Form CM 44B

REPUBLIC OF NAMIBIA

COMPANIES ACT 2004

(Section 64) (Regulation 18(3))

**ARTICLES OF ASSOCIATION**

**OF A COMPANY NOT HAVING SHARE CAPITAL**

**NOT ADOPTING SCHEDULE 1**

Registration Number of Company

Name of Company

**National Institute for Civil Society Training (NICST)**

A. The articles of Table A contained in Schedule 1 to the Companies Act, 2004, shall not apply to the Company.

B. The articles of the company are as follows:

INDEX

[1 I N T E R P R E T A T I O N 3](#_Toc54623937)

[2 T H E I N S T I T U T E & THE GUARANTEE 3](#_Toc54623938)

[3 O B J E C T S O F T H E I N S T I T U TE 4](#_Toc54623939)

[4 M E M B E R S H I P 4](#_Toc54623940)

[5 G E N E R A L M E ET I N G S 5](#_Toc54623941)

[6 N O T I C E O F G E N E R A L M E ET I N G S 5](#_Toc54623942)

[7 P R O C E ED I N G S A T G E N E R A L M E ET I N G S 6](#_Toc54623943)

[8 V O T E S O F M E M B E R S 8](#_Toc54623944)

[9 LEGAL ENTITIES ACTING TRHOUGH REPRESENTATIVES AT MEETINGS 9](#_Toc54623945)

[10 D I R E C T O R S 9](#_Toc54623946)

[11 F U N D R A I S I N G 10](#_Toc54623947)

[12 P O W E R S A N D DU T I E S O F D I R E C T O R S 10](#_Toc54623948)

[13 D I S Q U A L I F I C A T I O N O F D I R E C T O R S 11](#_Toc54623949)

[14 E L E C T I O N S & T E R M S O F O F F I C E O F D I R E C T O R S 12](#_Toc54623950)

[15. P R O C E E D I N G S O F D I R E C T O R S 13](#_Toc54623951)

[16 T H E S E C R E T A R Y 14](#_Toc54623952)

[17 T H E S E A L 14](#_Toc54623953)

[18 F I N A N C I A L Y E A R A N D A C CO U N T S 14](#_Toc54623954)

[19 A U D I T 15](#_Toc54623955)

[20 N O T I C E S 15](#_Toc54623956)

[Annexure A: Voting Proxy Form 17](#_Toc54623957)

[Annexure B: Proxy Voting Form with Direction of how to vote 18](#_Toc54623958)

[Annexure C: Chapter 10 of Companies Act 28 of 2004 : Auditors 19](#_Toc54623959)

# 1 I N T E R P R E T A T I O N

1.1 In these Articles:

1.1.1 "The Act" means the Companies Act, 2004;

1.1.2 "The Seal" means the common seal of the company;

1.1.3 “Person” means natural person or legal entity

1.1.4 "Secretary" means any person appointed to perform the duties of the secretary of the company;

1.1.5 "Namibia" means the Republic of Namibia.

1.2 Expressions referring to writing shall, unless the contrary intention appears, be concurred as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form, including writing transmitted and displayed in electronic format.

1.3 Unless the context otherwise requires, words or expression contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

# 2 T H E I N S T I T U T E & THE GUARANTEE

* 1. The National Institute for Civil Society Training is a non-profit association, registered in terms of section 21 of the companies Act and limited by guarantee. The liability of members is limited to the amount referred to in paragraph 2.4
  2. The Institute shall apply all its profits, if any, or other income, however derived must be applied solely toward promoting the object of the Institute, and no portion may be paid or transferred, directly or indirectly, by way of bonus or otherwise, to the members of the Institute or to its holding company or subsidiary, if any. However nothing contained in these Articles of Association prevents the Institute from paying in good faith any reasonable remuneration to any officer or employee of the Institute or to any member in return for any services actually rendered to the Institute.
  3. On winding-up, deregistration or dissolution of the Institute, the assets of the Institute, remaining after the satisfaction of all its liabilities must be given or transferred to some other non-profit association or institution having similar objects to this Institution, to be determined by members of the Institution at or before the time of its dissolution or, failing that determination, by the Court.
  4. Each member undertakes to contribute to the assets of the Institute in the event of it being wound up while a members or within one year afterwards, for payment of the debts and liabilities of the Institute contracted before the member ceased to be a member, and of the costs, charges and expenses for the winding-up, and for adjustment of the rights of the contributories among themselves, any amount which may be required, but not exceeding N$ 500.00 (five hundred Namibia dollars).

# 3 O B J E C T S O F T H E I N S T I T U TE

* 1. The Objects of the Institute are to provide training and capacity building opportunities to Namibian civil society, including individuals, governmental institutions, non-governmental organisations and community based organisations in all fields which promote skills development for the Namibian economy, self-employment, employment creation, and life long learning.
  2. The Institute aims to contribute specifically to civil society organisations’ capacity in inter alia:
* general management areas for CSOs;
* Generaloperational areas for CSOs
* Service Delivery areas for CSOs such as in health care, early childhood development, entrepreneurship, crafts and community development.
  1. The Institute aims to assist communities in Namibia to eradicate poverty and to achieve participation in civil society activism.
  2. The Institute aims to promote through education and training, an understanding and appreciation of Namibia’s civil society landscape and areas for further development based on the needs identified in Namibia from time to time.

1. The Institute aims to promote through education and training, an understanding and appreciation of Namibia’s environmental resources and vulnerabilities, and to mainstream inclusion of environmental consideration in the implementation of all economic and social development projects and programmes.

# 4 M E M B E R S H I P

4.1 *Number*: The maximum number of members of the company shall not be limited but shall be not less than seven.

4.2 *Admittance:* The subscribers to the Memorandum of Association and such other persons as a majority of the directors shall admit to membership, shall be members of the company.

4.3 Membership shall be open to natural persons, associations and legal entities which meet the requirements for membership and who adhere to the objectives and code of conduct of the company, as determined by the members in general meeting. Natural persons may also become non-voting associate members.

4.4 *Cancellation of Membership:* A member who desires to resign shall signify such desire in writing to the secretary. A member’s membership shall be cancelled if the majority of the directors so resolve. In cases of resignation or cancellation the secretary shall remove the name of the person from the list of members.

# 5 G E N E R A L M E ET I N G S

5.1 The General Meeting of Members is the highest decision-making body of the Institute. The Directors report to the General Meeting of Members and execute the resolutions of the General Meeting.

5.2 General meetings may be held by electronic means such as conference calls, provided that all other requirements of general meetings such as the quorum have been met. Any general meeting held by electronic means and any resolutions passed at such electronic general meeting shall be as valid and binding on the Institute as a general meeting where the parties were physically present at one place.

*5.3 First Meeting:* The first general meeting of the company shall be held at such time not being less than one month nor more than six months after the incorporation of the company at such time and place as the directors shall determine.

5.4 *Annual general meeting:* The company shall not later than six months after the end of each financial year of the company hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. The annual general meeting shall be held at such time and place as the directors shall appoint.

5.5 *Extraordinary general meetings:* All general meetings other than annual general meetings shall be called extraordinary general meetings.

5.6 *Calling of meetings:* The Directors may, whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by requisitions for at least five percent (5%) of the members of the Institute (as provided by Section 188 of the Act). If at any time there are not within Namibia sufficient directors available to act to form a quorum in person or by electronic means, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly possible as that in which meetings may be convened by the directors.

# 6 N O T I C E O F G E N E R A L M E ET I N G S

6.1 *Notice*. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days’ notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. Written notice shall include notice sent by e-mail or other electronic means such as telephone messaging and social media messaging.

6.2 The notice period shall be counted exclusive of the day on which it is served or deemed to be served (or sent) and of the day of which it is given (or received), and shall specify the place (or the log in or dial in details for a conference by electronic means), the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the articles of the company, entitled to receive such notices from the company.

6.3 Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this Article be deemed to have been duly called if it is so agreed -

6.3.1 in case of a meeting called as the annual general meeting, by all the members entitled to attend and vote there at; and

6.3.2 in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.

6.4. *Omission to give notice*: The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

# 7 P R O C E ED I N G S A T G E N E R A L M E ET I N G S

7.1 *Ordinary and special business:* All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration, of the auditors.

7.2 *Quorum:* No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, **fifty percent (50%) of the** members present in person or by electronic means shall be a quorum.

7.3 *Failure to obtain quorum*: If within an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place (or electronic conferencing platform), or to such other day and at such other time and place (or electronic conferencing platform) as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

7.4 *Chairperson:* The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the company or, if there is no such chairperson, or if he/she is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.

7.5 *Election by members****:***  If at any meeting no director is willing to act as chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairperson of the meeting.

7.6 *Adjournment*: The chairperson may, with the consent of any meeting at which a quorum is present, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

7.7 If at any meeting of the Institute any member of the Institute who is present and entitled to vote at the meeting demands an adjournment of the meeting upon any ground stated by him/her the chairperson shall put the demand to the vote of the meeting and if a majority of the members present and entitled to vote at the meeting vote in favor of an adjournment, the chairperson shall adjourn the meeting to a day seven days after the date of the meeting or if that day is a public holiday, to the next succeeding day other than a holiday.

7.8 When a meeting has been adjourned as aforesaid the secretary of the Institute shall upon a date not later than two days after the adjournment, publish in a newspaper circulating in Namibia or on the social media platform of the Institute a notice stating:-

7.8.1 the time and place (or electronic conferencing platform) to which the meeting was adjourned;

7.8.2 the matter before the meeting at the time when it was adjourned; and

7.8.3 the ground for the adjournment.

7.9 *Voting on resolutions:* At any general meeting a resolution put to the meeting shall be decided on a show of hands (or by verbal communication in case of a meeting by conference call) unless before the voting a poll by secret ballot is demanded -

7.9.1 by the chairperson; or

7.9.2 by at least three members present in person or by proxy; or

7.9.3 by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

*7.10 Declaration of chairperson conclusive*. Unless a poll by secret ballot be so demanded a declaration by the chairperson that a resolution has on a show of hands or by verbal communication in case of a meeting by conference call) been carried or carried unanimously, or by a particular majority or lost, an entry to that effect in the book containing the minutes of proceedings of the Institute shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

7.11 The demand for a poll by secret ballot may be withdrawn.

7.12 *Taking a poll*. Except as provided in Article 7.15, if a poll by secret ballot is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll by secret ballot shall be deemed to be the resolution of the meeting at which the poll by secret ballot was demanded.

7.13 *Casting vote*. In the cases of equality of votes, whether on a show of hands or verbal communication or on a poll, the chairperson of the meeting at which the show of hands or verbal communication takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

7.14 *When poll to be taken*. A poll demanded on the election of a chairperson, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

7.15 *Validation of resolution not passed at a meeting duly convened*. Subject to the provisions of the Act a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at a general meeting (or being legal entities by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

7.16 A written communication supporting a resolution and sent by a member by electronic means to the secretariat of the Institute shall be deemed to be such member’s signature on the resolution. The secretariat shall keep records of all written communications of members supporting or opposing a resolution.

# 8 V O T E S O F M E M B E R S

8.1 *Votes* Member shall have one vote.

8.2 *Money owing to company*. No member shall be entitled to vote at any general meeting unless all membership fees or any other monies presently payable by him/her to the Institute have been paid.

8.3 *Proxy*. On a poll votes may be given either personally or by proxy.

8.4 *Instrument of proxy*. The instrument appointing a proxy shall be in writing under the hand of the appointing member or of his/her agent duly authorized in writing, or, if the appointing member is a legal entity, either under seal or under the hand of an officer or agent duly authorized. A proxy must be a member of the Institute.

8.5 *Deposit of instrument*. The instrument appointing a proxy shall be deposited at or sent to the secretariat of the Institute or at such other place within Namibia as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, in default the instrument of proxy shall not be treated as valid.

8.6 *Forms*. An instrument appointing a proxy shall be in a form as near as possible to Annexure A hereto.

8.7 *Form of proxy stating how vote to be cast*. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in a form as near as possible to Annexure B.

8.8 *Proxy may demand poll*. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

8.9 *Proxy irrevocable, except on notice in writing*. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the Institute at the secretariat before the commencement of the meeting or adjourned meeting at which the proxy is used.

# 9 LEGAL ENTITIES ACTING TRHOUGH REPRESENTATIVES AT MEETINGS

9.1 *Corporate bodies*: Any corporate body (legal entity) which is a member of the Institute may by resolution of its directors or any other governing body authorize such person as it thinks fit to act as its representative at any meeting of the Institute, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporate body which he/she represents as that corporate body could exercise if it were an individual member of the Insitute.

# 10 D I R E C T O R S

10.1 *Number*: There shall at all times be seven directors of the Institute. The names of the first directors shall be determined in writing by the subscribers of the Memorandum of Association or a majority of them.

10.2 *Remuneration*: The directors shall not be entitled to be remunerated for their services. Subject to the prior approval by a two-thirds majority of the directors, directors shall however be paid all traveling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the Institute or in connection with the business of the Institute.

# 11 F U N D R A I S I N G

11.1 *Directors powers*: Subject to the provisions of these articles the directors may exercise all the powers of the Institute raise donor funding and to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to provide security for any debt, liability or obligation of the Institute.

11.2 The directors shall not accept donor funding or borrow money, which is subject to conditions contrary to the objects of the Institute.

# 12 P O W E R S A N D DU T I E S O F D I R E C T O R S

12.1 *Management by directors:* The business of the Institute shall be managed by the directors, who may pay all expenses incurred in promoting and registering the Institute, and may exercise all such powers of the Institute as are not, by the Act or by these Articles, required to be exercised by the Institute in general meeting, subject nevertheless to the provisions of the Act or these Articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Institute in general meeting; but no regulation made by the Institute in general meeting shall invalidate any prior act of the directors which would have been valid if the regulation had not been made.

12.2 Agents: The directors may from time to time and at any time by agency contract or power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the agent or attorney of the Institute for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such agency contracts or powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such agent or attorney as the directors may think fit and may also authorize any such agent or attorney to delegate all or any of the powers, authorities and discretions vested in him.

12.3 *Financial instructions*: All instructions to financial institutions such as, but not limited to payment or transfer instructions, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the Institute shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

12.4 *Minutes*: The directors shall cause minutes to be made in books provided for the purpose:

12.4.1 of all appointments of officers made by the directors:

12.4.2 of the names of the directors present at each meeting of the directors and of any committee of the directors;

12.4.3 of all resolutions and proceedings at all meetings of Institute, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his/her name in a book to be kept for that purpose.

# 13 D I S Q U A L I F I C A T I O N O F D I R E C T O R S

13.1 *Disqualification*: The office of director shall be vacated if the director:-

13.1.1 becomes insolvent or makes any arrangement or composition with her creditors generally; or

13.1.2 becomes prohibited from being a director by reason of any order made under Section 225 -226 of the Act; or

13.1.3 becomes of unsound mind; or

13.1.4 resigns his/her office by notice in writing to the Institute; or

13.1.5 is directly or indirectly interested in any contract with the Institute and fails to declare the nature of her interest in manner required by paragraph 13.3 below.

13.1.6 uses information obtained from his/her acting in the position as director in competition against or to the detriment of the Institute.

13.1.7 if a simple majority of the other directors or of the members in general meeting pass a resolution for the disqualification of the director.

13.2 A director may not vote in respect of any contract in which he/she is interested or any matter arising thereout, and if he/she does so vote his/her vote shall not be counted.

13.3 *Duty of director or office to disclose interes in contracts*

13.3.1 A director of the Institute who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract referred to in subsection 13.3.2, which has been or is to be entered into by the Instituite or who so becomes interested in that contract after it has been entered into, must declare his or her interest and full particulars of his or her interest.

13.3.2 Subsection 13.3.1 applies to any contract or proposed contract which is of significance in relation to the Institute’s business and which is entered into or to be entered into-

*(a)* in pursuance of a resolution taken or to be taken at a meeting of directors of the Institute; or

*(b)* by a director or officer of the Institute who either alone or together with others has been authorised by the directors of the Institute to enter into that contract or any contract of a similar nature.

13.3.3 For the purposes of subsection 13.3.1 a general notice in writing given to the directors of the Institute by a director to the effect that he or she is a member of a specified company or firm and is to be regarded as interested in any contract which may after the date of the notice and before the date of its expiry be made with that company or firm, is deemed to be a sufficient declaration of interest in relation to any contract or proposed contract so made or to be made, if-

*(a)* the nature and extent of the interest of that director in that company or firm is indicated in that notice; and

*(b)* at the time the question of confirming or entering into the contract in question is first considered or at the time that director becomes interested in a contract after it has been entered into, the extent of his or her interest in that company or firm is not greater than is stated in the notice.

13.3.4 A general notice under subsection 13.3.3 may from time to time be amended and is not effective beyond the end of the financial year of the Institute but may from time to time be renewed.

# 14 E L E C T I O N S & T E R M S O F O F F I C E O F D I R E C T O R S

14.1 *Term of office*: The first seven directors (the founding directors) and any other elected directors of the Institute shall be in office for a period of three years. After a term of office of a director comes to an end, the vacancy shall be filled by election at a general meeting of members.

14.2 *Eligible for re-election*: A director whose term of office has ended shall be eligible for re-election only twice.

14.3 *New director*: No person be eligible for election to the office of director unless such person’s intention to stand for election was communicated in time to the secretariat, to enable it to send out such person’s intention together with the agenda of the meeting at which the elections are to be held.

14.4 *Appointment of director*: The directors shall have power at any time, and from time to time, to appoint any person to be a director to fill a vacancy. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for election, and the time that such director was in his/her position before the election by the annual general meeting shall be counted for determination of the three year term of office period.

14.5 *Removal of director*: The Institute may by ordinary resolution, of which special notice has been given in accordance with Section 228(3) of the Act, remove any director before the expiration of his or her period of office notwithstanding anything in these Articles or in any agreement between the Institute and such director.

14.6 *Appointment of director in place of one removed*: The Institute may by ordinary resolution appoint another person in place of a director removed from office under the immediately preceding Article. Without prejudice to the powers of the directors under 14.5 the Institute in general meeting may appoint any person to be a director either to fill a vacancy. The person appointed to fill such a vacancy shall hold the position until the next annual general meeting, at which he or she shall be eligible for election to the position of director by the members. Time that such director was in his/her position before the election by the annual general meeting shall be counted for determination of the three year term of office period.

# 15. P R O C E E D I N G S O F D I R E C T O R S

15.1. *Meetings of directors*: The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairperson shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time call a meeting of the directors.

15.2 *Quorum*: The quorum necessary for the transaction of the business of the directors shall be four directors.

15.3 *Vacancies*: The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below four, the continuing director or directors may act for the purpose of increasing the number of directors to that number, or of calling a general meeting of the Institute, but for no other purpose.

15.4 *Chairperson;*  The directors may elect a chairperson of their meetings and determine the period for which he/she is told to hold office; but; if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairperson of the meeting.

15.5 *Delegation of powers*: The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall in the exercise of the powers to delegated conform to any regulations that may be imposed on it by the directors. Committees shall have the right to *ad hoc* co-option of persons who are or are not members of the Institute.

15.6 *Chairperson of committee*: A committee may elect a chairperson of its meetings; if no such chairperson is elected, or it at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairperson of the meeting.

15.7 *Meetings of committee*: A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairperson shall have a second or casting vote.

15.8 *Validity of acts*: All acts done by any meeting of the directors or of a committee of directors or members, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

15.9 *Validation of resolution*: A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

# 16 T H E S E C R E T A R Y

16.1 *Secretary*: The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

16.2 *Same person not to act as secretary and director*: A provision of the Act or these Articles requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

# 17 T H E S E A L

17.1 *Seal*: The directors may procure a seal to be made for the Institute and, if so made, shall provide for the safe custody thereof. The seal shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the director for the purpose.

# 18 F I N A N C I A L Y E A R A N D A C CO U N T S

18.2 *Financial year*: The financial year of the company shall terminate on the last day of February in each year.

18.3 *Proper account to be kept*: The directors shall cause proper books of account to be kept with respect to:-

18.3.1 all sums of money received and expended by the Institute and the matters in respect of which the receipt and expenditure takes place;

18.3.2 all sales and purchases of goods by the Institute; and

18.3.3 the assets and liabilities of the Institute.

18.4 Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

18.5. *Books to be kept at registered office*: The books of account shall be kept at the registered office of the Institute, or, subject to Section 292 of the Act, at such other place or places as the directors think fit, and shall always be open for the inspection of the directors and members.

18.6 *Profit and loss accounts and balance sheets*: The directors shall from time to time in accordance with Section 292 of the Act, cause to be prepared and to be laid before the Institute in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in this section.

18.7 *Copies for members*: A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Institute in general meeting, together with a copy of the auditor's report, shall not less than twenty-one days before the date of the meeting be sent to every member of the company; provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Institute is not aware or to more than one of the joint holders of any debentures. This Article shall be complied with if the Institute send the records by electronic means.

# 19 A U D I T

19.1. *Auditors*: Auditors shall be appointed and the appointment, resignation and removal, rights and duties of the auditors shall be and regulated in accordance with Chapter 10 (sections 277 – 291) of the Act. Chapter 10 of the Act is attached hereto as Annexure C.

# 20 N O T I C E S

20.1 *Service of notices*: A notice may be given by the Institute to any member either personally or

20.1.1 by sending it by post to her or to her registered address, or (if she has no registered address within Namibia) to the address, if any, within Namibia supplied by her to the company for the giving of notice to her; or

20.1.2 by sending it by fax; or

20.1.3 by sending it by electronic means such as e-mail or sms.

20.2 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of five working days hours after the letter containing the same is posted.

20.3 Where notice is sent by fax or electronic means it shall be deemed until the contrary is proved that it was received on the day after it was sent by the Institute.

20.4 *Who is entitled to notice of general meeting*: Notice of every general meeting shall be given in any manner hereinbefore authorized to:-

20.4.1 every member except those members who (having no registered address within Namibia) have not supplied to the Institute an address or electronic device address (for example an e-mail address, or cell phone number) for receiving notices from the Institute;

20.4.2 the auditor for the time being of the Institute.

20.5 No other person shall be entitled to receive notices of general meetings.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Annexure A: Voting Proxy Form

**National Institute for Civil Society Training**

I (We), ......................................... of ........................................, being a member (members) of the National Institute for Civil Society Training , hereby appoint

........................................ of ................................................. or failing him/her

.................................... of ........................................ or failing him/her

.................................... of ......................................., as my (our) proxy to vote for me (us) on my (our) behalf at the annual (extraordinary) general meeting of the institute to be held on the

.................... day of ................................................... and at any adjournment thereof.

Signed this ................................... day of (month) ...................................... at (place) ………………….

# Annexure B: Proxy Voting Form with Direction of how to vote

National Institute for Civil Society Training

I (We), ............................................ of ...................................., being a member (members) of the National Institute for Civil Society Training, hereby appoint

........................................ of .............................. ......................... or failing him/her

......................... of ..................................................,

as my (our) proxy to vote for me (us) on my (our) behalf at the annual (extraordinary) general meeting of the company to be held on the .................... day of ................................................., and at any adjournment thereof.

This form is to be used \_\_\_\_\_\_\_\_ in favour of / \_\_\_\_\_\_\_\_\_ against the resolution.

Unless otherwise instructed, the proxy will vote as he/she thinks fit. \_\_\_\_\_\_\_\_

Signed this ...................... day of (month) ........................... at (place)…………………………..

Annexure C: Chapter 10 of Companies Act 28 of 2004 : Auditors

CHAPTER 10  
AUDITORS (ss 277-291)

PART 1  
APPOINTMENT (ss 277-284)

[a28y2004s277]277 First appointment of auditor of company

(1) When the memorandum and articles of a company to be incorporated are lodged with the Registrar for registration, a written consent by a person to be appointed as auditor of the company to be formed may be lodged simultaneously, and that auditor is deemed to have been appointed as such by the company.

(2) If no appointment of an auditor of a company is made under subsection (1), the directors of the company must appoint the first auditor of the company within 21 days after the date of incorporation of the company.

(3) The auditor of a company appointed under subsection (1) or (2) holds office until the conclusion of the first annual general meeting of the company.

(4) If the directors of a company fail to appoint an auditor of the company as provided in subsection (2), the Registrar may appoint the first auditor.

(5) If the directors of a company fail to appoint the first auditor of the company as required by subsection (2), each of those directors commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

[a28y2004s278]278 Annual appointment of auditor

(1) A company must, at every annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting of the company.

(2) An outgoing auditor is deemed to be reappointed at any annual general meeting without any resolution being passed, unless-

*(a)* that auditor is not qualified for reappointment;

*(b)* a resolution has been passed under section 286; or

*(c)* that auditor has given the company and the Registrar notice in writing of being unwilling to be reappointed at the next annual general meeting.

(3) Subsection (2) does not apply where notice of an intended resolution to appoint some person or persons in place of an outgoing auditor has been duly given under section 287 but cannot be proceeded with because of the death, incapacity or disqualification of that person or of all those persons.

[a28y2004s279]279 Failure to appoint auditor

(1) If at an annual general meeting of a company no auditor is appointed or reappointed, the directors must, within 30 days as from the date of the meeting, appoint a person or persons to fill the vacancy, and if they fail to do so, the Registrar may at any time do so.

(2) The company must and any director may, if the directors fail to appoint an auditor as provided in subsection (1), within seven days after the expiry of the period mentioned in that subsection, lodge with the Registrar a notice in the prescribed form to that effect.

(3) Any company which fails, and any director or officer of that company who knowingly fails, to comply with subsection (2), commits an offence and is liable to a fine which does not exceed N$40 for every day during which the contravention continues.

[a28y2004s280]280 Minister may appoint joint auditor

The Minister may at any time, in the case of a company having a share capital, on the application of 100 members or of members holding not less than one-twentieth of the issued share capital, and, in the case of a company not having a share capital, on the application of not less than one-tenth of the members, appoint, at the expense of the company, for any period and at a remuneration which the Registrar may determine, an auditor to act jointly with any other auditor of the company.

[a28y2004s281]281 Filling of casual vacancies

Subject to section 288, a casual vacancy in the office of auditor of a company-

*(a)* must, if that auditor is the only incumbent, be filled by the directors within 30 days, and section 279 in so far as it relates to the appointment of an auditor by the Registrar does, with the necessary changes, apply in regard to the filling of that vacancy and the duty of the company; or

*(b)* may, if there is more than one incumbent, be filled by the directors, but while that vacancy continues, the surviving or continuing auditor must act as auditor of the company.

[a28y2004s282]282 Firm may be appointed auditor

(1) A firm of auditors may be appointed to hold the office of auditor of a company.

(2) A change in the composition of the members of a firm of auditors while holding office as auditor of a company does not constitute a casual vacancy in the office of auditor but if less than one-half of the members of that firm remain after any one change, it must be taken as a resignation of the auditor and a casual vacancy is constituted.

[a28y2004s283]283 Disqualification for appointment as auditor

(1) No person qualifies for appointment as auditor of a company if that person is-

*(a)* a director, officer or employee of the company;

*(b)* a director, officer or employee of any company performing secretarial work for the company;

*(c)* a partner or employer or employee of a director or an officer of the company;

*(d)* a person who personally, or a partner or employee of that person who, habitually or regularly performs the duties of secretary or bookkeeper of the company;

*(e)* a body corporate;

*(f)* a person who at any time during the financial year was a director or officer of the company; or

*(g)* not qualified to act as such under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

(2) Any person who in terms of subsection (1) is disqualified for appointment as the auditor of a company is likewise disqualified for appointment as the auditor of any other body corporate which is a subsidiary or holding company of that company or is a subsidiary of that holding company, or would be so disqualified if that body corporate were a company.

(3) Subsection (1) must not be construed as prohibiting the appointment as auditor of a private company, no shares of which are held by a public company, of a person who personally, or the partner or employee of that person who, habitually or regularly performs the duties of secretary or bookkeeper of that private company if that person is registered under the Public Accountants' and Auditors' Act, 1951, and all the shareholders of that private company agree in writing to the appointment of that person and the relevant circumstances are set out in the auditor's report on the affairs and annual financial statements of that private company.

(4) Any person who acts as the auditor of a company or other body corporate while disqualified, commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(5) For the purposes of this section "secretarial work" does not include share transfer secretarial work.

[a28y2004s284]284 Consent by, and notice, entry and lodging of information pertaining to, auditor

(1) The written consent contemplated in section 277(1) must be given by the person concerned on the prescribed form.

(2) Any other person who consents to being appointed as auditor of a company, other than a retiring auditor contemplated in section 278(2), must give notice in the prescribed form to the company concerned of that consent.

(3) Any auditor of a company must give notice on the prescribed form to the company concerned of any change in his or her particulars which are in terms of section 223(2) to be entered in the register referred to in that section, and must give that notice within 14 days after the occurrence of any change.

(4) A company must, after any entry has been made in the register referred to in section 223 in respect of particulars pertaining to the auditor of the company, lodge with the Registrar a return in the prescribed form, and the company must lodge that return within 14 days after an auditor has vacated office or after receipt of a notice contemplated in subsection (2) or (3), as the case may be.

(5) Any company which fails to lodge a return contemplated in subsection (4), and any person who fails to comply with subsection (2) or (3), commits an offence and is liable to a fine which does not exceed N$20 for every day during which the contravention continues.

PART 2  
REMOVAL AND RESIGNATION OF AUDITOR (ss 285-288)

[a28y2004s285]285 Removal of auditor appointed by directors or Registrar, and filling of vacancy

(1) Subject to subsection (2) and section 287, a company may at a general meeting by resolution remove any auditor appointed by the directors or the Registrar under section 277 or 279 or by the directors under section 281 before the expiration of the auditor's term of office and at the same meeting appoint another person as auditor in that auditor's place.

(2) Where an auditor has reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, and has made a report in writing to the directors of the company, that auditor may not be removed from office until section 26(3)*(b)* of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), has been complied with.

[a28y2004s286]286 Removal of auditor and appointment of new auditor

(1) Any company may, subject to subsection (2) and section 287, at an annual general meeting by resolution passed by not less than three-fourths of the members entitled to vote who are present in person or by proxy, determine that any person then holding office as its auditor must not be reappointed or that some other person must be appointed as the auditor of the company.

(2) Where an auditor has reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, and has made a report in writing to the directors of the company, that auditor may not be removed from office until section 26(3)*(b)* of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), has been complied with.

[a28y2004s287]287 Special notice for removal of auditor

(1) Special notice to the company is required for a resolution to be proposed at a general meeting under section 285 or at an annual general meeting under section 286 and on receipt of notice of that proposed resolution the company must immediately deliver a copy of the notice to the auditor concerned.

(2) Where a notice referred to in subsection (1) is given and the auditor concerned makes in respect to the proposed resolution representations in writing to the company and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so-

*(a)* in any notice of the proposed resolution given to members of the company, state that representations have been made; and

*(b)* send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether the notice is sent before or after receipt of the representations by the company.

(3) If a copy of representations contemplated in subsection (2) is not sent as provided for in that subsection because of their being received too late or because of the company's default, the auditor may, without prejudice to the right to be heard orally, require that the representations be read out at the meeting.

(4) A copy of representations contemplated in subsection (2) must not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(5) The Court may, on an application under subsection (4), order the company's or the person's costs to be paid in whole or in part by the auditor, notwithstanding that the auditor is not a party to the application.

[a28y2004s288]288 Resignation of auditor

(1) The auditor of a company may at any time during his or her period of office resign from office provided the requirements of this section are complied with.

(2) An auditor intending to resign must deliver to the company and to the Registrar a written notification in the prescribed form to the effect that he or she has no reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of its members or creditors, other than an irregularity which has been reported to the Public Accountants' and Auditors' Board in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), and it is not necessary that that auditor has carried out, for the purposes of the notification, a special audit subsequent to the date up to which the last annual financial statements on which he or she has already reported, were made up.

(3) The directors of the company must, on receipt of the written notification referred to in subsection (2), appoint an auditor to fill the vacancy and must lodge that notification together with the return required under section 284 with the Registrar.

(4) The resignation of an auditor becomes effective on the receipt by the Registrar of the written notification referred to in subsection (2).

(5) If the directors fail to appoint an auditor to fill the vacancy within three months after the receipt of the written notification referred to in subsection (2), any person who-

*(a)* at the expiry of that period of three months was a director of the company or became a director of the company after that period has expired and before the filling of the vacancy; and

*(b)* was aware of the vacancy but failed to take all reasonable steps to ensure that it would be filled in accordance with subsection (3),

is together with the company jointly and severally liable for all debts incurred by the company during the existence of the vacancy.

PART 3  
RIGHTS, DUTIES AND REMUNERATION (ss 289-291)

[a28y2004s289]289 Right of auditor to access of books and to be heard at general meetings

An auditor of a company-

*(a)* has the right of access at all times to the accounting records and all books and documents of the company, and is entitled to require from the directors or officers of the company any information and explanations which the auditor may consider necessary for the performance of his or her duties as auditor;

*(b)* has, in the case of an auditor of a holding company, the right of access to all current and former financial statements of any subsidiary of that holding company and is entitled to require from the directors or officers of that holding company or subsidiary all information and explanations in connection with any statements and in connection with the accounting records, books and documents of the subsidiary as the auditor may consider necessary; and

*(c)* is entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which the auditor attends on any part of the business of the meeting which concerns him or her as auditor.

[a28y2004s290]290 Duties of auditor

The auditor of a company must report to its members in any manner and on any matters which are prescribed by this Act and carry out all other duties imposed on him or her by this Act or any other law.

[a28y2004s291]291 Remuneration of auditor

(1) Save as is otherwise provided in this Act, the remuneration of the auditor of a company is determined by agreement with the company.

(2) All payments made or to be made by a company to its auditor, specifying the remuneration for the audit, the remuneration for other specified services, the auditor's expenses and payments in respect of the audit and any other matter, must be included under a separate heading in the income statement in respect of the accounting period concerned.