

SOUTH AFRICA

SCHEDULE 1 OF COMPANIES ACT, 2008

Provisions concerning non-profit companies

Objects and policies

1. (1) The Memorandum of Incorporation of a non-profit company must—
 - (a) set out at least one object of the company, *and* each such object must be either—
 - (i) a public benefit object; or
 - (ii) an object relating to one or more cultural or social activities, or communal or group interests; and
 - (b) be consistent with the principles set out in subitems (2) to (9).
- (2) A non-profit company—
 - (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in its Memorandum of Incorporation; and
 - (b) subject to paragraph (a), may—
 - (i) acquire and hold securities issued by a profit company; or
 - (ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- (3) A non-profit company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether the income or asset was derived, to any person who is or was an incorporator of the company, or who is a member or director, or person appointing a director, of the company, except—
 - (a) as reasonable—
 - (i) remuneration for goods delivered or services rendered to, or at the direction of, the company; or
 - (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the company;
 - (b) as a payment of an amount due and payable by the company in terms of a *bona fide* agreement between the company and that person or another;
 - (c) as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the company; or
 - (d) in respect of any legal obligation binding on the company.
- (4) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of a non-profit company—
 - (a) no past or present member or director of that company, or person appointing a director of that company, is entitled to any part of the net value of the company after its obligations and liabilities have been satisfied; and
 - (b) the entire net value of the company must be distributed to one or more non-profit companies, external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts—
 - (i) having objects similar to its main object; and
 - (ii) as determined—
 - (aa) in terms of the company's Memorandum of Incorporation;
 - (bb) by its members, if any, or its directors, at or immediately before the

(5) The Commission may apply to the court, on behalf of a non-profit company, for a determination contemplated in subitem (4)(b)(ii)(cc) if the non-profit company has—
(a) no remaining members or directors; and
(b) failed to—
(i) make a determination contemplated in subitem (4)(b)(ii)(bb); or
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(ii) apply to the court for such a determination.

(6) Incorporation as a non-profit company in terms of this Act, or registration as an external non-profit company in terms of this Act, and compliance by either with the provisions of this Act does not necessarily qualify that non-profit company, or external non-profit company, for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other legislation, except to the extent that any such legislation provides otherwise.

(7) Each voting member of a non-profit company has at least one vote.

(8) The vote of each member of a non-profit company is of equal value to the vote of each other voting member on any matter to be determined by vote of the members, except to the extent that the company's Memorandum of Incorporation provides otherwise.

(9) If a non-profit company has members, the requirement in section 24(4) to maintain a securities register must be read as requiring the company to maintain a membership register.

Fundamental transactions

2. (1) A non-profit company may not—
(a) amalgamate or merge with, or convert to, a profit company; or
(b) dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the non-profit company.
- (2) If a non-profit company has voting members, any proposal to—
(a) dispose of all or the greater party of its assets or undertaking; or
(b) amalgamate or merge with another non-profit company,
must be submitted to the voting members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, respectively.
- (3) Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in subitem (2).

Incorporators of non-profit company

3. The incorporators of a non-profit company are its—
(a) first directors; and
(b) its first members, if its Memorandum of Incorporation provides for it to have members.

Members

4. (1) A non-profit company is not required to have members, but its Memorandum of Incorporation may provide for it to do so.

- (2) If the Memorandum of Incorporation of a non-profit company provides for the company to have members, it—
- (a) must not restrict or regulate, or provide for any restriction or regulation of, that membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution;
 - (b) must not presume the membership of any person, regard a person to be a member, or provide for the automatic or *ex officio* membership of any person, on any basis other than life-time membership awarded to a person—
 - (i) for service to the company or to the public benefit objects set out in the company's Memorandum of Incorporation; and
 - (ii) with that person's consent;
 - (c) may allow for membership to be held by juristic persons, including profit companies;
 - (d) may provide for no more than two classes of members, that is voting and non-voting members, respectively; and
 - (e) must set out—
 - (i) the qualifications for membership;
 - (ii) the process for applying for membership;
 - (iii) any initial or periodic cost of membership in any class;
 - (iv) the rights and obligations, if any, of membership in any class; and
 - (v) the grounds on which membership may, or will, be suspended or lost.

Directors

5. (1) If a non-profit company has members, the Memorandum of Incorporation must—
- (a) set out the basis on which the members choose the directors of the company; and
 - (b) if any directors are to be elected by the voting members, provide for the election each year of at least one-third of those elected directors.
- (2) If a non-profit company has no members, the Memorandum of Incorporation must set out the basis on which directors are to be appointed by its board, or other persons.
- (3) A non-profit company must not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a director of the company or of a related or inter-related company, or to a person related to any such director.
- (4) Subitem (3) does not prohibit a transaction if it—
- (a) is in the ordinary course of the company's business and for fair value;
 - (b) constitutes an accountable advance to meet—
 - (i) legal expenses in relation to a matter concerning the company; or
 - (ii) anticipated expenses to be incurred by the person on behalf of the company;
 - (c) is to defray the person's expenses for removal at the company's request; or
 - (d) is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.