

Memorandum of Incorporation

of

**The Ombudsman for Short-Term Insurance
NPC**

(registration number 2000/030638/08)

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1 Definitions and interpretation

1.1 In this Memorandum of Incorporation:

- (1) a reference to a section number refers to a section of the Act;
- (2) unless inconsistent with the context, words that are defined in the Act bear the same meaning in this Memorandum of Incorporation;
- (3) the headings to the clauses are for reference purposes only and do not affect the terms of this Memorandum of Incorporation.

1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- (1) **Act** means the *Companies Act, 2008*, as amended, together with any regulations published in terms thereof;
- (2) **Board** means the board of Directors of the Company appointed in terms of this Memorandum of Incorporation;
- (3) **Company** means The Ombudsman for Short-Term Insurance NPC;
- (4) **Consumer Group** means any consumer protection group or person who is:
 - (a) a member of the South African National Consumer Union;
 - (b) a member of the National Consumer Tribunal;
 - (c) a consumer journalist or person with experience with the media and who has been involved in issues relating to consumer education, consumer protection and/or the facilitation of the resolution of complaints made by consumers against product and service providers;
 - (d) any other person who in the opinion of the current consumer representatives on the Board is a person with a substantial interest in the welfare of consumers in South Africa and who would, by virtue of their knowledge, experience, and training, be a suitable candidate for representing the interests of consumers on the Board of the Company.
- (5) **Director** means a member of the Board of the Company;
- (6) **Financial Year** means a period commencing on 1 January of a calendar year and terminating on the last day of December of the same calendar year or any other period of 12 consecutive calendar months that may be decided by the Board as the financial year of the Company;

- (7) **FSR Act** means *the Financial Sector Regulation Act, 2017*, as amended, together with any regulations published in terms thereof;
- (8) **Insurance Act** means *the Insurance Act, 2017*, as amended, together with any regulations published in terms thereof;
- (9) **Insurer** means a non-life insurer as defined in the Insurance Act;
- (10) **Lloyd's** means the association of persons generally known as Lloyd's which is incorporated by the Lloyd's Act of 1871 (34 Vict. C21), passed by the Parliament of the United Kingdom of Great Britain and Northern Ireland;
- (11) **Lloyd's Representative** means the person appointed by Lloyd's in terms of the Insurance Act;
- (12) **Member** means a person who holds membership in, and specified rights in respect of, the Company and who is registered as such in the Company's members register;
- (13) **Non-life Insurance Business** means non-life insurance business as defined in the Insurance Act.
- (14) **NPC** means non-profit company incorporated in terms of section 10 of the Act;
- (15) **Ombudsman** means the non-life insurance ombudsman;
- (16) **Personal Lines Business** means a Non-life Insurance Business in respect of which the Policyholder is a natural person;
- (17) **Policy** means a non-life insurance policy as defined in the Insurance Act;
- (18) **Policyholder** means any policyholder in respect of whom the Ombudsman has jurisdiction relating to a Registered Complaint;
- (19) **Registered Complaint** means a complaint made to the Ombudsman by a complainant which is registered as a disputed claim and is allocated a complaint number;
- (20) **Regulatory Authority** means the Financial Sector Conduct Authority established by the FSR Act;
- (21) **Terms of Reference** means the Terms of Reference of the Company as approved by the Board from time to time; and
- (22) **Voting Rights** means the rights of a Member to vote in connection with any matter to be decided by the Company.

1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.

1.4 Unless inconsistent with the context, an expression which denotes:

- (1) any gender includes the other genders;
- (2) a natural person includes an artificial person (including a trust) and vice versa;
- (3) the singular includes the plural and vice versa.

- 1.5** The schedules to this Memorandum of Incorporation, if any, form an integral part hereof and words and expressions defined in this Memorandum of Incorporation shall bear, unless the context otherwise requires, the same meaning in such schedules.
- 1.6** When, in this Memorandum of Incorporation, 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) excluding the day on which the first such event occurs;
 - (2) including the day on or by which the second event is to occur; and
 - (3) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.6(1) and 1.6(2), respectively.
- 1.7** Law is construed as any law including the common law, a statute, the constitution, a decree, a judgment, a treaty, a regulation, a directive, a by-law, an order or any other measure of any government, local government, statutory or regulatory or court having the force of law.
- 1.8** Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, 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 same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, despite the term not having been defined in this interpretation clause.

2 Incorporation and nature of the Company

2.1 Incorporation

- (1) The Company was incorporated as a non-profit company on 8 December 2000.
- (2) The Company is constituted subject to:
 - (a) the unalterable provisions of the Act that are applicable to non-profit companies;
 - (b) any provisions imposing on the Company a higher standard, greater restriction, longer period of time or any similar more onerous requirement, that would otherwise apply to the Company in terms of an unalterable provision of the Act that are applicable to non-profit companies;
 - (c) 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 Memorandum of Incorporation; and
 - (d) the provisions of this Memorandum of Incorporation.

2.2 Powers of the Company

- (1) This Memorandum of Incorporation does not:
 - (a) contain any restrictive conditions applicable to the Company and any requirement, in addition to the requirements set out in clause 2.3, for the amendment of any such conditions; and
 - (b) prohibit the amendment of any particular provision hereof.

- (2) The Company has all of the legal powers and capacity of an individual, to the extent possible, subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

2.3 Objects of the Company

- (1) The objects of the Company are:
 - (a) to comply with the requirements for recognition as an industry ombud scheme in terms of the FSR Act;
 - (b) to serve the interests of the insuring public and of the insurance industry, which will include all registered Insurers and Lloyd's underwriters and their intermediaries;
 - (c) to receive and consider any complaints arising as a result of a dispute between a Policyholder and a Member.

2.4 Memorandum of Incorporation and Company rules

- (1) This Memorandum of Incorporation of the Company may be altered or amended:
 - (a) in compliance with a court order effected by a resolution of the Company's Board;
 - (b) by a special resolution of the Members but subject to that special resolution having been proposed by (i) the Board, or (ii) by Members entitled to exercise at least 10% of the Voting Rights that may be exercised on such a resolution.
- (2) An amendment contemplated in clause 2.4(1)(b) may take the form of:
 - (a) a new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or
 - (b) one or more alterations to the existing Memorandum of Incorporation by:
 - (i) changing the name of the Company;
 - (ii) deleting, altering or replacing any of its provisions;
 - (iii) inserting any new provisions; or
 - (iv) making any combination of such alterations.
- (3) After amending its Memorandum of Incorporation, the Company must file a Notice of Amendment with the Commission in accordance with the requirements contemplated in sections 16(7) and (8) of the Act.
- (4) An amendment to this Memorandum of Incorporation takes effect:
 - (a) in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or
 - (b) in any other case, on the later of:

- (i) the date on, and time at, which the Commission accepts the filing of the Notice of Amendment; or
 - (ii) the date, if any, set out in the Notice of Amendment.
- (5) The Board has authority to make, amend or repeal any necessary or incidental rules (which includes the Terms of Reference) relating to the governance of the Company in respect of matters that are not addressed in this Memorandum of Incorporation or the Act by:
 - (a) delivering a copy of those rules, or any amendment or repeal thereof, to every Member by hand, by ordinary mail (at such Member's registered address) or by publishing in the press in a newspaper circulating in the area in which the Company's registered office is located. Alternatively, delivery may be by email, provided that the Member has given the Company an email address for the purposes of receiving communications; and
 - (b) filing a copy of those rules (which include the Terms of Reference), or any amendment or repeal thereof, with the Commission.
- (6) Any necessary or incidental rules made, amended or repealed as contemplated in clause 2.4(5):
 - (a) take effect on the later of:
 - (i) ten business days after the rule is filed with the Commission; or
 - (ii) the date, if any, specified in the rule; and
 - (b) are binding:
 - (i) on an interim basis from the time it takes effect until it is put to a vote at the next general Members meeting of the Company; and
 - (ii) on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in clause 2.4(6)(b)(i).

2.5 Alterations of Memorandum of Incorporation and Company rules, translations and consolidations of Memorandum of Incorporation

- (1) The Company's Board, or an individual authorised by the Board, may alter the Company's rules (which includes the Terms of Reference), or its Memorandum of Incorporation, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:
 - (a) delivering a notice of the alteration in the manner contemplated in clause 2.4(5)(a); and
 - (b) filing a notice of the alteration with the Commission.
- (2) At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations of it, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete representation of the Memorandum of Incorporation.

- (3) At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of clause 2.5(3) must be accompanied by:
- (a) a sworn statement by a Director; or
 - (b) a statement by an attorney or notary public,
- stating that it is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered or amended up to the date of the statement.

2.6 Application of optional provisions of the Act

The Company, as a non-profit company, chooses only to comply voluntarily with the extended accountability requirements contained in Chapter 3 of the Act relating to the appointment of an auditor, preparing audited financial statements and holding annual general meetings.

2.7 Non-profit company provisions

- (1) The Company is a non-profit company; and
- (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum of Incorporation; and
 - (b) subject to clause 2.7(1)(a) may:
 - (i) acquire and hold securities issued by a profit company; or
 - (ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to the Company's stated objects.

2.8 Special conditions applicable to the tax-exempt status of the Company

- (1) To the extent that the Company has been approved by the Commissioner of the South African Revenue Service (the **Commissioner**), as contemplated in terms of section 30 of the Income Tax Act, 1962 (as amended), as a public benefit organisation (**PBO**) exempting the Company from income tax, the following special conditions shall apply at all times:
- (a) the Company will have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company;
 - (b) no single person, directly or indirectly, shall control the decision-making powers of the Company;
 - (c) the Company is prohibited from directly or indirectly distributing any of its funds to any person (unless otherwise than in the course of undertaking its activities) and is required to utilise its funds solely for the object for which it has been established;

- (d) the Company must use its funds solely for the object for which it has been established and shall invest its funds with a registered financial institution;
- (e) the Company will on dissolution transfer its assets to:
 - (i) a similar PBO which has been approved in terms of section 30 of the Income Tax Act, 1962 (as amended); or
 - (ii) any body, institution or board approved in terms of the provisions of section 10(1) (cA)(i) of the Income Tax Act, 1962 (as amended) which has as its sole or principal object the carrying on of any public benefit activity; or
 - (iii) any department of state or administration in the national, provincial or local sphere of the government of the Republic, contemplated in section 10(1)(a) of the Income Tax Act, 1962 (as amended) which is required to use those assets solely for purposes of carrying on one or more public benefit activities.
- (f) the Company is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act, 1962 (as amended): provided that a donor (other than a donor which is an approved PBO or an institution board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, 1962 (as amended) which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
- (g) the Company will submit to the Commissioner a copy of any amendment to this Memorandum of Incorporation; and
- (h) the Board furthermore undertakes to ensure that: -
 - (i) the Company will not knowingly be a party to, or knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act, 1962 (as amended) or any other Act administered by the Commissioner;
 - (ii) the Company will not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, 1962 (as amended) to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;
 - (iii) the Company complies with such reporting requirements as may be determined by the Commissioner; and

- (iv) the Company will not use its resources directly or indirectly to support, advance or oppose any political party.

3 Members

3.1 Membership

- (1) Companies underwriting Non-life Insurance Business which are registered Insurers and the person appointed by the Committee of Lloyd's in the Republic in terms of the Insurance Act as being authorised to act on its behalf and on behalf of underwriters at Lloyd's and intermediaries shall be eligible for membership of the Company.
- (2) Applicants for membership of the Company shall apply in writing to the Board, or to a membership committee established by the Board, giving the details that the Board or the membership committee may require. No applicant for membership of the Company may be admitted as a Member unless the applicant has agreed to be bound by the terms and conditions of this Memorandum of Incorporation and any rules formulated by the Company.
- (3) When a new Member is admitted, the Board or the membership committee will inform Members in any manner it deems appropriate.
- (4) Membership of the Company will terminate:
 - (a) upon receipt by the Company at its registered office of a notice in writing to this effect from the Member concerned;
 - (b) upon the issue of a final order of liquidation, winding-up or business rescue of the Member concerned;
 - (c) in the event of non-compliance by a Member with any obligations attached to the membership of the Member, despite expiration of a period of three months reckoned from the date of written notice by the Ombudsman on behalf of the Company to the Member concerned requiring the remedying of such default; except that the Board may extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion consider appropriate;
 - (d) upon the passing of a special resolution to this effect by the Company in general meeting; or
 - (e) upon any Member ceasing to be an underwriter of Non-life Insurance Business and/or ceasing to be a registered Insurer in terms of the Insurance Act or an authorised Lloyd's underwriter.
- (5) The Company in a general meeting at which a quorum is present, may expel any Member from the Company by a special resolution passed by the Members.
- (6) Any Member who resigns or who is expelled is not entitled to a refund of subscriptions paid for any period in advance of the date of resignation or expulsion and furthermore remains liable for the payment of any subscriptions which were due and payable on that date.

3.2 Funding of the Company

- (1) The Ombudsman will be responsible for preparing the budget of the Company.
- (2) Upon the Board approving the annual budget set out in clause 3.2(1) the annual budget will be shared pro rata by the Members according to the number of Registered Complaints which have been made against each Member.
- (3) The Board is entitled to amend the method of ascertaining the contribution which each Member is required to make in terms of clause 3.2(2) by majority vote.

3.3 Rights and obligations of Members

- (1) The rights and obligations of a Member shall not be transferable, and every Member shall:
 - (a) further the objects and interests of the Company to the best of its ability;
 - (b) have the rights set out in this Memorandum of Incorporation; and
 - (c) have the obligations set out in this Memorandum of Incorporation.

3.4 Register of Members

The Company shall maintain a register of Members as required by section 24 of the Act.

3.5 Non-transferability of membership

Membership shall be personal to the Member concerned and may not be assigned or transferred to any other person, Company or concern.

3.6 Members' right to information

Other than the rights to access information set out in section 26 of the Act or any other law, a Member has no further rights to information pertaining to the Company.

3.7 Members' authority to act

- (1) If the Company has only one Member, the ability of that Member to exercise any or all of the Voting Rights pertaining to the Company on any matter, at any time, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (2) A resolution which could be voted on at a Members Meeting may instead be adopted by written consent of the Members, given in person or by electronic communication, provided that the resolution was submitted for consideration to the Members entitled to exercise Voting Rights in relation to the resolution and the resolution is voted on in writing or by electronic communication by such Members within 20 business days after the resolution was submitted to them.

3.8 Votes of Members

Each Member shall have one vote and each such vote shall, unless otherwise provided in this Memorandum of Incorporation, be of equal value to the vote of each other voting Member on any matter to be determined by the Members.

3.9 Proxies

- (1) A Member may, at any time, appoint any individual who is an employee of a Member, as a proxy to:
 - (a) participate in, and speak and vote at, a Members meeting on behalf of the Member; or
 - (b) give or withhold written consent on behalf of the Member to a decision by Members acting other than at a meeting.
- (2) the instrument that appoints a proxy must:
 - (a) be in writing, dated and signed by the Member;
 - (b) be given by the person appointing such proxy, if the appointor is a corporation, given by a representative who is an employee of a Member so authorised.
- (3) Every instrument of proxy, whether for a specified meeting or otherwise, must comply with section 58 of the Act.

3.10 Representation by concurrent proxies

- (1) The right of a Member to appoint two or more persons concurrently as proxies is restricted or varied by this Memorandum of Incorporation.
- (2) A Member has the right to appoint an alternative person as proxy to the originally appointed as proxy.

3.11 Authority of proxy to delegate

A Member's proxy may delegate that proxy's authority to another delegate, if that delegate is also an employee of the Member and the Member has provided its consent to such delegation, and subject to any restrictions if set out in the instrument appointing that proxy.

3.12 Requirement to deliver proxy instrument to the Company

The instrument of proxy or power of attorney appointing a proxy for any particular meeting must be delivered to the Company at its registered address not less than 24 hours (or such lesser period as the Directors may determine in relation to any particular meeting) before such meeting is due to take place, or the instrument of proxy or power of attorney shall not be treated as valid.

3.13 Deliberative authority of proxy

The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising, any voting right of the Member, except to the extent that the instrument appointing that proxy provides otherwise, is not restricted or varied by this Memorandum of Incorporation.

3.14 Validity of appointment

- (1) The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or by the making of a later inconsistent appointment of another proxy and delivering a copy of the revocation instrument to the proxy, and to the Company.
- (2) The appointment of a proxy 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.
- (3) A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the legal incapacity of the Member or revocation of the instrument or power of attorney, unless notice in writing of such legal incapacity or, revocation is received by or on behalf of the Company not less than 24 hours (or such lesser period as the Board may determine in relation to any particular meeting) before the time appointed for holding the meeting.
- (4) Within 14 days of any change of the proxy or alternate proxy of any Member, the Member must notify the company secretary of the Company of such change and must in addition provide the address of the newly appointed proxy or alternate proxy.

3.15 Record date for exercise of Member rights

- (1) If, at any time, the Board fails to determine a record date for any action or event, the record date for the relevant matter is:
 - (a) in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or
 - (b) in any other case, the date of the action or event.

4 Members meetings

4.1 Requirement to hold meetings

The Company is not required to hold any Members meetings other than those specifically required by section 61 of the Act and this clause 4, but may do so.

4.2 Members' right to requisition a meeting

- (1) The right of Members to requisition the Board to call a Members meeting may be exercised if, in aggregate, written and signed demands for a meeting with substantially the same purpose are made by the holders of at least 10% of the Voting Rights entitled to be exercised in relation to the matter to be considered at the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.
- (2) In addition, any general meeting may be called by two or more Members holding not less than 10% of the Voting Rights.

4.3 Location of Members meetings

The authority of the Board to determine the location of any Members meeting and the authority of the Company to hold any such meeting in the Republic or in any foreign country, is not restricted or varied by this Memorandum of Incorporation.

4.4 Calling a Members meeting

If the Company is unable to convene a Members meeting because it has no Directors or because all of its Directors are incapacitated, any Member may convene a meeting.

4.5 Notice of Members meetings

- (1) The minimum number of days for the Company to deliver a notice of a Members meeting to the Members is 15 business days before the meeting is to begin or 24 hours if agreed on in writing by Members holding not less than 90% of the votes exercisable at such meeting.
- (2) A notice of a meeting must be in writing and include the information set out in sections 62(3) and 63(3) of the Act.

4.6 Electronic participation in Members meetings

The authority of the Company to conduct a Members meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.

4.7 Quorum for Members meetings

- (1) Subject to the provisions of clause 4.7(2) to clause 4.7(7) (both inclusive), and clause 4.9 the quorum for:
 - (a) a Members meeting to begin is sufficient persons present in person or by proxy at the meeting to exercise, in aggregate, at least 25% of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
 - (b) a matter to begin to be considered at the meeting is sufficient persons present in person or by proxy at the meeting to exercise, in aggregate, at least 25% 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.
- (2) Notwithstanding clause 4.7(1), where the Company has more than two Members, a meeting may not begin, or a matter begin to be considered, unless at least three Members are present at the meeting and the requirements of clause 4.7(1) are satisfied.
- (3) If, within 30 minutes after the appointed time for a meeting to begin, the requirements of clauses 4.7(1), or 4.7(2) if applicable:
 - (a) for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week; and
 - (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.

- (4) The person intended to preside at a meeting, where the quorum requirements in clause 4.7(1), or clause 4.7(2) if applicable, are not satisfied, may extend the 30 minute limit allowed for a reasonable period on the grounds that:
 - (a) exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of Members to be present at the meeting; or
 - (b) one or more delayed Members have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the quorum requirements; or
 - (c) any other reason such person considers appropriate.
- (5) After a quorum has been established for a meeting, or for a particular matter, the meeting may continue, or the matter may be considered, so long as at least 25% of the Members with Voting Rights entitled to be exercised at the meeting, or on that matter, are present at the meeting.
- (6) If the quorum requirements in clause 4.7(1), or clause 4.7(2), if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the Members present in person or by proxy will be deemed to constitute a quorum.
- (7) The chairperson at a meeting shall not be entitled to a second or casting vote in addition to a deliberative vote at a meeting of Members.

4.8 Adjournment of Members meetings

- (1) Subject to clauses 4.7, 4.8(2) and 4.8(3), a Members meeting or the consideration of any matter at the meeting, may be adjourned from time to time, 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 consideration, as the case may be.
- (2) An adjournment of a meeting, or the consideration of a matter at the meeting, in terms clause 4.8(1), may be either to a fixed time and place or until further notice, as agreed at the meeting.
- (3) A meeting may not be adjourned beyond the earlier of:
 - (a) 120 business days after the record date determined in accordance with clause 3.15; or
 - (b) 60 business days after the date on which the adjournment occurred.

4.9 Members resolutions

- (1) For an ordinary resolution to be approved by Members, it must be supported by the holders of more than 50% of the Voting Rights exercised on that resolution.
- (2) For a special resolution to be approved by Members, it must be supported by the holders of at least 75% of the Voting Rights exercised on that resolution.

4.10 Annual General Meeting

- (1) Annual general meetings of the Company must be held no later than 30 September each Financial Year at a time, date and place determined by the Board.
- (2) In addition to the requirements of clause 4.5, the notice calling an annual general meeting must include the financial statements to be presented, or a summarised form thereof.
- (3) The agenda at an annual general meeting shall include but shall not be limited to:
 - (a) presentation of the Directors' report and annual financial statements for the immediately preceding financial year; and
 - (b) election of Directors, to the extent required by the Act or this Memorandum of Incorporation; and
 - (c) any matters raised by Members, with or without advance notice to the Company.

5 Directors and officers

5.1 Composition of the Board

- (1) The Company's Board must comprise not more than eleven Directors appointed by the Company at the annual general meeting. All Directors appointed must be residents in the Republic.
- (2) The composition of the Board of the Company is:
 - (a) two independent non-executive Directors appointed from a list compiled by the Ombudsman in consultation with every member of the Board, who are persons who, by virtue of their training, expertise, experience in the business world and stature in the community, are able to add to the standing of the Company in the eyes of all its stakeholders,
 - (b) three Directors representing the Members appointed from a list of any person who is nominated by the chief executive officer of a Member and who accepts such nomination;
 - (c) four Directors from the Consumer Group appointed from a list of the most appropriate candidates compiled by the Ombudsman in consultation with current consumer Directors on the Board;
 - (d) one Director representing the South African Insurance Association NPC, appointed *ex officio*; and
 - (e) one Director representing the Financial Sector Conduct Authority, appointed *ex officio*.
- (3) In accordance with section 5(1)(b) of Schedule 1 to the Act, at least one-third of the Directors who are elected by Members shall be elected annually. In this regard, the Chairperson shall, annually, nominate one Director who has been elected by Members from each of the categories in clauses 5.1(2)(a), (b) and (c) for re-election by Members in accordance with clause 5.

- (4) A Member will advise the Company within 14 days of being requested to do so by the Company whether a representative of their organisation is available to stand for election as a Director.
- (5) A list of persons available to stand for election as Directors of the Company must be made available to the Members by the Company not later than 21 days before the annual general meeting at which the Board for the ensuing year is to be elected.
- (6) Any person appointed as Director:
 - (a) holds office:
 - (i) for a term of three years unless removed from office earlier in accordance with the provisions of this Memorandum of Incorporation; or
 - (ii) until he or she resigns by notice in writing to the Company; or
 - (iii) until he or she is disqualified therefrom by virtue of any provision of the Act or for any reason whatsoever.
 - (b) ceases to be a Director and must vacate the office of Director if such Director:
 - (i) is the representative of a Member whose Membership is terminated in terms of clause 3.1(4); or
 - (ii) ceases to be an employee or director of the Member; or
 - (iii) ceases to qualify as a representative of the Consumer Group; or
 - (iv) is absent from three consecutive meetings of the Board without leave of the chairperson. The vacancy must be filled by the Board at its first meeting after the occurrence of the vacancy.
- (7) There are no *ex officio* Directors in addition to any Directors appointed in terms of this Memorandum of Incorporation and the elected Directors.
- (8) The authority of the Board to fill any vacancy on the Board is not restricted or varied by this Memorandum of Incorporation but the person appointed must be appointed taking into account the required composition of the Board. A Director appointed must be a person who satisfies the requirements for election as a Director and has all the powers, functions, and duties, and is subject to all the liabilities, of any other Director.
- (9) Any person appointed to fill a vacancy on the Board in terms of clause 5.1(8) retains office for the rest of the original term that his or her predecessor was appointed to serve subject to any conditions stipulated in clause 5.1(6).
- (10) In order to become or to continue to act as a Director or a prescribed officer of the Company, a person must not be:
 - (a) a juristic person;
 - (b) an unemancipated minor, or a person under a similar legal disability;

- (c) a person who has been declared a delinquent or placed under probation by a court in terms of section 162 or section 47 of the *Close Corporations Act, 1984*, except to the extent permitted by the order of probation;
- (d) an unrehabilitated insolvent;
- (e) prohibited in terms of any public regulation from being a Director;
- (f) removed from an office of trust, on the grounds of misconduct involving dishonesty;
- (g) a person who has been convicted, in the Republic 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:
 - (i) involving fraud, misrepresentation or dishonesty;
 - (ii) in connection with the promotion, formation or management of a company;
 - (iii) in connection with having been appointed or elected as a Director or acting as a Director whilst ineligible or disqualified, or whilst having been placed under probation by a court; or
 - (iv) under the Act, the *Insolvency Act, 1936*, the *Close Corporations Act, 1984*, the *Competition Act, 1998*, the *Financial Intelligence Centre Act, 2001*, the *Securities Services Act, 2004*, or Chapter 2 of the *Prevention and Combating of Corruption Activities Act, 2004*.

(11) A person need not satisfy any further eligibility requirements or qualifications.

5.2 Alternate Directors

No alternate Directors may be appointed to act as alternate Directors in a Director's place.

5.3 Authority of the Board

- (1) The authority of the Company's Board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, the Company has only one Director, the authority of that Director to act without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (3) The Board may frame, and from time to time alter, amend, add to or repeal rules dealing with the following matters:
 - (a) contributions to the budget payable by Members and the manner or time when payment is to be made;
 - (b) the proper and effective management and control of the Company and the Board;
 - (c) the general attainment and carrying out of the objects of the Company;
 - (d) the method of conducting the meetings of the Board and the Company;

- (e) the procedure to be followed at meetings of the Company for the election of Directors;
- (f) changes recommended by the Ombudsman to the Ombudsman's Terms of Reference;
- (g) the election and appointment of the Ombudsman;
- (h) the creation of the budget;
- (i) receiving reports from the Ombudsman and making recommendations based on these reports;
- (j) the determination of the powers and authority of the executive committee; and
- (k) to ensure compliance by the Company with the FSR Act.

5.4 Directors' meetings

- (1) A Director authorised by the Board of the Company:
 - (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:
 - (i) 25% of the Directors, in the case of a Board that has at least 12 Members; or
 - (ii) two Directors, in any other case.
- (2) Notwithstanding clause 5.4(1), any Director may call a meeting of Directors if such Director considers there is good reason to do so.
- (3) The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation 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, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Board to adopt a decision, that could be voted on at a Board meeting, by way of written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided, is not restricted or varied by this Memorandum of Incorporation. Any decision made in the manner contemplated in this clause 5.4(4) has the same effect as if it had been approved by voting at a meeting.
- (5) The Board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this Memorandum of Incorporation or the Company's rules, provided that no meeting of the Board shall be convened without notice to all of the Directors subject, however, to the provisions of clause 5.4(6).
- (6) The authority of the Board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the Directors acknowledge actual receipt of the notice or are present at

the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.

- (7) Board resolutions in order to be of force and effect must be approved by the majority of Directors present and voting. Each Director is entitled to speak at any meeting of the Board and will have one vote.
- (8) If within 30 minutes from the time appointed for the meeting a quorum is not present at the meeting, the meeting may be dissolved and 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. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present constitute a quorum. The chairperson of the Board or, if not, the vice-chairperson and failing him/her some other member of the Board present at the meeting and elected by the Directors present, will act as chairperson and preside at the meeting of the Board.
- (9) The Board must meet at the Company's premises at least twice during a Financial Year.
- (10) The company secretary of the Company must forward a copy of the agenda and all supporting documents (including the minutes of the previous meeting) to each of the Directors at least five business days prior to a meeting of the Board.
- (11) The company secretary of the Company must cause a copy of the minutes of any proceedings of the Board to be disseminated to all Directors and Members within 30 days of the meeting.
- (12) The quorum requirement for a meeting of Directors is six members of the Board of which one of the Directors from the Consumer Group and one of the Directors representing the Members must be present.
- (13) Each Director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution.
- (14) In the case of a tied vote the chairperson of the Board or vice-chairperson of the Board will not have a deciding vote and the resolution will fail.
- (15) The Board elects its own chairperson and vice-chairperson who will be respectively the chairperson and vice-chairperson of the Company. The chairperson and vice-chairperson of the Company will be elected on an annual basis at the first board meeting of the Directors after the annual general meeting of the Company. The chairperson will be elected from the two independent non-executive Directors.

5.5 Directors' power to effect borrowing

The Company's Board may raise or borrow from time to time for the purposes of the Company, or secure the payment, of such sums as they think fit, and may secure the repayment or payment of any such sums by guarantee, bond or mortgage upon all or any of the property or assets of the Company or by the issue of debt instruments or otherwise as they may think fit.

5.6 Directors' compensation and financial assistance

- (1) The authority of the Company to pay remuneration to those Directors entitled to be remunerated, in accordance with a special resolution approved by the Members within the previous two years, is not restricted or varied by this Memorandum of Incorporation.

- (2) The Company shall not, directly, or indirectly pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or director, or person appointing a director, of the Company, except –
 - (a) as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - (b) as payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
 - (c) as payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
 - (d) in respect of any legal obligation binding on the Company.

5.7 Indemnification of Directors

- (1) For purposes of this clause 5.7, **Director** includes a former Director, a prescribed officer or a person who is a Member of a committee of a Board of the Company, or of the audit committee of the Company, irrespective of whether or not the person is also a Member of the Board.
- (2) The authority of the Company to advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company and to directly or indirectly indemnify a Director for such expenses if those proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director, is not restricted or varied by this Memorandum of Incorporation.
- (3) The authority of the Company to indemnify a Director in respect of any liability for which the Company may indemnify a Director, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Company to purchase insurance to protect:
 - (a) a Director against any liability or expenses for which the Company may indemnify a Director as contemplated in clause 5.7(2) or clause 5.7(3); or
 - (b) the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director as contemplated in clause 5.7(2) or any liability for which the Company is permitted to indemnify a Director as contemplated in clause 5.7(3),is not restricted or varied by this Memorandum of Incorporation.
- (5) The Company shall be entitled to claim restitution from a Director or a related Company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this clause 5.7 or the Act.

5.8 Committees of the Board

- (1) The authority of the Company's Board to appoint any number of committees of Directors for managing any of the affairs of the Company and to delegate to any such committee any authority of the Board, is not restricted or varied by this Memorandum of Incorporation.

- (2) Subject to the powers and authorities granted by the Board to any such committee, the authority of:
 - (a) the Board to include persons who are not Directors of the Company, provided that such persons are not ineligible or disqualified from being a Director as contemplated in clause 5.1(10) and the Act and that no such person shall vote on a matter to be decided by the committee;
 - (b) the committee to consult with or receive advice from any other person; and
 - (c) the committee to exercise the full authority of the Board in respect of a matter referred to it,

is not restricted or varied by this Memorandum of Incorporation.

5.9 The executive committee

- (1) The executive committee carries out *ad hoc* functions delegated to it by the Board from time to time pursuant to the Terms of Reference that the Board may provide in respect of such functions.
- (2) The executive committee comprises:
 - (a) the chairperson and vice-chairperson of the Board;
 - (b) any two Directors; and
 - (c) the Ombudsman.
- (3) The executive committee may co-opt a person who is not a Director or Member onto the executive committee if required.
- (4) The executive committee will meet when required for the purposes of performing its functions.
- (5) The powers and authority of the executive committee are at all times subject to the limitations, policies and strategies laid down by the Board.

5.10 Appointment of the Ombudsman

- (1) The Ombudsman will be appointed and elected by a majority vote of the Board. If requested by the Ombudsman, the Board may appoint a Deputy Ombudsman. The appointment and election of the Deputy Ombudsman will take place by majority vote of the Board.
- (2) The Ombudsman will be a natural person qualified as an attorney or advocate, of not fewer than 15 years' standing, or a former judge of the High Court of South Africa, and such person must have had at least seven years' involvement with the non-life insurance industry in whatever capacity approved by the Board.
- (3) Any person appointed as Ombudsman will:
 - (a) hold office:
 - (i) for an initial period of no fewer than three years or any other longer period determined by the Board, but the initial period shall not exceed a period of five years. Such person may be re-appointed by the Board for a further period or periods from the initial period that

the Board deems fit, provided that such further period or periods does or do not exceed five years in total; or

- (ii) until he or she resigns by three months' notice in writing to the Company; or
 - (b) cease to be the Ombudsman and must vacate the office of Ombudsman if such Ombudsman is removed from the office of the Ombudsman by majority vote of the Board.
- (4) The Ombudsman may not be a Director of the Company.

5.11 Powers of the Ombudsman

- (1) The powers of the Ombudsman will be restricted to the Ombudsman's Terms of Reference determined by the Board. The Ombudsman may, however, make recommendations to the Board on any issue relating to his/her Terms of Reference, the efficient carrying on of the business of the Company and any other related matter.
- (2) The Ombudsman has the power to appoint staff of the Company at such remuneration and upon such other terms and conditions deemed fit within the budget constraints of the Company. The Ombudsman must perform such further functions and duties as the Board may from time to time assign to him/her.
- (3) The Ombudsman may attend all meetings of the Company and the Board but is not entitled to vote at such meetings. It is the responsibility of the Ombudsman, and the chairperson of the meeting concerned, to ensure that proper minutes in customary form are kept in respect of general meetings of the Company, and all meetings of the Board and any sub-committee of the Board that may from time to time be formed. Such minutes, including the terms of all resolutions passed must be distributed in the case of general meetings to all members of the Board by the Ombudsman within 30 days of such meeting. The minutes and resolutions passed at any meeting shall be kept in a minute book to be maintained in customary form.

5.12 Ombudsman's remuneration and reimbursement

The Ombudsman is:

- (1) entitled to receive payment of reasonable remuneration in respect of any services rendered for the Company or on the Company's behalf.
- (2) entitled to reimbursement of all authorised and approved travelling subsistence, and other expenses properly incurred in the execution of his/her duties in or about the business of the Company, but the authorisation or approval must be given by the chairperson of the Board.

5.13 Authentication of documents

- (1) Any Director or any person appointed by the Directors for this purpose shall have power to authenticate any resolutions passed by the Members or the Directors, and any books, records, accounts and other documents relating to the Company, and to certify copies or extracts from those documents as true copies or extracts and where any books, records, documents or accounts are elsewhere than at the registered office, the local manager or other officer of the Company having the custody of the documents at such other place shall be deemed to be the person so appointed.

- (2) A document purporting to be a copy of a resolution of the Directors or Members or an extract from the minutes of a meeting of the Directors or Members which is certified in accordance with clause 5.13(1) is *prima facie* evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors or Members.

6 General provisions

6.1 Accounts

- (1) The Board must keep accurate and complete accounting records required or prescribed by the Act.
- (2) The accounting records must be kept at the registered office of the Company or (subject to the provisions of section 25 of the Act) at such other location within the Republic as the Board think fit and shall at all times be accessible and open to inspection by the Board. Except as provided by the Act or the authority of the Board, the Members have the right to inspect any accounting record or document of the Company.
- (3) The Board must, in accordance with sections 30 and 31 of the Act, cause to be prepared and laid before the Company at its annual general meeting those annual financial statements and reports and group annual financial statements and reports, if any.
- (4) Subject to the provisions of the Act, a copy of the annual financial statements and reports referred to in clause 6.1(3) must be delivered or sent by post to the registered address of each Member at least 10 business days before the annual general meeting. A Member may give the Company an address for the purposes of receiving electronic communications, in which case a copy of such documents may be delivered electronically to that Member at that address. This clause 6.1(4) does not require the Company to send or deliver a copy of such documents to any person who is not entitled to receive notice of general meetings of the Company or whose address the Company is not aware of.

6.2 Conversion of the Company to a profit company, disposal of assets, mergers and amalgamations

- (1) The Company may not amalgamate or merge with, or convert to, a profit Company, or dispose of any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- (2) Any proposal to dispose of all or the greater part of the Company's assets or undertaking or to amalgamate or merge with another non-profit Company must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act, respectively.
- (3) Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause 6.2(2) above.

6.3 Winding-up

- (1) The Company may be dissolved at any time by a special resolution.

- (2) Upon the passing of the special resolution dissolving the Company the Board must pay all outstanding debts of the Company (liquidating assets and property necessary in order to do so) and dispose of all surplus assets or money of the Company remaining in the manner directed in clause 6.3(3) below. The members of the Board remain in office until completion of their duties under this sub-clause, and the dissolution of the Company will not be complete until such duties have been discharged.
- (3) Upon the winding-up or dissolution of the Company, no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.
- (4) The entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts which have similar objects to the Company's main objects.

The Company's main objects may be determined in terms of the Company's Memorandum of Incorporation or by its Members, or Directors immediately before the time of its dissolution; or by the court, if the Memorandum of Incorporation, or the Members or Directors fail to make such a determination.

This Memorandum of Incorporation was adopted by resolution at a Members meeting held on 25 August 2022.