

**CONSTITUTION OF**

**THE NATIONAL BAR COUNCIL**

**OF SOUTH AFRICA<sup>1</sup>**

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<sup>1</sup> UPDATED BY ADV M KLEIN ON 2 JUNE 2019

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## **1. NAME AND PURPOSE DESCRIBING MAIN BUSINESS**

- 1.1 The name of the association is **THE NATIONAL BAR COUNCIL OF SOUTH AFRICA**.
- 1.2 (Repealed 8 June 2013)
- 1.3 The shortened form of the name of the association is “NBCSA”.
- 1.4 The main business of the association is to deal with all matters relating to the interests of advocates and to protect those interests.
- 1.5 The Association was formed in 1994 under the name The Independent Association of Advocates of South Africa. (IAASA) The purpose was to act, within the profession of advocacy, as an agent of change in post- apartheid South Africa and to strive towards the ideal of non-racialism and non-sexism in an open society, to promote the achievement of equality within our ranks by the adoption and implementation of measures designed to protect and advance individual practitioners and categories of practitioners disadvantaged by unfair discrimination. The name became offensive and the majority elected to change same.

## **2. LEGAL STATUS**

- 2.1 The Association is and shall continue to be a distinct and separate legal entity and body corporate, with the power to acquire, to hold and to alienate property of every description whatsoever, and with the capacity to acquire rights and obligations and having perpetual succession.
- 2.2 All actions or suits, proceedings at law or any arbitration shall be brought by or against the Association in the name of the Association and the committee may authorize any person or persons to act on behalf of the Association and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.
- 2.3 The Association is and shall continue to be a distinct and separate legal entity and body corporate, however, the Association acknowledges the existence of the South African Legal Practice Council (LPC) established in terms of the Legal Practice Act 28 of 2014. (LPA)
- 2.4 The Association are subject to the LPC and all regulations, rules and Code of Conduct which came into force after 1 November 2018.
- 2.5 If this constitution or any rules or actions by the National Executive, committees or members of the association be in conflict with clause 2.4, the LPC’s regulations,

rules and Code of Conduct have preference and is applicable *mutatis mutandis* to the Association, its National Executive, committees or members.

**3. A NON-PROFIT ASSOCIATION** - Notwithstanding anything to the contrary herein contained:

- 3.1 The Association is not formed and does not exist for the purpose of carrying on any business that has for its object the acquisition of gain by the Association or its individual members.
- 3.2 Individual members might, because of their services rendered as individual advocates, receive honorarium from clients, but the Association does not exist for the purpose of its individual members carrying on a business for gain. No member is obliged to carry on a business for gain.
- 3.3 The income and assets of the Association shall be applied solely for investment and for the promotion of the objects for which it is established.
- 3.4 No part of the income or assets of the Association shall be paid directly or indirectly, by way of dividend, donation or otherwise, to any person.
- 3.5 The Association shall not be entitled to carry on any trading or other profit-making activities or participate in any business, profession or occupation carried on by any of its members or provide to any of its members financial assistance or any premises or continuous services or facilities for the purpose of carrying on any business, profession or occupation.
- 3.6 The financial year of the association ends on the 28<sup>th</sup> February of each year.

**4. RIGHTS OF MEMBERS**

- 4.1 Membership of Association in any of the classes of membership does not and shall not give any member of any class a right to any of the moneys, property or assets of the Association, but only confers upon such members the privilege of membership subject to such charges and reasonable restrictions as the committee may from time to time impose and subject to the by-laws in force for the time being.
- 4.2 A member whose application for membership has been accepted shall be bound by the constitution, rules and by-laws of the Association, and of any branch or section thereof, which are then in force, or which subsequently may be altered or amended and in force at any future time. No person shall be absolved from the effect and application of the constitution, rules and by-laws by reason of the fact that he may not have received a copy thereof.

**5. LIABILITY OF MEMBERS**

The liability of members of any class is limited to the amount of unpaid subscriptions or other moneys owing by them to the Association.

## **6. OBJECTS**

- 6.1 The objects of the Association shall be as follows:
- 6.2 To maintain and enhance the prestige, status and dignity of member-advocates;
- 6.3 To encourage and promote efficiency and responsibility in relation to member-advocates;
- 6.4 To uphold and improve the standards of professional conduct and qualifications of advocates in general and especially member-advocates;
- 6.5 To provide for the effective control of the conduct of member-advocates;
- 6.6 To encourage the study of the law;
- 6.7 To initiate and promote reforms and improvements in the law and to co-operate with the Minister of Justice and any other Minister, State Department or Association to achieve this object;
- 6.8 To provide a forum for the exchange of views on matter of common interest;
- 6.9 To communicate and represent the interests of members on matters pertaining to advocates.
- 6.10 To uphold the interests of advocates in South Africa.
- 6.11 To act, within the profession of advocacy, as an agent of change in post-apartheid South Africa and to strive towards the ideal of non-racialism and non-sexism in an open society.
- 6.12 To promote the achievement of equality within our ranks by the adoption and implementation of measures designed to protect and advance individual practitioners and categories of practitioners disadvantaged by unfair discrimination.

## **7. POWERS OF THE ASSOCIATION**

Subject to the provisions of clause 3 above, the Association shall have all such powers as are necessary for the proper attainment of the objects set out in clause 6 above and shall, in particular, have the following express powers:

- 7.1 To facilitate the exchange of idea and act as a clearing house for ideas, priorities and problems in respect of legal matters;

- 7.2 To establish and publish a newsletter for the benefit of it's members and/or interested persons;
- 7.3 To acquire any movable or immovable property for the Association calculated to benefit the Association and to advance its objects and to maintain, improve and alter any of the Association's property;
- 7.4 To institute, conduct, defend, compound or abandon any legal proceedings by or against the Association or its officers, or otherwise concerning the affairs of the Association.
- 7.5 To open bank and building society accounts in the name of the Association and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and other negotiable instruments connected with the business and affairs of the Association;
- 7.6 To invest and deal with any moneys of the Association not immediately required for the purpose of the Association;
- 7.7 To secure the fulfillment of any contracts or engagements entered into by the Association by the mortgage of all or any part of the property of the Association;
- 7.8 to establish, promote or assist in establishing or promoting and to subscribe to or become a member of any association or society whose objects are similar or partly similar to the objects of the Association, or the establishment or promotion of which may be beneficial to the Association, provided that no subscription be paid to any such other association out of the funds of the Association except *bona fide* in furtherance of the interests of the Association;

- 7.9 To support and subscribe to any institution or society which may be for the benefit of the Association or for its employees whether past or present;
- 7.10 To borrow or raise and give security for money by the issue of bonds, debentures, debenture stock, bills of exchange, promissory notes or other obligations or securities of the Association or by mortgage of all or any part of the property of the Association;
- 7.11 Subject to the provisions of clause 3 above, to make donations, loans, exchanges, leases and any other forms of contract whatsoever including sales and purchase of property of any kind whatsoever.

## **8. CLASSES OF MEMBERSHIP**

There shall be the following classes of members of the Association namely:

- 8.1. Ordinary members;
- 8.2. Honorary members;
- 8.3. Special members.

## **9. QUALIFICATION FOR MEMBERSHIP**

The person eligible for the various classes of membership of the Association shall be as follows:

- 9.1. Ordinary members. Any person who has been admitted as an advocate shall be eligible for membership as an ordinary member of the Association subject to such conditions as the committee may impose upon such person on election.
- 9.2. Honorary members. At any annual general meeting of the Association, the committee may propose honorary member(s) of the Association to be elected by a majority of the members present at such meeting, and any such honorary life member shall be subject to the rules and regulations of the Association and enjoy the privilege of membership without payment of subscription. An honorary member is an honorary member for life subject to the provisions of this constitution.
- 9.3. Special members. The committee may, in its discretion and subject to such conditions as it may prescribe, admit persons and organizations as special members.

## **10. ELECTION OF MEMBERS**

- 10.1 Except in the case of honorary members, applications for membership shall be in writing upon such form or forms as the committee or subcommittee may from time to time decide and shall contain such information and particulars, together with such verification thereof, as the committee or subcommittee may require.

- 10.2 The committee or subcommittee shall have the right from time to time to vary, amend or alter the form or forms of application and/or proposal for membership in any class, and may prescribe different forms for different classes of membership.
- 10.3 Candidates for membership shall be elected by a majority vote of the committee of the Association or a subcommittee appointed by it. For the purpose of the election of candidates for membership, the quorum of the committee shall be the chairman and one committee member or of the subcommittee shall be one member.
- 10.4 Should any candidate be inadvertently admitted as a member in any class of membership, the committee or subcommittee may declare his election void, and it shall give him notice to that effect, and it may in its sole discretion return to such candidate any subscription or entrance fee paid by him and he shall cease to be a member in any such class of membership to which he was inadvertently admitted, and his name shall be erased from the register of members.
- 10.5 If at any time after the election of a candidate it shall appear that he has been elected under a misrepresentation or mistake as to identity, or owing to incorrect information having been given, the committee or subcommittee shall have the power to cancel such election. The person whose election is thus cancelled in terms of this clause shall cease to be a member of the Association and his name shall be erased from the register of members and he shall have no claim against the Association for damages, return of entrance fee, deposit or subscription, on any grounds whatsoever, but the committee or subcommittee shall be entitled to make such *ex gratia* refund of entrance fee, deposit or subscription as it may consider proper.
- 10.6 Any candidate whose application for membership has been rejected shall not be entitled to seek election again within one year of the date of such rejection. If, however, at any time after the rejection of a candidate, it should appear that such rejection has been made under a misapprehension or mistake as to identify, or owing to incorrect information having been given, the committee or subcommittee shall have the power to reconsider such application forthwith.
- 10.7 On the election of a member in any class, the secretary or the office manager or subcommittee of the Association shall notify such person, and he shall be entitled, on application therefore, to a copy of the constitution and by-laws of the Association free of charge per email.
- 10.8 The first ordinary and corporate members of the Association shall be the subscribers to this constitution whose names and signatures appear in the Agreement dated 2 September 1994.

**11. RESIGNATIONS**

A member may resign his membership by notice to the secretary or the manager of the Association given prior to the date upon which his next subscription becomes due.

**12. ENTRANCE FEES**

The entrance fees for the various classes of membership shall be such sums as the committee or subcommittee may from time to time determine and such fees shall be paid with the lodging of the application for membership and if not so paid, the application shall be invalid.

**13. SUBSCRIPTIONS**

The annual subscription for membership in any class shall be such sum as the committee may from time to time determine.

**14. PAYMENT OF SUBSCRIPTIONS**

14.1 Members may elect to pay their subscriptions either by

14.1.1 monthly debit order and/or

14.1.2 an upfront annual subscription which shall become due on the last day of January in each year.

14.2 No member who has not paid his subscription within three months after it becomes due shall be allowed to continue as a member while his subscription is unpaid, and any such person shall forthwith cease to be a member of the Association, without notice, and his name shall be erased from the register of members.

**15. TRANSFER IN CLASS, RE-INSTATEMENT AND RE-ADMISSION OF MEMBERS**

15.1 The committee or subcommittee may re-instate a defaulting member on payment by such person of all subscriptions in arrears and any amounts owing to the Association, on such conditions as the committee may deem fit.

15.2 The committee or subcommittee shall have power to re-admit a member, who for any reason has relinquished membership of the Association, on such terms and conditions as the committee or subcommittee shall determine in each particular case.

15.3 A member of any class of membership may, on making written application to or with the consent and approval of the committee, transfer from one class of membership to another as from the commencement of any financial year. Such change of membership from one class to another shall be upon such terms and conditions as the committee in its sole discretion may impose.

## **16. THE COMMITTEE**

16.1 Subject to sub-clause (b) below, the committee shall consist of:

16.1.1 Any honorary member shall be *ex officio* members of the committee and may be elected to any position in the committee.

16.1.2 Eight members to be elected to the committee; this is subject to clause 16.1.5

16.1.3 Not more than one additional person whom the committee may nominate and appoint to the committee;<sup>2</sup> on such conditions as the committee may deem fit which could include non-voting rights and time constraints.

16.1.4 The eight members elected in clause 16 (a) (2) shall comprise of 2 members nominated by a member from their respective provinces: per the following provinces: Western Cape ; Eastern Cape; Gauteng, Kwazulu Natal, Limpopo, Mpumalanga and Northern Cape.

16.1.5 Should a province other than those mentioned in 16.1.4 above grow to more than ten members then same will receive membership on the Committee on the basis of one per completed ten members.

16.2 Until the first annual general meeting of the Association the committee shall consist of the members listed per Annexure "A". The committee shall have the powers of co-option under sub-clause (a) above.

## **17. ELECTION OF COMMITTEE**

17.1 Each elected member of the committee shall hold office for two full terms, "the period", concluding with the end of the annual general meeting of the Association after that in which he was elected and, upon the expiry of such period, such member shall automatically retire from office but shall be eligible for nomination and re-election as a member of the committee, provided that he retains his qualification.

17.2 Nominations in writing for the office of members of the committee shall be signed by one ordinary member of the Association practicing/residing within the province of the nominee and delivered to the secretary or manager at least ten days before the date fixed for the holding of the annual general meeting of the Association at which election shall take place. Nominations may also be accepted at the AGM only in the event of a province not having lodged nominations or if a province does not have two nominations. In this last instance, only one may be added. Subject to the provisions of clause 17.

17.3 At the annual general meeting voting for the election of members of the committee shall be by way of ballot of those members present or by show of

hands as the chairman may decide. Proxy holders must provide their proxies before the meeting starts.

- 17.4 At the AGM the nominations will be voted on per province. The nominations will be divided in the province that the member comes from and the AGM will then vote for two members per province. The nominator of members to the office of members of the committee must practice/reside in the province of the nominee's nominator.
- 17.5 If a province only has two nominations then there will be no voting for the province.
- 17.6 If a province reflects more than two nominations then the AGM will vote for two members.
- 17.7 If at the AGM no further nominations are received and a province has one nominee then that province will be represented by the one nominee.
- 17.8 If there are no nominations for the province then the province will not be represented and the seat will not be transferred to another province.
- 17.9 The members of the committee per province shall as far as possible be representative of both race and gender.

## **18. MANAGEMENT OF THE AFFAIRS OF THE ASSOCIATION**

18.1 The management and control of the affairs of the Association shall vest in the committee which shall have full power and authority to do any act, matter or thing which could or might be done by the Association excepting such matters as are in the rule specially reserved to be dealt with at a general meeting of members. In addition to the general powers and authorities hereby conferred on the committee, and without in any way limiting such powers and authorities, the committee shall have the following further special powers:

18.1.1 To appoint such agents, officers, office manager (as is referred to in this constitution as "manager") for permanent, temporary or special services as they think fit, and to invest them with such powers as they may think expedient, and to determine their duties and fix and vary their salaries or emoluments (if any) and to require security in such instances, and to such amounts, as they may think fit, and to suspend or discharge any such persons at their discretion;

18.1.1.1 Any remuneration referred to in 18.1.1 or 18.1.9 shall not be excessive, having regard to what is generally considered reasonable in the sector and in relation to the services rendered.

18.1.2 To execute, in the name of the Association, any contracts;

18.1.3. To refer any claim or demand by or against the Association to arbitration and to perform, or refuse to perform, the award;

- 18.1.4 To make and give receipts, releases and other discharges for moneys payable to the Association and for the claims and demands of the Association;
- 18.1.5 to appoint persons who shall be entitled, on behalf of the Association, to sign bills of exchange, cheques, receipts and negotiable instruments; to operate internet banking
- 18.1.6 to make, vary and repeal by-laws for the regulation of the affairs of the Association, it's officers and servants, or the members of any class of the Association, provided that such are not inconsistent with or contrary to the constitution herein contained;
- 18.1.7 to delegate to any sub-committee or sub-committee all or any of the authorities conferred on the committee by these rules and such sub-committees shall have such powers as may be conferred on it at the time of its appointment, or thereafter, by the committee of the Association and to be subject in all respects to such rules and by-laws or instructions as may from time to time be framed, given or approved by the committee;
- 18.1.8 to establish sections and branches of the Association and determine their functions, to appoint sub-committees with such powers as may be conferred on it at the time of its appointment, or thereafter, by the committee of the Association and to be subject in all respects to such rules and by-laws or instructions as may from time to time be framed, given or approved by the committee;
- 18.1.9 to fix the remuneration of the Association's bookkeeper or accounting officials.
- 18.2 The Association's financial transactions shall be conducted by means of a banking account and internet banking. The Treasurer via the manager shall cause a budget to be kept and to report on a monthly basis to the Committee via email as to the spending whether it is within the budget or not.
- 18.3 The Committee may form its own rules as to conduct and procedure at committee meetings and as to the use of internet as a means of making decisions as well as teleconferences.
- 18.4 The Committee may adopt rules relating to the use of email members' lists and relating to communication via the manager to members
- 18.5 The committee may decide on the structures of provinces and the formation of provincial branches

18.6 The Association, in a general meeting, may review, approve or amend any decision of the committee, but no such decision of the Association shall invalidate any action taken by the committee in accordance with these rules.

**19. TERMINATION OF OFFICE OF COMMITTEE MEMBERS**

19.1 Any member of the committee absenting himself without leave of the committee for more than three consecutive meetings of which due notice has been given, shall cease to be a member of the committee.

19.2 Any member of the committee who ceases to hold the necessary qualifications of membership or who has been suspended as member or as committee member shall cease to be a member of the committee.

19.3 In the event of any member of the committee elected to such office at any annual general meeting ceasing to hold the necessary qualifications or ceasing to be a member of the committee for any reason whatsoever, the committee shall have the power to fill such vacancy for the remainder of the period of office of such member provided that the member be replaced by a member from the same province.

19.4 Any member of the committee failing or neglecting to fulfill the function/mandate of his designated or appointed office on the committee without reasonable explanation or cause can on a majority vote of the remaining committee members be removed from office and thereby cease to be a member of the committee

**20. MEETINGS OF THE COMMITTEE**

20.1 The committee shall, at its first meeting after the annual general meeting of the Association, elect one of its members as chairman of the committee and of the Association and another of its members as vice-chairman of the committee and vice-chairman of the Association. Should both the chairman and the vice-chairman not be present at any meeting of the committee, the members thereof present shall elect from their number a chairman for that meeting.

20.2 The committee shall meet at least twice in each year. Three weeks' notice at least shall be given of all meetings of the committee unless all members of the committee agree to accept shorter notice.

20.3 The quorum for a meeting of the committee shall be four members present at the commencement of and throughout the meeting. Any decision of the committee shall be by majority vote by show of hands of those present. Each person entitled to be present and to vote shall have one vote and the chairman of the meeting shall have a casting vote in addition to his deliberative vote. No voting by proxy shall be permitted.

- 20.4 The secretary of the Association shall convene a special meeting of the committee on the instructions of the chair of the Association or upon the written request of FIVE (5) MEMBERS of the committee.
- 20.5 The committee shall cause a register of all members of the Association, together with their addresses, and proper accounting records, to be kept and it shall further cause minutes to be kept of the appointment of officers and names of members of the committee present and any meeting, together with minutes of all resolutions and all proceedings taken at any such meeting. All such minutes shall be duly entered into books properly kept and provided for that purpose. Any such minutes, or an extract therefrom, signed by the chairman, shall be received as *prima facie* evidence of the matters therein stated.
- 20.6 Members of the committee serve two full terms in a personal capacity and not as representatives of any members or organizations. A Regional Coordinator may not serve in dual capacity as National Executive Committee member and as Regional Coordinator.
- 20.7 A resolution in writing which is signed by the chairperson or the vice-chairperson of the committee and inserted in the minute book of the committee shall be as valid and effective as if passed at a meeting of the committee.
- 20.8 All acts done by any meeting of the committee or by any person acting as a member of the committee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such member or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the committee.
- 20.9 The inadvertent omission to give notice of any meeting of the committee shall not invalidate the proceedings at any such meeting.
- 20.10 The proceedings of the committee shall be valid notwithstanding any temporary vacancy in the committee.

## **21. ANNUAL GENERAL MEETINGS (AGM)**

- 21.1 The annual general meeting of members of the Association shall be held at such time and place as the committee may determine but as soon as may be after the first day of February in each year.
- 21.2 Notice of the date, time and place for the holding of the annual general meeting shall be posted by letter or print or electronic media to each of the members of the Association at his registered address as appearing in the register of members, at least three weeks before the date fixed for the holding of such meeting.

- 21.3 The omission to send by post or print or electronic media any such notice to any member shall not invalidate the holding of the meeting, or the passing of any resolution thereat.
- 21.4 Notice of the terms of any resolution to be proposed at an annual general meeting, other than concerning ordinary and general business, shall be lodged with the secretary or manager at least fourteen days before the date fixed for such meeting.
- 21.5 Notice of any proposed resolution adding to, repealing or amending any of these rules of any part of the constitution shall be given as provided in clause 28 below.

## **22. PROCEEDINGS AT ANNUAL GENERAL MEETING.**

- 22.1 At the annual general meeting the committee shall present a balance sheet and income statement drawn by the accountant as at 28 February of the preceding financial year, together with its report.
- 22.2 The ordinary business to be done at an annual general meeting shall be as follows:
  - 22.2.1. To confirm the minutes of the previous annual general meeting and any special general meeting held since the previous annual general meeting;
  - 22.2.2. To receive and consider the report of the committee and the financial statements for the preceding financial year with the accountant's report thereon;
  - 22.2.3. To elect members of the committee.
  - 22.2.4. The Committee must elect a chairperson from its members after the AGM.
  - 22.2.5. The Committee must elect other officials after the AGM.
  - 22.2.6. To consider and to pass, with or without modification, any resolutions concerning the affairs of the Association of which due and proper notice has been given and any other business concerning the affairs of the Association.

## **23. SPECIAL GENERAL MEETINGS**

- 23.1 The committee may at any time, through the manager or secretary, call a special general meeting of members by giving not less than twenty one days (21) notice to members specifying for what object or objects the meeting is called.

23.2 The secretary or manager shall convene a special general meeting of members of the Association, upon receiving a requisition in that behalf signed by not less than six ordinary members, specifying any resolution or resolutions proposed to be moved or other business to be discussed. The secretary or manager shall post at his registered address a copy of such notice, or send same per print or electronic media to each member at least twenty one (21) days prior to the holding of the meeting.

23.3 The omission to send by post or send per print or electronic media any such notice to any member shall not invalidate the holding of the meeting, or the passing of any resolution thereat.

#### **24. QUORUM AT GENERAL MEETINGS**

The quorum for a general meeting of members excluding an annual general meeting, shall be ten (10) members entitled to vote thereat; provided that if no quorum be present within 15 minutes after the time fixed for the meeting, it shall, in the case of a special general meeting called by the committee, be postponed to the same day and hour in the following week and at such adjourned meeting, the ordinary members present shall be deemed to be a quorum for the transaction of the business of the meeting. In the case of a special general meeting called by requisition of members, if no quorum is present upon the date fixed, and within 15 minutes after the time fixed for the meeting, it shall be dissolved.

#### **25. CHAIRMAN AT GENERAL MEETINGS**

The chair at all general or special general meetings of the members of the Association shall be taken by the chairperson of the Association or, in his absence, by the vice-chairperson. Should both be absent, the members present shall elect a chairperson for that meeting from among the other members of the committee present, if any, or, failing their presence, a chairman shall be elected, being a person who is entitled to vote at an annual general meeting, from among those members present.

#### **26. ADJOURNMENT OF GENERAL MEETINGS**

The Chairman of any general meeting may, with the consent of the meeting decided by majority vote, adjourn the meeting from place to place and from time to time, but no business shall be transacted at any adjourned meeting other than that business left unfinished at the meeting from which the adjournment took place.

#### **27. VOTING**

- 27.1 Only ordinary and honorary members shall be eligible and entitled to vote at an annual or special general meeting of members of the Association and each such member shall have one vote.
- 27.2 Save as otherwise provided in this constitution, any business, resolution or question submitted to such a meeting for decision shall be decided by majority vote of those present and entitled to vote and, in the first instance, by a show of hands. A special member may be represented by a representative whose identity has been notified to the secretary or chairperson. The chairperson of any such meeting shall have a casting as well as a deliberative vote, provided, however, that a ballot may be demanded by not less than four ordinary or honorary members present at the meeting. Should any such ballot be demanded, it shall be taken in such a manner and at such time and place as the chairman of the meeting may direct.
- 27.3 A declaration by the chairperson of the meeting of the result of a show of hands or a ballot, as the case may be, shall be conclusive.

## **28. AMENDMENTS TO CONSTITUTION**

- 28.1. The constitution of the Association, or any part thereof, as contained in these rules, shall not be repealed or amended, and no new rules shall be made, save by a resolution adopted by a majority of 50 % of the ordinary and honorary members of the Association present at an annual or special general meeting of members of the Association, of which due and proper notice has been given.
- 28.2. Twenty one (21) days notice of the intention to propose and move a resolution for the adoption of a new rule or the repeal or amendment of an existing rule and setting out the terms of such proposed resolution, shall be given to the secretary, or the manager, the secretary or the manager must send a copy of such notice by post or print or electronic media to each member of the Association at the address of each member appearing in the register of members.
- 28.4 The proposed amendments mentioned in this clause may at the said meeting be amended , in full or in part AND the proposed amendment may be replaced by a counter proposal in full or in part, which shall be done by a resolution adopted by a majority of 50 % of the ordinary and honorary members of the Association present at an annual or special general meeting of members of the Association, of which due and proper notice has been given.

28.3 No amendment concerning provincial representation will be allowed unless done by way of referendum as determined by the Committee.

**29. MISCONDUCT OF MEMBERS**

29.1 A member of the Association shall be guilty of misconduct should he/she, in the opinion of the committee:

29.1.1 Commit any breach of this constitution or the rules or by-laws of the Association; or

29.1.2 Be guilty of any improper conduct; or

29.1.3 Fail to make payment of any money due to the Association after due notice; or

29.1.4 Be guilty of conduct in any way offensive to members or any class or to the committee; or

29.1.5 Introduce into the Association or any meeting of the Association any person whose presence therein shall be prejudicial to the interests and reputation of the Association or objectionable to the members as a whole; or

29.1.6 Or be guilty of behaving in a manner unbecoming a member of the Association or prejudicial to the interests and reputation of the Association, whether within the Association's premises or outside them, or without cause or justification behave in a manner which is offensive or unbecoming towards any other member, or guest, or the staff employed by the Association, or

29.2 The hearing and investigation of any complaint as to the conduct of a member, and the procedure to be adopted in connection therewith, shall be in the sole discretion of the committee, provided, however, that the member whose conduct is the subject of complaint and investigation, shall be informed of the nature of the complaint, or the committee shall take any reasonable steps to bring to his notice the nature thereof, by posting a registered letter to his registered or residential address or otherwise, or send per print or electronic media such notice and provided that such member shall be afforded an opportunity of replying to any such complaint, whether in writing or in such other manner as the committee may determine.

29.3 The powers and duties of the committee as set out in this rule may be delegated to a sub-committee once the Chairperson in consultation with the disciplinary officer deem it necessary to institute a disciplinary hearing. The bench will consist of three members, two members elected by the committee and one elected by the member being charged. Should the member fail to elect a member within 10 days after being asked to do so by the manager, then the chairperson may elect a member as the 3<sup>rd</sup> member of the bench.

29.4 The bench after the hearing, but within 14 days after the hearing, shall have the power in regard to a member who, in its opinion, has been guilty of misconduct as described in sub-clause (a) above:

- i. To expel such member, who shall be ineligible for re-election; or
- ii. To deprive such member of any or all of the rights, benefits and privileges of his membership during such time or period as the committee in its absolute discretion may deem fit; or
- iii. To call upon such member in writing, through the manager , to resign and, if he/she fails to tender his/her resignation within seven days of the date of such request, to expel such member, who shall then be ineligible for re-election; or
- iv. To reprimand and/or censure such member;
- v. To caution such member; or
- vi. To impose such condition upon such member as to the use of the facilities of the Association as the bench may in its sole discretion determine.
- vii. To make any monetary award.
- viii. To make any award which a labour court would make in a similar situation
- ix. An honorary member can lose his/her honorary membership as a sentence/punishment
- x. Any award or sentence above may be suspended on such conditions as the Bench deemed fit

29.5 The decision of the committee under this rule shall be notified to such member by posting a registered letter to such member at his registered or residential address or by sending per print or electronic media . In the alternative, should a member be sent an email and should he/she acknowledge receipt thereof, then same will suffice as proper notice.

29.6 Any complaint against a committee member will be investigated by the committee and the audi alteram rule will apply.

29.7 The committee may suspend a member as member pending investigations and/or a disciplinary hearing.

29.8 The committee may suspend a committee member as committee member pending investigations and/or a disciplinary hearing.

### **30. RIGHT OF APPEAL**

- 30.1 The member concerned who was found guilty in terms of clause 29 above, may within three weeks after the decision, finding or sentence in the process in front of the bench, came to the knowledge of the said member, apply for leave to appeal to the Committee, unless good cause is shown for an application for leave to appeal noted outside the three week period.
- 30.2 The application for leave to appeal must be lodged in a written, motivated application for leave to appeal, stating the grounds therefor, with the manager. Where applicable a written application for condonation regarding the three week time period must be filed.
- 30.3 If the Committee find that there is a reasonable prospect of success and, where applicable, that condonation should be granted, leave to appeal shall be granted.
- 30.4 The appeal provided for shall be heard by a committee consisting of at least two advocates, who are members and who will hear the appeal.
- 30.5 Should the two members disagree on the outcome then a final decision shall be made by a member appointed by the committee.
- 30.6 The parties to the appeal or hearing shall be entitled to representation by advocates or attorneys or by both.
- 30.7 The committee shall deliver a reasoned ruling, in writing and signed, where possible, by the members of the committee.

### **31. INTERPRETATION**

- 31.1 Save where the context otherwise requires, singular words shall be deemed to import the plural and vice versa and the masculine gender shall be deemed to include the feminine and neuter genders and vice versa.
- 31.2 In case of *bona fide* doubt or dispute as to the meaning and interpretation of any of the rules and by-laws of the Association or in connection with any other matter whatsoever, the committee for the time being which rules thereon shall be the arbiter and its decision shall be binding upon the members of all classes of the Association, subject to any resolution of a general meeting of the Association thereon.

### **32. REGISTER OF MEMBERS**

All members shall communicate their addresses from time to time to the manager who shall keep a register of the names of members and of their addresses. A member and, in appropriate circumstances, a special member with the approval of the committee, shall notify the manager from time to time, the name or names of persons who are authorized to represent that corporate member or special member at meetings of the Association.

### **33. GENERAL**

- 33.1 A copy of the rules and by-laws and of any repeal or amendment thereto or new rule effected from time to time shall be available for the inspection of the members upon application to the manager. Every person, upon becoming a member of the Association, shall receive on request per email a copy of the rules of the Association as embodied in this constitution, or as amended from time to time, together with such by-laws as may be in force.
- 33.2 A special notice or account to a member shall be properly delivered by posting it to the member's registered address as appearing in the register of members or by sending same per print or electronic media. In the event of any member failing to register his address, or in the event of letters posted to the registered address being returned, such notice shall be considered as having been properly given.
- 33.3 Any notice to be sent in any clause in this constitution may be sent via email by the manager, provided that the manager certifies that he/she has sent the notice and that it was not returned as unopened or as undeliverable.
- 33.4 No member may institute legal proceedings against a committee member or the Association. All disputes will be referred to mediation and arbitration to be agreed upon by the parties, failing which a judge will be approached in chambers to appoint an arbitrator.

### **34. INDEMNITY**

Every member, officer or servant of the Association shall be indemnified by the Association against all costs, losses and expenses which he may incur or become liable for by reason of any act or thing done by him as such in the discharge of his duties, unless the loss in question is caused by his own gross negligence, dishonesty or breach of trust.

### **35. WINDING-UP**

The Association may be dissolved by a resolution passed at a special general meeting called for that purpose, provided that such resolution is passed by a majority of two-thirds of the members present and entitled to vote at such meeting and, further, that such resolution is confirmed at a special general meeting held not less than four weeks thereafter by a majority vote of members entitled to present and vote thereon. In the event of such resolution being passed at the second special general meeting, that meeting shall also have power to pass resolutions by a majority vote for the appointment of a liquidator and the disposal of the surplus funds and assets of the Association after winding-up and after the payment of all the debts and obligations of the Association, provided that any surplus assets shall be given or transferred to some other association or institution, with objects similar to those of the

Association, exempt from tax under the laws relating to income tax and donations tax.

END