

# **PUBLISHERS' ASSOCIATION OF SOUTH AFRICA**

## **CONSTITUTION**

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## PART 1: INTRODUCTION

### 1 INTERPRETATION

- 1.1 In this Constitution, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 "**Annual Report**" means the annual report prepared by the Chairperson in accordance with clause 11.1.4.1;
- 1.1.2 "**Association**" means the voluntary association named on the first page of this document;
- 1.1.3 "**Association Funds**" means the aggregate capital and income, howsoever invested and derived, which is vested in, and administered by the Association, from time to time;
- 1.1.4 "**Auditors**" means the auditors of the Association from time to time;
- 1.1.5 "**Chairperson**" means the chairperson of the Association as contemplated in clause 12.3;
- 1.1.6 "**Committee**" means the executive committee contemplated in clause 13;
- 1.1.7 "**Committee Members**" mean the members of the Committee from time to time;
- 1.1.8 "**Constitution**" means the constitution contained in this document, including all annexures hereto;
- 1.1.9 "**Executive Committee**" means the committee established in terms of clause 13, with executive power and responsibility in respect of the administration of the Association;
- 1.1.10 "**Founding Principles**" means the basic Principles and Values set out in clause 2 upon which the Association is based;
- 1.1.11 "**General Assembly**" means the body referred to in clause 11 comprising all Ordinary Members of the Association in whom are vested the powers and prerogatives therein contemplated;

- 1.1.12 "**General Council**" means the body to be constituted in terms of clause 12 in whom are vested the powers and prerogatives therein contemplated;
- 1.1.13 "**Income Tax Act**" means the Income Tax Act, No 58 of 1962;
- 1.1.14 "**Ordinary Members**" means the members as contemplated in clause 7.3.2;
- 1.1.15 "**Members**" means the businesses which are admitted to membership of the Association from time to time as envisaged by clause 7;
- 1.1.16 "**Member Register**" means the register of members of the Association which contains the name and address of each member;
- 1.1.17 "**Sector Councils**" means such sectoral and special interest bodies as may be constituted as such in terms of clause 14, in whom are vested the powers and prerogatives therein contemplated;
- 1.1.18 "**South African Publishers**" means all businesses, whether constituted as partnerships, companies, close corporations or otherwise, as may from time to time be acknowledged by the General Council as eligible for Ordinary Membership, on the basis that the whole or a significant part of their usual business involves the production, distribution or marketing of books and related materials (including recorded, digital or electronic versions thereof) within South Africa; but shall also include the marketing and distribution within South Africa of imported books and such related materials, through business activities conducted and established in South Africa;
- 1.1.19 "**South Africa**" means the Republic of South Africa;
- 1.1.20 "**Special Purpose Committee**" means a committee which has been delegated a special mandate in terms of clause 12.9 hereof; and
- 1.1.21 "**Written Notice**" means any notice that is dispatched by the Association to its Members including by electronic means, including email, provided that such electronically dispatched written notice is received by the incoming mail server of the intended recipient.
- 1.2 In this Constitution –

- 1.2.1 clause headings and the heading of the Constitution are for convenience only and are not to be used in its interpretation;
- 1.2.2 an expression which denotes –
- 1.2.2.1 any gender includes the other genders;
- 1.2.2.2 a natural person includes a juristic person and *vice versa*;
- 1.2.2.3 the singular includes the plural and *vice versa*;
- 1.2.2.4 a Member includes a reference to that Member's successors in title and assigns allowed at law; and
- 1.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- 1.3 Any reference in this Constitution to –
- 1.3.1 "**business hours**" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.3.2 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.3.3 "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "**law**" shall have a similar meaning; and
- 1.3.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 1.4 The words "**include**" and "**including**" mean "include without limitation" and "including

without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

- 1.5 Any substantive provision, conferring rights or imposing obligations on any person and appearing in any of the definitions in this clause 1 or elsewhere in this Constitution, shall be given effect to as if it were a substantive provision in the body of the Constitution.
- 1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Constitution.
- 1.7 Unless otherwise provided, defined terms appearing in this Constitution in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the date of the last signature to this Constitution and as amended or substituted from time to time.
- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.10 If the due date for performance of any obligation in terms of this Constitution is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 1.11 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.12 Any reference in this Constitution to "**this Constitution**" or any other agreement or document shall be construed as a reference to this Constitution or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.13 In this Constitution the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**"

refer to clauses of and annexures to this Constitution.

## 2 FOUNDING PRINCIPLES

2.1 The Association is formed by and behalf South African Publishers, in recognition of their particular role and responsibility in protecting and promoting the Bill of Rights which forms part of the Constitution of the Republic of South Africa, No 108 of 1996.

2.2 The South African Publishers of wish to establish a voluntary association with particular reference to the fundamental rights which have reference to the freedom of expression, including the specific freedoms referred to therein, namely –

2.2.1 freedom of the press and other media;

2.2.2 freedom to receive or impart information or ideas;

2.2.3 freedom of artistic creativity; and

2.2.4 academic freedom and freedom of scientific research.

2.3 The South African Publishers wish to record in writing their agreement in respect of the above and matters ancillary thereto.

## 3 NAME

The name of the association shall be the Publishers' Association of South Africa ("PASA") and shall be referred to as the "**Association**" in this Constitution.

## 4 AIMS AND OBJECTS

In order to promote its Founding Principles, the Association is founded upon the following aims and objects –

4.1 to promote and protect the rights and responsibilities of the independent publishing sector in South Africa; and to coordinate industry representation, including submissions to and negotiations with government legislators and other relevant public and private bodies with reference to matters affecting South African Publishers;

4.2 to promote creativity, literacy, a culture of reading, and the free flow of ideas, information and opinion;



- 4.3 to establish and apply policy guidelines and codes of conduct as may be adopted by the General Assembly from time to time as applicable to South African Publishers seeking membership of the Association; and to promote best practice and the highest standards of ethics in publishing;
- 4.4 to examine policy or legislative proposals likely to affect publishing in South Africa; and to take such measures in support of or in opposition to such proposals; and where appropriate to make representations with a view to securing amendments thereto as may be considered appropriate;
- 4.5 to liaise with representative international publishing organisations, and to promote the enactment and enforcement of effective legislation to protect copyright and other intellectual property rights, in order to secure the legitimate interests of authors, publishers and the general public;
- 4.6 to provide information, support and resources with reference to new technologies and publishing media, in order to enable South African Publishers to maintain their viability and competitiveness, and to advance the best interests of the publishing industry;
- 4.7 to organise and arrange participation by South African authors and publishers in competitions, exhibits, fairs, displays and other events organised to promote a culture of reading and excellence in writing and publishing in South Africa;
- 4.8 to provide general assistance and support services to the publishing industry in South Africa, including training, workshops, seminars and access to a statistical and informational database; and
- 4.9 generally, to promote the best interests of the publishing industry in South Africa and to do all such other things as may be reasonably ancillary thereto.

## 5 LEGAL STATUS

- 5.1 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.
- 5.2 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 Executive Committee may authorise 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.

## 6 RESTRICTIONS

Notwithstanding anything to the contrary herein contained:

- 6.1 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.
- 6.2 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.
- 6.3 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 save in respect of –
  - 6.3.1 reasonable remuneration for professional or business services actually rendered to or on behalf of the Association, with the prior approval of the Executive Committee;
  - 6.3.2 reasonable actual costs, expenses and other commitments, incurred on behalf of the Association with the prior approval of the Executive Committee;
  - 6.3.3 any fees payable to members of the Executive Committee as decided from time to time by the Members in a general meeting;
  - 6.3.4 all administrative and operating expenses payable by the Association, which shall not exceed the income of the Association generated by the entrance fees and subscription fees, provided that to the extent that such income is inadequate for these purposes, the Executive Committee may request Members to contribute to the funding of such expenditure; and
  - 6.3.5 to the extent required to fulfil the objects and purpose of the Association as contemplated in this Constitution.
- 6.4 The Association shall not be entitled to carry on 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.

- 6.5 Upon the dissolution of the Association 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 Executive Committee (failing which any division of the High Court) considers appropriate and which has objectives the same or similar to the objectives of the Association.
- 6.6 The Association intends to apply to the Commissioner for the South African Revenue Services exemption from appropriate taxes and duties. In compliance with the provisions of the Income Tax Act, the provisions set out in the attached Annexure "3" shall bind the Association and qualify this Constitution.

## **PART 2: MEMBERSHIP**

### **7 MEMBERSHIP**

- 7.1 Membership of the Association does not and shall not give any Member 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 rules of the Association in force for the time being.
- 7.2 A Member whose application for membership has been accepted under this Constitution or any previous constitution of the Association shall be bound by this Constitution and any rules of the Association which are then in force (rules as are envisaged under clause 4.3 including any Codes of Conduct), or rules 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 this Constitution, or of any rules by reason of the fact that such person may not have received a copy thereof or a copy of such rules.
- 7.3 **Classification of Members**
- 7.3.1 The Members of the Company shall comprise of Ordinary Members, Associate Members and Honorary Life Members.



- 7.3.2 An Ordinary Member of the Association shall be –
- 7.3.2.1 those persons who were are presently admitted and recorded as such in the Membership Registers of the Association;
- 7.3.2.2 such other persons including juristic persons, as may from time to time be admitted to Membership in the relevant category by the General Council in its sole and entire discretion; on the basis that all Members shall be required to satisfy the relevant eligibility criteria; and shall be required to conform to the provisions of this Constitution, and to submit to the jurisdiction of the Association and its Executive Bodies, with regard to the conduct of its affairs and the administration of its Membership; and
- 7.3.2.3 all South African Publishers who satisfy the eligibility and admission requirements of the Association from time to time, and who are deemed acceptable as such to the General Council.
- 7.3.3 An Associate Member of the Association shall be –
- 7.3.3.1 those persons who were are presently admitted and recorded as such in the Membership Registers of the Association;
- 7.3.3.2 such other persons including juristic persons, as may from time to time be admitted to Membership in the relevant category by the General Council at its sole and entire discretion; on the basis that all Members shall be required to satisfy the relevant eligibility criteria; and shall be required to conform to the provisions of this Constitution, and to submit to the jurisdiction of the Association and its Executive Bodies, with regard to the conduct of its affairs and the administration of its Membership; and
- 7.3.3.3 persons who, although not themselves publishers, are nevertheless involved with activities associated with aspects of publishing in the South Africa, and who are acceptable as such to the General Council.
- 7.3.4 An Honorary Life Member of the Association shall be –
- 7.3.4.1 those persons who were are presently admitted and recorded as such in the Membership Registers of the Association;

- 7.3.4.2 such other persons including juristic persons, as may from time to time be admitted to Membership in the relevant category by the General Council at its sole and entire discretion; on the basis that all Members shall be required to satisfy the relevant eligibility criteria; and shall be required to conform to the provisions of this Constitution, and to submit to the jurisdiction of the Association and its Executive Bodies, with regard to the conduct of its affairs and the administration of its Membership; and
- 7.3.4.3 any person who on the recommendation of the General Council, and with the approval of the General Assembly of Members, is acknowledged as having given exceptional service to the publishing industry in South Africa.
- 7.4 For the avoidance of doubt, it is stipulated that no business or person shall have the right to demand membership of the Association in any category, notwithstanding that they may satisfy the eligibility criteria. A complete discretion is vested in the General Council to adjudicate applications for membership, and to accept or reject them, as it may deem appropriate in the best interests of the Association and the publishing industry in South Africa.
- 7.5 The General Council shall also have the right from time to time to re-evaluate and reassess the continued eligibility of any existing or prospective Member.
- 7.6 It is expressly stipulated that neither the Association itself nor the General Council may be required to furnish reasons for, or required to justify, any such decision with respect to the admission, refusal or withdrawal of membership of the Association.
- 7.7 The Association through its General Assembly may determine periodic Membership Fees or Subscriptions, which shall be payable by each Member concerned as a condition and consequence of membership. Differential fees/subscriptions may be determined in respect of different classes or categories of members.

## 8 CESSATION OF MEMBERSHIP

- 8.1 Membership of the Association shall be terminated *ipso facto* –
- 8.1.1 upon receipt by the Company of notice in writing to that effect from the Member concerned;

- 8.1.2 upon the issue of a final order of sequestration or liquidation of or commencement of business rescue proceedings against the Member concerned; or
- 8.1.3 upon any Member ceasing to carry on business.
- 8.2 Membership of the Association may be terminated at the discretion of the General Council –
- 8.2.1 if a Member fails to pay any Member's membership fee or any other charges levied on the Member; or
- 8.2.2 otherwise having failed to comply with any other financial, procedural or other requirement with respect to membership in the category concerned;
- provided that the General Council shall have first afforded the Member in default an opportunity to rectify any such default within a period of not less than 21 (twenty one) days subsequent to the despatch of Written Notice to this effect.
- 8.3 Membership of the Association may also be terminated at any time by decision of the General Council on the recommendation of the Executive Committee, in the event of the conduct of a Member being deemed to be incompatible with the Associations Founding Principles or prevailing Codes of Conduct, provided that –
- 8.3.1 any such decision shall require the support of not less than two thirds of the Members of the General Council by resolution;
- 8.3.2 the Member concerned shall be afforded the opportunity to make a written representation with regard to matter in issue; and
- 8.3.3 there shall be no further obligation upon the Association or its executive bodies to furnish reasons or to justify its decision with reference thereto.

## 9 RIGHTS AND PREROGATIVES OF MEMBERSHIP

- 9.1 Members of the Association shall confer the following rights and prerogatives –
- 9.2 Ordinary Membership
- 9.2.1 the right to receive notice of; to attend, speak and vote at all meetings of the General Assembly;

- 9.2.2 the right of Member's representatives to be nominated, and if elected, to serve as office bearers on the Sector Councils of the Association;
- 9.2.3 the right to participate fully in the affairs of the relevant Sector Councils of the Association;
- 9.2.4 the right to receive copies of the Annual Report and Annual Financial Statements of the Association; and
- 9.2.5 such other rights and prerogatives as may from time to time be determined by the Association in respect of ordinary membership.

### 9.3 Associate Membership

- 9.3.1 the right to receive notice of; to attend, speak (but not to vote) at all meetings of the General Assembly;
- 9.3.2 the right to receive copies of the Annual Report and Annual Financial Statements of the Association; and
- 9.3.3 such other rights and prerogatives as may from time to time be determined by the Association in respect of ordinary membership.

### 9.4 Honorary Life Membership

- 9.4.1 the right to receive notice of; to attend, speak (but not to vote) at all meetings of the General Assembly;
- 9.4.2 the right to receive copies of the Annual Report and Annual Financial Statements of the Association; and
- 9.4.3 such other rights and prerogatives as may from time to time be determined by the Association in respect of honorary life membership.

## **PART 3: MEETINGS AND EXECUTIVE BODIES**

### **10 ORGANISATIONAL STRUCTURES**

- 10.1 The Association shall pursue its aims and objects, and conduct its affairs through –
  - 10.1.1 the General Assembly;



- 10.1.2 the General Council;
- 10.1.3 the Executive Committee;
- 10.1.4 the Sector Councils; and
- 10.1.5 any special purpose committees as may from time to time be constituted in order to exercise a particular mandate on behalf of the Association or its membership.

## 11 GENERAL ASSEMBLY

The General Assembly shall comprise all Ordinary Members of the Association from time to time, and shall be convened as occasion may require, in the manner and for the purposes contemplated hereunder –

### 11.1 Annual General Meeting

- 11.1.1 The Association shall convene an annual general meeting of its Members once in each calendar year, but no more than 3 (three) months after the end of the financial year.
- 11.1.2 The minimum number of days for the Association to deliver a Written Notice of an Annual General Meeting of Members to the Members is 21 (twenty one) days.
- 11.1.3 The chairperson, or in his absence, the vice chairperson, of the Association shall preside as chairperson at every Annual General Meeting.
- 11.1.4 Each annual general meeting of the Company contemplated in clause 11.1.1 shall provide for at least the following business to be transacted –
  - 11.1.4.1 the presentation and consideration of the Chairperson's Annual Report;
  - 11.1.4.2 the consideration and adoption of the Annual Financial Statements;
  - 11.1.4.3 the (re) election for the ensuing year of the Chairperson, Vice-Chairperson, Executive Secretary, and Treasurer; each of whom shall also serve *ex officio* on the General Council and Executive Committee during the tenure of such office;
  - 11.1.4.4 the (re) appointment of the Auditors; and
  - 11.1.4.5 such other matters as may be considered appropriate.

## 11.2 Special General Meetings

Other General Meetings of the Association (termed Special General Meetings) may be convened at any time at the discretion of the Chairperson, and shall be so convened at the request of –

11.2.1 the General Council; or

11.2.2 the Executive Committee; or

11.2.3 any 15 (fifteen) Ordinary Members of the Association;

provided that should the Chairperson, having been duly requested to convene the meeting, fail to give the required notice with 7 (seven) days of the request being made, then the persons requisitioning the Meeting shall themselves be entitled to give such required notice and to convene the meeting.

11.3 Any such Special General Meeting (other than the Annual General Meeting) shall be convened on not less than 14 (fourteen) days Written Notice to all Members entitled to attend General Meetings, and such notice shall state in broad terms the business to be transacted at the meeting.

## 11.4 Resolutions and Voting

11.4.1 Unless otherwise stipulated in terms of this Constitution, a resolution put to the vote shall be decided by a show of hands, or by a poll, as the Chairperson may determine. A poll shall be taken as directed by the Chairperson, and the result of the poll shall be deemed to be the resolution of the Meeting.

11.4.2 Each Ordinary Member present or represented at a General Meeting shall be entitled to 1 (one) vote. Unless otherwise stipulated in terms of this Constitution, decisions shall be reached by the majority of votes cast. The Chairperson shall be entitled to a second or casting vote in the event of an equality of votes.

11.4.3 Notwithstanding the foregoing, the Chairperson shall be entitled to determine that a particular issue concerns only certain members or interest group/s, in which event voting thereon shall be restricted to the members concerned.

## 11.5 Quorum



- 11.5.1 The quorum requirement for a General Meeting of the Association to begin shall be 15 (fifteen) Ordinary Members present or represented at the meeting.
- 11.5.2 In the event of any General Meeting having been duly convened but no quorum being present, such meeting shall stand adjourned to another date, which shall be not less than 5 (five) days thereafter, as may be determined by the Executive Committee, and Written Notice reflecting such adjournment shall be given to all Members entitled to notice of General Meetings. At such reconvened General Meeting, the Ordinary Members then present or represented shall be deemed to constitute a quorum.
- 11.5.3 Proper minutes shall be kept of the proceedings of the General Assembly, and a record of the persons present at each meeting. The minutes shall be signed by the person who chairs the meeting, and shall be available at all reasonable times for purposes of inspection or copying by any member entitled to attend meetings of the General Assembly.

## 12 GENERAL COUNCIL

- 12.1 The General Council shall comprise the following persons –
- 12.1.1 The Chairperson; Vice-Chairperson; Treasurer; and Executive Secretary, as voting members; and the Executive Director as a non-voting member; all of whom shall serve during the period of their respective appointments *ex officio*; and/or
- 12.1.2 Such number of Members representative of and duly appointed by the Sector Councils as may subsist from time to time, in accordance with the determination of the General Assembly. Unless otherwise determined by the General Assembly, the representation of the presently existing Sector Councils shall be as reflected in the Schedule of Representation annexed hereto marked Annexure "1;" and/or
- 12.1.3 4 (four) experts on the basis of the needs of the Association, and the specialized knowledge or skills which such individuals may be in a position to contribute to the Association. Such co-opted persons shall have no voting rights.
- 12.2 The General Council shall receive reports from the Sector Councils and from its Executive Committee, and shall determine its own agenda, with a view to exercising broad responsibility for determining the Association's policy with regard to matters of

importance affecting the publishing industry in South Africa, as it may deem appropriate, and as may be referred to it for consideration by the General Assembly, in order to give general policy guidance and direction to the Executive Committee.

- 12.3 The Chairperson, or in his or her absence, the Vice-Chairperson, shall chair all meetings of the General Council. In the absence of both the Chairperson and Vice-Chairperson, the members of the General Council who are present at the meeting concerned shall elect one of their number as Chairperson for that meeting.
- 12.4 The Chairperson may at any time convene a meeting of the General Council, and shall be obliged on the request of any 2 (two) members of the General Council to convene such a meeting.
- 12.5 The quorum necessary for the transaction of any business by the General Council shall be 7 (seven) of its members.
- 12.6 All meetings of the General Council each of its members shall have 1 (one) vote; provided that co-opted members shall have no vote.
- 12.7 Decisions of the General Council shall be determined by a simple majority of votes. In the event of an equality of votes, the Chairperson shall be entitled to a second or casting vote.
- 12.8 Proper minutes shall be kept of the proceedings of the General Council, and a record of the persons present at each meeting. The minutes shall be signed by the person who chairs the meeting, and shall be available at all reasonable times for purposes of inspection or copying by any member entitled to attend meetings of the General Council.
- 12.9 The General Council may delegate any of its powers to one or more of its members, or to a Special Purpose Committee, or to an employee or agent of the Association, as it deems appropriate. The member, committee, employee or agent to whom any such delegation is made shall, in the exercise of the relevant functions, conform to any directions that may be stipulated by the General Council from time to time.
- 12.10 Notwithstanding the foregoing, a Resolution signed by all the Members of the General Council, shall have the same force and effect as a Resolution adopted at a duly convened meeting of the Council.

12.11 The General Council may determine its own rules of procedure for its meetings, be they in person meetings or subject to written rules adopted at an in-person General Council meeting, meetings conducted by teleconference, videoconference or by electronic means now known or as may be available in future.

### 13 EXECUTIVE COMMITTEE

13.1 The Executive Committee shall comprise of the following members –

13.1.1 the Chairperson;

13.1.2 the Vice-Chairperson;

13.1.3 the Executive Secretary;

13.1.4 the Treasurer; and

13.1.5 the Executive Director.

13.2 The Executive Committee is established in order to administer the affairs of the Association and to promote its Aims and Objects set out in clause 4. In executing its mandate, the Executive Committee shall implement the decisions of the General Assembly, as tasked by the General Council; take due cognizance of the deliberations of the Sector Councils; and generally have regard to the Association's policy framework and its available means and resources from time to time.

13.3 Each Member of the Executive Committee shall have the right to exercise 1 (one) vote, provided that the Executive Director shall have no vote.

13.4 Save as otherwise provided, the provisions of 12.4 to 12.10 with respect to General Council Meetings shall apply *mutatis mutandis* with respect to the procedure to be adopted at meetings of the Executive Committee.

### 14 SECTOR COUNCILS

14.1 The Association shall, by decision of its General Assembly, constitute such Sector Councils, from time to time, as it may deem appropriate, in order to advise the Association with respect to the special interests and concerns of particular interest groups amongst its Members.

- 14.2 In constituting each such Sector Council, the General Assembly shall determine –
- 14.2.1 its broad mandate;
  - 14.2.2 the composition of its membership;
  - 14.2.3 its numerical representation on the General Council; and
  - 14.2.4 any other procedural matters which the General Assembly may deem appropriate to regulate in respect of the proceedings, and conduct of meetings of Sector Councils.
- 14.3 Subject to any contrary direction of the General Assembly, it is intended that the persons serving from time to time on the General Council as nominated representatives of the Sector Councils, shall serve for such period/s as the relevant Sector Council in each instance may from time to time determine; provided that at least 1 (one) of the nominated representatives of each Sector Council shall stand down at successive Annual General Meetings (but shall be eligible for re-election); in order to make provision not only for the benefit of continuity of representation, but also for the opportunity of periodic review of each Sector Council's representation.

#### **PART 4: FINANCING PROVISIONS**

##### **15 FUNDS OF THE ASSOCIATION**

- 15.1 The Association Funds shall be derived as follows –
- 15.1.1 by Membership Fees or Subscriptions duly authorised by the General Assembly in terms of clause 7.7;
  - 15.1.2 by special levies raised by the General Council to meet particular needs and purposes; and
  - 15.1.3 by special contributions raised by particular Sector Councils, to facilitate its projects and programmes.
- 15.2 Subject to clause 15.3, the Association Funds shall be under the control and at the disposal of the General Council, which shall be authorised to appropriate and disburse such funds as it may deem necessary from time to time, in implementation of duly approved budgets, and generally in pursuance of the aims and objectives of the

Association. The General Council shall have the power to delegate authority with reference to such expenditures to the Executive Committee, subject to such directions and qualifications as it may deem appropriate from time to time.

- 15.3 Notwithstanding anything to the contrary herein contained or implied Sector Councils shall be entitled to control, disburse and deal with any special industry contributions which they may have raised and contributed, and to mandate the General Council and/or the Executive Committee accordingly.

## 16 POWERS OF THE ASSOCIATION

Subject to the provisions of clause 15 above, the Association shall have all such powers as are necessary for the proper attainment of the objects set out in clause 4 above and shall, in particular, be entitled (through its appropriate organisations sub-structure) to exercise any of the General Investment and Administrative powers set out in Annexure "2", subject however to the prescribed fiscal conditions imposed in terms of the Income Tax Act by virtue of its exemption from income and other taxes, as envisaged by clause 18 below.

## 17 SIGNATURES

All cheques, promissory notes, contracts, deeds and other documents which require to be signed on behalf of the Association shall be signed in such manner as the Executive Committee shall determine from time to time.

## 18 PRESCRIBED FISCAL CONDITIONS

- 18.1 Notwithstanding anything to the contrary hereinbefore contained or implied, the powers of the Association, shall be subject to due compliance with all conditions stipulated from time to time in respect of the Public Benefit Organisations in terms of section 30 of the Income Tax Act, as read with the Ninth Schedule thereto, in order to ensure that the Association both establishes and retains its tax-exempt status in terms of section 10(1)(cN) of the Act, and the further fiscal benefits envisaged by section 18A of the Act.

- 18.2 The prescribed fiscal conditions applicable to the Association at the time of the adoption of the Constitution shall be such as set out in Annexure "3" to this Constitution, but shall remain subject to any amendments thereto as may be enacted or prescribed at any time.

## 19 ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT AND ANNUAL FINANCIAL STATEMENTS

- 19.1 The Annual Financial Year of the Association shall be as from 1 July in each year to 30 June in the succeeding year.
- 19.2 The Association shall keep proper books, vouchers and accounting records. Financial Statements (including capital and revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice and shall clearly reflect the affairs of the Association. The books of account and Financial Statements shall be audited and certified in the customary manner by an independent practising chartered accountant.
- 19.3 A copy of the Annual Financial Statements, audited and certified as aforesaid, shall be made available to the Members of the Association, as soon as possible after the close of the financial year.

## PART 6: GENERAL

### 20 SIGNATURES

All cheques, promissory notes and other documents requiring signature on behalf of the Association shall be signed in such manner as the Executive Committee may determine from time to time.

### 21 AMENDMENTS TO CONSTITUTION AND CHANGE OF NAME

- 21.1 By decision of the General Assembly –
- 21.1.1 the name of the Association may be changed;
- 21.1.2 the terms of the Constitution may be amended; and
- 21.1.3 the Association may be dissolved

provided that Written Notice of the proposed resolution is given to all members entitled thereto not less than 21 (twenty one) days prior to the date of the meeting and provided further that such notice states the broad nature of the resolution to be proposed.

- 21.2 Any such resolution shall be deemed to have been duly adopted only if supported by at



least 2/3<sup>rds</sup> (two thirds) of the Ordinary Members present at the meeting, being not less than the minimum necessary to constitute a quorum.

- 21.3 For the avoidance of doubt, and notwithstanding anything to the contrary contained in this Constitution, it is confirmed that a resolution signed by all Ordinary Members of the Association, shall be valid as if passed at a duly convened meeting of the General Assembly of the Association.

## 22 INDEMNITY

- 22.1 Subject to the provisions of any relevant statute, each person serving on any organisational structures or executive body, including all office bearers, shall be indemnified by the Association for the consequences of acts done in good faith on the Association's behalf; and it shall be the duty of the Association to pay all reasonable and necessary expenses which any such person incurs on behalf of the Association, or as a result of work and acts performed on the instructions and with the authority of the relevant structure.
- 22.2 Subject to the provisions of any relevant statute, no person serving as aforesaid on any of the organisational structures or executive bodies, shall be liable for the acts, receipts, neglects or defaults of any other member so serving, or for having joined in any receipt or other act of conformity, or for any loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by the Association; or for the insufficiency or deficiency of any security in or on which the monies of the Association may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any monies, securities or effects are deposited or for any loss or damage caused in any other way, which occurs in the execution of the duties of such structure, unless it arises in consequence of such person's dishonesty or failure to exercise the degree of care, diligence and skill required by law.

## 23 AMBIT OF DISCRETION

Where discretions are vested in the General Assembly, or other structures of the Association in terms of this Constitution, such discretions, except where expressly limited, shall be complete and absolute, and no person affected by any such decision pursuant to the exercise of such discretionary powers shall be

entitled to challenge the decision; provided that the General Assembly or other structure concerned shall have duly conformed to the procedures and terms prescribed by this Constitution.



## SCHEDULE OF REPRESENTATION

## SECTOR COUNCILS

NAME AND MANDATE	REPRESENTATION ON THE GENERAL COUNCIL
Basic Education	4 (four) representatives
Consumer and Trade Affairs	3 (three) representatives
Academic	1 (one) representative
Scholarly	1 (one) representative
Industry, Skills and Development	2 (two) representatives
Technical and Vocational Education and Training	2 (two) representatives
Legal Affairs	1 (one) representative
Adult Education and Training Forum	1 (one) representative
Small Micro and Medium Enterprises Committee	1 (one) representative

## GENERAL INVESTMENT AND ADMINISTRATIVE POWERS

In accordance with the provisions of clauses 15 and 16 and subject to the prescribed fiscal conditions set out in Annexure "3", the Association, acting through its appropriate structures, shall have the following general investment and administrative powers, which powers and authorities may be exercised within South Africa and also in any other part of the world –

1. to invest the Association Funds as it deems fit, on condition that any investments made by the Association shall be permissible in terms of such prescribed fiscal conditions;
2. to take over investments and assets forming the subject matter of donations made to the Association, and to retain them in the form in which they are received, or to realise same and re-invest the proceeds;
3. to realise or vary any investments from time to time forming part of the Association Funds and to re-invest the proceeds resulting from such realisation in any authorised investments;
4. to allow funds or monies forming part of the Association Funds to remain un-invested or in their original state of investment on acquisition by the Association;
5. to effect borrowings for the purposes of pursuing the aims and objects of the Association; including the payment of liabilities; the making of a loan in furtherance of such aims and objects; the preserving or acquiring of any assets or investments; the subscriptions of any shares; with powers from time to time to consent to any alteration or variation of the terms applicable thereto; and as security for any money so borrowed, the Association shall be entitled to mortgage, pledge, (either generally or specifically) or otherwise encumber, all of any portion of the Association Funds, in the manner and on terms and conditions as it sees fit, with the right also to replace such borrowings or security;
6. to guarantee (either gratuitously or for a consideration) the performance of contracts or obligations of any person (including a juristic person), upon such terms and conditions, and with or without security, as may be deemed appropriate; provided that this power may only be exercised in pursuance of the aims and objects of the Association;

7. to exercise the voting power attached to any shares forming part of the Association Funds as may be considered appropriate, and to enter into any arrangements considered necessary for the liquidation, reconstructions or amalgamation of any company whose capital the shares form a part;
8. to deal with any of the assets forming part of the Association Funds from time to time, by way of exchange, sale, lease or otherwise; and in exercising any powers of sale, the Association shall be entitled to cause such sale to be effected by public auction, tender or private treaty, as it considers appropriate;
9. to purchase or otherwise acquire immovable property; and in respect of any immovable property forming part of the Association Funds –
  - 9.1 to exchange, sell, lease or otherwise deal with such immovable property or any portion of it, and to grant rights or options in respect of it; to register mortgage bond; and to maintain, repair and improve any buildings on, or forming part of such immovable property;
  - 9.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation or otherwise in the Deeds Registry, Mining Titles Office or other Public Office; to deal with servitudes, usufructs, limited interests or otherwise; and to make any applications, grant any consents and agree to any amendments, variations, cancellations, cessions, releases, reductions, substitutions or otherwise generally relating to any deed, bond or document; and to obtain copies of any deeds, bonds or documents for any purposes; and generally to do or cause to be done any act whatsoever in any Registry or office;
10. to transfer shares or other assets into the names of any nominee/s for the Association;
11. to exercise through its appropriate structure, all such management and executive powers as are normally vested in the board of directors of a company, including the employment of staff, and the determination of employees' benefits, and the terms and conditions of service.

**REQUIREMENTS FOR THE COMMISSIONER FOR THE SOUTH AFRICAN  
REVENUE SERVICE FOR EXEMPTION FROM TAX AND DUTIES**

As provided for in clause 6.6 of this Constitution, the Association intends to apply to the Commissioner for the South African Revenue Services for the exemption from appropriate taxes and duties. In compliance with the requirements of the Commissioner in respect of such exemptions, the following provisions shall bind the Association –

1. the entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept fiduciary responsibility of that entity;
2. no single person may directly or indirectly control the decision-making powers relating to that entity;
3. the entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
4. the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
5. no member may directly or indirectly have any personal or private interest in that entity;
6. substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
7. the entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;
8. the entity must not pay to any employees, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
9. substantially the whole of the entity's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic of the national, provincial or local sphere;

10. the entity must as part of its dissolution, transfer assets to –
  - (aa) another entity approved by the Commissioner in terms of this section;
  - (bb) a public benefit organisation approved in terms of section 30;
  - (cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i); or
  - (dd) the government of the Republic in the national, provincial or local sphere;
11. the persons contemplated in paragraph (b)(i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;
12. the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
13. the entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as a part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5).