

MEMORANDUM OF INCORPORATION

OF

THE WESTERN CAPE BLOOD SERVICE NPC

(REGISTRATION NUMBER: 1943/016692/08)

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1. PREAMBLE

- 1.1 The name of the company is the Western Cape Blood Service NPC.
- 1.2 The registered office of the WCBS shall at all times be situated in South Africa.
- 1.3 The WCBS is a non-profit company with members.

2. INTERPRETATION

- 2.1 In this Mol, the following words and expressions have the meanings hereinafter assigned to them respectively:

“**Act**” means the Companies Act, 71 of 2008, as amended from time to time;

“**administrative grouping**” means a donor panel constituted on the basis of administrative criteria, such as a donor panel for apheresis platelet donors;

“**Board**” means the board of directors of the WCBS;

“**business day**” means any day of the week, excluding a Saturday, Sunday or South African public holiday;

“**calendar day**” means any day of the week, including a Saturday, Sunday or South African public holiday;

“**director**” means a director of the WCBS as contemplated in the Act and elected as a non-executive director by the members or appointed as an executive director by the Board;

“**donor**” means a person who donated one or more units of blood or blood components to the WCBS or its predecessors, provided that the person has donated blood to the WCBS at least once in the preceding 12 months;

“**donor panel**” means a group of donors formed on the basis of geographical criteria (for example, a suburb), an institutional grouping or an administrative grouping;

“**executive director**” means a director of the WCBS who is an employee of the WCBS and appointed by the Board (in its sole discretion) from time to time;

“**financial year**” means a financial year commencing on the first day of April of every year and ending on the last day of March of the following year;

“**in writing**” and “**writing**” shall include printing, lithography and other modes of representing or reproducing words in visible form;

“**Income Tax Act**” means the Income Tax Act, 58 of 1962, as amended, or any legislation which replaces it;

“**institutional grouping**” means a donor panel constituted on the basis of the donors’ association with an institution, such as students and educators at a school or university;

“**member**” means, subject to the provisions of this Mol, a person who:

- (a) is appointed as a member in accordance with paragraph 10.2;
- (b) is appointed as an honorary member in accordance with paragraph 10.3; or
- (c) has been elected or appointed as a director in accordance with paragraph 14;

“**members’ meeting**” means a meeting of members in accordance with paragraph 12;

“**Mol**” means the Memorandum of Incorporation of the WCBS as set out in this document;

“**non-executive director**” means a director of the WCBS who is not an employee of the WCBS and is elected by the members in accordance with the provisions of paragraph 14.3;

“**office**” means the registered office of the WCBS;

"**register**" means the register of members of the WCBS;

"**Rules**" means any Rules made by the WCBS as contemplated in the Act;

"**WCBS**" means the Western Cape Blood Service NPC (Registration No. 1943/016692/08), or by whatever other name it may be known from time to time; and

"**year**" means a calendar year, and "**month**" means a period of thirty calendar days.

2.2 Words importing only the singular include the plural number, and vice versa.

2.3 Words importing only the masculine gender include the feminine gender, and vice versa.

2.4 Words importing persons shall include juristic persons.

2.5 The marginal or head notes appearing in this Mol shall not be taken into account in the interpretation of this Mol, the said notes having merely been added for convenience or reference.

2.6 A reference to a section by number refers to the corresponding section of the Act.

2.7 A reference to a paragraph by number refers to the corresponding paragraph of the Mol.

2.8 Unless otherwise defined in this Mol, words that are defined in the Act bear the same meaning in this Mol as in the Act.

3. OBJECTS

The WCBS has the following public benefit objects and powers:

3.1 to carry on a community based regional health organisation of organising and maintaining in the Province of the Western Cape and in limited adjacent areas as

determined by the Board, a body of persons who are willing to donate their blood to the WCBS;

- 3.2 to establish and maintain under medical supervision, facilities for the procurement, storage, processing and distribution of blood and its derivatives donated by donors, that may be used for the purpose of medical treatment of persons in the Republic of South Africa or elsewhere and to define geographical areas within which the WCBS may undertake its activities;
- 3.3 to provide safe blood products to the community while operating at the highest professional and ethical standards and remaining a viable organisation;
- 3.4 to maintain a blood transfusion service that is appropriate to the needs of the South African community, to be prepared for wider regional and national needs and to provide leadership in transfusion practice;
- 3.5 to make and wherever desirable to rescind, alter or amend the MoI for regulating any matters connected with the WCBS;
- 3.6 to admit to membership of the WCBS and/or such other status therein such persons as shall be eligible in accordance with the MoI of the WCBS for the time being and to conform thereto;
- 3.7 to take all such steps and adopt all such lawful ways and means as are calculated to promote the objects of the WCBS;
- 3.8 to provide, establish and maintain offices, clinics, libraries, scientific facilities and laboratories and to provide such courses or lectures and demonstrations as may be deemed desirable;
- 3.9 to acquire, establish, print and publish documents as may be deemed expedient in the interests of the WCBS or as may be deemed desirable for the promotion of its objects;
- 3.10 to distribute among the public and its members information on all matters affecting the WCBS;

- 3.11 to accept any gift, endowment or bequest made to the WCBS generally or for the purpose of any specific object and to carry out any trusts attached to any such gift, endowment or bequest;
- 3.12 to undertake and execute any trusts which may lawfully be undertaken by the WCBS and may be conducive to the attainment of its objects;
- 3.13 to purchase, take on lease, exchange, hire or otherwise acquire any real, personal, movable and/or immovable property, rights, interests or privileges necessary or convenient for the purpose of the WCBS;
- 3.14 to sell, dispose of, exchange, hire, mortgage, charge, let, deal with, or turn to account, any of the property and rights of the WCBS, as may from time to time be considered expedient or desirable in the interests of the WCBS;
- 3.15 to borrow, or raise or secure the payment of money without limitation as to amount, in such manner, on such terms and conditions and upon such security as may be determined, and in particular by pledge, mortgage, hypothecation or otherwise, charged upon all or any of the property of the WCBS (both present and future) personal, real, movable and/or immovable and to purchase, redeem or pay off any such securities;
- 3.16 to invest the moneys of the WCBS not immediately required for the purpose thereof in or upon such secure investments or property as may be thought desirable;
- 3.17 to establish and support or aid in the establishment and support of any charitable or benevolent associations or institutions connected with the objects of the WCBS, or calculated to further its objects, to grant pensions to ex-employees of the WCBS, and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the objects of the WCBS, or calculated to further its objects, and to co-operate with any associations or institutions formed for purposes in any way connected with the purposes of the WCBS;
- 3.18 to delegate all or any of its powers to one or more of the directors of the WCBS or any committee or committees consisting of one or more directors;

- 3.19 to pay out of the funds of the WCBS all costs, charges and expenses preliminary and incidental to the promotion, formation, establishment, registration and advertising of the WCBS;
- 3.20 if and whenever considered advisable, to apply or petition for, or promote any legislation for the purposes of the WCBS;
- 3.21 to promote or oppose any legislation or other measures affecting any matters connected with the WCBS as may be deemed expedient in the interests of the WCBS;
- 3.22 in so far as may be found to be consistent with law, to promote or assist in the promotion of any company or association for or with any purpose or object akin to the objects of the WCBS and to effect or assist in effecting the incorporation of such company, association or college under the Act or any other law; and
- 3.23 to do all the foregoing and such other lawful things as may be incidental or conducive to the attainment, promotion and/or carrying out of the foregoing objects or any of them,

provided always that all or any of the foregoing shall be done, not for pecuniary profit, but for the public benefit.

4. CONDITIONS

- 4.1 The WCBS shall apply all of its assets and income, however derived, to advance its stated objects, as set out in this Mol, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 4.2 The WCBS shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the WCBS, or who is a member or director, or person appointing a director, of the WCBS, except –
 - 4.2.1 as reasonable-

- (a) remuneration for goods delivered or services rendered to, or at the direction of, the WCBS; or
 - (b) payment of, or reimbursement for, expenses incurred to advance a stated object of the WCBS;
- 4.2.2 as a payment of an amount due and payable by the WCBS in terms of a *bona fide* agreement between the WCBS and that person or another;
- 4.2.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the WCBS in order to advance a stated object of the WCBS; or
- 4.2.4 in respect of any legal obligation binding on the WCBS.
- 4.3 During or about 2005, the WCBS obtained the following tax exemptions from the South African Revenue Service:
 - 4.3.1 the WCBS was approved as a public benefit organisation in terms of section 30 of the Income Tax Act and the receipts and accruals of the WCBS are exempt from income tax in terms of section 10(1)(cN) of the Income Tax Act;
 - 4.3.2 the WCBS was approved for purposes of section 18A(1)(a) of the Income Tax Act and donations to the WCBS will be tax deductible in the hands of the donors in terms of and subject to the limitations prescribed in section 18A of the Income Tax Act;
 - 4.3.3 donations by or to the WCBS are exempt from donations tax in terms of section 56(1)(h) of the Income Tax Act;
 - 4.3.4 bequests or accruals from the estates of deceased persons in favour of the WCBS are exempt from the payment of estate duty in terms of section 4(h) of the Estate Duty Act, 45 of 1955.
- 4.4 The exemptions listed in paragraph 4.3 are subject to the following conditions:

- 4.4.1 annual returns of income must be submitted to the Tax Exemption Unit, together with financial statements and supporting documentation, which must include full particulars of the receipts issued in respect of tax deductible donations in terms of section 18A of the Income Tax Act and how these funds were expended;
- 4.4.2 the following information must be specified on the tax deductible receipts issued:
- (a) the reference number of the WCBS, issued by the Commissioner for the South African Revenue Service, namely, 930004391;
 - (b) the date of the receipt of the donation;
 - (c) the name of the WCBS, together with an address to which enquiries may be directed in connection therewith;
 - (d) the name and address of the donor;
 - (e) the amount of the donation or the nature of the donation (if not made in cash); and
 - (f) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act and that the donation has been or will be used exclusively for the object of the WCBS;
- 4.4.3 the WCBS was required to formally amend its founding document to comply with the provisions of section 30 of the Income Tax Act on or before 15 July 2006 or whenever an amendment is effected to the founding document, whichever date occurs first;
- 4.4.4 the exemptions in paragraph 4.3 above, are subject to review by the South African Revenue Service on an annual basis upon receipt of the financial statements; and
- 4.4.5 the WCBS was required to register with the Department of Social Development: Directorate Non-Profit Organisations in terms of

section 13(5) of the Non-Profit Organisations Act, 1997, within a period of 12 months after the granting of the exemptions referred to in paragraph 4.3.

- 4.5 The WCBS shall not accept a donation that is revocable at the instance of the person making such donation, other than a material failure to conform to the designated purpose and conditions of such donation, including any misrepresentation regarding the tax deductibility thereof in terms of section 18A of the Income Tax Act: provided that the person making a donation (other than an approved public benefit organisation as contemplated in section 30 of the Income Tax Act or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity, as contemplated in section 30 of the Income Tax Act), may not impose conditions which could enable such person or any connected person (as defined in section 1 of the Income Tax Act) in relation to such person to derive some direct or indirect benefit from the application of such donation.
- 4.6 The WCBS is prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity, as contemplated in section 30 of the Income Tax Act) and is required to utilise its funds solely for the object for which it has been established.
- 4.7 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the WCBS -
- 4.7.1 no past or present member or director of the WCBS, or person appointing a director of the WCBS, is entitled to any part of the net value of the WCBS after its obligations and liabilities have been satisfied; and
- 4.7.2 after making provision for the costs of dissolving the WCBS, the WCBS shall transfer the net assets of the WCBS to any similar public benefit organisation which has been approved by the Commissioner: South African Revenue Service in terms of section 30 of the Income Tax Act or any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act,

which has as its sole object the carrying on of any public benefit activity and which has similar objects to those of the WCBS.

- 4.8 If there is any conflict between any provision of this Mol and an applicable provision of section 30 of the Income Tax Act, the provision of the Income Tax Act shall prevail.

5. REPLACEMENT OF MEMORANDUM AND ARTICLES OF ASSOCIATION

5.1 The WCBS was incorporated in 1943 (in accordance with the Companies Act of 1926) as a company limited by guarantee and not having a share capital. The Memorandum and Articles of Association of the WCBS were replaced and amended since its incorporation, with the most recent replacement on or about 8 November 1993. This Mol replaces the Memorandum of Association and Articles of Association of the WCBS.

5.2 The reasons for replacing the Memorandum and Articles of Association of the WCBS are:

5.2.1 to comply with the provisions and requirements of the Act; and

5.2.2 to reflect accurately the present governance of the WCBS.

6. INCORPORATION

6.1 The WCBS is incorporated as a non-profit company, as defined in the Act.

6.2 The WCBS is incorporated in accordance with, and governed by:

6.2.1 the unalterable provisions of the Act that are applicable to non-profit companies;

6.2.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Mol;

6.2.3 the provisions of this Mol; and

6.2.4 to the extent applicable, the provisions of the Income Tax Act applicable to public benefit organisations.

7. MOI AND ALTERATIONS OR AMENDMENTS

7.1 This Mol of the WCBS may be altered or amended in the manner set out in sections 16 and 17 of the Act, subject to the following provisions:

7.1.1 a special resolution to amend the Mol shall only be valid if the adoption of such special resolution is proposed by the Board or by members entitled to exercise at least 50% (fifty percent) of the voting rights that may be exercised on such a resolution;

7.1.2 for a special resolution to amend the Mol to be approved by the members, such resolution must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution;

7.1.3 a members' meeting for purposes of adopting a special resolution to amend the Mol may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 5% (five percent) of all the voting rights that are entitled to be exercised in respect of the special resolution to be adopted; and

7.1.4 the special resolution to amend the Mol shall comply with the provisions of the Act and the Mol applicable to members' meetings and the adoption of special resolutions.

7.2 A copy of any amendment to the MOI must be submitted to the Commissioner: South African Revenue Services.

7.3 The authority of the Board to make or amend any Rules for the WCBS, as contemplated in section 15(3) to (5) of the Act, is limited or restricted to the extent provided for in this paragraph 7.

7.4 Save so far as determined or provided by the Act or by this Mol:

7.4.1 the constitution and governance of the WCBS, the rights and obligations of the members and the appointment, duties, powers and privileges of the directors and all officers of the WCBS, and of the committees and subcommittees of the WCBS, shall be such as may from time to time be prescribed or determined by or in accordance with the Rules; and

7.4.2 the Rules may from time to time be added to, amended or altered or repealed by the Board in the manner prescribed in the Rules: provided that no Rule shall be made under this power which would amount to an addition to or alteration of this Mol as could only legally be made by special resolution.

7.5 The Board must publish any Rules made in terms of section 15 (3) to (5) of the Act and any proposed alterations to the Mol to be made in terms of section 17 (1) of the Act. The proposed alterations to the Rules or the Mol shall be made available to each director and shall be published on the website of the WCBS for the information of the members.

8. OPTIONAL PROVISIONS OF THE ACT WHICH DO APPLY

Except as otherwise provided for herein, the WCBS does not elect, in terms of section 34 (2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act. However, the WCBS shall comply with Chapter 3 of the Act to the extent required in terms of the Act and regulations to the Act.

9. DONOR PANEL

The Board shall, in furtherance of the objects of the WCBS and subject to the Mol, determine the means in respect of which a donor panel shall be constituted.

10. MEMBERSHIP

10.1 Number of members

For the purpose of registration and in general unless and until otherwise lawfully determined, the number of members of the WCBS is to be taken as being unlimited.

10.2 Nomination and appointment of members

10.2.1 The Board shall from time to time, invite donors in writing by means of notices on its website and at its office and other venues as determined by the Board, to nominate persons to represent a donor panel as members.

10.2.2 Each donor panel shall be represented by 1 (one) member.

10.2.3 If only one person is nominated by a donor panel, such person shall be deemed to be duly elected as a member unless the Board, by giving written notice (setting out the reasons) to the person so nominated and to the donor panel which nominated the said person, objects to the nomination of such person. The Board shall consider any representations by or on behalf of the person nominated or the donor panel which nominated the person and the Board shall then, on reasonable grounds, make a determination about the suitability of the person to serve as a member.

10.2.4 If a donor panel entitled to nominate a member fails to nominate a person to serve as a member, the Board shall be entitled to appoint a suitable person to represent such donor panel as a member.

10.2.5 If, in accordance with paragraph 10.2.2, a donor panel nominates more persons to serve as members than there are vacant posts, the Board shall be entitled to appoint a suitable person(s) to represent such donor panel from the persons so nominated.

10.2.6 Members, other than honorary members and/ or members who are also directors, shall serve for a period of 4 (four) years and shall be eligible for nomination and/or re-appointment as members.

10.3 Honorary members

- 10.3.1 Subject to the provisions of paragraphs 10.3.2 and 10.3.3, honorary members shall be appointed at an annual general meeting of the WCBS.
- 10.3.2 At least 30 (thirty) calendar days prior to an annual general meeting, the Board shall receive, consider and approve nominations for the appointment of honorary members and the Board shall present such nominees as approved by the Board for appointment by the members at the annual general meeting.
- 10.3.3 The Board may from time to time adopt Rules regarding the nomination and appointment of honorary members, including requirements which must be satisfied by any nominee for appointment as an honorary member. Any such Rules adopted by the Board shall be binding on the WCBS.
- 10.4 Any person elected or appointed as a director shall *ex officio* be a member of the WCBS.
- 10.5 Voting rights of members
 - 10.5.1 The WCBS shall have two classes of members, being voting members and non-voting members.
 - 10.5.2 Members who are also employees of the WCBS shall not have any voting rights.
 - 10.5.3 Each of the other members (i.e. members who are not also employees of the WCBS) shall have an equal vote in any matter to be decided by members of the WCBS.
- 10.6 Rights of members are personal only

The rights and privileges of every member shall be personal to such member, and shall not be transferable or transmissible.

10.7 Cessation of membership

10.7.1 A member shall cease to be a member, in the following circumstances:

- (a) if such member dies;
- (b) if by notice in writing to the WCBS, such member resigns; or
- (c) if by resolution of the Board in accordance with paragraph 11, such member's name is removed from the Register.

10.7.2 Persons who cease to be members in accordance with this paragraph, shall cease, both directly and indirectly, expressly or impliedly, to hold themselves out as being members.

10.7.3 Should any person disregard the provisions of paragraph 10.7.2, the WCBS shall be entitled to apply to any court of competent jurisdiction for an appropriate interdict against such person, together with a prayer regarding costs of the proceedings. Such costs to be on the scale as between attorney and own client.

11. REGISTER OF MEMBERS

11.1 The WCBS shall maintain a register, in the form of an electronic database, wherein shall be entered the name and contact details of every member of the WCBS.

11.2 The WCBS shall regularly update the Register and remove the names of persons who ceased to be members in accordance with paragraph 10.7.

11.3 Removal from Register

Subject to the MoI and the Rules, the Board shall have the power to remove the name of any person from the Register: provided that no person's name shall be removed from the Register except pursuant to a Board resolution which complies with the following prerequisites:

- 11.3.1 not less than 75% of the total number of directors shall be present at the Board meeting;
- 11.3.2 the resolution must be passed by a majority of at least 75% of the directors present in person at the Board meeting;
- 11.3.3 not less than 14 (fourteen) calendar days' written notice of the Board meeting and its purposes shall be sent to the member whose name the Board proposes to remove from the Register and such member shall be given an opportunity to be heard at the Board meeting; and
- 11.3.4 the resolution shall only be adopted after the representations (if any) made by the member referred to in this paragraph have been duly considered.

12. MEMBERS' MEETINGS

12.1 General and annual general meetings

- 12.1.1 The WCBS shall, at such time and place as may be prescribed by the Board, hold an annual general meeting at least once in every calendar year, if possible and practical not later than 6 months after the end of the financial year of the WCBS, but in any event no more than 15 months after the previous annual general meeting. WCBS shall, as may be prescribed by the Board, hold any other general meeting as may be required.
- 12.1.2 The business of an annual general meeting shall be to receive and consider the income and expenditure account and balance sheet, the reports of the Board and of the auditors, to elect directors, to appoint auditors, to consider any motion proposed by the Board or any member and any other business which ought to be transacted at an annual general meeting in terms of the Mol, including any matter pertaining to the objects and business of the WCBS. The business of any other general meeting shall be called and conducted in terms of this Mol and the Act.

- 12.1.3 The WCBS shall call a members' meeting if not less than 50% of members of the WCBS signed a written demand for such meeting, which was delivered to the WCBS and such demand describes the specific purpose for which the meeting is proposed.
- 12.1.4 The WCBS, or any member, may apply to a court for an order setting aside a demand made in terms of paragraph 12.1.3 on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the members, or is otherwise vexatious.
- 12.1.5 At any time before the start of the meeting contemplated in paragraph 12.1.3 -
- (a) members who submitted a demand for that meeting may withdraw that demand; and
 - (b) the WCBS must cancel the meeting if, as a result of one or more demands being withdrawn, the remaining members continuing to demand the meeting, in aggregate, fall below the minimum percentage of members required to call a meeting.
- 12.1.6 If the WCBS fails to convene a meeting demanded in accordance with paragraph 12.1.3, a member may apply to a court for an order requiring the WCBS to convene a meeting on a date, and subject to any terms, that the court considers appropriate in the circumstances.
- 12.1.7 A members' meeting for purposes of adopting a special resolution may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 5% of all the voting rights that are entitled to be exercised in respect of the special resolution to be adopted.
- 12.1.8 The special resolution to amend the Mol shall comply with the provisions of the Act and the Mol applicable to members' meetings and the adoption of special resolutions.

12.2 Location of members' meetings

Subject to the Rules, all members' meetings shall be held at such place or places as the Board shall from time to time appoint.

12.3 Notice of members' meetings

12.3.1 The WCBS must deliver a notice of each members' meeting in the prescribed manner and form to all of the members as of the record date for the meeting, not less than 10 (ten) business days before the meeting is to begin.

12.3.2 The WCBS may call a members' meeting with less notice than required by paragraph 12.3.3, but such a meeting may proceed only if every member is present at the meeting and votes to waive the required minimum notice of the meeting.

12.3.3 A notice of a members' meeting must be in writing, and must include –

- (a) signature of or have printed at the foot thereof, the name of a director or the company secretary;
- (b) in the case of a meeting convened by requisition in accordance with the Mol or Rules, the signature of or have printed at the foot thereof, the names of members convening the meeting or a majority of them;
- (c) the date, time and place for the meeting, and the record date for the meeting;
- (d) the general purpose of the meeting, and any specific purpose contemplated in paragraph 12.1.3 (if applicable);
- (e) a copy of any proposed resolution of which the WCBS has received notice, and which is to be considered at the meeting,

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

- (f) in the case of an annual general meeting:
 - (i) the financial statements to be presented or a summarised form thereof; and
 - (ii) directions of obtaining a copy of the complete annual financial statements for the preceding financial year;
- (g) a reasonably prominent statement that a member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the member, a proxy need not also be a member, and that meeting participants may be required to provide satisfactory identification.

12.3.4 If there was a material defect in the giving of the notice of a members' meeting, the meeting may proceed, subject to paragraph 12.3.5, only if every member is present at the meeting and votes to approve the ratification of the defective notice.

12.3.5 If a material defect in the form or manner of giving notice of a meeting relates only to one or more particular matters on the agenda for the meeting, any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and the meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of paragraph 12.3.4.

12.3.6 An immaterial defect in the form or manner of giving notice of a members' meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular member to whom it was addressed, does not invalidate any action taken at the meeting.

12.3.7 A member who is present at a meeting, either in person or by proxy –

- (a) is regarded as having received or waived notice of the meeting, if at least the required minimum notice was given; and
- (b) has a right to allege a material defect in the form of notice for a particular item on the agenda for the meeting and to participate in the determination whether to waive the requirements for notice if less than the required minimum notice was given, or to ratify a defective notice; and
- (c) except to the extent set out in paragraph 12.3.7(b), is regarded as having waived any right based on an actual or alleged defect in the notice of the meeting.

12.3.8 A notice may be given by the WCBS to any member either electronically or personally or by faxing it or sending it by registered post in a prepaid letter, envelope, or wrapper, addressed to such member at his/her registered address or failing such, to his/her last known address.

12.3.9 Any notice sent by registered post shall be deemed to have been delivered 7 (seven) calendar days after the letter, envelope or wrapper containing the same is posted, as recorded by the post office.

12.3.10 Any notice sent by fax or electronic mail shall be deemed to have been delivered on the date and at the time recorded by the fax receiver or computer used by the sender (whichever is applicable).

12.3.11 Where a given number of days' notice, or a notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or other period.

12.4 Appointment of a proxy

12.4.1 At any time, a member may appoint a proxy to participate in, and speak and vote at, a members' meeting on behalf of the member or

give or withhold written consent on behalf of the member to a decision.

- 12.4.2 A proxy appointment must be in writing, dated and signed by the member and remains valid for one year after the date on which it was signed or such other period expressly set out in the appointment: unless it is revoked in a manner contemplated in paragraph 12.4.6, or expires earlier as contemplated in paragraph 12.4.7.
- 12.4.3 A member may not appoint two or more persons concurrently as proxies.
- 12.4.4 A proxy may not delegate the proxy's authority to act on behalf of the member to any other person, other than the chairperson of the meeting.
- 12.4.5 A copy of the instrument appointing a proxy must be delivered to the WCBS before the meeting commences and before the proxy exercises any rights of the member at a members' meeting.
- 12.4.6 Irrespective of the form of instrument used to appoint a proxy –
- (a) the appointment is suspended at any time and to the extent that the member chooses to act directly and in person in the exercise of any rights as a member;
 - (b) the appointment is revocable unless the proxy appointment expressly states otherwise; and
 - (c) if the appointment is revocable, a member may revoke the proxy appointment by cancelling it in writing, or making a later inconsistent appointment of a proxy and delivering a copy of the revocation instrument to the proxy, and to the WCBS.
- 12.4.7 The revocation of a proxy appointment constitutes a complete and final cancellation of the proxy's authority to act on behalf of the member as of the later of-

- (a) the date stated in the revocation instrument, if any; or
- (b) the date on which the revocation instrument was delivered as required in paragraph 12.4.6(c).

12.4.8 If the instrument appointing a proxy or proxies has been delivered to the WCBS in accordance with paragraph 12.4.5, as long as that appointment remains in effect, any notice that is required by the Act or the Mol to be delivered by the WCBS to the member must be delivered by the WCBS to the member or the proxy, if the member has directed the WCBS to do so, in writing and paid any reasonable fee charged by the WCBS for doing so.

12.4.9 A proxy is entitled to exercise, or abstain from exercising, any voting right of the member without direction, except to the extent that the Mol, or the instrument appointing the proxy, provides otherwise.

12.4.10 If the WCBS issues an invitation to members to appoint a person named by the WCBS as a proxy, or supplies a form of instrument for appointing a proxy –

- (a) the invitation shall be sent to every member who is entitled to notice of the meeting at which the proxy is intended to be exercised;
- (b) the invitation, or form of instrument for the purpose of appointing a proxy, shall bear a reasonably prominent summary of the rights established by this paragraph 12.4, contain adequate blank space, immediately preceding the name or names of any person named in it, to enable a member to write in the name and, if so desired, an alternative name of a proxy chosen by the member; and provide adequate space for the member to indicate whether the appointed proxy is to vote in favour of or against any resolution or resolutions to be put at the meeting, or is to abstain from voting;

- 12.4.11 The WCBS must not require that the proxy appointment be made irrevocable.
- 12.4.12 The proxy appointment remains valid only until the end of the meeting at which it was intended to be used.
- 12.4.13 Paragraphs 12.4.10(b) and 12.4.11 do not apply if the WCBS merely supplies a generally available standard form of proxy appointment on request by a member.
- 12.4.14 Notwithstanding any other provision of this Mol, the Board shall be entitled to determine in advance of any members' meeting whether a member shall be entitled to give a general mandate to a proxy or whether the mandate shall be required to be specific in nature.
- 12.4.15 The notice of a meeting shall specify whether the mandate given to a proxy may be general in nature or whether the mandate shall be required to be of a specific nature.
- 12.4.16 A mandate to a proxy shall be substantially in the following format with substantially the wording set out below:

"I/We..... (full names and identity number) of (address), a member of the WCBS, hereby appoint (full names and identity number) of (address) as my/our proxy to attend and vote my/our behalf at the annual general meeting or general meeting (which ever is applicable) of the WCBS to be held on (date of the meeting) or any postponement or adjournment and to vote as follows:

	In favour of	Against	Abstain
Resolved to (number of resolution)			

Resolved to (number of resolution)			
Resolved to (number of resolution)			

Indicate instruction to proxy by inserting a cross under the applicable heading.

If no specific instructions are given, my proxy may vote as he/she wishes.”

12.5 No electronic participation in members’ meetings

The WCBS is prohibited from providing for a members’ meeting to be conducted entirely by electronic communication and the WCBS is further prohibited from providing for one or more members to participate in a members’ meeting by electronic communication.

12.6 Chairperson of members’ meeting

12.6.1 The chairperson of the Board, or in his/her absence or if he/she shall be unwilling to act, the deputy chairperson, shall take the chair at every members’ meeting.

12.6.2 If neither the chairperson of the Board or the deputy chairperson is present or willing to act as the chairperson of a members’ meeting within fifteen minutes after the time appointed for the commencement of such meeting, the members personally present shall choose another member (preferably a director), to take the chair at the members’ meeting.

12.7 Voting at members’ meetings

12.7.1 At a meeting of members, voting may either be by show of hands, or by polling.

- 12.7.2 A voting member shall not be entitled to vote at any meeting of members unless such voting member has confirmed his/her identity to the satisfaction of the Board.
- 12.7.3 Any voting member who is present at the meeting, whether as a voting member or as proxy for a voting member, has one vote, irrespective of whether voting is by show of hands or polling.
- 12.7.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded.
- 12.7.5 Any poll duly demanded on the election of a chairperson of a meeting or on any question of adjournment shall be taken at the meeting without adjournment.
- 12.7.6 In the case of an equality of votes, both on a show of hands or on a poll, the chairperson of the particular members' meeting shall have a casting vote in addition to the vote or votes to which the chairperson may be entitled as a voting member.
- 12.7.7 A declaration by the chairperson that a resolution has been passed or not been passed, or passed by a particular majority or not passed by a particular majority, and an entry to that effect in the minute book of the WCBS, shall be conclusive evidence of the vote, without proof of the number or proportion of the votes recorded in favour of or against a resolution.

12.8 Quorum at members' meetings

- 12.8.1 A members' meeting may not begin until sufficient persons (in person or by proxy) are present at the meeting to exercise, in aggregate, at least 3% of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting and a matter to be decided at the meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 3% of all of the voting rights that are entitled to be

exercised on that matter at the time the matter is called on the agenda.

12.8.2 If, within one hour after the appointed time for a meeting to begin, the requirements of paragraph 12.8.1 -

(a) for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week;

(b) for consideration of a particular matter to begin have not been satisfied –

(i) if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or

(ii) if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.

12.8.3 The person intended to preside at a meeting that cannot begin due to the operation of paragraph 12.8.1, may extend the one-hour limit allowed in paragraph 12.8.2 for a reasonable period on the grounds that -

(a) exceptional circumstances affecting weather or transportation have generally impeded or are generally impeding the ability of members to be present at the meeting; or

(b) one or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members, together with others in attendance, would satisfy the requirements of paragraph 12.8.1.

12.8.4 The WCBS shall not be required to give further notice of a meeting that is postponed or adjourned in terms of paragraph 12.8.2 (2), unless the location for the meeting is different from the location of the

adjourned meeting or a location announced at the time of adjournment, in the case of an adjourned meeting.

- 12.8.5 If, at the time appointed in terms of this paragraph for an adjourned meeting to begin, or for an adjourned meeting to resume, the requirements of paragraph 12.8.1 have not been satisfied, the members present in person or by proxy will be deemed to constitute a quorum as determined by section 64(8) of the Act.
- 12.8.6 After a quorum has been established for meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one member is present at the meeting.
- 12.8.7 A members' meeting, or the consideration of any matter being debated at the meeting, may be adjourned from time to time without further notice (to a fixed time and place or until further notice) on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under debate, as the case may be.
- 12.8.8 A members' meeting may not be adjourned beyond the earlier of the date that is 120 business days after the record date or the date that is 60 business days after the date on which the adjournment occurred.

13. MEMBERS' RESOLUTIONS

13.1 Types of members' resolutions

Every resolution of members is either an ordinary resolution or a special resolution.

13.2 Proposal and form of resolutions

- 13.2.1 The Board may propose any resolution to be considered by the members.
- 13.2.2 Any two members may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights and when proposing a resolution, may require that the resolution be submitted to members for consideration -
- (a) at a meeting demanded in terms of paragraph 12.1.3;
 - (b) at the next members' meeting; or
 - (c) by written vote in terms of section 60 of the Act.
- 13.2.3 A proposed resolution must be expressed with sufficient clarity and specificity and accompanied by sufficient information or explanatory material to enable a member who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution.
- 13.2.4 At any time before the start of the meeting at which a resolution will be considered, a member or Board who believes that the form of the resolution does not satisfy the requirements of paragraph 13.2.3 may seek leave to apply to a court for an order restraining the WCBS from putting the proposed resolution to a vote until the requirements of paragraph 13.2.3 are satisfied and requiring the WCBS, or the members who proposed the resolution, as the case may be, to take appropriate steps to alter the resolution so that it satisfies the requirements of paragraph 13.2.3 and compensate the applicant for costs of the proceedings, if successful.
- 13.2.5 Once a resolution has been approved, it may not be challenged or impugned by any person in any forum on the grounds that it did not satisfy paragraph 13.2.3.

13.3 Ordinary resolutions

For an ordinary resolution to be approved by members, it must be supported by more than 50% of the voting rights exercised on the resolution.

13.4 Special resolutions

13.4.1 For a special resolution to be approved by members, it must be supported by at least 75% of the voting rights exercised on the resolution.

13.4.2 A special resolution is required for the purposes set out in section 65 (11) of the Act.

13.4.3 A special resolution is required to –

- (a) amend the company's Memorandum of Incorporation to the extent required by section 16(1)(c) and section 36(2)(a) of the Act;
- (b) ratify a consolidated revision of a company's Memorandum of Incorporation, as contemplated in section 18(1)(b) of the Act;
- (c) ratify actions by the company or directors in excess of their authority, as contemplated in section 20(2) of the Act;
- (d) approve the voluntary winding up of the company, as contemplated in section 80(1) of the Act;
- (e) approve the winding up of a company in the circumstances contemplated in section 81(1) of the Act; or
- (f) approve any proposed fundamental transaction, to the extent required by item 2 of Schedule 1 to the Act.

14. BOARD

14.1 Authority of the Board

The business and affairs of the Board must be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the WCBS, except to the extent that the Act or this Mol provides otherwise.

14.2 Composition of the Board

14.2.1 The Board shall comprise of a minimum of 3 directors and a maximum of 14 directors, which shall include:

- (a) a maximum of 10 non-executive directors, to be elected by the members in accordance with the provisions of paragraph 14.3;
- (b) a maximum of 4 executive directors, who are employees of the WCBS and are appointed by the Board (in its sole discretion) from time to time.

14.2.2 The election or appointment of a person as a director is a nullity if, at the time of the election or appointment, that person is ineligible or disqualified.

14.3 Election of non-executive directors

14.3.1 The Board shall, not less than 21 (twenty one) calendar days prior to an annual general meeting, give notice to members to invite members to propose to the Board persons for nomination as directors at the next annual general meeting.

14.3.2 Any proposal as set out above shall be submitted to the Board by not later than 14 (fourteen) days from the date of the notice inviting proposals, on a form prescribed by the Board, and shall contain the curriculum vitae of the person proposed for nomination and the names and signatures of the proposer and the seconder and name and consent of the person proposed.

- 14.3.3 The Board shall take into account the proposals received from members and thereafter in the discretion of the Board, prepare a list of persons nominated by the Board for election as directors.
- 14.3.4 At the annual general meeting, the nominations shall be read by a person appointed by the chair and a proposer or his representative shall be invited to speak to a nomination by the relevant proposer.
- 14.3.5 In the event that there are more nominations than vacancies, an election by secret ballot shall be conducted at the annual general meeting.
- 14.3.6 Notwithstanding the foregoing, no person who is an employee or who was an employee of the WCBS may, after the adoption of this Mol, be nominated and/ or appointed as a non-executive director unless such person was a non-executive director prior to the adoption of this Mol or unless such person's employment with the WCBS terminated at least 3 (three) years prior to the earlier of such nomination and/ or appointment.

14.4 Election of chairperson and deputy chairperson of the Board

The Board shall, from the members of the Board, elect the chairperson and deputy chairperson of the Board for a 3 (three) year term of office, it being understood that upon adoption of this Mol, the terms of office of the chairperson and deputy chairperson of the Board shall be calculated with effect from the dates of their respective elections as such prior to adoption of this Mol.

14.5 Terms of office of directors

14.5.1 The non-executive directors shall retire annually by rotation in accordance with paragraphs 14.5.2 and 14.5.3 but a retiring non-executive director shall be eligible for nomination and re-election.

14.5.2 In order to regularise the terms of office of the non-executive directors, for a period of 3 (three) years after the adoption of this Mol:

- (a) at the Board meeting immediately preceding the annual general meeting of the WCBS (provided that such Board meeting is held at least more than 21 (twenty one) calendar days prior to the annual general meeting), 3 (three) of the non-executive directors (chosen by lot) shall retire from office;
- (b) in the second year after the adoption of this Mol, a further 3 (three) non-executive directors (again chosen by lot, but excluding those previously so chosen) shall retire in the manner set out in paragraph 14.5.2 (a);
- (c) in the third year after the adoption of this Mol, the remaining 4 (four) or less non-executive directors shall retire in the manner set forth in paragraphs 14.5.2 (a) and (b).

14.5.3 Following the period of 3 (three) years after the adoption of this Mol (as referred to in paragraph 14.5.2): at the Board meeting immediately preceding the annual general meeting of the WCBS (provided that such meeting is held at least more than 21 (twenty one) calendar days prior to the annual general meeting), one third of the non-executive directors (or if the number of directors at any given time is not divisible three, not less than one third) shall retire from office on the basis that the non-executive directors to retire in each year shall be those who shall have been the longest in office since their appointment or re-appointment (whichever is the later).

14.5.4 The executive directors shall not have a prescribed term of office.

14.6 Ineligibility and disqualification of persons to be directors

14.6.1 A person who is ineligible or disqualified, as set out in this paragraph, must not -

- (a) be appointed or elected as a director of the WCBS; or
- (b) act as a director of the WCBS.

- 14.6.2 The WCBS shall not knowingly permit an ineligible or disqualified person to serve or act as a director of the WCBS.
- 14.6.3 A person who becomes ineligible or disqualified while serving as a director of the WCBS ceases to be entitled to continue to act as such immediately.
- 14.6.4 A person is ineligible to be a director of the WCBS if the person does not satisfy the requirements of the Act and/or any qualification set out in the Mol.
- 14.6.5 A person is disqualified to be a director of the WCBS if -
- (a) a court has prohibited that person to be a director of a company, or declared the person to be delinquent in terms of the Act; or
 - (b) subject to the Act, the person -
 - (i) is an unrehabilitated insolvent;
 - (ii) is prohibited in terms of any public regulation to be a director of the WCBS;
 - (iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
 - (iv) has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence involving fraud, misrepresentation or dishonesty;
 - (c) the person ceases to be a member of the WCBS.

14.7 Standard of directors' conduct

14.7.1 A director of a company must-

- (a) not use the position of director, or any information obtained while acting in the capacity of a director-
 - (i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or
 - (ii) to knowingly cause harm to the company or a subsidiary of the company; and
- (b) communicate to the Board at the earliest practicable opportunity any information that comes to the director's attention, unless the director-
 - (i) reasonably believes that the information is-
 - (aa) immaterial to the company; or
 - (bb) generally available to the public, or known to the other directors; or
 - (ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.

14.7.2 Subject to paragraphs 14.7.3 and 14.7.4, a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director-

- (a) in good faith and for a proper purpose;
- (b) in the best interests of the company; and
- (c) with the degree of care, skill and diligence that may reasonably be expected of a person-

- (i) carrying out the same functions in relation to the company as those carried out by that director; and
- (ii) having the general knowledge, skill and experience of that director.

14.7.3 In respect of any particular matter arising in the exercise of the powers or the performance of the functions of director, a particular director of a company-

- (a) will have satisfied the obligations of subsection (b) and (c) if-
 - (i) the director has taken reasonably diligent steps to become informed about the matter;
 - (ii) either-
 - (aa) the director had no material personal financial interest in the subject matter of the decision, and had no reasonable basis to know that any related person had a personal financial interest in the matter; or
 - (bb) the director complied with the requirements of section 75 with respect to any interest contemplated in subparagraph (aa); and
 - (iii) the director made a decision, or supported the decision of a committee or the Board, with regard to that matter, and the director had a rational basis for believing, and did believe, that the decision was in the best interests of the company; and
- (b) is entitled to rely on-
 - (i) the performance by any of the persons-

(aa) referred to in subsection 14.7.4; or

(bb) to whom the Board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the Board's functions that are delegable under applicable law; and

(ii) any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in paragraph 14.7.4.

14.7.4 To the extent contemplated in paragraph 14.7.3(b), a director is entitled to rely on-

(a) one or more employees of the company whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(b) legal counsel, accountants, or other professional persons retained by the company, the Board or a committee as to matters involving skills or expertise that the director reasonably believes are matters-

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) the particular expertise of a committee of the Board of which the director is not a member, unless the director has reason to believe that the actions of the committee do not merit confidence.

14.8 Vacancies on the Board

14.8.1 Subject to paragraph 14.8.2, a person ceases to be a director of the WCBS and a vacancy arises on the Board -

- (a) when the person's term of office as director expires; or
- (b) in any case, if the person-
 - (i) resigns or dies;
 - (ii) in the case of an *executive* director, ceases to be an employee of the WCBS;
 - (iii) becomes incapacitated to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time;
 - (iv) is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the WCBS in terms of the Act;
 - (v) becomes ineligible or disqualified in terms of paragraph 14.6.4 or 14.6.5; or
 - (vi) is removed -
 - (aa) by resolution of the members in terms of paragraph 14.9;
 - (bb) by resolution of the Board in terms of paragraph 14.9; or
 - (cc) by order of the court.

14.8.2 If a vacancy arises on the Board, other than as a result of an *executive* director ceasing to hold that office, the vacancy shall be filled by the Board in accordance with the following provisions:

- (a) the appointment shall be ratified at the next annual general meeting of the WCBS;
- (b) any member appointed to fill a casual vacancy shall only hold office for the remainder of the period for which the vacating director would have retained office if no vacancy had occurred;
- (c) any member appointed to fill a casual vacancy shall be eligible for re-election; and
- (d) the Board may at any time appoint a member to fill a casual vacancy.

14.9 Removal of a director

14.9.1 A director may be removed by an ordinary resolution adopted at a members' meeting.

14.9.2 Before the members may consider a resolution contemplated in paragraph 14.9.1 -

- (a) the director concerned must be given not less than 10 business days' notice of the meeting and the resolution, at least equivalent to that which a member is entitled to receive; and
- (b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.

14.9.3 If a member or director has alleged that a director of the WCBS -

- (a) has become -
 - (i) ineligible or disqualified in terms of the Act and/ or paragraph 14.6.4 or 14.6.5; or

(ii) incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

(b) has neglected, or been derelict in the performance of, the functions of a director,

the Board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

14.9.4 Before the Board may consider a resolution contemplated in paragraph 14.9.3, the director concerned must be given -

(a) not less than 10 (ten) business days' notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and

(b) a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

14.10 Authority of the Board to act notwithstanding vacancies

Any failure by the WCBS at any time to have the minimum number of directors required by the Mol, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the WCBS

15. POWERS OF THE BOARD

15.1 General powers of the WCBS vested in the Board

15.1.1 The business of the WCBS shall be managed by the Board.

- 15.1.2 In addition to the powers and authorities expressly conferred upon the Board by the Mol and the Rules, the Board may exercise all such powers and do all such acts and things as may be exercised or done by the WCBS and which are not hereby or by the Act directed or required to be exercised or done by the members of the WCBS in general meeting.
- 15.1.3 The exercise of any power or authority by the Board shall be subject to the provisions of the Act, the Mol, the Rules and to any direction from time to time resolved upon by the members of the WCBS in general meeting: provided that no such direction from the members of the WCBS shall invalidate any prior act of the Board which would have been valid if such direction had not subsequently been resolved upon.

15.2 Specific powers given to Board

Without prejudice to the general powers conferred upon the Board by paragraph 15.1 and without prejudice to the other powers conferred upon the Board by the Act or the Mol, it is hereby expressly declared that the Board shall have the following powers:

- 15.2.1 property: subject to the provisions of any law, to purchase, hire or otherwise acquire for the WCBS any property, rights, or privileges which the WCBS is authorised to acquire at or for such price or consideration and generally on such terms and conditions as the Board may think fit and to let, sell, hypothecate or mortgage the same, as may be deemed expedient in the interests of the WCBS;
- 15.2.2 employees: subject to compliance with the relevant labour laws and the Act, to appoint and remove or suspend employees, determine their duties and powers, fix their salaries or emoluments and to such amount(s) as the Board may from time to time determine;
- 15.2.3 security by way of indemnity: to execute in the name and on behalf of the WCBS in favour of any member, or other person who may incur

or be about to incur any personal liability for the benefit of the WCBS, such mortgages or hypothecations of the property of the WCBS (both present and/ or future) as the Board shall think fit, and any such mortgage may contain such conditions and provisions as shall be agreed upon;

15.2.4 delegate powers to committees: to delegate any of the powers of Board to committees consisting of such members of their body as the Board may deem fit;

15.2.5 borrow money: subject to the Act to raise any loan or loans for the purposes of the WCBS in any manner, upon any security, including the pledge, mortgage or hypothecation of the property of the WCBS (both present and/or future) and on terms authorised by such meeting,;

15.2.6 pay travelling expenses: to pay out of pocket travelling expenses to directors, members of committees, and salaried staff when travelling on the business of the WCBS;

15.2.7 publish literature: to establish, print, publish, issue and circulate any of the papers, journals, books, magazines, periodicals, circulars, newspapers, leaflets, calendars or other literary or scientific works as referred to in the objects of the WCBS. Copies thereof may be sold and distributed at such prices and on such terms as may from time to time be determined by the Board;

15.2.8 act for the WCBS: subject to the Act and the MoI, to do all other lawful things that Board may consider to be in the best interest or good management of the WCBS or the promotion of its objects.

16. PROCEEDINGS AT BOARD MEETINGS

16.1 Meetings of the Board

16.1.1 The Board shall meet at least 4 (four) times a year on such occasions and at such times and places as it may think fit, and may adjourn or

otherwise regulate its meetings in its discretion provided that it shall meet at least once a year.

16.1.2 The chairperson or deputy chairperson of the Board -

(a) may call a meeting of the Board at any time; and

(b) must call such a meeting if required to do so by at least 25% of the directors.

16.1.3 The Board may appoint such observers as it may from time to time deem appropriate.

16.1.4 The Board shall be entitled to solicit, receive and consider the opinions (in person and/or in writing) of experts if and when required by the Board. The fact that any director shall be a member or director of a firm, partnership or company providing such expertise to the WCBS, shall not debar the Board from contracting any such firm or company in its professional or similar capacity nor shall it debar such firm or company from charging against the WCBS the normal professional charges, brokerage or other remuneration for any services rendered by such firm or company on behalf of the WCBS.

16.2 Electronic participation at meetings

One or more persons may participate in a meeting by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

16.3 Notice of meetings

16.3.1 The Board may determine the form and time for giving notice of its meetings, but -

(a) such a determination must comply with any requirements set out in the Mol, or Rules; and

(b) no Board meeting may be convened without notice to all of the directors, subject to paragraph 16.3.3.

16.3.2 Not less than 5 (five) calendar days' notice shall be issued to directors in respect of any Board meeting. Such notice shall include information as to the time and place of the meeting and the business to be considered. Notwithstanding the foregoing, if in the opinion of the chairperson of the WCBS or any three members of the Board, as the case may be, a case of emergency has arisen, a meeting may be convened on short notice and no business shall be transacted other than that for which such emergency meeting was called, unless with the unanimous consent of the directors present.

16.3.3 Except as otherwise provided by the MoI or Rules, if all of the directors:

(a) acknowledge actual receipt of the notice;

(b) are present at a meeting; or

(c) waive notice of the meeting,

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

16.4 Quorum for Board meetings

The number of directors required to form a quorum shall be 4 (four) directors present in person or by proxy, of whom at least 3 (three) shall be non-executive directors and at least 1 (one) shall be an executive director.

16.5 Voting at Board meetings

16.5.1 At meetings of the Board each director shall have 1 (one) vote.

16.5.2 Voting shall be by way of confidential ballot, unless otherwise determined by the chairperson of the WCBS.

16.5.3 Observers appointed in accordance with paragraph 16.1.3 shall have no voting rights.

16.5.4 In the event of an equality of votes, the chairperson shall have a second (ie a casting) vote.

16.6 Chairperson of Board

The chairperson of the WCBS, or in his/her absence or if he/she is unable to act, the deputy chairperson, shall take the chair at such meetings of the Board as he/she shall attend. Should neither the chairperson nor the deputy chairperson be present and able to act, the directors present shall choose someone of their number to chair such meeting.

16.7 Decisions at meetings of Board

16.7.1 Voting shall be by way of confidential ballot as set out above.

16.7.2 A majority of the votes (more than 50%) cast on an ordinary resolution is sufficient to approve any resolution of the Board.

16.7.3 In the case of a tied vote -

(a) the chairperson may cast a deciding vote, in addition to the vote already cast by the chair in accordance with paragraph 16.5; or

(b) the matter being voted on fails, in any other case.

17. BOARD COMMITTEES

17.1 The Board may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may include persons who are not directors, but no such person shall have a vote on a matter to be decided by the committee.

- 17.2 No person shall be appointed or act as a member of a Board committee, if he is ineligible or disqualified from being a director of the WCBS and any such appointment shall be a nullity. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 17.3 Committees of the Board may consult with or receive advice from any person.
- 17.4 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) person shall be governed by the provisions of this MoI regulating the meetings and proceedings of directors.
- 17.5 Audit committee
- 17.5.1 The Board shall annually elect an audit committee.
- 17.5.2 The audit committee must comprise not less than 2 (two) persons who are not executive directors.
- 17.5.3 The function of the audit committee shall be to review the draft annual financial statements of the WCBS before finalisation thereof and generally to review the financial affairs of the WCBS.
- 17.5.4 The audit committee shall operate in an advisory capacity.
- 17.5.5 The audit committee shall meet at least twice per annum.
- 17.6 Social and ethics committee
- 17.6.1 The WCBS shall appoint a social and ethics committee if required to do so by the provisions of the Act.
- 17.6.2 The social and ethics committee must comprise not less than 3 (three) directors or prescribed officers, at least 1 (one) of whom must be a director who is not involved in the day-to-day management of the WCBS's business, and must not have been so involved within the previous 3 (three) financial years.

17.6.3 The social and ethics committee has the following functions –

- (a) to monitor the WCBS' activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to –
 - (i) social and economic development, including the WCBS' standing in terms of the goals and purposes of –
 - (aa) the 10 (ten) principles set out in the United Nations Global Compact Principles;
 - (bb) the OECD recommendations regarding corruption;
 - (cc) the Employment Equity Act; and
 - (dd) the Broad-Based Black Economic Empowerment Act;
 - (ii) good corporate citizenship, including the WCBS' –
 - (aa) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
 - (bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
 - (cc) record of sponsorship, donations and charitable giving;
 - (iii) the environment, health and public safety, including the impact of the WCBS' activities and of its products or services;

- (iv) consumer relationships, including the WCBS' advertising, public relations and compliance with consumer protection laws; and
- (v) labour and employment, including –
 - (aa) the WCBS' standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
 - (bb) the WCBS' employment relationships, and its contribution toward the educational development of its employees;
- (b) to draw matters within its mandate to the attention of the Board as occasion requires;
- (c) to report, through one of its committee members, to the members at the annual general meeting on the matters within its mandate.

17.6.4 The social and ethics committee is entitled to –

- (a) require from any director or prescribed officer any information or explanation necessary for the performance of the committee's functions;
- (b) request from any employee of the WCBS any information or explanation necessary for the performance of the committee's functions;
- (c) attend any members' meeting;
- (d) receive all notices of and other communications relating to any members' meeting; and

- (e) be heard at any members' meeting on any part of the business of the meeting that concerns the committee's functions.

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

18. MINUTES OF MEETINGS

18.1 Minutes shall be duly kept for the purpose:

- (a) of all appointments of officers;
- (b) of the names of the persons present at each meeting of the Board or members' meeting;
- (c) of all orders made or directions given by the Board or a members' meeting; and
- (d) of all resolutions and proceedings of general meetings of the WCBS, and of meetings of the Board and committees of the Board,

and any such minutes of any meeting of the WCBS or of the Board, or of any committee of the Board, if purporting to be signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting, shall constitute *prima facie* evidence of the matters stated in such minutes.

18.2 The minutes of the Board meetings and general meetings shall be duly entered in books provided for the purpose.

19. THE COMPANY SECRETARY

19.1 The WCBS shall appoint a company secretary.

19.2 The company secretary must -

- 19.2.1 have the requisite knowledge of, or experience in, relevant laws; and
 - 19.2.2 be a permanent resident of the Republic, and remain so while serving in that capacity.
- 19.3 The first company secretary of the WCBS must be appointed within 40 (forty) business days after the date on which the requirement first applies to the company.
- 19.4 Within 60 business days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a person whom the directors consider to have the requisite knowledge and experience.
- 19.5 Juristic person or partnership may be appointed company secretary
- 19.5.1 A juristic person or partnership may be appointed to hold the office of company secretary, provided that-
 - (a) every employee of that juristic person who provides company secretary services, or partner and employee of that partnership, as the case may be, satisfies the requirements contemplated in section 84(5) of the Act; and
 - (b) at least one employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements contemplated in section 86 of the Act.
 - 19.5.2 A change in the membership of a juristic person or partnership that holds office as company secretary does not constitute a casual vacancy in the office of company secretary, if the juristic person or partnership continues to satisfy the requirements of paragraph 19.5.1 above.
 - 19.5.3 If at any time a juristic person or partnership holds office as company secretary of the WCBS-

- (a) the juristic person or partnership must immediately notify the directors of the WCBS if the juristic person or partnership no longer satisfies the requirements of paragraph 19.5.1, and is regarded to have resigned as company secretary upon giving that notice to the WCBS;
- (b) the WCBS is entitled to assume that the juristic person or partnership satisfies the requirements of paragraph 19.5.1 above, until the WCBS has received a notice contemplated in paragraph 19.5.3(a); and
- (c) any action taken by the juristic person or partnership in performance of its functions as company secretary is not invalidated merely because the juristic person or partnership had ceased to satisfy the requirements of paragraph 19.5.1 at the time of that action.

19.6 Duties of company secretary

19.6.1 The company's secretary is accountable to the Board.

19.6.2 The company secretary's duties include, but are not restricted to-

- (a) providing the directors of the WCBS collectively and individually with guidance as to their duties, responsibilities and powers;
- (b) making the directors aware of any law relevant to or affecting the WCBS;
- (c) reporting to the Board any failure on the part of the WCBS or a director to comply with the Mol or Rules of the WCBS or the Act;
- (d) ensuring that minutes of all members' meetings, board meetings and the meetings of any committees of the directors, or of the WCBS's audit committee, are properly recorded in accordance with the Act;

- (e) certifying in the WPBT's annual financial statements whether the WCBS has filed required returns and notices in terms of the Act, and whether all such returns and notices appear to be true, correct and up to date;
- (f) ensuring that a copy of the WCBS's annual financial statements are sent, in accordance with the Act, to every person who is entitled thereto; and
- (g) carrying out the functions of a person designated in terms of section 33(3) of the Act.

19.7 Resignation or removal of company secretary

19.7.1 The company secretary may resign from office by giving the WCBS-

- (a) one month written notice; or
- (b) less than one month written notice, with the approval of the Board.

19.7.2 If the company secretary is removed from office by the Board, the company secretary may require the WCBS to include a statement in its annual financial statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal.

19.7.3 If the company secretary wishes to exercise the power referred to in paragraph 19.7.2, the company secretary must give written notice to that effect to the WCBS by not later than the end of the financial year in which the removal took place and that notice must include the statement referred to in paragraph 19.7.2.

19.7.4 The statement of the company secretary referred to in paragraph 19.7.2 must be included in the directors' report in the WCBS annual financial statements.

20. RECORDS OPEN TO INSPECTION

The records of the WCBS shall at all times be open to the inspection of the directors.

21. INDEMNIFICATION OF DIRECTORS AND OFFICERS

This Mol does not limit, restrict or extend the authority of the Board to —

- (a) advance expenses to a director or officer, or indemnify a director or officer, in respect of the defence of legal proceedings, as set out in section 78 (3) of the Act;
- (b) indemnify a director or officer in respect of liability, as set out in section 78 (5) of the Act; or
- (c) purchase insurance to protect the WCBS, or a director, or an officer as set out in section 78 (6) of the Act.

22. FINANCIAL MATTERS

22.1 Remuneration of employees

Subject to any other provision of the Mol or the Rules, any employees who are from time to time appointed by the Board may be remunerated for services rendered or to be rendered, as the Board may from time to time determine.

22.2 Accounts to be kept

The Board shall cause such accounting records to be kept as are prescribed by section 28 of the Act. The said accounting records shall be subject to proper and regular audit as contemplated by law.

22.3 Where accounts to be kept

The books of account shall be kept at the Office and shall always be open to the inspection of any member of the Board.

22.4 Audit of annual financial statements

Regardless of whether the WCBS may not be required in terms of section 30 of the Act to audit its financial statements, the WCBS shall in accordance with this provision of its Mol, annually appoint an auditor to audit the annual financial statements of the WCBS.

This MOI was adopted by special resolution at a members' meeting held on _____.

Certified by the chairperson of the Board as a true copy of the Mol so adopted.