

FIRST DRAFT – FOR DISCUSSION PURPOSES ONLY

FORM CM44B

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973

**ARTICLES OF ASSOCIATION OF A COMPANY
NOT HAVING A SHARE CAPITAL**
(Section 60(1); Regulation 18)

Amended in terms of a Special Resolution passed on

Registration No. of Company
2000/029897/08

NAME OF COMPANY :

**THE ASSOCIATION OF BUSINESS ASSESSMENT & RECOVERY
PROFESSIONALS**
(Association incorporated under Section 21)

- A. The Articles of Table A or Table B contained in Schedule 1 to the Companies Act, No 61 of 1973 (as amended), shall not apply to the company.
- B. The Articles of the Company are as follows :-

1. **DEFINITIONS**

- 1.1. “the Act” – means the Companies Act, Act 61 of 1973, including any amendment, consolidation or re-enactment thereof;
- 1.2. “the Articles” – means these Articles of Association and any amendments effected thereto by Special Resolution;

- 1.3. “the Association” – means the Association of Business Assessment and Recovery Professionals (an Association incorporated under Section 21 of the Act);
- 1.4. “the Executive” – means the Executive Committee for the time being of the Association or, as the case may be, the members of the Executive assembled at an Executive Meeting at which a quorum is present and shall consist of the Chairman, Vice Chairman, Secretary, Treasurer and 5 other members.
- 1.5. “Court” – means any provincial or local division of the High Court of South Africa and shall include any Court of Appeal or the Constitutional Court.
- 1.6. “Domicilium” – means the registered office of the Association from time to time.
- 1.7. “Unprofessional or unethical conduct” – shall include any conduct prescribed as such which shall within the context include fraudulent or negligent conduct.
- 1.8. “business assessment and recovery” – means the professional practice and application of business assessment and recovery.
- 1.9. “Master” – means any Master of the High Court of South Africa;
- 1.10. “meeting” – shall include an adjourned meeting;

- 1.11. “member” – means a person registered as a member of the Association in the register of members;
- 1.12. “Minister” – means the Minister of Justice;
- 1.13. “the office” – means the registered office of the Association;
- 1.14. “business assessment and recovery professional” – means any suitably qualified practising member actively engaged in business assessment and recovery;
- 1.15. “practising member” – means any individual or corporate member actively engaged in the practice of business assessment and recovery;
- 1.16. “corporate member” – means subject to these Articles, any firm, partnership or company of business assessment and recovery professionals, being a member of this Association actively engaged in the practice of business assessment and recovery.
- 1.17. “individual member” – means subject to these Articles, any natural person, being a member of the Association, being a business assessment and recovery professional.
- 1.18. “Republic” – means the territory of the Republic of South Africa;
- 1.19. “person” – means a natural person;

- 1.20. “the register” – means the register of members of the Association kept by the Association pursuant to the Articles;
- 1.21. “the Chairman” – means the Chairman of the Executive Committee;
- 1.22. “the Vice Chairman” – means the Vice Chairman of the Board of the Executive Committee;
- 1.23. “the Treasurer” – means the Treasurer of the Association for the time being, or any person duly authorised thereto by the Executive acting in the place of such Treasurer for the time being, or any person appointed by the Executive to perform any of the duties of the Treasurer or any person duly authorised to represent a corporate body which is the Treasurer of the Association;
- 1.24. “the Secretary” – means the Secretary of the Association for the time being, or any person duly authorised thereto by the Executive acting in the place of such Secretary for the time being, or any person appointed by the Executive to perform any of the duties of the Secretary or any person duly authorised to represent a corporate body which is the Secretary of the Association;
- 1.25. “examination” – means any Diploma or like qualification in business assessment and recovery awarded by any educational institution recognized by the Executive from time to time.

2. Unless the context otherwise requires :-
 - 2.1. Words importing the singular shall include the plural and vice versa;
 - 2.2. Words importing natural persons shall include firms and corporate bodies;
 - 2.3. Words importing any one gender shall include the other gender;
3. Subject as aforesaid, any words or expressions defined in the Act or in any Statutory amendment of such Act in force at the date on which these Articles become binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in the Articles.

4. **MEMBERSHIP**

Members of the Association shall be divided into the following categories, whose qualifications and methods of election shall be as follows :-

- 4.1. **Honorary Members** : Persons who have enjoyed a distinguished career in the field of business assessment, business recovery, commerce or education or in the Office of the Master or who, in the opinion of the Executive are qualified for such membership. Election of honorary members shall be by the Association at a General Meeting upon nomination by the Executive. Despite election no person shall become an honorary member unless he/she has

agreed in writing to his/her election and accepted such honorary membership after election.

4.2. **Corporate Members :**

4.2.1. A firm, partnership or company of attorneys, who are registered members of the Law Society and who are actively engaged in business assessment and recovery as defined herein.

4.2.2. A firm, partnership or company of chartered accountants, who are registered members of the South African Institute of Chartered Accountants and who are actively engaged in the practice of business assessment and recovery, as defined herein.

4.2.3. A firm, partnership or company of persons who are actively engaged in the practice of business assessment and recovery and is in the opinion of the Executive, suitably qualified to carry out business assessment and recovery as defined.

- 4.3. **Individual Members** : any individual who is either :-
- 4.3.1. An attorney, qualified as such, who is a member of a Law Society within the Republic of South Africa and who is actively engaged in business assessment and rescue, as defined herein;
- 4.3.2. A Chartered Accountant, qualified as such, who is a member of the South African Institute of Chartered Accountants and who is actively engaged in insolvency administration, as defined herein;
- 4.3.3. Any other person who has passed the examination set by the Association from time to time or who has in the opinion of the Executive an equivalent qualification and who is actively engaged in business assessment and rescue as defined herein or such person, who in the opinion of the Executive is qualified to carry out business assessment and rescue as defined.

- 4.4. **Non-Practising Members** : any individual who is :
- 4.4.1. An attorney, qualified as such, who is a member of a Law Society, within the Republic of South Africa, or a Chartered Accountant, qualified as such, who is a member of the South African Institute of Chartered Accountants, who is not actively engaged in business assessment and rescue, as defined.
 - 4.4.2. Any other person who has passed the examination set by the Association from time to time or who has in the opinion of the Executive an equivalent qualification and who is not actively engaged in business assessment and rescue, as defined.
 - 4.4.3. A previously existing member of the Association either corporate or individual who is not actively engaged in business assessment and rescue, as defined, as at that date.
- 4.5. A corporate member shall be obliged to register all professionals employed by it and who are actively involved in business assessment and rescue as individual members of

the Association and in this regard the prescribed fees will apply.

5. **CHANGE OF MEMBERSHIP**

- 5.1. Any non-practising member who, at any time becomes eligible to be re-admitted as a practising member may apply to the Executive for a change of membership from a non-practising to a practising member, provided that the Executive is satisfied that such member qualifies as a practising member, whereupon the Executive shall forthwith convert such membership from that of a non-practising member to a practising member.
- 5.2. In the event that the Executive is not satisfied that such member as referred to in clause 5.1 above qualifies as a practising member, then in such event, the member shall be obliged to pass any examination as required by the Executive.
- 5.3. Any practising member who ceases to be engaged in business assessment and rescue on a permanent basis, shall forthwith notify the Executive of such changed circumstances and request the Executive to change his membership from that of a practising member to a non-practising member. The Executive shall, if satisfied that it is appropriate, alter such individual's membership from that of a practising member to that of a non-practising member.

6. **QUALIFICATION FOR AND REGISTRATION OF MEMBERSHIP**

6.1. Any person or legal entity who desires to be registered as a member of the Association shall in writing lodge with the Executive an Application in such form as may be prescribed for such registration accompanied by the prescribed fee and such information as the Executive may require from time to time and supported by a written recommendation by two members for registration as a member.

6.2. If after consideration of such application, the Executive is satisfied that the Applicant :-

6.2.1. In the event of a natural person :

- (a) Is not less than 21 (twenty one) years of age; and
- (b) is a registered citizen of the Republic; and
- (c) is a fit and proper person to be registered as a member; and
- (d) has satisfied the Executive in terms of these Articles that he is suitably qualified as a

business assessment and recovery specialist.

The Executive shall register the applicant as a member of the Association and issue to him a certificate of registration in such form as it may prescribe.

6.2.2.

In the event of a corporate entity :

- (a) Being a firm, partnership or company of standing;
- (b) Being registered as such within the Republic;
- (c) Having satisfied the Executive in terms of these Articles;
- (d) Being suitably qualified to carry on the practice of business assessment and recovery,

The Executive shall register the applicant as a member of the Association and issue to it a certificate of registration in such form as it may prescribe.

7. **REGISTER OF NAMES**

The Executive shall cause to be opened a register of members of the Association into which shall be recorded any information requested by the Executive from time to time.

8. **DISQUALIFICATION FOR MEMBERSHIP**

8.1. The Executive may decline to register membership on the following grounds :-

8.1.1. In the event of a natural person :

- (a) if he has at any time been removed from an office of trust on account of misconduct; or
- (b) If in the case of an applicant who is or was an attorney or chartered accountant, if such person has at any time been suspended or removed from the roll by a competent authority; or
- (c) If he has been declared by a competent authority to be of unsound mind; or

- (d) If his name has been struck off the register of members after having been convicted by the Executive of improper or disgraceful conduct; or
- (e) If he is an un-rehabilitated insolvent; or
- (f) If he is the subject of any Order under the Act disqualifying him from being a Director of a company or a member of a Close Corporation in terms of the relevant provisions of the Close Corporations Act No. 69 of 1984;
- (g) If he has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document or perjury.

8.1.2.

In the event of a corporate entity

To be discussed and debated

- (a) **List reasons for disqualification –**

8.2. The decision of the Executive within the context of 8.1 above will be final.

9. **CORRECTION OF REGISTER**

If the Executive at any time has reason to believe that a member has been or has become incorrectly registered, it may call for such evidence as it thinks fit as to the correctness of the registration and if satisfied that the member has been or is incorrectly, registered, it shall correct the register and issue an amended certificate. The former certificate shall cease to have effect, and shall be returned forthwith to the registered office of the Association.

10. **DEREGISTRATION OF MEMBERS**

10.1. The registration of any natural person as a member shall lapse if such natural person :-

10.1.1. Dies;

10.1.2. Ceases permanently to reside in the Republic; or

10.1.3. Fails to pay any fee, levy or other charges or portion thereof prescribed in terms hereof and payable by him, within 3 (three) months after such a fee or portion becomes due or within such further period which the

Executive may in any particular case allow.

10.2. The registration of any legal entity as a member shall lapse if such legal entity :

10.2.1. Ceases to exist for any reason whatsoever; or

10.2.2. Cease to practice within the Republic; or

10.2.3. Fails to pay any fee, levy or other charges or portion thereof prescribed in terms hereof and payable by him, within 3 (three) months after such a fee or portion becomes due or within such further period which the Executive may in any particular case allow.

10.3. The Executive may cancel the registration as a member of any member who :

10.3.1. Subsequent to his registration, becomes subject to any of the disqualifications mentioned in Article 8;

10.3.2. Is found, subsequent to his registration, to have been

disqualified at the time of being admitted as a member by virtue of any of the disqualifications mentioned in Article 8.

- 10.4. The Executive shall forthwith cancel the registration of any member :
- 10.4.1. Whose estate is sequestrated/ liquidated; or
 - 10.4.2. Whose registration was made in error or on information subsequently proved to be false or incorrect; or
 - 10.4.3. Who has prior or subsequent to its/his registration been guilty of conduct by reason whereof it/he is in the opinion of the Executive not fit and proper to be registered as a member; or
 - 10.4.4. Who is removed from its/his office as a business assessment and recovery professional and the Executive is of the opinion that it/he is not fit and proper to remain registered as a member; or
 - 10.4.5. Who, in the case of a natural person, if he is an attorney or accountant, is

removed or suspended from the roll
by a competent authority; or

- 10.4.6. Who, in the case of a natural person, ceases to be an acceptable appointee to the Master and the Executive is of the opinion that he is not a fit and proper person to remain registered as a member.
- 10.5. Before cancelling any registration, the Executive shall give to the member not less than 21 (twenty one) clear days notice in writing of its intention to take such action, setting out the reasons why it intends to do so, and informing the member that if within 21 (twenty one) days of dispatch of the notice he informs the Executive in writing of his desire to do so, the Executive will give him or his representative an opportunity before the action is taken, of showing cause why his registration as a member should not be cancelled.
- 10.6. If, after giving any member the opportunity of being heard, the Executive decides to cancel the registration, it shall make an order to that effect and shall send a copy of the order to all the Masters, the Court and to the other interested party as the Executive deems fit.
- 10.7. The Executive may, in its sole discretion, at the written request of a member, remove its/his name from the register, but the removal shall not exonerate such member for the payment of any outstanding monies due to the Executive, nor shall it prevent the Executive from instituting any

disciplinary proceedings against such member either before or after such resignation in respect of the member's conduct during the tenancy of its/his membership.

11. **INFORMATION TO BE FURNISHED BY MEMBERS**

11.1. **INDIVIDUAL PERSONS**

11.1.1. Every person who is registered as a member shall notify the Executive in writing of any changes in his name or the name of any firm, partnership or company and the members thereof with which he is associated or employed, including the current postal and physical address, telephone and telefax numbers and email address within 30 (thirty) days after the date on which such change takes place.

11.1.2. Every person who is desirous of registering as a member of the Association shall, over and above any particulars which are to be furnished at the request of the Executive, furnish the following information :-

- (a) Every name under which he or his employer practices;

- (b) If he is employed by a Company, the names of the beneficial shareholders of the company;
- (c) The place or places of business of himself, his firm or his company;
- (d) If he practices in partnership, or is employed by a partnership, the full names of all his partners;
- (e) His nationality, his identity number, his first names, his surname and every surname which he may have borne previously and his residential address;
- (f) His full details of his membership of other professions.
- (g) The names of any other company or corporation in which he has an interest, financially or otherwise, whether directly or indirectly,

whose main business is that of business assessment and recovery.

- (h) His current postal and physical address, telephone and telefax numbers and current email address.

11.2. **CORPORATE MEMBERS**

11.2.1. Every corporate member who is registered as a member, shall notify the Executive in writing of any changes in its name or the name of any firm, partnership or company with which it is associated, including the current postal and physical address, telephone and telefax numbers thereof, within 30 (thirty) days after the date on which such change takes place.

11.2.2. Every corporate member who is desirous of registering as a member of the Association shall over and above any further particulars which are to be furnished at the request of the Executive, furnish the following information :-

- (a) The name and style under which it practices;
- (b) If a company/corporation, the names of the beneficial shareholders/members and directors of the Company;
- (c) If a partnership, the full names of all partners;
- (d) The place or places of business, together with postal and physical addresses.
- (e) Its registration number and copies of any other statutory documents to confirm inter alia : legal registration and standing, Directors, members and shareholders;
- (f) Full details of its membership of other professions.
- (g) The names of any other company, corporation, firm or partnership in which it has an interest, financially or otherwise, whose main business is that of business

assessment and business rescue.

(h) Its current telephone and telefax numbers and current email address.

11.3. Every corporate member or individual who is registered as a member :-

11.3.1. and who, is not actively engaged in business assessment and recovery, shall notify the Executive forthwith if he/it commences business assessment and rescue, subject to the relevant provisions of these Articles.

11.3.2. and who, is engaged in business assessment and rescue, shall notify the Executive forthwith if he/it ceases to be engaged in business assessment and rescue.

12. **EXECUTIVE OF THE ASSOCIATION**

The general affairs of the Association will be managed and controlled by the Executive, subject to the provisions of these Articles.

13. **CONSTITUTION OF THE EXECUTIVE, ELECTION AND PERIOD OF OFFICE**

13.1. From the ranks of the initial founding members as at the signature of this Memorandum there will be elected an interim Executive of 9 (nine) members, whose duties and functions it will be to establish, launch and promote the Association in accordance with the provisions of this Memorandum. The interim Executive will consist of :-

- (a) Chairman;
- (b) Vice Chairman;
- (c) Secretary
- (d) Treasurer
- (e) 5 other individuals

13.2. Thereafter, the Executive shall be 11 (eleven) practising members, consisting of

- (a) Chairman;
- (b) Vice Chairman;
- (c) Secretary;
- (d) Treasurer
- (e) 7 other individuals

13.3. The Executive will as stated in Article 13.2 include the Chairmen of the regional branches, if and when established by the Executive in terms of Article 24.3.

- 13.4. At least 4 members of the Executive shall accept the fiduciary responsibility of the Association, and no single person may directly or indirectly control the decision making powers relating to the Association.

- 13.5. The members of the Executive other than the Chairmen of the regional bodies established in terms of clause 24.3 hereof shall be elected at an Annual General Meeting of the Association.

- 13.6. A Notice calling for nominations of Executives shall be communicated to every member at least 60 days before the date of every Annual General Meeting. All nominations, in writing, for members of the Executive, shall be received by the Secretary or the Chairman of the Association not later than 45 clear days before the date on which the Annual General Meeting of the Association is to be held, failing which, such nominations shall not be valid, unless the periods as provided herein has been waived by Special Resolution. Such notice shall include the names of the Chairmen of the regional branches established in terms of Article 24.3 hereof, who shall not be eligible for election to the Executive.

- 13.7. Only practising members shall be entitled to vote for the election of the Executive. In the event of a tie between two or more candidates one of whom would otherwise have been elected as an Executive having received the least number of votes of the successful candidates, leaving undecided which of those candidates is elected, the question of which of them shall be deemed to be elected

shall be determined immediately by a lot drawn by a sub-committee appointed by the Chairman.

- 13.8. The members for the time being of the Executive may act notwithstanding any vacancy in their body, provided always that in the event of the members of the Executive at any time being reduced in number to less than 5, it shall be lawful for them to act as the Executive for the purpose of filling a casual vacancy on the Executive, admitting persons to membership of the Association filling up vacancies in their body, or of summoning a general meeting, but not for any other purpose.

14. **TERM OF OFFICE OF MEMBERS OF EXECUTIVE**

- 14.1. The members of the interim executive shall hold office for a period of 1 (one) year.
- 14.2. Thereafter, the members of the Executive and the members of any regional branches of the Association, if and when established, under Article 24.3 hereof shall hold office for a period of 2 (two) years but on the expiration of their period of office they shall be eligible to re-election.
- 14.3. The members of the interim Executive will be eligible for re-election.

15. **VACATION OF OFFICE OF MEMBERS OF EXECUTIVE**

A member of the Executive shall vacate his office before the expiry of his period of office :

- 15.1. If he resigns as member of the Executive;
- 15.2. If he is convicted of any offence which in the opinion of the Executive renders him an unfit or improper person to continue as a member of the Executive;
- 15.3. If he is absent, without leave of the Chairman of the Executive, for three consecutive meetings of the Executive;
- 15.4. If he is deregistered as a member in terms of the provisions of Article 10; or
- 15.5. If he is sequestered.

16. **APPOINTMENT OF NEW EXECUTIVE MEMBERS**

In the event of the disqualification, resignation or inability to act of any Executive member, the vacancy so arising may be filled by the Chairman who may nominate a person who is a member of the Association to fill such vacancy, either for the remainder of the term of office of such member or for the temporary period, subject to the approval of the Executive.

17. **CHAIRMAN AND VICE CHAIRMAN OF THE EXECUTIVE**

- 17.1. The members of the interim Executive shall, from their ranks, elect a Chairman and Vice Chairman, who shall hold office for a period of 1 (one) year, subject to the provisions of this Memorandum.

- 17.2. Thereafter, the members of the Executive shall at their meeting following their election and thereafter on occasions arising, out of their number elect a Chairman and Vice Chairman.
- 17.3. Any person so elected shall hold office as such until he ceases to be a member of the Executive or of the Association or on the expiration, in terms of Article 14, of his current period of office.
- 17.4. If the Chairman or Vice Chairman vacates his office before the expiration of his period of office, another member of the Council shall be elected as Chairman or Vice Chairman, as the case may be.
- 17.5. If, for any reason the Chairman is not able to act, the Vice Chairman, if able to do so, shall act as Chairman in his stead, and such Vice Chairman shall, while so acting, have all the powers and perform all the functions of the Chairman.

18. **MEETINGS OF THE EXECUTIVE**

- 18.1. The Executive shall meet at least 6 (six) times in every year.
- 18.2. The time and place of such meetings shall be determined by the Executive from time to time.
- 18.3. The Chairman may at any time call a special meeting of the Executive to be held at such time and place as he may

determine and shall, upon a written request signed by not less than 5 members of the Executive, call a special meeting thereof to be held within 14 days after the date of such request, at such time and place as he may determine.

19. **QUORUM MAJORITY DECISION AND CHAIRMAN'S CASTING VOTE**

- 19.1. Subject to the provisions of Article 13.5 hereof a meeting of not less than 5 members of the interim Executive shall form a quorum for any meeting of the Executive. In respect of any further Executive, the quorum shall be 7 members for the meeting of the Executive.
- 19.2. The Chairman shall preside at all meetings of the Executive at which he is present and, if both he and the Vice Chairman are absent from any meeting, the members present thereat shall elect one of their number to preside at such a meeting.
- 19.3. The decision of the majority of the members of the Executive present at any meeting thereof shall constitute a decision of the Executive and, in the event of an equality of votes in regard to any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.
- 19.4. A member of the Executive may require the person presiding at any meeting to direct that his dissent from any resolution passed by the Executive and reasons for such

dissent, be recorded in the minutes of the proceeding at which such resolution was passed.

19.5. No decision or act done under the authority of the Executive shall be invalid by reason only of an intervening vacancy on the Executive or of the fact that a person who is disqualified from being a member of the Executive, or in respect of whose appointment the provisions of this act have not been observed, sat or acted as a member at the time when the decision was taken or the act was performed or authorised by the majority of the members of the Executive present at the time who were entitled to sit and act as members.

19.6. In the event of any decision of the Executive directly affecting a member of the Executive, such member shall be debarred from exercising a vote on such issue and shall not be present when such vote takes place.

20. **REMUNERATION**

There shall be payable to a member of the Executive or a sub-committee of the Executive such remuneration for services rendered by him in connection with work of the Executive and such allowances to cover expenses reasonably incurred by him in the performance of his duties as a member of the Executive or such sub-committee as the Council may from time to time determine.

21. **COMMITTEES OF THE EXECUTIVE**

21.1. The Executive may establish sub-committees to assist it in the performance of its functions and duties and may appoint such persons, including persons other than members of the Executive of the Association as it may deem fit, to be members of any such sub-committee.

21.2. The Executive may assign or delegate to a committee so established such of its powers as it may deem fit, but shall not be deemed to be divested of any power which it may have assigned to a committee and may amend or repeal any decision of any such committee, provided that if the Executive has assigned to a committee the power to conduct an examination in terms of Articles 25 and 26 hereof to determine whether or not any person shall be registered as a practitioner or the power to enquire into any case of alleged improper or disgraceful conduct, and to impose a punishment in respect thereof, in accordance with the provisions of Article 26 hereof, it may not amend or repeal any decision arrived at or anything done by such committee under the power so assigned.

22. **REPORTS BY THE EXECUTIVE TO THE ANNUAL GENERAL MEETING**

22.1. The Executive shall in each year in terms of the provisions of the Act, submit to the Annual General Meeting of the members of the Association reports and statements of account which are prescribed by the Act.

- 22.2. The Chairman of the Executive may, in addition, submit to the Annual General Meeting of the members of the Association reports in regard to matters connected with the activities of the Association which in his opinion should be brought to the notice of the Annual General Meeting.

23. **DUTIES OF THE EXECUTIVES**

Subject to the provisions of the Act and this Memorandum the Executive shall :-

- 23.1. Convene annual a general meeting of members;
- 23.2. Convene in the prescribed circumstances a special meeting of all members;
- 23.3. Determine the date and place of such meetings and the business to be transacted at such meetings;
- 23.4. Make rules providing for the calling of and procedure at such meetings and the manner in which motions shall be submitted to such meetings;
- 23.5. Deposit all monies received by it with a recognized financial institution;
- 23.6. Keep proper accounts of income and expenditure and of the assets and liabilities of the Association.

23.7. Generally attend to all necessary matters pertaining to the functioning and management of the Association.

24. **GENERAL POWERS OF THE EXECUTIVE**

24.1. The business of the Association shall be managed by the Executive, who will pay all such expenses of, preliminary, and incidental to the promotion, formation, establishment and registration of the Association as it thinks fit, and may exercise all such powers of the Association and on behalf of the Association, do all such acts as may be exercised and done by the Association in General Meeting, subject nevertheless, to any regulations of these Articles, to the provisions of the Statutes for the time being in force and affecting the Association and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Association in General Meeting, but no regulation made by the Association in General Meeting shall invalidate any prior act of the Executive which would have been valid if such regulation had not been made.

24.2. Without in any way derogating from the powers referred to above, the Executive shall have the power :-

24.2.1. To determine the procedure at meetings of the Executive or any committee of the Executive;

- 24.2.2. To determine the area of responsibility of each executive member from time to time;
- 24.2.3. To prescribe an initial registration fee which shall be payable to the Association in respect of the registration of any person as a member;
- 24.2.4. To prescribe or conduct or make arrangements for the conduct of lectures for business assessment and rescue professionals or other persons who would be desirous of registering as a member and to prescribe fees which shall be payable to the Association in respect of such lectures.
- 24.2.5. To prescribe the books, records, certificates or other documents to be kept, maintained or issued by professionals and to inspect same from time to time by persons authorised by the Executive for such purpose.
- 24.2.6. To prescribe the information to be furnished to the Executive by any

business assessment and rescue professional who :

- (a) Commences or discontinues to practice as a business assessment and rescue professional;
- (b) Ceases to be employed as a business assessment and rescue professional;
- (c) Enters into or withdraws or resigns from a partnership with any person practising as a business assessment or rescue professional or a company or firm who practices as business assessment and rescue professionals.
- (d) Practices as a business assessment and rescue professional and who changes his business or residential address.

24.2.7.

To pay any person allowances to cover expenses reasonably incurred by such person in connection with

the performance of any act at the request of or under the directions of the Executive on behalf of or for the benefit of the Execution of Association.

24.2.8. To prescribe the tariff of fees payable to any business assessment and rescue professional in respect of services rendered by him as a business assessment and rescue professional in cases where no tariff is prescribed in any other law.

24.2.9. To prescribe the tariff of assessment of the fees payable by any person to a business assessment and rescue professional in respect of the performance on behalf of such person of any work, and at the request of such person or member, and assess such fees.

24.2.10. To make such order with regard to the costs incurred by it in the hearing of an enquiry into allegations of improper conduct as it may deem fit;

24.2.11. To take any steps including the incurring of any reasonable expenditure which it may consider

expedient for the maintenance of the integrity, the enhancement of the status and the improvement of the standards and qualifications of members and to encourage research in connection with problems relating to any matter affecting them.

24.2.12. To finance, print, circulate, administer the publication of, and generally to take any steps necessary to publish a journal or any other publication relating to business assessment and rescue.

24.2.13. To invest its funds in such a manner as it may deem fit.

24.2.14. To assist in the provision of education or facilities for persons desiring to become registered as members.

24.2.15. To establish a fund for the purpose of compensating any person for loss or damage suffered by him as a result of dishonesty or negligence in the conduct of an insolvency practice by a practitioner, and to provide for the administration and control of such funds by the Executive.

- 24.2.16. In its discretion to pay the premium or any portion thereof payable in respect of a professional indemnity group insurance policy taken out in favour of practitioners.
- 24.2.17. To conduct such commercial enterprise as the members at a General or Special Meeting may approve.
- 24.2.18. To determine the domicilium of the Association.
- 24.2.19. To determine the manner in which the Executive shall conduct its business.
- 24.2.20. To take any steps including the incurring of any reasonable expenditure which is necessary to ensure and enhance the membership of the Association to be representative of a democratic South Africa.
- 24.2.21. To take any steps including the incurring of any reasonable expenditure which it may consider to enhance the status and qualifications

of previously disadvantaged persons with the specific objective of encouraging and facilitating aforesaid persons becoming members of the Association.

24.2.22. Ancillary to the powers as stated in Articles 24.2.19 and 24.2.21 above, to establish a fund for the purpose of financially assisting previously disadvantaged persons in order to ensure and enhance their qualifications with the specific objective of encouraging and facilitating their membership, and to provide for the administration and control of such fund.

25. **CONDUCT**

Improper or disgraceful conduct on the part of a business assessment and recovery professional or, where applicable, a corporate member, shall include, inter alia, the following :-

25.1. Knowingly employing in connection with its/his practice, except with the consent of the Executive :

25.1.1. Any person while such person is suspended or debarred by the Court or the Master or the Association

from acting as a business assessment and rescue professional.

25.1.2. Any person not registered as a member whom the Executive has refused to register by virtue of the provisions of Article 8; or

25.1.3. Any person who has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury or any other crime that could render him an improper and unfit person to be a member.

25.2. The sharing of any income derived from any business assessment and rescue project in which he/it is involved, with any person or legal entity other than the employer of the business assessment and rescue professional, without the approval of the Executive. Notwithstanding the foregoing the business assessment and rescue professional shall be allowed to enter into fee sharing arrangements with other business assessment and rescue professionals, provided said arrangements are in accordance with the regulations of the statutory body regulating said professionals.

25.3. Agreeing with any person, whether in principle or otherwise, to accept a fee for performing its/his duties as a

business assessment and recovery professional, for less than that set out in the appropriate tariff.

- 25.4. The failure to keep books of account and records in respect of all the financial transactions relating to his/its practice as a business assessment and recovery professional.
- 25.5. Any contravention of any statute or regulation applicable to business assessment and recovery.
- 25.6. Neglecting to give proper attention to its/his practice as a business assessment and recovery professional.
- 25.7. Failing to answer or appropriately to deal with, in a reasonable time, any correspondence or other communications which reasonably require a reply or other response.
- 25.8. Failing to properly comply with an order, requirement or request of the Executive or the Court;
- 25.9. Making a donation or payment in any form, whether by way of formal presentation or otherwise, to a public official or a public office other than at the request or through the medium or under the authority of the Executive.
- 25.10. Receiving any untoward benefit, either directly or indirectly arising out of or in pursuance of his/its practice of a business assessment and rescue professional.

25.11. Failing to comply with any of the provisions of these Articles.

25.12. Such other conduct as the Executive in its discretion may consider improper or disgraceful.

26. **DISCIPLINARY POWER OF EXECUTIVE**

26.1. The Executive shall have power to either *mero mutuo* or as a result of any complaint made against any member by any interested party, to enquire in camera into cases of alleged improper or disgraceful conduct (whether or not prescribed to constitute improper or disgraceful conduct) of persons who are registered as members, and to impose in respect thereof any punishment prescribed under Article 26.3, provided that in the case of alleged improper or unworthy conduct which forms or which the Executive has reason to believe is likely to form the subject of criminal or civil proceedings in a competent Court of law, the Executive may postpone the enquiry until such proceedings have been determined.

26.2. For the purpose of conducting an enquiry into any alleged improper or disgraceful conduct, the Executive shall appoint a sub-committee of up to 5 (five) persons to hear such enquiry which persons may or may not be members of the Association, one of whom shall be appointed by the Executive as the Chairman of such proceedings.

26.3. The sub-committee appointed under Article 26.2 conducting an enquiry may find the member concerned guilty of improper or disgraceful conduct and may :

26.3.1. In the case of a member, in addition to any order made in terms of Article 26.4.3 :

- (a) Reprimand him/it; and
- (b) Suspend its/his membership of the Association for such period as the Executive may consider appropriate; and/or
- (c) Impose upon him a fine not exceeding R250 000.00; and/or
- (d) Cancel its/his membership of the Association and order the removal of his/its name from the register.

26.4. Where the sub-committee finds the member referred to in Article 26.1 guilty of the alleged conduct and has imposed a penalty as set out in Article 26.3.1, it may :

26.4.1. On the condition determined by it, postpone the taking of any steps in

respect of it/him or the imposition of any punishment upon it/him; and/or

26.4.2. On the conditions determined by it, impose the fine referred to in 26.3.1(c), but suspend the payment of such fine or any part thereof; and/or

26.4.3. In addition to any other punishment imposed, order the member to pay all costs incurred in holding the enquiry including the payment of a reasonable remuneration for those persons serving in the disciplinary hearing or of any person called upon to advise the Executive in terms of Article 26.2.

26.5. If the taking of any steps for the imposition of any punishment has been postponed for a particular period in terms of Article 26.4.1 and if at the end of that period the Executive concerned is satisfied that the member concerned has substantially observed all the relevant conditions that the Executive shall inform that member that no further steps will be taken against it/him or that no further punishment will be imposed upon it/him.

26.6. If the payment of a fine or any part thereof has been suspended by an executive for a particular period in terms of Article 26.4.2 and if at the end of such period the

Executive concerned is satisfied that the member concerned had substantially observed all the relevant conditions, that Executive shall inform such member that the payment of that fine or part thereof will not be enforced.

26.7. The Executive will be obliged to keep the disciplinary record of each member found guilty of improper or disgraceful conduct, which record must be taken into consideration when the Executive imposes a penalty as set out in Article 26.3.1.

26.8. Notwithstanding anything contained herein, in the event of a member on more than two occasions being found guilty of improper or disgraceful conduct then in such event upon a third conviction, the Executive will be obliged to in addition to any penalty, impose the penalty as set out in Article 26.3.1(d) above.

26.9. The Executive may, to such extent as it may decide, publish information relating to an enquiry held in terms of Article 26 and inform the Master, the Court and/or any interested party as the Executive may decide, of such enquiry and the result thereof.

27. **ENQUIRY BY DISCIPLINARY SUB-COMMITTEE**

27.1. For the purpose of an enquiry, the Chairman appointed under paragraph 26.2 may :-

27.1.1. Summon any member who in its opinion may be able to give material

information concerning the subject of the enquiry or who is believed to have in its/his possession or custody or under its/his control any book, document or thing which has any bearing on the subject of the enquiry to appear before it at the time and place specified in the summons, to be interrogated and to produce that book, document, or thing and the Executive may retain for examination any book, document or thing so produced.

27.1.2. Appoint any person to advise the sub-committee at such enquiry on matters pertaining to law, procedure or evidence and appoint such person or another person to act as pro forma prosecutor at such enquiry.

27.2. Issue a summons for the attendance before the sub-committee of any member or for the production of any book, document or thing which shall be in the form prescribed by the Committee, shall be signed by the Chairman of the Committee or a member authorised thereto by it, and shall be served in the same manner as a subpoena in a civil case issued by a Magistrate's Court.

27.3. If a member who has been duly summonsed under this section fails, without sufficient cause, to attend at the time

and place specified in the summons, or to remain in attendance until excused from further attendance by the Chairman of the committee, or if any member summonsed refuses without cause to answer fully and satisfactorily to the best of its/his knowledge and belief all questions lawfully put to it/him concerning the subject of the enquiry or to produce any book, document or thing in its/his possession or custody or under his control which it/he has been required to produce or to allow the sub-committee to retain for examination any book, document or thing so produced, it/he shall be guilty of improper conduct, provided that in connection with the interrogation of any such member or the production of any such book, document or thing, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a competent Court of law, shall apply.

- 27.4. A member who gives a false answer to any question, shall be guilty of improper conduct.
- 27.5. Any member who willfully hinders the Chairman or any member or officer of the Committee in the exercise of any powers conferred upon him by or under this section, shall be guilty of improper conduct.
- 27.6. Any member whose conduct is being enquired into by the sub-committee shall be informed of the nature of the complaint made against it/him and shall be entitled to appear by itself/himself or to be represented by some other person/s duly authorised in writing on his/its behalf, and to

produce evidence, call and examine witnesses on his/its behalf and cross-examine other witnesses.

28. **FUNDS OF ASSOCIATION AND KEEPING AND AUDIT OF ACCOUNTS**

28.1. The Executive shall comply with the provisions of the Act insofar as it relates to the keeping and auditing of financial accounts.

28.2. The Executive shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year, and shall, after such statement and balance sheet have been audited by an auditor appointed by the Executive, cause copies thereof to be transmitted to every member of the Executive and the Association.

29. **SUBSCRIPTIONS, FEES & LEVIES**

29.1. Each member, being a corporate and individual member, shall pay to the Association an annual subscription and such fees, levies or other charges at such time and in such amounts as may from time to time be fixed by the Executive.

29.2. If any member fails to pay a subscription or any fee, levy or other charge within one month after it has become due, the Treasurer or Chairman shall, by letter, telegram or fax draw his attention to the fact, and if the subscription or fee , levy

or other charge in arrears is not paid within 14 days from the date of such notice or within such further time as the Executive may allow, proceedings for the recovery thereof may be taken against him/it.

29.3. No member whose annual subscription is in arrears for more than 3 months shall be entitled to be present at any general or special meeting of members or to vote thereat by proxy.

30. **MEETING OF MEMBERS**

30.1. Subject to the provisions of the Act, notice of every Annual General Meeting of members shall :-

30.1.1. State the date, time of commencement and place thereof;

30.1.2. State the business to be transacted thereat;

30.1.3. State the names of members, the name of the business under which they carry on business and their business addresses of any member who has been nominated for election to the Executive.

30.1.4. Call for notices of special business to be raised by any member;

- 30.1.5. Call for the appointment of the auditor and the fixing of the amount of his remuneration.
 - 30.1.6. Include an annual report of the Council;
 - 30.1.7. Submit for consideration and transaction any business, which the Council may deem expedient to the meeting.
- 30.2. Notice of any special business to be raised by any member at an Annual General Meeting shall be given to the Secretary or Chairman in writing at least 14 business days before the date of the meeting.
- 30.3. The Executive may on such dates and at such times and places as it may determine, convene special meetings.
- 30.4. The Executive shall upon a request in writing made by members in terms of the Act and in compliance therewith convene a special meeting to consider such business for which a meeting is required to be held.
- 30.5. Notice of every special meeting shall be posted to every member by the Secretary or the Chairman at least 21 clear days before the date of the meeting and shall state :-
- 30.5.1. The date, place and time for which the meeting is convened;

- 30.5.2. The special business for which the meeting is convened;
- 30.5.3. Should it be a matter of urgency, as to which the Executive shall be the sole judge, such shorter period of notice as the Executive may determine;
- 30.5.4. That no business other than that for which a special meeting has been convened may be dealt with at the meeting.
- 30.6. No business shall be transacted at any general or special meeting unless a quorum is present.
- 30.7. A quorum for an general or special meeting of members shall be _____ members present at the commencement of the meeting.
- 30.8. If on the date appointed for the holding of an Annual General Meeting or of a special Meeting there shall not be a quorum present at the time appointed for the meeting or within 15 (fifteen) minutes thereafter, no business shall be dealt with, and :-
- 30.8.1. If that meeting is a general meeting or a special meeting other than one requested under Article 30.4, it shall stand adjourned to the corresponding

time on the 7th (seventh) day thereafter at the same place and the members then personally present shall nevertheless form a quorum provided that if such a day be a public holiday, the meeting shall stand adjourned to the corresponding time and the same place on the next succeeding business day not being a public holiday, Saturday or a Sunday.

30.8.2. If that meeting be a special meeting requested in accordance with Article 30.4 and there is not a quorum present at the time appointed for that meeting or within 15 (fifteen) minutes thereafter, the meeting shall be considered dissolved.

30.9. Unless the Chairman otherwise decides, no notice of any meeting adjourned as provided for in Article 30.8.1 need be given.

30.10. Any meeting of members at which a quorum shall be present may be adjourned to such time, date and place as may be decided at the meeting.

30.11. No business shall be transacted at an adjourned meeting other than the business competent to be considered and uncompleted at the meeting which was adjourned.

31. **MEETING OF MEMBERS : VOTING, PROXIES, MINUTES AND CHAIRMAN**

- 31.1. Except where herein otherwise provided, all matters to be decided upon at general or special meetings shall be decided by a simple majority of members voting either in person or by proxy.
- 31.2. In all such matters the Chairman at the meeting shall, in the event of an equality of votes, have a second or casting vote in addition to his deliberative vote.
- 31.3. Voting in person shall be by way of a show of hands, provided that if the Chairman so directs or if a poll is requested by any member, the vote shall be taken by poll in such a manner as the Chairman shall direct.
- 31.4. At all general and special meetings votes may be given in person or by proxy.
- 31.5. A proxy holder shall be a member and the votes and acts of a proxy holder shall be valid and effectual as if made, done or given by the member personally. Every such proxy shall continue to be in force for that particular meeting for which it was given and for any adjournment thereof.
- 31.6. The proxy shall contain a statement of the subject on which the holder thereof is to vote and also in what manner the holder is to vote in respect thereof or whether he may vote thereon as he thinks fit.

- 31.7. The proxy shall be lodged with the Secretary or the Chairman not less than 24 (twenty four) hours prior to the time fixed for the commencement of the meeting at which the proxy is intended to be acted upon.
- 31.8. No proxy vote shall be recognized which is not dealt with and cast in accordance with the provisions hereof.
- 31.9. No member shall be entitled to vote by proxy in the case of questions directly affecting any member.
- 31.10. Minutes of the proceedings of every meeting of members shall be kept by the Secretary, or in the event of his absence, by any other person appointed for the occasion by the Chairman at the meeting, a fair copy of which minutes shall be entered into a minute book to be kept for that purpose and shall, subject to any necessary correction having been made, be signed as correct by the Chairman at the first succeeding meeting of the Executive.
- 31.11. Such minutes shall be held available at the offices of the Chairman or Secretary for inspection, free of charge, by any member on request.
- 31.12. At all meetings of members, the Chairman of the Executive, and in his absence the Vice Chairman of the Executive, shall preside as Chairman. In the absence of the Chairman and Vice Chairman, a chairman shall be elected at the meeting from the members of the Executive

present at the meeting who shall continue to act as Chairman for so long as he is present at that meeting.

32. **ARTICLED CLERKS AND REGISTER**

Subject to the approval of the members of the Executive given at a General Meeting thereof, the Executive may draft and publish regulations providing for :-

32.1. The service under articles of clerkship of any person intending to be admitted as a practitioner and who does not qualify for registration as a practising member in terms of Article 4.2:

32.1.1. The period for which such person shall serve under articles of clerkship which period shall be not less than 2 years;

32.1.2. To whom such articulated clerk may be articulated;

32.1.3. Information which is to be submitted to the Executive before the articles of clerkship are entered into including such evidence as may be prescribed by the Executive, that such prospective articulated clerk is a fit and proper person to be registered as an articulated clerk;

- 32.1.4. The lodging, examination and registration of articles of clerkship;
- 32.1.5. Supervision over articulated clerks;
- 32.1.6. The absence of articulated clerks from the office;
- 32.1.7. The appearance of an articulated clerk in an insolvency court before any Board, tribunal or similar institution before which is principal is entitled to appear;
- 32.1.8. The terms and conditions of such articles of clerkship;
- 32.1.9. Cession of articles of clerkship;
- 32.1.10. The termination of articles of clerkship.
- 32.2. Any degrees, diplomas or other qualifications which shall entitle any person to register as an articulated clerk or which will entitle such person to exemption from the requirements to be complied with to be registered as such as well as the fees which will be payable to the Executive in respect of such exemption.
- 32.3. The fees payable for the registration of articles of clerkship;

32.4. The date from which these provisions shall come into operation;

32.5. The Executive shall have the power to maintain a register of articulated clerks with the intent of promoting and effecting the training of such clerks in business assessment and rescue and for such purposes may promote and hold on behalf of the Association examinations and adopt such rules and regulations (including provision for the payment of fees to the Association) as the Executive may in its discretion decide, for the control and administration of such articulated clerks.

33. **NOTICES**

33.1. Any notice or other document may be served by the Association upon any member, or by any member upon the Association or Chairman or Secretary by :-

33.1.1. Delivering it to that person at the address of the person recorded in the register of members; or

33.1.2. Sending it by registered post in a prepaid letter, envelop or wrapper, addressed to such person at the address referred to in Article 11.2.3; or

33.1.3. Telefaxing it to the telefax number of such person given to the Executive in terms of Article 11.2.8; or

33.1.4. Sending it to such person by email to the email address furnished in terms of Article 11.2.8.

33.2. The Notices referred to in Article 33.1 above, other than service in terms of Article 33.1.1 shall be deemed to have been served :

33.2.1. In the event of service in terms of Article 33.1.2 before 12h00 on the 5th (fifth) business day calculated from the following business day subsequent to the date of registered postage advice.

33.2.2. In the event of service in terms of Article 33.1.3 and 33.1.4 within 48 (forty eight) hours of the notice being submitted by telefax or electronically.

34. **INDEMNITY**

34.1. Every person acting as or deemed to be a director, manager, secretary or officer of the Association shall be indemnified out of the funds of the Association against :

- 34.1.1. All liabilities incurred by him in that capacity;
 - 34.1.2. Expenditure in defending any proceedings, whether civil or criminal in which Judgment is given in his favour, or in which he is acquitted; or
 - 34.1.3. Costs in connection with any application under Section 248 of the Act in which relief is granted to him by the Court.
- 34.2. Every such person shall be indemnified by the Association against, and it shall be the duty of the Executive, out of the funds of the Association to pay all costs, losses and expenses for which any such person may become liable by reason of :
- 34.2.1. Any contract entered into; or
 - 34.2.2. Any act done by him, in his capacity as Director, manager, secretary or officer of the Association or in any way in the discharge of his duties.
- 34.3. Subject to the provisions of the Act, no person acting as or deemed to be a director, manager, secretary, officer or employee of the Association shall be liable for :-

- 34.3.1. Any act, receipt, neglect or fault of any other such officer or servant of the Association; or
- 34.3.2. Joining in a receipt or other act; or
- 34.3.3. Loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by Order of the Executive for and on behalf of the Association; or
- 34.3.4. The insufficiency or deficiency of any security in or upon which any of the monies of the Association have been invested; or
- 34.3.5. Any loss or damage arising from the insolvency or delict of any person with whom any monies, securities or effect have been deposited; or
- 34.3.6. Any loss or damage occasioned by any error of Judgment or oversight on his part; or
- 34.3.7. Any loss, damage or misfortune, whatsoever which shall have happened in the execution of his duties of office or in relation thereto.

35. **WINDING UP & DISSOLUTION**

- 35.1. The Association shall ensure indefinitely notwithstanding any changes in the composition of its membership until such time as the members resolve, or are obliged by any duly authorised body, to dissolve the Association.
- 35.2. The Association may be dissolved if at least two-thirds of the members present and voting at a general meeting of members convened for the purpose of considering such matter are in favour of dissolution. Not less than 21 (twenty one) days notice shall be given of such meeting and the notice convening the meeting shall clearly state that the question of dissolution of the Association and the disposal of its assets will be considered. If there is no quorum at such general meeting, the meeting shall stand adjourned for not less than one week and the members attending such adjourned meeting shall constitute a quorum.
- 35.3. Upon its winding up, de-registration or dissolution the assets of the Association remaining after the satisfaction of its liabilities shall be given or transferred to :-
- 35.3.1. Such similar public benefit organisation having objects similar to its main object which has been approved in terms of Section 30 of the Income Tax Act, 1962 as amended, and is registered as a non-profit organization; or

35.3.2. Any institution, board or body which is exempt from tax under the provision of Section 10(1)(A)(i), which has as its sole or principal object the carrying on of any public benefit activity;

As may be determined by the members of the Executive at or before the time of the dissolution of the Association.

36. **SEPARATE IDENTITY OF THE ASSOCIATION**

36.1. The Association shall be deemed to be a body corporate and shall have an identity and existence distinct from that of the members.

36.2. Legal proceedings instituted by or against the Association may be instituted in the name of the Association.

36.3. Howsoever or wherever the Association's assets may be held or registered they shall be held on and for the account of the Association and at no time shall the members be deemed to acquire for themselves or their personal account or benefit any vested right or interest in the funds or assets of the Association.

37. **AMENDMENT OF MEMORANDUM AND ARTICLES OF ASSOCIATION**

The Memorandum and Articles of Association may only be rescinded, amended or added to by a two-thirds majority of members of the

Association present at an Annual General Meeting of the Association, or at a Special General Meeting called for this purpose, provided however, that written notice of any proposed rescission, amendment or addition be sent to the Secretary of the Association, not less than one week before the meeting of the Association at which such proposals are to be considered, and provided further that any such rescission, amendment or addition shall be submitted to, and shall be subject to the approval of, the Commissioner of the South African Revenue Services and the Director of Non-Profit Organizations.

38. **FINANCE**

38.1. The financial year-end of the Association shall terminate 28 February every year.

38.2. The Association's financial transactions shall be conducted by means of a banking account. Cheques shall be signed by any two authorised signatories, as decided by the Executive.

39. **RESTRICTIONS ON POWERS OF THE COUNCIL**

39.1. The Association shall be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilize its funds solely for the objectives for which it has been established, or to invest such funds –

39.1.1. With a financial institution as defined in Section 1 of the Financial

Services Board Act, 1990 (Act No. 97 of 1990);

39.1.2. In securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act , 1985 (Act No. 1 of 1985); or

39.1.3. In such other prudent investments in financial instruments and assets as the Commissioner of the South African Revenue Services may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organizations.

Provided that the provisions of this article shall not prohibit the Association from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance.

39.2. The Association shall be prohibited from carrying on any business undertaking or trading activity.

39.3. The Association shall 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 , 1962 as amended : Provided that a donor (other than a donor which is an approved public benefit organization or an institution, board or body which is exempt from tax in terms of Section 10(1)(A)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.