

# Model Constitution

for a

## Voluntary Association (with General Members)

### Contents

1.	NAME OF THE ASSOCIATION .....	2
2.	OBJECTIVES .....	2
3.	LEGAL STATUS.....	2
4.	INCOME AND PROPERTY OF THE ASSOCIATION .....	2
5.	TAXATION OF ASSOCIATION .....	2
6.	POWERS OF ASSOCIATION .....	3
7.	THE GOVERNING BOARD .....	3
8.	MEMBERSHIP .....	5
9.	MEETINGS OF MEMBERSHIP .....	6
10.	NOTICES OF MEETINGS .....	7
11.	FINANCES AND REPORTS.....	7
12.	AMENDMENTS AND DISSOLUTION:.....	8
13.	INDEMNITY .....	8

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#### Disclaimer:

This document is aimed at serving as a model constitution and may not be applicable to all specific circumstances. Professional assistance should be obtained before acting on any of the information in this document.

**1. NAME OF THE ASSOCIATION**

The name of the Association is: ..... (*the "Association"*)

The shortened name is: .....

**2. OBJECTIVES**

The Association is a non-profit organisation established for the following public benefit objectives:

2.1 .....

2.2 .....

2.3 .....

2.4 .....

2.5 .....

**3. LEGAL STATUS**

The Association is a body corporate with its own legal identity which is separate from its office-bearers and members. The Association will continue to exist even if the members change.

**4. INCOME AND PROPERTY OF THE ASSOCIATION**

4.1 Members and office-bearers have no rights in the property or other assets of the Association solely by virtue of their being members or office-bearers.

4.2 The income and property of the Association shall be used solely for the promotion of its stated objectives and shall not be paid or distributed directly or indirectly to any person, or to any member of the Association or office-bearers, except as reasonable compensation for services actually rendered to the Association or reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

**5. TAXATION OF ASSOCIATION**

The Association may apply to the Commissioner for the South African Revenue Service for approval as a Public Benefit Organisation in terms of section 30 of the Income Tax Act. Upon approval the provisions set out in **Schedule B** shall bind the Association.

## 6. POWERS OF ASSOCIATION

The Association shall have the same powers as that of a company under the Companies Act, as amended. Such powers include:

- 6.1 To institute or defend any legal or other proceedings and to settle any claims,
- 6.2 To prudently invest funds of the Association,
- 6.3 To buy, attain, maintain, manage, lease, sell, or in any way deal with property and assets of the Association,
- 6.4 To donate and transfer the property and assets of the Association to public benefit organisations with similar objectives,
- 6.5 To borrow and to use the property or assets of the Association as security for borrowing,
- 6.6 To execute any act or deed in any deeds registry, mining titles or other public office.
- 6.7 To exercise all the management and executive powers ordinarily vested in the Board of Directors of a Company, and
- 6.8 To carry out all the powers and authority of the Association in South Africa and in any other part of the world.

## 7. THE GOVERNING BOARD

- 7.1 **Powers:** The Governing Board shall manage the affairs of the Association in accordance with the resolutions of members in General Meeting.
- 7.2 **Number and Portfolios:** A minimum of five members shall serve on the Governing Board bearing the following portfolios: the Chairperson, the Vice-Chairperson, the Treasurer, the Secretary and the Vice-Secretary.
- 7.3 **Election:** All members of the Governing Board shall be members of the Association. The Governing Board shall be elected by the members of the Association at an Annual General Meeting.
- 7.4 **Term of office:** At least one-half of the members on the Governing Board, starting with those who have been office the longest since their last appointment, shall retire at every Annual General Meeting. The retirement of members serving for the same period shall be decided by a majority of votes of the members of the Association. No Governing Board member shall serve more than three consecutive years without a minimum ineligibility period of twelve months.
- 7.5 **Vacancies:** The Governing Board must, as soon as reasonable possible, appoint someone to fill any vacancy that reduced the number of board members to less than five. The next General Meeting must confirm the office of any board member appointed, otherwise it will lapse.

- 7.6 **Co-option:** The Governing Board may co-opt additional non-voting members as it may consider appropriate.
- 7.7 **Resignation, Disqualification and Removal:** A Governing Board member may resign from office in writing. A Governing Board member shall be disqualified from office upon termination of membership to the Association and becoming incapable by reason of mental illness. A member can be removed from office through a two-thirds resolution of the remaining Governing Board members, consisting of not less than four.
- 7.8 **Delegation of Powers:** The Governing Board may delegate any of its powers or functions to a committee or member(s) of the Association provided that: such delegation and conditions are reflected in the minutes for that meeting, at least one Board member serve on the committee, the Board in advance approves all expenditure incurred by the committee or member, and the Governing Board may revoke the delegation or amend the conditions.
- 7.9 **Procedures at Meetings:** The Governing Board may regulate its meetings and proceedings as it finds fit, subject to the following:
- a. The Chairperson shall chair all meetings of the Governing Board.
  - b. Meetings of the Governing Board may be conducted face-to-face or electronically which would allow Governing Board members to be present and participate through electronic means.
  - c. If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the Board members present at the meeting shall elect a chairperson for that meeting.
  - d. The Chairperson shall convene a meeting of the Governing Board at least quarterly and at the written request of any two members of the Governing Board.
  - e. The quorum for a meeting of the Governing Board shall be two-thirds of the serving Governing Board members.
  - f. If no quorum is present, the Governing Board may make no decision, except to preserve the assets of the Association and to call a meeting of the general members.
  - g. Each Governing Board member present or represented through written proxy shall have one (1) vote.
  - h. Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
  - i. Proper minutes and attendance records must be kept of all meetings of the Governing Board. The chairperson for the meeting shall sign the minutes which shall be available at all times for inspection or copying by any member of the Association on two days' notice to the Secretary or the Vice-Secretary.

- j. A resolution signed by all members of the Governing Board shall be as valid as if passed at a duly convened meeting of the Governing Board.
  - k. The Governing Board may appoint employees upon such lawful terms and conditions as it may deem necessary.
- 7.10 **Conflicting Interests:** Any actual, potential or perceived conflict of interest on the part of any member of the Governing Board, on a matter pertaining to the Association, must be disclosed in writing to the Governing Board which shall record such conflict of interest in the minutes of the Board meeting. Such member may be requested by the Governing Board to state his/her position in the matter or to respond to pertinent questions, but shall not vote or use his/her influence on the matter and shall not be counted for purposes of determining a quorum for the meeting where the voting takes place.
- 7.11 **Confidentiality:** All matters pertaining to litigation, security measures, contractual negotiations, employment matters and any other matters deemed confidential by the Governing Board, must be treated as confidential and only the actual decisions may be disclosed to the general public,

## 8. MEMBERSHIP

- 8.1 **First and Subsequent Members:** The first members of the Association shall sign **Schedule A** of this Constitution. The Governing Board may admit natural persons over eighteen [and legal persons] as members to the Association.
- 8.2 **Conditions and Criteria:** The Governing Board may determine the conditions and criteria for membership. Applications for membership that do not comply with such conditions and criteria may be refused by the Governing Board.
- 8.3 **Transfer of Membership:** Membership is not transferrable.
- 8.4 **Register of Members:** The Governing Board must keep a register with the names and addresses of all the members.
- 8.5 **Automatic Termination of Membership:** Membership automatically terminates upon the receipt by the Association of a notification of the death of a natural member or dissolution of an organisational member, and written resignation.
- 8.6 **Termination by Governing Board:** Membership terminates if a member is removed by a resolution of the Governing Board. Provided that the member has been given an opportunity to make written or verbal representations at a meeting of the Governing Board pertaining to the proposed termination, and the Board's decision to terminate membership was confirmed by resolution of two-thirds of the members present at the next General Meeting, otherwise it will lapse.

## 9. MEETINGS OF MEMBERSHIP

- 9.1 **Annual General Meetings:** All Annual General Meetings (AGMs) must be held within six months of the Association's financial year-end. At least twenty-one days' written notice must be given to all members stating the date, time, place and business of the AGM, which business must include:
- a. The Chairperson's report,
  - b. The presentation of the Association's Annual Financial Statements,
  - c. The election of Governing Board members,
  - d. The appointment of Auditors, and
  - e. Other appropriate matters.
- 9.2 **Special General Meetings:** The Governing Board or not less than one-third of the members may call a Special General Meeting of the Association. At least fourteen (14) days' written notice must be given to all members stating the date, time, place and business of the Special General Meeting. If the Board fails to give notice within seven days of the request of one-quarter of the members, such members shall be entitled themselves to give notice of and to convene the meeting.
- 9.3 **Powers of the General Meetings:** The members in a properly convened General Meeting of the Association is the highest decision-making structure of the Association as set out in this Constitution. The members in General Meeting may review, approve or amend any decision taken by the Governing Board but no such resolution of the Association shall nullify any earlier resolution taken by the Governing Board in accordance with the provisions of this Constitution.
- 9.4 **Procedures at General Meetings:** The Members may regulate their meetings and proceedings as it finds fit, subject to the following:
- a. The Chairperson shall chair all General Meetings.
  - b. General Meetings of the Association may be conducted face-to-face or electronically which would allow members to be present and participate through electronic means.
  - c. If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the members present at the General Meeting shall elect a chairperson for that meeting.
  - d. The quorum for General Meetings of the Association shall be one quarter of the members of the Association.
  - e. If a quorum is not present within fifteen minutes of the appointed time of the meeting, the meeting must be adjourned to another date, within fourteen days thereafter. Notice, as provided for under the constitution, must be given to all members of the Association of such adjournment.
  - f. If no quorum is present at the reconvened meeting within fifteen minutes of the appointed time, the members present, or represented by proxy, shall deem to constitute a quorum for that meeting.

- g. A resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot can be demanded by not less than one third the members present, or represented by proxy.
- h. Each member present or represented by proxy shall be entitled to one (1) vote.
- i. Except where this constitution requires a higher threshold, questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
- j. Proper minutes and attendance records must be kept of all General Meetings. The chairperson must sign the minutes which shall be available at all times for inspection or copying by any member of the Association on two days' notice to the Secretary or the Vice-Secretary.

## 10. NOTICES OF MEETINGS

- 10.1 All notices terms of this constitution must be given to members in writing (personally, post or electronic communication) to the address provided by the members.
- 10.2 The accidental omission to address notices to any member shall not nullify the proceedings of any meeting.
- 10.3 A member present in person at any meeting shall be deemed to have received notice of such meeting.
- 10.4 If posted, notices shall be deemed to have been received seven days after posting.

## 11. FINANCES AND REPORTS

- 11.1 **Bank Account:** The Governing Board must open a bank account in the name of the Association with a registered Bank.
- 11.2 **Signing:** Cheques and other documents requiring signature on behalf of the Association shall be signed by at least two persons authorised by the Governing Board.
- 11.3 **Financial year-end:** The financial year end of the Association shall be end of February.
- 11.4 **Financial Report:** The Governing Board must ensure that proper records and books of account which fairly reflect the affairs of the Association are kept, and within six months of its financial year a report is compiled by an independent practicing auditor registered in terms of the Auditing Profession Act stating whether or not the financial statements of the Association are consistent with its accounting records, the accounting policies are appropriate and have been appropriately applied with in preparing the

financial statements and the Association has complied with the financial provisions of this constitution.

## **12. AMENDMENTS AND DISSOLUTION:**

- 12.1 This Constitution may be amended, the name of the Association may be changed and the Association may be dissolved by resolution of two-thirds of the members present at a General Meeting.
- 12.2 At least twenty-one days' notice of the Meeting stating the nature of the resolution to be proposed must be given to all the members of the Association.
- 12.3 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 Governing Board (and failing which the members in General Meeting) considers appropriate and which has objectives the same or similar to the objectives of the Association, and should the Association be exempt from the payment of any taxes and duties;
- i. Any similar public benefit organization which has been approved in terms of section 30 of the Income Tax Act,
  - ii. Any institution, board or body which is exempt from tax under the provisions of section 10 (1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity,
  - iii. Any department of state or administration in the national or provincial or local sphere of government of the Republic.

## **13. INDEMNITY**

- 13.1 Subject to the provisions of any relevant law, members, office-bearers or appointed delegates of the Association shall be indemnified by the Association for all acts done by them in good faith on its behalf.
- 13.2 Subject to the provisions of any relevant law, no member of the Association or appointed delegates shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Association, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

**SCHEDULE A****SCHEDULE OF FIRST MEMBERS**

Nr.	Name	Address	Date	Signature
1.				
2.				
3.				
4.				
5.				
6.				
7.				
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**SCHEDULE B****REQUIREMENTS FOR APPROVAL AS PUBLIC BENEFIT ORGANISATIONS**

As provided for in Clause 5 of this Constitution, The Association intends to apply to the Commissioner for SARS for approval as a Public Benefit Organisation in terms of Section 30 of the Income Tax Act. Upon approval the Association shall:

1. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation.
2. Ensure that no single person directly or indirectly controls the decision making powers relating to the Association.
3. Is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established.
4. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
5. Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.
6. Submit to the Commissioner a copy of any amendment to this constitution.
7. Not pay any remuneration to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
8. Comply with such reporting requirements as may be determined by the Commissioner.
9. Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule of the Act are utilised for the purpose for which they are provided.
10. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.