



CONSTITUTION

OF

THE MORTGAGE ORIGINATION REGULATORY COUNCIL OF

SOUTH AFRICA

(MORCSA)

SALIENT STRUCTURE OF THE COUNCIL

MEMBERSHIP	VOTING	EXCO
Corporate Members Accredited Mortgage Consultants (AMC) Mortgage Consultants Awaiting Accreditation (MCAA)	Only Corporate Members (i.e. Members other than AMCs and MCAAs) can vote in either Voting Group 1 or Voting Group 2	6 members 5 Voting Members, Plus the CEO
	Voting Group 1: Directly employ 50 or more AMC / MCAA; and/or Have direct contracts with 50 or more Aggregators /; and Have 2 or more direct contracts with Credit Providers (Banks)	First Exco is appointed by the Founding Corporate Members
	Voting Group 2: All Corporate Members not falling in Voting Group 1	Exco is elected by the Voting Members in General Meeting from Corporate Members by simple majority as follows: 3 elected by Voting Group 1 2 elected by Voting Group 2
	Each Corporate Member has one vote and will vote in either Group 1 or Group 2. The relevant majorities will be determined in each Voting Group. Once the vote of each Voting Group has been determined, the resolution will only be deemed to be passed if passed by the requisite majority required (depending on whether it is an Ordinary Resolution or a Special Resolution) by both Voting Groups. Ordinary Resolution: agreed to by a simple majority of the votes of the Members of both Voting Group 1 and Voting Group 2 Special Resolution: agreed to by a majority of 75% of the votes of the Members of both Voting Group 1 and Voting Group 2	The Voting Members of Exco will appoint the Chairperson of the Exco The Chairperson will under certain circumstances exercise a second or casting vote

OMBUDSMAN	DISCIPLINARY TRIBUNAL	GENERAL COMPLAINTS PROCESS
Exco will appoint the first Ombudsman	CEO of the Association will be the Chairperson of the Tribunal	If a complaint is received, by the Ombudsman or the Association through the Exco, such complaint will be referred to an Investigating Officer
Composition of the Ombudsman Committee: The Ombudsman 1 Exco Member	Tribunal Panel will consist of 3 persons elected by Exco and for purposes of a Hearing will consist of at least: The Chairperson or Deputy Chair	The Investigating Officer will investigate the complaint. The Investigating Officer may refer the matter and/or his recommendations to the

1 Consumer Committee Member	and/or 1 Tribunal Panel Member	Disciplinary Tribunal
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1. Definitions and interpretation

1.1 Definitions

In this Constitution, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

- 1.1.1 "**Accredited Mortgage Consultant**" or "**AMC**" means a Mortgage Consultant admitted to membership of the Association in accordance with clause 8.4;
- 1.1.2 "**Admission Fee**" means the amount (if any) determined by the Exco from time to time which is payable by a Member for admission to Membership;
- 1.1.3 "**Affiliated Association**" means an association affiliated to the Association as contemplated in clause 8.7;
- 1.1.4 "**Aggregator**" means a person or entity (other than a Mortgage Consultant), who or which:
 - 1.1.4.1 Engages in the business of Mortgage Origination; and
 - 1.1.4.2 Submits applications for mortgage secured finance indirectly to Credit Providers, i.e. via the agreement of an Originator with a Credit Provider for the submission of applications;
- 1.1.5 "**Annual Subscription Fee**" means the amount determined by the Exco from time to time which is payable by a Member;
- 1.1.6 "**Association**" means the Mortgage Origination Regulatory Council of South Africa or "**MORCSA**";
- 1.1.7 "**Budget**" means the budget adopted by the Exco from time to time in accordance with clause 25;
- 1.1.8 "**Business Day**" means any day other than a Saturday, Sunday or a gazetted national public holiday in the Republic of South Africa;
- 1.1.9 "**Chairperson**" means the chairperson of the Exco elected by the Voting Members of the Exco from time to time;
- 1.1.10 "**Chief Executive Officer**" means the person appointed pursuant to clause 21;
- 1.1.11 "**Code of Practice**" or "**Code**" means any code of practice promulgated by the Exco in accordance with clause 16;

- 1.1.12 "Companies Act" means the Companies Act, No. 71 of 2008, as amended or replaced from time to time;
- 1.1.13 "Complaint(s)" means:
- 1.1.13.1 in relation to complaints before the Ombudsman, any complaint made by a Consumer against a Member arising out of the Member's business of Mortgage Origination, and
- 1.1.13.2 in relation to complaints before the Disciplinary Tribunal, any complaint against a Member arising out of the Member's business of Mortgage Origination made by a Consumer or Member, or the Exco, or a referral made by the Ombudsman,
- and where the complaint is made in terms of and in the manner envisaged in the applicable provisions of this Constitution and the relevant policies, codes or rules promulgated by the Association and/or the Exco and/or the Ombudsman Committee from time to time or any gazetted regulations or code governing the business of Mortgage Origination;
- 1.1.14 "Constitution" means this constitution, as may be amended from time to time;
- 1.1.15 "Consumers" means members of the public who deal with Members in relation to the Member's business of Mortgage Origination, whether as borrowers, applicants, guarantors, prospective borrowers or prospective guarantors, or who in any other way seek the services of Members in the ordinary course of business in the Industry;
- 1.1.16 "Consumer Committee Member" means Ombudsman Committee Members appointed in accordance with clause 35.5.3 and meeting the eligibility criteria in clause 35.8;
- 1.1.17 "Corporate Member" means a Member (other than a Mortgage Consultant Awaiting Accreditation or Accredited Mortgage Consultant) admitted to membership of the Association in accordance with clause 8.2. For the avoidance of any doubt, should an AMC trade as a sole proprietor or in partnership with another or other AMCs, that sole proprietor or partnership will be, for the purposes of voting, a Corporate Member. Notwithstanding the aforesaid, no separate or additional Corporate Membership fee will be payable by the sole proprietor or partnership, provided that the:
- 1.1.17.1 sole proprietorship does not employ or contract more than 5 (five) Accredited Mortgage Consultants or Mortgage Consultants Awaiting Accreditation;

- 1.1.17.2 the partnership does not employ or contract more than 5 (five) Accredited Mortgage Consultants or Mortgage Consultants Awaiting Accreditation and/or does not comprise more than 5 (five) partners;
- 1.1.18 “**CE**” means the Continuing Education obligations of Members scored on an appropriate system as provided for in the Code of Practice and as required pursuant to the Code of Practice for the renewal of Membership, once such CE programme is introduced by Exco;
- 1.1.19 “**Credit Provider**” means any individual, corporation, bank, financial institution or other entity that lends or provides mortgage secured finance to Consumers;
- 1.1.20 “**Direction to Comply**” means an order made by the Ombudsman directing a Member to act or cease acting in a particular way;
- 1.1.21 “**Disciplinary Rules**” means the rules relating to Complaints against Members promulgated in accordance with clause 16;
- 1.1.22 “**Disciplinary Tribunal**” means the Association’s Disciplinary Tribunal established in terms of this Constitution;
- 1.1.23 “**Exco**” means the Executive Committee of the Association from time to time as formed in accordance with clause 20;
- 1.1.24 “**Exco member**” means a person appointed or elected from time to time to the Exco of in accordance with this Constitution;
- 1.1.25 “**Financial Year**” means the year beginning on the first day of March and ending on the last day of February each year;
- 1.1.26 “**Founding Corporate Members**” means BetterGroup Limited, ooba Limited and the Multi Net Real Estate CC;
- 1.1.27 “**General Meeting**” means a meeting of Members duly called and constituted in accordance with this Constitution and any adjourned holding of it, it being recorded that although a single General Meeting may be held, the voting of Voting Groups 1 and 2 shall be separately conducted and determined, and the relevant majorities for any resolutions shall be required to be achieved by both Voting Groups for any resolution of the Association to be passed;
- 1.1.28 “**Industry**” means the Mortgage Origination industry of South Africa;
- 1.1.29 “**Member**” means any person entered in the National Register as a Corporate Member, an Accredited Mortgage Consultant and / or a Mortgage Consultant Awaiting Accreditation;

- 1.1.30 **"Membership"** means membership of the Association;
- 1.1.31 **"Misconduct"** means conduct involving:
- 1.1.31.1 fraud or dishonesty in the conduct of its mortgage origination business whether in regard to Consumers or Credit Providers;
- 1.1.31.2 neglecting, refusing or failing to comply with any provision of the Constitution, the Code of Practice, the Ombudsman Rules, the Disciplinary Rules, and / or any policies, codes or rules promulgated by the Exco from time to time;
- 1.1.31.3 misrepresentation of material facts or making a false statement or gross negligence in relation to an application for Membership, including but not limited to misrepresentation of the length of experience in the Industry;
- 1.1.31.4 misrepresentation of material facts, making a false statement or gross negligence concerning CE and / or the calculation of CE points earned or to be earned as a Member;
- 1.1.31.5 misrepresentation of material facts, making a false statement or gross negligence in relation to any Consumer including as part of any application to any Credit Provider;
- 1.1.31.6 a breach of any legislation governing or relating to the conduct by Members of Mortgage Origination or their Mortgage Origination business in the Industry;
- 1.1.31.7 whether or not any conduct referred to in paragraphs 1.1.31.1 to 1.1.31.6 is involved, conduct:
- 1.1.31.7.1 which indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other Members; or Credit Providers; or the Association; or Consumers; and / or
- 1.1.31.7.2 conduct prejudicial to the reputation or interests of the Association and / or the Industry; or
- 1.1.31.7.3 unethical conduct or conduct unbecoming of a Member; or
- 1.1.31.7.4 which involves a Member knowingly maintaining either a direct or indirect business relationship with regards mortgage finance applications with a Member who / that has been expelled or suspended pursuant to the provisions of this Constitution, the Code of Practice or the Disciplinary Rules; or

- 1.1.31.8 such other conduct (whether by way of act or omission) as the Exco may from time to time prescribe as misconduct for the purposes of this Constitution;
- 1.1.32 "**Mortgage Consultant**" means a natural person that conducts the business of Mortgage Origination;
- 1.1.33 "**Mortgage Consultant Awaiting Accreditation**" or an "**MCAA**" means a person admitted to membership of the Association in accordance with clause 8.3;
- 1.1.34 "**Mortgage Origination**" means the process, by a person or legal entity (other than an employee or agent of a credit provider) of soliciting, completing or concluding credit agreements that are mortgage agreements (as contemplated by the National Credit Act, i.e. are secured, directly or indirectly, by way of the mortgage of immovable property), for or on behalf of a credit provider or a Consumer, where such mortgage origination is undertaken for reward. For the purposes hereof, "completing or concluding credit agreements" will include:
- 1.1.34.1 advising or assisting the Consumer in the completion of the application to the credit provider for the credit agreement concerned;
- 1.1.34.2 advising and/or assisting the Consumer in regard to the credit application, including in regard to different mortgage agreements that may be available, the affordability of the mortgage agreement for the Consumer and/or other aspects specific to the mortgage agreement application process.
- 1.1.34.3 submitting any application for a mortgage agreement to a credit provider;
- 1.1.35 "**National Register**" means the register of all Members maintained by the Association;
- 1.1.36 "**Nominated Representative**" means a natural person appointed by a Corporate Member to be that Member's representative at specified meetings in accordance with clause 13.1;
- 1.1.37 "**Ombudsman**" means the person for the time being appointed to and occupying the position of Ombudsman pursuant to this Constitution;
- 1.1.38 "**Ombudsman Annual Report**" means the annual report of the Ombudsman to be presented to the Exco;
- 1.1.39 "**Ombudsman Committee**" means the Ombudsman Committee established in accordance with clause 35;

- 1.1.40 "Ombudsman Committee Member" means a member of the Ombudsman Committee;
- 1.1.41 "Ombudsman Office" means the office of the Ombudsman established under this Constitution;
- 1.1.42 "Ombudsman Rules" means the rules made, from time to time, by the Ombudsman Committee for the purposes of the Ombudsman Service;
- 1.1.43 "Ombudsman Service" means the service provided by the Ombudsman Office established under this Constitution and the Ombudsman Rules and unless the context indicates the contrary, includes the Ombudsman;
- 1.1.44 "Ordinary Resolution" means a resolution agreed to by a simple majority of the votes of the Members of both Voting Group 1 and Voting Group 2, present in person or by proxy, and entitled to vote, at a general meetings of such Members;
- 1.1.45 "Originator" means a person or entity (other than a Mortgage Consultant) who or which:
- 1.1.45.1 Engages in the business of Mortgage Origination; and
 - 1.1.45.2 Has a direct Mortgage Origination agreement with one or more Credit Providers;
- 1.1.46 "Registered Office" means the Registered Office for the time being of the Association;
- 1.1.47 "Special Resolution" means a resolution agreed to by a majority of 75% of the votes of the Members of both Voting Group 1 and Voting Group 2, present in person or by proxy, and entitled to vote, at a general meeting of such Members;
- 1.1.48 "Voting Group 1" means the group of Members consisting of all Corporate Members in good standing with the Association who are Originators that:
- 1.1.48.1 have two or more direct Mortgage Origination agreements with Credit Providers; and
 - 1.1.48.2 directly employ 50 (fifty) or more Accredited Mortgage Consultants and/or Mortgage Consultants Awaiting Accreditation; and/or
 - 1.1.48.3 have direct contracts with 50 (fifty) or more Aggregators;
- 1.1.49 "Voting Group 2" means all Corporate Members not part of Voting Group 1;

- 1.1.50 "Voting Members of Exco" means the members of Exco save for the Chief Executive Officer.
- 1.2 Interpretation
- 1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 1.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 1.2.3 references to a "**person**" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.2.4 if a definition imposes substantive rights and obligations on a Member, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.5 any definition, wherever it appears in this Constitution, shall bear the same meaning and apply throughout this Constitution unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.6 if there is any conflict between any definitions in this Constitution then, for purposes of interpreting any clause of the Constitution or paragraph of any annexe to this Constitution, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Constitution;
- 1.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.2.8 where the day upon or by which any act is required to be performed is not a Business Day, the Association shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- 1.2.9 any provision in this Constitution which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Constitution shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Constitution, without invalidating the remaining provisions of this

Constitution or affecting the validity or enforceability of such provision in any other jurisdiction;

- 1.2.10 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply, and whenever the word "*including*" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

2. **Name**

The name of the Association shall be the Mortgage Origination Regulatory Council of South Africa.

3. **Acronym**

The Association shall be commonly referred to as MORCSA.

4. **Objects**

The objects for which the Association is established are:

- 4.1 to ensure the long-term sustainability and credibility of the Industry;
- 4.2 to support, promote and protect the interests of Members and Consumers;
- 4.3 to regulate Members and the Industry through transparent processes that enhance professionalism, sound and ethical business practices and service excellence;
- 4.4 to provide for the resolution of complaints by Consumers against Members or by Credit Providers against Members, and to provide credible procedures and forums for the handling and resolution of Complaints;
- 4.5 to support and sponsor educational programs, meetings and seminars with a view to informing Members of aspects of the Industry;
- 4.6 to support and promote the objects of the Ombudsman Office and to ensure that at all times the Ombudsman Office has the financial resources, staff, technology, research facilities and other resources to ensure the timely, efficient and effective resolution of Complaints;
- 4.7 to co-operate with the South African Government in relation to the efficient and effective operation of the Industry and its regulation; and

- 4.8 to perform all such other lawful acts as are incidental or conducive to the attainment of the objects of the Association.

The objects of the Association referred to in clause 4, do not restrict or prohibit the exercise of any power or capacity available in law to the Association.

5. **Corporate status of the Association**

The Association shall be a voluntary *universitas* association constituted and incorporated in terms of the common law of South Africa with perpetual succession notwithstanding any change in the number or identity of its Members from time to time. The Association shall have the objectives and powers set out in 4 and 23 and may exercise all the powers of a corporate body including the owning of assets and the right to conduct legal proceedings in its own name. The Members shall be bound by all the provisions of this Constitution and all regulations and decisions of the Exco. The Association shall be formally established by way of a signed resolution of the Founding Corporate Members and the initial members of the Exco shall be the persons specified in the founding resolution, it being recorded that the initial members of the Exco are those persons nominated for that purpose by the interim steering committee.

6. **Use of the property by the Association**

6.1 Application of Association Property

The Association will, as best as it is able, apply its income and property for the objects of the Association. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to any Member.

6.2 Payments of Association Expenses

Nothing in clause 6.1 prevents the payment in good faith of market related and arm's length:

- 6.2.1 remuneration to the Chief Executive Officer or any other officers or employees of the Association or to any Member in return for any services actually rendered by them to the Association;
- 6.2.2 interest on money borrowed from any Member for any of the purposes of the Association (provided the interest rate does not exceed the rate charged by the Association's bank on similar borrowings);
- 6.2.3 rent for premises let by any Member to the Association; or
- 6.2.4 payment for any goods supplied to the Association by any Member.

6.3 Remuneration Payments

6.3.1 No remuneration or other benefit may be paid or given by the Association to any member of the Exco except:

6.3.1.1 for payment of *per diems* allowance and the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of an Exco member; or

6.3.1.2 for any service rendered to the Association in a professional or technical capacity, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Exco.

7. Use of property on winding up and on revocation of endorsement

Upon its dissolution the assets of the Association remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or associations or institutions which themselves have objectives similar to the objectives of the Association at or before the time of dissolution. The Members in general meeting shall by Ordinary Resolution determine the association(s) or institution(s) to which the remaining assets are to be given or transferred. Failing such determination by the Members a majority of the Exco members at a meeting of the Exco called for that purpose shall make a determination. Failing such determination by the Exco the remaining assets will be given or transferred to such other association(s) or institution(s) as directed by order of the High Court of South Africa (Cape of Good Hope Provincial Division).

8. Members

8.1 The Members consist of:

8.1.1 Corporate members;

8.1.2 Accredited Mortgage Consultants; and

8.1.3 Mortgage Consultants Awaiting Accreditation.

8.2 Corporate members

8.2.1 The following persons or entities shall be eligible for Corporate membership in the Association:

8.2.1.1 Originators;

8.2.1.2 Aggregators,

and as further contemplated by the definition of Corporate Member in clause 1.1.17 above.

8.2.2 In order to be eligible for membership to the Association as a Corporate Member, any applicant entity must meet the criteria for membership established by the Exco from time to time, which criteria shall include, and in the absence of criteria established by the Exco, shall consist of, the following:

8.2.2.1 that the applicant entity must be engaged, or intending to be engaged, in the business of Mortgage Origination;

8.2.2.2 that only Accredited Mortgage Consultants or Mortgage Consultants Awaiting Accreditation are employed by or contracted to the applicant to interface with Consumers for the purposes of Mortgage Origination;

8.2.2.3 has agreed to be bound by this Constitution, the Code of Practice and all other Association regulations; including the Ombudsman Rules and any rules, regulations, policies and awards made by the Ombudsman; and

8.2.2.4 has fully completed an application for Membership of the Association.

8.2.3 If the applicant meets the above listed minimum criteria, and any other criteria established by the Exco from time to time, and pays the Admission Fee and Annual Subscription Fee in the manner and at the time as specified by Exco from time to time, it shall be registered by the Association as a Corporate Member and shall receive a uniquely numbered identification card indicating its Corporate Member accreditation.

8.3 Mortgage Consultants Awaiting Accreditation

8.3.1 The Exco shall establish from time to time the criteria for membership as a Mortgage Consultant Awaiting Accreditation. Such criteria shall include, and in the absence of criteria established by Exco, shall consist of, that the applicant:

8.3.1.1 is an individual natural person;

8.3.1.2 is not an unrehabilitated insolvent or subject to insolvency proceedings, whether provisional or final;

8.3.1.3 does not have a criminal record for any offence involving fraud or dishonesty;

8.3.1.4 is covered by a professional indemnity insurance policy to a minimum sum insured as may be specified, from time to time, by Exco;

- 8.3.1.5 pays the Admission Fee and the Annual Subscription Fee in the manner and at the time as specified by Exco from time to time;
 - 8.3.1.6 has agreed to be bound by this Constitution, the Code of Practice and all other Association regulations; including the Ombudsman Rules and any rules, regulations, policies and awards made by the Ombudsman; and
 - 8.3.1.7 has fully completed an application for Membership of the Association.
- 8.3.2 For so long as the applicant meets the above listed minimum criteria, and any other criteria established by Exco from time to time, he/she shall be registered by the Association as a Mortgage Consultant Awaiting Accreditation and shall receive a uniquely numbered identification card indicating his/her MCAA accreditation.
- 8.4 Accredited Mortgage Consultants
- 8.4.1 The Exco shall establish from time to time the criteria for membership as an Accredited Mortgage Consultant. Such criteria shall include, and in the absence of criteria established by the Exco, shall consist of, that the applicant:
- 8.4.1.1 is prior to becoming an AMC, a Mortgage Consultant Awaiting Accreditation registered with the Association;
 - 8.4.1.2 has operated as an MCAA within the Industry for a continuous 12 month period immediately prior to applying for membership as an Accredited Mortgage Consultant;
 - 8.4.1.3 is not an unrehabilitated insolvent or subject to insolvency proceedings, whether provisional or final;
 - 8.4.1.4 does not have a criminal record;
 - 8.4.1.5 is able to provide written references, to the satisfaction of Exco, as to his/her character from two senior business persons operating in the Mortgage Origination or financial services Industry;
 - 8.4.1.6 is covered by a professional indemnity insurance policy to a minimum sum insured as may be specified, from time to time, by Exco;
 - 8.4.1.7 agrees to be bound by this Constitution, the Code of Practice and all other Association regulations; including the Ombudsman Rules and any rules, regulations, policies and awards made by the Ombudsman;
 - 8.4.1.8 has successfully completed the Association entrance examination or has automatically qualified on the basis that the applicant has

operated in a position analogous to that of an AMC for a continuous period of 24 months prior to implementation of the Association and applied for membership as an AMC within 6 months of the implementation of the Association;

8.4.1.9 pays the Admission Fee and the Annual Subscription Fee in the manner and at the time as specified by Exco from time to time; and

8.4.1.10 has fully completed an application for Membership of the Association.

8.4.2 For the period that he/she meets the minimum and any other criteria in such manner as established by Exco from time to time for registration as an MCAA, but does not meet the listed minimum criteria in 8.4.1, and any other criteria and in the manner as established by Exco from time to time for registration as an AMC, he/she shall be registered by the Association as an MCAA. For as long as the applicant meets the above listed minimum and any other criteria and in the manner as established by Exco from time to time for registration as an AMC, he/she shall be registered by the Association as an AMC and shall be entitled to refer to him/herself in the conduct of his/her business as an AMC and be entitled to receive from the Association, a uniquely numbered identification card indicating his/her AMC accreditation.

8.4.3 In the event that the applicant for membership as an AMC fails the entrance examination referred to in 8.4.1.8 above, then such applicant shall be entitled to re-write the entrance examination within a period of 2 months after the results of the first examination become known. Should the applicant not re-write the examination within the 2 month period, or fail the re-written examination, then, while and on condition that the applicant meets the applicable MCAA accreditation criteria as set out herein, the applicant shall be accredited by the Association as an MCAA, provided that if the applicant has not re-written and passed the exam within a three year period since being registered as an MCAA, the applicant's registration as an MCAA shall lapse.

8.5 The Exco may from time to time prescribe other rules relating to the criteria which must be met before any person becomes or remains a Member.

8.6 The Exco may from time to time establish other categories of Membership and may make appropriate provisions for the granting of such Membership and the conditions of such Membership.

8.7 Affiliated Associations

Exco may admit as Affiliated Associations, any other association with similar objects as the Association, whether operating in South Africa, or in other countries. Such affiliation shall be on terms as decided by Exco. The Association may furnish to an Affiliated Association

publications and communications distributed to Members, but Affiliated Associations shall not be entitled to vote or play any role in the governance of the Association.

9. Application for membership

9.1 Form of Application

An application for membership must be made to the Association in writing in a form determined by the Exco.

9.2 Applications for memberships

Subject to 9.1 an application form to be completed by a person making application to become a Member of the Association or Affiliated Association must:

- 9.2.1 identify the category of membership for which application is made;
- 9.2.2 state that the applicant agrees to be bound by this Constitution, the Disciplinary Rules, the Ombudsman Rules, the Internal Dispute Resolution Procedures and the Code of Practice;
- 9.2.3 in the case of an applicant that is seeking to become a Corporate Member, identify who is to be the Nominated Representative of the applicant;
- 9.2.4 state that the Admission Fee and the Annual Subscription Fee must be paid to the Association at the time the application is made;
- 9.2.5 specify such information that is required by the Exco to allow consideration for membership.

9.3 Approval of application

9.3.1 Upon application for Membership to the Association being made to the Exco, the Exco shall consider the application and then approve or decline the application.

9.3.2 The Exco:

- 9.3.2.1 Must refuse to admit a person as a Member if that person is not eligible to be a Member; and / or
- 9.3.2.2 Must admit a person as a Member if that person is eligible to be a Member; and / or

9.3.2.3 May, by majority vote, request further information in respect of the application for Membership.

9.3.3 If the Exco refuses to admit a person as a Member, it is obliged to give written reasons for refusing.

9.3.4 Any person who is refused Membership by the Exco may appeal the decision to a special committee to be established by the CEO, to have the refusal by the Exco overturned. An appeal application must be made in writing and sent to the CEO on the prescribed form accompanied by the appropriate fee (if any) as promulgated by the Exco from time to time.

9.3.5 If an appeal application is successful, the applicant will be informed and accordingly entered into the National Register by the Exco.

9.4 Delegation

The Exco may at any time delegate, on such terms as it thinks fit, to such persons as they may determine, the power to:

9.4.1 receive and consider applications (including all necessary information) for Membership;

9.4.2 admit persons as Members;

9.4.3 re-admit such persons;

9.4.4 refuse applications for Membership.

9.5 National Register of all Members

9.5.1 The Exco will maintain a National Register of all persons admitted as a Member in any class. The register will identify each Member by reference to:

9.5.1.1 whether they are a Corporate Member, Accredited Mortgage Consultant, or Mortgage Consultant Awaiting Accreditation;

9.5.1.2 the persons who are the Nominated Representatives of each Corporate Member;

9.5.1.3 the address to which notices are to be sent by the Association;

9.5.1.4 full name and identity number, or in the case of a Corporate Member that is not a sole proprietor, its registration number;

9.5.1.5 Admission Fee (if any) payable by the Member and whether it is paid or in arrears;

9.5.1.6 Annual Subscription Fee (if any) payable by the Member and whether it is paid or in arrears;

9.5.1.7 date on which the Member's application was approved; and

9.5.1.8 such other information as is deemed appropriate by the Exco.

9.5.2 The National Register will constitute the official roll for the purposes of identifying Corporate Members eligible to vote at meetings of Members and to nominate for positions on Exco. The National Register will be conclusive evidence of the status of each Member.

10. Fees to be paid by Members

10.1 Admission Fee

10.1.1 Admission Fees must be paid in the amount and for the period commencing on such date or dates as is determined by Exco from time to time, or by such other method and / or at such other time as is determined by Exco from time to time.

10.1.2 The Admission Fee is payable to the Association.

10.1.3 Where an Originator or Aggregator is a member of a group of companies, the Admission Fee shall be payable only by the holding company. Notwithstanding this, and for the avoidance of any doubt, each group company that is an Originator or Aggregator shall be required to be a member of the Association.

10.2 Annual Subscription Fee

10.2.1 Annual Subscription Fees must be paid in the amount and for the period commencing on such date or dates as is determined by the Exco from time to time, or by such other method and / or at such other time as is determined by the Exco from time to time.

10.2.2 Annual Subscription Fees are to be paid to the Association.

10.2.3 Where an Originator or Aggregator is a member of a group of companies, the Annual Subscription Fees shall be payable only by the holding company.

10.3 Exco may, from time to time and in the amount and manner as determined by Exco, levy other fees on Members.

10.4 Waiver

The Exco may at any time fix at different rates, suspend or waive payment of the Admission Fee or Annual Subscription Fee in favour of any Member.

10.5 Fees in arrears

Without derogating from right to deregister a Member, if any Member fails to pay to the Association or its nominated agent on the due date determined by the Exco, any fee that is due and payable by that Member, that Member may not be entitled, while the fee remains due and unpaid, to any rights or benefits of membership, including but not limited to the right to:

- 10.5.1 nominate a Member as a candidate for election to the Exco;
- 10.5.2 vote in any ballot;
- 10.5.3 refer to himself / herself / itself as a Member of the Association;
- 10.5.4 receive notices of meetings of Members or any other publications or communications to Members; or
- 10.5.5 attend, be counted in forming a quorum for, exercise any vote at, or be a proxy or Nominated Representative for any Member for any general meeting.

11. Obligations on Members

No Member may engage in Misconduct and Members are bound by this Constitution and must comply with all directions, policies, codes and rulings related to ethics, standards, and professional conduct which are promulgated by the Association, the Exco and the Ombudsman Committee from time to time.

12. Rights of Members

12.1 Membership Rights

- 12.1.1 All Members are entitled to attend meetings of Members and to participate in the governance of the Association in the manner envisaged in this Constitution.
- 12.1.2 Only Members who are not under suspension from the Association and have paid all amounts due and payable to the Association shall be considered as being in good standing with the Association and in the case of Corporate Members, shall accordingly be entitled to vote at Member's meetings.
- 12.1.3 The Exco may provide Affiliated Associations with notice of meetings of Members, in which event the Affiliated Associations may, if invited, attend such meetings of Members but will not be entitled to exercise voting rights at any such meeting of Members or to participate in the governance of the Association.

12.2 No joint Members

Joint Memberships of the Association are not permitted.

12.3 Right to use Association logo

Members in good standing may use the logo of the Association in the course of their business in accordance with the Exco's policy as to the use of the logo. The Exco may at its discretion prevent a Member from using the logo or from using the logo in a particular manner.

13. Representation of Corporate Members

13.1 Nominated Representative

Each Corporate Member shall by notice in writing to the Exco appoint a representative to act for such Member in meetings and proceedings of the Association and may by like notice, from time to time, appoint an alternate and remove any such representative and appoint another person in their place.

13.2 Privileges of Nominated Representative

The Nominated Representative shall be entitled to exercise the voting rights of the Corporate Member appointing them (except the ability to appoint a representative).

14. Cessation of membership

14.1 Suspension

A Member's membership of the Association shall be automatically suspended if the Member:

14.1.1 in the case of a Corporate Member, is provisionally liquidated, or in the case of any other Member, is provisionally declared insolvent;

14.1.2 ceases to be covered by professional indemnity insurance up to at least the minimum amount prescribed by the Exco from time to time;

14.1.3 fails to pay any fee payable by that Member on the date nominated by the Exco for payment; or

14.1.4 is suspended by the Association under this Constitution.

14.2 Cessation

A Member automatically ceases to be a Member if the Member:

14.2.1 dies;

- 14.2.2 in the case of a Corporate Member, is finally liquidated, or in the case of any other Member, is finally declared insolvent;
- 14.2.3 resigns that Membership pursuant to the provisions of clause 14.4;
- 14.2.4 after having received at least 10 (ten) Business Days written notice from Exco of its failure to pay any fee due by that Member or fails to pay such fee by the date nominated in such written notice by Exco for payment;
- 14.2.5 after having received at least 10 (ten) Business Days written notice from Exco of its failure to be covered by professional indemnity insurance up to at least the minimum amount prescribed by the Exco from time to time or fails to institute the required professional indemnity insurance up to at least the minimum amount prescribed by the Exco from time to time;
- 14.2.6 if after 10 (ten) Business Days written notice by the Exco of any other basis upon which it is said the person has breached or failed to meet the relevant criteria for that person's class of Membership, the person fails to remedy any such breach within the 10 (ten) Business Day notice period; or
- 14.2.7 is expelled from the Association under this Constitution.

14.3 Appointment as Member not transferable

A right, privilege or obligation (other than the obligation to pay to the Association all fees and amounts due to it and to pay any awards and/or determinations made by the Ombudsman) that a person has by reason of being a Member:

- 14.3.1 is not capable of being transferred or transmitted to another person;
- 14.3.2 is suspended upon suspension of the person's Membership; and
- 14.3.3 terminates upon cessation of the person's Membership.

14.4 Resignation

A Member who seeks to resign must notify the Association of their intention to resign by notice in writing addressed to the Exco and the resignation of the Member takes effect three months from the date the Exco receives any such notice of resignation from that Member. The Member must pay all amounts payable by the Member to the Association in respect of the Member's Membership upon resignation, including any outstanding fees, other monies and any interest due thereon as well as any awards and / or determinations made by the Ombudsman. The Member agrees that any amounts payable to the Association upon resignation, remain due as a debt to the Association; provided that a Member whose conduct is under investigation pursuant to the Disciplinary Rules or any

provision of this Constitution, or the Ombudsman, may not resign until the proceedings have been completed and any penalty honoured, except with the specific approval of the Exco.

15. Expulsion, suspension and reinstatement of a member

15.1 Expulsion and suspension

15.1.1 The Exco may, where a Member has refused or failed to comply with any provision of this Constitution, or any other rule, policy or procedure made by the Exco from time to time, relating to that Member's CE obligations or to the payment of any fees by that Member to the Association, and

15.1.2 the Disciplinary Tribunal may, where a Member:

15.1.2.1 has refused or failed to comply with any provision of this Constitution, the Code of Practice, the Disciplinary Rules, the Ombudsman Rules or any other rules, policies or procedures made by the Exco from time to time, not relating to Members' CE obligations or to the payment of any fees by Members to the Association; or

15.1.2.2 has refused or failed to comply with an obligation imposed on the Member pursuant to the Ombudsman Rules; or

15.1.2.3 has refused or failed to comply with a determination, ruling or other like action by the Disciplinary Tribunal; or

15.1.2.4 has, in the reasonable opinion of the Exco acted in a manner prejudicial to the reputation of the Association; or

15.1.2.5 has been disciplined by the Disciplinary Tribunal,

act in any one or more of the manners listed below to:

15.1.2.6 reprimand the Member in such manner and subject to such conditions as the it thinks fit; or

15.1.2.7 suspend the Member from membership of the Association for such specified period as it thinks fit; or

15.1.2.8 expel the Member from membership of the Association; and / or

15.1.2.9 impose a penalty, monetary and / or otherwise, on the Member.

15.2 Save as provided for in this Constitution, a Member shall not be dealt with in any way under this clause 15 unless the Member concerned has been given at least 5 (five)

Business Days notice in writing of the matters alleged against that Member and has otherwise been afforded procedural fairness. The Association will be always be allowed to communicate the expulsion and/or suspension of a Member to the Industry in writing.

- 15.3 A Member, who has been expelled by the Disciplinary Tribunal, ceases to be a Member of the Association on the basis as specified by the Disciplinary Tribunal.
- 15.4 A Member, whose membership has been suspended by Exco resolution and / or by the Disciplinary Tribunal, is suspended from membership and all the rights and benefits attached thereto, immediately upon the passing of that resolution, or at such later time as the Exco's resolution or the Disciplinary Tribunal specifies.
- 15.5 The cessation or suspension of a Member's membership pursuant to this clause 15 does not:
- 15.5.1 entitle the Member to any refund of any fee paid or any compensation; or
- 15.5.2 prejudice or restrict in any manner whatsoever the Member's liability to pay any fee that has become due and payable before cessation or suspension of membership; or
- 15.5.3 preclude or restrict in any manner whatsoever the Ombudsman Office, Exco or Disciplinary Tribunal exercising its powers under the Ombudsman Rules, this Constitution, the Code of Practice or the Disciplinary Rules, as the case may be, to deal with a Complaint received by it at any time but in respect of an action or omission by the Member which took place before the date on which the cessation or suspension of the Member's membership took effect and to require the Member to comply fully with the Member's obligations under the Ombudsman Rules, this Constitution, the Code of Practice or the Disciplinary Rules, as the case may be, in respect of that Complaint; or
- 15.5.4 prejudice or diminish in any manner whatsoever the Member's obligations under the Ombudsman Rules, this Constitution, the Code of Practice or the Disciplinary Rules, as the case may be, in respect of a Complaint received by the Ombudsman Office or the Disciplinary Tribunal at any time but in respect of an action or omission by the Member which took place before the date on which the cessation or suspension of the Member's membership took effect; or
- 15.5.5 preclude or restrict in any manner whatsoever the making of an Award by the Ombudsman or the Disciplinary Tribunal or the due enforcement by the Association or the Ombudsman of any Award made by the Disciplinary Tribunal or the Ombudsman, as the case may be, as regards that Member pursuant to the Ombudsman Rules, this Constitution, the Code of Practice or the Disciplinary Rules, as the case may be, in respect of a Complaint received by the Ombudsman Service or the Disciplinary Tribunal at any time but in respect of an action or omission by the

Member which took place before the date on which the Member's resignation took effect.

15.6 Reinstatement

The Exco or a special committee established by the CEO may in its absolute discretion and on good cause shown and upon such terms and conditions as it sees fit reinstate a Member to membership of the Association, as long as the Member meets the same qualification criteria applicable to any other applicant for membership of the Association.

16. Promulgation of rules and codes of practice

16.1 Disciplinary Rules

16.1.1 The Exco may from time to time promulgate rules to establish a procedure and a tribunal for Complaints to be made to and received by the Association from any person, including any Member, in relation to the conduct of any Member.

16.1.2 The rules so promulgated will be called the Disciplinary Rules.

16.1.3 The Disciplinary Rules may only be amended by majority resolution of the Exco.

16.1.4 The tribunal established and appointed under this clause shall be known as the Disciplinary Tribunal and it shall preside over disciplinary matters concerning Members brought before it.

16.2 Code of Practice

16.2.1 The Exco may from time to time promulgate a Code of Practice in relation to the conduct of Members towards Consumers and other Members.

16.2.2 The Code so promulgated will be called the Association Code of Practice.

16.2.3 The Code of Practice may only be amended by majority resolution of the Exco.

17. Meetings of Members

17.1 Calling of meetings

The Exco may call a General Meeting of the Members.

17.2 Notice of meeting

Every notice of a General Meeting must:

17.2.1 set out the place, date and time of meeting;

- 17.2.2 set out an agenda for the business of that meeting;
- 17.2.3 if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
- 17.2.4 contain a statement that the Corporate Members have a right to appoint a proxy.

17.3 Entitlement to receive notice

Notice of a General Meeting must be given to:

- 17.3.1 each Member except any Member who under this Constitution or by the terms of issue of any Membership is not entitled to the notice; and
- 17.3.2 the auditor of the Association.

17.4 Notice period

Notice of a General Meeting must be given on not less than 10 (ten) Business Days notice in writing.

17.5 Proxy Voting by Corporate Members

A Corporate Member will be present if represented by its Nominated Representative. Failing the ability of a Nominated Representative to attend the meeting, the Corporate Member may appoint a proxy to attend and vote at any meeting at which the Corporate Member is entitled to attend and vote. To be valid, a proxy appointment must be in writing (in the form approved by the Exco from time to time) and delivered to the place nominated by the Exco in the notice of meeting (or, if no place is nominated, the Registered Office) at least 48 hours before the scheduled commencement of the meeting. A proxy appointment may be delivered, *inter alia*, by email and / or facsimile transmission. The Chairperson of any General Meeting shall be entitled to accept any proxy that has not been given timeously, provided that the Chairperson is satisfied that the proxy has been validly given by a Member.

17.6 Omission to give notice

The accidental omission to give notice of a General Meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

17.7 Consent to short notice

With the consent in writing, which includes by facsimile and / or email, of all the Corporate Members, any General Meeting may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly.

17.8 Cancellation or postponement of meeting

The Exco may cancel or postpone the holding of any General Meeting. If the meeting was called by requisitioning Members or in response to a requisition by Members, the Exco may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Members.

17.9 Notice of cancellation or postponement

The Exco may notify the Members of a cancellation or postponement of a meeting by such means as it sees fit. If any meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Members of the postponed meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting. No new business may be transacted at the postponement meeting unless the notice for such postponed meeting is given which complies with the provisions of this Constitution as they pertain to the convening of General Meetings.

17.10 Venue

Despite any other clause, the Association may hold a General Meeting of Members at two or more venues using technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

17.11 Annual General Meeting

The business of an annual General Meeting of the Association is to: receive and consider the accounts and to deal with and dispose of the following matters:

17.11.1 the appointment of an auditor or auditors; and

17.11.2 to transact any other business required by this Constitution to be transacted at an annual General Meeting of the Association.

17.12 Report on Association's activities

The Exco must at each annual General Meeting in addition to the matters in clause 17.11 submit to the Members a report on the activities of the Association in the period since the previous annual General Meeting.

18. Proceedings at meetings of Members

18.1 Quorum

No business may be transacted at any General Meeting unless a quorum of 4 (four) Corporate Members, comprising 2 (two) from each of the Voting Groups is present at the time when the meeting proceeds to business, except as provided in clause 18.2.

18.2 Failure of quorum

If a quorum is not present within 60 (sixty) minutes from the time appointed for a General Meeting:

18.2.1 where the meeting was called by, or in response to, the requisition of Members, the meeting is dissolved; or

18.2.2 in any other case the meeting shall stand adjourned to such day, and at such time and place, as the Chairperson of the meeting determines.

If no determination of an adjourned meeting is made by the Chairperson, the meeting shall stand adjourned to the same day in the second week following, at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, 2 (two) Corporate Members, comprising 1 from each of the Voting Groups present constitutes a quorum, or where such quorum is not present, the meeting is dissolved.

18.3 Frequency of Annual General Meeting

The Association must hold an annual General Meeting at least once every calendar year and within five months after the end of its financial year.

18.4 Special business

No special business may be transacted at any General Meeting other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution to be transacted at the meeting.

18.5 Chairperson of meetings

The Chairperson of the Exco shall take the chair at each General Meeting. If the Chairperson is not present at any General Meeting within 60 minutes after the time appointed for holding the meeting, or he/she is unwilling or unable to take the chair, a majority of the Members present and eligible to vote must elect a person to be chairperson of the meeting.

18.6 Passing the chair

If the Chairperson of a General Meeting is unwilling or unable to be the chairperson for any part of the business of the meeting:

18.6.1 the Chairperson may withdraw as chairperson for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and

18.6.2 after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairperson. The prior chairperson is then entitled to resume as the Chairperson of the meeting.

18.7 Responsibilities of Chairperson

The Chairperson of a General Meeting is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning any item of business which is properly before the meeting. For these purposes the Chairperson of the meeting may, without limitation:

18.7.1 delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;

18.7.2 make, vary or rescind rulings;

18.7.3 prescribe, vary or revoke procedures;

18.7.4 in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and

18.7.5 determine conclusively any dispute concerning the admission, validity or rejection of a vote.

18.8 Adjournment of meeting

The Chairperson of a General Meeting at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the Chairperson determines.

18.9 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment or of the business to be transacted at an adjourned meeting. However if any meeting is adjourned for 10 (ten) Business Days or more, notice of the adjourned meeting must be given.

19. Voting at meetings of Members

19.1 Entitlement to vote

Only Corporate Members, represented by their Nominated Representative, or a duly authorised proxy, shall be entitled to vote at a General Meeting of the Association, this applies to both Special Resolutions and Ordinary Resolutions being considered.

19.2 Number of votes

19.2.1 Each Corporate Member will have one vote, and will vote in one of either Voting Group 1 or Voting Group 2, whichever is applicable to such Corporate Member from time to time.

19.2.2 Once each Corporate Member has voted or abstained from voting, as the case may be, the votes within each of Voting Group 1 and Voting Group 2 shall be counted and the outcome of the vote for each Voting Group will be determined by a simple majority, other than in the case of a Special Resolution. In the event of a tie in the number of votes in any Voting Group, the Corporate Members comprising that Voting Group shall re-vote. Should there again be a tie in the number of votes in that Voting Group, that Voting Group's vote shall be ignored, other than provided for in clause 20.5.

19.2.3 Once the vote of each Voting Group has been determined, the outcome of the overall vote is determined on the basis of whether it is an Ordinary Resolution or a Special Resolution under consideration and whether or not such Resolution has been passed by both Voting Groups. For the avoidance of any doubt, should a Resolution have been passed by only one of the Voting Groups, and not the other, the Resolution shall fail, unless the Voting Group that did not pass the Resolution was tied.

19.2.4 In the event that there is a tie between the Voting Groups, then the Chairperson shall not have a casting or second vote.

19.3 Method of voting

Members shall vote by written ballot, show of hands or on a poll, as determined by the Chairperson.

19.4 Declaring result of vote

In respect of any General Meeting of the Association:

19.4.1 Should the Auditors of the Association be present at the meeting, then the Auditors shall tally the votes, failing which the Chairperson and / or any persons nominated by the Chairperson shall tally the votes cast by each Voting Group and apply the appropriate weighting thereto to determine the vote for each Voting Group;

19.4.2 a declaration by the Chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and

19.4.3 an entry made in the book containing the minutes of proceedings of the Association, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

19.5 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting is treated as valid. In recording votes the latest copy of the National Register must be adopted and acted on as the voting roll.

19.6 Ruling on votes

The Chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the Chairperson is final and conclusive.

19.7 Restrictions

Notwithstanding anything to the contrary contained in this Constitution and in addition to other matters separately specified in this Constitution as requiring approval by a Special Resolution, no action will be taken by either the Members of the Association or the Exco, and the powers of the Exco will be limited so that it will not have the power to take any action, in regard to the undermentioned matters without the approval by way of a Special Resolution -

19.7.1 amendments to the Constitution after the first General Meeting by the Founding Corporate Members;

19.7.2 the pledging, mortgaging, hypothecating or encumbering of any assets of the Association in any manner whatsoever;

19.7.3 the liquidation or winding-up, de-registration or the discontinuance of the activities of the Association;

19.7.4 any material change in the nature of the business of the Association;

19.7.5 the incurring of any direct indebtedness (other than trade debt in the ordinary course of business) with an exposure at any given time in excess of R50,000.00 (fifty thousand rand) (Indexed);

19.7.6 the issue of guarantees, suretyships, letters of comfort or other similar undertakings with an aggregate exposure at any given time of R50,000.00 (fifty thousand rand) (Indexed) or more.

20. Appointment and removal of Exco members

20.1 The Exco shall at all times comprise 6 (six) members, 5 (five) of whom are Voting Members of Exco and must be full time salaried employees or directors of Corporate Members and the 6th member who shall be the Chief Executive Officer of the Association. The first Exco shall be elected by the Founding Corporate Members.

20.2 At a General Meeting, the Voting Members of the Exco shall be nominated and elected from the Corporate Members by a simple majority of the Corporate Members comprising Voting Group 1 and Voting Group 2 as follows:

20.2.1 3 (three) Exco members elected by Voting Group 1; and

20.2.2 2 (two) Exco members elected by Voting Group 2.

20.3 Where the number of Voting Members of the Exco to be elected by a Voting Group equals the number of Corporate Members constituting that Voting Group, then each Corporate Member within that Voting Group shall elect one Voting Member of the Exco from that Voting Group. Should there be more than 3 (three) members of Voting Group 1, each of the Founding Members shall have a first right to appoint an Exco member, for so long as that Founding Member concerned remains part of Voting Group 1.

20.4 Where the number of Voting Members of the Exco to be elected by a Voting Group exceeds the number of Corporate Members constituting that Voting Group, then each Corporate Member within that Voting Group shall elect one Voting Member of the Exco from that Voting Group. The balance of Voting Members of the Exco to be elected by the Voting Group will be nominated by such Voting Group and then elected by a vote to be taken by such Voting Group.

20.5 Where, at any stage in the process of electing the Voting Members of the Exco, a vote results in a tie, then such vote shall be repeated until a final outcome is achieved.

20.6 The Voting Members of the Exco shall elect and appoint from time to time the Chairperson of the Exco, who shall also act as Chairperson of meetings of Members pursuant to clause 18, and who shall be a Voting Member of the Exco.

20.7 Each of the Voting Members of the Exco shall have one vote at Exco meetings. Resolutions of the Exco shall be passed by a simple majority. Where any vote by Exco is tied, the Chairperson may call for a re-vote to take place and in the event of a further tie, may (but shall not be obliged to) exercise a second or casting vote.

20.8 Alternate Exco members

Any director or full-time salaried employee of the Corporate Member from which the Voting Member of Exco unable to attend the Exco meeting ("the relevant Exco member") was elected or any other director or full-time salaried employee of a member of the same voting group shall be capable of being appointed by the relevant Voting Member of Exco as an alternate member of the Exco who, when the relevant Exco member is unable to attend an Exco meeting, shall be entitled to attend and participate in such Exco meeting as if he or she was the relevant Voting Member of Exco.

20.9 Resignation of Voting Member of Exco

Any Voting Member of Exco may retire from office by giving notice in writing to the Association of his/her intention to do so. Such resignation takes effect 30 calendar days from date of said written notice unless the resignation is stated in the notice to take effect at some future time. However the resignation must take effect within 3 months from the date of the giving of the notice.

20.10 Vacation of office

In addition to the circumstances in which the office of the Voting Member of Exco becomes vacant by virtue of any other provisions of this Constitution, the office of the Voting Member of Exco is vacated automatically if the Voting Member of Exco:

- 20.10.1 becomes mentally incapable or the Voting Member of Exco's estate is liable to be dealt with in any way under the law relating to mental health;
- 20.10.2 is or his alternate is absent from more than 3 consecutive meetings of Exco without the prior leave of the Exco ;
- 20.10.3 becomes insolvent or subject to insolvency proceedings, whether provisional or final or makes any arrangement or composition with his/her creditors generally;
- 20.10.4 becomes prohibited from being a director of a company by reason of any order made under the Companies Act; or
- 20.10.5 dies; or
- 20.10.6 is an AMC or MCAA in his / her personal right and such registration as an AMC or MCAA is suspended or terminated by the Association; or
- 20.10.7 ceases to be employed by the Corporate Member that employed him/her at the time that he/she was elected to the Exco, or such Corporate Member ceases to be a member of the Association or is suspended as a Corporate Member of the Association.

20.11 Where the Corporate Member employing a Voting Member of Exco changes Voting Groups or ceases to be a Member or where a vacancy on the Exco occurs by virtue of any of 20.10.1 to 20.10.7, or by resignation, then that Voting Member of Exco shall automatically vacate office. The remaining Voting Members of Exco nominated and elected by the Members of the same Voting Group shall then nominate and by simple majority vote, elect a replacement Voting Member(s) of Exco from that same Voting Group. Where there are no remaining Voting Members of Exco from the same Voting Group, then the remaining Voting Members of Exco shall, by majority vote, elect a replacement Voting Member(s) of Exco from that same Voting Group to represent the Voting Group in question. Where there are no replacements available from that same Voting Group, then the remaining Voting Members of Exco shall, by majority vote, elect a replacement Voting Member(s) of Exco from any other Voting Group to represent the Voting Group in question.

20.12 Less than minimum number of Exco members

If the number of Voting Members falls below the minimum number of 4 (four) Voting Members, other than in circumstances contemplated in 20.11, then the remaining Voting Members of Exco shall elect as many new Voting Members of Exco, in the manner described in 20.11, as are necessary in order to maintain the required minimum number of 4 (four) Voting Members of Exco ("the replacement Exco members"). Unless they cease to be Voting Members of Exco as provided herein, the replacement Exco members shall hold office until the next annual General Meeting of Members, at which meeting the Exco shall be properly reconstituted pursuant to the provisions of this Constitution.

21. Chief Executive Officer

The Exco shall:

- 21.1.1 Appoint the Chief Executive Officer who shall, at the date of assumption of his duties, not be a director of, or salaried employee of, or consultant to or shareholder in any Corporate Member;
- 21.1.2 define, limit and restrict the Chief Executive Officers powers;
- 21.1.3 fix the Chief Executive Officer's Remuneration and duties;
- 21.1.4 subject to the provisions of any contract between the Chief Executive Officer and the Association, vary any of the powers so conferred; and
- 21.1.5 be empowered to remove the Chief Executive Officer from that office and appoint another in that person's place, subject to prevailing labour legislation.

22. Proceedings of the Exco

22.1 Number of Exco meetings

Exco meetings must be held at least 2 times in each Financial Year.

22.2 Mode of meeting

The Exco may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it sees fit. The Exco may conduct its meetings in person, by telephone, audio visual link or by using any other technology consented to by all Voting Members of Exco. A consent may be a standing one. A meeting conducted by telephone or other means of communications is considered to be held at the place agreed on by the Voting Members of Exco attending the meeting if at least one of the Voting Members of Exco present at the meeting was at that place for the duration of the meeting.

22.3 Quorum

A quorum for a meeting of the Exco comprises not less than half of the Voting Members of Exco. (

22.4 Calling a meeting

Any member of the Exco may, on at least 10 (ten) Business Days notice, call a meeting of the Exco to be held at such time and place as such member reasonably chooses, save that the notice period may be waived by the majority of the Voting Members of Exco.

22.5 Notice of meeting

Notice of each meeting of the Exco:

22.5.1 may be given by such means as is convenient, including by telephone, telefax or email; and

22.5.2 must be given to all Exco members.

22.6 Recipients of notice

For the purposes of clause 22.5 the accidental omission to give notice of any meeting of the Exco to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

22.7 Votes of Exco members

22.7.1 Questions arising at any meeting of the Exco must be decided by a majority of votes cast by the Voting Members of the Exco.

22.7.2 Each Voting Member of the Exco has one vote.

22.7.3 A person who is an alternate Exco member is entitled (in addition to his or her own vote if a Voting Member of the Exco) to one vote on behalf of each Voting Member of the Exco whom the alternate Exco member represents (as an alternate Exco member at the meeting). The alternate Exco member may only vote if the Voting Member of the Exco is not personally present.

22.7.4 If there is an equality of votes, the Chairperson of the Exco may call for a re-vote to take place and in the event of a further tie, may (but shall not be obliged to) exercise a second or casting vote.

22.7.5 The Chief Executive Office of the Association, although a member of the Exco, shall not have a vote at Exco meetings,

22.8 Circular resolution of Exco members

If a majority of Voting Members of Exco have signed a document containing a statement that they are in favour of a resolution of the Exco in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Exco held on the day on which the document was signed. If the Exco members sign the document on different days, then a resolution is treated as having been passed on the day on which the document was last signed by an Exco member thereby constituting a majority in number of the Voting Members of Exco. A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier or later date.

22.9 Signing of circular resolution

For the purposes of clause 22.8:

22.9.1 each Exco member, other than one not entitled to vote on the resolution, may sign the document;

22.9.2 if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;

22.9.3 each alternate Exco member may sign the document on behalf of each Exco member whom the alternate Exco member represents ("appointor") if:

22.9.3.1 the alternate Exco member reasonably believes that the appointor is unavailable to sign the document; and

22.9.3.2 the appointor has not suspended or terminated the appointment of the alternate Exco member;

22.9.4 an electronic transmission purporting to be signed by an Exco member or alternate Exco member is treated as being in writing signed by such person; and

22.9.5 2 or more separate documents containing statements in identical terms each of which is signed by one or more Exco members are together treated as constituting one document containing a statement in those terms signed by those Exco members on the respective days on which they signed the separate documents.

22.10 Deemed minute

The document or documents referred to in 22.8 and 22.9 above are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

22.11 Validity of acts of Exco members

All acts done in respect of any meeting of:

22.11.1 the Exco ; or

22.11.2 a committee of Exco ; or

22.11.3 other persons or by any person acting as an Exco member; or

22.11.4 any person purporting to act as an attorney under power of the Association,

are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such Exco member, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be an Exco member or attorney and was entitled to vote

23. Powers and Duties of the Exco

23.1 Borrowing

The Exco has the power to raise or borrow any sum of money and to secure the payment or repayment of such money and any other obligation or liability of the Association in such manner and on such terms as they think fit.

23.2 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Association may be signed, drawn, accepted, endorsed or otherwise executed as the case may be, in such manner as the Exco at any time determines.

23.3 Litigation

The Exco may at any time institute or defend litigation and judicial proceedings on behalf of the Association.

23.4 Appointment of attorney

The Exco may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Association for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Exco under this Constitution) and for such period and subject to such conditions as it may think fit. Any such powers of attorney may:

23.4.1 contain such provisions for the protection and convenience of persons dealing with any such attorney as the Exco may think fit; and

23.4.2 authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

23.5 Delegation

The Exco may at any time confer upon any person as it may select such of the powers exercisable under the Constitution by the Exco for such time as it may think fit and to be exercised for such objects and purposes and upon such terms and with such restrictions as it thinks expedient. It may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Exco in that respect. The Exco may at any time revoke, withdraw, alter or vary all or any of such powers.

23.6 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid.

23.7 Powers consistent with that of a director in terms of the Companies Act in order to achieve the objects of the Association.

24. **Committees**

24.1 Delegation to committee

The Exco may:

24.1.1 delegate any of its powers to committees which may consist of one or more persons who may, but need not, be any Exco member;

24.1.2 establish advisory or special committees (or other committees not having delegated power of any Exco member) consisting of such person or persons as it by majority resolution deems fit; and

24.1.3 appoint and remove persons as the chairperson of such committees as by majority resolution is deemed fit. A chairperson so elected must be a Nominated Representative of a Corporate Member.

24.2 Committee powers

Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions or regulations that may at any time be imposed by the Exco.

24.3 Committee meetings

The meetings and proceedings of any committee, consisting of 2 or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the Exco, contained in clause 22 (save for clauses 22.7 and 22.11 and as may be contained in any other applicable policy, code or rule of the Association or the Exco or the Ombudsman Committee, such as the Ombudsman Rules), so far as those provisions are applicable and are not affected by any direction or regulation made by the Exco as applicable under clause 24.2.

25. **Budget**

25.1 The Exco must review and adopt a Budget for each Financial Year.

25.2 The Chief Executive Officer or failing him the Chairperson, must submit to the Exco a draft Budget at least 2 (two) months before the commencement of each Financial Year.

25.3 The Exco must review and seek to approve the Budget, with or without amendment, by majority consent before the commencement of the Financial Year.

25.4 The Budget from the previous Financial Year continues to apply until the Exco adopts a new Budget, in the event that the Exco fails to adopt a Budget before the commencement of any Financial Year.

25.5 Distribution of Funds

25.5.1 The Exco will be responsible for the allocation and distribution of the funds of the Association to the Ombudsman and as otherwise provided in the Budget and in terms of this Constitution.

25.5.2 The Exco may require the Ombudsman to submit a proposed budget for the next Financial Year at least 3 (three) months before commencement of the Financial Year to which the budget relates.

26. **Accounts**

26.1 Accounts to be kept

The Association must keep proper books of account (which may include computer records) of the Association at its principal place of business and entries made of all such matters, transactions and things which are usually entered in books of accounts kept by entities engaged in concerns of a similar nature.

26.2 Audit

The Association must arrange for the annual financial statements to be timeously completed and audited.

27. **Notices for General Meetings, Special Meetings and Exco Meetings**

27.1 Service of notices

Where this Constitution or any legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this clause referred to as “served”), the document may be served on the person:

27.1.1 by delivering it to the person personally;

27.1.2 by dispatching it, whether by post, contractor, agent, electronic means (including by e-mail or fax) or otherwise, to:

27.1.2.1 the address of the place of residence; or

27.1.2.2 business of the person last known to the person serving the document;
or

27.1.2.3 in the case of a Member, to the address (including e-mail address or fax number) of the Member entered in the National Register, or

27.1.2.4 in the case of a member of Exco and / or any committee, to the address (including e-mail address or fax number) of such member,

the document, by such dispatch, is regarded as left at that address; or

27.1.3 by publication in a newspaper or newspapers circulating generally throughout South Africa.

27.2 Date of deemed service

A document served under clause 27.1 is treated as having been duly served, regardless of whether it is actually received:

27.2.1 where clause 27.1.2 applies - on the day following the day when dispatch occurred;
and

27.2.2 where clause 27.1.3 applies - on the day the newspaper is first published.

27.3 Counting of days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

27.4 Service on Association or its officers

Every document required to be served upon the Association or upon any officer of the Association may be served by leaving it at the Registered Office.

27.5 Signature

The signature to any document to be given by the Association may be written, printed or stamped.

28. Indemnity

28.1 Indemnity for officers and other persons

28.1.1 Each officer of the Association, each Exco member, each member of a committee of the Association and each member of any tribunal established by the Exco from time to time shall be indemnified by the Association against any liability *bona fide* incurred by that person in that capacity.

28.1.2 The indemnity referred to in 28.1.1 above shall not apply in respect of any person who acts or fails to act in a malicious, reckless or grossly negligent manner that gives rise to a liability of the Association.

28.2 Insurance premiums

The Association may at any time pay premiums in respect of a contract insuring a person (whether with others or not) who is an officer of the Association, or an Exco member or a member of a committee of the Association and each member of any tribunal established by the Exco from time to time against a liability incurred by that person in that capacity. Any

such premium is in addition to, and not regarded as part of, the remuneration approved by Members under this Constitution.

29. Members to comply with the Association policies

29.1 Compliance with the Association policies

The Exco may, in the furtherance of the objects of the Association, at any time resolve to adopt policies or promulgate codes or make rules relating to:

- 29.1.1 training and supervision of Members in relation to provision of advice relating to mortgage finance;
- 29.1.2 the conduct of Members;
- 29.1.3 Membership of the Association;
- 29.1.4 ethics; and
- 29.1.5 standards,

as the Exco thinks fit, provided that such policies, codes or rules are not in conflict with any other provision of this Constitution.

29.2 Each Member acknowledges that he, she or it is bound to comply with this Constitution and such policies, codes or rules as the Exco may have adopted, promulgated or made as the case may be as referred to in clause 29.1.

30. Assistance with enquiries

30.1 Every Member who is the subject of an inquiry or any notice to attend a hearing issued by any person including the Ombudsman pursuant to the Ombudsman Rules, and every Member who is the subject of an inquiry or any notice to attend or is the subject of any investigation of a matter referred under the Disciplinary Rules, must attend in accordance with the terms of such notice unless there is a reasonable excuse for failing so to do.

30.2 Every Corporate Member that has received a notice referred to in clause 30.1, must nominate a director, secretary or other officer of that Corporate Member to attend in accordance with such notice where issued to that Corporate Member.

30.3 Any Member who fails to attend a hearing without reasonable excuse may be required to defray the reasonable costs incurred by the Association or Ombudsman or Disciplinary Tribunal, as the case may be, of convening that hearing and may also be required to appear before the Disciplinary Tribunal in relation thereto.

31. Constitution and Rules

31.1 This Constitution, the Code, the Disciplinary Rules and any policy, rule or code made in accordance with clause 29 is binding:

31.1.1 on the Members; and

31.1.2 between each Member and the Association.

31.2 Unless the conditions of Membership otherwise allow, every Member is bound by and must comply with:

31.2.1 the Disciplinary Rules; and

31.2.2 the Code of Practice; and

31.2.3 the Ombudsman Rules and any Practice Note(s) issued from time to time by the Ombudsman Committee; and

31.2.4 every Award, ruling or other like action by the Ombudsman, in respect of such Member, pursuant to the Ombudsman Rules; and

31.2.5 every determination, ruling or other like action by the Disciplinary Tribunal in respect of such Member.

31.3 Alterations to Constitution

31.3.1 This Constitution may be amended from time to time provided that such amendments are approved, prior to the first General Meeting by the Founding Corporate Members and thereafter by a Special Resolution of Members of the Association in a General Meeting.

31.3.2 This clause 31.3 and the definition of Special Resolution may only be amended in General Meeting by at least 75% of the Members present and eligible to vote in Voting Group 1 and 75% of the Members present and eligible to vote in Voting Group 2.

32. Publication and reporting

32.1 The Association may as it sees fit publish or make available to any one or more Member, or any other person, or the public generally, the content of, or an extract from or précis of any determination by the Disciplinary Tribunal as permitted by the Disciplinary Rules and the National Register maintained for the purposes of the Disciplinary Rules.

32.2 Each and every Member of the Association, by applying to join the Association, is deemed to provide his, her or its express consent to the publication of information, documents and

other material by the Association as contemplated by this Constitution or the Ombudsman Rules and hereby expressly waives and forever releases any rights such Member may otherwise have to bring action with respect to such publication whether by suit in defamation or other cause of action whatsoever.

- 32.3 Before the Association reports any matter relating to proceedings under the Disciplinary Rules in relation to a Member the Association must give 5 (five) Business Days notice, or such shorter notice as the Exco regards as still affording procedural fairness to the Member concerned of the intention to publish material and provide to the Member within that period an opportunity to make representations as to why the material should not be published in the form and manner proposed, but the Association is not bound by any representations made by the Member and the Association may proceed to report notwithstanding the representations or the making of them.

Ombudsman Office

33. Objects

- 33.1 The objects for which the Ombudsman Office is established are:
- 33.1.1 to act as a Complaints resolution body for the resolution of Complaints against Members by Consumers in accordance with the provisions of the Ombudsman Rules;
 - 33.1.2 to actively promote the role of the Ombudsman Office in regard to the above;
 - 33.1.3 to refer Complaints and/or alleged Misconduct to the Disciplinary Tribunal;
 - 33.1.4 to ensure the timely, efficient and effective resolution of Complaints against Members having regard to the criteria of applicable legal requirements, the provisions of this Constitution and all relevant policies, codes and rules adopted in terms of this Constitution and fairness in all the circumstances;
 - 33.1.5 to establish and as appropriate modify procedures for resolving Complaints against Members;
 - 33.1.6 to support and promote the development of the Industry by providing resources and procedures for the timely, efficient and effective resolution of Complaints against Members; and
 - 33.1.7 to ensure that Consumers in their dealings with Members have available to them the highest standards of Complaint resolution procedures that are relevant and continue to be relevant having regard to changes in the Industry.

34. **Service fees**

- 34.1 The Ombudsman Committee may at any time and from time to time prescribe, or prescribe a manner for calculating, fees and charges ("**Service Fees**") payable by a Member or another person to the Association in connection with the Complaint resolution operations of the Ombudsman Office.
- 34.2 Service Fees must be paid within the period for payment stipulated by the Ombudsman Committee from time to time.

35. **The Ombudsman Committee**

Appointment of the Ombudsman

- 35.1 The Exco shall appoint the first Ombudsman. All subsequent Ombudsmen shall be appointed by a majority vote of the Ombudsman Committee (but excluding the Ombudsman) and failing which by the Exco.

Impartiality

- 35.2 The Ombudsman Committee shall perform its functions impartially and without fear, favour or prejudice.
- 35.3 The members of the Ombudsman Committee ("**Ombudsman Committee Members**") must not:
- 35.3.1 act in any way that is inconsistent with clause 35.2 or expose themselves to any situation in which the risk of a conflict between their responsibilities and private interests may arise; or
- 35.3.2 use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.
- 35.4 An Ombudsman Committee Member who has a personal or financial interest in any matter which the Ombudsman Committee considers must disclose that interest and withdraw from the proceedings of that committee meeting when that matter is discussed.

Composition of the Ombudsman Committee

- 35.5 The Ombudsman Committee shall comprise:
- 35.5.1 the Ombudsman, and failing him a Chairperson appointed by and from the rest of the Ombudsman Committee, from time to time who shall act as the Chairperson thereof ("**Ombudsman Committee Chairperson**"); and

- 35.5.2 1 (one) **Exco Member** who shall be appointed by the Exco on such terms and conditions as the Exco determines ("**Committee Member**") ; and
- 35.5.3 1 (one) **Consumer Committee Member** who shall represent the interests of Consumers with regards the operation of the Ombudsman Service on the Ombudsman Committee and be appointed by the Exco, on such terms and conditions as the Exco determines.

Ombudsman Committee Members' fees and expenses

- 35.6 The Ombudsman Committee Members shall be paid such Committee Members' fees as the Exco from time to time determines.
- 35.7 Each Ombudsman Committee Member shall be entitled to be paid all traveling, accommodation and other expenses reasonably and properly incurred and vouched for in performing his or her functions, exercising his or her powers, or discharging his or her duties as an Ombudsman Committee Member.

Eligibility for appointment

- 35.8 Eligibility criteria for being a member of the Ombudsman Committee is as follows:

Ombudsman

- 35.8.1 must be free from any interest that might materially interfere with his or her duties as a member of the Ombudsman Committee,
- 35.8.2 a legal practitioner with not less than five years experience specifically in the area of banking and / or finance and / or dispute resolution, or such other qualifications or experience as in the opinion of the Exco render the person suitable for appointment as Ombudsman;
- 35.8.3 be able to become well informed about and to make objective and independent decisions on, the subject matter of a dispute;
- 35.8.4 be able to exercise sound and fair judgment; and
- 35.8.5 be able to command the respect of the parties.

Consumer Committee Members

- 35.8.6 capability based upon qualifications or experience to represent Consumer interests;

Exco members acting as Committee Members

- 35.8.7 be appointed by the Exco, on such terms and conditions as the Exco determines;

Ombudsman and Consumer Committee Members

- 35.8.8 not currently or within 12 (twelve) months prior to appointment, a Member and / or shareholder, director or employee of a Corporate Member;

For all Ombudsman Committee Members

- 35.8.9 not currently or previously an unrehabilitated insolvent;
- 35.8.10 being a person whose standing and authority in the community generally is such as to give credibility to the Ombudsman Committee and the Ombudsman Office; and
- 35.8.11 an Ombudsman Committee Member must satisfy the eligibility criteria for appointment and at all times during his or her term of office.

Equality of representation

- 35.9 The number of Exco members appointed as Committee Members and the number of Consumer Committee Members must at all times be equal.
- 35.10 Each Ombudsman Committee Member shall hold office for a period of two years from the date of appointment.
- 35.11 Each Ombudsman Committee Member is eligible for re-appointment.

Removal of Committee Member

- 35.12 The Exco may remove any Committee Member appointed by it and substitute another Exco Member as a Committee Member provided that said Exco Member was nominated by the Members as contemplated in clause 35.8.7). Every substitute Committee Member so appointed shall hold office only until the expiration of the term of appointment of the Committee Member so removed. The substitute Committee Member is entitled to be reappointed as an Committee Member.

Removal of Consumer Committee Members

- 35.13 Consumer Committee Members shall not be capable of being removed from office during their two year appointment period except in circumstances where the Consumer Committee Member fails to or is unable to perform his/her duties or no longer meet the eligibility criteria. In such circumstances the Exco may remove the Consumer Committee Member and substitute another person as Consumer Committee Member. Every substitute Consumer Committee Member so appointed shall hold office only until the expiration of the term of appointment of the Consumer Committee Member so removed. The substitute Consumer Committee Member is entitled to be reappointed as a Consumer Committee Member.

Resignation

- 35.14 Any Ombudsman Committee Member may resign office by delivering a notice in writing to that effect to the Exco. Any such resignation takes effect immediately unless the notice states that resignation is to take effect at some future time. In every case resignation must take effect not more than three months after the date of delivery of the notice to the Exco.

Vacation of office

- 35.15 In addition to the circumstances in which the office of Ombudsman Committee Member becomes vacant by virtue of any other provision of this Constitution, the office of an Ombudsman Committee Member becomes automatically vacant if the Ombudsman Committee Member:

- 35.15.1 is or becomes mentally incapacitated or the Ombudsman Committee Member's estate is or becomes liable to be dealt with in any way under laws relating to mental health; or
- 35.15.2 is absent for more than three consecutive meetings or three meetings in every consecutive five meetings of the Ombudsman Committee without prior leave of the Ombudsman Committee; or
- 35.15.3 is or becomes an insolvent or is subject to insolvency proceedings, whether provisional or final; or
- 35.15.4 is or becomes prohibited from being a director of a company by reason of any action taken or order made under the Companies Act; or
- 35.15.5 is or becomes a director or officer of a Member that is a company that is or becomes subject to judicial management as defined in the Companies Act; or
- 35.15.6 is or becomes, or is or becomes a director or officer of a Member that is a company and that is, a party against whom a Direction to Comply has been issued under clause 47 and who has not complied in full with that Direction to Comply within the time specified therein for compliance.

Inequality of representation at Ombudsman Committee meetings

- 35.16 Any meeting of the Ombudsman Committee may proceed to business notwithstanding that there is an unequal number of Exco members and Consumer Committee Members present at the meeting. However where there is an inequality of representation, those Committee Members (other than the Chairperson) comprising the majority must agree amongst themselves as to the votes to be cast and may cast only such number of votes as equals the number of votes able to be cast by those other Ombudsman Committee Members (other than the Chairperson) who comprise the relevant minority.

35.17 However nothing in clause 35.16 requires that any particular vote for or against be cast, and clause 35.16 relates only to the number of votes that may be cast.

Alternate Committee Members

35.18 Any Committee Member or Consumer Committee Member may appoint another person approved by the Ombudsman Committee to be that Ombudsman Committee Member's alternate Committee Member or alternate Consumer Committee Member (as the case may be) in that Committee Member's place for such period as that Committee Member is unable to act as such.

35.19 Where an alternate Ombudsman Committee Member has been appointed and the Ombudsman Committee Member appointing the alternate Ombudsman Committee Member will be absent from one or more meetings of the Ombudsman Committee, that alternate Ombudsman Committee Member is entitled:

35.19.1 to be given notice of the Ombudsman Committee meetings that the appointing Ombudsman Committee Member will not attend; and

35.19.2 to attend and vote at those meetings, and otherwise to exercise all the powers and perform all the duties of an Ombudsman Committee Member other than the power to appoint another or further alternate Ombudsman Committee Member.

35.20 An alternate Ombudsman Committee Member ceases to hold office immediately upon the appointing Ombudsman Committee Member cancelling the appointment, ceasing to hold office or being removed from office.

35.21 Every instrument appointing or cancelling the appointment of an alternate Ombudsman Committee Member must be in writing, signed by the Ombudsman Committee Member making the appointment or cancellation as the case may be, and must be lodged with the Exco promptly.

35.22 An alternate Ombudsman Committee Member must satisfy the eligibility criteria set out above both at the time of appointment and at all times during the alternate Ombudsman Committee Member's term of office.

36. Functions, powers and duties of the Ombudsman Committee

36.1 The Ombudsman Committee's functions and powers are the following:

36.1.1 to discharge responsibility for the overall supervision of the Ombudsman Service;

36.1.2 to make Ombudsman Rules for the purposes of the Ombudsman Service and may at any time and from time to time suspend the operation of any one or more rule;

- 36.1.3 to determine the budget for the Ombudsman Service for submission to the Exco annually;
- 36.1.4 to promote consultation about proposals for substantive changes to the Ombudsman Rules;
- 36.1.5 to receive and consider Complaints about the operation of the Ombudsman Service;
- 36.1.6 to monitor general trends and issues arising from Complaints made to the Ombudsman Service, including those that fall outside the Ombudsman Rules;
- 36.1.7 to monitor and, where appropriate, report to Exco, systemic issues arising from Complaints made to the Ombudsman Service;
- 36.1.8 to report Misconduct by a Member, to the Disciplinary Tribunal;
- 36.1.9 to monitor the ability of the Ombudsman Service to manage its own caseload and to perform other promoted functions;
- 36.1.10 to oversee and monitor practices and procedures of the Ombudsman Service;
- 36.1.11 to ensure independence of the Complaint resolution process; and
- 36.1.12 to do any other act or thing provided for or contemplated by the Constitution and / or the Ombudsman Rules.

- 36.2 Whenever the Ombudsman Committee exercises any discretion or power or performs any function or carries out any duty, allowed, provided for or imposed under this Constitution, it may:
 - 36.2.1 in doing so, impose such terms and conditions as it sees fit;
 - 36.2.2 at any time and from time to time vary or revoke any terms and conditions imposed; and
 - 36.2.3 do so at any time and from time to time.

- 36.3 If the Ombudsman Committee is satisfied that the exercise of any discretion or power by it or the performance of any function or the carrying out of any duty by it:
 - 36.3.1 was induced by or is tainted by any fraud, material misstatement or non-disclosure, or any other conduct of a misleading or deceptive nature of or by any person; or
 - 36.3.2 by reason of a change in material circumstances, has become inappropriate, frustrated or otherwise incapable of being fully and effectively exercised, performed or carried out as intended, the Ombudsman Committee may take such action as it

sees fit to give full effect to the Ombudsman Committee's intentions, including but not limited to:

- 36.3.3 revoking or terminating any approval; and
- 36.3.4 re-exercising in whole or in part any discretion previously exercised whether in whole or in part.
- 36.4 The Ombudsman Committee has, to the exclusion of the Exco and the Association in General Meeting, the power of and responsibility for the management and control of the funds paid to it by the Association and its assets and the operations of the Ombudsman Office. In this regard, the Ombudsman Office will open and operate its own banking accounts.
- 36.5 The Ombudsman Committee may at any time and from time to time engage on such terms and conditions and with such powers and authorities and duties as the Ombudsman Committee may from time to time determine, and dismiss, any employee, agent or consultant engaged in relation to the operations of the Ombudsman Service.

37. **Practice notes**

The Ombudsman Committee may at any time and from time to time issue a Practice Note on particular issues or procedures in relation to the Ombudsman Service and may withdraw or amend or re-issue such Practice Note at any time and from time to time.

38. **Proceedings of the Ombudsman Committee**

Meeting procedures

- 38.1 Any Ombudsman Committee member may summon a meeting of the Ombudsman Committee on 10 (ten) Business Days notice, unless such notice period is reduced by written resolution of the entire Ombudsman Committee.
- 38.2 Subject to the provisions of this Constitution, the Ombudsman Committee may meet for the dispatch of its business or adjourn or otherwise regulate its meetings as it sees fit.
- 38.3 The Ombudsman Committee must meet at such place and at such time and date as the Ombudsman determines.
- 38.4 Subject to this Constitution, every question arising at a meeting of the Ombudsman Committee must be decided by a majority of votes cast at that meeting. In the case of equality of votes, the Chairperson shall have and may exercise a second and casting vote.

Quorum

- 38.5 The quorum necessary for the transaction of business of the Ombudsman Committee is at least three Committee Members comprising the Ombudsman and at least one Exco Member acting as a Committee Member and one Consumer Committee Member.

Presiding Officer

- 38.6 The Ombudsman shall preside, as Chairperson, at every meeting of the Ombudsman Committee. If for any reason the Ombudsman is absent, or unwilling, or unable to act as Chairperson within 20 minutes from the time appointed for the holding of a meeting, then those present shall elect the chairperson of that meeting, failing which lots shall be drawn to determine the chairperson of the meeting. In all instances where the Ombudsman does not preside as chairperson of the Ombudsman Committee he shall not have a casting vote.

Notices of Ombudsman Committee meeting

- 38.7 Not less than 10 (ten) Business Day's notice shall be given of every meeting of the Ombudsman Committee, and every such notice must specify the time and place and nature of the business to be dealt with at that meeting.
- 38.8 Where the Ombudsman is of the view that it is necessary so to do, the Ombudsman may convene a meeting of the Ombudsman Committee on less than 10 (ten) Business Days notice.

Defective appointment

- 38.9 Every act or decision of an Ombudsman Committee Member is valid even though it is later determined that there was some defect in the Ombudsman Committee Member's appointment or that any such person was disqualified or not qualified to act.

Means of communication

- 38.10 The Ombudsman Committee may meet at such place and by such means as it sees fit consistent with the objective of ensuring that every Committee Member has a proper opportunity to participate in the Ombudsman Committee's deliberations. The fact that any Committee Member is not present with the other Committee Members at the same time is to be disregarded.
- 38.11 Where all the Committee Members entitled to vote on a resolution have signed a document containing a statement that they are in favour of a particular resolution in terms set out in that document, then a resolution in those terms shall be deemed to have been passed at a meeting of the Ombudsman Committee held on the day on, and at the time at, which the document was last signed by a Committee Member.
- 38.12 For the purposes of clause 38.11, any two or more documents in identical terms and signed by one or more of the Committee Members together shall be deemed to constitute

one document containing a statement in those terms signed by the Ombudsman Committee.

- 38.13 However a reference in this clause 38 to all the Committee Members does not include a reference to a Committee Member who at that particular meeting of Committee Members, is not entitled to vote on the resolution.

Public communications

- 38.14 Save as provided for elsewhere in this Constitution, the Ombudsman shall have exclusive power and authority to make any and all public communications on behalf of the Ombudsman Committee.

39. Ombudsman

- 39.1 The Ombudsman Committee, subject to clause 35.1 and as provided for in this Constitution may at any time and from time to time appoint a person as Ombudsman for the purposes of the Ombudsman Rules.

- 39.2 To be eligible to be appointed and to remain appointed as Ombudsman a person must prior to his appointment and at all times whilst Ombudsman meet the requirements contained in 35.8.1 to 35.8.5.

40. Delegation

- 40.1 The Ombudsman may appoint another person who is not a Member to perform, and may delegate to that person, all or any of his or her powers, functions and duties except the power to make a determination or award and this power of delegation. During any period in which the Ombudsman is absent as a result of taking leave or through illness or in a circumstance in which a conflict of interest may arise, the Ombudsman Committee may appoint a Deputy Ombudsman to act in place of the Ombudsman.

41. Members' professional indemnity insurance

Every Member must maintain a current Professional Indemnity Insurance policy on such terms and conditions as the Exco may from time to time stipulate including but not limited to conditions that:

- 41.1 a Member must at all times maintain Professional Indemnity Insurance cover for an amount not less than the maximum amount which may be awarded as compensation pursuant to the Ombudsman Rules from time to time; and
- 41.2 the policy must be endorsed, and at all times remain endorsed, to cover any award made by the Ombudsman in relation to the Member insured.

42. Special and periodic reporting

- 42.1 In addition to the annual report in 43 below, the Ombudsman Committee will collect, record and report such information as the Exco may stipulate from time to time, and must report to the Exco in the manner and at the times required by the Exco from time to time.
- 42.2 Nothing in this Constitution or the Ombudsman Rules requires the Ombudsman Committee or the Ombudsman to conduct any independent investigation or enquiry into the subject matter of any Complaint.

43. Ombudsman Committee's annual report on Ombudsman Service

43.1 The Ombudsman Committee will publish an annual report to the Exco on the operations of the Ombudsman Rules within five months after the end of each full calendar year. The annual report must contain a comprehensive summary and analysis of the following matters:

- 43.1.1 the number of Complaints and enquiries received;
- 43.1.2 demographics of complainants (where practical);
- 43.1.3 the number of Complaints received that were not covered by Ombudsman Service (with reasons);
- 43.1.4 the Ombudsman's current caseload including the age and status of open cases;
- 43.1.5 the time taken to resolve Complaints; and
- 43.1.6 the profile of Complaints to enable identification of:
- 43.1.6.1 the type of financial product or service involved;
 - 43.1.6.2 the product or service provider;
 - 43.1.6.3 the purpose for which the financial product or service was obtained;
 - 43.1.6.4 the underlying cause(s) of the Complaint; and
 - 43.1.6.5 any trends,

but shall not disclose the identity of any Member that is the subject of any undetermined complaint, but may disclose the identity of any Member that is the subject of any determination or award.

43.2 The Ombudsman Committee may publish the annual report on the Association's web site.

44. Review

44.1 The Ombudsman Committee will, not more than 3 (three) years after the date of publication of a previous review commissioned under this clause 44 or within such longer period or on such other basis as the Association may allow or prescribe, commission an independent review of the operations of the Ombudsman Service. This review will address:

44.1.1 the satisfaction levels of Consumers and Members with the operations of the Ombudsman Service;

44.1.2 the effectiveness, fairness and independence of the Ombudsman Service;

44.1.3 public awareness of access to the Ombudsman Service; and

44.1.4 such other issues as may be identified in consultation between the Ombudsman Committee and the Exco.

44.2 The review will be made available to the Exco.

44.3 The Ombudsman Committee may publish the review on the Association's web site.

45. Publicity

The Ombudsman Committee will ensure that the Ombudsman Service is appropriately publicised.

46. Amendment to the Ombudsman Rules

The Ombudsman Rules may be amended by unanimous vote of the Ombudsman Committee in favour of such amendment after consultation with the Exco.

47. Enforcement of the Ombudsman's awards

Where a Member fails to comply in full with the Ombudsman Award, the Ombudsman must as soon as practicable report that failure to the Disciplinary Tribunal which must take the appropriate action as laid down in the Disciplinary Rules.

DATED AT JOHANNESBURG ON 11 APRIL 2011

BetterGroup Limited
Founding Corporate Member

ooba Limited
Founding Corporate Member

Multi Net Real Estate CC
Founding Corporate Member