



**SAMAC**  
Macadamias South Africa NPC

**Memorandum of Incorporation  
(MOI)**

**Macadamias South Africa NPC  
Shortened Name: SAMAC NPC**

Registration Number: 2017/656242/08

A non-profit company with members  
(Hereinafter: “**the Company**”)

This is the Memorandum of Incorporation which was adopted by members of the Company at the AGM held on 11 October 2022 and certified as correct:

**Name and Surname:** Mr Pierrrie Cronje      **Capacity:** Chairperson: SAMAC

**Signature:** \_\_\_\_\_

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## 1. INTERPRETATION

- 1.1 The headings of the clauses in this MOI are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this MOI nor any clause of this MOI. Unless a contrary intention clearly appears:
- 1.1.1 words importing;
- 1.1.2 any gender includes all genders;
- 1.1.3 the singular includes the plural and vice versa; and
- 1.1.4 natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;
- 1.1.5 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.1.6 **“the Act”** or **“Companies Act”** means the Companies Act, No. 71 of 2008;
- 1.1.7 **“Associate members”** has the meaning ascribed thereto in the member Schedule;
- 1.1.8 **“Auditor”** means the Auditors of the Company from time to time;
- 1.1.9 **“the Board”** means the Board of Directors of the Company from time to time;
- 1.1.10 **“bonded warehouse activity”** means activities in relation to imported Macadamias which have been wholly exempted from the payment of taxes in the manner envisaged in section 19 of the Customs and Excise Act 91 of 1664;
- 1.1.11 **“Business Day”** means any day, other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.12 **“the Commission”** means the Companies and Intellectual Property Commission established by section 185 of the Act;
- 1.1.13 **“the Commissioner”** means the Commissioner of the South African Revenue Services;
- 1.1.14 **“Director”** means a member of the Board of the Company, as contemplated in section 66 of the Act, or an alternate Director of the Company, and includes any person occupying the position of a Director by whatever name designated;
- 1.1.15 **“Electronic Communications and Transactions Act”** means the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.16 **“Exporter”** means any person that exports macadamias for his own account or, acts as agent on behalf of producers and/or processors or packers of macadamia nuts in relation to the export of macadamias (provided that if the definition of the term “Exporter” is amended in terms of a statutory measure imposed by the Company pursuant to the Marketing of Agricultural Products Act No. 47 of 1996, the definition of the term Exporter as contained in this MOI shall be deemed to have been amended *mutatis mutandis*)
- 1.1.17 **“Growers”** has the meaning ascribed therefore in the member Schedule;

- 1.1.18 “**Grower members**” means a member who meets the criteria specified for “Growers” in the member Schedule;
- 1.1.19 “**Handler**” or “**Consolidator**” has the meaning ascribed therefore in the member Schedule;
- 1.1.20 “**Handler members**” means a member who meets the criteria specified for “Handlers” or Consolidators” in the member Schedule;
- 1.1.21 “**Honorary Life members**” means a member who meets the criteria specified therefore in the member Schedule;
- 1.1.22 “**Importer**” means an entity which imports macadamias into South Africa for any purpose (other than storage and processing in a bonded warehouse activity) and includes persons organising imports on behalf of or in the name of another person (provided that if the definition of the term “Importer” is amended in terms of a statutory measure imposed by the Company pursuant to the Marketing of Agricultural Products Act No. 47 of 1996, the definition of the term Importer as contained in this MOI shall be deemed to have been amended mutatis mutandis);
- 1.1.23 “**the Income Tax Act**” means the Income Tax Act No. 58 of 1962;
- 1.1.24 “**member/s**” means a person who holds a membership in, and specified rights in respect of the Company, as contemplated in schedule 1 of the Act read with the provisions of this MOI;
- 1.1.25 “**member Schedule**” means the schedule attached hereto as Annexure A setting out the different classes of members;
- 1.1.26 “**member in Good Standing**” means in respect of any matter in which members are entitled to vote, a member who, at the record date, has no outstanding membership fees and whose financial obligations (if any) towards the Company are discharged in full;
- 1.1.27 “**Macadamias**” means macadamia nuts and related or derivative products;
- 1.1.28 “**membership Fee**” has the meaning contemplated in clause 14.9.2;
- 1.1.29 “**MOI**” means the memorandum of incorporation of the Company;
- 1.1.30 “**Non-Profit Company**” has the meaning ascribed to it in the Act;
- 1.1.31 “**NIS**” means dry nut in shell at 1.5% (one comma five percent) kernel moisture content determined in accordance with such standards prescribed by the Company from time to time which may include those contained in a Statutory Measure;
- 1.1.32 “**Province**” means a province in the Republic, and “**Provincial**” shall have a corresponding meaning;
- 1.1.33 “**Public Benefit Activity**” or “**PBA**” means a public benefit activity as contemplated in section 30(1) of the Income Tax Act;

- 1.1.34 **“the record date”** means the date set by the Board in order to determine which members are entitled to (a) receive notice of members’ meetings; and (b) decide any matter by written consent or electronic communication as contemplated in section 60 of the Act;
- 1.1.35 **“the Republic”** means the Republic of South Africa;
- 1.1.36 **“Rules”** means the rules published by the Board as contemplated in clause 10 of this MOI;
- 1.1.37 **“Section”** refers to a section in the Companies Act; and
- 1.1.38 **“Statutory Measure”** has the meaning ascribed thereto in the Marketing of Agricultural Products Act No. 47 of 1996;
- 1.1.39 Save as otherwise contained herein:
- 1.1.39.1 a reference to a Section by number refers to the corresponding Section of the Companies Act, 2008 (as amended);
- 1.1.39.2 words that are defined in the Companies Act, 2008 (as amended) bear the same meaning in this Memorandum of Incorporation as in that Act;
- 1.1.39.3 if the Act is amended at any time to confer any right or benefit on the Company, then this MOI shall be deemed to have been amended so as to result in the Company enjoying the full benefit of any such benefit to the Act.
- 1.1.39.4 the headings to the respective clauses are for reference purposes only and shall not be taken into account in the interpretation of the MOI.
- 1.1.39.5 Unless otherwise indicated herein, where any consent/approval is required for any act to be done by a party (including the Company and its Directors) such consent/approval shall be in writing and signed by that party or his authorised agent (acting on his written authority) whose consent/approval is required.
- 1.1.39.6 If notice is required or permitted to be given or published to any person, it is sufficient if the notice is transmitted electronically directly to that person in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 1.1.39.7 If this MOI requires a document to be signed or initialled by or on behalf of:
- 1.1.39.7.1 a person, that signing or initialling may be effected in any manner provided for in the Electronic Communications and Transactions Act; or
- 1.1.39.7.2 two or more persons, it is sufficient if:
- 1.1.39.7.2.1 all of those persons sign a single original of the document, in person or as contemplated above; or
- 1.1.39.7.2.2 each of those persons signs a separate duplicate original of the document, in person or as contemplated in (h) above, and in such a case, the several signed duplicate originals, when combined, constitute the entire document.

1.1.39.8 If a manner of delivery of a document, record, statement or notice is prescribed in terms of this Memorandum of Incorporation for any purpose-

1.1.39.8.1 it is sufficient if the person required to deliver such a document, record, statement or notice does so in a manner that satisfies all of the substantive requirements as prescribed herein; and

1.1.39.8.2 any deviation from the prescribed manner does not invalidate the action taken by the person delivering the document, record, statement or notice, unless the deviation materially reduces the probability that the intended recipient will receive the document, record, statement or notice or is such as would reasonably mislead a person to whom the document, record, statement or notice is, or is to be, delivered.

## **2. INCORPORATION**

2.1. This MOI was adopted by the members of the Company, in accordance with section 16(1)(c) of the Act.

2.2. The Company is incorporated in accordance with, and governed by:

2.3. the unalterable provisions of the Act;

2.3.1. the alterable provisions of the Act, but subject to those negations, restrictions, qualifications, limitations, extensions, variations or substitutions set out in this MOI; and

2.3.2. the other provisions of this MOI

## **3. THE COMPANY AND ITS OBJECTS**

3.1. The Company is a Non-Profit company and, as such, continues to exist as a Non-Profit company in terms of this MOI.

3.2. To provide inspirational and innovative leadership to an all-inclusive and aligned South African Macadamia Industry, which through the power of the collective, is built on broad based research, market development and stakeholders engagements.

3.3. The main objective of the Company is to carry on a Public Benefit Activity as defined in Part 1 of the Ninth Schedule to the Income Tax Act. These include:

3.3.1. Leading world class Macadamia research in support of:

3.3.1.1. continuous improvement in production yields, processing and quality;

3.3.1.2. collection, processing and dissemination of reliable production and market information;

3.3.1.3. growing the demand ahead of supply through *inter alia* the health benefits for consumers as reasons to increase consumption; and

3.3.1.4. continuously gauging market evolution and being agile to industry changes and identifying drivers of future change.

- 3.3.2. Establishing and improving collaborative government relations in order to:
  - 3.3.2.1. facilitate favourable market access;
  - 3.3.2.2. leverage transformation advantages for the Company and its members;
  - 3.3.2.3. ensuring long term goodwill for the industry amongst legislators;
  - 3.3.2.4. managing local and export minimum quality standards;
  - 3.3.2.5. responding constructively from a single voice to new legislation and having a unified/standardised implementation and response to change.
- 3.3.3. Deliver value for money to growers:
  - 3.3.3.1. interpret and make research results available and useful to growers
  - 3.3.3.2. continually improve technology by connecting growers to appropriate sources for technical advice
  - 3.3.3.3. represent South Africa on the global Macadamia stage
- 3.3.4. Develop and implement a formal communications strategy to communicate:
  - 3.3.4.1. internally to the industry
  - 3.3.4.2. externally
  - 3.3.4.3. the results and benefits of SAMAC NPC's achievements on behalf of the industry
- 3.3.5. Build and maintain a professional and lean organisation to:
  - 3.3.5.1. deliver value and quality;
  - 3.3.5.2. outsource to the best-in-class service providers; and
  - 3.3.5.3. focus on execution excellence of the core fundamentals.
- 3.3.6. The Company may not provide a loan to, or secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a Director or to a director of a related or inter-related company, or to a person related to any such Director. The provision of this clause does not prohibit a transaction which would otherwise fall foul hereof if such transaction:
  - 3.3.6.1. is in the ordinary course of the Company's business and for fair value;
  - 3.3.6.2. constitutes an accountable advance to meet:
    - 3.3.6.2.1. legal expenses in relation to a matter concerning the Company;
    - 3.3.6.2.2. anticipated expenses to be incurred by the Director on behalf of Company;



#### **4. POWERS OF THE COMPANY**

- 4.1. The Company has all the legal powers and capacity of a natural person, except to the extent that the Company, as a juristic person, is incapable of exercising any such power, or having any such capacity or except to the extent that the Company's Memorandum of Incorporation provides otherwise.
- 4.2. The Company is not subject to any provisions contemplated in Section 15(2) (b) or (c) of the Act.

#### **5. FUNDING OF THE COMPANY**

- 5.1. In order to facilitate the achievement of its objectives, the Company intends to:
  - 5.1.1. apply a statutory levy to be paid by each member; and/or
  - 5.1.2. accept donations from donors; and/or
  - 5.1.3. raise funds from the general public; and/or
  - 5.1.4. source services, expertise and skills which could assist the Company to achieve its objectives; and/or
  - 5.1.5. generate funds in the manner referred to in clause 6 below.

#### **6. APPLICATION OF FUNDS**

- 6.1. The Company shall be funded in the manner referred to in clause 5 above.
- 6.2. The Company shall not accept a donation where such donation:
  - 6.2.1. may be recalled by the donor (except in the event of the Company failing to abide by the conditions of the donation); or
  - 6.2.2. is coupled with a condition which will entitle the person making said donation to obtain some direct or indirect benefit from the application of the donation.
- 6.3. The Company shall apply its funds and resources solely and exclusively for the furtherance and for carrying on the stated objectives listed in clause 3 above, with the understanding that excess funds may be invested to generate income for future use.
- 6.4. Notwithstanding the provisions of clause 3, the Company may conduct trading or other business activities provided such trading or other business activities form a source of funding for or are related to the objectives listed in clause 3 above or as are consistent with or ancillary to the stated objectives of the Company and further subject to the understanding that the sole or principal purpose of the Company shall never be to conduct a commercial activity merely for the purposes of generating profits.



- 6.5. The investment of excess funds shall never be done in such manner as amounts to the indirect distribution of profits or an impermissible benefit as contemplated in the Income Tax Act. Surplus funds may be invested in the manner decided by the Board with an institution approved by the Board, who shall act with prudence, integrity and reasonable care.
- 6.6. Subject to the provisions of clause 6.7 below, the income, profits and assets of the Company, however derived, shall not in any manner whatsoever be distributed to its incorporators, Directors, officers or persons related to any of them (but always subject to such exceptions as the Act and the Income Tax may permit) but must instead be applied to advance the stated objectives of the Company. The Company is however permitted to:
- 6.6.1. acquire and hold securities issued by a profit company; and
- 6.6.2. carry on any business, trade or undertaking, directly or indirectly, alone or with any other person, but subject to clause 6.4 above.
- 6.7. Notwithstanding, the provisions of clause 6.6 above, the Company shall be entitled to:
- 6.7.1. pay reasonable remuneration for goods delivered to the Company or for services rendered to the Company or at the direction of the Company;
- 6.7.2. pay a reasonable amount for or to make a reasonable reimbursement for expenses incurred in advancing a stated objective of the Company;
- 6.7.3. to pay any reasonable amount which is due and payable by the Company to a third party in terms of a *bona fide* agreement between the Company and that third party or another third party;
- 6.7.4. make payment in respect of any legal obligation that is binding on the Company;
- 6.7.5. make payment in respect of any rights of that person, to the extent that those rights are administered by the Company in order to advance one of its stated objectives; and
- 6.7.6. pay reasonable remuneration to employees, office bearers or other persons serving the Company for services actually rendered to the Company.

## **7. SPECIAL TAX EXEMPTION PROVISION**

- 7.1. It is specifically recorded that:
- 7.1.1. the funds of the Company will be used solely for the objects for which it has been established;
- 7.1.2. at least 3 (three) directors shall at all times be unrelated (in terms of section 2 of the Act) to the other directors, and no single director or prescribed officer shall directly or indirectly control the decision-making powers of the Company;
- 7.1.3. no activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company other than by way of reasonable remuneration;

- 7.1.4. no funds will be distributed to any person, other than in the course of undertaking the public benefit activities referred to in this MOI;
- 7.1.5. the activities of the Company are to be carried on in a non-profit manner and with an altruistic or philanthropic intent;
- 7.1.6. the Company will not be a party to, or knowingly permit, or has knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner;
- 7.1.7. no resources will be used directly or indirectly to support, advance or opposed any political party;
- 7.1.8. no remuneration will be paid 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 the Company's objects;
- 7.1.9. no donation will be accepted which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purpose and conditions of such donation, including and misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: 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) of the Income Tax Act, which has its sole or principle object as the carrying on of any public benefit activity) may not impose any 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;
- 7.1.10. The Company may not knowingly and will not knowingly become a party to or permit itself to be used as part of, an impermissible avoidance arrangement as contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act; and
- 7.1.11. any amendment to this Memorandum of Incorporation will be submitted to the Commissioner of the South African Revenue Services within 20 (twenty) business days of such amendments being adopted

## **8. WINDING-UP**

- 8.1. The Company may be voluntarily wound-up, as contemplated in section 80 of the Act, by way of a special resolution of its members.
- 8.2. Upon dissolution of the Company (for whatever reason), its net assets must be distributed in the manner set out below determined in accordance with item 1(4)(b) of schedule 1 to the Act in that:

- 8.2.1. no past or present member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 8.2.2. the entire net value of the Company must be distributed to one or more:
  - 8.2.2.1. public benefit organisations as approved in section 30 of the Income Tax Act;
  - 8.2.2.2. any institution, board or body which is exempt from payment of income tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object as carrying on a public benefit activity; or
  - 8.2.2.3. any department of state or administration in the national or provincial sphere of government of the Republic as contemplated in section 10(1)(a) or (b) of the Income Tax Act.

## **9. AMENDMENT OF MOI**

- 9.1. An amendment to the MOI may be proposed by
  - 9.1.1. the Board of the Company;
  - 9.1.2. members entitled to exercise at least 20% (twenty percent) of the voting rights that may be exercised on such a resolution; or
  - 9.1.3. not less than 10% (ten percent) of the voting members
- 9.2. Such amendment must be adopted at a members' meeting by voting as contemplated in this MOI.
- 9.3. The Company must deliver a notice to all members, as of the record date of the meeting, in the manner prescribed by the Act, not less than 21 (twenty-one) days before the meeting is to begin.
- 9.4. The Company must publish a notice of any alteration of this MOI by forthwith filing a notice of the alteration with the Commission and the Commissioner for the South African Revenue Services.

## **10. COMPANY RULES**

- 10.1. The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum by:
  - 10.1.1. publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) of the Act by delivering a copy of such Rules or amendments to each member by ordinary mail or e-mail; and
  - 10.1.2. filing a copy of those Rules with the Commission.
- 10.2. Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4) of the Act.

- 10.3. The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of any alteration made by delivering a copy of such amendments to each member by ordinary mail or e-mail and filing a notice of the alteration with the Commission.

## **11. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT**

- 11.1. The Company elects in terms of Section 34(2), not to comply with the provisions of the whole of Chapter 3 of the Act, unless the Company is required by the Act and/or the Regulations to have its financial statements audited every year.
- 11.2. The Company shall however have its financial statements audited every year (provided such audit shall [unless required by the Act] take place outside the provisions of Chapter 3 of the Act).

## **12. COMPANY SECRETARY**

- 12.1. The Company elects not to appoint a Company Secretary.

## **13. COMPANY RECORDS**

- 13.1. The financial year end of the Company will be the last day of February in each year.
- 13.2. Each year, within six months after the end of its financial year the Company must have its annual financial statements prepared and independently reviewed or audited by a registered auditor in accordance with the Financial Reporting Standards applicable to the Company.
- 13.3. The Company must keep accurate and complete accounting records in English:
- 13.3.1. so as to fairly represent the state of affairs and business of the Company, and to explain transactions and the financial position of the Company;
- 13.3.2. as necessary to enable the Company to satisfy its obligations in terms of the Act and any other law regulating the preparation of financial statements; and
- 13.3.3. including any prescribed accounting records, which must be kept in the prescribed manner and form, such accounting records to comply with the provisions of the Act and the Regulations made in terms of the Act.
- 13.4. The Company's accounting records must be kept at, or be accessible from, the registered office of the Company.

## **14. MEMBERS OF THE COMPANY AND THEIR VOTING RIGHTS**

- 14.1. The Company is a Non-Profit Company with members.
- 14.2. members shall be comprised of both voting members and non-voting members:
- 14.3. The following categories of members shall be voting members:
- 14.3.1. Grower members; and

- 14.3.2. Handler members
- 14.4. The following categories of members shall be non-voting members:
- 14.4.1. Associate members and
- 14.4.2. Honorary Life members (provided no further Honorary Life members shall be appointed after the adoption of this MOI).
- 14.5. Where this MOI refers to any votes of members, such referral shall be construed as being a referral to voting members.
- 14.6. Handler members shall be entitled to 1 (one) vote each in respect of any matter which is to be voted on by members.
- 14.7. Grower members voting entitlements shall be determined as follows:
- 14.7.1. Each Grower member is entitled to 1 (one) vote (regardless of the production of such Grower member); and
- 14.7.2. in addition to such 1 (vote), 1 (one) additional vote per complete NIS tons produced by such Grower in the preceding 2 (two) years, divided by two, on the condition that only the volumes produced whilst the Grower was a Member will be taken into consideration.
- For the calculation of the number of votes, the following formula shall be used:
- A=  $1+(B+C)/2$ , where
- A= the total number of votes limited to a maximum of 10% of the total tons produced by all members during the same period
- B= the total tons produced and declared by the Grower Member for the preceding year if he was a member in the preceding year.
- C= the total tons produced and declared by the Grower Member in the year before the preceding year if he was a member in the year before the preceding year.
- 14.7.3. The number of votes capable of being exercised pursuant to the provisions of clause 14.7.2 shall be calculated by the Company's auditors on an annual basis (preferably at the end of February) and only be adjusted should new Members acquire membership in the Company.
- 14.8. In the event of any dispute as to the average production in NIS tons of a Grower member, the determination by the Board shall be final and binding. Grower members shall provide all such data reasonably requested by the Company for purposes of enabling the calculation above. In the event that a Grower member does not provide (as reasonably determined by the Board) sufficient data as is necessary to determine the average production in NIS tons of a Grower member, such Grower member shall be entitled to 1 (one) vote each in respect of any matter which is to be voted on by members.

- 14.9. Notwithstanding anything else herein contained and by way of an overriding provision, only voting members who are members in Good Standing as at the record date shall be entitled to exercise any voting rights in respect of any matter which is to be voted on by members.
- 14.10. members:
- 14.10.1. must be approved by the majority of the Board following receipt of an application for membership stating the category of membership and such additional information as the Board may in its sole, absolute and unfettered discretion determine, who may in their sole, absolute and unfettered discretion refuse membership, without assigning any reasons therefore;
- 14.10.2. must pay the prescribed membership fee as determined by the Board and in such manner and format determined by the Board, provided that any membership fees (at the election of the Board) which are not paid on the due date, therefore, shall attract interest in accordance with the interest rate specified in the Prescribed Rate of Interest Act 55 of 1975.
- 14.10.3. membership in the Company will terminate:
- 14.10.3.1. upon the expiration of the period of at least 3 (three) months' notice in writing by the member to the Company of his intention to terminate his membership;
- 14.10.3.2. if, at any time, notwithstanding anything contained in this MOI, the Company, by ordinary resolution, elects to remove a member;
- 14.10.3.3. where the Board elect to terminate the membership by way of an ordinary Board resolution;
- 14.10.3.4. if such member's estate is surrendered or sequestrated, whether voluntarily or compulsorily;
- 14.10.3.5. on the death of a member;
- 14.10.3.6. where the Board so elects, upon a member failing to pay membership Fees upon same becoming due and payable;
- 14.10.3.7. where a *curator bonis* is appointed to conduct the affairs of a member; or
- 14.10.3.8. if such member commits any act of insolvency or where a member is deemed unable to pay its debts in terms of any applicable laws.

## 15. PROXIES

- 15.1. Any member may at any time appoint any 1 (one) natural person who is a member, as a proxy to:
- 15.1.1. participate in, and speak and vote at, a members' meeting on behalf of that member; or
- 15.1.2. give or withhold written consent on behalf of that member to a decision contemplated in section 60 of the Act.
- 15.2. A proxy appointment:



- 15.2.1. must be in writing, dated and signed by the member; and
- 15.2.2. remains valid for:
  - 15.2.2.1. 1 (one) year after the date on which it was signed; or
  - 15.2.2.2. any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.
- 15.3. The holder of a proxy or other written authority from a member may, if so authorised thereby, represent such member at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the member at a members' meeting.
- 15.4. It is however specifically recorded that no member shall be entitled to vote on behalf of more than 5 (five) proxies.
- 15.5. In the event of a member appointing a proxy and the member subsequently attending the applicable meeting, the proxy (and the person's ability appointed thereunder to attend the applicable meeting) will be deemed to have been forthwith revoked and no further force and effect.

## **16. MEMBERS' MEETINGS**

- 16.1. In addition to those instances where members' meetings are specifically required by the Act, the Company is required to convene:
  - 16.1.1. An annual general meeting within 12 (months) months after the expiration of the financial year of the Company; and
  - 16.1.2. whenever either:
    - 16.1.2.1. not less than 10% (ten percent) of the voting members demand a members' meeting of which such meetings may be held at any time; or
    - 16.1.2.2. members entitled to exercise at least 20% (twenty percent) of the voting rights demand a members' meeting of which such meetings may be held at any time.
- 16.2. Annual general meetings and other members' meetings will be held at such a time and place as the Board appoints.
- 16.3. The business to be transacted at an annual general meeting shall as a minimum include:
  - 16.3.1. The presentation of:
    - 16.3.1.1. the directors' report;
    - 16.3.1.2. the audited financial statements for the immediately preceding financial year; and
    - 16.3.1.3. an audit committee report.
  - 16.3.2. Election of directors (to the extent required in the Act or the MOI)



- 16.3.3. The election and appointment of:
- 16.3.3.1. an auditor for the ensuing financial year; and
  - 16.3.3.2. an audit committee.
- 16.4. The minimum number of days for the Company to deliver notice in writing of a members' meeting is in respect of:
- 16.4.1. the annual general meeting, 21 (twenty-one) days;
  - 16.4.2. a meeting called for the passing of a Special Resolution, 15 (fifteen) days; and
  - 16.4.3. any other members' meeting, ten (10) days of which the notice must comply with section 62(3) of the Act.
- 16.5. In addition to those matters included in the notice of the meeting, each member in Good Standing is entitled to submit any number of discussion points for inclusion in the notice, subject to the following:
- 16.5.1. the point/s for discussion must be submitted to the Board (for attention of the chief executive officer) at least 30 (thirty) business days prior to the date of the meeting (to enable inclusion in the notice of the meeting prior to distribution).
- 16.6. The Company may conduct its members meeting through regional meetings in multiple locations, provided that it must be done in accordance with rules to be established by the Board in respect of the conduct of such and practical arrangements for members attending the meetings in multiple locations is made.
- 16.7. The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act, is not limited or restricted by this MOI.
- 16.8. No members' meeting may commence, nor may any matter be considered unless a quorum of members is present. Save as otherwise provided herein, voting members capable of exercising 10% (ten percent) of the voting rights personally present or present via proxy or via electronic medium will be a quorum.
- 16.9. If, within thirty (30) minutes after the appointed time for a meeting to begin has elapsed and sufficient members to establish quorum are not present:
- 16.9.1. for that meeting to begin, the meeting is postponed without motion, vote or further notice, for 1 (one) week; or
  - 16.9.2. for consideration of a particular matter if there is:
    - 16.9.2.1. other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion; or
    - 16.9.2.2. other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote; and

- 16.9.2.3. if at an adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the members present will be quorum.
- 16.10. Where quorum is established for a meeting to begin or a matter to be considered, the meeting may continue, irrespective of whether or not the quorum is contained.
- 16.11. The chairman or, failing him, the deputy-chairman of the Directors will be the chairman of each general meeting. If no chairman or deputy-chairman is present and willing to act, the members present will elect one of the Directors or, if no Director is present and willing to act, a member, to be chairman of that general meeting.
- 16.12. The chairman of a general meeting will, if obliged to do so in terms of the Act, and may, in his discretion in any other circumstance, adjourn that general meeting from time to time.
- 16.13. In the case of an equality of votes, the chairman of the meeting shall be entitled to a second or casting vote.

## **17. MEMBERS RESOLUTIONS**

- 17.1. For an ordinary resolution to be adopted at the members' meeting, it must be supported by more than 50% of the voting rights of members who voted on the resolution.
- 17.2. For a special resolution to be adopted at the members' meeting, it must be supported by at least 67% of the voting rights of members who voted on the resolution, of which, such special resolution will be required only relating to matters as contemplated in section 65(11) of the Act.
- 17.3. A declaration by the chairman that a resolution has been carried by show of hands, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the meeting, shall be conclusive evidence of the fact. Scrutineers may be appointed by the chairman to count the votes. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting. Any objection at a meeting as to the admissibility of any vote shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- 17.4. At any general meeting a resolution put to vote will be decided by poll.
- 17.5. Notwithstanding the provisions above, voting in respect of the following matters will be conducted by way of a closed ballot (as a polled vote):
- 17.5.1. Any amendment to the Memorandum of Incorporation;
- 17.5.2. The adoption of any special resolution; and
- 17.5.3. Any matter, which the Board (acting in its reasonable discretion) is of the view is of significant importance and warrants voting by way of a secret ballot.
- 17.6. A member, being a juristic entity, shall be represented at any meeting of members by a single representative appointed by it, provided such member shall be required to deliver to the Board reasonably documentary proof of such representative's authority (in such

manner and form determined by the Board) no later than 5 (five) business days prior to the meeting.

## **18. NOTICES OF MEMBERS' MEETINGS**

- 18.1. A notice may be given by the Company to any member, either personally or by sending it by e-mail, post in a prepaid letter addressed to such member at his registered address outside the Republic, or at the address, if any, within the Republic supplied by him to the Company for the giving of notices to him.
- 18.2. A notice of a members' meeting must be in writing, and must include:
- 18.2.1. the date, time and place for the meeting, and the record date for the meeting;
- 18.2.2. the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a) of the Act, if applicable;
- 18.2.3. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
- 18.2.4. a reasonably prominent statement that:
- 18.2.4.1.1. a member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the member.

## **19. DIRECTORS AND OFFICERS**

- 19.1. The Board of the Company must comprise of at least 7 (seven) and a maximum number of 9 (nine) Directors, provided that if the application of the election process in clause 20.2 and 20.4 results in more than 6 (six) Grower members being appointed as Directors, the maximum number of Directors shall be increased by the same amount as the number of Grower member Directors in excess of 6 (six) Directors.
- 19.2. At least 6 (six) of the Directors shall be Grower members or representatives or employees of Grower members.
- 19.3. It is specifically recorded that no person actively involved in the day-to-day management of a handler or Handler member shall be eligible to act as a director.

## **20. APPOINTMENT AND REMOVAL OF DIRECTORS**

- 20.1. Subject to Schedule 1 of the Act and this MOI, Directors are elected:
- 20.1.1. by the members of the Company in a members' meeting; and
- 20.1.2. for an initial period of 3 (three) years, provided that any Director who is re-elected shall (on each re-election) be appointed for a further period of 2 (two) years.
- 20.2. The members of Mpumalanga, KwaZulu Natal and Limpopo Provinces, shall each be entitled to nominate 1 (one director) to the Board, whereas the members from the rest of South Africa, shall cumulatively be entitled to nominate 1 (one) director to the Board. Such

- nominees shall (and the members shall procure that they) be appointed at the annual general meeting of the Company.
- 20.3. A member conducting business in more than one Province may only exercise the rights contemplated above in relation to a single Province with the understanding that the member concerned shall be entitled to exercise an election in relation to the province in respect of which he chooses to exercise his rights. Upon making such an election (where applicable), the member's entire contribution to the national Macadamia crop (in NIS tonnage terms) will be to such selected Province.
- 20.4. In addition to the directors nominated and elected in terms of clause 20.2 above, the members of the Company (on a national basis) can nominate a minimum of 2 (two) and a maximum of 3 (three) directors. Such nominees shall (and the members shall procure that they) be appointed at the annual general meeting of the Company.
- 20.5. By way of an overriding provision, no more than 3 (Three) directors shall be from the same Province.
- 20.6. The persons nominated for appointment to the Board in the manner envisaged in the preceding clauses must be Grower members or (where the Grower member is a juristic person) an employee, director or office bearer of such Grower member.
- 20.7. The Company shall timeously advise the members of the provinces of their entitlement (if any) to nominate and appoint a director in the manner envisaged above. The Board shall determine and facilitate the manner and process in which the nomination and election of Persons to the Board as contemplated above is to take place.
- 20.8. The Board may appoint a minimum of 1 (one) and a maximum of 3 (three) additional persons (who are not members or representatives of members) as additional directors to the Board ("**Independent Directors**"). Such Independent Directors shall serve for an initial period of 1 (one) year, provided that any Independent Director who is re-elected shall (on each re-election) be appointed for a further period of 1 (one) year. The Board, in making an election as to the appointment of Independent Directors shall have regard to the need for sound corporate governance, appropriate skills, experience, and expertise required by the Board in discharging their obligations towards the Company.
- 20.9. The Company may remove any Director by ordinary resolution once special notice has been given and the Director has been given a reasonable opportunity to make a presentation as contemplated in section 71(2) of the Act.
- 20.10. The office of any Director will be vacated if the Director:
- 20.10.1. Becomes disqualified in terms of the Act
  - 20.10.2. is removed by an ordinary resolution of the members who nominated him for appointment;
  - 20.10.3. is declared mentally unfit;
  - 20.10.4. dies;

- 20.10.5. (Where applicable) ceased to be employed or be an office bearer of a Grower Member;
- 20.10.6. resigns by notice in writing to the Company; or
- 20.10.7. absents himself from meetings of Directors on 3 (three) consecutive occasions without the leave of the other Directors, and they resolve that his office will be vacated.

## **21. AUTHORITY OF BOARD DIRECTORS**

- 21.1. The authority of the Board to manage and direct business and affairs of the Company, as set out in section 66(1) of the Act, is unlimited.

## **22. REMUNERATION OF DIRECTORS**

- 22.1. The remuneration payable to Directors, if any, for services rendered as directors, shall be approved by way of special resolution in accordance with the provisions of section 66 of the Act, but having regard to the provisions of clause 7 of the MOI.
- 22.2. The Board may pay any director who serves on any committee or who devotes special attention to the business of the Company, or otherwise, performs services, which in the opinion of the Board are outside the scope of the ordinary duties of a director, such extra remuneration as they may determine and provided such remuneration has been approved by a special resolution of the members in accordance with the provisions of section 66 of the Act, but having regard to the provisions of clause 7 of the MOI.

## **23. COMMITTEES OF THE BOARD**

- 23.1. The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, and to include in any such committee persons who are not Directors, is not limited or restricted by this MOI.
- 23.2. The authority of any committee appointed by the Board shall be determined by the Board resolution establishing such committee.
- 23.3. The Board may from time to time appoint an individual to the office of Chief Executive Officer for such a period and generally on such terms as they may think fit.
- 23.4. The Board may from time to time entrust to and confer upon a Chief Executive Officer for the time being such of the powers vested in the Board as the Board may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as the Board may deem expedient; and the Board may confer such powers either collateral or to the exclusion of, and in substitution for, all or any of the powers of the Board, and may from time to time revoke or vary all or any of such powers.

## **24. INDEMNIFICATION OF DIRECTORS**

- 24.1. The authority of the Board to:
  - 24.1.1. advance expenses to a Director, or indemnify a Director, in respect of
    - 24.1.1.1. the defence of legal proceedings as set out in section 78(3) of the Act;

24.1.1.2. indemnify a Director in respect of liability, as set out in section 78(5) of the Act; and

24.1.1.3. purchase insurance to protect the Company, or a Director, as set out in section 78(6) of the Act is not limited or restricted by this Memorandum.

## **25. BOARD MEETINGS**

25.1. The Board may meet for the despatch of business, adjourn or otherwise regulate its meetings, as the Directors think fit. They may determine what notice must be given of their meetings and the means of giving that notice, provided that any such prior determination may be varied to the extent necessitated by the circumstances and reasons for the Directors' meeting in question.

25.2. The authority of the Company's Board to consider a matter other than at a meeting, as contemplated in section 74 of the Act, is not limited or restricted by this MOI.

25.3. The right of the Board to requisition a meeting at any time, as set out in section 73(1) of the Act, may be exercised by any one of the Directors.

25.4. The quorum for all board meetings will be 50% (fifty percent).

25.5. All resolutions of the Board shall be decided by a majority vote.

25.6. A director unable to attend any meeting of the Board may authorise any other director to vote for him at that meeting.

25.7. In the event of an equality of votes the chairman will have a second or casting vote.

25.8. If, within thirty (30) minutes after the appointed time for a meeting to begin has elapsed and sufficient Directors to establish quorum are not present:

25.8.1. for that meeting to begin, the meeting is postponed without motion, vote or further notice, for 1 (one) week; or

25.8.1.1. for consideration of a particular matter if there is:

25.8.2. other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion; or

25.8.3. other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote; and

25.8.4. if at an adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the Directors present will be a quorum.

25.9. Where a quorum is established for a meeting to begin or a matter to be considered, the meeting may continue, or the matter may be considered regardless of whether or not 50% (fifty percent) of the voting Director's attending the meeting remain present.



## **26. CHAIRMAN**

- 26.1. The chairman and vice chairman (who will serve as such for both Board and members' Meetings) must be elected by the Board for a period of 2 (two) years, following the annual general meeting.
- 26.2. The chairman and vice chairman may be removed and replaced at any time by way of a resolution of the Board. The chairman or vice chairman contemplated to be removed in terms of a resolution of the Board shall not be entitled to exercise a vote in respect of such resolution.
- 26.3. The chairman shall, following his appointment, immediately resign from any political or other position, which in the opinion of the Board, could have an adverse effect on the execution of his/her duties as office-bearer of the Company. In addition, the Chairman shall not make him/herself available or accept appointment for any public political position during his term of office.
- 26.4. Should a permanent vacancy arise in respect of the office of chairman, the vice chairman shall fill this vacancy until such time as the Board elects a new Chairman.

## **27. DETERMINATION OF DISPUTES**

- 27.1. Any dispute arising out of or in connection with the MOI, or the Rules, except where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction, must be determined in terms of this clause.
- 27.2. If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved between the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute for determination in terms of clause 27.3.
- 27.3. If a party exercises his right in terms of clause 27.2 to refer the dispute for determination, such dispute shall be referred to:
- 27.3.1. a practising senior counsel of not less than 10 (ten) years' standing, if the parties agree that the dispute in question is a legal one; or
- 27.3.2. a practising chartered accountant of not less than 10 (ten) years' standing if the parties agree that the dispute in question is an accounting one; or
- 27.3.3. If the parties cannot agree:
- 27.3.3.1. on the person referred to in clauses 27.3.1 to 27.3.2; or
- 27.3.3.2. whether or not the dispute falls within the framework of clauses 27.3.1 to 27.3.2; within 14 (fourteen) days after such dispute has arisen and in regard to which any of the parties have notified the other, either of the parties may refer the matter to the Arbitration Foundation of Southern Africa to resolve the issue.
- 27.4. Any person (the expert) agreed upon by the parties to the dispute or nominated as aforesaid shall act as an expert and not as an arbitrator in all respects.



- 27.5. Subject to clause 25.6 the expert shall be bound to follow the general substantive principles of South African Law.
- 27.6. The expert shall be vested with the entire discretion as to the procedure and manner to be followed in arriving at his decision, including the giving and receipt of evidence.
- 27.7. The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty -one) days or so soon thereafter as possible after it has been demanded.
- 27.8. The expert's decision shall be final and binding on all the parties to the dispute and shall be carried into effect and may be made an order of any competent court at the instance of any of the parties at his cost.
- 27.9. The provisions of this clause:
- 27.9.1. constitutes the irrevocable consent by the parties to any proceedings in terms thereto and none of the parties shall be entitled to withdraw therefrom or claim that in any such proceedings that it is not bound by such provisions; and
- 27.9.2. severable from the rest of these clauses and shall remain in effect even if this MOI is terminated for any reason whatsoever.



## 28. MEMBER SCHEDULE

<b>GROWER MEMBERS</b>
Any person engaging, in a proprietary capacity, in the commercial production of macadamias inclusive of persons or entities who process and produce macadamia nuts, trade with macadamia nuts, husks, kernels or nut in-shell macadamias or who grow and sell macadamia trees (provided that if the definition of the term “ <i>Grower</i> ” is amended in terms of a Statutory Measure imposed by the Company pursuant to the Marketing of Agricultural Products Act No. 47 of 1996, the definition of the term Grower member as contained in this MOI shall be deemed to have been amended <i>mutatis mutandis</i> )
<b>HANDLER OR CONSOLIDATOR MEMBERS</b>
Any person that receives macadamia nuts from growers for the purpose of preparing and packing for sale as nut in shell or kernel; and includes persons that buy nut in shell from growers and/or act as agents for the sale of nut in shell or kernel, and act as agents or contractors for dehusking of nut in shell; and further includes Growers that sell their own production of nut in shell or kernel directly to traders (provided that if the definition of the term “ <i>Consolidator</i> ” is amended in terms of a Statutory Measure imposed by the Company pursuant to the Marketing of Agricultural Products Act No. 47 of 1996, the definition of the term Handler member as contained in this MOI shall be deemed to have been amended <i>mutatis mutandis</i> )
<b>ASSOCIATE MEMBERS</b>
Persons that have an interest in the Macadamia industry, including but not limited to: macadamia nurseries, agricultural advisors, roasters, packagers, wholesalers, retailers, Exporters, Importers, marketers, input and equipment suppliers, researchers and educators or any persons who in the sole discretion of the Board should be afforded membership by virtue of special qualifications or experience of value to the Macadamia industry. Associate members may also include person who are situated, resident or domiciled outside of South Africa.
<b>HONORARY LIFE MEMBERS</b>
Persons appointed by the Board in recognition of special or extraordinary services rendered to the Macadamia industry. It is specifically recorded that no further Honorary Life members will be appointed by the Board from date of filing of this MOI.