

**EXPLANATORY MEMORANDUM TO PROPOSED CHANGES TO THE MEMORANDUM
OF INCORPORATION**

1. Introduction

Members are requested to approve, by special resolution, the proposed changes to the Memorandum of Incorporation ("MOI") of the Company. The proposed changes deal with:

- correction of grammatical and/or drafting errors (cosmetic changes); and
- harmonization of the current MOI with the provisions of the new Companies Act (Act No. 71 of 2008, as amended), ("Companies Act") and best practices.

2. Cosmetic changes

Art 1.6.19

To add "*the*" before MOI.

Art 1.6.22

To add "*the*" before "**Income Tax Act**".

Art 1.6.26

To change "Non-Profit Company" to "*non-profit company*".

Art 1.6.29

To add "*the*" before fixation.

Art 1.6.35

To move definition of "*sound Recording*" to after "*Secretary*".

Art 10.1

To delete "*its*" and replace with "*this*".

Art 11.6.1

(a) To delete "*the members of*" before "Board". The words are superfluous as Board is already defined.

(b) To delete “*their*” and replace with “*its*” to follow from the change in (a).

Art 14.1

To replace “*Constituance*” with “*Composition*”.

Art 14.2

The proposed Art 14.2.2 will result in numbering changes in clause 14.2.

14.3

The proposed Art 14.3.2 will result in numbering changes in clause 14.3.

Art 14.2.6

To delete “*of this MOI of Incorporation*” and replace with “*or this MOI*”.

Chairperson

Wherever the term is used to be changed to “*Independent Chairperson*”.

Art 24.1.30

To delete “*of the Company*” before “*Board*”. Board is defined.

Art 28.2

To change “*Board*” to “board” and “s” before member to be “a”.

Art 28.3

“*Member*” to be changed to “*member*”.

Art 29

To delete the “,” between “*must*” and “*cause*”.

Art 30.2

“*Member*” to be changed to “*member*”.

Numbering

Changes to articles of the MOI may result in changes in numbering and cross referencing

Reason for and effect of the changes

The reason for the changes is to correct grammatical and terminological errors in the current MOI.

The effect of the changes will be to correct the MOI.

3. Article 1

Art 1.6.8

To delete “*not for*” before profit and replace with “*non*”.

Reason for and effect of the change

The reason for the change is to use a terminology used in the Companies Act. The Companies Act defines companies that are incorporated for a public benefit or other objects in terms of item 1 (1) of Schedule 1 of the Act and whose income and property is not distributable except to the extent permitted by item 1 (3) of Schedule 1 as “non-profit company”.

The effect of the change is to align the terminology in the MOI with the Companies Act.

Art 1.6.22

To add “*as amended, consolidated or re-enacted from time to time, and includes all schedules and regulations of such act*”

Reason for and effect of the change

The reason for the change is to cover current and future forms the legislation may take.

The effect of the change is to ensure that the Company is covered in the event of the legislation changing.

Art 1.6.23

To delete “*tariff under*” and replace with “*provisions of*”.

Reason for and effect of the change

The reason for the change is that the Copyright Act does not prescribe tariffs but set the basis for parties to a licence agreement to agree the licence fee.

The effect of the change is to align the MOI with the provisions of the Copyright Act.

Art 1.6.24

To add “*in terms of this MOI and/or the Company Rules*” between “*membership*” and “*and*”.

Reason for and effect of the change

The reason for the change is align the definition with the proposed process for admission of members.

The effect of the change is to align the definition with the proposed process for admission of members.

Art 1.6.32

To add “*as amended, consolidated or re-enacted from time to time, and includes all schedules and regulations of such act*”.

Reason for and effect of the change

The reason for the change is to cover current and future forms the legislation may take.

The effect of the change is to ensure that SAMPRA is covered in the event of the legislation changing.

Art 1.6.33

To change “*Performing Right*” to “*Performance Right*”.

Reason for and effect of the change

The reason for the change is to avoid a likely confusion with the right that is administered by SAMRO and differentiate the right that SAMPRA administers. The expression “performing rights” is a technical expression used traditionally to refer to the authors’ rights of performance.

The effect of this change is to correctly define the right that the Company administers.

Art 1.6.35

To change the definition of “*sound recording*” as follows:

“***sound recording*** shall, with respect to the rights administered by the Company, mean a sound recording as defined in the Copyright Act”

Reason for and effect of the change

The reason for and the effect of the change is to properly define the right that SAMPRA administers.

Art 1.6.43

To be deleted.

Reason for and effect of the change

The reason for the change is that the term is not used in the MOI.

The effect of the change is to remove unnecessary text in the MOI.

4. Article 3

Art 3.2.2

To amend so that the article reads as follows:

“the alterable provisions of the Companies Act, 2008 applicable to a non-profit company subject to any limitation, extension, variation or substitution set out in this MOI”.

Reason for and effect of the change

The reason for the change is for amplify the status of SAMPRA as a non-profit company in relation to the applicable (alterable) provisions of the Companies Act.

The effect of the change is to ensure that the correct provisions of the Companies Act are recognized for application in the MOI.

5. Article 4

Art 4.1.1

To replace “*Performing*” to “*Performance*”

Reason for and effect of the change

The reason for and effect of the change is to aligned with the defined term in article 1.6.33.

Art 4.2

To read as follows:

“4.2 *In spite of the provisions of Item 1 (2) (b)(ii) of Schedule 1 of the Companies Act, the following shall not constitute ancillary objects which the Company shall be authorised to carry out:*

4.2.1 *the carrying on by the Company of any business, profession or occupation carried on by any of its Members; and*

4.2.2 *...”*

Reason for and effect of the change

The reason for the change is to provide clarity on the objects on the Company. Section 15 (2) (ii) of the Companies Act allows a company’s MOI to include and change any alterable provision of the Act.

A non-profit company may, in terms of Item 1 (2) (b)(ii) of Schedule 1 of the Companies Act, subject to it applying all its assets and income to advance its stated object, carry on any business consistent with or ancillary to its stated objects.

The reason for the change is to clarify that, although the Companies Act allows non-profit companies to carry on any business and does not restrict provision of financial or other assistance “*required by its members for the purpose of carrying on any business, profession or occupation*” as ancillary objects, these ancillary objects are excluded.

The effect of the change is to provide clarity on the objects of the Company.

Art 4.4.3

To delete “*Commission of Inland Revenue*” and replace with “*Commissioner for the South African Revenue Service*”.

Reason for and effect of the change

The reason for and effect of the change is to accord the correct reference of that office.

6. Article 9

To add “*or in accordance with the provisions of item 1 (3) (c) of Schedule 1 of the Companies Act*” after “*public benefit activity*”.

Reason for and effect of the change

The reason for and effect of the change is to provide clarity that the Company can distribute royalties in terms of Schedule 1 of the Companies Act.

Reason for and effect of the change

The reason and effect of the change is to clarify the object of the Company which is founded on the provisions of item 1 (3) (C) of Schedule 1 of the Companies Act.

7. Article 11

Art 11.3.1

To delete in its entirety and replace with:

“11.3 Location of Members Meetings

11.3.1 The location of any Members’ meeting shall be determined by Management, represented by the CEO, in consultation with the Independent Chairperson.”

Reason for and effect of the change

The reason for and effect of the change is to provide a more efficient mechanism for approving a venue of general meetings other than Board convening to determine a venue of a meeting.

Art 11.4.2.5

To be amended to read “include notices of special business to be raised by any Member in terms of article 11.4.3, if any”.

Reason for and effect of the change

The article gives effect to the provisions of section 65(3) of the Companies Act that entitles members to propose resolutions as well as those of the provisions of Art 11.4.3 of the MOI

The reason for and effect of the change is to clarify the provisions of the article.

Article 11.5.1

To reduce the quorum to “3” from “10” per Chamber.

Reason for and effect of the change

Section 64 (3) of the Companies Act prescribes minimum number of “shareholders” required to form a quorum for a meeting and for consideration of matters in a general meeting, which

is 25% of holders of all voting rights. This provision is alterable and a company's MOI may prescribe a lower or higher number. The right of a company is however restricted in that if a company has more than 2 "shareholders" a general meeting may not commence and a matter may not be considered unless at least 3 "shareholders" are present despite what the MOI may provide.

Section 10 of the Companies provides that every provisions of the Companies Act applies to a non-profit company except to the extent of any exclusion in the Act and limitations, alterations and extensions in Schedule 1 of the Act. Therefore, the reference herein to "shareholders" must be read to mean "members".

The reason for the change is to prescribe the minimum number required in terms of section 64 (3) of the Companies Act.

The effect of the change is to reduce the quorum for general meetings from 10 to 3.

Article 11.5.9

To amend by adding "*or his or her successor-in-title*" after "*Registrar of Copyright*".

Reason for and effect of the change

The reason for and effect of the change is to ensure that if there is a change in the title of the Registrar of Copyright or that offices functions are moved to another functionary, that change does not necessitate an amendment of the MOI

Article 11.5.9.3

To delete the article.

Reason for and effect of the change

The reason for the change is that it is not possible for performers to share in a royalty.

The effect of the change is to delete a provision that is not applicable.

Art 11.5.6.3

The change reflects the position of equality of the Chambers that no ordinary resolution that affects both Chamber will be passed unless the majority (50% plus 1) of members present or represented at the meeting of each Chamber vote for the resolution.

Reason for and effect of the change

The reason for the change is that the current wording of the article has the potential of dominance of one Chamber over the other.

The effect of the change is to give effect to the equality of the Chambers.

Art 11.5.7.3

The change reflects the position of equality of the Chambers that no special resolution that affects both Chamber will be passed unless three fourths (75%) of members present or represented at the meeting of each Chamber vote for the resolution.

Reason for and effect of the change

The reason for the change is that the current wording of the article has the potential of dominance of one Chamber over the other.

The effect of the change is to give effect to the equality of the Chambers.

Art 11.6.2.2.1

To add "*and the taking of decisions on any matters arising therefrom*" at the end of the article.

Reason for and effect of the change

The reason for and effect of the change is to ensure that decisions that may arise from any matter in the annual report.

Article 11.6.2.2.

To amend to read "*the consideration of the Annual Financial Statements and the taking of decisions on any matters arising therefrom*".

Reason for and effect of the change

Section 61 (8) of the Companies Act requires that at an annual general meeting, one of the business to be transacted is "*presentation of the audited financial statements for the immediately preceding financial year.*"

The reason for and effect of the change is to align the MOI with the Companies Act.

New Art 11.7.

Added to provide for representation by proxy. The article to be read in conjunction with Article 20.6.

Reason for and effect of the change

Section 58 of the Companies Act have extensive provisions relating to “shareholders” right to appoint any person to act as a proxy at a shareholders’ meeting.

The reason for and effect of the change is to give effect to the provisions of Section 58 of the Companies Act.

Art 14.2.1

To be amended to conform with the provisions of item 5 (1) of Schedule 1 of the Companies Act which provides that:

“5 Directors

- (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”.*

Reason for and effect of the change

The reason for the change is to give effect to the provisions of Item 5 of Schedule 1 of the Companies Act

The effect of the change is that the members will elect at least one-third of the elected directors at each annual general meeting.

Art 14.2.2.1

Amend to read *“nominations of candidates for election, in a form and manner prescribed by the Company...”*

Art 14.2.2.2

To change *“appointed”* to *“nominated”*.

Reason for and effect of the change

The reason for and effect of the change is that directors are elected by the members at the AGM, by a resolution following a voting process and not the respective Chambers.

The effect of the change is to reflect the correct position on directors' election.

Art 14.2.2.6

To change "*elected*" in the second sentence to "*nominated*".

Reason for and effect of the change

The reason for and effect of the change is that directors are elected by the members at the AGM, by a resolution following a voting process and not the respective Chambers.

The effect of the change is to reflect the correct position on directors' election.

Art 14.2.3.1

Amend to read "*nominations of candidates for election, in a form and manner prescribed by the Company*"

Reason for and effect of the change

The reason for and effect of the change is to defer the administrative requirement to the Company.

Art 14.2.3.2

To change "*elected*" in the second sentence to "*nominated*".

Reason for and effect of the change

The reason for and effect of the change is that directors are elected by the members at the AGM, by a resolution following a voting process and not the respective Chambers.

The effect of the change is to reflect the correct position on directors' election.

Art 14.2.3.3

The entire article to be deleted.

Reason for and effect of the change

The reason for the change is that Members in the Performers' Chamber are natural persons therefore would not have subsidiaries.

The effect of the change is to reflect the correct legal position.

Art 14.2.3.6

To change “*elected*” in the second sentence to “*nominated*”.

Reason for and effect of the change

The reason for and effect of the change is that directors are elected by the members at the AGM, by a resolution following a voting process and not the respective Chambers.

The effect of the change is to reflect the correct position on directors’ election.

Art 14.2.6

To add “*At such Annual General Meeting the person appointed to fill a casual vacancy shall retire from office but will be eligible for re-election*” at the end of the paragraph.

Reason for and effect of the change

The reason and effect of the change is to reflect the correct treatment of directors appointed to fill casual vacancies.

Art 14.3.1

To amended to indicate that any one of the Vice Chairperson will chair the meeting and that they will chair by rotation and to delete the requirement for joint chairmanship.

Reason for and effect of the change

The reason for and effect of the change is to simplify the process.

Art 14.3.2

“*Twice*” to be changed to “*once*”.

Reason for and effect of the change

The reason for the change is to ensure that the time of the board is used effectively. The board can have special meetings when the need arises.

The effect of the change is to reduce the requisite board meetings in a year to 4.

Art 14.3.3.2

To amend the article to provide for quorum at two thirds of Voting directors from each Chamber and remove the requirement for equal number of directors from the two Chambers.

Reason for and effect of the change

The reason for and effect of the change is to have a practical provision.

Art 14.3.6

To amend “*two-thirds*” to “*majority*” of directors.

Reason for and effect of the change

The reason for and effect of this change is to reflect the normal practice for decision making at board level.

Art 14.3.7

To delete “*No voting by proxy is permitted*”

Reason for and effect of the change

The reason for the change is that the statement is superfluous. The MOI makes provision for alternate directors.

The effect of the change is to reflect the correct position.

Art 14.4.1.5

To be deleted.

Reason for and effect of the change

The reason for the change is that this event is covered in article 14.4.4.1.3.

The effect of the change is to remove a repetition. statement is superfluous.

Art 14.4.1.8

To be deleted.

Reason for and effect of the change

The reason for and effect of the change is to remove an impractical provision.

New Art 14.6

The article deals with issues of directors' remuneration and financial assistance.

Item 1 (3) (a) (i) allows for payment of reasonable remuneration of directors for services rendered to the company as directors. The remuneration will be determined by the members at a general meeting by ordinary resolution.

Sub-articles dealing with financial assistance reflect the provisions of Item 5 (3) and (4) of Schedule 1 of the Companies Act.

Reason and effect of the change

The reason for and effect of the change is to:

- (i) provide for payment of remuneration to the directors. It is a common corporate governance practice that directors are remunerated for their services to the company; and
- (ii) reflect the provisions of the Companies Act relating to financial assistance to directors.

8. Article 15

Art 15.4.2

To be amended to read "*The Vice Chairpersons shall serve a term equal to their term of appointment as Directors unless the Directors appointing such Vice Chairperson remove him/her from that position before the end of his/her term as a Director.*"

Reason for and effect of the change

The reason for the change is to account for rotation of directors and the ability of the directors appointing a vice chairperson to remove him/her from that position.

The effect of the change is to reflect the circumstances a vice chairperson will cease to be.

Art 15.4.3

Proposal that the Vice Chairpersons should be paid remuneration as vice chairperson.

Reason for and effect of the change

The reason for the change is that vice chairpersons are assigned responsibilities in that capacity.

9. Article 16

Art 16.1

To delete the article in its entirety.

Reason for and effect of the change

The Board itself can co-opt any person to assist it in discharging its duties. This responsibility should not be delegated. The Chamber can co-opt individuals into the Chamber Committee.

The reason for the change is to properly align responsibilities.

Art 16.2

The change clarifies how members of the Performers' Chamber Committee are appointed and their term of appointment.

Reason for and effect of the change

The reason for and effect of the change is to clarify the appointment and term of members of the Performers' Chamber Committee.

Art 16.3.2

To delete "*other than any reasonable remuneration as may be approved by the Board by way of an ordinary majority of votes, provided that the remuneration to be paid falls within the budget of the Company*" and replace with "*provided the CEO's prior written approval is obtained*". This changed is suggested for practical reasons.

Reason for ad effect of the change

The reason for the change is that the Board approves the budget at the beginning of the year and the CEO executes the budget under the oversight of the Board.

The effect of the change is to provide for proper segregation of responsibilities.

10. Article 17

Art 17.2

The change clarifies how members of the Copyright Owners' Chamber Committee are appointed and their term of appointment.

Reason for and effect of the change

The reason for and effect of the change is to clarify the appointment and term of members of the Copyright Owners' Chamber Committee.

Art 17.3.2

To delete "*other than any reasonable remuneration as may be approved by the Board by way of an ordinary majority of votes, provided that the remuneration to be paid falls within the budget of the Company*" and replace with "*provided the CEO's prior written approval is obtained*". This change is suggested for practical reasons.

Reason for and effect of the change

The reason for the change is that the Board approves the budget at the beginning of the year and the CEO executes the budget under the oversight of the Board.

The effect of the change is to provide for proper segregation of responsibilities.

11. Article 24

Art 24.1.5

To change "*Royalties*" to "*Licence Fee*".

Reason for and effect of the change

The reason for and effect of the change is to use the words as defined.

Art 24.1.18

To change "*regulate and control*" to "*endeavour to influence*".

Reason for and effect of the change

The reason for the change is not in the mandate of the Company to regulate or control the industry.

The effect of the change is to properly define the role of the Company in the industry.

Art 25.3.1

To delete the wording of the article and replace it with:

“that collected Net Licence Proceeds shall, per each track, be split equally between the Performers featured in the track and the Copyright Owner”.

Reason for and effect of the change

The current wording seems to suggest that distributions are done equally between all Performers and the Copyright Owners.

The reason for and effect of the change is to ensure that the MOI records correctly how the distribution is done.

12. Article 25**Art 25.3.1**

To change “*Net Licence Proceeds*” to “*Net Proceeds*”.

Reason for and effect of the change

The Reason for the change is that “*proceeds*” is defined to include non-licence income.

The effect of the change is to properly reflect the distribution proceeds.

Art 25.4

To change to read:

“It is a condition of Membership, in both Chambers of the Company, that a Member agrees that collected Net Proceeds per track shall be distributed equally between the Performers featured in the track (on the one hand) and the Copyright Owner (on the other hand), irrespective of any contractual agreement between any Performer and Copyright Owner, to the contrary. In the event that there is a dispute between a Performer and a Copyright Owner relative to the existence and/or application of a contractual agreement between them, the dispute shall be referred to the Copyright Tribunal.”

Reason for and effect of the change

The current wording seems to suggest that distributions are done equally between all Performers and the Copyright Owners.

The reason for and effect of the change is to ensure that the MOI records correctly how the distribution is done.

13. Article 26

To delete sub-article 26.1 and add the following sub-articles:

“26.1 The Board may make Company Rules amend or repeal such Company Rules in respect of matters that are not specifically addressed in this MOI.

26.2 Company Rules shall be published on the Company’s website and will be emailed to any then serving Director and shall be available for inspection by any Member at the Company’s Office.

26.3 Company Rules must be consistent with the Companies Act and this MOI, and shall take effect on the date specified in the Company Rules, or 30 days after publication thereof.

26.4 New or amended Company Rules shall be binding until the next General Meeting Company where they shall be amended and adopted or ratified by Special Resolution.”

Reason for and effect of the change

The reason for and the effect of the change is to clarify how Company Rules will be made, amended, put into effect and published.

Art 26.5

To delete *“The Company will, by Special Resolution, adopt Company Rules to govern matters relating to the Company’s objectives which must include but shall not be limited to collection of Licence Fees.”*

Reason for and effect of the Change

The reason for the deletion is that the this is reflected in the proposed Sub-articles 26.1 to 26.4.

The effect of the change is alignment to the proposed changes to how Company Rules will be effected.

Art 26.6

To delete *“rules relating to application, registration, disqualification, termination and cancellation of membership of the Chamber as well as the”*

Reason for and effect of the change

The reason of the change is that these rules relating to membership are at a corporate level.

The effect of the change is to align the article with the corporate structure on membership.

14. New Article 33

A new article dealing with membership is added

Reason for and effect of the change

The reason for the change is that the MOI currently does not stipulate on how membership is attained.

The effect of the change is a determination of how membership of the company is attained.