

ASSOCIATION OF SALES AND MERCHANDISING COMPANIES **CONSTITUTION**

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1. NAME

- 1.1 The Association of Sales and Merchandising Companies is a Section 21 Company and the organisation is established for the purposes of representing the collective interests of Sales and Merchandising companies in South Africa.
- 1.2 Its shortened name will be ASMC.

2. DEFINITIONS

- 2.1 "accounting officer" – as provided by the CGCSA.
- 2.2 "agent" – appointed representative of the Council by the Council.
- 2.3 "CGCSA" – Consumer Goods Council of South Africa
- 2.4 "donor" – a person or organisation that donates money but does not apply for membership.
- 2.5 "ex-officio" – the person can attend all of the meetings and take part in discussions, but may not vote on any issues.
- 2.6 "in good standing" – an approved member who has paid his fees in full.
- 2.7 "member" – an organisation that conducts sales and merchandising activities in the FMCG industry in South Africa and has applied for membership in writing, has paid their fee(s) and has been approved by the management committee.
- 2.8 "management committee" – the directors appointed by the members consisting of 4 (four) directors/office bearers.
- 2.9 "office bearers" – the Chairperson, Vice-Chairperson, Treasurer and Secretary elected by the members at an Annual General Meeting.
- 2.10 "organisation" – Association of Sales and Merchandising Companies.
- 2.11 "portfolio" – a sub committee appointed by the management committee to do ongoing projects.
- 2.12 "quorum" – as follows
 - management committee meeting – more than 50% of the Management Committee members, AGM and Special General Meetings will be 4 members of the membership base
 - adjournment of and AGM or Special General Meeting – those present.
- 2.13 "representative" – person appointed in writing by the Management Committee.
- 2.14 "staff" – paid individuals that have been employed by the management committee.
- 2.15 "sub committee" – a group of people appointed by the management committee to do a specific task.
- 2.16 "written or in writing" – means written, typewritten, printed, reproduced by any electronic means.
- 2.17 Words importing the masculine gender include the feminine gender and vice versa.
- 2.18 Words importing singular include plural.

3. OBJECTIVES AND CODE OF ETHICS

3.1 The organisation's main objectives are to:

- 3.1.1 The Association was established as a collective body to look after and represent the collective interests of sales and merchandising companies in our industry.
- 3.1.2 This association is to be a consultative forum, which will meet on a regular basis to address common industry issues.

The Association's objective is to promote the interests of the industry rather than the individual members to ensure relations with other components within the industry are advanced and strengthened. An additional objective would be to create common minimum standards among the members.

- 3.1.4 It is envisaged that the membership will be through unity of thought and purpose as well as the common business of its members.

3.2 Code of Ethics

3.2.1 Honesty and Integrity

Members should loyally and faithfully serve their clients and always deal fairly with their clients and customers. No member should engage in any inconsistent or irreconcilable activity, or knowingly permit any transaction to occur through their offices, which is not fair to clients and customers alike.

3.2.2 Competition

The use by a member of any unfair or deceptive methods or tactics in competition with another member, whether for their clients or for their clients' customers, is unworthy of members of the association.

3.2.3 Confidentiality

Since the agent often possesses confidential information concerning its client, faithful service to its client and reliable guidance to the client's customer cannot be guaranteed if actions and opinions are tainted by breaches of confidentiality.

3.2.4 Compliance

Members should cooperate with all prevailing legislation in every proper way.

4. POWERS OF THE ORGANISATION

In furtherance of the objectives stated in clause 3, the management committee may:-

- 4.1 Collect and receive money, funds, by way of contribution and subscriptions
- 4.2 Open and operate a banking account in the name of the organisation or management committee or alternatively have it managed by the CGCSA.
- 4.3 Form and have an interest in any company, trust, organisation or body for the purpose set out in the objectives.
- 4.4 Establish, promote, amalgamate or co-operate with any institution, trust associations or bodies, incorporated or unincorporated, whose objects are wholly or in part similar to those of the organisation, or become a part of or member of such institutions, or associate or affiliate with such institutions.
- 4.5 Represent or appoint person(s) to represent the management committee or any of its members in any negotiations with any other parties or attendance of conferences.
- 4.6 Establish sub-committees in accordance with the provisions of this constitution.
- 4.7 Employ any person in the interests of the management committee and remunerate them from organisation funds and terminates such employment. Such staff shall be employed in terms of a contract of employment stipulating that the employee is an employee of the organisation.
- 4.8 Register the name and, if necessary, the Constitution of the organisation under any law.
- 4.9 Institute or defend any legal proceedings in the name of the organisation or the management committee.
- 4.10 Appoint an accounting officer to examine and report upon the accounts of the management committee and remunerate the accounting officer accordingly.
- 4.11 The registered office and address of the organisation will be situated at such place as the management committee may decide from time to time.
- 4.12 To print and publish any article, book, etc desirable to promote the organisation's objectives.

5. INCOME AND PROPERTY

- 5.1 The organisation may not give any of its money or property to its members or office bearers. The only time it can do this is when it pays for work that a member or office bearer has done for the organisation. The payment must be a reasonable amount for the work that has been done.
- 5.2 A member of the organisation can only get money back from the organisation for expenses that he has paid for or on behalf of the organisation as approved by the management committee.
- 5.3 Members or office bearers of the organisation do not have rights over things that belong to the organisation.

6. MEMBERSHIP

6.1 Members

- 6.1.1 "Foundation members" - the first members of the board of directors shall be foundation members.
- 6.1.2 "Sponsor members" - persons, corporations, companies, institutions or other bodies who, having agreed to be bound by the terms of the memorandum and Articles of the company.

- 6.1.3 "Corporate members" - persons, corporations, companies, institutions or other bodies, who, having agreed to be bound by the terms of the Memorandum and Articles of the company and having been admitted to membership agree to pay such annual subscriptions as shall be determined by the board of directors.
- 6.1.4 "Honorary members" – persons who, in recognition of exceptional and distinguished services rendered to the company are elected honorary members by the board of directors. Persons who elected in terms of Article 8.3 8.4 to serve on the board of directors.
- 6.1.5 "Affiliated members" – professional or educational or other institutions and/or associations and/or societies which, having agreed to be bound by the terms of the company and having been admitted to membership by the board of directors in each particular case.

6.2 Corporate members

- 6.2.1 "National member" – a company/organization who operates in more than one province.
- 6.2.2 "Regional member" – a company/organisation who operates in only one province
- 6.2.3 Each member organisation must appoint someone to represent it. That person will vote on its behalf at meetings of the organisation. It may send someone else, called an alternate, to replace it's appointed representative at any meeting if the appointed representative cannot attend. Members of the member organisation will have full membership rights except they will not be eligible to vote in their own right unless they become full members.
- 6.2.4 Each member organisation must tell the organisation's secretary who its representative and alternate will be. If the representative or alternative resigns from or leaves the member organisation, he cannot carry on as the member organisation's representative.

6.3 Members rights, duties, etc

- 6.3.1 A copy of the constitution, as amended from time to time, shall be supplied to each member and to an intending applicant for membership if requested.
- 6.3.2 Only paid up members or members in good standing are eligible to vote. National member will have 2 votes and regional members will have 1 vote.
- 6.3.3 Provision shall be made for proxies.
- 6.3.4 The rights and privileges of membership shall not be transferable.
- 6.3.5 All members of the organisation have to abide by this constitution and decisions that are taken by the management committee.
- 6.3.6 The liability of an individual member for the debts of the organisation shall be limited to the amount, if any, of their unpaid membership fees and any other amount owing to the organisation.
- 6.4.7 Members of the organisation should attend its annual general meetings. At the annual general meeting members exercise their right to determine the policy of the organisation.

6.4 Resignation and removal of members

- 6.4.1 If a member has not paid within 3 (three) months of the due date, he/she shall automatically cease to be a member.
- 6.4.2 If the management committee has a good reason to do so, and if all of the management committee members agree it can end any individual or member organisation's membership. Reasons for this drastic step would include, not subscribing to the objectives of the organisation, and not adhering to the Code of Ethics, fraudulent behaviour etc. A member has the right to defend the action however the management committee's final decision will be binding.
- 6.4.3 A member may resign by giving due written notice. Any fees or part thereof shall be forfeited.

7. MANAGEMENT

7.1 Management committee

- 7.1.1 A management committee will manage the organisation.
- 7.1.2 The management committee shall comprise of the office bearers.
- 7.1.3 Office bearers will serve for one year, but they can stand for re-election.
- 7.1.4 Office bearers shall be nominated, seconded and voted in at the AGM. Other management committee members shall be nominated and elected to the management committee at the AGM. The Portfolio allocation shall take place at the next AGM meeting following the AGM. All nominations shall be in writing and handed to the secretary 7 (seven) days before the AGM. All nominations shall be proposed and seconded by members in good standing. A ballot will take place

by the Chairman and vice-chairman. The appointment will be determined by the highest number of votes. A separate election will take place for Secretary and Treasurer. The Chairperson shall not have a casting vote in this case; it must go back to the vote by the members.

- 7.1.5 The management committee may, by resolution at an Annual General Meeting or Special General Meeting, set subscription fees for members, provided that such fees are reasonable.
- 7.1.6 The office bearers of the management committee shall be, and are hereby indemnified by the organisation against any loss, negligence, expense or damage incurred in the discharge of or arising out of their voluntary duties, owing to his own fault or neglect providing that their actions were lawful under the law of the Republic of SA. No member or other officer of the organisation shall be liable for the act, defaults, negligence or loss of any other management committee officer or member.

7.2 Resignation and removal of members of the management committee

- 7.2.1 If any member of the management committee or a sub-committee does not attend 3 (three) consecutive meetings without good cause, that person may be called upon to account for his/her absence. Where applicable, should the management committee deem this account to be unsatisfactory, that person shall cease to be a member of that committee.
- 7.2.2 A member of the management committee may tell the management committee if he wants to resign. But he can only do this if there will still be at least four members of the management committee left behind once the member has left.
- 7.2.3 A member of the management committee or any sub-committee thereof shall cease to be a member of such committee should the management committee resolve to remove a member of the committee from office at a constituted meeting of the management committee where at least 75% of the members of the management committee have voted in favour of such resolution. Provided that at least 7 (seven) days written notice has been given to the member concerned of the meeting and the proposed resolution and provided further that the member concerned has first been granted the opportunity to address the meeting.
- 7.2.4 Should a member of the management committee give written notice to the management committee of his/her intention to resign, such member shall immediately cease to be a member of the management committee.

7.3 Duties of the Chairperson

The Chairperson, as leader of the organisation, chairs all the organisation's meetings that he attends. He must:

- 7.3.1 See that members adhere to the rules and guidelines that are in their constitution.
- 7.3.2 Chair meetings in such a way as to keep good order.
- 7.3.3 Sign minutes of meetings after members have agreed that the minutes are accurate.
- 7.3.4 Check that accounts show the correct spending of the organisation's money, and agree to the accounts being paid.
- 7.3.5 Sign cheques together with another office bearer.
- 7.3.6 Sign all funding or other relevant agreements.
- 7.3.7 Generally supervise and keep a check on the organisation's affairs.
- 7.3.8 Do other duties that the organisation expects of its Chairperson.
- 7.3.9 Make sure that all office bearers and sub-committees complete what tasks they have agreed to, and within the time that was agreed to.
- 7.3.10 Make sure that meetings take place regularly, as set down in the constitution.
- 7.3.11 Uses his power to ask other office bearers and members of the organisation and its sub-committees to do certain duties and tasks if needs be.
- 7.3.12 Work in a team spirit with other members of the organisation.
- 7.3.13 Chair the annual general meeting or special general meeting
- 7.3.14 Ensure that an annual report is communicated at the AGM.

7.4 *Duties of the Vice-Chairperson*

The Vice-Chairperson takes over the Chairperson's task and duties when he is not there. The Vice-Chairperson should keep in close contact with the Chairperson. The Vice-Chairperson must:

- 7.4.1 Take on duties and functions that have been passed on to him.

7.5 *Duties of the Treasurer*

The treasurer keeps a record of all the money received by the organisation. This includes membership fees. The treasurer also keeps a record of all the money that is spent by the organisation. The treasurer must:

- 7.5.1 Keep proper records of what the organisation receives, and expenditures.
- 7.5.2 Keep a proper updated list of the members' names.
- 7.5.3 The organization, will where appropriate take out such insurance policies as deemed necessary for the protection of the assets, the liability, the staff and members of the organisation.
- 7.5.4 Write out, sign, keep a copy of, and give receipts for all money that the organisation receives.
- 7.5.5 Pay the organisation's accounts.
- 7.5.6 Be responsible for collecting the membership fees from all members.
- 7.5.7 Make sure that the organisation does not spend more money than it has.
- 7.5.8 Prepare monthly accounts for consideration and approval of the management committee and submit copies to the relevant authorities
- 7.5.9 Prepare the organisation's annual financial statements to present to the annual general meeting.

7.6 *Duties of the Secretary*

The secretary is responsible for making sure that the organisation's administration runs smoothly. He must work closely with the Chairperson and the Vice-Chairperson. The secretary must:

- 7.6.1 Keep proper records and minutes of all meetings and submit copies to the relevant authorities.
- 7.6.2 Deal with letters and other correspondence that the organisation receives and sends.
- 7.6.3 prepare and send out notices and agendas for all meetings of the organisation.
- 7.6.4 Do other duties that he may be asked to do from time to time.
- 7.6.5 Prepare the venue for meetings.

7.7 *Meetings and procedures of the management committee*

- 7.7.1 The management committee shall have the right to make by-laws for proper management, including procedure for application, approval and termination of membership and shall document the same.
- 7.7.2 The Chairperson, or two members of the management committee, can call a special meeting if they want to. But they must let the other management committee members know the date of the proposed meeting not less than 21 (twenty one) days before it is due to take place. They must also tell the other members of the organisation which issues will be discussed at the meeting. If, however, one of the matters to be discussed is to appoint a new management committee member, then those calling the meeting must give all the other organisation members not less than 21 (twenty one) days notice.
- 7.7.3 The Chairperson of the organisation shall act as the Chairperson of the management committee. If the Chairperson does not attend a meeting, and then the Vice-Chairperson will chair the meeting. If both do not attend a meeting, then the organisation's members must elect a Chairperson from amongst themselves for that meeting before the meeting starts.
- 7.7.4 The management committee will meet at least quarterly. To make a decision a quorum must be Present. If within 30 (thirty) minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, to the next succeeding day other than a public holiday, and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the meeting, then, subject to the Statutes, the members or member present shall be a quorum.
- 7.7.5 Minutes will be taken at every meeting to record the decisions. The minutes of each meeting will be distributed to members at least two weeks after the meeting. The minutes shall be confirmed as a true record of proceedings, by the next meeting of members, and shall thereafter be signed by the Chairperson.

- 7.7.6 Minutes of all meetings must be kept at the CGCSA and always be on hand for members to consult.
- 7.7.7 The sub-committee must report back to the management committee on its activities in writing. It should do this monthly or at all management committee meetings. All sub-committee decisions need to be approved by the management committee at the next management committee meeting prior to action being taken on that decision. If an urgent decision is required, a special management committee meeting can be called.
- 7.7.8 Any matter before the management committee shall be resolved by a simple majority of those members present and voting. Should there be equality in respect of the votes cast "for" and "against" then the Chairperson of the meeting shall be entitled, at his discretion, to exercise a casting vote.

8. ANNUAL GENERAL MEETINGS, SPECIAL GENERAL MEETINGS AND MEMBERS MEETINGS

- 8.1 The Annual General Meeting ("AGM") of members of the organisation shall be held not later than October each year. The business conducted at the AGM shall include:-
- Agree to the items to be discussed on the agenda.
 - Record attendance and apologies
 - Read and confirm the previous meeting's minutes with matters arising
 - Table Chairperson's report
 - Table Treasurer's report
 - Appointment of an accounting officer
 - Determination of membership fees
 - Changes to the constitution that members may want to make
 - Elect new office bearers
 - Consideration of items included in the agenda at the request of members of the organisation
 - General
 - Close the meeting
- 8.2 In regard to any such request, notice of items for inclusion in the agenda not being special business requires prescribed notice to members, must be submitted to the Secretary, in writing, at least 7 (seven) days prior to the AGM.
- 8.3 Notice of any AGM or Special General Meeting shall be given to members of the organisation in writing. Such notice shall be given not less than 21 (twenty-one) days before the meeting.
- 8.4 The management committee may, at its discretion, call a Special General Meeting to consider any business, which it deems appropriate or necessary. However, a Special General Meeting shall be called in response to a written request or requests, signed by at least half of the active paid up members of the organisation. Such requests must be lodged with the Secretary of the organisation and must clearly specify the reasons for requesting the meeting. Such meeting shall be called to take place within 21 (twenty-one) days of the requests being lodged as aforesaid and shall deal only with the specific matters requested.
- 8.5 A quorum for an AGM or Special General Meeting called by the management committee shall be no less than 4 of the membership base, provided that if within 30 (thirty) minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, to the next succeeding day other than a public holiday, and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the meeting, then, subject to the Statutes, the members or member present shall be a quorum.
- 8.6 Every agenda item will be discussed and where decision is required, a vote will take place. Where there is an equal vote the Chairperson will have the casting vote.
- 8.7 Members meetings should be called every quarter where progress and updates on initiatives will be discussed.
- 8.8 A record shall be kept of members attending general meetings. The Secretary shall duly record the minutes of each meeting (this includes management committee meetings). Minutes, after having been approved, shall be signed by both the Chairperson and the Secretary.

9. FINANCE

- 9.1 An accounting officer shall be appointed at the annual general meeting. His or her duty is to certify and check on the finances of the organisation.
- 9.2 The treasurer's job, as apposed to the accounting officer, is to control the day-to-day finances of the organisation. The treasurer shall arrange for all funds to be put into a bank account in the name of the organisation. The treasurer must also keep proper records of all the finances.
- 9.3 The organisation's certified annual financial statements and reports must be ready and handed to the Director of Non-profit Organisations within six months after the financial year-end along with the annual report.
- 9.4 The financial year of the organisation shall end on the last day of February of each year.
- 9.5 The funds raised and controlled by the management committee shall be deposited in a banking account or accounts within 5 (five) working days in the name of the organisation/management committee and shall be operated by at least 2 (two) nominated signatories appointed from time to time by the management committee.
- 9.6 All expenditure shall be authorised by resolution of the management committee.
- 9.7 Audited annual Financial Statements shall be prepared and submitted at each AGM. The Chairperson and the full management committee will sign them.

10. AMENDMENTS TO THE CONSTITUTION

- 10.1 The constitution can be changed by a resolution. The resolution has to be agreed upon and passed by not less than two thirds of the paid up members who are at the annual general meeting or special general meeting. Any annual general meeting may vote upon such a notion, if the details of the changes are set out in the notice referred to in 7.7.
- 10.2 A written notice must go out not less than 21 (twenty-one) days before the meeting at which the changes to the constitution are going to be proposed. The notice must indicate the proposed changes to the constitution that will be discussed at the meeting.
- 10.3 No amendments to the constitution may be made which would have the effect of making the organisation ceases to exist.

11. DISSOLUTION AND/OR WINDING-UP

- 11.1 The organisation may be dissolved by a resolution to that effect passed at an AGM or a Special General Meeting and the notice of the meeting must contain appropriate information as to the intent and the reasons for dissolution. A two-thirds majority vote of paid up members attending that meeting will be required to pass the motion for dissolution. Provided that if no quorum be present within 30 (thirty) minutes after the time fixed for the meeting, then the meeting shall be adjourned for 2 (two) weeks at the same time and venue. At such adjourned meeting the members then present shall be deemed to constitute the quorum for the transaction of all business of the meeting.
- 11.2 Upon its winding-up, deregistration or dissolution the assets of the company remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to its main object, to be determined by the members of the company at or before the time of its dissolution or, failing such determination, by the Court provided that in any event such other association or institutions shall be charitable, educational or ecclesiastical organisations or bodies of a public character within the Republic of South Africa which are themselves exempt from tax.
- 11.3 Dissolution shall take effect following the conclusion of the meeting and the organisation shall only continue to function for as long as necessary and in a manner appropriate to complete any unfinished business of the organisation and matters pertaining to its dissolution.

12. INTERPRETATION

In the event of doubt or disagreement concerning the interpretation of any provisions of this Constitution, the decision taken thereon by the management committee of the organisation shall be final and binding.

ii) In the event of a conflict to the Constitution of the memorandum and articles of association provisions of this constitution shall prevail.

This constitution was approved and accepted by members of _____

At a special general meeting held on _____ Day/Month/Year

_____ (name) Chairperson _____(signature)

_____ (name) Secretary _____(signature)

_____ (name) _____(signature)

_____ (name) _____(signature)

_____ (name) _____(signature)

_____ (name) _____(signature)

_____ (name) _____(signature)