

Certified Copy  
of the  
Memorandum of Incorporation  
Adopted on Friday, 20 June 2025 at the AGM



**COMPANIES ACT, 2008 MEMORANDUM OF INCORPORATION  
OF A NON-PROFIT COMPANY WITH MEMBERS**

(Adopted on at the Annual General Meeting)

**NAME OF COMPANY:**  
**THE HILTONIAN SOCIETY NPC**  
**("Company")**

**REGISTRATION NUMBER:**

**1928/001172/08**

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## 1. INTRODUCTION

- 1.1. The Memorandum of Incorporation in the prescribed form as contemplated in section 13(1)(a)(i) of the Act shall not apply to the Company.
- 1.2. The Company is incorporated as a non-profit company in terms of the Act.
- 1.3. This Memorandum does not contain any restrictive conditions contemplated in section 15(2)(b) of the Act and does not prohibit the amendment of any particular provision of this Memorandum.

## 2. INTERPRETATION

In this Memorandum, including the introduction above, and unless the context requires otherwise -

- 2.1. words importing any one gender shall include the other genders;
- 2.2. the singular shall include the plural and *vice versa*;
- 2.3. any word which is defined in the Act and is not defined in 2.5 shall bear that statutory meaning in this Memorandum;
- 2.4. the clause headings of this Memorandum have been inserted for convenience only and shall not be used for or assist or affect their interpretation;
- 2.5. each of the following words and expressions shall have the meaning stated opposite it and cognate words and expressions shall have corresponding meanings, namely –
  - 2.5.1. **“the Act”** - the Companies Act No. 71 of 2008 together with the Companies Regulations, 2011, as amended or substituted from time to time;
  - 2.5.2. **“Board”** - the board of Directors;
  - 2.5.3. **“Commissioner”** - the Commissioner for the South African Revenue Service;
  - 2.5.4. **“Director”** - a director of the Company;
  - 2.5.5. **“the Income Tax Act”** - the Income Tax Act No. 58 of 1962, as amended or substituted from time to time;

- 2.5.6. **"Member"** - a member of the Company;
- 2.5.7. **"this Memorandum"** - this Memorandum of Incorporation; and
- 2.5.8. **"Republic"** - the Republic of South Africa.

### 3. OBJECTS OF THE COMPANY

- 3.1. The main object of the Company is the provision of education by an "independentschool", as defined in the South African Schools Act No. 84 of 1996, as amended.
- 3.2. The following are ancillary objects of the Company –
  - 3.2.1. subject to the provisions of section 30 of the Income Tax Act, to acquire by donation, purchase or otherwise movable and immovable property, freehold and leasehold, and to use, hire out, sell and dispose of the same and to exercise all rights of ownership or possession;
  - 3.2.2. to improve any freehold or leasehold property of the Company by the erection or removal of buildings or the erection of memorials and by the construction of roads and other transportation facilities and by erecting or creating works for the purpose of lighting, communication, air transport, water supply and sanitation and other necessities and conveniences, and to utilize the property of the Company in the best means possible to advance the objects thereof;
  - 3.2.3. to collect and canvass for and to accept donations, bequests, endowments and other benefits for the Company from any person, firm or company, or from any other source whatever; provided that no donation shall be accepted 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; 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, which has as its sole or principal object the carrying on of any public benefit activity) may not impose any 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;

- 3.2.4. to borrow money for the sole purpose of the promotion of the objects of the Company with or without security upon debentures or otherwise and to hypothecate, mortgage or otherwise encumber any of the assets of the Company for such purpose;
- 3.2.5. to establish, contribute to and encourage the creation of a fund or funds for the purpose of providing bursaries, scholarships and other financial assistance for the education of young persons and rewards for diligence, and to contribute thereto and to invest, manage or assist in managing the same;
- 3.2.6. to promote and encourage the formation of a fund or funds for the purpose of providing pensions or other financial assistance for present or past members of the teaching staff or the other employees of the Company, and to contribute thereto and to invest, manage or assist in managing the same;
- 3.2.7. to pay pensions and other benefits to present and past members of the teaching staff or the other employees of the Company in consideration of their services;
- 3.2.8. to provide at any school, college or educational institution controlled by the Company free or partially free tuition with or without free or partially free board and lodging to any young persons, as determined by the Board from time to time;

- 3.2.9. to promote and encourage the formation of social and sports clubs and societies consisting of ex-pupils of Hilton College or of any other educational institution owned or controlled by the Company;
  - 3.2.10. to act as trustee for and to administer any fund created for the purpose of providing any scholarship or bursary or for any purpose authorised by this Memorandum;
  - 3.2.11. to co-operate with any company, association or body having objects similar to the Company in order to carry out any object which is to the mutual advantage of both;
  - 3.2.12. to permit each teacher and pupil of any educational institution owned and controlled in whole or in part by the Company to worship God in such decent, reverend and Christian manner as shall to his conscience seem fit; provided that no pupil of any such educational institution shall be excused by virtue hereof from the study of divinity nor from any attendance at divine service according to the lawful orders of those in authority;
  - 3.2.13. to encourage and assist financially or otherwise in the establishment and/or maintenance of preparatory and other schools whether associated or not with Hilton College or any other educational institution owned or controlled by the Company;
  - 3.2.14. subject to the provisions of section 30 of the Income Tax Act, to make loans to and guarantee the performance of contracts and obligations for the sole purpose of the promotion of the main object of the Company; and
  - 3.2.15. generally, to do all such other things as may be expedient to further the interests of the Company and the objects for which it has been formed.
- 3.3. The activities of the Company shall be carried on in a non-profit manner and with an altruistic or philanthropic intent.

#### 4. **LIABILITY OF MEMBERS AND DIRECTORS**

This Memorandum does not impose any liability on any person for the liabilities or obligations of the Company, solely by reason of such person being a Member or Director, as contemplated by section 19(2) of the Act.

#### 5. **ASSETS AND INCOME OF THE COMPANY**

5.1. All of the assets and income of the Company, however derived, shall be used solely to advance the objects for which the Company was established, as set out in 3, and by reason whereof the Company was approved as a public benefit organisation (PBO reference number 130002644). No funds shall be distributed to any person other than in the course of undertaking any public benefit activity.

5.2. No activity shall directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company otherwise than by way of reasonable remuneration and no portion of the income or assets of the Company, regardless of how the income or asset was derived, shall be paid or transferred to any person who is or was an incorporator of the Company, or who is a Member or Director, or person appointing a Director, except -

5.2.1. as reasonable –

5.2.1.1. remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

5.2.1.2. payment of, or reimbursement for, expenses incurred to advance an object stipulated in 3; or

5.2.2. as a 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; or

5.2.3. as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance

an object stipulated in 3; or

5.2.4. in respect of any legal obligation binding on the Company.

5.3. No remuneration shall be paid 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 the Company has not and shall not economically benefit any person in a manner which is not consistent with the Company's objects.

5.4. No resources shall be used, directly or indirectly, to support, advance or oppose any political party.

5.5. Upon the winding up or dissolution of the Company, the entire net value of the Company that remains after the satisfaction of all its obligations and liabilities must not be paid to or distributed to any past or present Member or Director or person appointing a Director, but shall be distributed to –

5.5.1. another public benefit organisation which has been approved in terms of section 30 of the Income Tax Act; or

5.5.2. any institution, board or body which is exempt from payment of income tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity; or

5.5.3. any department of state or administration in the national or provincial or local sphere of government of the Republic contemplated in section 10(1)(a) or (b) of the Income Tax Act,

as determined by the Members at or before the time of dissolution, or by the Court if the Members fail to make such a determination.

## **6. POWERS OF THE COMPANY**

Subject to the provisions of 3, this Memorandum does not restrict, limit or qualify the legal powers or capacity of the Company provided in section 19(1)(b) of the Act.



## **7. MEMORANDUM OF INCORPORATION AND RULES**

- 7.1. This Memorandum does not provide any different requirements than those set out in section 16(1)(c)(i) of the Act regarding proposals for amendments to this Memorandum.
- 7.2. This Memorandum does not restrict, limit or qualify the power of the Board to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this Memorandum, in accordance with the provisions of sections 15(3) to 15(5) of the Act.
- 7.3. If the Board makes any rules in terms of section 15(3) of the Act, it must file a copy of those rules in the manner prescribed in the Act and must publish a copy of those rules by sending them electronically to each Member and by publishing them on the Company's website.
- 7.4. If the Board, or any individual authorised by the Board, alters this Memorandum or any rules made by it in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, it must publish a notice of such alteration on the Company's website, and must file a notice of alteration in the manner prescribed by the Act.

## **8. ACCOUNTING REQUIREMENTS**

- 8.1. The Directors shall cause proper accounting records of the Company to be kept in compliance with the provisions of the Act.
- 8.2. The Company's accounting records shall be kept at the registered office of the Company or at such other place as the Board shall think fit under the charge of a person authorised by the Board, and shall be open for inspection by the Directors at all reasonable times.



- 8.3. The Directors shall, from time to time, cause to be prepared and laid before the Members in general meeting such financial statements as are required to be prepared by the Act.
- 8.4. The Company shall prepare annual financial statements, which shall be audited.
- 8.5. A duly qualified auditor shall be appointed by the Directors.
- 8.6. The auditor's remuneration for his services during the past year shall be fixed by the Directors.
- 8.7. A Member shall not be eligible to be appointed as auditor of the Company.
- 8.8. The auditor shall at all reasonable times have access to the books and records of the Company and the Company shall be bound to give him such information as he may require for the purpose of discharging his duties.
- 8.9. Subject to the foregoing provisions of this 8, the extended accountability requirements set out in Chapter 3 of the Act shall not apply to the Company, except as provided in section 84(1)(c)(i) of the Act.

## **9. SOLVENCY AND LIQUIDITY TEST**

This Memorandum does not alter the application of the solvency and liquidity test provided in section 4 of the Act.

## **10. MEMBERS AND BENEFACTORS**

10.1. The following persons shall be entitled to apply in writing to the Board for membership of the Company –

- 10.1.1. ex-pupils of Hilton College who have attained the age of eighteen (18) years and who were neither expelled nor asked to leave Hilton College on the grounds of misconduct or non-payment of fees; provided that the Board, at its sole discretion, may admit to membership any person who has been so expelled or asked to leave

Hilton College and may exclude any person who has been a pupil of Hilton College for less than two (2) years;

- 10.1.2. current and past full-time employees of the Company of not less than ten (10) years' standing who are not otherwise eligible for membership under 10.1.1 or 10.1.3 and whose services, in the sole discretion of the Board, justify him becoming a Member;
  - 10.1.3. current and past headmasters of Hilton College who are not otherwise eligible for membership under 10.1.1;
  - 10.1.4. persons whose names appear on the register of benefactors of Hilton College, as provided in 10.4; and
  - 10.1.5. any Nominated Director (as defined in 13.3) who is not eligible for membership under 10.1.1.
- 10.2. Any person not otherwise eligible for membership in terms of 10.1 who, in the sole opinion of the Board, espouses the values and virtues sought to be promoted at Hilton College from time-to-time, who will promote the interests of Hilton College, and who will improve the Company's ability to achieve the objectives for which the Company was established, as to justify his being specially invited by the Board to become a Member, may be invited by the Board to become a Member.
- 10.3. There shall be a register of Members in which shall be recorded the full name and address of each Member and of his death, resignation or suspension.
- 10.4. There shall be a register of the benefactors of Hilton College in which the Board shall cause to be entered the name of every person who, in the sole opinion of the Board, ought to be regarded as a benefactor to Hilton College. The reason for such entry shall also be recorded. After the death of such person, the Board may enter in his stead the name of some near relative of such deceased benefactor.
- 10.5. A Member shall retain his membership for his lifetime unless he resigns as a Member upon written notice to the Company or his membership is terminated by

the Board in terms of 10.6.

10.6. The Board shall be entitled, in its discretion, to terminate from membership of the Company -

10.6.1. any Member whose registered address or electronic address supplied by him to the Company appears to be incorrect or insufficient by reason of any notice posted or sent to him at that address being returned undelivered;

10.6.2. any Member who, for a consecutive period of five (5) years, has failed to attend any general meeting of the Members held during that period and who is not represented at any of those meetings by a duly appointed proxy; and

10.6.3. any Member who has become insolvent or of unsound mind or who is regarded by the Board, in its absolute discretion, as unsuitable for membership. The Board shall be entitled to terminate a Member's membership of the Company if that person is regarded by the Board, in its sole discretion, as unsuitable for membership.

10.7. The name of any Member terminated by the Board shall be struck off the register of Members and such person shall then cease to be a Member; provided that the Board may, in its discretion, reinstate such Member at any time and shall do so if required by a general meeting.

10.8. This Memorandum does not establish any information rights of any person in addition to the information rights provided in sections 26(1) and (2) of the Act.

## **11. PROXIES AND RECORD DATE**

11.1. This Memorandum does not limit or restrict the right of a Member to appoint two (2) or more persons concurrently as alternate proxies.

11.2. This Memorandum does not limit or restrict the right of a proxy to delegate the proxy's authority to act on behalf of the Member appointing him to another person, subject to such restrictions as may be set out in the instrument

appointing the proxy.

- 11.3. A copy of the instrument appointing a proxy must be delivered to the office of the Company, or to any other person on behalf of the Company, not less than twenty four (24) hours before the time appointed for the holding of the meeting (including an adjourned meeting) at which the person(s) named in the proxy form proposes to vote, and if the instrument of proxy is not so delivered, the instrument shall not be treated as valid.
- 11.4. This Memorandum does not limit or restrict the right of a proxy to exercise, or abstain from exercising, any voting right of the Member appointing him without direction, except to the extent that the instrument of proxy provides otherwise.
- 11.5. If the Board fails to determine a record date for any action or event, the record date shall be determined in accordance with the Act.

## **12. MEMBERS' MEETINGS**

- 12.1. This Memorandum does not specify any person other than the Board who may call a Members' meeting.
- 12.2. This Memorandum specifies that twenty-five (25) Members are required for the written requisition by Members of a Members' meeting in place of the percentage set out in the Act.
- 12.3. Members' meetings must be held in the KwaZulu-Natal Province of the Republic.
- 12.4. This Memorandum does not provide a different period of notice of Members' meetings to the period prescribed by the Act.
- 12.5. This Memorandum does not prohibit the Company from providing for any Members' meeting to be conducted by electronic communication, or for one or more Members, or proxies for Members, to participate in any Members' meeting by electronic communication, subject to the provisions of the Act.



- 12.6. This Memorandum specifies ten (10) Members present in place of the twenty-five per centum (25%) required in terms of section 64(1) of the Act for a Members' meeting to begin or for any matter to be decided at any Members' meeting to be considered.
- 12.7. This Memorandum specifies thirty (30) minutes in place of the one hour provided in sections 64(4) and 64(5) of the Act for a quorum to be established before a Members' meeting may be adjourned.
- 12.8. This Memorandum does not specify a different period than the period of one week provided in section 64(4) of the Act for the adjournment of a Members' meeting.
- 12.9. This Memorandum does not restrict or prohibit the continuation of any Members' meeting or the consideration of any matter to be considered at any Members' meeting after a quorum has been established for commencement of such meeting, or for such matter to be considered; provided at least one Member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
- 12.10. This Memorandum does not provide different maximum periods for adjournment of Members' meetings than those specified in section 64(12) of the Act.
- 12.11. This Memorandum does not require a higher percentage of voting rights to approve an ordinary resolution than the percentage of voting rights specified in the Act.
- 12.12. This Memorandum does not require a different percentage of voting rights to approve a special resolution than the percentage of voting rights specified in the Act.
- 12.13. This Memorandum does not require a special resolution for any other matter not contemplated in section 65(11) of the Act.
- 12.14. Each Member shall have one general voting right on every matter to be determined by vote of the Members.



12.15. The chairman of the Board shall preside as chairman at every general meeting of the Company. If at any general meeting of the Company there is no chairman or if the chairman is not present within fifteen (15) minutes after the time appointed for holding the general meeting, the Members present shall choose one of their number to be chairman of the meeting.

### 13. **DIRECTORS AND OFFICERS**

13.1. The Board shall consist of not less than seven (7) Directors and not more than twelve (12) Directors, who shall be elected or appointed, as the case may be, in the manner, and who shall hold office for the periods, hereinafter set out.

13.2. The majority of Directors must be Members by virtue of 10.1.1 (Members in this category being hereinafter called "**Old Hiltonians**") and shall be elected as hereinafter provided ("**Elected Directors**").

13.3. The remaining Directors, who are hereinafter called "**Nominated Directors**", shall be appointed from time to time by the Directors then in office as such. Nominated Directors need not be Old Hiltonians; provided that the number of Nominated Directors shall be less than the number of Elected Directors.

13.4. All Directors, other than those Elected Directors and Nominated Directors appointed to fill a casual vacancy in terms of 13.6, may hold office unless disqualified under 13.8 or unless retiring by rotation in terms of 15.1, until the end of the third annual general meeting of the Company after the date of their election or re-election or appointment or re-appointment, provided always that at least one-third (to the nearest whole number) of the Directors shall retire from office at each annual general meeting of the Company. An Elected Director shall be eligible for re-election as such and a Nominated Director shall be eligible for re-appointment as such, unless disqualified under 13.8, for up to a maximum of three (3) further periods, each of which shall last until the end of the third annual general meeting after each such re-election or re-

appointment; provided that, notwithstanding anything to the contrary contained in this Memorandum, no Director shall hold office for a period in excess of twelve (12) consecutive years; provided further that a Director, having held office for a period of twelve (12) consecutive years, shall be eligible for re-election or re-appointment, *mutatis mutandis*, in the manner and for the period/s provided for in this 13 if he has, after expiry of the said period of twelve (12) years, ceased to hold office as a Director for at least one year; provided further that no Director shall hold office for periods in aggregate in excess of eighteen (18) years.

13.5. A Director may resign his office by giving seven (7) clear days' notice in writing to the Company of his intention so to do, and his resignation will take effect upon expiry of that period or such later period as may be specified in the notice.

13.6. The continuing Directors may fill any casual vacancies occurring in the number of Elected Directors or Nominated Directors and the continuing Directors may continue to act notwithstanding any vacancy in their number; provided that if the number of Elected Directors falls below a majority of Directors or the total number of Directors falls below seven (7), the continuing Directors may, insofar as the number of Elected Directors falls below a majority of Directors, act only to fill vacancies in the number of the Elected Directors to restore the majority of Elected Directors on the Board and, insofar as the total number of Directors falls below seven (7), act only to fill vacancies in the number of the Elected Directors and/or Nominated Directors to restore the number of Directors on the Board to seven (7) after which the previously continuing Directors and those appointed to fill vacancies as provided above shall be entitled to act as Directors. The words "any casual vacancies occurring in the number of Elected Directors or Nominated Directors" shall include vacancies occurring by reason of changes in this Memorandum increasing the number of Elected Directors resulting in there not being sufficient Elected Directors to enable the

composition of the Board to include the number of Elected Directors required by 13.2. A person who is appointed as a Director to fill any vacancy in the number of Elected Directors or Nominated Directors as aforesaid shall serve as a Director on a temporary basis until the vacancy is filled by election or appointment at the next annual general meeting of the Company.

13.7. If, between annual general meetings of the Company, the number of Elected Directors falls below a majority of Directors then provided there are at least seven (7) remaining Directors on the Board it shall be permissible for the remaining Directors, in their sole discretion, to temporarily convert the directorship of a sitting Old Hiltonian Nominated Director, if any, to that of Elected Director to re-establish the majority of Elected Directors on the Board. A Nominated Director whose directorship is so temporarily converted shall have his directorship as a Nominated Director automatically restored on the earlier of the Board appointing an Elected Director to fill that casual vacancy or at the next annual general meeting of the Company when a new Elected Director is elected pursuant to nominations being called for.

13.8. The office of Director shall be vacated if a Director –

13.8.1. ceases to be a Director or becomes ineligible, disqualified or otherwise prohibited from being a Director by virtue of any of the provisions of the Act; or

13.8.2. resigns his office by notice in writing to the Company as provided in 13.5; or

13.8.3. is removed by ordinary resolution of the Members; provided that the other formalities prescribed by section 71(2) of the Act are complied with; or

13.8.4. is removed by resolution in writing signed by all his co-Directors for the time being; or

13.8.5. is absent from four (4) consecutive meetings of the Board without leave of absence from the chairman; or



- 13.8.6. becomes insolvent or compounds with his creditors or is sequestrated whether provisionally or finally; or
- 13.8.7. attains the age of seventy (70) years whilst in office; provided that a Director vacating his office as such in terms of this 13.8.7 shall, subject to the other provisions of this Memorandum, be eligible for re-election or re-appointment, as the case may be; or
- 13.8.8. if, being a Member, he is terminated from such membership.
- 13.9. Any Director residing more than fifty (50) kilometers from the location of a meeting of the Board may be reimbursed his out-of-pocket and travelling expenses if the Board so resolves.
- 13.10. Any Director who is called upon to perform extra services or to make any special exertions for the purpose of the Company may be remunerated by the Board in such manner as it shall determine.
- 13.11. Subject to the foregoing provisions of this 13, this Memorandum does not stipulate any additional qualifications or eligibility requirements than those set out in the Act for a person to become or remain a Director or a prescribed officer of the Company.
- 13.12. If the number of Nominated Directors standing for appointment or re-appointment pursuant to 15.4:
- 13.12.1. does not exceed the number of vacancies in the number of Nominated Directors determined by the Board to be filled, the persons so nominated and so becoming candidates shall be declared by the chairman of such meeting to be appointed as Nominated Directors; and
- 13.12.2. exceeds the number of vacancies determined by the Board to be filled, the provisions of **Error! Reference source not found.** shall apply *mutatis mutandis* to such Nominated Directors.

**14. FELLOW OF THE HILTONIAN SOCIETY**

The Company, on the recommendation of the Board, shall be entitled to bestow upon persons, deserving of the honour, the title of "Fellow of the Hiltonian Society".

**15. ROTATION OF DIRECTORS**

15.1. At each annual general meeting of the Company, so many of the Elected Directors, if any, whose period of office is then to terminate by virtue of 13.4 in that it is the third annual general meeting since their initial election or re-election, together with so many of the remaining Elected Directors, as is necessary to bring the number to retire in terms hereof to one-third (to the nearest whole number) of the Elected Directors then in office, shall retire from office, but shall, subject to the provisions of this Memorandum, be eligible for re-election. In the event of the remaining Elected Directors then so holding office being unable to decide amongst themselves who shall retire from office so as to bring the number to retire in terms hereof to one-third (to the nearest whole number) of the Elected Directors, those of the remaining Elected Directors who shall retire from office in terms hereof shall be determined by lot.

15.2. At each annual general meeting of the Company, so many of the Nominated Directors, if any, whose period of office is then to terminate by virtue of 13.4 in that it is the third annual general meeting since their initial appointment or re-appointment, shall retire from office, but shall, subject to the provision of this Memorandum, be eligible for re-appointment .

15.3. Any Director appointed to fill a casual vacancy in the number of Elected Directors or Nominated Directors shall retire at the next annual general meeting. Such retirement shall not affect the rotation by which other Elected Directors are required to retire under 15.1 and 15.2.



- 15.4. An Elected Director and/or Nominated Director due to retire in terms of 15.3, an Elected Director due to retire by rotation in terms of 15.1 and a Nominated Director due to retire in terms of 15.2 shall, subject to the provisions of this Memorandum, become a candidate for election, re-election, appointment or re-appointment, as the case may be, without nomination unless he has notified the secretary in writing not less than sixty (60) days before the date fixed for the next annual general meeting that he does not intend to stand for re-election.
- 15.5. Except with the consent of the Board, it shall not be competent for a retiring Elected Director who becomes a candidate in terms of 15.3 or 15.4 to withdraw his nomination.

## 16. ELECTION OF ELECTED DIRECTORS

- 16.1. There shall be an election once every year to fill vacancies about to occur in the number of Elected Directors pursuant to 15
- 16.2. In addition to 16.1, the Board shall have a discretion whether to invite applications from new candidates to fill any vacancy in the number of Elected Directors. The Board shall determine the number of vacancies that are required to be filled pursuant to this **Error! Reference source not found..**
- 16.3. If the Board calls for new applications, any new candidate for the office of Elected Director shall be nominated in writing by at least three (3) Members and such nomination shall be lodged with the secretary sixty (60) days before the date fixed by the Board for the next annual general meeting of the Company. If the number of persons so nominated, together with those becoming candidates in terms of 15.3 or 15.4, does not exceed the number of vacancies in the Elected Directors determined by the Board to be filled, the persons so nominated and so becoming candidates shall be declared by the chairman of such meeting to be elected as Elected Directors.

16.4. If the number of persons so nominated and so becoming candidates for election exceeds the number of vacancies determined by the Board to be filled, the secretary shall make available to each Member within fourteen (14) days after the expiry of the date for lodging nominations, a voting paper in a form approved by the Board, giving the names of the candidates and the number of vacancies that are required to be filled and directions as to the filling up and return of the voting paper and the date on which the poll shall close, which date shall be fixed by the Board but shall not be less than fifteen (15) nor more than thirty (30) days from the date of issue of the notice.

16.5. The chairman of the Board shall receive and count the votes. Any voting paper received after the close of the poll and any voting paper which, in the opinion of the chairman is improperly completed in, shall be rejected.

16.6. The candidates who have received the highest number of votes for the seats open to be filled shall be declared by the chairman to be duly elected. On an equality of votes, the question shall be decided by lot by the chairman in the presence of such of the candidates as express a desire to be present.

## **17. AUTHORITY OF THE BOARD**

The authority of the Board to manage and direct the business and affairs of the Company, as contemplated in section 66(1) of the Act, is not limited, restricted or qualified by this Memorandum.

## **18. DIRECTORS' MEETINGS**

18.1. This Memorandum does not restrict the Directors from acting otherwise than at a meeting, as contemplated in section 74(1) of the Act.

18.2. This Memorandum does not specify a different percentage or number of Directors upon whose request a meeting of the Board must be called in terms of

section 73(1) of the Act.

- 18.3. This Memorandum does not restrict the Board from conducting meetings, or Directors from participating in meetings, by electronic communication, as contemplated in section 73(3) of the Act.
- 18.4. This Memorandum does not limit, restrict or qualify the authority of the Board to determine the manner and form of giving notice of its meetings.
- 18.5. This Memorandum does not limit, restrict or qualify the authority of the Board to proceed with a Board meeting in accordance with the requirements of section 73(5)(a) of the Act, despite a failure or defect in giving notice of the meeting.
- 18.6. The quorum requirement for a Board meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, as set out in section 73(5) of the Act, are not varied by this Memorandum.
- 18.7. The Directors may elect from their number of Elected Directors a chairman and decide the period for which he is to hold office. If a chairman has not been appointed or if at any meeting of the Directors, the chairman is not present within five (5) minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting. In the event of an equality of votes on any matter to be determined by the Board, the chairman shall have a casting vote in addition to his deliberative vote.
- 18.8. The sitting chairpersons of the Old Hiltonian Club and the Hilton College Endowment Fund shall be entitled to attend all Directors' meetings and to speak thereat, but not vote (unless they are also a duly appointed Director).

## 19. **DIRECTORS' COMPENSATION**

Other than remuneration contemplated in 5.2, Directors may not be remunerated for their role as directors of the Company.

## **20. SECRETARY**

20.1. The Directors shall appoint a company secretary in accordance with the provisions of the Act.

20.2. A vacancy arising in the office of company secretary must be filled by the Board within sixty (60) business days after that vacancy occurs.

## **21. INDEMNIFICATION OF DIRECTORS**

21.1. This Memorandum does not limit, restrict, or qualify the ability of the Company to advance expenses to a Director to defend any legal proceedings arising from his service to the Company, or to indemnify a Director against such expenses if the proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director in terms of sections 78(5) and 78(6) of the Act.

21.2. This Memorandum does not limit, restrict or qualify the power of the Company to indemnify a Director in respect of any liability arising out of the Director's service to the Company to the fullest extent permitted by the Act.

21.3. This Memorandum does not limit, restrict or qualify the power of the Company to purchase insurance to protect a Director against any liability or expenses for which the Company is permitted to indemnify a Director in terms of the Act and this Memorandum, or the Company against any contingency.

## **22. INDEMNITY**

Subject to the provisions of the Act, every member of the Board, the secretary and other officers of the Company and each member of a Board or statutory committee be and is hereby indemnified against loss, expenses or damage incurred in the discharge of or arising out of his duties and/or arising out of their service to the Company. Subject to the provisions of the Act, no Director or other officer of the



Company or member of a Board or statutory committee shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or member of a Board or statutory committee or for joining in any receipt or other act, or for any loss or expense suffered or incurred by the Company through the insufficiency or deficiency of title to any property acquired by the Board for or on behalf of the Company or for the insufficiency or deficiency of any security in or upon which the moneys of the Company shall be invested, or for any loss or damage arising from the insolvency, tortious act of any person with whom moneys, securities or effects shall be deposited, or for any loss or damage whatever which shall occur in the execution of the duties of his office or in relation thereto, unless the same occurs through his own dishonesty. The Board may, on behalf of the Company purchase insurance to protect 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 the persons contemplated in this 22.

## **23. COMMITTEES OF THE BOARD**

23.1. This Memorandum does not limit, restrict or qualify the authority of the Board to appoint any number of committees of Directors, or to delegate to any such committee any of the authority of the Board.

23.2. Save for the social and ethics committee under 23.3, and except to the extent that a Board resolution establishing a committee provides otherwise, the committee –

23.2.1. may include persons who are not Directors but any such person must not be ineligible or disqualified to be a Director in terms of section 69 of the Act, and any such persons shall not have a vote on any matter to be decided by the committee;

23.2.2. may consult with or receive advice from any person;

23.2.3. has the full authority of the Board in respect of any matter referred to it.



23.3. Pursuant to section 72 of the Act, the Company shall, unless it makes application in terms of section 72(5)(a) of the Act and is exempted from appointing a social and ethics committee, establish a social and ethics committee and appoint Directors as contemplated in section 72(7A)(b) of the Act to serve on that committee.

#### 24. **PROVISION OF SCHOLARSHIPS, BURSARIES AND AWARDS**

24.1. All scholarships, bursaries or awards granted by the Company shall be *bona fide* and granted to an individual on grounds of objective merit or need.

24.2. No scholarship, bursary or award granted by the Company may –

24.2.1. be revocable otherwise than for reasons of a material failure to conform to the designated purposes and conditions of that scholarship, bursary or award;

24.2.2. be subject to conditions which would enable the donor of the funds of that scholarship, bursary or award or any connected person in relation to that donor to derive some direct benefit from the application of that scholarship, bursary or award; or

24.2.3. be granted to any person who is or will become an employee of the donor of the funds of that scholarship, bursary or award or the Company (or any associated institution in relation to that donor or the Company) or any relative of that person, unless circumstances indicate that that scholarship, bursary or award would have been granted to that person or his relative even if that person had not been an employee of that donor, the Company or associated institution.

24.3. All decisions regarding the granting of scholarships, bursaries and awards shall be made by a duly constituted committee consisting of at least three (3) Directors who are not connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted.

24.4. All scholarships, bursaries and awards granted by the Company 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 –

24.4.1. 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 Company; or

24.4.2. to refund the full amount of the scholarship, bursary or award should he decide not to apply the knowledge as contemplated in 24.4.1.

## 25. COMPLIANCE WITH THE INCOME TAX ACT

25.1. The Company is registered as a public benefit organisation in terms of the Income Tax Act and approved for the issuance of section 18A deduction certificates for *bona fide* donations.

25.2. The Company will not be a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is 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 or any other legislation administered by the Commissioner.

25.3. Copies of all documents and information relating to any scholarship, bursary or award and minutes of all meetings at which any scholarship, bursary or award is granted shall be made available to the Commissioner on request.

25.4. A copy of this Memorandum and all amendments to it from time to time shall be submitted to the Commissioner.

26. **AMENDMENT OF MEMORANDUM OF INCORPORATION**

This Memorandum may be amended by special resolution in terms of the Act.