

CONSTITUTION OF THE SOCIETY OF CONSTRUCTION LAW FOR AFRICA

1. NAME

The name of the Society shall be the "The Society of Construction Law for Africa".

2. INTERPRETATION OF TERMS

- (i) "The Society" shall mean the Society of Construction Law for Africa;
- (ii) "The Council" shall mean the Council of the Society as provided for under Clause 6;
- (iii) "The Members" shall mean the Members provided for under Clause 5.

3. OBJECT

The Object of the Society is to promote education, study and research (and publication of the useful results of such research) in the field of construction law and related subjects in Africa and overseas for the public benefit.

4. In furtherance of the above object but not further or otherwise:

4.1. The Society may engage in the following:

- (a) Promoting, supporting, organising or participating in Conferences, Seminars, Exhibitions, Scholarships, Courses, Lectures and similar projects;
- (b) Instigating research and studies and working parties, obtaining information on all aspects of construction law and technology and publishing the useful results thereof;

- (c) Publishing or communicating by any desirable and effective means information relating to construction law, and all matters relating thereto;
- (d) Establishing relationships, association and liaison with other persons and other bodies both within Africa and overseas with similar or related objects and exchanging information and studies and results concerning all matters relating thereto;
- (e) Facilitating the giving of legal advice and assistance and representation to Members or other persons upon such basis or terms and may be authorised from time to time by the Council;
- (f) Employing agents or servants (not being members of the Council) as may be necessary to further the object of the Society;
- (g) Subject to such consents as may be required by law, purchasing, selling, mortgaging, charging or leasing any property which may be required for the purposes of the Society;
- (h) Collecting subscriptions, donations and grants;
- (i) Providing, equipping, furnishing, fitting-out with all necessary plant, furniture and equipment and managing buildings and properties;

4.2. The Society shall for all purposes be an universitas, and, as such, a juristic person with a separate and distinct estate, capable of owning property and suing or being sued in its own name.

4.3. The affairs of the Society shall at all times be conducted only for the ~~public~~ benefit of the general public and in a non-profit manner ~~not for any commercial gain~~.

4.3.4.4. No activity of the Society is intended to directly or indirectly promote the economic self interest of any member of the Council, any Officer or any other person connected to or employed by the Society, otherwise than by way of reasonable remuneration.

5. MEMBERS

- (a) There shall be three categories of Membership: -
- (i) Founder Membership;
 - (ii) Ordinary Membership;
 - (iii) Honorary Membership;
- (b)
- (i) Candidates for membership must declare in writing a serious and active interest in construction law.
 - (ii) Applications for membership must be in writing addressed to the Society and must be signed by the candidate who shall thereby undertake, if elected, to conform to the Rules of the Society.
 - (iii) The election of candidates shall be by the Council, which shall elect to membership any suitably qualified candidate unless there is sufficient contrary reason.
 - (iv) An elected candidate shall be admitted as a Member on payment of such annual subscription or proportion thereof as may from time to time be fixed by Rules made by the Council.
 - (v) If any Member fails to pay his annual subscription within three months after it becomes due the Secretary shall give notice to the Member of the fact and if the subscription is not paid within seven days of the date of such notice or within such further

requisite time as the Council may grant, such member may by resolution of the Council be excluded from the Society and shall thereupon cease to be a Member, but shall not thereby cease to be liable for any outstanding subscription.

- (vi) A Member who has paid his subscription to date may retire from the Society by sending his letter of resignation in writing to the Council.
- (vii) A Member who is in arrear with his subscription may retire from membership with the consent of the Council but shall not cease to be liable for such arrears of subscription.
- (viii) The Council may elect any persons as Honorary Members of the Society for such periods as the Council think fit on account of their distinction and eminence. Honorary Members of the Society shall not pay any entrance fee or annual subscription. Honorary Members shall receive notices of and may attend any meeting and take part in any business or function of the Society and any Honorary Member shall in any circumstances have the right to vote at any meeting of the Society.
- (ix) If it appears to the Council or shall be represented to the Council by a requisition in writing signed by three or more Members that there has been reason to believe that a Member has been guilty of conduct which in the absence or satisfactory explanation will render such member unfit to remain a Member or which would render a Member ineligible for election the Council shall send to such Member a statement in writing of the conduct imputed to such Member and shall afford the Member and opportunity of giving an explanation in writing or in person as such Member may elect. If on consideration of such explanation the Council shall be of the opinion that such

Member ought to be excluded from the Society provided that no less than two-thirds of the votes of the Council present and voting are cast in favour of such exclusion and on the passing of such Resolution of the Member shall cease to be a Member of the Society but shall not cease to be liable for any arrears of subscription.

- (x) The Council may, during the first three years of the Society's existence, extend invitations to any persons to become a Founding Member of the Society. Founding Members shall, in addition to the membership obligations which apply to members, also be obliged to maintain their membership of the Society of Construction Law of the United Kingdom, so as to ensure the continued affiliation of the Society with the aforesaid Society of Construction Law of the United Kingdom (or any successor thereof). Notwithstanding the foregoing, the Founders who are the signatories to this Constitution shall at all times be Founding Members of the Society.

- (c) The Council shall be empowered to create various subscription classes within the Ordinary Membership Category, and may determine different annual subscriptions in respect of each such subscription class.

6. COUNCIL

- (a) The Society shall be governed by a Council which shall comprise:
 - (i) Founder Members as hereinafter provided;
 - (ii) 5 Ordinary Members selected as hereinafter provided in Clause 8;

- (iii) Such additional members as may be co-opted by Resolution of the Council for such period or periods as the Council in its discretion shall so decide. A co-opted Member shall not vote on any matter or be eligible for election as Chairman or Vice-Chairman of the Society. The number of co-opted members shall not exceed one-fourth of the Council formed at the Annual General Meeting.
- (b) The Council shall, subject to the control of General Meetings (but not so as to render invalid any act done by the Council prior to a Resolution of a General Meeting), conduct and manage all the affairs of the Society, exercise all the powers, authorities and discretions of the Society, obtain all such concessions, grants, acts and authorisations from any Government or authority, enter into such contracts and do all such other things as may be necessary for furthering the Object of the Society.
- (c) At all meetings of the Council the Chairman of the Society if he shall be present, or, if not, the Vice-Chairman, then a Member of the Council chosen by the Council shall preside as Chairman.
- (d) (i) A vacancy shall occur in the office of a Member of the Council if:-

 - (1) a Member dies;
 - (2) the Member's resignation in writing is accepted by the Council;
 - (3) an elected Member shall retire in rotation;
 - (4) a Member ceases for any reason to be a Member of the Society; and,
 - (5) a Member has been adjudged insolvent.

A resolution of the Council declaring such vacancy of office as aforesaid shall be conclusive evidence as to the facts and the grounds of the vacation stated in the resolution.

- (ii) A casual vacancy may be filled by election by the Council and the Member shall hold office until the next Annual General Meeting.
- (e) Elections at the Annual General Meetings and by the Council shall take place in accordance with such rules as may be passed by the Council from time to time.
- (f) Not less than 28 days before the date of the Annual General Meeting each Founder Member shall notify the Secretary in writing whether or not he wishes to be a member of the Council for the next year. Any Founder Member who fails so to notify the Secretary or who notifies the Secretary that he does not wish to be a member of the Council shall not be a member of the Council for the relevant year unless he shall be co-opted by the Council as provided by the sub-clause (a) above.
- (g) Notwithstanding any other provision in this clause and this Constitution, the Council of the Society shall, for the first four years of the Society's existence be constituted by the following persons, so as to facilitate the proper establishment and growth of the Society in Africa:
 - (i) Adv J.A.L. Beyers, as co-founder of the Society and chairman of the Council
 - (ii) Mr Christoffel Ackermann, as co-founder of the Society, who will also fulfil the secretarial and treasury functions of the Society; ~~and~~

(iii) Ms Anneli Wiese; and

(iv) Such additional members as may be co-opted by Adv Beyers, Ms Wiese and Mr Ackermann jointly. ~~(The constitution must refer to at least 3 unconnected individuals who will accept fiduciary responsibilities for the Society – who else can be included here? This person's details must also be included in the E11 application form.)~~

The Council so established in terms of this sub-clause shall enjoy all the powers and authorities extended to the Council in terms of this Constitution. In addition, such Council shall be empowered to effect such changes to this Constitution as are required to obtain affiliation with the Society of Construction Law UK.

No remuneration shall be payable to Council members, whether in respect of the remuneration of services or otherwise, and Council members shall not economically benefit any person in a manner which is not consistent with the Object of the Society. Council members will, however, be entitled to the re-imbursment of reasonable expenses incurred in the furtherance of the objectives of The Society, provided that such expenses are approved by The Council. ~~will not be excessive, having regard to what is generally considered to be reasonable in the sector and in relation to the services rendered, and will not economically benefit any person in a manner which is not consistent with the Object of the Society.~~

7. OFFICERS

(a) The Officers of the Society shall be:-

(i) a Chairman and a Vice-Chairman who shall be elected by the Council annually from the Council constituted at the Annual General Meeting. They shall hold office until the first meeting of

the Council following the Annual General Meeting and shall be eligible for re-election. Any vacancies in the office of Chairman or Vice-Chairman may be filled by the Council and such arrangement shall be held for the unexpired term of office; and,

- (ii) the Treasurer, Secretary and a Director (if any) as shall be appointed by the Council who must be members of the Society provided always that members may hold more than one such office.

(b) The Treasurer, Secretary and Director shall serve for such period or periods as may be appointed by the Council and, if not honorary, upon such terms and conditions which the Council may decide and agree with such Officers.

(c) It is hereby confirmed that current and future Officers of the Society will:

- (i) Ensure that there are three appointed Officers at all times;
- (ii) Be independent and unconnected persons in respect of every other Officer;
- (iii) Accept a fiduciary responsibility in respect of the Society; and
- (iv) No single Officer will directly or indirectly control the decision making powers relating to the Society.

~~(b)~~(d) The Council may appoint any person (who need not be a member of the Society) as honorary President to serve for such period or periods as may be appointed by the Council.

8.7. MEETINGS

I Annual General Meeting

- (a) The Annual General Meeting shall be held between the 1st March and the 1st June. At every Annual General Meeting one-third of the elected Members of the Council, or, if the number of elected Members is not a multiple of three, then the number nearest to, but not exceeding, one-third shall retire from office. Provided always that, if, at the time when an elected Member is due to retire under this Rule, he is holding office as Chairman of the Society, he shall be deemed to have been re-elected.
- (b) Subject to the provisions of Clause 6(d)(i) the one-third or other nearer number of the elected Members of the Council to retire shall consist of those who have been longest in office. The length of time a Member has been in office shall be computed from his last election or appointment where he has been appointed by Council to fill a previously vacated office. In the event of two or more having been in office for the same length of time, and a lesser number have to retire, such lesser number shall either retire by agreement or by drawing lots amongst such two or more members who have been in office for the same amount of time.
- (c) Every elected Member of the Council retiring under this Rule and being eligible for re-election shall, unless he shall have signified to the Council his desire not to offer himself for re-election, be deemed to be nominated for election.

II **Special General Meetings**

- (a) A Special General Meeting may at any time be called by the Council;
- (b) 10 or more members may at any time require the Council to call a Special General Meeting for the general consideration of any motion set out in the requisition.

- (c) Every such requisition shall be in writing signed by the Members who make it and sent to the Secretary. The Council shall call a meeting in pursuance of such requisition, to be held not earlier than 35 or later than 63 clear days from the receipt thereof.
- (d) Notice of every Special General Meeting specifying the object of it including any motion to be moved thereat and stating on whose requisition (if any) premises (if any) and also sent to each member by the Secretary not less than 21 clear days before the day for holding the meeting.
- (e) No business shall be transacted at a Special General Meeting other than business of which notice has been given.
- (f) At Special General Meetings the order of the proceedings shall so far as applicable be at the same as at Annual General Meetings.

III **General**

- (a) To constitute a General Meeting other than a meeting adjourned under (b) below there must not be less than 10 members present.
- (b) Every General Meeting shall have power to adjourn to a future day.
- (c) Whenever a General Meeting shall, in consequence of the non-attendance of a sufficient number of Members, or by the Resolution of the Members present, be adjourned to a future day, notice thereof shall be affixed in the Society's premises if none sent to the Members.

- (d) All questions shall be decided by a majority of the Members personally present and voting and the Chairman shall in the event of an equality of votes, have a second or casting vote.

IV The Chair at any General Meeting shall be taken by the Chairman or if absent the Vice-Chairman or if absent a Member appointed by the Council.

9.8. **FUNDING AND ACCOUNTS**

(a) The Council shall ensure that all funds received will be utilised or expended in the furtherance of the Object of the Society.

(b) The Council shall further ensure that no direct or indirect distributions will be made to any person, other than in the furtherance of the Object of the Society or as a reasonable remuneration for services rendered to the Society.

~~(c)~~(c) The Council shall cause true accounts to be kept:-

- (i) of the sums of money received and expended by the Society and the matters in respect of which such receipts and expenditure take place;
- (ii) of the assets and liabilities of the Society.

~~(d)~~(d) The books of account shall be kept at the Office of the Society or at such other place or places as the Council may think fit and shall at all reasonable times be open to the inspection of the Council.

~~(e)~~(e) The accounts and books of the Society shall be open to the inspection of Members at all times during business hours subject to any reasonable restrictions which may from time to time be imposed by the Society in General Meeting.

~~(e)~~(f) The Council shall lay before the Society at the Annual General Meeting an account of the receipts and the expenditure and the assets and liabilities up to the last day of February in the previous year. Provided always that the date to which the accounts are made in each year may be altered by a Resolution of the Members in General Meeting either for any year in particular or permanently.

~~(e)~~(g) Auditors shall be appointed who shall be duly qualified. No person who is a Member of the Council or holds any other office under the Society shall be eligible for appointment as Auditor. The Auditor or Auditors shall make a report on the balance sheet and accounts to be submitted to the Annual General Meeting and such a report shall be annexed to the accounts or a reference thereto appear at the foot thereof and in the former case a copy of the Auditor's report shall be sent with the accounts to every Member and in either case the report shall be read at the relevant General Meeting.

(h) All sums of money not immediately required for the business of the Society shall from time to time be deposited in a Bank or otherwise invested as directed by the Council. Money of the Society requiring to be invested shall be invested in any investments from time to time authorised by the Council for the investment of trust funds.

~~(f)~~(i) The Council is 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 the donation, which purposes and conditions must align to the Object of the Society. No conditions may be imposed by a donor which would enable such donor, or any connected person to such donor, to derive a direct or indirect benefit from the application of such donation.

A notice may be given to any Member either by delivering the same to him personally or by sending it to him by post at his registered address or to his email address. When a notice is sent by post, service of the notice shall be deemed to have been effected by properly addressing, prepaying and posting an envelope containing such notice and unless the contrary is proved, service shall be deemed to have been effected at the time at which the same would have been delivered in the ordinary post, prepaid and addressed to a Member at his registered address, shall be deemed conclusive evidence thereof.

11.10. **RULES**

The Council may from time to time make Rules not inconsistent with any provisions of this Constitution as it may think fit for the more effectual conduct of the object of the Society and from time to time rescind the same and make and publish other Rules in lieu or substitution thereof or in addition thereto and the Rules for the time being in force shall be binding upon all the Members.

12.11. **AMENDMENT**

This Constitution may be altered by resolution passed by at least two-thirds of the Members present and voting at a General Meeting. Such a resolution must be received by the Secretary at least 21 days before that Meeting, and notice (including the proposed alteration) must be given by the Secretary to the membership at least 14 days before the meeting. If the Society shall have been registered as an income tax exempt entity ~~a charity~~ any~~ne~~ alteration to the Constitution ~~clause 3, this clause or clause 13~~ shall promptly be submitted to the Commissioner of the South African Revenue Service ~~have effect unless and until approved in writing by the Charity Commissioners~~ or any other authority having charitable jurisdiction, and no alteration shall

be made which would cause the Society to cease to be an income tax exempt entity-~~charity~~.

~~13.~~12. **DISSOLUTION**

The Society may be dissolved by resolution requiring the same majority and same notices as a resolution for alteration of the Constitution. Upon dissolution, after satisfaction of liabilities, the assets shall be applied to such approved public benefit activity ~~charitable purpose~~ similar to the object of the Society as the General Meeting may select and in absence of such selection for some other public benefit organisation or other non-taxable entity as specified in section 30(3)(b)(iii) of the Income Tax Act No 58 of 1962 ~~charitable purpose~~, which entity will be required to use such assets for the carrying on of one or more public benefit activity as specified in the Ninth Schedule to the Income Tax Act No 58 of 1962.

~~14.~~13. **COMING INTO FORCE**

This Constitution shall come into force immediately upon signature thereof by the Founder and the Founding Member and further shall have effect with respect to all the provisions relating to the composition of the Council.

Thus done and signed at **CAPE TOWN** on this the **30th** day of **JULY 2013**

ADV J.A.L. BEYERS

Co-Founder

Thus done and signed at **CAPE TOWN** on this the **30th** day of **JULY 2013**

MR C. ACKERMANN

Co-Founder