

**Companies and Intellectual Property Commission
Republic of South Africa**

MEMORANDUM OF INCORPORATION

of

**JOINT BUILDING CONTRACTS COMMITTEE NPC
“JBCC” OR “THE COMPANY”**
Registration number 1997/017676/08

29 April 2020

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The name of the company is 'The Joint Building Contracts Committee' NPC

1. INTERPRETATION

- 1.1. In this **Memorandum of Incorporation (MOI)**, words in bold type shall bear the same meanings as in the Companies Act 71 of 2008 and the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:
- 1.1.1. **“Annual General Meeting” (AGM)** means a meeting to be held once every calendar year, but no more than 15 months after the date of the previous annual general meeting;
- 1.1.2. **“Board”** means the board of Directors of the Company;
- 1.1.3. **“Business Day”** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.1.4. **“Chairperson”** means the Chairperson of the Board;
- 1.1.5. **“Commission”** means the Companies and Intellectual Property Commission established in terms of section 185 of the Companies Act;
- 1.1.6. **“Companies Act” (Act)** means the Companies Act No. 71 of 2008, as amended from time to time;
- 1.1.7. **“Companies Regulations”** means the Companies Regulations of 2011 promulgated by the Minister in terms of section 223 of the Companies Act, as amended from time to time;
- 1.1.8. **“Company”** means The Joint Building Contracts Committee NPC, registration number 1997/017676/08, a non-profit company incorporated in accordance with the laws of the Republic of South Africa

1.1.9. “**Company Rules**” means "rules" and "rules of a company" as defined in the Companies Act or its “MOI”, subject to such “MOI” not being in conflict with the Act or this “MOI” in any way or form;

1.1.10. “**Constituent Member**” means a voluntary association within the built environment represented on the JBCC Board by a Director

1.1.11. “**Deputy Chairperson**” means the deputy Chairperson of the Board;

1.1.12. “**Director**” means a member of the Board of the Company, as contemplated section 66 of the Act;

1.1.13. “**Effective Date**” means the date on which this MOI is filed with the Commission;

1.1.14. “**File**”, when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;

1.1.15. “**Income Tax Act**” means the Income Tax Act No. 58 of 1962, as amended from time to time;

1.1.16. “**MOI**” means this Memorandum of Incorporation of the Company, which shall become binding on the Company with effect from the date upon which the MOI is filed with the Commission;

1.1.17. “**SARS Commissioner**” means the Commissioner of the South African Revenue Services;

1.2. In this **MOI**:

1.2.1. reference to a “**section**” by number refers to the corresponding section of the **Act**; and

1.2.2. a reference to a “**paragraph**” by number refers to the corresponding paragraph in this **MOI**; and

1.2.3. a reference to a “**Rule**” by number refers to the corresponding rule in the Company Rules; and

- 1.2.4. any reference to a “**person**” includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, firm, partnership, trust, close corporation, company, undertaking, joint venture, authority or other incorporated or unincorporated entity or association;
- 1.2.5. references to a “**day**” shall be to any calendar day. Where any number of days or **Business Days** are prescribed in this **MOI**, those days shall be reckoned exclusively of the first and inclusively of the last day or **Business Day** (as the case may be), unless (in the case of days) the last day falls on a day not being a **Business Day**, in which event the last day shall be the next succeeding **Business Day**; and
- 1.2.6. words importing any gender include the other genders as well as juristic persons and words importing the singular number include the plural and vice versa; and
- 1.2.7. words and expressions which are defined and used or have a particular meaning ascribed to them in a particular context in the **Act** shall when used in this **MOI** in a similar context bear the same meaning unless excluded by the subject or the context, or unless this **MOI** provides otherwise; and
- 1.2.8. the provisions of this **MOI** shall be interpreted in the same way as the provisions of the **Act** in terms of section 19(1)(c) are interpreted (alterable and unalterable provisions); and
- 1.2.9. each provision and each sentence and each part of a sentence in this **MOI** is separate and severable from each other, and to the extent any provision or sentence or part thereof is found to be illegal or unenforceable or inconsistent with or contravenes any provision of the **Act**, or void, such may to that extent only be modified or severed from the **MOI**, so that the remaining part of that provision or sentence or part thereof, as the case may be, is legal, enforceable or consistent with or does not contravene the **Act** or is not void;
- 1.3. long standard form of **MOI** for a Non-Profit Company with members contained in the regulations published in terms of the **Act**, as amended from time to time, shall not apply to the **Company**

2. INCORPORATION

- 2.1. This **MOI** is in a form unique to the **Company**, as contemplated in section 13(1)(a)(ii) of the **Act**
- 2.2. This **MOI** was adopted and approved by the **Board** at a special meeting held on 29 April 2020

3. NATURE OF THE COMPANY

- 3.1. The **Company** is a Non-Profit Company, with **Constituent Members**, as defined in the **Act**
- 3.2. The **Company** is, in terms of section 19(1)(c) of the **Act** read with section 15(2), incorporated in accordance with, and governed by:
 - 3.2.1. The unalterable provisions of the **Act**, that are applicable to Non-Profit Companies;
 - 3.2.2. The alterable provisions of the **Act**, that are applicable to Non-Profit Companies, subject to the limitations, extensions, variations or substitutions set out in this **MOI**; and
 - 3.2.3. The provisions of this **MOI**
- 3.3. The persons bound by this **MOI** in terms of section 15(6) of the **Act**, being for the time being the **Company** and each **Director** and prescribed officer of the **Company** and each member of a **Board** committee, are required to familiarise themselves with the relevant provisions of the **Act**, including those contemplated in paragraph 4.2 and the provisions of this **MOI**,

4. CONFLICTS WITH THE ACT

4.1. Notification of conflicts

Any person bound by this **MOI** who becomes aware that any provision of this **MOI** or any agreement entered into by the **Company** contravenes or is or has become inconsistent with any provision of the **Act** (as it is amended from time to time), whether or not such provision is void or could be declared void by a court in terms of section 218(1) of the **Act** or a person could incur personal liability in terms of

section 218(2) of the **Act** or otherwise, shall within 10 (ten) **Business Days** of becoming aware of such contravention or inconsistency inform the **Board** in writing of the applicable contravention or inconsistency

4.2. **No obligation to act inconsistently with the Act**

4.2.1. Notwithstanding anything to the contrary contained elsewhere in this **MOI**, no person bound by this **MOI** shall be required, obliged or entitled in terms of this **MOI** to do or omit to do something in terms of this **MOI** to the extent that it is inconsistent with or contravenes any provision of the **Act**

4.2.2. Any person bound by the **MOI** who has complied with paragraph 4.1 and has done something or has failed to do something that is inconsistent with or contravenes any provision of the **Act** or attempts to avoid personal liability under section 218(2) or otherwise in terms of the **Act**, but as a result thereof has contravened any provision of this **MOI** which is void or is declared void by a court in terms of section 218(1) of the **Act**, shall not for that reason alone be liable or responsible therefor under or in terms of this **MOI** with respect to any claim by any person bound by this **MOI** and entitled under or in terms of this **MOI** to do so, arising out of or in connection with any such act or omission

4.3. **Board must address inconsistencies**

If any provision of the **Act** is amended, or the Board is aware or informed of any inconsistency with or contravention of the **Act** in terms of paragraph 5.1 or otherwise, then in addition to and without limiting the rights or remedies of any other person in terms of this **MOI** or otherwise, the **Board** shall expeditiously:

4.3.1. assess that amendment with relation to the **Act** and/or that inconsistency or contravention; and

4.3.2. obtain reasoned written external legal opinion if the **Board** deems it necessary with respect to any such alleged inconsistency or contravention; and

4.3.3. propose amendments to the agreement in question or propose the Resolutions required to appropriately amend the **MOI**, as the case may be, as is necessary so

as to remove or eliminate or address any applicable contraventions or inconsistencies

5. OBJECTIVES

5.1. The main objectives of the **Company** are as follows:

- 5.1.1. the representation of building owners and developers, built environment professional consultants and general and specialist contractors who contribute their knowledge and experiences to the compilation of the JBCC contract suite of construction documents and supporting material that are published in the interests of standardisation and good practice with an equitable distribution of contractual risk in the built environment;
- 5.1.2. to update and develop additional products and contracts for the JBCC contract suite of products and supporting documentation for the built environment;
- 5.1.3. to stimulate and promote either directly and/or, via **Constituent Members** and stakeholders, the utilisation of JBCC construction contracts and related support documentation throughout South Africa and internationally;
- 5.1.4. to provide training and guidance regarding the appropriate application and use of JBCC products to the public;
- 5.1.5. to accredit presenters of seminars or workshops dealing with the JBCC suite of documents to protect the intellectual property of the JBCC documents
- 5.1.6. to circulate or make available appropriate information to industry participants;
- 5.1.7. to stimulate and maintain contacts with industry stakeholders;
- 5.1.8. to promote best practice contract management and /or administration within the industry;
- 5.1.9. to assist the relevant authorities with proposals for improvement in the building and related compliance environment in South Africa;
- 5.1.10. to maintain and promote ethical and professional standards

- 5.2. The legal powers and capacity of the **Company** are not subject to the restrictions, limitations or qualifications as contemplated in section 19(1)(b)(ii) of the **Act**
- 5.3. The **Company** is not subject to any restrictive conditions or prohibitions contemplated in section 15(2)(b) or (c) of the **Act**.

6. POWERS OF THE BOARD

- 6.1. The business and affairs of the **Company** shall be managed by or under the direction of its **Board**, which has the authority to exercise all of the powers and perform any provisions contained in this **MOI** and to act in terms of the **Company Rules**. The **Board** shall have the powers as contained in the **Company Rules**

7. AMENDMENT OF THE MOI

- 7.1. This **MOI** may be altered or amended only in the manner set out below, being:
- 7.1.1.1. in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:
- 7.1.1.2. publishing a notice of the intention of an alteration, in any manner required or permitted by this **MOI** or the **Rules** of the **Company**; and
- 7.1.1.3. filing a notice not less than (fifteen)15 **business days** before a meeting of the **Board**; or
- 7.1.2. in compliance with a court order, effected by a resolution of the **Board**; or
- 7.1.3. at any other time if a Resolution to amend the **MOI** is proposed and adopted by seventy five percent (75%) of the **Directors** of the **Board** after notice
- 7.1.4. any amendment to the **MOI** must be approved at the **AGM** prior to filing with the CIPC

- 7.2. The **Company** must publish a notice of any alteration of this **MOI** by delivering a copy of the amendment to each **Director** by email and included in a board pack
- 7.3. A copy of all amendments to this **MOI** must be submitted to the **Commission** within thirty (30) days of its amendment

8. RULES

- 8.1. The **Company** will ensure that it generally complies with such requirements set out by the Companies **Act** and the Commission from time to time and the **Company Rules**

9. WINDING UP OR DISSOLUTION OF THE COMPANY

- 9.1. The **Company** may be wound up voluntarily by the **Board** in passing a special resolution supported by seventy five percent (75%) of the **Directors**. Any such voluntary winding up shall be effected in accordance with section 80 of the **Act** and the **Company Rules**