

# **CONSTITUTION**

of the

**CAPE CHAMBER OF COMMERCE AND INDUSTRY**

**1 DECEMBER 2016**

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## **SCHEDULE**

### **Schedule 1: Form of Proxy**

## PART ONE – INTRODUCTORY

### 1 INTRODUCTION

- 1.1 The Cape Chamber of Commerce and Industry was originally founded as the Kamer van Commerce in 1804.
- 1.2 On 18 August 1891 it was incorporated as the Cape Town Chamber of Commerce under the Cape Town Chamber of Commerce Act, 1891.
- 1.3 The Cape Chamber of Commerce and Industry has unified the independent operations of other chambers of commerce in the area of the City of Cape Town including the Tygerberg Chamber of Commerce and Industry, the Helderberg Chamber of Commerce and Industry, the Stellenbosch Chamber of Commerce, the Boland Chamber of Commerce, and the Fish Hoek Chamber of Business.
- 1.4 This is the Constitution of the Cape Chamber of Commerce and Industry.

### 2 DEFINITIONS AND INTERPRETATION

- 2.1 In this Constitution, unless the context shows a different intention –
- 2.1.1 "**AGM**" means the Annual General Meeting of Members contemplated in clause 24.1.1;
- 2.1.2 "**Auditor**" means the independent auditor of the Chamber from time to time;
- 2.1.3 "**Board**" means the Board Members contemplated in clause 20.1;
- 2.1.4 "**Board Committee**" means a committee of the Board contemplated in clause 20.14.1;
- 2.1.5 "**Board Members**" means members of the Board contemplated in clause 20.1;
- 2.1.6 "**Branch**" means a branch of the Chamber contemplated in clause 6.1.1;
- 2.1.7 "**Branch Committees**" means a committee of a Branch contemplated in clause 6.2.1;
- 2.1.8 "**Chamber**" means the Cape Chamber of Commerce and Industry as contemplated in clause 1;

- 2.1.9        "**Constitution**" means this document;
- 2.1.10      "**Council**" means the council of the Chamber contemplated in clause 19.1;
- 2.1.11      "**Deputy President**" means the Deputy President of the Chamber as contemplated in clause 20.7.2;
- 2.1.12      "**Exco**" means the executive committee of the Chamber contemplated in clause 23.1;
- 2.1.13      "**Executive Director**" means the executive director of the Chamber as contemplated in clause 21.1.1;
- 2.1.14      "**Financial Year**" means the financial year of the Chamber contemplated in clause 28;
- 2.1.15      "**Honorary Members**" means honorary Members of the Chamber contemplated in clause 10.1;
- 2.1.16      "**Honorary Treasurer**" means the honorary treasurer of the Chamber contemplated in clause 20.7.3;
- 2.1.17      "**Life Members**" means life Members of the Chamber as contemplated in clause 12.1;
- 2.1.18      "**Members**" means subscribing Members of the Chamber or persons deemed by the Board, or its delegate, to qualify as representatives of such subscribing members for all purposes of the Chamber and include past Presidents of the Chamber and Honorary Members and "**Membership**" has a corresponding meaning as contemplated in clause 7;
- 2.1.19      "**Members by Office**" means persons who are Members of the Chamber by office (*ex officio*) contemplated in clause 11;
- 2.1.20      "**Members Meeting**" means an AGM or SGM;
- 2.1.21      "**Members Register**" means the register of Members contemplated in clause 18.1;
- 2.1.22      "**Objectives**" means the objectives of the Chamber contemplated in clause 4.1;

- 2.1.23 "**Ordinary Members**" means ordinary Members of the Chamber contemplated in clause 9.1;
- 2.1.24 "**Ordinary Resolution**" means a resolution of Members contemplated in clause 25.1.1;
- 2.1.25 "**Portfolio Committees**" means portfolio committees of the Council contemplated in clause 19.2.1.5;
- 2.1.26 "**Pre-AGM Board Meeting**" has the meaning given to that term in clause 20.9.8;
- 2.1.27 "**President**" means the president of the Chamber contemplated in clause 20.7.1;
- 2.1.28 "**Region**" means the Western Cape Province and any other areas identified by the Board;
- 2.1.29 "**South Africa**" means the Republic of South Africa;
- 2.1.30 "**Special Resolution**" means a resolution of Members contemplated in clause 25.1.2;
- 2.1.31 "**SGM**" means a special general meeting of the Members contemplated in clause 24.2;
- 2.1.32 "**Subscription**" has the meaning given to that term in clause 14.1;
- 2.1.33 "**Vetting Committee**" means the committee of the Chamber contemplated in clause 22.1;
- 2.1.34 "**vote**" means by to vote by a "show of hands" unless specifically requested otherwise in terms of this Constitution; and
- 2.1.35 different grammatical forms of the same words have the same meaning.
- 2.2 In this Constitution, save as clearly stated otherwise in this Constitution –
- 2.2.1 the heading of the Constitution and clause headings are for ease of reference only and are not used to interpret the Constitution;
- 2.2.2 a reference to (i) a gender includes the other genders, (ii) a natural person

includes a juristic person, and the other way around, and (iii) the singular includes the plural, and the other way around;

- 2.2.3 "**business hours**" are the hours between 08h30 and 17h00 on a business day;
- 2.2.4 "**days**" are calendar days unless qualified by the word "business", and then a "**business day**" is a day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 2.2.5 "**include**" means to include without limitation;
- 2.2.6 "**law**" means a law of general application and includes the common law and a statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or another legislative measure of government (including local and provincial government), statutory or regulatory body which has the force of law in South Africa;
- 2.2.7 "**person**" includes a company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 2.2.8 "**writing**" means readable writing in English and includes email and any other form of electronic communication set out in the Electronic Communications and Transactions Act, No 25 of 2002;
- 2.2.9 examples are illustrative only and do not limit what else might be included;
- 2.2.10 substantive terms in this clause 2 have effect as if they were substantive terms in the body of the Constitution;
- 2.2.11 a reference to a statute (i) is interpreted as a reference to that statute as at the Signature Date and as amended or substituted from time to time, and (ii) includes regulations and other enactments under that statute;
- 2.2.12 a number of days is determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next business day; and
- 2.2.13 if the due date for doing something is a day which is not a business day then the due date is the prior business day.

### 3 LEGAL STATUS

- 3.1 The Chamber is a public, non-profit organisation, which is a body corporate separate from its individual members.
- 3.2 The Chamber exists perpetually and continues to exist despite a change in Membership.
- 3.3 The Chamber may own property, conclude contracts, conduct business and sue or be sued in its own name.

### 4 OBJECTIVES

- 4.1 The objectives ("**Objectives**") of the Chamber, which must be achieved with integrity, non-alignment, professionalism, accountability and autonomy, are the following:
- 4.1.1 The Chamber must be the effective voice of business, including to –
- 4.1.1.1 formulate representative views of Members and to be the effective voice of business in the Region;
  - 4.1.1.2 strive for the effective operation of private enterprise with free competition and a minimum of direct controls;
  - 4.1.1.3 consider and address any matters of government or public body policy or any other matters of general public importance;
  - 4.1.1.4 foster and develop interaction between business and persons in the economic, social, political, labour and community sectors;
  - 4.1.1.5 provide a forum for debate on matters affecting various sectors of business;
  - 4.1.1.6 represent the interests of members on other bodies as the Board may decide; and
  - 4.1.1.7 interact with the media.
- 4.1.2 The Chamber must promote economic growth, including to –
- 4.1.2.1 promote and develop commerce and industry in the Region;
  - 4.1.2.2 encourage co-operation in business on all matters of common interest;

- 4.1.2.3 do things that may be necessary to improve the quality of life in society;
- 4.1.2.4 create a business climate within the Region aimed at attracting investment from local and foreign business enterprises; and
- 4.1.2.5 assist Members to become globally competitive and export-orientated by improving the efficiency of management, labour and capital.
- 4.1.3 The Chamber must promote a vibrant business environment, including to –
  - 4.1.3.1 play a proactive role in assisting business to influence and adapt to changing socio-economic and political environments;
  - 4.1.3.2 encourage participation of all people in the market economy of the Region by promoting, among other things, broad-based Black economic empowerment and transformation;
  - 4.1.3.3 promote sound business practices and socio-economic responsibility in an ethical business environment;
  - 4.1.3.4 promote inter-dependence between management and labour in order to build harmonious relationships in the Region;
  - 4.1.3.5 promote the creation of employment opportunities for all persons living in the Region and sound employment relations in the workplace;
  - 4.1.3.6 encourage environmentally responsible business practices in the Region;
  - 4.1.3.7 encourage co-operation between businesses in the same fields of activity and the formation of trade associations; and
  - 4.1.3.8 enter into arrangements for co-operation, association or affiliation with other chambers, associations, institutions of other bodies that have similar objectives as the Chamber.
- 4.1.4 The Chamber may provide business support services, including to –
  - 4.1.4.1 provide services of real value to Members with a view to catering for their diverse needs;
  - 4.1.4.2 promote foreign trade and related business services;

- 4.1.4.3 provide secretarial support services to other associations;
  - 4.1.4.4 identify and address the different developmental needs of business enterprises of all types;
  - 4.1.4.5 assist with the resolution of business disputes;
  - 4.1.4.6 assist with, and promote education and training to meet the needs of business and to offer assistance to persons training for careers in business, considering the changing business environment since 1994;
  - 4.1.4.7 organise and promote trade fairs and exhibitions, symposia, business courses, seminars and other events of interest to the wider business community;
  - 4.1.4.8 collect statistics and other information about any of the Objectives which may benefit Members; and
  - 4.1.4.9 provide, form and maintain Branches, form and maintain databases and digital library facilities and to provide such courses, lectures and demonstrations as may be deemed desirable in line with the Objectives.
- 4.2 To achieve the Objectives, the Chamber must do all lawful things as may be incidental or helpful to attain, promote and carry out of the Objectives for the public benefit.

## 5 POWERS

- 5.1 Subject to the limits in clause 5.2 and elsewhere in this Constitution, the Chamber has all the powers of a natural person (save for those that cannot be exercised by a person that is not a natural person) to achieve its Objectives, including the power to –
- 5.1.1 acquire and hold securities in profit companies;
  - 5.1.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with, or ancillary to its Objectives;
  - 5.1.3 form and have an interest in any person having the same or similar objectives to the Objectives, for the purpose –

- 5.1.3.1 of acquiring the undertaking, or all or any of the assets or liabilities of that person, or for any other purpose that directly or indirectly benefit the Chamber and advance the Objectives; and
- 5.1.3.2 of transferring to that person the undertaking of the Chamber, comprising all or any of its assets or liabilities;
- 5.1.4 amalgamate, liaise, and co-operate with any other person having the same or similar objectives to the Objectives;
- 5.1.5 take part in the management, supervision and control of persons other than natural persons, or operations of any other person having the same or similar objectives to the Objectives;
- 5.1.6 enter into joint ventures or partnerships with any other persons having the same or similar objectives to the Objectives;
- 5.1.7 remunerate any person in cash or in kind for services rendered in its activities, including payment of reasonable fees and charges for professional services rendered;
- 5.1.8 make grants and donations in pursuance of its Objectives, save that it may make no grants or donations to the Board; and
- 5.1.9 pay staff salaries, pension contributions, and other benefits, and to establish pension and incentive schemes, for its employees.
- 5.2 The Chamber may not –
  - 5.2.1 directly or indirectly, pay any part of its income or transfer any of its assets to any person who is a Member or Board Member except for –
    - 5.2.1.1 reasonable remuneration for goods delivered or services rendered to, or at the direction of the Chamber;
    - 5.2.1.2 reasonable payments for, or reimbursement of costs incurred to advance the Objectives;
    - 5.2.1.3 reasonable payment of amounts due by the Chamber under *bona fide* agreements between the Chamber and another person;

5.2.1.4 reasonable payments for the rights of a person, to the extent that the Chamber administers those rights to advance the Objectives; or

5.2.1.5 payments under a binding legal obligation of the Chamber.

## 6 BRANCHES

### 6.1 Formation of Branches

6.1.1 The Board may permit the formation of branches ("**Branches**") to benefit Members in a particular geographical area, or with particular business interests.

6.1.2 The Board may only allow for the formation of a Branch if it is satisfied that a reasonable need exists for the Branch.

6.1.3 When allowing the formation of a Branch it may impose terms and conditions as it sees fit.

6.1.4 Before a Branch may be formed, the proposed Branch must have at least 50 Members or such lesser number of Members as the Board may determine.

### 6.2 Branch Committees

6.2.1 The Board may form a Branch committee ("**Branch Committee**") for each Branch.

6.2.2 The Board must invite Members in writing by means of notifications, and at its office and at other venues as determined by the Board, to nominate persons to serve on Branch Committees.

6.2.3 A Branch Committee may make decisions about matters affecting Members of the Branch within its geographical area. A decision may not conflict with this Constitution or with any prior decision and/or the overall policy of the Chamber.

6.2.4 Branch Committees may appoint representatives to serve on other bodies dealing with matters affecting the Members in that geographical area.

6.2.5 The President and the Executive Director are members of every Branch Committee by office (*ex officio*) and may attend, speak at and vote at the

meetings of the Branch Committees.

- 6.2.6 The President may arrange a general meeting of Members in the geographical area of the Branch for the election of Branch Committees.
- 6.2.7 Branch Committees may co-opt Members of the Branch to be committee members. Branch Committees may also co-opt non-Members to serve in an advisory capacity. Non-Members have no voting rights on a Branch Committee.
- 6.2.8 The Board must determine the election process and the quorum for meeting of Branch Committees.
- 6.2.9 The Board must determine the size of each Branch Committee.
- 6.2.10 A Branch Committee must, subject to this Constitution –
  - 6.2.10.1 consider any matter peculiar to its Branch;
  - 6.2.10.2 refer appropriate matters to the Board for consideration; and
  - 6.2.10.3 act in the best interest of Members of the Branch.

### 6.3 **Fundraising**

- 6.3.1 Branches may raise funds for use by them for their own specific operations, subject to the approval of the Board within the financial framework of the Chamber.
- 6.3.2 Members of Branches are not relieved from their obligation to pay Subscriptions and other charges owing by them to the Chamber.

### 6.4 **Branch representatives on the Council**

- 6.4.1 Each Branch, regardless of the number of Members in that Branch, is represented by at least one person on the Council.
- 6.4.2 Further, for every 50 additional Members from the date that the Branch was constituted, the Branch has one additional representative on the Council.
- 6.4.3 However, a Branch has no more than three representatives on the Council.
- 6.4.4 If a Branch nominates only one person to represent it on the Council, that

person is deemed to be duly elected as a member of Council unless the Board objects to the nomination.

- 6.4.5 If the Board wishes to object it must give a written notice to the nominee and the Branch.
- 6.4.6 The notice must set out the reasons for the objections.
- 6.4.7 The Board must give the nominee and the Branch a chance to make representations and must consider those representations.
- 6.4.8 The Board must then, on reasonable grounds, determine the suitability of the person to serve as a member of Council.
- 6.4.9 If a Branch which may nominate a person to represent it on the Council fails to do so, the Board may appoint a suitable person as it deems fit to represent the Branch on the Council.

## **PART TWO – MEMBERSHIP**

### **7 MEMBERS**

The Chamber has members ("**Members**").

### **8 TYPES OF MEMBERS**

The Chamber has the following types of Members, namely –

- 8.1 Ordinary Members;
- 8.2 Honorary Members;
- 8.3 Members by Office; and
- 8.4 Life Members.

### **9 ORDINARY MEMBERS**

- 9.1 Any person may apply to become an ordinary Member ("**Ordinary Member**").
- 9.2 If a person wishes to apply for Ordinary Membership then the person must apply in writing in the way fixed by the Board.

9.3 The Board may approve or decline applications for Ordinary Membership as it deems fit and without giving reasons for its decision.

9.4 Ordinary Members have the right to vote at Members Meetings.

## 10 HONORARY MEMBERS

10.1 The Board may make rules which may be amended from time to time about the nomination and enrolment of honorary members ("**Honorary Members**"), including requirements for enrolment, subject to clause 10.6.

10.2 The Board may, subject to clauses 10.1 and 10.6, enrol as an Honorary Member, any person who, in the opinion of the Board should be enrolled as such.

10.3 Honorary Members enjoy all the privileges of Ordinary Members, including for certainty the right to vote at Members Meetings.

10.4 Honorary Members are not liable for payment of any Subscriptions.

10.5 Past Presidents must be admitted as Honorary Members in their personal capacity.

10.6 The AGM must approve the enrolment of Honorary Members by Ordinary Resolution.

10.7 If the Board does not make rules under clause 10.1, the process to enrol Honorary Members is the same as that to appoint Board Members, with changes required by the context.

## 11 MEMBERS BY OFFICE

All Board Members are Ordinary Members by office (*ex officio*) ("**Members by Office**").

## 12 LIFE MEMBERS

12.1 The Board may make rules which may be amended from time to time about the nomination and appointment of life members ("**Life Members**"), including requirements for appointment, subject to clause 12.4.

12.2 The Board may, subject to clauses 12.1 and 12.4, enrol as a Life Member any person who, in the opinion of the Board, has rendered valuable service to the

Chamber.

- 12.3 Life Members enjoy the same privileges as Ordinary Members, subject to clause 12.6, but are not liable for payment of any Subscriptions.
- 12.4 The AGM must approve the appointment of Life Members by Ordinary Resolution.
- 12.5 If the Board does not make rules under clause 12.1, the process to enrol Life Members is the same as that to appoint Board Members, with changes required by the context.
- 12.6 Life Members have no right to vote at Members Meetings.

### 13 **MEMBERSHIP: GENERAL**

- 13.1 The Chamber must always have at least three Ordinary Members.
- 13.2 There is no limit on the maximum number of Ordinary Members.
- 13.3 There is no limit on the minimum or maximum number of Honorary Members or Life Members.
- 13.4 If the number of Ordinary Members falls below three, the remaining Ordinary Members and/or Honorary Members must determine whether or not it would be in the best interest of the Chamber to be wound up, having due regard to the non-profit sector's best practice.
- 13.5 A Member may not transfer his or her Membership, or any rights attaching to the Membership to any person without the Board's prior written consent.

### 14 **SUBSCRIPTIONS**

- 14.1 Members must pay annual subscriptions ("**Subscriptions**") to the Chamber as determined from time to time by the Board.
- 14.2 A Member must pay the first Subscription on the date that the Member is enrolled and then on each anniversary of that date, or such other date as determined by the Board.
- 14.3 Members must pay Subscriptions –

- 14.3.1 in cash at the main office of the Chamber; or
- 14.3.2 by electronic funds transfer or debit orders, free of set-off or deductions, to the bank account named by the Board.

## 15 RIGHTS OF MEMBERS

- 15.1 Members enjoy all the privileges and facilities of the Chamber.
- 15.2 Each Member has the right –
  - 15.2.1 to inspect, and to get copies of the annual financial statements of the Chamber; and
  - 15.2.2 to receive notice of, and to attend and speak at Members Meetings.
- 15.3 For certainty, only Ordinary Members and Honorary Members have the right to vote at Members Meetings.

## 16 END OF MEMBERSHIP

- 16.1 A Member may end his or her Membership on prior written notice of not less than 30 days to the Chamber.
- 16.2 A Member automatically stops being a Member if –
  - 16.2.1 where the Member is a natural person, his or her estate is sequestrated;
  - 16.2.2 where the Member is not a natural person it is wound up, deregistered or placed under business rescue;
  - 16.2.3 he or she fails or refuses to pay his or her Subscription, or any other money that he or she owes to the Chamber when due; but the debts remain due to, and recoverable by the Chamber despite Membership having stopped; but he or she may be readmitted as Member if the Board so decides and if he or she has paid the arrears;
  - 16.2.4 he or she fails or refuses to comply with this Constitution or any code of conduct adopted by the Board; or
  - 16.2.5 he or she is convicted of any crime involving dishonesty, or any other offence deemed serious enough by the Board to damage the Chamber's reputation.

- 16.3 If a Member is a natural person, and his or her estate is sequestrated then he or she may, on rehabilitation, make a fresh application for Membership if he or she wishes to become a Member again.

## 17 **EXPULSION AND SUSPENSION**

- 17.1 If the Board thinks that the conduct of a Member and the interests of the Chamber so require, it must investigate the matter and may then decide to –

17.1.1 expel the Member; or

17.1.2 for a stated period, suspend his or her Membership.

- 17.2 Before making a decision under clause 17.1, the Board must give the Member a chance to make representations, either verbally or in writing, as the Board may deem fit.

17.3 The decision of the Board is final.

17.4 An expelled or suspended Member –

17.4.1 has no claim against the Chamber; and

17.4.2 is not refunded any Subscription or part thereof already paid by the Member.

## 18 **REGISTER OF MEMBERS**

- 18.1 The Chamber must maintain a register ("**Members Register**"), in the form of an electronic database or another form as the Board may determine.

18.2 The Chamber must keep the Members Register at its main office and keep a copy or back-up of such information at a separate location.

18.3 The name and contact details of every Member must be entered in the Members Register.

18.4 The Chamber must regularly update the Members Register and remove the names of persons who have stopped being Members. The Chamber must update the Members Register at least once a year.

## **PART THREE – GOVERNANCE OF CHAMBER**

### **19 COUNCIL**

#### **19.1 Council**

The Chamber has a council ("**Council**").

#### **19.2 Functions of Council**

19.2.1 The functions of the Council are –

19.2.1.1 to formulate strategic positions of the Chamber;

19.2.1.2 to give strategic advice to the Board about the positions taken by the Council and generally on policy issues;

19.2.1.3 to appoint the Vetting Committee;

19.2.1.4 to elect Board Members; and

19.2.1.5 to form portfolio committees ("**Portfolio Committees**"), that is, groups of Members who must (i) consider and debate issues that impact on business, (ii) develop policy decisions for the Chamber, and (iii) start appropriate action in respect of related business matters when required.

#### **19.3 Composition of Council**

19.3.1 The Council consists of –

19.3.1.1 all Board Members on the Board;

19.3.1.2 the chairpersons and vice chairpersons of the Portfolio Committees and Board Committees;

19.3.1.3 representatives from each Branch under clause 6.4;

19.3.1.4 10 persons appointed by the Board;

19.3.1.5 10 Members elected by the Members at an AGM; and

19.3.1.6 no more than six recent past Presidents of the Chamber, available and willing to serve on the Council.

- 19.3.2 If there are more than six past Presidents who are willing and available to serve on Council, any one of those past Presidents may ask the Executive Director to call a meeting of those past Presidents. The Executive Director must give at least 21 business days' prior written notice of that meeting to those past Presidents. At that meeting, the past Presidents present in person elect their representatives on the Council save that, for certainty, they cannot elect more than six. This does not preclude a past President from being elected onto Council in any other capacity or vacancy.

#### 19.4 **Meetings of Council**

- 19.4.1 The quorum for all Council meetings is 40 percent of the members of the Council.
- 19.4.2 All decisions of the Council are taken by simple majority of 50 percent plus one of the members of the Council present at a quorate meeting save for such decisions where a higher percentage is expressly called for under this Constitution.
- 19.4.3 The Council must meet at least six times a year.
- 19.4.4 The procedures for Council meetings are the same as those of Board meetings, with changes required by the context.

### 20 **BOARD**

#### 20.1 **General**

The Chamber has a board ("**Board**") comprising individuals who are named "**Board Members**".

#### 20.2 **Powers of the Board**

The Board generally and ultimately manages and controls the Chamber and its affairs.

#### 20.3 **Composition of Board**

- 20.3.1 The Board must consist of at least nine Board Members.
- 20.3.2 The Board consists of –

- 20.3.2.1 seven Board Members appointed by the Council;
  - 20.3.2.2 the Executive Director; and
  - 20.3.2.3 the immediate past President of the Chamber, or if not available, the preceding available past President.
- 20.3.3 A failure by the Chamber to have the minimum number of Board Members does not generally limit or negate the authority of the Board, or nullify anything done by the Board or the Chamber, but the reduced Board may only –
- 20.3.3.1 preserve and secure the assets and enterprise of the Chamber, and ensure the continuity of its business activities and functions; and
  - 20.3.3.2 promptly start the process of appointing additional Board Members as may be required, including the calling of a meeting of the Vetting Committee for that purpose; provided that if there is no Board Member able or willing to act, then any Member may start that process and call that meeting.
- 20.3.4 Despite clause 20.6.1, the Board may co-opt (but is not obliged to co-opt) no more than two individuals to be members of the Board in addition to the Board Members contemplated above. Those individuals must be eligible to be Board Members under this Constitution. Those individuals need not be Members but will have all the rights and responsibilities of a Board Member.
- 20.4 Eligibility to serve as Board Member**
- 20.4.1 To serve as a Board Member a person must be eligible to serve as a director as if the terms of the Companies Act, No 71 of 2008 would apply.
  - 20.4.2 Save as set out in this clause 20, there are no general qualifications prescribed by the Chamber for a person to serve as a Board Member.
- 20.5 Terms of office and election**
- 20.5.1 The term of office for Board Members is this:
    - 20.5.1.1 Save for the Executive Director, three Board Members are deemed to have retired at the end of the Pre-AGM Board Meeting with the assumption that the Board Member stepping down as President will not have to re-apply to become a Board member with reference to clause 20.3.2.3.

- 20.5.1.2 The order in which the Board Members are deemed to have retired is –
- 20.5.1.2.1 first, the Board Members who choose to retire; and
- 20.5.1.2.2 second, if the number of Board Members who choose to retire do not make up the number of Board Members who are deemed to have retired, then the Board Members who have been in office for the most days in aggregate in all their terms are deemed to have retired.
- 20.5.2 A retiring Board Member may be nominated and re-elected.
- 20.5.3 No person may be an appointed Board member in terms of clause 20.3.2.1 for more than five consecutive terms of office.
- 20.5.4 The Executive Director has no prescribed term of office as a member of the Board.
- 20.6 **Election**
- 20.6.1 The Council appoints all Board Members other than the Executive Director.
- 20.6.2 Only Members in good standing may nominate persons for appointment as Board Members.
- 20.6.3 The Board must at least 60 days before each AGM Meeting invite Members by notice to nominate persons for appointment as Board Members.
- 20.6.4 A Member wishing to nominate a person must give the Vetting Committee the details of the nominee in the form prescribed by the Board within 10 days of having received the call for nominations. The form must contain at least –
- 20.6.4.1 the name, consent and signature of the person proposed to be nominated and, if elected, to serve as a Board Member;
- 20.6.4.2 the name and signature of the proposer;
- 20.6.4.3 the name and signature of the seconder;
- 20.6.4.4 a written motivation indicating the reasons for the nomination, including particulars of the attributes, skills and experience of the nominee; and
- 20.6.4.5 a declaration by the proposer that, to the best of his or her knowledge, the

nominee is eligible to be a Board Member.

- 20.6.5 The curriculum vitae of the nominee must accompany that form.
- 20.6.6 On receipt of a nomination the Vetting Committee must consider the nomination and the suitability of the nominee, and then approve or decline the nomination.
- 20.6.7 The Vetting Committee must take into account the following criteria when considering a nomination:
  - 20.6.7.1 The nominee must be an individual of the highest integrity.
  - 20.6.7.2 The nominee must be willing and able to devote sufficient time to the affairs of the Chamber.
  - 20.6.7.3 The nominee must have knowledge about the Objectives and functioning of the Chamber.
  - 20.6.7.4 The nominee must show creativity and leadership in his or her business and community.
  - 20.6.7.5 The nominee must know what the duties of persons in a fiduciary position, such as a Board Member, entail.
  - 20.6.7.6 The Vetting committee must foster diversity across, among other things, race, gender and age.
- 20.6.8 Within 14 days of having received the call for nominations, the Vetting Committee must give the Council a notice listing the approved nominees together with the form in clause 20.6.4 and the curriculum vitae of the nominee for each approved nominee.
- 20.6.9 That notice must also state that any Council member who may be dissatisfied with the names of any approved nominees may, by written notice to the Council, object to the nominations.
- 20.6.10 The Council may only consider an objection if it –
  - 20.6.10.1 is in writing, signed by or on behalf of a Council member;
  - 20.6.10.2 is delivered to main office of the Chamber at least three days before the

- date of the Council meeting in clause 20.6.11;
- 20.6.10.3 is supported by at least two other Members in good standing (regardless of whether they are Council members or not), in addition to the Council member who objects;
- 20.6.10.4 contains substantive reasons and a motivation for the objection.
- 20.6.11 The Council must, at a meeting held not less than 21 days before the Pre-AGM Board Meeting (that is, before the relevant AGM), elect the persons to replace the retiring Board Members.
- 20.6.12 For certainty, at that meeting the quorum for Council meetings is that in clause 19.4.1.
- 20.6.13 Council members only have as many votes as there are vacancies.
- 20.6.14 There is only one round of voting. Only nominees who get 50 percent plus one of the votes of the Council members present at the meeting during that round may be appointed as Board Members. Nominees who receive less than that number of votes must not be appointed as Board Members. Any remaining vacancy must then be filled by following the process in clauses 20.6.3 and the following clauses.
- 20.6.15 No alternate Board Members may be appointed.
- 20.6.16 No election of a Board Member takes effect until he or she has delivered to the Chamber a written consent to serve.
- 20.6.17 The Vetting Committee must fill any casual vacancy on the Board by persons chosen by the Vetting Committee.
- 20.6.18 No person may be elected as a Board Member if he or she is ineligible or disqualified. Any such election is a nullity. A person who is ineligible or disqualified may not consent to be elected as a Board Member and may not act as a Board Member.

## 20.7 **Election of President, Deputy President and Honorary Treasurer**

The Board must elect from its number a President, a Deputy President, and an honorary treasurer ("**Honorary Treasurer**") at the Board Meeting following the

Pre-AGM Board Meeting.

20.7.1 The President –

20.7.1.1 means the duly elected President of the Chamber;

20.7.1.2 presides at all Members Meetings and all other meetings of the Chamber at which he or she is present;

20.7.1.3 is by office (*ex officio*) a member of all Committees duly formed except for the Vetting Committee;

20.7.1.4 has the authority usually vested in a chairman of a meeting including the authority to –

20.7.1.4.1 keep order;

20.7.1.4.2 direct the manner of debate upon all issues introduced; and

20.7.1.4.3 as set out in clause 24.6.2, has a second or casting vote if presiding.

20.7.2 The Deputy President –

20.7.2.1 means the duly elected Deputy President of the Chamber; and

20.7.2.2 in the absence of the President, possess and exercise all the rights, privileges and powers of the President.

20.7.3 The Honorary Treasurer –

20.7.3.1 means the duly elected Honorary Treasurer of the Chamber.

20.7.3.2 must monitor the financial administration of the Chamber; and

20.7.3.2.1 must report to the Board and Council at regular intervals on the state of its financial health, in line with best practice, and in compliance with legal requirements.

20.8 **Cessation of Office as Board Member**

A Board Member stops holding office –

20.8.1 immediately when he or she becomes ineligible or disqualified or the Board

- resolves to remove him or her on that basis;
- 20.8.2 when his or her term of office expires under this Constitution;
- 20.8.3 when he or she dies;
- 20.8.4 when he or she resigns by prior written notice to the Board;
- 20.8.5 if the Board determines that he or she has become incapacitated to the extent that he or she is unable to perform the functions of a Board Member, and is unlikely to regain that capacity within a reasonable time;
- 20.8.6 if he or she is removed by the Board for being negligent or derelict in performing the functions of a Board Member;
- 20.8.7 if he or she (i) files an application for sequestration or debt review, (ii) commits an act of insolvency as defined in the insolvency law in force, or (iii) makes any arrangement or composition with his or her creditors generally;
- 20.8.8 if he or she is otherwise removed under this Constitution;
- 20.8.9 if the Board so decides, if he or she is absent from three consecutive Board meetings or events arranged by the Chamber occurring within a period of six consecutive months without the leave of the Board; or
- 20.8.10 stops being eligible to serve as a director in terms of the Companies Act, No 71 of 2008.

## 20.9 **Proceedings of Board Members**

- 20.9.1 The Board may authorise a Board Member, at any time, to call a Board meeting.
- 20.9.2 The Board must call a Board meeting if at least two Board Members, in writing, ask it to do so.
- 20.9.3 The Board may determine what period of notice must be given of Board meetings. The Board may determine the means of giving such notice which may include phone, fax or electronic communication.
- 20.9.4 Notice of a Board meeting must be given to all Board Members including those for the time being absent from South Africa.

- 20.9.5 A Board meeting may proceed even if proper notice of that meeting was not given if (i) all of the Board Members acknowledge actual receipt of the notice, (ii) are present at a Board Meeting, or (ii) waive notice of the meeting.
- 20.9.6 The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to what is stated below.
- 20.9.7 The Board must meet at least ten times a year.
- 20.9.8 The Board must hold a meeting no more than 60 days, and no less than 14 days before each AGM. That Board meeting is named the "**Pre-AGM Board Meeting**".
- 20.9.9 All Board meetings must be held in Cape Town, unless the Board resolves otherwise.
- 20.9.10 A Board Meeting may be held by electronic communication and Board Members may participate in a Board Meeting by electronic communication so long as everyone participating in that meeting is able (i) to communicate concurrently with everyone else without an intermediary, and (ii) to participate effectively in the meeting.
- 20.9.11 The quorum for a Board meeting is at least one half of the Board Members in office.
- 20.9.12 When establishing the quorum, if the President, Deputy President or chairperson of the meeting is notified that any Board Member will be arriving later than the scheduled starting time for the Board Meeting, and that person eventually arrives before the Board Meeting is adjourned, that Board Member is deemed to be present at the time the quorum is established.
- 20.9.13 If a quorum is not present within 30 minutes after the scheduled starting time for the Board Meeting, that meeting proceeds. No decisions may be taken at that Board Meeting. That Board Meeting is then postponed to the same business day in the following week at the same time and place. The postponed Board Meeting may only deal with the matters that were on the agenda on the original Board Meeting.
- 20.9.14 If at the postponed Board Meeting a quorum is not present within 30 minutes

after the scheduled starting time for the Board Meeting, then the Board Members present are a quorum.

- 20.9.15 If the President or Deputy President is not present within 15 minutes after the scheduled starting time for the Board Meeting, the Board Members present may choose one of their number to be chairperson of that Board Meeting.
- 20.9.16 Each Board Member has one vote on a matter before the Board.
- 20.9.17 A majority of the votes cast on a resolution is sufficient to approve that resolution.
- 20.9.18 In the case of a tied vote the President, Deputy President or chairperson has a deciding vote in addition to a deliberative vote.
- 20.9.19 All acts done by any Board Meeting, or by a Board Committee, or by any person acting as a Board Member is deemed to be valid as if every such person had been duly appointed and was qualified to be a Board Member, despite the fact that afterwards it is discovered that there was some defect in the appointment of the person so acting, or that he or she was disqualified.
- 20.9.20 The Chamber must keep minutes of Board Meetings and Board Committees.
- 20.9.21 Resolutions of the Board must be dated and sequentially numbered.
- 20.9.22 Resolutions of the Board are effective as of the date of the resolution, unless the resolution states otherwise.
- 20.9.23 The President, Deputy President or chairperson of a Board Meeting must sign the minutes of a Board Meeting at the Board Meeting or at the next Board Meeting.
- 20.9.24 Any minutes of a Board Meeting, or a Board resolution signed by the President, Deputy President or chairperson of the Board Meeting, or by the President, Deputy President or chairperson at the next Board Meeting, is evidence of the proceedings of that Board Meeting or adoption of that resolution.

## 20.10 **Written resolutions by Board Members**

- 20.10.1 A written Board resolution signed by a majority of the Board Members in office

has effect as if it had been passed at a Board Meeting duly called and constituted; provided that all Board Members in office have been given notice of the matter to be decided.

20.10.2 The written resolution may be contained in different documents.

20.10.3 Unless the contrary is stated in the resolution, any such resolution is deemed to have been passed on the date on which it was signed by the Board Member signing last.

#### 20.11 **Remuneration of Board Members and members of Board Committees**

Save for the Executive Director and any other Board Member who is employed by the Chamber on a full-time basis, the Chamber may not remunerate Board Members and members of Board Committees.

#### 20.12 **General powers and duties of Board Members**

20.12.1 The Board may –

20.12.1.1 form and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

20.12.1.2 make payments towards the insurance of pensions, gratuities and allowances of,

(i) any persons who are employees or ex-employees (including Board Members or ex-Board Members) of the Chamber, or of any company which is or was a subsidiary of the Chamber, (ii) any persons who are or were associated with the Chamber or any such subsidiary, and (iii) the husbands, wives, widowers, widows, families and dependants of those persons.

20.12.2 The Board may regulate the general expenses of the Chamber and fix the remuneration of all employees, in consultation with the Executive Director.

20.12.3 The Board must pay the expenses and liabilities of the Chamber out of money received by the Chamber.

20.12.4 The Board may from time to time borrow, raise or secure money as it deems fit for any purpose which it may deem to be in the interests of the Chamber, but not so as to charge any right or interest of a Member.

- 20.12.5 The Board must conduct and manage the business and operations of the Chamber.
- 20.12.6 The Board may exercise all such powers of the Chamber –
- 20.12.6.1 as are not under the Constitution required to be exercised by the Chamber in a Members Meeting; and
- 20.12.6.2 subject to regulations made by the Members in a Members Meeting; provided that no regulation may nullify any prior act of the Board which would have been valid if that regulation had not been made.
- 20.12.7 The Board may, by power of attorney, appoint any person, whether nominated directly or indirectly by the Board, to be the agent of the Chamber for such purposes, and with such powers, authorities and discretions and for such period, and subject to such terms, as it may deem fit. Those powers, authorities and discretions may not exceed those of the Board under the Constitution.
- 20.12.8 That power of attorney –
- 20.12.8.1 may contain terms to protect persons dealing with the agent as the Board may deem fit; and
- 20.12.8.2 may authorise the agent to delegate all or any of those powers, authorities and discretions.
- 20.12.9 The Board may determine the manner in which cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Chamber, must be signed, drawn, accepted, endorsed, or otherwise executed.

## 20.13 **Delegation and representation**

- 20.13.1 The Board may delegate to any persons all such powers and the doing of all such acts as the Board may decide. Those persons have no power to sub-delegate.
- 20.13.2 The Board must appoint persons to act as the authorised representatives of the Chamber at meetings of the shareholders and boards of directors of any company in which the Chamber has an interest.

## 20.14 BOARD COMMITTEES

- 20.14.1 The Board may form any number of Board committees ("**Board Committees**").
- 20.14.2 The Board may delegate to the Board Committees any authority of the Board.
- 20.14.3 The members of the Board Committees may include persons who are not on the Board, if they are eligible and qualified to be Board Members under this Constitution. Those persons have no vote on a matter to be decided by the Board. A person stops being a member of a Board Committee immediately he or she becomes ineligible or disqualified to be on the Board.
- 20.14.4 A person who is ineligible or disqualified to be a Board Member under this Constitution may not consent to be appointed as a member of a Board Committee.
- 20.14.5 The Board may determine the composition and membership of each Board Committee.
- 20.14.6 The chairperson of each Board Committee must be a Board Member designated by the Board.
- 20.14.7 Each Board Committee is accountable to the Board for the performance of its delegated functions. The Board is not divested of its overriding or substantive powers by reason of a delegation.
- 20.14.8 Any written reports and recommendations issued by a Board Committee must record any dissenting minority views about the subject matter.
- 20.14.9 A Board Committee must, in the exercise of its powers and functions, conform to any rules, restrictions or procedures imposed on it by the Board, including those relating to quorum, voting, frequency of meetings, and notices.
- 20.14.10 The Board may change any decisions affecting a Board Committee and may undo any Board Committee, without prior notice and without giving reasons.
- 20.14.11 The Board Committees may include such committees as the Board may deem fit.
- 20.14.12 If the Chamber has a remuneration committee that committee must consist of

the members of Exco, excluding the Executive Director.

20.14.13 The Board must establish and annually elect an audit committee ("**Audit and Risk Committee**").

20.14.14 The Audit and Risk Committee must comprise of –

20.14.14.1 the Executive Director;

20.14.14.2 the Honorary Treasurer;

20.14.14.3 the financial manager of the Chamber;

20.14.14.4 two additional Board Members who cannot be the Executive Director or Honorary Treasurer; and

20.14.14.5 a representative of the Auditor.

20.14.15 The functions of the Audit and Risk Committee are to –

20.14.15.1 prepare the annual financial statements of the Chamber;

20.14.15.2 review the annual financial statements;

20.14.15.3 generally review the financial affairs of the Chamber;

20.14.15.4 give advice; and

20.14.15.5 meet at least twice in the Financial Year.

20.14.16 One of the Board Members must preside at any meeting of the Audit and Risk Committee.

## 20.15 **Personal financial interests of Board Members**

20.15.1 In this clause 20.15, "**Board Member**" includes a member of a Board Committee, whether or not the person is also a Board Member.

20.15.2 A Board Member may disclose any personal financial interest in advance, by delivering to the Board a written notice setting out the nature and extent of that interest, to be used generally by the Chamber until changed or withdrawn by further written notice from that Board Member.

- 20.15.3 If a Board Member has a personal financial interest about a matter to be considered at a Board Meeting, or knows that person related to the Board Member has such an interest in the matter, the Board Member –
- 20.15.3.1 must disclose details of that interest, known to the Board Member, before the matter is considered at the Board Meeting;
  - 20.15.3.2 may disclose any observations or pertinent insights about the matter if asked to do so by the other Board Members;
  - 20.15.3.3 if present at the meeting, must leave the Board Meeting immediately after making the disclosure;
  - 20.15.3.4 may not take part in the consideration of the matter, except to make the disclosure;
  - 20.15.3.5 while absent from the meeting, is deemed to be –
    - 20.15.3.5.1 present at the Board Meeting to determine whether there is a quorum or not; and
    - 20.15.3.5.2 absent from the meeting to determine whether a resolution has sufficient support to be adopted; and
  - 20.15.3.6 may not sign any document for the Chamber about the matter unless the Board specifically directs him or her to do so.
- 20.15.4 If a Board Member acquires a personal financial interest in an agreement or other matter in which the Chamber has a material interest, or knows that a person related to the Board Member has acquired such an interest, after the agreement or other matter has been approved by the Chamber, the Board Member must promptly disclose to the Board the nature and extent of that interest, and the details about the Board Member or related person's acquisition of that interest.
- 20.15.5 A decision of the Board, or a transaction or agreement approved by the Board is valid despite any personal financial interest of a Board Member or person related to the Board Member, only if –
- 20.15.5.1 it was approved following the disclosure of the personal financial interest in the way set out above; or

- 20.15.5.2 despite having been approved without disclosure of that interest, it has been ratified by an Ordinary Resolution following the disclosure of the interest.
- 20.15.6 A Board Member may not use the position of Board Member, or any information obtained while a Board Member –
- 20.15.6.1 to gain an advantage for the Board Member, or for another person other than the Chamber or a wholly-owned subsidiary of the Chamber; or
- 20.15.6.2 to knowingly cause harm to the Chamber or a subsidiary of the Chamber.
- 20.15.7 A Board Member must inform the Board as soon as possible of any information that comes to the Board Member's attention, unless (i) the Board Member reasonably believes that the information is immaterial to the Chamber or is generally available to the public, or known to the other Board Members, or (ii) he or she may not disclose that information under a legal or ethical obligation of confidentiality.
- 20.15.8 Subject to clause 20.15.9, a Board Member, when acting in that capacity, must exercise the powers, and perform the functions of a Board Member –
- 20.15.8.1 in good faith and for a proper purpose;
- 20.15.8.2 in the best interests of the Chamber; and
- 20.15.8.3 with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the Chamber as those carried out by that Board Member and having the general knowledge, skill and experience of that Board Member.
- 20.15.9 In respect of any particular matter arising in the exercise of the powers, or the performance of the functions of a Board Member, a particular Board Member –
- 20.15.9.1 will have met the obligations in clause 20.15.8.3 if her or she –
- 20.15.9.1.1 has taken reasonably diligent steps to become informed about the matter;
- 20.15.9.1.2 had no material personal financial interest in the subject matter of the decision, and had no reasonable basis to know that any related person

had a personal financial interest in the matter; or

- 20.15.9.1.3 made a decision, or supported the decision of a Board Committee or the Board, with regard to that matter, and had a rational basis for believing, and did believe that the decision was in the best interests of the Chamber;
- 20.15.9.2 may rely on the information, opinions, reports and statements provided by employees of the Chamber, delegates of the Chamber and the persons in clause 20.15.9.3;
- 20.15.9.3 may rely on –
  - 20.15.9.3.1 lawyers, accountants, or other professional persons retained by the Chamber, the Board or a Board Committee as to matters involving skills or expertise that the Board Member reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence; or
  - 20.15.9.3.2 the particular expertise of a Board Committee of which he or she is not a member, unless the Board Member has reason to believe that the actions of the Board Committee do not merit confidence.

## 20.16 Indemnity and insurance for Board Members

- 20.16.1 In this clause 20.16, "Board Member" includes a former Board Member and a member of a Board Committee, whether or not the person is also a Board Member.
- 20.16.2 The Chamber may not, directly or indirectly, pay any fine imposed on a Board Member, arising from that Board Member having been convicted of an offence under national legislation.
- 20.16.3 The Chamber may –
  - 20.16.3.1 advance expenses to a Board member to defend litigation in any proceedings arising from the Board member's service to the Chamber; and
  - 20.16.3.2 directly or indirectly indemnify a Board Member against –
    - 20.16.3.2.1 any liability, other than (i) any liability arising from wilful misconduct or

- wilful breach of trust, or (ii) a fine in clause 20.16.2; and
- 20.16.3.2.2 any expenses in clause 20.16.3.1, whether or not it has advanced those expenses, if (i) the proceedings are abandoned or clear the Board Member or (ii) the expenses are for any other liability for which the Chamber may indemnify the Board Member.
- 20.16.4 The Chamber may get insurance to protect –
- 20.16.4.1 a Board Member against any liability or expenses in clause 20.16.3.1 or 20.16.3.2; and
- 20.16.4.2 the Chamber against any contingency, including any expenses above that the Chamber may advance, or for which the Chamber is permitted to indemnify a Board Member, or any liability for which the Chamber is permitted to indemnify a Board Member.
- 20.16.5 The Chamber may indemnify each Board Member against (and pay to each Board member, on demand by that Board Member, the amount of) any loss, liability, damage, costs (including all legal costs reasonably incurred by the Board Member in dealing with or defending any claim) (together "**Loss**") which that Board Member may suffer due to any act or omission of that Board Member in his or her capacity as a Board member.
- 20.16.6 The Chamber may not indemnify a Board Member against any Loss –
- 20.16.6.1 arising from fraud, wilful misconduct, gross negligence or recklessness on the part of that Board Member;
- 20.16.6.2 relating to a Board Member's reputation; or
- 20.16.6.3 if and to the extent that the Board Member has recovered or is entitled and able to recover the amount of that Loss under any insurance policy (whether taken out or paid by the Chamber or otherwise).
- 20.16.7 Board Members may recover Losses from the Chamber.
- 20.16.8 All Losses other than those referred to in this clause 20.16.6 are called "**Indemnified Losses**".
- 20.16.9 Each Board Member's right to be indemnified by the Chamber under this

indemnity (ii) starts automatically when he or she becomes a Board Member and (ii) endures even after he or she stops being a Board Member until he or she can no longer incur any Indemnified Loss.

- 20.16.10 If any claim is made against a Board Member for an Indemnified Loss, the Board Member may not admit any liability for the Loss. The Board Member must notify the Chamber of the claim within a reasonable time after the Board member becomes aware of the claim so that the Chamber is able to contest the claim. Despite the above, the Chamber's liability under this indemnity is not affected by any failure of the Board Member to comply with this clause 20.16.10 save if, and to the extent that the Chamber proves that the failure has resulted in the Indemnified Loss being greater than it would have been had the Board Member complied.
- 20.16.11 The Chamber may, at its cost and with the assistance of its own legal advisers, (i) contest the claim in the name of the Board Member until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given about the claim) or settle the claim, and (ii) may control the proceedings relating to the claim; provided that –
- 20.16.11.1 the Board Member must, at the cost of the Chamber and, if the Board member so requires, with the involvement of his or her own legal advisers, assist the Chamber in the manner in which the Chamber may reasonably require of the Board Member to contest the claim;
- 20.16.11.2 the Chamber must regularly, and in any event when the Board Member asks the Chamber to do so, inform the Board Member fully of the status of the contested claim and give the Board Member all documents and information about the claim which the Board Member may reasonably ask for;
- 20.16.11.3 the Chamber must consult with the Board Member before –
- 20.16.11.3.1 taking any major steps in relation to, or settling a contested claim; and
- 20.16.11.3.2 before making, or agreeing to any announcement or other publicity about the claim;
- 20.16.11.4 to the extent that any Loss consists of or arises from a claim or potential

claim that the Chamber might otherwise have had against the Board Member, then the effect of this indemnity is to prevent the Chamber from making that claim against the Board Member, who is immune to that claim.

20.16.12 If this clause 20.16 is changed, the change does not detract from the right of the Board Member under this clause for any period before the date on which the resolution for the change is adopted.

20.16.13 This indemnity does not detract from any separate indemnity that the Chamber may give in favour of the Board Member.

## 20.17 **Reviewing performance of the Board**

20.17.1 As noted in clause 22.2.2, one of the functions of the Vetting Committee is to review the performance of the Board.

20.17.2 The Vetting Committee must review the performance of the Board, the Board Committees and the individual Board Members every year.

20.17.3 The Board must determine its own role, functions, duties and performance criteria as well as that for Board Members and Board Committee members to serve as a benchmark for the performance review.

20.17.4 The results of performance reviews must identify training needs for Board Members.

20.17.5 The nomination for the re-appointment of a Board Member must only occur after the review of the performance and attendance of the Board Member at Board Meetings.

20.17.6 The Vetting Committee must take into account the following criteria when reviewing the performance of the Board, namely, whether –

20.17.6.1 the Board –

20.17.6.1.1 complies with its specific duties under the Constitution;

20.17.6.1.2 has set itself clear performance objectives and has measured its performance against them;

20.17.6.1.3 formulates business objectives, strategies and plans and regularly

- monitors their execution;
- 20.17.6.1.4 regularly receives and considers reports on the financial position of the Chamber, and ensures that financial controls are robust;
- 20.17.6.1.5 has responded appropriately to any problems or crises that arose;
- 20.17.6.1.6 communicates well with Members, the Council, Board Committees and outside persons;
- 20.17.6.1.7 formulates policies and practices for significant risks and regularly monitors their execution;
- 20.17.6.1.8 monitors the performance of the Executive Director and Board Committees;
- 20.17.6.1.9 has appointed qualified employees, and is monitoring their performance; and
- 20.17.6.1.10 has implemented human resources and policies and practices, and is monitoring their execution; and
- 20.17.6.2 individual Board Members–
- 20.17.6.2.1 still comply with clause 20.6.7;
- 20.17.6.2.2 attend, prepare for, and participate in Board meetings;
- 20.17.6.2.3 demonstrate a willingness to devote time and effort to understanding the business of the Chamber;
- 20.17.6.2.4 participate in events outside the boardroom; and
- 20.17.6.2.5 stay informed of developments in business and industry.

## 21 EXECUTIVE DIRECTOR

21.1 The Board may –

- 21.1.1 appoint any person (whether a Member or not) as executive Board Member ("**Executive Director**") of the Chamber for a period, at the remuneration and on the other terms as it may deem fit; and

- 21.1.2 subject to any contract between the Chamber and the Executive Director (i) remove him or her, and (ii) appoint some other person as Executive Director in his or her place.
- 21.2 It may be made a term of the appointment of an Executive Director that he or she must be paid a pension, gratuity or other benefit on his or her retirement from office.
- 21.3 The Board may give the Executive Director any of the powers vested in the Board as the Board may deem fit and may from time to time revoke or change those powers.
- 21.4 The Board may give those powers for a period, and on the terms as the Board may deem fit.
- 21.5 An Executive Director is not an agent or delegate of the Board and after powers have been given to him or her by the Board, he or she is deemed to derive the powers directly from this clause 21.

## 22 VETTING COMMITTEE

- 22.1 The Chamber has a committee called the "**Vetting Committee**".
- 22.2 The functions of the Vetting Committee are –
- 22.2.1 to receive, consider, accept or decline, and submit nominations for the appointment of Board Members as set out in clauses 20.6.4 to 20.6.8; and
- 22.2.2 to consider and review the composition and performance of the Board from time to time.
- 22.3 The Vetting Committee consists of –
- 22.3.1 five Council members elected by Council from its members, excluding current or nominated Board members;
- 22.3.2 the Executive Director; and

## 23 THE EXECUTIVE COMMITTEE

- 23.1 The Chamber has an executive committee ("**Exco**").

- 23.2 Exco consists of –
- 23.2.1 the Executive Director;
  - 23.2.2 the President;
  - 23.2.3 the Deputy President;
  - 23.2.4 the Honorary Treasurer; and
  - 23.2.5 the immediate past President of the Chamber or if not available, the preceding available past President as contemplated in clause 20.3.2.3.
- 23.3 The function of Exco is to oversee the implementation of operational decisions relating to the day-to-day running of the Chamber's affairs between Board meetings.

## 24 MEMBERS' MEETINGS

### 24.1 AGM

- 24.1.1 The Chamber must convene an annual general meeting of Members ("**AGM**") once a year, within six months of the end of each Financial Year failing which, a SGM must be held in the specified period whereafter an AGM shall be held no later than 90 business days after the SGM.
- 24.1.2 The following business must at least be transacted at the AGM, namely –
- 24.1.2.1 the presentation of the annual report and audited financial statements for the immediately preceding Financial Year;
  - 24.1.2.2 the appointment of an Auditor for the ensuing Financial Year; and
  - 24.1.2.3 any matters raised for discussion by Members, with or without advance notice to the Chamber.
- 24.1.3 The agenda of an AGM must include –
- 24.1.3.1 a summary of the financial statements to be presented and directions for obtaining a copy of the complete annual financial statements for the preceding Financial Year;
  - 24.1.3.2 a copy of any proposed resolution which is to be considered at the meeting;

24.1.3.3 a notice of the percentage of voting rights that will be required for that resolution to be adopted; and

24.1.3.4 a statement that an Ordinary Member may appoint a proxy in writing as per **Schedule 1** to attend, participate in, speak at and vote at the meeting in the place of the Ordinary Member.

## 24.2 **SGMs**

24.2.1 Subject to this Constitution, special general meetings ("**SGMs**") of Members may be held as the Board may decide.

24.2.2 The Board must call an SGM within 30 days if it receives a request to that effect signed by at least five percent of the Members stating the purpose for which the meeting is called.

24.2.3 The Chamber must hold an SGM at any time that the Board must under the Constitution refer a matter to Members for decision.

## 24.3 **Notice of Members Meetings**

24.3.1 The Chamber must give notice of each Members Meeting at least 15 days before the proposed Members Meeting. The notice must include an agenda.

24.3.2 The Chamber may call an SGM with less notice in an emergency. That SGM may proceed only if every person who may vote on an item on the agenda of that SGM (i) has received proper notice of the SGM, or (ii) waives the required minimum notice.

24.3.3 If a material defect in the form or manner of giving notice of a Members Meeting relates only to one or more particular matter on the agenda for the Members Meeting –

24.3.3.1 the matter may be severed from the agenda, and the notice remains valid for any remaining matters on the agenda; and

24.3.3.2 the meeting may proceed to consider a severed matter, if the defective notice has been ratified.

24.3.4 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 does not invalidate any action taken at the Members Meeting.

- 24.3.5 Each proposed resolution must be expressed with sufficient clarity and specificity and must be accompanied by sufficient information and explanatory material to enable a voting Member to determine whether to participate in the Members Meeting, and to seek to influence the outcome of the vote on that resolution. If that resolution has been approved, it may not be challenged or disputed because it did not comply with the above.
- 24.3.6 A Member who is present at a Members Meeting, either in person or by proxy –
- 24.3.6.1 is deemed to have received or waived notice of the Members Meeting, if at least the required minimum notice was given;
- 24.3.6.2 has a right to allege a material defect in the form of notice for a particular item on the agenda for the Members Meeting and to 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; and
- 24.3.6.3 is deemed to have waived any right based on an actual or alleged defect in the notice.
- 24.3.7 Where a given number of days' notice, or a notice extending over any other period must be given, the day of service is counted in that number of days or other period.
- 24.3.8 The notice of a Members Meeting must specify whether the mandate given to a proxy (i) may be general in nature, or (ii) must be of a specific nature.
- 24.3.9 At any time before the start of an SGM under clause 24.2.2 –
- 24.3.9.1 the Members who submitted the demand for that SGM may withdraw that demand; and
- 24.3.9.2 the Chamber must cancel the SGM if, as a result of one or more demands being withdrawn, the remaining Members continuing to demand the meeting, in aggregate, fall below five percent of Members.

#### 24.4 **Members' representatives**

- 24.4.1 A Member who is not a natural person may appoint a representative to attend any Members Meeting.
- 24.4.2 If a Member appoints more than one representative then those representatives have only one vote on behalf of the Member he or she represents.

#### 24.5 **Quorum**

- 24.5.1 Unless stated otherwise, a quorum for Members Meeting is five percent of Members.
- 24.5.2 If within one hour from the time appointed for the meeting, a quorum is not present, the meeting –
- 24.5.2.1 if convened on requisition of Members, is dissolved; and
- 24.5.2.2 in any other case, subject to clause 24.5.4, is automatically postponed without motion to the same day in the following week at the same time and place.
- 24.5.3 The postponed meeting may only deal with matters that were on the agenda of the meeting that was postponed. A quorum for the postponed meeting is one Member.
- 24.5.4 The person presiding at a meeting that cannot begin because of clause 24.5.2, may extend the starting time for one hour or for a reasonable period if –
- 24.5.4.1 exceptional circumstances affecting weather or transport have generally impeded or are generally impeding the ability of Members to be at the meeting on time; or
- 24.5.4.2 one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the quorum requirements.
- 24.5.5 The Chamber must give notice to Members of the fact and date of an adjourned meeting.

## 24.6 **President, Deputy President and chairperson**

24.6.1 The President or Deputy President presides at all Members Meetings. If neither of them are present within 15 minutes of the appointed time of the Members Meeting, the Members must elect a chairperson.

24.6.2 The chairperson of the Members Meeting has a second or casting vote in addition to his or her own deliberative vote.

## 24.7 **Proxies and identification**

24.7.1 An Ordinary Member may appoint a proxy to attend, participate in, speak at and vote at the meeting in the place of that Member at a Members Meeting.

24.7.2 A proxy need not be a Member.

24.7.3 A Member may not appoint more than one proxy to exercise voting rights.

24.7.4 A proxy may not delegate the authority granted to him or her.

24.7.5 A form appointing a proxy is valid for one year from date of signature, unless the form itself provides for a longer or shorter validity period.

24.7.6 A form appointing a proxy may be revoked at any time, unless the form itself states otherwise. The form may be revoked in writing, or by the making of a later inconsistent appointment of a proxy, and delivering a copy of the document to the proxy and to the Chamber.

24.7.7 A form appointing a proxy is suspended at any time and to the extent that the Ordinary Member chooses to act directly and in person in the exercise of any rights as an Ordinary Member.

24.7.8 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of the power or authority must be delivered to the Chamber at least 48 hours before the Members Meeting.

24.7.9 A vote given under a form of proxy is valid despite the revocation of the form or of the authority under which the form was exercised; provided that no intimation in writing of the revocation has been received by the Chamber before the start of the Members Meeting or the adjourned Members Meeting at which the form is used.

- 24.7.10 If a proper form of proxy is received but it does not state how the proxy must vote on any issue, the proxy may vote or abstain from voting as he or she deems fit unless the form states otherwise.
- 24.7.11 Each person at a Members Meeting may be required to give satisfactory identification in order to reasonably satisfy the person presiding at the Members Meeting that the person may participate in and vote at that Members Meeting.
- 24.7.12 A form of proxy must be substantially in the format in **Schedule 1**.

## 24.8 **Voting**

- 24.8.1 A resolution put to the vote is decided on a show of hands, unless a secret ballot is requested by at least 10 percent of the Members at that meeting.
- 24.8.2 Each Ordinary Member and Honorary Member has one vote, subject to clause 24.6.2.
- 24.8.3 A declaration by the person presiding at the meeting that (in the case of a show of hands) a resolution has been carried unanimously, or by a particular majority, or lost, and an entry to that effect is entered into the minute book of the Chamber, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against the resolution.
- 24.8.4 In the case of a secret ballot, the person presiding must be assisted by two Members present at the meeting and the above also applies.
- 24.8.5 No objection may 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. Every vote not disallowed at that Members Meeting is valid for all purposes. Any such objection must be referred to the person presiding at the Members Meeting, whose decision is final and binding.

## 24.9 **Conduct of Members Meetings**

- 24.9.1 A Members Meeting may be exclusively conducted by electronic communication and Members may participate in a Members Meeting by electronic communication should appropriate technology be available as

determined by the Board.

- 24.9.2 A Members Meeting, or the consideration of any matter being debated at the Members Meeting, may be adjourned without further notice (to a fixed time and place or until further notice) on a motion supported by Ordinary Resolution.
- 24.9.3 A Members Meeting may not be adjourned beyond the earlier of the date that is 120 days after the record date or the date that is 60 days after the date on which the adjournment occurred.

## 25 MEMBERS' RESOLUTIONS

- 25.1 Every resolution of Members is either –
- 25.1.1 a resolution that must be adopted by a majority of Members present at a Members Meeting ("**Ordinary Resolution**"); or
- 25.1.2 a resolution that must be adopted by 75 percent of Members present at a Members Meeting ("**Special Resolution**").
- 25.2 Unless stated otherwise in this Constitution, an Ordinary Resolution is sufficient to approve a matter that must be decided at a Members Meeting.
- 25.3 The Board may propose any resolution to be considered by the Members.
- 25.4 Any two Members may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights and when proposing a resolution, may require that the resolution be submitted to Members for consideration –
- 25.4.1 at a Members Meeting demanded in terms of clause 24.2.2; or
- 25.4.2 at the next Members Meeting.
- 25.5 For certainty, the proposed resolution must comply with clause 24.3.5.
- 25.6 Once a resolution has been approved, it may not be challenged or disputed by any person on the grounds that it did not satisfy clause 24.3.5.
- 25.7 A Special Resolution is required –

- 25.7.1 to change the Constitution, as set out in clause 36.2;
- 25.7.2 to ratify actions by the Chamber or Board Members in excess of their authority; and
- 25.7.3 to approve the voluntary winding up of the Chamber.

## 26 RECORD DATE

- 26.1 The Board may set the record date for the purpose of determining which Members are entitled to receive notice of a Members Meeting, or participate in and vote at a Members Meeting.
- 26.2 A record date determined by the Board –
  - 26.2.1 may not be earlier than the date on which the record date is determined or more than 10 days before the date scheduled for the Members Meeting; and
  - 26.2.2 must be published by the Chamber to the Members by delivering a copy to each Member and posting a conspicuous copy of the notice at its main office and on its website.
- 26.3 If the Board fails to determine a record date, the record date is the latest date by which the Chamber must deliver the notice of the Members Meeting.

## 27 THE CHAMBER SECRETARY

- 27.1 The Chamber may appoint, and remove from office a secretary ("**Secretary**").
- 27.2 The Secretary reports to the Board.
- 27.3 The Secretary's duties include –
  - 27.3.1 guiding the Board Members about their duties, responsibilities and powers;
  - 27.3.2 making the Board aware of any law affecting the Chamber;
  - 27.3.3 reporting to the Board any failure on the part of the Chamber or a Board Member to comply with the Constitution; and
  - 27.3.4 ensuring that minutes of all Members Meetings, Board Meetings, meetings of Board Committees, and any other committee meetings are properly recorded.

- 27.4 The Secretary may resign on written notice to the Board.
- 27.5 In the absence of a Secretary, the Executive Director must perform the Secretary's function.

#### **PART FOUR – FINANCIAL MATTERS**

##### **28 FINANCIAL YEAR**

The financial year ("**Financial Year**") of the Chamber starts on the first day of July and ends on last day of June in the next year.

##### **29 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 29.1 The Board must keep accounting records that fairly present the state of affairs and business of the Chamber and that explain the transactions and financial position of its business.
- 29.2 The accounting records must be accessible at the Chamber's main office or at such other place as the Board may deem fit.
- 29.3 The Chamber must 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.
- 29.4 The Chamber must have its annual financial statements audited by a duly appointed independent external auditor.
- 29.5 Members may subject to applicable laws, including the Promotion of Access to Information Act, No 2 of 2000, inspect and take copies of the Constitution, changes to the Constitution, records in respect of Board Members, accounting records required to be maintained by the Chamber, reports to AGMs, annual financial statements, notices and minutes of meetings, communications generally to Members and the Members Register.
- 29.6 The Board determines at what times and places (save in the case of accounting records which must be accessible at the main office of the Chamber) and on what terms, the documents which Members may inspect and take copies of are open to inspection by Members.

- 29.7 Apart from the Board or Members, no other person may inspect any of the documents of the Chamber unless expressly authorised by the Board or by Ordinary Resolution.
- 29.8 The Chamber must notify the Members of the publication of any annual financial statements of the Chamber, setting out the steps required to obtain a copy of those annual financial statements. If a Member asks for a copy of the statements, the Chamber must make the statements available to the Member at the cost determined by the Board or Exco may decide from time to time.

### 30 **APPOINTMENT OF AUDITOR**

- 30.1 Ordinary Members appoint and remove the Auditor at the AGM.
- 30.2 If an AGM does not appoint or re-appoint an Auditor, the Board must fill the vacancy within 40 days of the AGM.
- 30.3 If a vacancy arises in the office of Auditor, the Board must appoint a new Auditor within 40 days.
- 30.4 If the Auditor is removed from office, the Auditor may, by giving written notice to that effect to the Chamber by not later than the end of the Financial Year in which the removal took place, require the Chamber to include a statement in its annual financial statements relating to that Financial Year, not exceeding a reasonable length, setting out the Auditor's contention as to the circumstances that resulted in the removal. The Chamber must include this statement in the Board report in its annual financial statements.

## **PART FIVE: TAX PROVISIONS**

### 31 **TAX PROVISIONS**

- 31.1 The Chamber will continue to seek exemption from income tax in terms of the relevant provisions of the Income Tax Act, No 58 of 1962 ("**ITA**") and such other tax exemptions as the Commissioner for the South African Revenue Service ("**Commissioner**") may allow.
- 31.2 To qualify for tax exemption the Chamber must at all times comply with this clause 31, despite any term to the contrary in this Constitution.
- 31.3 The Board must consist of at least three persons, who are not connected persons

(as that term is defined in s 1 of the ITA) in relation to each other, to accept the fiduciary responsibility of the Chamber.

- 31.4 No single person may directly or indirectly control the decision-making powers of the Chamber.
- 31.5 The Chamber may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its Objects.
- 31.6 The Chamber must use substantially the whole of its funds for the Objects.
- 31.7 No Member may directly or indirectly have any personal or private interest in the Chamber.
- 31.8 Substantially the whole of the activities of the Chamber must be directed to the furtherance of its Objects and not for the specific benefit of an individual member or minority group.
- 31.9 The Chamber may not have a share or other interest in any business, profession or occupation which is carried on by its Members.
- 31.10 The Chamber not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule to the ITA, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 31.11 Substantially the whole of the Chamber's funding must be derived from Subscriptions or from an appropriation by the government of South Africa in the national, provincial or local sphere.
- 31.12 The Chamber must as part of its dissolution transfer its assets to –
  - 31.12.1 another entity approved by the Commissioner in terms of section 30B of the ITA;
  - 31.12.2 a public benefit organisation approved in terms of section 30 of the ITA;
  - 31.12.3 an institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the ITA; or
  - 31.12.4 the government of South Africa in the national, provincial or local sphere.

- 31.13 The Board must submit any amendment of the Constitution to the Commissioner within 30 days of its amendment.
- 31.14 The Chamber must comply with such reporting requirements as may be determined by the Commissioner from time to time.
- 31.15 The Chamber may not knowingly become a party to, and may not knowingly permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the ITA, or a transaction, operation or scheme contemplated in s 103(5) of the ITA.

## **PART SIX – GENERAL**

### **32 INDEMNITY**

- 32.1 Subject to the provisions of any relevant law, Members, Board Members, office-bearers and appointed delegates of the Chamber are indemnified by the Chamber for all acts done by them in good faith on its behalf.
- 32.2 Subject to the provisions of any relevant law, no Member, Board Member, office-bearer or appointed delegate is liable for –
- 32.2.1 the acts, receipts, neglects or defaults of any other Member, Board Member, office-bearer or appointed delegate; or
- 32.2.2 for any loss, damage or expense suffered by the Chamber, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty.

### **33 MINUTES AND MINUTE BOOK**

- 33.1 The Board must keep minutes of –
- 33.1.1 the appointments of Board Members and members of Board Committees;
- 33.1.2 names of Members present at every Members Meeting;
- 33.1.3 the names of Board Members present at every Board Meeting; and
- 33.1.4 all proceedings at all Board meetings and Members Meetings.
- 33.2 The minutes must be signed by the person presiding at the meeting at which the

proceedings took place, or by the person presiding at the next meeting.

## 34 NOTICES

- 34.1 All notices to be given under this Constitution may be delivered to the relevant person by hand, by post, by fax, by electronic communication or registered post in a prepaid letter addressed to the person at his or her recorded address or failing that, his or her last known address.
- 34.2 Any person who has given an email address to the Chamber, by doing so authorises the Chamber to use email to give notices, information and documents to him or her.
- 34.3 All notices to be given under this Constitution –
- 34.3.1 if delivered by hand during business hours, are deemed to have been received on the date of delivery;
  - 34.3.2 if delivered by hand after business hours or on a day which is not a business day, are deemed to have been received on the following business day;
  - 34.3.3 if sent by fax or electronic communication during business hours, are deemed to have been received on the date of successful sending of the fax or electronic communication;
  - 34.3.4 if sent by fax or electronic communication after business hours or on a day which is not a business day, are deemed to have been received on the following business day; and
  - 34.3.5 if sent by registered post, are deemed to have been received on the seventh day after the date of posting.
- 34.4 Despite the above, any notice given in writing, and actually received by the person to whom it is addressed is deemed to have been properly given and received.

## 35 WINDING UP

Despite any law or agreement to the contrary, on the winding-up or dissolution of the Chamber –

35.1 no past or present Member, Board Member or person other than a person in clause 35.2, is entitled to any part of the net value of the Chamber after its liabilities have been settled; and

35.2 the Chamber must transfer its net assets under clause 31.12.

## 36 CHANGES TO THE CONSTITUTION

36.1 The Board may correct self-evident errors in this Constitution, including spelling, punctuation, reference, grammar or similar defects.

36.2 Save for clause 36.1, this Constitution may only be changed by a Special Resolution; provided that the meeting is attended by at least 10 percent of the Members, and that 14 days' written notice of the proposed change has been given to Members.

## 37 DISPUTE RESOLUTION

37.1 "**AFSA**" means the Arbitration Foundation of Southern Africa.

37.2 If any dispute arises between any persons bound by this Constitution, including any dispute or difference arising from –

37.2.1 any of the terms of this Constitution;

37.2.2 any relationship between any two or more persons in their capacities as Members;

37.2.3 any relationship between any person, in his or her capacity as a Member, on the one hand, and the Chamber on the other hand;

37.2.4 any relationship between any person, in his or her capacity as a Board Member, on the one hand, and the Chamber on the other hand;

37.2.5 any relationship between any person, in his or her capacity as a member of a Board Committee, on the one hand, and the Chamber on the other hand;

37.2.6 any right or obligation of any Member, in his or her capacity as a Member, against, or to the Chamber or any other Member;

37.2.7 any right or obligation of the Chamber against or to (i) a Member, in his or her capacity as a Member, (ii) a Board Member, in his or her capacity as a Board

Member, or (iii) any other person serving the Company as a member of a Board Committee with reference to such service;

37.2.8 any right or obligation of any Board Member, in his or her capacity as a Board Member, against or to the Chamber; or

37.2.9 any right or obligation of any other person serving the Chamber as a member of a Board Committee with reference to such service,

that dispute must, except to the extent that provision is made elsewhere in this Constitution for the final resolution of that dispute, on written demand by any such person be submitted to arbitration in accordance with the rules of AFSA.

37.3 The arbitration must be held in Cape Town, in English.

37.4 AFSA or any other arbitrator deemed acceptable by the disputing parties, must administer the arbitration.

37.5 If AFSA, as an institution, is not operating at that time, or if AFSA is not accepting requests for arbitration, then the arbitration must be held under the AFSA rules for commercial arbitration (as last applied by AFSA). That arbitration must be held before an arbitrator appointed by agreement between the parties to the dispute. If the parties to the dispute cannot agree on an arbitrator within 10 business days of the demand for arbitration, then a party to the dispute may call on the President of the Cape Law Society (or its successor) to nominate the arbitrator. That arbitrator must be an advocate of not less than 10 years' standing.

37.6 If the parties to the dispute fail to agree on a matter relating to the administration of the arbitration, the matter must be referred to, and decided by the arbitrator whose decision is final and binds those parties.

37.7 An arbitration under this clause 37 must be held in secret (*in camera*). The parties must keep confidential (i) the details of the dispute submitted to arbitration, and (ii) the conduct and result of the arbitration.

37.8 Despite this clause 37, a party may apply to court for urgent relief, or for judgment for a liquidated claim.

37.9 This clause 37 is binding on the relevant persons despite the end of this

Constitution for any reason, the winding-up or dissolution of the Chamber, or the cessation of Membership or Board Membership.

- 37.10 A written demand by a party for a dispute to be submitted to arbitration is deemed to be a legal process for the purpose of interrupting extinctive prescription under the Prescription Act, No 68 of 1969.

## 38 **REPLACEMENT OF PREVIOUS CONSTITUTIONAL DOCUMENTS**

This Constitution replaces all previous constitutional documents of the Chamber, excluding for certainty the Cape Town Chamber of Commerce Act, 1891.

## 39 **SEVERABILITY**

- 39.1 All terms of this Constitution are severable from each other, despite the way in which they have been grouped together or linked grammatically.
- 39.2 If a term of this Constitution is, or becomes unenforceable for any reason then (i) that term, only to the extent that it is unenforceable, is treated as if it has not been written, and (ii) the rest of the terms continue to operate.

## Schedule 1

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**FORM OF PROXY**


---

I/we \_\_\_\_\_

being a member of the Cape Chamber of Commerce and Industry appoint

\_\_\_\_\_

or failing him or her

\_\_\_\_\_

or failing him or her

the chairperson of the meeting

as my/our proxy to vote or abstain from voting on my/our behalf at the Members Meeting to be held at \_\_\_\_\_ on \_\_\_\_\_ and at any adjournment of that meeting as follows:

	In favour of	Against	Abstain
Special Resolution 1	.....	.....	.....
Ordinary Resolution 1	.....	.....	.....

---

 (Indicate instruction to proxy by way of a cross in space provided above.)

Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he or she thinks fit.

**SIGNED** at \_\_\_\_\_ on \_\_\_\_\_

---

 MEMBER'S SIGNATURE