

Republic of South Africa

Companies Act, No 71 of 2008, as amended

**MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY**

Name of company: **BORDER CRICKET NPC**

Registration No.: **2000/012072/08**

This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Companies Act, No 71 of 2008, as amended, and was adopted by Special Resolution passed on \_\_\_\_\_ 2013, a copy of which was Filed together with the notice of amendment in substitution for the memorandum of association and the articles of association of the Company (which were the constitutional documents of the Company in terms of the Companies Act, No. 61 of 1973 as amended).

## 1. INTERPRETATION

In this MOI -

- 1.1. words that are defined in the Companies Act (which are contained in **Schedule 1** for ease of reference, which do not form part of this MOI for purposes of interpretation), but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires –
  - 1.2.1. "**Address**" shall include Electronic Address, business, residential or postal or any other address furnished by the Member to the Company;
  - 1.2.2. "**Associate Member**" means any cricket organisation, other than an Affiliate Member or Associate Province, which in the opinion of the Board meets the relevant criteria as determined by the Board from time to time.
  - 1.2.3. "**Annual General Meeting**" means the annual general meeting of the Company in accordance with section 61 of the Companies Act;
  - 1.2.4. "the **Board**" means the Board of Directors of the Company as per clause 19;
  - 1.2.5. "**Border Region**" means the geographic area within which the Company has jurisdiction in respect of amateur and professional cricket;
  - 1.2.6. "**CEO**" means the Chief Executive Officer of the Company, who has been appointed to attend to the day-to-day management of the Company;
  - 1.2.7. "**CFO**" means the Chief Financial Officer of the Company, who has been appointed to attend to, *inter alia*, the management of treasury, financial management, accounting and information services of the Company;
  - 1.2.8. "**Chairman of Finance Committee/Treasurer**" means the Office Bearer elected in accordance with clause 19;
  - 1.2.9. "**Companies Act**" means the Companies Act, No 71 of 2008, as amended or any legislation which replaces it;
  - 1.2.10. "**Company**" means **Border Cricket NPC** or by whatever other name it may be known from time to time;
  - 1.2.11. "**Cricket**" means any participation in and/or influencing of any administrative and/or managerial activity related to any decision making process in the business of cricket;

- 1.2.12. "**CSA**" means Cricket South Africa NPC, a company registered within the Republic of South Africa, registration number 2002/002641/08, which company is responsible for the custodianship of all cricket activities within the Republic of South Africa, and in respect of which the Company is a member;
- 1.2.13. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 31 and the Companies Act;
- 1.2.14. "**Director**" or "**Directors**" means those Persons nominated, elected and/or appointed as such in terms of clause 20;
- 1.2.15. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by a Member or a Director;
- 1.2.16. "**Handbook**" means the handbook of the Company, as may be adopted and amended from time to time, and which read with this MOI will regulate all aspects of Cricket in the Border Region;
- 1.2.17. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Schedule 2** for ease of reference, which does not form part of this MOI for purposes of interpretation) which shall apply not only to Directors but also to members of Board committees and members of statutory committees, Prescribed Officers and the secretary of the Company;
- 1.2.18. "**Life Membership**" means an honour conferred by the Company upon any Person duly nominated, in Writing, and whom the Company is satisfied meets all the relevant criteria for such conferral;
- 1.2.19. "**Member**" means a person who holds membership in, and specified rights in respect of the Company, being the bodies that represent and serve as the respective custodians of amateur cricket within the provincial or regional structures as determined by the member body from time to time, which currently comprises of the Border regions (being Alice, Healdtown, Middledrift, Peddie, King Williams Town, East London East, East London West and Queenstown), the official Super League Competition of the Company, and the associates (being the Border Schools Cricket Association, the Border Cricket Umpires Association, the Border Women's Cricket Association, the Border Rural Cricket Association, the Border Scorers Association and the Border Association for Disabled Cricket);

- 1.2.20. **"Members Meeting"** or **"Members' Forum"** means any general meeting of the Members, other than the Annual General Meeting, and will include special general meetings and extra-ordinary general meetings; provided that any other Person or Persons representing Members or cricket-related organisations may be invited to attend and speak at such Members Meetings from time to time, however, such Person or Persons will not be entitled to a vote;
- 1.2.21. **"Members Register"** means the register of Members required to be kept in terms of section 24(4) of the Companies Act;
- 1.2.22. **"MOI"** means this Memorandum of Incorporation of the Company, as amended from time to time;
- 1.2.23. **"Non-Independent"** Directors means the President, the Vice-President, the Chairman of Finance Committee/Treasurer, and two elected officials appointed in accordance with clause 19;
- 1.2.24. **"President"** means the Office Bearer elected in accordance with clause 19;
- 1.2.25. **"Public Interest Score"** means the sum of the following (as amended by the Companies Act or the regulations promulgated in terms thereof from time to time) –
- 1.2.25.1. a number of points equal to the average number of employees of the Company during the financial year;
- 1.2.25.2. 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in third party liability of the Company, at the financial year end;
- 1.2.25.3. 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in turnover during the financial year; and
- 1.2.25.4. 1 (one) point for every Individual who, at the end of the financial year, is known by the Company to be a member of the Company, or a member of an association that is a member of the Company;
- 1.2.26. **"Regulations"** means regulations published pursuant to the Companies Act, from time to time;
- 1.2.27. **"Round Robin Resolution"** means a resolution passed other than at a –
- 1.2.27.1. Members Meeting, which –

1.2.27.1.1. was submitted for consideration to the Persons entitled to exercise Voting Rights in relation to the resolution; and

1.2.27.1.2. was voted on by the requisite percentage of the Persons entitled to vote contemplated in clause 17.32 by signing a resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them,

and includes Written polling of Persons entitled to vote regarding the election of Directors;

1.2.27.2. meeting of Directors, in respect of which, subject to clause 27.13, all the Directors being not less than a quorum of Directors, voted in favour by signing in Writing a resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them;

1.2.28. "**SASCOC**" means the South African Sports Confederation and Olympic Committee;

1.2.29. "**Vice-President**" means the Office Bearer elected in accordance with clause 19;

1.2.30. "**Writing**" and "**Written**" includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Company of an Electronic Address;

1.3. if there is any conflict between the provisions of this MOI and the provisions of the MOI of CSA the constitution of SASCOC, the provisions of such constitution shall prevail. The Company shall comply with the constitution of SASCOC and any directives issued by CSA and/or SASCOC from time to time subject to the proviso that any directive shall not be in conflict with any requirement of the International Cricket Council;

1.4. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;

1.5. references to Members entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by duly authorised representatives or acting in the manner prescribed in the Companies Act;

- 1.6. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.7. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.8. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the one gender shall include the other genders, and words importing persons shall include created entities (corporate or not);
- 1.9. 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;
- 1.10. 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.

## 2. **CALCULATION OF BUSINESS DAYS**

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 —

- 2.1. excluding the day on which the first such event occurs;
- 2.2. including the day on or by which the second event is to occur; and
- 2.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

## 3. **NON-PROFIT COMPANY**

The Company is a Non-Profit Company as it is -

- 3.1. incorporated for a public benefit or other object as required by item 1(1) of Schedule 1 to the Companies Act;
- 3.2. consistent with the principles set out in items 1(2) to 1(9) of Schedule 1 to the Companies Act; and
- 3.3. is prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of carrying out its stated objects) and is required to solely utilise its funds for the purpose that it has been established.

#### 4. OBJECTS OF THE COMPANY

- 4.1. The main business of the Company is custodianship of all cricket activities which ultimately advance amateur and professional cricket, within the Border Region, for all South Africans.
- 4.2. In conducting its main business, the Company shall *inter alia* –
  - 4.2.1. promote, organise, develop, control, provide facilities and administer all aspects of cricket in the Border Region, including clubs, schools, universities, colleges and other institutions;
  - 4.2.2. promote, provide for, regulate and manage all or any details or arrangements or other things as may be considered necessary or desirable for, or ancillary to, the comfort, conduct, convenience or benefit of cricket players and of the public or of any other persons concerned or engaged in or associated with Cricket in the Border Region;
  - 4.2.3. co-ordinate and facilitate the development of cricket in the Border Region and to foster good relations among participants in cricket;
  - 4.2.4. govern and to make, adopt, vary and publish rules, regulations, and conditions for the management of Cricket and matters relating thereto, and to take all such steps as shall be deemed necessary or advisable for enforcing such rules, regulations and conditions;
  - 4.2.5. co-operate with and implement directives from CSA in all matters relating to domestic and international competitions, the laws of the game of cricket and generally with respect to the administration of cricket in the Region.
  - 4.2.6. adopt codes of conduct and best practices in line with the governance and the administration of the Sport adopted by CSA
  - 4.2.7. formulate, control and amend the conditions under which amateur and professional competitions, including first class cricket, are contested;
  - 4.2.8. encourage and assist the dissemination of literature and information which may further the aims of the Company;
  - 4.2.9. maintain membership of CSA and to enforce the laws of the game of cricket as promulgated by CSA from time to time;
  - 4.2.10. settle disputes arising between Members or bodies of persons connected directly or indirectly with cricket within the jurisdiction of the Company;

- 4.2.11. support and promote the development of playing infrastructure so as to facilitate amateur and professional cricket activities;
- 4.2.12. utilise its commercial opportunities to enable it to benefit the game of cricket;
- 4.2.13. distribute monies to its Members for the protection, promotion and advancement of amateur and professional cricket;
- 4.2.14. actively strive towards a situation where resources for the playing of cricket be accessible to all persons desirous of playing cricket on an equal basis;
- 4.2.15. strive to become representative of the South African Society; and
- 4.2.16. adopt codes of conduct and best practices in line with the Governance Code for Sport adopted by CSA and/or SASCOC,

and do all other things to further the objects of the Company or as may be deemed incidental or conducive to the attainment of any of these objects.

## 5. **CONDITIONS**

### 5.1. The Company -

- 5.1.1. must apply all of its assets and income, however derived, to advance its stated objects, as set out in its MOI; and
- 5.1.2. subject to clause 5.1.1, may -
  - 5.1.2.1. acquire and hold securities issued by a profit company; or
  - 5.1.2.2. directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

### 5.2. The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether how the income or asset was derived, to any Person who is or was an incorporator of the Company, or who is a Director or a Member, except -

- 5.2.1. as reasonable -
  - 5.2.1.1. remuneration for goods delivered to, at the direction of, the Company; or
  - 5.2.1.2. remuneration for services rendered to, at the direction of, the Company; or



- 5.2.1.3. payment of, or reimbursement for, reasonable expenses incurred to advance a stated object and/or the activities of the Company;
- 5.2.2. as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that Person or another; or
- 5.2.3. as a payment in respect of any rights of that Person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
- 5.2.4. in respect of any legal obligation binding on the Company.

## 6. **POWERS AND CAPACITY OF THE COMPANY**

The Company has the powers and capacity of an Individual save to the extent set out in the Companies Act and Regulations, as well as the limitations in clause 5. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a Non-Profit Company to do, even if not specifically so authorised by its MOI.

## 7. **AMENDMENTS TO THE MOI**

Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with sections 16(1) and 16(4) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board by distributing a copy of the Members in writing, or on the Company's web site, if any.

## 8. **THE MAKING OF RULES**

The Board shall be entitled to make any Rules as contemplated in the Companies Act, and shall do so in terms of the provisions of clause 13.

## 9. **INDEPENDENT DIRECTORS**

An Independent Director means a non-executive Director who -

- 9.1. is not a representative of the Members;
- 9.2. does not have the ability to control or significantly influence the management of the Company;
- 9.3. has not been employed by the Company, or the Members, in any executive capacity for the preceding 3 (three) financial years;

- 9.4. is not a member of the immediate family of an individual who is, or has been in any of the past 3 (three) financial years, employed by the Company or its Members in an executive capacity;
- 9.5. is not a professional advisor to the Company or its Members other than in a Director capacity;
- 9.6. is not a significant supplier, sponsor or customer of the Company or any of its Members;
- 9.7. has no significant contractual relationship with the Company or any of its Members;
- 9.8. is free from any business or other relationship that could be seen to materially interfere with the individual's capacity to act in an independent manner; and
- 9.9. has not been associated with Cricket in the preceding 3 (three) years.
- 9.10. Has his/her place of residence in the Border Region

## 10. **MEMBERSHIP**

- 10.1. The membership of the Company shall consist of those listed in clause 1.2.18 which will be known as the Members.
- 10.2. The following provisions shall apply with regard to an application for affiliation as Member, namely the application shall be in Writing, accompanied by -
  - 10.2.1. a remittance of such amount as the Board may from time to time resolve;
  - 10.2.2. a copy of its constitution, or its memorandum of incorporation. In this regard, such constitution, or memorandum of incorporation, must recognise the Company as the governing body for Cricket in the Border Region and that the Member agrees to be bound by the provisions of this MOI, the MOI of CSA and directives issued by CSA from time to time.
  - 10.2.3. a copy of its audited financial statements;
  - 10.2.4. a list of officials, cricket affairs, affiliates and associates under its jurisdiction; and
  - 10.2.5. such other or further information as may be required by the Company.
- 10.3. Any application for affiliation or association shall be considered at an Annual General Meeting or at any postponed Annual General Meeting and the application must be received by the CEO at least 30 (thirty) Business Days prior to the date of the Annual General Meeting and shall be subject to the approval of 2/3 (two thirds) of the Members.

- 10.4. The annual general meetings of the Members must be held prior to the date of the Annual General Meeting of the Company and that of CSA
- 10.5. The Company may terminate the membership of a Member at an Annual General Meeting, acting on the recommendation of the Board, or suspend the Member for a specific or indefinite period, or withhold any funds due to the Member or alternatively, terminate the affiliation or association of such Member: Provided that -
- 10.5.1. the termination or suspension, or withholding of funds, shall be subject to the approval of 2/3 (two thirds) of the total votes of the Members;
- 10.5.2. the termination or suspension shall not in any way extinguish any financial liability the Member has to the Company;
- 10.5.3. the termination shall, or in the case of suspension, the suspension shall, during the period thereof result, *ipso facto*, in the forfeiture of all rights of payment, distribution or participation in the competitions, assets, income, sponsorships or monies of the Company; and
- 10.5.4. the principles of natural justice shall always prevail.
- 10.6. Life Membership may be conferred on any person by the Company who is considered worthy of the honour and who has given outstanding service to cricket. In addition, only nominees whom the Company is satisfied have retired from all forms of Cricket will be eligible for Life Membership. Life members will be entitled to receive notice of and attend the Annual General Meeting, however, will not be entitled to any votes. Nominations for such life members shall be submitted to the CEO, not less than 30 (thirty) Business Days prior to the date of the Annual General Meeting, for consideration by the Members and shall be approved by a simple majority in number.
- 10.7. The liquidator of an insolvent Member or the trustee of an insolvent Member shall not become a Member of the Company as a result of their appointments as liquidator or trustee. Such Member shall *ipso facto* cease for all purposes to be a Member of the Company.
- 10.8. A Member shall *ipso facto* cease to be a Member of the Company if -
- 10.8.1. being a body corporate, it is liquidated, wound up or placed under business rescue, whether provisionally or finally and whether compulsorily or voluntarily;  
or
- 10.8.2. it commits any act of insolvency; or
- 10.8.3. it is removed as a Member by Ordinary Resolution of the Members or Directors of the Company; or

10.8.4. its membership is terminated pursuant to the provisions of clause 10.5; or

10.8.5. it tenders Written notice of resignation as a Member to the Directors.

10.9. Members who, having agreed to be bound by the terms of the MOI and having been admitted to membership, shall each pay an annual contribution/subscription as determined by the Board from time to time.

10.10. Any Member who has failed to pay the subscription in terms of clause 10.9 shall not be entitled to attend (whether by representation or not) the Annual General Meeting or a Members Meeting, nor shall it be allowed to take part in any competition conducted under the auspices of the Company, unless it has fully paid any current or arrear subscriptions.

10.11. All membership subscriptions shall become due and payable in advance on the 1st (first) day of May in each year. Failure to renew subscription within 90 (ninety) clear days from due date shall terminate membership.

## 11. **MEMBERS REGISTER**

11.1. The Company must maintain a Members Register of Members, in accordance with the provisions of section 24(4) of the Companies Act. There needs to be a register of clubs and a register of individual club members.

11.2. In addition the Company must maintain a register of both clubs and individual club members in the Border Region.

11.3. The Company shall cause the Members Register to reflect –

11.3.1. the names and registration number (or other identification number) of the Members;

11.3.2. the Member's business or postal Address;

11.3.3. the Electronic Addresses of Members' who have furnished them;

11.3.4. the date on which the Person became a Member of the Company and if applicable, the date on which such Member ceased to be a Member of the Company; and

11.3.5. any other information prescribed in terms of the Companies Act from time to time.

11.4. The Company shall not be bound to enter any person in the Members Register until that Person gives the Company an Address for entry on the Members Register.

## 12. OBLIGATIONS OF MEMBERS

### 12.1. Codes of Conduct

The Members will adopt codes of conduct and best practices in line with this MOI and directives issued by CSA from time to time and the Handbook (if any) adopted by the Company.

### 12.2. Constitutions

12.2.1. Members' constitutions and any rules or regulations formulated there under shall not be in conflict with this MOI, that of CSA, and the constitutions of SASCOC or the International Cricket Council.

12.2.2. The constitutions of the Members and any proposed amendments thereto, must comply with this MOI and be submitted to the Company for prior Written approval.

12.2.3. The Company is entitled to exercise rights granted by its Members to the Company in terms of their constitutions.

12.2.4. The Company is entitled to enforce compliance by its Members with the terms of their constitutions.

### 12.3. Administrative and Financial Affairs

The Company shall be entitled to inquire into the administrative and/or financial affairs of Members and, where necessary, to recommend corrective measures in this regard, and if these measures are not implemented, to take over the administrative and/or financial affairs of the Member until these are placed on a satisfactory footing.

### 12.4. Step-In Rights

12.4.1. If the Company reasonably believes that it needs to take any action in connection with the implementation of the obligations imposed on the Members in terms of this MOI and/or Handbook, then the Company shall be entitled to take action in accordance with the provisions of this clause 12.4.

12.4.2. The Company shall as soon as possible after determining that action is required to be taken by the Company as contemplated in clause 12.4.1, notify the Member in Writing of –

12.4.2.1. the action it wishes to take;

12.4.2.2. its reasons for taking such action;

- 12.4.2.3. the date when it wishes to commence such action;
- 12.4.2.4. the time period (the “**Step-In Period**”) which it reasonably believes will be necessary for such action; and
- 12.4.2.5. to the extent practicable, the effect of such action on the Member and its obligations to perform in terms of this MOI and/or Handbook during the Step-In Period.

12.4.3. Following the service of such notice, the Company shall take such action as notified under clause 12.4.2 and any ancillary action as it reasonably believes is necessary (the “**Necessary Action**”) and the Member shall give all reasonable assistance to the Company in the conduct of such Necessary Action.

### 13. **HANDBOOK**

13.1. The Company may make and adopt, and from time to time amend, the Handbook for purposes of regulating all matters affecting the administration, management, and control of Cricket in the Border Region.

13.2. The Handbook shall regulate, amongst others, the following matters –

- 13.2.1. the criteria and procedure for acceptance of Members;
- 13.2.2. the colours and emblems of Members;
- 13.2.3. the membership fees and subscriptions to be paid by Members;
- 13.2.4. the obligations of Members with respect to financial statements and books of accounts;
- 13.2.5. the grounds on which Members may be suspended from their affiliation with the Company. In this regard, the Company shall be entitled, *inter alia*, to suspend, fine and terminate the membership of any Member which infringes the MOI or Handbook or engages in any act of misconduct, improper practices, misdemeanour, acts of defiance, or brings the Company into disrepute;
- 13.2.6. any amendments to any Members’ constitutions.

### 14. **FINANCIAL YEAR**

The financial year of the Company is 30 April.

## 15. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 15.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 15.2. The Company must maintain adequate records of all revenue received from CSA, donations, grants and Members' fees (if any), or in terms of any funding contracts or arrangements with any party or Person for a period of at least 5 (five) years.
- 15.3. The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, or, if it qualifies in terms of the Regulations, in accordance with the South African Statements of Generally Accepted Accounting Practise as adopted from time to time by the Accounting Practices Board or its successor body, or, if it qualifies in terms of the Regulations, in accordance with such standard as it shall determine, and shall have its annual Financial Statements independently reviewed in accordance with the International Standard for Review Engagements, as issued from time to time by the International Auditing and Assurance Standards Body or its successor body, by a Registered Auditor or a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Professions Act (No 26 of 2005) ("**Auditing Professions Act**"), unless it qualifies by reason of its Public Interest Score being less than 100 (one hundred) to use an accounting officer, provided that such independent review must not be carried out by any independent accounting professional who was involved in the preparation of the annual Financial Statements. For this purpose, the Company shall calculate its Public Interest Score for each financial year, as defined herein, or as amended by the Companies Act or the regulations thereto from time to time.
- 15.4. The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the Affiliate Members are entitled to inspect and take copies of –
  - 15.4.1. the MOI;
  - 15.4.2. amendments to the MOI;
  - 15.4.3. records in respect of Directors;
  - 15.4.4. Accounting Records required to be maintained by the Company;
  - 15.4.5. reports to Annual General Meetings;

- 15.4.6. annual Financial Statements;
- 15.4.7. notices and minutes of Members Meetings;
- 15.4.8. communications generally to Members; and
- 15.4.9. the Members Register.

In addition the Members have rights to information regarding Directors declarations of interests.

- 15.5. Apart from the Members, no other Person shall be entitled to inspect any of the documents of the Company (other than the Members Register and the register of Directors).
- 15.6. The Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Member demands a copy of the annual Financial Statements, the Company shall make same available to such Member free of charge.

## 16. **AUDITOR**

- 16.1. The Company shall appoint an Auditor at its Annual General Meeting; provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless –
  - 16.1.1. the retiring Auditor is –
    - 16.1.1.1. no longer qualified for appointment; or
    - 16.1.1.2. no longer willing to accept the appointment, and has so notified the Company; or
    - 16.1.1.3. required to cease serving as Auditor, in terms of section 92 of the Companies Act;
  - 16.1.2. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.
- 16.2. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act, provided that –



- 16.2.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
  - 16.2.2. if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated audit or until after the expiry of at least 2 (two) further financial years.
- 16.3. The Auditor –
- 16.3.1. has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
  - 16.3.2. has the right of access to all current and former Financial Statements and is entitled to require from the Directors or Prescribed Officers of the Company any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents as necessary for the performance of the Auditor's duties;
  - 16.3.3. is entitled to –
    - 16.3.3.1. attend any Members Meeting;
    - 16.3.3.2. receive all notices of and other communications relating to any Members Meeting;
    - 16.3.3.3. be heard at any Members Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions; and
  - 16.3.4. may not perform any services for the Company that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act.
- 16.4. If a vacancy arises in the office of Auditor, the Board –
- 16.4.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and

16.4.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.

If, by comparison with the membership of a firm at the time of its latest appointment, less than  $\frac{1}{2}$ (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.

16.5. Before making an appointment in terms of clause 16.4the Board may proceed to make an appointment of a Person.

## 17. MEMBERS MEETINGS AND ROUND ROBIN RESOLUTIONS

17.1. The Company shall on an annual basis hold at least 3 (three) meetings for Members, 1 (one) shall be in the first quarter of the year, one mid year and one shall be the Annual General Meeting, which shall be held not later than 30 September each year.

17.2. Every Members meeting shall, unless otherwise resolved by Members, be held in locations as suggested by the CEO.

17.3. Only Members of the Company and any invitees shall be entitled to attend any Annual General Meeting or Members Meeting.

17.4. The CEO may convene the Annual General Meeting and may also convene any other General Meetings of the Company.

17.5. The Company shall invite to its Annual General Meeting and Members Meetings, the Office Bearers, the Independent Directors, the CEO, CFO/Financial Manager, the company secretary, a representative of any cricket related organisation which the Company considers appropriate to attend and any other person who the Company considers to be a stakeholder, including an employee of the Company.

17.6. Only Members will be entitled to vote at Annual General Meetings and Members Meetings.

17.7. The Company shall convene an Annual General Meeting once in every calendar year, by no later than 30 September each year, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –

17.7.1. presentation of –

17.7.1.1. the Directors' report;

- 17.7.1.2. Audited Financial Statements for the immediately preceding financial year;
  - 17.7.1.3. the Audit committee report; and
  - 17.7.1.4. the presentation of the report of the Social and Ethics Committee;
  - 17.7.2. election of Directors, to the extent required by the Companies Act or the MOI;
  - 17.7.3. appointment of an Auditor for the ensuing year;
  - 17.7.4. appointment of an Audit committee,
  - 17.7.5. approve the annual contributions/ subscriptions payable by Members as per clause 10.9
  - 17.7.6. any matters raised by Members, with or without advance notice to the Company.
- 17.8. The Company shall, as determined by the Board, either –
- 17.8.1. hold a Members Meeting in order to consider one or more resolutions; or
  - 17.8.2. as regards such resolution/s that could be voted on at a Members Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round Robin Resolution contemplated in clause 1.2.27.1.
- 17.9. Within 10 (ten) Business Days after a Round Robin Resolution is adopted, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Round Robin Resolution.
- 17.10. A Company must hold a Members Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.27.1 -
- 17.10.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to Members entitled to vote for decision; or
  - 17.10.2. whenever required to fill a vacancy on the Board other than in accordance with clause 4.
- 17.11. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Members Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been

approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.

17.12. The Board or Members in good standing holding not less than 51% of voting rights, may whenever it thinks fit, on written requisition convene a Members Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.27.1. A Members Meeting must be convened, or the Board must put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.27.1, if one or more Written and signed demands for such a Members Meeting or Round Robin Resolution is/are delivered to the Company, and —

17.12.1. each such demand describes the specific purpose for which the Members Meeting is proposed; and

17.12.2. in aggregate, demands for substantially the same purpose are made and signed by Members in good standing holding not less than 51% of voting rights.

17.13. Round Robin Resolutions contemplated in clause 1.2.27.1, will be passed if signed by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members Meeting.

17.14. Every Members Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Members Meeting entirely by Electronic Communication, or to provide for participation in a Members Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Members Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members Meeting, as set out in section 63(2) of the Companies Act, is not limited or restricted.

17.15. A Members Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company (and for this purpose clause 31.3 shall not apply) to all Members entitled to vote or Persons otherwise entitled to receive notice. Provided that the CEO has taken reasonable steps to give notice of a Members Meeting, the accidental omission to give and/or the accidental giving of a defective notice (provided that by reason of such defect it is not misleading) of a Members Meeting to, or the non-receipt of notice of a Members Meeting by, any Person entitled to receive notice shall not invalidate the proceedings of that Members Meeting. The notices of Members' Meetings shall contain the business to be considered at such Members' Meeting.

- 17.16. The Company may call a Members Meeting with less notice than required by clause 17.155, but such a Members Meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda -
- 17.16.1. is Present at the Members Meeting; and
  - 17.16.2. votes to waive the required minimum notice of the Members Meeting.
- 17.17. A Member entitled to vote, who is Present at a Members Meeting –
- 17.17.1. is regarded as having received or waived notice of the Members Meeting if at least the required minimum notice was given;
  - 17.17.2. has a right to —
    - 17.17.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Members Meeting; and
    - 17.17.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice;
  - 17.17.3. except to the extent set out in clause 17.17.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Members Meeting.
- 17.18. A notice of a Members Meeting must be in Writing, in plain language and must include -
- 17.18.1. the date, time and place for the Members Meeting, and the Record Date for the Members Meeting;
  - 17.18.2. the general purpose of the Members Meeting, and any specific purpose contemplated in clause 17.1, if applicable;
  - 17.18.3. in the case of the Annual General Meeting a summarised form of the Financial Statements to be presented and directions for obtaining a copy of the complete annual financial statements for the preceding financial year;
  - 17.18.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Members Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
  - 17.18.5. a reasonably prominent statement that -

- 17.18.5.1. a Member entitled to attend and vote at the Members Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members Meeting in the place of the Member entitled to vote or give or withhold written consent on behalf of the Member entitled to vote to a decision by Round Robin Resolution contemplated in clause 1.2.27.1;
  - 17.18.5.2. a proxy shall be a Natural Person from the area of the Member;
  - 17.18.5.3. a Member may not appoint more than 1 (one) proxy to exercise Voting Rights held by that Member which entitle it to vote at any Members Meeting;
  - 17.18.5.4. the proxy may not delegate the authority granted to him as proxy;
  - 17.18.5.5. participants in a Members Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Members Meeting;
  - 17.18.5.6. participation in the Members Meeting by Electronic Communication is available, and provide any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Company determines otherwise.
- 17.19. A Members Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 17.20.20, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Members Meeting is present at the Members Meeting and votes to approve the ratification of the defective notice.
- 17.20. If a Material defect in the form or manner of giving notice of a Members Meeting relates only to one or more particular matters on the agenda for the Members Meeting -
- 17.20.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
  - 17.20.2. the Members Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 17.199.

- 17.21. An immaterial defect in the form or manner of Delivering notice of a Members Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Members Meeting.
- 17.22. Business may be transacted at any Members Meeting only while a quorum is present.
- 17.23. The quorum necessary for the commencement of a Members Meeting where no special resolution is proposed, shall be a majority of the Members entitled to vote, personally Present, or if a Member is a body corporate, represented: provided that the quorum at a Members Meeting where a special resolution is proposed, shall be 67% (sixty seven percent) of Members entitled to vote, personally Present, or if a Member is a body corporate, represented: provided further that the Members Meeting may not begin unless at least 10 (ten) Members entitled to vote shall be personally Present, or if a Member is a body corporate, represented.
- 17.24. A matter to be decided at a Members Meeting where no special resolution is proposed, may not begin to be considered unless a majority of the Members entitled to vote, personally Present, or if a Member is a body corporate, represented, are Present: provided that if the Members Meeting is one where a special resolution is proposed, a matter to be decided may not begin to be considered unless 67% (sixty seven percent) of Members entitled to vote, personally Present, or if a Member is a body corporate, represented, are Present: provided further that a matter to be decided may not begin to be debated unless at least 10 (ten) Members entitled to vote shall be personally Present, or if a Member is a body corporate, represented
- 17.25. If within 30 (thirty) minutes from the time appointed for the Members Meeting to commence, a quorum is not present or if the quorum requirements in clause 17.244 cannot be achieved for any one or more matters, the Members Meeting shall be postponed, without motion, vote or further notice, subject to clause 17.277, for 1 (one) week to the same time on the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Members Meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Members Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 17.26. A Members Meeting, or the consideration of any matter being debated at the Members Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights —
- 17.26.1. held by all of the Persons who are present at the Members Meeting at the time;  
and

17.26.2. that are entitled to be exercised on at least one matter remaining on the agenda of the Members Meeting, or on the matter under debate, as the case may be.

Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Members), as determined at the Members Meeting.

17.27. No further notice is required to be Delivered by the Company of a Members Meeting that is postponed or adjourned as contemplated in clause 17.255, unless the location or time for the Members Meeting is different from -

17.27.1. the location or time of the postponed or adjourned Members Meeting; or

17.27.2. a location or time announced at the time of adjournment, in the case of an adjourned Members Meeting.

17.28. The President shall preside as chairperson at every Members Meeting. If there is no such chairperson, or if at any Members Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Members Meeting or is unwilling to act as chairperson, the Vice-President shall preside as chairperson. If the Vice-President is unable or unwilling to act as chairperson, Persons entitled to vote which are Present shall select a Director present at the Members Meeting, or if no Director be present at the Members Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Members Meeting.

17.29. At any Members Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by –

17.29.1. not less than 5 (five) Persons having the right to vote on that matter; or

17.29.2. a Person/s entitled to exercise not less than 1/10<sup>th</sup> (one tenth) of the total Voting Rights entitled to vote on that matter; or

17.29.3. the chairperson of the Members Meeting,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Members Meeting or adjourned Members Meeting at which the vote objected



to is or may be given or tendered and every vote not disallowed at such Members Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Members Meeting, whose decision shall be final and conclusive.

- 17.30. If a poll is duly demanded it shall be taken in such manner as the chairperson directs save that it shall be taken forthwith, and the result of the poll shall be deemed to be the resolution of the Members Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Members Meeting, shall be deemed to be the resolution of the Members Meeting at which the poll is demanded. The demand for a poll shall not present the continuation of a Members Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 17.31. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Members Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 17.32. Every resolution of Members is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty percent) of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall require to be adopted with the support of at least 75% (seventy five percent) of the Voting Rights exercised on the resolution.
- 17.33. On a show of hands and on a poll a Person entitled to vote Present at the Meeting shall have only 1 (one) vote. A proxy shall irrespective of the number of Members entitled to vote here presents have only 1 (one) vote on a show of hands.
- 17.34. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in Writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.
- 17.35. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company or any Person which it has identified in the notice of Members Meeting as being

the Person to whom proxies may be delivered on behalf of the Company, not less than 24 (twenty four) hours prior to the time scheduled for the commencement of the Members Meeting.

- 17.36. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in Writing of such death, insanity or revocation as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Members Meeting or adjourned Members Meeting at which the proxy is used.
- 17.37. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form provided that it is in Writing. The Company shall supply a generally standard form of proxy upon request by a Member entitled to vote.
- 17.38. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.

## 18. **RECORD DATE**

- 18.1. If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.
- 18.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –
- 18.2.1. in the case of a Members Meeting, the latest date by which the Company is required to Deliver to Members entitled to vote, notice of that Members Meeting; or
- 18.2.2. the date of the action or event, in any other case.
- 18.3. The Company must publish a notice of a Record Date for any matter by –
- 18.3.1. Delivering a copy to each Member (and clause 31.3 shall not apply); and
- 18.3.2. posting a conspicuous copy of the notice –
- 18.3.2.1. at its principal office; and
- 18.3.2.2. on its web-site, if it has one.

**19. OFFICE BEARERS**

- 19.1. The Office Bearers, who have been nominated by the Members, will be elected and appointed by the Members of the Company at the Annual General Meeting.
- 19.2. An Office Bearer shall not be entitled to hold a position (whether in an executive or non-executive capacity) during their term of office, to serve in any capacity on any Member board or council, whether it being amateur or professional cricket.
- 19.3. The Office Bearers will serve for a 3 (three) year term, effective from the date of the Annual General Meeting at which they were appointed: provided that they shall not be entitled to serve for longer than 2 (two) consecutive terms.
- 19.4. Each Member shall be entitled to nominate a President, a Vice-President and Chairman of Finance Committee/Treasurer: provided that a nomination must be seconded by another Member.
- 19.5. Written nominations for the appointment of the Office Bearers must be submitted to the CEO, by the Members, not less than 14 (fourteen) business days prior to the date of the holding of the Annual General Meeting. Such nominations must contain a written acceptance by the candidate so nominated.
- 19.6. The Office Bearers may be removed during their term by the Members at a General Meeting held in accordance with the provisions of this MOI, subject to the approval of 12 (twelve) Members or 80% (eighty per cent) of the votes of the Members.
- 19.7. The voting for Office Bearers will take place by secret ballot.
- 19.8. In the event of only 1 (one) nomination for an Office Bearer position, such position will be regarded as uncontested and the person nominated will be deemed as elected and appointed.
- 19.9. In the event of 2 (two) nominations being received for an Office Bearer position, such election shall be by simple majority.
- 19.10. In the event of more than 2 (two) nominations being received for an Office Bearer position, the following procedure shall apply -
  - 19.10.1. should any 1 (one) candidate attract more than 50% (fifty per cent) of the total votes and such candidate has the greatest number of votes, he shall be declared elected;

19.10.2. should no candidate attract more than 50% (fifty per cent) of the total votes, the 2 (two) candidates who have received the greatest number of votes shall proceed to a new ballot; and

19.10.3. the candidate who receives the greatest number of votes in the latter ballot shall be declared elected,

**20. DIRECTORS, ELECTION OF DIRECTORS AND CASUAL VACANCIES**

20.1. Unless otherwise determined by a meeting of Members, the number of Directors shall not be less than 7 (seven) nor more than 10 (ten).

20.2. The Company may from time to time by special resolution at any General Meeting of Members increase or reduce the number of Directors.

20.3. The Board should ideally consist of 4(four) Independent Directors, not more then 6(six) Non-Independent Directors the CEO, the CFO/Financial manager, the chairperson of the audit committee, if any (all who will serve as *ex officio* directors)

20.4. Ex officio Directors cease to hold such position when no longer holding the positions referred to in Clause 20.3

20.5. In the event of any vacancy occurring on the Board, the following provisions shall apply –

20.5.1. In respect of a Non-Independent Director, the vacancy shall be filled by an Affiliate Members, nominated for election and appointment at the Members' Forum: and

20.5.2. In respect of an Independent Director, the vacancy shall be filled by a Person nominated by the selection panel for election and appointment at the Member's Forum

20.5.3. The Independent Directors elected shall be appointed for a term of 3 (three) years and shall be eligible for re-election, subject to qualification: provided that a Director shall not be entitled to serve for longer than 2 (two) consecutive terms.

20.5.4. The Non-Independent Directors elected shall be appointed for a term of 3 (three) years and shall be eligible for re-election, subject to qualification: provided that a Director shall not be entitled to serve for longer than 2 (two) consecutive terms. .

20.6. Any Director nominated and appointed in terms hereof may be replaced or removed by the Members, by ordinary resolution.

- 20.7. Any nomination, election and appointment of a Director shall be subject to the provisions of this MOI and shall take cognisance of demographics, transformation, gender equity, business and sport skills and/or knowledge, independence and acumen.
- 20.8. In the event of the Directors being of the opinion that the objectives in respect of nomination, election and appointment as per Clause 20.7 have not been met, the Directors are entitled at their sole discretion to co-opt an additional Director. A Director so co-opted will only hold office until the next Annual General Meeting.
- 20.9. The Company at a meeting of Members shall have power at any time, and from time to time, to appoint any person as a Director but so that the total number of Directors shall not at any time exceed the maximum number fixed by or in terms of this MOI.
- 20.10. Further to Clause 20.3, the processes and procedures for the nomination, election and appointment of Directors will be result in the Board being constituted as follows -
- 20.10.1. the 3 (three) Office Bearers, the CEO, the CFO and the chairperson of the audit committee (if any) shall serve *ex officio*;
- 20.10.2. the Members of the Company may nominate and elect up to 4 (four) Independent Directors. In the event of such a Director's resignation the Members may elect another Member representative to fill the casual vacancy which occurred as a result of such person's termination. The person filling the casual vacancy will only be appointed for the remainder of the period of the Director whose position he or she fills;
- 20.10.3. The Chairperson of the Board will be President of the Members meeting.
- 20.11. Written nominations for the elections of the Independent Directors shall be submitted to the CEO not less than 30 (thirty) Business Days prior to the holding of the Annual General Meeting and/or Members Meeting. Such nominations must contain written acceptances by the nominated candidates.
- 20.12. Written nomination for the elections of the Non-Independent Directors shall be submitted by the Affiliate Members to the CEO not less than 30 (thirty) Business Days prior to the holding of the Annual General Meeting and/or General Meeting. Such nominations must contain written acceptances of the nominated candidates.
- 20.13. The Directors of the Company shall appoint the chairperson of the Audit Committee, if any, whom shall serve as an *ex-officio* Director, for the duration of his term as chairperson of the

Audit Committee. The Directors shall take into account the skills and expertise required for such a position.

20.14. Subject to the provisions contained in this clause 20, each of the Directors, other than the Directors or a Director contemplated in clauses 20.4 and 20.10.1, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clause 20.155, to serve as a Director.

20.15. In any election of Directors, the election is to be conducted as follows –

20.15.1. a series of votes of those entitled to exercise votes regarding such election, 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; and

20.15.2. in each vote to fill a vacancy –

20.15.2.1. each Voting Right entitled to be exercised may be exercised once; and

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

20.16. No Person shall be elected as a Director, if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director nor act as a Director. A Person placed under probation by a court must not serve as a Director unless the order of court so permits.

20.17. No election of a Director shall take effect until he has delivered to the Company a Written consent to serve.

20.18. The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director may act only for the purpose of summoning a Members Meeting.

20.19. If there is no Director able and willing to act, then any Member entitled to exercise Voting Rights in the election of a Director may convene a Members Meeting for the purpose of appointing Directors.

## 21. **CESSATION OF OFFICE AS DIRECTOR**

21.1. A Director (excluding ex officio Directors) shall cease to hold office as such –

- 21.1.1. immediately he becomes Ineligible or Disqualified or the Board resolves to remove him on such basis, and in the latter case the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended); or
- 21.1.2. when his term of office contemplated in clause 20.6 expires; or
- 21.1.3. when he dies; or
- 21.1.4. when he resigns by Written notice to the Company; or
- 21.1.5. if there are more than 3 (three) Directors in office and if the Board determines that he has become incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended); or
- 21.1.6. if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the Company; or
- 21.1.7. if he is removed by Ordinary Resolution by Members; or
- 21.1.8. if there are more than 3 (three) Directors in office and if he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended); or
- 21.1.9. he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally; or
- 21.1.10. he is otherwise removed in accordance with any provisions of this MOI.

## 22. REMUNERATION OR REIMBURSEMENT

- 22.1. The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) of the Companies Act.
- 22.2. A Director may be appointed to more than one Board or statutory committee.

- 22.3. The remuneration of Directors and/or the Prescribed Officers, as determined by the Remuneration & Human Resources Committee, shall be market related and subject always to the provisions of clause 5.
- 22.4. The Directors or members of Board committees and members of statutory committees shall be entitled to such remuneration for their services as Directors or members of Board committees and members of statutory committees, in accordance with clause 5 and as may have been determined from time to time by Special Resolution within the previous 2(two) years.
- 22.5. In addition, the Directors shall be entitled to all reasonable expenses in travelling (including hotels/accommodation) to and from meetings of the Directors, and members of the Board committees and members of statutory committees shall be entitled to all reasonable expenses in travelling (including hotels/accommodation) to and from meetings of members of the Board committees and members of statutory committees.

23. **FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES**

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 a director of a related or inter-related company, or to a Person related to any such Director, other than a transaction if it –

- 23.1. is in the ordinary course of the Company's business and for fair value;
- 23.2. constitutes an accountable advance to meet-
- 23.2.1. legal expenses in relation to a matter concerning the Company; or
- 23.2.2. anticipated expenses to be incurred by the Person on behalf of the Company;
- 23.3. is to defray the Person's expenses for removal at the Company's request; or
- 23.4. is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

24. **GENERAL POWERS AND DUTIES OF DIRECTORS**

- 24.1. The Directors shall have the powers of management granted to the Directors in terms of section 66(1) of the Companies Act.
- 24.2. The Directors may -
- 24.2.1. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and



24.2.2. give pensions, gratuities and allowances to and make payments for or towards the insurance of,

any persons who are employees or ex-employees (including Directors or ex-Directors) of the Company, or of any company which is or was a Subsidiary of the Company or is or was in any way allied to or associated with it or any such Subsidiary, and the wives, widows, families and dependants of such persons.

24.3. The Board may from time to time appoint one or more Persons to the office of CEO, CFO or manager for such period and at such remuneration (whether by way of salary or commission, or partly in one way and partly in another) and generally on such terms they may think fit, and it may be made a term of his appointment that he be paid a pension, gratuity or other benefit on his retirement from office.

24.4. The Board may from time to time entrust to and confer upon a CEO, CFO or manager for the time being such of the powers vested in the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers.

24.5. A manager appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Board in terms hereof he shall be deemed to derive such powers directly from this clause.

## 25. **BOARD COMMITTEES**

25.1. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may include Persons who are not Directors.

25.2. No Person shall be appointed as a member of a Board committee, if he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

25.3. There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.

25.4. A member of a Board committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.

- 25.5. Committees of the Board may consult with or receive advice from any Person.
- 25.6. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

26. **PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF COMMITTEES**

26.1. For the purposes of this clause 26 –

26.1.1. "Director" includes a Prescribed Officer, and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board;

26.1.2. "Related Person" also includes any other company of which the Director or a Related Person is also a director, or a close corporation of which the Director or a Related Person is a member.

26.2. This clause 26 shall not apply to a Director in respect of a decision that may generally affect –

26.2.1. all of the Directors in their capacity as Directors, but in that case all the Directors shall act in accordance with and as if section 75(3) of the Companies Act were applicable unless the Directors are acting pursuant to an authorisation given by the Members for the Directors to make a decision within certain thresholds, relating to their capacity as Directors; or

26.2.2. a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or inter-related to the Director. In such event the Director shall be treated as not having a Personal Financial Interest, unless the class is predominantly made up of Directors and Persons Related or Inter-related to such Directors and in the circumstances the conflict of the Director requires the provisions of this clause 26 to apply.

26.3. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

26.4. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the

matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

26.5. If a Director has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director –

26.5.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;

26.5.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;

26.5.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

26.5.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 26.5.2 and 26.5.3;

26.5.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 26.5.2 and 26.5.3;

26.5.6. while absent from the meeting in terms of this clause 26.4 -

26.5.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and

26.5.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

26.5.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

26.6. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.

26.7. A decision by the Board, or a transaction or agreement approved by the Board is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if –

26.7.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 26; or

26.7.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

## 27. **PROCEEDINGS OF DIRECTORS**

27.1. The CEO authorised by the Board -

27.1.1. may, at any time, summon a meeting of the Directors; and

27.1.2. must call a meeting of the Directors if required to do so by at least 4 (four) Directors.

27.2. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors, even those for the time being absent from the Republic of South Africa.

27.3. Unless otherwise resolved by the CEO, the Directors' meetings shall be held in the city or town where the Company's Registered Office is for the time being situated.

27.4. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all Persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

27.5. If all of the Directors -

27.5.1. acknowledge actual receipt of the notice; or

27.5.2. are present at a meeting of the Directors; or

27.5.3. waive notice of the 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.

- 27.6. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 27.7. A quorum shall consist of 50% (fifty per cent) plus 1 (one), rounded up to the nearest full number, of the Directors entitled to vote, one of whom shall be an Independent Director, within the meaning of clause 9.
- 27.8. For the purpose hereof a Director who has authorised another Director to vote for him at a meeting in terms of clause 27.17 shall, if the Director so authorised is present at the meeting, be deemed to be present himself.
- 27.9. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 27.10. In the case of a tied vote the chairperson may not cast a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on fails.
- 27.11. The chairperson of the Board will be appointed in accordance with the provisions of clause 20.10.3.
- 27.12. If at any meeting the chairperson so elected is not present within 15 (fifteen) minutes after the time appointed for holding it, or if the President is not present or unwilling to act within 15 (fifteen) minutes after that time, the Directors present may choose 1 (one) of their number to be chairperson of the meeting.
- 27.13. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 27.13.1. any declaration given by notice or made by a Director as required by clause 26;
  - 27.13.2. every resolution adopted by the Board.
- 27.14. Resolutions adopted by the Board –
- 27.14.1. must be dated and sequentially numbered; and
  - 27.14.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 27.15. Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be, without the necessity for further proof of the facts stated.

27.16. A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director has received notice of the matter to be decided upon.

27.17. A Director unable to attend a Directors' meeting may authorise any other Director to vote for him at that meeting, and in that event the Director so authorised shall have a vote for each Director by whom he is so authorised in addition to his own vote. Authority in terms of this clause 27 must be In Writing (which may take the form of an Electronic Communication, telefax or telegram) and must be handed to the Person presiding at the meeting at which it is to be used.

28. **PRESCRIBED OFFICERS**

28.1. No Person shall hold office as a Prescribed Officer, if he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

28.2. A Prescribed Officer shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.

29. **APPOINTMENT OF SECRETARY**

The Directors of the Company are authorised to appoint a company secretary who is permanently resident in the Republic and who, in the opinion of the Directors, has the requisite knowledge and experience to carry out the duties of a company secretary.

30. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any document sent through the post either to the registered address of any Member or to any other Address requested by the Member.

31. **NOTICES**

31.1. The Company may give notices, documents, records or notices of availability of the foregoing by personal delivery to the Member or by sending them prepaid through the post or by transmitting them by telegram or fax or by Electronic Communication to such Person's last known address. The Company must give notice of availability of a document, record or

statement to the Member either to his last known delivery Address or last known Electronic Address.

- 31.2. Any Member who/which has furnished an Electronic Address to the Company, by doing so –
- 31.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to it; and
- 31.2.2. confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 31.3. Any notice required to be given by the Company to the Members and in respect of which the Companies Act does not expressly prohibit the provisions of this clause from applying, shall be sufficiently given by posting it on the Company's web site, if any, until at least the date when the event to which the notice refers occurs, provided that the Company gives a notice similar to a notice of availability in the manner contemplated in clause 31.1.
- 31.4. A Member shall be bound by every notice. The Company shall not be bound to enter any Person in the Members Register until that Person gives the Company an Address for entry on the Members Register.
- 31.5. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations (which is included as **Schedule 3** for easy reference but which does not form part of this MOI for purposes of interpretation). In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2), the provisions of clause 2 shall also be applied.
- 31.6. As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

## 32. INDEMNITY

32.1. For the purposes of this clause 32, "Director" includes a former Director, a Prescribed Officer, a person who is a member of a Board or statutory committee, irrespective of whether or not the Person is also a member of the Board.

32.2. The Company may -

32.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction was based on strict liability;

32.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

32.2.3. directly or indirectly indemnify a Director for –

32.2.3.1. any liability, other than in respect of -

32.2.3.1.1. any liability arising in terms of sections 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or

32.2.3.1.2. any fine contemplated in clause 32.2.1;

32.2.3.2. any expenses contemplated in clause 32.2.2, irrespective of whether it has advanced those expenses, if the proceedings -

32.2.3.2.1. are abandoned or exculpate the Director; or

32.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 32.2.3.1.

32.3. The Company may purchase insurance to protect -

32.3.1. a Director against any liability or expenses contemplated in clause 32.2.2 or 32.2.3; or

32.3.2. the Company against any contingency including but not limited to -

32.3.2.1. any expenses -



32.3.2.1.1. that the Company is permitted to advance in accordance with clause 32.2.2;or

32.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 32.2.3.2;or

32.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 32.2.3.1.

32.4. The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 75 of the Companies Act.

### 33. **SOCIAL AND ETHICS COMMITTEE**

33.1. If the Company in any 2 (two) of the previous 5 (five) years, scored above 500 (five hundred) Public Interest Score or would have so scored if the Companies Act had been in effect at that time, the Board shall appoint a social and ethics committee with the first such committee, if one is required, being appointed if the Company scored above the aforementioned Public Interest Score requirement or the Company has been exempted in terms of the Companies Act from having to have a social and ethics committee.

33.2. The social and ethics committee must comprise not less than 3 (three) Directors or Prescribed Officers, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years.

33.3. The social and ethics committee has the following functions –

33.3.1. to monitor the Company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to –

33.3.1.1. social and economic development, including the Company's standing in terms of the goals and purposes of –

33.3.1.1.1. the 10 (ten) principles set out in the United Nations Global Compact Principles; and

33.3.1.1.2. the OECD recommendations regarding corruption;

33.3.1.1.3. the Employment Equity Act; and

- 33.3.1.1.4. the Broad-Based Black Economic Empowerment Act;
- 33.3.1.2. good corporate citizenship, including the Company's –
  - 33.3.1.2.1. promotion of equality, prevention of unfair discrimination, and reduction of corruption;
  - 33.3.1.2.2. contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
  - 33.3.1.2.3. record of sponsorship, donations and charitable giving;
- 33.3.1.3. the environment, health and public safety, including the impact of the Company's activities and of its products or services;
- 33.3.1.4. consumer relationships, including the Company's advertising, public relations and compliance with consumer protection laws; and
- 33.3.1.5. labour and employment, including –
  - 33.3.1.5.1. the Company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
  - 33.3.1.5.2. the Company's employment relationships, and its contribution toward the educational development of its employees;
- 33.3.2. to draw matters within its mandate to the attention of the Board as occasion requires;
- 33.3.3. to report, through one of its members, to the Members at the Annual General Meeting on the matters within its mandate.
- 33.4. A social and ethics committee of a company is entitled to –
  - 33.4.1. require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;
  - 33.4.2. request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

- 33.4.3. attend any Members Meeting;
- 33.4.4. receive all notices of and other communications relating to any Members Meeting; and
- 33.4.5. be heard at any Members Meeting on any part of the business of the meeting that concerns the committee's functions.

33.5. The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

#### 34. **FUNDAMENTAL TRANSACTIONS AND CONVERSION**

34.1. The Company may not –

34.1.1. amalgamate or merge with, or convert to, a profit company; or

34.1.2. 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.

34.2. If the Company has voting members, any proposal to –

34.2.1. dispose of all or the greater part of its assets or undertaking; or

34.2.2. amalgamate or merge with another non-profit company,

must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, of the Companies Act respectively.

34.3. Sections 115 and 116 of the Companies Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause 34.2.

#### 35. **RESPONSIBILITY OF DIRECTORS TOWARDS THE COMPANY**

Due to the company's role as custodian of cricket in the Border Region, as well as its focus on transformation and development of amateur and professional cricket in the Border Region, it is acknowledged that the company has a major role to play in providing funds and other resources to its Members and associates, in order to finance activities, in order to promote, foster, encourage and provide facilities for the game of cricket.

## 36. DISPUTE RESOLUTION

- 36.1. Subject to the Constitution of the Republic of South Africa, and save in circumstances where there is a need for urgent relief of a sort which cannot be obtained through the dispute prevention or resolution procedures contemplated in this MOI, no club, club member, official, Prescribed Officer, Office Bearer or affiliate shall approach a Court of Law to decide a dispute it has with a body or individual falling under the jurisdiction of the Company.
- 36.2. Each club, Member or associate member falling under the jurisdiction of the Company shall ensure that it has incorporated into its constitution a dispute prevention and dispute resolution mechanism. The dispute prevention and resolution procedures set out herein may be duplicated by any associate and/or club and/or affiliate and/or Member for convenience and with the necessary changes.
- 36.3. All disputes concerning club matters and matters falling within the jurisdiction of a Member (including disciplinary matters), shall be resolved within the dispute prevention and dispute resolution mechanism set out in a club and/or a Member's constitution. Only in the event of a dispute not having been resolved within a Member's prevention and/or dispute resolution mechanisms, shall it be referred to the CEO for resolution, by way of either negotiation or arbitration.
- 36.4. The CEO shall decide, in consultation with the Directors, whether to resolve it through negotiation or whether to refer the dispute to arbitration.
- 36.5. Referral of any or all disputes to arbitration at club, affiliate, associate or company level, shall be done speedily, and in any event, not later than 10 (ten) Business Days after the date on which the decision or issue in dispute between the parties arose.
- 36.6. Issues in dispute, as referred to in clause 36.5, shall be recorded in Writing, and be conveyed to the relevant secretary of the club or associate, chief executive officer of the Member, or the CEO of the Company as soon as possible and, in any event, not later than 10 (ten) Business Days after the date of referral.
- 36.7. In the event of a dispute being referred to the CEO for arbitration, such referral shall be in Writing, and the referring party shall pay a deposit, as determined by the Board on a case by case basis, which may be refunded, depending on the outcome of the arbitration. The following procedures will apply to an arbitration -
- 36.7.1. a party requesting arbitration ("the requestor") shall file with his request a notice of dispute which shall set out fully the grounds of dispute;
- 36.7.2. the parties to the arbitration shall be the requestor and any other parties to the dispute;

- 36.7.3. on receipt of a request for arbitration the CEO shall provide a list of 3 (three) names of possible arbitrators from which 1 (one) person shall be chosen by mutual consent of the parties involved in the dispute, as the arbitrator. The arbitrator shall be a legal practitioner of at least 10 (ten) years' experience. If the parties are not able to agree on an arbitrator, the CEO shall request from either the Law Society of South Africa or the General Council of the Bar of South Africa a list of suitably qualified candidates from which the parties shall choose the arbitrator and failing that, the CEO shall make the appointment;
- 36.7.4. within 2 (two) Business Days of the appointment of the arbitrator, the parties shall all sign a submission to arbitration which shall set out the disputes between the parties and shall confirm that the arbitration is to be held in accordance with the provisions of this MOI;
- 36.7.5. the date and time for the arbitration shall be fixed by the CEO in consultation with the arbitrator having due regard to the need for fairness and for speedy finalisation of the disputes;
- 36.7.6. the parties to the arbitration shall be entitled to attend the arbitration, and may be represented by members of the legal profession;
- 36.7.7. the venue of the arbitration shall be decided by the CEO in consultation with the arbitrator;
- 36.7.8. the arbitration shall be carried out informally and in a summary manner. It will not be necessary to observe strict rules of evidence or procedure; and
- 36.7.9. the decision of the arbitrator shall be final and binding.
- 36.8. Where a dispute arises between Members, or between a Member and the Company, and cannot be resolved by negotiation, it shall be referred to CSA for resolution. If the dispute remains unresolved thereafter it shall be submitted for final and binding arbitration. Where such a dispute is referred to arbitration, the procedure (with the necessary changes) referred to in clause 36.7 shall be followed.
- 36.9. In the event of a dispute at Member level having been decided in terms of an appeal process (such as, for example, a disciplinary matter), an aggrieved party may lodge a further appeal with the CEO in Writing, accompanied by the payment of a deposit as determined by the Board on a case by case basis. The CEO shall deal with the dispute in accordance with clause 36.7 above.

**37. PUBLIC STATEMENTS**

- 37.1. The following Individuals will be authorised to give a public interview, opinion or statement -
- 37.1.1. the President (who is also chairperson of the Board) and CEO of the Company;  
and
  - 37.1.2. any other person who has the necessary authority or permission to do so.
- 37.2. In the event of any of the abovementioned Individuals being requested to report on proceedings or results of any Members Meeting or Annual General Meeting, only the Individual who has acted as the chairperson at the relevant Members Meeting or Annual General Meeting will be authorised to be interviewed or to attend and speak at any media briefing.
- 37.3. If the President (who is also chairperson of the Board), CEO or authorised person expresses an opinion, as distinct from stating facts, and in particular when he knows that the opinion is not supported by the Company, he must make it clear that such view is expressed as his own.

## Schedule 1 – Definitions in the Companies Act

"**accounting records**" means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;<sup>1</sup>

"**annual general meeting**" means the meeting of a public company required by section 61(7);

"**audit**" has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

"**Auditing Profession Act**" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"**auditor**" has the meaning set out in the Auditing Profession Act;

"**board**" means the board of directors of a company;

"**business days**" has the meaning determined in accordance with section 5(3);

"**Commission**" means the Companies and Intellectual Property Commission established by section 185;

"**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in section 189;

"**company**" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date —

- (a) was registered in terms of the —
  - (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
  - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of **Schedule 2**;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

"**consideration**" means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including—

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

"**director**" means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated;

"**effective date**", with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

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<sup>1</sup> Regulation 25(3) contains requirements as to what the accounting records must include.

"**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

"**Electronic Communications and Transactions Act**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"**exercise**", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

"**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;

"**financial statement**" includes—

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

"**group of companies**" means a holding company and all of its subsidiaries;

"**holding company**", in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);

"**incorporator**", when used—

- (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or
- (b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;

"**individual**" means a natural person;

"**inter-related**", when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;

"**juristic person**" includes—

- (a) a foreign company; and
- (b) a trust, irrespective of whether or not it was established within or outside the Republic;

"**knowing**", "**knowingly**" or "**knows**", when used with respect to a person, and in relation to a particular matter, means that the person either—

- (a) Had actual knowledge of the matter; or
- (b) Was in a position in which the person reasonably ought to have—
  - (i) had actual knowledge;
  - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or



- (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

"**material**", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is—

- (a) of consequence in determining the matter; or
- (b) might reasonably affect a person's judgement or decision-making in the matter;

"**member**", when used in reference to—

- (a) a close corporation, has the meaning set out in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
- (b) a non-profit company, means a person who holds membership in, and specified rights in respect of, that non-profit company, as contemplated in Schedule 1; or
- (c) any other entity, means a person who is a constituent part of that entity;

"**nominee**" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"**non-profit company**" means a company —

- (a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and
- (b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1;"**ordinary resolution**" means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8) —

- (a) at a shareholders meeting; or
- (b) by holders of the company's securities acting other than at a meeting, as contemplated in section 60;

"**person**" includes a juristic person;

"**personal financial interest**", when used with respect to any person—

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

"**prescribed officer**" means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);

"**present at a meeting**" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

"**public company**" means a profit company that is not a state-owned company, a private company or a personal liability company;

"**record date**" means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

"**registered auditor**" has the meaning set out in the Auditing Profession Act;

"**registered office**" means the office of a company, or of an external company, that is registered as required by section 23;

"**related**", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to section (c);

"**rules**" and "**rules of a company**" means any rules made by a company as contemplated in section 15(3) to (5);

"**special resolution**" means—

- (a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) -
  - (i) at a shareholders meeting; or
  - (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

"**subsidiary**" has the meaning determined in accordance with section 3;

"**voting power**", with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;

"**voting rights**", with respect to any matter to be decided by a company, means—

- (a) the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or
- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

"**wholly-owned subsidiary**" has the meaning determined in accordance with section 3(1)(b).

**Schedule 2 – Ineligible / disqualified in terms of section 69(7) and (8) of the Companies Act read with Regulation 39(3)**

1. A person is ineligible to be a Director if the Person –
  - 1.1. is a juristic person;
  - 1.2. is an unemancipated minor, or is under a similar legal disability; or
  - 1.3. does not satisfy any qualification set out in the MOI.
  
2. A person is disqualified to be a Director if –
  - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  
  - 2.2. the Person –
    - 2.2.1. is an unrehabilitated insolvent;
  
    - 2.2.2. is prohibited in terms of any public regulation to be a Director;
  
    - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
  
    - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –
      - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
  
      - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
  
      - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

**Schedule 3 – Prescribed methods of delivery in the Regulations**

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
Any Person	<p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an ElectronicAddress;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
Any natural Person	<p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
A company or similar body corporate	<p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed</p>

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	place of business.	on a different date or at a different time.
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	<p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union.</p> <p>If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	<p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>