

CONSTITUTION OF THE
GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA
(Amendments as approved up to July 2012 incorporated herein)

We, the affiliated Bars of the General Council of the Bar of South Africa, duly cognisant of our duties and responsibilities to the broader society in which we operate, hereby commit ourselves to the promotion of democracy, to the protection and the enhancement of the rule of law, to the ideal of an open society founded upon human dignity, the achievement of equality and the advancement of human rights and freedoms.

1. **CONSTITUTION**

There shall be constituted a **General Council of the Bar of South Africa** (hereinafter referred to as “**the Council**”).

2. **OBJECTS**

- (a) To consider, promote and deal with all matters concerning the teaching and practice of the law and the administration of justice.
- (b) To deal with all matters affecting the profession and to take action thereon.
- (c) To uphold the interests of advocates in South Africa.
- (d) To act, within the profession of advocacy, as an agent of change in post-apartheid South Africa and to strive towards the ideal of non-racialism and non-sexism in an open society.
- (e) To promote the achievement of equality within our ranks by the adoption and implementation of measures designed to protect and advance individual practitioners and categories of practitioners disadvantaged by unfair discrimination.

3. **COMPOSITION**

- (a) The Constituent Bars of the General Council of the Bar are the following:

- (i) The Cape Bar,
 - (ii) The Society of Advocates of KwaZulu-Natal:
 - (iii) The Pretoria Society of Advocates;
 - (iv) The Society of Advocates (Witwatersrand Local Division);
 - (v) The Free State Society of Advocates;
 - (vi) The Eastern Cape Society of Advocates;
 - (vii) The Society of Advocates Transkei;
 - (viii) The Bhisho Society of Advocates;
 - (ix) The North West Bar Association;
 - (x) The Northern Cape Society of Advocates.
 - (xi) The Polokwane Society of Advocates;
- (b) The Constituent Bars shall be represented in the **Council** by delegates chosen by themselves as follows:
- (i) The Cape Bar - **four** delegates;
 - (ii) The Society of Advocates of KwaZulu-Natal - **four** delegates;
 - (iii) The Pretoria Society of Advocates - **four** delegates;
 - (iv) The Society of Advocates (Witwatersrand Local Division) - **four** delegates;
 - (v) The Free State Society of Advocates - **two** delegates;
 - (vi) The Eastern Cape Society of Advocates - **three** delegates;
 - (vii) The Society of Advocates Transkei - **two** delegates;
 - (viii) The Bhisho Society of Advocates - **one** delegate;

- (ix) The North West Bar Association - **one** delegate;
 - (x) The Northern Cape Society of Advocates - **one** delegate.
 - (xi) The Polokwane Society of Advocates – **two** delegates
- (c) Each Constituent Bar shall, in selecting delegates to meetings of the **Council**, seek to ensure that it is appropriately represented with particular reference to race and gender, and in the case of Bars entitled to be represented by two or more delegates, shall whenever possible ensure that not less than half of its delegates are delegates nominated by the AFT Branch of those Bars.
- (d) The **Council** of every Constituent Bar shall notify the executive officer of the **General Council of the Bar** of the names of its delegates in advance of every meeting of the **Council**.
- (e) The **Council** shall consist of:
- (i) delegates of the Constituent Bars as hereinbefore provided;
 - (ii) an executive consisting of:
 - (aa) a Chair;
 - (bb) a Deputy Chair;
 - (cc) a Vice Chair;
 - (dd) an honorary secretary
 - (ee) an assistant honorary secretary;
 - (ff) such further numbers of members as may be decided by resolution from time to time;

provided that not less than half of the executive is to consist of

persons nominated by Advocates for Transformation, a voluntary organisation with its constitution adopted on 5 June 2004 (“AFT”).

- (iii) (aa) the Chair of the National Bar Examination Board *ex officio*;
- (bb) the outgoing Chair of the **Council** who by virtue of occupying that office, remains an office-bearer of the **Council** for a period of one year after the expiry of his/or her term of office.
- (iv) representatives of any Associate Bar admitted to membership in terms of clause 6(A).
- (f) (i) the delegates who are to be nominated from the ranks of AFT in terms of sub-clause 3(c) shall be selected in accordance with the convention or constitutional arrangement that exist in each constituent Bar.
- (ii) AFT shall be entitled to nominate half of the executive.
- (iii) AFT shall, on an annual basis not later than one month prior to each annual general meeting of the Council, submit a list of its members at each Constituent Bar to the Council.
- (iv) The relationship between the Council and AFT, both at national and Constituent Bar level shall be conducted in accordance with a set of agreed protocols.

4. **OFFICIALS**

- (a) The **Council** may from time to time elect an honorary president and such honorary vice-presidents as it may determine.
- (b) The **Council** shall annually from practising members of the Constituent Bars elect the members of the Executive as provided for in clause 3(e)(i) and (ii).
- (c) During the absence or incapacity of the Chair, the Deputy Chair or the Vice Chair, or all of them, a member of the Executive, nominated by the

Chair, the Deputy Chair or the Vice Chair as the case may be, shall act as Chair of the **Council**.

5. **MEETINGS OF THE COUNCIL**

- (a) The headquarters of the **Council** shall be in such a place as the **Council** for the time being shall decide.
- (b) Meetings shall be at such times and places as the Chair shall decide.
- (c) A quorum for a meeting shall be a majority of the number of members of the **Council** for the time being.
- (d) Save where otherwise provided in this constitution, decisions of the **Council** shall be taken by a majority of votes of the **Council**. The Chair shall have a casting as well as a deliberative vote.

6. **POWERS AND DUTIES OF THE COUNCIL**

- (a) The **Council** shall have no jurisdiction over any constituent Bar or its members except to the extent provided for in the **three** succeeding subsections.
- (b) The **Council** shall have the power to:
 - (i) Hear and decide appeals by members of constituent Bars from decisions of those Bars in any disciplinary proceedings in respect of those members save where the decision concerned is one to approach a High Court to take disciplinary proceedings against that member;
 - (ii) Hear and decide appeals by any complainant from decisions of a constituent Bar in any disciplinary proceedings in respect of members of such Bar;
 - (iii) Hear and decide appeals from constituent Bars in connection with any investigation into a member's fee;
 - (iv) Hear and decide any matter in respect of which provision is made

for the **Council's** jurisdiction in the constitution of any constituent Bar, or when such a hearing and decision are requested by a majority vote of the members of a constituent Bar.

- (c) (i) The appeals provided for in paragraphs (b)(i), (b)(ii) and (b)(iii) shall only be heard after the appellant has exhausted the appeal procedure, if any, of a constituent Bar. Subject to any right of appeal to the **Council** afforded in terms of the constituent Bar's rules or constitution, or any leave to appeal to the **Council** obtained in terms of the constituent Bar rules or constitution, or the leave to appeal referred to in paragraph (c) (ii), there is no automatic right to appeal to the **Council**.
- (ii) Where there is no right to appeal to the Council afforded by the constituent Bar rules of constitution, or leave to appeal to the Council has been refused by the constituent Bar, the member concerned or the complainant concerned may within three weeks after the decision, finding or sentence by the constituent Bar or, as the case may be, the refusal of leave to appeal by the constituent Bar as contemplated in c(i) came to the knowledge of the said member or the said complainant, apply for leave to appeal to the **Council**, unless good cause is shown for an application for leave to appeal to the Council to be delivered outside of the three week period. .
- (iii) The application for leave to appeal must be lodged in a written, motivated application for leave to appeal, stating the grounds therefor, with the Secretary of the **Council**. Where applicable a written application for condonation regarding the three week time period must be filed.
- (iv) The application for leave to appeal, and, where applicable, the application for condonation, shall be considered by a retired Judge or by a senior member or associate member from a Bar different to the constituent Bar that took the decision that led to the application for leave to appeal, appointed by the Chairman in consultation with the Deputy Chairman and the Vice Chairman. If the retired Judge or the senior member is of the opinion that there is a reasonable prospect of success and, where applicable, that condonation should be granted, leave to appeal shall be granted.
- (v) The appeal provided for in paragraphs (b)(i) and (b)(ii) shall be heard by a committee consisting of:
 - (1) At least three advocates, who are senior members of any constituent Bar, appointed by the Chairman in consultation with the Deputy Chairman and the Vice Chairman, provided that no member of such committee shall be a member or

associate member of the constituent Bar that took the decision that led to the appeal;

- (2) A retired judge, appointed by the Chairman in consultation with the Deputy Chairman and the Vice Chairman, who shall be the chairman of the committee;
 - (3) A lay person, selected and co-opted by the members of the committee, if, in the opinion of those members and taking into account the interests of justice and of transparency, the appeal warrants the co-option of such a person on to the committee.
- (vi) The appeal provided for in paragraph (b)(iii) shall be heard by a committee consisting of:
- (1) Two advocates, who are senior members of any constituent Bar, appointed by the Chairman in consultation with the Deputy Chairman and the Vice Chairman, provided that no member of such committee shall be a member or associate member of the constituent Bar that took the decision that led to the appeal;
 - (2) Two attorneys appointed by the chairperson(s) of the Law Society of South Africa.
- (vii) The hearing provided for in paragraph (b)(iv) shall be heard by the **Council** unless, with the consent of the Bar Council of the constituent Bar concerned, the majority of the executive is of the opinion that the matter may be heard by the executive itself or by a committee as contemplated in paragraph (c)(v)(1) above;
- (viii) In all cases the Chairman, in consultation with the Deputy Chairman and the Vice Chairman, shall appoint a secretary to the said committee and in the appeal provided for in paragraph (b)(iii) and in the hearing contemplated in paragraph (b)(iv), if the matter is to be heard by a committee, shall designate one of the members as chairman.
- (d) (i) The committee thus appointed determines the procedure to be followed and shall make same known to the parties to the appeal or hearing.
- (ii) The parties to the appeal or hearing shall be entitled to representation by advocates or attorneys or by both.
- (iii) The committee shall deliver a reasoned ruling, in writing and signed, where possible, by the members of the committee.

- (iv) A constituent Bar shall be obliged to make the provisions of paragraphs (b), (c) and (d) known to its members and to complainants at the conclusion of all its disciplinary procedures.
- (e) The **Council** may on its own initiative, or whenever requested by a constituent Bar to do so, recommend rules of professional etiquette and practice for adoption by all constituent Bars or a constituent Bar.
- (f) The **Council** may:
 - (i) examine and take appropriate action in regard to legislation and the administration of justice;
 - (ii) formulate evidence for submission to government or provincial commissions or committees or other bodies;
 - (iii) express its opinion in such quarters as it deems from time to time to be desirable;
 - (iv) make or join in making representations to ministers or other persons or bodies on matters relating to the profession or members thereof;
 - (v) refer to any constituent Bar any matter concerning the interests or conduct of any member or members thereof;
 - (vi) appoint such committees or sub-committees and employees as it may consider necessary from time to time, with power to co-opt or delegate to any constituent Bar the power to appoint a committee or sub-committee with such powers and functions as the **Council** may determine; or
 - (vii) generally take such steps as it deems necessary to promote its objects.
- (g) The **Council** shall be a legal persona independent of the Bars and their representatives from which it is constituted and may, subject to the provisions of this constitution:
 - (i) acquire, encumber or realize assets;
 - (ii) enter into contracts in its own name, and

- (iii) act as a plaintiff or an applicant or be cited as a defendant or respondent.
- (h) The Council shall every ten years appoint a standing committee to report to the AGM on an annual basis to consider:
 - (i) whether the objects set out in this Constitution have been met; and
 - (ii) the suitability of this Constitution to achieve the objects of the Council;
 - (iii) and to report thereon to the Annual General Meeting of the Council.

6A **ASSOCIATE MEMBERSHIP**

- (a) The **Council** may, by a resolution adopted unanimously, upon the recommendation of the Chair, invite a Bar, which is not a constituent Bar of a Division of the High Court of South Africa, to be admitted as an Associate Bar of the **Council**.
- (b) The recommendation of the chair shall, together with a report, as contemplated by sub-clause (iii) hereof, be tabled together with the resolution, which report shall be signed by the chair and the representatives of at least two constituent Bars.
- (c) The chair shall cause a report to be prepared, to which shall be annexed the constitution of the Bar, the code of ethics and conduct, a list of individual members, and in which report it is stated that signatories have satisfied themselves that the Bar to which an invitation to become an associate member should be extended –
 - (i) adheres to a written code of ethics and conduct that is the same or similar to that of the **Council** and that the Bar, if invited, will adopt as binding on itself, the code of the **Council**;
 - (ii) adheres to the Referral principle;
 - (iii) is a genuinely independent institution, *de facto* and *de jure*, free of state control or influence and subscribes unreservedly to the principle of the rule of law and an independent judiciary;

- (iv) is composed of practitioners whose academic qualifications are on a par with the academic qualifications required to practice law as an individual member of a constituent Bar of the **Council**;
 - (v) provides a systematic induction to the practice of advocacy consistent with and approximating to the practice of the **Council's** pupillage and advocacy training schemes;
 - (vi) is financially and organisationally sound;
 - (vii) if admitted to associate membership, no interest of the **Council** or of a constituent Bar would thereby be materially prejudiced.
- (d) A Bar that accepts an invitation to be admitted as an Associate Bar of the **Council** shall in writing, declare that it accepts such associate membership on terms that oblige it to subscribe to the constitution of the **Council** and to continue to comply with the requirements set out in clause 3(a) to (g) above, and such Associate Bar upon admission on a date to be determined by the **Council** enjoy such rights and obligations of a constituent member as set out therein; save only, that a representative of an associate Bar shall not be vested with a vote.

7. **EXECUTIVE COMMITTEE**

- (a) There shall be an Executive Committee of the **Council** in accordance with the provisions of clause 3(e)(ii).
- (b) The executive committee shall meet at such time and place as the Chair shall decide.
- (c) A quorum of a meeting of the executive committee shall be two thirds of its members.
- (d) The executive committee shall be entitled to exercise all the powers and functions of the **Council**.
- (e) Decisions of the executive committee shall be by majority vote provided that, to the extent that it is required by any constituent Bar, it shall be noted in any subsequent statement to the press or otherwise be made known that the decision is a majority decision and stating which Bars

supported the decision and which did not.

- (f) If at any time the Chair or Acting Chair of the **Council** is of the opinion that a situation of sufficient urgency has arisen, he shall be entitled to make a decision by consent of the majority of chairmen or acting chairmen of the Bar Councils of all constituent Bars and such decisions shall constitute a decision of the **Council** notwithstanding the provision of clause 8(a)(iii) hereof.

8. DECISIONS OF THE COUNCIL

- (a) Decisions of the **Council** may be validly taken in any one of the following ways:
- (i) by resolution of the **Council** in terms of clause 5 *supra*;
 - (ii) by resolution of the executive meeting in terms of clause 7 *supra*;
 - (iii) by consent of all constituent Bars.
- (b) It shall be within the discretion of the Chair to determine the manner in which any matter requiring the decision of the **Council** shall be dealt with. In particular and without derogating from the foregoing, he shall be entitled:
- (i) to refer such matter for comment or report to any committee or sub-committee of the **Council**, to any constituent Bar or member thereof.
 - (ii) to circulate such matter, with or without comment or recommendation, to the constituent Bars for their information or consideration; or
 - (iii) to place such matter on the agenda of a meeting of the **Council** or the executive committee.

9. BYE-LAWS

- (a) The **Council** may from time to time pass bye-laws and regulations governing its procedure.

- (b) The two official languages are recognised as media communication for the **Council** and communications shall be replied to by the **Council** in the language in which they are couched.
- (c) All notices, regulations, rules and bye-laws shall be in both official languages and the same applies to the minutes unless the **Council** otherwise decides.

10. **FINANCE**

- (a) The finances of the Council shall be provided by the constituent Bars.
- (b) At each Annual General Meeting the Council shall determine the membership subscription payable by the constituent Bars by determining the monthly subscription payable by each of the members of the constituent Bars. The Council may, in its discretion, determine different amounts for such differing categories of individual member as it may decide.
- (c) As it is the constituent Bar (and not the individual member of that Bar) which is the member of the General Council of the Bar, it is the responsibility of the constituent Bars to contribute to the finances of the Council.
- (d) By no later than the 15th of each month each of the constituent Bars shall forward to the secretariat a schedule reflecting the status of its individual membership as at the end of the previous month divided into the different categories as determined in sub-paragraph (b) above together with that constituent Bar's payment of its membership subscription for that month.
- (e) The constituent Bar shall not be entitled to withhold payment of the whole or any portion of its membership subscription for any reason including the non-payment to it by its individual members.
- (f) A banking account (or accounts) shall be opened in the name of the General Council of the Bar of South Africa and shall be operated upon as directed by the Council from time to time.
- (g) A constituent Bar which has not complied with all of its obligations in terms of paragraph 10 shall not be entitled to vote on or take part in the deliberations on any matter serving before Council or the Executive Committee.

11. **LIST OF MEMBERS OF CONSTITUENT BARS**

Each constituent Bar shall annually, not later than the 15th May, provide the GCB secretariat with a list of its members as at 30th April of that year, together with the dates of admission and in the case of senior counsel with the date of their letters patent. Such list shall be the basis of representation on the **Council** and contributions to the **Council**.

12. **AMENDMENTS**

Amendments to this constitution may be made by a majority of votes of the **Council**, provided that, not less than 3 (three) months notice of the terms of the proposed amendment shall have been given to each constituent Bar; provided further that amendments to clauses 2(a), 6(a), 6(b) and 6(e) shall require the consent of all constituent Bars.

Any amendments of this constitution shall be submitted to the Commissioner for The South African Revenue Service within 30 days of the amendment.

13. **OPERATION**

This constitution shall come into operation on **26 JULY 1980**.

14. **ADMINISTRATION**

- a) The Council shall not (directly or indirectly) distribute its funds or assets to any person, other than in the course of furthering its objects.
- b) The Council shall utilise substantially the whole of its funds for its objects and no member shall (directly or indirectly) have any personal or private interest in the Council's funds or assets.
- c) The activities of the Council must be directed to its objects and substantially the whole of such activities must not be for the specific benefit of an individual member or minority group.
- d) The Council may not have a share or other interest in any business, profession or occupation which is carried on by its members.

- e) The Council shall not pay to any employee, office bearer, member or other person any remuneration (as defined in the Fourth Schedule of the Income Tax Act, 1962), which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- f) In the event of the Council being dissolved, it must as part of its dissolution transfer its assets to an entity which has been approved in terms of section 30 and/or 30B of the Income Tax Act, 1962.
- g) The Council shall comply with such reporting requirements as may be determined by the Commissioner for The South African Revenue Service from time to time, and shall not knowingly be a party to, or permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act, 1962.