

DATED 26 NOVEMBER 2019

**CONSUMER GOODS AND SERVICES OMBUD
NPC
A NON-PROFIT COMPANY WITHOUT MEMBERS
(HEREINAFTER REFERRED TO AS THE "COMPANY")
REGISTRATION NUMBER 2014/084742/08**

**THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)**

- relating to -

MEMORANDUM OF INCORPORATION



Matter ref I33282
Ref: Ms S Month/hf

Hogan Lovells (South Africa)
22 Fredman Drive, Sandton, Johannesburg, 2146

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1. INTERPRETATION

1.1 In this MOI, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

- (a) "**Alternate Director**" means the person elected or appointed to serve, as the occasion requires, as a member of the Board in substitution for a particular elected Director of the Company;
- (b) "**Auditors**" means the auditors of the Company from time to time;
- (c) "**Board**" means the board of Directors from time to time of the Company;
- (d) "**CIPC**" means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;
- (e) "**Code of Conduct**" means the consumer goods and services industry code of conduct, established and accredited in accordance with section 82(6) of the Consumer Protection Act, as amended from time to time and as more fully dealt with in article 30 below;
- (f) "**the Commissioner**" means the Commissioner for the South African Revenue Service;
- (g) "**the Company Rules**" means any rules made by the Board in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act, and published by the Board as contemplated in article 12 of this MOI;
- (h) "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules to such Companies Act;
- (i) "**Connected Person**" has the meaning ascribed to it in section 1 of the Income Tax Act;
- (j) "**Consumer Body**" means a consumer protection group as defined in section 1 of the Consumer Protection Act;
- (k) "**Consumer Goods Council**" means the Consumer Goods Council of South a not for profit company registered in terms of the laws of South Africa under the registration number (1982/006710/08);
- (l) "**Consumer Goods and Services Industry**" means the consumer goods and services industry as defined in the Code of Conduct;
- (m) "**Consumer Goods and Services Ombudsman**" means the person who meets the minimum requirements as set out in the Code of Conduct, appointed as such from time to time by the Board in accordance with this MOI and the Code of Conduct;
- (n) "**Consumer Protection Act**" means the Consumer Protection Act No. 68 of 2008, as amended, and includes any replacement or successor legislation;
- (o) "**Days**" means calendar days, unless qualified by the word "business", in which instance a "**Business Day**" will be any day other than a Saturday, Sunday or public holiday as gazetted by the Government of the Republic from time to time;

- (p) **"Director"** means a member of the Board as contemplated in section 66 of the Companies Act, or an Alternative Director, and includes any person occupying the position of a director or Alternative Director, by whatever name designated;
- (q) **"Electronic Address"** means such address as appointed by a Director for the purposes of conducting an Electronic Communication;
- (r) **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- (s) **"Gazette"** means the government gazette and/or the provincial gazette, as the context may require;
- (t) **"Industry Association Bodies"** means a member funded, voluntary association, which has as its members, Participants in the Consumer Goods and Services Industry;
- (u) **"the Income Tax Act"** means the Income Tax Act No. 58 of 1962, as amended, and includes any replacement or successor legislation;
- (v) **"Law"** means any law of general application as amended and re-enacted from time to time, and includes the common law and any statute, constitution, degree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of Government (including local and provincial Government), statutory or regulatory body which has the force of law;
- (w) **"Manufacturing Sector"** means the entities that operate in the Supply Chain as manufacturers as defined in the Code of Conduct;
- (x) **"MOI"** means this memorandum of incorporation, including the schedules attached thereto, as amended from time to time;
- (y) **"National Consumer Commission"** means the National Consumer Commission, established in terms of section 85 of the Consumer Protection Act, as an organ of state in the public administration;
- (z) **"Non-Profit Company"** means any non-profit company incorporated in terms of the Companies Act;
- (aa) **"Participant"** has the meaning given to it in the Code of Conduct;
- (bb) **"Public Benefit Activities"** means a public benefit activity as contemplated in section 30(1) read with Part 1 of the ninth schedule of the Income Tax Act or any such activities determined by the Minister of Finance by notice in the Gazette which are benevolent in nature, having regard to the needs, interests and well-being of the general public;
- (cc) **"Principal Object"** means the principal object of the Company as set out in article 5.2;
- (dd) **"Public Benefit Objective"** means a public benefit objective as contemplated in section 30(1) of the Income Tax Act;
- (ee) **"Public Benefit Organisation"** means a public benefit organisation as contemplated in section 30 of the Income Tax Act and approved by the Commissioner;

- (ff) **"Regulations"** means the regulations published in terms of the Companies Act from time to time;
- (gg) **"Republic"** means the Republic of South Africa;
- (hh) **"Retail Sector"** means entities that operate in the Supply Chain as a retailer as defined in the Code of Conduct;
- (ii) **"Supply Chain"** has the meaning given to it in terms of Section 1 of the Consumer Protection Act;
- (jj) **"Writing"** means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any Electronic Communication in a manner and form permitted in terms of the Companies Act and/or the Regulations.

1.2 In this MOI, unless the context clearly indicates otherwise –

- (a) words and expressions defined in the Companies Act and which are not defined herein shall have the meanings given to them in the Companies Act;
- (b) a reference to the Companies Act shall include a reference to the Regulations;
- (c) a reference to a section by number refers to the corresponding section of the Companies Act;
- (d) clause headings are for convenience only and are not to be used in its interpretation;
- (e) an expression which denotes -
 - (i) any gender includes the other genders;
 - (ii) a natural person includes a juristic person and *vice versa*; and
 - (iii) the singular includes the plural and *vice versa*;
- (f) if the due date for performance of any obligation in terms of this MOI is a Day which is not a Business Day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding Business Day;
- (g) any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this MOI;
- (h) any reference to a notice shall be construed as a reference to a written notice and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act and/or the Regulations.

1.3 The words **"include"** and **"including"** mean "include without limitation" and "including without limitation". The use of the words **"include"** and **"including"** followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

1.4 Unless otherwise provided in this MOI or the Companies Act, defined terms appearing in this MOI in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

1.5 Unless specifically otherwise provided, any number of Days prescribed shall be determined by excluding the first and including the last Day or, where the last Day falls on a Day that is not a Business Day, the next succeeding Business Day.

1.6 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2. CONFLICTS WITH THE MOI

As required by the Companies Act, in any instance where there is a conflict between a provision (be it express, implied or tacit) of this MOI and –

2.1 an alterable or elective provision of the Companies Act, the provisions of this MOI shall prevail to the extent of the conflict;

2.2 an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provisions of the Companies Act shall prevail to the extent of the conflict unless the MOI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.

3. INCORPORATION AND NATURE OF THE COMPANY

3.1 The Company is incorporated as a Non-Profit Company.

3.2 The Company is incorporated in accordance with and governed by –

(a) the unalterable provisions of the Companies Act, subject to any provisions of this MOI imposing on the Company a higher standard, greater restriction, longer period of time or any similar more onerous requirement, than would otherwise apply to the Company in terms of an unalterable provision of the Companies Act;

(b) the alterable provisions of the Companies Act, subject to the limitations, extensions, restrictions, variations or substitutions set out in this MOI;

(c) the other provisions of this MOI; and

(d) the Company Rules, if any.

3.3 Each person bound by this MOI (which shall include, for the time being, the Company and each Director of the Company), is required to familiarise themselves with the relevant provisions of the Companies Act and the provisions of this MOI.

4. COMPANY WITH NO MEMBERS

As contemplated in item 4(1) of schedule 1 to the Companies Act, the Company has no Members.

5. OBJECT AND POLICIES

5.1 The Company is a Non-Profit Company and its objects must be interpreted in line with an object to conduct Public Benefit Activities as contemplated in the Income Tax Act.

5.2 The Company is established principally to:

(a) further the protection and promotion of consumer rights; and

(b) improve the control over, and the quality, of goods and services,

within the Consumer Goods and Services Industry.

- 5.3 It will do so by resolving disputes within the Consumer Goods and Services Industry.
- 5.4 The intended dispute resolution will be conducted either via facilitation, mediation, the conducting of fact-finding exercises and/or the makings of recommendations on the facts or by taking steps to correct the incorrect perceptions on the part of consumers. The Company shall pursue this dispute resolution objective by appointing a Consumer Goods and Services Ombudsman who shall in his discretion resolve disputes as set out above, as contemplated in the ninth schedule to the Income Tax Act, for the benefit of the general public at large.
- 5.5 The activities of the Company shall be carried out in a non-profit manner with an altruistic and philanthropic intent and without any direct benefit accruing to any of its Directors, employees, officers or agents (otherwise than as stated herein).
- 5.6 Except to the extent necessarily implied by the stated object hereof, the purpose and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Companies Act.

6. **INCOME AND PROPERTY OF THE COMPANY**

- 6.1 The income and property of the Company, irrespective of when it arises, must be applied solely towards the promotion of the Principal Object. No portion thereof must be paid or transferred, *in specie*, directly or indirectly by way of dividend, bonus or otherwise to any person who is or was an incorporator of the Company, or who is a Director, or a person appointing a Director, or to its holding Company and/or any subsidiary, in so far applicable.
- 6.2 Having regard to the Principle Object of the Company, this article does not preclude:
- (a) the payment or transfer of property in good faith; or
 - (b) the payment of reasonable remuneration to any officer or servant of the Company in return for any services actually rendered to the Company; or
 - (c) the payment of reasonable remuneration of any person or persons in cash for services rendered in its formation or in the development of the Company's activities; or
 - (d) paying gratuities and pensions and establish pension schemes, in respect of its officers and employees; or
 - (e) the payment of an amount due and payable to an incorporator, Director or appointed Director, by the Company in terms of a *bona fide* agreement between the Company and that person or another; or
 - (f) payment in respect of any rights of the person contemplated in article 5.2.3, to the extent that such rights are administered by the Company in order to advance the Principal Object; or
 - (g) payment in respect of any legal obligation binding on the Company.
- 6.3 The Company, subject to article 5.1, may -
- (a) acquire and hold securities issued by a profit company; or

- (b) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its Principal Object.

7. STATUS AS PUBLIC BENEFIT ORGANISATION

7.1 Notwithstanding any other provision contained in this MOI:

- (a) at all times at least 3 (three) Directors shall not be Connected Persons;
- (b) no single person shall, directly or indirectly, control the decision-making powers relating to the Company;
- (c) save as otherwise provided herein, the income of the Company shall not be distributed to any person otherwise than in the course of undertaking Public Benefit Activities as contemplated in the ninth schedule to the Income Tax Act;
- (d) save, as otherwise provided herein, the income of the Company shall be used solely for the purpose of the Principal Object;
- (e) the Company shall not knowingly be a party to any part of any transaction, operation or scheme which sole or main purpose is or was the reduction or postponement or avoidance of liability for any tax, duty or levy that, but for the transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other act administered by the Commissioner;
- (f) the Company shall not pay excessive remuneration, as contemplated in the fourth schedule to the Income Tax, to a Director, employee, or other person, or any Connected Person to the aforementioned persons, having regard to what is generally considered reasonable in relation to the service rendered or such employment;
- (g) the Company shall comply with the reporting requirements determined by the Commissioner from time to time;
- (h) the Company shall not use its assets or income directly or indirectly, to support, advance or oppose any political party; and
- (i) provided that a donor of funds is not a Public Benefit Organisation or an entity contemplated in 8.2(b)(ii) below, the Company may not accept any donation that may be recalled by the donor, save where the Company fails to abide by the terms thereof, nor may a donor impose conditions on the Company for it or a Connected Person to obtain a direct or indirect interest in the Company.

8. WINDING-UP/LIQUIDATION

8.1 The Company may be voluntarily wound-up as contemplated in section 80 of the Companies Act.

8.2 Upon dissolution of the Company, its net assets must be distributed in the manner set out below determined in accordance with Item 1(4)(b) of schedule 1 to the Companies Act in that:

- (a) no past or present Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

- (b) the entire net value of the Company must be distributed to one or more Non-Profit Companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations, non-profit trusts or government bodies having objectives similar to the Principal Object, provided that such Non-Profit Company, registered external non-profit company carrying on activities within the Republic, voluntary association, non-profit trust or government body must be:
 - (i) approved as a Public Benefit Organisation by the Commissioner; or
 - (ii) an 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 as its sole and or principal object the carrying on of any Public Benefit Activities; or
 - (iii) a department of state or administration in the national, provincial or local sphere of government in the Republic as contemplated in section 10(1)(a) or (b) of the Income Tax Act.

8.3 In the event that the net assets of the Company cannot be distributed as set out in article 8.2(b) above, the distribution of assets will take place as resolved by:

- (a) the Company's Directors, at or immediately before the time of its dissolution; or
- (b) where the Company's Directors fail to make such a determination as contemplated in article 8.3(a), by a court competent to do so.

9. **LIMITATION OF LIABILITY**

No person shall, solely by reason of being an incorporator, or Director of the Company, be liable for any liabilities or obligations of the Company.

10. **SPECIAL CONDITIONS**

This MOI imposes no restrictive conditions as contemplated in section 15(2)(b) or (c) of the Companies Act.

11. **AMENDMENT OF THE MOI**

11.1 All amendments to this MOI shall be submitted to the Commissioner.

11.2 An amendment to this MOI will only be valid if it is approved by more than 75% (seventy five percent) of Directors appointed at the time of the proposal of the amendment.

11.3 The provisions of this MOI are consistent with the principles set out in item 1(2) to item 1(6) of schedule 1 to the Companies Act in so far as such principles are applicable to the Company and no amendment of this MOI shall be competent to the extent that it is contrary to or negates any of such principles.

11.4 As contemplated in section 17 of the Companies Act, the Board, or any individual authorised by the Board, may alter this MOI in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –

- (a) publishing a notice of any alteration made by delivering a copy of such amendments to each Director by ordinary mail or any manner so determined by the Company; and
- (b) filing a notice of the alteration.

- 11.5 An amendment of this MOI will take effect from the later of –
- (a) the date on, and time at, which the CIPC accepts the filing of the notice of amendment contemplated in section 16(7) of the Companies Act; or
 - (b) the date, if any, set out in the said notice of amendment,
- save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the CIPC.
- 11.6 At any time after having filed its MOI with the CIPC, the Company may file one or more translations of it, in an official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete translation of the MOI.
- 11.7 At any time after having filed its MOI with the CIPC, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the CIPC requires, must) file a consolidated revision of the MOI, as so altered or amended, provided that every such consolidated revision filed with the CIPC in terms of this article 11.7 must be accompanied by a sworn statement by a Director or a statement by an attorney or notary public, stating that it is a true, accurate and complete representation of the Company's MOI, as altered or amended up to the date of the statement.
12. **COMPANY RULES**
- 12.1 The authority of the Company's Board to make Company Rules for the Company, as contemplated in section 15(3) to (5) of the Act is not in any manner limited or restricted by this MOI.
- 12.2 The Board may make, amend or repeal any necessary or incidental Company Rules relating to the governance of the Company in respect of matters not addressed in the Act or this MOI by:
- (a) publishing a copy thereof in any manner permitted or required by the Board; and
 - (b) filing a copy thereof with the CIPC as contemplated in regulation 5 to the Companies Act read with column 1 of CR1 of the Companies Act.
- 12.3 The Company Rules: -
- (a) must be consistent with the Companies Act and MOI, and to the extent that there is any inconsistency therewith, will be void;
 - (b) will take effect on a date which is the later of:
 - (i) 10 (ten) Business Days after the Company Rules are filed in terms of article 12.2(b); or
 - (ii) the date, if any, specified in the Company Rules; or
 - (c) will be binding:
 - (i) on an interim basis from the time it takes effect as per article 12.3(b) above, to the time that it is put to a vote at the next meeting of the Board of Directors of the Company; and

- (ii) on a permanent basis only if it has been ratified by a majority vote of the Board as contemplated in article 12.3(c)(i) above.

12.4 If the Company Rules filed in terms of article 12.2:

- (a) are subsequently ratified when put to the vote as contemplated in article 12.3(c)(i), the Company must file a notice of ratification within the period and in the manner and form as prescribed in the Act and Regulations;
- (b) are not subsequently ratified as contemplated in article 12.3(c)(i), the Company must file a notice of non-ratification within the period and in the manner and form as prescribed in the Act and Regulations.

12.5 The Board may not make substantially similar Company Rules within the ensuing 12 (twelve) months unless it has been approved in advance by a resolution of the Board at a meeting of the Board.

12.6 Any failure to ratify the Company Rules shall not affect the validity of anything done in terms of those Company Rules during the period in which they had interim effect as provided in article 12.3(c).

12.7 The Company must publish a notice of any alteration of the Company Rules made in terms of section 17(1) of the Companies Act by delivering a copy of those amendments to each Director by ordinary mail within 5 (five) Business Days of said alterations having been made.

13. **APPLICATION OF OPTIONAL PROVISIONS OF THE ACT**

The Company elects, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in Chapter 3 of the Companies Act.

14. **COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS**

14.1 The incorporators of the Company will be its first Directors in terms of Item 3(b) of schedule 1 of the Act and will serve for a 2 (two) year term, until such time as sufficient Directors are elected in terms of this MOI.

14.2 Subject to 14.3, in addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Companies Act to appoint an audit committee, or a social and ethics committee, the Board must comprise of at least 9 (nine) Directors, which may either be executive or non-executive Directors, and no more than 15 (fifteen) Directors, provided that at least three of the Directors may not be Connected Persons as contemplated in the Income Tax Act.

14.3 Notwithstanding article 14.1 above, the Board shall comprise of:

- (a) a minimum of 9 (nine) Directors, made up as follows:
 - (i) 3 (three) Directors from the Retail Sector;
 - (ii) 3 (three) Directors from the Manufacturing Sector;
 - (iii) 2 (two) representatives from Consumer Bodies; and
 - (iv) 1 (one) representative from the Industry Association Bodies; and
- (b) a maximum of 15 (fifteen) Directors:

- (i) 4 (four) Directors from the Retail Sector;
- (ii) 4 (four) Directors from the Manufacturing Sector; and
- (iii) 2 (two) representatives from Consumer Bodies; and
- (iv) 2 (two) representative from the Industry Association Bodies; and
- (v) up to a maximum of 3 (three) representatives appointed as fit and proper persons as the board agreed.

14.4 Subject to the provisions of the Companies Act, the Board shall have the power, by majority to –

- (a) appoint Directors to the Board; and/or
- (b) appoint a successor or successors to assume office as Directors/s on the failure of any one or more of them; and/or
- (c) remove any Director from office,

as they may in their discretion deem fit, provided that they shall so exercise the powers hereby granted to them to ensure that the number of Directors shall not fall below 9 (nine) and will not exceed 15 (fifteen) Directors. Subject to 14.5 below, the Company shall have the Directors appointed by the Board, respectively, and there shall be no Directors appointed by any other person or *ex officio* Directors as contemplated in section 66(4) of the Companies Act, other than as provided for herein.

14.5 Notwithstanding articles 14.3 and 14.4 above, the Company shall have 2 (two) *ex officio* Directors, that being the Consumer Goods and Services Ombudsman and the CEO (or such number of *ex officio* Directors as the Board may resolve from time to time) and who:

- (a) are not entitled to vote on any matters to be decided by the Board; and
- (b) shall not be included in the calculation of any quorum requirements.

14.6 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Companies Act, a person need only satisfy the eligibility requirements and qualifications as set out in article 19.1 hereof.

14.7 No Director shall be appointed for life or for an indefinite period.

14.8 The Directors shall rotate in accordance with the following provisions of this article 14.8–

- (a) the term of office of a Director shall be for a period of no longer than 2 (two) years;
- (b) at the end of each 2 (two) year term, the affected Director shall cease to be a Director unless the Director qualifies and is eligible for his/her term to be extended, and the Board approves such extension;
- (c) a Director whose term has ended shall be eligible for re-election for a further term of two years;
- (d) a Director whose term ends during a Board meeting shall retain office until the close or adjournment of such meeting;
- (e) the Directors, at the meeting at which a Director retires in the above manner, or at any other meeting, may fill the vacancy by electing a person thereto;

- (f) if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this MOI, will apply mutatis mutandis to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned meeting; and
 - (g) *ex officio* Directors shall be appointed for the tenure of their employment contracts and shall not be required to rotate in terms of this article 14.8.
- 14.9 In the event that the number of Directors should for any reason fall below 9 (nine), the remaining Director/s –
- (a) shall retain the power to act in terms of this article to appoint a further Director to increase the number of Directors to the required number; and
 - (b) shall further, pending such appointment, have power to exercise all the functions and powers of the Directors under this MOI for a period not exceeding 2 (two) months.
- 14.10 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this MOI) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 14.11 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 14.12 All acts performed by the Directors or by any person acting as a Director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director.
- 14.13 A Director may hold any other office or place of profit under the Company (except that of Auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration and otherwise as a disinterested quorum of the Directors may determine.
- 14.14 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any company or other juristic person promoted by the Company or in which the Company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the Directors) he shall not be accountable for any remuneration or

other benefits received by him as a director or officer of or from his interest in such other company or juristic person.

15. AUTHORITY OF BOARD DIRECTORS

15.1 In addition to any other restrictions placed on the Company pursuant to the provisions of this MOI, the authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Companies Act, is further limited to the extent set out below.

15.2 The business of the Company will be managed by the Board, who will pay all expenses incurred in the promotion of the Principal Object of the Company and may exercise all such powers of the Company subject to the provisions contained in this MOI, the provisions of the Companies Act and to the extent that such rules are not inconsistent with the aforesaid or provisions as may be prescribed by the Company in the Company Rules; but no regulation made by the Company in a Board meeting will invalidate any prior act of the Board which would have been valid if such regulation had not been made. Without prejudice to the general powers conferred by this article 15.2, it is hereby expressly declared that the Board will have the following powers, to:

- (a) do all such things, and take all such actions, as authorised by the Code of Conduct;
- (b) delegate responsibilities and powers, by way of majority resolution, to the Consumer Goods and Services Ombudsman, the CEO and any other officers that may be appointed by the Directors in order to better achieve the objects of the Company;
- (c) appoint the CEO and the Consumer Goods and Services Ombudsman in accordance with article 16 and the Code of Conduct;
- (d) do all such things that may be required from time to time to promote the Principal Object, which includes, but is not limited to:
 - (i) receive and publish the Consumer Goods and Services Ombudsman's annual report as referred to in the Code of Conduct and on-going updates on the Consumer Goods and Services Ombudsman's activities;
 - (ii) to approve and recommend changes to the National Consumer Commission of the Code of Conduct as recommended by the Ombudsman, in accordance with the provisions of the Code of Conduct and the Consumer Protection Act;
 - (iii) monitor, maintain and promote independence of the Company;
 - (iv) assist in ensuring that the Consumer Goods and Services Industry, Consumer Bodies, media and the general public understand the role, function and activities of the Company;
 - (v) fully co-operate with the National Consumer Commission where necessary and required by law;
 - (vi) participate in and provide input on any legislative or regulatory processes which may affect the Company and/or the Consumer Goods and Services Ombudsman in the promotion of the Principal Object;

- (vii) assist in publicising the role, functions and activities of the Company and the Consumer and Goods Services Ombudsman; and
 - (viii) facilitating the efficient management of the Company, by deciding on issues such as financing and the operational costs of the Company.
- (e) purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorised to acquire at a price and generally upon such terms and conditions as they think fit;
 - (f) appoint at their discretion, to remove or suspend any employee, whether temporary or permanent, as they from time to time may think fit, and to determine their power, duties and fix their salaries or emoluments and to require security in such instances and to such amounts as they think fit;
 - (g) execute in the name and on behalf of the Company or in favour of any Director or such person who may incur or be about to incur any personal liability for the benefit of the Company such bonds or mortgages of the property of the Company, present or future, as they think fit;
 - (h) engage, with due regard being had to the Principal Object of the Company, consultants, technical advisers, engineers, architects, surveyors and town planners and to determine the period of their engagement and determine their powers, duties and fix their reward;
 - (i) borrow, lend or secure the repayment of money for the purpose of the Company on such terms and in such manner as they may think fit;
 - (j) sign, execute, endorse and complete undertakings, promissory notes and other documents for the accommodation of any other person, persons or other juristic person or trust in such form and upon such terms and conditions as the Directors determine; and
 - (k) to raise funds and to invite and receive contributions, including but not limited to the determination of required funding from the Consumer Goods and Services Industry, in accordance with the Code of Conduct.

15.3 Where a Director or a related person to the Director, as contemplated in section 2(1)(a) to (c) and 75(1)(b) of the Companies Act, contracts with the Company as vendor or purchaser or by way of any contract or arrangement in which he/she or his/her related person has an interest, the procedure as set out in section 75(4) and (5) of the Companies Act must be followed.

15.4 In addition to and without limitation of the powers expressly conferred upon the Directors by the Companies Act or this MOI, they may:

- (a) exercise or delegate to any one or more persons all or any such powers; and
- (b) do or delegate to any one or more persons the doing of all or any such acts (including the right to sub-delegate),

as may be exercised or done by the Company.

16. APPOINTMENT OF THE CONSUMER GOODS AND SERVICES OMBUDSMAN AND THE CEO

16.1 The Board must appoint, establish the conditions of employment of, and terminate any such appointment of the Consumer Goods and Services Ombudsman and the CEO in accordance with the provisions of this article 16 and the Code of Conduct.

16.2 The Consumer Goods and Services Ombudsman and the CEO so appointed will be subject to, and must meet the eligibility requirements as set out in any conditions of employment, this MOI, the Code of Conduct and Company Rules, if any.

17. POWERS AND AUTHORITY OF THE CONSUMER GOODS AND SERVICES OMBUDSMAN

17.1 The Consumer Goods and Services Ombudsman has the powers and authority as provided for and set out in the Code of Conduct.

17.2 The CEO and any other officers of the Company appointed by the Board shall have those powers and authorities as determined by the Board.

18. ALTERNATE DIRECTORS

18.1 Each Director shall have the power to nominate any other person, to act as Alternate Director in his place during his absence or inability to act as such, provided that the appointment of any Alternate Director shall require the approval of the Board. Upon such appointment being made, the Alternate Director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other Directors of the Company.

18.2 Any Alternate Director, whilst acting in the stead of the Director who appointed him, shall exercise and discharge all the powers, duties and functions of the Director he represents.

18.3 The appointment of an Alternate Director shall be revoked, and the alternate Director shall cease to hold office, whenever –

- (a) the Director who appointed him ceases to be a Director;
- (b) such appointing Director or the Alternate Director himself gives notice to the secretary of the Company that such Alternate Director has ceased to represent the Director concerned; and/or
- (c) such alternate Director becomes ineligible or disqualified from serving as a Director in terms of the provisions of the Act.

18.4 The appointment of an Alternate Director shall be revoked, and the Alternate Director shall cease to hold office, whenever –

- (a) the Director who appointed him/her ceases to be a Director;
- (b) such appointing Director or the Alternate Director himself/herself gives notice to the secretary of the Company, if so appointed by the Board, failing which, the Board, that such Alternate Director has ceased to represent the Director concerned; and/or
- (c) such Alternate Director becomes ineligible or disqualified from serving as a Director in terms of the provisions of the Companies Act and/or this MOI.

18.5 A person may be appointed as Alternate Director to more than 1 (one) Director.

18.6 Where a person is an Alternate Director to more than 1 (one) Director, or where an Alternate Director is also a Director in his personal capacity, he shall have a separate vote on behalf of each Director whom he represents in addition to his own vote as a Director.

19. **APPOINTMENT AND REMOVAL OF DIRECTORS**

19.1 Subject to schedule 1 of the Companies Act and this MOI, Directors are appointed by the Board by a majority vote of the Board, and there shall be no Directors appointed by any other person or *ex officio* Directors as contemplated in section 66(4) of the Companies Act, save as provided for in article 14.5 above. Nominations must be in Writing and must set out a motivation for such appointment, the elected portfolio/s and must be accepted by the nominee. All nominations must be seconded by any other Director of the Company.

19.2 The Board may remove any Director by a majority vote once notice has been given and the Director has been given a reasonable opportunity to make a presentation as contemplated in section 71(2) of the Companies Act. This power remains regardless of:

- (a) anything mentioned in this MOI;
- (b) any agreement between the Company and the Director; or
- (c) the fact that the Directors prescribed term has not expired, if so agreed.

19.3 Such removal will be without prejudice to any claim the Director may have for damages or breach of any contract of service between him and the Company.

19.4 Over and above the provisions of section 69 of the Companies Act, the office of any Director will be vacated if the Director:

- (a) is declared mentally unfit by a registered medical practitioner;
- (b) resigns his/her office by notice in writing to the Company;
- (c) compounds with his/her creditors;
- (d) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his/her interest and the nature thereof in the manner required by the Companies Act;
- (e) absents himself/herself from 4 (four) consecutive meetings of Directors without the leave of the other Directors, and they resolve that his/her office will be vacated; or
- (f) is no longer committed to furthering the Principal Objects of the Company.

19.5 Any failure by the Company at any time to have the minimum number of Directors as required by the Act or this MOI, does not limit or negate the authority of the Board, or invalidate anything done by the Board.

20. **DIRECTORS' MEETINGS**

20.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

20.2 Notwithstanding the provisions of article 20.1 above, the Board is required to meet at least 4 (four) times per year.

- 20.3 Subject to article 20.4 below, the Directors may elect a chairperson and a deputy chairperson and determine the period for which each is to hold office. The chairperson, or in his absence the deputy chairperson, shall be entitled to preside over all meetings of Directors. If no chairperson or deputy chairperson is elected, or if at any meeting neither is present or willing to act as chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be chairperson of such meeting.
- 20.4 Notwithstanding the provisions of article 20.3 above, the chairperson or deputy chairperson may not hold office for a period longer than 1 (one) year. The chairperson and/or deputy chairperson may be eligible for re-election.
- 20.5 A Director authorised by the Board or the chairperson (or in his/her absence, the deputy chairperson)-
- (a) may convene a meeting of the Board at any time; and
 - (b) must convene a meeting of the Board if required to do so by at least:
 - (i) 25% of the Directors, where the Board has at least 12 (twelve) Directors; or
 - (ii) 3 (three) Directors in any other case.
- 20.6 The Board has the power to –
- (a) consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;
 - (b) 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), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
 - (c) determine the manner and form of providing notice of its meetings as set out in section 73(4); and
 - (d) proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5),
- and the powers of the Board in respect of the above matters are not limited or restricted by this MOI.
- 20.7 A meeting of the Board must, unless otherwise agreed by the Directors, take place at the premises of the Company.
- 20.8 The quorum requirement for a Directors' meeting (including an adjourned meeting), the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to article 20.8(e), and accordingly –
- (a) if all of the Directors of the Company –
 - (i) acknowledge actual receipt of the notice convening a meeting; or

- (ii) are present at a meeting; or
- (iii) waive notice of a meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;

- (b) a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors
- (c) each Director has 1 (one) vote on a matter before the Board;
- (d) a majority of the votes cast on a resolution is sufficient to approve that resolution;
- (e) in the case of a tied vote –
 - (i) the chairperson may not cast a deciding vote in addition to any deliberative vote; and
 - (ii) the matter being voted on fails.

20.9 Resolutions adopted by the Board –

- (a) must be dated and sequentially numbered; and
- (b) are effective as of the date of the resolution, unless any resolution states otherwise.

20.10 The Consumer Goods and Services Ombudsman may attend Directors meetings but shall not be entitled to vote at such meetings.

21. MINUTES OF BOARD MEETINGS

The Directors must cause minutes as contemplated in section 24 of the Companies Act, in books to be provided for the purpose, to be kept:

- 21.1 of all appointments of officers made by the Board;
- 21.2 of the names of the Directors present at each Board meeting, and of any committee of Directors; and
- 21.3 of all resolutions and proceedings at all meetings of the Company and the Directors, and of committees of Directors, and every Director present at any Board meeting or committee of Directors must sign his/her name in a book to be kept for that purpose. The minutes of the meetings must be distributed at least 5 (five) Business Days before the next meeting and will be confirmed as a true record of proceedings at the next meeting of Directors and signed by the chairman.

22. DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 22.1 Despite the provisions of section 66(8) and (9) and subject to Item 1(3) of schedule 1 of the Companies Act, a Director other than a representative from a Consumer Body or a representative appointed under clause 14.3(b)(v) must not directly or indirectly receive any remuneration for any services rendered by him/her to the Company in his/her capacity as Director provided that nothing herein contained will prevent the payment in good faith of reasonable remuneration to any Director of the Company in return for any services other than those as Director rendered to the Company. If any Director commits a breach of this

article, he/she must forthwith vacate his/her appointment and will not be eligible for re-election.

22.2 As contemplated in item 5(3) in schedule 1 to the Companies Act, the Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a person related to any such Director.

22.3 Notwithstanding the provisions of article 22.2, a transaction shall not be prohibited if it –

- (a) is in the ordinary course of the Company's business and for fair value;
- (b) constitutes an accountable advance to meet –
 - (i) legal expenses in relation to a matter concerning the Company; or
 - (ii) anticipated expenses to be incurred by the person on behalf of the Company; or
 - (iii) is to defray the person's expenses for removal at the Company's request; or
 - (iv) is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

23. **INDEMNIFICATION OF DIRECTORS**

23.1 Each:

- (a) Director, secretary and other officer of the Company; and
- (b) person employed by the Company as its auditor,

will be indemnified by the Company against any liability incurred by him/her/it from time to time in that capacity that is not inconsistent with the provisions of sections 77 and 78 of the Companies Act.

23.2 The Company:

- (a) may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- (b) may directly or indirectly indemnify a Director for expenses contemplated in article 23.2(a), irrespective of whether it has advanced those expenses, or if the proceedings are abandoned or the Director is exculpated or which arises in respect of any liability for which the Company may indemnify the Director, in terms of sections 78(5) and 78(6) of the Companies Act.

23.3 The Company indemnifies a Director in respect of any liability arising other than as contemplated in section 78(6) of the Companies Act.

23.4 The Company must purchase insurance to protect:

- (a) a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with section 78 (5) of the Companies Act; or
- (b) the Company against any contingency including but not limited to any expenses:

- (i) that the Company is permitted to advance in accordance with section 78(4)(a) of the Companies Act; or
 - (ii) for which the Company is permitted to indemnify a Director in accordance with subsection 78(4)(b) of the Companies Act; or
 - (iii) any liability for which the Company is permitted to indemnify a Director in accordance with section 78(5) of the Companies Act.
- (c) The Company will be entitled to claim restitution from a Director of the Company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

24. **COMMITTEES OF THE BOARD**

24.1 The Board may –

- (a) appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1) of the Companies Act; and/or
- (b) include in any such committee persons who are not Directors, as set out in section 72(2)(a) of the Companies Act,

and the power of the Board in this regard is not limited or restricted by this MOI.

24.2 The authority of a committee appointed by the Board as set out in section 72(2)(b) and (c) of the Companies Act is not limited or restricted by this MOI.

25. **COMPANY SECRETARY**

25.1 Subject to the provisions of article 25.2 the company secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as the Board may deem fit.

25.2 The company secretary must have the requisite knowledge of, or experience with, relevant laws and be a permanent resident of the Republic.

25.3 Board must fill any vacancy in the office of company secretary within 60 (sixty) Business Days after such vacancy arises by a person whom the Directors consider to have the requisite knowledge and experience

26. **FUNDAMENTAL TRANSACTIONS**

26.1 As contemplated in Item 2(1) of schedule 1 to the Companies Act:

- (a) the Company may not –
 - (i) amalgamate or merge with, or convert to, a profit company; or
 - (ii) dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

27. **ANNUAL FINANCIAL STATEMENTS**

27.1 The financial year end of the Company will be the last day of February each year.

- 27.2 The Company must have a separate banking account from which its financial transactions will be conducted.
- 27.3 Deeds and other instruments of conveyance, instruments to satisfy or release a lien of mortgages, and deeds of trust or other security instruments, upon due authorisation of the Directors, will be executed on behalf of the Company by the chairperson or any Director duly appointed for such purpose by the Board, and countersigned by the Company secretary or any Director duly appointed for such purpose.
- 27.4 The Company must cause Company and accounting records to be created and maintained at the registered office of the Company in the prescribed form as contemplated in sections 24, 25 and 28 of the Companies Act.
- 27.5 The Company must comply with all reporting requirements determined by the Commissioner to be approved as, and remain, a Public Benefit Organisation in terms of section 30 of the Income Tax Act. The Board must ensure that provisions of the Income Tax are complied with, which specifically includes the provisions of section 30 of the Income Tax Act.
- 27.6 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –
- (a) the Companies Act;
 - (b) any other Law with respect to the preparation of financial statements to which the Company may be subject;
 - (c) the Regulations;
 - (d) this MOI; and
 - (e) the Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year.
- 27.7 The Company shall in particular, in order to satisfy its obligations in Regulation 25(4), maintain a register of revenue received from donations, grants or in terms of any other funding contracts or arrangements with any party, to the extent applicable.
- 27.8 In the event that the annual financial statements of the Company –
- (a) are required to be audited pursuant to Regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Companies Act, the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; or
 - (b) are required to be independently reviewed, as contemplated in section 30(2)(b)(ii)(bb), or as otherwise contemplated in the Companies Act, the annual financial statements shall be so independently reviewed in accordance with the relevant provisions of the Companies Act; or
 - (c) are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Companies Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.
- 27.9 In the event that the Company falls in the category of companies that may be exempted from having its annual financial statements independently reviewed, as contemplated in section 30(2)(b)(ii)(bb), or if the Company is otherwise exempted from having its annual

financial statements either audited or independently reviewed, the Company shall concomitantly not be required to have its annual financial statements audited or independently reviewed.

- 27.10 The Board may, either in respect of a particular financial year of the Company or for any other fixed or indefinite period, resolve that the annual financial statements shall be audited or independently reviewed, as the case may be, in which event such audit or independent review shall be conducted in accordance with the requirements and parameters set out in the relevant resolution.

28. EXTERNAL AUDITOR

- 28.1 The Company shall appoint an Auditor each year. If the Company appoints a firm as its Auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of Auditor.
- 28.2 Auditors shall be appointed, and their duties regulated in accordance with the Companies Act and any other applicable law.
- 28.3 Subject to the provisions of the Companies Act, all actions of any person or firm acting as Auditor shall be valid against all persons dealing in good faith with the Company, notwithstanding any shortcoming with regard to its appointment.

29. ACCESS TO COMPANY RECORDS

The public has a right to inspect the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

30. CODE OF CONDUCT

- 30.1 The Consumer Goods and Services Industry has the right and obligation to create, develop, implement and maintain the Code of Conduct that ensures:
- (a) general education of the Consumer Goods and Services Industry;
 - (b) minimum standards of conduct; and
 - (c) assistance in the resolution of disputes that arise between consumers and the Consumer Goods and Services Industry,
- in accordance with the provisions of the Consumer Protection Act and the Code of Conduct.
- 30.2 The maintenance, amendment and variation of the Code of Conduct is subject to the requirements and authorities as provided for in the Code of Conduct and the Consumer Protection Act, where applicable.
- 30.3 The Board is required to review the Code of Conduct on an annual basis, and record the outcome of this review in a written report, which is required to be made available to the National Consumer Commission.
- 30.4 Any proposed amendments to the Code of Conduct must be reviewed and approved by a majority vote of the Board, before the proposed amendments may be sent to the Minister of the Department of Trade and Industry for consideration and/or approval.