

Background and Legal Structure

The Fynbos Forum is presently constituted as a Voluntary Association in terms of a written constitution. This is a common law structure and is not regarded as optimal in terms of current legislation. At the 2018 Annual Conference a decision was adopted to convert this relatively informal common law structure to that of a Non-Profit Company in terms of the new Companies Act, which would provide an opportunity to ensure compliance with the relevant provisions of the Income Tax Act affecting Public Benefit Organisations and registered Non-Profit Organisations. Currently the two organisations exist in parallel and need to be formally merged to comply with the relevant requirements of the Income Tax Act and the Non-Profit Organisations Act.

Accordingly, it has been proposed as follows:

1. To implement the earlier decision to establish a Non-Profit Company which will be known as The Fynbos Forum (RF) NPC. This requires the adoption of a substituted founding document, described as the “Memorandum of Incorporation” (MOI). The MOI will be drafted in terms that ensure compliance with all requirements of the applicable legislation, so that it will be eligible for both registration as a Non-Profit Organisation (NPO), and for approval as a Public Benefit Organisation (PBO). In this way, it will not only be tax-exempt, but will also be eligible for donor support, and for the tax-deductibility of future donations. (Section 18A).
2. To arrange for the adoption of a Special Resolution to be passed by the three initial Incorporators, in terms of which the existing MOI is substituted by a new MOI which achieves these objectives.
3. Thereafter, the new MOI will be submitted to the Non-Profit Organisations Directorate (for registration, and allocation of a Non-Profit Organisation (NPO) number) and to the Tax Exemption Unit of SARS (for approval, and allocation of a Public Benefit Organisation (PBO) number).

Membership

The organisation will continue to be membership-based as a non-profit company governed by an elected Board of Directors. The new constitution (MOI) will make provision for two levels of Membership – A Custodian Membership and an Associate Membership.

- A. The Custodian Membership would be of limited size – say, maximum 50 persons – and would be admitted at the discretion of an elected Nominations Committee on the basis that the individual member has indicated a wish to assume this role and responsibility, and has attended at least three Annual Forums in the last ten years, thereby demonstrating a qualifying commitment and involvement with the affairs of the Forum. The primary responsibility of the Custodian members will be to attend AGM’s, at which the Board is appointed, and to hold it responsible for fulfilling its mandate. They would have right and responsibility of voting at AGMs and any other special meetings called by the board.
- B. The Associate Membership would be of unlimited size, and would comprise all those who have attended one or more Annual Forums, and have indicated a wish to identify with and participate in the affairs of the Fynbos Forum. They would be entitled to attend, and could participate at AGM’s, but they would not be counted for purposes of determining a quorum, or in the event of formal voting. Associate Members would however be able to put forward recommendations for the appointment of new Custodian members, who in most instances would be selected from this group.

Governance

In accordance with the Companies Act, there would be two levels of governance –

- A General Meeting comprising all Custodian Members, which would meet at least once annually; would elect the Members of the Board; appoint the Chairperson, and such other office bearers as may be required; approve the Annual Financial Statements; appoint the Auditors; and deal with other business appropriate for a General Meeting of members of a Non-Profit Company.

- A Board of Directors comprising not less than 5 persons and no more than 15 elected by the Custodian Members at the AGM, who would serve for 3-year terms (1/3rd retiring at each AGM); but retiring members would be eligible for re-election. The Board would also have power to co-opt a limited number of additional Directors in order to complement available knowledge and skills, and ensure appropriate representivity and proportionality. The Board would be responsible for directing and governing the affairs of the Forum, with power to delegate authority, adopt specific projects and programmes; allocate funding; appoint project or other sub-committees; and undertake and authorise such acts as may be appropriate or necessary.

The Transition Process: *[Note some of the following processes can run in parallel.]*

Approval of Memorandum of Incorporation (MOI) and Election of Custodian members

- The proposed process will be presented for approval at the AGM of the Fynbos Forum.
- Once the new MOI has been agreed and adopted by the Committee including the Directors of the existing Voluntary Association, it will be put on the Fynbos Forum website.
- A summary of the proposed approach will be circulated to everyone on the Fynbos Forum database, together with a form for nominating additional Custodian members.

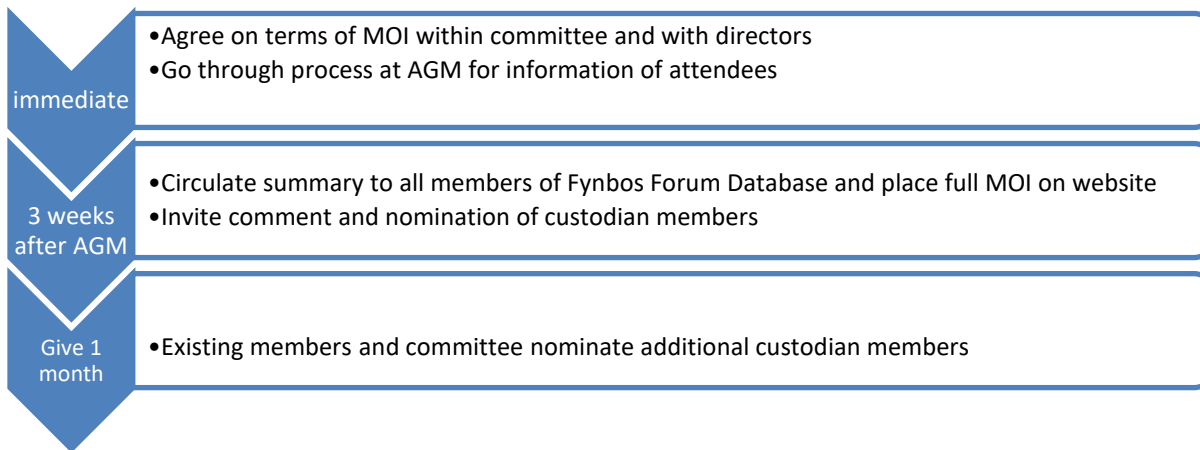
Dissolving old Voluntary Association (VA) and Non-Profit Company (NPC) and creating a new Non-Profit Company

- The current Board of the VA will need to pass a Resolution formally adopting this proposal, and agreeing to transfer all the assets, liabilities, rights and interests of the existing VA to the new NPC, subject to its prior approval as a Public Benefit Organisation (PBO).
- The existing three members of the NPC will need to pass a Special Resolution (which must be registered with the CIPC), in terms of which the new approved MOI is adopted and substituted.
- The Special Resolution must be registered with the CIPC; and thereafter two formal applications must be submitted – that is, to SARS for approval of the new NPC as a PBO; and to the Non-Profit Organisation Directorate for its approval as an NPO.
- The three initial NPC members must also pass a Resolution in terms of which the NPC agrees to accept the transfer of all assets, liabilities, rights and interests of the existing Voluntary Association to the new NPC (subject to its approval by SARS as a PBO).

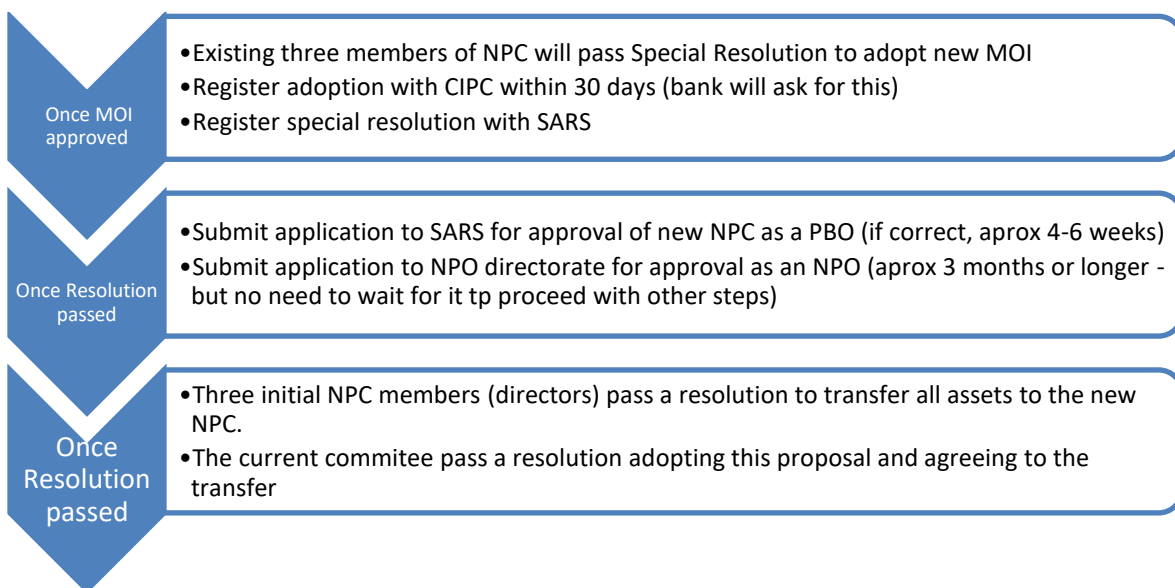
Establishing the organisational structures of the new Non-Profit Company (NPC)

- In order to establish the initial Custodian Membership, all those presently serving as members of the initial NPC Board and of the Fynbos Forum Committee (both of which will cease to exist) will be invited to become the first Custodian Members, and admitted as such with their consent.
- The first custodian members will elect a Nomination Committee to screen and appoint additional custodian members.
- Additional Custodian members will be appointed on the basis of nominations put forward by all members and approved by the Nominations Committee. [Further Custodian Members may be admitted from time to time by the Nominations Committee at its discretion, having particular regard to those who participate in the Annual Forum. One of the Nomination Committee should be nominated to become a member of the board but the rest of this committee must remain normal custodian members.]
- The Custodian Members will then meet, in order to elect the persons who will constitute the members of the Board of Directors of the new NPC. They will also elect its initial Chairperson, and any other required Office Bearers. [As indicated, the elected Board will have limited power to co-opt additional Directors).
- Once the resolutions referred to above have been adopted and the new board has been appointed, a new bank account will need to be opened, and all funds and any other assets of the existing Voluntary Association will be transferred into the name of the new Non-Profit Company. The existing organisation will then be dissolved.
- The newly-constituted Board will then assume full responsibility for the governance of the affairs of the Fynbos Forum, including its future programmes, policies, administration and financial affairs.

Securing buy in from the Fynbos Forum Community



Dissolving the old Voluntary Association and Restructuring the new NPC



Establishing the organisational structures of the new NPC

