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**MYANMAR
INSTITUTE OF
DIRECTORS**

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Governance for Growth

Constitution of the
**Myanmar Institute of Directors
Association Incorporated**
A not for profit business association

[Date]

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CHAPTER 1 DEFINITIONS

1. In this Constitution, subject to clause 2, unless the context otherwise requires:
 - (a) **Board** means the Directors acting together as a board of directors.
 - (b) **CBM** means the Central Bank of Myanmar.
 - (c) **CEO** means the Chief Executive Officer of the Institute.
 - (d) **Constitution** means this Constitution of the Institute, as amended from time to time in accordance with the Law.
 - (e) **DICA** means the Directorate of Investment and Company Administration.
 - (f) **Director** means a natural person appointed as a director of the Institute in accordance with this Constitution and the Law.
 - (g) **distribution** includes any form of income or capital distribution.
 - (h) **general meeting** means a general meeting of the Members.
 - (i) **Institute** or **MloD** means the Myanmar Institute of Directors Association Incorporated.
 - (j) **Law** means the Myanmar Companies Law 2017 (Pyidaungsu Hluttaw Law No. 29) as amended and in effect from time to time.
 - (k) **Member** means a natural person who is entered in the Register as a member of Institute in accordance with this Constitution.
 - (l) **Nominee Director** means a Director nominated by one of the CBM, DICA, the SECM and the UMFCCI, as appointed by the Board pursuant to clause 58(b).
 - (m) **Objects** means the objects of the Institute as set out in clause 10.
 - (n) **Ordinary Resolution** means a resolution which has been passed by a simple majority of the votes of Members entitled to vote as are present in person or by proxy at a general meeting of which notice specifying the intention to propose the resolution as an ordinary resolution has been duly given.
 - (o) **poll** means, for the purposes of voting, a count of votes held by each Member.
 - (p) **Register** means the register of the Company's members required to be set up and maintained under the Law and this Constitution.
 - (q) **resolution** means any resolution and includes a resolution of the Directors, an Ordinary Resolution and a Special Resolution.
 - (r) **SECM** means the Securities and Exchange Commission of Myanmar.

- (s) **Secretariat** means the management team of Institute, including – and as managed and supervised by - the CEO.
 - (t) **Secretary** means any person appointed as a secretary of the Company in accordance with this Constitution and the Law.
 - (u) **show of hands** means, for the purposes of voting, a count of raised hands of Members.
 - (v) **Special Resolution** means a resolution which has been passed by a majority of not less than three-fourths of the votes of Members entitled to vote as are present in person or by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.
 - (w) **UMFCCI** means The Republic of the Union of Myanmar Federation of Chambers of Commerce & Industry.
 - (x) **Union** means The Republic of the Union of Myanmar.
2. **Definitions in the Law.** All words used in this Constitution that have been defined in the Law have the same meaning as given to them in the Law, unless otherwise stated.
 3. **Constitution Subject to the Law.** This Constitution is subject to the Law. Where there is any conflict or inconsistency between a clause of this Constitution and the Law, except to the extent that such conflict or inconsistency is permitted under the Law, the Law prevails in respect of the conflict or inconsistency.

CHAPTER 2: GENERAL

4. **Constitution.** This is the constitution of the Institute. Each Member agrees to be bound by this Constitution, including any modification of this Constitution made in accordance with the Law after the date on which they become a Member.
5. **Section 42 Association.** The Institute is an association for promoting objects related to commerce and economic development that applies its profits (if any) or other income in promoting its objects and prohibits the payment of any dividend to its Members, under section 42 of the Law.
6. **Not for Profit.** The Institute is a not for profit membership-based association. Its business is to be carried on without any distribution or other pecuniary gain to its Members. Any profits or other accretions to the assets of the Institute are to be used in furthering its undertakings.
7. **Purpose.** The Institute will be engaged in promoting corporate governance standards and best practices in Myanmar. It aims to advance board professionalism, promote business ethics and transparency, create networks between corporate leaders and stakeholders, and boost investor confidence in Myanmar’s capital markets.
8. **Place of Business and Principal Office.** The place of business and principal office of the Institute will each be in Yangon, at such address as the Board may fix from time to time by resolution.

9. **Compliance with Laws.** The Institute will implement its functions in accordance with the applicable laws of the Union.

CHAPTER 3: OBJECTS & POWERS

10. **Objects of the Institute.** The objects of the Institute are to:
- (a) promote the highest standards and best practices of corporate governance;
 - (b) advance board professionalism by offering corporate governance professional development programs to board directors and officers of public, private and state-owned companies;
 - (c) promote business ethics and corporate citizenship among body corporates, directors and officers;
 - (d) promote sustainable practices that integrate environmental, social and governance considerations;
 - (e) promote transparency, disclosure of accessible, reliable, timely, and material information by companies to their shareholders, stakeholders and the general public and a comprehensive and integrated approach to corporate reporting;
 - (f) conduct the study, research, benchmarking and development of the practice of corporate governance in the Union, and to publish, disseminate or otherwise make available the results of such study or research;
 - (g) create networks amongst and between corporate leaders and stakeholders;
 - (h) contribute to boosting investor confidence in Myanmar's capital markets;
 - (i) establish and maintain an active network of members;
 - (j) establish relationships and strategic partnerships, and engage in joint activities, with national, regional and international bodies active in corporate governance, including regulators and peer organizations in other countries and with other bodies or organizations which may advance the objects of the Institute;
 - (k) provide advice and counseling on corporate governance practices and related matters; and
 - (l) generally, to do all such other things as are conducive or incidental to the attainment of the above objects.
11. **Powers of the Institute.** Pursuant to the Law and subject to this Constitution, the Institute is a legal entity in its own right separate from its members having full legal capacity to carry on any business or activity, do any act, or enter into any transaction in the furtherance of its Objects, including the power to:
- (a) enter into any contract or create or assume any obligation, borrow or raise

- money, obtain any form of credit or finance and give guarantees and indemnities;
- (b) apply surplus funds, fees or other monies of the Institute towards the achievement of its Objects;
 - (c) develop and issue membership criteria, accept and decline membership applications, issue rules and regulations pertaining to the conduct of its Members, and review the status of any existing Member or sponsor; and
 - (d) exercise any of its powers for consideration of any kind or for no consideration in any part of the world and to do all such other lawful things in the pursuit of its Objects.
12. **No Distributions.** The Institute will not make any distributions to any of its Members or Directors. The Directors are prohibited from making any form of distribution, including distributing dividends, returns of capital, income or profits of the Institute to the Members. The Institute will use any surplus funds in any year to pursue its Objects. Nothing will prevent the Institute from making reasonable, legitimate and proper payments in good faith to any of its Members or Directors where such payment is by way of reasonable remuneration in consideration of any services, facilities and goods actually rendered to the Institute in the ordinary course of business. Payments made to Members and/or Directors will be made in a fair and transparent manner, in accordance with Chapter 11 of this Constitution.

CHAPTER 4: MEMBERSHIP

13. **Additional Membership Requirements.** Without limiting any of the provisions of this Chapter 4, the Board may resolve to approve any additional by-laws, rules, regulations, policies, codes of conduct, application procedures, eligibility requirements, appeals mechanisms and disciplinary processes applicable to Members from time to time, provided that such approved requirements must be consistent with this Constitution and the Law. Any such additional requirements approved by the Board will be binding on all Members.
14. **Nature of Membership.** Memberships of the Institute will be individual natural person memberships held by Members in their personal capacity. The criteria for eligibility for, and exclusions from, membership of the Institute will be as set out in this Constitution and otherwise as determined and approved by the Board.
15. **Members' Financial Liability on Dissolution of the Institute.** If the Institute is wound up or otherwise dissolved, the liability of each Member (in his or her capacity as a Member) to contribute towards the Institute's outstanding debts and liabilities is limited to any unpaid amounts of their applicable membership fees.
16. **Membership Classes, Criteria and Appeals.** Subject to this Constitution (including clause 18), the Board may resolve to establish or modify any categories or classes of membership, the criteria for membership, and the appeals mechanisms in relation to membership issues, and may otherwise generally determine all matters relating to membership.

17. **Membership Applications.** Applications for membership of the Institute will be made in writing in such prescribed form as the Board may require. The Board may from time to time approve procedures and criteria for the making and assessment of membership applications, which may include requirements regarding personal interviews. The Secretariat will consider and determine all applications for membership, provided that where the Board elects to make a resolution regarding the acceptance or rejection of any membership application (including in relation to an appeal by a rejected applicant) the Board's resolution will be final and binding.
18. **Eligibility Criteria.** Applicants for membership of the Institute must meet each of the following criteria in order to be eligible for acceptance as a Member and existing Members must continue to meet each of the following criteria in order to remain eligible to continue as Members.
- (a) Be a natural person (not a legal entity) of any nationality, at least 21 years of age.
 - (b) Meet the criteria and standards of eligibility to act as a company director under the Law and any other applicable law.
 - (c) Have never been disqualified from acting as a director, officer or secretary under the Law or any other applicable law.
 - (d) Have never been adjudged of unsound mind.
 - (e) Not be an undischarged bankrupt.
 - (f) Have never been convicted of any offence under the Law.
 - (g) Have never been convicted, whether in the Union or any other jurisdiction, of fraud, corruption, collusion or money laundering or for a criminal act involving dishonesty, drug trafficking, physical violence or harm to human life, nor be the subject of credible and/or persistent allegations related to, or be under investigation for, such criminal activities.
 - (h) Not currently be, nor have been at any time during the 12-month period immediately preceding their application for membership, included as a debarred person pursuant to the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision (www.crossdebarment.org) or any sanctions list of the US, Europe, or Australia.
19. **Admission of Members.** Where a membership application is accepted, the Secretariat will:
- (a) notify the applicant in writing of his or her acceptance, including details of the category or class of membership for which the applicant has been accepted (where relevant); and
 - (b) request the applicant to proceed with the payment of any applicable admission and membership fees.

Upon payment of the applicable fees, the applicant's name will be entered in the Register.

20. **Rejection of an Application.** Where a membership application is rejected, the Secretariat will notify the applicant in writing within fourteen (14) days after the making of the decision without the need to specify the reason(s) for rejection. An applicant whose application has been rejected is entitled to reapply.
21. **Right of Appeal.** A rejected applicant may submit a written appeal to the Board against the refusal to admit the applicant to membership, provided that such appeal is made in accordance with any procedures approved by the Board in relation to appeals mechanisms.
22. **Membership fees.** Members, or any category or class of Members, (as the case may be), must pay membership fees (and admission fees on first becoming a Member) to the Institute at the rates and at the frequency determined by the Board and notified to the Members. The Board may delegate to any of the CEO and the Secretariat the power and authority to:
 - (a) determine, revise, revoke or postpone the payment of any membership fees for any or all categories or classes of Members;
 - (b) set or extend the time for payment of membership fees;
 - (c) stipulate the amount, the time, the method and place for payment of membership fees;
 - (d) determine a penalty to be levied by the Institute where a Member is late in payment of membership fees; and
 - (e) waive the payment of all or any part of a penalty levied for late payment, upon representations of the Member.
23. **Obligations of Members.** Members must:
 - (a) pay applicable membership fees and admission fees to the Institute by the applicable due date, each as determined in accordance with clause 22 and notified to Members;
 - (b) abide by the by-laws, rules, regulations, policies, codes of conduct and other membership requirements of the Institute approved by the Board (in accordance with the Law and this Constitution) and notified to Members and by any relevant Members resolutions or Board resolutions; and
 - (c) comply with the applicable laws of the Union.
24. **Rights of Members.** Members have the right to:
 - (a) make reasonable use of the property of the Institute in accordance with the relevant rules and requirements established by the Institute from time to time;
 - (b) to participate in various programs and seminars organized by the Institute at special membership conditions to be established by the Board;

- (c) attend and participate in any general meeting;
 - (d) nominate or second candidates to the Board;
 - (e) stand for election to the Board;
 - (f) vote on Members resolutions; and
 - (g) work with the Institute to achieve its objectives.
25. **Board Discretion.** Without limiting clauses 17, 18 or 26, the Board may decide to reject any membership application or to cancel the membership of any existing Member if it deems in its discretion that accepting the applicant as a Member or allowing the existing Member to continue as a Member (as the case may be) would, or would be reasonably likely to, cause harm to the reputation, independence, or functions of the Institute.
26. **Cessation of Membership.** Where any of the following occurs, the affected Member will automatically cease to be a Member:
- (a) the death or bankruptcy of a Member;
 - (b) a Member resigns or withdraws his or her membership in writing to the Secretariat;
 - (c) a Member no longer meets the criteria set out in clause 18;
 - (d) a Member fails to pay applicable membership fees, or any other fees due to the Institute, within the time period prescribed in accordance with this Constitution (subject to any extension or waiver granted to the relevant Member).
27. **Suspension or Termination by the Board.** Without limiting clause 26, the Board may resolve to suspend or terminate the membership of any Member:
- (a) where the Member no longer meets or complies with any applicable membership requirements or criteria;
 - (b) where the Member has breached any by-laws, rules, regulations, policies, codes of conduct, or other membership requirements of the Institute approved by the Board; or
 - (c) for any good cause in accordance with any policies or procedures approved by the Board in relation to suspending or terminating membership.
28. **Continuing Liability for Payments.** Any Member who ceases to be a Member will remain liable to the Institute for all subscriptions, membership fees, training fees and other sums that may be due by him or her to the Institute at the date of cessation. No Member who ceases to be a Member will be entitled to any refund of any sum already paid by him or her to the Institute, including any membership fees for any remaining portion of the relevant membership period.

CHAPTER 5: CORPORATE SPONSORSHIPS

29. **Sponsorships.** The Board of Directors may approve specific corporate sponsorships for the Institute. Sponsorships may only be procured from an entity that meets the criteria set out in clause 30. Sponsorships may entitle the sponsor to a predefined number of individual memberships in accordance with any sponsorship scheme for the Institute approved by the Board (from time to time), provided that the sponsor must designate the specific names of the relevant individual Members to be entered into the Register and such persons must meet all membership requirements and criteria in accordance with this Constitution. Notwithstanding that the relevant memberships are granted pursuant to a corporate sponsorship, the relevant individual Members will be Members in their own right and will enjoy the same rights as any other Member. The sponsor may change the individual Members designated under its sponsorship on an annual basis.
30. **Sponsor Criteria.** To be eligible to become a sponsor of the Institute, an entity:
- (a) may be any form of legal entity (e.g., public, private, non-profit, association, or other legal form);
 - (b) may be registered either nationally or internationally;
 - (c) must be an entity in good standing and sound reputation in the Myanmar community;
 - (d) must not currently be, nor have been at any time during the 12-month period immediately preceding the grant of sponsorship, included as a debarred entity pursuant to the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision (www.crossdebarment.org) or any sanctions list of the US, Europe, or Australia;
 - (e) must not have any current directors or senior executives that fail to meet the individual membership criteria set out in clause 18; and
 - (f) must not otherwise be deemed (by resolution of the Board) to be an entity an association with which would, or would be reasonably likely to, cause harm to the reputation, independence, or functions of the Institute.
31. **Termination of Sponsorship.** The Board may resolve to terminate the sponsor status of an entity if the Board determines that the entity no longer meets the criteria set out in clause 30 or for any other good cause, which may include non-payment of sponsor fees. If a sponsor's status is terminated the:
- (a) individual memberships granted to the sponsor will immediately be terminated;
 - (b) Board may decide to publicly communicate that the entity is no longer a sponsor entity of the Institute; and
 - (c) entity will remain liable to the Institute for all sponsor fees, training fees and

other sums which may be due by it to the Institute as at the date of cessation, and none of the sponsor and the individual Members under its sponsorship will be entitled to any refund of any sum already paid to the Institute, including fees for any remaining portion of the subscription period.

CHAPTER 6: GENERAL MEETINGS OF MEMBERS

32. **Annual General Meeting.** The Board will call and arrange for the Institute to hold an annual general meeting of the Members at least once in every calendar year, not more than fifteen months after the holding of the last preceding annual general meeting, and otherwise on such date, time and place as reasonably determined by the Board. The business of annual general meetings will include the:
- (a) retirement and appointment of Directors;
 - (b) approval of the appointment of an external auditor; and
 - (c) consideration of the audited financial statements, the auditors' report and the Directors' report.
33. **Convening Special General Meetings.** Subject to the Law:
- (a) any one or more Directors may convene a special general meeting at a reasonable date, time and place determined by them; and
 - (b) at least ten (10) Members may require the Institute to convene a special general meeting by giving a letter to the CEO requesting such a meeting and identifying the matters to be discussed, in which case the Board must give call and give notice of the date of this meeting (at a reasonable time and place determined by the Board) within twenty-one (21) days of the receipt of the written request.
34. **General meetings by technology.** Subject to compliance with the requirements of the Law regarding meeting notification and voting, and provided that the Institute must ensure at all times that meetings are held in a manner that enables all members to participate and for the meeting to be properly conducted, the Institute may call or hold any general meeting using any means or form of technology that is available to members.
35. **Notice of general meetings.** The Board must ensure that not less than twenty-one (21) days' prior written notice of any Members' meeting is provided to every Member entitled to vote at the meeting, every Director and the Institute's external auditor. Notice of a general meeting must be given in the manner provided by this Constitution and the Law and must include or be accompanied by all information required by the Law.
36. **Omission to Give Notice of General Meeting or Comply with Notice Requirements.** Subject to the Law:
- (a) the accidental omission to give notice of a general meeting (or any postponement or, if required, adjournment of or change to the meeting) to, or

non-receipt of any such notice by, any Member or any person who is otherwise entitled under this Constitution or the Law to receive notices of general meetings; or

- (b) failure to strictly comply with clause 34 in respect of a notice of a general meeting,

does not invalidate any of the proceedings at the general meeting.

37. **Quorum.** No business may be transacted at any general meeting unless a quorum is present at all times during the meeting. A quorum is constituted by at least five (5) Members (present in person or by proxy, including present via technological means pursuant to clause 34). If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) any meeting convened by Members or by the Board on request of Members is dissolved; and
- (b) any other meeting stands adjourned to the same day in the next week at the same time and place or to any other day, time and place as the Board may determine and give notice of to the Members and those persons who are otherwise entitled under this Constitution or the Law to receive notices of general meetings. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, then those Members who are present are deemed to be a quorum and may transact the business specified in the original notice convening the meeting.

38. **Chairperson of the General Meeting.** Where the Chairperson of the Board is present at a general meeting, the Chairperson will chair the general meeting. If the Chairperson of the Board is not present (and willing to take the chair) within 15 minutes after the time scheduled for the commencement of the general meeting, the Directors present at the meeting may choose one of their number to chair of the meeting. If the Directors do not choose a chair of the meeting, the Members present must choose one of the Directors to be chair, and if no Director is present or willing to take the chair, the Members must choose one of the Members to be chair. No business will be discussed at any meeting before the appointment or election of a Chairperson and/or whilst the chair is vacant.

39. **Powers of Chair.** The Chairperson of the meeting is responsible for the conduct of that general meeting and for the procedures to be adopted at that meeting. The chair of a general meeting may, in the case of a conflict of interest or otherwise in their discretion, appoint someone else (who need not be a Director) to chair one or more items of business or resolutions at the meeting. While acting as chair the appointee may exercise all of the chair's powers and discretions conferred by this Constitution or the Law. The chair resumes the chair after the appointment concludes.

40. **Adjournment of General Meeting.** The chair of a general meeting may adjourn the meeting to a different day, time and place, but only business left unfinished at the meeting from which the adjournment took place may be transacted at the adjourned meeting. However, the chair of a general meeting may not adjourn a meeting convened by a single Director, or in accordance with the Law by Members, or by the Directors on request of Members, or by a

court unless the persons who convened the meeting (or at the request of whom the meeting was convened) consent to the adjournment.

41. **Notice of Adjourned General Meeting.** If a general meeting is adjourned for more than 28 days, notice of the adjournment must be given to all Members and those persons who are otherwise entitled under this Constitution or the Law to receive notices of general meetings in the same manner in which notice was, or ought to have been, given of the original meeting.

CHAPTER 7: VOTING AT GENERAL MEETING

42. **Resolutions for Voting.** No general meeting, whether annual or special, will enter upon, discuss or transact any business which has not been specially mentioned in the notice convening such meeting.
43. **Resolutions Determined by Majority.** At a general meeting all proposed resolutions will be decided by Ordinary Resolution except where a decision by Special Resolution is required by this Constitution or the Law.
44. **Voting.** Each voting Member in good standing will have one vote on each proposed resolution at any general meeting. Each proposed resolution at a general meeting will be determined by a show of hands unless, before a vote is taken or before or immediately after the declaration of the result of the vote on a show of hands, a poll is demanded as provided by this Constitution and the Law.
45. **Casting Vote of Chair.** If, on a resolution at a general meeting, an equal number of votes occurs on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any votes to which the chair may be entitled as a Member or proxy.
46. **Demand for Poll.** A poll may be demanded on any resolution at a general meeting by:
 - (a) at least five Members present and entitled to vote on the resolution; or
 - (b) the chair of the meeting.
47. **Conducting a Poll.** If a poll is demanded on any resolution at a general meeting, the chair of the meeting will:
 - (a) decide the manner in which the poll is taken; and
 - (b) determine any dispute regarding admitting or rejecting a vote and that determination, made in good faith, will be final and binding.
48. **Voting by Proxy.** A Member who is entitled to vote on a proposed resolution at a general meeting may appoint a person as that Member's proxy to attend and be heard at the meeting and vote on that Member's behalf. A proxy may demand or join in demanding a poll. Subject to the Law, a proxy may vote or abstain from voting on a proposed resolution at a general meeting as they choose. However, if the instrument appointing the proxy directs the way in which the proxy must vote or abstain from voting, then the proxy may only vote or abstain in that way.

49. **Validity of Proxy.** A proxy present at any general meeting will for all purposes be deemed to have received due notice of such meeting and, where required, of the purposes for which such meeting was convened. Subject to the Law, any dispute as to the validity of the appointment of a proxy will be determined by the chair of the relevant meeting and the chair's decision will be final and binding.
50. **Appointer Present at Meeting.** If a Member is present at any general meeting for which the Member has validly appointed a proxy to attend and vote for the Member, the proxy's authority to:
- (a) speak for the Member is suspended while the Member is present; and
 - (b) vote for the Member on any proposed resolution is not suspended while the Member is present but is revoked by the Member voting in person.
51. **Validity of Vote Given in Accordance with Proxy.** Unless the Institute has received written notice of the matter before the start or resumption of the general meeting at which a person votes as a proxy, a vote cast by the person will be valid even if, before the person voted, the Member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the person's appointment or authority; or
 - (d) revokes the authority under which the person was appointed by a third party.
52. **Ruling on Entitlements and Votes.** A person may only object to whether a purported voter is entitled to vote, or a vote by any person present and entitled (or claiming to be entitled) to vote should be admitted or rejected, at the meeting at which the purported voter wishes to vote or the vote objected to is given or tendered. The objection must be determined by the chair of the general meeting, whose decision is final and binding. A vote not disallowed as a result is valid and effective for all purposes.
53. **Chair Determines if Resolution Carried.** At any general meeting, if the chair of the meeting declares that a resolution has been carried, or carried by a particular majority, or not carried and an entry to that effect is recorded in the minutes of the meeting, that declaration is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against or abstained on that resolution.

CHAPTER 8: RESOLUTIONS WITHOUT MEETINGS

54. **Written Members' Resolutions.** The Members may pass a resolution, other than a resolution to remove an auditor under the Law, without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Identical copies of the document and

accompanying information may be distributed for signing by different Members. The resolution is passed when all of the Members have signed the document.

CHAPTER 9: PROXIES

55. **Appointment of a Proxy.** A proxy may be appointed by a written instrument signed by the appointing Member, in a form and content prescribed by the Board from time to time. A proxy appointment form will be sent out with each notice convening a general meeting of the Members. An instrument appointing a proxy must be received by the Institute at least 48 hours before the time for holding the general meeting to which the proxy relates and may be sent to the Institute by any means specified in the notice of meeting, notified by the Institute from time to time or otherwise permissible under the Law.

CHAPTER 10: BOARD OF DIRECTORS

56. **Director Eligibility.** Subject to clause 58(b), a Director must be a natural person of at least 21 years of age and must be a Member in good standing in accordance with this Constitution (including clause 18). In addition, for a Director to be and remain eligible any organization that employs the Director (either as an executive or as a board director) must also meet the criteria for eligibility to be a sponsor of the Institute under clause 30. Each Director must also:
- (a) be capable of dedicating sufficient time to the discharge of his or her duties as a Director; and
 - (b) attend a minimum of 75% of scheduled board meetings.
57. **Appointment or Removal of Directors.** Subject to clause 58(b), Directors may be appointed or removed by Ordinary Resolution in accordance with this Constitution and the Law and may resign from their role by notice in writing to the Institute. Any Director who ceases to be a Member will automatically cease to be Director.
58. **Board Size.** The Board will be composed of not less than five (5) and not more than fifteen (15) Directors.
59. **Board Composition.** The Board must include sufficient number and identity of Directors to meet the following requirements.
- (a) Directors constituting Members who are residents of more than seven different States and Regions of the Union or, if DICA (in its capacity as Registrar under the Law and relevant related regulations) has given written approval for the Institute to have Directors constituting Members who are residents of a lesser number of States and Regions, then Members who are residents of such States and Regions as are required to satisfy the conditions of any relevant written approval given by DICA (from time to time).
 - (b) One Nominee Director nominated in writing by each of the CBM, DICA, the SECM and the UMFCCI. The appointment of each Nominee Director will be confirmed by

resolution of the Board. Each of the CBM, DICA, the SECM and the UMFCCI can nominate any replacement for its Nominee Director by notice in writing to the Institute at any time (provided that the relevant organisation requires its then-current nominee (if any) to resign from his or her position to allow appointment of the replacement). Nominee Directors are not required to be Members and are not subject to any approval or appointment by the Members or to any limited terms of office or retirement under clause 61. However, any candidates nominated by any of the relevant organizations must otherwise meet all eligibility criteria for Directors under this Constitution and the Law.

Subject to this Constitution, the Board will otherwise seek to promote a reasonably diverse composition of Directors, in particular in relation to gender diversity. The Board may resolve to invite nominations of.

60. **Board may Fill Casual Vacancies or Appoint Additional Directors.** The Board has the power at any time to appoint any other person as a Director either to fill a casual vacancy or as an addition to the Board, provided that such person meets the relevant eligibility criteria under this Constitution and that the total number of Directors must not at any time exceed the maximum number for the time being fixed by or under this Constitution.
61. **Casual Vacancies Where Deficient Number of Directors.** If at any time the total number of Directors falls below the minimum number, or the minimum number for quorum at a directors meeting, required under this Constitution the remaining Directors may nevertheless exercise their power to appoint additional Directors to fill casual vacancies under clause 60. Subject to clause 58(b), any such appointments will be valid notwithstanding the lack of quorum and/or deficiency in the total number of Directors otherwise required under this Constitution, provided that the relevant casual vacancy or additional Director appointment(s) will be subject to approval of Members at the next general meeting held after the appointment(s), which must be called within six months of the appointment.
62. **Term of Directors.** Subject to the Law, this Constitution (including clauses 58(b) and 61) and any policies relating to director nomination and selection approved by the Board, each Director will serve for:
 - (a) an initial term from the date of his or her first appointment as Director until the second annual general meeting following such date, at which annual general meeting he or she must retire from office but may nominate himself or herself for re-appointment by Ordinary Resolution; and
 - (b) if re-appointed under sub-paragraph (a), one further term running from the date of re-appointment until the second annual general meeting following the annual general meeting at which he or she was re-appointed.

Any Director who has served as a Director for two consecutive terms under this clause 62 will not be eligible for re-appointment at the end of his or her second consecutive term and must retire without nomination for re-appointment at the relevant annual general meeting marking the end of his or her second consecutive term. The relevant person may nominate for

appointment as a Director again not less than two years after such retirement (subject to the eligibility criteria for Directors under this Constitution).

63. **Remuneration.** No Director may be paid any remuneration by the Institute unless authorized under this Constitution.
64. **Alternates.** Directors are not permitted to appoint alternate directors or to send any alternate person to meetings or to act on their behalf in any capacity. If a Director cannot attend a meeting, he or she should notify the Chairperson and may send comments in advance on any meeting discussions.

CHAPTER 11: DIRECTOR AND RELATED PARTY CONTRACTS AND CONFLICTS

65. **Related Party Contracts.** Subject to clauses 66 and 67, related parties of the Institute – including Directors, Members, corporate sponsors, or any other related parties – must not procure goods or services from, provide goods or services to, or otherwise enter into contractual or other business relationships with, the Institute unless:
 - (a) the Board, upon analysis and recommendation by the Secretariat, determines that the engagement and compensation is fair and is on non-preferential arm's length terms and is in the best interest of the Institute; and
 - (b) the decision of the Board is disclosed to all Directors and is reported in reasonable detail in an annual report (or similar document) of the Institute provided to all Members.

This clause 65 does not apply to any goods or services procured by the Director from the Institute in his or her capacity as a Member where such goods or services are provided on equivalent terms to those available to any Member of the same category or class as the Director.

66. **Director May Not Vote on Contract in Which Director is Interested.** A Director must not be present or vote at a Board meeting on any matter about any contract or arrangement in which the Director is interested (whether directly or indirectly) and may not be counted in a quorum for the meeting at which the matter is considered.
67. **Directors to Declare Interest.** Any Director who has a material personal interest in a matter that relates to the Institute's affairs must give the other Directors notice of that interest, by giving details of the nature and extent of the interest (including any relevant compensation) and its relation to the Institute's affairs and by otherwise meeting the requirements of the Law, at a meeting of Directors as soon as possible after the Director becomes aware of their interest in the matter.
68. **Directors to Declare Potential Conflicts.** Any Director who holds any office or position or possesses any property or assets in circumstances where the holding or possession might, either directly or indirectly, create conflicting duties or interests with those duties or interests that the Director has in their capacity as a Director, must declare the fact of holding that office or position or possessing that property or assets, and the nature and extent of any conflict, at

the first Board meeting held after they become a Director or (if already a Director) at the first Board meeting held after they become aware of the relevant facts which give rise to the potential conflict.

CHAPTER 12: POWERS AND DUTIES OF DIRECTORS

69. **Powers of the Board.** The Board will manage, or cause the management of, the business of the Institute and may exercise, or cause to be exercised, all powers, authorities and discretions of the Institute that are not, by the Law or by this Constitution, required to be exercised by the Members in general meeting. The Board's powers will be exercised in the manner provided and permitted by this Constitution and the Law. Except as permitted or required by the Law or this Constitution, no Member may direct the Institute or the Board in the exercise of the powers, discretions and authorities conferred on the Institute or the Directors under this Constitution.
70. **Agent or Attorney.** The Board may at any time appoint any person to be an agent or attorney of the Institute for any purpose and with any of the powers, authorities and discretions exercisable by them, any Director, the Secretary, or any officer under this Constitution or the Law, and may revoke, vary or suspend that appointment, on any terms they determine.
71. **Delegation of Powers** The Board may delegate any of the powers, authorities and discretions exercisable by it under this Constitution or the Law to a committee of Directors, a single Director, an employee of the Institute or any other person, and may revoke, vary or suspend that delegation, on any terms they determine.
72. **Director's Duties.** Directors must:
- (a) always meet or exceed the standards of duties and loyalty imposed under the Law;
 - (b) commit adequate time to sufficiently discharge their roles and responsibilities as Directors;
 - (c) attend Board meetings as regularly as possible and prepare themselves appropriately to contribute to the effective functioning of the Board and its committees;
 - (d) always put the interests of the Institute ahead of their own interest and that of the organization(s) by which they are employed;
 - (e) make decisions as Directors that they believe are in the best long-term interest of the Institute as a whole;
 - (f) treat all Board matters as confidential;
 - (g) ensure that any conflicts are appropriately disclosed; and
 - (h) comply with all applicable law and adhere to the provisions in this Constitution.
73. **Indemnification.** To the extent permitted under applicable law, the Institute will indemnify each current and former Director and officer, and the Board may by resolution also agree to

indemnify any employee, against any and all expenses and liabilities incurred in defending an action for any liability incurred as a Director, officer or employee of the Institute (as the case may be). However, there no indemnification will be given in relation to matters in relation to which the relevant person is adjudged to be guilty of a criminal offense or liable to the Institute for damages arising out of his or her own gross negligence in the performance of a duty to the Institute.

74. **Scope of Indemnity.** Amounts paid in indemnification of expenses and liabilities under clause 73 may include: legal counsel fees and other fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, the relevant Director, officer, or employee. The Institute may advance expenses or, where appropriate, may itself undertake the defense of any Director, officer, or employee. However, such Director, officer, or employee will repay such expenses if it should be ultimately be determined that he or she is not entitled to indemnification under clause 73.

CHAPTER 13: PROCEEDINGS OF DIRECTORS

75. **Board meetings.** The Directors may meet:
- (a) in person;
 - (b) by telephone;
 - (c) by audiovisual linkup; or
 - (d) by any other instantaneous communications medium,
- for dispatch of business and adjourn and otherwise regulate their meetings as they determine.
76. **Director to be Regarded as Present at Board Meeting.** A Director is regarded as present at a Board meeting where the meeting is conducted by telephone, audiovisual linkup or other instantaneous communications medium if the Director is able to hear, and to be heard by, all other Directors attending the meeting.
77. **Convening of Board Meeting.** A Director may at any time, and the Secretary (if any) on the request of a Director must, convene a meeting of Directors.
78. **Notice of Board Meeting.** Notice of every Board meeting must be given to each Director and to the CEO, but failure to give or receive that notice will not invalidate any meeting.
79. **Directors May Act Notwithstanding Vacancy.** The Board may act despite there being a vacancy on the Board, but if and so long as their number is below the number required for a quorum, they must not act except in an emergency or to fill a vacancy or to convene a general meeting.
80. **Quorum for Board Meeting.** No business may be transacted at any meeting of Directors unless a quorum is present at the start of the meeting. A quorum for all meetings of the Board will be constituted by not less than five (5) Directors. If a quorum is present at the beginning of a

meeting of Directors, it is deemed to be present throughout the meeting even if a Director absents themselves, or abstains from voting, for any reason.

81. **Board Meeting Competent to Exercise all Powers.** A Board meeting at which a quorum is present will be competent to exercise all or any of the powers, authorities and discretions exercisable by the Board under this Constitution or the Law.
82. **Chair of Board meetings.** At the first Board meeting after the holding of the annual general meeting in each calendar year the Directors will appoint a Chairperson of the Board from amongst the Directors to serve until the next annual general meeting. If no chair is elected or if at any Board meeting the chair is not present within 15 minutes after the time appointed for the meeting, the Directors present at the meeting may choose one of the Directors present to be chair of the meeting.
83. **Questions to be Decided by Majority.** Questions arising at, or proposed resolutions submitted to, any Board meeting will be decided by a simple majority of votes of Directors present and voting. If the votes cast are equal, the chair will have a casting vote in addition to any vote to which the chair may be entitled as a Director.
84. **Resolution in Writing.** The Directors may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Identical copies of the document and accompanying information may be distributed for signing by all Directors. The resolution is passed when the last participating Director signs the document.
85. **Director Committees.** The Board may establish specialized committees of Directors to consider special matters such as: audit, membership, director training programs and curriculum development. The role and terms of reference of Director committees will be provided in charters approved by the Board or otherwise determined by resolution. The Board may also designate Director committees to discharge specific responsibilities on behalf of the Board. However, the Board remains ultimately responsible for any and all actions and decisions taken by any Director committees.
86. **Committee Powers.** Any committee of Directors must exercise the powers, authorities and discretions delegated to it in accordance with any directions that may be imposed on it by the Board.
87. **Proceedings of Director Committees.** The meetings and proceedings of any committee of Directors consisting of two or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any directions of the Board.
88. **Validity of Acts of Directors.** All acts done by the Board, a committee of Directors established by the Board or any person acting as a Director will be valid even it is discovered afterwards that there was some defect in the appointment or election of that Director or person acting as a Director or that any Director was disqualified or had vacated office or was otherwise not entitled to vote or act.

CHAPTER 14: SECRETARY

89. **Secretary.** The Directors may appoint a secretary of the Institute in accordance with the Law. The Directors may also appoint any person:
- (a) to perform the duties of secretary of the Institute on a temporary basis; or
 - (b) to assist the Secretary of the Institute.

Any Secretary appointed by the Board will hold office on the terms (including as to remuneration) and with the powers, authorities and duties, as the Board determine. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board. A Secretary may be removed by the Board.

CHAPTER 15: CEO AND SECRETARIAT

90. **Chief Executive Officer.** The Board may appoint a person to the office of CEO for such period and on such terms (including with respect to remuneration) as it thinks fit and, subject to the terms of appointment entered into, may revoke that appointment. The CEO must not be a Director. The performance of the CEO will be reviewed annually by the Board. Any decision to suspend or remove the CEO will be made by Board resolution.
91. **Authority of the CEO.** The CEO will have the power and authority to operate the Institute and make decisions on behalf of the Institute within the scope of the authority delegated by the Board to the CEO in the instrument appointing the CEO. The CEO will be held to the same standards of conduct, duties, and eligibility as those of a Director. In general, the CEO will have the following responsibilities.
- (a) Formulate the strategy and business plan of the Institute for review and approval by the Board.
 - (b) Report periodically on the progress against plan and targets set by the Board and other risks facing the Institute.
 - (c) Monitor the financial position of the Institute and help develop strategies to achieve and maintain financial sustainability, per guidance by the Board.
 - (d) Oversee the development and execution of Institute events – including workshops, seminars, and conferences – ensuring high levels of quality and professionalism.
 - (e) Build and maintain positive, fruitful relationships in the market with businesses, governmental organizations, NGOs, donors, the media, and other stakeholders, as necessary.
 - (f) Lead the drive for memberships and sponsorships and other revenue sources to help achieve and maintain financial sustainability.

- (g) Ensure the business of the Institute operates with the highest standards of conduct and ethics, taking steps to help maintain the Institute’s reputation of quality and excellence.
 - (h) Ensure sound financial and operational controls are in place to mitigate the potential for misuse of funds.
 - (i) Work closely with the Chairperson to organize and conduct Board, Director committee, and Members meetings.
 - (j) Hire and hold accountable the rest of the Secretariat.
 - (k) Make operational decisions and approve business expenditures and activities in line with the approved business plan.
 - (l) Deliver progress reports, as needed, to other funding and technical partners of the Institute.
 - (m) Ensure adherence of all Institute activities with this Constitution and applicable law.
92. **Secretariat.** The CEO will supervise the formation of the Secretariat upon his or her appointment. The Secretariat may have staff at administrative and analyst levels, appointed by the CEO within the budget approved by the Board.

CHAPTER 16: FINANCIAL STATEMENTS AND AUDIT

93. **Financial Records.** The Board will ensure that accounting records for the Institute are kept in accordance with the requirements of applicable law, this Constitution, generally accepted accounting principles in the Union, and applicable codes of corporate governance in the Union; and otherwise to a reasonable level of accuracy and detail that gives a true and fair view of the affairs of the Institute for any relevant period and at any particular time.
94. **Financial Report and Directors' Report.** The Institute must prepare a financial report and Directors' report for each financial year of the Institute in accordance with all applicable laws and financial reporting standards and have each such report audited by the Institute’s auditors.
95. **Auditors.** At each annual general meeting, the Members must vote on a resolution for the appointment of auditors of the Institute to hold office until the next annual general meeting (subject to earlier resignation or removal in accordance with the Law).
96. **Remuneration.** Subject to requirements under the Law to have the remuneration of the Institute’s auditors approved by Members’ resolution at general meeting, the Board will otherwise determine the remuneration payable to the auditor. Members will be entitled to obtain particulars of all emoluments paid to the auditor, or his or her partners, employers or employees.

97. **Attendance of Auditors at General Meeting.** The Institute’s auditor for the time being will be entitled to attend the annual general meeting and to receive all notices of, and other communications relating to, any such meeting. The auditor will further be entitled to be heard at any annual general meeting that he or she attends on any part of the business of the meeting which concerns his or her role as auditor of the Institute.

CHAPTER 17: MINUTES AND REGISTERS TO BE KEPT

98. **Minutes.** The Institute must enter in its minute books:
- (a) within 21 (twenty-one) days after the relevant meeting, minutes containing details of:
 - (i) the names of the Directors present at each Board meeting and any meeting of a committee of Directors;
 - (ii) all declarations made or notices given by any Director under chapter 11; and
 - (iii) all resolutions and proceedings of general meetings, Board meetings and meetings of any committee of the Directors; and
 - (b) resolutions passed by Members or Directors without a meeting.

The minute book will be kept at the Institute’s registered office or principal place of business and will be open to inspection by any Member.

99. **Minutes to be Signed by the Chair.** Any minutes of any general meetings, Board meetings or meetings of any committee of the Directors must be signed within a reasonable time after the meeting by the chair of the meeting or by the chair of the next succeeding meeting or by another authorised Director and once signed will constitute prima facie evidence of the matters stated in the minutes.
100. **Registers.** The Institute must keep the Register of Members and any other registers required to be kept under the Law.
101. **Register of Members.** The Institute will cause the Register to be kept and to enter in the Register in respect of each Member:
- (a) their names, affiliations, contact information and any other pertinent information;
 - (b) the date on which each Member became or ceased to be a Member;
 - (c) any other information required to be entered into the Register under the Law.

The Register will be kept at the Institute’s registered office or principal place of business or at such other place as may be determined by the Board. The register will be open for inspection by any Member.

CHAPTER 18: SEAL

102. **Seal.** If the Institute has a Seal:
- (a) the Board must provide for the safe custody of the Seal; and
 - (b) the Seal may only be used with the authority of the Board or the authority of any person or a committee of the Directors given authority by the Board to authorise the use of the Seal.

CHAPTER 19: DISSOLUTION AND LIQUIDATION OF THE MIOD

103. **Dissolution.** The Institute may be dissolved if:
- (a) it is deemed by the Board that the Objects have become contrary to applicable law or endanger the economic well-being or security of the Union, or the public peace, order, and good morals of the Union;
 - (b) the Institute is no longer able to carry on its activities, or has ceased activities for two years or more;
 - (c) the Members pass a special resolution for the winding up or dissolution at a general meeting called for that purpose; or
 - (d) the Institute is declared or deemed to be insolvent.
104. **Dealing with Net Assets by Members.** Subject to the Law, the Members may at any time before, and in expectation of, the dissolution or winding up of the Institute resolve that any net assets of the Institute after all its debts and liabilities have been paid, or provision has been made for them, will on or before the dissolution or winding up of the Institute be applied or transferred in any of the following ways:
- (a) directly for the Objects;
 - (b) by transfer to any charities or other not-for-profit organisations for purposes similar to the Objects; or
 - (c) by transfer to any charities or other not-for-profit organisations for use for particular purposes that fall within the Objects.
105. **Dealing with Net Assets by Board.** Subject to any resolution of the Members under clause 104, the Board may at any time before and in expectation of its dissolution resolve that any net assets of the Institute after all its debts and liabilities have been paid, or provision made for them, will on or before dissolution of the Institute be applied or transferred:
- (d) directly for the Objects;
 - (e) by transfer to any charities or other not-for-profit organisations for purposes similar to the Objects;

(f) by transfer to any charities or other not-for-profit organisations for use for particular purposes that fall within the Objects.

106. **No Distribution to Members.** In no circumstances will the net assets of the Institute be paid to or distributed among the Members and if no resolution in accordance with clauses 104 or 105 is passed by the Members or the Board the net assets of the Institute will be applied for charitable purposes as directed by a court of competent jurisdiction.

CHAPTER 20: NOTICES

107. **Notices by Institute.** The Institute may give a notice to any Member in any one of the following ways:

- (a) personally, by giving it to the Member;
- (b) by leaving it addressed to the Member at the Member's address in the Register or notified to the Institute;
- (c) by fax to the Member at the Member's fax number in the Register or notified to the Institute;
- (d) by e-mail to the Member's electronic address in the Register or notified to the Institute;
- (e) by post by sending it addressed to the Member at the Member's address in the Register or notified to the Institute; or
- (f) otherwise by any method (including by advertisement) as the Board may determine.

108. **Notice Deemed to be Given.** Any notice:

- (a) by advertisement will be deemed to have been given on the day of publication of the newspaper containing the advertisement;
- (b) by post will be deemed to have been given on the day following the day on which the notice is posted;
- (c) sent by fax or other electronic means will be deemed to have been given on the same day that it is sent; and
- (d) given to a Member personally or left at the Member's address will be deemed to have been given when delivered.

109. **Signing Notices.** The signature to any notice to be given by the Institute may be written, printed or provided by electronic means.