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No. Gazette
 No.**GENERAL NOTICE****Public Enterprises, Department of***General Notice*

- 49 Companies Act (61/1973): Memorandum of association of a company having a share capital: Eskom Holdings Limited

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GENERAL NOTICE

NOTICE 49 OF 2002

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, NO. 61 OF 1973

MEMORANDUM OF ASSOCIATION OF A COMPANY

HAVING A SHARE CAPITAL

ESKOM HOLDINGS LIMITED

REGISTRATION NUMBER OF COMPANY

1

.....
Financial year end: 31 December

1. NAME OF COMPANY

1.1 The name of the Company is **ESKOM HOLDINGS LIMITED**

1.2 The name of the Company in the other official language of the Republic is
N/A

(c) The shortened form of the name of the Company is **ESKOM**

2. PURPOSE DESCRIBING MAIN BUSINESS

The main business of the Company is to provide energy and related services including the generation, transmission, distribution and supply of electricity, and to hold shares in certain Companies.

3. MAIN OBJECT

The main object of the Company is to provide energy and related services including the generation, transmission, distribution and supply of electricity, and to hold shares in certain Companies.

4. ANCILLARY OBJECTS

The Company has unlimited ancillary objects and there are no specific excluded ancillary objects.

5. POWERS

The Company has full plenary powers to embark upon all its activities.

6. PRE-INCORPORATION CONTRACTS (if any)

Not Applicable

8. CAPITAL**8.1 Par Value:**

The share capital of the Company is **R 1 000** (one thousand) rand, divided into:

8.1.1 R 1 000 (one thousand) ordinary par value shares of **R1** (one rand) each;

8.1.2 0 (nil) preference par value shares of **0 (NIL)** rand/cents each; and

8.1.3 0 (nil) redeemable preference par value shares of **0 (NIL)** rand/cents each.

8.2 No Par Value:

8.2.1 The number of no par value ordinary shares is **0 (NIL)**;

8.2.2 The number of no par value preference shares is **0 (NIL)**; and

8.2.3 The number of no par value redeemable preference shares is **0 (NIL)**. _____

DRAFT NO.10 FOR DISCUSSION PURPOSES ONLY

FORM CM 44A

REPUBLIC

COMPANIES ACT, 1973, AS AMENDED

ARTICLES OF ASSOCIATION

of a Company having a share capital not adopting Schedule 1

(Section 60(1); Regulation 18)

Registration number of Company

.....

NAME OF COMPANY: ESKOM HOLDINGS LIMITED

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- A. The Articles set out in Table A of Schedule 1 to the Companies Act No. 61 of 1973 as amended, shall not apply to the Company.
- B. The Articles of the Company are as follows:

1. **INTERPRETATION**

In these Articles, unless the context otherwise requires:

WORD

MEANING

"Articles"	means these Articles of Association as amended from time to time;
"Capital" and "Shares"	means respectively the capital and the shares of the Company from time to time;
"Companies Act"	means the Companies Act, No 61 of 1973, as amended from time to time;
"Company"	means ESKOM HOLDINGS LIMITED ;
"Day"	means a day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
"Directors"	means at any time the directors of the Company holding office as such at that time;
"Gazette"	means the Government Gazette of the Republic;

"Main subsidiary"	means the divisions of Generation, Transmission and Distribution if they are incorporated as separate Companies and Eskom Enterprises;
"Member"	means the Minister;
"Memorandum of Association"	means the Memorandum of Association as amended from time to time;
"Minister"	means the Minister of Public Enterprises in his capacity as the representative of the Republic of South Africa as a Member or if any other Minister is designated as being responsible to hold the shares on behalf of the Republic of South Africa, then that Minister acting in such capacity;
"Month"	means a calendar month;
"Office"	means the registered office of the Company;
"PFMA"	means the Public Finance Management Act, No. 1 of 1999, as amended;
"Principal Act"	means Eskom Conversion Act No. 13 of 2001;
"Proxy"	means a person duly appointed in accordance with the provisions of these

- Articles to represent a Member at any meeting or any adjourned meeting;
- “Register”** means the register of the Member of the Company and any branch register kept by the Company in terms of these Articles;
- “Republic”** means the Republic of South Africa;
- “Sign and Signature”** include respectively lithography, printing, electronic signature or signing by a mechanical process; and
- “Transfer office”** means an office which is intended for the receipt and registration of transfer of shares, debentures and other financial instruments issued by the Company, and where the register is compiled.
- 1.1 Words importing the singular number shall include the plural number and vice versa.
- 1.2 Words importing the masculine gender shall include the feminine gender.
- 1.3 Words importing natural person shall include juristic persons (whether corporate or not and including partnerships and trusts) and vice versa.
- 1.4 The word “share” shall include stock, options or any right or interest in or to shares or other similar securities.
- 1.5 The word “debenture” shall include debenture stock, debenture bonds, loan stock, notes and other similar securities.

1.6 The word "dividend" shall not, unless otherwise resolved by the Member, include any amount capitalized under Article 19.

1.7 Reference to any provision of any Act shall include such provision as amended or re-enacted from time to time.

1.8 Reference to Member represented by proxy shall include Member represented by an agent appointed under general or special power of attorney and reference to Member present or acting in person include corporations represented or acting in the manner prescribed by the relevant Act.

1.9 Subject to the preceding Article, any words or expressions defined in any Act shall, unless the context otherwise requires, bear the same meaning in these Articles as in the Act in which they are defined.

1.10 Headings to these Articles are intended for reference purposes only and shall not be taken into account in the interpretation thereof.

2. **PRELIMINARY**

2.1 If the provisions of these Articles are in any way inconsistent with the provisions of any Act, the provisions of such Act shall prevail and these Articles shall be read in all respect subject to such Act. Notwithstanding the omission from these Articles of any provisions to that effect, the Company may do anything which any Act empowers it to do if so authorized by its Articles of Association.

- 2.2. These Articles shall only apply while the Minister is the sole Member of the Company. If such state of affairs ceases to exist, the Articles shall accordingly be amended. In the event that the Articles are not amended, they will continue to apply until amended.

3. CERTIFICATES

- 3.1 The certificate of title to a share, debenture or other financial instrument of the Company shall:

3.1.1 be issued under the authority of the Directors in such manner and form as the Directors may from time to time prescribe; and

3.1.2 describe the share, debenture or other financial instruments.

- 3.2 Any signature, referred to in these Articles may be affixed by electronic or autographic or mechanical means.

- 3.3 Subject to the provisions of the Companies Act, if any financial instruments are numbered, all such instruments shall be numbered in numerical progression (beginning with the number one) and each instrument shall be distinguished by its appropriate number.

- 3.4 If any financial instruments are not numbered, each certificate in respect of such instruments shall bear numbers in numerical progression, and each certificate shall be distinguished by its appropriate number and by such endorsement as may be required by section 95(2) of the Companies Act.

3.5 The Member shall be entitled to receive:

3.5.1 without payment, one certificate for all its financial instruments of any one class of shares; or

3.5.2 several certificates (each for one or more of its financial instruments of such class of shares) without payment for every certificate after the first, as the Directors shall from time to time determine.

3.6 If any shares are applied for and allotted on the basis that, when issued, such shares shall be converted into stock, no share certificate, but stock certificate only, shall be issued in respect of such shares.

3.7 If a certificate is worn or defaced, then, upon production thereof to the Company, such a certificate may be cancelled and a new certificate may be issued in lieu thereof.

3.8 If any certificate is lost or destroyed, then upon proof thereof to the satisfaction of the Directors and after such indemnity being given and deemed adequate by the Directors, a new certificate in lieu thereof may be issued to the Member and no stamp duty shall be payable in respect thereof.

4 REGISTER OF MEMBER

The Company shall keep a Register at the place and in the manner specified in section 105 and 110 of the Companies Act.

5 TRANSFER OF SHARES

The Directors may, appoint a person or persons (to be designated registrars, transfer agents or by such other title as the Directors may think fit), to which person(s) the Directors may delegate all or part of their powers, authority and discretion in regard to the registration of transfers and the keeping of the Register and other records required by the Companies Act to be kept at the office.

6 ALTERATION OF CAPITAL AND MEMORANDUM

6.1 Subject to the provisions of the Companies Act, the Company may from time to time by special resolution and subject to the Member's written approval:

6.1.1 increase its share capital by new shares of such amount, or increase the number of its shares having no par value, as it thinks expedient;

6.1.2 increase its stated capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;

6.1.3 consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares or consolidate and reduce the number of the issued no par value shares;

6.1.4 convert any shares (whether or not having a par value) into stock and re-convert any stock into shares of any denomination, or into shares of no par value;

6.1.5 increase the number of its issued no par value shares without an increase of its stated capital;

- 6.1.6 subdivide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association;
- 6.1.7 convert all of its ordinary or preference share capital consisting of shares having a par value into stated capital constituted by shares of no par value;
- 6.1.8 convert its stated capital constituted either by ordinary or preference shares of no par value into share capital consisting of shares having a par value;
- 6.1.9 cancel shares which at the time of the passing of the resolution in that regard, have not been taken or agreed to be taken by any person and diminish the amount of its authorised share capital by the amount of the shares so cancelled or may cancel shares of no par value which have not so been taken or agreed to be taken;
- 6.1.10 alter the provisions of its memorandum with respect to the objects and powers of the Company;
- 6.1.11 convert any shares in the capital of the Company to shares of a different class, whether issued or not, and in particular (but without derogating from the generality of the foregoing) convert ordinary shares or preference shares to redeemable preference shares:
 - 6.1.11.1 provided that:
 - 6.1.11.1.1 where shares are converted into stock, the Directors may from time to time, if they think fit, fix the minimum amount or

number of units of stock transferable, with the power, nevertheless at their discretion, to waive any such restrictions in any particular case; and

6.1.11.1.2 moneys other than dividends due to the Member or the amount payable on the redemption of any preference shares shall be held in trust by the Company indefinitely until lawfully claimed by the Member.

- 6.2 Unless the Companies Act provides otherwise, a resolution to be passed by the Company in general meeting to authorise the reduction by the Company of its share capital, stated capital and any capital redemption reserve fund or any share premium account, the Directors shall have the power, subject to the prior written approval of the Member, to the extent necessary, to resolve that the Company reduce its share capital, stated capital and any capital redemption reserve fund or any share premium account, whether accompanied by a payment to the Member or without any payment to the Member.

7 MEETINGS OF MEMBER

- 7.1 A general meeting may, subject to the provisions of Article 8 below and the Companies Act, be convened by the Member wherever the Member so desires.
- 7.2 The Directors may, subject to the provisions of the Companies Act, whenever they deem fit, convene a general meeting.

- 7.3 The general meetings referred to in Articles 7.1 and 7.2 above shall be convened in Pretoria, Cape Town or Johannesburg, provided however, that in exceptional circumstances, at any other place as the Member or board of Directors deem fit.

8 NOTICE OF MEETINGS OF MEMBER

- 8.1 Subject to compliance with sections 186 (3), 199 (3A) and 200 (1) of the Companies Act, an annual general meeting and a general meeting convened for the passing of a special resolution shall be convened by giving notice of at least 21 (twenty one) clear days and any other general meeting shall be convened by giving notice of at least 14 (fourteen) clear days.
- 8.2 Notwithstanding the fact that a meeting is convened by giving a shorter notice than as provided for in Article 8.1 above, the said meeting shall be deemed to have been duly convened if the Member so agrees.
- 8.3 A resolution in writing signed by the Member shall be as valid and effectual as if it had been passed at a meeting duly convened and held.

9. PROCEEDINGS AT MEETINGS OF MEMBER

- 9.1. The annual general meeting shall deal with and dispose of all matters prescribed by the Companies Act, and may deal with any other business laid before it. All such other business laid before an annual general meeting or other general meeting shall be deemed to be special business.
- 9.2. Subject to the Companies Act, the board of Directors shall after consultation with the Member ensure that a framework is developed for conducting general meetings.

10. APPOINTMENT OF DIRECTORS

10.1. The Member shall ensure that the board of Directors of the Company shall be appropriately balanced in terms of executive and non-executive Directors, (including independent Directors) and shall be representative of the gender and race demographics of South Africa and when viewed collectively, possess appropriate skills and experience relevant to the business of the Company, subject to the following:

10.1.1 There shall be maximum of 15 directors comprising of at least 3 executives directors which shall include the Chief Executive, Chief Financial Officer and any other strategic positions.

10.1.2 There shall be a minimum of 8 directors to constitute a quorum, compromising 2 executive directors and 6 non-executive directors.

10.2. The first board of Directors of the Company to take office upon the conversion of Eskom into a Company shall be appointed by the Member.

10.3. As regards any:

10.3.1. Executive Directors to be appointed to the Company after the board of Directors as contemplated in 10.2 above has been appointed, the board of Directors after having obtained the approval of the Member, shall appoint same, other than the Chief Executive Officer / Managing Director and Chairman; and

10.3.2. Non-executive Directors to be appointed to the Company after the board of Directors as contemplated in 10.2 above has been appointed, the Member shall appoint same after consultation with the board of Directors of the Company.

10.4. The Member shall appoint the Chairperson after consultation with the board of Directors and the board of Directors shall appoint the Chief Executive/Managing Director after consultation with the Member.

10.5. as well as the Chief Executive Officer/Managing Director

10.6. **appointment of directors to the board of subsidiaries**

10.6.1. As regards any:

10.6.1.1. executive directors to be appointed to any main subsidiary of the Company, the board of Directors of the Company shall appoint same after consultation with the Member; and

10.6.1.2. non-executive directors to be appointed to any main subsidiary of the Company, the board of Directors of the Company shall appoint same after consultation with the board of Directors of the main subsidiary and the Member.

10.6.2. The Chairpersons and Chief Executives/Managing Directors of the main subsidiaries shall be appointed by the board of Directors of the Company after consultation with the Member.

10.7. **process of appointment of directors**

10.7.1. When directors are to be appointed in terms of 10.3, a list of nominees proposed by the board of Directors shall be submitted for consideration by the Member.

10.7.2. As regards:

10.7.2.1. an appointment to be made in terms of 10.3.1 and 10.3.2, the Member shall take into account the nominees proposed by the board of Directors in making such an appointment;

10.7.2.2. an appointment to be made in terms of 10.5.1.1 and 10.5.1.2, the Member shall indicate its preferences from the nominees furnished, and the board of Directors shall take into account such preferences when making such an appointment.

11. REMUNERATION, RELATED MATTERS AND REMUNERATION COMMITTEES

11.1. The Company shall have a Remuneration Committee consisting of a majority of non-executive directors. The remuneration and other conditions of appointment applicable to:

11.1.1. the executive directors of the Company and its main subsidiaries shall be determined by the Remuneration Committee, and in accordance with a policy and framework for the remuneration of executives that is approved by the Member; and

11.1.2. the non-executive directors of the Company and its main subsidiaries shall be determined by the Member after consultation with the board of Directors of the Company.

11.2. A non-executive Director who:

11.2.1. serves on any executive or other committee of the board of Directors, or

11.2.2. devotes special attention to the business of the Company, or

11.2.3. travels or resides outside the Republic for the purposes of the business of the Company, or

11.2.4. otherwise performs or binds himself to perform services which, in the opinion of the Remuneration Committee are outside the scope of his ordinary duties as a Director,

may be paid such extra remuneration or allowance in addition to or in substitution for the remuneration to which he may be entitled as a Director, as determined from time to time by the Remuneration Committee in accordance with the framework referred to in Article 11.1 above.

12. **DECLARATION OF INTEREST**

12.1. Any Director who has in any way (whether directly or indirectly) an interest in a contract or proposed contract with the Company shall declare the nature of such interest in accordance with the Companies Act in the manner prescribed by sections 234 to 241 of the Companies Act.

12.2. A Director may not vote (and if he does so his vote shall not be counted) or be counted in the quorum present at a meeting to pass a resolution for his own appointment to any other office or paid position with the Company or in respect of any contract in which he has an interest.

12.3. The provisions of Article 12.2:

12.3.1. shall not apply to a corporate body or partnership in which a director has an interest by reason only of being a creditor of such corporate body or partnership; and

12.3.2. may at any time be suspended or relaxed either generally, or in respect of any particular contract, by the board of Directors.

12.4. A contract entered into by or on behalf of the Company and which violates the provisions of Article 12.2 above may be ratified by the board of Directors.

13. RETIREMENT OF DIRECTORS AND FILLING OF VACANCIES

13.1. If a Director ceases to hold office or a term of office of any Director is due to expire, the Member and board of Directors shall ensure that necessary steps are taken to appoint the requisite number of eligible Directors in his place as soon as possible. In this regard the board of Directors shall advise the Member within a reasonable time of such impending vacancy.

13.2. Unless otherwise determined by the Member, all the non-executive Directors shall retire at the first annual general meeting, and at every annual general meeting thereafter, one-third of the non-executive Directors, or if their number is not a multiple of three, then the number nearest to (but not less than) one-third of the non-executive Directors, shall retire.

13.3. The Directors so to retire shall be those who have been longest in office since their last appointment but, in the case of persons who became

Directors on the same day, those to retire shall (unless they otherwise agree amongst themselves) be determined by lot.

13.4. Notwithstanding anything herein contained, if, at the date of any annual general meeting, any non-executive Director shall have held office for a period of five years since his last appointment or re-appointment, he shall retire at such meeting either as one of the non-executive Directors to retire by rotation referred to in this Article 13 or additionally thereto.

13.5. Retiring non-executive Directors shall be eligible for re-appointment.

13.6. The continuing Directors may act notwithstanding any vacancy on the board of Directors provided that if their number is reduced below the number fixed by these Articles as the necessary quorum of Directors, the continuing Directors may subject to the provisions of Article 10 act for the purpose of increasing the number of Directors to that number, or for convening a general meeting of the Company but for no other purpose.

14. ALTERNATE DIRECTORS

14.1. Each Director shall have the power to appoint any person, to act as alternate Director in his place during his absence or inability to act as such, provided that the appointment of an alternate non-executive Director shall be with the prior written approval of the Member, and the appointment of an alternate executive Director shall be with the prior written approval of the Chief Executive Officer/Managing Director. The alternate Directors shall, in all respects, be subject to the terms and conditions existing with reference to the other Directors of the Company.

14.2. The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the powers, duties and

functions of the Directors they represent. The appointment of an alternate Director shall be revoked, and the alternate Director shall cease to hold office, whenever the Director who appointed him ceases to be a Director or gives notice to the Company that the alternate Director representing him has ceased to do so.

- 14.3. The provisions of Article 18 below relating to the disqualification of Directors shall also apply to alternate Directors.

15. DIVISIONAL DIRECTORS.

- 15.1. The board of Directors may at any time and from time to time appoint any persons to be divisional Directors and at any time remove from office any person so appointed.

- 15.2. The Directors may define and limit the powers and duties of such divisional Directors and may determine their remuneration for such services provided that a divisional Director as such shall not (except where such divisional Director is also a Director of the Company), at any time be:

- 15.2.1. a member of the board of Directors and shall not be entitled to attend at meetings of the board of Directors except by invitation;
or

- 15.2.2. reckoned in a quorum for any meeting of the board of Directors;
or

- 15.2.3. entitled to vote at such meeting.

- 15.3. A divisional Director is not and shall at no time be regarded as a Director in terms of these Articles and otherwise.

16. **POWERS OF DIRECTORS**

16.1. The management and control of the Company shall be vested in the Directors who, in addition to the powers and authorities by these Articles expressly conferred upon them, may exercise all such powers, and do all such acts and things, as may be exercised or done by the Company and are not hereby or by any Act expressly directed or required to be exercised or done by the Company in general meeting but subject nevertheless to such management and control not being inconsistent with these Articles or with any resolution passed at any general meeting of the members in accordance therewith and Directors shall not have authority to perform any act which falls outside the capacity of the Company, including any act referred to in clause 5 of the Memorandum of Association but no resolution passed by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such resolution had not been passed. The general powers given by this Article shall not be limited or restricted by any special authority or power given to the Directors by any other Article.

16.2. It is hereby declared pursuant to the provisions of any Act that although the Directors shall have power to enter into a provisional contract for the sale or alienation of the undertaking of the Company, or the whole or the substantial part of the assets of the Company, such provisional contract shall become binding on the Company only in the event of the specific transaction proposed by the Directors being approved in writing by a resolution passed by the Company in general meeting:

16.3. The board of Directors may delegate any of the powers, functions, or duties and discretion to any appointed member of the board of Directors, any person(s) or committee.

16.4. The board of Directors shall not be divested of any power it may have delegated.

16.5. The delegation:

16.5.1. may be made on and subject to any conditions determined by the board of Directors;

16.5.2. may be given together with the power to sub-delegate subject to the provisions of PFMA, and further subject to any conditions so determined (if any); and

16.5.3. shall be communicated to the delegatee in writing and such written communication must contain full particulars of the matters being delegated and of the conditions determined under Article 16.3 and 16.4 above, if any, and, where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under Article 16.5, if any.

16.6. The board of Directors, may, by special resolution at any time:

16.6.1. amend or revoke a delegation made; and

16.6.2. withdraw any decision made by the delegatee with regard to a delegated matter and decide the matter itself.

16.7. Without in any way limiting or restricting the general powers of the Directors to grant pensions, allowances, gratuities and bonuses to officers or ex-officers, employees or ex-employees of the Company or the dependants of such persons, it is hereby expressly declared that the Directors may from time to time without any further sanction or consent of

the Company in general meeting (but subject to the Companies Act and PFMA) grant pensions, gratuities or other allowances to any person or to the widow or dependants of any deceased person in respect of services rendered by him to the Company as Chief Executive Officer, Executive Director, general manager or manager, of any other office of employment under the Company, notwithstanding that he may continue to be or be elected a Director or may have been a Director of the Company, of such amounts, for such period, whether for life or for a definite period or for a period terminable on the happening of any contingency or event, and generally upon such terms and conditions as the Directors in their discretion may from time to time think fit. For the purpose of this Article, the expression "Executive Director" shall mean a Director appointed to an executive office in the Company and receiving in addition to his fees as a Director a salary or remuneration for additional services whether under a service agreement or otherwise.

16.8. The general powers conferred by this Article shall not be limited or diminished by any special authority or power given to the Directors by any other Article.

16.9. The Directors may donate or apply or guarantee money for any charitable or benevolent purpose or for any exhibition and for any public or useful purpose and may do any of the aforementioned things either alone or in co-operation with a subsidiary of the Company.

16.10. The Directors shall have the powers to pay all taxes, duties, fees, expenses or other amounts which may be payable.

17. PROCEEDINGS OF DIRECTORS AND COMMITTEE

- 17.1. The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. A Director may at any time, and the secretary upon the request of a Director, shall convene a meeting of the Directors. The Directors may determine what period of notice shall be given for meetings of Directors and may determine the medium of giving such notice, which may include telephone, telegram, telex or telefax.
- 17.2. The quorum applicable to all the meetings of the Directors shall be 51% (fifty-one per cent) provided that such quorum shall comprise of at least 6 non-executive Directors and 2 executive Directors.
- 17.3. Questions arising at any meeting of the Directors shall be decided by a majority of votes and in case of an equality of votes, the Chairperson shall have a second or casting vote.
- 17.4. Subject to the Companies Act, the board of Directors shall ensure that a framework is developed for conducting meetings of Directors and such committees as the Directors may from time to time establish.
- 17.5. Subject to the Companies Act:
- 17.5.1. a resolution in writing, including through the medium of telefax, signed by the sole Director or by a majority of the Directors for the time being present in the Republic and being not less than are sufficient to form a quorum determined shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted: Provided that where a Director is not present in the Republic, but has an alternate who is, the resolution must be signed by that alternate; and

17.5.2. in the case of matters requiring urgent resolution or, if for any reason it is impracticable to meet or pass a resolution as contemplated in Article 17.1 above, proceedings may be conducted by utilising conference telephone facilities, provided that the required quorum is met. A resolution agreed to by a majority of the Directors participating during the course of such proceedings shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted. The secretary of the Company shall as soon as is reasonably possible after such meeting by telephone has been held, be notified thereof by the relevant parties to the meeting, and the secretary shall prepare a written minute thereof.

18. DISQUALIFICATION OF DIRECTORS

A Director shall cease to hold office as such if:

- 18.1.1. he is prohibited from being or is removed as or is disqualified from acting as a Director of a Company in terms of the Companies Act and/or PFMA;
- 18.1.2. he gives notice to the Company of his resignation as a Director with effect from the date of, or such later date as is provided for in such notice;
- 18.1.3. if he is absent from meetings of the Directors for 3 (three) consecutive months without leave of the Directors and is not represented at any such meetings during such 3 (three) consecutive months by an alternate Director and the Directors resolve that the office be vacated, provided that the Directors shall have power to grant any Director leave of absence for any or an indefinite period;

18.1.4. he is knowingly interested in any contract or proposed contract with the Company and fails to declare his interest and its nature in the manner required by the Companies Act and the PFMA;

18.1.5. if he becomes insolvent, or assigns his estate for the benefit of his creditors, or suspends payment or files a petition for the liquidation of his affairs, or compounds generally with his creditors; and

18.1.6. he becomes of unsound mind.

19. **CAPITALISATION**

The Member may, subject to the provisions of the Companies Act, upon the recommendation of the Directors, or the Directors may at any time and from time to time with the Member's written approval, resolve that:

19.1.1. it is desirable to capitalize all or any part of the amount then standing to the credit of:

19.1.1.1. any of the Company's reserve funds; or

19.1.1.2. any share premium account or capital redemption reserve fund; or

19.1.1.3. the income statement,

or which is otherwise available for distribution and not required for the payment of the fixed dividend on any preference shares of the Company; and

19.1.2. such amount be appropriated for distribution to the Member with or without deduction of income tax, in the same ratio as it would be entitled thereto if distributed by way of dividend on the basis that such dividend be not paid in cash but be applied in paying up in full unissued shares then to be allotted and issued to such Member.

20. POWERS OF DIRECTORS ON CAPITALISATION

Should any problem arise in regard to capitalization under the preceding Article, the Directors may resolve to deal with such capitalization subject to the written approval of the Member.

21. DIVIDENDS

21.1. The board of Directors after consultation with the Member, shall develop an appropriate dividend policy and framework for the Company taking into account, *inter alia*, the Company's corporate plan and strategic objectives. In addition, the Company shall be entitled to invest sufficient funds of the Company for the adequate capitalization and ongoing investment in certain subsidiaries deemed appropriate. Such capitalization or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Member shall be taken into account in calculating any dividend payable to the Member.

21.2. No dividend shall be declared or paid except out of distributable profits or out of accumulated distributable reserve funds of the Company. Distributable profits is the Net Profit ("after tax"), after deducting amounts set aside for future business needs and investments and after funds for the capitalization and/or investment in any subsidiary, and for any expenditure

for industry restructuring, electrification, delivery of universal services or any other socio-economic activities has been deducted. Distributable reserve funds shall refer to accumulated reserves after deducting amounts set aside for longer term business needs, for example, new investments.

21.3. The dividend policy and framework shall set out in sufficient detail matters that need to be taken into account in determining whether, and if so, the manner in which dividends are to be declared and paid.

21.4. The provisions hereof are subject to the Companies Act, and in particular, sections 90.

22. COMPANY'S DEVELOPMENTAL ROLE AND POLICIES

In determining the objectives, targets and key performance indicators for the Company, the Member shall take into consideration the Company's developmental role and the promotion of universal access to electricity, taking into account the costs of electricity, financial sustainability and the competitiveness of the Company.

23. NOTICES

23.1. Notices shall be served by the Company upon the Member by hand delivery to the office of the Minister or by transmission through the post in a prepaid letter, envelope, email or any electronic means addressed to the Member at his registered address or transmitted by telefax to its registered address.

23.2. The Member chooses the address of the permanent office of the Member in Pretoria as its address or such other address as the Member shall advise from time to time.

23.3. Any notices sent by the Company by post shall be deemed to have been received on the fourth day after that on which the letter, envelope or electronic message containing the same is posted or sent and, in providing such service, each shall be sufficient to prove that the letter, envelope or electronic message containing the notice was properly addressed, posted or sent.

23.4. Where a given number of days notice or notice extending over any other period is required to be given, the day of service and the day of the meeting shall not, unless it otherwise provided, be counted in such number of days or other period.

23.5. Every notice calling any general meeting shall comply with the provision of the Companies Act unless otherwise determined by the Directors.

24. **WINDING – UP**

It is hereby specifically recorded that the Company shall not be wound-up without the prior written consent of the Member.

25. **SUBSIDIARY COMPANIES**

The Company may in its discretion form or acquire further subsidiary companies subject to the PFMA.

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PARTICULARS:	OF SUBSCRIBER	OF WITNESS
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Full names

Occupation

Residential
address

Business address

Postal address

Date

Signature

.....
ON BEHALF OF THE MEMBER

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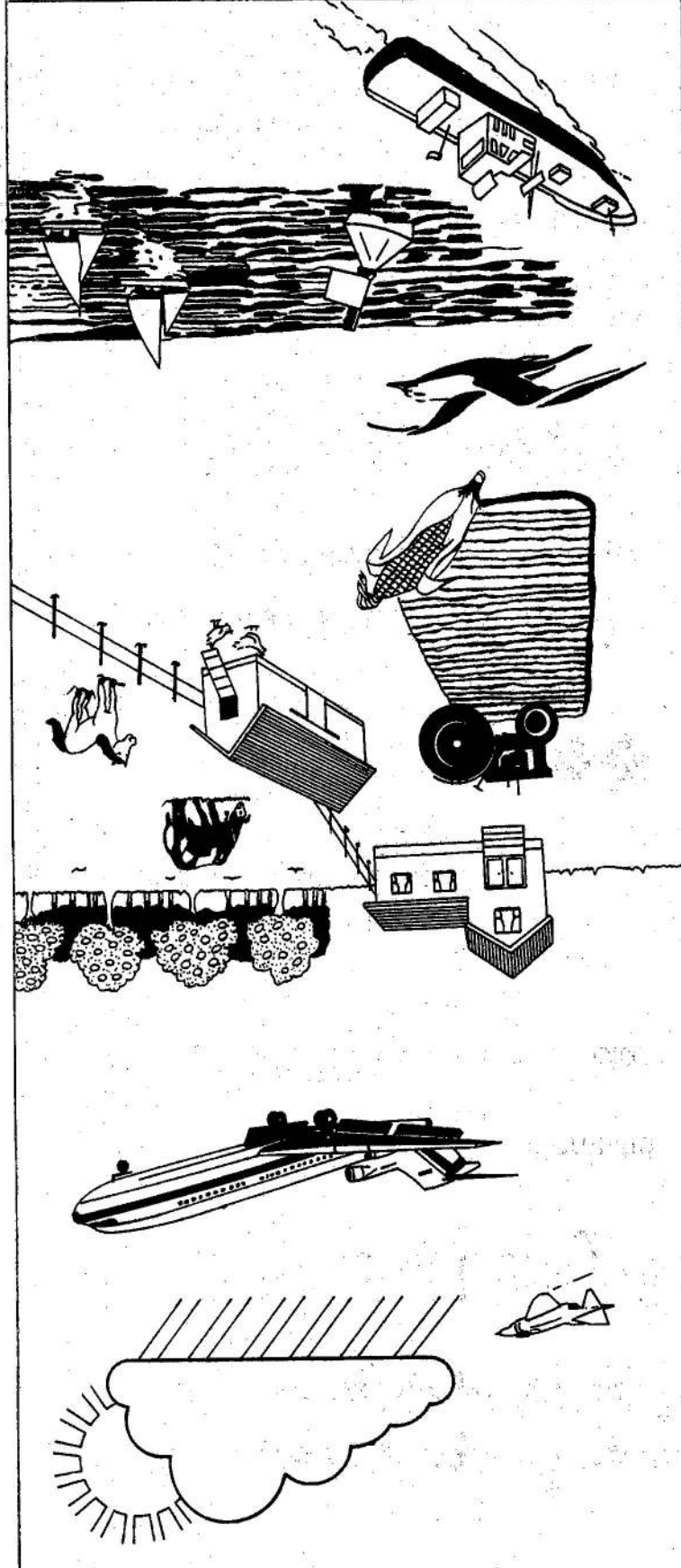
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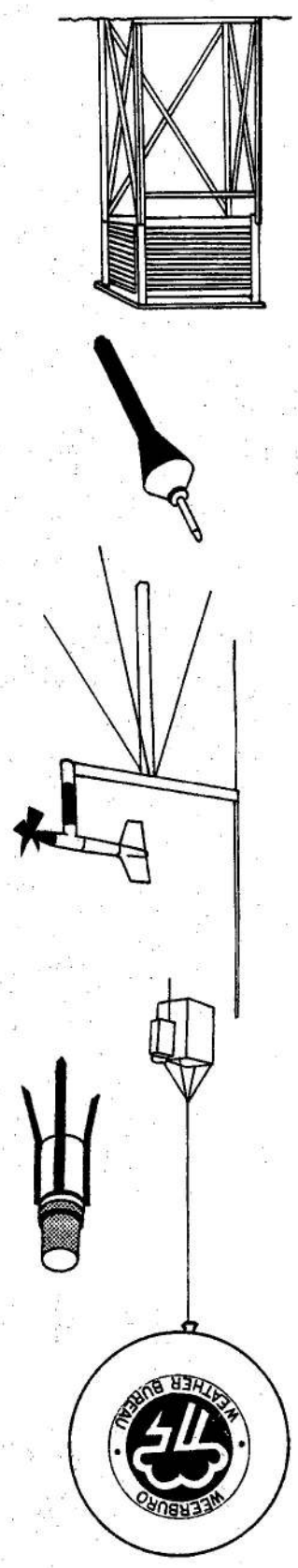
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