

MPUMALANGA ATTORNEYS' ASSOCIATION

CONSTITUTION

Contents

PREAMBLE	2
1. NAME.....	2
2. OFFICES.....	2
3. OBJECTIVES.....	3
4. Powers of the Association.....	4
5. MEMBERSHIP	5
6. SUBSCRIPTIONS	6
7. MANAGEMENT COMMITTEE.....	7
8. POWER OF DUTIES OF THE MANAGEMENT COMMITTEE	8
9. MEETINGS OF THE ASSOCIATION.....	9
10. DEFAULTERS	11
11. RESIGNATIONS.....	12
12. VOTING	12
13. LEGAL PROCEEDINGS.....	12
14. FUNCTIONS	12
15. AMENDMENTS.....	12
16. LIABILITY OF MEMBERS	13
17. INTERPRETATION OF RULES	13
18. INCOME, PROPERTY AND TAXATION.....	13
19. NOTICES	14
20. WINDING UP	14

PREAMBLE

Whereas the Legal Practice Act 28 of 2014 dissolved the law societies referred to in section 56 of the Attorneys Act 53 of 1979 (now repealed) and transferred their assets, rights, liabilities, obligations and staff, to the Legal Practice Council;

And whereas the legal practitioners currently practising in the Mpumalanga Province of South Africa (the Province) have decided to establish a voluntary association to promote the transformation of the profession, the maintenance of standards, prestige and image of the profession, to encourage practitioners' continued commitment to delivering high quality legal services to all their clients and a fair distribution of pro bono services for indigent clients and to enhance an independent legal profession that operates ethically and responsively in this Province;

And whereas the legal practitioners in the Province seek to align themselves with the principles, aims and objectives of the Law Society of South Africa (the LSSA); and

Now therefore, it is agreed to establish the Legal Practitioners' Association of Mpumalanga and this constitution is accordingly adopted:

1. NAME

1.1 The name of the Association is:

MPUMALANGA ATTORNEYS ASSOCIATION
(the Association)

1.2 The Association shall affiliate to the LSSA as its recognised mother body, the Association is an independent juristic entity and is recognised to operate independently.

2. OFFICES

The offices of the Association shall be in the Middelburg.

3. OBJECTIVES

The objectives of the Association are the following:

- 3.1 To act in the general interest of members of the profession so as to ensure that legal mechanisms, including the Constitution of the Republic of South Africa, Act 108 of 1996, fundamental human rights, legislation, the judicial system, the common law and the Rule of Law are maintained, upheld and developed in such a manner as to ensure the maximum protection of the general well-being of the profession;
- 3.2 To promote and safeguard and maintain the independence, objectivity and integrity of members;
- 3.3 To maintain and enhance professional standards, prestige and standing of the legal profession and of its members nationally, which standards shall be reviewed from time to time;
- 3.4 To promote legal education, continuing legal education, practical legal education and related research; to grant bursaries to candidate legal practitioners in need of financial assistance; to conduct lectures and seminars, and other training for members and to circulate information electronically, or otherwise, which may be of interest to members in their practices;
- 3.5 To promote and safeguard the independence, integrity and reputation of the Judiciary;
- 3.6 To uphold, safeguard and advance the Constitution, the rule of law, the administration of justice, and the laws of the Republic of South Africa;
- 3.7 To strive towards the achievement of a system of law that is fair, just, equitable, certain and free from unfair discrimination; to initiate, consider, promote, support, oppose or endeavour to modify proposed reforms or changes in law, practice, procedure, the administration of justice and existing or proposed legislation; and, to promote and facilitate access to the profession and access to justice and the Courts
- 3.8 To co-operate and collaborate with the Legal Practice Council and Provincial Councils;
- 3.9 To watch and advance the interests of the members as envisaged by the LSSA constitution.
- 3.10 To establish closer relations and association between members of the legal profession;
- 3.11 The objective should also include the promotion of professionalism amongst members, good ethics and a healthier public relations between practitioners and the public; and
- 3.12 To co-operate with other voluntary associations or societies; within the province;
- 3.13 To express its views on matters of common concern for its members;
- 3.14 To make representations on behalf of its members to any and all bodies and/or organisations including Legal Practice Council and Provincial Councils; and
- 3.15 To safeguarding of the interest of ~~attorneys~~ in their freedom to make their skill available to those requiring their legal expertise, in a profitable matter.

4. Powers of the Association

The Association shall have the following powers:

- 4.1 To acquire or dispose of any movable or immovable property by purchase, lease, sale or otherwise; to collect, canvass for and to accept subscriptions, donations, bequests, endowments and benefits of any nature for the Association from any person or body and from any source whatsoever;
- 4.2 To accept members' subscriptions and donations of movable and immovable property of all kinds or any rights or interest therein or any other asset of any kind, subject to the condition that such donations are not revocable at the instance of the member or the donor;
- 4.3 To open, operate and close banking accounts on behalf of the Association and generally to control the funds and finances of the Association professionally, honestly and with the intent to carry out the objectives of the Association;
- 4.4 To borrow, raise, invest monies and funds and to allocate funds and to sanction all expenditure on behalf of the Association;
- 4.5 To enter into contracts as may be necessary or expedient from time to time to achieve the objectives of the Association;
- 4.6 To institute, conduct, defend, settle or abandon any legal proceedings by or against the Association in any manner as it may deem fit, but always to achieve the objectives of the Association;
- 4.7 To mediate between members and adjust and foster to settle differences or disputes between them, whenever called upon to do so by members;
- 4.8 To establish machinery for the settlement of disputes between members and their clients concerning fees or any other matter;
- 4.9 To acquire rights or privileges which the Association may regard as necessary or convenient for its purposes;
- 4.10 To invest moneys of the Association upon such securities and unit trusts as may be from time to time determined by general membership;
- 4.11 To raise or borrow money from time to time in such manner as the Association may think fit and to mortgage or hypothecate all or any of the property of the Association present as well as future;
- 4.12 To sponsor and supervise the making by members of gifts or donations in money or in kind to any person or organisation approved by the Committee;
- 4.13 To foster legal studies and conduct lectures, symposia, seminars and study courses for its members;
- 4.14 To make donations to institutions, bodies corporate, welfare organisations and/or universities where this is considered necessary to further the interests its members. Provided that the Association shall not be permitted to distribute any of its profits or gains to any person, but shall be required to utilise its funds solely for investment or the objects for which it has been established;

- 4.15 To engage the Association in legal proceedings in any capacity which the committee may deem necessary so as to advance, protect, uphold or develop the objectives and interest of the Association and/or the interests of its members; and
- 4.16 To exercise all the management and executive powers ordinarily vested in the Board of Directors of a Company;
- 4.17 To carry out all the powers and authority of the Association in South Africa and in any other part of the world;
- 4.18 Generally, to do all such things as may be necessary or expedient to carry out or further any of the objectives of the Association.

5. MEMBERSHIP

- 5.1 The following persons, irrespective of colour, race, gender or creed, who accept and agree to abide by the principles contained this Constitution, shall be eligible for membership:
 - 5.1.1 ~~Attorneys~~ practising in the Mpumalanga Province;
 - 5.1.2 ~~Attorneys~~ employed by such attorneys;
 - 5.1.3 Candidate ~~attorneys~~ serving Practical Vocation Training (PVT) contracts with such ~~attorneys~~ in clause 5.1.1.

Application of membership

- 5.2 The Management Committee may, on application in the prescribed format, admit persons listed under clause 5.1 as members to the Association.
- 5.3 The Management Committee may, subject to any resolutions issued by the members in general meeting, determine the conditions and criteria for membership. Applications for membership that do not comply with such conditions and criteria may be refused by the Management Committee.
- 5.4 The Management Committee must keep a register with the names and addresses of all the Members.

Membership conditions

- 5.5 Membership is non-transferrable.
- 5.6 Members in good standing (i.e. a member not suspended for any reason pursuant to this Constitution) have the right to attend all General meetings. At a general meeting, members may exercise their right to determine the policy of the Association in accordance with the objectives of this Association.

- 5.7 The liability of members for the obligations of the Association shall be limited to the amount of their unpaid subscriptions.

Suspension and termination of membership

- 5.8 The status of a member is suspended through non-payment of the annual subscription if such payment remains outstanding for three months from date of invoicing.
- 5.9 The status of a member terminates through non-payment of the annual subscription if such payment remains outstanding for six months from date of invoicing or due date, whichever is the later.
- 5.10 The status of a member of the Association terminates through death or resignation.
- 5.11 The status of a member terminates if a member is found guilty by the Management Committee of actions prejudicial to the interests of the Association, provided that such member has had the right to appear before the Management Committee and has been heard by it, if the said member exercised the right to be heard.
- 5.12 If the member's membership is terminated, the Management Committee must give the member written reasons within 14 days of the date of the Management Committee's decision or the date of request for reasons made by the said member if the request is made within 90 days of the decision.
- 5.13 At the next general meeting the said committee's decision shall be ratified by the general membership, failing which the decision to terminate such member's membership will lapse. Such member may appear at the said general meeting to argue against ratification of the Management Committee's decision. The decision of the general membership is final and binding on all parties.¹

6. SUBSCRIPTIONS

- 6.1 An annual subscription, the amount of which shall be determined by the annual general meeting with attendance of majority by two-thirds (2/3) of members in good standing.
- 6.2 A notice shall be given to members before the end of April each year, shall be paid by each member except those who are serving articles of clerkship;
- 6.3 The financial year of the Association shall commence on the 1st day of June of each year and subscriptions shall be due and payable on such date.

¹ It is desirable that members in general meeting must ratify the MC's decision to terminate membership.

7. MANAGEMENT COMMITTEE

- 7.1 The affairs of the Association shall be managed by a Management Committee of nine, all of whom shall be elected from those members referred to in clauses 5.1.1 and 5.1.2 at the Annual General Meeting of the Association or any other General Meeting specially called for such purpose. The Management Committee must consist of at least three individuals who are not related to each other, as defined in the Income Tax Act, to accept the fiduciary responsibility of the Association and no single person shall directly or indirectly control the decision making powers relating to the Association.
- 7.2 Each Management Committee member shall hold the office for a two-year period, but the retiring members shall be eligible for re-election.
- 7.3 At the first meeting following every year's Annual General Meeting, the Management Committee shall elect a Chairperson, Vice-Chairperson, Secretary, Deputy Secretary and Treasurer and three other positions will be designated a specific responsibilities as per decision of the Annual general meeting.
- 7.4 No member of the Management Committee shall hold office for more than (two) consecutive term.
- 7.5 All existing office-bearers and sub-committee members shall hold office until the formal appointments are made at the first Management Committee meeting after the Annual General Meeting.
- 7.6 All nominations for the Management Committee shall be in writing and shall be forwarded in the approved form, with the nominee's acceptance, to the Secretary not less than twenty-one days before the date of the Annual General Meeting and the names of the persons nominated shall be notified to members not less than fourteen days before the date of the meeting.
- 7.7 In the event of any vacancy or vacancies occurring on the Management Committee the remaining members of the Management Committee shall have the power to fill any such vacancy or vacancies by co-option . The co-opted member so elected shall hold office on the same terms as the member whose place he takes and shall serve only until the next Annual General Meeting.
- 7.8 The Management Committee shall be entitled to co-opt Management Committee members with specific roles and responsibilities, who shall be members of the Association and who shall hold office on the same terms as the other members of the Management Committee and shall serve only until the next Annual General Meeting.
- 7.9 The Management Committee shall entitled to remove a Management Committee member through a majority resolution who missed 3 (three) consecutive Management Committee meetings, without leave of absence and the Management Committee shall be entitled to replace such member, by co-option.
- 7.10 Any member attending less than 50% (fifty per cent) of Management Committee meetings from the date of election to the next Annual General Meeting, without prior leave of absence from the Committee, shall be penalised as may be decided by the members at a General Meeting from time to time.

- 7.11 The composition of the Management Committee shall be limited to one representative of or from any one law firm.
- 7.12 At a Management Committee meeting, the majority of fifty percent plus one member shall be required to form a quorum.

8. POWER OF DUTIES OF THE MANAGEMENT COMMITTEE

- 8.1 The Management Committee shall conduct all the affairs of the Association and be entitled to do all matters and things mandated to perform by the annual general meeting.
- 8.2 Without limiting their rights of management, the Management Committee shall have the following special powers:
 - 8.2.1 To convene meetings;
 - 8.2.2 To appoint, remove and determine the duties, salaries and remuneration of employees;
 - 8.2.3 To hold and have the custody and control of the funds and other property of and for the Association;
 - 8.2.4 To open a banking account which shall be operated on by the signatures of any two of the Chairperson, Treasurer or Secretary;
 - 8.2.5 To appoint sub-committees and delegate any of its powers to such sub-committees subject to two thirds majority of entire membership supporting such appointment;
 - 8.2.6 To do all other things that it may consider reasonable and in the best interests or good management or the promotion of the objectives of the Association;
 - 8.2.7 To implement and collect the annual subscription from time to time;
 - 8.2.8 To appoint committees and sub-committees and delegate any of its powers to such sub-committees;
 - 8.2.9 The members appointed to committees must be appointed from any of Association's membership, and may include Management Committee members;
 - 8.2.10 To do all other things that it may consider conducive to the interests and good management and the promotion of the objectives of the Association;
 - 8.2.11 To direct and conduct an enquiry into any complaint received regarding a member's alleged conduct contrary to the provisions of this constitution; and,
 - 8.2.12 To compel any member subjected to such enquiry to submit on demand all documentation and information required by the Management Committee to investigate such a complaint.

9. MEETINGS OF THE ASSOCIATION

9.1 MEETINGS OF THE MANAGEMENT COMMITTEE

- 9.1.1 The Management Committee should hold at least one ordinary meeting every sixty (60) days.
- 9.1.2 A majority of Management Committee members shall form a quorum at any meeting of the Management Committee, present in person.
- 9.1.3 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
- 9.1.4 Minutes must be taken at every meeting of the Management Committee to record the proceedings and must be kept by the secretary general at the designated offices of the Association.
- 9.1.5 Draft minutes of the previous meeting must be furnished to the Management Committee, as the case may be, at least seven days before the relevant next meeting. The minutes must be confirmed as a true record of proceedings of the relevant previous meeting at the next meeting of the Management Committee.

9.2 MEETINGS OF THE MEMBERS OF THE ASSOCIATION

General meetings

- 9.2.1 The Management Committee shall have full power of authority at any time to call Special General Meetings of the Association of which at least seven days' notice shall be given.
- 9.2.2 The Management Committee may call an ordinary general meeting of the members at any time during the year upon twenty-one (21) calendar days' notice to members. Such notice must include the date, venue, time and an agenda of the business to be conducted at the general meeting.
- 9.2.3 Timely despatch of the notice for a general meeting determines whether the meeting is validly convened: failure to receive a notice of the meeting is not an impediment to the general meeting continuing as convened.
- 9.2.4 If ten (10) percent of the members of the Association request a general meeting, the Management Committee will call such meeting upon twenty-one (21)

calendar days' notice to members and include in the convocation of the meeting the agenda proposed by the members requesting the meeting.

9.2.5 The Association may convene as many general meetings as the Management Committee – or the general body of membership – desires in a calendar year. Members of the Association who are in good standing may vote and participate at all general meetings.

9.2.6 The rules relating to matters before any general meeting with regard to decisions binding on the Association are the same rules that apply to annual general meetings.

Annual General Meetings

9.2.7 An annual general meeting shall be convened by the Management Committee not later than 30 November in each and every year. The Management Committee shall call the annual general meeting on twenty-one (21) calendar days' notice to members. Such notice must include the date, venue, time and an agenda of the business to be conducted at the annual general meeting.

9.2.8 Only in exceptional cases may the Management Committee convene an annual general meeting on fourteen (14) days' notice. The majority of the members present at the said annual general meeting must confirm that they accept the reasons for using fourteen instead of twenty-one days' notice.

9.2.9 The quorum of a general meeting shall be a minimum of [state the number] of the Association's members present or represented by written proxy.

9.2.10 If no quorum is present within fifteen minutes of the appointed time for the postponed meeting, the members present, or represented by proxy, shall deem to constitute a quorum for that meeting. Provided that the meeting shall only be empowered to issue resolutions pertaining to the items on the agenda proposed for the original meeting.

9.2.11 The Management Committee shall at least fourteen (14) days before the date set down for the meeting, circulate an agenda for every general meeting.

9.2.12 The business of the AGM must include:

- i. The presentation of the Chairperson's report;
- ii. The adoption of the minutes for the previous Annual General Meeting;

- iii. The presentation and adoption of the Association's Annual Financial Statements;
- iv. The election of the relevant members of the Management Committee;
- v. The appointment of Auditors, and
- vi. Other appropriate matters.

Special issues for a general meeting

- 9.2.13 The Management Committee shall submit for approval to a general meeting:
- i. Any acquisition, any exchange or transfer of immovable property in the name of the Association;
 - ii. The mortgaging of any immovable property registered in the name of the Association;
 - iii. Any contract or lease for a period of more than nine years;
 - iv. Any loans to or by the Association.
- 9.2.14 A quorum of members shall be not less than 25% of the members of the Association who are in good standing.
- 9.2.15 Should there be no quorum present at any Annual or Special General Meeting, the meeting shall, subject to clause 8(5), stand adjourned until a date to be agreed upon at such meeting (for which those present shall be a quorum) and at such resumed meeting those present shall form a quorum regardless of the number. At least seven days' notice of such adjournment shall be given to members.
- 9.2.16 Upon receipt of a requisition signed by not less than 20% of members who are in good standing the Management Committee shall convene a Special General Meeting to consider the matters specified in the requisition. The meeting shall be upon not less than seven days' notice, which shall state the purpose of the meeting, and such Special Meeting shall be held within twenty-one days from the date of receipt of the requisition. Should there be no quorum present at any such meeting, it shall be dissolved.

10. DEFAULTERS

Any member whose subscription shall be in arrears for a period of six months, and who shall not hereafter pay such subscription within 14 days of the posting to him of written request for payment, may be removed from the list of members by the Committee.

11. RESIGNATIONS

Any member desiring to resign from the Association may do so on giving written notice to the Secretary, but such person shall remain liable for any subscription or subscriptions which fell due prior to the date of such resignation.

12. VOTING

- 12.1 Every member of the Association, not being a candidate attorney, present at a meeting and not in arrears with his subscription shall have one vote. In the event of an equality of votes, the meeting shall adjourn the matter and reconvene the matter for re-voting.
- 12.2 The majority at any meeting may demand that voting be by ballot or by show of hands.
- 12.3 The committee shall appoint a voting agent to conduct voting as it may be necessary.

13. LEGAL PROCEEDINGS

- 13.1 The Association may sue or be sued in its own name in any Court of competent jurisdiction.
- 13.2 Any legal action initiated by the association should be endorsed or ratified by the AGM on majority vote.

14. FUNCTIONS

A function, the nature, cost and venue to be determined by the Committee in their discretion may be held. Members who attend the function shall be required to contribute an amount to be determined by the Committee to the cost of that function.

15. AMENDMENTS

- 15.1 This Constitution may be amended, altered or added to at any Annual General Meeting or any General Meeting specially called for such purpose. Any such alterations or additions shall not be deemed to be passed unless approved by two-thirds of the members physically present at such meeting, provided that meetings may be conducted face-to-face or electronically which would allow Members to be present and participate through electronic means.
- 15.2 No proposed alteration or amendment shall be considered at any meeting unless the proposed amendment or alteration has been notified to members in writing not less than fourteen days before the date of the meeting.

16. LIABILITY OF MEMBERS

- 16.1 The liability of a member for the obligations of the Association shall be limited to the amount of his unpaid subscription.
- 16.2 The Mpumalanga Attorneys Association is an Association not for gain, and a corporate body with legal personality separate from its members, the assets and liabilities of which are separate from its members and in which no member shall ever obtain an interest, which assets shall upon dissolution not evolve upon its members but shall be donated to other associations not for gain with similar objectives and interests as the Association.

17. INTERPRETATION OF RULES

In the case of doubt as to the meaning or interpretation of the Constitution and any clauses framed thereunder, the Committee shall be the final arbiter and its decision shall be binding upon members.

18. INCOME, PROPERTY AND TAXATION

- 18.1 The Association will keep an asset register of all fixed assets and property owned.
- 18.2 The income and property of the Association shall be used solely for the promotion of its 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.
- 18.3 The payment contemplated above, must be a reasonable amount for the work that has been done and approved in accordance with the policies adopted by the Management committee; as defined in the Fourth Schedule of the ITA, which is not excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 18.4 The Association is prohibited from directly or indirectly distributing any surplus funds to any Association, other than in terms of its objectives.

- 18.5 Substantially the whole of the activities of the Association shall be directed to the furtherance of its objectives and not for the specific benefit of an individual member or minority group.
- 18.6 The Association is prohibited from holding any share or other interest in any business, profession or occupation which is carried on by its members.
- 18.7 The Association may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 18.8 The Board undertakes to submit to the Commissioner of the South African Revenue Service, a copy of any amendment to the Constitution within thirty days of its amendment.

19. NOTICES

Whenever notice of any matter or thing is to be given to members it shall be deemed to have been duly given if posted or delivered to Docex or despatched by e-mail or via telefax to members at the address recorded in the Association's offices and shall be deemed to have been received two days after the date on which such notice was posted, delivered or despatched.

20. WINDING UP

- 20.1 The Association may be dissolved by resolution of two-thirds of the entire membership at a special general meeting called specifically for that purpose.
- 20.2 Upon the dissolution of the Association, after all debts have been paid and all commitments honoured, any remaining assets shall not be paid to or distributed amongst members but shall be transferred to and vest in the Law Society of South Africa and in the event that the Law Society of South Africa is no longer in existence or not approved under section 30B of the Income Tax Act, the Association must as part of its dissolution transfer its assets to—
- 20.2.1 another entity approved by the Commissioner in terms of section 30B;
 - 20.2.2 public benefit organisation approved in terms of section 30;
 - 20.2.3 an institution, board or body which is exempt from tax under section 10 (1) (cA) (i) of the Income Tax Act; or
 - 20.2.4 the government of the Republic in the national, provincial or local sphere