

REPUBLIC OF SOUTH AFRICA**Companies Act, 71 of 2008 (as amended)****MEMORANDUM OF INCORPORATION OF A
NON-PROFIT COMPANY WITH VOTING MEMBERS**

NAME OF COMPANY: PRO LIBERIS**REGISTRATION NUMBER: 1995/12111/08**

**PRO LIBERIS t/a LEEUWENHOF AKADEMIE**

Pro Liberis t/a Leeuwenhof Akademie conducts school education predominantly in Afrikaans and within the principles of the Christian faith, values and ethos.

The Company was incorporated previously as a company in accordance with Section 21 of the Companies Act, 61 of 1973.

The Company has adopted this Memorandum of Incorporation by Special Resolution passed on 7 August 2012 by the members of the Company at its 2012 Members' Meeting in substitution for the existing memorandum and articles of association of the Company.

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INTRODUCTION

Name:

- 1 The name of the Company is **PRO LIBERIS**, hereinafter referred to as “the Company”.
- 2 The Company is a non-profit company with voting members.
- 3 In this Memorandum of Incorporation-
 - (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
 - (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
 - (c) the following words shall bear the following meaning:
 - (i) “**Act**” means the Companies Act 71 Of 2008 as amended from time to time;
 - (ii) “**Board**” means the Board of Directors of the Company;
 - (iii) “**business days**” means school days and excludes any week day that is a school holiday;
 - (iv) “**Code of Conduct**” means a Code of Conduct for Directors as adopted and amended from time to time;
 - (v) “**Company**” means Pro Liberis, registration number 1995/12111/08;
 - (vi) “**Members**” as defined in Section 1.5 means any parent or lawful guardian or sponsor of any child enrolled at the Company who shall have a right to exercise a vote as a Member in accordance with the provisions of the Act, but subject to the limitations set out in this Memorandum;
 - (vii) “**Memorandum**” means this Memorandum of Incorporation.

The Schedules attached to this Memorandum are part of the Memorandum.

Article 1 - Incorporation and Nature of the Company

1.1 Incorporation

- (a) The Company is incorporated as a non-profit company with voting Members.

- (b) The Company is incorporated in accordance with and governed by-
 - i) the unalterable provisions of the Act that are applicable to non-profit companies;

 - ii) the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and

 - iii) the provisions of this Memorandum.

1.2 Objects and Powers of the Company

- (a) The objects of the Company are to conduct a school, including a pre-primary, primary and high school and to provide education and tuition predominantly in Afrikaans with the preservation and expansion of the Christian faith, values and ethos and to own property and/or companies which are ancillary to these objects of the Company.

- (b) From the date and time that the incorporation of the company was registered, as stated in its registration certificate, the Company has all of the legal powers and capacity of an individual, except to the extent that this Memorandum provides otherwise.

- (c) The following ancillary powers are also granted to the Company:
 - i) To incorporate other companies with similar objectives and/or to hold assets of the Company, which other companies are in the opinion of the Board beneficial to the Company.

 - ii) To amalgamate with other companies who have similar objectives.

 - iii) To partake in the management, supervision or activities of any other company or entity which conduct a business with similar objectives to that of the Company and to conclude partnerships or joint ventures with such entities.

- iv) To compensate any third party for services rendered by a third party to, for and on behalf of the Company, excluding directors of the Company.
 - v) To make donations to any third party save for the Directors of the Company.
 - vi) To take any step, create any fund (pension or otherwise) for and on behalf of the children enrolled with the Company or teachers employed by the Company.
 - vii) To communicate to Members solely in Afrikaans.
 - viii) The Board is authorised to take whatever steps may be necessary to acquire, improve and/or expand the immovable property to be owned by the Company or its subsidiaries on the understanding that any acquisition and/or improvement fall within the greater object and powers of the Company.
- (d) The ancillary powers granted to the Company may be exercised by the Board when so authorised by the Members.
- (e) The Company is subject to the provisions contemplated in section 15 (2)(b) or (c) in that:
- i) This Memorandum contains restrictive conditions applicable to the Company and any requirement for the amendment of any such condition in addition to the requirements set out in section 16 of the Act, are included in this Memorandum.
 - ii) This Memorandum may be amended in compliance with a court order.
 - iii) The court order must be affected by a resolution of the Company's Board and does not require a special resolution.
 - iv) In order for the Company to affect an amendment, the Company must file a Notice of Amendment together with the prescribed fee setting out the proposed changes.
 - v) If an amendment to this Memorandum has the effect of substituting this Memorandum with a new Memorandum, the changes required also apply to the filing of the Amendment.

- vi) If the amendment to this Memorandum has altered this Memorandum, the Company must submit a copy of the amendment to the Commission, who may require the Company to file a full copy of its amended Memorandum within a reasonable time.
 - vii) This Memorandum may be amended by way of Special Resolution if it is proposed by:
 - The Board of the Company; or
 - Members entitled to exercise at least 10% (ten percent) of the voting rights of Members and it is adopted as a Special Resolution at a Members' Meeting.
- (f) Upon dissolution of the Company, its nett assets must be distributed as follows:
- i) the entire nett value after costs of the Company (and its subsidiaries) must be distributed to one or more non-profit companies carrying on activities within the Republic, or voluntary associations, or non-profit trust:
 - ii) having objects similar to its main object; and as determined:
 - in terms of the Company's Memorandum;
 - by its Members, if any, or its Directors, at or immediately before the time of its dissolution; or
 - by the court, if the Memorandum or the Members or Directors fail to make such a determination.
 - iii) The Company must give notice in the Government Gazette of its intended dissolution.
 - iv) The Company must comply with the remaining provisions of the Act.

1.3 Memorandum of Incorporation and Company rules/policies

- (a) This Memorandum of the Company may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b) of the Act.

- (b) The Company's Board may make rules or policies, amend such rules or policies, or repeal any rule or policy relating to the governance of the Company in respect of matters that are not specifically addressed in this Memorandum. Such rules or policies shall be published:
 - i) on the Company's website; and
 - ii) emailed to any then serving Director; and
 - iii) be available for inspection by any Member at the Company's principal place of business.
- (c) A rule or policy contemplated above must be consistent with the Act and this Memorandum, and shall take effect on the date specified in the rule, or within 10 (ten) days after publication thereof.
- (d) These rules or policies shall be binding until the next General Members' Meeting of the Company and permanently thereafter once it has been ratified by an Ordinary Resolution at a Members' Meeting, if required.
- (e) The provisions of section 15 of the Act shall apply to any proposed.

1.4 Optional provisions: Section 34 of the Act

- (a) The Company elects to be audited unless otherwise directed by an Ordinary Resolution of Members. This election shall be valid until the next General Meeting of Members, whereafter the Members shall annually elect whether or not the Company should be audited for the next year.
- (b) The Company does not need to comply with the extended accountability requirements set out in Chapter 3 of the Act. It is not a requirement for the Company to be subject to an independent review of its Annual Financial Statements.
- (c) The Company may, by Ordinary Resolution by its Members, require to be voluntarily subjected to the provisions of Chapter 3 if so resolved at a General Members' Meeting. Such a resolution shall not be an amendment to this Memorandum of Incorporation.

1.5 Members of the Company

- (a) The Members of the Company are the persons who are defined as "Members" in this Memorandum.

- (b) The Members are all in a single class and are eligible to vote as follows:
- i) Each enrolled child shall attract one vote, to be exercised by a Member present or by proxy.
 - ii) A Member shall be either a parent or a guardian or a sponsor of a child. Although both parents, guardians or sponsors are members, only one vote per child may be exercised. Should any dispute arise as to which Member is entitled to vote, the Member who has paid the school fees (a largest portion thereof) shall be entitled to exercise the vote.
 - iii) A Member shall not have a vote per child if:
 - the child is not enrolled with the Company; or
 - the child has been suspended and/or expelled from the Company at the time when votes are cast;
 - the Member is an arrears with payment of school fees for more than 60 (sixty) days.
 - iv) Should a child be suspended and/or expelled and a process of an appeal is pending, or should a Member be in arrears with the payment of school fees for more than 60 (sixty) days, such Member may, in writing be authorised to vote if the Member has 7 (seven) days prior to any meeting, requested and received authority from the Board to do so. Any request to the Board should be addressed to it in writing.
 - v) The then Chairman of the Board shall make a final determination as to which Member is entitled to cast a vote at a Members' meeting should a dispute arise between Members.

Article 2 - Rights of Members

2.1 Members' authority to act

If, at any time, a Member of the Company is also a Director of the Company as contemplated in section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section is limited as follows:

- (a) The Member cannot bind the Company unless authorised to do so by the Board.

- (b) The Member shall at all times remain subject to the Code of Conduct applicable to Directors, in addition to the conditions imposed on the Directors in the Act.

2.2 Members' right to Information

The Members have the right to inspect the following information in respect of the Company:

- i) the Company's Memorandum, amendments to it and Rules made by the Company;
- ii) Directors' resolutions;
- iii) the Company's financial statements;
- iv) Minutes of General Meetings;
- v) A list of the Company's Members and/or Directors;
- vi) Directors' Code of Conduct.

2.3 Representation by concurrent proxies

- (a) The right of a member of the Company to appoint persons concurrently as proxies is limited and restricted, as a proxy can only be given to another Member and for a particular meeting.
- (b) A proxy should be in writing and as close as possible to a format set out in Schedule 1 to this Memorandum. Such a written proxy must clearly indicate the resolution for which it is given and the manner in which the person holding the proxy should exercise his/her vote.

2.4 Authority of proxy to delegate

A Member's proxy may not delegate the powers to another person.

2.5 Requirement to deliver proxy instrument to the Company

A proxy must be delivered to the Company 24 (twenty four) hours prior to the time of the meeting.

2.6 Deliberative authority of proxy

- (a) The Member may authorise a proxy to decide in his/her discretion whether to exercise or abstain from voting.
- (b) In case of a Special Resolution, the Member may not delegate such rights in a proxy and should clearly indicate the manner in which the vote falls to be cast.

2.7 Date set to exercise Members' rights

- (a) The Board shall, on not less than 10 (ten) business days before the date of an intended meeting, notify Members of any such meeting.
- (b) Notification shall be given:
 - i) by way of letter and/or notification given to a child at school; or
 - ii) by way of electronic communication; or
 - iii) in a manner which the Board deems appropriate in the circumstances.
- (c) The Board may, in its discretion, increase the record date, but not decrease such a date.

Article 3 - Members' Meetings

3.1 Requirement to hold meetings

The Company is required to hold at least 1 (one) annual Members' meeting per calendar year.

3.2 Members' right to requisition a meeting

- (a) Members who hold at least 30% of the voting rights of the Company may, on requisition to the Board, demand a meeting.
- (b) The requisition should clearly identify the purpose for which the meeting is demanded and contain evidence of the request by 30% of the voting rights of the Company.

3.3 Location of members' meetings

Members' meetings are to be held on the school premises only.

3.4 Notice of members' meetings

At least 10 (ten) business days notice needs to be given in respect of any Members' meeting.

3.5 Electronic participation in members' meetings

The Board is authorised to conduct a meeting in any manner, including by electronic communication, as it may in its discretion determine.

3.6 Quorum for Members' meetings

- (a) The quorum requirement for a Members' meeting to begin shall be 10% of the Members of the Company.
- (b) The time periods provided for in section 64(4) and (5) of the Act are as follows:
 - i) if, within 30 (thirty) minutes after the appointed time for a meeting to begin, a minimum quorum is not present, the meeting shall be postponed without motion for 1 (one) week;
 - ii) the remainder of the provisions of section 64 of the Act apply.
- (c) The authority of a meeting to continue to consider a matter is not limited.

3.7 Adjournment of members' meetings

The maximum period allowable for an adjournment of a members' meeting is 21 (twenty one) business days.

3.8 Members' resolutions

- (a) For an ordinary resolution to be adopted at a Members' meeting, it must be supported by at least 50% of the Members present at the meeting.
- (b) For a special resolution to be adopted at a Members' meeting, it must be supported by at least 70% of the Members present at the meeting.
- (c) A special resolution adopted at a Members' meeting is required to:
 - i) amend the Company's Memorandum;
 - ii) approve the dissolution or voluntary winding up of the Company;

- iii) approve a proposed amalgamation with another entity with similar objectives;
- iv) approve the winding up of the Company;
- v) approve any proposed fundamental transaction as defined in the Act;
- vi) change the Christian ethos of the Company;
- vii) change the predominant Afrikaans culture of the Company;
- viii) change the principal object of the Company;
- ix) expend capital in an amount exceeding 10% of the gross asset value of the Company as depicted in the latest financial statements of the Company.

Article 4 - Directors and Officers

4.1 Composition of the Board of Directors

- (a) There shall be 3 (three) types of Directors:
 - i) *Ex officio* Directors, being Directors who hold a position as the Principal of the pre-primary, primary and high school and the Executive Principal of the school.
 - ii) Member Directors, being Directors nominated and appointed at a General Meeting of Members of the Company, which Members should have a child enrolled at a school at the time of election.
 - iii) Co-opted Directors, being Directors co-opted by the Board for a specific purpose, or for a specific task or for a duration not exceeding 3 (three) years.
- (b) The Board of the Company shall comprise of a minimum of 11 (eleven) Directors to be appointed in the following manner and to, as close as possible, represent the schools and Members as follows:
 - i) 3 (three) school Principals, representing the pre-primary, primary and high schools respectively;
 - ii) 1 (one) executive Principal (if applicable);

- iii) 7 (seven) Members nominated and elected to represent the schools within the Company:
- 1 (one) Director to represent the pre-school;
 - 3 (three) Directors to represent the primary school; and
 - 3 (three) Directors to represent the high school.
- (c) The Board may consist of more than 11 (eleven) Directors, but may not exceed 15 (fifteen) Directors.
- (d) Should any *ex officio* Director be dismissed or should there be a pending disciplinary procedure, he/she will automatically be removed as Director and not have any entitlement to further partake in the decisions of the Board pending the outcome of the disciplinary hearing.
- (e) Members and Directors nominated to represent a particular school should at least have 1 (one) child enrolled with the Company in a particular school during the year of the Director's election to the Board of the Company. Separate votes should be cast per school to appoint Directors to the Board. The composition of the Board shall remain the task of the Chairman, who shall have a discretion not to strictly comply with the provisions of clause 4.1(b)(iii) should there be no candidates for the position.
- (f) The School Principals and the Executive Principal shall hold their positions as Directors *ex officio*. The Chairman of the Board of Directors shall be appointed by the Board by simple majority, but may only be a Member or co-opted Director and not a Director who holds the position *ex officio*.
- (g) Directors serve for a period of 3 (three) years, whereafter they have to resign. A Director can make himself/herself available for re-election for a further period of 3 (three) years.
- (h) The Board may appoint further co-opted Directors as it deems appropriate, which Directors may be appointed for a specific purpose or to fulfill a specific task, or for a specific duration. Such Directors need not be Members of the Company.
- (i) Members and Directors co-opted may be removed by the Board on a majority vote if such a Director has not complied with the Code of Conduct of the Company or any provisions of the Act or any provision of this Memorandum.

4.2 Authority of the Board of Directors

The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company is limited further by the Code of Conduct for Directors, as amended from time to time.

4.3 Board of Directors meetings

- (a) The authority of the Company's Board is not otherwise limited.
- (b) The right of the Company's Directors to requisition a meeting of the Board may be exercised by at least 25% of the Directors.
- (c) The authority of the Company's Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication is not limited or restricted by this Memorandum.
- (d) The authority of the Company's Board to determine the manner and form of providing notice of its meetings, is not limited or restricted by this Memorandum.
- (e) The authority of the Company's Board to proceed with a meeting despite a failure or defect in giving notice of the meeting is limited to the extent that 1 (one) *ex officio* Director and three Directors, being Members, are present there at.
- (f) The quorum requirement for a Directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are 4 (four) Directors of which 1 (one) Director should be an *ex officio* Director.
- (g) If any Director who is also a Member does not attend at least 80% of the meetings scheduled during 12 (twelve) consecutive months, that Director will automatically be suspended and removed from his/her directorship. The vacancy may be filled by the Board, if required.

4.4 Officers and Committees

- (a) The Board may appoint any officers it considers necessary to better achieve the objects of the Company.
- (b) The authority of the Company's Board to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, or to include in any such committee persons who are not Directors, is not limited or restricted by this Memorandum.

- (c) The authority of a committee appointed by the Company's Board is not limited or restricted by this Memorandum.

Article 5 - General Provisions

5.1 Public Benefit Organisation

The company is a Public Benefit Organisation as provided for in terms of section 10(1) (cN) with section 30 of the Income Tax Act at the time of the adoption of this Memorandum.

5.2 Notification

- (a) Each Member of the Company chooses as his/her *domicilium citandi et executandi* the address:
- i) which he/she has nominated to receive monthly statements from the Company in respect of his/her child; or
 - ii) the email address which he/she has nominated to receive monthly statements from the Company in respect of his/her child.
- (b) Notwithstanding the above, sufficient notice shall be deemed to have been given if a Member's child was given a handwritten notice at school.

5.3 Certified copy of Memorandum of Incorporation

- (a) It shall be the Directors' responsibility to translate this Memorandum into Afrikaans within 60 (sixty) business days from adoption hereof.
- (c) A certified copy of this Memorandum shall be available at the school at all times.

5.4 Dispute Resolution

- (a) If any dispute arises out of or in connection with this Memorandum, or related thereto, whether directly or indirectly, including the enforcement of the provisions hereof, the Board may, in its sole discretion, refer such dispute for resolution by way of arbitration.
- (b) A dispute within the meaning of this clause exists once the Board notifies the relevant parties in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.

- (c) Within 10 (ten) business days following such notification, the matter will be referred to arbitration as envisaged in the clauses below.
- (d) The arbitration will be held as an expedited arbitration in accordance with the then current rules for expedited arbitration of the Arbitration Company of Southern Africa (“AFSA”) by 1 (one) arbitrator appointed by agreement between the Board and the relevant disputing party/ies. If the parties cannot agree on the arbitrator within 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA.
- (e) The decision of the arbitrator shall be final and binding on all parties and there shall be no further right of appeal.
- (f) The provisions of this clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters pending finalization of this dispute resolution process.