

**MICRO LENDERS ASSOCIATION OF NAMIBIA**

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**CONSTITUTION**

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# 1. DEFINITIONS AND INTERPRETATION

## Definitions

1.1 In this Constitution, unless the context indicates otherwise the following terms bear the following meanings:

1.1.1 “**Accountant**”, an independent accountant or auditor registered and practising in accordance with section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

1.1.2 “**Accounting Records**”, such accounting records as are necessary to fairly present the state of affairs of the Association and to explain the transactions and financial position of the business of the Association;

1.1.3 “**Annual General Meeting**”, the General Meeting contemplated in Article 9;

1.1.4 “**Article**”, a distinctly numbered section of this Constitution;

1.1.5 “**Associate Member**”, natural or legal persons who do not act as Micro Lenders, but who have a vested interest in the industry, by providing services and/or products to the members of the industry, and who endorse the aim and Objectives of the Association and subject themselves to the Code of Conduct;

1.1.6 “**Associate Membership Fee**”, the charge determined in accordance with Article 8.6;

1.1.7 “**Association**”, the association established under Article 2 or, depending on the context, a General Meeting of the Association;

1.1.8 “**Branches**”, a local division, including a mobile division, of a Member;

1.1.9 “**Chairman**”, the person contemplated in Article 13;

1.1.10 “**Code of Conduct**”, the Code of Conduct of the MLA;

1.1.11 “**Conduct Committee**”, the committee referred to in Article 18;

1.1.12 “**Constitution**”, this document [**and includes the Code of Conduct**];

1.1.13 “**Core Values**” the core values subscribed to by the Association contemplated in Article 6.1;

1.1.14 “**Financial Year**”, the financial year of the Association which ends on 30 June of each year;

- 1.1.15 “**General Meeting**”, a meeting of Members and includes Annual General Meetings and Special General Meetings;
- 1.1.16 “**Good Standing**”, a Member with fully paid Membership Fees and having no pending or active Conduct Committee procedures against such Member;
- 1.1.17 “**Management Committee**”, the committee referred to in Article 11;
- 1.1.18 “**Management Committee Members**”, the members of the Management Committee referred to in Article 11;
- 1.1.19 “**Members**”, persons admitted to membership of the Association, including, depending on the context in each case, Representatives, in terms of this Constitution and “**Membership**” shall have a corresponding meaning;
- 1.1.20 “**Membership Category**”, the categories of Membership contemplated in Article 8.4
- 1.1.21 “**Membership Fee**”, the charge determined in accordance with Article 8.5;
- 1.1.22 “**Microlender**”, any person who, as a regular feature of the business advertises or conducts the business of advancing loans to borrowers in terms of microlending transactions;
- 1.1.23 “**Microlending Act**”, Microlending Act 7 of 2018 (GG 6664) brought into force on 15 October 2018 by GN 261/2018 (GG 6736), with its regulations and standards;
- 1.1.24 “**Microlending transaction**” means a transaction as defined in the prevailing legislation. A
- 1.1.25 “**Objectives**”, the objectives contemplated in Article 6.2;
- 1.1.26 “**Ordinary Members**”, Provisional Members who are approved by the Management Committee, in their sole discretion, as Ordinary Members;
- 1.1.27 “**Provisional Ordinary Member**”, natural or legal persons who intend to act as Microlender and who endorse the aim and Objectives of the Association and subject themselves to the Code of Conduct
- 1.1.28 “**Representative**”, a natural person appointed by a Member who is a legal person to represent such Member;

1.1.29 “**Special General Meeting**”, any General Meeting other than an Annual General Meeting; and

1.1.30 “**Sub-Committee**”, a committee contemplated in Article 11.17.

### **Interpretation**

1.2 In this Constitution unless the context otherwise indicates a reference to

1.2.1 expressions in the singular also denote the plural and *vice versa*;

1.2.2 words and phrases denoting natural persons refer also to juristic persons and *vice versa*;

1.2.3 pronouns of any gender include the corresponding pronouns of the other gender;

1.2.4 a statute or statutory provision includes a reference to the statute and all regulations made thereunder, as amended from time to time;

1.2.5 a person includes a reference to any natural person, firm, body corporate, unincorporated association or partnership, joint venture, trust and unincorporated association, the state or local government or regulatory department, body, agency, minister or the authority having jurisdiction over any of the aforementioned;

1.2.6 time is a reference to Namibian time as per the Namibian Time Act, 1994 (Act No. 3 of 1994), and the following construction shall apply to time matters

(a) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;

(b) if the time for performing an obligation under this Constitution expires on a day that is not a business day, time will be extended until the next business day;

(c) “**year**” means a period of 12 (twelve) consecutive months;

(d) “**month**” is a reference to a calendar month, and more specifically, (i) in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent

month, and (ii) in any other context, one of the 12 (twelve) months of the calendar;

(e) “**day**” is a reference to any day; and

(f) “**business day**” is any day other than a Saturday, Sunday or public holiday in Namibia as per the Public Holidays Act, 1990 (Act No. 26 of 1990).

1.3 Article headings appear in this Constitution for reference purposes only and shall not be employed in the construction of the subject matter.

1.4 Where any term is defined within the context of any particular Article in this Constitution, the term so defined, unless it is clear from the Article in question that the term so defined has limited application to the relevant Article only, shall bear the same meaning as ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in Article 1.1.

1.5 Any phrase in this Constitution introduced by the term ‘include’, ‘including’ or ‘in particular’ or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

1.6 Where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.7 Expressions not defined in this Constitution will have the meaning as defined in the Namibian Constitution and subordinate legislation.

1.8 This Constitution shall be construed in accordance with the laws of Namibia.

## **2. ESTABLISHMENT AND LEGAL STATUS OF ASSOCIATION**

On the terms set out in this Constitution, there is hereby established a voluntary association not for gain.

### **3. NAME**

3.1 The name of the Association shall be the **Micro Lenders Association of Namibia**.

3.2 The abbreviated name of the Association shall be the **Micro Lenders Association** or the **MLA**.

**4. PRINCIPAL PLACE OF BUSINESS**

- 4.1 The principal place of business of the Association shall be an address determined by the Management Committee from time to time.
- 4.2 The Association may establish branch offices and representations in other places within Namibia.

**5. LEGAL STATUS**

- 5.1 The Association shall be a body corporate under common law, existing as a legal person separate from its Members.
- 5.2 The Association shall not carry on business that has for its object the acquisition of gain by its Members.
- 5.3 The Association shall apply its assets, including its income and profits, only for the purposes of promoting the Objectives.

**6. CORE VALUES AND OBJECTIVES**

**6.1 Core Values**

The Association subscribes to the following core values:

- 6.1.1 The Association subscribes to the rule of law and the letter and spirit of the Namibian Constitution.
- 6.1.2 The Association shall be non-political, non-partisan, non-governmental, non-tribal and non-ethnic.
- 6.1.3 The Association shall accept assistance and contributions, including financial donations, without any conditions attached.

**6.2 Objectives**

- 6.2.1 The Association shall serve to promote and represent the interests of its Members in all matters concerning the micro lending industry.
- 6.2.2 Without derogating from the reach of Article 6.2.1, the Association shall foster
  - (a) the promotion of the interests of the Members in their capacity as Microlenders in the micro lending industry;
  - (b) legitimacy and credibility to the microlending industry;

- (c) support and participate in legislative reform and developments related to the micro lending industry;
- (d) raise the profile of micro lending industry issues and advocate for inclusion in financial institutions matters;
- (e) the exposure and elimination of malpractices in the wider micro lending industry; and
- (f) the Association will promote the long-term sustainability of the micro lending industry, as integral to the enhanced participation and financial services access.

## **7. FUNCTIONS AND POWERS**

- 7.1 Subject to this Constitution, the Association shall have all powers as are necessary or reasonably required to achieve its Objectives.
- 7.2 Without limiting the reach of Article 7.1, the Association shall have the power to
- 7.2.1 admit, suspend and expel Members;
  - 7.2.2 engage persons to assist the Association as employees, officers or agents;
  - 7.2.3 remunerate any person for services rendered by them to the Association;
  - 7.2.4 pay gratuities and pensions of Association employees in accordance with employment laws;
  - 7.2.5 draft, amend and enforce the Code of Conduct;
  - 7.2.6 adopt policies and guidelines;
  - 7.2.7 enter into contracts;
  - 7.2.8 delegate responsibilities and functions to Sub-Committees;
  - 7.2.9 engage in legal proceedings for and in the name of the Association;
  - 7.2.10 raise funds through subscriptions, levies, donations and other appropriate means;

- 7.2.11 open, hold and operate bank accounts or other investments with financial institutions registered in terms of the Banking Institutions Act, 1988 (Act No. 2 of 1998), or the Building Societies Act, 1986 (Act No. 2 of 1986);
- 7.2.12 obtain insurance, including insurance over or in respect of risks pertaining to property, agents, employees or activities of the Association; and
- 7.2.13 hire, purchase or otherwise acquire movable or immovable property and to manage, let, sell, exchange or otherwise deal with such property.

## **8. MEMBERSHIP**

### **Qualification, Application and Admission**

- 8.1 Any natural or legal person meeting the requirements in Article 8.4, who agrees to uphold and complies with this Constitution and agrees to perform the duties of Membership, may qualify and apply for Membership.
- 8.2 Applications for Membership shall be made by furnishing such information and in such form as the Management Committee from time to time determines.
- 8.3 The Management Committee may accept or reject applications for Membership in its sole discretion.

### **Categories of Membership**

- 8.4 Members are persons admitted with membership in terms of this Constitution who are:

#### **8.4.1 Provisional Ordinary Members**

Provisional membership is awarded subject to the following conditions:

- 8.4.1.1 The Provisional Ordinary Member must submit an application for registration to Namfisa as provided for in section 5(1) and (3) of the Microlending Act (“the application for Namfisa registration”), within 30 (thirty) days of the provisional membership being awarded, and provide the Management Committee with proof thereof, failing which the provisional membership will automatically terminate;
- 8.4.1.2 In the event that the application for Namfisa registration is rejected by Namfisa, for whatever reason, then the provisional membership will automatically terminate; and



8.4.1.3 Any other suspensive conditions as the Management Committee may determine from time-to-time in their sole discretion.

**8.4.2 Ordinary Members**

**8.4.3 Associate Members**

**Membership Fees**

8.5 Provisional Ordinary Members, Ordinary Members shall be liable to pay the Membership Fee and Associate Members shall be liable to pay the Associate Membership Fee, pay monthly in advance, as determined by the Management Committee from time to time.

8.6 The Management Committee shall give at least one month's notice to all Members of changes in Membership Fees and Associate Membership Fees. Such changes shall be effective on the date stipulated by the Management Committee.

**Loss of Membership**

8.7 Membership and any elective office held by Members shall be lost

8.7.1 when a Member resigns;

8.7.2 on decision by the Management Committee to do so upon advice from the Conduct Committee in terms of Article 18.4.4 ; or

8.7.3 upon a decision supported by not less than two thirds of Members present at a General Meeting revoking such Membership.

8.8 Members who lose their Membership shall remain liable for one month of Membership Fees or Associate Membership Fees (as applicable) payable to the Association.

8.9 Members shall provide notice of a change of ownership within thirty days of such change becoming effective.

8.10 Members shall provide notice of a change of Membership Category within thirty days of such change becoming effective.

8.11 The Management Committee shall provide a report at each Annual General Meeting of Memberships which terminated during the preceding year.

**Reinstatement of Membership**

- 8.12 Subject to this Constitution, and subject to payment of any outstanding Membership Fees, the Management Committee may reinstate former Members who lost their Membership under Article 8.8 on such terms and conditions as it may determine.

### **Rights and Privileges of Membership**

- 8.13 Ordinary Members in Good Standing are entitled to
- 8.13.1 speak and vote in General Meetings;
  - 8.13.2 make proposals and move any matter for decision;
  - 8.13.3 be elected and hold office as Chairman and Management Committee Members;
  - 8.13.4 have access to the outcome of any study done for/on behalf of the Association subject to the principle of reciprocity where applicable;
  - 8.13.5 the rights and privileges of Membership.
- 8.14 Rights and privileges of Ordinary Membership in addition to the rights and privileges in Article 8.14 not inconsistent with the Constitution may be created at a General Meeting.
- 8.15 Members' rights and privileges are not transferable.

### **Access to Records of the Association**

- 8.16 Ordinary Members shall be entitled to inspect the Accounting Records on request. The Management Committee may impose reasonable restrictions on the times and manner of inspection of the Accounting Records.
- 8.17 A copy of this Constitution and of any deletion, addition or amendment thereto effected from time to time shall be available for the inspection of Members upon application to the secretary of the Association.
- 8.18 The Association shall keep records of the proceedings of General Meetings, meetings of the Management Committee, voting results and appointments, and Ordinary Members shall have reasonable access thereto.

### **Members' Register**

- 8.20 The Association shall keep a register of Members and Members shall have reasonable access thereto.

8.21 The register of Members shall be kept at the principal place of business of the Association.

**Obligations of Membership**

8.22 Every Ordinary Member shall pay the Membership Fee and every Associate Member shall pay the Associate Membership Fee on a monthly basis which shall become due in advance on the beginning of the month.

8.23 Ordinary Members shall register its Branches with the Association.

8.24 Members shall adhere to this Constitution, the Code of Conduct and decisions made in accordance with the Constitution.

**Conflict of Interest**

8.25 Every Member shall disclose and declare any conflict of interest existing or arising which is contrary to the Core Values and Objectives and declare any interest in any contract contemplated for entry into or already entered into by the Association.

8.26 Any Member having a conflict of interest as contemplated in Article 8.25 shall have its relevant rights and privileges suspended for all votes, agenda item discussion, and meetings held regarding such issue triggering such conflict of interest.

8.27 Any Member found to have an undeclared conflict of interest shall be referred to the Conduct Committee and any votes cast by such Member related to the conflict of interest shall be a nullity.

**9. GENERAL MEETINGS**

**Annual General Meeting**

9.1 Within a period of six months from the end of the Association's Financial Year, the Association shall hold a General Meeting known as its Annual General Meeting.

9.2 Not more than 18 (eighteen) months may pass between two Annual General Meetings.

9.3 The Annual General Meeting shall be held at a place and time determined by the Management Committee.

9.4 The Annual General Meeting shall conduct the business required by this Constitution.

9.5 An Ordinary Member may only convene a general meeting of the Association if

9.5.1 all the members of the Management Committee have become incompetent or ceased to be Ordinary Members; or

9.5.2 Ordinary Members representing one-third (33%) or more of the votes of the Association so request.

### **Special General Meetings**

9.6 In addition to the Annual General Meeting, the Association may hold Special General Meetings.

9.7 Special General Meetings may be convened

9.7.1 by a majority of the Management Committee;

9.7.2 on a written requisition to the Management Committee of not less than thirty percent of the Ordinary Members.

9.8 A Special General Meeting shall only deal with the business for which it was convened.

### **Notice of General Meetings**

9.9 The Management Committee shall give written notice to Ordinary Members of General Meetings as follows:

9.9.1 21 (twenty one) days in the case of an Annual General Meeting; and

9.9.2 14 (fourteen) days in the case of a Special General Meeting.

9.10 A notice of a General Meeting shall state the place, date and time of the meeting, and the business to be conducted.

9.11 Notice of a General Meeting may be given to Ordinary Members:

9.11.1 by hand;

9.11.2 by post;

9.11.3 by telefax; or

9.11.4 through any other electronic media.

9.12 The inadvertent failure to give notice of a General Meeting, or the non-receipt of a notice by Ordinary Members, does not invalidate the proceedings at that General Meeting.

## 10. GENERAL MEETING PROCEEDINGS

### General Business

- 10.1 An Annual General Meeting shall, as part of its business
  - 10.1.1 receive and consider the report of the Chairman;
  - 10.1.2 consider and approve the minutes of the previous Annual General Meeting and any Special General Meeting held immediately prior to such Annual General Meeting;
  - 10.1.3 consider and approve the Accounting Records;
  - 10.1.4 elect the Chairman;
  - 10.1.5 elect the Management Committee Members (and therewith the Management Committee); and
  - 10.1.6 appoint the Accountant.

### Quorum

- 10.2 The quorum for a General Meeting shall be constituted by Ordinary Members eligible to vote representing one-half (50%) (fifty percent) of the votes of the Association represented personally or by proxy.
- 10.3 The meeting will be dissolved if quorum is not reached within thirty minutes of the commencement of the meeting.
- 10.4 In the event a meeting is cancelled due to a lack of quorum, the meeting shall be postponed to the same day and hour the following week and at such adjourned meeting the members present shall be deemed to be a quorum for the transaction of the business of the meeting.

### Chairman

- 10.5 The Chairman and in his or her absence an Ordinary Member (who is a natural person) or Representative elected by the General Meeting shall act as chairman of a General Meeting (“**the Presiding Member**”).

### Voting

- 10.6 Resolutions put to a vote of a General Meeting shall be decided on a show of hands, unless a poll is demanded

- 10.6.1. by the Presiding Member; or
- 10.6.2. by at least two Ordinary Members who are entitled to vote at the Meeting.
- 10.7 A demand for a poll may be withdrawn.
- 10.8 Where voting takes place on a show of hands, the Presiding Member shall declare whether a resolution is carried (whether unanimously or by a particular majority) or defeated.
- 10.9 Polls are conducted in a manner directed by the Presiding Member. The result of a poll shall constitute the resolution of the General Meeting at which the poll was demanded.
- 10.10 A poll demanded on a question of an adjournment shall be taken immediately. A poll demanded on any other question may be taken at such time as the Presiding Member may direct, and any business other than that upon which a poll has been demanded may be stayed pending the taking of the poll.

#### **Weight of Votes and Disqualification**

- 10.11 Every Ordinary Member shall have one vote per registered branch.
- 10.12 Ordinary Members whose Membership Fees are unpaid may not vote.
- 10.13 Members with a conflict of interest may not vote or speak regarding issues, agenda items or motions related to such conflict of interest. The Chairman, at his or her discretion may exclude such Members with conflicts of interest from portions of the relevant meeting.
- 10.14 An “Associated Member” may not vote.

#### **Casting Vote**

- 10.15 In the event of an equality of votes the Presiding Member shall have a casting vote.

#### **Proxies**

- 10.16 Votes are cast either personally or by proxy granted to another Ordinary Member.
- 10.17 A proxy shall be appointed in writing using the proxy form accompanying the notice of the meeting from the Management Committee and under signature of the Ordinary Member or Representative making the appointment. Notice of the appointment shall be addressed and delivered to the Secretary prior to the commencement of the meeting.

## **Representatives**

10.18 The secretary may request reasonable proof of appointment of a Representative. If no such proof is provided, the Presiding Member may disqualify such Representative from attending, participating or voting at a General Meeting.

## **11. MANAGEMENT COMMITTEE**

11.1 The Management Committee shall consist of 5 (five) elected Ordinary Members who shall be elected at a General Meeting, and of which one will be elected as Chairman by the elected Management Committee Members.

11.2 If the need arises for additional specialist knowledge on the Management Committee, the elected Management Committee Members may co-opt up to 4 (four) additional field specialists as non-voting members to address such needs. The term of office of such co-opted Management Committee Member will expire at the next Annual General Meeting.

### **Management Committee Members' Duties**

11.3 Management Committee Members shall

11.3.1 act in good faith towards the Association;

11.3.2 act in the best interests of the Association;

11.3.3 act honestly towards the Association and its Members;

11.3.4 further the Objectives of the Association;

11.3.5 disclose any conflict of interest;

11.3.6 not prejudice or bring the name of the Association into disrepute; and

11.3.7 disclose direct or indirect interests in a contract, arrangement or proposed contract with the Association.

### **Functions and Powers**

11.4 The Management Committee is the highest decision making authority between General Meetings.

11.5 The Management Committee shall be responsible for the management of the day-to-day business and operation of the Association, including the duties and functions of a secretary and treasurer.

- 11.6 The management and operations of the Association shall vest in the Management Committee which, at its discretion shall pay all expenses relevant to the conducting of the Association, and which, in addition to any powers explicitly conferred on it, may exercise all powers and conduct all business operations that may be conducted on it and undertaken by the Association and which are not reserved for the Association at the General Meeting.
- 11.7 Subject only to the provisions of this Constitution, the Management Committee may perform all functions and exercise all powers of the Association.
- 11.8 The Management Committee Members shall receive remuneration as determined from time to time at an Annual General Meeting.

**Election, Term and Vacancy**

- 11.9 Management Committee Members shall be elected at an Annual General Meeting.
- 11.10 Management Committee Members shall be Ordinary Members or representatives of Ordinary Members.
- 11.11 Ordinary Members are ineligible for election as Management Committee Members if they are
- 11.11.1 provisionally or finally sequestrated or placed under administration order or curatorship; or
- 11.11.2 unfit or incapable of acting as Management Committee Members.
- 11.12 Management Committee Members' terms commence after the conclusion of the Annual General Meeting at which they are elected and terminate at the end of the Annual General Meeting following the Annual General Meeting of their election.
- 11.13 Management Committee Members shall be eligible for re-election.
- 11.14 Management Committee Members shall vacate their office if they
- 11.14.1 lose their office or resign, or in the case of Representatives, the legal persons who appointed such persons lose their Membership or are removed from office in the circumstances contemplated in Article 8.8; or
- 11.14.2 fail to attend Regular Meetings without notice to and permission of the Chairman either twice consecutively or three out of five consecutive Regular Meetings; or



- 11.14.3 are provisionally or finally sequestrated or placed under administration order or curatorship; or
  - 11.14.4 are removed from office by a decision of the General Meeting of the Association; or
  - 11.14.5 are requested by a 70% majority of Management Committee Members in a signed written notice submitted to the Chairman to relinquish his or her office.
  - 11.14.6 are convicted of an offence involving an element of dishonesty.
- 11.15 If a vacancy arises on the Management Committee, the remaining Management Committee Members may co-opt any Member to fill any vacancy. The term of office of such substituted Management Committee Member will expire at the next Annual General Meeting.
- 11.16 The remaining Management Committee Members may act despite any vacancy in the Management Committee. If on account of vacancies there are less than two Management Committee Members, the remaining Management Committee Member may still act, but only to co-opt another Management Committee Member.

### **Sub-Committees**

- 11.17 With such composition and on such terms and conditions as the Management Committee may determine, the Management Committee may establish sub-committees comprised of Members and non-Members provided that
- 11.17.1 the Management Committee shall always remain finally responsible and accountable under and in terms of this Constitution; and
  - 11.17.2 a Management Committee Member shall be the chairman of that Sub-Committee.

## **12. MANAGEMENT COMMITTEE PROCEEDINGS**

- 12.1 The Management Committee shall meet when necessary in order to properly discharge its functions, but in any event not less than once during every three month period (“**Regular Meetings**”).
- 12.2 The Management Committee shall meet at such venues and on such dates and times and shall regulate its meetings and transact its business as it deems fit.

12.3 The Secretary shall give notice of the date, time and venue for any meeting of the Management Committee requested by the Chairman or any of the Management Committee Members to each Management Committee Member at least 7 (seven) days for Regular Meetings and at least 24 (twenty four) hours for any other meetings (or such other period as may be unanimously agreed upon by the Management Committee Members) before the time appointed for the holding of the meeting.

12.4 The Secretary's notice shall specify the general nature of the business to be transacted at the meeting and shall, whenever reasonably possible, be supported by submissions or related documentation.

### **Quorum**

12.5 The quorum required for a meeting of the Management Committee shall be three of the Management Committee Members.

### **The Chairman**

12.6 At meetings of the Management Committee the Chairman, and in his or her absence, a person elected by the Management Committee, shall chair such meeting.

### **Decisions and Voting**

12.7 Decisions of the Management Committee shall be by a majority of elected Management Committee Members present.

12.8 In the event of an equality of votes the person chairing shall have a casting vote.

12.9 Acts performed or decisions by the Management Committee shall be valid, even if it should be established afterwards that one or more of the Management Committee Members were disqualified.

12.10 A written resolution of the Management Committee supported and signed by all Management Committee Members, shall be as valid and effective as a decision taken at a meeting.

## **13. CHAIRMAN**

13.1 The Chairman shall be elected by the elected Management Committee Members from the ranks of the elected Management Committee Members.

13.2 The Chairman shall act as spokesperson for and executive officer of the Association.

- 13.3 The candidate for Chairman receiving the highest number of votes shall become the Chairman. In the event of an equality of votes among candidates receiving the highest number of votes, the Presiding Member shall have the casting vote.
- 13.4 The Chairman shall be elected at the first Management Committee Meeting for the period commencing at the end of that Annual General Meeting to the end of the next Annual General Meeting following the Annual General Meeting of his or her election.
- 13.5 In the event of a vacancy in the office of the Chairman, the Management Committee shall elect from amongst their number an acting Chairman for the remaining period.

**14. OTHER MANAGEMENT COMMITTEE MEMBERS**

The Management Committee may appoint such other office bearers from amongst their number on such terms and conditions as it may determine.

**15. CONTRACTS, BILLS AND DOCUMENTS**

- 15.1 Any two Management Committee Members, as authorised by the Management Committee from time to time, shall sign and execute contracts, bills of exchange, negotiable instruments or formal documents, on behalf of the Association.
- 15.2 The Association shall retain its financial statements for five years.

**16. FINANCIAL MATTERS**

**Banking Functions**

- 16.1 Subject to any limitations or procedures imposed by the Management Committee, any two Management Committee Members, properly authorized thereto by the Management Committee, may operate the Association's banking facilities and accounts, and may authorise and execute payment instructions for and on behalf of the Association.

**Accountant**

- 16.2 The Association shall appoint an Accountant at an Annual General Meeting who shall hold office at the end of that meeting until the conclusion of the next Annual General Meeting.
- 16.3 The Accountant shall prepare financial statements for the Association in accordance with acceptable financial reporting standards and practices in Namibia.

**17. ADHERENCE TO THE CODE OF CONDUCT**

The Management Committee has the right and obligation to create, develop, implement and maintain the Code of Conduct that ensures:

- (a) the setting of good practices and compliance thereof;
- (b) general education and rehabilitation of Members;
- (c) support in engaging and dealing with oversight regulation;
- (d) limited sanctioning of Members (ultimate sanction will be termination of Membership);
- (e) the MLA will not operate as regulator;

with powers vested in the Conduct Committee to facilitate the abovementioned.

**18. CONDUCT COMMITTEE**

18.1 The Management Committee is vested with the authority to appoint members of the Conduct Committee as follows:

- 18.1.1 1 (one) Management Committee Member who is not conflicted with the matter under review;
- 18.1.2 an external and independent subject specialist/expert; and
- 18.1.3 a person with legal background who will act as chairman .

18.2 The proceedings held by the Conduct Committee must adhere to the following rules:

- 18.2.1 the Member must personally make submissions;
- 18.2.2 the Member may have legal representation;
- 18.2.3 the Conduct Committee will function and operate independently;
- 18.2.4 such proceedings will be closed and not be open to the public;
- 18.2.5 the decisions of the Conduct Committee must be ratified by the Management Committee;
- 18.2.6 the decision of the Conduct Committee must be given in writing;

18.2.7 a notice of appeal may be given to the Management Committee not less than 14 (fourteen) days following the rendering of the decision of the Conduct Committee; and

18.2.8 an appeal of a decision of the Conduct Committee must be reviewed by the Management Committee.

18.3 The penalties available for imposition by the Conduct Committee are as follows:

18.3.1 no action needed;

18.3.2 guidance and education;

18.3.3 referral to applicable regulatory and/or enforcement agency or authority;

18.3.4 suspension or termination as Member (Management Committee to agree);

18.3.5 referral to Management Committee for further consideration / recommendation; and

18.3.6 appeal to the Management Committee.

## **19. LIMITATION OF LIABILITY AND INDEMNITY**

19.1 Members, Management Committee Members or Sub-Committee Members, are not liable for any claims, losses and expenses of the Association unless they arise from gross negligence or dishonesty.

19.2 The Association shall indemnify and hold harmless Management Committee Members and members of Sub-Committees for and in respect of any claims or liability against them arising from any acts or omissions in their said capacities save for such or as arising from their dishonesty or gross negligence.

## **20. AMENDMENTS**

20.1 Subject to the provisions of Article 20.2, the Constitution may be amended by the Members at a Special General Meeting.

20.2 This Constitution may not be amended unless

20.2.1 notice of any proposed resolution to amend the Constitution, specifying the wording of the changes and properly supported reasoning has been given to the Members;

20.2.2 the resolution to so amend the Constitution is supported by the vote of two thirds of the Members present at such Special General Meeting; and

20.2.3 any amendment incompatible with the Objectives shall be invalid.

## **21. NOTICES**

21.1 Members shall provide the Association with a residential or business address, postal address, telefax and e-mail address (to the extent that such postal, telefax or e-mail addresses are available), and any change of such address. Notices to Members may be effected to any one of such addresses. Should a Member fail to provide an address for notifications, or should a Member fail to inform the Association of the change thereof, or if any of the addresses are no longer current, the Member shall be regarded as having waived his or her rights to receive any notice from the Association.

21.2 The *domicilium citandi executandi* of the Association is:

As notified by the Management Committee from time to time.

## **22. GENERAL**

22.1 Any matter not dealt with in this Constitution and requiring regulation or decision shall be dealt with at a General Meeting.

22.2 Formal communications, notices, decisions and appointments under or in connection with this Constitution shall require the written forms.

## **23. DISSOLUTION**

23.1 The Association shall continue until dissolved in accordance with the provisions of Article 23.2

23.2 The Association may be dissolved only where

23.2.1 the Objectives of the Association become impossible; or

23.2.2 with the approval of 75% (seventy five percent) of the Ordinary Members at a Special General Meeting.

23.3 If upon a dissolution of the Association, there remains, after the satisfaction of all its debts and liabilities, any assets, the same shall not be paid to or distributed among the Members, but shall be transferred to any educational non-profit organisation operating in Namibia as may be determined by the General Meeting following the decision to

dissolve the Association, and failing such determination, to be determined by the High Court of Namibia.

**24. TRANSITIONAL PROVISIONS [a new Constitution]**

- 24.1 Members in good standing of the MLA present at the founding meeting of the MLA shall be deemed to be Members.
- 24.2 The Members shall elect a chairman from amongst its number to preside over such founding meeting only.
- 24.3 The founding meeting shall be deemed to be an Annual General Meeting for the purpose of electing the Chairman and the Management Committee.