

The Ecommerce Forum of South Africa NPC

Corporate Governance Memorandum of Incorporation (Mol or Statutes)

The Board of directors recognises that the main objective of the Ecommerce Forum of South Africa (hereafter the Forum) is to ensure all collaborative efforts to promote trust in ecommerce for those business sectors using ecommerce or providing services to it. The work of the board and all committees and specialist advisors will promote ethical conduct & good corporate citizenship for all ecommerce merchants and their suppliers (based on principle 1.2.4 of the King III Report). In conducting its business the Forum Board will ensure effective corporate governance protocols are in place to protect the interests of all stakeholders, and that Forum business is conducted in accordance with the principles of openness, integrity and accountability, as advocated in the King III code and the Company's Act of SA. The Board is committed to applying and enforcing appropriate corporate governance principles, policies and practices within all the Forum's operations and activities.

The Board shall regularly (in two yearly intervals) review the Forum organisational structures and corporate governance procedures and will implement measures to ensure continued compliance with good corporate governance practices. Through this process, all stakeholders (the members & the sponsors of the Forum) can be assured that the Forum is being managed according to prudently determined risk parameters and in compliance with generally accepted business practices.

Article 1 - Incorporation and Nature of the Company

- 1) The Forum is incorporated as a Non-Profit Company (NPC), in accordance with, and governed by -
 - a) the provisions of the Companies Act, 2008 that are applicable to Non-Profit companies, without any limitation, extension, variation or substitution; and
 - b) the provisions of this Memorandum of Incorporation.

Article 2: Overall governance structure

1) The Board of directors

a) Composition

Forum's board structure comprises a majority of non-executive directors independent of management as well as the executive director (CEO) who manages day to day operations. The members, in collaboration with the Board, select and appoint new directors both executive and non-executive as the need arises in a formal procedure applying to all appointments, which are confirmed by members at the following annual general meeting (AGM) or ratified by majority voting at a specially constituted meeting.

The Board should consist of a balance of skills, experience and competencies.

b) Independence

To ensure a clear division of responsibilities, the roles of chairperson and the executive directors are separate. The chairperson, and any vice-chairpersons appointed by the Board, together with the executive director (CEO) jointly provide leadership and guidance to the Forum.

The Board will meet no less than three (3) times per year. Details of directors' attendance of Board meetings during the year will be provided in the annual report.

c) The Chairperson will be selected & appointed by the Board. He/she will be a senior and well-respected individual from the ecommerce sector, with the requisite industry connections to perform the role of non-executive chairperson to its fullest effect and benefit of all stakeholders. The chairperson's performance will be evaluated annually by the Board as a whole. There may be more than one Chairperson or Vice-Chairpersons, each responsible for specific portfolios within the organisation.

d) The Treasurer will be selected and appointed by the Board from among the members of the Board. The Treasurer will Chair the Audit, Governance & Reporting (Management) committee, and will be one of the signatories on the bank account.

e) Non-executive directors

The non-executive directors will bring a diversity of experience, insight and independent judgement on issues of strategy, performance, resources and standards of conduct, while contributing to decision making through their knowledge and experience. To protect members' interests, the non-executive directors will ensure that the executive director is fully answerable for his/her decision making and authority.

The annual general meeting (AGM) of the Forum will elect the non-executive directors initially for a one (1) year period, extendable each year to a total maximum of five (5) years, after which they must step down.

The Board membership, including the Chairperson and CEO should not exceed fifteen (15), and should when possible represent the wide range of interests involved in the ecommerce sector. The Board may invite observer members to its meetings.

The performance of the Board shall be evaluated annually by the members at the AGM.

f) Executive director (CEO)

Being involved in the day-to-day business activities of the Group, the CEO is responsible for ensuring that the decisions, strategies and views of the Board are implemented within a reasonable time-frame. The CEO is appointed on a contract by the Board, and is a member of the Board with full voting rights.

The CEO will report to the Board and is responsible for ensuring the smooth running of the day-to-day business of the Forum, as well as guiding the implementation of policies and strategies adopted by the Board. In addition, he/she is responsible for developing and recommending to the Board a long-term strategy and vision for the Forum that will generate stakeholder value, as well as developing and recommending to the Board annual business plans and budgets that support the Forum's long-term strategy.

g) The Board charter

The Board will adopt a charter defining its responsibilities, the terms of which include:

- Providing strategic direction to the Forum and being responsible for ratifying strategic plans (such as strategies and plans originated by management) and, in particular, approving a long-term strategic plan;
- Approving the annual business plan proposed by the executive management and their advisors and or committee chairpersons;
- Retaining full and effective strategic oversight of Forum, whilst monitoring management's implementation of the approved annual budget and strategies;
- Appointing the executive director (CEO), who is accountable to the Board
- Ratifying the annual financial statements, and ensuring the integrity and presentation thereof;
- Assessing the viability of the Forum as a going-concern via a two yearly strategic review workshop;
- Determining director selection, orientation and evaluation procedures
- Ensuring the Forum has appropriate risk management, internal control and regulatory compliance procedures in place, and that these are communicated to the stakeholders openly and promptly;
- Establishing committees of the Board with clear terms of reference and responsibilities, as and when appropriate;
- Monitoring the non-financial aspects relevant to the business
- Considering, and, if appropriate, approving social reserves for the Forum;
- Finding the correct balance between conforming to governance constraints and performing in an entrepreneurial manner;
- Ensuring a board evaluation process is in place to monitor its own performance as a whole, the performance of management and that of committees appointed by the

Board, including reviewing both its charter and methods of evaluation from time to time;

- Determining the appropriate code of ethics to ensure the integrity of the business affairs of Forum.

Directors' interests in terms of other Board positions and contracts shall be declared, recorded and updated at every meeting. Board members are required to excuse themselves when participating in deliberations or decision-making processes that could in any way be affected by a conflict of interest.

Notwithstanding the mandate given to the audit, remuneration, social, ethics and risk committees, the Board is ultimately accountable and responsible for the performance and affairs of the Forum. Delegating authority to Board committees or management does not in any way mitigate or discharge the Board and its directors of their duties and responsibilities.

The authority of the Forum's Board to make rules for the Forum, as contemplated in section 15 (3) to (5) of the Companies Act, is not limited or restricted in any manner by this Memorandum of Incorporation.

3) The Annual General Meeting and Special General Meetings

a) The Annual General Meeting (AGM)

Will be held within three (3) months of the start of the Forum's Annual Financial year which starts in February.

There will be a quorum if 20% or more of the paid-up members attend¹ or are represented by proxy votes². Members who hold *pro bono* membership (eg academic institutions) have no vote.

The AGM must be called by email and/or by notice in the official Website of the Forum at least three (3) weeks before the date.

The AGM's tasks, as laid out above in Section 1, are to select the Non-Executive members of the Board; to approve the Forum's annual financial report, as presented by the Auditor or Treasurer; to approve the Forum's Strategic Plan.

Only an AGM or a Special General Meeting can dissolve the Forum.

b) The Special General Meeting

¹ If a quorum is not reached in the AGM, the Board must call a Special General Meeting within three (3) months to carry out the tasks of the AGM.

² A paid-up member may apply to the Secretariat to cast a Proxy Vote if unable to attend the AGM or a Special General Meeting. The Chairman or CEO will hold the Proxy Votes on behalf of absent members.

A Special General Meeting will be called if less than 20% of paid up members attend the AGM (thus resulting in no quorum being reached), or may be called by 20% of the paid up members or by the Board in order to agree specific, major policy changes which would require a change to these Statutes (the Mol), or to replace more than 3 members of the Board because of fundamental disagreements, or to dissolve the organisation. A Special General Meeting requires a 20% quorum of all members including those holding pro bono memberships.

4) Board committees

While the Board remains accountable and responsible for the performance and affairs of Forum, it has the power and authority to delegate to management and Board committees certain functions to assist the Board in properly discharging its duties.

Each Board committee acts within agreed, written terms of reference that are reviewed and updated annually. The chairperson of each Board committee reports back to the Board on the deliberation of the committee meeting, and minutes of Board committee meetings are provided to the Board for comment and noting.

The chairperson of each Board committee is required to attend annual general meetings to answer questions raised by members. The established Board committees are as follows:

- The Chairperson's Committee, which includes the Audit, Governance & Reporting (Management) committee
- Research and Education & Skills development
- Ecommerce Trustmark
- Online Payment systems
- Legal & Government Liaison

Other Committees may be added, or those established changed, at the direction of the Board and/or the members at an AGM or Special meeting, with the exception of the Audit, Governance & Reporting (Management) Committee which is required under formal compliance procedures.

a) The Audit, Governance & Reporting Committee

The audit committee shall operate according to the provisions of the Companies Act, and written terms of reference approved by the Board, in accordance with the King III Report and the Companies Act. It will be chaired by the Treasurer. The responsibilities of the audit committee include:

- Overseeing integrated reporting, and in particular all factors and risks that may impact the integrity of the integrated annual report

- Reviewing the interim and annual financial statements and considering whether they are complete, consistent with information known to the committee members and reflect appropriate accounting principles
- Reviewing the adequacy of management’s efforts in maintaining effective internal control systems, including information technology security and control
- Reviewing the performance of the external auditors and exercising approval on the appointment or discharge of the auditors subject to shareholder approval
- Reviewing the performance of internal audit and ensuring that no unjustified restrictions or limitations on their activities exist
- Reviewing the Forum’s finance function to satisfy itself of its expertise, resources and experience, assessing the expertise and experience of the finance director and disclosing the results of the review in the audit committee’s report in the organisation’s annual financial statements
- Exercise oversight of financial reporting risks, internal financial controls, and fraud and non-compliance risks as these relate to financial reporting, and IT risks as these relate to financial reporting.

b) Attendance at Board and Board committee meetings

The record of attendance by each director at Board meetings and Board committee meetings will be kept. Non-executive directors unable to attend two (2) consecutive board meetings will be asked to step down unless the Board agrees to make a special exception. Board meetings must be called at least two weeks in advance except in urgent circumstances. The Board will be called by the CEO or company secretary.

c) Relations with members

Members should make every effort to attend the annual general meeting, as this is an opportunity for them to participate in discussions relating to agenda items and to raise additional issues. Explanatory notes setting out the effects of all proposed resolutions are included in each notice of meeting.

In addition to AGMs, the Board, or a quorum of the members (see above), may call special general meetings to address specific issues.

5) Appointment of an External Auditing Company

An external auditing company shall be appointed by the Board, approved by the AGM. Services rendered by the external auditors during the year, and approved by the audit committee, comprised mainly compliance and other assurance-based engagements, including opinion work not related to or associated with any prohibited services in terms of current policy.

Both the internal and external auditors have unrestricted access to the audit committee. The external and internal auditors may report findings to the committee in the absence of members of executive management. It is a duty of the audit committee to ensure that the independence of the external auditor is not impaired.

The audit committee is responsible for recommending to the Board and shareholders at the annual general meeting, for their consideration, the approval and appointment of the external auditors.

Members of the audit committee shall conduct an evaluation exercise to identify areas that require attention and appropriate action. Based on this evaluation exercise, the audit committee will focus on strengthening its oversight role in relation to combined assurance. At the end of each financial year the audit committee reviews compliance with its terms of reference and makes recommendations to address any areas which may require improvement.

An auditor and/or an accountant shall only be appointed once the Forum's turnover exceeds 500,000R.

Article 3: Compliance, The Annual Report, Company Secretary and Final Considerations

a. Compliance

A key requirement of King III is the establishment of a compliance function to ensure compliance with legislative, regulatory and policy requirements. This includes regularly reviewing the legislative and regulatory environment within which Forum operates, given that the main objective of Forum is to ensure best practice in the ecommerce sector. The Legal Advisor to the Forum will be responsible to ensure Forum meets the necessary requirements. The Audit, Governance & Reporting Committee will assist in this process.

b. Integrated annual report

The CEO & Audit Committee are responsible for the preparation of the integrated annual report. Management fulfils its responsibilities by maintaining adequate accounting records to ensure the integrity of the integrated annual report. This is accomplished by systems of internal control designed to provide reasonable assurance on their reliability. Such controls provide the Forum members & sponsors with the assurance that its assets are safeguarded, transactions are executed in accordance with management's authorisations, and financial and other records are reliable. This is augmented by the Forum's procedures, which should be regularly updated to take cognisance of shifting circumstances in the financial and operational environment.

c. The company secretary

The company secretary will be responsible for providing the Board collectively, and each director individually, with guidance on the discharge of their responsibilities in terms of the legislative, regulatory and governance requirements.

A Company Secretary will only be appointed, at an AGM or Special General Meeting once sufficient annual revenues are acquired.

d. Final Considerations

1) Indemnification of Directors

This Memorandum of Incorporation does not limit, restrict or extend the authority of the Forum's Board of Directors to –

a) advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings (section 78 (4) of the Companies Act);

b) indemnify a director in respect of liability (section 78 (5) of the Companies Act); or

c) purchase insurance to protect the Forum, or a director (section 78 (7) of the Companies Act).

2) upon dissolution of the Forum, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Companies Act, 2008.

3) This Memorandum of Incorporation may be altered or amended only in the manner set out above following section 16, 17 or 152 (6) (b) of the Companies Act.

4) All Board members must be informed of any changes to the Mol by email.

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