



CONSTITUTION OF THE COLLEGE OF MAGIC 007-517 NPO

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1. BACKGROUND

South Africa's youth, especially those from marginalised backgrounds, face a multitude of challenges. Problems such as poverty, violence, drugs, crime and the scourge of the HIV/AIDS pandemic have permeated the very fabric of our society, are placing so many young people at risk and are contributing to the general lack of hope experienced by our young people. There is a pressing need for creative initiatives to address educational needs, and transform our youth, giving them hope for the future. The theatrical performing art of Magic – which include sleight of hand, illusions, juggling, puppetry, drama, clowning and mime – is a universal language that motivates and excites young people making it an excellent medium through which to provide educational enrichment, curriculum support, and nurture holistic life skills, enabling young people to achieve greater academic success, gain the respect of their families and community, and promote community interaction, moral regeneration and social cohesion. Literally thousands of learners from disadvantaged backgrounds have attended and benefitted from courses at the College of Magic since its inception. Many attribute their success in life to skills acquired at the College.

2. NAME

The name of the association is **The College of Magic**. Its shortened name will be "College" and it is referred to below as the "Association".

3. OBJECTS

The aim of this organisation is to see lives and communities transformed through the provision of educational and developmental programmes with a specific emphasis on educational enrichment and supplementary tuition, targeting the full diversity of South African Youth. Thus, the public benefit activities of the association are directed to achieving the following outcomes:

- 3.1 To holistically educate young people from diverse backgrounds, especially marginalised youth.
- 3.2 To develop employable skills among unemployed youth, and to foster an entrepreneurial culture.
- 3.3 To enrich the educational experience of marginalised youth from poor and needy communities through nurturing confident, balanced, disciplined, organised, creative individuals and leaders with hope for the future.
- 3.4 To provide supplementary tuition in order to achieve greater understanding of educational theory and concepts through practical experience and

demonstration; by means of the development of skills in performance, leading ultimately to proficiencies which will provide access to future employment opportunities.

- 3.5** To provide educational and community outreach programmes to the poor and needy involving empowerment and capacity building, whereby they are enabled to become skilled workseekers, accomplished entertainers and contribute constructively to their communities.
- 3.6** To enhance the school curriculum using the performing arts to enrich and supplement the learning areas of science, mathematics, English language, problem solving, life orientation, and arts & culture.

The College of Magic aims to achieve these objectives by:

- employing the performing arts, especially the theatrical art of magic, as a powerful tool
 - making use of a comprehensive and innovative curriculum, the goodwill of experienced volunteers and global networking.
 - demonstrating and nurturing among learners the values of honesty, respect, responsibility, initiative, excellence, empathy, humility and wonder.
- Learners will be empowered through learning employable expertise and critical life skills, contributing to community pride and audience development, wealth creation and career development.

4. LEGAL STATUS

- 4.1** The Association is a body corporate with its own legal identity which is separate from its individual members.
- 4.2** The Association shall continue to exist even if the members change.
- 4.3** The Association may own property, enter into contracts, and sue or be sued in its own name.

5. NON-PROFIT DISTRIBUTING CHARACTER

- 5.1** The Association will write down and keep a record of everything it owns.
- 5.2** The income and property of the Association shall be used solely for the promotion of its stated objectives. The members and the office-bearers shall have no rights to the property or other assets of the Association solely by virtue of them being members or office-bearers. No portion of the income or property of the Association shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of the Association or Management Board, except as:
- 5.2.1 reasonable compensation for services actually rendered to the Association;
- 5.2.2 reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

- 5.3** Upon the dissolution of the Association, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other public benefit organisation approved in terms of Section 30 of the Income Tax Act, which the Management Board (failing which, the Director of the Non-Profit Organisations Directorate) considers appropriate, which organisation must have the same or similar objectives as those of this Association.
- 5.4** As an approved Public Benefit Organisation, the Association and its Management Board shall be subject to due compliance with the prescribed fiscal conditions set out in Section 30 and (insofar as it may be applicable) Section 18A of the Income Tax Act; which are referred to and repeated in Schedule "A" and which bind the Association and qualify this Constitution.

6. POWERS

The Association, acting through its Management Board, or at a General Meeting, shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the General Investment and Administrative Powers set out in the attached Schedule B, but subject to due compliance with the Prescribed Fiscal Conditions set out and referred to in clause 5.4.

7. MEMBERS

The membership of the Association shall comprise such persons as may from time to time be admitted to membership by the Management Board at its sole and absolute discretion.

- 7.1.** The Management Board may admit further members from time to time subject to due compliance with any conditions of membership (including payment of any membership fees) which the Management Board may stipulate from time to time.
- 7.2.** The Management Board may suspend or terminate the membership of a member at its discretion, provided that:
- 7.2.1. At least (14) fourteen days prior written notice is given to all members of the Management Board of the intention to terminate a membership; and
- 7.2.2. At least (14) fourteen days prior written notice is given to the member concerned. The notice shall invite the member to make written representations to the meeting as the member may consider appropriate. The Management Board may at its discretion permit the member concerned to make verbal representations and/or to have legal representation during any such representation; but it shall not be obliged to do so.
- 7.3.** The decision of the Management Board to admit an applicant to membership, or to

suspend or terminate a membership is final, unless otherwise resolved by a resolution of two thirds of the members of the Association present at the next General Meeting.

8. STRUCTURE OF THE ASSOCIATION

8.1 The Management Board

8.1.1 Powers

- 8.1.1.1 The affairs of the Association shall be controlled and managed by the Management Board. Subject to the terms of this constitution and to the resolutions of members in General Meeting, the Management Board may exercise all the powers of the Association.
- 8.1.1.2 To elect members to fill temporary or permanent vacancies on the Management Board.
- 8.1.1.3 To make by-laws not inconsistent with the terms of this constitution.
- 8.1.1.4 To appoint, suspend and discharge any employee or appointed officer of the Association and to fix their remuneration and conditions of employment or appointment.
- 8.1.1.5 To appoint sub-committees for special purposes. The chairperson of such sub-committee shall be a member of the Management Board. The Management Board shall not delegate to any sub-committee the power to make, alter or repeal by-laws.
- 8.1.1.6 Generally to administer and manage the affairs of the Association
- 8.1.1.7 To spend monies and incur liabilities for matters related to the Association
- 8.1.1.8 To do such other lawful things as are incidental or conducive to the attainment of the objects of the Association.

8.1.2 Election

- 8.1.2.1 At each Annual General Meeting, a minimum of one (1) member of the Management Board shall stand down and the Chairperson shall stand down. Thereafter, new Management Board members will be nominated and elected. A term shall be deemed to be two (2) years.
- 8.1.2.2 Management Board members standing down shall be eligible for re-election or co-option.

8.1.2.3 Management Board members must be members of the Association.

8.1.2.4 The members of the Management Board should be persons who have been so appointed by a resolution passed by a majority of not less than three quarters (3/4) of the members present at the Annual General Meeting, and who have accepted their nomination, thereby binding themselves to the Constitution of the Association.

8.1.2.5 Voting shall be by open or secret ballot, as may be determined by the Chairperson.

8.1.3 Nomination process

8.1.3.1 At the Management Board Meeting leading to the AGM (provided that it is at least 3 months before the AGM) the meeting may propose and the AGM shall decide how many, if any at all, additional members shall be elected to the Board.

8.1.3.2 Three (3) weeks before the AGM the chairperson will then circulate a letter to all relevant members asking for nominations. The nominations should be submitted with Letter of Motivation from the nominator, a CV of the nominee and a signed nomination form.

8.1.3.3 Two (2) weeks before the AGM the Management Board will then screen the nominations to see that specific criteria regarding the board composition is met.

8.1.3.4 One week before the AGM the names of the successful nominees will be made known to all the members.

8.1.4 Composition

8.1.4.1 The Management Board shall comprise at least five (5) but not more than twelve (12) members. The membership of the Management Board shall comprise:

8.1.4.1.1 the Chairperson;

8.1.4.1.2 the Treasurer who shall have the requisite degree of skill to discharge the functions of office;

8.1.4.1.3 at least three (3) other persons, one of whom shall have practising legal knowledge and another of whom shall have secretarial skills.

8.1.4.2 The Chairperson and Treasurer shall be elected from amongst the Management Board members by a majority of not less than three quarters (3/4) of the members of the Management Board.

8.1.4.3 The CEO shall be an ex officio member of the Board with voting and speaking rights.

8.1.5 Management Board Member Vacating Office

8.1.5.1 The office of a Management Board member shall be vacated if a member:

- 8.1.5.1.1 resigns; or
- 8.1.5.1.2 becomes unfit and/or incapable of acting as such; or
- 8.1.5.1.3 would be disqualified, in terms of the Companies Act or equivalent legislation in force from time to time, from acting as a Director of a Company; or
- 8.1.5.1.4 is removed by the Management Board, by resolution adopted by at least three-quarters (3/4) of its members in office from time to time, being not less than the required minimum of five (5). The Management Board shall not be obliged to furnish reasons for its decision/s regarding removal except to the member removed and to the members of the Association in General Meeting.

8.1.5.2 Should a position on the Management Board fall vacant, the Management Board, by resolution adopted at least two-thirds (2/3) of its members, may (and if the vacancy reduces the number of members to less than five (5), shall) co-opt a member/s to fill the vacancy/ies. The office of any person so co-opted as member of the Management Board shall lapse unless confirmed by resolution of members at the next General Meeting.

8.1.6 Procedure at Management Board Meetings

- 8.1.6.1 The Management Board shall conduct its meetings and regulate its proceedings as it finds convenient, provided that:
 - 8.1.6.1.1 The Chairperson shall chair all meetings of the Management Board which he or she attends. In the absence of the Chairperson the remaining members of the Management Board shall elect a chairperson from those attending.
 - 8.1.6.1.2 The Chairperson shall convene a meeting of the Management Board at least four (4) times per year and at the written request of any two (2) members of the Management Board and may convene such a meeting at any other time.
 - 8.1.6.1.3 The quorum necessary for the transaction of any business by the Management Board shall be two-thirds (2/3) of the Management Board members serving at any given time. Voting by proxy will be permitted in the event that members are unable to attend a meeting.
 - 8.1.6.1.4 At meetings of the Management Board each member shall have one (1) vote.

- 8.1.6.1.5 Resolutions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
 - 8.1.6.1.6 Proper minutes shall be kept of the proceedings of the Management Board, and a record of the persons present at each meeting. The minutes shall be signed by the member who chairs the meeting, and shall be available at all times for inspection or copying by any member of the Management Board, and on two (2) days' notice to the Secretary or his or her deputy, by any member of the Association.
 - 8.1.6.1.7 A resolution signed by all members of the Management Board shall be as valid as if passed at a duly convened meeting of the Management Board.
 - 8.1.6.1.8 Meetings of the Management Board may be held at any time or times, and at any place or places, subject to due notice having been given; and such meetings may be held simultaneously in more than one place, provided the parties concerned are linked by telephone, video, teleconference or other communication facility, in a manner which enables them to speak, hear, and participate effectively in the business of the meeting, without reliance upon an intermediary.
- 8.1.7 The Management Board may delegate any of its powers to any of its members, or to a special purpose committee. The member, committee, employee or agent to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Management Board from time to time.
- 8.1.8 The Management Board may appoint a Chief Executive and other officers and employees as it may consider necessary from time to time upon such terms and conditions as it may consider appropriate.

8.2 General Meetings

8.2.1 Annual General Meeting

- 8.2.1.1 An Annual General Meeting of the Association shall be held within six (6) months of the end of each financial year.
- 8.2.1.2 Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) days prior written notice to all members entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting.
- 8.2.1.3 The business of an Annual General Meeting shall include:

8.2.1.3.1 the presentation and adoption of the Annual Report of the Chairperson;

8.2.1.3.2 the consideration of the Annual Financial Statements;

8.2.1.3.3 the election of members to serve on the Management Board for the next term of service;

8.2.1.3.4 the appointment of Auditors;

8.2.1.3.5 other matters as may be considered appropriate by the meeting

8.2.1.4 At the Annual General Meeting, the Association may review, approve or amend any decision taken by the Management Board but no such resolution of the Association shall invalidate any prior action taken by the Management Board in accordance with the provisions of this Constitution.

8.2.2 Other General Meetings

8.2.2.1 Other General Meetings of the Association shall be convened at any time by the Chairperson or at the written request of:

8.2.2.1.1 the Management Board;

8.2.2.1.2 the lesser of one quarter (1/4) or five (5) of the members of the Association.

8.2.2.2 Any General Meeting other than the Annual General Meeting shall be convened on not less than fourteen (14) days written notice to all members. The notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting: provided that: should the Chairperson, having been requested to give such notice, fail to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and to convene the meeting.

8.2.3 Quorum

8.2.3.1 A quorum constituting a General Meeting of the Association shall be the greater of:

8.2.3.1.1 five (5) members; or

8.2.3.1.2 25 percent of the members.

8.2.3.2 Should any General Meeting have been properly convened but no quorum be present, the meeting shall stand adjourned to another date to be determined by the Chairperson, which shall be not earlier

than seven (7) days and not later than twenty-one days thereafter. The notice reflecting such adjournment shall be given to the persons and in the manner provided for in this Constitution. At such reconvened General Meeting, the members then present or represented shall be deemed to constitute a quorum.

8.2.4 Resolutions and Voting

- 8.2.4.1 At all General Meetings, a resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot shall be held only if demanded by the Chairperson or not less than one third (1/3) of the persons voting in person or by proxy. The result of the vote shall be the resolution of the meeting.
- 8.2.4.2 Each member present or represented at such meeting shall be entitled to one (1) vote.
- 8.2.4.3 Resolutions shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

8.2.5 Minutes

Proper minutes shall be kept of the proceedings of all General Meetings, and a record of the persons present at each meeting. The minutes shall be signed by the chairperson of the meeting, and shall be available for inspection or copying by any member on two (2) days notice to the Secretary or his or her deputy.

8.2.6 Powers

Subject to the provisions of Clause 8.1.1.2 above, a duly convened General Meeting of the Association, at which a quorum is present, is competent to carry out all the objectives and to exercise all the powers of the Association as set out in this Constitution.

8.3 Notices

- 8.3.1 Notice of all meetings provided for in this Constitution, shall be delivered personally, or sent by email or sent by prepaid post, to the last email address or postal address notified by each person concerned to the Association, or in any other manner as the Management Board may decide from time to time.
- 8.3.2 The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.
- 8.3.3 If emailed, notices shall be deemed to have been received two (2) days after sending. If posting, notices shall be deemed to have been received seven (7) days after posting.

9 FINANCIAL MATTERS

9.1 Bank Account

The Management Board shall open such bank account/s as it deems necessary, in the name of the Association with a registered Bank or Building Society. The Management Board shall ensure that all monies received by the Association are deposited in the abovementioned bank account/s as soon as possible after receipt.

9.2 Signatures

All cheques, electronic fund transfers, promissory notes and other documents requiring signature on behalf of the Association shall be signed (or approved in the case of electronic fund transfers) by one signatory up to the designated amount as determined by the Management Board after which two (2) signatories authorised by the Management Board will be required.

9.3 Financial Year End

The Association's financial year-end shall be December:

9.4 Financial Records

The Management Board shall ensure that the Association keeps proper records and books of account which fairly reflect the affairs of the Association.

9.5 Annual Narrative Report and Financial Statements

- 9.5.1 The Management Board shall ensure that the Association prepares an annual narrative report describing the Association's activities and an Annual Financial Statement for each financial year. The Annual Financial Statements shall conform to generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.
- 9.5.2 Within three (3) months after drawing up the Annual Financial Statements, the Management Board shall ensure that the Association arranges for a qualified accounting officer to certify that the annual financial statements are consistent with the financial records of the Association and that its accounting policies are appropriate and have been appropriately applied in the preparation of its financial statements.
- 9.5.3 A copy of the Annual Financial Statements and annual narrative report shall be made available to all members as soon as possible after the close of the financial year.

10 AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION

- 10.1** The terms of this Constitution may be amended and the name of the Association may be changed, and the association may ultimately be dissolved, by resolution of not less than seventy five per cent (75%) of the members present at a quorate General Meeting.
- 10.2** For such General Meetings, proper notice must be given not less than twenty-eight (28) days prior to the date of the Meeting and such notice must state the nature of the resolution to be proposed.

11 INDEMNITY

- 11.1** Subject to the provisions of any relevant statute, members of the Management Board and other office bearers shall be indemnified by the Association for all acts done by them in good faith on its behalf.
- 11.2** Subject to the provisions of any relevant statute, no member of the Management Board and or other office bearer of the Association shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Association, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

12 DISPUTES

- 12.1** In the event of any disagreement arising with respect to the interpretation or application of this constitution, which the parties are unable to resolve despite their best efforts to this end, then any two (2) Management Board members or any five (5) members of the Association shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Management Board.
- 12.2** The Management Board shall consider such declaration within twenty eight (28) days of receiving it. Should the Management Board not be able to resolve the dispute to the satisfaction of the persons declaring it, the dispute shall be referred in the first instance to mediation.
- 12.3** Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Management Board shall agree on a suitable mediator and to the costs of the mediation. Should the parties fail to reach agreement regarding the appointment of the mediator within 14 days, then a mediator shall be appointed by the Chairperson of the South African Association of Mediators. Should the parties be unable to agree on the issue of costs, then the issue of costs shall be decided by the mediator. A mediator shall recommend an appropriate resolution of the dispute.

- 12.4** Should mediation not resolve the dispute, the dispute shall at the election of either party be referred to arbitration under terms of reference to be agreed between the parties. The arbitrator shall be such suitably qualified person as the persons declaring the dispute and the Management Board may mutually agree. Failing agreement on the terms of reference and/or the identity of the arbitrator within 14 days, both these issues will be determined by the Chairperson of the Arbitration Foundation of Southern Africa.
- 12.5** The arbitration shall be conducted in terms of the Arbitration Act 1942, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.
- 12.6** The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.
- 12.7** The person(s) declaring the dispute and the Management Board, beforehand, may agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which party shall be liable for the costs.
- 12.8** The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.

13 ADOPTION OF THE AMENDED CONSTITUTION

This amended constitution was approved and accepted by the members of The College of Magic at a quorate special general meeting duly convened and called for this purpose and thus adopted on this 30th day of September 2016 and witnessed by the following office bearers.

Title: CHAIRPERSON

Full Name: Bruce Hutchison

Signature: _____

Title: TREASURER

Full Name: Wendt Saurma-Jeltsch

Signature: _____

Title: _____

Full Name: _____

Signature: _____

Title: _____

Full Name: _____

Signature: _____

Title: _____

Full Name: _____

Signature: _____

All people who sign the bottom of this document shall also initial every page thereof.

SCHEDULE "A"**PRESCRIBED FISCAL CONDITIONS**

**[In terms of Sections 18A and 30 of the Income Tax Act No. 58 of 1962, as amended]
("The Act")**

Pursuant to the Association (hereinafter referred to as "the Organisation") having been approved by the Commissioner as a "Public Benefit Organisation" in terms of Section 30, and once approved also for purposes of Section 18A of the Act, the Management Board shall be bound by and at all times conform to the conditions prescribed from time to time in terms of the relevant legislation, including any amendments thereto which may from time to time be enacted or prescribed. Such Conditions as are presently applicable to the Association as at the date of execution of this Constitution are set out hereunder.

ACCORDINGLY THE MANAGEMENT BOARD SHALL:

- 1. Once the Organisation has been approved by the Commissioner for purposes of Section 18(A)(1) of the Act:**
 - 1.1 Ensure that any eligible donations actually paid or transferred to the Organisation, are applied solely to undertake, or to enable other Eligible Beneficiaries to undertake Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule; including the provision of funds or assets to assist other Eligible Beneficiaries to conduct such Activities, including such as may be determined by the Minister from time to time for purposes of section 18A of the Act. The term "Eligible Beneficiaries" shall include any agency referred to in section 18A(1)(bA) of the Income Tax Act; and any department of government of the Republic in the national, provincial or local sphere, as contemplated in section 10(1)(a) of the Act.
 - 1.2 Ensure that within 12 months of the end of any year of assessment during which a qualifying donation is received, the Organisation distributes or incurs the obligation to distribute at least Fifty Percent (50%) of the funds so received in respect of which a tax receipt was issued by the Organisation, enabling a deduction thereof to be effected by a taxpaying donor in terms of section 18A of the Income Tax Act; unless the Commissioner upon good cause shown agrees to waive, defer or reduce such obligation to distribute, as contemplated by the proviso to section 18A(2A)(b)(i) of the Act, and in that event, subject to any such conditions as the Commissioner may determine.

- 1.3 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including any additional requirements prescribed by the Minister as binding upon Eligible Beneficiaries carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.
 - 1.4 Ensure that an audit certificate is obtained and retained by the Organisation, confirming that all donations received or accrued by the Organisation in that year, in respect of which section 18A receipts were issued by the Organisation, were utilised in the manner contemplated in subsection 2(A) of the Act.
- 2. As the Organisation has been approved by the Commissioner as a "Public Benefit Organisation" in terms of Section 30 of the Act:**
- 2.1 Carry on the public benefit activities of the Organisation in a non-profit manner, and with an altruistic or philanthropic intent.
 - 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
 - 2.3 Ensure that each such activity is carried on by the Organisation for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
 - 2.4 Comply with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its object.
 - 2.5 Submit to the Commissioner a copy of the document, under which it is established and constituted.
 - 2.6 Be required in terms of such constituting document, to have at least three persons, who are not "connected persons" in relation to each other, to accept the fiduciary responsibility of the organisation; and that no single person directly or indirectly controls the decision-making powers of the organisation.

- 2.7 Be prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity), and be required to utilise its funds solely for the object for which it has been established.
- 2.8 Be required on dissolution to transfer its assets to:
- 2.8.1 any public benefit organisation which has been approved in terms of the relevant provision of the Income Tax Act; or
- 2.8.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity; or
- 2.8.3 the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Act, which is required to use those assets solely for purposes of carrying on one or more public benefit activities.
- 2.9 Be 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; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), 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.
- 2.10 Be required to submit to the Commissioner a copy of any amendment to the documentation under which it is established and constituted.
- 2.11 Ensure that it is not knowingly a party to, and does not 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 Act or any other Act administered by the Commissioner.
- 2.12 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, 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.

- 2.13 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.14 Take reasonable steps to ensure that any funds, which it may provide to an association of persons as contemplated in paragraph 10 (iii) of Part 1 of the Ninth Schedule, have been utilised for the purpose for which they have been provided.
- 2.15 Not use its resources directly or indirectly to support, advance, or oppose any political party.
- 2.16 Ensure that any books of account, records or other documents relating to its affairs are:
 - 2.16.1 where kept in book form, retained and carefully preserved by any person in control of the organisation, for a period of four years after the date of the last entry in any such book; or
 - 2.16.2 where not kept in book form, are retained and carefully preserved by any person in control of the organisation, for a period of four years after the completion of the transactions, acts or operations to which they relate.
- 3. Once approved also as a Public Benefit Organisation for purposes of paragraph 4(o) of Part I of the Ninth Schedule to the Income Tax Act; The Management Board shall further comply with the conditions prescribed by the Minister by way of Regulation for purposes of such provision, viz :**
 - 3.1 All scholarships, bursaries or awards granted by the Organisation will be *bona fide* and be granted to an individual on grounds of objective merit or need.
 - 3.2 No scholarship, bursary or award granted will be :
 - 3.2.1 revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of the scholarship, bursary or award; and

- 3.2.2 subject to conditions which would enable the donor of the funds of the scholarship, bursary or award or any connected person in relation to the donor, to derive some direct benefit from the application of the scholarship, bursary or award; or
- 3.2.3 granted to any person who is or will become an employee of the donor of the funds of the scholarship, bursary or award or the organisation (or any associated institution in relation to the donor or organisation) or any relative of the person, unless circumstances indicate that the scholarship, bursary or award would have been granted to the person or his or her relative, even if that person had not been an employee of the donor, organisation or associated institution.
- 3.3 All decisions regarding the granting of scholarships, bursaries and awards will be made by a duly constituted committee consisting of at least three persons who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted.
- 3.4 All scholarships, bursaries and awards granted in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –
- 3.4.1 to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic for a period of at least the period that the study, research or training was funded by the organisation; or
- 3.4.2 to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in paragraph 3.4.1 above.

SCHEDULE B

GENERAL MANAGEMENT, INVESTMENT AND ADMINISTRATIVE POWERS

In administering the affairs of the Association the Management Board will have the following Powers, in addition to any specific powers and discretions referred to or necessarily implied by the Constitution to which it is attached, viz:

1. To receive and administer donations, grants, subsidies, and bequests received for purposes of the Association; and to enter into contracts or tenders with National, Provincial and Local tiers of Government, in furtherance of the Objects of the Association.
2. To acquire assets, and invest and reinvest the funds of the Association in a manner permitted by law, with due regard to prudence, integrity, and reasonable care, as may be deemed appropriate, in the sole and entire discretion of the Management Board.
3. To retain, or take over assets and investments made available to the Association; and to retain them in the form in which they are received, or to realise and re-invest the proceeds thereof.
4. To realise or vary any investments from time to time forming part of the funds of the Association, and re-invest the proceeds thereof in any authorised investments.
5. To allow funds and investments forming part of the assets of the Association to remain uninvested, or in their original state of investment upon acquisition by the Association.
6. To lend money, with or without security, and with or without provision for interest, as may be deemed appropriate in the furtherance of the Objects of the Association.
7. To borrow on such terms and conditions as may be considered appropriate for purposes of the Association, including to enable the repayment of liabilities; the making of loans in furtherance of its Objects; the acquisition or development of real estate; the preserving or acquisition of assets or investments; the subscription of shares, with powers from time to time to consent to alterations or variations in the terms applicable thereto; and as security for any moneys so borrowed, the Association shall be entitled to mortgage, pledge, either generally or specifically, or otherwise encumber, all or any portion of the assets of the Association, in such manner and upon such terms and conditions as it may deem fit, with the right also to replace any such borrowings or security.

8. To guarantee (either gratuitously, or for a consideration) the performance of contracts or obligations of any third party, in order to promote the Objects of the Association, upon such conditions, and with or without security, as the Management Board in its sole and absolute discretion may deem fit; provided such transaction is entered into in pursuance of the Object of the Association.
9. To exercise the voting powers attached to any shares forming part of the assets of the Association, as may be considered appropriate and in the best interests of the Association; and to enter into arrangements as may be considered necessary for the purpose of causing the liquidation, reconstruction, or amalgamation of any Company, Trust, or other entity.
10. To deal with, and turn to account, any of the assets of the Association, by development, exchange, sale, lease or otherwise and in exercising any powers of sale, to cause such sale to be effected by public auction, tender, or private treaty as may be considered appropriate.
11. To purchase or otherwise acquire movable and immovable property for the advancement of the purposes and activities of the Association in pursuance of its Objects.
12. In respect of any immovable property donated to, or forming part of the assets of the Association, at any time:
 - 12.1 to develop, maintain, exchange, sell, lease or otherwise deal with any such immovable property or any portion thereof, and to grant rights or options in respect thereof; including Leasehold; Life Rights and other rights of use and occupation; to register mortgage bonds; and to procure the maintenance, repair, improvement, demolition or reconstruction of any buildings situated thereon;
 - 12.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation, or otherwise, in any Deeds Registry, Mining Titles or other public office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document; and to obtain copies of deeds, bonds or documents for any purposes, and generally to do or cause to be done any act whatsoever in any such Registry or office.

13. To transfer shares, property rights, or other assets into the name of a Nominee Company or other fiduciary, to hold such assets on behalf and for the benefit of the Association.
14. To cause any Company, Trust, or other entity to be formed, and to appoint its Directors, Trustees or other office bearers; or otherwise exercise control over its activities and affairs, directly or indirectly, for the purpose of holding specific assets or undertaking specified activities which serve to promote the Objects of the Association.
15. To sue for, recover and receive all debts or sums of money, goods, effects and other things whatsoever, which may become due, owing, payable or vested in the Association; and bring sequestration, liquidation or judicial management proceedings against any person.
16. To defend, oppose, adjust, settle, compromise or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the Association and any person and, for the purposes aforesaid, to do and execute all necessary acts or documents.
17. To attend meetings of creditors indebted to the Association whether in insolvency, liquidation, judicial management or otherwise, and vote for the election of a Trustee, liquidator or judicial manager, and also vote on all questions submitted to any such meeting of creditors, and generally exercise the rights of a creditor.
18. To exercise the voting powers attaching to any share, stock, debenture, or unit, in such manner as the Association may deem fit, for the purpose of amalgamation, merger or compromise.
19. To exercise and take up or sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debenture, or unit forming part of the assets of the Association.
20. To appoint a Chief Executive Officer and such other personnel as may be considered appropriate, from time to time, whether in a part-time or full-time capacity; and to determine their remuneration, and terms of employment, and delegate to the Chief Executive Officer or any other designated person, such powers and authorities with respect thereto as may be deemed appropriate.
21. To establish employee benefit schemes, pension and retirement funds, and to make such

other provision for the wellbeing of employees as may be considered appropriate and desirable.

22. To give receipts, releases or other effectual discharges for any sums of money or things recovered.
23. To treat as income any periodic receipts, though received from wasting assets; and to make provision for the amortisation thereof, if deemed necessary and appropriate.
24. To determine what receipts shall be treated as income and what receipts shall be treated as capital, in respect of any liquidation dividend, or return of capital, or capitalisation of profits, in the case of companies whose shares are being held as portion of the assets of the Association; and generally to decide any question which may arise as to what constitutes capital and what constitutes income, by effecting an apportionment in such manner as the Association may consider fit.
25. To employ accountants, attorneys, agents, brokers, or other professional advisers to transact any business or furnish any service of whatever nature required to be done in furtherance of the Sole or Principal Object of the Association; and to pay all such charges and expenses so incurred as a first charge, and not to be responsible for the default of any such appointees, or for any loss occasioned by their employment.
26. To cause the Association to be merged with any other approved Non-Profit Organisation(s) having the same or similar purposes; and/or to incorporate the Association as a Non-Profit Company, and to transfer all or any of its assets in favour of such other entity, subject to due compliance with all relevant legislation.
27. Generally, to deal with assets or investments in such manner as may be considered to be in the interests of the Association for the advancement of its Sole or Principal Object.

