

15.6 REPORT 6: DIACONAL MATTERS – CONSTITUTION OF THE SDDS AND ALIGNMENT OF THE MEMORANDUM OF INCORPORATION OF THE SINODALE DEPUTATE VIR DIAKONALE SAKE (SDDS) OF THE GEREFORMEERDE KERKE IN SUID-AFRIKA – NON-PROFIT COMPANY WITH THE COMPANIES ACT (Art 150)

- A. Rev MJ Erasmus tables the Report.
- B. The Report will be concluded during the Synod session.

C. REPORT

1. Matters that the Synod take note of

- 1.1 In complying with a Synod instruction (Acta 2012:116, 2) the SDDS management was obliged to refer to the original Memorandum of Incorporation drawn up in accordance to the Companies Act of (46 of 1926).
- 1.2 This necessitated the SDDS management to revise the Memorandum of Incorporation, also including representatives from orphanages, to comply with the Companies Act (71 of 2008).
- 1.3 The Memorandum of Incorporation was submitted to and approved by the Registrar of Companies.
- 1.4 The SDDS management was not able to comply with the instruction, as per Acta (2012:116, 2). This matter has never been discussed or addressed by the SDDS. Should compliance with the instruction be undertaken, it would not be possible to fulfil the objective set out in the point of description. The annual general meetings of the members of the orphanages are not localised or representative. Furthermore, the work of the SDDS entails more than just attending to the orphanages.
- 1.5 The approved Memorandum of Incorporation is published here for the Synod's information (the Memorandum is numbered separately).

Decision: Points 1.1 to 1.5 noted.

**REPUBLIC OF SOUTH AFRICA COMPANIES ACT 2008
MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY**

NAME:

The Name of the Company is:

**SINODALE DEPUTATE VIR DIAKONALE SAKE VAN DIE GEREFORMEERDE KERKE IN
SUID-AFRIKA – NPC**

Registration Number:

1947/026814/08

("The Company")

The Company is incorporated as a Non-profit Company, with no members or shareholders, as defined in the Companies Act of 2008.

This Memorandum of Incorporation has been adopted in line with the suggestion by the Board of Directors, issued and adopted by means of special decision, taken by the Directors at a Board Meeting of the Company held on the 6th day of June 2014.

This Memorandum of Incorporation, as contained in form CoR 15 D of the Companies Act Regulations 2011, will not be applicable to the Company.

PART A: INTRODUCTION

1. INCORPORATION OF COMPANY

- a. The Company is a Non-profit Company, as defined in the Companies Act (71 of 2008) (hereinafter referred to as the Companies Act).
- b. The Company is incorporated in accordance with and governed by:
 - i. the provision of the Companies Act unalterable by the content of this Memorandum of Incorporation;
 - ii. the alterable provisions of the Companies Act, applicable to Non-profit Companies, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation;
 - iii. the provisions of this Memorandum of Incorporation.

2. OBJECTIVE, POWERS AND ACTIVITIES OF THE COMPANY

- a. The objective, powers and activities of the Company shall:
 - i. Not be subject to any limitation or condition as set out in Article 19 (1)(b)(ii) of the Companies Act;
 - ii. be subject to any limitation, restriction or condition as set out in Addendum 1 of Article 19(1)(b)(ii) of the Companies Act;
 - iii. not be subject to the provisions as set out in Article 15(2)(b) or (c) of the Companies Act; and
 - iv. be subject to any limitation, restriction or condition as set out in Addendum 1 of Article 15(2)(b) or (c) of the Companies Act.
- b. The aim and objectives of the Company is to:
 - i. coordinate and unite the diaconal affairs of the Gereformeerde Kerke in Suid-Afrika (hereinafter referred to as the Church) into one body to create a special charity organisation for the Church and manage, administrate, develop, take over and supervise it in accordance with the Church Order and subject to reporting to the General Synod of the Church (hereinafter referred to as the Synod);
 - ii. establish, erect, repair, renovate, rebuild, maintain, manage and supervise orphanages and facilities for the elderly, physically unfit, the ill (mentally or physically) or the unemployed; as well as homes for the poor and in general such facilities or homes that may be deemed necessary or desirable by the Company to alleviate poverty and suffering;
 - iii. institute such welfare, moral and economic measures the Company may deem necessary to relieve the suffering of individuals experiencing trouble, sorrow, need, illness or any other adversity;
 - iv. perform or have perform all other actions that may contribute to or relate to achieving the aforementioned objectives or any one of them; and
 - v. apply all income and property of the Company, obtained from whatever source, exclusively for the promotion of the objectives of the Company, as set out in the Memorandum of Incorporation and no part thereof may be directly or indirectly, by means of dividend, bonus or otherwise by means of profit paid or transferred to the directors or other decision makers. This with the understanding that no provision herein will prohibit the payment in good faith of remuneration to an official or employee or member of the Company for services rendered or expenses incurred on behalf of the Company as such.

3. ADDITIONAL CAPACITIES AND POWERS TOWARDS THE ACHIEVEMENT OF THE AIM AND OBJECTIVES OF THE COMPANY

For the effective achievement of the aforementioned objectives the following additional powers enable the Company to:

- a. erect, manage, maintain, repair, demolish, rebuild and alter any orphanages, shelters, halls, schools, facilities or other buildings and premises;
- b. purchase, rent, trade or obtain by any other means and sell, donate, rent, trade or manage in any other way and convert into money any property, movable or immovable, and any other assets deemed fit for achieving the objectives of the Company;
- c. enter into any agreement in view of a joint venture, collaboration or mutual concessions with any individual, firm or company with objectives that conform wholly or in part to that of the Company;
- d. borrow or otherwise obtain funds with or without the provision of securities and where securities are required, to provide such securities the Company may deem appropriate for the repayment of monies borrowed in this fashion, whether it be by means of an ordinary bond, special bond, pledge or transfer of any or all property, rights or other assets due the Company, whether it be the cession of debentures, in perpetuity or otherwise found in any or all property and assets belonging to the Company and/or may belong or otherwise and to purchase back or redeem in any other way such securities;
- e. that which the Company deems desirable and is subject to the provision of security for repayment on which the Company may decide or also without provision of security for repayment depending on whether the Company deems it desirable or not; and to make monetary or other donations to such persons that the Company deems it necessary to make;
- f. invest in securities any monies of the Company not immediately necessary to the pursuance of the Company's objectives and manage such, as may be decided from time to time, and to convert into funds, alter, reinvest or manage in any other manner such securities;
- g. open, maintain and manage a bank account or other account and redeem, make, endorse cheques and other negotiable documents and make electronic payments;
- h. insure any or all of the enterprises, property and assets of the Company against loss due to fire, theft, civil disturbance or any other loss and to insure any employee or servant of the Company under a fidelity guarantee or against risk of death or disability or injury that may occur because of or in the course of the execution of his/her duties;
- i. undertake and execute free of charge or otherwise any trust the Company may deem fit;
- j. conduct business as less or, lessee, agent, trader and business person;
- k. employ such secretaries, managers, agents, messengers, contractors, brokers, consultants, nurses, assistants and any other employees, whether it be permanent, temporary or for any particular reason and according to such terms related to salary, employment period and otherwise the Company may deem fit;
- l. establish, maintain, manage and supervise any clubs or other institutions that are deemed to promote the main objectives of the Company or to contribute to the establishment, maintaining, management and supervision of such clubs or institutions;
- m. merge with any other individual, firm, association or company with objectives that confirm, wholly or in part, to that of the Company;

- n. establish any other company or institution with objectives that conform, wholly or in part, to that of the Company or of which the objectives will include the acquisition or take-over of all or part of the activities, property, assets, rights and obligations of the Company or for any other objective aimed at directly or indirectly promoting the achievement of the objectives of this Company or to contribute to the establishment of such a company or institution;
- o. remunerate any individual, firm, institution or company for services rendered or to be rendered to and on behalf of this Company;
- p. execute all other activities that may contribute or relate to the achievement of the aforementioned objectives or any one of them;
- q. support, in so far it is financially possible for the Company, deaconries and collaborators in the care of the needy, nationally and internationally; and
- r. make direct or indirect contributions in times of emergency, in such a manner that it promotes the objective of the Company and is wholly or partly achieved.

4. AMENDMENT OF THE MEMORANDUM OF INCORPORATION

- a. This Memorandum of Incorporation may be amended in accordance with the provisions of Articles of 16 or 17 of the Companies Act.
- b. The authority of the Directors of the Company, acting as Board of Directors (Board), to make rules for the Company as set out in Sub-articles 15(3) to (5) of the Companies Act, is not restricted to any degree by this Memorandum of Incorporation.
- c. In terms of Sub-article 17(1) of the Board, any rule made in terms of Sub-articles 15(3) to (5) and any amendment of this Memorandum of Incorporation and/or the rules made in terms thereof, must be published and delivered as stipulated in this Memorandum of Incorporation by:
 - i. handing it directly to each Director;
 - ii. having it delivered to each Director by means of regular mail delivery of the post office; and/or
 - iii. e-mailing or faxing it to each Director.

5. EXCLUSION OF OPTIONAL PROVISIONS SET BY THE COMPANIES ACT

- a. The Company wishes to:
 - i. in accordance with the provisions of Article 34(2), refrain from voluntary compliance with all of the stipulations and provisions of Chapter 3 of the Companies Act; and
 - ii. not have members or shareholders, as set out in Item 4(1) of Schedule 1 of the Companies Act.

6. APPOINTMENT OF DIRECTORS

- a. The Directors of the Company will be eleven (11) in number, but at no time less than eight (8), constituted and appointed by the Board as follows:
 - i. Two (2) ministers
 - ii. Five (5) members of the Church — preferably deacons
 - iii. Two (2) representatives of orphanages
 - iv. One (1) secretary/executive officer
 - iv. One (1) advisor, preferably knowledgeable in the area of finance

- vi. All the aforementioned Directors must be members of the Church at the time of their appointment as Directors. Should any of the Directors cease to be a member of the Church during the period of service as Director, such nomination/appointment as director will immediately be revoked and require immediate vacating of his/her post.
 - vii. The Board will appoint substitute directors and submit same to the Synod for approval.
- b. Terms of appointment:
- i. All Directors nominated, as specified in paragraph 6(a) above, shall be appointed for a fixed term of three (3) years.
 - ii. Notwithstanding the fact that all Directors are appointed to a term of three (3) years, in accordance to Sub-clauses (i) and (ii), a Director of the Company will solely cease to serve as Director if officially replaced by the Board through the appointment of a new Director and once the documents have been accordingly amended with the Registrar of Companies – save for when a Director is disqualified from serving as Director, in accordance with the provisions of this Memorandum of Incorporation, in which case the Director's term is immediately terminated.
 - iii. Should a vacancy arise over the course of a given term of three (3) years for which the Directors of the Company have been appointed, the Board will elect an alternate Director for the remaining term of the Board.
 - iv. No remuneration shall be payable to the Directors as Directors' remuneration, save for, where applicable, the reimbursement of direct expenses incurred for attending meetings and/or the execution of the duties as entrusted to them by the Board, to act on behalf of the Company.

7. BOARD MEETINGS

- a. The Company shall convene at least one Board Meeting a year at a date, time and place as set by the Board of the Company or if not set by the Board, the Chairman of the Board is to ensure that such meeting occurs.
 - i. No more than 12 months may elapse between board meetings: and
 - ii. should more than 50% of the Directors of the Company deliver a written demand for a Board Meeting to the Secretary of the Board, the Chairman of the Board is obliged to call for a meeting at a date and time as specified or without delay give notice of the meeting, as stipulated in this Memorandum of Incorporation in relation to the notice of meetings.

8. NOTICE OF BOARD MEETINGS

The Chairman of the Board must ensure that:

- i. at least 14 days written notice is given to each Director of any Board Meeting;
- ii. such notice provides all details of the place, day and time of the meeting;
- iii. in the event of a special Board Meeting, the notice must set out the specific nature of the purpose for which the special meeting has been called;
- iv. with the express consent of all the members entitled to receive such notice of a particular meeting, such a meeting may be called at shorter notice and in such a manner that the Directors find acceptable: and

- v. the validity of any events at any meeting shall not be affected, unless it is advertently neglected to notify a Director of such a meeting.

9. CHAIRMAN OF THE BOARD OF DIRECTORS

- a) The Chairman is elected by the Directors at the first Board Meeting, subsequent to the appointment of the Directors and they are as such registered with the Registrar of Companies on the CIPS database.
- b) Should the Chairman not be present at a Board Meeting, the Directors present will elect a Chairman from amongst themselves to chair the meeting, whereby the elected Director is then invested with all the powers of the chairman.

10. POWERS AND FUNCTIONS OF DIRECTORS

- a) The Board of the Company assembled is the highest legal and executive authority of the Company and is entitled to make any decision in reference to any business of the Company or carry out any action in regard to such business.
- b) The Board assembled furthermore has the right to delegate any of its powers to any Committee of the Board, as and when it deems it appropriate for the proper execution of the Company's aims and objectives.
- c) The business of the Company shall be supervised by the Board of the Company. The Board may incur any expenses toward the marketing of the Company and its incorporation and the Company may exercise all powers and rights to do or have done to realise its aim, capacity and objectives that are not prohibited by the Companies Act, in accordance with the provisions of the Companies Act.

11. ROLE OF THE DIRECTORS AND CHIEF EXECUTIVE OFFICER AT MEETINGS

- a) The Directors shall ensure that the Executive Officer keeps and maintains minutes of the meetings, in terms of:
 - i. The appointment of all functionaries, officials and employees;
 - ii. the names of all Directors present at every Board Meeting and that every Director present signs the attendance register kept for such purpose;
 - iii. all decisions made by the Board at all Board Meetings, including the personal details of the Directors who voted for and against the decision;
 - iv. all the activities of the Company and the Directors and that such minutes are signed, upon its adoption, by the Chairman of the Board Meeting or the Chairman of the Board at the next meeting;
 - v. keeping the minutes of any Company Meeting in one register and that the register will serve as proof of the facts therein contained, as though signed by the Chairman of the Board or any individual present at such a meeting who is authorised by the Directors of the meeting or the Directors of the next meeting to sign in the Chairman's stead and any excerpt or copy of such minutes, considered signed by the Chairman, shall *prima facie* serve as proof of the facts therein contained; and
 - vi. making the Minutes of Company Meetings available to the Directors. Any other person must, in accordance with the provisions of Article 26 of the Companies Act (71 of 2008) apply for access to the minutes, as applicable to that case.

12. **MEETING PROCEEDINGS**

- a) The Board convenes, dispatches the business of the Company, adjourns and regulates meetings as is deemed fit and as could be reasonably expected to be done.
- b) Any question or proposal that requires resolution will be decided by a show of hands, whereby the majority shall approve and ratify such resolution for adoption. Every Director is entitled to one vote, whether in the form of a showing of hands or per closed ballot, and the Chairman shall have the sole casting voting in the case of a tie.
- c) In the event that a vote per closed ballot is requested by a Director, for whatever reason, the Chairman must present such request to the Board for approval and such request shall be adopted or rejected by means of a show of hands and recorded in the minutes of the Company to serve as proof thereof, without reference to the number of votes for or against the request.
- d) In the event that voting occurs by means of closed ballot, upon request and approval by the Board, it shall be conducted as the Chairman sees fit and the result of which shall be adopted as resolution by the Board of the matter voted on by means of a closed ballot.
- e) The Directors may also participate in a Board Meeting, if necessary, by telephonic conference or electronic Skype communication, in such a manner that all persons present are able to communicate clearly and that such participation in a meeting confirms the attendance of all present at the meeting.
- f) The following will be applicable to Board Meetings:
 - i. No business shall be taken up or discussed at a Board Meeting without a quorum of Directors present at the time that the meeting goes over to resolution of business on the agenda or as agreed.
 - ii. Unless otherwise stipulated by this Memorandum of Incorporation and the Companies Act, the quorum necessary for a meeting is at least six Directors who are personally present, as set out in Clause 12(b) above.
 - iii. In the event that a quorum cannot be reached within thirty minutes of the time set for the meeting, the meeting shall be adjourned for the same day in the next week and at the same time and location of the adjourned meeting, unless the last-mentioned day falls on a public holiday. Should the latter be the case, the meeting will be postponed to the first business day following the last-mentioned public holiday and occur on the same day and location of the adjourned meeting. In the event that a quorum cannot be reached, within thirty minutes of the time set for the meeting, on that day, the Directors present shall be deemed a quorum.
 - iv. All business conducted by Directors of the Company in Board Meetings or by a committee of the Company of which he/she is a member and acts as such shall, notwithstanding subsequent apparent problems with the Director's appointment or the apparent disqualification of the Director, remains valid as though every Director present was properly appointed and qualified to be appointed a Director.
 - v. Subject to the provisions of Article 75 of the Companies Act, any Director who has a personal interest, directly or indirectly, in business before the Board such Director or Directors must disclose the nature and extent of such personal interest to the Board. The Director must also disclose all relevant information at his/her disposal to the Board, but may not participate in the discussion or final resolution of the matter.

- g. The Board as well as the Executive of the Company may make decisions without the various management bodies being present in a meeting – by having a written decision signed by all members of the different management bodies. A decision thus signed shall be duly valid and enforceable as one adopted by a meeting properly convened.

13. THE EXECUTIVE OFFICER

- a) The Company will have an Executive Officer who is, in consultation with the Chairman of the Board, responsible for day-to-day activities.
- b) The Executive Officer can be:
 - i. appointed by the Directors, appointed to the Board of the Company, upon the vacancy of a post; or
 - ii. appointed by the Board by filling the position with a person who is not a Director.
- c) In order to ensure continuity between the appointments of Boards, an Executive Officer shall be appointed for a term not longer than six months of the term of the Board that appointed the person.

14. COMMITTEES

- a) The Executive may from time to time appoint committees consisting of Directors of the Company and transfer and delegate powers to the committees the Executive deems appropriate in order to enable a committee to fulfil its mandate.
- b) The thus formed committee is to confine itself to exercising the delegated power and the prescribed rules stipulated by the Board.
- c) Upon permission of the Board, authority may also be delegated to a committee that does not solely consist of Directors of the Company and/or comprise members who are not members of the Church.
- d) Upon execution of its mandate, the committee may determine its own method of operation and procedures in order to properly and fully execute its mandate.

15. DISSOLUTION OR LIQUIDATION OF THE COMPANY

In the event of a decision of the Board to dissolve the Company, voluntarily liquidate or should the company undergo involuntary liquidation and there remains, upon satisfying all the Company's debts and obligations, further property and/or assets of whatever nature, such property and/or assets shall not be divided among the Directors of the Company, but the property and/or assets shall be given to another institution or entity that have aims and objectives that conform to that of the Company and that shall be designated at the time of or prior to the liquidation of the Company by the Directors or in the event that the Directors fail to do so, by the Church.

16. AMENDMENT OF THE MEMORANDUM OF INCORPORATION

The Board of this Company may alter or supplement this Memorandum of Incorporation by means of a special decision by the Board of the Company and in accordance with the provisions of the Companies Act.

17. **LIMITED INDEMNITY OF DIRECTORS, OFFICERS OR EMPLOYEES**

Subject to the provisions of Article 77 and 78 of the Companies Act, the Company hereby indemnifies all and any of the Company's Directors, Officers or Employees against any loss, liability or proceedings and costs and expenses incurred as a result of any proceeding or litigation against such Director, Employee or Officer related to any action or conduct by such Director, Officer or Employee in service to the Company as Director, Officer or Employee of the Company where such action is not the result of negligence, deceit or fraud on the part of that Director, Officer or Employee.