

# THE PENSION LAWYERS ASSOCIATION OF SOUTH AFRICA

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## CONSTITUTION

Adopted at the first Annual General Meeting held at Somerset West on 14 February 1996 and including amendments adopted on 16 February 1998, 18 February 1999, 3 March 2003, 16 February 2004 , 7 March 2005, 17 March 2008, 16 March 2009, 29 March 2010, 8 March 2011, 27 February 2012, 3 March 2014 and 29 February 2016.

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### 1. NAME

The name of the Association shall be "THE PENSION LAWYERS ASSOCIATION OF SOUTH AFRICA".

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### 2. LEGAL PERSONALITY

The Association shall have legal personality separate from its Members and officers. It shall in its own name be able to sue and be sued, be capable of acquiring rights and incurring liabilities, and also be able to do all things that may be necessary to achieve its objects.

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### 3. OBJECTS

The main objects of the Association are:

- a. to promote the common interests of Pension Lawyers, being the members of the Association;
- b. to promote awareness of the importance of the role of law and Lawyers in the provision of retirement and other employee/group benefits and in regulating and defining the relationships between such benefit schemes, trustees, employers, beneficiaries, service providers, the regulatory authorities and any other relevant parties;
- c. to afford opportunities for the discussion, sharing of information and consideration of matters of interest to Members of the Association;
- d. to promote education of and provide information to Members of the Association and others similarly interested;
- e. to make representations to organisations or governments or individuals on matters of interest to Members of the Association;
- f. to develop and enhance the image and profile of Pension Lawyers within the retirement industry as well as with the broader public;

- g. to do all such other lawful things as are incidental to or conducive to the attainment of the above objects or any of them, provided that the Association shall not carry on any trading operations, speculative transactions, dividend stripping operations or the letting of property, on a systematic or regular basis, nor shall it participate in any business, profession or occupation carried on by any Member, provide any financial assistance, premises, continuous services or facilities to Members for the purpose of carrying on any business, profession or occupation by any such Member.

In order to best achieve these objectives, the Association will be run by a National Steering Committee ('the Committee') which may appoint sub-committees, to ensure that the Association's objectives are achieved throughout the country. Initially the sub-committees will support four Chapters, namely a Cape Chapter serving the Cape Province and the Northern Cape, an Eastern Chapter serving the Eastern Cape, a KZN Chapter serving KwaZulu-Natal, and a Northern Chapter serving Gauteng, the Free State, the Northern Province, Mpumalanga, Limpopo and the North West. Further Chapters may be established by the Committee.

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#### **4. MEMBERSHIP**

##### **4.1 General**

- a. In this Rule, "Lawyer" means a person who has a B.Proc or LLB degree or is admitted to practise in the Republic as an attorney or advocate.
- b. A "Member" includes a Full and Associate Member, who has paid the required annual subscription, and any Honorary or Life Member.
- c. Should the circumstances of any person at any time so change that in the opinion of the Committee, such person would not satisfy the requirements for Full Membership or Associate Membership, the Committee shall have the discretion to suspend or terminate such person's membership or, to reclassify such person's membership appropriately. On termination or suspension of membership, no refund of subscriptions paid or any part thereof need be made.
- d. The Committee shall have the right to refuse admission to membership of the Association without giving reasons for such refusal.
- e. The Committee shall have the right to call for any information it deems desirable regarding issues relating to qualifications for membership from Members or prospective Members.

##### **4.2 Full Members**

- a. Any person who satisfies the Committee that he or she:
  - i. is a Lawyer; and
  - ii. is interested, employed or active in the retirement fund industry or pensions law, whether or not she or he is wholly or mainly employed or active in this manner

is eligible for consideration by the Committee to be accepted as a Full Member of the Association.

- b. Notwithstanding the other provisions of this clause 4.2, any Member as at 2 March 2003 who was recorded in the records of the Association as a Full Member but who does not meet the requirements in terms of clause 4.2 shall not become ineligible in respect to the above requirements to remain a Full Member of the Association.

#### **4.3 Associate Members**

- a. Any person who satisfies the Committee that he or she:
  - i. is interested, employed or active in the retirement fund industry or pensions law, whether or not she or he is wholly or mainly employed or active in this manner

is eligible for consideration by the Committee to be accepted as an Associate Member of the Association.

- b. An Associate Member will automatically qualify for Full Membership if he or she meets the requirements of clause 4.2.

#### **4.4 Honorary Members**

The Committee may in its absolute discretion bestow Honorary Membership on any person in the following two categories -

- a. **Period**

Honorary membership may be bestowed on any person for a period of 3 (three) years and unless otherwise specified, such Honorary Membership shall automatically terminate after 3 (three) years.
- b. **Position**

The Committee may, in its absolute discretion, nominate certain positions that will have Honorary Membership bestowed on the person who occupies such a position. Unless otherwise specified such Honorary Membership shall be for the period that the person occupies the position and shall automatically terminate upon the person vacating the position.

#### **4.5 Life Members**

The Committee may, in its absolute discretion, bestow Life Membership on any person who, in the opinion of the Committee, has made any worthy, ongoing and/or significant contribution to the Association.

#### **4.6 Termination of Honorary or Life Membership**

Nothing contained herein above shall prevent the Committee from withdrawing Honorary or Life Membership at any time.

#### 4.7 Foreign Members

- a. Any person who satisfies the Committee that he or she:
  - i. is resident in a jurisdiction outside the Republic of South Africa; and
  - ii. is a Lawyer or has a legal qualification to practise law outside the Republic of South Africa; and
  - iii. is interested, employed or active in the retirement fund industry or pensions law, whether or not she or he is wholly or mainly employed or active in this manner

is eligible for consideration by the Committee to be accepted as a Full Member of the Association.
- b. The remaining provisions of clause 4.2 shall apply mutatis mutandis to Foreign Members.

#### 4.8 Committee's Discretion

The Committee may in its discretion admit as a Full or Associate Member, any person who does not fulfill the criteria as set out in 4.2.a and 4.3.a above.

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### 5. THE NATIONAL STEERING COMMITTEE

#### 5.1 Composition

- a. The Association shall be administered by a National Steering Committee ("the Committee"), comprising the following Members, elected or appointed as provided herein:
  - i. a President, Vice-President, Secretary and Treasurer;
  - ii. 4 (four) additional Members;
  - iii. a maximum of four further Members, as may be invited by the Committee ("Co-opted Members");
- b. The Members in categories I and ii above will be referred to as 'Elected members' and the members in category ii as 'Co-opted Members'. Elected and Co-opted Members shall have the same rights and obligations unless otherwise specified in this Constitution, and the term Committee Members will be used for Elected and Co-opted members collectively.
- c. When selecting Co-opted Members, the Committee shall endeavour to achieve both geographic and demographic representation of the membership.
- d. Co-opted Members shall serve until the next Annual General Meeting.
- e. Committee Members shall serve a term of office of 2 (two) years. Nothing contained herein shall prevent the re-election of a Committee Member.

- f. Committee Members may be removed from office by majority decision of the Elected Committee Members only.

## 5.2 Elections

- a. Elections for Committee Members shall take place in accordance with the practices and procedures adopted by the Committee at or before each Annual General Meeting, at which sufficient Committee Members shall be elected, provided there are enough nominations, to restore the Committee to the full complement of eight Committee Members. Committee Members shall hold office, subject to their prior resignation or removal, until the second Annual General Meeting following their election.
- b. Any contest for election shall be resolved by such method of voting as the Committee shall determine, provided that:
  - i. only Full Members may vote;
  - ii. The Committee shall, to the extent possible by virtue of the nominations received, comprise three Members resident in the provinces of the Northern Chapter, three Members resident in the provinces of the Cape Chapter, one Member resident in the province of the KZN Chapter, and one Member resident in the provinces of the Eastern Chapter.
  - iii. The nominees with the highest number of votes, whose election would result in such representation being achieved, shall be elected, and thereafter, the remaining nominees with the highest number of votes shall be elected, regardless of their province of residence.
  - iv. In the event of the number of nominations received being less than or equal to the number of vacancies to be filled, then those nominees shall be duly elected.
  - v. any such election held prior to the Annual General Meeting shall only take effect from the Annual General Meeting following such election;
  - vi. if no such election takes place prior to the Annual General Meeting then any contest for election shall be resolved at the Annual General Meeting by a show of hands or by secret ballot as the chairperson of that Annual General Meeting shall decide; provided that only Full Members may vote either in person, or by proxy to a Full Member not standing for election, and provided further that the determination by the chairperson of that Annual General Meeting shall be final.
- c. In the event of the termination any Committee Member's participation on the Committee prior to the end of his or her elected term of office, the Committee may nominate a Member to serve until the next Annual General Meeting (or leave the office open until the next Annual General Meeting) at which a replacement shall be elected for the duration of the original Committee Member's term of office, or for a new term of office if the original Committee Member's term would have then expired. In the event of any nomination being unopposed, the Chairperson shall declare that person duly elected.
- d. The Committee shall, at its first meeting after each Annual General Meeting, elect from its members, a President, who shall serve as Chairperson, a Vice-President, a Treasurer and a Secretary. Only Elected Members may be elected to or nominate other members for election to, the offices of President, Vice-President, Secretary and Treasurer.

### **5.3 Quorum**

The quorum for meetings of the Committee shall be five, of whom no more than two shall be Co-opted Members.

### **5.4 Proceedings of the Committee**

- a. Committee meetings shall be held as the Committee deems fit, provided that reasonable notice of meetings shall be given to every Committee Member.
- b. The Committee may delegate any of its powers under the Constitution to any one or more of its sub-committees or any of the Committee Members, or such other persons as the Committee in its discretion decides.
- c. The Committee shall be empowered to resolve issues and take decisions by resolution, including round-robins by e-mail, adopted by a simple majority of Committee Members.

### **5.5 Sub-Committees**

The Committee may establish sub-committees to deal with ongoing or ad hoc issues of importance to the Association. The Committee shall have the power to appoint Members to serve on such committees and to furnish them with such powers and functions as the Committee may prescribe. The Committee shall also have the power, in its absolute discretion, to disband any sub-committee and/or withdraw the appointment of any sub-committee Member.

### **5.6 Income and Expenditure**

- a. The Association shall open and maintain banking accounts in the name of the Association and withdrawals, cheques, transfers and other instructions to the bank shall be given under the authority of the Committee or the joint authority of any two members of the Committee appointed by the Committee to operate on the bank accounts. The Committee shall keep an account of the income and expenditure of the Association and of its assets and liabilities, which duty may be delegated to an accountant appointed by the Committee, and shall submit such accounts, duly approved by the Committee and signed on its behalf, to the Annual General Meeting. Any Member may at any time convenient to the Committee, inspect the records of account of the Association.
- b. The Committee may expend the monies of the Association in its absolute discretion to attain the objectives of the Association. The monies of the Association may be invested in any manner seen fit by the Committee, provided that any such investment shall be with a registered financial institution as defined in the Financial Institutions (Protection of Funds) Act, 2001 or its successor.
- c. No income, profits or gains of the Association may be distributed to any person.

### **5.7 Auditor**

The Committee shall appoint an auditor to audit the Association's accounts.

### **5.8 Conduct of Members**

Should the conduct of any Member result in circumstances or consequences which, in the opinion of the majority of the Members of the Committee, are likely to place the Association or the Member in disrepute or to lead to a misrepresentation of the Association or its view, the Committee shall have the absolute discretion to suspend, terminate or reclassify such person's membership or remove such person from any office, provided that any such Member shall have the opportunity to address the Committee on the issue.

### **5.9 Indemnity**

Each member of the National Steering Committee, and the Conference and other sub-Committees, and the Administrator shall be indemnified by the Association in respect of any claim, howsoever arising, based in whole or in part on any act or omission by him or her whilst in office for which such member or Administrator may be liable in damages or otherwise to any party, provided that this indemnity does not apply in respect of any loss or damage caused by such member or Administrator as a result of his or her gross negligence or dishonesty.

### **5.10 Annual Conference**

- a. The Association shall organize an annual conference at which legal and other issues which are of interest to the Members and the pension industry are to be discussed;
- b. The Committee organizing a conference in any year may appoint a Conference Committee and delegate powers to it;
- c. The Conference Committee, in consultation with the National Steering Committee, shall determine the date and place when the annual conference will be held;
- d. The Conference Committee organizing the annual conference in any year shall have the power, in consultation with the National Steering Committee, to do all such things as may be necessary to ensure the success of the annual conference, including determining the theme, the budget for the conference, conference fees, delegate numbers, graphic design and logo, topics and speakers that will participate in the conference, organizers and planners and the like;
- e. The views expressed by delegates and speakers at the annual conference shall be those of the individuals concerned and the Association shall not be responsible for the views expressed at the conference.

### **5.11 Powers of the National Steering Committee**

- a. The National Steering Committee shall be responsible for promoting the objects of the Association and for the overall management of the affairs of the Association and shall have the following powers and duties:
    - i. Do all such things as may be necessary to advance the objects of the Association
    - ii. Prepare an annual budget.
    - iii. Organise workshops and seminars as and when the Committee deems necessary;
    - iv. Organise Committee meetings and social functions for Members
    - v. Establish and promote relationships with other organizations whose objects are similar to those of the Association;
    - vi. Collect subscriptions from Members;
    - vii. Operate the Association's bank accounts;
    - viii. Delegate any of its powers and functions to the Conference Committee, Sub-Committees, individual Members and any third party appointed by the National Steering Committee;
    - ix. Supervise the activities of the sub-Committees and to take any decision or make any recommendation on any matter affecting the Association and its Members except those decisions that may only be taken at the Annual General Meeting;
    - x. Approve annual budgets and conference budgets prepared by Committees;
    - xi. Enter into any transactions with third parties on behalf of and in the name of the Association.
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### **6. MEMBERS' RESOLUTIONS OTHER THAN AT ANNUAL GENERAL MEETINGS**

Any resolution by Full Members on any matter not reserved to an Annual General Meeting may be taken by:

- a. The vote of Full Members present at, or voting by proxy through another Full Member, at a General Meeting which shall be convened by the President of the Committee or on the request of at least thirty-three percent (33%) of Full Members with at least fourteen (14) days' written notice being given to Full Members of such meeting. Any vote at such Full Meeting shall either be by way of a show of hands or by secret ballot as the Chairperson of that meeting shall decide, and the Chairperson of that meeting shall be responsible for ensuring that minutes are kept of the proceedings at such meeting.
  - b. If the President of the Committee shall so decide, a ballot of the Full Members of the Association on any matter not reserved to an Annual General Meeting may be done by post or by email (for which purpose the email address of the Full Member concerned shall be deemed to be his or her correct email address).
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## 7. ANNUAL GENERAL MEETING

The Committee shall call an Annual General Meeting each year at which the annual accounts and Committee reports shall be presented and at which such other business as the Committee deems appropriate shall be dealt with. 20 (twenty) Full Members present at an Annual General meeting shall constitute a quorum.

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## 8. SUBSCRIPTIONS

- a. An annual subscription shall be payable in advance each year in respect of each Member other than an Honorary Member or Life Member.
  - b. The amount of the annual subscription and of any joining or readmission application fee shall be determined by the Committee and may be varied from time to time as circumstances may require.
  - c. The Committee may waive or reduce any subscription due by a Member if it feels that the circumstances warrant it.
  - d. With effect from 1 January 2011, the subscription payable by a Member shall be paid on or before 31 January of each year in which the subscription is due. Members shall be sent invoices for the following year's subscription by no later than 31 December of the previous year.
  - e. If a Member has not paid his or her subscription by 31 January, that Member shall be notified that his or her membership will be suspended until such time that he or she has paid the subscription fee in full.
  - f. If that Member fails to pay within 30 days of such suspension, he or she shall be notified that his or her Membership has been terminated.
  - g. If a Member has registered and paid for the annual conference prior to 31 January and prior to paying his or her membership subscription for the year in question and consequently receives a Member's discounted rate, but subsequently fails to pay his or her annual subscription before 31 January as required, the Member shall be liable to pay to the Association the full conference fee applicable to non-members.
  - h. In respect of a new Member, the annual subscription fee shall be payable within fourteen (14) days of the Member having been notified that he or she has been accepted as a Member of the Association. Where a new Member joins the Association after the end of June each year, the Committee shall have the discretion to impose a lower subscription on a basis that it deems fair and equitable, provided that its approach shall be consistent.
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## 9. CHANGES IN CONSTITUTION

The Constitution of the Association may be amended by the agreement of a simple majority of Full Members in a General Meeting subject to notice of the change having been given to Full Members at the same time the General Meeting is convened. Any changes to the Constitution shall be submitted to the Commissioner for Inland Revenue.

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## 10. DISSOLUTION

Subject to the provisions of Clause 11.8 below the Association may be dissolved in a General Meeting by agreement of seventy five percent (75%) of Members present. On dissolution, any assets of the Association shall be donated to another organisation with objects similar to those of the Association and which is itself exempt from income tax in terms of section 10(1)(cB)(i)(ff) of the Income Tax Act.

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## 11. GENERAL

- 11.1 No member of the Association shall be liable for any loss or liability of whatsoever nature, and howsoever arising, suffered or incurred by the Association as a result of any act or omission on the part of a Member in furthering the objects of the Association made or done in good faith, and the Association indemnifies each Member in respect of any such act or omission.
- 11.2 No Committee Member of the Association shall be liable for any loss or liability of whatsoever nature, and howsoever arising, suffered or incurred by the Association as a result of any act or omission committed by a Committee Member in his or her capacity as such, provided that the Committee Member acted in good faith, and the Association indemnifies each Committee Member in respect of any such act or omission.
- 11.3 No Committee Member shall be required to furnish security as a result of his or her election to the Committee.
- 11.4 The provisions of s30B of the Income Tax Act ("the Act"), a copy whereof is annexed hereto marked "A", as the context requires be deemed to be incorporated into this constitution.
- 11.5 The Association shall comply in all respects with the provisions of s30B of the Act.
- 11.6 Without affecting the generality of the foregoing, as a gloss to clause 5.1.a. the Association's National Steering Committee will consist of at least 3 persons who are not connected persons in

relation to each other to accept the fiduciary responsibilities for the Association. No single person may directly or indirectly control the decision-making powers relating to the Association.

- 11.7 Any amendments to the constitution as provided in Clause 9 above must be forwarded to the Commissioner for Inland Revenue within 30 days of amendment.
- 11.8 Upon the winding up or liquidation of the Association or within six months from the withdrawal of the exemption (or such longer period as the Commissioner may allow), the Association shall transfer its assets remaining after the satisfaction of its liabilities to-
- a) Another entity with similar objects and which is approved in terms of section 10(1)(d)(iii) or (iv) of the Act;
  - b) A public benefit organisation approved in terms of section 30 of the Act;
  - c) Any institution, board or body approved in terms of section 10(1)(cA)(i) of the Act; or
  - d) Any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of the Act, which is required to use those assets solely for purposes of carrying on one or more public benefit activities.

**14 February 1996**

**Amended February 1998**

**Amended February 1999**

**Amended March 2003**

**Amended February 2004**

**Amended March 2005**

**Amended March 2008**

**Amended March 2009**

**Amended March 2010**

**Amended March 2011**

**Amended February 2012**

**Amended March 2014**

**Amended February 2016**