



# **THE CONSTITUTION OF THE MARKETING CODE AUTHORITY**

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## 1. DEFINITIONS

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- 1.1 In this Constitution:
- 1.1.1 words and phrases that are defined in the Medicines Act have the meanings assigned to them in this Act unless otherwise stated or inconsistent with the context;
  - 1.1.2 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
  - 1.1.3 unless the context indicates otherwise, any use of the word “includes” or “including” in relation to a defined or generic word or expression, on the one hand, and one or more enumerated examples or specific items, on the other, is not to be construed as limiting the defined or generic expression to the examples or items so enumerated;
  - 1.1.4 a word in the singular includes the plural, and vice versa;
  - 1.1.5 a reference to the one gender shall include the other genders;
  - 1.1.6 a reference to a ‘clause’ refers to a clause in the Constitution unless otherwise stated or inconsistent with the context;
  - 1.1.7 clause headings are for convenience and reference purposes only and are not to be used in the interpretation of any of the provisions to which they apply;
  - 1.1.8 information is not without legal force and effect merely on the grounds that it is wholly or partially in the form of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002 (Act 25 of 2002); and
  - 1.1.9 where a document is required to be signed by a person and is sent by electronic means and/or stored electronically, an advanced electronic signature shall not be required.
- 1.2 The following words have the meanings assigned to them unless otherwise stated or inconsistent in the context:
- 1.2.1 **“Associate Member”** means any person or entity that does not qualify to be a Member of the MCA, but can associate with the objectives of the MCA and the provisions of the Constitution, and has been admitted as an Associate Member of the MCA as provided for in clause 4. **“Associate Membership”** has a corresponding meaning. Persons and entities qualifying for Associate Membership include HCPs, regulators and service providers to the Health Products industry, such as training providers, event organisers, advertising agencies, consultants, medical schemes, medical scheme administrators, and managed care organisations;



- 1.2.2 **“Board”** means the Board of the MCA constituted in terms of this Constitution;
- 1.2.3 **“Code”** means the South African Code of Marketing Practice for Health Products, as amended from time to time, which regulates the advertising, promotion and marketing of Health Products;
- 1.2.4 **“Code-Certified”** means to pass the assessment of the MCA successfully in respect of competence in the implementation of the Code;
- 1.2.5 **“Company Code Compliance Officer”** means any natural person duly authorised by a Company, or appointed by a Company in writing, to sign documents or give instructions on behalf of the Company with regard to compliance with the Code. Every Company shall authorise or appoint a person as the Company Code Compliance Officer;
- 1.2.6 **“Code Guidelines”** means the Guidelines to the Code, which contain supplementary information to guide the interpretation of the Code, which is compiled and regularly updated by the MCA;
- 1.2.7 **“Company”** means a manufacturer, importer, wholesaler, distributor or retailer of Health Products;
- 1.2.8 A **“Conflict of Interest”** occurs when there is a direct or indirect conflict, in fact or appearance, between the interests of a person on the Board or a committee of the MCA and that of the MCA, or a party that will be affected by the outcome of a matter considered by a committee of the MCA. **“Conflicted”** has a corresponding meaning;
- 1.2.9 **“Constitution”** means this Constitution of the MCA;
- 1.2.10 **“CTAC”** means the Code Technical Advisory Committee established in terms of the Constitution to advise the Board on technical matters related to the enforcement of the Code;
- 1.2.11 **“HCP or Healthcare Professional”** means any person registered with any statutory council regulating healthcare practitioners, such as the Health Professions Council of South Africa (HPCSA), the South African Veterinary Council (SAVC), the Allied Health Professions Council of South Africa (AHPCSA), the South African Nursing Council (SANC) and the South African Pharmacy Council (SAPC), and includes any person registered as a clinical engineer with the Engineering Council of South Africa (ECSA);
- 1.2.12 **“Health Products”** means medicines, scheduled substances, complementary medicines, medical devices and IVDs regulated by the Medicines Act;
- 1.2.13 **“Independent Non-Aligned Member”** means a Member of the MCA who is not a member of a Trade Association or chooses not to be represented by a Trade Association at the MCA;



- 1.2.14 **“Industry Sub-Sector”** means a sub-sector of the Health Products industry which is distinct, and which is subject to regulatory provisions that are different from those set for other sub-sectors and includes, but is not limited to the medicines sub-sector, the complementary medicines sub-sector, the self-medication sub-sector, the medical device sub-sector, the IVD sub-sector, the animal health sub-sector or any other sub-sector the stakeholders of which may become Members as provided for in the Constitution;
- 1.2.15 **“IVD”** means an *in vitro* diagnostic;
- 1.2.16 **“MCA”** or **“Marketing Code Authority”** means the Marketing Code Authority established in terms of this Constitution;
- 1.2.17 **“Medicines Act”** means the Medicines and Related Substances Act (Act 101 of 1965) as amended from time to time, and any regulations and notices issued in terms thereof, as well as guidelines, directives, notices, codes or enforceable documents issued by the Regulatory Authority in terms thereof;
- 1.2.18 **“Member”** means a Company, which has been admitted as a Member of the MCA as provided for in clause 4 and does not include an Associate Member. **“Membership”** has a corresponding meaning;
- 1.2.19 **“Panels of Experts”** means the Panels of Experts constituted in terms of this Constitution and from which the members of adjudicating, appeals and ex parte committees are appointed from time to time;
- 1.2.20 **“Regulatory Authority”** means the body appointed to regulate Health Products in terms of the Medicines Act or any succeeding legislation, which is currently the South African Health Products Regulatory Authority (SAHPRA);
- 1.2.21 **“Sanction Policy Document”** means the document published by the Board from time to time with respect to the sanctions that may be imposed for contraventions of the Code;
- 1.2.22 **“Special Resolution”** means a resolution adopted with the support of at least 75% of Members at a general meeting of Members;
- 1.2.23 **“Trade Association”** means an association of Companies organised to promote their common interests.



## **2. LEGAL PERSONA**

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- 2.1 The MCA is a voluntary association established to create a mechanism for the self-regulation of its Members.
- 2.2 The MCA shall be a body corporate with its own assets and liabilities and shall be capable in its own name of suing and being sued and of doing or causing to be done all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of this Constitution.
- 2.3 The MCA shall not pursue any pecuniary gain for its Members.

## **3. PURPOSE AND OBJECTS OF THE MCA**

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- 3.1 The MCA is the body through which the enforcement of the Code takes place, in line with the principles embodied in the Constitution and the Code.
- 3.2 In order to fulfil its purpose, the MCA shall:
  - 3.2.1 encourage the ethical promotion, marketing and advertising of Health Products within the scope of the Code by Members and Associate Members with the principal objective of promoting the independence of HCPs;
  - 3.2.2 promote high ethical and professional standards in the promotion, marketing and advertising of Health Products;
  - 3.2.3 encourage compliance with the applicable legal, regulatory and professional requirements;
  - 3.2.4 adjudicate complaints in terms of the Code; and
  - 3.2.5 update, publish and maintain the Code and Code Guidelines on an ongoing basis.
- 3.3 It is recognised that, in terms of Section 18C of the Medicines Act, all Companies, which operate in the various Industry Sub-Sectors, shall be bound by the provisions of the Code once incorporated into appropriate legislation, or recognised by the Regulatory Authority.



## 4. MEMBERSHIP AND ASSOCIATE MEMBERSHIP

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- 4.1 The founding Members of the MCA are the members of the Trade Associations that participated in the development of the original Code and have adopted it.
- 4.2 A Company shall be eligible for Membership, if it:
  - 4.2.1 carries on business in the Republic of South Africa; and
  - 4.2.2 meets any additional criteria set by the Board from time to time.
- 4.3 A Member:
  - 4.3.1 may participate in all the activities of the MCA;
  - 4.3.2 may use the MCA's logo to indicate its Membership of the MCA;
  - 4.3.3 shall ensure that all its customer-facing staff shall become Code-Certified;
  - 4.3.4 may participate in the Panels of Experts;
  - 4.3.5 is entitled to be nominated to the Board as provided for in clause 9;
  - 4.3.6 is entitled to be nominated to CTAC as provided for in clause 20 n;
  - 4.3.7 is entitled to vote at general meetings of Members; and
  - 4.3.8 shall be counted at general meetings of Members for the purpose of establishing a quorum.
- 4.4 A person or entity that does not qualify to be a Member of the MCA but can associate itself with the purpose and objects of the MCA and the provisions of the Constitution, shall be eligible for Associate Membership of the MCA, if it:
  - 4.4.1 agrees to support the ethical promotion, marketing and advertising of Health Products; and
  - 4.4.2 meets any additional criteria set by the Board from time to time.
- 4.5 An Associate Member:
  - 4.5.1 may participate in all the activities of the MCA;
  - 4.5.2 may use the Associate Member logo;
  - 4.5.3 shall ensure that all its relevant staff become Code-Certified;
  - 4.5.4 may participate in the Panels of Experts as approved by the Board;
  - 4.5.5 shall not be entitled to be represented on the Board;
  - 4.5.6 shall not be entitled to be represented on CTAC;
  - 4.5.7 may be appointed to a committee appointed from the Panels of Experts and shall have voting rights as a member of such a committee;
  - 4.5.8 may attend general meetings of Members, but shall not be entitled to vote at such meetings; and



- 4.5.9 shall not be counted at general meetings of Members for the purpose of establishing a quorum.
- 4.6 Admission of Members and Associate Members is subject to the absolute discretion of the Board.
- 4.7 A Company or another person or entity shall apply to become a Member or an Associate Member of the MCA, as the case may be, by completing the official application form for Membership or Associate Membership as prescribed by the Board from time to time and submitting such form to the Executive Officer. Without in any way limiting the powers of the Board, such form shall contain an undertaking by the applicant that upon admission to Membership or Associate Membership as the case may be, it shall:
- 4.7.1 not frustrate any enforcement process implemented by the MCA in relation to the Code;
  - 4.7.2 pay all Membership or Associate Membership fees, levies and other fees due and payable to the MCA within the stipulated timeframes;
  - 4.7.3 in the case of a Member, submit to the accounting officer of the MCA on a confidential basis annually the total annual turnover of the Company in respect of Health Products in the foregoing financial year, as stated in its latest approved or audited financial statements, by the date specified by the Board for the determination of its Membership Fees, which statements shall be treated as confidential by the accounting officer; and
  - 4.7.4 treat as confidential any documents marked or indicated as such by the MCA.
- 4.8 Any Company, person or entity accepted and enrolled as a Member or an Associate Member shall be bound by the provisions of the Constitution, the Code and any resolutions and policies determined by the Board from time to time.
- 4.9 An applicant for Membership or Associate Membership, as the case may be, which has met all the criteria and has been approved by the Board, shall be enrolled as a Member or an Associate Member only when the annual Membership or Associate Membership fees and any other fees or levies, which may be due, have been paid to the MCA in full.
- 4.10 A Member or an Associate Member may be admitted at any time during a calendar year, and such Member or Associate Member shall be liable to pay the prescribed Membership or Associate Membership fee, , and any other fees or levies payable as may be determined by the Board. The Membership and Associate Membership fee shall be prorated quarterly. Membership and Associate Membership fees may be paid through the offices of the Trade Associations representing those Members and Associate Members, if applicable.





- 4.11 Each Member and Associate Member shall nominate a person who is a partner, member, director, owner or employee of such Member or Associate Member as its representative, together with an alternate who may act on his behalf in his absence, and advise the Executive Officer in writing of such nominations, and, in the case of a Member, advise the Executive Officer of the contact details of its Company Code Compliance Officer. The nominated person, his alternative or the Company Code Compliance Officer shall be permitted to attend general meetings of Members and, in the case of a Member, vote at such meetings on behalf of the Member represented.

## **5. TERMINATION OF MEMBERSHIP**

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- 5.1 A Member or an Associate Member shall remain a Member or an Associate Member of the MCA until its Membership or Associate Membership is terminated in accordance with the provisions of the Constitution.
- 5.2 A Member or an Associate Member shall cease to be a Member of the MCA in the following circumstances:
- 5.2.1 upon resignation subject to the provisions of clauses 5.4 and 5.6;
  - 5.2.2 upon the person's death in the case of a natural person; or
  - 5.2.3 upon termination by the Board, if a Member or an Associate Member brings or has brought the MCA into disrepute, acts or has acted in a manner that is harmful to the interests of the MCA, fails to pay the Membership or Associate Membership fees, levies and other fees due to the MCA, or fails to comply with the resolutions, rules and policies of the Board and, in the case of a Member, the decisions or rulings of the enforcement structures of the MCA.
- 5.3 The Board shall furnish its reasons for terminating a Member or Associate Member's Membership to that Member or Associate Member in writing. The relevant Member or Associate Member shall have the right to respond to the termination by requesting the chairperson of the Board to be heard by the Board within 7 (seven) days of receipt of those reasons. The terminated Member or Associate Member shall be heard by the Board within a period of 30 (thirty) days of receipt of such request by the chairperson. Within 7 (seven) days of hearing the terminated Member or Associate Member, the Board shall either rescind or confirm the termination of such Member or Associate Member as it deems appropriate in the circumstances.
- 5.4 No resignation shall be accepted from any Member while there are enforcement proceedings pending in respect of that Member under the Code.



- 5.5 Upon termination of Membership or Associate Membership, a company, a person or an entity shall no longer be entitled to use the relevant Membership or Associate Membership logo or hold itself out to any person, regulatory authority or the public to be a Member or an Associate Member of the MCA or in any manner affiliated with it.
- 5.6 A Member or an Associate Member shall only be entitled to terminate its Membership or Associate Membership at the end of a calendar year by providing written notice thereof to the MCA no later than 30 September of any calendar year. Should written notice be given after 30 September in any calendar year, the Member or Associate Member shall remain liable for the full annual Membership or Associate Membership fee, as the case may be, and any other fees and/or levies, as may be applicable, in respect of the following calendar year.

## **6. READMISSION TO MEMBERSHIP OR ASSOCIATE MEMBERSHIP**

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No Company, entity or person whose Membership or Associate Membership has been terminated shall be readmitted as a Member or an Associate Member without the approval of the Board and provided that all Membership or Associated Membership fees, levies and other fees in arrears, if applicable, have been paid in full.

## **7. ROLE AND FUNCTION OF TRADE ASSOCIATIONS**

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- 7.1 Trade Associations are eligible for Associate Membership of the MCA.
- 7.2 Trade Associations, which have adopted the Code shall have the responsibility to ensure that all their members become Members of the MCA.
- 7.3 Trade Associations shall provide the MCA with the contact details of their members when requested from time to time, including the names and contact details of the heads or chief executive officers and compliance officers of their members unless this is prohibited by law. These details are required by the MCA for purposes of administering their Membership of the MCA as well as for implementation of and compliance with the Code.
- 7.4 The MCA may request Trade Associations to facilitate the completion of application forms for Membership or Associate Membership by their members. The MCA may also request Trade Associations to facilitate the collection of the annual turnovers of their members who are admitted as Members or Associate Members and submit such information to the accounting officer of the MCA on a confidential basis to enable the MCA to determine the applicable Membership fees of such members.



- 7.5 Trade Associations may collect Membership and Associate Membership fees from their members on behalf of the MCA at the request of the Board. The MCA, where appropriate, shall provide invoices to the Trade Associations for this purpose subject to the approval by their members.
- 7.6 Trade Associations, which have adopted the Code, shall have the right to nominate representatives to the MCA Board as provided for in clause 9.
- 7.7 Trade Associations shall promote the training and Certification of persons involved in the marketing, promotion and advertising of Health Products.
- 7.8 Trade Associations may identify appropriate and competent persons for appointment to the Panels of Experts and advise the Executive Officer of the details of such persons subject to the provisions of the law.

## **8. POWERS OF THE MARKETING CODE AUTHORITY**

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- 8.1 The MCA shall have all the powers necessary to ensure an efficient and effective self-regulatory mechanism and to achieve its purpose and objects.
- 8.2 In addition to all the powers granted to the MCA in the Code, the MCA shall also have the following powers, without limitation, namely to:
- 8.2.1 appoint a Board, in the manner provided for in the Constitution, in which shall vest the authority and responsibility to achieve the MCA's objects and exercise its powers;
  - 8.2.2 appoint and remunerate a fit and proper person as the Executive Officer to exercise such functions and powers as provided for in the Code and the Constitution, and determined or delegated by the Board to the Executive Officer;
  - 8.2.3 appoint and remunerate such employees from time to time as may be required;
  - 8.2.4 appoint and remunerate such consultants, advisors or investigators from time to time as may be required;
  - 8.2.5 outsource any of its functions, including the right to administer the Code and its enforcement to any entity it deems competent and suitable to fulfil such functions, subject to the oversight of the Board and in terms of an agreement setting out the scope, nature and duration of such functions;
  - 8.2.6 enter into co-operation and other agreements with any Trade Association, group, institution and/or organisation, in order to further the MCA's objectives and encourage compliance with the Code by all Companies operating in the Health Products industry sector;



- 8.2.7 ensure that Trade Associations that have adopted the Code, and, in particular, the heads of these Associations, are kept abreast of all developments in relation to the Code, through any mechanism such as training, reviews, guidance and/or enforcement action;
- 8.2.8 ensure that all relevant external stakeholders, such as HCPs, software houses, marketers and others are informed of the Code and developments relating to it
- 8.2.9 formulate rules or determine criteria for the eligibility and admission of Members and Associate Members subject to the provisions of the Constitution;
- 8.2.10 determine the Membership and Associate Membership fees, other fees and/or levies, including fees for training, assessment, advisory opinions, complaints and appeals payable in terms of the Code and the Constitution;
- 8.2.11 establish Panels of Experts and appoint, in consultation with the Executive Officer, persons with the required expertise to such Panels, from which adjudicating, appeal and ex parte committees shall be appointed by the Executive Officer;
- 8.2.12 promote compliance with the provisions of the Code;
- 8.2.13 determine the sanctions, which may be imposed by the adjudicating or appeal committees for non-compliance with the Code or any enforcement ruling, as the case may be. Such sanctions shall not include the payment of the legal costs of the parties to the enforcement proceedings, but may include costs incurred by the MCA in respect of these proceedings as well as the complaint and appeal fees paid by any party;
- 8.2.14 refer issues, including complaints, not within the scope and ambit of the Code, to the appropriate regulatory authorities where these are deemed not to be within the MCA's mandate, where the MCA is not able to resolve the complaint, or where a person defaults on a ruling or decision of an enforcement structure of the MCA;
- 8.2.15 print, publish and circulate, (electronically or otherwise), or assist with or subsidise, in its discretion, the printing, publication and circulation of official publications and newspapers and periodicals devoted to the healthcare industry;
- 8.2.16 provide guidance to, including training and competency assessments of, any person on the Code. This guidance, training and assessment shall not, however, bind the MCA or any of its enforcement structures in any manner whatsoever when adjudicating a complaint, deciding on an appeal in any matter or providing an ex parte opinion;



- 8.2.17 monitor advertisements, the promotion and/or marketing of Health Products, in whatsoever form, including, but not limited to journal, Internet and/or electronic advertising by Members (and other Companies, where appropriate). This includes interactions between Members or such Companies and HCPs as envisaged in the Code;
- 8.2.18 request a Member or an Associate Member to submit copies of any advertising, marketing and/or promotional material, including copies of the certificates authorising such material and copies of briefing instructions provided to sales representatives;
- 8.2.19 request any information or documentation from any person which may be required for the purposes of adjudicating a complaint or as part of an appeals process, including the documents and information stipulated in the Code;
- 8.2.20 indemnify the Executive Officer, employees of the MCA, other office-bearers and members of the Board, committees and Panels of Experts against liability, including losses and damages of any nature, costs and the like, which they may incur in the bona fide exercise and discharge of their powers and duties, and obtain appropriate insurance cover for this purpose;
- 8.2.21 in general, deal with the MCA's property and funds in the pursuit of its objects and purposes and to that end enter into any and all such contracts as may be necessary or expedient from time to time;
- 8.2.22 open bank accounts with any reputable financial institution in the name of the MCA and make payments and draw, accept and endorse cheques, bills of exchange and promissory notes in connection with the business activities of the MCA;
- 8.2.23 purchase, hire, exchange, accept donations from or acquire, sell, let, exchange, mortgage, pledge, donate or dispose of movable and immovable property of any kind or any right and interest therein or any other asset of any kind;
- 8.2.24 borrow by way of an overdraft or loan from any reputable financial institution for the purpose and objects of the MCA, and pledge any of the MCA's assets as security for such advances, where necessary;
- 8.2.25 lend, invest, place on deposit, make advances or otherwise deal with monies not immediately required to meet current financial obligations of the MCA upon such securities and in such a manner as it may determine from time to time, and realise, vary, reinvest or otherwise deal with such securities as it may deem appropriate;
- 8.2.26 amend the Code and its Guidelines from time to time, to ensure that they remain up to date, provided that the amended Code shall be approved by Special Resolution at a general meeting of Members before it takes effect;



- 8.2.27 amend the Constitution as may be necessary from time to time, the amendments of which shall be approved by Special Resolution at a general meeting of Members before they take effect;
- 8.2.28 take out, relinquish and cede any policy of insurance;
- 8.2.29 institute, conduct, defend, or abandon any legal proceedings by or against the MCA or otherwise concerning the affairs of the MCA;
- 8.2.30 enter into agreements with organisations and entities for the management of complaints of their members as may be agreed; and
- 8.2.31 generally, without limitation, do anything it may consider necessary or proper for the achievement of its purpose and objects.

## **9. BOARD COMPOSITION**

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- 9.1 The Board shall consist of a maximum of 13 (thirteen) members, all of whom shall be natural persons of at least 18 (eighteen) years old, as follows:
  - 9.1.1 A maximum of 8 (eight) persons nominated from their own ranks by the Trade Associations that have adopted the Code and from their members who are MCA Members, provided that a Trade Association may be represented by 1 (one) person only on the Board. Trade Association nominees to the Board shall be approved by the Members at an annual general meeting;
  - 9.1.2 1 (one) person nominated by the Independent Non-Aligned Members;
  - 9.1.3 1 (one) Ethics and Governance Specialist focussing on the interests of consumers, who may be appointed by the Board within its sole discretion, after an agreed recruiting process has been followed;
  - 9.1.4 1 (one) person with the appropriate legal qualifications and expertise appointed by the Board from the Panels of Experts; and
  - 9.1.5 1 (one) person with the appropriate finance expertise appointed by the Board as the honorary Treasurer; and
  - 9.1.6 The Executive Officer.
- 9.2 Trade Associations may not appoint any person from their management or any of their employees to the Board.
- 9.3 The representatives of Trade Associations and the Independent Non-Aligned Members may nominate alternate representatives who may attend Board meetings and vote on their behalf at such meetings. An alternate Board member may only exercise his powers and discharge his functions when the Board member he represents is not present in person at a meeting or available in between Board meetings. Each alternative Board member, while so acting, shall have the same powers and duties of the Board member he represents with the exception of the power to appoint an alternate.



- 9.4 The term of office of Board members envisaged in clauses 9.1.1 to 9.1.4 is 1 (one) year. Retiring Board members shall be eligible for reappointment to the Board.
- 9.5 Only the Board members envisaged in clauses 9.1.1 and 9.1.2 shall be entitled to vote on matters on which the Board must deliberate and shall be counted for purposes of the quorum for the Board.
- 9.6 The MCA's Executive Officer shall act as the Board's Secretary.
- 9.7 The Board may, in its sole discretion, at any time co-opt a person with the necessary skills and expertise to inform and/or support its work. Such person may attend Board meetings but may not have voting rights and shall not be counted for purposes of a quorum.
- 9.8 The Board shall appoint from its Members, or otherwise co-opt a person with the appropriate accounting expertise, to act as the MCA's Treasurer. If this person is not a Board member with voting rights, no voting rights shall be conferred upon him by virtue of his appointment or co-option.

## **10. VACANCIES ON THE BOARD**

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- 10.1 Should a vacancy occur on the Board, the appointing body as envisaged in clause 9.1 may fill the vacancy by appointing another person to that position for the remainder of the term of office of the person who has vacated the position.
- 10.2 The person so appointed shall vacate his position at the end of the term of the person whose vacant position he has filled, and the position shall then be filled as provided for in the Constitution.

## **11. TERMINATION OF MEMBERSHIP OF THE BOARD**

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- 11.1 A member of the Board shall vacate his office if:
  - 11.1.1 he resigns with written notice to the chairperson;
  - 11.1.2 he represents a Trade Association that no longer supports the Code;
  - 11.1.3 he is absent from 2 (two) consecutive Board meetings without prior consent of the chairperson;
  - 11.1.4 he represents an Independent Non-Aligned Member, which ceases to be a Member of the MCA;
  - 11.1.5 he does not correct his conduct or a behaviour that the chairperson has alerted him to on at least 2 (two) occasions;
  - 11.1.6 he becomes mentally ill or incapable of managing his affairs;





- 11.1.7 he is expelled from the Board upon the unanimous resolution of all Board members present (but excluding the person being expelled) at a meeting, in the following circumstances:
- 11.1.7.1 he is destructive or improper in his attitude, participation and behaviour in meetings or in his general conduct as a member of the Board;
  - 11.1.7.2 he has brought the MCA into disrepute and it is both desirable and in the interests of the MCA that he should not remain a member of the Board;
  - 11.1.7.3 he has acted in an improper manner or contrary to the MCA's interests; or
  - 11.1.7.4 he is not a fit and proper person to hold the position of Board member as determined within the Board's discretion, which may inter alia be determined in relation to the serious and/or repeated breaches of the Code by the Member he represents, or if this Member has failed to implement any ruling made by the enforcement structures of the MCA;
  - 11.1.7.5 provided that no such resolution shall be effective unless the notice convening the meeting includes an indication that such a resolution will be considered by the meeting and the member has been given the opportunity to state his case and answer any charge made against him.

## **12. CHAIRPERSON AND VICE-CHAIRPERSON OF THE BOARD**

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- 12.1 All of the members of the Board (other than the Executive Officer) shall at the first Board meeting following the annual general meeting, elect by secret ballot from the voting members of the Board, a chairperson and a vice-chairperson from the nominations received for these positions at the Board meeting. Voting shall continue until a candidate is elected by a majority vote.
- 12.2 Only those persons representing Members on the Board may be elected as chairperson or vice-chairperson of the Board.
- 12.3 The nominations for candidates must be submitted in writing to the Executive Officer on the official nomination form, and determined by the Board from time to time, at least 48 (forty-eight) hours prior to the Board meeting during which the chairperson and vice-chairperson will be elected. The Executive Officer shall confirm the validity of the nominations and confirm the nominations with the nominees.





- 12.4 The chairperson and vice-chairperson shall be elected for a period of 1 (one) year. The retiring chairperson and vice-chairperson shall be eligible for re-election provided that no person may serve as the chairperson for more than a total period of 5 (five) years. The maximum consecutive term shall be 3 (three) years.
- 12.5 The chairperson shall preside over meetings of the Board and ensure due and proper conduct at meetings.
- 12.6 In the absence of the chairperson, the vice-chairperson shall act as chairperson of the Board. In the absence of both the chairperson and vice-chairperson, the remaining Board members shall elect one of their number to preside.
- 12.7 Should the chairperson vacate his office prior to the termination of his tenure, the position shall be filled by the vice-chairperson until the next Board meeting when a new chairperson shall be elected by the Board for the remainder of his term.
- 12.8 Should the vice-chairperson vacate his office prior to the termination of his tenure as vice-chairperson, the position shall be filled by the Board at its next meeting for the remainder of his term.

### **13. QUORUM**

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A majority of the Board members with voting rights constitutes a quorum for meetings of the Board.

### **14. REMUNERATION**

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- 14.1 A Board member, his alternate and the Trade Association or other group, which he represents, shall not receive any remuneration for being a Board member or for any meeting or business attended to as a Board member on the MCA's behalf.
- 14.2 The reasonable expenses of a Board member may be remunerated at the discretion of the Board provided this is supported by the necessary documentation and receipts.
- 14.3 No person serving on the Panels of Experts, a committee or any other MCA structure, whether this is a standing or ad hoc structure, may charge any fees for services rendered to the MCA or on its behalf. The Board may, however, in its sole discretion, determine a reasonable honorarium payable to such a person and reimburse the reasonable expenses of such a person, where the financial situation of the MCA permits.



## 15. BOARD MEETINGS AND RESOLUTIONS

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- 15.1 The Board shall determine its own annual meeting schedule but shall meet at least once per quarter or more frequently, if required.
- 15.2 The Board shall in all instances aim to reach consensus on all matters before it, failing which matters shall be decided by a majority vote and in the event of an equal number of votes, the chairperson of the Board shall have a casting vote in addition to his deliberative vote.
- 15.3 The Board may, subject to the participation by sufficient members to form a quorum, discuss and resolve matters by telephone or electronic conferencing and may adopt resolutions decided by majority vote. Such a resolution shall have the same effect as one passed at a Board meeting. The Board shall note all such resolutions in the minutes of the Board meeting following the passing of such resolution. Failure to record the resolution shall not affect its validity.
- 15.4 Any resolution in writing and signed by all Board members with voting rights shall be as valid and effective as if it had been passed at a Board meeting. The Board shall note such resolution in the minutes at the Board meeting following the passing of such resolution. Failure to record the resolution shall not affect its validity.
- 15.5 Where a matter pertains to a Code provision applying to members in one specific Industry sub-sector only, the sub-sector's representatives on the Board shall have a veto right in all such matters. In the case of a dispute about whether such matter constitutes a common matter, or a matter specific to an Industry sub-sector, an independent arbitrator shall be appointed by the Board to determine this. The decision of the independent arbitrator shall be final and binding on all members of the Board.
- 15.6 A resolution adopted by the Board shall constitute a collective and binding resolution of the Board.



## **16. POWERS OF THE BOARD**

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- 16.1 The Board shall exercise all the powers of the MCA as provided for in the Constitution and the Code, save for the powers awarded to Members in a general meeting, the Executive Officer or any other structure of the MCA.
- 16.2 Notwithstanding any vacancy, the Board may act provided that the number of Board members does not fall below the number required for a quorum. If this occurs, the Board may only act for the purposes of appointing members to achieve a quorum.
- 16.3 The Board shall have the power to use the MCA's funds to achieve its purpose and objects as provided for in the Constitution.
- 16.4 The Board may establish or authorise the establishment of a reserve fund for contingencies or the furtherance of any object of the MCA and such funds may be invested as the Board directs.
- 16.5 The Board shall have the power to delegate any of its powers or functions to any committee, the Executive Officer or any other appropriate person (with or without the power of sub-delegation and with or without conditions as it may deem fit) and shall have the power to vary, withdraw, increase or decrease the powers or functions delegated at any time.
- 16.6 At its discretion, the Board shall have the power to institute, defend, bring, carry or discontinue, or refer to arbitration any proceedings, actions, suits, claims and demands for or against the MCA or with regard to any matter affecting the interests of the MCA.

## **17. DUTIES OF THE BOARD**

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- 17.1 The Board shall manage and conduct all the MCA's affairs, including, but not limited to, the determination of the general strategic and policy direction and control of the MCA's operations in line with its purpose and objects, including the adoption of policies, procedures and rules relating to good corporate governance for the MCA and all its structures.
- 17.2 The Board shall act on behalf of the MCA and pass resolutions which shall be binding upon Members and Associate Members.
- 17.3 The main duties of the Board collectively, and of Board members individually (with the necessary changes made), are as follows:
  - 17.3.1 To provide ethical and effective leadership by nurturing the characteristics of integrity, competence, fairness, transparency, accountability and responsibility and to exhibit these characteristics in their conduct.



- 17.3.2 To govern the MCA's ethics in a way that supports the establishment of an ethical culture.
- 17.3.3 To ensure that the MCA is and is seen to be a responsible corporate citizen by setting the direction for corporate citizenship and how this should be approached and addressed.
- 17.3.4 To appreciate that the MCA's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process, by steering and setting the direction for strategy, approving policies and operational plans to give effect to the approved strategy, exercising ongoing oversight of the strategy implementation and assessment and to ensure accountability for the MCA's performance through its reporting procedures and disclosures.
- 17.3.5 To ensure that reports issued by the Board enable its stakeholders to make informed assessments of the MCA's performance including its short, medium and long-term prospects;
- 17.3.6 To act as the focal point and custodian of corporate governance at the MCA and to establish and maintain a system of corporate governance that is adequate, effective and consistent with the nature, complexities and risks inherent in the MCA's operations and business activities.
- 17.3.7 To assume responsibility for the composition of the Board by setting the direction and approving the processes for it to attain the appropriate balance of knowledge, skills, experience, diversity and independence so as to discharge its governance role and responsibilities objectively and effectively.
- 17.3.8 To set the parameters for the powers, which it reserves for itself and those delegated to management.
- 17.3.9 To ensure the appointment and delegation to management contribute to role clarity and the effective exercise of authority and responsibilities.
- 17.3.10 To ensure that its arrangements for delegation within its own structures promote independent judgement and assist the balance of power and the effective discharge of duties.
- 17.3.11 To ensure that the evaluation of its performance supports continued improvement in its performance and effectiveness.
- 17.3.12 To obtain expert guidance on any other matter in which the Board members may lack sufficient expertise after following an agreed procedure.
- 17.3.13 To govern risk in a way that supports the MCA in setting and achieving its strategic objectives.
- 17.3.14 To govern technology and information in a way that supports the MCA in setting and achieving its strategic objectives.



- 17.3.15 To ensure the MCA's compliance with applicable laws and the adoption of non-binding rules, codes and standards in a way that supports the MCA's ethics and its role as a good corporate citizen.
  - 17.3.16 To ensure that the MCA follows fair, responsible and transparent remuneration practices so as to promote the achievement of its strategic objectives and positive outcomes in the short, medium and long-term.
  - 17.3.17 To ensure that assurance services and functions enable an effective environment of control and that these support the integrity of information for internal decision-making and for the MCA's external reports.
  - 17.3.18 To adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the MCA over time.
- 17.4 The Board shall have the following specific duties:
- 17.4.1 administer and conduct the financial affairs of the MCA;
  - 17.4.2 ensure adequate control systems are in place;
  - 17.4.3 ensure proper minutes, records and documents are kept;
  - 17.4.4 prescribe the forms and other documents required in terms of the Constitution and Code;
  - 17.4.5 determine the conditions for the waiver of complaint and appeal fees;
  - 17.4.6 determine the institutions or authorities to which matters adjudicated upon by any of its enforcement structures may be referred for further action, where appropriate. For the purposes of clarity, it is specifically stated that any decision by the Board in this regard does not preclude any affected party from pursuing a matter in a competent court of law;
  - 17.4.7 review the Code from time to time, after consultation with CTAC, and recommend amendments to it, to a general meeting of members and if applicable, to any appropriate regulatory authority;
  - 17.4.8 approve and amend the Code Guidelines from time to time, after consultation with CTAC, as the practical manifestations of the implementation or application of the Code, which shall be used by the adjudicating, appeal and ex parte committees to guide the consideration of matters before them;
  - 17.4.9 compile and publish reports on the complaints received by the MCA in a format it approves and in accordance with the Board policy set in terms of the Constitution and may submit these reports to the Department of Health and/or any appropriate authority;



- 17.4.10 communicate with Members, Associate Members and other stakeholders on the achievement of the MCA's objects, including details of business undertaken as well as the work undertaken by the adjudication, appeals and ex parte committees in any particular calendar year subject to the provisions of the law, and any other matters of interest to the Members, Associate Members and other stakeholders; and
  - 17.4.11 use all reasonable efforts to expand the Membership and Associate Membership of the MCA and the acceptance of the Code by relevant Trade Associations, their members and Independent Non-Aligned Members.
- 17.5 In the event of a complaint being lodged with the MCA that involves an entire Industry Sub-Sector of the MCA, the Board shall:
- 17.5.1 appoint an independent and experienced mediator to mediate;
  - 17.5.2 in consultation with the appointed mediator determine the procedures and timelines for the resolution of the dispute; and
  - 17.5.3 should the dispute not be resolved, call a special general meeting for a decision by the Members about the dispute.
- 17.6 Board members shall have the following specific duties:
- 17.6.1 act with due care, diligence, skill, in good faith and in the best interests of the MCA;
  - 17.6.2 disclose any conflict or potential conflict of interest as required;
  - 17.6.3 refrain from using the MCA as a mechanism for commercial gain or advantage;
  - 17.6.4 not to accept any gift, benefit or consideration of any kind offered as a result of being a member of the Board unless otherwise provided for in this Constitution or in any policy approved by the Board;
  - 17.6.5 not to make any public announcements relating to the MCA or its affairs, unless mandated by the Board;
  - 17.6.6 attend Board meetings regularly unless prevented from doing so by illness or any other reasonable excuse and to remain abreast of the activities of the MCA; and
  - 17.6.7 be fully prepared for Board meetings to enable the provision of appropriate and constructive input on matters for discussion.



## 18. EXECUTIVE OFFICER

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- 18.1 The Executive Officer shall act as the custodian of the Code and the enforcement processes described in the Code.
- 18.2 The Board shall delegate to the Executive Officer all such necessary powers to enable the Executive Officer to conduct and perform the functions and duties set out in the Constitution and the Code.
- 18.3 In addition to all the powers granted and duties specified in the Constitution and the Code and the duties delegated by the Board, the Executive Officer shall have the following specific duties:
- 18.3.1 ensure that comprehensive and confidential records are kept of all MCA matters, including the entire history of complaints, investigations, hearings, deliberations and outcomes of all investigations, hearings and appeals and any relevant record of any other Code matter, in a manner and format and for the duration determined by the Board, subject to the provisions of the relevant legislation, unless otherwise required in terms of the Code or the Constitution;
  - 18.3.2 ensure that the MCA complies with all applicable legislation;
  - 18.3.3 maintain a register of MCA Members and Associate Members at the MCA offices or such other place as may be approved by the Board;
  - 18.3.4 maintain a functional and secure website for the MCA at all times, which shall contain the latest versions of the Code, the Code Guidelines and other relevant documents;
  - 18.3.5 facilitate the training of appropriate persons on Code compliance and promote and facilitate Code-Certification;
  - 18.3.6 constitute and Administer CTAC;
  - 18.3.7 appoint adjudicating, appeal and ex parte committees from the Panels of Experts as may be required from time to time;
  - 18.3.8 publish summaries of the outcomes of adjudication and appeals proceedings as well as advisory opinions provided by ex parte committees, as provided for in the Code;
  - 18.3.9 engage with key stakeholders, including HCPs, to pursue the formal recognition of the Code through regulated channels;
  - 18.3.10 represent the MCA at all external meetings, events and other engagements, the responsibility for which the Board may delegate to another person due to the unavailability of the Executive Officer and
  - 18.3.11 make any public announcement or public response, on behalf of the MCA.



- 18.4 The Executive Officer may, where relevant to the adjudication of a complaint or an appeal, request copies of internal approval documentation relating the matter in question, in order to establish compliance with the Code and must submit the documentation received or report the failure to receive such documentation to the relevant adjudicating and/or appeal committee
- 18.5 The Executive Officer shall not be involved in the hearings, deliberations and/or decisions of an adjudicating or appeals committee. Members' promotional material and events. The Executive Officer may provide guidance on how to apply the Code.
- 18.6 The MCA, other than a committee duly constituted to adjudicate on a complaint or an appeal, shall not pronounce on the acceptability of promotional material and events in terms of the Code of either members or non-members. The Executive Officer may however provide training and guidance on how to use and apply the Code.

## 19. COMMITTEES AND PANELS

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### 19.1 General

The Board may appoint committees, sub-committees and Panels of Experts for such objects and purposes and with such powers and duties as may be decided upon, in line with the objects and interests of the MCA and in accordance with the provisions of the Constitution and the Code.

### 19.2 CTAC

- 19.2.1 The Executive Officer shall constitute and administer a CTAC comprising:
- 19.2.1.1 the Executive Officer of the MCA;
  - 19.2.1.2 a maximum of 2 (two) representatives nominated from their ranks by each Trade Association that has adopted the Code, i.e. from their management, staff, or members that are Companies. A Trade Association shall have 1 (one) vote only irrespective of the number of its representatives on CTAC; and
  - 19.2.1.3 a maximum of 2 (two) representatives nominated by the Independent Non-Aligned Members. The Independent Non-Aligned Members shall have one vote only irrespective of the number of their representatives on CTAC.
- 19.2.2 The Executive Officer shall be the chairperson of CTAC. The remaining members of CTAC shall appoint one of their number to chair the meeting in the absence of the Executive Officer.
- 19.2.3 The person appointed to provide administrative support to the MCA shall be the secretary of CTAC.





- 19.2.4 The Executive Officer may invite persons for their specific expertise to contribute to CTAC meetings from time to time as appropriate.
- 19.2.5 Each qualifying Trade Association shall notify the Executive Officer in writing by 1 February of each year who will represent the Trade Association on CTAC for the year. Any change to the representatives during the year shall be communicated to the Executive Officer before the next CTAC meeting takes place.
- 19.2.6 The mandate of CTAC shall be to:
  - 19.2.6.1 prepare and recommend any changes to the Code from time to time to the Board;
  - 19.2.6.2 prepare and recommend any changes to the Code Guidelines to the Board from time to time;
  - 19.2.6.3 assist and advise the Executive Officer with any Code and Code Guideline related matters;
  - 19.2.6.4 provide guidance on processes relating to the handling of complaints and
  - 19.2.6.5 assist with Code training and presentations.

### 19.3 Panels of Experts

- 19.3.1 The Board shall, on the recommendation of the Executive Officer, appoint appropriate persons to the Panels of Experts and may remove any such person from such Panels, after following a fair process and providing the person with an opportunity to state his case, where the person has brought the MCA into disrepute, where he has acted contrary to the interests of the MCA and/or has breached any provision of the Constitution or Code. A person appointed to the Panels of Experts is not required to be a representative of a Member or an Associate Member of the MCA.
- 19.3.2 The Panels of Experts shall consist of persons with suitable medical, legal, regulatory and/or marketing expertise, skills and qualifications, who are Code certified and who have at least 5 (five) years' experience in the specific field.
- 19.3.3 The terms of a person on the Panel of Experts shall expire when he submits his written resignation to the MCA, dies or is removed in accordance with the provisions of clause 19.3.1
- 19.3.4 The Executive Officer may approach the Trade Associations and members to call for nominations of persons considered suitable for serving on the Panels of Experts, and these nominations shall be accompanied by a comprehensive curriculum vitae and a declaration of interest by each nominee.



- 19.3.5 A person appointed to the Panels of Experts shall be required to sign an undertaking in terms of which he agrees to:
- 19.3.5.1 keep all processes, deliberations, decisions and rulings of any committee he is appointed to, confidential;
  - 19.3.5.2 as soon as he becomes aware of any potential or actual conflict of interest, disclose such interest to the Executive Officer;
  - 19.3.5.3 disclose any interest he has or may have in a matter to be considered by a committee to which he has been appointed and to recuse himself from all deliberations and decisions on that matter in accordance with clause 20; and
  - 19.3.5.4 undergo training and attend workshops provided by the MCA from time to time to equip him for his task on a committee.

#### 19.4 Committees

- 19.4.1 For the purpose of advisory opinions or the enforcement of the Code, as the case may be, the Executive Officer shall appoint the following committees from the Panels of Experts in line with the provisions of the Constitution and the Code, ensuring a balanced representation of persons from the various Industry Sub-Sectors to which the Code applies and ensuring that the members of the committee in any particular matter have an understanding of the specific Industry Sub-Sector relevant to the subject-matter to be deliberated upon with due regard to potential bias and Conflicts of Interest:
- 19.4.1.1 An adjudicating committee, which shall adjudicate complaints;
  - 19.4.1.2 An appeals committee, which shall hear appeals from any party aggrieved by a decision of the adjudicating committee, as well as matters of non-compliance with rulings and undertakings made under the Code; and
  - 19.4.1.3 An ex parte committee, which shall provide advisory opinions to persons in respect of the application of the Code and/or the Code Guidelines.
- 19.4.2 A committee shall comprise at least 3 (three) persons of whom 1 (one) shall be a legal person.
- 19.4.3 No person shall be appointed to a committee if he is or may be biased or conflicted in any respect.
- 19.4.4 The same person shall not be appointed to the adjudicating and appeals committees, for the adjudication of a complaint and the hearing of an appeal in respect of the same complaint, and the appeals committee to deliberate on the non-compliance by a party with a ruling.



- 19.4.5 The legal person appointed to the committee shall act as chairperson of the committee for the purpose of hearing the complaint or appeal. Should the legal person be absent from any proceedings pertaining to a specific complaint or appeal, the Executive Officer shall appoint another legal person to the committee and the proceedings shall commence de novo.
- 19.4.6 The quorum for a committee when adjudicating a matter or hearing an appeal is 2 (two) persons of which 1 (one) shall be the legal person.
- 19.4.7 The absence of a member of a committee on any occasion during the proceedings shall not affect the validity of such proceedings, provided that the number of members present does not fall below the stipulated quorum and the legal person is always present. In his sole discretion, the Executive Officer shall be entitled to fill a vacancy on a committee.
- 19.4.8 The Executive Officer shall disclose the identity of the members of the relevant committee to the parties involved in a complaint or appeal for the sole purpose of providing any party with the opportunity to raise a Conflict of Interest or potential Conflict of Interest. A party to a dispute shall refrain from using this knowledge for any commercial gain or other advantage, shall keep this information confidential, and refrain from victimising influencing or placing any undue pressure on such a person.
- 19.4.9 The adjudicating, appeals and ex parte committees shall have the powers and functions stipulated in the Code and the Constitution and shall exercise their duties in accordance with the processes and principles set out in the Code. The committees shall determine their own processes and procedures to be followed in respect of a specific complaint or appeal unless otherwise stipulated in the Code or the Constitution.
- 19.4.10 From time to time the Board may determine the rules relating to the functioning of all the committees and the Panels of Experts.

## **20. CONFLICTS OF INTEREST**

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- 20.1 The following terms have the meanings assigned to them for the purposes of this clause:
  - 20.1.1 "Material", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is
    - 20.1.1.1 of consequence in determining the matter; or
    - 20.1.1.2 may reasonably affect a person's judgement or decision-making in the matter.



- 20.1.2 “Personal Financial Interest” means:
  - 20.1.2.1 a direct material interest of any person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but:
  - 20.1.2.2 does not include any interest held by a person in a unit trust or collective investment scheme unless that person has direct control over the investment decisions of that fund or investment.
- 20.1.3 “Related Parties”:
  - 20.1.3.1 an individual is related to another individual if they –
    - 20.1.3.1.1 are married, or live together in a relationship similar to a marriage; or
    - 20.1.3.1.2 are separated by no more than two degrees of natural or adopted consanguinity or affinity;
  - 20.1.3.2 an individual is related to a juristic person if the individual directly or indirectly controls the juristic person.

This means that a person’s “first degree” relatives would include the natural or adopted parents, siblings and children of consanguinity and those with “affinity” would include the mother- and father-in-law, sisters- and brothers-in-law. The “second degree” relatives are the member’s natural or adopted consanguine or affinity grandparents, grandchildren, aunts, uncles, nephews, nieces or half-siblings.

- 20.2 As a general rule, no conflict between the interests of persons acting on behalf of the MCA and those of the MCA shall be allowed.
- 20.3 A person acting on behalf of the MCA shall be free from any business or other relationship, which may interfere with the exercise of his independent judgement.
- 20.4 Where a Conflict of Interest cannot be avoided, it must be managed as set out in this clause.
- 20.5 Members of the Board, Panels of Experts and committees must complete the MCA’s Declaration of Interests when accepting office and thereafter, annually, and whenever there are significant changes, and any relevant changes during the course of the year shall be reported to the Executive Officer
- 20.6 Persons shall be required to declare any interest with regard to any item on the agenda of any Board or committee meeting at the beginning of the relevant meeting and before any business is transacted.



- 20.7 A member of an adjudicating, appeals or ex parte committee, shall be regarded as being Conflicted, inter alia, where that member has or has had direct business dealings with any party to the proceedings before the committee, including being/having been in an employment or contractual relationship with such a party, or involved in the same class of molecule or, in the same type of device or IVD or business as a party to the proceedings, or where such a member could potentially benefit from a ruling in a specific manner or direction or where a member holds a specific position with regard to the subject matter of the proceedings.
- 20.8 A person shall:
- 20.8.1 disclose to the Board or relevant committee all his interests, including all his personal, financial and professional relationships, as well as the existence and circumstances of any transaction or relationship, which may create or give rise to an actual or perceived Conflict of Interest.
  - 20.8.2 refrain from using his personal influence to encourage the Board or committee to take action/decline to take action in a matter, which involves such interest, transaction or relationship.
  - 20.8.3 exercise due care and diligence to avoid a breach of his duties through negligence, intentional actions or omissions or any unauthorised communication with any person, aimed at influencing any business of the MCA or decision of the Board or any committee.
  - 20.8.4 refrain from attempting to affect the outcome of any matter before the Board or a committee, which may constitute a real or perceived Conflict of Interest.
  - 20.8.5 recuse himself from participation in any deliberation or decision with regard to a transaction, relationship or interest, which may constitute a real or perceived Conflict of Interest. This includes recusing himself from those parts of meetings where matters pertaining to such transactions, relationships or interests are being discussed, with the exception of responses to requests from the Board or any relevant committee for information about the transaction, relationship or interest.
  - 20.8.6 recuse himself from participation in any deliberations of a committee where he is conflicted or may have a potential conflict of interest.
- 20.9 In order to avoid the appearance of impropriety, any person acting on behalf of the MCA:
- 20.9.1 may not have private contracts or business dealings with the MCA.
  - 20.9.2 may not abuse his authority by using his office to obtain favourable treatment for any person by the MCA.
- 20.10 In order to avoid a Conflict of Interest, a member of the Board or his alternate may not act in a professional capacity for the MCA.



## 21. GENERAL MEETINGS

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- 21.1 Once every financial year, the MCA shall hold a general meeting of Members, i.e. an annual general meeting, at a time and place that may be determined by the Board provided that not more than 15 (fifteen) months shall lapse between any 2 (two) annual general meetings.
- 21.2 Matters reserved for consideration at a general meeting include;
- 21.2.1 any proposed changes to the Constitution
- 21.2.2 any proposed changes to the Code
- 21.3 Special general meetings of Members may be held at any time, when called by the Board, or, on the written requisition by at least 10% of the MCA's Members or 3 (three) of the Trade Associations or 2 (two) of the Trade Associations and the Independent Non-Aligned Members that have adopted the Code. The requisition shall state the objectives of the meeting and shall be signed by all parties to the requisition and deposited at the office of the MCA. Only those matters related to the objects of the meeting shall be discussed at the special general meeting. Special general meetings shall be held at such time and place as the Board shall determine.
- 21.4 A general meeting of Members at which a Special Resolution shall be considered shall be called by written notice of at least 21 (twenty-one) calendar days before the date of the meeting. The notice shall specify the place, the date and the time of the meeting, the general nature of the business, the Special Resolution to be considered, where applicable, and any relevant supporting documentation and shall be provided to all Members and Associate Members, provided that a meeting of the MCA shall, notwithstanding the fact that it is called by shorter notice than that specified in this clause, be deemed to have been duly called if it is agreed by a majority of the Members present at the meeting.
- 21.5 The notice convening the special general meeting shall specify the place, the date and the time of the meeting and contain the agenda and any relevant supporting documents and shall be provided to Members and Associate Members at least 14 (fourteen) days before the date of the meeting.
- 21.6 The number of notice days shall exclude the day for which it is given.
- 21.7 Matters submitted by the Board or Members for discussion and resolution at a general meeting of Members shall be placed on the agenda of the meeting provided that written notice of such resolution has been given to the Executive Officer at least 21 (twenty-one) calendar days before the date of the general meeting.



- 21.8 The accidental omission to give notice of a meeting to any Member or Associate Member or, the non-receipt of notice of a general meeting by any of these shall not invalidate the proceedings at such meetings.
- 21.9 At least 40% of Members present in person or via electronic conferencing means constitutes a quorum at a general meeting. A Member shall be regarded as being present when represented by a representative duly appointed or nominated in terms of clause 4, the Company Code Compliance Officer or a proxy duly appointed in terms of clause 21.10.
- 21.10 In the event the representative or his alternate envisaged in clause 4 or the Company Code Compliance Officer is unable to attend a general meeting of Members, such representative may nominate another person who is a partner, member, director, owner or employee of that Member or Associate Member or a representative from the Trade Association to which that Member or Associate Member belongs, by using the official proxy form prescribed by the Board, and direct such nominated person to attend the meeting and, in the case of a Member, vote on his behalf. Proxies shall be delivered to the Executive Officer at least 48 (forty-eight) hours before the commencement of the meeting.
- 21.11 If, a quorum is not present within 10 (ten) minutes after the time appointed for the meeting, the meeting, shall be dissolved if it has been convened by a request of Members or qualifying Trade Associations and in any other case it shall stand adjourned to the same day in the following week at the same time and place, or where such place is not available, to such other place as the chairperson may select, or should that day be a public holiday, then it shall be adjourned to the first Business Day following such public holiday at the same time, and where a quorum is not present at such adjourned meeting those Members who are present shall constitute a quorum and may transact the business for which the meeting was called.
- 21.12 The chairperson, and in his absence the vice chairperson of the Board, shall preside over a general meeting of Members. If both the chairperson and vice chairperson are unavailable, the meeting shall elect a chairperson from among those present.
- 21.13 The Executive Officer shall act as the secretary at all general meetings.
- 21.14 The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) 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 adjourned meeting. Save in the case where the meeting is adjourned for 30 (thirty) days or more, notice of the meeting need not be given again to members.





- 21.15 Any minutes of proceedings at general meetings shall be approved by the Members at the next general meeting and shall be signed by the chairperson of the meeting to conclude the approval process. Draft minutes shall be sent to all Members and Associate Members within 3 (three) weeks following the meeting.
- 21.16 At any general meeting a resolution shall be taken by show of hands or voting by electronic means unless a secret ballot is required by either the chairperson within his discretion or at the request of least 5 (five) Members present , including by proxy.
- 21.17 After a vote, the chairperson of the meeting shall declare that a resolution has either been carried/not carried.
- 21.18 In case of an equal number of votes, whether by show of hands or a poll, the chairperson of the meeting shall have a casting vote.
- 21.19 Subject to the participation by a sufficient number of Members to form a quorum, general meetings may be conducted by way of electronic conferencing means at the discretion of the Board provided that the electronic means employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting. Resolutions may be adopted by a majority vote of Members present at a meeting unless a higher majority is prescribed for a particular vote. For the avoidance of doubt, a Member's show of hands may be confirmed orally in the event of a Member participating by way of electronic conferencing means or, in the case of a secret ballot, by means of persons designated by the Executive Officer at such places to count and verify the votes cast. The results of voting by secret ballot shall be confirmed by the Executive Officer within 5 (five) business days after the meeting. Such a resolution shall have the same effect as if passed at a general meeting where Members are present in person.
- 21.20 The business of the annual general meeting of Members shall be to:
- 21.20.1 receive and consider the annual report of the Board, which shall include a report on all the matters that were adjudicated in terms of the Code, all training and education undertaken under the auspices of the MCA and any other matter related to the business of the MCA;
  - 21.20.2 receive and consider the audited financial statements with the auditor's report;
  - 21.20.3 appoint an auditor whose remuneration shall be determined by the Board;
  - 21.20.4 confirm the appointment of Board members representing the Trade Associations and the Independent Non-Aligned Members as provided for in clause 9;





21.20.5 transact any business as envisaged in the reports of the Board and Executive Officer; and

21.20.6 carry out any other business as may be transacted in terms of the Constitution at a general meeting.

21.21 .Matters appearing on the official notice or agenda to be transacted at any general meeting shall be disposed of before any additional matter is discussed. Any other matter may, however, be discussed at any such meeting, provided that is raised at the commencement of the meeting and is supported by a written memorandum stipulating the reason why it should be discussed together with relevant background information on the matter and provided that a majority of not less than 75% (seventy five percent) of the Members present is in favour of such matter being discussed.

21.22 The resolutions adopted at any general meeting shall be implemented by the Board, which shall report on the action taken at the next ensuing annual general meeting unless determined otherwise in such a resolution.

## **22. ENFORCEMENT PROCESSES IN RESPECT OF NON-MEMBERS**

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22.1 A person who is not a Member or Associate Member of the MCA may agree to be bound by the Code, including the enforcement processes.

22.2 A person who is not a Member or Associate Member of the MCA shall agree to be bound by the Code, which includes being bound by the decision of the MCA's enforcement structures, as a pre-condition for the acceptance and adjudication of a complaint by the MCA in respect of such a person.

## **23. BANK ACCOUNT**

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23.1 A bank account shall be opened in the name of the MCA.

23.2 All payments shall be made electronically from a bank account of the MCA in terms of an appropriate system implemented and approved by the Board from time to time, provided that all payments shall be approved and released by persons authorised by the Board in terms of a procedure adopted by the Board for this purpose.



## **24. FINANCIAL STATEMENTS AND AUDIT**

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- 24.1 The financial year end of the MCA shall be 31 December.
- 24.2 The Board shall ensure that proper books of accounts are kept to exhibit and explain the MCA's transactions and financial position, and in particular with respect to:
- 24.2.1 all sums of money received and expenditure incurred by the MCA and the matters in respect of which such receipt and expenditure take place; and
  - 24.2.2 the assets and liabilities of the MCA.
- 24.3 The books of account shall be kept at the office of the MCA or at such other place as the Board may determine and shall at all times be open for inspection by members of the Board. No Member or Associate Member (other than a person who is a member of the Board) shall have any right of inspection of any accounts, books or documents of the MCA except where authorised by the Constitution or the Board.
- 24.4 At least once a year, the accounts of the MCA shall be audited and the correctness of the income and expenditure account and balance sheet verified by the MCA's auditors.
- 24.5 At least once a year, the Board, represented by the Treasurer, shall present to an annual general meeting the audited financial statements in respect of the previous financial year in such a format and with all the particulars required in terms of the Constitution and any relevant legislation. Copies of these documents shall be sent to every Member and Associate Member with the notice of the general meeting.
- 24.6 Every balance sheet shall be signed by the chairperson of the Board and the Treasurer and shall be accompanied by the auditor's report and a report by the Board in respect of the state of the MCA's affairs and the amount (where applicable) which the Board has carried or proposes to carry to reserve.

## **25. AUDITOR**

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The auditors shall be appointed and their duties regulated in accordance with the Constitution and relevant legislation.



## **26. NOTICES**

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- 26.1 All documents, communications and notices that must be given to a Member or an Associate Member in terms of the Constitution shall be given to the representative nominated in terms of clause 4 or the Company Code Compliance Officer.
- 26.2 For the sake of expediency and efficiency, it shall not constitute a breach of this Constitution if notice to Members and Associate Members who are members of Trade Associations, are provided to them by means of a notice delivered to their respective Trade Associations.
- 26.3 The Executive Officer may in his discretion submit the various documents, communications and notices in electronic format.
- 26.4 Any notice, where given by post or e-mail, shall be deemed to have been given at the time when the letter or e-mail has been sent and it shall be sufficient to prove that the letter or e-mail containing the notice was properly sent for this purpose provided that the notice was actually received by the relevant person.
- 26.5 Notwithstanding anything to the contrary contained in the Constitution, a written notice or communication actually received by the relevant person shall be regarded as adequate written notice or communication to that person.

## **27. SIGNING POWERS**

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All documents, including powers of attorney, bonds, deeds, contracts and other documents, which must be executed by the MCA, shall be signed by the chairperson of the Board, whose power may be delegated to the Executive Officer or any other member of the Board as determined by the Board from time to time.

## **28. AMENDMENT OF THE CONSTITUTION**

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Any amendment of the Constitution shall be affected by the passing of a Special Resolution at a general meeting of Members of the MCA.

## **29. DISSOLUTION OR WINDING UP**

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- 29.1 The MCA may be dissolved by an order of a competent court or by voluntary dissolution.
- 29.2 Members in a general meeting may decide by Special Resolution that the MCA should be dissolved, in which case the Board shall arrange for Members to decide by ballot whether the MCA should be liquidated. A special general meeting shall be called for this purpose.



### **30. AMALGAMATION AND TRANSFER OF BUSINESS**

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If approved by Members by means of a Special Resolution and subject to the provisions of clause 34 of this Constitution, the MCA may amalgamate with, transfer its assets and liabilities to, or take transfer of the assets and liabilities of any other association or entity. A special general meeting shall be called for this purpose.

### **31. VALIDITY OF ACTS OF MEMBERS OF THE BOARD AND COMMITTEES**

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All acts performed by the Board or any committee shall, notwithstanding the discovery a posteriori that there may have been some defect in the appointment or continuance in office of the members of the Board or the committee or that any member of the Board or the committee had been disqualified or ceased to hold office or was not entitled to vote, be as valid as if every person involved had been duly appointed, was qualified or had continued to be a member of the Board or the committee or was entitled to vote, as the case may be.

### **32. LIMITATION OF LIABILITY**

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- 32.1 The MCA shall indemnify each current or past member of the Board or committee, any other office bearer and every employee of the MCA and the Executive Officer against any liability of whatever nature, including losses and damages of any nature as well as the costs and expenses incurred for any act or omission arising from and/or in connection with their bona fide and diligent performance of their functions and/or any obligations on behalf of the MCA, provided that such acts or omissions were not mala fide, fraudulent and/or unlawful.
- 32.2 The Board shall for the purposes of the indemnification set out in clause 32.1 ensure that appropriate and sufficient indemnity and/or other insurance is in place to cover the MCA and the persons stated above against any liability incurred by the MCA or the relevant persons in the discharge of their functions and duties on behalf of the MCA.

### **33. CONFIDENTIALITY**

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All information obtained by virtue of a person's membership of the Board or a committee or attendance of Board or committee meetings and any discussions held at Board or committee meetings shall be confidential and subject to the provisions of the Constitution, the requirements of the law and/or any decision by the Board.



## **34. INCOME TAX ACT: SPECIAL CONDITIONS**

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- 34.1 To the extent that the MCA has been approved by the Commissioner for the South African Revenue Service (SARS) for the purposes of section 30B of the Income Tax Act (Act 52 of 1962) as amended:
- 34.1.1 The Board shall consist of at least 3 (three) persons, who are not persons connected to one another, to accept the fiduciary responsibility of the MCA for income tax purposes.
  - 34.1.2 No single person shall directly or indirectly control the decision-making powers relating to the MCA.
  - 34.1.3 The MCA shall not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives.
  - 34.1.4 The MCA shall utilise a substantial proportion or the all its funds for the sole or principal objective for which it was established and not for the specific benefit of any individual member or minority group.
  - 34.1.5 No member shall directly or indirectly have any personal or private interest in the MCA.
  - 34.1.6 The MCA shall not have a share or any other interest in any business, profession or occupation, carried on by its Members or Associate Members.
  - 34.1.7 The MCA shall not pay any employee, office bearer, Member, Associate Member or other person any remuneration, as defined in the Fourth Schedule to the Income Tax Act, which is excessive, having regard to what is generally considered reasonable in the Health Products industry or Industry Sub-Sector and in relation to the service rendered.
  - 34.1.8 A substantial proportion or all of the MCA's funding shall be derived from its Members and Associate Members or by means of an appropriation by the government of the Republic of South Africa in the national, provincial or local sphere.
- 34.2 The MCA shall as part of its dissolution transfer its assets to:
- 34.2.1 another entity approved by the Commissioner for SARS in terms of section 30B of the Income Tax Act;
  - 34.2.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act;
  - 34.2.3 an institution, board or body which is exempt from tax under section 10(1)(ca)(i) of the Income Tax Act; or
  - 34.2.4 the government of the Republic of South Africa in the national, provincial or local sphere.
  - 34.2.5 The Executive Officer shall submit any amendment of the Constitution to the Commissioner for SARS within 30 (thirty) days of its approval by the Members in a general meeting.



- 34.2.6 The MCA shall comply with such reporting requirements as may be determined by the Commissioner for SARS from time to time.
- 34.2.7 The MCA shall not knowingly become a party to and shall not knowingly permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

**For further information contact:**

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**Executive Officer: Val Beaumont**



**[Amendment as adopted at the Special General Meeting on 13<sup>th</sup> March 2013 in terms of clause 23 of this Constitution]**

**[Amendment as adopted at the 2nd Annual General Meeting on 13<sup>th</sup> September 2013;**

**Clauses amended:** 1.4; 1.7; 5.11; 6.2.1; 9.9; 9.11; 10.2; 11.10.2; 11.11; 11.17

**Clauses added:** 5.23; 5.24; 9.10; 9.16; 9.17; 9.18; 14.10; 20.1]

**[Amendment as adopted at the 3rd Annual General Meeting on 24<sup>th</sup> November 2014;**

**Clauses amended:** 3.9.1; 6.2; 11.4; 11.4.2; 11.4.3; 11.13; 14.10; 15.5

**Clauses added:** 3.9.2; 6.4; 6.9; 11.4.1; 11.13.1; 11.13.2]

**[Amendment as adopted at the 4<sup>th</sup> Annual General Meeting on 10<sup>th</sup> September 2015;**

**Clauses amended: 3.4; 8.2 Clauses added: 3.5]**

**[Amendment as adopted at the MCA Annual General Meeting on 25<sup>th</sup> June, 2019,**

**Complete review of the Constitution.**

Substantive changes, include the streamlining of definitions; the addition of a category of membership for Associate Members; clarification of the powers and duties of the Board and the Executive Officer; the combination of the three expert panels into one panel of experts for the hearing of complaints and appeals. To provide for Association staff to attend CTAC meetings and for one vote per association; providing for a legally qualified person to chair enforcement proceedings; enhancing the objectives of the MCA; enhancing the provisions related to the termination of membership of Members, Associate Members, Board and committee members; providing for the dissolution of the MCA; providing for the transfer of business of the MCA; enhancing the conflict of interest provisions; providing for the limitation of liability of officials; providing for the confidentiality of information; and other related matters ]

**Amendment to be proposed to the MCA Annual General Meeting on 30<sup>th</sup> June, 2021,**

**Complete review of the Constitution.**

Complete review of the Constitution to align with the Protection of Personal Information Act 4 of 2013 (POPIA), Substantive changes include; [Removal of reference to SA veterinary association](#); [Clarity on definition of conflict of interest](#); [Introduction of requirements for compliance with POPIA with respect to personal information](#); [Clarity on the issuing of cost orders as a sanction](#); [Provision for the appointment to the Board of an Honorary Treasurer](#);

[Requirement to do audits of members' compliance records changed from a duty to an option and qualified to relate to complaints and appeals](#); [Provision for electronic general meetings](#); and related matters.



Composition of Board (9.1.3). Substitution of “Consumer Representative” by Ethics and Governance Specialist focusing on the interests of consumers.

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