

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION FOR A NON PROFIT COMPANY WITH MEMBERS

Name of company:

THE RACING ASSOCIATION NPC

Which is referred to in the rest of this Memorandum of Incorporation as “the Company”

Registration No:

1997/019092/08

This MOI was adopted by Special Resolution passed on _____ 2016 in substitution of the existing memorandum of Company and articles of Company of the Company.

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1. INTERPRETATION

1.1 In this Memorandum of Incorporation, unless the context otherwise indicates:

- 1.1.1 “**Act**” means the Companies Act, No 71 of 2008 as from time to time amended or re-enacted;
- 1.1.2 “**AGM**” means the annual general meeting of the Company;
- 1.1.3 “**Auditors**” means the auditors of the Company as appointed from time to time, in accordance with Clause 39;
- 1.1.4 “**Board**” means the national and regional Directors, for the time being of the Company, and alternate Directors appointed by them or, the Directors assembled as a Board of the Directors acting by written resolution in terms of Clause 34.6 or a committee of Directors appointed by the Board acting under delegated authority from the Directors;
- 1.1.5 “**Business Day**” means a day other than a Saturday or Sunday or a day which from time to time is a proclaimed public holiday in the Republic of South Africa;
- 1.1.6 “**Clause**” means clauses of this Memorandum of Incorporation;
- 1.1.7 “**Company**” means the Racing Association NPC, registration number 1997/019092/08, a non-profit company incorporated under the laws of the Republic, having its registered office at 4th Floor Aloe Grove, Houghton Estate Office Park, 2 Osborn Road, Houghton;
- 1.1.8 “**Director**” means a member of the Board;
- 1.1.9 “**Day**” means any day of the week excluding public holidays in the Republic of South Africa and “**Days**” shall have a similar meaning;
- 1.1.10 “**General Meeting**” means any general meeting of the Company and includes an AGM;

- 1.1.11 **“Income Tax Act”** means the Income Tax Act, No 58 of 1962 as amended or any legislation which replaces it;
- 1.1.12 **“NHA”** means the National Horseracing Authority;
- 1.1.13 **“MOI”** means this Memorandum of Incorporation;
- 1.1.14 **“Member”** means the subscribers to the MOI and all others who become Members in terms hereof;
- 1.1.15 **“Office”** means the registered office of the Company;
- 1.1.16 **“Phumelela”** means Phumelela Gaming and Leisure Limited, a company registered in the Republic of South Africa with registration number 1997/016610/06;
- 1.1.17 **“Race Horse”** means a thoroughbred racehorse registered with the NHA and includes a colt, mare, stallion, gelding, rig or filly;
- 1.1.18 **“Racing Trust”** means the Thoroughbred Horseracing Trust, an *inter vivos* trust established under an amended Deed of Trust dated December 1998 and registered in terms of the Trust Property Control Act, 1988 under registration number IT1400/98;
- 1.1.19 **“Record Date”** means the date upon which the Company determines the identity of its Members;
- 1.1.20 **“Register”** means the register of Members kept in terms of the Act and includes any branch register;
- 1.1.21 **“Secretary”** means the secretary of the Company for the time being or any person authorised to act in his stead;

- 1.1.22 **“Special Business”** means all business that is transacted at an AGM except for the business such meeting is obliged to transact in terms of Clause 15 and all business that is transacted at any other General Meeting;
- 1.1.23 **“Voting Officer”** means the Managing Director, or Chief Executive Officer or General Manager of the Company or, failing any of them, the Auditors.
- 1.2 All references to “section/s” in this MOI refer to the sections of the Companies Act unless the context indicates otherwise.
- 1.3 The headings are for reference purposes only and shall not affect the interpretation of the MOI.
- 1.4 Words in the singular number shall include the plural, and words in the plural number shall include the singular.
- 1.5 Words importing the masculine gender shall include the female gender and words importing the female gender shall include the male gender.
- 1.6 Words importing persons shall include any natural person, partnership, firm, syndicate, society or other voluntary Company, a close corporation any company or body, whether corporate or not; and
- 1.7 Words that are defined in the Companies Act bear the same meaning in this MOI as in the Act.
- 1.8 If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that term has not been defined in this interpretation provision.
- 1.9 In the event that the provisions of this MOI are in anyway inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act.

1.10 When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:

1.10.1 Excluding the day on which the first such event occurs;

1.10.2 Including the day on or by which the second event is to occur; and

1.10.3 Excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in Clauses 1.11.1 and 1.11.2 respectively.

2. INCORPORATION AND NATURE OF THE COMPANY

2.1. Incorporation –

2.1.1. The Company was incorporated as a Non Profit Company on 10 November 1997.

2.1.2. The Company is governed by –

2.1.2.1. the unalterable provisions of the Companies Act, 2008, that are applicable to Non Profit companies;

2.1.2.2. the alterable provisions of the Companies Act, 2008, that are applicable to Non Profit Companies, subject to any limitations, extension, variation or substitution set out in this MOI;

2.1.2.3. the provisions of this MOI; and

2.1.2.4. the unalterable provisions of Section 30B of the Income Tax Act.

3. MAIN OBJECT

3.1. The Company has the following main objects:

3.1.1. to promote the sport of thoroughbred horseracing;

- 3.1.2. to promote the sport of racing in Southern Africa;
 - 3.1.3. to use its best endeavours to ensure that the infrastructure of thoroughbred horseracing is satisfactorily maintained and operated;
 - 3.1.4. to advance and promote the interests of the body of Members and ensure they continue to enjoy adequate facilities at racing clubs and courses.
 - 3.1.5. to ensure stakes are paid on a basis agreed between the Company and Phumelela;
 - 3.1.6. to use its best endeavours to protect the copyrights of audio and audio-visual transmission of racing;
 - 3.1.7. to strive towards a more racially representative Membership of the Company and participation in the sport of thoroughbred horseracing.
- 3.2. The purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) and accordingly has all the legal powers and capacities of an individual, except to the extent that a juristic person is incapable of exercising such power or having any such capacity.
- 3.2.1. The Company does not contain any restrictive conditions and accordingly is not restricted from amending any particular provision of this MOI.
- 3.3. Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions of Clause 41, as prescribed by Section 30B of the Income Tax Act 58 of 1962 (as amended).
- 3.4. The Company may not provide any loan to secure any debt or obligation of any nature whatsoever; or otherwise provide any direct or indirect financial assistance to a Member or Director of the Company or of a related or inter-related Company or to a person related to any such Member or Director.

- 3.5. The Company may make payments contemplated in Clause 3.5.2 if such payment:
- 3.5.1. is in the ordinary course of the Company's business and for fair value; or
 - 3.5.2. constitutes an accountable advance to meet:
 - 3.5.2.1. legal expenses in relation to a matter concerning the Company; or
 - 3.5.2.2. anticipated expenses to be incurred by the Member or Director on behalf of the Company.
- 3.6. The Company is empowered:
- 3.6.1. to form and have an interest in any company or companies of a similar nature having the same or similar object to the Company, for the purpose of acquiring the undertaking of all or any of the assets or liabilities of that company or companies or for any other purpose which may seem directly or indirectly, calculated to the benefit of the Company, and to transfer to any such company or companies the undertaking or all or any of the assets or liabilities of the companies;
 - 3.6.2. to amalgamate with other companies having the same or similar objects to the Company;
 - 3.6.3. to take part in the management, supervision and control of the business or operations of any other company or business having the same or similar objects as the Company, and to enter into partnerships having the same or similar objects as the Company;
 - 3.6.4. to remunerate any person or persons in cash for services rendered in the formation or development of its business;
 - 3.6.5. to make donations except to Members or Directors;
 - 3.6.6. to pay gratuities and pensions and establish pension schemes in respect of its bona fide employees and officers and Directors who are bona fide employees.

- 3.7. The income and property of the Company whensoever and howsoever derived shall be applied solely towards the promotion of its objects and purposes, as set out in Clause 3.1, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, 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 or to any Member thereof in return for any services actually rendered to the Company.
- 3.8. The Company shall not be permitted to distribute any of its surplus, gains or assets to any person other than a Company whose objects are in the furtherance of the objects for which the Company is established.

4. AMENDMENT OF THE MEMORANDUM OF INCORPORATION AND COMPANY RULES

- 4.1. The Board may propose to amend any of the provisions of this MOI and the Members may by way of special resolution supported by 75% of all Members, adopt such amendments at a properly constituted general meeting of the Company.
- 4.2. A notice of alteration of the provisions of the MOI shall be sent to each Member via electronic mail at least 21 (twenty one) days before the general meeting to consider the proposed amendments.
- 4.3. The Board shall ensure that a copy of any amendments that have been made to the MOI shall be given to the Commissioner of the South African Revenue Service within 10 (ten) Business Days of having effected such amendments. Such submission to the Companies and Intellectual Properties Commission (CIPC) must be made within 3 (three) months of the date of the resolution.
- 4.4. No amendments shall be made which:
- 4.4.1. allow any income or other funds of the Company to be applied for a purpose which does not promote the achievement of the objects of the Company;
- 4.4.2. will amend this clause in any manner which would give any proprietary or similar interest in the Company's account to any natural person or any other entity which is not a public benefit organization; and

- 4.4.3. are not in accordance with section 30B of the Income Tax Act.
- 4.5. The Board may make, amend or repeal any necessary or incidental rules relating to the governance of the Company by publishing a copy of these rules via electronic mail to each of the Directors and filing a copy of these rules at the Company's registered office. Any rule published in this manner shall take effect on the date specified in the actual rule.
 - 4.5.1. The procedure to be followed regarding 4.5 above is as follows:
 - 4.5.1.1. notice of a Board meeting is to be sent out in the prescribed manner and form, together with a brief outline of the proposed rule/amendment/appeal etc.
 - 4.5.1.2. the rule or amendment thereof is to be adopted by a special resolution, whereafter it is to be sent to all Members and filed at the Registrar of Companies.
 - 4.5.2. The rule will be binding:
 - 4.5.2.1. on an interim basis from the time it takes effect to the next Members meeting of the Company; and
 - 4.5.2.2. on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in 4.5.2.1.

5. PROVISIONS OF CHAPTER 3 OF COMPANIES ACT

- 5.1. The organisation is obliged to appoint an auditor and have their financials audited, even in the event of their Public Interest Score (PIS) score being below the required number.
- 5.2. The Company elects to appoint a Company Secretary
- 5.3. Aside from Clause 5.1 above, the Company does not voluntarily elect to comply with the remaining provisions of Chapter 3 of the Companies Act.

6. AREA AND SCOPE OF OPERATION

- 6.1. The area in which the objects of the Company are to be applied is the Republic of South Africa.
- 6.2. Notwithstanding the above, the Company is free to obtain funding from within and outside the Republic of South Africa.

7. MEMBERS OF THE COMPANY – GENERAL

- 7.1. As contemplated in Item 4(1) of Schedule 1 of the Companies Act, the Company has Members, who are all in a single class, being voting Members each of whom has a vote in any matter to be decided by the Members of the Company as set out in Clause 18.
- 7.2. The Members shall be such people who, at the time of the registration of this MOI, are Members of the Company.
- 7.3. Additional Members shall be admitted in accordance with the MOI provided that an intending Member shall:
 - 7.3.1. hold colours registered with the NHA in terms of its rules; and
 - 7.3.2. have an interest in racehorse ownership, as determined by the Directors in their sole discretion; and/or
 - 7.3.3. possess such qualification as may from time to time be prescribed by the Members in a General Meeting.
- 7.4. Honorary Members, to a maximum of 25 (twenty five) in total, may from time to time be admitted by the Directors on such terms and conditions as the Directors, in their sole discretion may decide provided that honorary Members shall not be obliged to pay an entrance fee or annual subscription.
- 7.5. All Members who at the date of registration of this MOI, have been admitted as a life Member shall remain life Members, and as such enjoy all the privileges of Membership but shall not be required to pay any annual subscription. The Directors shall be entitled to appoint further life Members in their sole discretion.

- 7.6. All Members, with the exclusion of honorary and life Members shall be obliged to pay an annual subscription to the Company, the amount of which shall be determined by the Directors. The subscription shall be payable on, or before, the 1st (first) day of August each year. It is recorded that the amount of the annual subscription may vary depending on the regional area within which a Member is domiciled.
- 7.7. All applications for Membership shall be made in such manner and form and on such conditions as may be prescribed by the Directors in relation to the class of Membership for which Membership is made. Any application submitted to the Directors may be refused if, in the opinion of the Directors, such refusal would be in the best interest of the Company and/or the sport of horseracing.
- 7.8. The Company shall give regard to each of the Members' rights not to be discriminated against unfairly as provided in Section 9 of the Constitution of the Republic.

8. CESSATION OF MEMBERSHIP

- 8.1. Membership of the Company shall automatically be terminated:
- 8.1.1. upon receipt by the Company, at the office, of a notice, in writing, of his resignation from the Member concerned;
 - 8.1.2. upon the issue of a provisional or final order of sequestration of the Member concerned;
 - 8.1.3. upon the death of any Member, or upon any Member being declared insane or incapable of managing his own affairs;
 - 8.1.4. upon the passing of a resolution to that effect by a duly convened General Meeting;
 - 8.1.5. upon a Member, other than a Member who was a Member at the date of incorporation of the Company, becoming ineligible in terms of Clause 7.3 or
 - 8.1.6. upon termination in terms of Clause 8.5.5.

- 8.2. Membership of a Member, who was a member at the date of incorporation of the Company, shall not be terminated, notwithstanding the fact that he has become ineligible for Membership in terms of Clause 7.3. Such Members shall not be deemed to be life Members, and shall be required to pay the subscription fees referred to in Clause 7.6.
- 8.3. Membership of the Company shall automatically be suspended should a Member fail to pay his/her annual subscription by 31 August each year to the Company, whereafter such Member shall not be entitled to enjoy any of the privileges of Membership.
- 8.4. Membership of the Company shall be terminated in the event of:
- 8.4.1. Non-compliance by a Member with any such obligations as may attach to his Membership;
and
- 8.4.2. The failure to remedy such non-compliance upon the expiration of a period of 30 (thirty) days, reckoned from the date of written notice by the Company to the Member concerned, requiring the remedying of such default, save that the Directors shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as they may in their sole and absolute discretion deem fit.
- 8.5. If the Directors deem it to be in the best interests of the Company, and/or the sport of horseracing:
- 8.5.1. The Directors may, by written notice to a Member, inform the Member that, subject to Clause 8.5.2 they shall be terminating his Membership of the Company. The notice shall state the reasons for the Directors' decision, which may include *inter alia*:
- 8.5.1.1. the Directors believe the Member to be acting contrary to the best interest of the Company, or the sport of horseracing; or
- 8.5.1.2. the Member's conduct is bringing the Company, or the sport of horseracing, into disrepute; or
- 8.5.1.3. the Member's conduct is unbecoming of a Member of the Company.

- 8.5.2. Upon receipt of such notice, the Member may accept, or dispute, the Directors recommendation for termination of his Membership.
- 8.5.3. Should the Member dispute the Directors' recommendation for the termination of his Membership, he shall inform the Company, in writing, within 10 (ten) days of receipt thereof.
- 8.5.4. Within 5 (five) days of receiving the notice of dispute, the Directors shall refer the dispute to a director of the NHA agreed upon by the Directors and the Member or, failing agreement, nominated on the request of the Company by the chairman for the time being of the NHA, who shall act as an expert and not as an arbitrator and whose determination of whether the recommendation is fair or not shall, in the absence of any manifest error, be final and binding on the Company and the Member.
- 8.5.5. As at the date of the recommendation notice by the Directors the Member's Membership of the Company shall be suspended –
- 8.5.5.1. if, after the notice period referred to in Clause 8.5.3 the Member does not dispute the Directors' recommendation, his Membership shall be terminated; or
- 8.5.5.2. if the Member disputes the Directors' recommendation within the notice period referred to in Clause 8.5.3 after determination by the Directors of the NHA his Membership shall either be restored or terminated.
- 8.5.6. All Members who have been suspended, or whose Membership has been terminated, in terms of this MOI, shall not be a Member in good standing.

9. OBLIGATIONS ON CESSATION OF MEMBERSHIP

Notwithstanding anything to the contrary contained, or implied, in the MOI, the cessation of Membership shall in no way release a Member from any obligation undertaken by him prior to the cessation of Membership.

10. NON-TRANSFERABILITY OF MEMBERSHIP

Membership may not be assigned or transferred.

11. REGISTER OF MEMBERS

- 11.1. The Company shall maintain a Register of Members which is available for inspection at its Registered Office.
- 11.2. The Directors shall be empowered to make such regulations as they think fit relating to the opening and closing of such Register provided that such Register shall not be closed for more than 60 (sixty) days in any calendar year.
- 11.3. The Company may establish and maintain a branch register or branch registers.
- 11.4. The Company shall circulate a list of names of its Members with the annual audited financial statements referred to in Clause 38.

12. MEMBERS RIGHT TO INFORMATION

The Members of the Company shall have the right to inspect and copy information contained in the records of the Company as per the relevant statutory provisions regarding members rights to information (as from time to time amended).

13. GENERAL MEETINGS

- 13.1. The Company shall hold an AGM not later than 5 (five) months after the end of each financial year of the Company. The Notice period to convene an Annual General Meeting shall be 21 (twenty one) days.
- 13.2. The Directors may, whenever they think fit, convene a General Meeting, and the Secretary shall convene a General Meeting if a General Meeting is requisitioned in terms of the Act. If at any time there are, within the Republic, insufficient Directors capable of acting to form a quorum, the remaining Director(s) may convene a General Meeting in the same manner, as nearly as possible as that in which meetings may be convened by the Directors.
- 13.3. Subject to Clause 15, a General Meeting shall be held at such time and place as the Directors shall determine.

14. NOTICE OF GENERAL MEETINGS

- 14.1. A meeting called for the passing of a special resolution shall be called on not less than 21(twenty-one) Days' notice in writing and any other general meeting shall be called on not less than 15(fifteen) Days' notice in writing.
- 14.2. The notice period shall be determined as per 14.1, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in a general meeting, to such persons who are, under this MOI, entitled to receive such notices from the Company. A meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this clause, be deemed to have been duly called if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting (in accordance with the provisions of section 62(2A) of the Act).
- 14.3. The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting. In the event of a dispute as to whether the omission was accidental or not, the decision of the Board shall be final and binding on the Members.

15. PROCEEDINGS AT GENERAL MEETINGS

- 15.1. The AGM shall deal with, and dispose of, all matters prescribed by the Act, including but not limited to:
 - 15.1.1. the consideration of the annual financial statements;
 - 15.1.2. the appointment of an Auditor;
 - 15.1.3. the fixing of the remuneration of the Auditor; and
 - 15.1.4. may deal with any other business laid before it and of which notice has been duly given in terms of this MOI or in respect of which notice has been waived in terms of Clause 14.3.
- 15.2. Business may be transacted at a General Meeting only while a quorum of Members is present.

- 15.3. Subject to the Act, 20 (twenty) Members eligible to attend and vote and present in person or by proxy at a General Meeting, shall constitute a quorum.
- 15.4. If, within one hour after the time appointed for the General Meeting, a quorum is not present, the General Meeting, if convened upon requisition of the Members, shall be dissolved. In any other case the General Meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is not a Business Day, to the next succeeding Business Day, and if at such adjourned General Meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present in person shall constitute a quorum.
- 15.5. 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 of the Act, is not limited or restricted by this MOI, subject to the notice of that meeting informing Shareholders of the availability of that form of participation, and providing any necessary information to enable Shareholders or their proxies to access the available medium or means of electronic communication.
- 15.6. The chairman of the Board of Directors shall preside as chairman at every General Meeting.
- 15.7. If there is no such chairman, or if at any General Meeting he is not present within 15 (fifteen) minutes after the time appointed for the holding of the meeting, or if he is unwilling to act as chairman, the Directors shall choose one of their number to act as chairman and, failing any Director present and willing to act, the Members present shall elect 1 (one) of their number to be the chairman of the meeting.
- 15.8. The chairman of a General Meeting at which a quorum is present may (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 business left unfinished at the meeting at which the adjournment took place. Subject to the Act, when a meeting is adjourned, it shall not be necessary to give notice thereof.
- 15.9. All resolutions at a General Meeting shall require a seconder.
- 15.10. At any General Meeting a resolution put to the vote shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or by at least 5 (five) Members entitled to vote at the meeting. No poll shall, however, be demanded on the election of the chairman of the meeting or on any question of adjournment. Unless a poll is so demanded, a

declaration by the chairman of the meeting that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

15.11. If a poll is demanded:

15.11.1. the poll shall be taken in such manner and at such time as the chairman of the meeting shall direct;

15.11.2. the chairman of the meeting shall be entitled to appoint scrutineers;

15.11.3. no notice of a poll other than an announcement at the meeting at which it is demanded shall be required;

15.11.4. the demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question on which the poll has been demanded;

15.11.5. a demand for a poll may be withdrawn; and

15.11.6. the result of a poll shall be deemed to be the resolution of the meeting on any question on which the poll is taken.

15.12. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is taken, shall, if he is a Member, have a casting vote.

15.13. Any objection to the admissibility of a vote on a show of hands or on a poll shall be raised at the General Meeting at which the show of hands or poll is to take place or takes place. The chairman of that General Meeting shall determine that objection and his decision thereon shall be final and binding. Accordingly, any vote not disallowed at that meeting shall be valid for all purposes.

15.14. A resolution shall not be invalid because a vote that should not have been included has been taken into account unless, in the opinion of the chairman of that meeting (whose decision thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless, in the opinion of the chairman of that meeting (whose decision thereon shall be final and binding), the inclusion of that vote would have altered the resolution of the voting on that resolution.

16. MEMBERS RESOLUTION

- 16.1. For an ordinary resolution to be adopted at a General meeting, it must be supported by at least 51% of the Members who voted on the resolution, in person or by proxy, and at which a quorum is present (as determined by the provisions of this MOI) and as provided for in section 65(7).
- 16.2. For a special resolution to be adopted at a General meeting, it must be supported by at least 75% of all Members who voted on the resolution, in person or by proxy and at which a quorum is present (as determined by the provisions of this MOI) and as provided for in section 65(9).
- 16.3. A special resolution adopted at a General meeting is not required for a matter to be determined by the Company; however a special resolution at a General meeting will be required to:
- 16.3.1. amend this Memorandum of Incorporation;
 - 16.3.2. approve the voluntary winding up of the Company; and
 - 16.3.3. approve the implementation of the fundamental transactions provided for in Part A, Chapter 5 of the Companies Act.
- 16.4. A resolution in writing signed by all the Members 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 has been passed at a meeting of the Company duly convened and held. A resolution in terms of this clause may consist of several documents of the same form, each of which is signed by one or more Members, and shall be deemed to have been passed on the date of signature thereof by the last Member entitled to sign it.

17. MINUTES AND INSPECTION

- 17.1. The Directors shall cause a record to be made of all resolutions of the Company in a General meeting in a book provided for that purpose.
- 17.2. The minutes kept in terms of Clause 17.1 (or any extract therefrom) which purports to be signed by the chairman of the Board of Directors or by any Director or the Secretary shall be prima facie evidence of the matters therein stated.
- 17.3. The minute book shall be open for inspection and may be copied as provided in the Act.

18. VOTES OF MEMBERS

- 18.1. Subject to any rights or restrictions for the time being attaching to any class or classes of Membership, on a show of hands every Member Present in Person or represented by proxy shall have 1 (one) vote and on a poll every Member Present in Person or represented by proxy shall have 1 (one) vote.
- 18.2. Any Member who is not duly registered or has not paid every subscription and other sum or fine which shall be due and payable by him to the Company shall not be entitled to vote either personally or by proxy at any General meeting.

19. PROXIES

- 19.1. A Member entitled to attend and vote at a General Meeting shall be entitled to appoint 1 (one) person as his proxy to attend, speak and vote at a General Meeting on his behalf.
- 19.2. A proxy must be a Member in good standing.
- 19.3. A form of proxy may be issued at the Company's expense only if it is sent to all Members who are entitled to attend and vote at the General Meeting to which the proxy form relates.
- 19.4. 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 authority) shall be deposited, or telefaxed, or delivered by electronic mail to the address indicated on the form appointing the proxy, or delivered by any other format which the Directors may approve, at the Office at any time before the meeting but not less than 48 hours prior to the meeting (or at such other place and such lesser period as the Directors may

determine in relation to any particular meeting) before the time for the holding of the meeting which the person named in the instrument proposes to attend and at which the person named in the instrument proposes to speak and vote. A form of power of attorney or proxy shall be invalid if this Clause is not complied with.

- 19.5. Except in so far as the form appointing a proxy indicates otherwise, the appointment of a proxy shall be deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specially directed to vote for or against or to abstain from voting on any proposal or resolution) the power generally to act for the Member giving that proxy at the General Meeting in question as the proxy may think fit and in accordance with the Members instructions for whom they are acting. Unless the contrary is stated thereon, the form appointing a proxy shall be valid for each adjournment of the General Meeting to which it relates.
- 19.6. No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date on which it was signed unless specifically stated to the contrary in the instrument of proxy itself.
- 19.7. The instrument appointing a proxy may be in any usual or common form approved by the Directors but shall be so worded that the holder thereof may vote for or against or abstain from voting on any one or more of the resolutions proposed at the General Meeting at which the proxy is to be used.

20. RECORD DATE FOR EXERCISE OF MEMBER RIGHTS

If, at any time, the Board fails to determine a Record Date, the Record Date for participating in and voting at a General meeting is the latest date by which the Company is required to give Members notice of that meeting.

21. DIRECTORS

- 21.1. Until otherwise determined by the Company in a General Meeting, the number of Directors shall not be less than 5 (five) and not more than 13 (thirteen) of which the number of national Directors shall not be less than 4 (four) and not more than 7 (seven).
- 21.2. On each anniversary of the Company's annual year end, not less than 2 (two) of the national Directors shall give notice that they will resign at the next AGM, when new national Directors, as elected in terms of Clause 22 will take office. The national Directors to retire as aforesaid shall be determined firstly by a reference to their eligibility to be re-elected and, secondly by reference to their length of service in office

since their last election for the then current term of service and, if there are more than 2 (two) possible candidates for retirement, by drawing lots amongst themselves at a meeting prior to the Company's annual year end.

21.3. Each regional committee, as soon as possible after it has been elected in the manner prescribed in this MOI, shall elect 1 (one) of its Members to serve on the Board of Directors ("the regional Directors").

21.4. At the conclusion of the AGM all the regional Directors shall resign, whereafter the new regional Directors elected by the regional committees will take office.

21.5. Subject to the provisions of Clause 21.8, all retiring Directors shall be eligible for re-election.

21.6. Notwithstanding anything to the contrary herein contained:

21.6.1. no person shall be entitled to serve as a Director for a consecutive period of more than 6 (six) years or for a period in excess of 12 (twelve) years in total;

21.6.2. all Directors shall retire from the Board at the AGM following the date on which they reach the age of 70 (seventy) years and shall not be eligible for re-election; and

21.6.3. any Director may be removed or replaced in the manner provided for by the Act.

21.7. Any person nominated as a Director must be, subject to the provisions of Clause 32 which apply here *mutatis mutandis*:

21.7.1. a Member of the Company in good standing; and

21.7.2. a Member of not less than 5 (five) years standing provided however that an exception will be made in regard to this 5 (five) year standing in the case of regional chapter members who have been elected by their respective bodies and who do not have more than 5 (five) years standing may still be so nominated.

- 21.8. Any vacancy in the ranks of the Directors may, in the sole discretion of the remaining Directors, be filled by a Member appointed as a Director subject to Clause 21.10 provided that:
- 21.8.1. if the vacancy arises from the retirement of a regional Director, the Member so appointed shall be a Member of the relevant regional committee which appointed such regional Director; and
- 21.8.2. if no Member of such regional committee is available for such appointment, any Member of the Company may be appointed.
- 21.9. The Directors shall be entitled to appoint any person as a national Director, provided that pursuant to such appointment, the total number of Directors shall not exceed the number stipulated in Clause 21.1.
- 21.10. The Directors shall be entitled to appoint any person as a national Director in terms of Clause 21.8 and Clause 21.9, provided that any person so appointed shall automatically retire at the next AGM.

22. METHOD OF ELECTION OF NATIONAL DIRECTORS

- 22.1. On or before 15 August of each year the Voting Officer shall send to each Member of the Company a notice calling for nominations for the offices of national Directors, which will become vacant at the conclusion of the next AGM. A retiring national Director shall be deemed to be duly nominated unless he had notified the Voting Officer in writing that he is not prepared to stand for re-election.
- 22.2. The completed nomination form, signed by the proposer and seconder, must reach the Voting Officer not later than noon on 15 September. A Member may nominate as many Members as there are vacancies for national Directors. Signed acceptance of such nomination by the person nominated must reach the Voting Officer by not later than noon on 1 October.
- 22.3. If an election is necessary, the Auditors shall by not later than 15 October send voting papers in the form prescribed by the Directors to the Members. Each Member who exercises his right to vote shall record his vote in favour of as many candidates as there are vacancies for national Directors, and any voting paper containing a greater or lesser number of votes shall be disregarded.

- 22.4. Voting papers must reach the Auditors not later than noon on 1 November who shall scrutinise them and forthwith declare in writing to the Voting Officer the persons elected as national Directors who shall assume office at the close of the next AGM.

23. ESTABLISHMENT OF REGIONAL COMMITTEES

- 23.1. The membership of the Company shall be divided into the following regional areas to facilitate the establishment of regional committees:

23.1.1. Free State and Northern Cape;

23.1.2. Eastern Cape;

23.1.3. Western Cape;

23.1.4. KwaZulu-Natal; and

23.1.5. Gauteng.

- 23.2. A regional committee shall be established for a regional area when:

23.2.1. the assets of the racing clubs within that region are transferred to Phumelela; or

23.2.2. there are no less than 50 (fifty) Members of the Company normally domiciled within that region and no less than 10 (ten) such Members petition the Voting Officer in writing to establish a regional committee.

- 23.3. A regional committee shall cease to exist if the number of Members normally domiciled within that area fall to below 50 (fifty) at the time of an AGM.

- 23.4. Notwithstanding anything to the contrary provided for in this MOI, a regional committee shall only be established for Gauteng after a regional committee has been established for Western Province or for KwaZulu-Natal.

- 23.5. The Members, in a General Meeting, may approve the establishment of other regional areas comprising Provinces (or parts thereof) within the Republic, or neighbouring States (or parts thereof).

23.6. The Members, in a General Meeting, may approve the recognition of other regional areas comprising Provinces (or parts thereof) within the Republic, or neighbouring States (or parts thereof), as affiliated regions with such rights, including the right to observe at Board meetings, and duties of Directors may thereafter from time to time, determine within the context of any guidelines prescribed by the Members in General Meeting.

24. COMPOSITION OF A REGIONAL COMMITTEE

24.1. Until otherwise determined by the Company in a General Meeting, the number of Members on a regional committee shall not be less than 3 (three) and not more than 5 (five).

24.2. On each anniversary of the Association's annual year end, not less than 2 (two) of the committee members shall give notice that they will resign at the next AGM, when new committee members as elected in terms of Clause 25 will take office. The committee members to retire as aforesaid shall be determined firstly by a reference to their eligibility to be re-elected and, secondly by reference to their length of service in office since their last election for the then current term of service and, if there are more than 2 (two) possible candidates for retirement, by drawing lots amongst themselves at a meeting prior to the Company's annual year end.

24.3. Subject to the provisions of Clause 24.4, all retiring committee members shall be eligible for re-election.

24.4. Notwithstanding anything to the contrary herein contained:

24.4.1. No person shall be entitled to serve as a committee member:

24.4.1.1. for a consecutive period of more than 6 (six) years or for a period in excess of 12 (twelve) years in total; and

24.4.1.2. unless he/she ordinarily resides in the region for which he/she wishes to serve as a committee member;

24.4.2. All committee members shall retire from the committee at the AGM following the date on which they reach the age of 70 (seventy) years and shall not be eligible for re-election; and

- 24.4.3. Any committee member may be removed or replaced by notice in writing delivered to the Company at the Office and signed by a majority of members within that region.
- 24.5. Unless specifically provided to the contrary in this MOI, all committee members shall be current Members of the Company.
- 24.6. Any vacancy in the ranks of the committee members may, in the sole discretion of the remaining committee members, be filled by a regional member appointed as a temporary committee member until the next AGM.

25. METHOD OF ELECTION OF REGIONAL COMMITTEE MEMBERS

- 25.1. On or before 15 August of each year the Voting Officer shall send, in conjunction and simultaneously with the notices calling for nominations for the office of national Directors, to each Member domiciled within a particular region, a notice calling for nominations for the offices of committee members of that particular region, which will become vacant at the next AGM. A retiring committee member shall be deemed to be duly nominated unless he had notified the Voting Officer in writing that he is not prepared to stand for re-election.
- 25.2. The completed nomination form, signed by the proposer and seconder, must reach the Voting Officer not later than noon on 15 September. A Member may nominate as many Members as there are vacancies for committee members. Signed acceptance of such nomination by the person nominated must reach the Voting Officer by not later than noon on 1 October.
- 25.3. If an election is necessary the Auditors shall, by not later than 15 October, send voting papers in the form prescribed by the Directors, to the Members specified in Clause 25.1. Each Member who exercises his right to vote shall record his vote in favour of as many candidates as there are vacancies, and any voting paper containing a greater or lesser number of votes shall be disregarded.
- 25.4. Voting papers must reach the Auditors not later than noon on 1 November who shall scrutinise them and forthwith declare in writing to the Voting Officer the persons elected who shall assume office at the close of the next AGM.

26. FUNCTION OF A REGIONAL COMMITTEE

- 26.1. The function of a regional committee is to facilitate, through its representations on the Board of Directors, the recognition and advancement of regional issues; and to provide the forum where regional members can interact and discuss matters affecting them. To this end, a regional committee shall ensure that it holds at least 1 (one) General Meeting of all its regional members, called by not less than 21 (twenty one) days' notice in writing. The notice of the meeting shall specify:
- 26.1.1. the place;
 - 26.1.2. the date and the hour of the meeting; and
 - 26.1.3. the general nature of the issues to be discussed at the meeting.
- 26.2. The committee shall be empowered to perform such duties and exercise such powers as may be delegated to it from time to time by the Board of Directors.

27. PROCEEDINGS OF REGIONAL COMMITTEES

- 27.1. Any 2 (two) committee members may summon a meeting of the committee at a time and on a date reasonably convenient to the committee members.
- 27.2. The committee members shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit.
- 27.3. Questions arising at any meetings of the committee shall be decided by a majority of votes. The chairman shall have a casting vote in the case of an equality of votes.
- 27.4. The Company in a General Meeting may fix the quorum necessary for the transaction of business of the committee and unless so fixed shall, while there are 5 (five) members, be 3 (three).
- 27.5. A committee member unable to attend a committee meeting may authorise any other committee member to vote for him at the meeting.

28. REMUNERATION OF DIRECTORS

- 28.1. This MOI does not limit the authority of the Company to pay remuneration to the Company's Directors, in accordance with a special resolution approved by the Company's Members within the previous two years, as set out in section 66(9) and (10), provided that the Company acts at all times within the scope of Clause 41.8 and any other applicable section of the Income Tax Act.
- 28.2. Any Director who serves on any committee or otherwise performs services which the Directors consider outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of fees, salary, commission or otherwise as the Board of Directors may approve, confirm or ratify.
- 28.3. The Directors shall be entitled to be reimbursed for all travelling, hotel and other expenses of whatsoever nature properly incurred by them (and their spouses where, with the prior approval of the Board, they are accompanied by their spouses) in or about the performance of their duties as Directors, including, but not limited to, the reasonable cost of attending and travelling from their normal place of residence to and from meetings of Directors or any committee of Directors or any General Meetings.

29. BORROWING POWERS OF DIRECTORS

- 29.1. The Board of Directors may in their discretion borrow any sums of money for the purposes of the Company provided that the aggregate amount borrowed shall not exceed R1 000 000 (one million Rand) or such higher amount as may be approved by the Members in a General Meeting.
- 29.2. The Directors may secure the payment or repayment of any money borrowed in terms of Clause 29.1 and/or the payment of any debt, liability or obligation whatsoever of the Company or of any third party in such manner and upon such terms and conditions, in all respects, as they think foregoing, by the execution of mortgage bonds or other securities or the issue of debenture and debenture stock of the Company upon the security of all or any part of the property or rights of the Company present or future.
- 29.3. Clause 29.2 and 29.3 above is subject at all times to the results of the solvency and liquidity test.

30. GENERAL POWERS AND DUTIES OF DIRECTORS

- 30.1. The business of the Company shall be managed by the Directors who may pay all expenses incurred and shall exercise all such powers of the Company as are not, by the Act, or by this MOI, required to be

exercised by the Company in a General Meeting, but subject always to such regulations (not inconsistent with this MOI or the Act) as may be prescribed by the Company in a General Meeting. No regulation made by the Company in a General Meeting shall invalidate any prior act of the Directors which would have been valid had that regulation not been made.

30.2. The Directors may:

30.2.1. establish and maintain and/or contribute any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

30.2.2. give pensions, gratuities and allowances to and make payments for or toward the insurance of -
any persons who are employees or ex-employees (including any managing Directors or ex-managing Directors) of the Company or of any company which is or was a subsidiary of the Company or is or was in any way allied to or associated with the Company or any such subsidiary and any wives, widows, families or dependants of such persons.

30.3. The Directors may authorise payment of any Members' or committee members' reasonable expenses upon a similar basis as set out in Clause 28 as and when such expenses are incurred.

30.4. Notwithstanding anything to the contrary contained in this MOI, the Directors shall be entitled, in their sole discretion, to provide for special conditions to be applicable, from time to time, for the establishment, composition, method of election, functions and proceedings of all or any of the initial and subsequent regional committees. Should no special conditions be prescribed, the provisions of this MOI shall prevail.

31. CHIEF EXECUTIVE OFFICER

31.1. The Directors may from time to time appoint a person to the office of Chief Executive Officer in which case such person shall *ex officio* be a Director, or any other person as chief executive or general manager for such period and at such remuneration (including, without detracting from the generality of the foregoing, by way of fees, salary, commission or partly in one way and partly in another) and generally upon such terms as the Directors think fit. It may be a term of the appointment of any such person that he be paid a pension, gratuity or other benefit on his retirement from office. The Directors may revoke any such appointment and any such appointment shall terminate *ipso facto* if the appointee shall cease for any

reason to be qualified as a Director subject to the rights of the appointee in terms of any agreement entered into between him and the Company in the particular case.

- 31.2. The Directors may from time to time entrust or confer upon the Chief Executive Officer for the time being such of the powers and authorities vested in them for such objects and purposes and upon such terms and conditions and with such restriction as they may think fit. Such powers and authorities may be conferred either collaterally or to the exclusion of or, in substitution for, all or any of the powers or authorities of the Directors. The Directors may at any time revoke or vary any powers or authorities conferred by them in terms of this clause provided that the revocation of such powers or authorities shall not invalidate any act performed prior to such revocation in terms thereof.

32. VACATION OF OFFICE BY DIRECTORS AND COMMITTEE MEMBERS

The office of a Director or a committee member shall be vacated if:

- 32.1. he is disqualified from acting as a Director in terms of the Act;
- 32.2. he becomes unsound of mind;
- 32.3. he commits an act of insolvency or is sequestered;
- 32.4. he concludes a compromise with his creditors generally;
- 32.5. he resigns his office by notice in writing to the Company;
- 32.6. he is dismissed by a notice signed by all of his co-Directors;
- 32.7. he is, where there are more than 3 (three) regional committee members, dismissed by a notice signed by all of his co-committee members;
- 32.8. he dies;
- 32.9. he is removed or replaced as is provided for in Clause 21; or

32.10. he ceases to be a Member.

33. PRIVILEGES OF DIRECTORS

Provided he has, in terms of the Act, disclosed his interest in the relevant contract or arrangement, no Director shall be disqualified from:

- 33.1. being or becoming interested in any manner whatsoever in any contract with the Company or in any other company, enterprise or business whatsoever;
- 33.2. representing the Company in any way whatsoever;
- 33.3. holding any office of profit in the Company or accepting office as a Director or officer of any subsidiary of the Company or of any company controlled by the Company or of any company of which the company is a Member or in which it holds a financial interest;
- 33.4. receiving any remuneration in consideration of the office referred to in Clause 28.2;
- 33.5. acting, and no firm of which a Director is a Member shall be disqualified from acting, in any professional capacity or holding any office of profit (other than that of Auditor) in the Company or in any company of which the Company is a Member or disqualified from receiving remuneration for those professional or other services; and
- 33.6. receiving any benefits whatsoever by virtue of any interest or office referred to above or any other interest or office whatsoever that the Director may have and will not be accountable to the Company therefor.

34. PROCEEDINGS OF DIRECTORS

- 34.1. The Chairman, Chief Executive Officer or on the requisition of any 2 (two) Directors may at any time, summon a meeting of the Directors at a place and time and on a date reasonably convenient to the Directors.
- 34.2. The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit.

- 34.3. Questions arising at any meetings of Directors shall be decided by a majority of votes. The chairman shall have a casting vote in the case of an equality of votes.
- 34.4. The Company in a General Meeting may fix the quorum necessary for the transaction of business of Directors and unless so fixed shall, while there are initially 4 (four) Directors, be 3 (three) and thereafter, while there are more than 4 (four) Directors, be 4 (four).
- 34.5. The Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below a quorum, the Directors may act for the purpose of appointing further Directors set out in Clause 21, and/or making the arrangements for the election of additional Directors so as to enable a quorum to be constituted and/or for summoning a General Meeting for that purpose.
- 34.6. A resolution in writing (which may be contained in one or more documents) signed by all the Directors for the time being present in the town in which the Office is situated (or where any Director is not in the Republic, by all of the Directors in the Republic) shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted. Signature of a copy of the resolution shall be deemed to be signature of the original resolution itself.
- 34.7. A chairman shall be elected annually after the new Board of Directors has been constituted. No Director may hold office as chairman for a period of more than 6 (six) years in total.

35. VALIDITY OF ACTS OF DIRECTOR(S) AND COMMITTEES

As regards all persons dealing in good faith with the Company, all acts done by any meeting of the Directors or of a committee appointed by the Directors or by any person acting as a Director shall, notwithstanding the fact that it is afterwards discovered that there was some defect in the appointment or continuation in office of any such Directors or persons or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been duly appointed or was qualified or had continued to be a Director or was entitled to vote, as the case may be.

36. ACCOUNTING RECORDS

- 36.1. The Directors shall cause to be kept such accounting records as are prescribed by the Act and in particular 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 trade or business of the Company.

36.2. The Company's records shall be kept at the Office or such other place or places as the Directors think fit and shall at all reasonable times be open to inspection by the Directors and by past Directors but, in the case of the latter, only in respect of the period during which they held office as Directors.

37. FINANCIAL YEAR END

The financial year end of the Company shall be the last day of July each year.

38. AUDITED FINANCIAL STATEMENTS

38.1. The Directors shall from time to time and in accordance with the Act, cause the annual audited financial statements to be prepared and laid before the Company in a General Meeting.

38.2. A copy of the annual audited financial statements which are to be laid before the Company at the AGM shall, not later than 21 (twenty one) days before the date of that meeting, be made available to every Member and, where required by the Act, also to the Registrar of Companies. The provisions of this MOI shall not require a copy of those documents to be sent to any person who has not furnished an address to the Company.

39. AUDIT

An Auditor shall be appointed in accordance with the Act.

40. INDEMNITY

Every Director, manager and officer of the Company and every other person (whether an officer of the Company or not) employed by the Company, shall be indemnified out of the funds of the Company against all liability incurred by him as such Director, manager, officer or employee in defending any proceedings, whether civil or criminal, where the court in question finds that the Director, manager, officer or employee acted on the instructions of, or with the permission of, or in the course and scope of his duty to the Company.

41. SECTION 30B OF THE INCOME TAX ACT

Section 30B of the Income Tax Act provisions are applicable as follows:

41.1. The Company has a Board of Directors consisting of at least 3 (three) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company.

- 41.2. No single person may directly or indirectly control the decision-making powers of the Company.
- 41.3. The Company does not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
- 41.4. The Company utilises substantially the whole of its funds for the sole or principal object for which it has been established.
- 41.5. No Member, directly or indirectly, has any personal or private interest in the Company;
- 41.6. Substantially the whole of the activities of the Company are directed to the furtherance of its sole or principal object and not for the specific benefit of an individual Member or minority group;
- 41.7. The Company does not have a share or other interest in any business, profession or occupation which is carried on by its Members;
- 41.8. The Company does not pay to any employee, office bearer, Member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- 41.9. Substantially the whole of the Company's funding is derived from its annual or other long-term Members;
- 41.10. The Company must as part of its dissolution transfer its assets to –
- (aa) another entity approved by the Commissioner in terms of this section;
 - (bb) a public benefit organisation approved in terms of section 30;
 - (cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the Income Tax Act; or
 - (dd) the Government of the Republic in the national, provincial or local sphere;

- 41.11. The persons contemplated in Clause 41.1 (i.e. in terms of Section 30B(i)), will submit any amendment of the constitution or written instrument of the Company to the Commissioner within 30 days of its amendment;
- 41.12. The Company will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
- 41.13. The Company is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

42. ARBITRATION

In the event of any dispute or disagreement arising between the Company and any of the Members, or between the Directors or their respective alternatives touching or connected with these presents or the meaning, interpretation or performance thereof, or any dispute of any other nature or description between the Members or between the Directors of the parties hereto, in any way relating to these clauses or otherwise in relation the Company or the Company's business, agreements or contracts, then and in any of such cases any such dispute or difference shall be submitted to arbitration in terms of the arbitration laws of the Republic for the time being. The arbitrator shall be a practising Attorney of the High Court of South Africa nominated by the President for the time being of the Law Society of that Division of the High Court which has jurisdiction over the Company.