



OMBUDSMAN  
ASSOCIATION  

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South Africa

THE OMBUDSMAN ASSOCIATION OF  
SOUTH AFRICA

## THE CONSTITUTION OF THE OMBUDSMAN ASSOCIATION OF SOUTH AFRICA

### 1. THE ASSOCIATION

The association shall be known as THE OMBUDSMAN ASSOCIATION OF SOUTH AFRICA (hereafter referred to as the “Association”).

Unless otherwise determined by the Management Committee, the address of the Association shall be at the office of the then Chairperson as set out in Schedule A, and may be amended from time to time on notice to the members.

### 2. LEGAL STATUS

The Association shall be a voluntary association not for gain.

The Association is a body corporate with its own legal identity which is separate from its individual members. The Association shall continue to exist even if the members change. The Association may own property, enter into contracts, and sue or be sued in its own name.

### 3. OBJECTS

The Association is an independent, non-profit organization established with the following objectives:

- (a) To promote the concept and institution of the Ombudsman and to encourage its development throughout the Republic of South Africa and Africa.
- (b) To act as a formal body representing and promoting the interests of Ombudsman offices.
- (c) To promote access to justice or redress for all.
- (d) To develop and/or support programmes enabling an exchange of information and experience between Ombudsman offices throughout South Africa and Africa;
- (e) To encourage the professional development of members.
- (f) To develop standards of practice and ethics and to promote the adoption of and adherence to the standard of practice and ethics by members.
- (g) To support the autonomy and independence of members and encourage mutual understanding and assistance by and between members.
- (h) To support educational programmes for Ombudsman offices, their staff and other interested parties.
- (i) To promote an awareness of the existence of the respective Ombudsman offices and to create an understanding of the function of an ombudsman.
- (j) To promote the practice and use of alternative dispute resolution.

- (k) To collaborate with other organisations which work in related or similar fields where this would not compromise the Associations purposes or autonomy.
- (l) To facilitate or organize Ombudsman offices' meetings and conferences.
- (m) To assist with the establishment of new ombudsman offices.
- (n) To undertake such other matters as are necessary to further the objectives of the Association.

#### **4. POWERS OF THE ASSOCIATION**

In pursuance of the main objects and powers of the Association and subsidiary thereto, the Association shall have all such powers as are necessary for the proper attainment of the objects set out in 3 above and shall in particular, have the following express powers:

- (a) To institute or defend any legal or other proceedings and to settle any claims.
- (b) To open and conduct bank accounts in the name of the Association and to prudently invest the funds of the Association.
- (c) To accumulate capital for any purpose of the Association, either by capitalising unexpended income or otherwise, and to appropriate any of the Association's assets for specific purposes, either conditional or unconditional.
- (d) To buy, maintain, manage, lease, sell or in any way deal with the property and assets of the Association.
- (e) To donate and transfer the property and assets of the Association to public benefit organizations of its choice.
- (f) To effect assurances of all descriptions, including assurances against accidents of any description; against liability to pay compensation for injuries happening to or sustained by any employee, official, administrator of or connected with the Association; against liability to pay damages to any person in consequence of such accident, and to pay the premiums and other monies required to keep such policies of assurance of full force and effect.
- (g) 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.
- (h) To execute any act or deed in any deeds registry or other public office.

- (i) To duly delegate authority to act on its behalf to the Chairman and the Management Committee, and
- (j) To do all such other things as are incidental or conducive to the attainment of the above objects, whether main or subsidiary.

## **5. MEMBERSHIP**

- A.** Any institution, organization or association, whether titled Ombudsman, Mediator, Adjudicator or any like designation, shall be eligible to apply to become a member if:
  - (a) Its function is to investigate, resolve and/or determine (whether by means of facilitation, recommendation or ruling) complaints against any public authority, industry or entity over which jurisdiction is held.
  - (b) It was created in terms of a statute and/or has received approval or recognition in terms of a statute.
  - (c) It does not receive any direction from the public authority, industry or entity over which jurisdiction is held as to how to determine any complaint and which would compromise its independence.
  - (d) It performs its functions independently of the public authority, industry or entity over which jurisdiction is held.
  - (e) It offers its services free of charge to the persons or body of persons who submit complaints.
  - (f) It has the necessary powers to properly investigate complaints by any person or body of persons who considers that any act done or omitted, or any decision, advice or recommendation made by the public authority, industry or entity within its jurisdiction, has resulted in unfairness, maladministration, violation of rights, abuse, corruption, inadequate or unacceptable service or any injustice caused by the public authority, industry or entity over which jurisdiction is held.
  - (g) It is held accountable by reporting to an appropriate authority and/or independent body.
  - (h) It's incumbent or incumbents are appointed or elected, according to the relevant legislative enactment, charter, constitution or terms of reference, for a defined period and can only be dismissed for cause by a competent authority or body.

## **B. PROCEDURES GOVERNING APPLICATIONS FOR MEMBERSHIP**

- (a) An Application for membership shall be lodged with the Secretary of the Association.
- (b) The Secretary shall refer an application for membership to the Management Committee for approval.
- (c) The Management Committee shall determine or relax the criteria for membership and in doing so, shall have regard to internationally accepted standards for Ombudsman offices.
- (d) Where the Management Committee refuses to grant the membership as requested by the applicant and the applicant is dissatisfied with the decision, the applicant for membership shall be given an opportunity to comment in writing to the Management Committee.
- (e) In the event of the Management Committee being unable to reach a unanimous decision it shall refer the application for membership to a General Meeting for a final decision.

## **C. RESIGNATION**

Any member may resign by giving one (1) months' written notice to the Secretary.

## **D. SUSPENSION OR TERMINATION OF MEMBERSHIP**

- (a) The Management Committee may suspend the membership of any member.
- (b) The Management Committee may recommend to the Association in a General Meeting that the membership of any member be terminated.
- (c) At least fourteen (14) days prior written notice is to be given to all members of the intention to suspend or recommend the termination of membership of any member.
- (d) The decision of the Management Committee to suspend or recommend the termination of the membership of any member shall lapse unless confirmed by resolution of two thirds of the members of the Association in General Meeting.

# **6. STRUCTURE OF THE ASSOCIATION**

## **A. THE MANAGEMENT COMMITTEE**

### **i. Powers**

- (a) The day-to-day affairs of the Association shall be administered by the Management Committee.

(b) The Association in General Meeting, may review, approve or amend any decision taken by the Management Committee.

ii. Election

(a) The members of the first Management Committee shall be elected at the General Meeting at which this Constitution is adopted, and shall hold office until the first Annual General Meeting, when all of them shall resign.

(b) At the first Annual General Meeting, a new Management Committee shall be elected. Thereafter the incumbent Management Committee shall resign and a new Management Committee shall be elected at each succeeding Annual General Meeting.

(c) Resigning Management Committee members shall be eligible for re-election or co-option.

iii. Composition

(a) The Management Committee shall consist of at least three but not more than five members. The membership of the Management Committee shall comprise at least:

(i) The Chairperson

(ii) The Treasurer

(iii) The Secretary

(b) Only duly nominated representatives of members are eligible to serve as the Chairperson, the Treasurer or the Secretary.

(c) The Management Committee may co-opt up to two additional members as it may consider appropriate from time to time. The co-opted members shall serve until the next general meeting.

(d) Should a position on the Management Committee fall vacant, the remaining member/s of the Management Committee may co-opt a member/s to fill the vacancy/ies.

(e) The office of any person so co-opted as member of the Management Committee shall lapse unless confirmed by the Association at the next General Meeting.

iv. Fiduciary Duty

Each member of the Management Committee has a fiduciary duty to act in the best interest of the Association and not in their own personal interest or that of the constituency that the member may represent.

v. Procedure at Management Committee Meetings

- (a) The Management Committee shall conduct meetings and regulate its proceedings as it finds convenient.
- (b) The Chairperson may convene a meeting of the Management Committee at any time and shall do so at the written request of any two members of the Management Committee.
- (c) The quorum necessary for the transaction of any business by the Management Committee shall be two-thirds (2/3) of the Management Committee members serving at any given time.
- (d) Questions arising shall be decided by a majority of votes.
- (e) Each member of the Management Committee shall have one (1) vote.
- (f) Should there be an equality of votes the Chairperson shall not have a casting or second vote and decisions shall be taken by consensus.
- (g) Proper minutes shall be kept of the proceedings of the Management Committee meetings and a record of the persons at each meeting. The minutes shall be signed by the member who chairs the meeting and shall be available at all times for inspection or copying by any member of the Management Committee and on two (2) days' notice to the Secretary by any member of the Association.
- (h) A resolution circulated and signed by all members of the Management Committee shall be as valid as if passed at a meeting of the Management Committee.
- (i) The Management Committee may create temporary or permanent committees to fulfil a special purpose or to further any of the objects of the Association, as it deems appropriate.
- (j) The Management Committee may delegate any of its powers to any of its members or to a special purpose or committee on such terms as it may from time to time stipulate.

**B. ANNUAL GENERAL MEETING**

- (a) A first Annual General Meeting of the Association shall be held within a period of fifteen (15) months of the date of the adoption of the first Constitution of the Association.
- (b) Subsequent Annual General Meetings shall be held within five (5) months from the beginning of each calendar year.
- (c) Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) business days' prior written notice to all members entitled to attend the meeting.
- (d) This notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting.
- (e) The normal business of an Annual General Meeting shall include:
  - (i) The representation and adoption of the Annual Report of the Chairperson;
  - (ii) The election of members to serve on the Management Committee for the following year; and
  - (iii) Other matters as may be considered appropriate.

**C. OTHER GENERAL MEETINGS**

- (a) Other General Meetings of the Association may be convened at any time by the Chairperson or at the written request of:
  - (i) The Management Committee; or
  - (ii) one quarter (1/4) of the members of the Association;
- (b) Any General Meeting other than the Annual General Meeting shall be convened on not less than fourteen (14) business days' written notice to all members.
- (c) The notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting: provided that should the Chairperson having been requested to give such notice in terms of clause 5.3 (a) (ii), fail to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and convene the meeting.

**D. QUORUM**

- (a) The quorum constituting a General Meeting of the Association shall be one quarter (1/4) of the members.
- (b) If no quorum be present when any General Meeting had been properly convened, the meeting shall stand adjourned to another date, which shall be within seven (7) days thereafter.
- (c) A written notice reflecting such adjournment and date, time and place of the reconvening of the General Meeting shall be given to all the members.
- (d) At such reconvened General Meeting, the members then present or represented shall be deemed to constitute a quorum.

**E. RESOLUTIONS AND VOTING**

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

**F. GENERAL**

All meetings of the Association (including General Meetings, and meetings of the Management Committee or any other committee) may be held in person or telephone, video conference or other appropriate remote communications system, or a combination thereof, as determined by the Management Committee from time to time.

**G. MINUTES**

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

#### **H. CONFIDENTIALITY**

- (a) All meetings shall be in closed session, and all business shall be deemed confidential.
- (b) Minutes shall remain confidential and shall not be disclosed without express permission from the Management Committee.

#### **I. POWERS**

A duly convened General Meeting of the Association, at which a quorum is present, is competent to carry out all the objectives and to exercise all the powers of the association as set out in this Constitution.

#### **J. NOTICES**

Notice of all meetings provided for in this Constitution, shall be delivered personally, or be sent by prepaid post, fax or email, to the last address notified by each member concerned to the Association, or in any other manner, including suitable electronic means, as the Management Committee may from time to time decide.

### **7. FINANCIAL MATTERS**

- (a) The members individually will carry their own costs in respect of such matters as attending meetings in connection with the business of the Association.
- (b) The members will by agreement carry the burden of the administrative costs of the Association by making their resources available to it. The Association shall not be liable to indemnify them for these costs.
- (c) The basis of financing the Association will be determined by the Management Committee. In making this determination, the Management Committee shall ensure that the funding contributed by the members of the Association is sufficient to enable the Association to fulfil the stated objectives of the Association.
- (d) All expenditure shall be approved and must be in line with the approved budget.

- (e) The annual fees for members shall be such sum as the Management Committee shall from time to time determine. All fees payable by members shall become due and payable annually in advance and within 30 (thirty) days after invoicing.
- (f) Members joining during a year shall be liable to pay a *pro rata* portion of the annual fee for that year.

## **8. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION**

The terms of the Constitution may be amended, the name of the Association may be changed and the Association may be dissolved by resolution of fifty per cent (50%) plus one of the members present at the General Meeting: provided that proper notice of the meeting is given not less than twenty-eight (28) business days' prior to the date of the Meeting and such states the nature of the resolution to be proposed.

## **9. INDEMNITY**

Subject to the provisions of any relevant statute, no member of the Management Committee and or other office bearer of the Association 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 a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

## **10. PUBLIC BENEFIT ORGANISATION**

10.1 The Association will apply for approval by the Commissioner of the South African Revenue Services as a Public Benefit Organisation and as such it is stipulated that:

- 10.1.1 The sole object of the Public Benefit Organisation is to carry on one or more public benefit activities as defined in section 30(1) of the Income Tax Act 58 of 1962 ("the Act"), in a non-profit manner and with an altruistic or philanthropic intent.
- 10.1.2 No activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation otherwise than by way of reasonable remuneration.

- 10.1.3 At least three persons, who accept fiduciary responsibility for the public benefit organisation, will not be connected persons in relation to each other, and no single person directly or indirectly controls the decision making powers relating to such organisation.
- 10.1.4 No funds will be distributed to any person (other than in the course of undertaking any public benefit activity) and is required to utilize its funds solely for the objects for which it was established.
- 10.1.5 On dissolution of the Public Benefit Organisation, the remaining assets must be transferred to –
- (a) Any similar public benefit organisation, which has been approved in terms of Section 30 of the Act.
  - (b) Any institution, board or body which is exempt from the payment of income tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity; or
  - (c) Any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of the Act.
- 10.1.6 No donation will be accepted which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and condition of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose any 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.
- 10.1.7 A copy of all amendments to the constitution, trust deed, memorandum and articles of association, or other written instrument, under which the Public Benefit Organisation was established, will be submitted to the Commissioner for the South African Revenue Service.

- 10.1.8 No remuneration will be paid to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 10.1.9 The Public Benefit Organisation will submit the required returns for income tax together with the relevant supporting documents.

## **SCHEDULE A**

### **SCHEDULE OF ADDRESSES OF THE ASSOCIATION**

Postal Address:

PO Box 805  
Pinegowrie  
2123

Physical Address:

1<sup>st</sup> Floor, Silver Fern  
Fernridge Office Park  
5 Hunter Street (Cnr Bram Fischer Drive)  
Ferndale

Telephone:

011 781 6431