

## ZA Domain Name Authority NPC

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**To: ZADNA Members**

**From: The Chief Executive Officer**

**Date: 02 November 2021**

**Ref: Changes from the Articles of Association (AoA) to the Memorandum of Incorporation (Moi)**

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### 1. PURPOSE

To provide feedback on the request for written submissions from Members following a proposal for an MOI for ZADNA to replace the existing Article of Association (AoA).

### 2. BACKGROUND

As one of the critical steps to put an MOI in place for ZADNA, the ZADNA Management prepared a Memo in response to the Members' request to articulate the need for a framework different from the current framework in place, which is the Articles of Association (AOA). This was done through an invitation for written submissions from the Members responding to the Memo issued on 10 October 2021. Further, members were invited to consultative meetings on 19 October 2021 for oral submissions and to put before Management any clarity-seeking questions before making written submissions due for submission on 22 October 2021.

Two meetings were set up to accommodate Members across the nine(9) provinces, but due to the low turnout in response, only one meeting was held on 19 October 2021.

The meeting had twenty-one (21) participants, including four (4) ZADNA Management staff members and the Company Secretary. The ZADNA CEO facilitated the discussion, and answers to the Members' questions were responded to by the CEO and the Policy, Licensing and Regulations Manager.

Only one written submission was made despite an extension for submission to 25 October 2021.

### 3. MEMBERS SUBMISSIONS

#### 3.1 Consultative Meeting

The following salient points were captured from the discussion during the consultative meeting:

MEMBERS SUBMISSIONS	RESPONSE	STATUS
<p>1. Reference was made to <b>clause 9.1</b>, and a question asked as to why the non-compliance was not required</p>	<ul style="list-style-type: none"> <li>• <b>Clause 9.1</b> relates to subsidiary relationships that apply to entities who have subsidiary companies or are subsidiaries to principal companies. ZADNA is neither of the two.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause left as is in the Draft Mol.</li> </ul>
<p>2. There was a view that <b>Clause 4.1.1.10</b> could be interpreted twofold, that the Minister could give ZADNA leeway to make Regulations or ZADNA presents Regulations for the Minister to interrogate before approval.</p> <p>Further, there was a request to clarify the intent of the clause.</p>	<ul style="list-style-type: none"> <li>• The Regulations processes were explained to members indicating critical steps to be undertaken, including submission to the State Law Adviser and the public participation process. A process that would eventually necessitate Ministerial confirmation of the compliance with the principal legislation.</li> <li>• The request was noted.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed alternative clause will read:  <i>"To make Regulations, to be subjected to a public participation process and subsequently submitted to the Minister for approval, regarding the various matters stipulated in the ECT Act."</i> </li> </ul>
<p>3. Members were highly contentious about <b>clause 4.2</b>.</p> <ul style="list-style-type: none"> <li>• There was a view to do away with the clause because it gave ZADNA a commercial mandate contrary to the ECT mandate.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Clause 4.2</b> was to be read in line with <b>Clause 4.1</b>, which outlines the principal mandate of ZADNA. <b>Clause 4.2</b> speaks to ZADNA receiving a fraction of the</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed alternative clause will read:  <i>"The secondary Object of the Company is to partake in any business, trade or undertaking ("Commercial Activity") which is consistent with or</i> </li> </ul>

<ul style="list-style-type: none"> <li>• There was a view that the clause was ambiguous and should be struck off.</li> <li>• There was a view not to strike off the clause and further not to limit the level of engagement of the Regulator.</li> </ul>	<p>wholesale fee from the registration of domain names.</p> <ul style="list-style-type: none"> <li>• It was explained that the clause is ambiguous if read in isolation.</li> <li>• View noted.</li> </ul>	<p><i>ancillary to its Principal Object."</i></p> <p>The definition of 'Commercial Activity is also proposed to be expanded to:  <i>"Commercial Activity means any transaction resulting from the transfer of the agreed portion of the wholesale fee by the Registry Operator emanating from the registration and renewal of domain names."</i></p>
<p>4. There was a contention to state 'juristic' persons as members of ZADNA under <b>Clause 11.3</b>, and the term suggested to be struck off.</p> <p>There was an alternative view to add juristic persons to expand the membership based on the response given.</p>	<ul style="list-style-type: none"> <li>• ZADNA membership comprises all citizens and permanent residents. All citizens are legal subjects in law. There are two categories of legal subjects: (i) natural persons and (ii) juristic persons. Therefore, juristic persons, like natural persons, qualify for membership.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause left as is.</li> </ul>
<p>5. There was a view to remove <b>Clause 12.1.3</b> as it applies to Directors and not members.</p>	<ul style="list-style-type: none"> <li>• This is critical to remove members who are convicted, delinquent, are unrehabilitated insolvents, or have conducted acts of misconduct.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause left as is.</li> </ul>
<p>6. <b>Clause 12.1.5 and 12.1.6</b> were disputed on the basis that termination for non-attendance of two meetings without an apology was too short of a number. A proposal for termination for non-attendance without an apology five (5) times was suggested.</p>	<ul style="list-style-type: none"> <li>• Suggestion Noted.</li> </ul>	<ul style="list-style-type: none"> <li>• Initial clause of 12.1.5 struck off.</li> <li>• The amendment effected to the clause.</li> </ul>
<p>7. There was a proposal to strike off <b>Clause 12.1.8</b> because ZADNA was not engaged in commercial activity.</p>	<ul style="list-style-type: none"> <li>• This is related to the receipt of a nominal fee upon registration of ZADNA membership.</li> </ul>	<ul style="list-style-type: none"> <li>• The clause is left as is.</li> </ul>
<p>8. There was a proposal to rework <b>Clause 15</b> in its entirety.</p>	<ul style="list-style-type: none"> <li>• The proposal was noted, and the member requested to submit in writing why and how that would be actioned.</li> </ul>	<ul style="list-style-type: none"> <li>• No submission to this effect was made.</li> </ul>

<p>9. There was a proposal to give a two-week extension for written submissions for views on the proposed MOI.</p>	<ul style="list-style-type: none"> <li>This was not accepted as the MOI was to form part of the SGM Agenda and would not afford adequate time to address the submissions before the SGM is convened. An extension was, however, given until 25 October 2021.</li> </ul>	<ul style="list-style-type: none"> <li>The extension though granted, resulted in one submission made.</li> </ul>
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### 3.2 Written Submission

ZADNA received one written submission with proposed changes and areas for more clarification on some of the Draft Mol clauses:

SUBMISSIONS	STATUS
<p>1. Reference was made to <b>clause 1.6</b>. The cross reference of the article to 4.2.1 was insufficient to detail what commercial activities entail.</p> <p><b>Clause 1.8</b> is not clearly articulated and should be linked to <b>clause 1.35</b></p>	<ul style="list-style-type: none"> <li>See 3 above.</li> <li>Proposed and accepted alternative wording: <i>"The Company means the entity described in clause 1.35 as ZADNA."</i></li> <li>.ZA DNA to be amended to ZADNA.</li> </ul>
<p>2. <b>Clause 1.6 and 4.2</b> were deemed to bear a repetitive connotation and is overbroad as it seems to provide an extension on the powers of ZADNA.</p>	<ul style="list-style-type: none"> <li>See 3 above.</li> </ul>
<p>3. <b>Clause 11</b></p> <ul style="list-style-type: none"> <li>Deemed to be unduly restrictive as it limits membership to natural persons and should be extended to natural and juristic persons.</li> </ul>	<ul style="list-style-type: none"> <li>See 4 above.</li> </ul>
<p>4. <b>Clause 12.1.4</b>- How would ZADNA determine the status and/or enforce this provision? Does ZADNA maintain a complete and accurate record of its Register of Members?</p>	<ul style="list-style-type: none"> <li>ZADNA maintains a list of its members and will continue to do a members audit to verify active members.</li> </ul>
<p>5. <b>Clause 12.1.5</b> -It is overly harsh to terminate membership based on a single instance of non-attendance without an apology from the member</p>	<ul style="list-style-type: none"> <li>See 6 above.</li> </ul>
<p>6. <b>Clause 27.4 to 27.6</b>-Revisit to segregate appointments. CEO appointment by the Board and Operational staff by the CEO</p>	<ul style="list-style-type: none"> <li>Noted, and the amendment to be effected.</li> </ul>

<p>7. <b>Clause 23.3.1</b>- Overbroad powers by the Board. Link the responsibility to the statutory objectives so that the members are satisfied that the surpluses would be reinvested.ZA domain namespace.</p>	<ul style="list-style-type: none"> <li>Proposed alternative clause:  <i>"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 accordance with section 66 (4) of the ECT Act."</i></li> </ul>
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**4. CONCLUSION**

ZADNA takes note of the Members submissions as articulated above and will table the amended Draft Mol to the Members at the SGM in November 2021.