



SUMMARY OF DECISIONS THAT MEMBERS WILL BE REQUIRED TO MAKE AT THE EXTRAORDINARY GENERAL MEETING TO BE HELD ON FRIDAY, 20 MAY 2011, AT 14:30 AT SAMRO PLACE, 20 DE KORTE STREET, BRAAMFONTEIN

1. INTRODUCTION

Following the announcement on the effective date of the new Companies Act 2008 as well as the finalization of the Regulations by the Ministry of Trade and Industry, the Board of Directors of SAMRO determined the date for the Extraordinary General Meeting (EGM) of members. A notice of the meeting was sent to all members with all the relevant documentation which were annexed to the notice.

While every effort has been made to make the purpose of the meeting clear through a detailed step by step notice of the meeting, a number of requests have been received to give a summarized version of the decisions that will be required of members to make.

Following is the summarized version of the decisions and the main reasons for such decisions. It is however important to point out that this summary document does not in anyway substitute any of the documents sent, inclusive of the notice of the meeting. It will therefore still be important that the members familiarize themselves with documents that were sent to them.

2. BACKGROUND

The government of the Republic of South Africa, through the Ministry of Trade and Industry, has, with effect from 1 May 2011, introduced a new Companies Act which wholly substituted the Companies Act which had been effective since 1973. The new Act brought with it specific requirements on companies in general. As one of these general requirements, all companies in South Africa are required to consolidate their constitutive documents into a single Memorandum of Incorporation (Moi).

Specifically the Act also requires that Companies Limited by Guarantee (which is the current corporate form of SAMRO) should, within twenty business days of the effective date of the Act, elect on a once off basis whether they become 'not-for-profit' companies or 'for-profit' companies. This requirement has fundamentally far reaching implications for SAMRO and other Companies Limited by Guarantee.

3. SALIENT FEATURES

The following are the salient aspects (a non-exhaustive list) of the two forms of companies between which members will be required to choose the most appropriate.

3.1. For Profit Company (Limited Company)

- It has share capital which must be issued;
- It thus has shareholders to whom the share capital is issued;

- Members of a membership based organisation can become shareholders provided shares are allocated to them on an objective and consistent basis;
- In issuing the shares the company needs to determine whether the shares are of the same class or are of different classes;
- In a case of different classes of shares these have to be determined on objective criteria. (An example can be existing membership categories of SAMRO as in the present Articles of Association)
- It can distribute income by way of dividends and / or specific contractual relationships.
- In an event of dissolution or the company being wound up, the assets can be liquidated and distributed among shareholders as well as on the basis of specific contractual relationships which contributed to the accumulation of such assets.

3.2. Not-for-Profit Company

- may not distribute income except where:
 - There is a *bona fide* agreement between the company and a person;
 - A payment is made in respect of any rights of a person, to the extent that such rights are administered by the company in order to advance a stated object of the company;
 - There is any legal obligation binding on the company.
- The implication of the requirement above is that SAMRO may and can distribute royalties but may not distribute non-royalty revenue (NRR) to its members.
- Upon dissolution, the entire net value of the assets must be distributed to one or more non-profit companies having similar objects (purpose) to its main objects. This simply means that assets may not be liquidated to be distributed to members or principals represented by company.
-

4. RESOLUTIONS TO BE VOTED ON AT THE EXTRAORDINARY GENERAL MEETING:

Given the salient features summarized above, and to ensure that the organisation responds effectively to the changes in the Act, members will be requested to vote on the following:

4.1 **SAMRO to become a “For Profit Public” (Limited) Company.** This is Special Resolution 1 in the notice of the meeting and the proxy forms. In an event that members do not vote “For” on this resolution, then SAMRO will automatically become a “Non-Profit” Company.

4.2. **Amendment of membership election rules so as to enable the Board of Directors to elect all members to full membership.** This is Ordinary Resolution 1 in the notice of the meeting and the proxy forms. This is more of a procedural step necessary to effect subsequent Special Resolutions 2 or 3. SAMRO membership is currently in three categories; namely Full, Associate and Candidate. As part of Special Resolution 2, members can only elect one class of shares if they have created membership categories by passing Ordinary Resolution 1.

4.3. **Adoption of public profit company Memorandum of Incorporation** as the first part of this resolution; secondly, authorize shares and, thirdly, convert members’ rights into **one class of shares.** This is Special Resolution 2 in the notice of the meeting and the proxy forms. It is important to bear in

mind that this Special Resolution can only be passed if Special Resolution 1 and Ordinary Resolution 1 have been passed.

4.4. **Adoption of a public profit company Memorandum of Incorporation** as the first part of this resolution; secondly, authorize shares and, thirdly, convert members' rights into **three classes of shares**. This is Special Resolution 3 in the notice of the meeting and the proxy forms. It is again important to bear in mind that this Special Resolution can only be passed if special Resolution 1 has been passed. For purposes of clarity there is no need to have passed Ordinary Resolution 1 for this Special Resolution to be passed.

4.5. **Adoption of non-profit company Memorandum of Incorporation.** This is Special Resolution 4 in the notice of the meeting and the proxy forms. This Special Resolution can only be passed if the members have not elected for the Company to become a profit public company in Special Resolution 1. In other words if the members do not pass Special Resolution 1, then they have to pass Special Resolution 4 in order to properly constitute a non-profit company. Failure to pass both Special Resolutions 1 and 2 will result in the current constitutive documents being deemed to be the new Memorandum of Incorporation. Any discrepancies with the Act will result in the Act taking preeminence without the necessary documentation reflecting such changes.

4.6. **Authorize the Board and Management to establish a Trust.** This is Ordinary Resolution 2 in the notice of the meeting and the proxy forms. The need for this Ordinary resolution arises out of the fact that due to limited time from the finalization of the regulations to the 2008 Companies Act to the effective date, there was a limited opportunity to explore in full the efficacy and appropriateness of setting up a Trust either as an alternative to a profit public company or as an additional instrument in the administration of members' rights.

5. GENERAL

There are three types of Memoranda of Incorporation that were annexed to the notice of the Extraordinary General Meeting. The first one is the Memorandum of Incorporation for a profit public company with a single class of shares, the second is the Memorandum of Incorporation for a profit public company with three class of shares and final one is the Memorandum of Incorporation for a non profit company. In addition copies of the current Memorandum of Association and Articles of Association have been annexed so as to enable members to see any adaptations that were necessitated by this process.

For further enquiries please call the Customer Service line at 0861172676