

IMPORTANT LETTER TO ALL SAMA MEMBERS THE NEW MOI DOES NOT WARRANT SUPPORT AT THE AGM

The South African Medical Association (SAMA) will hold a virtual AGM on Thursday, 20th January 2022, at 18:00. SAMA members have received a personalised electronic invitation to this meeting by email. Members have the duty and the right to determine the business of SAMA and its governance structures.

This meeting is critical as it asks members to vote to support, without adequate prior explanation or context, a new Memorandum of Association (MOI). The MOI, in a Non-Profit Company such as SAMA, is the equivalent of a constitution in a Voluntary Association and is the basis of how SAMA will be governed in the future. If this new MOI is passed it will irrevocably, change the core nature of the way SAMA is organised and, in our view, inappropriately transfer almost unlimited power and decision making to the SAMA board. This is NOT appropriate for a member-based organization and is in keeping with the ethos of a listed, for profit Company. SAMA is decidedly not that.

SAMA has an existing MOI, which is legal. The existing board was elected at a National Council in 2018 and according to the existing MOI there should have been an Elective National council in 2021 where a new Board should have been elected. (There has not been a National Council meeting since 2020).

If the new MOI is passed, the National Council will be totally disempowered, and the Board's term will be extended for another four years. In effect the current board will have disempowered National Council which elected it, without consulting National Council on these changes.

National Council currently has the governance responsibility to elect new SAMA directors, the National Chair, Vice Chair and Board Committee Chairs and their members. If the new MOI is adopted at the coming AGM, the power to elect the directors will pass from National Council to an AGM. All the other powers of National Council, including election of the National Chair, the Vice Chair and Board Committee members, will then vest in the board. It will give the Board complete control over all aspects of the Association and change SAMA from a 'bottom-up structure' appropriate to a member-based organisation, to a 'top-down' commercial structure more suited to listed companies. The National Council, which represents all the various groups and branches in SAMA, has historically been well attended and in addition to acting as an elective forum, engenders lively debate around policy issues. In contrast, SAMA AGMs, are a formality required by the Companies Act and usually are non-quotate and have to be postponed.

How did this happen? The Constitutional Matters Committee (CMC), is a SAMA board committee elected at National Council. It acts as a technical and oversight committee with the responsibility of drafting the MOI. The CMC reluctantly developed a new MOI on the premise provided by the Company Secretary that (a) the existing MOI was illegal and that (b) the only way that directors can be elected in an NPC is at an AGM. A recent sound legal opinion has shown that neither of these postulates are in fact correct. The current MOI is legal, and the Companies Act as it relates to Non-Profit Companies allows directors to be elected at an elective conference such as the National Council. The requirements of the Companies Act are different for with-profit and non-profit companies. The CMC was never made aware of the different clauses applicable to non-profit companies, such as SAMA. When these clauses were pointed out to the Board, Company Secretary and the CMC chair, the objections were dismissed out of hand.

A large branch of SAMA has made these points to the Board, first in a letter from the branch and then as there was no adequate response from the Board, through a legal letter. Both the initial and the subsequent response from the Board to the legal letter evaded the salient issues and threatened to sue the branch members in their individual capacities for any costs incurred. All these documents are available [here](#).

Despite these written approaches to the Board, and an open members meeting where the board again avoided all the main issues, the Board remains determined to proceed with the AGM.

In summary:

- The existing MOI requires an elective National Council to elect a new board;
- The whole of the board is required to stand down, not the one third of directors incorrectly proposed in the AGM notice;
- The board is attempting to disempower National Council, which elected it without any discussion at National Council, which once fully informed, could well reject or modify these changes;
- While changes to a MOI have to be passed at an AGM, the board is attempting to do this by slipping a new MOI through an AGM without adequate motivation or adequate consultation with SAMA members and their elected National Councilors;
- If the new MOI is approved, it will transfer power from members to the Board, and extend the current Board's term for four years;
- All attempts to raise these issues with the Board have resulted in 'shooting the messenger' without any significant attempt by the Board to deal with the pertinent member issues at hand.

What is needed?

- Postponement of the AGM
- An Elective National Council to elect a new board and discuss SAMA governance structures,

What should members do?

If the AGM goes ahead, members should vote against the new MOI, either at the AGM on 20th January 2022 (or 27th January 2022 should the first meeting fail to be quorate.) or by advanced voting which is now open.

Members should also insist that an elective National Council is called to elect a New Board and discuss the structure of SAMA and a way forward.

SAMA Concerned Members Group