
MEMORANDUM OF INCORPORATION

OF THE

SOUTHERN AFRICAN-GERMAN CHAMBER OF COMMERCE AND INDUSTRY NPC

COMPANY REGISTRATION NUMBER: 1963/002981/09

CHAPTER 1: LEGAL BASIS

1. GENERAL PROVISIONS

- 1.1 The **SOUTHERN AFRICAN - GERMAN CHAMBER OF COMMERCE AND INDUSTRY NPC** - (hereinafter referred to as the "Chamber") is a non-profit company with members, duly incorporated and registered in accordance with the Companies Act 71 of 2008, as amended, with registration number 1963/002981/09. The bilateral Chamber is a member of the German Chambers of Commerce Worldwide Network, recognised by the Association of German Chambers of Commerce and Industry (hereinafter: "DIHK").
- 1.2 The name of the Chamber is:
- 1.2.1 in the Southern African language: **SOUTHERN AFRICAN - GERMAN CHAMBER OF COMMERCE AND INDUSTRY**, in brief: SAGCC.
- 1.2.2 in the German language: Deutsche Industrie- und Handelskammer für das südliche Afrika; in brief: AHK Südliches Afrika.
- 1.3 The registered office of the Chamber is 47 Oxford Road, Forest Town, Johannesburg, 2193, South Africa.
- 1.4 The official languages of the Chamber are English and German.
- 1.5 The Chamber possesses a seal adopted by the Board of Directors.



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- 1.6 For the performance of the objectives referred to in clause 2, the Chamber may, at the resolution of the Board of Directors, open branch offices and branches and establish subsidiaries.
- 1.7 The governing bodies of the Chamber are the Members in General Meeting, the Board of Directors, the President, the Executive Director and the Treasurer. The Members can appoint an Advisory Board (Senior Council).

2. THE MAIN BUSINESS OF THE CHAMBER AND ITS OBJECTIVES

2.1 The objects of the Chamber are, *inter alia*:

- 2.1.1 to represent the interests of its members;
- 2.1.2 to promote economic and commercial relations between the Federal Republic of Germany and the Republic of Southern Africa; and
- 2.1.3 to represent the interests of German business and industry in the Southern African region and the interests of Southern African business and industry in the Federal Republic of Germany. These tasks and interests include professional education and training, trade fairs and conventions, transformation initiatives, environmental issues as well as the promotion of tourism.

2.2 Except as provided for otherwise by law, the Chamber shall undertake tasks to accomplish its objects referred to in clause 2.1 which shall include, but are not limited to, the following:

- 2.2.1 To promote and foster such trade and commerce of all descriptions whatsoever between SADC member states, the Republic of South Africa and the Federal Republic of Germany.
- 2.2.2 To promote and foster such trade and commerce in such a manner as shall be in the mutual interest of both countries.
- 2.2.3 To safeguard and protect in as far as may be possible, the interest of all persons and/or firms engaged in reciprocal commerce between the Federal Republic of Germany and SADC Member States, including the Republic of South Africa.



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- 2.2.4 To promote and facilitate and co-ordinate education in commerce.
- 2.2.5 To arrange and hold trade fairs, exhibitions, symposia, lectures and advertising campaigns at such places, whether in SADC Member States, the Republic of South Africa or the Federal Republic of Germany, as may be advisable with a view to improving trade and commerce between these countries.
- 2.2.6 To advise on, promote and co-ordinate initiatives of transformation and accompany such initiatives in order to ensure well-considered advantages and prosperity for previously disadvantaged parts of the population of the Republic of South Africa.
- 2.2.7 The Chamber is non-political and has not, nor shall at any time, have any affiliations or connections, direct or indirect, with any political body, party or organisation in the SADC Member States, the Republic of South Africa or the Federal Republic of Germany. The Chamber shall not be used in any manner or circumstance whatsoever for any political purposes whatsoever either in the SADC Member States, the Republic of South Africa or the Federal Republic of Germany.
- 2.2.8 The Chamber shall be a non-profit earning organisation and any profits earned or income accruing to the company shall be applied to the promotion of the objects of the Chamber and the payment of dividends is prohibited.
- 2.2.9 The Chamber shall be entitled to charge such fees in respect of the services rendered by it for any persons or organisations or for members of the Chamber, as it may deem advisable.
- 2.2.10 To establish offices in SADC member states, the Republic of South Africa, the Federal Republic of Germany and in such other place or places as the Chamber in its sole discretion may deem necessary or desirable.
- 2.2.11 To engage staff for the purpose of the conduct of its various offices and to engage and dismiss personnel or consultants as and when deemed necessary.
- 2.2.12 To appoint managers, secretaries, accountants, auditors, attorneys and all personnel and professional personnel from time to time as may be deemed necessary.



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- 2.2.13 To purchase, acquire, sell, exchange and dispose of every type of office equipment and motor vehicles and all other commodities necessary or desirable for the conduct of the Chamber's operation as and when deemed necessary or advisable.
- 2.2.14 To organise, conduct, manage and operate either alone or in conjunction with others, *inter alia*, trade fairs, exhibitions, symposia, lectures and advertising campaigns in SADC member states, the Republic of South Africa and in the Federal Republic of Germany as well as in such other countries as may from time to time be deemed necessary.
- 2.2.15 To establish mediation tribunals for the purpose of mediating upon disputes between members of the Chamber in SADC member states, in the Republic of South Africa and overseas or between members of the Chamber or any otherwise affiliated entities and any other party, whether in SADC member states, the Republic of South Africa or elsewhere, and for such purposes to engage legal practitioners, experts and all other such personnel as may from time to time be necessary or appropriate in order to give effect hereto.
- 2.2.16 To purchase, take on lease, receive or otherwise acquire and hold land, whether freehold, leasehold or *Erbpacht* [99-year lease in terms of German Law], within SADC member states, the Republic of South Africa or within the Federal Republic of Germany or in such places as may be deemed necessary and to build and erect or purchase, acquire, take on lease or otherwise hold buildings, wherein to house the Chamber's offices and or wherein to provide such facilities for members of the Chamber or other persons as may from time to time be deemed necessary or desirable and for such purposes to provide and equip such buildings and erections with lighting, heating, power, drainage, sewerage, water, gas and such other necessities or conveniences as may be deemed necessary or expedient by the Chamber.
- 2.2.17 To invest any money not immediately required for the purposes of the Chamber in such manner as the Chamber may determine.
- 2.2.18 To borrow money not immediately required for the purposes of the Chamber in such manner as the Chamber may determine.



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- 2.2.19 To borrow money for any of the purposes of the Chamber and to secure the repayment thereof by mortgage, hypothecation, or pledge of any of the assets of the Chamber movable or immovable.
- 2.2.20 To undertake and execute any trust, which, in the discretion of the Chamber, may be conducive to any of the objectives of the Chamber.
- 2.2.21 To sell, improve, manage, develop, lease, mortgage, and dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Chamber.
- 2.2.22 To draw, accept, endorse, discount, execute and issue negotiable or transferable instruments, electronically or otherwise.
- 2.2.23 To do all or any of the above things as principals, agents, contractors, trustees or otherwise, and by and through trustees, agents or otherwise and either alone or in conjunction with others.
- 2.2.24 To join by affiliation or otherwise organisations engaged in similar work.
- 2.2.25 To do all such other things as are incidental or conducive to the attainment of the Chamber's objects.
- 2.2.26 To provide information and advice, especially to prepare advisory opinions, market studies and reports.
- 2.2.27 To facilitate, foster and further the development of business relationships between persons or entities in the two countries and the SADC region.
- 2.2.28 To initiate and cultivate contacts between interested business circles in the two countries and the SADC region.
- 2.2.29 To represent the economic and commercial interests of parties to the business relationships in dealings with government representatives and agencies, public sector corporations and public authorities in Germany, South Africa and the SADC region.



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- 2.2.30 To collect and distribute information about economic conditions in the Federal Republic of Germany and in the SADC member states as well as the status of and developments in economic and trade policy matters through publications (e.g. circulars, annual reports, bulletins/fact sheets and the like).
- 2.2.31 To organise events such as press conferences, informational seminars, symposiums and discussions, and to participate in such events to the extent that this is compatible with the mission set out in these Memorandum of Incorporation.
- 2.2.32 To identify sales, procurement, investment, education, development and transformation opportunities in the Republic of South Africa and, where possible, in both countries and SADC member states.
- 2.2.33 To mediate disputes between participants in the bilateral commercial exchanges.
- 2.2.34 To undertake any other lawful activity that serves the objects described in clause 2.1 above.
- 2.3 The Chamber carries out its activities in close and trusting cooperation with the DIHK and with the institutions and public authorities in both countries (i.e. the Federal Republic of Germany and the Republic of South Africa) that are concerned with the work of the Chamber.
- 2.4 The Chamber will refrain from any and all activities that are reserved by law to political parties and movements as well as from any and all ideological activities.
- 2.5 The business and objects of the Chamber shall not be in conflict with the requirements of section 30 B of the Income Tax Act 58 of 1962 (as amended).
- 2.6 Substantially the whole of the activities of the Chamber must be directed to the furtherance of the sole or principal objectives of the Chamber and not for the specific benefit of an individual member or minority group.
- 2.7 The Chamber will comply with the reporting requirements as may be determined by the Commissioner of the South African Revenue Service (as defined in the Income Tax Act 58 of 1962, as amended) from time to time.

- 2.8 The Chamber is not and will not knowingly become a party to and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible tax avoidance arrangement as contemplated in Part IIA of Chapter III, or a transaction operation or scheme contemplated in section 103 (5) of the Income Tax Act 58 of 1963 (as amended).
- 2.9 The Chamber must not pay any employee, office bearer, member or other person any remuneration, as defined in the Schedule 4 of the Income Tax Act 58 of 1963 (as amended), which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 2.10 The Chamber must derive substantially the whole of its funding from annual or other long-term members or from appropriation by the government of the Republic (including foreign governments) in the national, provincial or local sphere.
- 2.11 The special conditions which apply to the Chamber and the requirements additional to those prescribed in the Companies Act for their alteration are:
- 2.11.1 The income and property derived by the Chamber shall be applied solely towards the promotion of its main objectives and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever to the Chamber or to its holding Chamber or subsidiary, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Chamber in return for any services actually rendered to the Chamber or payment of, or reimbursement for, expenses incurred to advance a stated object of the Chamber.
- 2.11.2 No donation shall be accepted by the Chamber, 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 accordance with section 18A of the Income Tax Act 58 of 1962 (as amended)); 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) of the Income Tax Act 58 of 1962 (as amended), which has at its sole or principal object the carrying on of any public benefit activity) may not impose any conditions, which could



enable such donor or connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

2.11.3 If, upon the winding-up or dissolution of the Chamber, there remains, after the satisfaction of all debts and liabilities, any property whatsoever, the same shall not be paid to or distributed to the Chamber, but shall be given or transferred to some other institution(s) having objects similar to the objects of the Chamber or shall be donated to charitable organisation(s), provided such institution(s) or organisation(s) are/is:

2.11.3.1 an entity approved by the Commissioner in terms of section 30 B of the Income Tax Act 58 of 1962 (as amended);

2.11.3.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act 58 of 1962 (as amended);

2.11.3.3 an institution, board or body which is exempt from tax under section 10 (1) (cA) (i) of the Income Tax Act 58 of 1962 (as amended);

2.11.3.4 any department of state or administration in the national or provincial or local sphere of the government of the Republic of South Africa, as contemplated in section 10 (1) (a) or (b) of the Income Tax Act 58 of 1962 (as amended).

3. NON – PROFIT COMPANY

3.1 The Chamber –

3.1.1 is a Non-Profit Company with voting members, incorporated for a public benefit or other object as required by Schedule 1 of the Companies Act;

3.1.2 is one, the income and property whereof, may not be distributed to its Incorporators, Members, Directors, Officers or persons related to any of them, except to the extent permitted by Schedule 1 of the Companies Act.



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3.2 The Chamber is incorporated in accordance with and governed by:

3.2.1 The provisions of the Companies Act that are applicable to Non – Profit Companies, without any limitation, extension, variation or substitution; and

3.2.2 The provisions of this Memorandum of Incorporation; and

3.2.3 The Rules made by the Board of the Chamber in terms of section 15 (3) to (5) of the Companies Act.

4. POWERS OF THE CHAMBER

4.1 General

4.1.1 The Chamber has all the legal powers and capacity of an individual except to the extent that: -

4.1.1.1 a juristic person is incapable of exercising any such power, or having such capacity; and

4.1.1.2 item 1(3) and 1(4) of the Schedule 1 of the Companies Act limits such powers and capacity.

4.1.2 Nothing in this MOI shall preclude the Chamber:-

4.1.2.1 from forming and/or having an interest in any company or companies or associations (including profit companies) subject to the Chamber applying all of its assets and income, however derived, to the advance of its stated objects, as set out herein, provided the Chamber will receive fair value for its interest;

4.1.2.2 from amalgamating with other non-profit companies having the same or similar objects as the Chamber;

4.1.2.3 from taking part in the management, supervision and control of the business or operations of any other company or business having the same or similar objects as the Chamber and to enter into partnerships having the same or similar objects as the Chamber.

4.2 Memorandum of Incorporation and Chamber Rules

- 4.2.1 This Memorandum of Incorporation of the Chamber may be altered or amended only in the manner set out in section 16, 17 or 152 (6) (b) of the Companies Act.
- 4.2.2 The authority of the Chamber's Board of Directors to make rules for the Chamber, as contemplated in section 15 (3) to (5) is not limited or restricted in any manner by this MOI.
- 4.2.3 The Board must publish any rules made in terms of section 15 (3) to (5) of the Companies Act by delivering a copy of those rules to each Director by electronic communication.
- 4.2.4 The Chamber must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) of the Companies Act, by delivering a copy of the notice to each director by electronic communication.

4.3 Optional provisions of the Companies Act, 2008 do not apply

The Chamber does not elect, in terms of section 34 (2) of the Companies Act, to comply voluntarily with the provisions of Chapter 3 of the Companies Act.

4.4 Calculation of Business Days

- 4.4.1 When a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by –
 - 4.4.1.1 excluding the day on which the first such event occurs;
 - 4.4.1.2 including the day on or by which the second event is to occur; and
 - 4.4.1.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 4.4.1.1 and 4.4.1.2 respectively.

5. FUNDS AND ASSETS

- 5.1 The Chamber's activities and services are not aimed at generating profits. The revenues from its activities shall be used to cover the costs of the Chamber and to accomplish the mission and tasks of the Chamber in accordance with this Memorandum of Incorporation. The funds and assets of the Chamber may only be used in a manner

consistent with the tasks and activities of the Chamber as set out in this Memorandum of Incorporation. Such use must adhere to the principles of economy and efficiency.

- 5.2 The Chamber may engage in activities on behalf of members and of non-members.
- 5.3 Members may be granted a discount. The individual members do not have any rights to the assets.
- 5.4 The funds received by the Chamber to carry out its tasks may comprise of:
 - 5.4.1 Membership contributions;
 - 5.4.2 Remuneration for services;
 - 5.4.3 Public grants;
 - 5.4.4 Interests and returns on the Chamber's invested assets;
 - 5.4.5 Other grants and subsidies.
- 5.5 The Chamber is supported in the performance of the tasks referred to in clause 2 by a grant from the Federal Republic of Germany as part of activities for the promotion of German foreign trade. Details shall be regulated in the agreement underlying such a grant.
- 5.6 The Chamber operates under an annual budget; to this end it is required to maintain accounts on commercial principles in accordance with prevailing rules and agreements.
- 5.7 To the extent that the Chamber receives grants or subsidies earmarked for specific purposes, it may only dispose of such funds in connection with these purposes.

6. LIABILITY

- 6.1 Any liability of the Chamber is limited exclusively to the Chamber's assets. All personal liability of individual members of the Board of Directors or of the Chamber for liabilities of the Chamber, subject to the provisions of the Companies Act, is, as far as is permitted by law, excluded.

- 6.2 Where funds are entrusted to the Chamber on a fiduciary basis, a separate cash journal must be kept for them. Such funds must be deposited in separate bank accounts.
- 6.3 The liability of the Members of the Board of Directors vis-à-vis the Chamber is limited to intent and gross negligence.

CHAPTER 2: MEMBERSHIP

7. TYPES OF MEMBERSHIP

- 7.1 The Chamber is made up of:

- 7.1.1 ordinary members;
- 7.1.2 extraordinary members;
- 7.1.3 honorary members.

- 7.2 Ordinary members can be business enterprises, in particular legal entities as well as associations domiciled in the Federal Republic of Germany or the Republic of South Africa, which have an interest in Southern African-German economic and commercial relations.

- 7.3 Extraordinary members can be business enterprises, in particular legal entities or associations that demonstrably support the mission of the Chamber.

- 7.4 Public figures who have rendered exceptional service for Southern African-German economic and commercial relations and for other purposes of the Chamber can, at the proposal of the Board of Directors, be awarded honorary membership by a two-thirds majority of the members present or represented at the Annual General Meeting.

8. MEMBERSHIP START DATE

- 8.1 Subject to the rules of the Chamber, membership becomes effective upon receipt, by the applicant, of the notice of admission. No applicant has a right to be admitted. Employees of the Chamber are not eligible to become members.

8.2 Admission is granted on the basis of a written application for admission. By virtue of the application, the applicant accepts the Memorandum of Incorporation and the Rules of the Chamber in the event of admission.

8.3 The Board of Directors decides on admissions by a simple majority vote. It may delegate this decision to the Executive Director. The applicant is to be notified of the result in writing. There is no obligation to disclose any reasons for the decision.

9. MEMBERSHIP END DATE

9.1 Subject to the Rules of the Chamber, membership expires upon resignation, exclusion, or the death of a member; in case of a legal entity or partnership it also expires when the same is wound up.

9.2 Members may only resign effective as of the end of a financial year. Written notice of resignation must be given to the Board of Directors no later than three months before the end of the financial year in question. The Board of Directors may waive observance of the three-month period if this appears reasonable based on the reasons for the resignation. The notice of resignation will not affect the rights and obligations associated with membership until the end of the financial year.

9.3 If a member, after having been sent two reminders, fails to meet the obligation to pay the annual membership fee within a grace period of one month from the sending of the second reminder to pay, the membership shall expire at the end of this one-month period.

9.4 The Board of Directors may exclude a member for important reasons by a majority of two-thirds of its members. Important reasons shall include, but not be limited to, a grave violation of the interests and objects of the Chamber, an intentional infringement of a provision of this Memorandum of Incorporation, the Rules of the Chamber, the Companies Act, as well as conduct, which in the sole discretion of the Board of Directors is unbecoming of a member of the Chamber.

9.5 If possible grounds for exclusion become known, the President of the Chamber shall promptly refer such grounds to the member concerned in writing and request the member to respond to the allegations made within a reasonable time. Should the member fail to respond or should a response not be satisfactory for the Board of

Directors, the President shall notify the member in question about the exclusion resolution of the Board of Directors taken against it by electronic notice sent to the last email address notified to the Chamber. The exclusion is deemed effective upon the mailing of the notice.

- 9.6 The expiration of membership does not establish any rights to the refund of membership fees for the current financial year nor shall any claims lie against the Chamber.

10. RIGHTS OF THE MEMBERSHIP

- 10.1 Subject to the Rules of the Chamber, members have the right to attend the Annual General Meeting or any Extraordinary General Meeting (jointly "General Meeting"), to move motions and to exercise their rights to vote, subject to the provisions in this Memorandum of Incorporation and the Act.
- 10.2 Every ordinary member who has paid the annual membership fee shall have one vote in any General Meeting. Extraordinary members shall not have any voting rights. Legal entities or Associations shall exercise their voting rights through their statutory representatives or through employees whom they have authorised to do so in writing.
- 10.3 The right to vote may be assigned to another ordinary member by written authorisation (i.e., proxy). No member may exercise more than a total of five voting rights (including its own).
- 10.4 Proxies must be handed to the Executive Director before the start of the Annual General Meeting.
- 10.5 The members are entitled to assistance and advice from the Chamber in all matters that fall within the scope of the Chamber's objects. The services of the Chamber, including its publications, are generally provided to them at preferential prices or—in exceptional cases specified by the Executive Director—free of charge. Expenses incurred by the Chamber must be reimbursed separately by the member concerned.

11. OBLIGATIONS OF THE MEMBERS

- 11.1 Subject to the Rules of the Chamber, each member shall support the Chamber in accomplishing its objects and tasks. Each member undertakes to adhere to the

Memorandum of Incorporation, the Rules of the Chamber and to the resolutions of the Chamber's governing bodies.

- 11.2 The members are required to pay an annual membership fee as determined by the Board of Directors and confirmed by the Members in the Annual General Meeting. Pursuant to a resolution of the Board of Directors, the annual membership fee may also be collected in instalments. The fee for extraordinary members may be no more than one-third below the ordinary membership fees. Honorary members are exempt from membership fees. The annual membership fee is due and payable at the start of the financial year.

CHAPTER 3: MEETINGS OF MEMBERS

12. FUNCTIONS OF MEMBERS

The Members function as the principal governing body of the Chamber.

13. ANNUAL GENERAL MEETING

- 13.1 The Annual General Meeting is convened at the registered office of the Chamber at least once a year and no later than after the expiration of 6 (six) months from the end of each financial year.
- 13.2 The purpose of the Annual General Meeting includes, but is not limited to the following:
- 13.2.1 Taking receipt of the report of the Board of Directors, and in particular the current budget, and the report of the Treasurer and of the auditors;
 - 13.2.2 Election and discharge from liabilities of the members of the Board of Directors with the exception of the Executive Director;
 - 13.2.3 Election of an auditor, who is not allowed to be a member of the Board of Directors;
 - 13.2.4 Vote on motions that have been presented with the exception of membership applications;
 - 13.2.5 Appointment of honorary members;

13.2.6 Election of mediators and their alternates for the mediation panel as provided for in clause 25 of this Memorandum of Incorporation;

13.2.7 Changes and amendments to the Memorandum of Incorporation.

14. EXTRAORDINARY GENERAL MEETINGS

14.1 Extraordinary General Meetings may be convened at any time by the President of the Chamber.

14.2 An Extraordinary General Meeting must be held within 20 (Twenty) business days from receipt of a request, if at least one-fifth of the ordinary members submit a written request to convene an Extraordinary General Meeting to the Board of Directors, stating the reasons for doing so.

14.3 An Extraordinary General Meeting is required, in particular, to decide on the dissolution of the Chamber (Article 27) and to decide about motions that have been submitted.

15. PROCEDURE

15.1 The Annual General Meeting is convened by the Executive Director in agreement with the President. The notice of convocation is sent out by email or a comparable means of communication. It must include the agenda and must be sent at least 20 (Twenty) business days prior to the meeting date for the Annual General Meeting or 15 (Fifteen) business days prior to the meeting date for an Extraordinary General Meeting.

15.2 Voting members may propose agenda items, which must be presented to the Board of Directors no later than 2 (Two) days before the mailing of the invitations (i.e. notice of convocation) to the Annual General Meeting.

15.3 The Annual General Meeting is chaired by the President of the Chamber or by the Deputy President if the former is not available. If both are unavailable the Vice President will serve as chair, or as a further alternative, in his or her absence, the longest serving member of the Board of Directors.

15.4 Only resolutions concerned with items on the agenda may be put to a vote. Matters that are not on the agenda may only be put to a vote if no objections to a vote on such resolution are raised at the meeting.

- 15.5 Unless otherwise provided for in this Memorandum of Incorporation, an Annual General Meeting and/or Extraordinary General Meeting has a quorum if there is present in person or represented by a duly authorised agent (i.e., by proxy) at such Annual General Meeting and/or Extraordinary General Meeting at least 15 (Fifteen) members or one – third of the total number of members, whichever is the lesser. If an Annual General Meeting does not have a quorum, an alternate Annual General Meeting with the same agenda must be held within 15 (Fifteen) business days. Such meeting will be quorate independent of the number of voting members that are present or represented. The invitation to the Annual General Meeting must make reference to the possibility of an Alternate General Meeting. The invitation to the Alternate General Meeting may also be sent together with the invitation to the General Meeting to be held in the event that the original meeting does not reach the quorum provided for in terms of the Memorandum of Incorporation.
- 15.6 Unless otherwise provided for in this Memorandum of Incorporation, resolutions are adopted by a simple majority of voting members present or represented by proxy. In the case of appointments to offices for which there are several candidates, the candidate who wins the most votes is elected.
- 15.7 Upon resolution by the Annual General Meeting, votes are cast by secret ballot. The motion for a secret ballot is likewise voted on by secret ballot. The chair of the Annual General Meeting may order a vote by open ballot if no objections are raised at the Annual General Meeting.
- 15.8 Minutes of the Annual General Meeting will be prepared, recording the results of the votes in particular, and will be signed by the President of the Chamber and by the Executive Director.
- 15.9 The provisions in this clause 15 apply equally to Annual General Meetings, Extraordinary Meetings as well as to Alternate General Meetings unless further specific rules are set out elsewhere in this Memorandum of Incorporation or Chamber Rules.

CHAPTER 4: BOARD OF DIRECTORS

16. COMPOSITION

- 16.1 The Board of Directors is composed of the President, one Deputy President, one Vice President, the Executive Director, the Treasurer and up to 3 (Three) other Board members. The maximum number of members of the Board shall be 8 (Eight). In case of the unavailability of the President, the Deputy President represents / substitutes the President. The Vice President resides in Germany and represents the interests of members domiciled in Germany. No more than one person from any one-member company may serve on the Board of Directors. The Board is chaired by the President, or by the Deputy President if he or she is not available. If both are unavailable the Vice President will serve as chair, or as a further alternative, in his or her absence, a senior member of the Board of Directors.
- 16.2 The Members of the Board serve in an honorary capacity. They undertake their office in a personal capacity; representation is not possible. This does not apply to the Executive Director, who may appoint an Alternate Director in accordance with the Companies Act.
- 16.3 Any member of the Chamber or of the Board of Directors may propose candidates for election to the Board from among the group of ordinary voting members. The list of proposed candidates will be sent to the members together with the invitation to the Annual General Meeting.
- 16.4 Subject to the rules of the Chamber, the members of the Board of Directors are elected for a two-year term in office.
- 16.5 Subject to the Rules of the Chamber, consecutive re-election is permitted twice. The Executive Director will be named by the Board of Directors upon the recommendation of DIHK. The Executive Director's term in office is stipulated in his or her contract of employment. In justified exceptional cases, a local contract of employment may be entered into with the consent of DIHK. In each case, early termination is only possible with the consent of DIHK.
- 16.6 If a Director leaves the Board before the expiration of his or her term in office, the Board may co-opt an ordinary member of the Chamber to serve on the Board of

Directors until the next Annual General Meeting. In a deviation from this provision, clause 16.5, sentences 3 and 4 of clause 16.5 shall apply to a departure of the Executive Director.

17. TASKS OF THE BOARD OF DIRECTORS

- 17.1 The Board of Directors furthers the objectives of the Chamber, ensures that it serves its intended mission, adopts policies for the management of the Chamber and looks after the interests of its members. It acts in conformance with the resolutions of the Annual General Meeting and the agreements with DIHK. Notwithstanding anything contained herein, the directors are bound by the provisions of the Act.
- 17.2 Subject to the Rules of the Chamber and apart from the tasks set out by law and this Memorandum of Incorporation, the tasks of the Board include but are not limited to:
- 17.2.1 Election of the President of the Chamber from among its members;
 - 17.2.2 Election of the Vice President of the Chamber from among its members;
 - 17.2.3 Election of the Deputy President of the Chamber from among its members;
 - 17.2.4 Reporting to the General Meeting;
 - 17.2.5 Determining the membership fees based on proposals from the Executive Director;
 - 17.2.6 Determining the Chamber's service fees based on proposals from the Executive Director;
 - 17.2.7 Determining the schedule of responsibilities for the Board of Directors based on proposals from the Executive Director;
 - 17.2.8 Deciding on the acceptance and exclusion of members;
 - 17.2.9 Reviewing the budget of the Chamber for the financial year as submitted by the Executive Director;
 - 17.2.10 Exercising powers of disposal over the assets of the Chamber in accordance with clause 5 of the Memorandum of Incorporation;



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17.2.11 Appointing the Executive Director proposed by DIHK;

17.2.12 The Board of Directors is further competent in all matters not expressly reserved to the General Meeting or to the Executive Director by law or under these Memorandum of Incorporation.

18. MEETINGS, RESOLUTIONS, MINUTES

18.1 The meetings of the Board of Directors are convened by the President in consultation with the Executive Director of the Chamber. Meetings of the Board of Directors are to be held regularly but at least three times a year. The invitations to the meetings together with the agenda must be sent out by mail or by email in accordance with section 73 of the Companies Act and no later than 10 (Ten) business days before the meeting date. In urgent cases, invitations may be issued verbally or by email and observation of the time limit may be waived.

18.2 The Board of Directors has a quorum if the majority of its members is present.

18.3 Clause 15.6 and clause 15.7 shall be applicable *mutatis mutandis*.

18.4 Minutes of the meetings of the Board of Directors shall be taken by the Executive Director or by his or her Deputy; they shall be signed by the person recording the minutes and sent on to the Board members. These minutes shall be approved by the Board of Directors at the following meeting but no later than at the next following meeting.

19. PRESIDENT

19.1 The Board of Directors elects the President of the Chamber from among its number for a two-year term. He or she may only be re-elected twice. If the President's term in office extends beyond his or her term as a member of the Board of Directors, the latter is extended accordingly.

19.2 In the event that the President is unavailable, the Deputy President will serve as his or her deputy, but will do so no longer than until the next Annual General Meeting.

20. TREASURER

The Board of Directors elects a Treasurer from among its number for a two-year term. He or she may be re-elected twice. The Treasurer supervises the financial practices of the Chamber. He or she advises the Executive Director in preparing the budget, summarily reviews the accounting/bookkeeping and provides advice during the preparation of the financial statements.

21. EXECUTIVE DIRECTOR

- 21.1 The Executive Director is responsible for running all ongoing business activities of the Chamber within the framework of this Memorandum of Incorporation, the policies of the Board of Directors, the Rules of the Chamber and the agreements with DIHK; this shall include the registration of any changes as well as the implementation of all steps related to the same.
- 21.2 The Executive Director shall appoint an employee of the Chamber as his or her Deputy after consulting the Board of Directors.
- 21.3 Board resolutions which are not consistent with the objectives of the Chamber according to clause 2 of this Memorandum of Incorporation, the Rules of the Chamber or with the agreements with DIHK or that are not covered by the Chamber's approved budget require the express consent of the Executive Director, who shall at all times act in accordance with the provisions of the Companies Act and his fiduciary duties.

22. ADVISORY BOARD (SENIOR COUNCIL), COMMITTEES

- 22.1 Subject to the Rules of the Chamber, the President of the Chamber may appoint, based on an election at an Annual General Meeting, ordinary as well as extraordinary members to an Advisory Board (Senior Council) so as to assist the Board of Directors in fulfilling their obligations. An Advisory Board serves in an advisory capacity; it is convened and chaired by the President of the Chamber or by the Deputy President if the President is not available.
- 22.2 Unless and until otherwise determined by the Chamber at an Annual General Meeting, the Advisory Board (Senior Council) shall consist of not less than 10 (Ten) and not more than 25 (Twenty-Five) members excluding ex-officio and Life Members.

- 22.3 All members of the Board shall be ex-officio members of the Advisory Board.
- 22.4 Special Committees may be formed by resolution of the Board of Directors in order to handle certain/specific tasks. Each Committee is chaired by an individual designated by the President of the Chamber. That individual reports to the Board of Directors on the work of the Committee.
- 22.5 **Authorized Representatives, Signatories for the Chamber**
- 22.6 The President and the Executive Director represent the Chamber jointly in all legal transactions. The President of the Chamber and the Executive Director shall sign on behalf of the Chamber by way of adding their handwritten / electronic signature together with their function to the written or printed name of the Chamber.
- 22.7 The Board of Directors may provide by resolution that in a departure from clause 22.6, the Executive Director may sign jointly with the Treasurer or jointly with an employee of the Chamber whom he or she has designated in case of certain transactions that create an obligation for the Chamber or that encumber its assets. Further details shall be recorded in a directive on authority to represent and sign for the Chamber to be adopted by the Board of Directors at the proposal of the Executive Director. The Board resolution must specify maximum limits for the signing authorities in question. In the absence of the President and/or the Executive Director, it must be ensured that their representatives act jointly and equally.

CHAPTER 5: ACCOUNTING

23. FINANCIAL YEAR

The financial year is the calendar year.

24. AUDIT OF THE FINANCIAL STATEMENTS

- 24.1 The auditor is responsible for auditing the Chamber's accounts and records, receipts and annual financial statements in accordance with generally accepted auditing standards.



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- 24.2 The auditor is elected for a term of one year by the General Meeting on the basis of a number of different nominations from among the available certified public auditors. Re-election is permitted.
- 24.3 He or she shall prepare a written report on the audit of the annual financial statements.
- 24.4 The audit findings shall be disclosed and explained to the members of the Chamber at the Annual General Meeting.

CHAPTER 6: MEDIATION

25. MEDIATION PANEL

Disputes within the Chamber, especially disputes arising from membership in the Chamber or between members within the Chamber, shall be mediated by an ad-hoc Mediation Panel composed of 3 (three) mediators. The members of the Mediation Panel shall be mediators elected at the Annual General Meeting from among the Members to serve on the Panel in accordance with clause 13.2.6 of this Memorandum of Incorporation. The Mediation Panel shall adopt the Rules of Procedure for itself. Its recommendations are made at its due discretion.

CHAPTER 7: AMENDMENTS TO MEMORANDUM OF INCORPORATION AND WINDING UP OF THE CHAMBER

26. CHANGES AND AMENDMENT OF THE MEMORANDUM OF INCORPORATION

- 26.1 Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the Memorandum of Incorporation, which the Board is empowered to do, all other amendments of the Memorandum of Incorporation shall be effected in accordance with section 16, 17, 152 (6) (b) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Chamber's web site.
- 26.2 The Board of Directors shall submit any amendment of the Memorandum of Incorporation to the Commissioner within 30 (Thirty) days of its amendment as required by the section 30 B of the Income Tax Act 58 of 1962 (as amended).

- 26.3 Subject to what is set out in the Companies Act, changes and amendments to the Memorandum of Incorporation require the prior approval of the DIHK.

27. DISSOLUTION OF THE CHAMBER

- 27.1 The Chamber can only be dissolved by resolution of an Extraordinary General Meeting that is called exclusively for this purpose. The motion to dissolve may be proposed by the Board of Directors or by at least one-third of the ordinary members. In the latter case, the motion must be submitted in writing to the Board, which is required to convene an Extraordinary General Meeting within 20 (Twenty) business days from the receipt of the motion.
- 27.2 In a departure from clause 15.5, an Extraordinary General Meeting called to decide on the dissolution of the Chamber shall have a quorum if at least half of all voting members are present or represented. The provisions in this Memorandum of Incorporation for an Alternate General Meeting shall apply *mutatis mutandis*.
- 27.3 A motion to dissolve the Chamber shall only be approved if carried by two-thirds of the votes of the Members present or represented and entitled to vote. The disposal of the assets within the meaning of clause 5.6 of the Memorandum of Incorporation shall be decided at that Extraordinary General Meeting by a simple majority of votes. The decision must adhere to the provisions in the grant agreement between DIHK and the Chamber.
- 27.4 The invitation to attend the Extraordinary General Meeting to vote on the dissolution of the Chamber must make specific reference to the purpose of the Extraordinary General Meeting. The deadline for the invitation is 15 (Fifteen) business days prior to the meeting and is met by the mailing of the invitation by electronic mail.
- 27.5 Except as provided otherwise in this clause 27, the provisions in the Memorandum of Incorporation shall apply to the procedures for this Extraordinary General Meeting.
- 27.6 Any assets that may still be at hand at the dissolution of the Chamber that are not earmarked for a specific purpose shall, upon recommendation of DIHK, be transferred by resolution of the Extraordinary General Meeting to an institution with the same or similar tasks, or to another institution with the mission to promote Southern African-German economic and commercial relations. Any repayment obligations under grant



agreements entered into by the Chamber shall take priority over other uses of the Chamber's assets.

CHAPTER 8: IMPLEMENTATION OF MEMORANDUM OF INCORPORATION

28. IMPLEMENTATION OF MEMORANDUM OF INCORPORATION

- 28.1 This Memorandum of Incorporation was adopted by the Annual General Meeting on 25 June 2021 and shall become effective of the date that the Notice of Amendment of Incorporation is filed in the Companies Registry. The previous Memorandum of Incorporation registered with the (Companies and Intellectual Property Commission) CIPC under 1963/002981/09 shall accordingly be repealed on the date this Memorandum of Incorporation entered into force.
- 28.2 Any rights and obligations that were established on the basis of the previous Memorandum of Incorporation on the date that this Memorandum of Incorporation entered into force, remain unaffected.
- 28.3 This Memorandum of Incorporation was drafted in concurrent versions in the English language and in the German language. The English language is authoritative.