COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION

REPUBLIC OF SOUTH AFRICA

In accordance with s13(1)(*a*)(ii)

MEMORANDUM OF INCORPORATION OF

BOTANICAL SOCIETY OF SOUTH AFRICA NPC

("BOT SOC")

BOT SOC is a non-profit company with members, and with the following object:

To promote, advance and actively participate in the conservation, rehabilitation, protection and sustainable use of the indigenous flora, vegetation and natural habitats of South Africa, in accordance with recognised environmental best practice and for the benefit of the public.

This object will be achieved by, *inter alia:*

- **encouraging, supporting and undertake the cultivation, restoration and sustainable utilisation of South Africa's indigenous botanical plants, including initiatives that preserve threatened, endangered or culturally significant species;**
- **Encouraging public education and awareness and developing and delivering educational programmes, awareness campaigns, exhibitions, training, publications and public outreach activities that increase the knowledge, understanding and appreciation of South Africa's indigenous flora and vegetation, aimed primarily at the people of South Africa, with the purpose of promoting environmental responsibility and stewardship;**
- **Promoting and encouraging the active involvement of communities, volunteers and citizen scientists in conservation, monitoring and educational activities that benefit South Africa's indigenous botanical plants and natural ecosystems.**
- **Liaising, cooperating with, and partnering with local, national, and international organisations with similar aims, objects and objectives to BOT SOC; and**
- **Encouraging support of botanical gardens in South Africa and southern Africa.**

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation ("**MOI**") was adopted by the incorporators of BOT SOC, in accordance with section 13(1) of the Companies Act, 2008 ("**the Act**"), as evidenced by the following signatures made by them, or on their behalf:

Name of incorporator	**Signature**	**Date**
(Council member)	_______________	____

(Council Member) ________________ ____

(Council Member) ________________ ____

BOT SOC VA
(First member) ________________ ____

In this MOI:

a) A reference to a section by number refers to the corresponding section of the Act;

b) A reference to a clause by number refers to the corresponding clause in this MOI; and

c) Words that are defined in the Act bear the same meaning in this MOI as in the Act.

1. INCORPORATION

1.1 BOT SOC is a non-profit company, as defined in the Act.

1.2 BOT SOC is incorporated in accordance with, and governed by:

1.2.1 the unalterable provisions of the Act that are applicable to non-profit companies;
1.2.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this MOI; and
1.2.3 the provisions of this MOI.

2. OBJECT AND POWERS OF BOT SOC

2.1 The object of BOT SOC is as set out on the first page of this MOI and describes the ambit and types of the public benefit activities (as defined in the Ninth Schedule to the Income Tax Act 58 of 1962, as amended ["**the Income Tax Act**"]) which BOT SOC intends to carry out.

2.2 BOT SOC shall have all the legal powers and capacity of an individual:

2.2.1 except to the extent necessarily implied by its stated object;
2.2.2 except to the extent that a juristic person is incapable of exercising such a power or having such a capacity; and
2.2.3 subject to the restrictive conditions (as contemplated in section 15(2)(b)) and other limitations or qualifications, as are contained in this MOI.

2.3 The powers of BOT SOC may only be executed in accordance with the main object of BOT SOC.

2.4 BOT SOC may not:

2.4.1 amalgamate or merge with, or convert to, a profit company; or
2.4.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that the disposal of an asset occurs in the ordinary course of the activities of BOT SOC; or
2.4.3 knowingly become a party to, or knowingly permit itself to be used as part of, any tax avoidance scheme, being any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax duty or levy which would have been or become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.

2.5 All of the public benefit activities of BOT SOC shall be carried out in a non-profit manner and with an altruistic or philanthropic intent and no public benefit activities shall be intended to directly or indirectly promote the economic self-interest of any director, officer or employee of BOT SOC, other than by way of reasonable remuneration or refunding of reasonable and approved expenses payable to that director, officer or employee.

3. MEMBERS OF BOT SOC

3.1 As contemplated in Item 4(1) of Schedule 1 of the Act, BOT SOC has members who are all in a single class, being voting members. All members of BOT SOC shall be natural persons.

OR

3.2 As contemplated in Item 4(1) of Schedule 1 of the Act, BOT SOC has members who in either of two classes, being voting and non-voting members. All members of BOT SOC shall be natural persons.

3.3 The members of BOT SOC shall:

3.3.1 support the object and objectives of BOT SOC;

3.3.2 comply with the Code of Good Practice adopted by the members by ordinary resolution from time to time; and

3.3.3 if they are voting members/ where required, pay annual membership subscriptions to BOT SOC.

3.4 Candidate voting members shall submit an application for membership in accordance with the process set out by Council from time to time. Council shall, in evaluating membership applications, apply the criteria for membership set by the members from time to time.

3.5 A member of BOT SOC shall cease to be a member if:

3.5.1 the member resigns in writing addressed to the Chairperson of BOT SOC at its registered office;

3.5.2 a resolution of a majority of members of BOT SOC at a general meeting deprives that person of their membership;

3.5.3 the member becomes disqualified for service as a director of a company; or

3.5.4 the member no longer satisfies the criteria for membership of BOT SOC as determined by the voting members from time to time in accordance with this MOI.

3.6 BOT SOC shall maintain and keep up to date, in one of the official languages of South Africa, a physical and/or electronic register of the members of BOT SOC and members shall have the right to inspect and copy the information contained in the members' register.

4. INTERNAL AND EXTERNAL BRANCHES

4.1 The work of BOT SOC requires active and ongoing relationship with its membership base and volunteers. To do so, BOT SOC has organised its operations regionally through "Internal" and "External" **Branches.**

4.2 Historically, some Branches have elected to establish independent non-profit legal entities to co-ordinate the activities of BOT SOC's members in that region ("External Branches"). The independence of these External Branches is recognised by BOT SOC, but the members of BOT SOC residing in the regions in which the External Branches operate **are members** of **BOT SOC in addition to any membership status** held by that member in accordance with the founding document of the External Branch, and the natural person members of BOT SOC in that recognised region will have the same rights, privileges, and treatment as any other natural person member of BOT SOC.

4.3 BOT SOC's **"Internal Branches" (which operate without independent legal personhood from BOT SOC)** shall be evidenced by the Register of Internal Branches developed by BOT SOC from time to time.

4.4 The relationship between any External Branch and BOT SOC shall be governed in accordance with an agreement signed by BOT SOC and that External Branch. An Internal Branch shall be governed by the BOT SOC Terms of Reference for Internal Branches.

4.5 Internal and External Branches shall be responsible for:

4.5.1 Organising member events, guest speakers, volunteer opportunities, educational initiatives, and other activities for members and the public or volunteers in the region in which it operates;

4.5.2 Acting as the nexus of communication between Council and the members in that Region;

4.5.3 Administering funds allocated to work and activities in that region by BOT SOC; and

4.5.4 Carrying out any additional responsibilities delegated to Internal Branches by Council, and as agreed between BOT SOC and External Branches by agreement.

5. INTERNAL AND EXTERNAL BRANCH MANAGEMENT COMMITTEES

5.1 External Branches are bound to govern their affairs in accordance with the founding document of that External Branch limited only as required by law and any agreement between that External Branch and BOT SOC. A governing body appointed by that External Branch and identified as such by the members of that External Branch shall be deemed to be a "Management Committee" in the context of this MOI.

5.2 Where an Internal Branch has more than 10 members, those members will be required to appoint a Management Committee of three of the members. An Internal Branch that has 10 or fewer members may, if it wishes, appoint a Management Committee of three members.

5.3 Each **Internal Branch** which has more than 10 members shall hold an election for Management Committee members every three years.

5.4 No member of the Management Committee may serve more than three consecutive terms (nine-years in total).

6. MEMBERS MEETINGS – CALLING AND CONVENING

6.1 BOT SOC shall convene an annual general meeting of its members:

6.1.1 initially, no more than 18 months after BOT SOC's date of incorporation; and

6.1.2 thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the members by unanimous vote.

6.2 Special General meetings of the members shall also be called:

6.2.1 at any time that the Council is required by the Act or this MOI to refer a matter to members for decision and the Council determines that it is not appropriate to hold the matter over till the following annual general meeting; or

6.2.2 if the number of directors drops below the minimum required by this MOI, and the next annual general meeting is more than two months from the date upon which the relevant director/s cease/s to act.

6.3 The right of members to call a meeting may be exercised by at least 10% of the voting members, provided that the costs of any unscheduled meeting called by members shall be borne by the members who call the meeting and that the notice calling the meeting shall comply with the requirements of clause 6.5.

6.4 BOT SOC's Council may determine the location of any members' meeting.

6.5 The minimum number of days for BOT SOC to deliver a notice of a members' meeting to the members shall be 15 business days before the meeting date. The notice of meeting shall include the agenda and the detail of any proposed resolution to be taken at the meeting.

6.6 BOT SOC may conduct a meeting entirely by electronic communication or provide for participation in a meeting by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

7. MEMBERS MEETINGS - QUORUM AND VOTING

7.1 For the purposes of attending members meetings, members may appoint proxies to act on their behalf at meetings of BOT SOC provided that:

7.1.1 members may not appoint multiple proxies at the same time to represent the same member;
7.1.2 a member's proxy may not delegate the proxy's powers to another person;
7.1.3 unless authorised by Council in advance, no person may act as proxy for more than three members at any time;
7.1.4 a member must deliver to BOT SOC a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members' meeting;
7.1.5 any member intending to vote by proxy shall have the right to terminate the proxy at any time prior to the commencement of the meeting by lodging with BOT SOC a written notice terminating the proxy and a proxy shall further be deemed to be *ipso facto* terminated in the event of the member who granted the proxy to be present at the meeting; and
7.1.6 a member's proxy may not decide without direction from the member whether to exercise or abstain from exercising any voting right of the member.

7.2 The quorum requirement for a members' meeting to begin, or for a matter to be considered is 25% or three (whichever is higher) of voting members being present or represented by proxy, provided that at least 5 members or 10% of the members (whichever is higher) of each Internal and External Branches shall also be present or represented.

7.3 If, within half an hour after the appointed time for a meeting to begin, the quorum requirements for that meeting to begin have not been satisfied, the meeting shall be automatically postponed without considering any business or item of the agenda for one week, subject to the proviso in clause 7.4.

7.4 If the quorum requirements for consideration of a particular matter to begin have not been satisfied and:

7.4.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
7.4.2 if there is no other business on the agenda of the meeting,

the meeting is adjourned for one week and voting Members who are present or by proxy at the postponed meeting shall constitute a quorum.

7.5 The rules in clauses 7.2 and 7.3 shall be subject to the proviso that the person intended to preside at a meeting that cannot begin may extend the half-hour limit allowed in for a reasonable period on the grounds that exceptional circumstances including weather, transportation or electronic communication have generally impeded or are generally impeding the ability of members to be present at the meeting or one or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members, together with others in attendance, would satisfy the quorum requirements.

7.6 For a matter to be considered and decided on at a meeting:

7.6.1 sufficient members for a quorum to be established must be present or represented at the time the matter is decided; and

7.6.2 the matter must have been included in the agenda of the meeting and/or mentioned in the notice of meeting provided that, if any matter is raised which members have not had prior notice and there is any member present who objects to consideration of and voting on the matter in absence of proper notice, 75% of members present shall be required to vote in favour of dealing with the matter at that meeting, for it to proceed.

7.7 Except for meetings that do not reach quorum as accommodated by clause 7.4, the maximum period allowable for an adjournment of a members meeting is 60 business days from the date of the adjourned meeting or part-meeting.

7.8 Meetings of members shall be chaired by the Chairperson or a member elected by the members to chair that meeting.

7.9 For a resolution to be adopted at a members meeting, it must be supported by;

7.9.1 more than 50% of the members present or represented by proxy, in the case of an ordinary resolution; or

7.9.2 at least 75 % of the members present or represented by proxy, in the case of a special resolution.

7.10 The members may consider a matter other than at a meeting, and the members may, instead of voting to make a decision at a meeting, adopt a decision by written consent of the members.

7.11 Proposed written resolutions shall be electronically submitted to voting members for consideration and electronic voting by members and:

7.11.1 voting shall close when votes from all members are received or 20 business days after the call for votes, whichever occurs sooner in accordance with section 60 of the Act; and

7.11.2 the number of votes received shall be at least the number required for a quorum at a meeting of voting members; and

7.11.3 for a resolution to be adopted it must be supported by:

7.11.3.1 more than 50% of the votes received in the case of an ordinary resolution; or

7.11.3.2 at least 75% of votes received in the case of a special resolution.

7.11.4 the results of the voting shall be communicated to all members, within 10 business days of the close of the voting period.

7.12 A special resolution of the voting members is only required for those matters set out in section 65(11), being the amending of the MOI, ratifying actions by BOT SOC or directors in excess of their authority, approving an application to transfer the registration of BOT SOC to a foreign jurisdiction, amalgamating or merging with another non-profit company, approving the voluntary winding up of BOT SOC, or disposing of all or a greater part of the assets of BOT SOC and for the approving of director remuneration in terms of section 66(8) and 66(9).

8. COMPOSITION OF THE "COUNCIL" (BOARD OF DIRECTORS)

8.1 The "Council" shall be the governing body and board of directors of BOT SOC. Council shall consist of a minimum of three and a maximum of nine persons who are elected to office by the members. At all times, at least three directors on the Council shall not be "connected persons", as defined in the Income Tax Act, in relation to one another.

8.2 No single person shall, directly or indirectly, control the decision-making powers of BOT SOC.

8.3 Elected directors shall serve terms of three years each beginning from the date of their appointment and shall retire at the meeting of directors following the expiry of each term of office provided that the terms of office of directors shall be staggered so that the terms of office of at least one third of the directors ends each year.

8.4 Elected directors whose terms of office end in terms of clause 8.3 shall be eligible for re-appointment for a maximum of two further (three total) consecutive terms of office, but once this maximum is reached must then take a sabbatical of at least one year before they may be re-appointed as directors.

8.5 Once a year, in good time before the expiry of terms of office of the relevant directors, electronic notification shall be issued to members indicating which directors' terms will end, which may be elected for a further term of office and if any other of the directors has ceased or will cease to serve. The notice shall include a call for nominations. The members shall elect or re-elect directors as required, either at a meeting or via electronic voting.

8.6 Subject to the composition requirements in terms of clause 8.1, the Council may co-opt up to two persons to serve on the Council as directors to fill a gap in skills, background, or experience. Such co-opted directors shall serve as full voting directors on Council until the next AGM of BOT SOC.

8.7 If the number of directors falls below the minimum required by clause 8.1at any time the remaining directors in office shall be empowered to continue to make decisions and govern BOT SOC, while replacement directors are appointed to meet the requirements.

8.8 The office of a director shall *ipso facto* be vacated if:

8.8.1 the director's term of office ends, and they are not or may not be re-appointed to office;

8.8.2 by written notice to BOT SOC, the director resigns from office;

8.8.3 the director ceases to be eligible to be a director by virtue of the Act;

8.8.4 the director is directly or indirectly interested in any contract or proposed contract with BOT SOC and fails to declare their interest and the nature thereof in the manner required by the Act;

8.8.5 the director is removed from office in accordance with section 71 of the Act.

9. AUTHORITY, VALUES AND DUTIES OF THE COUNCIL

9.1 The authority of BOT SOC's Council of directors to lead and direct the business and affairs of BOT SOC, as set out in section 66(1) is limited or restricted to the extent that the powers of BOT SOC are limited in this MOI.

9.2 In accordance with legal requirements, each of the directors shall exercise their powers:

9.2.1 in good faith and for the purpose for which they were conferred;

9.2.2 in the best interests of BOT SOC; and

9.2.3 with the degree of care, skill and diligence that may reasonably be expected of a person:

9.2.3.1 carrying out the functions of a director; and

9.2.3.2 having the general knowledge, skill and experience of that director.

9.3 Council shall exercise their powers in accordance with the following fundamental values:

9.3.1 **Conscience**: acting with intellectual honesty and independence of mind in the best interests of BOT SOC and its mission;

9.3.2 **Competence**: having the knowledge and skills required for governing BOT SOC effectively;

9.3.3 **Commitment:** diligence in performing duties and devoting sufficient time and energy to the affairs of BOT SOC; and

9.3.4 **Courage:** taking the risks associated with directing and controlling a successful, sustainable non-profit company.

9.4 The duties of the directors shall include (but not be limited to) the following key areas:

9.4.1 devising and overseeing the implementation of the medium and long-term strategy of BOT SOC;

9.4.2 appointing, overseeing, and monitoring the performance and remuneration of the chief executive;

9.4.3 keeping the planning, strategy and work of BOT SOC aligned with the objects of BOT SOC and being familiar with the fundamentals of the projects and programmes in which BOT SOC is engaged;

9.4.4 monitoring the organisational affairs, policies and compliance environment of BOT SOC;

9.4.5 setting the overall budget and interrogating the financial reports and statements and assessing the financial sustainability of BOT SOC and its status as a going concern;

9.4.6 overseeing the implementation and ongoing monitoring of risk management;

9.4.7 responding to strategic challenges in a creative, innovative, proactive and constructive manner;

9.4.8 establishing and maintaining a delegation of authority framework which records the extent and nature of the delegation of authority to employees of BOT SOC and/or committees;

9.4.9 interacting with fellow directors, members and senior executives of BOT SOC in a manner that is beneficial to the work of BOT SOC; and

9.4.10 networking and liaison with members of the broader public, and organisations to broaden the reach, influence and support of BOT SOC and in the best interest and sustainability of BOT SOC.

9.5 Council shall establish a routine review process to evaluate the performance and level of engagement of directors and the Council as a whole, identify gaps, and make recommendations accordingly during the nominations process.

10. INDEMNIFICATION OF DIRECTORS

10.1 A director shall incur no personal liability for the debts or obligations of BOT SOC, by reason only of their service in the capacity of director. Members incur no liability for the debts or obligations of BOT SOC, by reason only of their participation in BOT SOC. Subject to the relevant provisions of this MOI and the Act, each director and other officer of BOT SOC shall be indemnified by BOT SOC against all costs, expenses, and liabilities reasonably incurred by them on behalf and in the interests of BOT SOC and with the authority of Council.

10.2 BOT SOC will indemnify directors, officers or employees of BOT SOC against personal liability for loss, expenses or damages incurred by BOT SOC:

10.2.1 through the insufficiency or deficiency of any security in or upon which any of the funds of BOT SOC are invested;

10.2.2 arising from the bankruptcy, insolvency or delictual acts of any persons with whom monies, securities or effects are deposited; or

10.2.3 occasioned by any error of judgment or oversight on their part; or

10.2.4 through other misfortunes which occur in the execution of the duties of their office, or in relation thereto,

unless the loss, damage or expense:

10.2.4.1 happened through their own gross negligence, gross default, gross breach of duty or wilful misconduct or wilful breach of trust; or

10.2.4.2 is a fine arising from conviction for an offence (provided that BOT SOC will indemnify against fines imposed in circumstances where there is no wrongful conduct by the director, officer or employee, but the fine is imposed by law purely because of the officer's position in BOT SOC).

10.3 BOT SOC may, in the discretion of Council and if funds are available:

10.3.1 advance expenses to a director to defend litigation in any proceedings arising out of the director's service to BOT SOC; and/or

10.3.2 directly or indirectly indemnify a director for expenses contemplated in clause 17.3.1, irrespective of whether it has advanced those expenses, if the proceedings—

10.3.2.1 are abandoned or exculpate the director; or

10.3.2.2 arise in respect of any liability for which BOT SOC may legally indemnify the director.

11. REMUNERATION OF AND CONTRACTS WITH DIRECTORS

11.1 The directors shall not be remunerated for their services as directors but shall serve on Council and any committees of Council in a voluntary capacity. Directors who are also employees of BOT SOC will not be paid for attending Council meetings or for any other director duties, as they are already remunerated by BOT SOC in terms of their employment contracts.

11.2 Directors who are not employed and not remunerated, may be paid the reasonable travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as directors including those of attending and travelling to and from meetings of the directors or of any committee of the directors, as are approved and provided for in the budget.

11.3 BOT SOC may pay any director who serves on any committee or who devotes special attention to the business of BOT SOC, or otherwise performs services which in the opinion of the directors are outside the scope of the ordinary duties of a director, extra remuneration as they may determine, subject to the provisions of clause 13.2 and provided that the remuneration is approved by Council and that BOT SOC holds funds which can be allocated to these expenses.

11.4 If directors, connected persons to directors (or any legal entities in which directors or their connected persons have an interest) are appointed to act in their professional capacity on behalf of BOT SOC or perform services for BOT SOC or contract with BOT SOC or with any entity in which BOT SOC is interested, this appointment shall be subject to compliance with the procurement policy of BOT SOC, the fees or contractual amounts paid shall be reasonable, their appointment and the amounts paid to them shall be declared, and they may not vote on the contract or on any other matter in which they are interested, directly or indirectly.

12. COUNCIL MEETINGS

12.1 BOT SOC's Council may consider a matter other than at a meeting, and the directors may, instead of voting to make a decision at a meeting, adopt a decision by written consent of all of directors. A decision so made shall have the same effect as if it had been approved at a meeting and shall be effective from the date of last signature of the resolution.

12.2 Council shall schedule their meetings in advance, by discussion and agreement at meetings of Council. Additional or unplanned meetings of Council may be called upon the written request of two directors.

12.3 The minimum period of notice required to call a Council meeting is 10 business days from the date on which the notice is issued. The notice must specify the date, time and place of the meeting and the general nature of the business to be discussed. The notice shall be in writing or by electronic communication.

12.4 BOT SOC's Council may conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

12.5 The Council may proceed with a meeting despite a failure or defect in giving notice of the meeting, if all of the directors of BOT SOC:

12.5.1 acknowledge actual receipt of the notice;
12.5.2 are present at a meeting; or
12.5.3 waive notice of the meeting.

12.6 The directors shall appoint a Chairperson from their number who may serve a maximum of three consecutive years as Chairperson before retiring from office of Chairperson for at least one year.

12.7 The Chairperson shall preside over all meetings of Council and perform the tasks set out in this MOI and all of the other usual functions of a Chairperson of BOT SOC. If no Chairperson is elected, or if the Chairperson is not present at a meeting within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to preside at that meeting.

12.8 At a meeting at least once a year the directors shall disclose any ongoing or current conflict of interests to the other directors. A conflict of interest is any situation where a director's personal interests, financial interests or interest they owe to another person or body may influence a director's decision making. The Chairperson shall facilitate a discussion by the directors of any conflicts so declared and:

12.8.1 each director who declares a conflict shall absent themselves from the meeting during the time that the conflict is discussed by the other directors;
12.8.2 the other directors shall consider whether the extent and nature of the conflict is adequately dealt with by the relevant director following the procedure in clause 12.8.1 OR whether the director should be requested or required to leave office for the duration of the conflict of interest; and
12.8.3 the minutes shall note the conflicts declared and decisions made by the directors.

12.9 The rules for directors' meetings are as follows:

12.9.1 the directors shall meet together not less often than four times per year for the dispatch of business but shall otherwise regulate their meetings as they think fit;
12.9.2 the quorum necessary for the transacting of business of Council shall be three directors or half plus one of the total number of directors, whichever is greater;
12.9.3 each director shall have one vote on a matter before Council, except as provided in clause 12.8;
12.9.4 the directors will endeavour to govern by consensus but, where consensus cannot be reached a vote will be taken and, except as otherwise provided in this document, a majority of the votes cast on a resolution will be sufficient to approve that resolution; and

12.9.5 in the case of a tied vote, the Chair may cast a deciding vote, in addition to their deliberative vote; **OR** the matter being voted on shall fail.

12.10 If a matter in which any director (or any person in relation to whom a director is a 'connected person' (as defined in the Income Tax Act)), has conflict of interests as described in 12.8 is placed upon the agenda of a meeting or arises during the course of meetings or correspondence of directors, the relevant director shall:

12.10.1 immediately and in advance of the matter being dealt with, disclose the fact and nature of the personal financial interest;

12.10.2 inform the relevant meeting or electronic communication group or email mailing list of material information and answer questions concerning the personal financial interest;

12.10.3 not take part in any consideration of any matter, and leave the relevant meeting/electronic group/email list after disclosure concerning the personal financial interest; and

12.10.4 not be entitled to vote on or sign any document in relation to the matter in which the personal financial interest arises.

12.11 BOT SOC shall keep minutes of the meetings of Council, and any of its committees, and include in the minutes:

12.11.1 any declaration given by notice or made by a director as required by section 75 with reference to the personal financial interests of the director, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter; and

12.11.2 every resolution adopted by Council, which resolutions shall be dated, sequentially numbered, and will be effective from the date of the resolution, unless the resolution states otherwise.

12.12 Copies of the minutes of every meeting shall be despatched by the person appointed by Council from time to time, to all directors within two weeks of the holding of the meeting.

13. BOT SOC COMMITTEES AND OFFICERS

13.1 In addition to any committees required by this MOI, Council may appoint any officers it considers necessary to better achieve the objects of BOT SOC.

13.2 The authority of any committee of BOT SOC, as set out in section 72(2)(b) and (c) is limited and restricted to the extent that the powers of BOT SOC are limited by clause 2.

13.3 The Council of directors shall appoint a chief executive who shall be accountable to Council and responsible for executing Council instructions and for day to day management of the work of BOT SOC. The chief executive shall be subject to their employment agreement with BOT SOC, and shall be subject to an annual review conducted by Council annually. The chief executive shall appoint other administrators, and managers and other staff as required to manage and administer the day-to-day affairs and business of BOT SOC and these persons shall have delegated to them the powers needed in order to fulfil their duties and shall be responsible to the chief executive.

13.4 The Council of directors may appoint sub-committees of directors, and delegate to any sub-committee any of the authority of Council, and/or include in any sub-committee persons who are not directors. The sub-committees appointed shall be those required to provide focused attention and specific expertise for oversight of ongoing matters fundamental to the work of BOT SOC. Council shall periodically review the performance and composition of sub-committees, and evaluate their ongoing necessity. All sub-committees report and make recommendations to Council, which then takes any resolutions necessary.

14. AFFILIATED OR OTHER ASSOCIATED ORGANISATIONS

14.1 In pursuit of its objects, BOT SOC shall be enabled to enter into arrangements with other legal entities which have a shared or aligned mission with BOT SOC, and to grant recognition to, and work with and alongside these organisations.

14.2 The nature of the relationship with these organisations shall be in accordance with the policies of BOT SOC and governed by written agreements with these organisations.

15. ACCOUNTING RECORDS, BANKING AND RECEIPT OF DONATIONS

15.1 Council shall cause accurate and complete records to be kept which enable BOT SOC to satisfy all legal requirements and prepare financial statements.

15.2 The accounting records shall be securely stored and accessible to Council from the registered office of BOT SOC through any method or platform as the directors agree from time to time.

15.3 The financial transactions of BOT SOC shall be administered via one or more bank accounts which shall be opened in the name of BOT SOC and which shall be operated in terms of authorisation and signatory criteria approved by Council from time to time.

15.4 BOT SOC shall be entitled to accept revocable and conditional donations provided that:

15.4.1 BOT SOC may only accept donations including revocable donations where the reason for the revocation is:

15.4.1.1 a material failure to conform to the designated purposes and conditions of the donation; or

15.4.1.2 any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act;

15.4.2 a donor (other than a donor which is an approved public benefit organisation or an institution or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable the donor or any connected person in relation to the donor to derive some direct or indirect benefit from the application of the donation.

15.5 All member subscriptions are payable to and administered by BOT SOC. Member subscriptions shall be earmarked for the use of the relevant External/ Internal Branch.

15.6 Internal Branches do not have separate legal personhood from BOT SOC, and all funds raised by them shall be payable to and administered by BOT SOC on behalf of the relevant Internal Branches.

15.7 All member subscriptions and funds raised by Internal Branches are included in in BOT SOC's financial and accounting records.

15.8 The use of earmarked member subscriptions or funds raised shall be in terms of the consultative process as established by Council from time to time, which shall include a substantiated request for expenditure, and engagement between the representative of the Internal Branch and a member of the "partnership fund committee".

15.9 External Branches shall be required to share their financial records as agreed between the External Branch and BOT SOC.

16. EXPENDITURE AND USE OF RESOURCES

16.1 The income and property of BOT SOC, however derived, shall be applied solely towards the promotion of its main object or invested and no funds will be distributed to any person other than in the course of undertaking any 'public benefit activity' (as defined in the Income Tax Act) and no portion of the income or assets of BOT SOC may be paid or transferred, directly or indirectly, to the directors or persons appointing directors of BOT SOC; provided that this shall not prevent:

16.1.1 the payment in good faith of reasonable remuneration to any officer or servant of BOT SOC, for any services rendered to BOT SOC;

16.1.2 payment of an amount due and payable by BOT SOC in terms of a *bona fide* agreement between BOT SOC and that person or another;

16.1.3 payment in respect of any rights of that person, to the extent that the rights are administered by BOT SOC in order to advance a stated object of BOT SOC; or

16.1.4 payment in respect of any legal obligation binding on BOT SOC.

16.2 Remuneration (as defined in the Fourth Schedule to the Income Tax Act) may be paid to any employee, office bearer, director or other person in keeping with clause 14 and the policy of BOT SOC from time to time provided that:

16.2.1 no remuneration may be paid if it is excessive, having regard to what is generally considered reasonable in the appropriate sector and in relation to the service rendered;

16.2.2 no person shall be economically benefitted in any way which is not consistent with the objects of BOT SOC;

16.2.3 no remuneration or payment may be calculated as a percentage of the value of turnover, surplus or net revenue of the Society;

16.2.4 remuneration shall be determined within the range and scales as established by BOT SOC from time to time and subject to the restrictions by law;

16.2.5 no employees or officers shall be granted entitlement to ownership of intellectual property belonging to BOT SOC;

16.2.6 bonus payments are only permissible as part of a structured salary package; and

16.2.7 the provisions of clause 10.10 shall apply to any decision taken regarding remuneration for directors, officers or their connected persons.

16.3 BOT SOC shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a director or staff of BOT SOC or of a related or inter-related Society, or to a person related to any director, unless it

16.3.1 is in the ordinary course of BOT SOC's business and for fair value;

16.3.2 constitutes an accountable advance to meet:

16.3.2.1 legal expenses in relation to a matter concerning BOT SOC; or

16.3.2.2 anticipated expenses to be incurred by the person on behalf of BOT SOC;

16.3.3 is to defray the person's expenses for household and furniture removal costs if changing the area in which they reside at BOT SOC's request; or

16.3.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

16.4 BOT SOC is a non-partisan entity and BOT SOC shall not use its resources, directly or indirectly, to support, advance or oppose any political party.

16.5 No expenditure shall be incurred by or on behalf of BOT SOC except on authority of Council or of the person or persons to whom Council has generally or specifically delegated the power to authorise expenditure.

17. SCHOLARSHIPS, BURSARIES, AND AWARDS FOR STUDY

17.1 All scholarships, bursaries or awards granted by BOT SOC will be *bona fide* and be granted to an individual on grounds of objective merit or need.

17.2 No scholarship, bursary or award granted will be:

17.2.1 revocable, otherwise than for reasons of a material failure to conform to the designated purposes and conditions of the scholarship, bursary or award;

17.2.2 subject to conditions which would enable the donor of the funds of the scholarship, bursary or award or any connected person in relation to the donor, to derive some direct benefit from the application of the scholarship, bursary or award; or

17.2.3 granted to any person who is or will become an employee of the donor of the funds of the scholarship, bursary or award or BOT SOC (or any associated institution in relation to the donor or Society) or any relative of the person, unless circumstances indicate that the scholarship, bursary or award would have been granted to the person or his or her relative, even if that person had not been an employee of the donor, BOT SOC or associated institution.

17.3 All decisions regarding the granting of scholarships, bursaries and awards will be made by a duly constituted committee of at least three persons, none of whom shall be persons who are connected persons in relation to the donors or the person to whom the scholarship, bursary or award is granted.

17.4 All scholarships, bursaries and awards granted in respect of overseas study, research or teaching will be subject to an undertaking by the person to whom the scholarship, bursary or award is granted –

17.4.1 to apply the knowledge obtained from the study, research or teaching immediately after completion thereof, in the Republic of South Africa for a period of at least the period that the study, research or training was funded by the organisation; or

17.4.2 to refund the full amount of the scholarship, bursary or award should he or she decide not to apply the knowledge as contemplated in clause 16.4.1.

18. ANNUAL FINANCIAL STATEMENTS AND RETURNS

18.1 The directors shall, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the members of BOT SOC the annual financial statements which shall:

18.1.1 be prepared within six months of the end of each financial year;

18.1.2 if audited, include an auditor's report;

18.1.3 include a report by the directors as to the activities and financial state of BOT SOC; and

18.1.4 be approved by the directors of BOT SOC and signed by an authorised director.

18.2 A copy of the annual financial statement shall, at least 15 business days prior to the relevant meeting, be sent to every member of BOT SOC.

18.3 BOT SOC shall file annual returns:

18.3.1 annually with the Companies and Intellectual Property Commission within 30 business days of each anniversary of its date of incorporation; and

18.3.2 for income and other taxes as required with the Commissioner for South African Revenue Services,

along with the payment, documents and information which may be required from time to time.

19. NONPROFIT ACT

19.1 The directors may apply for BOT SOC to be registered as a Non-Profit Organisation and shall, if so registered, ensure that BOT SOC complies with all the requirements of the Non-Profit Organisations Act No. 71 of 1997.

20. CHANGING MEMORANDUM OF INCORPORATION

20.1 This MOI of BOT SOC may be altered or amended in the manner and for the reasons set out in the Act, provided that any amendment under section 16(1)(c) shall require the following:

20.1.1 a special resolution by members, which may take the form of a resolution to substitute an updated MOI for the one which was then registered or of making one or more alterations to the MOI and which may include a change of the name of BOT SOC;

20.1.2 if BOT SOC is exempted from payment of normal tax a copy of any amendment shall be sent to the Commissioner for the South African Revenue Service or their authorised representative;

20.1.3 if BOT SOC is registered as a Non-Profit Organisation then a copy of any amendments shall be sent to the Directorate of Non-Profit Organisations.

20.2 BOT SOC shall publish a notice of any alteration of the MOI made in terms of section 17(1) to correct a patent error in spelling, punctuation, reference, grammar or similar defect, by delivering a copy of these changes to each member by electronic mail provided that the members concerned have consented to the delivery of the communication by electronic mail.

21. WINDING UP, DE-REGISTRATION OR DISSOLUTION

21.1 Upon its winding up, de-registration or dissolution no past or present member or director of BOT SOC, or person appointing a director of BOT SOC, is entitled to any part of the net value of BOT SOC, but the assets of BOT SOC remaining after the satisfaction of all its liabilities shall be given or transferred to some other organisation or organisations to be determined by the members of BOT SOC at or before the time of its dissolution, or failing determination, by a court and which:

21.1.1 are non-profit,

21.1.2 have objects similar to its main object;

21.1.3 if BOT SOC is so registered, is/are registered in terms of the Nonprofit Organisations Act, 1997; and

21.1.4 if BOT SOC is exempt from income tax, donations tax and estate duty, under the relevant laws of the country is/are an entity as listed below and which shall be required to use the assets solely for the purpose of carrying on public benefit activities similar to those of BOT SOC:

21.1.4.1 a public benefit organisation, approved in terms of section 30 of the Income Tax Act; or

21.1.4.2 an institution, board or body contemplated in section 10(1)(cA)(i), of the Income Tax Act.