



42 Murray Street | Bethlehem 9701
058-303-1200
management@malutifm.co.za
Maluti FM 971 NPC
Reg. No. 2020/892615/08

MALUTI FM 971 NPC CONSTITUTION

1. NAME

The name of the company is Maluti FM 971 NPC (Reg. No 2020/892615/08)

(hereafter referred to as the "Maluti")

2. PURPOSE

Maluti is a Section 21, non-profit company established for the sole purpose of operating a community radio station in accordance with the regulations and legislative requirements of the Electronic Communications Act, 2005 (No. 36 of 2005).

Maluti provides a bilingual radio service to the community. It is based in Bethlehem, Free State. Satellite studios will be positioned at key locations as the service expands.

3. LEGAL STATUS

Maluti is a legal entity separate from its individual members. It shall continue to exist even if the members change. It may own property, enter into contracts, and sue or be sued in its own name.

4. NON-PROFIT DISTRIBUTING CHARACTER

1. The income and property of Maluti shall be used solely in the pursuit of its objectives. The members and the office-bearers shall have no rights to the property or other assets of Maluti solely by virtue of them being members or office-bearers. No portion of the income or property of Maluti shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of Maluti or its Board of Directors, except as:

- i. reasonable compensation for services actually rendered to Maluti;
- ii. reimbursement of actual costs or expenses reasonably incurred on behalf of Maluti.
- iii. upon the dissolution of Maluti, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organisation which the Board of Directors (or the Nomination Committee in the absence of a Board) considers appropriate and which has objectives the same or similar to the objectives of Maluti.

2. Upon the dissolution of the company the assets of Maluti shall be transferred on condition that it:

- i. is a similar public benefit organisation which has been approved in terms of section 30 of the Income Tax Act, or

- ii. any institution, board or body which is exempt from tax under the provisions of section 10(1) (c), which has as its sole or principal object the carrying on of any public benefit activity, or
- iii. any department of state or administration in the national or provincial or local sphere of government of the Republic contemplated in section 10(1) (a) or (b).

3. Maluti has applied to the Commissioner of the South African Revenue Service for exemption from appropriate taxes and duties. In compliance with the provisions of the Income Tax Act, the provisions set out in the attached Schedule A shall bind Maluti and qualify this Constitution.

5. POWERS

Maluti, acting through its Board of Directors, shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the General Investment and Administrative Powers set out in the attached Schedule B.

6. STRUCTURE OF MALUTI

The Board of Directors

Powers

- i. Maluti operates under the direction of its board, and the board has all the authorities and powers to do so. It is the statutory duty and function of the board under the Companies Act (2008). ii. The Board of Directors should ensure the financial sustainability, public accountability, socio environmental responsibility and sound corporate governance of Maluti.
- iii. The Board may resolve to take actions regarding the management of Maluti, its office bearers and other staff (both remunerated and voluntary) to ensure the sustainability, growth and good standing of the company.
- iv. At a General Meeting, Maluti may review, approve or amend any decision taken by the Board of Directors but no such resolution shall invalidate any prior action taken by the Board of Directors in accordance with the provisions of this Constitution.

Appointment

The members of the Board of Directors shall constitute five (5) members elected at an AGM. The minimum number of directors is three (3).

- i. If a director should resign, then s/he should notify the other directors in writing and discuss the reason(s) at a special Board meeting. Should the reason(s) be accepted, the resignation is ratified by a Board resolution; a vacancy is declared and a replacement director is sourced by the Board. The replacement director will be on a probation period of three (3) months before being confirmed as a director. The term of office of the director expires at the annual AGM.
- ii. If a director should pass away, the Board sources a replacement. The replacement director will be on a probation for three (3) months before being confirmed as a director. The term of office of the director expires at the annual AGM.
- iii. If a director is disqualified from serving the interests of Maluti for reasons set out in the Companies Act and MOI, the directorship of the person concerned can be terminated immediately by the Board through an unanimous decision. The members of Maluti will be informed at the following AGM.

iv. The members of the Board will automatically be members of Maluti.

Composition

- i. The Board of Directors shall comprise five (5) but no less than three (3) directors.
- ii. Directors will be competent, diverse, involved and committed to direct the business of Maluti.
- iii. The Board of Directors shall comprise:
A Chairperson
a Managing Director
a Financial Director
a Director of Human Resources
a Projects Director
or according to the needs of the company
- iv. The Board of Directors may co-opt up to two (2) additional members for specific functions, as required. The co-opted members shall serve for the period required by the Board.

Removal of a Director

The Companies Act (2008) provides that a Director may be removed in one of three ways:

- i. by way of an ordinary members resolution
- ii. a Board resolution (at board meeting) or
- iii. by the Companies' Tribunal.

A person who becomes ineligible or disqualified while serving as a director of Maluti ceases to be a director immediately, subject to section 70(2) of the Companies Act (2008). Despite anything to the contrary in Maluti's Memorandum of Incorporation, or any agreement between Maluti and a director, or between any member of Maluti and a director, a director may also be removed by an ordinary resolution adopted at an AGM by the persons entitled to exercise voting rights in an election, subject to:

- i. the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a member is entitled to receive, irrespective of whether or not the director is a member of Maluti; and
- ii. the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.

If a member has alleged that a director of the company has become

- i. ineligible or disqualified in terms of the Act, or
- ii. incapacitated to the extent that the director is unable to perform the functions of a director and is unlikely to regain that capacity within a reasonable time; or

- iii. has neglected, or been derelict in the performance of, the functions of director, the board other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

Before the board may consider a resolution contemplated in terms of the above, the director concerned must be given

- i. notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and
- ii. a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.
- iii. in any circumstances contemplated above, any director or member of Maluti may apply to the Companies Tribunal, to make a determination.
- iv. Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have in common law or otherwise, to apply to a court for damages or other compensation.
- v. A person has the right to apply to a court for an order declaring a director delinquent, or placing a director on probation.

Management Committee (MANCO)

The Management Committee consists of members whose function is to guide the business to be sustainable and meet its strategic objectives. They implement the strategy of the Company with regard to human resource development, financial sustainability, community beneficiation and socio-environmental priorities.

The Management Committee will consist of the Station Manager and three (3) members appointed by the Board. In making such appointment, the Board shall give due consideration to their capacity to direct the strategic processes, oversee the management of the station, as well as to support and further the Company's main purpose and objectives. The Board may co-opt additional members for specific projects or required skills.

The Management Committee reports to the Managing Director who is an *ex officio* member.

The Management Committee meets at least once a month to discuss the progress made against strategic objectives and plan actions required.

The Board has the right to replace a member of the Managing Committee who is unable or unwilling to perform his/her role.

General Meetings

Annual General Meeting

1. An Annual General Meeting of the Company shall be held within a period of fifteen (15) months of the adoption of this Constitution. Subsequent Annual General Meetings shall be held within three (3) months of the end of each financial year.
2. Annual General Meetings shall be convened by the Chairperson on not less than fifteen (15) days prior written notice to all members entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad terms, the business to be transacted at the meeting.
3. The business of an Annual General Meeting shall include:
 1. the presentation and adoption of the Annual Report of the Chairperson;
 2. the consideration of the Annual Financial Statements;
 3. the election or ratification of directors to serve on the Board of Directors for the following year;
 4. the election of members to serve on the Nominations Committee for the following year;
 5. the appointment of an auditor;
 6. other matters as may be considered appropriate.

Other General Meetings

1. Other General Meetings of the Company shall be convened at any time by the Chairperson or at the written request of the Board of Directors;
 1. the lesser of one quarter (1/4) or three (3) of the members of the Company.
 2. Any General Meeting other than the Annual General Meeting shall be convened on not less than fourteen (14) days written notice to all members. The notice shall state the date, time and place of the meeting and in broad terms, the business to be transacted at the meeting. Should the Chairperson, having been requested to give such notice, fail to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and to convene the meeting.

Quorum

1. A quorum constituting a General Meeting of the Company shall be 50% plus one of the members.
2. Should any General Meeting have been properly convened but no quorum is present, the meeting shall stand adjourned to another date, which shall be within one (1) week thereafter. The notice reflecting such adjournment shall be given to the persons and in the manner provided for in this Constitution.
At such reconvened General Meeting, the members then present or represented shall be deemed to constitute a quorum.

Resolutions and Voting

1. At all General Meetings, a resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot shall be held only if demanded by the Chairperson or not less than one third (1/3) of the persons voting in person or by proxy. The result of the vote shall be the resolution of the meeting.
2. Each member present or represented at such meeting shall be entitled to one (1) vote.
3. Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

MALUTI FM 971 NPC CONSTITUTION



Minutes

Proper minutes shall be kept of the proceedings of all General Meetings, and a record of the persons present at each meeting. The minutes shall be signed by the chairperson of the meeting, and shall be available for inspection or copying by any member on two (2) days' notice to the Station Manager.

Powers

Subject to the provisions of Clause 8.1.1.2 above, a duly convened General Meeting of the Company, at which a quorum is present, is competent to carry out all the objectives and to exercise all the powers of the Company as set out in this Constitution.

Notices

1. Notice of all meetings provided for in this Constitution, shall be delivered personally, or sent electronically, to the last address notified by each person concerned to the Company, or in any other manner as the Board of Directors may decide from time to time.
2. The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.

7. MEMBERSHIPS

Legal Persons:

Natural persons (legal persons) over the age of eighteen who are South African citizens and reside within the frequency range of the community radio station are eligible as members to the Company.

Conditions:

Applicants are to apply for membership. The membership is limited to fifty (50) individuals and is overseen by the Nominations Committee. New members can be allowed as vacancies develop.

Members pay an annual membership fee determined by the Board. Members are entitled to use social media platforms to indicate topics and themes that they would like to have aired on the radio station. They are entitled to lodge complaints and indicate changes they would like. All member correspondence will be responded to formally by management. Members will also receive a monthly electronic newsletter.

Transfer of Membership:

Membership is not transferable.

Termination of Membership:

Membership automatically terminates upon notification of the death of a natural person. Membership will terminate upon resignation or if the member has been found guilty of illegal practices or for bringing the reputation of the radio station into disrepute. Membership will terminate if a member moves out of the licensed broadcasting area.

Register of Members:

The Managing Committee must keep a register with the names and addresses of all the members.

8. FINANCIAL MATTERS

1. Bank Account

The Board of Directors shall open a bank account in the name of the Company with a registered Bank. The Management Committee shall ensure that all monies received by the Company are deposited in the abovementioned bank account as soon as possible after receipt.

2. Signatures

All cheques, promissory notes and other documents requiring signature on behalf of the Company shall be signed by two (2) of the Board of Directors members.

3. Financial Year End

The Company's financial year end shall be the end of February each year.

4. Financial Records

The Board of Directors shall ensure that the Company keeps proper records and books of account which fairly reflect its affairs.

5. Annual Report and Financial Statements

1. The Board of Directors shall ensure that the Company prepares an annual report describing its activities and an Annual Financial Statement for each financial year. The Annual Financial Statements shall conform to generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.

2. Within two (2) months after drawing up the Annual Financial Statements, the Board of Directors shall ensure that the books of account and financial statements are audited and certified in the customary manner by an independent practising chartered accountant.

3. A copy of the Annual Financial Statements and annual narrative report shall be made available to all members as soon as possible after the close of the financial year.

6. Monthly and Annual Reports to the Broadcasting Authority

1. The Board of Directors shall ensure that the Company prepares and submits monthly:

1. Logs of all advertisements broadcast
2. Logs of % airtime allocated to adverts
3. Logs of sponsorships received for various programmes (showing categories) and details of all payments received
4. Logs of direct and indirect fundraising activities

2. The Board of Directors shall ensure that the Company prepares and submits annually:

1. Financial Statements according to applicable legislation
2. Full details of donors and the amounts received for donations

9. COMPANY OPERATIONAL DOCUMENTS

In order to comply with good corporate governance, the Board of Directors shall acquire or develop procedural documentation which should be revised annually and updated as required. These include policies regarding language, faith, gender, environment, human resource development and management. Labour-related policies (conditions of employment and codes of discipline, ethics, equity etc) are updated according to applicable legislation and best practice. Being a public broadcaster, the Company is required to adhere to ICASA regulations, but develop its own guidelines for community matters (community diary, "live" competitions, etc). The station management (MANCO) has to ensure that the necessary guidelines are in place for operational and safety procedures. The human resource committee must ensure that standard

forms are available to all volunteers and gainfully employed at the radio station. These include grievance forms, disciplinary code, leave form, as well as forms required for broadcasting.

10. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION

The terms of this Constitution may be amended, the name of the Company may be changed and the Company may be dissolved by a special resolution of fifty-one per cent (51%) of the members present at a General Meeting or by implementing a Round Robin electronic method. Proper notice of the meeting should be given no less than fifteen (15) days prior to the date of the Meeting and such notice states the nature of the resolution to be proposed.

11. INDEMNITY

1. Subject to the provisions of any relevant statute, members of the Board of Directors and other office bearers shall be indemnified by the Company for all acts done by them in good faith on its behalf. It shall be the duty of the Company to pay all costs and expenses which any such person incurs or becomes liable for as a result of any contract entered into, or act done by him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the Company.
2. Subject to the provisions of any relevant statute, no member of the Board of Directors and or other office bearer of the Company shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Company, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

12. DISPUTES

1. In the event of a serious disagreement between the members of the Board of Directors and/or the Company regarding the interpretation of this constitution then any two (2) Board of Directors members or any five (5) members of the Company shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and is addressed to the Board of Directors.
2. The Board of Directors shall consider such declaration within two (2) weeks of receiving it. Should the Board not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.
3. Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Board must agree on a suitable mediator and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.
4. In the absence of agreement regarding a mediator or should mediation not resolve the dispute, the dispute shall be referred to arbitration. The arbitrator shall be such suitably qualified person/s as the person(s) declaring the dispute and the Board may mutually agree. Alternatively, each of the parties shall be entitled to nominate one arbitrator, who shall act jointly with a third person to be nominated jointly by the respective nominees of the parties; on the basis that a majority decision of the appointed arbitrators shall be final and binding.
5. The arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.
6. The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.

MALUTI FM 971 NPC CONSTITUTION



7. The person(s) declaring the dispute and the Board, beforehand, may agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which parties shall be liable for the costs.
8. The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.

SCHEDULE A

REQUIREMENTS OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE FOR

EXEMPTION FROM TAXES AND DUTIES

As provided for in Clause 5.3 of this Constitution, the Association intends to apply to the Receiver of Revenue for the exemption from appropriate taxes and duties. In compliance with the anticipated requirements of the Commissioner in respect of such exemptions, the following provisions shall bind the Association:

1. In the case of a PBO seeking a section 10(1)(c) exemption from income and other related taxes and donor deductible status in terms of sections 10(1)(c) and 18A, respectively, of the Income Tax Act, as amended:

Carry on its public benefit activities in the Republic.

2. Only in the case of a PBO which provides funds solely to any income tax exempt PBO seeking a section 10(1)(c) exemption from income and other related taxes only and section 18A donor deductible status, as described in section 18A(1)(b) of the Income Tax Act, as amended.

During the year of assessment during which the donation is received, distribute or incur the obligation to so distribute at least 75% of the funds received. Provided that the Minister may on good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute at least 75% of its funds having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds.

3. Carry on its public benefit activities in a non-profit manner.
4. Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its objects.
5. Submit to the Commissioner a copy of and a copy of any amendment to the Constitution, Will or other written instrument under which it has been established.
6. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation and no other single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this sub-paragraph shall not apply in respect of any trust established in terms of a will of any person who died on or before 31 December 2003.
7. In the event of the Association investing funds, invest such funds:
 1. with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); and/or
 2. in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) ; and/or
 3. in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Management Officer of the Financial Services

Board and the Director of Non-Profit Organisations; provided that the provisions of this sub-paragraph do not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance.

8. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(c)A(i), which has as its sole or principal object the carrying on or any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
9. Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
10. Has not and will not pay any remuneration as defined in the Fourth Schedule, to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects.
11. Comply with such reporting requirements as may be determined by the Commissioner.
12. Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in section 30(b)(iii) of the Act are utilised for the purpose for which they are provided.
13. Become registered in terms of section 13(5) of the Non-Profit Organisations Act, 1997 (Act No. 71 of 1997), within such period as the Commissioner may determine, and comply with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director or Non-profit Organisations designated in terms of section 8 of the Non-profit Organisations Act, 1997, on good cause shown, otherwise directs.
14. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.
15. Ensure that any books of account, records or other documents relating to its affairs are:
 1. where kept in book form, retained and carefully preserved by any person in control of the organisation, for a period according to law; or
 2. where not kept in book form, are retained and carefully preserved according to law.

SCHEDULE B

GENERAL ADMINISTRATIVE AND INVESTMENT POWERS

1. To employ staff and hire professional and other services.
2. To institute or defend any legal or arbitration proceedings and to settle any claims made by or against the Association.
3. To open and operate accounts with registered banks and building societies.
4. To make and vary investments and re-invest the proceeds of such investments on condition that any investments made by the Association shall be with Financial Institutions as defined in Schedule A Clause 7 above.
4. To accept donations made to the Association and retain them in the form in which they are received.
5. With regard to movable and immovable property and tangible and intangible assets of whatsoever nature:
 1. to purchase or acquire property and assets.
 2. to maintain, manage, develop, exchange, lease, sell, or in any way deal with the property and assets of the Association;
 3. to donate and transfer the property and assets of the Association to organisations with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.
7. To borrow and to use the property or assets of the Association as security for borrowing;
8. To guarantee the performance of contracts or obligations of any person on condition that any such person is primarily engaged in activities which further the objectives of the Association.
9. To execute any act or deed in any deeds registry, mining titles or other public office.
10. To work in collaboration with other organisations and to amalgamate with any organisation with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.
11. To exercise all the management and Management powers that is normally vested in the Board of Directors of a Company.
12. To exercise all the powers and authority of the Association not only in the Republic of South Africa but in any other part of the world.