

Companies Act, 2008 (Act No. 71 of 2008)

**MEMORANDUM OF
INCORPORATION
of the Audit Bureau of
Circulations of South Africa**

which is referred to in the rest of this Memorandum of Incorporation as "The Company".

- a) **The Company is a Non Profit company with members, with the following objects:**
- i) to promote the interests of the bipartite grouping (of advertisers and advertising agencies, on the one hand and media owners, on the other) in the buying and selling of advertising and promotional material, by providing accurate and comparable circulation figures, fully and fairly disclosed. This is achieved through agreement on auditing standards, on the certificates and on the reports submitted;
- b) This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13 (1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of incorporator	Identity or Registration Number	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- c) This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).
- d) In this Memorandum of Incorporation, unless the context indicates otherwise:
- i) **“ACA”** means the Association of Communication and Advertising;
 - ii) **“Act”** means The Companies Act, 2008 (Act No. 71 of 2008), as amended or any Act passed in substitution thereof;
 - iii) **“Affiliate”** means any proprietor/publisher of a newspaper or magazine or specialist publication, with circulation figures in accordance with the rules of the company, or any other person approved by the board.
 - iv) **“AMF”** means the Advertising Media Forum;
 - v) **“Bipartite grouping”** means the grouping of Buyers (advertisers represented by MFSA and advertising agencies represented by ACA and/or AMF) and the sellers represented by PDMSA;
 - vi) **“Board”** means the Board of Directors of the Company established by part A of Schedule 4;

- vii) **“The Company or ABC”** means Audit Bureau of Circulations of South Africa, a non-profit company (NPC) company with limited liability, duly registered in terms of this Memorandum in accordance with the laws of South Africa;
- viii) **“Constituent Bodies”** shall be ACA and AMF (acting together for advertising agencies), MA(SA), and PDMSA;
- ix) **“Director”** means a director of the Company;
- x) **“Guarantors”** mean those natural persons appointed as members of ABC by the Constituent Bodies representing the interest of the Bipartite Grouping as defined in Article 1.5 and part C of Schedule 1;
- xi) **“Income Tax Act”** means Income Tax Act, 1962 (Act 58 of 1962);
- xii) **“Member”** means the appointed guarantors selected as members of the ABC as defined in Article 1.5 and part C of Schedule 1;
- xiii) **“Memorandum”** means this Memorandum of Incorporation;
- xiv) **“MA(SA)”** shall mean the Marketing Association of South Africa;
- xv) **“PDMSA”** shall mean Print & Digital Media SA;
- xvi) **“Roll of Members”** means the Register of members of the ABC;
- xvii) **“Rules”** mean the written body of rules of the Company, as amended from time to time;
- xviii) reference to a section by number refers to the corresponding section of the Act;
- xix) words that are defined in the Act bear the same meaning in this Memorandum as in that Act;
- xx) The Schedules attached to this Memorandum are part of the Memorandum of Incorporation.

1. **ARTICLE 1 - INCORPORATION AND NATURE OF THE COMPANY**

1.1. **Incorporation**

1.1.1. The Company is incorporated as a Non Profit company (NPC), as defined in the Companies Act, 2008.

1.1.2. The Company is incorporated in accordance with, and governed by:

- 1.1.2.1. the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies;
- 1.1.2.2. the alterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and;
- 1.1.2.3. the provisions of this Memorandum of Incorporation.

1.2. **Objects And Powers Of The Company**

- 1.2.1. The Objects of the Company are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are subject to any restriction, limitation or qualification, contemplated in section 19 (1)(b)(ii) as set out in Part A of Schedule 1.
- 1.2.2. The Company is not subject to any provision contemplated in section 15 (2)(b) or (c).
- 1.2.3. Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with:
 - 1.2.3.1. Item 1(4)(b) of Schedule 1 of the Companies Act, 2008; and;
 - 1.2.3.2. the provisions set out in Part B of Schedule 1 of this Memorandum.

1.3. **Memorandum of Incorporation and Company Rules**

- 1.3.1. This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in section 16, 17 or 152 (6) (b).
- 1.3.2. The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.
- 1.3.3. The Board must publish any rules made in terms of section 15 (3) to (5) by delivering a copy of those rules to each director by ordinary mail.
- 1.3.4. The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) by delivering a copy of those rules to each director by ordinary mail.

1.3.5. Any alteration of this Memorandum of Incorporation must be submitted to the Commissioner of the South African Revenue services or his successor in title;

1.4. **Optional provisions of Companies Act, 2008 do not apply**

1.4.1. The Company:

1.4.1.1. does not elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act 2008, however the Company does elect to have its annual financial statements audited every year), in terms of article 5.7 below .

1.5. **Members of the Company**

1.5.1. As contemplated in Item 4 (1) of Schedule 1 of the Act, the Company has members, who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company.

1.5.2. The terms and conditions of membership in the company are as set out in Part C of Schedule 1 to this Memorandum.

2. **ARTICLE 2 - RIGHTS OF MEMBERS**

2.1. **Members' authority to act**

2.1.1. If, at anytime, every member of the Company is also a director of the Company, as contemplated in section 57 (4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

2.2. **Members' right to Information**

2.2.1. In addition to the rights to access information set out in section 26 (1), a member of the Company has the further rights to information, if any, set out in Part B of Schedule 2 of this Memorandum of Incorporation.

2.3. **Representation by concurrent proxies**

2.3.1. The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3)(a) is not limited, restricted or varied by this Memorandum.

2.4. Authority of proxy to delegate

2.4.1. The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(b) is not limited or restricted by this Memorandum.

2.5. Requirement to deliver proxy instrument to the Company

2.5.1. The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58 (3)(c) is varied to the extent set out in Part B of Schedule 2.

2.6. Deliberative authority of proxy

2.6.1. The authority of a member's proxy to decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member, as set out in section 58 (7) is not limited or restricted by this Memorandum of Incorporation.

2.7. Record date for exercise of member rights

2.7.1. If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59 (3).

3. ARTICLE 3 - MEMBERS MEETINGS

3.1. Requirement to hold meetings

3.1.1. The Company is required to hold members meetings, in addition to those specifically required by the Companies Act, 2008 as set out in Part A of Schedule 3.

3.2. Members' right to requisition a meeting

3.2.1. The right of members to requisition a meeting, as set out in section 61 (3), may be exercised by at least 10% of the voting members.

3.3. Location of members meetings

3.3.1. The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) is not limited or restricted by this Memorandum of Incorporation.

3.4. Notice of members meetings

3.4.1. The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62 is as provided for in Section 62(1), subject to the requirements set out in Part B of Schedule 3.

3.5. Electronic participation in members meetings

3.5.1. The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation.

3.6. Quorum for members meetings

3.6.1. Subject to article 3.6.2 below, the quorum requirement for a members meeting to begin, or for a matter to be considered, are as set out in section 64 (1), subject to a minimum of 75% in substitution for the 25% required by that section.

3.6.2. The time periods allowed in section 64 (4) and (5) apply to the Company, subject to the variations set out in Part C of Schedule 3.

3.6.3. The authority of a meeting to continue to consider a matter, as set out in section 64 (9) is limited or restricted to the extent set out in Part D of Schedule 3.

3.7. Adjournment of members meetings

3.7.1. The maximum period allowable for an adjournment of a members meeting is as set out in section 64 (13), subject to variation set out in Part C of Schedule 3.

3.8. Members resolutions

- 3.8.1. For an ordinary resolution to be adopted at a members meeting, it must be supported by more than 50% of the members who voted on the resolution, as provided in section 65 (7).
- 3.8.2. For a special resolution to be adopted at a members meeting, it must be supported by at least 75% of the members who voted on the resolution, despite provided in section 65 (7).
- 3.8.3. A special resolution adopted at a members meeting is required, in addition to the matters set out in section 65 (11), for the matters set out in Part C of Schedule 1.

4. ARTICLE 4 - DIRECTORS AND OFFICERS

4.1. Composition of the Board of Directors

- 4.1.1. The Board of Directors of the Company comprises of eight directors each of whom:
 - 4.1.1.1 is to be appointed in the manner set out in Part A of Schedule 4; and;
 - 4.1.1.2 serves for a term of one year.
- 4.1.2. In addition to the appointed directors, there are no appointed or *ex officio* directors of the company, as contemplated in section 66 (4).
- 4.1.3. In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director of the Company, a person must satisfy the additional eligibility requirements and qualifications set out in Part C of Schedule 4.
- 4.1.4. A Chairperson of the Board of Directors shall be elected, in the manner as set out in Part A of Schedule 4.

4.2. Authority of the Board of Directors

- 4.2.1. The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) is limited or restricted to the extent set out in Part B of Schedule 4.

4.3. Board of Directors meetings

- 4.3.1. The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation.
- 4.3.2. The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by one of the directors.
- 4.3.3. The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) is not limited or restricted by this Memorandum of Incorporation.
- 4.3.4. The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) is not limited or restricted by this Memorandum of Incorporation.
- 4.3.5. The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5), is not limited or restricted by this Memorandum of Incorporation.
- 4.3.6. The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, as set out in section 73 (5), subject to variations set out in Article 4.7.3.

4.4. Indemnification of Directors

- 4.4.1. The authority of the Company's Board of Directors to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (3) is not limited or restricted by this Memorandum of Incorporation.
- 4.4.2. The authority of the Company's Board of Directors to indemnify a director in respect of liability, as set out in section 78 (5) is limited, restricted or extended to the extent set out in Article 5.2.2.
- 4.4.3. The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a director, as set out in section 78 (7) is not limited or restricted by this Memorandum of Incorporation.

4.5. Officers and Committees

- 4.5.1. The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 4.5.2. The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board as set out in section 72 (1), or to include in any such committee persons who are not directors, as set out in section 72 (2)(a), is not limited or restricted by this Memorandum of Incorporation.
- 4.5.3. The authority of a committee appointed by the Company's Board, as set out in section 72 (2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

4.6. Remuneration of Directors

- 4.6.1. The Directors shall not be entitled to remuneration for their services. If any director shall be required to perform extra services outside the scope of such Director's ordinary duties he shall be entitled to receive a remuneration to be fixed by the Board. The provisions of this article shall not affect the right of any Director to receive a salary in the course of his employment by the Company.

4.7. Proceedings relating to Directors

- 4.7.1. The Board may meet, adjourn and otherwise regulate its meetings, as it shall think fit, provided that it shall meet at least twice a year.
- 4.7.2. Any Director can convene a meeting of the Board at any reasonable time upon request, and such meeting shall be held within 10 business days of the date of request. Notice of a meeting of the Board shall be given orally, or in writing, to all Directors a reasonable period of time before such a meeting.
- 4.7.3. The quorum for a meeting of the board shall be four Directors present. Where voting is required a quorum shall be four Directors, provided that at least one Director shall have been appointed by ACA and/or AMF, one Director by MFSA and two Directors by PDMSA are present. The Board shall transact no business unless a quorum of Directors is present at the time when the meeting proceeds to business.
 - 4.7.3.1. Each Director present at a meeting of the Board shall be entitled to vote and shall have one vote. A resolution put to the vote of the meeting shall be decided by a simple majority of Directors present.

- 4.7.3.2. The Board may appoint committees from among the members and may fix a quorum thereof, and delegate any of its powers to any such committees, and make any rules for regulating the proceedings of the committees. The Chairman or his nominee from time to time shall be ex officio a Member of all committees.
- 4.7.3.3. Subject to the approval of the Board, each such committee shall have the right to co-opt such person as it may think fit to be a Member of such committee
- 4.7.3.4. The Board may appoint executive officers of the Company, including the treasurer and the secretary of the Board
- 4.7.3.5. Subject to the provisions of Section 75 inclusive of the Act, a Director shall not vote in respect of any contract or proposed contract with the Company in which he is interested, or any matter arising therefrom.
- 4.7.4. At the meeting of the board following the General Meeting, the directors shall elect from their numbers, a President and a Vice President.
- 4.7.5. The President and Vice President, elected in terms of clause 4.7.4, and two other Directors, elected from the remaining sectors of the Bipartite Grouping, shall form the Executive Committee, which will meet on an ad hoc basis. The Executive Committee will make recommendations to the Board, and deal with day-to-day matters, together with the General Manager, not requiring Board approval.
- 4.7.6. The Member, whose representative Director vacated office, must fill the vacancy that occurs.
- 4.7.7. The full Board shall have the power to change the Rules. The following shall apply to proposed changes to the Rules:
 - 4.7.7.1. Must be unanimously approved at a Board meeting
 - 4.7.7.2. Must, together with motivation for the change(s), be circulated ten working days prior to the Board meeting;
 - 4.7.7.3. Any Rule changes will be implemented as soon as practically possible;

4.7.7.4. Any changes to the Rules must be ratified by the Members at a Special General Meeting, convened as soon as possible in terms of article 3.

4.7.8. The President shall preside as Chairman of the Board. In the absence of the President his powers and duties shall devolve upon the Vice President. In the event of both the President and the Vice President being absent from a Board meeting, the Directors present shall elect a Chairman from among their number.

4.7.9. In the event of any deadlock arising between the Board members the said deadlock will, if demanded by any Director on written notice to the other Directors, as from that date be deemed to be a matter that is reserved to the Members and shall be referred to the Members for determination. Should the Members fail to resolve the matter (in terms of a resolution passed by the Members) at the first meeting of the Member's held after the said referral of the matter to them (which meeting must be held within 10 business days of such referral), any Member shall be entitled to submit the matter for resolution to a referee in accordance with the provisions set out below

4.7.9.1. The hearing in respect of the matter referred to in this article will be held at Johannesburg;

4.7.9.2. Informally with a view to its being completed within fourteen business days, having particular regard to any urgency regarding the matter in issue.

4.7.9.3. The referee will be, if the question in issue is:

4.7.9.3.1. primarily an accounting matter, a practising, independent chartered accountant with not less than ten years standing as such;

4.7.9.3.2. primarily a legal matter, a practising advocate or attorney with not less than ten years standing as such; and

4.7.9.3.3. any other matter, an independent, suitably qualified person.

4.7.9.4. and failing agreement between the Parties as to such accountant, advocate, attorney or independent person within 48 (forty-eight) hours after a matter has been submitted by any Member for

resolution as set out above, such person to be appointed by the President for the time being of the South African Institute of Chartered Accountants (where a chartered accountant is to be appointed) or the President for the time being of the Johannesburg Bar Association (where an advocate, attorney or other person is to be appointed) after a matter has been submitted by any Member for resolution as set out above:

- 4.7.9.4.1. The referee:
- 4.7.9.4.2. will have regard to the desire of the Members to dispose of such matter expeditiously, economically and confidentially; and
- 4.7.9.4.3. will make his decision on the basis that it shall not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, which decision will be made as an expert and not as an arbitrator according to what he considers just and equitable in the circumstances.
- 4.7.9.5. The decision of the referee in any proceedings:
- 4.7.9.6. will be final and binding on all of the Members and will be entered in the minute books of the Company as a resolution of the Members and;
- 4.7.9.7. will forthwith be carried into effect.

4.8. Appeal of Certain Board Decisions

- 4.8.1. Any affiliate aggrieved by a decision of the Board may appeal such decision to the Members, provided that such decision:
 - 4.8.1.1. Relates to the interpretation of the Rules; or
 - 4.8.1.2. Relates to any sanction imposed by the Board; and
 - 4.8.1.3. Does not relate to proceedings conducted under clause 12.8 of the Rules and provided further that should such member also be a Member, it shall recuse itself from any deliberations of the members relating to such appeal.

- 4.8.2. In the event of an affiliate referring a decision of the Board to the Members as provided for in 4.8.1 above, a resolution of the Members in regard to the decision under appeal shall be final and binding, provided that the provisions of clause 4.7.9 will apply, mutatis mutandis, in the event of the Members failing to resolve the matter in terms of a resolution. For avoidance of doubt, an affiliate shall not have an automatic right of further appeal to a referee.

5. **ARTICLE 5 - GENERAL PROVISIONS**

5.1. **Voting at General Meetings**

- 5.1.1. Voting is restricted to Members. Each Member is entitled to one vote, which may be exercised personally or by proxy.
- 5.1.2. A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the power provided no intimation in writing of the death or revocation shall have been received at the office or by the Chairman of the meeting before the vote is given.
- 5.1.3. The provisions of articles 4.7.9 shall mutatis mutandis apply to any deadlock arising at any meeting of the Members.
- 5.1.4. A resolution in writing signed by all the Members of the Company or their duly appointed agents shall (except in cases where a meeting is prescribed by the Act) be as valid and effectual as if it had been passed at a meeting of the Company duly convened and held, provided that such resolution is duly inserted in the minute book of meetings of the Company.

5.2. **General**

- 5.2.1. All acts done by the Board, or any person acting as a Director shall, notwithstanding that it afterwards be discovered that there was some defect in the appointment of any such Directors or persons acting as aforesaid, or that they or any of them are disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 5.2.2. Subject to the provisions of the Act, the Directors, auditors, and other officers for the time being of the Company, shall be indemnified and held harmless out of the assets of the Company from and against all actions, costs, charges, losses, damages and expenses which they, or any of them, their or any of their

executors or administrators shall, or may incur or sustain by or by reason of any act done, concurred in or admitted in or about the execution of their duty, in their respective offices, except such (if any) as they shall incur or sustain by or through their own negligence, default, breach of duty or breach of trust respectively, and subject to as aforesaid, none of them shall be answerable for the negligence, default, breach of duty or breach of trust of the other or others of them, or for joining in any receipt for the sake of conformity, or for any bankers or other persons which whom any monies or effects belonging to the Company shall or may be lodged or deposited for safe custody or for insufficiency or deficiency of any security upon which any monies of or belonging to the Company shall be placed out or invested, or for any loss, misfortune or damage which may happen in execution of their respective offices or in reaction thereto, unless the same shall happen by or through their own negligence, default, breach of duty or breach of trust respectively.

5.3. Minutes of Meetings

5.3.1. Minutes shall be kept of all resolutions and proceedings of meetings by one of the members, board and committee elected at the meeting as secretary. Such minutes shall be approved at the next meeting.

5.4. Notices and Domicilia

5.4.1. Each Member shall register with the Company an address within South Africa to serve as that Member's registered address and *domicilium citandi et executandi* for the purposes of receiving all notices, minutes, demands, legal process and other documents provided for, or required to be given by the Company in terms of or arising out of these Articles of Association.

5.4.2. In the event a Member fails to register an address with the Company as provided for, that Member shall be deemed to have waived his right to be served with, notices minutes and other documents provided for or required to be given by the Company.

5.4.3. Each Member will be entitled to substitute his registered address and *domicilium citandi et executandi* with any other address within South Africa which is not a post office box or *post restante*, by written notice to the Board.

5.4.4. Unless the contrary is proved any notice, minutes, demand and other document sent by post to a Member at his registered address will be deemed to have been received ten business days after the date of posting thereof. Any such

notice, minute, demand and other document may alternatively be hand delivered personally to such Member.

5.5. Finances

- 5.5.1. The financial year end of the Company is the 31 December.
- 5.5.2. The Company shall keep such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the Company including:
 - 5.5.2.1. records showing the assets and liabilities of the Company;
 - 5.5.2.2. a register of fixed assets showing the respective dates of dates of acquisition and the cost thereof, depreciation, if any, the respective dates of any disposals and the considerations received in respect thereof; and
 - 5.5.2.3. records containing entries from day-to-day activities in sufficient detail of all cash received and paid out of the matters in respect of which receipts and payments take place.
- 5.5.3. The books of account shall be kept at the registered office of the Company, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.
- 5.5.4. The Company's financial transactions will be conducted through a bank account or accounts opened and operated by the Board on behalf of the Company, which bank account will be opened in accordance with the Income Tax Act. The opening and operating of any such bank accounts shall be subject to such policies and procedures as the Board may from time to time determine.
- 5.5.5. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members, not being Directors, and no Member (not being a Director) shall have the right of inspecting any account or document of the Company except as conferred by statute or authorised by the Directors or by the Company in a General Meeting.
- 5.5.6. The Directors shall in respect of every financial year of the Company cause to be made out Annual Financial Statements in accordance with Section 30 of the

Act and shall lay them before the Special General Meeting of the Company in respect of that year.

5.5.7. A copy of the Annual Financial Statements, which are to be laid before the Company in a Special General Meeting, shall not less than fourteen business days before the date of the meeting, be sent to every Member of the Company. Provided that this Article shall not require a copy of those documents to be sent to any person, the address of whom the Company is not aware.

5.6. Records To Be Kept By The Board Of Directors

5.6.1. The board of directors of the Company shall cause minutes to be kept in respect of any meeting of directors or of sub-committees (if any) of the board, at which a vote is to be taken. The minutes shall include:

5.6.1.1. the names of the directors present at each meeting;

5.6.1.2. record of all resolutions and proceedings at each meeting.

5.7. Audit

5.7.1. Auditors shall be appointed and their duties regulated in accordance with the provisions of the Act.

5.7.2. Auditors shall be appointed and their duties regulated in accordance with the provisions of the Act, provided that:

5.7.2.1. the provisions of Part B (section 86 to 89 of the Act - relating to Company Secretary); and;

5.7.2.2. the provisions of Part D (section 94 of the Act - relating to Audit committees)

of Chapter 3 of the Act will not apply.

5.7.3. The Company shall appoint an auditor each year at a General Meeting.

5.8. Activities

5.8.1. The activities of the Company shall be directed wholly or mainly to the furtherance of its main object, as set out in this Memorandum of Incorporation, and ancillary objects, which are not in accordance with the main objects of the company, including trading of any nature whatsoever, are excluded.

5.8.2. The Company shall not have the power to carry on any business, including, *interalia*, ordinary trading operations, dividend stripping activities as well as the letting of property on a systematic or regular basis.

5.9. **Special Conditions**

5.9.1. The following special conditions shall apply to the Company:

5.9.1.1. Income and Property

5.9.1.1.1. The income and property of the Company, howsoever derived, shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred directly, or indirectly, by way of dividend, bonus, or otherwise whatsoever; to the Members of the Company or to its controlling or controlled company: Provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company in return for any services actually rendered to the Company.

5.9.1.2. Investments

5.9.1.2.1. The funds of the Company shall be invested;

5.9.1.2.1.1. With a financial institution as defined in Section 1 of the Financial Institutions (Protection of Funds) Act, 2001;

5.9.1.2.1.2. In such other financial instruments as the Commissioner of the South African Revenue services may approve.

5.9.1.3. Borrowing

5.9.1.3.1. The Company shall not be entitled to borrow.

5.10. Guarantee

5.10.1. Liability of Members is limited to a contribution to the assets of the Company, in the event of its being wound-up, while he is a Member, or within one year after he has ceased to be a Member, for payment of the debts and liabilities of the Company contracted before he ceased to be a Member, to the amount of R1-00 (one rand only).

5.11. Register of Members

5.11.1. The Company shall retain at its registered office a Register of Members of the Company as provided in Section 50 of the Act, read with Schedule 1 (9) of the Act. The Register of Members shall be open to inspection as provided in Section 26 (3) of the Act

5.12. Requirements for Public Benefit Organisations

5.12.1. The Board shall ensure that the Company complies with the requirements of the Income Tax Act, in relation to its approval as a public benefit organisation and furthermore that it complies with, and incorporates in Memorandum of Incorporation such amendments as may be required in terms of any statutory changes to such requirements from time to time.

Schedule 1

1. Schedule 1 - Incorporation and nature of the Company**1.1. PART A - SPECIFIC POWERS**

1.1.1. Powers as set out below, shall only be exercised in accordance with the main object of the Company:

1.1.1.1. to purchase or acquire in any way stock-in-trade, plant, machinery, land, buildings, agencies, shares, debentures and every kind or description of moveable and immovable property;

1.1.1.2. to manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertakings or all or any part of its property or assets;

1.1.1.3. to apply for, purchase or by any other means acquire, protect, prolong and renew any patents, patent rights, licences, trademarks, concessions or other rights and to deal with and alienate them

1.1.2. Powers as set out below, shall be excluded from the plenary powers of the company;

1.1.2.1. to undertake and execute any trust;

1.1.2.2. to act as principals, agents, contractors or trustees;

1.1.2.3. to distribute *in specie* or in kind any of its assets among its members.

1.1.3. Powers as set out below, shall be qualified powers of the Company

1.1.3.1. to form and have an interest in any company or companies provided such company or companies have objects similar to the objects of the Company and that such company or companies are also exempt from the payment of Income Tax in terms of Section 10(1)(cN) of the Income Tax Act, for the purpose of acquiring the undertaking or all or any of the assets or liabilities of the company or for any other purpose which may seem, directly or indirectly, calculated to benefit the company, and to transfer to any such

Schedule 1

company or companies the undertaking or all or any of the assets or liabilities of the company;

- 1.1.3.2. to amalgamate with other companies provided such other companies have objects similar to the objects of the Company and that such companies are also exempt from the payment of income tax in terms of Section 10(1)(cN) of the Income Tax Act;
- 1.1.3.3. to take part in the management, supervision and control of the business or operation of any other company or business and to enter into partnerships provided such company, business or partnership has objects similar to the objects of the Company and that such company, business or partnership is also exempt from the payment of income tax in terms of Section 10(1)(cN);
- 1.1.3.4. to remunerate any person or persons in cash for services rendered in its formation or in the development of its business;
- 1.1.3.5. to make donations except to Members or Directors, only in accordance with the main object of the Company;
- 1.1.3.6. to pay gratuities and pensions and establish pension schemes, in respect of its employees.

RING FENCING PROVISIONS

Not applicable.

1.2. PART B - DISSOLUTION OF THE COMPANY

Upon winding up, deregistration or dissolution of the Company, its net assets must be transferred to:

- 1.2.1. some other association(s), institution(s) , board(s) or Body, which;
 - 1.2.1.1. has objects the same, or similar to the Company's main object;
 - 1.2.1.2. which is exempt from tax under the provisions of section 10(1)(cN) of the Income Tax Act, and;
 - 1.2.1.3. which has as its sole or principal object the carrying on of public benefit activities, as defined in section 30 of the Income Tax Act,

Schedule 1

1.2.2. to be determined by the Members of the Company at or before the time of its dissolution or, failing such determination, by a court.

1.2.3. any institution, board or body which has objects the same, or similar to its main objects, which has as its sole or principal object the carrying on of any public benefit activity, as defined in section 30 of the Income Tax Act.

1.3. **PART C - THE TERMS AND CONDITIONS OF MEMBERSHIP IN THE COMPANY**

1.3.1. The Company shall have eight members, those members shall be natural persons each appointed by the respective Constituent Bodies, of which

1.3.1.1. four members must be representatives of PDMSA; and

1.3.1.2. two members must be representatives of MFSA; and

1.3.1.3. two members must be representatives of ACA and / or AMF.

1.3.2. Members of the Company shall be known as Guarantors.

1.3.3. The purpose of the membership structure is to give proportional and fair representation to all stakeholders.

Schedule 2

2. **Schedule 2 - Rights of Members**

2.1. **PART A - ADDITIONAL INFORMATION RIGHTS OF MEMBER**

Not Applicable

2.2. **PART B - REQUIREMENT TO DELIVER PROXY INSTRUMENT TO THE COMPANY**

2.2.1. The instrument appointing the proxy shall be deposited at the office of the Company not less than 24 (twenty-four) hours before the person named purports to vote in respect thereof. No person shall act as a proxy unless he is entitled to be present and vote.

2.2.2. The instrument 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 other authority, shall be deposited at the office not less than 24 (twenty four) hours before the person named in such instrument purports to vote in respect thereof, but no instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution, unless the proxy otherwise provides.

2.3. **PART C - RECORD DATE FOR DETERMINING MEMBERS RIGHTS**

Not applicable.

Schedule 3

3. Schedule 3 - Members Meetings**3.1. PART A - REQUIREMENT TO HOLD MEETINGS**

- 3.1.1. A meeting of the Company shall be referred to below as a Special General Meeting.
- 3.1.2. The Company shall hold as many members meetings per year as the Chairperson of the board deems necessary.
- 3.1.3. The Chairman of the Board shall preside at every General Meeting. In the absence of the Chairman, his powers and duties shall devolve upon the Vice-Chairman. In the event of both the Chairman and Vice-Chairman being absent from the General Meeting, the Members present shall elect a presiding officer from among their number.
- 3.1.4. The Special General Meeting shall deal with and dispose of the following:
 - 3.1.4.1. The receiving and consideration of the Annual Financial Statements;
 - 3.1.4.2. The consideration and approval of the report of the Board;
 - 3.1.4.3. The appointment and level of remuneration of an auditor;
 - 3.1.4.4. The ratification of the appointment of the Directors;
 - 3.1.4.5. The consideration of any other matter of which due notice has been given.
- 3.1.5. A Special General Meeting may be held at any time at the registered office of the Company or another venue acceptable to all Members and may be called by Members subject to Article 3.2.1.
- 3.1.6. A company need not hold any particular special general meeting if all members entitled to attend that meeting agree thereto in writing, and in such event a resolution in writing dealing with and disposing of
 - a) the matters required by this MOI to be dealt with and disposed of at an special general meeting of a company; and
 - b) such other matters, if any, as may, be dealt with at such a meeting,

Schedule 3

and signed by all members entitled to vote at that meeting, before the expiration of the period within which that meeting is to be held, shall be deemed to be a resolution passed at a special general meeting of the company held on the date on which the last signature to such resolution is affixed.

3.2. PART B - NOTICE OF MEMBERS MEETINGS

- 3.2.1. Written notice of a meeting of the members shall be made in accordance with Section 62(3) of the Act.
- 3.2.2. Where the company fails to give the required notice of a meeting of the members, the meeting may proceed subject to Section 62(4) and Section 62(5) of the Act.
- 3.2.3. A Member who intends to bring a motion before a General Meeting shall, not less than 10 business days before the day appointed for the said General Meeting, serve upon the Company at its registered office a notice, in writing, signed by himself and one other Member containing the proposed resolution. Upon receipt of such notice, the secretary shall, in any case where the notice is received before the notice of the General Meeting is issued include it in the notice of the General Meeting, and shall in any other case issue as quickly as possible to the Members notice that such resolution will be proposed.

3.3. PART C - QUORUM FOR MEMBERS MEETINGS

- 3.3.1. If within 30 (thirty) minutes after the time appointed for the meeting a quorum is not present it shall stand adjourned to a day not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting the Members present in person shall constitute a quorum.

PART D - ADJOURNMENT OF MEETINGS

- 3.3.2. The Chairman may, with the consent of any General Meeting at which a quorum is present (and shall, if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from

Schedule 3

which the adjournment took place. When a meeting is adjourned, the provisions of section 62(11) of the Act shall apply *mutatis mutandis* to such adjournment.

3.4. **PART E - RESOLUTIONS ADOPTED AT A MEMBERS MEETING**

3.4.1. The quorum for a meeting shall be six members and ordinary resolutions shall be taken by majority vote except in so far as this Memorandum requires otherwise.

Schedule 4

4. **Schedule 4 - Directors of the Company**

4.1. **PART A - THE BOARD OF DIRECTORS OF THE COMPANY AND THE CHAIRPERSON OF THE BOARD ARE TO BE APPOINTED IN THE FOLLOWING MANNER**

- 4.1.1. The Board shall consist of eight Directors and be comprised as follows:
 - 4.1.1.1. The members appointed by PDMSA shall collectively be entitled to nominate and appoint four Directors to the board;
 - 4.1.1.2. The members appointed by MA(SA) shall collectively be entitled to nominate and appoint two Directors to the board;
 - 4.1.1.3. The members appointed by ACA and / or AMF shall collectively be entitled to nominate and appoint a total of two Directors to the board.
- 4.1.2. On resignation, removal or disqualification of a Director the relevant members shall appoint a person in his place.
- 4.1.3. Each set of Members which has the power to appoint a Director as set out above:
 - 4.1.3.1. Shall also have the power to remove or replace any such Director and;
 - 4.1.3.2. Hereby indemnifies the Company and holds it harmless against any claim instituted by any such Director as a result of his removal from office, as well as the costs arising from such claim.
- 4.1.4. Each set of Members which has the power to appoint a Director as set out above, shall also have the right to appoint a person to act as alternate director to their chosen Director(s).
- 4.1.5. An alternate Director shall act subject to the terms, qualifications and conditions applicable to a Director, save that he may not vote at any meeting where the Director to whom he is an alternate, is present
- 4.1.6. Any member or director may nominate any director to act as Chairperson of the board;

Schedule 4

4.1.7. The members shall also elect the Chairperson of the board, and such Chairperson will hold office as Chairperson for a period of one year, where after he or she shall be eligible for re-election, provided he or she is also re-elected as a director.

4.2. **PART B - AUTHORITY OF THE BOARD OF DIRECTORS**

4.2.1. The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) is not limited or restricted by the Memorandum of Incorporation.

4.2.2. PMSA will be responsible for managerial services and administration of the Company, unless otherwise decided by the members.

4.2.3. The Board may appoint a Director, or any other interested person, to represent the Company on any other industry body.

4.3. **PART C - COMPOSITION OF THE BOARD OF DIRECTORS**

4.3.1. The office of a Director shall *ipso facto* be vacated if;

4.3.1.1. He becomes insolvent, is sequestrated, assigns his estate, suspends payment or compounds with his creditors; or

4.3.1.2. He becomes of unsound mind; or

4.3.1.3. By notice in writing to the Company he resigns his office; or

4.3.1.4. He ceases to be a Director under any provisions of the Memorandum of Incorporation; or

4.3.1.5. He is removed from office by an ordinary resolution of the Company passed in terms of section 71 of the Act, or

4.3.1.6. He ceases to be a Director by virtue of any provision of the Act or becomes prohibited from being a Director by reason of any order made under section 69 of the Act; or

4.3.1.7. His authority to represent a Member is withdrawn; or

4.3.1.8. Without leave of absence and without a valid excuse, he is absent from two consecutive meetings of the Board; or

Schedule 4

4.3.1.9. He is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act.

4.3.2. The Company may by ordinary resolution remove any Director before the expiration of his period of office.

4.4. **PART D - LIMITATIONS ON THE AUTHORITY OF THE BOARD TO CONSIDER A MATTER OTHER THAN AT A MEETING**

Not applicable.

4.5. **PART E - LIMITATIONS ON THE AUTHORITY OF THE BOARD TO CONSIDER THE CONDUCT OF MEETINGS**

Not Applicable