

FLEXI HOLIDAY CLUB

CONSTITUTION

1. NAME

The name of the Club is Flexi Holiday Club.

2. LEGAL NATURE OF THE CLUB

The Club is an association not for gain, capable of owning its own property and of suing and being sued in its own name and having perpetual succession, and is therefore a common law body corporate.

3. OBJECTS

The objects of the Club are to acquire holiday property for the use and enjoyment of its members.

4. POWERS

Powers of the Club, which shall be exercised by the trustees, are to perform any legal acts which a natural person of full legal capacity can perform, including the entering into of any agreements or transactions of any kind, whether of a commercial nature or otherwise, subject only to the exclusion of certain powers as set out herein. The Club also has all the powers necessary and/or incidental to the achievement of its objects. The powers of the trustees, as listed elsewhere herein are merely illustrations of the powers of the Club, and shall not be interpreted as limiting the powers in any way.

5. FUNDS

The Club shall obtain funds inter alia from subscriptions for membership (which may also be referred to as the purchase price of accommodation points) and the collection of Accomodation Fee. Club funds may be used to acquire holiday property, and to pay the costs and running expenses of the Club, which includes reasonable payment to trustees, employees and agents. Funds may be invested and accumulated for future use, but no portion of the funds or assets of the Club may be transferred by way of profit or dividend to any person. Any surplus funds will be carried over towards the funding requirements of the following year.

6. MEMBERSHIP

- a. There shall be founder members and ordinary members.
- b. The founder members are the signatories hereto, and such other persons appointed by them from time to time.
- c. Founder member may transfer their rights. Their heirs inherit their rights. They may also become ordinary members in the ordinary way.
- d. Applicants for membership shall only become members upon written acceptance of their application for membership, and registration of their

membership in the register of members. In the event of any reconstruction, arrangement, or amalgamation with any other body or Club, the trustees may unanimously authorise other methods of accepting persons to membership.

- e. All members are bound by this constitution and any amendment thereof, including the scheme rules and other documents referred to herein which shall be deemed to form part of this constitution.
- f. A register of members shall be kept, and any extract therefrom certified by any trustees or nominee of the managing agent shall be prima facie proof of the correctness thereof.
- g. If a juristic person becomes a member, it shall nominate a natural person as its representative who shall have the right to exercise its rights and who shall be liable, jointly and severally, as surety and co-principal debtor for the obligations of the member. In the absence of such express nomination, which must be acceptable to the trustees, the person who signs the application on behalf of such juristic person shall be deemed to be so nominated.
- h. Membership may be transferred and passes to the estate of the member, subject to payment of all outstanding subscriptions and other dues, whether otherwise due and payable or not, and subject to the discretionary consent of the trustees, against payment of a transfer fee equal to 5 percent of the current valuation of the membership points.

7. TRUSTEES

- a. The affairs of the Club shall be controlled by the trustees, of whom there shall be at least three.
- b. The trustees shall include at least one attorney or accountant, at least one bona fide businessman with experience in the property industry, and at least one founder member or person nominated by the founder members.
- c. The trustees shall not be required to give security to the Master of the Supreme Court or to any other person for the due performance of their duties.
- d. Any act/s performed by the trustees in the name and on behalf of the Club shall be valid and binding on the Club.
- e. The trustees are indemnified by the Club against any claim arising from any loss resulting from the bona fide exercise of their powers.

- f. At every annual general meeting all the trustees shall retire, but shall all be eligible for re-election.
- g. Any casual vacancy shall be filled by a person as appointed by the remaining trustees.
- h. If ever there are no trustees, the managing agent or auditors shall convene a special general meeting for the purpose of electing trustees. If no such meeting is called with 10 days of a written request by any member, any member may convene such a meeting and the Club shall repay the reasonable costs relating thereto.
- i. Any trustee may nominate an alternate, who must be reasonable acceptable to the other trustees, to act in his stead during his absence.
- j. A trustee shall cease to hold office if he dies, resigns, is sequestrated, declared unfit to be a director of a company, or if a special resolution is passed dismissing him.
- k. There shall be paid a reasonable remuneration for their services, which shall be approved annually at the annual general meeting under the financial report and budget vote.
- l. The trustees shall determine the procedure at and relating to their meetings, provided that a quorum shall be two, and the chairman shall have a casting vote to avoid deadlock.
- m. Any resolution signed by all the trustees, even if at different times and at different places shall be as valid and effective as a resolution passed at a meeting duly called.
- n. If any law requires a management association the board of trustees shall be the management association representing members.

8. POWERS OF TRUSTEES

The powers of the trustees include the following:

- a. To invest and apply Club funds as they deem in the best interests of the Club.
- b. To acquire holiday property.
- c. To alienate and encumber the assets of the Club, and to borrow money.
- d. To delegate their powers or any of them, except the power to borrow money or to alienate or encumber holiday property.
- e. To enter into any agreement or arrangement of any kind, with any body or person, whether in the holiday industry or otherwise.
- f. To determine and amend the scheme rules from time to time.
- g. To establish a Holiday Contribution fund and determine what amounts and on what basis the members

shall contribute to it.

- h. To bring or defend any legal or other proceedings.
- i. To increase the number of trustees, and to co-opt additional trustees until the next general meeting.
- j. To determine the number of additional holiday points of various classes that may be issued at any time, regard being had to prevailing circumstances.
- k. To authorise the use of a shortened name of the Club, or any alternative trading name, for purposes of marketing, banking and otherwise.
- l. To authorise the release and use of funds.
- m. To determine the subscription fees for membership points from time to time.
- n. To pay the establishment costs.
- o. To appoint an honorary patron or president or other such titular head as they may decide.
- p. To invite the Minister of Trade and Industry, or such other authority as may be charged with consumer protection, to nominate a person who shall be appointed as an additional trustee.
- q. To engage the services of professional people, agents, and brokers and pay their fees and remuneration.
- r. To allow member the gratuitous use of uncertified property, and to allow the gratuitous use of any holiday property to any person who in their opinion has contributed or will contribute in any way to the advancement of the interests of the Club.
- s. To appoint a managing agent or agents on such terms as they approve.
- t. To let holiday property to non-members.
- u. To operate banking and similar accounts.
- v. To exercise the votes of any members who are not present in person or by proxy at any meeting.

9. ACCOUNTS

Proper books and records shall be kept relating to the affairs of the Club, which shall be audited annually.

10. DISCLOSURE AND RIGHT TO INSPECT RECORD.

- a. Members shall be entitled to full disclosures of the affairs of the Club at any general meeting.
- b. Any member may at any reasonable time and for any bona fide reason inspect the books and records of the Club, including the audited financial statements and approved budgets, with

or without a professional representative. If the trustees or managing agent is not satisfied as to the bona fides of the request, permission may be refused, in which event the dispute may be adjudicated upon.

- c. In order to protect the confidentiality of the Club's affairs, members may not make or receive copies of the books and records, except for bona fide judicial purposes.

11. MEMBERS ACCOMMODATION RIGHTS

Members are entitled to the use of the Club's property portfolio 90 (ninety) days after being accepted as a member of the Club and such use shall be in terms of and subject to the Constitution and Scheme Rules of the Club.

12. RELEASE OF FUNDS

Subscriptions by members shall be held in the Club's investment account until the trustees consent to the release thereof. In deciding whether to consent, the trustees shall have regard to the total accommodation rights of members, as represented by paid up points, and the property portfolio and whether the property portfolio is sufficient to satisfy the accommodation rights represented by such points, but disregarding time or location preferences. If the trustees are not satisfied that the accommodation rights can be met, they shall only consent to the release of such fund for the purpose of acquiring further holiday property.

13. CONTRACTS WITH CLUB

Any member, founder member or trustee may enter into any contract with the Club and/or perform professional services for reward.

14. MEMBERS MEETINGS

- a. Within one (1) month of the completion of the audited financial statements of the Club, the trustees shall call an Annual General Meeting to:
 - i. Receive a Report from the Chairman of the Board of Trustees.
 - ii. Approve the Minutes of the previous Annual General Meeting.
 - iii. Consider the audited Annual Financial Statements for the previous year.
 - iv. Appoint auditors for the ensuing year and to approve the auditors remuneration.
 - v. Receive a Report from the Managing Agent.
 - vi. Consider and approve the annual provisional Holiday Contribution for the next year.
 - vii. Consider and approve the Club Membership Subscription for the next year.
 - viii. Determine and approve Trustees' remuneration.
 - ix. Determine the number of Trustees to hold office for the ensuing year.

- x. Appoint Trustees for the ensuing year.
- xi. Consider any other business that the Trustees may consider necessary.
- b. Meetings shall be held at such places as the trustees shall nominate, failing which they shall be at the main offices of the Club.
- c. Special general meetings may be called at any time by the trustees, and shall be so called on the request of a fully paid up member, provided that he submits a petition for such a meeting signed by 20 paid up members. In such event the member calling for the meeting shall be liable to pay in advance to the Club the reasonable costs of convening such meeting, as shall be determined by the trustees, and at the meeting a resolution will be put to the vote on the question of whether the Club shall reimburse such costs.
- d. At least 21 (twenty one) days written notice shall be given of all general meetings, including the content of any special resolutions which will be proposed.
- e. The members present in person or by proxy at the appointed place and time shall constitute a quorum.
- f. The chairman of the board of trustees shall preside as chairman at all meetings. In his absence, the trustees present shall nominate one of them as chairman. If no trustee is present the managing agent shall nominate a chairman, and failing that the persons present may elect a chairman.
- g. A special resolution shall be required
 - 1. To amend the constitution.
 - 2. To dismiss a trustee.
 - 3. To dispose of the major portion of the Club's assets.
 - 4. To terminate the Club.
- h. A special resolution requires the supporting votes of 75 percent of the membership points and 75 percent of the founder members. If within half an hour after the time appointed for the meeting insufficient members are present to vote on a special resolution, the meeting shall stand adjourned to a day not earlier than seven (7) days and not later than 21 (twenty one) days after the date of the meeting and at that meeting, a special resolution shall require the supporting vote of 75 percent of the members present at the meeting in person or by proxy and 75 percent of the founder members present at the meeting in person or by proxy. In the event of the meeting being adjourned as aforesaid, the Club shall, upon a date not later than three (3) days after the adjournment, send a written notice to each

member of the Club stating:

1. the date, time and place to which the meeting has been adjourned;
 2. matter before the meeting when it was adjourned;
 3. the grounds for the adjournment.
- i. Resolutions shall be determined by a show of hands unless a poll is demanded, in which event every fully paid up membership point shall represent one vote provided that the member in question is not in arrears of any obligation to the Club.
 - j. In the case of joint members, the person whose name appears first in the register shall have a vote.
 - k. Only those members who have paid at least 40percent of the purchase consideration for the points they hold in the Club and who have complied with all their obligations are entitled to vote at any meeting.
 - l. A member may be represented at any meeting by a proxy, who need not be a member, but who may not be a person whose interests are opposed to the Club or who, in the opinion of the chairman, has ulterior motives or interests. The form of proxy must be in the approved form which shall be annexed to the notice convening the meeting, and shall only be recognised if it is delivered to the trustees or managing agent at least 48 hours before the start of the meeting. In the absence of express written instructions as to how the proxy should vote, he may vote in his discretion after considering what is said at the meeting.

15. MANAGING AGENT

- a. The terms of appointment and remuneration shall be determined by the trustees.
- b. The managing agent shall require the written approval of the trustees to borrow money or to alienate or encumber holiday property or to authorise the release of funds held in trust.

16. TERMINATION

- a. The Club may be terminated by special resolution, or by a winding up order by a Court of competent jurisdiction.
- b. Upon the termination of the Club, the net assets if any remaining after payment of all debts and costs of winding up shall be distributed to the members in proportion to their paid up holiday points.

17. CLASSES OF POINTS

- a. As part of the scheme rules, the trustees may from time to time create different classes of points.
- b. The trustees may at their discretion declare a differentiation between paid up points and other points.
- c. Points of one class may be converted to another

class by unanimous resolution of the trustees.

18. MISCELLANEOUS

- a. All members shall be bound by the constitution and any documents created under the powers of the constitution, including the scheme rules, and also any amendments thereof.
- b. All subscriptions (and/or payments for points) shall form part of the capital of the Club, and no member shall under any circumstances be entitled to a refund of his subscriptions or the return of anything else, unless the trustees in their discretion consent thereto. The rights of the members are limited to their rights as determined by this constitution.
- c. A certificate purporting to be signed by any trustee, or any officer of the managing agent, certifying any obligation by any member to the Club and/or any fact relating to the Club and/or a member, shall be prima facie proof of the content thereof in any proceedings.
- d. In the constitution or any other document issued by the Club, unless inconsistent with or otherwise indicated by the context, defined words have the meaning ascribed to them in the constitution. Any reference to the singular includes the plural and vice versa. Any reference to a gender includes the other genders. Where appropriate, meanings ascribed to defined words and expressions shall impose substantive obligations on the parties. Headings have been inserted for convenience only and shall not be taken into account in interpretation. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause. This constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- e. The member chooses the address appearing in the records of the Club as his domicilium citandi et executandi for all purposes arising out of or in connection with the membership or constitution, at which addresses all processes and notices arising out of or in connection with the membership or constitution may validly be served. Any notice given in terms of this constitution shall be in writing and shall: If delivered by hand be deemed to have been duly received by the addressee on the date of delivery; if posted by prepaid registered post be deemed to have been received by the addressee on the 4th day following the date of such posting; if given by telegram be deemed to have been received by the addressee one (1) day after despatch; if transmitted by telex or facsimile be deemed to have been received by the addressee one (1) day after despatch. Notwithstanding anything to the contrary contained in this agreement, a written notice or communication actually received by the member or the Club including by way of telex or facsimile transmission shall be adequate

written notice or communication to such party.

- f. This constitution constitutes the entire legal relationship between the Club and the member who acknowledges that he has not been induced to subscribe for membership or become a member by any representation or warranty or conduct or promise not set out in the constitution, and that there have been no other representations or warranties or conduct or promises, that he knows that he is entitled to ask to inspect various documents and that the Club is willing to allow such inspection, and that he has had or waived access to all relevant information and documents, and that there are no oral collateral agreements and no understandings not set out in this constitution. The content of any promotional material, whether in writing or otherwise, shall not constitute and did not constitute any representations or promises or obligations by the Club, but constitutes at most a statement of intent and/or unauthorised sales talk without imposing any substantive obligations on the Club.
- g. Any dispute between the Club and any member shall be referred to and decided by arbitration before an arbitrator who shall be appointed by the Club's attorney. The arbitrator shall determine his own procedure and his decision shall be final and binding on the member and on the Club. He shall have the power to make an award as to costs, and the Club or the member may apply to the magistrates court for the district Club has its main office, or any other Court of where the competent jurisdiction, for judgment in terms of the award of the arbitrators. The arbitrator shall make judgment in terms of the award of the arbitrators. The arbitrator shall make such award as he considers just and equitable in the circumstances.
- h. No waiver of any right arising from this constitution or the members membership shall be of any force or effect unless reduced to writing and signed by all the trustees.
- i. All debts by members to the Club bear interest at the maximum rate allowed by law. The trustees may, in their discretion, charge lower rates. The rate of interest applicable to any member or obligation shall be proved by a certificate as provided for elsewhere herein.
- j. No latitude, extension of time or other indulgence which may be given or allowed by the Club to any member in respect of the performance of any obligation hereunder or the enforcement of any right arising from this constitution and/or the membership in question and no single or partial exercise of any right by the Club shall under any circumstances be construed to be an implied consent or operate as a waiver or a novation of, or otherwise affect any of the rights of the Club or estop the Club from enforcing, at any time and without notice, strict and punctual compliance with each and every obligation of the member. Applicants for membership may offer trade-ins. In such event, every such applicant by filling in details of a trade-in on the application form thereby gives a special power of attorney to any trustee and/or nominee of the managing agent to

sign all and any documents which are or may be necessary to effect transfer of the holiday property in question to the Club. In addition, such applicants warrant that the trade-in is fully paid for and that there are no outstanding obligations whether for levies or otherwise, and that the trade-in is transferable to the Club or its nominee, and that it will upon transfer to the Club become part of the property portfolio. In addition, such applicant shall be liable for all costs of transfer to effect transfer thereof to the Club. If transfer is, for whatever reason, not passed to the Club within 60 days of the Club accepting the offer of trade-in, the member shall be liable to make payment to the Club of the Club's valuation of the trade-in.

- k. Each of the clauses and sub-clauses contained in this constitution shall, notwithstanding that they have been grouped together or linked grammatically, be separate, divisible and severable from each other so that, if any such clause or sub-clause is or becomes unenforceable for any reason whatsoever, then that clause or sub-clause shall be severable and shall not affect the validity or any other clause or sub-clause contained in this constitution.
- l. This constitution shall be binding upon the Club and the members, and their successors in title, administration and heirs.

19. DEFINITIONS

Establishment Costs

The reasonable costs and expenses including professional fees and retainers, relating to the establishment of the Club.

Architect's certificate

A certificate by the architect of the property or resort in question that it has been properly completed.

Accountant

Any person registered with any professional body as an accountant or as a chartered secretary.

Attorney

Any person enrolled as any attorney and registered as such with a recognised law society.

Holiday property

Any interest which the Club has in any property timesharing scheme or holiday property or accommodation, regardless of whether such interest is temporary or permanent, owned or rented, registered in its name or not, shareblock or sectional title, or otherwise.

Completed holiday property

Holiday property in respect of which an architect's certificate has been produced to the Club.

Uncertified holiday property

Holiday property other than completed holiday property.

Property portfolio

The total of the Club's completed holiday property as it may change from time to time.

Members

Ordinary members.

Scheme rules

Such rules as shall be determined by the trustees from time to time relating inter alia to the points system, the rights attaching to various classes of points, Holiday Contributions, contributions to be paid by members toward the expenses of the Club, reservations, special offers, guest certificates, occupation rules and related matters affecting the day to day running of the Club and the achievement of its objects.

Trade-in

Holiday property offered by any applicant or member to the Club as payment in full or in part for any obligation to the Club whether for subscriptions for points or otherwise.