

Republic of South Africa

Companies Act, 2008

**MEMORANDUM OF INCORPORATION FOR A NON PROFIT COMPANY WITH  
MEMBERS**

Name of company: **THE INSTITUTE OF DIRECTORS IN SOUTH AFRICA NPC**

referred to in this Memorandum of Incorporation as “the IoDSA”

Registration No. **1985/002734/08**

This Memorandum of Incorporation was adopted by Special Resolution passed on 19 June 2019 in substitution of the existing Memorandum of Incorporation of the IoDSA.

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## 1. INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context otherwise requires:
- 1.1.1 **“Board”** means the board of Directors of the IoDSA;
  - 1.1.2 **“Chair”** means the chair of the Board of Directors;
  - 1.1.3 **“Commission”** means the Companies and Intellectual Property Commission established in terms of section 85;
  - 1.1.4 **“Companies Act”** means the Companies Act, No. 71 of 2008, as amended;
  - 1.1.5 **“Directors”** the directors for the time being of the IoDSA;
  - 1.1.6 **“ex officio Director”** means a person who holds office as a Director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company’s memorandum of incorporation;
  - 1.1.7 **“General Meeting”** any general meeting of the Members, or any adjournment thereof, as the case may be, and all references in this MOI to "General Meeting" shall, where the context so requires, include a reference to an "annual General Meeting";
  - 1.1.8 **“Income Tax Act”** means the Income Tax Act, No. 58 of 1962 as amended or any legislation which replaces it;
  - 1.1.9 **“Individual”** means a natural person;
  - 1.1.10 **“IoDSA”** means The Institute of Directors in South Africa NPC (registration number 1985/002734/08), a non-profit company incorporated and existing under the laws of the Republic
  - 1.1.11 **“Lead Independent”** means the lead independent non-executive director of the Board of Directors
  - 1.1.12 **“Member”** any member of the IoDSA as contemplated by clause 6
  - 1.1.13 **“MOI”** means this Memorandum of Incorporation;
  - 1.1.14 **“Record Date”** means the date established under section 59 on which a company determines the identity of its members for the purposes of the Companies Act;
  - 1.1.15 **“Republic”** means the Republic of South Africa;
  - 1.1.16 **“Rules”** means any rules made by the Board as contemplated in section 15(3) to (5);
  - 1.1.17 **“Sign”** includes the reproduction of a signature lithography, printing with an india-rubber stamp, or any other mechanical or electronic process, or partly the one

- and partly the other process and “signature” has the corresponding meaning; and
- 1.1.18 **“Writing”** includes printing, typewriting, lithography or any other electronic or mechanical process, or partly one and partly the other. A requirement that a document, notice or information should be given in Writing will be met if the document, notice or information is in the form of a data message and accessible in a manner usable for subsequent reference. “Written” has a corresponding meaning.
- 1.2 All references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise.
- 1.3 The headings are for reference purposes only and shall not affect the interpretation of this MOI.
- 1.4 Words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not).
- 1.5 Words that are defined in the Companies Act bear the same meaning in this MOI as in that Act.
- 1.6 If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.
- 1.7 If the provisions of this MOI are in any way inconsistent with the unalterable provisions of the Companies Act, the provisions of the Companies Act shall prevail.
- 1.8 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.9 When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:
- 1.9.1 excluding the day on which the first such event occurs;
- 1.9.2 including the day on or by which the second event is to occur; and
- 1.9.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.9.1 and 1.9.2 respectively.

## **2. OBJECTS**

The objects of the IoDSA are to:-

- 2.1 promote good corporate governance in South Africa by empowering those who are charged with governance duties to effectively and legally discharge those duties;
- 2.2 safeguard the integrity and status of directorship as a profession by serving as the professional body for directors and through offering a professional designation which serves to assess and credit mastery as a director;
- 2.3 take a continuing and effective interest in legislative developments as this relates to governance and directors' duties in order as far as possible to ensure that the Constitution of South Africa, 1996 is upheld and that a climate conducive to economic growth is maintained;
- 2.4 uphold and maintain the concept of the corporate entity as a responsible corporate citizen and its role in a free enterprise economy;
- 2.5 provide an effective voice for directors in public affairs;
- 2.6 maintain and strengthen the bonds and reciprocity between the IoDSA and professional organisations with similar objectives within South Africa and in other parts of the world;
- 2.7 undertake, provide and support or assist in research, thought leadership, guidance, advice, opportunities for peer interaction, education and training which may assist in the attainment or advancement of any of the objects of the IoDSA as set out above; and
- 2.8 do all such things as the Board determines would be in the furtherance of the objects set out above.

## **3. INCORPORATION AND NATURE OF THE IODSA**

### **3.1 Incorporation**

- 3.1.1 The IoDSA is incorporated as a Non Profit company, with members, in terms of the Companies Act.
- 3.1.2 The IoDSA is incorporated in accordance with, and governed by:-
  - 3.1.2.1 the unalterable provisions of the Companies Act that are applicable to Non Profit companies;
  - 3.1.2.2 the alterable provisions of the Companies Act that are applicable to Non Profit companies, subject to any negation, restriction, limitation, qualification, extension, variation or substitution set out in this MOI; and
  - 3.1.2.3 the provisions of this MOI.

### **3.2 Objects and powers of the IoDSA**

- 3.2.1 The objects of the IoDSA are as set out in clause 2 and, except to the extent necessarily implied by the stated objects, the IoDSA has the powers and capacity of an Individual as envisaged by section 19(1)(b).
- 3.2.2 The IoDSA is not subject to any restrictive conditions and there are no additional requirements or restrictions which apply to the amendment of this

MOI as envisaged by section 15(2)(b) and section 15(2)(c) and accordingly the IoDSA may do anything which the Companies Act empowers a company to do unless prohibited by its MOI.

3.2.3 The IoDSA:

3.2.3.1 must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the company, or who is a Member or Director, or person appointing a Director, of the IoDSA, except:

3.2.3.1.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the IoDSA;

3.2.3.1.2 as reasonable payment of, or reimbursement for, expenses incurred to advance a stated object of the IoDSA;

3.2.3.1.3 as a payment of an amount due and payable by the IoDSA in terms of a bona fide agreement between the IoDSA and that person or another party;

3.2.3.1.4 as a payment in respect of any rights of that person, to the extent that such rights are administered by the IoDSA in order to advance a stated object of the IoDSA; or

3.2.3.1.5 in respect of any legal obligation binding on the IoDSA;

3.2.3.2 must apply all of its assets and income, however derived, to advance its stated objects, as set out in this MOI; and

3.2.3.3 subject to clause 3.2.3.2 and 9, may:

3.2.3.3.1 acquire and hold securities issued by a profit company; and

3.2.3.3.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

#### **4. RULES AND AMENDMENT OF THE MOI AND RULES**

4.1 The Board may make, amend or repeal any necessary or incidental Rules relating to the governance of the IoDSA by publishing a copy of these Rules and by sending notice thereof by registered post (to any address, within the Republic supplied by the Member to the IoDSA) or by electronic transmission (to any electronic address supplied by the Member to the IoDSA) to each of the Members and by filing a copy of the Rules with the Commission. Any Rules published in this manner take effect on the date specified in that rule and shall be subject to ratification by the Members as set out in section 15(4)(c)(ii).

4.2 The Board may propose to amend any of the provisions of this MOI and the Members may by way of special resolution adopt such amendments.

4.3 A notice of the proposed alterations of the MOI shall be sent to each Member by registered mail or by electronic transmission at least 15 (fifteen) Business Days before

the meeting at which the special resolution to amend the provisions of the MOI is to be passed.

- 4.4 The Board shall ensure that a copy of any amendments that have been made to the MOI have been provided to the Commissioner for the South African Revenue Service within 30 (thirty) days of having effected such amendments.
- 4.5 The Board or a person authorised by the Board may alter the MOI or the Rules to correct any patent errors (spelling, punctuation, grammar or similar defects on the face of the document) by publishing a notice of the alteration, on its website or in any other manner required or permitted by the Rules and by filing a notice of the alteration with the Commission.
- 4.6 No amendments to the MOI shall be made which will:-
  - 4.6.1 allow any income or other funds or other assets of the IoDSA to be applied for a purpose which does not promote the achievement of the objects of the IoDSA; or
  - 4.6.2 amend this clause 4.6 in any manner which would give any proprietary or similar interest in the IoDSA's income or other funds or other assets to any Individual or any incorporated entity contrary to the provisions of the Income Tax Act.

## **5. OPTIONAL PROVISIONS OF THE COMPANIES ACT**

The IoDSA does not elect, in terms of section 34(2), to comply voluntarily with the provisions of chapter 3 of the Companies Act.

## **6. MEMBERS OF THE IODSA**

- 6.1 Membership
  - 6.1.1 A Member may be any person including Individuals, companies or other incorporated entities, statutory bodies, partnerships or associations of persons. The Board may, in its sole discretion, determine the criteria to be applied for qualification of membership of the IoDSA.
  - 6.1.2 Membership for a determined period becomes effective subject to the following:
    - 6.1.2.1 application in Writing, on the prescribed application form;
    - 6.1.2.2 acceptance of the application and
    - 6.1.2.3 payment of the requisite membership fee, where applicable.
  - 6.1.3 The decision to accept or to reject an application for membership is, subject to applying the qualification criteria as determined by the Board in terms of 6.1.1, in the discretion of the management of the IoDSA which is not required to give reasons for its decision and there is no appeal process available.
  - 6.1.4 The Board may in its sole discretion determine categories of membership with set qualification criteria and confer membership of a certain category on a person who qualifies in terms of the criteria for that category.

## 6.2 Termination of Membership

6.2.1 Membership of the IoDSA is *ipso facto* terminated if the Member:

6.2.1.1 dies;

6.2.1.2 fails to make punctual payment of any amount due to the IoDSA or fails to discharge any of his or her obligations to the IoDSA on due date, whether such obligation is related to membership or not and if the Board as a result in its sole discretion decides to terminate membership;

6.2.1.3 gives notice to the IoDSA in Writing of his or her resignation as a Member;

6.2.1.4 is sequestered, surrenders his or her estate, or in the case of an incorporated entity, an order for the provisional winding-up of the Member is made, or the relevant Member enters into Business Rescue proceedings as contemplated in the Companies Act;

6.2.1.5 is placed under curatorship.

6.2.2 In addition to the causes for termination of membership in terms of clause 6.2.1, the Board has the power to terminate a Member's membership of the IoDSA if, in its sole discretion:

6.2.2.1 the Member is guilty of conduct that is obstructive or harmful to the interests and/or objects of the IoDSA or which contravenes IoDSA's code of conduct for Members;

6.2.2.2 the Member brings the IoDSA into disrepute;

6.2.2.3 it is obstructive or harmful to the interests and/or objectives of the IoDSA that the Member should continue as a Member of the IoDSA.

6.2.3 The Board shall, when terminating a Member's membership in terms of clause 6.2.2, follow due and fair process as determined by the Board from time to time.

6.2.4 A Member whose membership has been terminated remains liable for all amounts that may at the date of termination of membership be due by the Member to the IoDSA.

6.2.5 The IoDSA maintains at its registered office a register of Members of the IoDSA as required by the Companies Act.

## 6.3 Rights of Members

6.3.1 Each Member has an equal vote in any matter to be decided by Voting Members.

6.3.2 The Board has regard to each of the Members' rights not to be discriminated against unfairly, as provided in section 9 of the Constitution of the Republic.

## 6.4 Appointment of proxies

6.4.1 A Member may appoint any Individual, who need not be a Member of the IoDSA, as a proxy to participate in and speak and vote at a General Meeting on behalf of the Member.

- 6.4.2 The instrument appointing a proxy shall be in Writing in the format prescribed by IoDSA management and dated and Signed by the appointing Member, or, if the appointing Member is an incorporated entity, under the hand of an officer or agent authorised by the incorporated entity.
  - 6.4.3 The instrument appointing a proxy shall be delivered to the registered office of the IoDSA not less than 48 (forty-eight) hours before the time for holding the General Meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid, unless the Chair, in his/her sole discretion decides otherwise.
  - 6.4.4 No instrument appointing a proxy is valid after the expiration of 1 (one) year from the date when it was Signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned General Meeting which could not have been used at the original General Meeting.
  - 6.4.5 A Member of the IoDSA may not appoint 2 (two) or more persons concurrently as proxies.
  - 6.4.6 A Member's proxy shall not have the authority to further delegate such proxy's powers to another person.
- 6.5 Record Date for exercise of Member rights
- If, at any time, the Board fails to determine a Record Date, the Record Date for participating in and voting at a General Meeting is the latest date by which the IoDSA is required to give Members notice of that meeting.
- 6.6 General Meetings
- 6.6.1 The IoDSA must hold an annual General Meeting within 15 (fifteen) months of the previous annual General Meeting held.
  - 6.6.2 The right of Members to requisition a General Meeting, as set out in section 61(3), may be exercised by at least 10% of the Members, as provided for in that section.
  - 6.6.3 The IoDSA must deliver a notice of each General Meeting (including the annual General Meeting) at least 15 (fifteen) Business Days before the date of the meeting in the manner and form as prescribed by section 62(3) to all of the Members of the IoDSA as at the Record Date for the meeting.
  - 6.6.4 The authority of the Board to determine the location of any General Meeting, and the authority of the IoDSA to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) is not limited or restricted by this MOI.
  - 6.6.5 The authority of the IoDSA to conduct a General Meeting entirely by electronic communication, or to provide for participation in a General Meeting by electronic communication, as set out in section 63 is not limited or restricted by this MOI. IoDSA may, from time to time, provide for Members to participate in General Meetings by way of electronic communication, in the

event of which the IoDSA shall communicate this to Members in advance of the General Meeting as required by section 63.

6.7 Proceedings, quorum and voting at General Meetings

6.7.1 At the annual General Meeting the following matters are dealt with and disposed of:

6.7.1.1 presentation of:

6.7.1.1.1 the Directors' report;

6.7.1.1.2 audited financial statements for the immediately preceding financial year;

6.7.1.2 the election of non-executive Directors;

6.7.1.3 the appointment of an auditor for the ensuing financial year;

6.7.1.4 any matters placed on the agenda by the Board; and

6.7.1.5 any matters raised by the Members.

6.7.2 A General Meeting may not begin until at least 5 (five) Members are present at the meeting and any matter to be decided at the meeting may not begin to be considered and decided unless at least 5 (five) Members are present at the meeting at the time the matter is called on the agenda.

6.7.3 The Chair presides as chair at every General Meeting of the IoDSA. If the Chair is unwilling or unable to act as chair of the General Meeting or is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Lead Independent shall chair the General Meeting. In the absence of the Lead Independent, the Board members present shall elect one of their number to be chair of the meeting.

6.7.4 If within 1 (one) hour from the time appointed for the General Meeting to commence, a quorum is not present, the General Meeting shall be postponed, without motion, vote or further notice for 1 (one) week to the same time and day in the next week or, if that day is not a Business Day, to the next succeeding day which is a Business Day, and if at such adjourned General Meeting a quorum is not present within 1 (one) hour from the time appointed for the General Meeting, then the Members entitled to vote and present at the meeting shall be deemed to be the requisite quorum.

6.7.5 At a General Meeting, voting may either be by show of hands, or by polling.

6.7.6 A polled vote must be held on any particular matter to be voted on at a General Meeting if a demand for such a vote is made by at least 5 (five) persons having the right to vote on that matter, either as a Member or a proxy representing a Member.

6.7.7 A declaration by the chair of the General Meeting that a resolution has been carried together with an entry to that effect in the General Meeting's minutes is conclusive evidence of the fact, without requiring proof of the number or proportion of the votes recorded in favour of or against such resolution.

6.7.8 If a poll is duly demanded it shall be taken in such a manner as the chair directs and the result of the poll shall be deemed to be the resolution of the

General Meeting at which the poll was demanded. The chair of the General Meeting may appoint scrutineers to determine the result of the poll.

- 6.7.9 A poll demanded on the question of adjournment, is taken forthwith. A poll demanded on any other question is taken at such time as the chair of the General Meeting directs and no notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuation of a General Meeting for the transaction of any business other than the question upon which the poll has been demanded.
  - 6.7.10 On a show of hands at a General Meeting each person who is entitled to vote on a resolution proposed at that meeting and is present by person or by proxy is entitled to 1 (one) vote on that resolution, notwithstanding the number of proxies held.
  - 6.7.11 On a poll at a General Meeting each person who is present, whether in person or by proxy, is entitled to 1 (one) vote on a resolution proposed at that meeting.
- 6.8 Members resolutions
- 6.8.1 For an ordinary resolution to be adopted at a General Meeting, it must be supported by more than 50% of the Members who voted on the resolution, as provided in section 65(7).
  - 6.8.2 For a special resolution to be adopted at a General Meeting, it must be supported by at least 75% of the Members who voted on the resolution, as provided in section 65(9).
  - 6.8.3 The quorum for both ordinary and special resolutions is as set out in clause 6.7.2.

## **7. BOARD OF DIRECTORS**

- 7.1 Authority of the Board and delegation
- 7.1.1 The authority of the Board to manage and direct the business and affairs of the IoDSA, as set out in section 66(1) is not restricted in this MOI.
  - 7.1.2 The Board may delegate any of its powers to Board appointed committees consisting of such Board members or other persons as it deems fit.
  - 7.1.3 Each Board committee must have a terms of reference dealing with its composition; role and purpose, functions; delegated authorities; tenure; meeting requirements and procedures and reporting mechanism to the Board.
  - 7.1.4 The Board or a committee of the Board may delegate to management of the IoDSA any of its powers upon such terms and conditions as is deemed fit.
  - 7.1.5 Notwithstanding that it may afterwards be discovered that there has been some defect in the appointment or continuance in office of a Director or person acting as a Director, bona fide decisions by the Board or by any person acting in good faith as a Director of the IoDSA are as valid as if every such person had been duly appointed, were qualified and continued to be a Director or were entitled to vote, as the case may be.

## 7.2 Composition of the Board

7.2.1 The Board consists of a minimum of 8 (eight) and a maximum of 15 (fifteen) Directors, inclusive of ex officio Directors.

7.2.2 The Chief Executive Officer serves as an ex officio executive Director of the IoDSA. Subject to the maximum number of directors as stipulated in clause 7.2.1, the Board may from time to time in its sole discretion identify other executive positions that qualify for ex officio membership of the Board.

7.2.3 A Director may resign from office by notice in Writing to the Board.

## 7.3 Rotation of non-executive Directors

7.3.1 One third (1/3) of the non-executive Directors of the IoDSA retires from office at every annual General Meeting. If the number of non-executive Directors is not three or a multiple of three, the number nearest to one-third (1/3) retires from office.

7.3.2 Retiring non-executive Directors may, subject to recommendation by the Board, stand for re-election.

## 7.4 Appointment, nomination and election of non-executive Directors

7.4.1 Subject to 7.2.1 the Board may in its sole discretion co-opt and appoint additional Directors to its number between annual General Meetings. Any casual vacancy occurring on the Board between annual General Meetings may be filled by the Board if the number of remaining Directors are at the minimum or above, but must be filled by the Board if the number of remaining Directors falls below the minimum.

7.4.2 A Director who has been appointed by the Board in terms of 7.4.1 must stand down at the next annual General Meeting and may, subject to recommendation by the Board, stand for re-election.

7.4.3 Subject to 7.4.1, vacancies in non-executive Director positions are filled by Member elections at the annual General Meeting.

7.4.4 Prior to the annual General Meeting, the Board by notice to Members calls for the nomination of candidates in the manner and in the form prescribed by the Board. The Board may review and amend the nomination process from time to time. A shortlist of candidates is decided on by the Board in its sole discretion for recommendation to Members for election at the annual General Meeting. In determining such shortlist the Board follows due and fair process and takes into account the skills, knowledge and experience requirements of the Board.

7.4.5 The Board includes in the notice of the annual General Meeting the names of the short-listed candidates, together with their curricula vitae and such further information as the Board deems necessary to enable Members to exercise an informed vote.

7.4.6 The nomination of candidates by Members is subject to 7.4.4 and no nominations by Members made outside the set process are allowed.

7.4.7 Candidates absent from the annual General Meeting are not eligible without having rendered prior apologies to the IoDSA in advance of the meeting together with sound reasons for absence.

7.4.8 The election by Members at the annual General Meeting is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled. Each Member present in person or by proxy is entitled to vote in favour of as many candidates as there are vacancies.

7.4.9 Voting for non-executive Directors is conducted by means of secret ballot.

7.4.10 A vacancy is filled only if a majority of the voting rights exercised support the candidate.

7.4.11 If at any General Meeting at which an election of non-executive Directors ought to take place the offices of the retiring non-executive Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of clause 6.7.4 shall apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the Board shall fill the vacancies subject to re-election of those Directors at the next annual General Meeting.

## 7.5 Disqualification of Directors

A Director ceases to hold office in the event of the Director:-

7.5.1 becoming ineligible or disqualified to be a Director by virtue of any of the provisions of the Companies Act;

7.5.2 being removed by a resolution of the Members or Board of Directors as provided for in section 71;

7.5.3 failing to attend 3 (three) meetings of the Board or its committees in 1 (one) financial year and the Board determines in its sole discretion that it is without good cause; or

7.5.4 having a material interest in any contract or proposed contract with the IoDSA or in a matter before the Board and failing to declare such interest and the nature thereof in the manner required by the Companies Act and this MOI.

## 7.6 Proceedings of the Board

7.6.1 The Board may meet in person or via any electronic communication, for the dispatch of business, adjourn and otherwise regulate their meetings at such times and places as it thinks fit. The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this MOI.

7.6.2 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this MOI.

7.6.3 The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) is not limited or restricted by this MOI.

7.6.4 The right of Directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 25% of the Directors.

- 7.6.5 The quorum necessary for the transaction of the business of the Board is a majority of the number of Directors in office, provided that the majority of the directors present must be non-executive Directors.
- 7.6.6 Questions arising at any meeting are decided by a majority of votes. Each Director has one vote on a matter before the Board.
- 7.6.7 Subject to the provisions of section 75, in respect of Directors' conflicts of interests:
  - 7.6.7.1 All Directors must at the first Board meeting of each year or at the first Board meeting that the Director attends complete an interest declaration in the format agreed by the Board and submit the forms to the Chair.
  - 7.6.7.2 At every Board meeting a declaration of conflict of interest must be made in the manner and form agreed by the Board in regard to all items for consideration before the Board.
  - 7.6.7.3 A Director may not vote in respect of any matter tabled at the Board in which the Director has a material interest, or on any matter arising therefrom and if a vote is exercised contrary to this, the vote is not counted.
  - 7.6.7.4 The Director must not take part in the consideration of the matter and leave the meeting immediately after making the required disclosure.
- 7.6.8 While being absent from the meeting in terms of 7.6.7.4, the Director:
  - 7.6.8.1 will be regarded as being present for the purpose of determining whether a sufficient number of Directors are present to constitute a quorum; and
  - 7.6.8.2 will not be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted.
- 7.6.9 Subject to the provisions of the Act, a round-robin resolution in Writing adopted by the majority of Directors is as valid and effective as if it had been passed at a duly called and constituted meeting of the Board or its committee as the case may be, provided that each Director has received notice of the matter to be decided. An adopted round-robin resolution may consist of multiple hard or electronic copies of the same resolution, each Signed by one or more Board members. A resolution of Directors passed in terms of this clause is presented at the next meeting of the Board or its committee as the case may be for noting and signature by the chair of that meeting in terms of the provisions of section 24 and section 73(8).
- 7.6.10 The Board must elect a Chair and a Lead Independent and determine the period for which the Chair and the Lead Independent is to hold office. If at any meeting the Chair is not present within 5 (five) minutes after the time appointed for holding the same, the Lead Independent shall chair the meeting. If the Lead Independent is not present, the Directors present may elect one of their number to chair the meeting.

**7.7 Accounting Records and Annual Financial Statements**

- 7.7.1 The Board causes accounting records as required by section 28 to be kept.
- 7.7.2 The accounting records are kept at the registered office of the IoDSA or at such other place or places as the Board decides, and are always open for inspection by the Directors.
- 7.7.3 The Board determines from time to time whether, to what extent, at what times and places and under what conditions the accounting records of the IoDSA shall be open to inspection by Members, and no Member has any right to inspect any accounting records or documents of the IoDSA except as conferred by the Companies Act and/or other applicable legislation.
- 7.7.4 The Board, in accordance with the Companies Act, ensures the preparation and tabling at the annual General Meeting as a minimum the matters referred to in 6.7.1 and performs all duties in relation to annual financial statements, accounting records and auditors in accordance with the Companies Act and other applicable legislation. A copy of the annual financial statements which are to be tabled at the annual General Meeting, is sent to every Member not less than 15 (fifteen) Business Days before the date of the meeting.

**8. NOTICES TO MEMBERS**

- 8.1 If a manner of delivery of a document, record, statement or notice is prescribed in terms of this MOI or the Companies Act:
  - 8.1.1 it is sufficient if the person required to deliver such a document, record, statement or notice does so in a manner that satisfies all of the substantive requirements as prescribed; and
  - 8.1.2 any deviation from the prescribed manner does not invalidate the action taken by the person delivering that document, record, statement or notice, unless the deviation-
    - 8.1.2.1 materially reduces the probability that the intended recipient will receive the document, record, statement or notice; or
    - 8.1.2.2 is such as would reasonably mislead a person to whom the document, record, statement or notice is, or is to be, delivered.
- 8.2 If, in terms of this MOI or the Companies Act, a notice is required or permitted to be given or published to any person, it is sufficient if the notice is transmitted electronically directly to that person in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 8.3 Any notice, document or statement sent in terms of this MOI or the Companies Act shall be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the regulations in terms of the Companies Act.

**9. COMPLIANCE WITH SECTION 30B OF THE INCOME TAX ACT**

- 9.1 The Board consisting of more than three Directors who are not related to each other accept the fiduciary responsibility of the IoDSA. No single person shall directly or indirectly control the decision making powers relating to the IoDSA.

- 9.2 The IoDSA is prohibited from distributing any of its funds or assets to any person (otherwise than in the course of undertaking its objects) and is required to utilise its funds solely for the objects for which it has been established.
- 9.3 Any Member of the IoDSA is prohibited from having any personal or private interest in the IoDSA except in so far as rendering a service to the IoDSA in pursuit of its objects and subject to 9.4 and 9.7.
- 9.4 The IoDSA is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of clause 10 of this MOI.
- 9.5 Substantially the whole of the activities of the IoDSA shall be directed to the furtherance of its objects and not for the specific benefit of an individual member or minority group.
- 9.6 The IoDSA is prohibited from holding any share or other interest in any business, profession or occupation which is carried on by its members.
- 9.7 The IoDSA may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 9.8 The Board undertakes to submit to the Commissioner of the South African Revenue Service a copy of any amendment to the MOI or written instrument of the IoDSA within 30 (thirty) days of its amendment.
- 9.9 Substantially the whole, being a considerable majority of the IoDSA's funding, must be derived from its annual or other long term members.
- 9.10 The IoDSA undertakes to comply with the reporting requirements as may be determined by the Commissioner of the South African Revenue Service from time to time.
- 9.11 The IoDSA is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

## **10. DISSOLUTION OF THE IODSA**

- 10.1 The IoDSA shall be dissolved by a special resolution to be effected by the Members at a duly constituted general meeting. Upon the dissolution of the IoDSA, the Board shall, after making provision for the liabilities and obligations of the IoDSA and the costs of dissolving the IoDSA, distribute the whole of the IoDSA's income (including distributed income still in its possession) and assets to:
- 10.1.1 another entity approved by the Commissioner of the South African Revenue Service in terms of section 30B of the Income Tax Act;
  - 10.1.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act to be determined by the Directors at or before the time of dissolution or falling such determination by the Court;
  - 10.1.3 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity; or

- 10.1.4 any department of state or administration in the national or provincial or local sphere of Government of South Africa.
- 10.2 No past or present Member or Director shall be entitled to any part of the net value of the IoDSA after the liabilities and obligations contemplated in clause 10.1 have been satisfied.