

CONSTITUTION

of

THE LIQUOR TRADERS ASSOCIATION OF SOUTH AFRICA

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1. Definitions

The following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- 1.1 **Appendix** – means any appendix, schedule or annexure to this Constitution;
- 1.2 **Association** – means the Liquor Traders Association of South Africa, as constituted in terms hereof;
- 1.3 **Constitution** – means this constitution and all Appendices hereto;
- 1.4 **Disaster Management Act** – means the Disaster Management Act, No. 57 of 2002;
- 1.5 **Industry** – means the industry pertaining to the retail and wholesale of Liquor Products in South Africa;
- 1.6 **Liquor Products** – shall bear the meaning ascribed thereto in the Liquor Products Act, No. 60 of 1989;
- 1.7 **Members** – means the members of the Association being the entities listed in Appendix 1 hereto, and any other entity which becomes a member of the Association in terms of paragraph 6.2 below and “**Member**” shall mean any one of them as the context may require;
- 1.8 **National State of Disaster** – means the national state of disaster declared on 15 March 2020 in terms of the Disaster Management Act;
- 1.9 **Relevant Percentage** – shall mean in relation to any Member, the percentage determined by dividing the number of employees employed by such Member as at 30 April 2020 by the number of employees employed by all of the Members as at 30 April 2020;
- 1.10 **South Africa** – means the Republic of South Africa;
- 1.11 **Steering Committee** – shall bear the meaning ascribed thereto in clause 8.1.

2. Background

- 2.1 On 15 March 2020 a National State of Disaster was declared by the Government of South Africa in response to the outbreak of COVID-19 in South Africa.
- 2.2 The South African government has since promulgated extensive regulations to the Disaster Management Act, with the intention of limiting and managing the spread of COVID-19. The regulations severely restrict the movement of people and the sale of goods in South Africa as well as the sale, dispensing and distribution of Liquor Products.
- 2.3 Consequently, the declaration of the National State of Disaster (and in particular the regulations imposed in terms of the Disaster Management Act) has had, and will continue to have, a significant and lasting detrimental impact on the organisations involved in and individuals employed within the Industry, including in particular (but not necessarily limited to) each of the Members and their respective employees.
- 2.4 The Association has therefore been formed for the principal purpose described in paragraph 4.1 below.

3. **Name**

The name of the Association shall be “**the Liquor Traders Association of South Africa**”.

4. **Purpose and Activities**

- 4.1 The principal purpose of the Association is to canvass and consolidate the views and proposals of all of the Members with a view to making unified submissions to the South African government, representative of the views of the Members as a whole, in relation to regulations promulgated under the Disaster Management Act insofar as they apply to the Industry.
- 4.2 The activities of the Association shall be wholly or mainly directed to the furtherance of its principal purpose as stated in clause 4.1 above. Such activities shall include, *inter alia*:
- 4.2.1 suggesting, promoting, supporting or opposing legislation, regulations or any other measures affecting the common interests of its Members or the Industry;
- 4.2.2 representing generally the views of the Members in relation to the principal purpose without in any manner restricting the freedom of action of any of its Members to make their own representations;
- 4.2.3 employing or retaining skilled professional or technical advisers in connection with the objectives of the Association and to pay such advisers fees;
- 4.2.4 furthering the objectives of the Association by corresponding, either directly or indirectly, with any person, group or body as may be of relevance to furthering the principal purpose of the Association, and appointing either Members of the Association or others to represent the Association in terms of this Constitution;
- 4.2.5 doing all such lawful acts and things as may be in the best interests of the Association and its Members and which are not inconsistent with its principal purpose as stated in clause 4.1 above.

5. **Legal Status**

- 5.1 The Association is a voluntary association and a distinct and separate legal entity and body corporate, with the power to acquire, to hold and to alienate property of every description, and with the capacity to acquire rights and obligations and having perpetual succession.
- 5.2 The Association is established for the principal purpose recorded in paragraph 4.1 above.
- 5.3 No profits or gains of the Association shall be distributed to any person and the funds of the Association shall be utilized solely for the objects of which the Association was established.
- 5.4 Each of the Members shall be liable for their Relevant Percentage of any expenses incurred by the Association in relation to furthering the principal purpose recorded in paragraph 4.1 above or conducting any of the activities recorded in paragraph 4.2 above.
- 5.5 Each of the Members liability in relation to the Association shall be limited to the amounts referred to in paragraph 5.4 above.
- 5.6 The Members confirm that it is not their intention to establish a partnership and/or relationship of agency and, accordingly, specifically agree that this Constitution shall not constitute a partnership and/or an agency agreement between them and that no Member shall have any power or authority to bind any other Member.

6. Membership

6.1 Qualification

- 6.1.1 Membership of the Association is, subject to the provisions of clause 6.2.3 below, available to all persons who conduct business as retailers or wholesalers of Liquor Products in South Africa.
- 6.1.2 The initial Members shall be those recorded in Appendix 1 hereto, and any additional Members shall be required to be approved of by the Steering Committee in terms of paragraph 6.2.

6.2 Application

- 6.2.1 Save for the initial Members recorded in Appendix 1 hereto (who are hereby approved as Members), any application to become a Member by any other person or entity shall be made in writing to the Steering Committee.
- 6.2.2 An applicant contemplated in paragraph 6.2.1 shall only become a Member once approved of by the Steering Committee and upon being notified in writing by the Steering Committee that its application for membership has been accepted.
- 6.2.3 The Steering Committee shall have the power to reject an application for membership should it consider it to be in the best interests of the Association to do so.

6.3 Termination of Membership

- 6.3.1 A Member shall cease to be a Member of the Association:
- 6.3.1.1 upon receipt by the Steering Committee of such Member's written letter of termination of membership from the Association; or
- 6.3.1.2 upon receipt by such Member of a written notice of termination from the Steering Committee, which may be issued by the Steering Committee upon the occurrence of any of the following events:
- 6.3.1.2.1 if the Member fails to abide by the terms and conditions of this Constitution (including its obligations in terms of paragraph 6.4.1 below);
- 6.3.1.2.2 if the Member or any of its employees or officers does or omits to do anything which brings the Association, its Members and/or the Industry into disrepute; or
- 6.3.1.2.3 if the Steering Committee deems it to be in the best interests of the Association to terminate the Member's membership of the Association.
- 6.3.1.3 Any Member who, for any cause whatsoever, ceases to be a Member shall not be repaid any part of its Relevant Percentage of the costs of the Association paid to the Association, but such Member shall remain liable for and shall pay to the Association, notwithstanding cessation of membership, all moneys which, at the time of cessation of membership are due to the Association, or which may become payable to the Association by virtue of any liability which such Member may have under this Constitution.

6.4 Costs and Expenses of the Association

- 6.4.1 Each Member shall be liable to pay to the Association on 30 (thirty) days written notice from the Steering Committee its Relevant Percentage of the Associations total costs duly incurred in pursuit of the purpose contemplated in paragraph 4.1.
- 6.4.2 Each Member shall be entitled upon written request to the Steering Committee to be furnished with detailed accounts in respect of the Associations total costs.

7. Powers

- 7.1 Subject to the limitations imposed upon it by this Constitution, the Association shall have all such powers as may be required to achieve its purpose under this Constitution, including but not limited to, the power:
- 7.1.1 to open and operate any bank accounts at a bank or other financial institution;
 - 7.1.2 to buy, sell, exchange, donate and/or accept, whether by donation or bequest, and otherwise deal with movable or immovable or incorporeal property of whatsoever nature, and to sign and execute any agreement or deed of sale in relation thereto, and to sign and execute all requisite documents and to do all things necessary for the purpose of letting and registering, if need be, transfer according to the law, of any such property, whether movable, immovable or incorporeal, bought or sold by the Association;
 - 7.1.3 to institute, defend or settle actions and proceedings at law including arbitration and mediation proceedings by or against the Association, which said actions and proceedings shall be instituted or defended in the name of the Association;
 - 7.1.4 to enter into contracts and agreements for the use and benefit of the Association;
 - 7.1.5 to engage the services of professional practitioners/consultants of whatsoever nature and tradesmen of whatsoever nature for the performance of work and rendering of services necessary or incidental to the Association;
 - 7.1.6 to do all or any of the foregoing things and to exercise all or any of the foregoing rights or powers, to delegate any of its powers in South Africa or in any other part of the world.
- 7.2 The powers referred to in clause 7.1 above are limited as follows:
- 7.2.1 the Association shall use any property and income acquired by it in terms of this Constitution, solely in the furtherance of its purpose and is prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by way of payment in good faith of reasonable remuneration to any practitioner/consultant, officer or employee of the Association for any services actually rendered to the Association;
 - 7.2.2 all transactions, of whatever nature, that may affect the whole or the major part of the assets of the Association, or any transaction involving immovable property, shall be subject to the approval of the Steering Committee; and
 - 7.2.3 the Association shall not have the power to carry on any business, including, *inter alia*, ordinary trading operations in the commercial sense and the letting of property on a systematic or regular basis.

8. Steering Committee

- 8.1 The day-to-day management of the Association shall be the responsibility of a committee (the “**Steering Committee**”), which shall be constituted and operate in accordance with this Constitution.
- 8.2 The Steering Committee shall comprise of a minimum of 3 (three) and a maximum of 5 (five) persons nominated by at least 75% of the Members (the “**Steering Committee Members**”).
- 8.3 The Members shall vote to appoint the Steering Committee Members. In relation to any votes to be cast by the Members in relation to any issue pertaining to the Association, (including but not limited to any voting in relation to the appointment of the Steering Committee Members), each Member’s vote shall be weighted in accordance with such Member’s Relevant Percentage as at the date on which such vote is being conducted.

8.4 No Member shall be entitled to have more than 1 (one) director or employee of such Members appointed to the Steering Committee.

8.5 Should the Members so elect in accordance with the provisions of this paragraph 8, it shall be possible for third parties who are not Members to be appointed to the Steering Committee.

9. Powers of the Steering Committee

9.1 The business and affairs of the Association shall be managed by the Steering Committee who may procure the payment all expenses of the promotion, formation, and establishment of the Association, and may exercise all such powers of the Association and do on behalf of the Association, all such acts as may be exercised and done by the Association in order to give effect to the purpose of the Association.

9.2 Without limiting the generality of the aforesaid, the Steering Committee shall be vested with the following particular powers to achieve the aims of the Association:

9.2.1 the admission and dismissal of Members;

9.2.2 the drafting and submission of the Association's proposed submissions to government and any responses or counter proposals to be provided in relation thereto (provided that the Steering Committee shall provide feedback to each of the Members as soon as practically possible in relation to any such submissions or interactions);

9.2.3 the date and place of the next meeting; and

9.2.4 the dissolution of the Association.

10. Meetings of the Steering Committee

10.1 A notice convening a meeting of the Steering Committee shall be sent to every Steering Committee Member with an agenda showing the general nature of the business to be transacted at the meeting.

10.2 No decision may be taken on an item that does not appear on the agenda for the meeting concerned, save for an item included by unanimous resolution of the Steering Committee Members.

10.3 No business shall be transacted at any meeting unless a quorum of Steering Committee Members is present in person or proxy for the duration of the meeting. Save as otherwise determined by all of the Steering Committee Members, at least 3 (three) Steering Committee Members for the time being shall constitute a quorum.

10.4 Each Steering Committee Member shall have one vote in relation to any issue to be determined by the Steering Committee.

10.5 Resolutions shall be passed at meetings of the Steering Committee by the vote of at least 75% (seventy-five percent) of the Steering Committee Members present at a meeting at which a quorum is present.

10.6 Any Steering Committee Member may summon a meeting of the Steering Committee on not less than 24 (twenty-four) hours written notice to the other Steering Committee Members specifying the date, time and place of the meeting, or such shorter period as may be unanimously agreed to by all of the Steering Committee Members.

10.7 The Steering Committee shall be entitled to conduct its meetings entirely by electronic communication.

11. Accounts, Minutes and Records

- 11.1 Minutes shall be kept of all general meetings, special general meetings and meetings of the Steering Committee.
- 11.2 The Steering Committee shall cause proper records and books of account to be kept of the financial affairs of the Association.
- 11.3 The Steering Committee shall keep an updated register of the Members of the Association.
- 11.4 The Steering Committee shall ensure that the signed minutes are kept in a safe place and are retained indefinitely. Electronic copies of unsigned minutes shall be circulated to all Members and copies of the signed minutes shall be made available to Members on request.

12. Compliance

- 12.1 The activities and objectives of the Association shall at all times be in compliance with the laws of the South Africa as may be amended from time to time (including but not limited to any competition laws of South Africa).
- 12.2 The Association will not participate in any business, profession or occupation carried on by any of its Members, or provide any financial assistance, premises, continuous services, or facilities to its Members for the purpose of carrying on any business, profession or occupation by them.

13. Amendments to the Constitution

This Constitution may only be amended from time to time in writing by means of a resolution approved of by at least 75% of the Members (voting in accordance with the provisions of paragraph 8.3).

14. Termination of the Association

- 14.1 Unless otherwise agreed by all of the Members, the Association shall automatically terminate on the earlier of:
 - 14.1.1 the date on which the National State of Disaster is terminated in terms of the Disaster Management Act; or
 - 14.1.2 the date on which a resolution is adopted by the Members (voting in accordance with the provisions of paragraph 8.3) terminating the Association.
- 14.2 On termination of the Association, the assets of the Association remaining after payment of all the Association's outstanding expenses shall be transferred to each of the Members in accordance with their Relevant Percentage (after deducting any amounts owing by any Member in terms of this Constitution). For the sake of clarity, to the extent that any Member may have effected contributions to, or discharged expenses of, the Association in excess of such Member's Relevant Percentage, the excess portion so paid or contributed by such Member shall, on the termination of the Association, firstly be reimbursed to such Member prior to distributing any remaining balance to the Members in accordance with this paragraph 14.2.

15. Approval and Acceptance of the terms of the Constitution

This Constitution is hereby approved and accepted by the initial Members recorded in Appendix 1 hereto, who by their signatures hereto, hereby undertake to be bound by and comply with the provisions of this Addendum.

Appendix 1

MEMBERS

[Note – Each initial member to conclude and sign on the basis set out below]

We, by the signature of the duly authorised representative below (who warrants his authority), hereby confirm our acceptance to be members of the Liquor Traders Association of South Africa and agree to be bound by its constitution.

Our details are as follows:

Full name of entity: _____

[Entity name also to be inserted in the signature line below]

Registration Number _____

Trading Name/s (if different from entity name) _____

Initial Representative: _____

Contact Telephone Number: _____

Contact E-mail address: _____

Notice Address

Signed at _____ on _____ 2020

_____ *[Signature of duly authorised representative]*

For and an behalf of _____ *[Insert full name of entity]*