

Agent Code: NPOLAW

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 1973

MEMORANDUM OF ASSOCIATION

OF A COMPANY NOT HAVING A SHARE CAPITAL

[Section 54(1); Regulation 17(3)]

CASABIO

["CASABIO"]

[Association Incorporated under Section 21]

Registration Number:

1 NAME

1.1 The name of the Association is:

Collaborative Archive of South African Biodiversity

[Association Incorporated under Section 21]

(hereinafter referred to as “the Association”)

1.2 The name of the Association in other official languages of the Republic is:

None

1.3 The shortened form of the name of the Association is:

“CASABIO”

2 FINANCIAL YEAR

The financial year of the Association shall commence on _____ and end on _____.

3 PURPOSE DESCRIBING MAIN BUSINESS

The sole purposes of the Association, as an independent Public Benefit Organisation are:

- 3.1 To collect and database digital photographs and associated information about biological species, including submissions from the public or other persons / organizations.
- 3.2 To facilitate conservation and scientific research through the dissemination of information and photographs and collaboration with appropriate organisations and authorities.
- 3.3 To foster an interest in biological species and the environment by involving learners and the public in participation in CASABIO projects.
- 3.4 To create an internet resource which will present biological photos and information to the public in a user-friendly way and allow interested people to share their information and expertise.
- 3.5 To train field biologists to document and identify species by employing them to populate and maintain the database.

MAIN OBJECTS

The sole purposes of the Association, as an independent Public Benefit Organisation are:

- 4.1 To collect and database digital photographs and associated information about biological species, including submissions from the public or other persons / organizations.
- 4.2 To facilitate conservation and scientific research through the dissemination of information and photographs and collaboration with appropriate organisations and authorities.
- 4.3 To foster an interest in biological species and the environment by involving learners and the public through participation in CASABIO projects.
- 4.4 To create an internet resource which will present biological photos and information to the public in a user-friendly way and allow interested people to share their information and expertise.
- 4.5 To train field biologists to document and identify species by employing them to populate and maintain the database.

4 ANCILLARY OBJECTS

The specific ancillary objects, if any, referred to in Section 33(1) of the Act, which are excluded from the unlimited ancillary objects of the Association, are such only as may not be in conformity with the Main Object of the Association, and conditions and constraints applicable to an approved Public Benefit Organisation, as hereinafter stipulated.

- 5.1 To promote sustainable job creation by providing training programmes for tour or field guides specializing in biodiversity
- 5.2 To create and participate in initiatives seeking to educate children about environmental topics
- 5.3 To empower parties or organizations wishing to contribute to environmental knowledge through collaboration, support and / or the provision of equipment / tools.

POWERS

- 4.1 The specific powers, or part of any specific powers of the Association, which are excluded from the plenary powers or the power set out in Schedule 2 to the Act is:

Power (s).

4.2 The specific powers or part of any specific powers of the Association set out in Schedule 2 to the Act, which are qualified under Section 34 of the Act are as follows:

4.2.1 Power (e) to be qualified to read as follows:

“(e) to secure the payment of monies borrowed in any manner including the mortgaging and pledging of property and, without detracting from the generality thereof in particular by the issue of any kind of debenture, with or without security.”

4.2.2 Power (k) to be qualified to read as follows:

“(k) to form and have an interest in any company or companies having the same or similar objects to the Association, for the purpose of acquiring the undertaking, or all or any of the assets or liabilities of such other company or companies, or for any purpose which may seem directly or indirectly calculated to benefit the Association and to transfer to any such other company or companies the undertaking or all or any of its assets or liabilities of the Association.”

4.2.3 Power (l) to be qualified as follows:

“(l) to amalgamate with any other companies or associations that are approved public benefit organizations in terms of the Income Tax Act, having the same or similar objects to the Association.”

4.2.4 Power (m) to be qualified as follows:

“(m) to take part in the management, supervision and control of the business or operations of any other company or association having the same or similar objects to the Association, and to enter into joint ventures or partnerships having the same or similar objects to this the Association.”

4.2.5 Power (n) to be modified to read as follows:

“(n) to remunerate any person or persons in cash for services rendered in the formation of the Association or in the development or conduct of its activities.”

4.2.6 Power (o) to read as follows:

“(o) to make grants and donations in pursuance of its Main Object, provided that no such grants or donations may be made to members or Management Committee Members or other offices of the Association, save insofar as such disposition may be made in favour of another public benefit organisation approved in terms of the Income Tax Act, having the same or similar objectives to those of the Association.”

4.2.7 Power (r) to read as follows:

“(r) to pay gratuities and pensions and to establish pension schemes and medical aid schemes in respect of its bona fide employees.”

5 SPECIAL CONDITIONS

The special conditions which apply to the Association, and the requirements additional to those prescribed in the Act for their alteration, are as follows:

5.1 The income and property of the Association whencesoever derived shall be applied solely towards the promotion of its Main or ancillary Object, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to the Members or Management Committee Members of the Association or to its controlling company or association or controlled company or association: provided that nothing contained herein shall prevent:

5.1.1 the payment in good faith of reasonable remuneration (commensurate with services rendered) to any officer or servant of the Association or to any Member or Management Committee Member thereof in return for services actually rendered to the Association; nor

5.1.2 the payment in good faith of benefits accruing to persons who are identified as eligible beneficiaries in terms of the Main Object of the Association; subject to due compliance with the fiscal constraint envisaged in Schedule A to this Memorandum.

5.2 Upon its winding-up, deregistration or dissolution, the assets of the Association remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution, or association or institutions having objects similar to the Main Object and approved as a

Public Benefit Organisation, to be determined by the members of the Association in general meeting, at or before the time of its dissolution or, failing such determination, by the Court.

6 FISCAL CONDITIONS

Notwithstanding anything to the contrary hereinbefore contained or implied, the powers of the Association, as excluded and modified aforesaid, shall be further subject to due compliance with the condition stipulated in Section 18A (as far as may be applicable), and Section 30 of the Income Tax No. 58 of 1962, as amended, as read with the Ninth Schedule thereto; in order thereby to facilitate the Association's eligibility for tax exempt status in terms of Section 10(1)(cN), and if also applicable the further fiscal benefit envisaged by Section 18A of the Income Tax Act. Such prescribed Fiscal Conditions presently applicable to the Association in terms of the Income Tax Act are set forth in Schedule "A" to this Memorandum of Association.

7 PRE-INCORPORATION CONTRACTS (IF ANY)

None.

8 GUARANTEE

8.1 The liability of the members of the Association is limited to the amount referred to in clause 10.2.

8.2 Each member undertakes to contribute to the assets of the Association in the event of it being wound up either while such person is a member or within one year afterwards, for the payment of the debts and liabilities of the Association contracted before such person ceases to be a member, and for the costs, charges and expenses of the winding-up, and for adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ONE RAND (R1,00).

9 ASSOCIATION CLAUSE

We, the several persons whose full names, occupations, residential, business and postal addresses are subscribed, are desirous of being formed into an Association in pursuance of this Memorandum of Association, and we respectively agree to become members of the Association.

SCHEDULE A

FISCAL CONDITIONS AS PRESCRIBED IN SECTION 18A AND SECTION 30 OF THE INCOME TAX ACT NO. 58 OF 1962 (AS AMENDED).

Pursuant to clause 8 of the Memorandum of Association:

Subject to the Commissioner's approval of the Association for purposes of the undermentioned provisions of the Income Tax Act, the Association shall be bound to conform to the conditions prescribed by the relevant legislation, as follows:

1. As a Public Benefit Organisation approved by the Commissioner for purposes of section 18(A)(1) of the Income Tax Act:

THE MANAGEMENT COMMITTEE MEMBERS SHALL:

- 1.1 Ensure that any eligible donations actually paid or transferred to the Association, are applied solely to undertake, or to provide funds or assets to assist other public benefit organisations, institutions, boards or bodies to conduct such Activities in the Republic Public Benefit Activities as listed from time to time in Part II of the Ninth Schedule, including such activities as may be determined by the Minister by notice in the Gazette from time to time for purposes of section 18A of the Act.
 - 1.2 Comply with, and have regard to, any such additional requirements as may be prescribed by the Minister from time to time in terms of section 18A(1), or as may be otherwise imposed by the Commissioner in terms of the Act, including any additional requirements prescribed by the Minister as binding upon public benefit organisations carrying on any specified activity before donations shall be allowed as a deduction for purposes of section 18A.
 - 1.3 Ensure that an audit certificate is provided upon submission by the Association to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Association in that year, in respect of which section 18A receipts were issued by the Association, were utilised in the manner contemplated in Section 18A(2A).
- 2. As a Public Benefit Organisation approved by the Commissioner for purposes of section 30 of the Income Tax Act:**

THE MANAGEMENT COMMITTEE MEMBERS SHALL:

- 2.1 Carry on the public benefit activities of the Association, therefore activities listed in Part I of the Ninth Schedule or any other activity determined by the Minister from time to time in the Gazette to be of a benevolent nature, having regard to the needs, interests and well-being of the general public, in a non-profit manner, and with an altruistic or philanthropic intent.
- 2.2 Ensure that no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary, or employee, of the Association, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.
- 2.3 Ensure that at least eighty-five percent (85%) of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister of Finance, having regard to the circumstances of the case, directs otherwise; provided that the cost incurred for the benefit of persons outside the Republic shall be disregarded to the extent of donations received by the Association from persons who are not resident and receipts and accruals derived directly or indirectly there from, which donations, receipts, and accruals have not previously been taken into account for purposes of this proviso.
- 2.4 Take reasonable steps to ensure that:
 - 2.4.1 each such activity as is carried on by it is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups);
 - 2.4.2 each such activity carried on by it is for the benefit of, or is readily accessible to, the poor and needy;
 - 2.4.3 at least Eighty-Five Percent (85%) of its funds are derived from donations, grants from any organ of state, or foreign grants.
- 2.5 Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the Association are directed in the furtherance of its objects.
- 2.6 Submit to the Commissioner a copy of the constitution, will or other written instrument under which it has been established.

- 2.7 In terms of the Memorandum of Association, the Association shall be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Association, and that no single person directly or indirectly controls the decision making powers of the Association.
- 2.8 Be prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and be required to utilise its funds solely for the objects for which it has been established, or to invest such funds:
- 2.8.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); other than an institution contemplated in paragraph (a)(xii) of that definition; and/or
 - 2.8.2 in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); and/or
 - 2.8.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations; provided that the provisions of this sub-paragraph do not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance.
- 2.9 Be required on dissolution to transfer its assets to:
- 2.9.1 any similar public benefit organisation which has been approved in terms of section 30(3) of the Income Tax Act;
 - 2.9.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of that Act, which has as its sole or principal object the carrying on or any public benefit activity; or
 - 2.9.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of that Act.

- 2.10 Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation
- 2.12 Be required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established.
- 2.13 Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
- 2.14 Not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 2.15 Comply with such reporting requirements as may be determined by the Commissioner.
- 2.16 Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph (b)(iii) of the definition of "Public Benefit Activities" in section 30 of the Act, are utilised for the purpose for which they are provided.
- 2.17 Take all necessary steps to procure that, within such period as the Commissioner may determine, it is registered in terms of section 13(5) of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), and complies with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997, on good cause shown, otherwise directs.

- 2.18 Shall not use its resources directly or indirectly to support, advance or oppose any political party.

- 2.19 Ensure that any books of account, records or other documents relating to its affairs are:
 - 2.19.1 where kept in book form, retained and carefully preserved by any person in control of the Association, for a period of at least four years after the date of the last entry in any such book; or
 - 2.19.2 where not kept in book form, are retained and carefully preserved by any person in control of the Association, for a period of four years after the completion of the transaction, act or operation to which they relate.

