

Namibian Foundation for the Conservation of Seabirds
(NAMCOB)



CONSTITUTION

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The founder Members of the Namibian Foundation for the Conservation of Seabirds (the "Foundation") have adopted the following constitution (the "Constitution"):

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this Constitution, and unless the context indicates otherwise –
- 1.1.1 **"Constitution"** means this document;
- 1.1.2 **"Council"** means the principal consultative and decision-making organ of the Foundation;
- 1.1.3 **"Delegate"** means natural persons designated from time to time by Members (particularly Members who are legal entities or other associations of persons) to represent Members at Council meetings; and where a Member is a single natural person, the term "Delegate" may be construed as a reference to such single natural person whenever he or she is personally present in a General Meeting or a meeting of the Executive Committee;
- 1.1.4 **"Executive Committee"** means the organ of the Foundation dealing with the day-to-day management and administration of the Foundation, as established in terms of article 10.1;
- 1.1.5 **"Foundation"** means the association established in terms of this Constitution;
- 1.1.6 **"General Meeting"** means a meeting of the Members as the Council, Members being represented by their respective voting Delegates and non-voting Delegates (if any), and includes both an Annual General Meeting and an Extraordinary General Meeting, as defined in article 9.6;
- 1.1.7 **"Marine Exclusive Economic Zone"** means the "territorial sea" and "exclusive economic zone" as defined in the Territorial Sea and Exclusive Economic Zone Act of Namibia No. 3 of 1990, as may be amended from time to time, and measured from the low water line (as defined by the said Act) and extending two hundred nautical miles (or 370 km) seaward;
- 1.1.8 **"Member"** means any natural person, legal entity or other association of persons capable of acquiring rights and obligations, as described in further detail in article 8 hereof, and admitted to membership of the Foundation, and the term **"Membership"** has a corresponding meaning;
- 1.1.9 **"Seabird"** means all species of birds, their young and eggs, that are dependent on coastal and/or marine ecosystems, and that frequent coastal and estuarine waters and immediately adjacent land, and the open ocean.

Interpretation

- 1.2 In this Constitution –
 - 1.2.1 expressions in the singular also denote the plural, and *vice versa*;
 - 1.2.2 words and phrases denoting natural persons refer also to juristic persons, and *vice versa*;
 - 1.2.3 pronouns of any gender include the corresponding pronouns of the other gender.
- 1.3 In this Constitution, unless the context otherwise indicates, a reference to:
 - 1.3.1 an article, unless the context otherwise indicates, is a reference to an article in this Constitution;
 - 1.3.2 a statute or statutory provision includes a reference to the statute and all regulations made thereunder, as amended from time to time;
 - 1.3.3 a person includes a reference to any natural person, firm, body corporate, unincorporated association or network, joint venture, trust, the state or local government or regulatory department, body, instrumentality, agency, minister or the authority;
 - 1.3.4 one gender includes all genders;
 - 1.3.5 time is a reference to Namibian time as per the *Namibian Time Act, 2017*, and the following construction will apply to time matters:
 - (a) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusively of that day and if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;
 - (b) a reference to a “day” is a reference to any day.
- 1.4 Article headings appear in this Constitution for reference purposes only and will not be employed in the construction of the subject matter.
- 1.5 Where any term is defined within the context of any particular article in this Constitution, the term so defined, unless it is clear from the article in question that the term so defined has limited application to the relevant article only, will bear the same meaning as ascribed to it throughout this Constitution, notwithstanding that that term has not been defined in article 1.1.
- 1.6 Where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- 1.7 This Constitution will be construed in accordance with the laws of Namibia.

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2. COMPOSITION OF FOUNDATION AND NAME

Composition of Foundation

- 2.1 Southern African Foundation for the Conservation of Coastal Birds (SANCCOB); and
Debmarine – Namdeb Foundation; and
Namibian Chamber of Environment (NCE); and
Namibia Nature Foundation (NNF); and
Jessica Kemper; and
The Maryland Zoo in Baltimore, USA

as founder Members, hereby agree to constitute the Foundation as a voluntary association under Namibian common law.

Name

- 2.2 The association's name is the “**Namibian Foundation for the Conservation of Seabirds**”, and the abbreviated form of its name is “**NAMCOB**”.

3. LEGAL STATUS AND NON-PROFIT DISTRIBUTING CHARACTER

Legal Status

- 3.1 The legal status of the Foundation is that of *universitas personarum* continuing in perpetuity. Accordingly –
- 3.1.1 the Foundation is a Voluntary Association under Namibian common law, with its own legal identity which is separate from its individual Members;
 - 3.1.2 the assets and liabilities of the Foundation are separate from those of its Members;
 - 3.1.3 the Foundation acquires rights and obligations separate from its Members; and
 - 3.1.4 the Foundation is entitled to institute and defend legal proceedings in its own name.

Non- Profit Distributing Character Motive

- 3.2 The Foundation does not pursue the acquisition of pecuniary gain for itself or its Members.

- 3.3 The Foundation applies all its income and property towards the promotion of its stated objects and shall not distribute the assets and income to its Members.
- 3.4 No portion of the income or property of the Foundation shall be paid or distributed directly or indirectly to any person (other than in the ordinary course of undertaking any public benefit activity) or to any Member of the Voluntary Association, save where –
- 3.4.1 reasonable compensation for services actually rendered to the Foundation; and
- 3.4.2 reimbursement of actual costs or expenses reasonably incurred on behalf of the Foundation.

4. PLACE OF BUSINESS

- 4.1 The Foundation's principal place of business shall be located in Lüderitz, Namibia;
- 4.2 The Foundation may change its place of business or establish such further places of business within Namibia as the Council may from time to time determine.

5. GOAL, OBJECTS AND CORE VALUES

Goal

The Goal of the Foundation is to conserve seabirds on the Namibian coast and in its marine exclusive economic zone, with emphasis on the most threatened species (hereinafter referred to as the "the Goal").

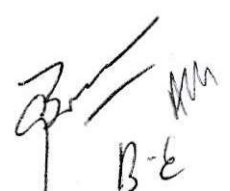
Main Objects

- 5.1 The main objects of the Foundation are:
- 5.1.1 preparedness for and response to seabird-related emergencies;
- 5.1.2 seabird rehabilitation, chick rearing (including egg incubation) and, if necessary, breeding programmes;
- 5.1.3 monitoring, research and data management which contributes towards achieving the Foundation's goal;
- 5.1.4 training people to handle, care for, raise and monitor seabirds and other coastal and marine species, oil spill response procedures, safety and other relevant skills that will benefit conservation and the Foundation's goal;

- 5.1.5 education and public awareness which informs and encourages people to develop positive habits which contribute towards a healthy coast and ocean, and to the wildlife dependent thereon;
- 5.1.6 fundraising, revenue-generating activities and project administration which support the objects of the Foundation;
- 5.1.7 informing and influencing local and global consciousness and action, promoting responsible governance of marine ecosystems and the conservation of marine animals that depend on it, and working towards harmonious coexistence between people, corporate business and marine life and habitats.
- 5.1.8 To work in support of the conservation and management of the Namibian Islands Marine Protected Area.

Further Objects

- 5.2 Without derogating from the main objects of the Foundation set out in article 5.1 which are to be interpreted broadly and inclusively, the further specific objects of the Foundation are to –
 - 5.2.1 act as a consultative forum for its Members;
 - 5.2.2 develop an approach that will foster, unite and engage national, regional and international partners and entities in a professional manner to support the objects of the Foundation;
 - 5.2.3 promote and advocate for best practices in respect of coastal and marine conservation and management by engaging government and law makers to enact, amend, repeal and implement, *inter alia*, policies, legislation, strategies, action plans, pilot projects, guidelines and targets;
 - 5.2.4 engage with companies operating within the maritime and fishing industries *inter alia* oil, gas, shipping, mining and fishing to minimise and mitigate against the impact of their maritime, fishing and coastal activities on seabird populations and their habitats;
 - 5.2.5 encourage joint action programming amongst partners, including local, transboundary, regional and international initiatives, related to research, monitoring and conservation of seabirds and on written resolution other coastal and marine wildlife and habitats;
 - 5.2.6 represent the interests of the Foundation and its Members to the Namibian public, the government, communities, business and investors / donors or at such other agreed upon platforms and/or forums;



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- 5.2.7 engage with the Namibian government to promote the development, adoption and ratification of regional and international agreements, conventions or treaties that are in support of the conservation of seabirds and their habitat;
- 5.2.8 contribute to the development of skills, expertise and mentoring of Namibians for the conservation of seabirds and their habitat;
- 5.2.9 establish itself as a reputable and credible organisation dealing with seabird conservation in Namibia;
- 5.2.10 collaborate with other aligned national, regional, and international seabird, coastal and marine conservation organisations, including in particular and without limitation, SANCCOB.

Ancillary Objects

- 5.3 The Foundation has all such ancillary objects as are necessary for it to fulfil its Goal and main Objects.

Core values

- 5.4 The Foundation subscribes to the following core values, which are to guide the actions of the Foundation, its organs, representatives, and Members –
 - 5.4.1 upholding the fundamental rights and freedoms of the Namibian Constitution and the laws of Namibia;
 - 5.4.2 in areas of mutual interest with those of the Foundation, support the conservation and sustainable development missions, goals and objectives of the relevant ministries responsible for coastal, marine and biodiversity management, protection and conservation;
 - 5.4.3 application of best practice in all aspects of the Foundation's work, including to ensure the highest possible care and welfare of the seabirds in its care;
 - 5.4.4 developing the skills, expertise and mentoring of Namibians in conservation of seabirds and other coastal and marine wildlife and habitats;
 - 5.4.5 political and ideological neutrality; and
 - 5.4.6 transparency, non-discrimination and inclusiveness.

6. Powers

- 6.1 The Foundation, acting through its organs, has all powers to enable it to achieve its main and ancillary objects, and in the furtherance of its objects, the Foundation

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may conduct any and all activities and do all such things as are allowed under the laws of Namibia.

- 6.2 Without limiting the broad and inclusive nature and reach of the powers contemplated in article 6.1, the Foundation has the powers to –
- 6.2.1 admit and expel Members;
 - 6.2.2 determine Membership admission and expulsion criteria and Membership categories;
 - 6.2.3 determine and collect (if any) Membership contributions;
 - 6.2.4 associate with any other person or association of persons;
 - 6.2.5 collaborate and receive technical support and assistance from any other person or institution;
 - 6.2.6 raise funds, invest funds, and to accept or refuse donations and sponsorship;
 - 6.2.7 acquire, hold and dispose of any kind of movable and immovable property;
 - 6.2.8 lend or encumber its movable or immovable property;
 - 6.2.9 borrow moneys or any movable or immovable property;
 - 6.2.10 enter into any type of contract, including, without limitation, contracts for goods and services, and contracts of –
 - a) donations, grants and bursaries;
 - b) sale;
 - c) lease;
 - d) loan, hire-purchase and credit;
 - e) suretyship, guarantee, indemnity or insurance;
 - f) mortgage and pledge, and granting any other type of security over its movable or immovable property;
 - g) employment;
 - h) agency and representation, mandate, power of attorney;
 - i) insurance;
 - 6.2.11 delegate its powers to agents, independent contractors and representatives;
 - 6.2.12 take and act upon professional advice;
 - 6.2.13 employ or appoint employees, independent contractors and agents;
 - 6.2.14 open and operate bank accounts, investment accounts and to issue financial instruments;



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- 6.2.15 institute and defend legal proceedings (including arbitration proceedings), and to submit disputes to legal proceedings, arbitration or mediation; and
- 6.2.16 waive, settle or compromise any indebtedness or obligation owed by or to the Foundation.
- 6.3 The Foundation's powers are executed through its organs, principally being –
 - 6.3.1 the Council; and
 - 6.3.2 the Executive Committee.

7. AFFILIATIONS

- 7.1 The Foundation may affiliate with any person or organisation where the objects of which are similar to or support the objects of the Foundation.
- 7.2 In particular, the Foundation may affiliate to SANCCOB based on an agreement established for this purpose.

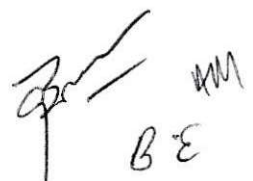
8. MEMBERSHIP

Eligibility for Membership

- 8.1 Any natural person, legal entity or other association of persons or organisations capable of acquiring rights and obligations –
 - 8.1.1 whose business (in the case of legal persons) or employment (in the case of natural persons), or active participation comprises an interest to promote, assist or support the conservation of seabirds and their habitat, (i.e. any of the matters listed in article 5.1 and 5.2), and at the final discretion of Council; and
 - 8.1.2 which supports the objects of the Foundation, may apply for Membership of the Foundation.

Application for Membership

- 8.2 Applications for Membership are made to the Executive Committee.
- 8.3 Applications for Membership are made in such form and are accompanied by such application fees as the Executive Committee determines from time to time, which may by written resolution be modified by the Executive Committee as required.
- 8.4 After scrutinising an application for Membership, the Executive Committee shall make a recommendation to the Council whether to accept or reject an application for Membership.

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8.5 The Council accepts or rejects applications for Membership in its final discretion.

Categories of Membership

8.6 At the entry into force of this Constitution, there are four categories of Membership –

- a) **Institutional Members**, applicable to constituted organisations whose business, or active participation comprises an interest to promote, assist or support the conservation of seabirds and their habitat in Namibia, as per article 8.1;
- b) **Ordinary Members**, applicable to individuals, who's business, or active participation comprises an interest to promote, assist or support the conservation of seabirds and their habitat in Namibia, as per article 8.1;
- c) **Junior and Student Members**, applicable to persons under the age of 18 years or who are *bona fide* students at any duly constituted educational facility, whether state or private, and who have an interest in seabirds, coastal and marine conservation and research, and who wish to become actively involved in the work of the Foundation.
- d) **Corporate and Donor Members**, being businesses, bilateral and multilateral development partners, foundations, trusts and other institutions that channel corporate social investment (CSI) and donor funding to conservation initiatives.

8.7 Only Institutional and Ordinary Members have voting rights on the Foundation Council.

8.8 All categories of Members may participate in all Foundation events.

8.9 Only Institutional and Ordinary Members are eligible for election to the Executive Committee. Other categories of Members may be co-opted to the Executive Committee.

8.10 Upon entry into force of this Constitution, the Council may, by a two-thirds majority, change or modify the categories of Membership, provided that any classification of Members into such categories should as far as possible be based on measurable and transparent criteria which are not inconsistent with the basic eligibility requirements set out in article 8.1 and the Foundation's core values set out in article 5.4.


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Loss and Reinstatement of Membership

- 8.11 Membership of the Foundation is lost –
- 8.11.1 when a Member resigns by written notice to the Foundation;
 - 8.11.2 upon the death of a Member who is a natural person;
 - 8.11.3 upon the dissolution of a Member who is a legal person or other association of persons;
 - 8.11.4 if the annual Membership contribution (if any) of a Member remains unpaid for six months after falling due; or
 - 8.11.5 when the Member is expelled on a two-thirds majority decision of the Council.
- 8.12 For the purpose of article 8.11.5 –
- 8.12.1 a Member may be expelled if his or her continued Membership is, in the final opinion of the Council, irreconcilable with the objects of the Foundation, or brings the Foundation into disrepute; and
 - 8.12.2 the Council may not resolve to expel a Member before having notified the Member of its intention and having given the Member an opportunity to make representations before or at the meeting of the Council at which such resolution is to be taken.

Membership Contributions

- 8.13 The Council may, from time to time, determine Membership contributions (if any) to be paid by Members; provided that Members whose business is not for gain may, on application to the Council and on good cause shown, and on a case-by-case basis, be exempted by the Council from paying such Membership contributions, on such further conditions as the Council may determine.

Obligations of Members

- 8.14 Members are obliged to comply with, uphold and defend in all respects the letter and spirit of this Constitution.
- 8.15 Members are expected and encouraged to actively support the objects, core values and activities of the Foundation to which they are capable of contributing and specifically to –
- 8.15.1 share information and experience on seabird conservation, rehabilitation, monitoring, research, education and related matters freely with other Members,

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including those on the wise management and protection of coastal and marine ecosystems;

- 8.15.2 actively engage in the recruitment of new Members and building alliances with relevant conservation organisations with similar objectives;
- 8.15.3 provide advice and professional support, as may be agreed, to the seabird sector and Foundation;
- 8.15.4 raise funds or provide input thereof, from time to time, in order for the Foundation to be able to carry out its functions and achieve the objects as set out in this Constitution.
- 8.16 Members pay the annual Membership contribution (if any).

Privileges of Membership

- 8.17 Members have the following privileges –
 - 8.17.1 become part of a national multi-stakeholder platform of seabird, coastal and marine conservation and information sharing;
 - 8.17.2 have access to a professional network with contacts to other Members and organisations;
 - 8.17.3 engage in collaborative conservation, rehabilitation, monitoring, research, education and awareness raising programmes to address critical local, national and transboundary seabird conservation issues and needs;
 - 8.17.4 be part of a mechanism for Members to mobilise resources for approved seabird conservation activities and programmes.

9. THE COUNCIL

Ultimate Decision-making Organ

- 9.1 The Foundation's ultimate decision-making organ is the Council.

Composition of Council

- 9.2 Each Institutional Member is entitled to be represented by a maximum of two Delegates at Council meetings with a total of two votes per Institutional Member.
- 9.3 All other members may be represented by one Delegate.
- 9.4 Ordinary Members have one vote each.

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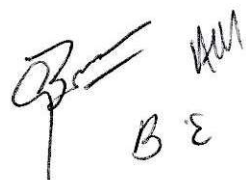
- 9.5 Delegates of Institutional Members should be functionaries or employees of the Members unless the Council is provided with adequate reasons why such person should be appointed as a Delegate although he or she is not a functionary or employee of the Member.

Council Meetings

- 9.6 The Council holds –
- 9.6.1 At least one General Meeting during every calendar year, known as the “**Annual General Meeting**”; and
- 9.6.2 Such other General Meetings, known as “**Extraordinary General Meetings**”, as may be convened in terms of this Constitution.
- 9.7 Not more than eighteen months should pass between two Annual General Meetings.
- 9.8 Annual General Meetings are held at a venue and time determined by the Executive Committee.
- 9.9 Each Annual General Meeting conducts at least the business required to be conducted under article 9.14 of this Constitution.
- 9.10 Extraordinary General Meetings of the Council are convened by the Secretary at the request of –
- 9.10.1 the Executive Committee; or
- 9.10.2 not less than five Members of the Foundation.
- 9.11 Extraordinary General Meetings only deal with the special business for which they have been convened.

Notice of General Meetings

- 9.12 All General Meetings are convened on at least fourteen days’ notice to the Members;
- 9.13 A notice of a General Meeting states the venue, day and hour of the General Meeting, and the business to be conducted.
- 9.14 Notice of a General Meeting may be given in any manner, including hand delivery, mail, telefax, e-mail or other applicable electronic or telecommunications messaging system.

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- 9.15 Any inadvertent omission to give notice of a General Meeting to a Member or the non-receipt of a notice by a Member will not invalidate the call of and the proceedings conducted at such General Meeting.

Business at Annual General Meeting

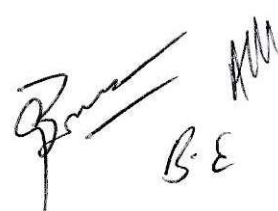
- 9.16 The ordinary business of the Annual General Meeting comprises the –
- 9.16.1 adoption of the Minutes of the previous Annual General Meeting (and any Extraordinary General Meetings held in between the Annual General Meetings, the minutes of which have not yet been adopted);
 - 9.16.2 consideration of the annual financial statements of the Foundation;
 - 9.16.3 election of the Executive Committee;
 - 9.16.4 appointment of the Foundation's auditors and legal practitioners; and
 - 9.16.5 other matters as may considered appropriate.

Quorum

- 9.17 The quorum for a General Meeting is five Institutional and Ordinary Members, present, as the case may be, in person or by proxy (in the case of Members who are natural persons) or by Delegate (in the case of Members who are legal entities or associations of persons).
- 9.18 No business is conducted without a quorum.
- 9.19 If, within half an hour of the scheduled time for a General Meeting, there is no quorum, the General Meeting is automatically adjourned for one week, for the same weekday, time and venue (or, if such venue is not available, at a venue as notified by the Secretary).
- 9.20 If, within half an hour after the scheduled time for the adjourned meeting referred to in article 9.19, there is no quorum, the Members actually present at the adjourned General Meeting are deemed to constitute a quorum and may conduct any lawful business of the Foundation in General Meeting.

The Chairperson

- 9.21 All general meetings are presided over by –
- 9.21.1 the Chairperson; or
 - 9.21.2 in the Chairperson's absence, any other Delegate elected by the General Meeting for the purposes of presiding over it, (the aforesaid persons hereinafter for

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convenience referred to as the “**Meeting Chairperson**”) who conducts the proceedings.

Voting - General

- 9.22 Resolutions put to the vote of a General Meeting are decided on a show of hands, but the Meeting Chairperson or any Delegate present may demand a poll.
- 9.23 A demand for a poll may be withdrawn.
- 9.24 Where voting takes place on a show of hands, the Meeting Chairperson declares whether a resolution has been carried (whether unanimously or by a particular majority) or has been defeated.
- 9.25 Polls are taken in a manner directed by the Meeting Chairperson.

Weight of Votes and Disqualification

- 9.26 Every Institutional Member has two votes and every Ordinary Member has one vote.
- 9.27 Members whose annual membership fees (if any) are unpaid have no vote.

Casting Vote

- 9.28 In the event of an equality of votes the Meeting Chairperson may exercise a casting vote.

Proxies

- 9.29 Members who are not able to attend a General Meeting (whether personally or through a Delegate) may appoint a proxy to attend on their behalf at the General Meeting.
- 9.30 Only Delegates may hold and act as proxies.
- 9.31 Proxies are appointed in writing and under signature of the person appointing the proxy.
- 9.32 If a document appointing a proxy is not delivered to the Secretary before the commencement of the General Meeting, it is invalid.
- 9.32.1 This document must be delivered to the Secretary by the Member appointing the proxy.


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- 9.33 Proxies not containing voting instructions may be exercised at the discretion of the proxy.

10. THE EXECUTIVE COMMITTEE

Committee Members

- 10.1 The Foundation has an Executive Committee comprising not less than four and not more than seven persons, all of whom must be Delegates to the General Meeting at which they are elected to the Executive Committee.
- 10.2 The Executive Committee may co-opt a further three persons as members of the Executive Committee (who, for the avoidance of doubt, need not be Delegates, but may be outside persons), but co-opted members have no vote on the Executive Committee.

Appointment and Terms of Office

- 10.3 Executive Committee members are ordinarily proposed, voted for and appointed by majority resolution at an Annual General Meeting, but may also be appointed at an Extraordinary General Meeting.
- 10.4 One Executive Committee member shall be a representative from SANCCOB for as long as there is an Agreement between NAMCOB and SANCCOB.
- 10.5 Executive Committee members hold office for a term of two years, such term commencing at a closing of the Annual General Meeting and/or Extraordinary General Meeting at which they are elected and terminating at the conclusion of the election proceedings for new Executive Committee members at the second subsequent Annual General Meeting thereafter.
- 10.6 The two-year term of office shall not apply to the SANCCOB representative, and SANCCOB may change its representative as it sees fit.
- 10.7 For the purposes of implementing article 10.5, and in respect of the first Executive Committee elected at the Annual General Meeting at which this Constitution is adopted, the term of office of two Executive Committee members expires at the next Annual General Meeting.
- 10.8 Executive Committee members are eligible for re-election.
- 10.9 Within the limitations of article 10.1, the Council may, by ordinary resolution passed at a General Meeting, determine, increase or reduce the number of Executive Committee members.

- 10.10 A General Meeting may, on good cause, remove an Executive Committee member from office prior to the expiry of his or her term of office, and may appoint another Executive Committee member in his or her place; provided that the General Meeting may not resolve to remove an Executive Committee member before having notified the Executive Committee member of its intention and having given him or her an opportunity to make representations before or at the General Meeting at which such decision is to be taken.

Vacancies

- 10.11 If any vacancy arises on the Executive Committee, the remaining Executive Committee members may appoint any other Member or Delegate of a Member to fill such vacancy, and the term of office of such substituted Executive Committee member will expire at the commencement of the next Annual General Meeting or call an Extraordinary General Meeting.
- 10.12 The remaining Executive Committee members may act or take decisions despite any vacancy in the Executive Committee. If on account of vacancies there are two or less Executive Committee members left, such remaining Executive Committee members may only act to call an Extraordinary General Meeting of the Council for the purposes of appointing Committee members.

Powers of Committee

- 10.13 Except when the Council is convened in a General Meeting, the Executive Committee holds all the powers under this Constitution and is in all respects authorised and responsible for the management and control of the business of the Foundation.

Sub-Committees and Delegation of Powers

- 10.14 The Executive Committee may appoint sub-committees comprising of Members or their designated representatives, and may assign any of its functions to such sub-committees; provided that the activities of the sub-committees remain under the final supervision and control of the Executive Committee. A sub-committee is bound by and accountable to the Executive Committee in accordance with any terms of reference or mandate given to it by the Executive Committee.
- 10.15 The Executive Committee may delegate any of its powers to any subcommittee or other person, but remains accountable to the members of the Foundation for any acts or omissions of such delegate pursuant to such delegation.


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Officials

10.16 Immediately after the Annual General Meeting, the Executive Committee elects from amongst its members, officials to the position of –

10.16.1 Chairperson;

10.16.2 Secretary; and

10.16.3 Treasurer.

10.17 The officials appointed under article 10.14 have such duties as are ordinarily attendant to their position, or as is determined from time to time by the Executive Committee.

Power to make Bylaws

10.18 The Executive Committee has the power to make bylaws for the purposes of:

10.18.1 Regulating the conduct of the Foundation's Members; and

10.18.2 Determining administrative, managerial and related procedures, to ensure the proper running, management and control of the Foundation in compliance with the provisions of this Constitution.

10.19 To the extent that any bylaws made by the Executive Committee are inconsistent with the provisions of this Constitution, they are invalid.

Convening of Meetings

10.20 The Executive Committee meets as often as is necessary to effectively conduct the business of the Foundation.

10.21 Subject to article 10.18, the Executive Committee regulates its meetings and transacts its business as it deems fit.

10.22 The Secretary convenes meetings of the Executive Committee at the request of –

10.22.1 The Chairperson;

10.22.2 Any two Executive Committee members; and on reasonable notice to the

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other Committee members.

- 10.23 Notices of Executive Committee meetings specify the general nature of the business to be dealt with by the meeting.

Quorum

- 10.24 Three Executive Committee members constitute a quorum for an Executive Committee meeting.
- 10.25 Meetings of the Executive Committee are presided over by the Chairperson or, in the Chairperson's absence, any other Executive Committee member voted for by the other Executive Committee members.

Decisions and Voting

- 10.26 If not determined otherwise in this Constitution, decisions of the Executive Committee are taken by a simple majority of the Executive Committee members present and voting.
- 10.27 In the event of an equality of votes the Chairperson, or, in the Chairperson's absence, the Executive Committee member presiding over the meeting, may exercise a casting vote.
- 10.28 A written resolution signed by all Executive Committee members is valid as if taken at an Executive Committee meeting and may be circulated electronically.

General

- 10.29 Executive Committee members administer the Foundation and exercise their powers strictly in accordance with provisions of this Constitution and the laws of Namibia.
- 10.30 In the performance of their duties and in the exercise of their powers, Executive Committee members act with the care, diligence and skill which can reasonably be expected of persons who manage the affairs of others.

Conflict of Interest

- 10.31 The Executive Committee and Council members are not permitted to place themselves in a position where their private interests or the interests of the Member who mandated them conflict with their duties towards the Foundation.



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- 10.32 Executive Committee and Council members are required to declare their private and professional interests and recuse themselves in the event that a conflict of interest as contemplated in 10.31 should arise or is likely to arise.

Privileges of Executive Committee Members


- 10.33 No Executive Committee member is liable for any act of dishonesty or other misconduct committed by another Executive Committee member, unless he or she knowingly allowed or tolerated such act of dishonesty or other misconduct or was an accessory to the Executive Committee member committing same.
- 10.34 An Executive Committee member is not liable to make good to the Foundation or to any other person or entity, any loss occasioned or sustained by any cause, howsoever arising, other than such loss as may arise from or be occasioned by his or her personal dishonesty or other willful misconduct or gross negligence.

Indemnity

- 10.35 Subject to the limitations of the applicable law, each Member, and each member of the Executive Committee, or the Council and all other office bearers, shall be indemnified by the Foundation for the consequences of acts done and decisions taken in good faith in the exercise or the purported exercise of any of the powers conferred upon them in terms of this Constitution. It shall be the duty of the Foundation to pay all costs and expenses which any such person may incur, or become liable for, as a result of contracts entered into, or acts done in such capacity, with the authority of the Executive Committee.
- 10.36 Subject to the provisions of any relevant statute, no Member, or member of the Executive Committee or the Council or any other office bearer of the Foundation shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Foundation, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

Various - Minutes

- 10.37 The Secretary keeps Minutes of all General Meetings and Executive Committee meetings. Members have the right to inspect such Minutes at all reasonable times.

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Various – Financial Year

10.38 The Council, from time to time, determines the financial year end of the Foundation by ordinary resolution.

Various – Books of Account

10.39 The Treasurer is responsible to keep proper and correct books of account for the Foundation, and presents annual financial statements to the Members of the Foundation at the Annual General Meeting.

Various – Auditor and Legal Practitioner

10.40 The Foundation shall annually appoint an auditor and may, at its discretion, appoint a legal practitioner.

Various – Contracts and Bank Accounts

10.41 The Foundation's financial affairs shall be conducted by means of a banking account.

10.42 The Executive Committee from time to time determines the signing powers of Executive Committee members in respect of contracts, other written instructions and bank accounts.

Various – Ambit of Discretion

10.43 Where discretions are vested in the Executive Committee or in the Members of the Council in terms of this Constitution, such discretions shall be complete and absolute, except where expressly limited.

11. ADMINISTRATIVE STRUCTURES

11.1 The Executive Committee may, from time to time, establish, vary and amend such administrative structures, support and resources, not inconsistent with the provisions of this Constitution, as will support the Executive Committee in fulfilling their duties and functions under this Constitution.

11.2 Administrative structures could comprise –

11.2.1 a Secretariat, which could be a Member organisation, a professional service organisation or an individual which may offer –

- a) hosting arrangements with a physical address;
- b) communications support including postal and e-mail addresses, and telephone number;

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- c) administrative and secretarial services, under supervision of the Secretary of the Executive Committee;
 - d) financial management services and support, under the supervision of the Treasurer of the Executive Committee;
 - e) any other functions as the Executive Committee may from time-to-time assign; and / or
- 11.2.2 a Chief Executive Officer, Executive Director or Manager to serve as the Foundation's principal administrative officer, for and on behalf of the Foundation as the Executive Committee may from time to time delegate to him or her, and to be fully accountable to the Executive Committee.
- 11.3 The Secretariat or principal administrative officer, or any other administrative mechanism established by the Executive Committee, unless excused by the Executive Committee, is required to be in attendance at meetings of the Executive Committee and at Annual General Meetings and Extraordinary Meetings.

12. AMENDMENTS TO CONSTITUTION

- 12.1 This Constitution may be amended by a special resolution of Members present in person or by proxy passed at an Annual General Meeting or Extraordinary General Meeting in accordance with article 12.2.
- 12.2 This Constitution may not be amended unless –
- 12.2.1 written notice of any proposed resolution to amend the Constitution, specifying the precise wording of the amendments, has been given to the Members of the Foundation;
 - 12.2.2 there is a quorum of at least twenty five percent of all the fully paid-up (if relevant) Members of the Foundation present (whether in person or by proxy) at such General Meeting; and
 - 12.2.3 the resolution to so amend the Constitution has been carried by not less than two thirds of the Members present and entitled to vote at such General Meeting.

13. DISSOLUTION

- 13.1 The Foundation continues in perpetuity until terminated by a special resolution of an Extraordinary General Meeting convened only for the purpose of dissolving the Foundation, such resolution to comply with the provisions of article 12.2.


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13.2 If upon winding up or dissolution of the Foundation, there remains, after the satisfaction of all the Foundation's debts and liabilities, any property, the same may not be paid to or distributed among the Members of the Foundation, but must be given or transferred to any other non-profit or charitable association, organisation or legal entity in Namibia with similar objects as the Foundation (as set out herein in article 8.1), as may be determined by Council and subject to the provisions of Namibian law.

14. DISPUTES

14.1 In the event of any dispute or difference arising between the Members relating to their work in the Foundation, or arising out of this Constitution, the disputing Members will immediately, within no more than 10 (ten) days after the dispute has arisen or any one of the Members having become aware of it, meet to attempt to settle such dispute or difference.

14.2 Failing such settlement, the disputing Members may bring their dispute to the Executive Committee for settlement. Should the dispute not be resolved by the Executive Committee, or should either of the Members not be satisfied with the Executive Committee's decision, either of the disputing Members may bring the dispute to the Council for settlement, which shall have the final say in the matter.

14.3 The Council may, however, refer the matter to a private arbitrator, who will be appointed by joint consensus of the disputing Members, in the event that the Council is either conflicted or does not possess the necessary expertise to deal with the dispute. Either of the disputing Members may, on reasonable cause shown, demand in writing that the Council refer the matter to a private arbitrator, which demand shall be made prior to any meeting of the Council having been held in order to deal with the dispute.

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