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JUNE 2008

MEMORANDUM

and

ARTICLES OF ASSOCIATION

of

THE .ZA DOMAIN NAME AUTHORITY

(association incorporated under section 21)

Registration Number : 2003/021150/08

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REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 1973

**MEMORANDUM OF ASSOCIATION OF A COMPANY
NOT HAVING A SHARE CAPITAL**

[Section 54(1); and Regulation 17(3)]

THE .ZA DOMAIN NAME AUTHORITY

(association incorporated under section 21)

Registration Number : 2003/021150/08

1.

NAME

1.1 The name of the Company is :

**THE .ZA DOMAIN NAME AUTHORITY
(association incorporated under section 21)**

1.2 The name of the Company in the other official languages of the Republic is :

None

1.3 The shortened form of the name of the Company is :

.ZA DNA

2.

FINANCIAL YEAR

The financial year of the Company ends on 31 March.

3.

PURPOSE DESCRIBING MAIN BUSINESS

The main purpose of the Company is to carry out all functions assigned to it by or in terms of the Electronic Communications and Transactions Act, No. 25 of 2002, which include the administration and management of the .za domain space.

4.

MAIN OBJECT

The Main Object of the Company is to carry out all functions assigned to it by or in terms of the Electronic Communications and Transactions Act, No. 25 of 2002, which functions include the following :

- 4.1 To administer and manage the .za domain name space.
- 4.2 To comply with international best practice in the administration of the .za domain name space.
- 4.3 To license and regulate registries, namely entities licensed by the Company to manage and administer specific sub-domains.
- 4.4 To license and regulate registrars for the respective registries.
- 4.5 To publish guidelines on –
 - 4.5.1 The general administration and management of the .za domain name space;
 - 4.5.2 The requirements and procedures for domain name registration; and
 - 4.5.3 The maintenance of and public access to a repository (namely the primary register of the information maintained by a registry),

with due regard to any policy directives which the Minister of Communications may make from time to time by notice in the Government Gazette.
- 4.6 To enhance public awareness of the economic and commercial benefits of domain name registration.
- 4.7 To conduct research into and keep abreast of developments in the Republic of South Africa and elsewhere on the domain name system.
- 4.8 To continually survey and evaluate the extent to which the .za domain name space meets the needs of the citizens of the Republic of South Africa.

- 4.9 To make recommendations, when requested to do so by the Minister of Communications, in relation to policy on any matter relating to the .za domain name space.
- 4.10 To continually evaluate the effectiveness of the Electronic Communications and Transactions Act, No. 25 of 2002, and things done in terms of that Act in respect of the management of the .za domain name space.
- 4.11 To make regulations, with the approval of the Minister of Communications, regarding the various matters stipulated in section 68 of the Electronic Communications and Transactions Act, No. 25 of 2002.

5.

ANCILLARY OBJECTS EXCLUDED

The specific ancillary objects, if any, referred to in section 33(1) of the Companies Act, No. 61 of 1973 ("the Companies Act"), which are excluded from the unlimited ancillary objects of the Company, are : **None**.

6.

POWERS

All the powers of the Company, as specified, incorporated by reference, limited and qualified below, must be exercised only in furtherance of and in accordance with the Main Object of the Company.

- 6.1 The specific power, or part of any specific power of the Company, which is excluded from the plenary powers or the Common Powers, as set out in schedule 2 to the Companies Act, is : **Power "(s)"**.
- 6.2 The specific powers or part of any specific powers of the Company set out in Schedule 2 to the Companies Act, which are qualified under section 34 of the Companies Act are as follows :

6.2.1 **Power (f) to be modified to read as follows:**

"To lend money to any person or company; provided that the Company may lend money only for the purpose of promoting its Main Object and for the benefit of other institutions having objects the same as or similar to the Main Object of the Company."

6.2.2 **Power (j) to be modified to read as follows:**

"To enter into indemnities, guarantees and suretyships and to secure payment under them in any way; provided that no such commitment may be entered into except in order to promote its Main Object and for the benefit of other institutions having objects the same as or similar to the Main Object of the Company."

6.2.3 **Power (k), which is to be modified to read as follows:**

"To form and to have an interest in any other company, trust or association having objects the same as or similar to the Main Object of the Company, for the purpose of acquiring the undertaking, or all or any of the assets or liabilities of such other company, trust or association, or for any other purpose which may seem directly or indirectly calculated to promote the Main Object of the Company; and to transfer to any such other company, trust or association the undertaking of this Company, comprising all or any of its assets or liabilities."

6.2.4 **Power (l) to be modified to read as follows :**

"To amalgamate with other companies, trusts or associations having objects the same as or similar to the Main Object of the Company."

6.2.5 **Power (m) to be modified to read as follows :**

"To take part in the management, supervision and control of the business or operations of any other company or business, and to enter into joint ventures or partnerships, provided that such other company, business, joint venture or partnership must have objects the same as or similar to the Main Object of the Company."

6.2.6 **Power (n) to be modified to read as follows :**

"To remunerate any person or persons in cash for services rendered in the formation of the Company or in the development or conduct of its activities."

6.2.7 **Power (o) to read as follows :**

"To make grants and donations in furtherance of its Main Object, provided that :

- No grants may be made to Directors; and
- No grants may be made to Members, except :
 - To a Member which is a juristic person registered as a non-profit organisation in terms of the Non-profit Organisations Act, 1997, and which
 - Agrees in writing to use the grant only to meet reasonable and necessary expenses incurred in pursuing its non-profit objectives."

6.2.8 **Power (p) to be modified to read as follows :**

"To undertake and execute any trust in furthering the Main Object of the Company."

6.2.9 **Power (q) to be modified to read as follows :**

"To act as principals, agents, contractors or trustees in furtherance of the Main Object of the Company."

6.2.10 **Power (r) to read as follows :**

"To pay staff gratuities and pensions and to establish pension schemes and incentive schemes in respect of its employees."

6.3 *It is intended that the Company will apply to the Commissioner for the SA Revenue Service for approval under section 30 of the Income Tax Act as a public benefit organisation, with the intention of qualifying for exemption from the payment of income tax under section 10(1)(cN) of the Income Tax Act, and for exemption from transfer duty, estate duty and donations tax.*

6.4 *If and for as long as the Company is approved as a public benefit organisation, the powers of the Company will be limited in the way described in the rest of this clause 6.4, which will override any other inconsistent or contradictory term of this memorandum or*

the articles of association of the Company :

- 6.4.1 *The sole object of the Company must be to carry on one or more public benefit activities where –*
- 6.4.1.1 *All such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent;*
- 6.4.1.2 *No such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; and*
- 6.4.1.3 *At least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister of Finance, having regard to the circumstances of the case, directs otherwise; Provided that cost incurred for the benefit of persons outside the Republic of South Africa may be disregarded to the extent of donations received by the Company from persons who are not resident in the Republic, and receipts and accruals derived directly or indirectly from such donations, which donations, receipts and accruals have not previously been taken into account for the purposes of this proviso.*
- 6.4.2 *If the Company is not at least 85 per cent funded by donations, grants from any organ of State, or any foreign grants, then each public benefit activity carried on by the Company must be :*
- 6.4.2.1 *For the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups); or*
- 6.4.2.2 *For the benefit of, or readily accessible to, the poor and needy.*
- 6.4.3 *The Company must have at least Three (3) persons who are not connected persons in relation to each other, to accept fiduciary responsibility for the Company, and no single person may directly or indirectly control the decision-making powers relating to the Company.*

- 6.4.4 *No funds may be distributed by the Company to any person (other than in the course of undertaking any public benefit activity).*
- 6.4.5 *The funds of the Company must be used solely for the objects for which it has been established, or must be invested :*
- 6.4.5.1 *With a financial institution as defined in Section 1 of the Financial Services Board Act, No. 97 of 1990; and/or*
- 6.4.5.2 *In any listed financial instrument of a company contemplated in paragraph (a) of the definition of "listed company" in section 1 of the Income Tax Act.*
- 6.4.6 *If and when the Company is wound-up, dissolved or de-registered, the net remaining assets of the Company, after all the obligations and commitments of the Company have been met, must be paid or transferred to :*
- 6.4.6.1 *Any similar public benefit organisation which has been approved in terms of section 30 (and, if applicable, section 18A) of the Income Tax Act;*
- 6.4.6.2 *Any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity; or*
- 6.4.6.3 *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.*
- 6.4.7 *The Company must not carry on any business undertaking or trading activity unless specifically permitted in terms of section 30(3)(b)(iv) of the Income Tax Act.*
- 6.4.8 *The Company will 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 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 conditions which could enable that donor or any connected person in relation to that donor to derive some direct or indirect benefit from the application of the donation.

- 6.4.9 *The Company must submit to the Commissioner a copy of any amendment to this memorandum or the articles of association of the Company, and all required income tax returns together with the relevant supporting documents.*
- 6.4.10 *The Company must comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its Main Object.*
- 6.4.11 *The Company must not knowingly become a party to, or knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is 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 Act administered by the Commissioner.*
- 6.4.12 *The Company must 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 in which the Company operates, and in relation to the service rendered, and the Company must not economically benefit any person in a manner which is not consistent with its Main Object.*
- 6.4.13 *The Company must comply with such reporting requirements as may be determined by the Commissioner.*
- 6.4.14 *To the extent that the Company may provide funds to any association of persons contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule to the Income Tax Act, the Company must take reasonable steps to ensure that those funds are utilised for the purposes for which they are provided.*
- 6.4.15 *The Company must ensure that it becomes and remains registered in terms of Section 13(5) of the Non-profit Organisation Act ("NPOA"), and that the Company complies with any requirements imposed in terms of the NPOA.*

- 6.4.16 *The Company must ensure that any books of account, records or other documents relating to the Company :*
- 6.4.16.1 *Where kept in book form, are retained and carefully preserved for a period of Four (4) years after the date of the last entry in any such book; or*
- 6.4.16.2 *Where not kept in book form, are retained and carefully preserved for a period of Four (4) years after completion of the transactions, acts or operations to which they relate.*
- 6.4.17 *The Company must not use its resources directly or indirectly to support, advance or oppose any political party.*

7.

CONDITIONS

The special conditions which apply to the Company, and the requirements additional to those prescribed in the Companies Act for their alteration, are as follows :

- 7.1 The income and property of the Company, from wherever they are derived, must be applied solely towards the promotion of its Main Object, and no portion of the income and property may be paid or transferred directly or indirectly, whether by way of dividend, bonus or in any other manner, to the Members or Directors of the Company or to its controlling or controlled Company; provided that nothing contained in this memorandum will prevent the payment in good faith of reasonable remuneration to any person, including a Member or Director, in return for services actually rendered to the Company; and
- 7.2 Upon its winding-up, deregistration or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities must be given or transferred to one or more other companies, trusts, associations or other institutions, having objects the same as or similar to the Main Object of the Company, as may be determined by its Members in General Meeting, at or before the time of its dissolution or, failing such determination, by the High Court.

8.

PRE-INCORPORATION CONTRACTS (IF ANY)

None.

9.

GUARANTEE

- 9.1 The liability of Members is limited to the amount referred to in clause 9.2.
- 9.2 Each Member undertakes to contribute to the assets of the Company, in the event of it being wound up, either while he/she is a Member or within one year thereafter, for the purpose of payment of the debts and liabilities of the Company contracted before he/she ceased to be a Member, and payment of the costs, charges and expenses of the winding-up, and for adjustment of the rights of the contributories amongst themselves, an amount not exceeding One Rand (R1,00).

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REPUBLIC OF SOUTH AFRICA

COMPANIES ACT 1973

ARTICLES OF ASSOCIATION

OF A COMPANY NOT HAVING A SHARE CAPITAL

AND NOT ADOPTING SCHEDULE (1)

[Section 60(1); Regulation 18]

THE .ZA DOMAIN NAME AUTHORITY

(association incorporated under section 21)

Registration Number : 2003/021150/08

PRELIMINARY

The standard articles of association contained in Table "A" or "B" of Schedule 1 to the Companies Act are not applicable to this Company, whose articles of association are set out below.

1.

INTERPRETATION

In these articles, unless the context clearly indicates otherwise :

- 1.1 "AGM" means an annual general meeting of the Members of the Company.
- 1.2 "these articles" means the articles of association as originally framed or as altered from time to time by special resolution.
- 1.3 "the Board" means the board of Directors of the Company.
- 1.4 "the Companies Act" means the Companies Act, No. 61 of 1973.
- 1.5 "the Company" means the .za Domain Name Authority (association incorporated under section 21).
- 1.6 "Director" means a director of the Company.
- 1.7 "domain name" means an alphanumeric designation that is registered or assigned in respect of an electronic address or other resource on the Internet.
- 1.8 "duly certified" in relation to copies, means a copy certified by a commissioner of oaths or notary public; or such other form of certification as the Directors may accept from time to time in their sole discretion.
- 1.9 "the ECT Act" means the Electronic Communications and Transactions Act, No. 25 of 2002.
- 1.10 "Member" means a person who has been admitted as a member of the Company in terms of these articles.

- 1.11 "the Minister" means the Minister of Communications.
- 1.12 "Month" means calendar month.
- 1.13 "the NPOA" means the Non-profit Organisations Act, 1997.
- 1.14 "the Office" means the registered office of the Company.
- 1.15 "the Republic" means the Republic of South Africa.
- 1.16 "secretary" means any person duly appointed from time to time to perform the duties of the Secretary of the Company.
- 1.17 Words and expressions contained in these articles bear the same meanings assigned to them by the Companies Act.
- 1.18 Reference to writing includes reference to printing, lithography, photographs, electronic data messages recognised as writing by the ECT Act, and other modes of representing or reproducing words in visible form.
- 1.19 The singular includes the plural; reference to any gender includes a reference to all other genders; and references to people include bodies corporate, and *vice versa* in each instance.
- 1.20 Reference to any statutory provision includes a reference to that provision as modified, amended, extended or re-enacted from time to time, and any statutory replacement of that provision from time to time.

2.

MEMBERSHIP

- 2.1 The Members of the Company as at the date of adoption of these amended articles are the people listed as such in the Company's register of Members.
- 2.2 As contemplated in section 60(2) of the ECT Act, the Company must admit to

membership, without any further formality, any person who :

- 2.2.1 Is a natural person; and
- 2.2.2 Is a citizen of or permanently resident in the Republic; and
- 2.2.3 Pays such nominal Membership registration fee as the Board may prescribe from time to time; and
- 2.2.4 Completes and submits such Membership application form as the Board may prescribe from time to time.
- 2.3 The Board will be entitled to co-opt and appoint any natural or juristic person as a Member of the Company, or create a new class of Members, if the Board believes that person or class will assist the Company in achieving its Main Object, provided that such resolution should be adopted by a 2/3rd majority of the members at a duly convened and quorate members.
- 2.4 The Members of the Company will be entitled to co-opt and appoint any natural or juristic person as a Member of the Company, or create a new class of Members, if the Members believe that person or class will assist the Company in achieving its Main Object, provided that such resolution should be adopted by a 2/3rd majority of the members at a duly convened and quorate meeting.
- 2.5 The Board will be entitled to terminate the Membership of any person if the Board believes this to be in the interests of the Company; provided that no Board resolution for the termination of Membership may be adopted unless the Member concerned has been given a reasonable opportunity to hear and respond to the reasons for the proposed termination.
- 2.6 The Members of the Company in general meeting will be entitled to terminate the Membership of any person if the Members believe this to be in the interests of the Company; provided that no resolution for the termination of Membership may be adopted at a general meeting unless the Member concerned has been given a reasonable opportunity to hear and respond to the reasons for the proposed termination.
- 2.7 Any resolution by the Board to co-opt a Member in terms of article 2.3, or to terminate Membership in terms of article 2.5, must be :

Comment [VW1]: Mike L is of the view that the Board should not have a power to create a new class of membership on its own without approval of the members.

Recommendation A:

The Board should have a right both to co-opt members and to create new membership class/es provided that the resolution is approved by a 2/3rd majority of the members.

Comment [VW2]: UF & Mike L point out that termination of membership is contrary to the aspirations of the ECTA.

Recommendation B:

2.5 will have to be deleted as a whole as it runs contrary to the ECTA.

If any decision were to be taken allowing termination of Membership under any circumstances, the Board's power in terms of 2.5 should also be subjected to approval by a 2/3rd majority of the Members at a general meeting.

Comment [VW3]:

Recommendation C: 2.6 should also be deleted as it is contrary to ECTA.

Comment [VW4]: Mike L proposes (see email of 08 January 2008) that only the members should have the power to co-opt members.

Recommendation D:

(a) The clause "Any resolution to co-opt a Member in terms of article 2.3..." should be amended by a new 2.7.3 subjecting Board's co-option to the Members 2/3rd majority approval.

(b) Should termination of membership (including termination by the Board) be allowed under any circumstances, it should also be subject to approval by a 2/3rd majority of the Members.

Comment [VW5]:

Recommendation E:

This clause (...or to terminate Membership in terms of article 2.5...) will have to be deleted as termination of membership is in contravention of the ECTA. According to UF & Mike L's view. Again, should there be a decision that termination of membership should be allowed, it should be subjected to approval by a 2/3rd majority of the Members.

- 2.7.1 Adopted by a Two-thirds ($\frac{2}{3}$ ^{rds}) majority of the Directors present at a duly convened and quorate Board meeting; or
- 2.7.2 Adopted in the manner stipulated in article 19.8.
- 2.7.3 Ratified by a 2/3^{rds} majority of the Members present at a duly convened and quorate general meeting.
- 2.8 Any resolution by the Members to co-opt a Member in terms of article 2.4, or to terminate Membership in terms of article 2.6, must be :
- 2.8.1 Adopted by a Two-Thirds ($\frac{2}{3}$ ^{rds}) majority of the Members present at a duly convened and quorate general meeting; or
- 2.8.2 Adopted in the manner stipulated in article 11.6.
- 2.9 There must at all times be a minimum of Seven (7) Members of the Company. If at any time the number of Members falls below this minimum, the Board or, if the Board fails to do so, the Members (in general meeting) must co-opt sufficient replacement Members within Sixty (60) days of the vacancy/ies occurring.

3.

TERMINATION OF MEMBERSHIP

Membership of the Company will terminate :

- 3.1 On the death, sequestration, dissolution, or final liquidation of a Member, or if a Member becomes of unsound mind; or
- 3.2 On receipt by the Company at the Office of the written resignation of a Member; or
- 3.3 On the occurrence of any event disqualifying a Member, under the Companies Act, from being the director of a company; or
- 3.4 In the case of a Member who is a natural person, and who has been admitted to

Comment [VW6]: UF & Mike L think this section contravenes the ECTA S60(2), particularly the stipulation that any SA citizen is eligible for membership "...without having to comply with any formality".

Recommendation F:
The listed provisions under 3 (Termination of membership) should be deleted. The .za DNA Board should first work with DOC to amend the ECT Act such that amended Act should give .za DNA power to terminate membership upon certain grounds.

Comment [VW7]: Mike L points out that the use of "director" here tends to imply that a member is automatically a director, when the intention seems in fact to be directorship as opposed to membership.

Recommendation G:
Re-wording this clause focus only on directors would have been necessary, but becomes unnecessary if the whole of section 3 is deleted based on being contrary to the ECT Act

Membership in terms of article 2.2, as soon as that Member is no longer a citizen of nor permanently resident in the Republic; or

3.5 If a Member fails to attend Two (2) general meetings without delivering an apology in writing to the Office before the meeting; or

3.6 If a Member fails, for whatever reason, to attend Three (3) consecutive general meetings, even if the Member delivers his/her apologies for not attending either or both meetings; or

3.7 If a Member fails, for whatever reason, to reply within Thirty (30) days of it being sent, to a notice from the Company calling on the Member to indicate in writing whether he/she wishes to remain a Member; or

3.8 Fails to pay any amount owing to the Company on due date; or

3.9 On the adoption of a resolution contemplated in article 2.5 or article 2.6;

Provided that the Board will be entitled, in the case of any person whose Membership would otherwise terminate in terms of any one of articles 3.4 to 3.8, to determine, in its entire discretion, that such person will remain a Member.

4.

RIGHTS OF MEMBERS AND THE MINISTER

4.1 The ECT Act confers certain rights on the Minister in relation to the Company. The Minister will be entitled to exercise those rights notwithstanding anything to the contrary contained in the memorandum of association, these articles or the Companies Act.

4.2 Subject to article 4.1, Members will have the following rights, as well as any further rights which may be conferred by the Companies Act or any other statute, which may be amended from time to time :

4.2.1 The right to participate in the appointment or removal of Members, and in the

removal of Directors, in accordance with the provisions of these articles; and

4.2.2 The right to inspect, and to receive copies of, the annual financial statements of the Company from time to time; and

4.2.3 The right to receive notice of, attend, speak and vote at all general meetings of the Company in accordance with the provisions of these articles.

Comment [VW8]: UF recommends that there should be no member powers specified herein, but these should left out as listed in the Companies Act.

5.

OBLIGATIONS OF MEMBERS ON TERMINATION

Despite anything to the contrary contained or implied in these articles, the termination of Membership will in no way release a Member from any obligation undertaken by that Member prior to that termination as a result of either :

- 5.1 The provisions of clause 9.2 of the memorandum of association of the Company; or
- 5.2 Any further or ancillary guarantee, commitment or obligation which that Member may have undertaken, either as a condition attaching to Membership, or for any other reason.

Recommendation G:
Member's powers should still be listed but this clause should be re-worded to state clearly that member rights are as prescribed by the Companies Act, (CA) which may be amended from time to time, but in addition to those in the CA, the members should also have these specific rights, and that in the event of a conflict between the specified powers & those in the CA, the CA will take precedence.

6.

TRANSFER OF MEMBERSHIP

Membership may not be ceded or transferred under any circumstances.

7.

REGISTER OF MEMBERS

The Company must maintain a register of Members at the Office, as provided in section 105 of the Companies Act. The register of Members must be open to inspection as provided in section 113 of the Companies Act.

8.

ALTERATION OF MEMORANDUM AND/OR ARTICLES

- 8.1 The Company may by special resolution alter any of the provisions of its memorandum of association or these articles. A special resolution is one which is adopted by Three-fourths (³/₄ths) of the Members present at a duly convened and quorate special general meeting, namely a general meeting called on not less than Twenty-one (21) clear days' notice in terms of section 199 of the Companies Act.
- 8.2 Section 61(2) of the ECT Act reads as follows :

"Notwithstanding the Companies Act, 1973, an amendment to the memorandum of association or articles of association (of the Company) affecting any arrangement made by any provision of (chapter X of the ECT Act), does not have any legal force and effect unless the Minister has consented in writing to such an amendment, which consent may not be withheld unreasonably".

9.

GENERAL MEETINGS

- 9.1 The Company must hold an annual general meeting ("AGM") every calendar year; provided that no more than Fifteen (15) months may elapse between the date of one AGM and that of the next, and an AGM must be held within Nine (9) months after the end of the financial year of the Company.
- 9.2 Other general meetings of the Company may be held at any time, and may be convened at the request of :
- 9.2.1 The chairperson;
 - 9.2.2 Any Two (2) Directors; or
 - 9.2.3 Any Ten (10) Members;

provided that, if the chairperson fails within Seven (7) days of being requested to do so, to take the necessary steps to convene the meeting, the people requesting that meeting

may themselves convene it.

- 9.3 AGMs and other general meetings will be held at such times, manner and places as the Board may appoint or at such times and places as may be stipulated in respect of meetings convened under sections 179(4), 181, 182 or 183 of the Companies Act.

10.

NOTICE OF GENERAL MEETINGS

- 10.1 An AGM and a meeting called for the passing of a special resolution must be called on not less than Twenty-one (21) clear days' notice in writing and any other general meeting must be called on not less than Fourteen (14) clear days' notice in writing.
- 10.2 A notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and must specify the place, the day and the time of the meeting.
- 10.3 A notice must be given in the manner mentioned in article 25 or in any other manner which may be prescribed by the Members in general meeting, to those people who are, in terms of these articles, entitled to receive such notices from the Company.
- 10.4 The notice for an AGM must be accompanied by :
- 10.4.1 The annual business plan contemplated in article 16.3; and
- 10.4.2 The most recent income statement, as contemplated in article 20.1.
- 10.5 Even if a general meeting is called on shorter notice than that specified in this article 10, it will be deemed to have been properly called, if it is so agreed by Ninety-five per cent (95%) of the Members.
- 10.6 Subject to the provisions of the Companies Act, a *bona fide* and inadvertent failure to give notice of any general meeting or any meeting of the Board to any person, or the non-receipt of any such notice by any Member or Director, as the case may be, will not invalidate any resolution passed at any such meeting.

10.7 Should any Member wish to propose a resolution for adoption at an AGM or other general meeting of the Company, then :

10.7.1 In the case of a resolution for an AGM, or a special resolution, that proposed resolution must be delivered in writing to the Office at least Thirty-five (35) days before the date set for the AGM or special general meeting.

10.7.2 In the case of a proposed resolution for any other general meeting, the resolution must be delivered in writing to the Office at least Twenty-eight (28) days before the date set for the general meeting.

11.

PROCEEDINGS AT GENERAL MEETINGS

11.1 The AGM must deal with and dispose of all matters prescribed by the Companies Act, the ECT Act and these articles, including the consideration of the annual financial statements, the annual business plan and income statement, and the appointment of an auditor, and may deal with any other business laid before it.

11.2 Quorum

11.2.1 No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. The company must provide remote participation facilities to enable those Members that cannot physically be at the meeting venue to attend the meetings remotely. Such members must be counted as present at the meeting for quorum purposes.

11.2.2 A quorum will be constituted if at least Seven (7) Members are present in person or, if a Member is a body corporate, through that Member's representative.

11.2.3 If within Forty-five (45) minutes after the time set for the start of the meeting, a quorum is not present, the meeting, if convened at the request of Members, must be dissolved.

11.2.4 In any other case the meeting must be adjourned to such time and date as the

Comment [VW9]: Mike L correctly points out that these dates are impractical as we don't have pre-determined AGM dates, but we simply convene them on 21 days notice.

Recommendation H: The deadline should simply be reduced to 7 days before the meeting date.

Comment [VW10]: Both UF & Mike L urge that .za DNA should be required to provide other participation means such as remote participation to enable Members to attend even away from the venue of the meeting.

Recommendation I: This clause should be expanded to require that .za DNA should provide various remote participation facilities for members away from the venue of the meeting.

Comment [VW11]: There is confusion over the current quorum requirement. The current Articles stipulate 3 members as quorum, not 30 as Matthew Walton said.

UF & Mike L agree that 7 is too low a number, but past experience shows that fewer members are interested in actually attending .za DNA meetings even if an offer for remote participation is available.

There's another challenge currently that a substantial number of the current members have proven un-contactable in the last 2 years, while other listed emails are no longer working. It therefore will not suit .za DNA to raise quorum requirements in the short-medium term, until the membership info is cleaned up & the members decide the status of the non-responsive members.

Recommendation J: The present quorum requirement of 3 be altered to 7 as recommended by Matthew, with a view of increasing this in the future to say 30% of the members.

chairperson decides, provided that the adjourned date must be at least Seven (7) but not more than Twenty-one (21) days after the date set for the original meeting.

- 11.2.5 If at the adjourned meeting a quorum is still not present within half an hour after the time set for the start of the meeting, the Members then present in person or through a representative will be deemed to constitute a quorum.

11.3 **Adjournment**

Where a meeting has been adjourned as contemplated in article 11.2, the Company must, on a date not later than Three (3) days after the adjournment, publish in a at least One (1) newspaper of national circulation :

- 11.3.1 The date, time and place to which the meeting has been adjourned;
- 11.3.2 The matter (if any) before the meeting when it was adjourned; and
- 11.3.3 The ground for the adjournment.

11.4 **Chairperson**

- 11.4.1 The chairperson of the Board will preside as chairperson at every general meeting of the Company.
- 11.4.2 If the chairperson is not present within Thirty (30) minutes after the time set for the start of the meeting, or is unwilling or unable to act as chairperson, the Members present must elect one of their number to chair the meeting.
- 11.4.3 The chairperson may, with the consent of any general meeting at which a quorum is present (and must, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of articles 11.2 and 11.3 will apply.

11.5 **Voting**

- 11.5.1 At any general meeting, a resolution put to the vote of the meeting must be decided on a show of hands, unless a secret ballot is demanded (before or on the declaration of the result of the show of hands).

- 11.5.2 Unless a secret ballot is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried unanimously or by a particular majority or negative, and an entry to that effect in the book containing the minutes of general meetings, will be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- 11.5.3 Except where these articles stipulate otherwise, a resolution put to the vote will be carried if supported by a simple majority.
- 11.5.4 The demand for a secret ballot may be made at any time by the chairperson or by not less than Two (2) Members present in person or represented at the meeting.
- 11.5.5 The demand for a secret ballot may be withdrawn.
- 11.5.6 If a secret ballot is demanded in the prescribed manner, it must be taken in such manner as the chairperson directs.
- 11.5.7 A secret ballot demanded on the election of a person to chair the meeting, or on a question of adjournment, must be taken immediately.
- 11.5.8 A secret ballot demanded on any other question must be taken at such time as the chairperson of the meeting directs.
- 11.5.9 The demand for a secret ballot will not prevent the meeting continuing with business other than the question on which the ballot has been demanded.

11.6 **Signed Resolution**

Despite anything to the contrary contained in these articles, and unless a meeting is required to be held in compliance with the Companies Act, a resolution signed by or on behalf of Two-thirds ($\frac{2}{3}$ rds) of the Members of the Company, will be as valid and effectual as if passed at a duly convened general meeting. It will not be necessary for a Member to sign the original resolution; signature of a true copy will be sufficient. The signed resolution must be inserted in the Company's minute book. |

Comment [VW12]: UF is of the view that there should be no provision for signed resolutions.

Recommendation K:
In the light of my (Vika Mpisane's) comments in 11.2.2 above, it is in the best interests of .za DNA in the short-medium term to allow for signed resolutions until .za DNA has matured as an organisation. The clause should therefore be kept as a proposed amendment.

VOTES OF MEMBERS

- 12.1 On a secret ballot or a show of hands, each Member will have One (1) vote.
- 12.2 In the case of an equality of votes on a secret ballot or a show of hands:
- 12.2.1 The chairperson of the meeting will **NOT** be entitled to a second or casting vote;
and
- 12.2.2 The resolution will be deemed not to have been passed.

13.

PROXIES

- 13.1 The appointment of a proxy must be in writing signed by the Member or by his/her agent duly authorised in writing, or if the Member is a juristic person, by an officer or agent authorised by the body corporate. A proxy need not be a Member of the Company. The holder of a general or special power of attorney incorporating the necessary powers contemplated in this article 13.1, will be entitled to attend and vote at any meetings on behalf of the Member granting that power.
- 13.2 Although the chairperson of the meeting will be entitled to condone any non-compliance with these formalities, the Company must give effect to the appointment of a proxy, provided the instrument appointing the proxy, including the power of attorney or other authority, if any, under which it is signed, or a duly certified copy thereof :
- 13.2.1 Is deposited at the Office not less than Forty-eight (48) hours before the time for the holding of the meeting or any adjournment of it.
- 13.2.2 Was executed not more than Twelve (12) months before the date of the meeting or adjourned meeting which the proxy wishes to attend.
- 13.3 The instrument appointing a proxy must be in the following form or in such other form as may be acceptable to the Board of Directors :

"I, _____ of _____

being a Member of The .za Domain Name Authority ("the Company") hereby appoint:

_____ of _____
or, if he/she is not available

_____ of _____
or, if he/she is not available

_____ of _____

as my proxy to attend, vote and speak for me and on my behalf at the AGM or other general meeting (as the case may be) of the Company to be held on the _____ day of 200____, and at any adjournment thereof as follows :

	In favour of	Against	Abstain from voting
Resolution to			
Resolution to			
Resolution to			

(Indicate instruction to proxy by way of a cross in space provided above)

Unless otherwise instructed, my proxy may vote as he/she thinks fit.

Signed this _____ day of _____ 200____.

(Note: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead. Such proxy need not be a Member of the Company)."

14.

THE BOARD OF DIRECTORS : APPOINTMENT, VACANCIES AND TENURE

14.1 As provided for in section 62 of the ECT Act :

14.1.1 The Board comprises Nine (9) Directors, all of whom are appointed by the Minister.

14.1.2 The chairperson of the Board is appointed by the Minister.

14.1.3 All Directors serve in a part-time and non-executive capacity.

14.2 Vacancies

14.2.1 Any vacancy on the Board from time to time is filled by a replacement appointed by the Minister.

14.2.2 If any position on the Board becomes vacant, for whatever reason, the remaining Directors must, within Thirty (30) days after the vacancy arises :

- Notify the Minister in writing of the vacancy; and
- Simultaneously request the Minister to appoint a replacement Director, as contemplated in section 62(6) of the ECT Act.

14.2.3 On condition that the remaining Directors comply with article 14.2.2, they may continue to act, and exercise all powers and functions of the Board, even though there are not Nine (9) Directors in office as required by section 62(1) of the ECT Act.

14.2.4 However, despite what is set out in article 14.2.3, if the number of Directors in office is less than Five (5), the remaining Directors may not continue to act, other than to notify the Minister as contemplated in article 14.2.2.

14.3 **Tenure**

14.3.1 The Chairperson is appointed for Four (4) years, at the end of which period he/she must retire from the Board.

14.3.2 The remaining Eight (8) Directors will each serve for a maximum of Four (4) years, subject to the remaining provisions of this article 14.3.

14.3.3 At every AGM of the Company, Two (2) of the Directors must retire.

14.3.4 The Directors to retire will be the longest-serving Directors, on condition that :

- The Directors may agree among themselves which Two (2) of them will retire.

Comment [VW13]: This rationale, logic for this section is very much obvious & merited: it is to make the appointment of directors run smoother than it currently does.

However, seeing the M&A cannot override the ECTA, we should be careful about the timing of this amendment: do we want to do it now or we want wait until the ECTA is amended? If it's done now, it already goes against the tenure of the current directors which is 3-4 years, as provided in the Minister's appointment letters for the current Board.

Recommendation L:
Clause 14.3 – 14.3.5 should be deleted as they raise several conflicts with the appointment process stipulated in the ECTA.

For example, 14.3.1 says the Chair should be appointed for 4 years, but the Minister appointed the current Chair in 2007 for 3 years. Also, 14.3.2 gives the other members to serve 4 years, but some the current Board members were given only 3 year tenures.

It is recommended that these clauses should be replaced by a new clause stating:

"the tenure of the directors will be determined by the Minister in terms of the ECTA."

- In the case of Directors who took office on the same day, if they cannot agree among themselves which of them will retire, this must be decided by the drawing of lots.

14.3.5 A retiring Director or chairperson will be eligible for re-appointment, on condition that :

- No Director or chairperson may serve more than Two (2) consecutive terms of office; and
- Where a Director or chairperson has served Two (2) consecutive terms, he/she may serve again, but at least One (1) calendar year must elapse between his/her retirement at the end of those Two (2) consecutive terms, and his/her subsequent re-appointment.

14.3.6 The Board must, at least Sixty (60) days before the compulsory retirement of the chairperson or any Director :

- Notify the Minister in writing of the impending retirement; and
- Simultaneously request the Minister to appoint a replacement.

14.3.7 Despite anything to the contrary contained in these articles, no Director or chairperson will be obliged to retire compulsorily in terms of the preceding provisions of this article 14.3, unless the Minister has, prior to the AGM in question, appointed a replacement in the manner stipulated in the ECT Act. Accordingly, if the Minister has not appointed a replacement, a vacancy (as contemplated in article 14.2) due to retirement will arise at the relevant AGM only if a Director retires voluntarily.

Comment [VW14]: Mike L is of the view that due to long time it takes to have a director appointed in terms of the ECTA, the "at least 60 days" requirement is insufficient.

Recommendation M:
The Board must notify the Minister & request a replacement at least 120 days (4 months) before the next AGM. This means that the Board can notify the Minister even 6-8 months before the next AGM.

Comment [VW15]: Mike L thinks this clause somehow usurps the Minister's power in terms of the ECTA as it allows a Director not to retire unless the Minister appoints a replacement prior to an AGM. The problem is likely to arise where the Minister fails to appoint a replacement prior to the AGM & can only do so after the AGM.

Recommendation N:
The clause should be re-worded to omit "...prior to the AGM in question", and simply delete the 2nd sentence i.e. "Accordingly, if the Minister has not appointed a replacement, a vacancy (as contemplated in article 14.2) due to retirement will arise at the relevant AGM only if a Director retires voluntarily."

14.4 Qualification of Directors

It will not be necessary for a Director to be a Member of the Company.

14.5 Removal of Directors

14.5.1 The Board of Directors may, by resolution adopted by a Two-thirds ($\frac{2}{3}$ rds) majority of the Directors present at a duly convened and quorate Board meeting, or in the

manner provided for in article 19.8, terminate the appointment of any Director if the Board believes this to be in the best interests of the Company; on condition that no such resolution will be of force or effect unless :

14.5.1.1 The Director concerned has been given a reasonable opportunity to hear and respond to the reasons for the proposed termination; and

14.5.1.2 The Minister has approved the removal of that Director in writing.

14.5.1.3 The Board's decision is ratified by a 2/3^{rds} majority of the Members at a duly convened and quorate general meeting.

14.5.2 The Members of the Company may, by resolution adopted by a Two-thirds ($\frac{2}{3}$ rds) majority of those present in person, by proxy or through an authorised representative at a duly convened and quorate general meeting, or in the manner provided for in article 11.6, terminate the appointment of any Director; on condition that no such resolution will be of force or effect unless :

14.5.2.1 The Director concerned has been given a reasonable opportunity to hear and respond to the reasons for the proposed termination; and

14.5.2.2 The Minister has approved the removal of that Director in writing.

14.5.3 If the Minister is of the opinion that this is in the interests of the Company, the Minister may, by notice in writing, remove any person from the office of Director.

14.5.4 Further provisions concerning the termination of the office of Director are set out in article 18.

15.

DIRECTORS' REMUNERATION AND REIMBURSEMENT

15.1 The Directors will be entitled to reimbursement of all travelling, subsistence, and other expenses properly incurred by them in the execution of their duties on behalf of the Company and which are authorised or approved from time to time by the Board.

Comment [VW16]: UF thinks only a 2/3rd majority of the members should have this right, not the Board.

Recommendation O:

The Board should be allowed to remove another director as envisaged by this clause, but a new 14.5.1.3 should be added subjecting the Board's removal to an adoption by a 2/3rd majority of the members at a general meeting.

Comment [VW17]: Mike L shares UF's sentiments & proposes that this clause, together with 14.5.1 & 15.5.2.2 should be removed.

Recommendation P:

In the light of the spirit of the ECTA being that of having .za DNA & its members operating without reliance & dependence on the Minister (e.g. .za DNA is required to be self-funding), this clause should be deleted. It is sufficient to give the Minister a say in the removal of a director as she appoints them, but there is no clear reason why she should have a power to remove a director, seeing she is in any case far removed from the operations of .za DNA.

- 15.2 The Directors may, by way of Board resolutions adopted from time to time, determine the remuneration they will receive for performing their part-time and non-executive duties. That remuneration must be reasonable, taking into account the nature of the work done, the time spent in doing it, and the sector in which the Company operates.
- 15.3 Nothing in the memorandum or these articles will prevent the payment of further fees and/or remuneration to any Director for work done or service rendered to the Company in addition to that required in order to fulfil the part-time and non-executive role contemplated in article 15.2.
- 15.4 A Director will be entitled to contract directly or indirectly with the Company, or benefit from any contract which the Company may conclude, on condition that :
- 15.4.1 The Director declares his/her interest in the relevant contract in the manner stipulated in the Companies Act; and
- 15.4.2 The Director does not participate in any proceedings of the Board during which the relevant contract is discussed or voted on; and
- 15.4.3 The conclusion of that contract is subject to the same procedures and criteria as any other similar contract concluded by the Company.

16.

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

16.1 **Powers**

The business of the Company must be managed by the Board, which may pay on behalf of the Company all expenses incurred in promoting and incorporating the Company, and in carrying out its functions, activities and Main Object. The Board may exercise all those powers of the Company which are not required by the Companies Act, or by these articles, to be exercised by the Members in general meeting. Without in any way limiting the general nature of this article 16.1, the Board will be entitled to exercise the following powers :

16.1.1 Common Powers

The Board will be entitled on behalf of the Company to exercise all and any of the common powers of companies itemised in schedule 2 of the Companies Act, subject only to any contrary stipulation contained from time to time in the memorandum or these articles.

16.1.2 Co-option of Assistance

The Board will be entitled to co-opt any person of its choice to assist the Board or any committee of the Board in relation to any matter concerning the management or administration of the Company, or the conduct of any aspect of its activities.

16.1.3 Divisions

The Board will be entitled to establish separate divisions of the Company, to perform any discrete or specialised functions of the Company. The Board must, from time to time, determine rules and procedures for the management and administration of any division, and must take all reasonable steps to ensure that such rules and procedures are complied with. The Board may, if deemed appropriate for administrative, fiscal or other reasons, keep separate books and account separately for each division.

16.1.4 Committees and Delegation

The Board may delegate any of its powers or assign any of its duties to individual Directors, committees comprising Directors and others, and/or to employees or divisions of the Company, as the Board chooses; on condition that :

- The Board must establish and maintain a management committee as required in terms of section 61(4)(d) of the ECT Act; and
- The Board must take reasonable steps to ensure that any such Director, division, committee or employee, in exercising the relevant powers or carrying out the relevant duties, conforms to any rules, restrictions or procedures which may be imposed by the Board from time to time; and
- The Board will not be divested of any power or duty by virtue of its delegation or assignment to any person; and

- The Board will be entitled, in its entire discretion, to vary or set aside any decision made under any delegation or in terms of any assignment.

16.1.5 Borrowing Powers

The Board's borrowing powers will be limited only as stipulated in the memorandum of the Company, and the Board will be entitled to borrow money and to mortgage or bind the undertaking and property of the Company or any part of it, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company.

16.2 **Duties**

The Board must carry out all duties required of it by the Companies Act, the ECT Act, or any other provision of law. Certain of those duties are set out below.

16.3 **Annual Business Plan**

16.3.1 The Board must, prior to each AGM, prepare a business plan setting out the proposed activities of the Company for the forthcoming year.

16.3.2 That business plan must be presented to the Members at the AGM, for their consideration and comment.

16.4 **Finances**

In managing the finances of the Company, the Board must comply with the provisions of article 20.

16.5 **Expertise**

16.5.1 The Board will be entitled to employ independent contractors, or other appropriate people, to provide the Company with such skills and expertise as it may require in order to achieve its Main Object.

16.5.2 The Board must, in selecting and employing such independent contractors or other people, apply procurement criteria and procedures which are objective, fair and

transparent.

16.6 **Registers**

In addition to the Members' register (see article 7), the Board must ensure that the following further registers are maintained in the manner and at the places prescribed by the Companies Act :

- Register of pledges, cessions and bonds (section 127)
- Register of Directors and officers (section 216)
- Register of declarations of interests of Directors and officers in contracts (section 240)
- Attendance register in respect of meetings of the Board (section 245)
- Register of fixed assets (section 284)

16.7 **Minutes**

The Board must cause minutes to be kept :

- Of all appointments of Directors and officers.
- Of names of Members (or their proxies or duly authorised representatives) present at every general meeting of the Company, and of Directors present at every meeting of the Board.
- Of all proceedings at all general meetings of the Company, and at all meetings of the Board.

Those minutes must be signed by the chairperson of the next meeting.

16.8 **Annual Report to the Minister**

As required by section 67 of the ECT Act, the Board must, as soon as practicable after the end of every financial year, prepare a report on its activities during that year, and submit

that report to the Minister, for tabling in parliament.

16.9 Domain Procedures and Criteria

16.9.1 As contemplated in section 61(4)(k) of the ECT Act, and subject to article 16.9.2, the Board must, from time to time, determine procedures and criteria for the establishment and dis-establishment of second level domains, and for delegations to such domains.

16.9.2 No procedures or criteria determined by the Board in terms of article 16.9.1 will be of force or effect until they have been approved by resolution of a simple majority at a duly convened and quorate general meeting of Members, or in the manner contemplated in article 11.6.

Comment [VW18]: UF supports this provision but proposes a 2/3rd majority as opposed to a simple majority.

Recommendation Q:
This must be replaced by a 2/3rd majority as is common throughout these Articles.

16.10 Appeal Mechanisms

16.10.1 As contemplated in section 61(4)(l) of the ECT Act, the Board must, from time to time, determine procedures and mechanisms whereby any person whose rights are adversely affected by any decision of the Company, may appeal that decision.

16.10.2 In order to avoid doubt it is confirmed that these appeal procedures and mechanisms will not be available for the resolution of any dispute in respect of the .za Domain Name space, or concerning the interpretation of the memorandum or articles of association of the Company; the resolution of those disputes is catered for, respectively, in section 69 of the ECT Act, and in article 16.11.

16.11 Disputes concerning Memorandum and Articles

As contemplated in section 61(4)(i) of the ECT Act, the Board must, from time to time, determine procedures for the arbitration of disputes concerning the interpretation of the memorandum and articles of association of the Company.

17.

INSPECTION OF MINUTES

The minutes of every general meeting and AGM of the Company under section 204 of the

Companies Act, may be inspected and copied by any Member as provided in section 113 of the Companies Act.

18.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

The office of Director will be vacated if the Director :

- 18.1 Ceases to be a Director by expiry of the period of his/her appointment, or becomes prohibited from being a Director by virtue of any provision of the Companies Act.
- 18.2 Dies, or resigns his/her office by notice in writing to the Company.
- 18.3 Is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his/her interest and its nature in the manner required by the Companies Act.
- 18.4 Is removed from office by a resolution adopted in terms of article 14.
- 18.5 Retires pursuant to the compulsory retirement provisions of article 14.
- 18.6 Is provisionally sequestrated or placed under an administration order.

19.

MEETINGS OF THE BOARD

- 19.1 Subject to the following provisions of this article 19, the Board may meet together to conduct its business, adjourn and otherwise regulate its meetings as it chooses.
- 19.2 The Board must from time to time appoint the following office bearers from among the Directors :
 - 19.2.1 A secretary;
 - 19.2.2 A treasurer; and

19.2.3 Such other office bearers as they see fit.

19.3 At all Board meetings the quorum necessary for the transaction of business will be Five (5) Directors. The Company must provide remote participation options to cater for the directors who cannot physically be at the venue of the meeting.

Comment [VW19]: Mike L is of the opinion that the use of remote participation should be expressly stated, as it will help limit quorum challenges.

19.4 A Director may at any time, and the secretary at the request of a Director must, convene a meeting of the Directors.

Recommendation R:
This is a good proposal and the clause should be extended accordingly.

19.5 Each Director present at a meeting, including the Directors attending the meeting remotely, will be entitled to exercise One (1) vote.

19.6 The Directors must make every reasonable effort to reach consensus on all questions arising at any meeting of Directors. In the event that consensus cannot be reached on any question arising at such a meeting, a resolution will be deemed to have been passed only if supported by a majority of Two-thirds ($\frac{2}{3}$ ^{rds}) of the Directors present in person.

19.7 The chairperson will be entitled to preside over all meetings of Directors. If at any meeting the chairperson is not present or willing to act within Fifteen (15) minutes after the time set for the start of the meeting, the Directors present must choose one of their number to chair the meeting.

19.8 Subject to the Companies Act, a resolution in writing signed by Two-thirds ($\frac{2}{3}$ ^{rds}) of the Directors will be as valid and effectual as if it had been passed at a duly convened and quorate meeting of the Directors. It will not be necessary for a Director to sign the original resolution; signature of a true copy will be sufficient, as will be a signed copy which is scanned and sent by e-mail.

19.9 Despite anything to the contrary contained in these articles, but subject to the Companies Act, the Directors will not be obliged to convene meetings, but may discuss and reach decisions on all or any matters relevant to the Company by way of exchange of e-mails, telephone communications, teleconferences, videoconferences, or in any other manner of their choice : On condition that, if decisions are taken by the Directors other than at a duly convened and quorate meeting of the Board, those decisions will be of no force or effect unless they are :

19.9.1 Recorded in writing;

- 19.9.2 Circulated to all the Directors, whether electronically or otherwise; and
- 19.9.3 Signed by at least Two-thirds ($\frac{2}{3}$ rds) of the Directors in the manner contemplated in article 19.8.
- 19.10 All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a Director will, even if it is discovered afterwards that there was some defect in their appointment, or that they were disqualified, be as valid as if they had been duly appointed or qualified.

20.

FINANCES

20.1 Estimated Income and Expenditure Statement

- 20.1.1 The Board must, at least Thirty (30) days before the beginning of each financial year, prepare a statement of the Company's estimated income and expenditure for that financial year ("the income statement"). That statement must record full particulars of any remuneration to be paid to Directors in terms of article 15.
- 20.1.2 If the Minister determines a date by when the income statement must be prepared (as contemplated in section 66(6) of the ECT Act), the Board must comply with that determination.
- 20.1.3 The Board must submit the income statement to the Minister, for his/her approval, by the date determined by the Minister in terms of section 66(6) of the ECT Act and, in any event, at least Thirty (30) days before the beginning of the financial year to which the income statement relates.
- 20.1.4 The Board may, at any time during the course of a financial year, submit an amended or supplementary income statement for that financial year, to the Minister for approval.
- 20.1.5 The Board must ensure that the Company does not incur any expenditure in excess of the total amount set out in an income statement (or supplementary or amended income statement) approved in terms of section 66(6) of the ECT Act.

20.2 Funds of the Company

20.2.1 The Company is funded from –

- Capital invested in or lent to the Company;
- Money appropriated by parliament;
- Income derived from the sale or other commercial exploitation of its licences, approvals, products, technology, services or expertise;
- Loans raised by the Company;
- The proceeds of any sale of assets of the Company;
- Income or interest earned on the Company's cash balances or money invested by it from time to time; and
- Money received by way of grant, contribution, donation or inheritance from any source inside or outside the Republic.

20.2.2 The Board must ensure that the funds of the Company are utilised only to meet the expenditure incurred by the Company in connection with its functioning, business and operations in terms of the ECT Act.

20.2.3 The Board must ensure that the funds of the Company are utilised only as provided for in income statements approved in terms of section 66(6) of the ECT Act.

20.2.4 Money received by the Company by way of grant, contribution, donation or inheritance must be utilised in accordance with any conditions imposed by the grantor, contributor, donor or testator.

20.3 Reserves

The Board may set aside and carry to a reserve fund all or any of the surplus funds of the Company, which may at its discretion be applied for any purpose for which such funds may properly be applied, in any manner the Board chooses; on condition that :

20.3.1 Before a reserve fund is established, the Board must obtain from the Minister approval for the purpose for which that reserve fund is to be established; and

20.3.2 Any money allocated to a reserve fund must have been provided for in an income statement (or amended or supplementary income statement) approved in terms of section 66(6) of the ECT Act.

20.4 **Banking and Investment of Funds**

20.4.1 The Board must ensure that all money received by the Company is deposited in one or more banking accounts in the name of the Company with a bank established under the Banks Act, No. 94 of 1990, or a mutual bank established under the Mutual Banks Act, No. 124 of 1993.

20.4.2 The Board must, from time to time, determine, by way of resolution :

- Who will have authority to operate the bank accounts of the Company, sign cheques and other financial instruments and contracts on behalf of the Company, and otherwise disburse Company funds and incur commitments on behalf of the Company; and
- The procedures to be followed in this regard.

21.

ACCOUNTING OFFICER

21.1 In terms of section 66(2) of the ECT Act, the chief executive officer of the Company is the Company's "*accounting officer*".

21.2 The Board must ensure that the chief executive officer of the Company carries out the following responsibilities, or causes them to be carried out :

21.2.1 A proper record of all the financial transactions, assets and liabilities of the

Company must be kept, in accordance with generally accepted accounting principles and practice.

- 21.2.2 Those records must include, at the very least, the accounting records prescribed by section 284 of the Companies Act, and must present fairly the state of affairs and business of the Company, and must explain the transactions and financial position of its trade or business.
- 21.2.3 The accounting records must be kept at the Office or at such other place or places as the Board chooses, and must always be open to inspection by the Directors.

22.

ANNUAL FINANCIAL STATEMENTS

- 22.1 The Board must from time to time, in accordance with sections 286 and 288 of the Companies Act, cause to be prepared and laid before the Company in general meeting the annual financial statements referred to in those sections.
- 22.2 Not less than Twenty-one (21) days before the date of the AGM, copies of any financial statements which are to be laid before that meeting, must be sent to every Member of the Company and to every holder of debentures, and to the Registrar of Companies; provided that such copies need not be sent :
- 22.2.1 To any Member who has requested in writing that copies of the financial statements NOT be sent to her/him;
- 22.2.2 To any person of whose address the Company is unaware; or
- 22.2.3 To more than one of the joint holders of any debentures;
- and provided further that the financial statements may be made available in electronic format to any person entitled to them who has consented in writing to receiving them in this form.
- 22.3 The Board must ensure that the annual financial statements of the Company are submitted to the Minister not later than Three (3) months after the end of each financial

year.

23.

COMPANY EMPLOYEES

- 23.1 The Board must appoint a chief executive officer (“CEO”) to manage and administer the activities, assets and staff of the Company on a day-to-day basis.
- 23.2 The CEO will be a full-time appointment.
- 23.3 If the CEO is for any reason unable to perform his/her functions (whether because of temporary incapacity, or because his/her employment has terminated, or otherwise), the Board must designate an employee in the service of the Company as acting CEO until the CEO is able to resume or take up office. Where there is no suitable employee to act as CEO, the Board may consider contracting an external person to act as CEO until a permanent CEO is appointed.
- 23.4 The Board must appoint such further employees as may be necessary to assist the CEO in carrying out his/her duties.
- 23.5 The Board must determine the conditions of service, remuneration and service benefits of the CEO and other Company employees.
- 23.6 In selecting and employing the CEO and other employees, the Board must apply, or cause to be applied, criteria and procedures which are objective, reasonable and transparent.

Comment [VW20]:

Recommendation S:
Mike L proposes this provision to cater for a situation where .za DNA has very few employees & where there's no suitable replacement from current staff.

24.

AUDITORS

- 24.1 An auditor must be appointed, and if necessary removed and replaced, in accordance with the relevant provisions of the Companies Act.
- 24.2 The auditor may be a Member of the Company, but no person may be appointed as

auditor of the Company if he/she is :

- 24.2.1 A Director, officer or employee of the Company;
- 24.2.2 A director, officer or employee of any company performing secretarial work for the Company;
- 24.2.3 In relation to a Director or an officer of the Company, a "connected person" as defined in the Income Tax Act;
- 24.2.4 A person who alone, or through a partner or employee, habitually or regularly performs the duties of secretary or bookkeeper of the Company, except where the provisions of section 275(3) of the Companies Act apply, and are complied with;
- 24.2.5 A person who at any time during the financial year to be audited, was a Director or officer of the Company; or
- 24.2.6 Not qualified to act as such under the Public Accountants' and Auditors' Act, No. 51 of 1951.
- 24.3 If the office of auditor falls vacant, for any reason whatsoever, a new auditor must be appointed by the Board in accordance with the provisions of section 280 or section 273 of the Companies Act, as the case may be.

25.

NOTICES

- 25.1 A notice may be given by the Company to any Member :
- 25.1.1 By giving or delivering it to the Member personally, provided that the Member should sign to acknowledge receipt of the notice;
- 25.1.2 By sending it by prepaid registered post to the Member at his/her registered address or (if the Member has no registered physical address in the Republic) at the address (if any) in the Republic supplied by the Member to the Company for the giving of notices;

Comment [VW21]: Mike L thinks 25.1 should be made a requirement, not an option.

Recommendation I:
We should simply replace "may" with "must" to make this a requirement.

In addition, the rest of 25.1 should be amended as shown by track changes below.

25.1.3 By sending it by fax to any fax number supplied to the Company by the Member for this purpose, provided that proof showing that the fax was sent successfully must be maintained.;

25.1.4 By sending it by e-mail to any e-mail address supplied by the Member to the Company for this purpose, provided that where the email is returned as not received on account of the email account no longer operational or on account of any other reason showing that the email was not received, other attempts must be made to send the notice using other contact details of the Member; or

25.1.5 By publishing it on the Company's website, provided that the notice is also sent to the Members' mailing list to make the Members aware that a notice has been published on the Company's website.

25.2 Any notice :

25.2.1 Sent by prepaid registered post will be deemed to have been received by the Member concerned Five (5) days after the proven day of posting.

25.2.2 Sent by fax or e-mail will be deemed to have been received by the Member concerned on the next business day after the proven date of despatch, provided that the Company has obtained proof of receipt.

25.2.3 Published on the Company's website will be deemed to have been received by all Members Five (5) days after publication, provided that the notice is also sent to the Members' mailing list to make the Members aware that a notice has been published on the Company's website.

25.3 Notice of every general meeting must be given in any manner authorised by these articles :

25.3.1 To every Member of the Company, except that such notices need not be sent :

25.3.1.1 To any Member who has requested in writing that such notices NOT be sent to that Member;

25.3.1.2 To any person of whose address (whether physical, postal or e-mail) or fax

Comment [VW22]:

Recommendation U:
These additions are recommended in the light of 25.1 being made a requirement in line with Mike L's view. The additions are meant to clarify the Company's duties to ensure that proof of receipt of notices sent in various ways is obtained by the Company.

number the Company is unaware;

25.3.1.3 To more that one of the joint holders of any debentures.

25.3.2 To the auditor for the time being of the Company.

No other person will be entitled as of right to receive notices of general meetings.

26.

INDEMNITIES

26.1 Subject to any contrary provision in the Companies Act, every Director and other officer of the Company will be indemnified out of the funds of the Company against all costs, expenses and liabilities properly incurred by her/him with the authority of the Company, and in the course of the Company's business.

26.2 No Director, officer or employee of the Company will be liable for the acts, receipts, omissions or defaults of any other Director, officer or employee; or for joining in any receipt or other act for conformity; or for

26.2.1 Any loss or expense happening to the Company through the insufficiency or deficiency of any security on which any of the funds of the Company are invested;

26.2.2 Any loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom any funds or securities are deposited;

26.2.3 Any loss or damage occasioned by any error of judgment or oversight on his/her part; or

26.2.4 Any other loss, damage or misfortune whatever which happens in the execution of the duties of his/her office, or in relation thereto,

unless that loss happens through his/her own wrongful act, negligence, default, breach of duty or breach of trust.

27.

NPOA REQUIREMENTS

In order to facilitate the Company's application for registration as a non-profit organisation under the NPOA, it is confirmed that :

- 27.1 The name of the Company is recorded at clause 1.1 of its memorandum of association.
- 27.2 The Company's main and ancillary objectives are set out at clause 4 of its memorandum.
- 27.3 The Company's income and property are not distributable to its Members, Directors or office-bearers, except as reasonable compensation for services rendered.
- 27.4 The Company is a body corporate, and has an identity and existence distinct from its Members or office-bearers.
- 27.5 The Company will continue to exist notwithstanding changes in the composition of its Membership or office-bearers.
- 27.6 Neither the Members nor the office-bearers have any rights in the property or other assets of the Company solely by virtue of their being Members or office-bearers.
- 27.7 The powers of the Company are set out in schedule 2 to the Companies Act, as qualified in clauses 5, 6 and 7 of the Company's memorandum.
- 27.8 The Company's structures and the mechanisms for its governance are set out at articles 2, 9, 10, 11, 12, 14 and 19.
- 27.9 Rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings, are set out in articles 11 and 19, and in the Companies Act.
- 27.10 The manner in which the Company's decisions are to be made are set out at articles 11 and 19.
- 27.11 All financial transactions of the Company must be conducted by means of one or more banking accounts.

- 27.12 The date for the end of the Company's financial year is recorded at clause 2 of its memorandum.
- 27.13 The procedure for amending the memorandum or the articles of the Company is set out in article 8, and is governed by the Companies Act, *inter alia* at section 200 of that Act.
- 27.14 The procedure by which the Company may be wound up or dissolved is contained in and governed by the Companies Act. Provisions which relate to the winding-up or dissolution of the Company can be found at clause 7 of its memorandum.
- 27.15 If the Company is, at the time of its winding up or dissolution, registered as a non-profit organisation in terms of the NPOA, any assets remaining after all its liabilities have been met, must be transferred to another body which qualifies as a non-profit organisation in terms of the definition contained in the NPOA, which body must have objectives similar to the Main Object of the Company.

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Annexure A:
Establishment & disestablishment of new
second-level domains

Both UF & Mike L support the removal of this Annexure from the Articles, so that the approval os procedures and rules for the establishment and disestablishment of domains should be approved by the membership.

Recommendation:

The Annexure should be removed from the Articles, as this would make it easier to have it approved and/or amended by the membership outside the administrative requirements of the Articles. However, the removal of this Annexure should not be construed as meaning that it is deleted and no longer operational; it is only removed from the current Articles of Association, but continues to be operational and may be amended upon approval by a 2/3rd majority of the

members at a duly convened and quorate general meeting.

Comment [VW23]:

Recommendation V: