

# THE INDEPENDENT BLACK FILMMAKERS COLLECTIVE (IBFC)



**A NON PROFIT COMPANY WITH MEMBERS**  
**NPC Registration Number: 2018/240939/08**

## **THE INDEPENDENT BLACK FILMMAKERS COLLECTIVE (IBFC)**

### **CONSTITUTION**

## 1. DEFINITIONS

The following words and phrases shall mean the following in this Constitution unless the context clearly indicate otherwise:

- 1.1 “**Associate Member**” means any interested public benefit, non government or education organisation, that has been admitted into Membership at a duly constituted meeting of the Management Board.
- 1.2 “**Black people**” means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent or become citizens of the Republic of South Africa by naturalisation prior to 27 April 1994 or on or after 27 April 1994 and would have been entitled to acquire citizenship by naturalisation prior to that date.
- 1.3 “**Business day**” means any other day other than a Saturday, Sunday or national public holiday in South Africa.
- 1.4 “**Chairperson**” means the chairperson of the Board of Directors;
- 1.5 “**Code of Conduct**” means the Code of the Company approved by the Members from time to time.
- 1.6 “**Commission**” means the Companies and Intellectual Property Commission;
- 1.7 “**Company**” means the Independent Black Filmmakers Collective or any other juristic person established in terms of the provisions of the Companies Act, 2008 depending on the context of its use in this Constitution.
- 1.8 “**Corporate Member**” means a registered company, close corporation, partnership, sole proprietorship and/or other enterprise (whether public or private), established for the primary reason of conducting business that has met the requirements for IBFC Membership.
- 1.9 “**Constitution**” means the Constitution of the Company approved by the Members from time to time;
- 1.10 “**Director**” means a Director of a Company; and an alternative director appointed in respect of such a director and “**Directors**” means the elected Members who constitute the governing structure of the organisation.
- 1.11 “**Effective date**” means the date on which the Company’s Mol is filed with the Commission.
- 1.12 “**File**” means to deliver a document to the Commission in the manner and form prescribed by the Commission.

- 1.13 **“Film industry”** means the South African film and television industry, its film value chain from development, pre-production, production and distribution and all actors within this value chain.
- 1.14 **“Full Member”** means any Member in good standing conferred with voting rights, whose Membership fees are paid up whether it be an individual or corporate Member engaged in the South African Film and Audiovisual industry across the creation, pre- production, production, distribution and sales of all forms. Associate, Honorary /Special Members are not full Members.
- 1.15 **“Honorary/Special Member”** means any individual who, by reason of rendering outstanding service to the Company, is admitted as an Honorary Member, by the Management Board at their discretion at a duly constituted meeting of the Management Board; any company, person or firm, which, in the opinion of the Board is sufficiently representative of a particular industry or interest and may be invited by the Board to become an Honorary/Special Member of the Company.
- 1.16 **“Individual Member”** means those Members who are Professionals in any specialised fields in filmed content production and consumption who has been admitted into Membership at a duly constituted meeting of the Board.
- 1.17 **“Member”** means **voting Corporate and Individual Members**, each of whom has an equal vote in any matter to be decided by the Members of the Company, and **Non-voting Associate Members and Honorary / Special Members who** shall have no vote in any matter to be decided by the Members of the Company other than as expressly provided for in this document. The definition also includes a Member of any Committees of the company established from time to time to be construed according to the context of its use.
- 1.18 **“Membership Register”** means the register of Member established or maintained by the Company in terms of the Companies Act, 2008.
- 1.19 **“Mol”** means the Memorandum of Incorporation of the Company, which shall become binding on the Company with effect from the date upon which it is filed with the Commission.

- 1.20 “**Ordinary resolution**” means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution.
- 1.21 “**Record date**” means the date upon which a Company determines the identity of its Members.
- 1.22 “**Related person**” in relation to two persons means persons who are married, live together in a relationship similar to a marriage or persons separated by no more than two degrees of natural or adopted affinity as defined in section 2(1) of the Companies Act, 2008.
- 1.23 “**Office**” means the registered office of the Company from time to time.
- 1.24 “**Special resolution**” means a resolution adopted with the support of more than 75% of the voting rights exercised on the resolution.
- 1.25 “**Voting rights**” means the rights of a Member to vote in connection to a matter.

## 2. **NAME OF ENTITY**

The name of the organization is the **Independent Black Filmmakers Collective**; the shortened name of the Company is the IBFC used interchangeably with the Company.

## 3. **TYPE AND STATUS OF ENTITY**

- 3.1 The Company is a juristic person incorporated under the Companies, incorporated as a not-for-profit with Members in terms of the Companies Act, 2008.
- 3.2 The Company shall exist in its own rights separate from its Board of Directors and Members and shall continue to exist notwithstanding any changes made to its Board of Directors, Members and employees from time to time.
- 3.3 The Company’s MoI and any rules of the Company including the Code of Conduct, operational policies are binding between the Company and each Member, amongst Members of the Company, the Company and all directors and office-bearers or any Member of a Board Committee. All Parties must

familiarise themselves with the Constitution, MoI, Code of Conduct and any Company rules that may apply from time to time.

- 3.4 The Company shall be able to acquire, hold and alienate property, enter into agreements and perform any other duties necessary to fulfill its aims and objectives within the ambit of the law.
- 3.5 The Company may acquire and hold securities issued by a profit company, directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objectives.
- 3.6 The Company shall be able to hold assets whether tangible or intangible separate from its Members which are for the exclusive and sole use of the Company whether by way of a loan, donation or any preferred arrangements.
- 3.7 The Company shall be able to sue or be sued in its own name and the Board may authorise any person(s) to act on behalf of the Company and to sign documents and all necessary steps required in all suits, legal proceedings or any arbitration.
- 3.8 The Company will keep a record of everything it owns including all its assets, liabilities, securities and incomes.
- 3.9 Notwithstanding the provisions of Clause 3.1 – 3.8 above:
  - 3.9.1 The Company is not formed and does not exist for the purpose of carrying on any business whose objective is the acquisition of gain by the Company or its individual Members. Trade in profit making activities is solely for the purpose of and pursuance of achieving its aims and objectives in Clause 4 of this Constitution.
  - 3.9.2 Members and office-bearers have no rights in the property or other assets of the Company solely by virtue of their Membership or holding positions as office bearers.
  - 3.9.3 The income and property of the Company derived shall be solely used towards the payment of expenses, acquisition of property and the promotion of its objects and processes.
  - 3.9.4 The Company may not give any of its money or property to its Members or Board of Directors except for reasonable remuneration for office-bearers or a Member who has provided a service to the Company.

3.9.5 The Company shall not provide a loan, secure a debt or an obligation, or provide any direct or indirect financial assistance to a director or interrelated company or a person related to a director of the company.

#### **4. COMPANY OBJECTIVES**

4.1 The Company exists to promote the interests of the Black Participation in the Film and Audio-visual industry in South Africa.

4.2 The objective of the Company is to promote and lobby to protect the interests of the Company and its Members, affiliated associations, government stakeholders at national, provincial and local level and the South African public.

4.3 The Company aims to uplift the industry through skills enhancement and development where required to ensure free and fair competition in the South African Film and Audiovisual industry value chain and to effect meaningful transformation through the value chain.

4.4 The Company is committed to assist and mentor start-up companies and new entrants in the industry to ensure that knowledge is imparted to these new companies to enable them to succeed in what is a highly competitive and regulated environment.

4.5 The company is committed to effective execution of duties to its members and operates under strict governance systems, the laws and Constitution of South Africa and will endeavour to support good governance among its members

#### **5. THE COMPANY'S MAIN BUSINESS**

The Company is a collaborative business to business network and advocacy group whose business is to:

5.1 accelerate transformation and increase trade and job creation through advocating for policy changes to enable enterprise development.

5.2 accelerate the quantitative and qualitative increase in the participation of Black Film Professionals and aspirant Black Industrialists to the growth of the economy.

5.3 identify business opportunities, education and human development, information sharing and networking.

- 5.4 create multiple and diverse pathways and instruments for Black Industrialists to enter strategic and targeted industrial sectors and value chains especially as part of the digital economy and ecosystem.
- 5.5 lobby, organise and work together to create a conducive environment for sustained growth of Film and Audio-visual industry.
- 5.6 engage with each other and local and international stakeholders to address imbalances and fast track the maturity of Black Film and Audiovisual industry.
- 5.7 engage government to finance Research and Development in the Film and Audiovisual industry.

## **6. POWERS OF THE COMPANY**

- 6.1 The Company is empowered to amalgamate with other Companies having the same or similar objects of the Company.
- 6.2 The Company is empowered to establish, promote or assist in establishing or promoting or subscribing to become a Member of any association or society whose objects are similar to the objectives of the Company.
- 6.3 The Company has powers to remunerate any person/s in cash for services rendered in the formation and development of its business. to pay salaries, gratuities and pensions and establish pension schemes for its employees and office-bearers.
- 6.4 The Company is empowered to open bank accounts in the name of the Company and to draw, accept, endorse, make and execute any bills of exchange connected with the business of the Company.
- 6.5 The Company may invest any surplus monies of the Company.
- 6.6 The Company has powers to make loans, exchanges, leases and any other forms of contracts for the furtherance of its objectives.
- 6.8 The Company may acquire any movable or immovable property for the Company that will advance its objectives.
- 6.9 The Company has powers to incur directors liability insurance and establish any fund or committee to protect the interests of the Company, its Members for the protection of benefits of its employees and for the joint interests of employers and employees in the Film and Audio-visual industry.

- 6.10 The Company has powers to provide legal assistance to its Members where deemed necessary falling within its regulatory universe subject to a majority authorisation to do so in a general meeting or special general meeting.
- 6.11 The Company through its Board of Directors has powers to make, amend or repeal any rules relating to how the Company is governed that are not addressed in the Mol by publishing a copy of such rules as permitted in the Mol, filing a copy of the Rules.
- 6.12 The Company is prohibited from distributing any of its surplus, gains or assets to any person other than as an association whose objects are in the furtherance of its duties.
- 6.13 The Company does not elect to comply with the provisions of Chapter 3 of the Act.

## **7. POWERS AND FUNCTIONS OF THE BOARD OF DIRECTOR**

- 7.1 The business of the Company shall be managed and supervised by the Board in accordance with the stated objectives of the Company.
- 7.2 The Board may exercise all powers of the Company which are not excluded by a statute or this Constitution.
- 7.3 The Board will be the official spokesperson for the Company, therefore any statements made in respect of the Company must be approved by the Board.
- 7.4 The Board may delegate its rights and duties in this respect to a committee of Members constituted out of the Board. To this end, the Board must ensure that:
  - 7.4.1 at least one office bearer serves in the sub-committee;
  - 7.4.2 there are three or more people who who will constitute a sub-committee; and
  - 7.4.3 the sub-committee must regularly report back to the Board on its activities.
  - 7.4.4 the Board must in advance approve all expenditure incurred by the sub-committee , and may revoke the delegation or amend the conditions of the delegation when necessary.



7.5 The Board has powers to appoint:

7.5.1 an Executive Director to implement Company's strategy and oversee operational requirements of the Company subject to terms and conditions of employment determined by the Board.

7.5.2 any service provider from time to time to render services that are required by the Company.

7.5.3 an Auditor who is not a connected person to prepare the Company's annual financial reports.

7.8 The Board must exercise powers conferred in this Clause 7 and duties in good faith and in the best interests of the Company and accordingly;

7.8.1 exercise the degree of care, skills and diligence reasonably expected of a Director with general knowledge, skills and experience of that director.

7.8.2 not use their position or any information to gain an advantage for themselves or for another person.

7.8.3 not cause harm to the Company.

7.8.4 inform the Board as soon as reasonably possible any information that comes to their attention unless such information is immaterial, known to other directors or to the public.

7.9 the Board has the power to determine contributions payable to the Company by the Members. The Board may differentiate among Members belonging to different categories determined by it.

## **7.10 Appointment of the Board**

7.10.1 The Company shall have a minimum of 3 Directors and a maximum of 9 Directors.

7.10.2 No Director may be a 'connected person' (as defined in the Income Tax Act) in relation to any other Director.

7.10.3 No single Director shall directly or indirectly control the decision making powers relating to the Company.

7.10.4 Board vacancies shall be filled at the first ensuing General Meeting. Each Member of the Company is entitled to nominate one Director to fill such vacancy. Once the nominations have been made by the Members, the Full voting Members may vote on the nominations.

7.10.5 A vacancy that occurs subsequent to the date on which the notice of that meeting was issued shall be filled at the next ensuing General Meeting. Nominations for the vacancy may be submitted to the Chair Person /Executive Director in writing at any time before the meeting or may be made verbally or in writing during the meeting.

7.10.6 A Member appointed to fill a vacancy shall hold office for the unexpired portion of the period of office of his predecessor.

7.10.7 Each Member will be entitled to remove and replace any Director nominated by such Member at any time provided that such Member immediately notifies the Chair person , Executive Director or public officer of the company of such removal and the name and details of the person nominated in such Director's place.

7.10.8 Every Director must satisfy the qualification and eligibility requirements set out in Section 69 of the Act to become or remain a Director. An ineligible person is a person who:

- is prohibited by a court or declared a delinquent;
- is an unrehabilitated insolvent;
- is prohibited in terms of any public regulation to be a director of a company;
- has been removed from an office of trust on the grounds of misconduct involving dishonesty; or
- has been convicted in South Africa or elsewhere and imprisoned without an option of a fine or fined more than the prescribed amount for theft, fraud, forgery, perjury or an offence that involves fraud, misrepresentation or dishonesty.

7.10.9 On appointment a director has to deliver to the company a written consent to act as director.

- 7.10.10 The Board will be appointed by the general Membership at the Annual General Meeting of the Company on nomination, duly seconded and voted upon by the Members entitled to vote and present in person or represented by proxy by a show of hands, of one representative per Member, or by ballot.
- 7.10.11 The Chairperson and Vice Chairperson shall be elected by the Board, from the representatives elected to the Board.
- 7.10.12 The remaining Members of the Board shall each be the Executive Director or an experienced senior professional serving as a director of that Member, or a Member in the case of a close corporation, provided that "Director" shall also include an alternate Director, and shall be appointed as follows:
- 7.10.12.1 An independent Chairperson, elected by the Board.
- 7.10.12.2 Executive Director appointed by the Board.
- 7.10.12.3 Board Members will be constituent Members and nominated and elected by the general Membership and not to exceed 9 as follows:
- 5 x Corporate Established and Intermediate Members
  - 1 x nominated representative from Emergent Members
  - 2 x Honorary or special Members
- 7.10.13 The Board of Directors may from time to time appoint one or more candidates to the office of Executive Director on such terms and conditions as may be determined from time to time and may revoke such appointment. Such appointed Executive Director shall be appointed to the Board.
- 7.10.14 The Board of Directors shall have the power from time to time to appoint any other person as a Director as an addition to the Board, provided that no more than 3 Directors so appointed shall be Members of the Board at any one time. Any Director so appointed shall have no voting power at meetings of the Board or be taken into consideration for the purpose of constituting a quorum at meetings of the Board, provided further that such persons shall only serve on the Board for as long as determined by the Board or a General Meeting.
- 7.10.15 A Director once appointed shall remain in office until s/he either resigns, is disqualified or is removed in terms. At least one third of the elected Directors shall be available for re-election at the end of the term.

7.10.16 The Director appointed by a Member who is under suspension or whose financial responsibilities to the Company are in arrears for more than 90 days is ineligible to vote or attend any meeting of the Board.

7.10.17 Although the Company's Membership is national, the Board may appoint provincial representatives who will be responsible for furthering the aims of the Company in those areas and would be required to hold at least 2 meetings per annum with local Members.

7.10.18 The Board may, at the first or any subsequent meeting following the annual election, appoint a Treasurer from among its Members.

7.10.19 The Treasurer, when or if appointed, shall be responsible for managing the funds of the Company, to the extent consented to by the Board.

## **8. AREA AND SCOPE OF OPERATION**

8.1 The Company will conduct business in South Africa including seeking contributions.

8.2 The Company may conduct business outside South Africa subject to approval by its Members to do so by way of a special resolution.

8.3 The Company will work with similar Companies and organisations in the rest of Africa and globally to further the interests of its Members across the film value chain and other sectors that provides services to the industry.

## **9. COMPANY MEMBERSHIP**

9.1 The Company's Members are comprised of persons admitted to Membership from time to time namely, whether Black individuals and majority owned Black companies.

9.2 There are two types of Membership; voting and non-voting Members as defined in Clause 1 of this Constitution.

9.3 Individual and company Members are categorised according to tiers stipulated in Table 1 below.

9.4 The Company shall not discriminate unfairly against Members and shall have regard to the right to equality protected in terms of section of the Constitution of the Republic of South Africa.

- 9.5 Membership to the Company is not transferable to any other person or Company.
- 9.6 All applications are vetted through a due diligence system that confirms compliancy and true reflection of documents submitted. This is to be done by the board of a committee set up by the board.
- 9.7 Applicants for Company Membership are subject to a two thirds majority vote of those present at a duly constituted meeting of the Management Board.
- 9.8 Membership is only effective when an applicant for Membership has paid in full the prescribed subscription fee or an installment if so agreed by the Management Board.
- 9.9 Members remain autonomous, they have a right to dissociate, disagree and state any dissenting view from that of the majority or other decisions of the Company.
- 9.10 No Member may directly or indirectly have any personal or private interest in the Company.
- 9.11 Members are obliged to pay up their subscription fees in advance either monthly or once off by 28 February of each year.
- 9.12 The Company shall keep and maintain a Membership registry.
- 9.13 The Founding Members/Incorporators will have 1 vote over and above 1 voting right that each Member is entitled to.
- 9.14 Each voting Member is entitled to 1 vote.
- 9.15 Each Member is entitled to have access to the annual financial statements of the Company including access to reports, notices, publications issued by the Company.
- 9.16 Each Member is entitled to attend and speak at general meetings of the Company.

	Tier 1 : Established Member	Tier 2 : Intermediate Member	Tier 3 : Emergent Member
Years of Experience	Established Member” means those Corporate or Individual Members who with 8-15+ years experience in the film and television, audio visual content practitioners, who have a proven track record in the industry and have worked in multiple areas of responsibility across the entire industry value chain, and/or have a company that has been in operation for more than 5 (five) years.	Intermediate Member” means those Corporate or Individual Members who have 4 –7 years experience , having worked with other teams and can show an impressive filmography and have a company that has been in operation for 3(three) to 5 (five) years.	Corporate or Individual new entrants into the industry, 0-3 years experience, recent film school graduates with limited experience, and/or any interested registered company, that has been in operation for less than 3 (three) years
Number of Films, Shows , Projects	3-5 theatrically released feature films,  5 - 10 + documentaries,  5-10+ television fiction and/or non-fiction programmes  5-10+ commercials  25+ Micro Budgets Films  25 short films	1-2 theatrically released feature films,  no less than 4 documentaries,  no less than 4 television fiction and/or non-fiction programmes,  no less than 4 commercials  15 - 25 Micro Budgets Films  15 - 25 short films	No theatrically released feature films, Portfolio of Evidence,  entry into documentary film production value chain,  Worked in industry as crew/assistant, in television fiction and/or non-fiction programmes, Micro Budgets Films , commercials, short film,
Formal Qualifications	Graduates with +10 years’ experience	Graduates with +7 years’ experience	Recent Graduates . Completed degree or 3 national SETA certified diploma,  No formal training at NQF level 6,
Compliance	good standing		

*Table 1: Membership tiers for individuals and companies*

## 10. RIGHTS AND OBLIGATIONS OF Members

10.1 Each Member must promote the Company’s objectives ensure that they conduct themselves in a manner that will not put the Company’s name in disrepute.

- 10.2 Only Members in good standing, with paid up annual Membership fees are eligible to vote at meetings of the Company and eligible to stand for election as an office-bearer or appointment to serve in a Board Committee.
- 10.3 Each Member must contribute towards the achievement of Company objectives by actively participation possibly through various engagement and communication platforms.
- 10.4 Each Member is entitled to attend events, forums and any other meetings hosted by the Company from time to time in the furtherance of the Company's objectives.
- 10.5 Members are entitled to regular and timeous communication on matters related to the administration, management and implementation of the Company's objectives through programmes.
- 10.6 Each Member must abide by the Company's MoI, Constitution, Code of Conduct, the Companies Act and any other laws, regulations and rules that apply to the Company and its operations.
- 10.7 The Board's reserves the right to suspend, revoke existing or refuse to grant a new application for Membership, such reasons will be communicated to a Member or applicant in writing by the Chairperson within 21 days after such a decision has been taken.

## **11. APPLICATION PROCESS FOR MEMBERSHIP**

- 11.1 Applications for admission as a Member must be addressed in writing to the Chairperson /Executive Director. Such applications must contain a commitment to abide by the MoI, Constitution and the Code of Conduct of the Company and a commitment to meet the financial obligations of Membership for the entire duration of Membership.
- 11.2 The Board shall determine procedures for the admission of Members.
- 11.3 Subject to the provisions of this Constitution, all persons, companies, corporations and associations from the South African Film and Audiovisual industry value chain will be eligible for Membership of the Company by approval of the sitting Board.
- 11.4 Candidates for Membership and accepted Members shall disclose such information as reasonably and equitably requested by the Board directly or

through sub-committee from time to time and under appropriate and clearly defined conditions of confidentiality

- 11.5 Applications for Membership shall be considered by the Board at its first meeting after the date of receipt thereof by the Chairperson /Executive Director, and the applicant concerned shall be notified in writing by the Chairperson /Executive Director of the decision of the Board within 7 days of the date of such decision.
- 11.6 It is the responsibility of the Board to scrutinise the admissibility of a candidate for Membership on the basis of the application for admission and the conditions as set out in this Constitution.
- 11.7 The decision to admit an applicant for Membership or to reject the application shall be at the sole and absolute discretion of the Board. Where requested by an applicant, the Board will give reasons for its decisions.
- 11.8 The Board has the final say; no decision of the Board to reject an application may be appealed.
- 11.9 Every Member of the Company shall, on becoming a Member, sign a written consent to become a Member and such signature shall bind the Company and the Members to observe all the provisions of the MOI, Constitution, Code of Conduct and the Companies Act No. 71 of 2008.

#### **11.10 Suspension and Termination of Membership**

11.10.1 Unless an alternative arrangement has been agreed to in writing between a Member and the Company, a Member who is no longer in good standing may be suspended or expelled:

11.10.1.1 if the subscriptions or other charges due by him to the Company are more than 3 months in arrears; or

11.10.1.2 as a result of gross misconduct resulting out of contravening the MOI, Constitution, Code of Conduct and the Companies Act.

11.10.2. Any Member who has been suspended shall, for the period of such suspension, remain liable for Membership fees and any other payments due to the Company but will not be entitled to:

11.10.2.1. vote at or attend any meeting

11.10.2.2. receive notices, minutes or circulars relating to the Company's activities



- 11.10.2.3. any other benefits of Membership.
- 11.10.3 The Board shall have the power to suspend or terminate a Member's Membership of the Company under the following circumstance:
- 11.10.3.1 if a Member is guilty of conduct detrimental to the interests and/or objects of the Company;
- 11.10.3.2 when a Member dies, is declared by a court to be insane or incapable of managing his or her own affairs;
- 11.10.4 Members who are non-compliant on any obligations will be provided with a written notice requiring them to remedy non-compliance within 1 months failure of which will result in the suspension of their Membership.
- 11.10.5 The Board shall furnish their reasons for suspending or terminating a Member's Membership.
- 11.10.6 Members have the right to be heard by the Board within a period of 14 days after receipt by the Chairperson /Executive Director of a notice to be heard in relation to Clause 11.10.3 above.
- 11.10.7 A Member will automatically cease to be a Member of the Company if such Member is dissolved, liquidated/sequestrated whether provisionally or finally, or placed under judicial management, whether provisionally or finally is placed under curatorship, or is de-registered or a comparable action occurs under the insolvency laws of the Members jurisdiction of the Company.
- 11.10.8 No Member whose Membership has been terminated whether as a result of automatic termination, resignation, expulsion or otherwise, will have any claim against the assets of the Company or for refund of any monies paid by it to the Company or of any nature whatsoever but shall remain fully liable to the Company for all amounts, contributions and Membership fees due and payable by such Member at the date of termination of such Member's Membership.
- 11.10.9 Upon expulsion of a Member, all monies due to the Company by such Member shall become payable. If payment thereof is not made within 30 (thirty) days, the Board may take such steps as it deems necessary to secure payment.
- 11.10.10 An extract from the books and records of the Company made by the Chairperson /Executive Director will be sufficient prima facie proof of the

amounts in arrears and the period for those amounts or any part thereof is in arrears. If the amounts in arrears and/or the period for payment of those amounts, or any part thereof, are contested, verification by the auditor of the Company will be made, and the decision of the auditor will be final.

11.10.11 A Member who has resigned or whose Membership has been terminated as contemplated above, may be re-admitted to Membership on such conditions and after such period as the Board may, in its sole discretion, determine.

## **12. RESIGNATION OF MEMBERS**

12.1 A Member may resign at any time by giving 1 calendar month written notice to the Executive Director. Any money owed by a Member shall immediately become due and payable to the IBFC.

12.2 A Member who resigns shall not be entitled to any refund and shall be liable for its financial and/or any other responsibilities to the Company, including its financial obligations as given in the budget for the 12 months notice period, as well as any arrears which are due up to the date of expiry of his/her period of notice. This includes the honouring of long term commitments undertaken by the Member in writing (and provided the Member has obtained all corporate approvals, including board approval) up to the predetermined end of such commitment as was previously agreed to by the Member.

## **13. TYPE OF MEETINGS**

### **13.1 Directors Meetings**

13.1.1 The Directors will endeavor to meet together at least once a month for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.

13.1.2 Special meetings of the Board shall be called by the Chairperson whenever s/he deems it or upon the request of 2 Board Members. Such a meeting must be convened within 21 days or 30 days if one of the matters to be discussed

is to appoint a new Board Member. A notice of such special meeting must include the matters to be discussed at the Board meeting.

- 13.1.3 A quorum at Board Meetings will consist of more than 50% of the directors constituted by at least 4 Directors or their duly appointed alternates who are present in person.
- 13.1.4 If within 15 minutes after the appointed time for a meeting to begin, a quorum has not been reached, the Board meeting shall stand adjourned to a day not less than 7 days and not more than 14 days from the date of the meeting at a time and place determined by the Chairperson. At such an adjourned meeting of which written notice shall be given, the Members present shall form a quorum.
- 13.1.5 The authority of the Board to determine the manner and form of providing notice of its meetings, is not limited or restricted by this document.
- 13.1.6 Due and proper notice of a Board Meeting shall be 7 business days before the meeting. Such notice must include the agenda and, if possible, any resolution to be proposed at the meeting.
- 13.1.7 Notices may be sent in electronic format and for purposes of this document a notice sent in electronic format will be deemed to be delivered to the Director 24 hours after it was sent provided that no undelivered message is received by the sender.
- 13.1.8 The conduct of meetings shall generally be governed in terms of Section 73 of the Act or as the Board sees fit.
- 13.1.9 Where the Chairperson has failed to give the required notice of the Board meeting, or there was a defect in the giving of the notice, such meeting may proceed, provided that all of the Directors acknowledge actual receipt of the notice, or are present at the meeting or waive notice of the meeting.
- 13.1.10 A Board meeting may be conducted by electronic communication, or one or more Directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 13.1.11 Board meetings may be conducted face-to-face or electronically, which would allow Members to be present and participate through electronic means.

- 13.1.12 The Chairperson shall chair all meetings or the Vice Chairperson in the absence of the Chairperson.
- 13.1.13 The Directors may choose a chairperson if both the Chairperson and Vice Chairperson are not present within 15 minutes of the appointed time.
- 13.1.14 At every Board Meeting the Minutes of the last preceding Board Meeting shall be read and signed by the presiding officer after confirmation.
- 13.1.15 It shall be competent for a meeting to authorise the presiding officer to sign and confirm minutes as correct if after perusal thereof he is of the opinion that the Minutes reflect a true record of the proceedings.
- 13.1.16 The Executive Director of the Company shall attend all Members' meetings and Board meetings and shall not in his capacity as Executive Director have a casting vote in addition to any vote he may have by virtue of being a Director of the Company.
- 13.1.17 A decision that could be voted on at a Board meeting may instead be adopted by written consent of the required number of Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.
- 13.1.18 All matters for consideration by the Board shall be decided on motion duly seconded and voted upon by show of hands or by ballot, and shall unless otherwise provided herein, be decided by the votes of a majority of the Members of the Board present in person or represented by proxy.
- 13.1.19 Each Director shall be entitled to one vote in regard to all business brought before the Board. The Chairperson of the Board meeting shall have a casting vote in the event of a tie.
- 13.1.20 All Board Members must abide by the majority decision.
- 13.1.21 For a special resolution to be adopted at a Board Meeting, it must be supported by at least 75% of all the Directors while an ordinary resolution must be supported by more than 50% of the Directors who voted on the resolution.
- 13.1.22 Resolutions adopted by the Board must be dated and sequentially numbered; and are effective as of the date of the resolution, unless the resolution states otherwise.

13.1.23 Proper minutes and attendance records must be kept for all Board meetings and any of its committees, of the Company, and include in the minutes any declaration of personal financial interest given by notice or made by a Director as and for any resolution adopted by the Board.

13.1.24 The minutes shall be confirmed as a true record of proceedings by the next meeting of the general Members, and shall thereafter be signed by the Chairperson.

## **13.2 MEMBERS MEETINGS**

13.2.1 A General Meeting of Members of the Company shall be held at least 2 times per annum on a date determined by the Chairperson. The Board may call a Members' meeting at any time.

13.2.2 The Chairperson of the Board, or in his/her absence a Vice Chairperson, shall be entitled to chair at every General Meeting. If there is no Chairperson or Vice Chairperson present within 10 minutes after the time appointed for holding the meeting, or is unwilling to act, the Directors may choose a Chairperson/Members present shall choose 1 of them to be Chairperson.

13.2.3 If the Company is unable to convene a meeting because it has no Directors or because all of its Directors are incapacitated then the Company authorises any Member to convene a meeting in these circumstances.

## **13.3 Requirement to hold meetings**

13.3.1 The Company is required to hold Members meetings in the following circumstances:

13.3.1.1 when adopting any Ordinary Resolution or Special Resolution;

13.3.1.2 to fill a vacancy on the Board; or

13.3.1.3 when one or more written and signed demands for such a meeting are delivered to the Company and signed by Members and each such demand describes the specific purpose for which the meeting is proposed;

13.3.1.4 Special General Meetings shall be called whenever desired by a majority of the Board or upon a requisition signed by not less than 10% of the Members

of the Company in good standing and entitled to vote. Such special General Meetings shall be called within 21 days from the date of decision of the majority of the Board or from the date of receipt of the requisition by the Chairperson.

13.3.1.5 Any Member, may apply to a court for an order setting aside such a demand on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.

13.3.1.6. At any time before the start of a Members meeting, a Member who submitted a demand for that meeting may withdraw that demand, and the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.

#### **13.4 Annual General Meetings (AGMs)**

13.4.1 The Company shall in each year hold an AGM of the Members within or not more than 6 months after the end of every financial year of the Company; provided that not more than 15 months shall be permitted to elapse between the date of one AGM and that of the next meeting.

13.4.2 Notice of an AGM must be given to Members in writing by the Chairperson /Executive Director not less than 15 (fifteen) business days before the date of such meeting.

13.4.3 The AGM shall deal with and dispose of all matters prescribed by the Act. All business laid before any other general meeting shall be considered special business.

13.4.4 If any business that would ordinarily be concluded at the AGM cannot be concluded for whatever reason, a General Meeting can be called to transact such business.

13.4.5 At each AGM the agenda must provide for the attendance & apologies, confirmation of the agenda, confirmation of the minutes of the previous AGM, the Chairperson's report, the Director's report, the auditor's report, audited financial statements for the immediately preceding financial year, an Audit

Committee report, the election of Directors, to the extent required by the Act or the Company's Mol, the appointment of an auditor for the ensuing financial year; and an audit committee, changes to the company Mol, Constitution or Code of Conduct, any general matters raised by Members, with or without advance notice to the company and closing of the meeting.

### **13.5 Members acting other than at a meeting**

Notwithstanding Clause 15.3 above, an ordinary resolution or special resolution that could be voted on at a Members meeting may instead be voted on in writing, via a round-robin resolution if:

- 13.5.1 the resolution is submitted to Members entitled to exercise voting rights in relation to the resolution; and
- 13.5.2 is thereafter voted on in writing by the Members within 20 business days after the resolution was submitted to them.
- 13.5.3 Resolutions taken in terms of this Clause has the same standing as an ordinary resolution or Special Resolution at a properly constituted Members meeting.
- 13.5.4 The Company must deliver a statement with the results of a vote within 10 business days after adopting a resolution, or conducting an election of Directors including the consent process or election to every Member who was entitled to vote on or consent to the resolution, or vote in the election of the Director.

### **13.6 Notice of Meetings**

- 13.6.1 Notice of a Members meeting must be given to Members in writing by the Chairperson /Executive Director not less than 15 business days before the date of such meeting.
- 13.6.2 The notice for Special General Meetings must be given at least 5 days and not shorter than 4 hours at the discretion of the Chairperson.
- 13.6.3 The notice must include the date, time and place for the meeting, the general purpose of the meeting and a reasonably prominent statement that a Member

entitled to attend and vote at the meeting is entitled to appoint a proxy to attend to participate in and vote at the meeting in the place of the Member. A prescribed form must be completed by a proxy and submitted to the Chairperson. Two proxies must be identified each year for this purpose so that they are also vetted accordingly.

13.6.4 Notices may be sent in electronic format and for purposes of this document a notice sent in electronic format to the Members email address. To minimise any omissions, Members must ensure that their email address are updated from time to time.

### **13.7 Electronic participation in Members' meetings**

13.7.1 Members meeting may be conducted entirely by electronic communication or one or more Members to participate by electronic communication in all or part of a Members meeting that is being held in person, provided that the electronic communication employed ordinarily enables participants in the meeting to communicate concurrently with each other without an intermediary and to participate effectively.

13.7.2 A resolution signed by the requisite majority or percentage of Members who were connected electronically shall be deemed to have been passed on the date on which the resolution was signed by the Member last to sign it. Documents may be signed by one or more Members who participated in the electronic meeting where:

13.7.2.1 all such Members remained connected for the duration of the electronic meeting;

13.7.2.2. the subject matter of the resolution has been discussed; and

13.7.2.3. the Chairperson of the meeting or any other Member certifies in writing that the aforementioned requirements have been met,

13.7.3 Electronic participation at meetings must be preceded by a notice that inform Members of the availability of this form of participation, and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication,.

13.7.4 Further, Members must be informed that access to such electronic means of communications is at the expense of the Member or proxy.



## 14. PROCEDURE AT GENERAL MEETINGS

- 14.1 No business shall be transacted at any General Meeting unless a quorum of Members is present. The quorum shall be more than 50% of the Members entitled to vote.
- 14.2 If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the following week or if that is a public holiday, to the next succeeding business day at the same time and place and if there is no quorum at such adjourned meeting the Members present will be deemed to constitute a quorum.
- 14.3. The 30 minutes limit may be extended by the Chairperson presiding at the Members' meeting for a reasonable period on grounds that:
- 14.3.1 there are exceptional circumstances including but not limited to weather, transportation or electronic communication that have hindering the ability of Members to be present at the meeting including those who have communicated their inability to attend.
- 14.4 If a quorum is not present when a matter is called on the agenda, consideration of that matter may be postponed to a later time in the meeting, without motion or vote, if there is other business on the agenda.
- 14.5 A meeting may be adjourned automatically, without motion or vote, unless the location of the meeting is different, adjourned to a date determined by the Chairperson on written notice to the Members. Such a meeting must take place no less than 5 business days but no later than 21 days from the date of the meeting at a date, time and place elected by the Chairperson.
- 14.6. The Chairperson of a General Meeting may, with the consent of the meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **15. PROCEEDINGS AT MEETINGS**

- 15.1 The Chairperson and in his absence the Vice Chairperson shall chair all meetings.
- 15.2 If the Chairperson or Vice Chairperson is not present within 10 minutes after the time meeting start time or unable to chair, the Members present shall elect a Chairperson for that meeting.
- 15.3 Minutes of the last preceding General Meeting shall be read and signed by the presiding officer after confirmation.

## **16. VOTING AT MEMBERS MEETING**

- 16.1 All resolutions to be considered at any Members' meeting shall be decided by a majority of votes cast by Members present in person or by proxy by a show of hands who are entitled to vote.
- 16.2 Every Full Member will have one vote at a meeting of the Company; and Founding Members 2 votes.
- 16.3 In the case of an equality of votes, the Chairperson will have a casting vote.
- 18.4 All Members must abide by the majority decision.

## **17. MEMBERS RESOLUTIONS**

- 17.1 All resolutions must be in writing. The resolution must include the reason for the resolution and the effect of the resolution.
- 17.2 Resolutions are valid for a period of 3 months from the date of adoption. If the process is not complete within the specified 3 months, a new resolution will have to be adopted on the process.
- 17.3 For an ordinary resolution to be adopted at a Meeting, 50% (fifty percent) of the Members who voted on the resolution must support it.
- 17.4 Special resolutions are considered to be adopted at a meeting if supported by at least 75% of all Members.
- 17.5 A special resolution at a General Meeting will be required in order to:
  - 17.5.1 amend the Company's Mol;

17.5.2 Constitution;

17.5.3 Code of Conduct;

17.5.4 approve the voluntary winding up of the Company.

17.5.5 A resolution in writing, signed by the Board on behalf of the Members entitled to vote or their proxies shall be as valid and effectual as if it has been passed at a meeting of the Company duly convened and held, provided that such resolution is duly inserted in the minute book of meetings of the Company.

## **18. RECORDS OF MEETINGS**

18.1 Proper minutes and attendance records must be kept for all meetings of the Company.

18.2 The minutes shall be confirmed as a true record of proceedings by the next meeting of the Board or of general Members and signed by the Chairperson.

18.3 Minutes shall thereafter be kept safely and available for Members to inspect.

## **19. NON-Members OF THE COMPANY**

19.1 The Board is empowered to deal with non Members in the best interests of the Company and to make such agreements or arrangements and reach such accommodations with such persons as it deems necessary subject to the following conditions:

19.1.1 such arrangements must be approved by special resolution of the Board at a meeting with the support of at least 75% of all Board Members;

19.2.2. arrangements must be temporary subject to review by the Board on a regular basis. Management must report back on the arrangements at each Board Meeting or at such frequency as required by the Board.

19.2.3 the Company reserves the right to cancel such arrangements immediately once they have served their purpose or where continuing with the arrangement is not in the best interests of the Company or its Members.

## **20. MAINTENANCE OF COMPANY RECORDS**

- 20.1 The Company will keep a record of everything it owns including properties whether corporeal or incorporeal, income from different type of sources including liabilities.
- 20.2 The Company will keep a record of the Directors and office-bearers including but not limited to copies of identity documents, curriculum vitae, declarations of financial interests, sworn affidavit attesting to fitness to be a Director.

## **21. SOURCES OF FUNDING**

The Company will be funded from a combination of the following sources towards the achievement of its objectives:

- 21.1 Annual Membership fees.
- 21.2 Income earned from surplus monies invested or deposited in any bank/investment accounts.
- 21.3 Donation and bequests from trusts, deceased estates etc.
- 21.4 Income derived from the sale of services, hosting of events and securities held in other for profit companies.
- 21.5 Grants received from any level of government or international organisations.

## **22. FINANCE AND REPORTS**

Payment authorisations, withdrawal of funds and other documents requiring signatures on behalf of the organisation shall be signed by at least two persons authorized by the Board to do so.

## **22.1 FINANCIAL YEAR END**

The financial year end of the organization shall be end of February each year .

## **22.2 Financial Report**

22.2.1 The Board must ensure that proper records and books of account which reflect the affairs of the organisation are kept, and within six months of its financial year end a report is compiled by an independent registered Accounting Officer stating whether or not the financial statements of the organisation are consistent with its accounting policies and practise of the Company.

22.2.2 If the Company has surplus funds that can be invested , the funds may only be invested with registered financial institutions. These institutions are listed in Section 1 of the Financial Institutions ( Investment of Funds ) Act , 1984. The Company can also acquire securities that are listed on a licensed stock exchange or set out in the Stock Exchange Control Act, 1985 .

## **22.3 INDEMNIFICATION AND DIRECTORS INSURANCE**

22.3.1 For the purpose of this section, a Director includes a former director, an alternate Director, prescribed officer and a committee Member, irrespective of whether or not the person is also a Member of the company's Board of Directors.

22.3.2 The Company may not directly or indirectly pay any fines or penalties that may be imposed on a Director who has been convicted of an offense in terms of any national legislation.

22.3.3 Subject to a resolution of the Board of Directors, the Board may:

22.3.3.1 advance expenses to a Director to defend litigation in any proceedings arising out of that Director's service to the Company and may directly or indirectly indemnify a Director for expenses irrespective of whether it has advanced those expenses, if the proceedings are abandoned.

- 22.3.4 The Company may purchase insurance to protect a Director against any liability or expenses for which the Company is permitted to indemnify a Director.
- 22.3.5 The Company against any contingency including, but not limited to any expenses that the Company is permitted to advance in accordance with section for any liability for which the Company is permitted to indemnify a Director.
- 22.3.6 The Company is entitled to claim restitution from a director of the Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with this section.

## **23. AMENDMENT TO THIS CONSTITUTION AND OTHER DOCUMENTS**

This Constitution may be amended as follows:

- 23.1 to correct any defect in the document by publishing a notice of alteration as required by the Constitution or the Rules of the Company;
- 23.2 at any time pursuant to a special resolution to amend the Constitution as proposed and adopted by the full Members.
- 23.3 Only a resolution passed by not less than two thirds vote of the Members at attendance at an annual general meeting or a special general meeting can effect any change to the Constitution.
- 23.4 A written notice to amend the Constitution must be sent to each Member by electronic email at least 21 days before a general meeting to consider the proposed changes.
- 23.5 Any addition, repeal or addition to this Constitution must be through a special resolution supported by 75% of the full Members present at a meeting in person or proxy and entitled to vote.
- 23.6 No amendments shall be made to allow the Company to cease to exist, change the non profit making nature of the Company or allow any income or funds of the Company to be used for purposes that do not promote the achievement of the objects of the Company.

## **24. DISSOLUTION OF THE COMPANY**

- 24.1 The Company may dissolve or close down if at least two thirds of the Members present and voting at a meeting convened for the purpose of considering such matter, are in favour of closing down.
- 24.2 When the Company closes down it has to pay off all its debts. Any property or monies left over should not be paid or given to Members of the organisation. It should be given in some way to another non-profit organisation that has similar objectives. The organisation's general meeting can decide what organisation this should be.

This constitution was approved and accepted by Members of the **Independent Black Filmmakers Collective** at a special general meeting held on 4 APRIL 2019.