

CONSTITUTION

OF

AIRCO

**Association of Independent Record
Companies of South Africa**

Preamble

We the members of the Association of Independent Record Companies of South Africa, commit ourselves to realizing the true potential of the South African music recording sector.

We believe that AIRCO as the major stakeholder driven by the independent recorded music sector will be a key driver to align the music industry to the state's vision of South Africans accruing economic benefit from a vibrant South African cultural industry.

We support the successful transformation of the cultural industries which will see increased ownership of the entire cultural industries value chain, production, distribution and most importantly ownership, fall into the hands of South Africans.

We recognize that the South African recording industry is not merely an economic driver and potential income generator both locally and internationally but deals with intellectual property related to the representation of a South African identity.

As members of AIRCO we commit ourselves to transformation of the sector, skills development, broad based black economic empowerment, fair trade, market access for emerging companies and support strategies to unlock the potential of the South African music.

Our underpinning philosophy is that South African record companies need to align themselves to the global context of the battle for cultural, social and economic rights as we give life to cultural diversity within our country.

We commit ourselves to the preservation, conservation and promotion of South African culture, language and diversity through our music business and in so doing will strive to foster market access, wealth creation and activate lobbying of the public and private sectors in the interests of independent creators of indigenous music.

1. **NAME**

1.1. The name of the Association is the Association of Independent Record Companies of South Africa (referred to herein as "AIRCO" or "the Association").

2. **OBJECTIVE**

2.1. The Association's primary objective is to represent independent record companies in South Africa in all aspects of the music industry and to promote independent companies generally.

2.2. The Association's secondary objectives are as follows:

2.2.1 To create a database of independent record companies in South Africa;

2.2.2 To develop and promote professionalism amongst the independent record companies;

2.2.3 To empower members of the Association through skills development programmes and other training activities;

2.2.4 To act as a clearing house for information relating to South African music;

2.2.5 To promote mutual understanding and co-operation among independent record companies and other stakeholders at all levels of the music industry.

2.3. The Association's tertiary objective is to structure and formalise partnerships and Associations with other independent recording Associations, nationally and internationally.

3. LEGAL PERSONALITY

- 3.1. The Association is a juristic person and, as such, has rights and obligations, assets and liabilities, and the capacity to sue and be sued in its own name and is registered in terms of section 21 of the Companies Act, as an Association not for gain.
- 3.2. The Association will continue its existence notwithstanding changes in the composition of its membership or office bearers.

4. MEMBERSHIP

- 4.1. Membership of the Association shall be open to:
 - 4.1.1. All persons (natural or juristic) and institutions operating as independent music record companies or persons;
 - 4.1.2. All other persons and institutions interested in the purposes of the Association, and upon approval of their written application for membership by the Board.
 - 4.1.3. The founding members of the Association, at the inauguration thereof, will be the following, namely:
 - 4.1.3.1 Musa Nhlapo
 - 4.1.3.2 Carmen Alexander
 - 4.1.3.3 Harvey Roberts
 - 4.1.3.4 Irfaan Gillan
 - 4.1.3.5 Ken Haycock
 - 4.1.3.6 Percy Sithathu
 - 4.1.3.7 Antos Stella

- 4.2. Friends of the Association shall not be entitled to a vote, or hold any office in the Association, or hold any position on the Board.
- 4.3. Members shall:
 - 4.3.1. pay annual fees;
 - 4.3.2. abide by and defend the Association's constitution where and when necessary;
 - 4.3.3. observe and attend scheduled meetings;
 - 4.3.4. use their best endeavours to improve the level of cooperation and synergy in the music industry and help others to achieve this goal and generally for further the aims and objects of the Association;
 - 4.3.5. participate in all the activities of the Association as shall be advised by the executive council or the general meeting.
- 4.4. Members will have the following rights:
 - 4.4.1. to vote and contest for leadership; and
 - 4.4.2. to get the support and services (in so far as the Associations resources will allow) of and from the Association with regard to skills development.
 - 4.4.3 to use, on such terms and conditions as may be determined by the Board, the resources of the Association.

5. THE BOARD

Annual General Meeting

- 5.1. The founding members shall convene a meeting to establish a Board for the first term until the Annual General Meeting.
- 5.2. The Board shall establish a Management Structure of the Association to deal with the organisations' daily activities.
- 5.3. The Board shall be entitled to decline any application for membership, and provide reasons therefore if requested to do so by the Applicant.
- 5.4. The Board will have the power to terminate the membership of any member on such grounds as the Board shall meet: provided that no such termination shall be resolved unless such member:
 - 5.4.1. shall first have been given written notice of the Board's intention to so terminate the persons membership, which notice shall afford the affected member 30 days within which to make representations, if any, regarding the Board's intention.; and
 - 5.4.2. the Board shall after considering the representations made by the member make its determination and notify the person accordingly.
- 5.5. Members will not be liable for any of the obligations and liabilities of the Association solely by virtue of their status as members of the Association.

- 5.6. Members, other than Friends of the Association, will all be liable to pay the annual dues determined from time to time by the Board and ratified by a general meeting of members.
- 5.7. Friends of the Association will be those persons determined by the Board to be Friends of the Association, and who will not be liable to pay membership fees and which determination, ratified shall be by the general meeting.
- 5.8. The management and control of the affairs of the Association shall vest in and be exercised by a Board which shall have the power to exercise all and any of the powers of the Association in pursuance of its objectives.
- 5.9. Each member of the Board shall be a full member of the Association.
- 5.10. All members of the Board will hold office for one year only, at the end of which they will be entitled to offer themselves as candidates for re-election.
- 5.11. The Board members shall after the first meeting be elected at the annual general meeting of the Association in the following manner, namely:
 - 5.11.1. written nominations for the number of positions on the Board, proposed and seconded by members in writing, and accepted by signature of the nominees, shall be submitted to the Board not less than thirty (30) days prior to the annual general meeting;
 - 5.11.2. a retiring Board member shall be eligible for re-election;

- 5.11.3. Election shall be by way of secret ballot. Each member in good standing will be entitled to one vote for one candidate. The nominees obtaining the highest number of votes will be elected;
- 5.11.4. The Board members shall be entitled to reimbursement of their reasonable expenses in respect of travel, accommodation and other disbursements incurred by the member.
- 5.11.5. the Board members shall from their number appoint a chairperson, a deputy chairperson and further committees as per the legal requirements.
- 5.11.6. No Board member or member who performs professional or other services on behalf of the Association shall be entitled to charge fees for such services.

6. POWERS OF THE BOARD

6.1. The Board is empowered on behalf of the Association:

6.1.1. to invest the monies and assets only with registered financial institutions referred to in clause 13.4, and only in terms of resolutions of the Board duly taken;

6.1.2. to operate banking accounts and to draw, make, accept, endorse, sign, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable documents;

6.1.3. to enter into any arrangements with any state or other authority or any corporation, company, society, organisation or person that may seem conducive to the objects of the Association;

6.1.4. to institute action in any competent court or other tribunal through attorneys or otherwise or to defend any action against the Association and to sign all legal documents for and on behalf of the Association to enable it to conduct legal proceedings;

6.1.5. to discipline members and to suspend the benefits of membership or expel members from the Association;

6.1.6. to raise funds and invite and receive contributions from any person or persons whatsoever by way of loan, subscription, donation and otherwise in terms of and subject to all relevant provisions of this constitution;

6.1.7. to co-operate and collaborate with voluntary bodies and statutory authorities operating in similar fields and to exchange information and advice;

6.1.8. to appoint ad hoc committees from amongst the members and/or others to carry out activities authorised by the Board;

6.1.9. to do all such things as may be deemed incidental or conducive to the powers set out above in furtherance of the aims and objects of the Association.

7. TERMINATION OF OFFICE

A Board member shall cease to hold office:

7.1. for the same reasons as would disqualify a director of a public company from holding office as such in terms of the law relating to companies in the Republic of South Africa;

7.2. if he/she resigns;

7.3. if he/she becomes of unsound mind or incapable of managing his/her affairs;

7.4. at the termination of his/her term of office

7.5. if he/she fails to attend three consecutive Board meetings, in which event the Board shall notify the offending member to furnish reasons for such failure and thereafter the Board may remove such Board member.

8. BOARD MEETINGS

- 8.1. Board members shall meet from time to time as they shall deem advisable, but shall hold at least four meetings in each financial year, provided, however that the chairperson shall convene a meeting within twenty one (21) days of being requested in writing to do so by not less than two (2) Board members.
- 8.2. The Board shall from time to time elect and replace from their number, a chairperson who shall be the spokesperson of the Association and who shall preside at all Board and general meetings.
- 8.3. In the absence of the chairperson, the deputy chairperson or any other person appointed by the general meeting shall preside over the meeting.
- 8.4. Not less than 21 days notice of meetings of the Board shall be given to each person entitled to attend, provided that if all persons entitled to attend any such meeting shall agree in writing thereto, any shorter period of notice shall be regarded as sufficient. Notice may be given by post, facsimile, or by email.
- 8.5. All decisions of the Board shall preferably be by consensus. However in the event of a vote taking place a majority of those present shall be required for all resolutions. Voting shall take place by secret ballot.
- 8.6. A resolution signed by all the members of the Board will have the same effect as if the same had been passed at a duly constituted meeting of the Board.

- 8.7. A quorum for any meeting of the Board shall not be less than a majority of the number of Board members.
- 8.8. Subject to the approval of the Board, a member may appoint a representative to act as his/her alternate who shall exercise at any meeting of the Board all the rights, powers and privileges which his/her principal could have exercised had he/she been personally present.
- 8.9. Minutes and attendance registers of all meetings of the Board shall be kept, which minutes shall be confirmed at the next meeting, either with or without amendment.
- 8.10. The members of the Board shall elect from their number a treasurer who shall:
- 8.10.1 maintain accurate and up-to-date records;
 - 8.10.2. have custody of the funds of the Association, which shall be deposited in the bank account of the Association;
 - 8.10.3 are among the signatories of cheques;
 - 8.10.4. Have custody of the financial documents and keep the financial records of the Association.
 - 8.10.5. Comply fully with auditing procedures.

9. ANNUAL GENERAL MEETINGS

- 9.1. Twenty-one days written notice of any general meeting (ordinary or extra-ordinary) shall be given to all members. Such notice shall state the agenda and/or the business to be transacted at the meeting.

- 9.2. Notice of each meeting will be deemed to have been given to every person to whose registered address a written notice has been posted, faxed or e-mailed. No meeting shall be invalidated by the inadvertent or accidental omission of notice to any member.
- 9.3. Each member present in person by proxy shall be entitled to exercise one vote at a general meeting. The chairperson of any such meeting shall not be entitled to exercise a casting vote.
- 9.4. A person entitled to vote at any general meeting shall be entitled to appoint any person to act as his/her proxy provided that the instrument appointing such a proxy shall be in writing and furnished at such meeting.
- 9.5. The chairperson shall preside at all general meetings. In his/her absence, the members shall elect a chairperson from those present.
- 9.6. A majority of the number of members present in person or by proxy shall constitute a quorum at any general meeting. Where there are two members, then both members need to be present for any meeting to be duly constituted.
- 9.7. The Board shall be obliged to convene:
 - 9.7.1. an annual general meeting each year, which shall take place not more than six (6) months after the end of each financial year;
 - 9.7.2. an extra-ordinary general meeting at the written request of one third of members.
 - 9.7.3. any other general meeting shall be convened at the discretion of the Board.
- 9.8. The Board members may invite any person or organisation to attend the general meetings of the Association, and/or Board meetings, but

any such invited person will not have the right to vote at any such meetings.

9.9. The general meeting shall receive and discuss the minutes of the previous proceedings.

9.10. The general meeting shall:

9.10.1 elect the Board;

9.10.2 discuss and decide upon policy guidelines;

9.10.3 delegate duties to the Board;

9.10.4 consider and approve the budget, as well as suggest the auditor;

9.10.5 review and endorse the programme of activities.

10. PROVINCIAL ASSOCIATIONS

10.1. The Association may adopt a constitution or regulations for the establishment and administration of provincial Associations.

10.2. A provincial Association shall elect its own officials, determine the amount of the special provincial branch dues, collect its own dues and organise its own programme.

10.3. Each provincial Association is entitled to appoint two delegates to the annual general meeting of the national Association.

10.4. A provincial Association may elect honorary members to such branch who are not active members of the Association. Such honorary

members will have none of the privileges of the Association membership, such as voting and receiving publications.

- 10.5. Officers, executive branch members and representatives of local branches must be full members of the Association.
- 10.6. In addition to the fees to the Association, provincial Associations may charge local membership fees to meet the expenses of the Association. Both membership fees may be paid to the provincial Associations treasurer, who shall forward the national membership fees to the treasurer of the Association.
- 10.7. A branch shall be in good standing and entitled to representation on the executive council of the Association and at the annual general meeting of the Association if the minimum number of membership referred to in clause 11.1, is paid up for the current year.

11. INCOME AND PROPERTY

- 11.1. The Association shall maintain a written register of all assets owned by it.
- 11.2. The Association may not pay or transfer any of its money or assets to any member or office bearer.
- 11.3. Members and office bearers will not have any rights to assets of the Association.
- 11.4. The sources of income of the Association shall be:
 - 11.4.1. membership fees that shall be decided by the general meeting;
 - 11.4.2. various dues that shall be decided by the Board;

- 11.4.3. donor support;
- 11.4.4. remunerated services by the Association that are not commercial;
- 11.4.5. any other income provided it falls within the constitution of the Association.
- 11.4.6 such other sources of funding as may be determined by the Board to be appropriate from time to time.

12. FINANCE AND AUDIT

- 12.1. The Board shall ensure that proper books of account are kept, in which all transactions are duly recorded.
- 12.2. The financial year shall end on 28 February of each year.
- 12.3. The auditor shall audit the annual financial statements as soon as possible after the end of each financial year.
- 12.4. The audited annual financial statements shall be submitted to the Board, and circulated amongst members prior to the annual general meeting.
- 12.5. Board members shall by resolution duly taken, be empowered to vest in any one or more of their body such powers and authorities, including the power to operate on the banking account or accounts, as they from time to time deem fit.
- 12.6. A copy of the audited financial statements shall be delivered to the Director of Non-Profit Organisations within six months of each financial year-end.

- 12.7. The Association's financial transactions will be conducted by means of a banking account. The monies of the Association shall be deposited in the banking account of the Association.
- 12.8. The monies shall be drawn from the bank by a cheque that bears, at least, two signatures of which one shall be that of the Chairperson or Vice Chairperson and the treasurer.

13. FUNDS AND ADMINISTRATION

- 13.1. The public benefit activities of the Association (or substantially the whole thereof) will be carried out in the Republic of South Africa.
- 13.2. At least three of the persons, who accept fiduciary responsibility for the Association, will not be connected persons as defined in the Income Tax Act.
- 13.3. No funds will be distributed by the Association to any person other than in the course of undertaking any activity in pursuance aims and objects of the Associations.
- 13.4. The funds of the Association will be used for the objects for which it was established, or shall be invested with registered financial institutions as defined in the Financial Services Board Act 97 of 1990 or in securities listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
- 13.5. On dissolution of the Association, the remaining assets will, on a resolution of the Board, be transferred either to:
- 13.5.1 any similar public benefit organisation, within the Republic of South Africa; or

- 13.5.2 an institution, Board or body established by or under any law, which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object, the carrying on of any public benefit activity; or
- 13.5.3 a department of State or an administration in the national or provincial or local sphere of government in South Africa.
- 13.6. 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 purposes and conditions of such donation:
- 13.7. Provided that a donor may not impose any conditions which could enable such donor or any connected person in relation to such donor to derive any direct or indirect benefit from the application of such donation: this proviso will not apply where the donor is a public benefit organisation or a section 10(1) (cA) (i) entity which carries on a public activity.
- 13.8. 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.
- 13.9. In the case of any public benefit organisation, which provides funds to any Association of persons contemplated in paragraph (b) (iii) of the definition of "public benefit activity" under the Income Tax Act, reasonable steps will be taken, to ensure that the funds are utilised for the purpose for which they have been provided.
- 13.10. The Association may not economically benefit any person in a manner, which is inconsistent with the objective of the Association.

13.11. The Association may, within such period as the Commissioner may determine, register in terms of section 13(5) of the Non-profit Organisations Act, 1997 (Act No. 71 of 1997), and comply with any other requirements imposed in terms of that Act.

13.12. The Association is prohibited from using its resources directly or indirectly to support, advance or oppose any political party.

14. ARBITRATION

14.1. Save where a particular remedy is provided specifically in any clause of this constitution, all disputes between the members or the Board relating to this agreement, its interpretation or implementation and the affairs of the Association, shall be resolved by arbitration on the following basis:

14.1.1 each party to the dispute shall be entitled to be represented at such arbitration proceedings by its legal representatives and/or any other expert or specialist retained by it;

14.1.2 the arbitrator shall permit each party to adduce such evidence and argument as the arbitrator may consider being relevant to the matter in dispute;

14.1.3 the arbitrator shall be a person agreed between the parties or if they are unable to agree within a period of three days of either party having given notice to the other proposing an appointee or alternative appointees;

- 14.1.4 the decision of the arbitrator shall be final and binding upon all parties and capable of being made an order of court on application by any of them;
- 14.1.5 anything herein contained or implied shall not preclude any party from applying to court for a temporary interdict or other relief of an urgent and temporary nature, pending the award of the arbitrator hereunder;
- 14.1.6 the costs of and incidental to any such arbitration proceedings shall be in the discretion of the arbitrator who shall be entitled to direct that they shall be taxed as between "party and party" or as between "attorney and client".

14.2. The arbitration shall be held:

- 14.2.1 at Johannesburg;
- 14.2.2 as soon as possible after the dispute shall have arisen, with a view to its being completed within two months after the date upon which the dispute shall have been referred to the arbitrator, if possible;
- 14.2.3 except where the provisions of this clause otherwise provide, in terms of the Arbitration Act as amended.

15. AMENDMENT

- 15.1 A resolution to amend this agreement will only be valid if at least two-thirds of the Trustees then in office have voted in favour of such resolution.
- 15.2 No resolution to amend this agreement shall be valid unless fourteen (14) clear days' notice of the amendment has been given to all the Trustee. The notice shall set out the terms of the amendment. This requirement for notice may be waived with the unanimous consent of all the members then in office.
- 15.3 In the event of the Association enjoying exemption from income tax, donations tax, stamp duty or transfer duty, any such amendments shall be submitted to the South African Revenue Services.
- 15.4 In the event of the Association being registered as a non-profit organisation in terms of the Non-profit Organisations Act No. 71 of 1997, the Director of Non-profit Organisations referred to in that Act shall be notified in writing of any amendment...
- 15.5 This constitution may be amended with the approval of not less than two-thirds of the members present and voting at an annual or special general meeting of which at least twenty one days notice has been given and such notice shall include the text of the proposed alteration.

16 DISSOLUTION

The Association may be dissolved if at least two-thirds of the members at a general meeting of members convened for the purpose of considering such matter are in favour of such dissolution. No less than twenty-one days notice shall be given of such meeting and the notice convening the meeting shall clearly state that the question of dissolution of the Association and disposal of its assets will be considered. If there is no quorum at such a general meeting, the meeting shall stand adjourned for one week to the same place and time, when the members attending such a meeting shall constitute a quorum.

17. PATRONSHIP

The Association may have one or more patrons who shall be appointed by a decision taken at a general meeting. The principal function of a patron shall be to give advice to and seek moral and material support for the Association as and when necessary.

18. GENERAL

18.1 This document constitutes the sole record of the agreement between the parties.

18.2 No party shall be bound by any representations, warranty, promise or the like not recorded herein.

18.3 No addition to, variation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

18.4 No indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

DATED AT _____ ON THIS _____ DAY
OF _____ 2005

As Witnesses:

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