

# MPUMALANGA ATTORNEYS' ASSOCIATION

## CONSTITUTION

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## 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Practice Act 28 of 2014 dissolved the law societies referred to in section 56 of the Attorneys Act 53 of 1979 (now repealed) and transferred their assets, rights, liabilities, obligations and staff to the Legal Practice Council;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 (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 but shall be recognised as operating independently and in terms of its constitution.

### 2. OFFICES

There will be no physical offices.

### 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, 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 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 associations between members of the legal profession;
- 3.11 The promotion of professionalism amongst members, good ethics and healthier relations between practitioners and the public;
- 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 safeguard the interest of attorneys and their freedom to make their skills available to those requiring their legal expertise against the payment of a reasonable fee.

## 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 accept subscriptions, donations, bequests, endowments, and benefits of any nature for the Association from any person or body and from any source whatsoever, subject to SARS, FICA and NPO regulations.
- 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 attempt to settle differences or disputes between them whenever called upon to do so by members;
- 4.8 To establish the tools necessary 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 prudently invest funds of the Association in such a manner as may be determined from time to time by the members of the Association;
- 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 or donate money or in-kind contributions to any eligible person or organisation approved by the Management Committee 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;
- 4.13 To foster legal studies and conduct lectures, symposia, seminars and study courses for its members;
- 4.14 To exercise all the management and executive powers ordinarily vested in the Board of Directors of a Company;

- 4.15 To carry out all the powers and authority of the Association in South Africa and any other part of the world and
- 4.16 Generally, to do all such things as may be necessary or expedient to carry out or further the Association's objectives.

## 5. MEMBERSHIP

- 5.1 The following persons, irrespective of colour, race, gender or creed, who accept and agree to abide by the principles contained in 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 articles of clerkship with such attorneys in clause 5.1.1.
- 5.2 The Management Committee may, on application in the prescribed format, admit persons listed under clause 5.1 as members of the Association.
- 5.3 The Management Committee may subject to any resolutions issued by the members in a general meeting, determine the conditions and criteria for membership. The Management Committee may refuse applications for membership that do not comply with such conditions and criteria.
- 5.4 The Management Committee must keep a register with all the Members' names and addresses.
- 5.5 Membership is non-transferable.
- 5.6 Members in good standing (i.e., members 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 Association's policy in accordance with its objectives.

## 6. SUSPENSION OR TERMINATION OF MEMBERSHIP

- 6.1 The status of a member is suspended through non-payment of the annual subscription if such payment remains outstanding for three months from the date of invoicing.

- 6.2 A member's status terminates through non-payment of the annual subscription if such payment remains outstanding for six months from the date of invoicing or the due date, whichever is the later.
- 6.3 The status of a member of the Association terminates through death or resignation.
- 6.4 A member's status terminates if the Management Committee finds him or her guilty of actions prejudicial to the interests of the Association, provided that the member has had the right to appear before the Management Committee and has been heard by it if the member exercised the right to be heard.
- 6.5 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 the request for reasons made by the said member if the request is made within 90 days of the decision.
- 6.6 The committee's decision shall be ratified by the general membership at the next general meeting, 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.<sup>1</sup>

## 7. SUBSCRIPTIONS<sup>2</sup>

- 7.1 An annual subscription, the amount of which shall be determined at the annual general meeting by a majority of 2/3 of attending members in good standing.
- 7.2 An invoice shall be sent to each member before the end of April each year. Those members serving articles of clerkship shall be exempt from payment.
- 7.3 The Association's financial year commences on the 1st day of June of each year, and subscriptions are due and payable on that date.

## 8. MANAGEMENT COMMITTEE

- 8.1 The affairs of the Association shall be managed by a Management Committee of nine [9], all of whom shall be elected from those members referred to in clauses 5.1.1 and 5.1.2 at

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<sup>1</sup> It is desirable that members in a general meeting must ratify the MC's decision to terminate membership. {Task Team]

<sup>2</sup> It is proposed that this clause be suspended, and the management committee be empowered to amend the suspension, subject to the negotiations within the LSSA amongst its constituents. [M Ramathe]

the Annual General Meeting of the Association or any other General Meeting, specially called for such purpose. The Management Committee must consist of:

- 8.1.1 Nine 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; and
  - 8.1.2 As is practically possible, one-third of the Management Committee members will be drawn from the Black Lawyers Association (“BLA”), another third from the National Association of Democratic Lawyers (“NADEL”), and the final third from ‘independent practitioners’ who are not members of BLA or NADEL. For ease of reference, the three groups contemplated here shall be referred to as the constituents.
  - 8.1.3 Independent members at the Annual General Meeting must sign or accept the independent declaration form when casting a vote, or in the event of virtual attendance, the online declaration form is deemed valid. [This form is to ensure that the voting is only done by independent members].
- 8.2 Each Management Committee member shall hold the office for two years, but the retiring members shall be eligible for re-election for another term [refer to 8.4 below]. The Management Committee must, as soon as reasonably possible, request the relevant constituent to appoint, in writing, a member to fill any vacancy that resulted from a Management Committee member drawn from the relevant constituent.
- 8.3 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. Four other positions will be designated specific responsibilities as per the decision of the Annual General Meeting. The aforementioned positions shall, to the extent practically possible, reflect an equitable representation of the constituents.
- 8.4 No member of the Management Committee shall hold office for more than (two) consecutive terms.
- 8.5 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.
- 8.6 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. Members shall be notified of the names of the persons nominated, not less than fourteen days before the date of the meeting.
- 8.7 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/she takes and shall serve only until the next Annual General Meeting.

- 8.8 The Management Committee shall be entitled to co-opt Management Committee members with specific roles and responsibilities from the 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.
- 8.9 The Management Committee shall be entitled to remove a member who missed 3 (three) consecutive Management Committee meetings without leave of absence through a majority resolution and to replace such member by co-option.
- 8.10 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.
- 8.11 The composition of the Management Committee shall be limited to one representative of or from any one law firm.
- 8.12 To form a quorum at a Management Committee meeting, a majority of members are required [at least 5].

## 9. POWERS AND DUTIES OF THE MANAGEMENT COMMITTEE [MC]

- 9.1 The Management Committee shall conduct all the affairs of the Association and be entitled to do all matters and things mandated to be performed by the annual general meeting.
- 9.2 Without limiting their rights of management, the Management Committee shall have the following special powers:
  - 9.2.1 To convene meetings;
  - 9.2.2 To appoint, remove and determine the duties, salaries and remuneration of employees;
  - 9.2.3 To hold and have custody and control of the funds and other property of and for the Association;
  - 9.2.4 To open a banking account which shall be operated on by the signatures of any two of the Chairperson, Treasurer or Secretary;
  - 9.2.5 To appoint sub-committees and delegate any of its powers to such sub-committees subject to a two-thirds majority of the entire membership supporting such appointment;
  - 9.2.6 To do all other things that it may consider reasonable and in the best interests of good management or the promotion of the objectives of the Association;
  - 9.2.7 To implement and collect the annual subscription from time to time;
  - 9.2.8 The members appointed to committees must be appointed from any of the Association's members and may include Management Committee members;
  - 9.2.9 To direct and conduct an enquiry into any complaint received regarding a member's alleged conduct contrary to the provisions of this constitution; and,



- 9.2.10 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.

## 10. MEETINGS OF THE ASSOCIATION

### 10.1 MEETINGS OF THE MANAGEMENT COMMITTEE

- 10.1.1 The Management Committee should hold at least one ordinary meeting every sixty (60) days.
- 10.1.2 A majority of Management Committee members shall form a quorum at any meeting of the Management Committee, present in person.
- 10.1.3 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.
- 10.1.4 Minutes must be taken at every meeting of the Management Committee to record the proceedings, and the secretary must keep them at an agreed-upon record-keeping facility.
- 10.1.5 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 an accurate record of proceedings of the relevant previous meeting at the next meeting of the Management Committee.

### 10.2 MEETINGS OF THE MEMBERS OF THE ASSOCIATION

#### General meetings

- 10.2.1 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.
- 10.2.2 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.
- 10.2.3 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.

- 10.2.4 If ten (10) percent of the Association's members request a general meeting, the Management Committee will call it upon twenty-one (21) calendar days' notice to members and include the agenda proposed by the members requesting the meeting in the convocation.
- 10.2.5 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 in all general meetings.
- 10.2.6 The rules relating to matters before any general meeting regarding decisions binding on the Association are the same rules that apply to annual general meetings.

#### Annual General Meetings

- 10.2.7 An annual general meeting shall be convened by the Management Committee not later than 30 November 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 agenda of the business to be conducted at the annual general meeting.
- 10.2.8 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.
- 10.2.9 If an Annual General Meeting is postponed for any reason. If at the reconvened meeting, no quorum is present within fifteen minutes of the appointed time for a postponed Annual General Meeting, the members present or represented by proxy shall be deemed 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.
- 10.2.10 The Management Committee shall at least fourteen (14) days before the date set down for the meeting, circulate an agenda for every general meeting.
- 10.2.11 The business of the AGM must include:
- i. The presentation of the Chairperson's report;
  - ii. The adoption of the minute of 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

- 10.2.12 The Management Committee shall submit for approval to a general meeting:
- i. Any acquisition, 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.
- 10.2.13 A quorum of members shall be not less than 25% of<sup>3</sup> the members of the Association who are in good standing.
- 10.2.14 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, 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.
- 10.2.15 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 convened with 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.

## 11. VOTING

- 11.1 Every member of the Association, not being a candidate attorney<sup>4</sup>, present at a meeting of members 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.

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<sup>3</sup> Proposal by M Ramathe that the threshold be increased to 30 %.

<sup>4</sup> Proposal by M Ramathe that candidates be allowed to vote, as they are admitted as members, and they are the future of the profession [practitioners] and hence they must be vested in the profession.

- 11.2 The majority at any meeting may demand that voting be by ballot or by show of hands.
- 11.3 The committee may appoint a voting agent to conduct voting as may be necessary.

## 12. LEGAL PROCEEDINGS

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

## 13. AMENDMENTS

- 13.1 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 or virtually, which would allow Members to be present and participate through electronic means.
- 13.2 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.

## 14. LIABILITY OF MEMBERS

- 14.1 The liability of a member for the obligations of the Association shall be limited to the amount of his unpaid subscription.
- 14.2 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 and subject to any relevant law.

## 15. INTERPRETATION OF RULES

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

## 16. INCOME, PROPERTY AND TAXATION

- 16.1 The Association will keep an asset register of all fixed assets and property owned.

- 16.2 The Association's income and property shall be used solely to promote its objectives and shall not be paid or distributed directly or indirectly to any person, member, or office bearer, 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.
- 16.3 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.
- 16.4 The Association is prohibited from directly or indirectly distributing any surplus funds to any Association other than in terms of its objectives.
- 16.5 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.
- 16.6 The Association is prohibited from holding any share or other interest in any business, profession, or occupation carried on by its members.
- 16.7 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.
- 16.8 The Management Committee, under the direction of its members, 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.

## 17. NOTICES

Whenever notice of any matter or business item 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 membership list. It shall be deemed to have been received two days after the date on which such notice was posted, delivered or despatched.

## 18. WINDING UP

- 18.1 The Association may be dissolved by resolution of two-thirds of the entire membership at a special general meeting called specifically for that purpose.

18.2 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—

18.2.1 another entity approved by the Commissioner in terms of section 30B;

18.2.2 public benefit organisation approved in terms of section 30;

18.2.3 an institution, board or body which is exempt from tax under section 10 (1) (cA) (i) of the Income Tax Act; or

18.2.4 the government of the Republic in the national, provincial or local sphere.