

CONSTITUTION

ASSOCIATION OF B-BBEE PROFESSIONALS (ABP) NPC

1. PREAMBLE

1.1. Broad Based Black Empowerment Act

- 1.1.1. The primary objectives of the Broad-Based Black Empowerment Act No 53 of 2003, as amended by act 46 of 2013 are to -
- 1.1.2. Promote the achievement of the constitutional right to equality, increase broad-based and effective participation of Black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution; and to
- 1.1.3. Establish a national policy on Broad-Based Black Economic Empowerment so as to promote the economic unity of the nation, protect the common market, and promote equal access to government services.

1.2. Codes of Good Practice

- 1.2.1. The Codes of Good Practice on Black Economic Empowerment was issued under Section 9(1) of the Broad Based Black Economic Empowerment Act, 2003 as Amended by Act 46 of 2013 on 9 February 2007.
- 1.2.2. The following Code and Statement relating to the measurement of Broad-Based Black Economic Empowerment and the accreditation of Verification Agencies have been issued:
 - 1.2.2.1. Code 000: Framework for Measuring Broad-Based Black Economic Empowerment;
 - 1.2.2.2. Statement 000: General Principles and the Generic Scorecard; Clause 10: Framework for the Accreditation of BEE Verification Agencies.

1.3. Professional Body

- 1.3.1. The Founding Members present at a meeting held at the **dti** Campus on 5 December 2005 resolved to establish an Association of private sector BEE Verification Agencies to serve as the formal representative entity for the fulfilment of the requirements of the Codes.

1.3.2. The name of the Association referred to in clause 1.3.2 will be the “Association of B - B BEE Professionals”, which will more commonly be referred to as “ABP”.

1.3.3 ABP is a Professional Body for BEE Verification Agencies and BEE Consultancies.

1.3.4 The Members further resolved to formulate this ABP Constitution for consultation and adoption by all parties engaged in the business of providing BEE verification and consultancy services.

2. DEFINITIONS

2.1. **“ABP”** means the Association of B-BBEE Professionals

2.2. **“ABVA”** means the Association of BEE Verification Agencies established by this Constitution;

2.3. **“Accredited”** means the qualification status accorded to a Agency by SANAS, the SANAS Guidelines for the Accreditation of BEE Verification Agencies;

2.4. **“Act”** means the Broad-Based Black Empowerment Act No 53 of 2003, as amended and its subsequent amendments;

2.5. **“Agency”** means a private sector-based BEE Verification Agency;

2.6. **“Associate Member”** means a business entity which does not comply with the requirements for accreditation as an Agency.,

2.7. **“BEE”** means Black Economic Empowerment and includes “Broad-Based Black Economic Empowerment”;

2.8. **“The Board”** means the Board of Directors of ABP created by clause 11 of this Constitution;

2.9. **“Codes”** means the current and future Codes of Good Practice published in terms of clause 9 of the Act

2.10. **“Code 000”** means the Code published under the title “Framework for Measuring Broad Based-Black Economic Empowerment”;

2.11. **“Constitution”** means this constitution of ABP;

2.12. **“Exco”** means the Executive Committee appointed by the Board of ABP;

- 2.13. **“EE Professional”** means Economic Empowerment Professional
- 2.14. **“the dtic”** means the Department of Trade, Industry and Competition;
- 2.15. **“Financial Committee”** means Board Members comprising of the Chairperson, Deputy Chairperson, Head of Finance Committee and Head of Legal Committee
- 2.16. **“Founding Members”** means the Agencies listed on Annexure A, who have contributed to the establishment costs of ABP;
- 2.17. **“Full Member”** means a BEE Verification Agency that have applied to SANAS for accreditation;
- 2.18. **“Members”** means all types of Members;
- 2.19. **“Minister”** means the Minister of Trade, Industry and Competition;
- 2.20. **“SANAS”** means South African National Accreditation System;
- 2.21. **“SAQA”** means the South African Qualifications Authority
- 2.22. **“Services”** means the BEE verification services that members provide;

3. NAME

- 3.1 The Name of the Association is the “Association of B-BBEE Professionals” which will more commonly be known as “ABP”

4. INTERPRETATION

- 4.1 If a dispute arises about the interpretation of any provision of the Constitution, the interpretation given by the Board will prevail.

5. LEGAL STATUS

- 5.1. ABP is registered in terms of Section 21 of the Companies Act as an association not for gain.
- 5.2. As a registered Section 21 Company, ABP is a body corporate and assume the legal rights and obligations prescribed by law from time to time.

6. OBJECTIVES

6.1 ABP is established to achieve the following main objectives -

- a) To promote the objectives of the Act and the Codes;
- b) To promote high levels of professionalism and competence;
- c) To regulate the proper conduct and practice of members;
- d) To represent the BEE verification and consulting sector in its dealings with the **dtic**, SANAS, the public and other relevant stakeholders;

6.2. To promote general public knowledge of the BEE verification and consulting requirements and processes.

7. ACTIVITIES

7.1 ABP will undertake such activities that may be necessary and appropriate to achieve the objectives referred to in clause 6.

8. MEMBERSHIP

8.1. Membership of ABP will be open to all BEE professionals, companies and public and private corporates.

8.2. There will be three categories of members, namely, Economic Empowerment Professionals, Associate Members and Corporate Members. The rationale for the three categories of membership is to –

- 8.2.1. distinguish between a EEP Member which complies with the criteria for accreditation as an Agency or EE Professional on the date of application for membership, and an Associate Member, which has not completed the B-BBEE MDP

8.2.2. Ensure that access to membership of ABP and participation in its activities is as inclusive and transparent as possible.

8.3. The criteria for membership as an Associate Member of ABP include –

- a) Registered legal entity, or competent professional
- b) Commitment to achieving the objectives of the Act and the Codes through achieving a minimum Level 4 B-BBEE status measured using the Generic or QSE scorecard in the case of the company;
- c) Currently engaged in providing BEE verification services, BEE consulting services or practicing practitioner,;
- d) Declaration of independence and impartiality;
- e) No record of blacklisting in terms of the Act and the Codes;

8.4. All members will be entitled to participate in ABP's activities but only members in good standing will be entitled to exercise the voting rights provided for in this constitution

8.5. Applicants may apply for membership of the ABP by completing and submitting an Application Form to the Secretary. The Board will consider applications for membership at its quarterly meetings and decide whether to admit new applicants with reference to the criteria for membership referred to in clause 8.3 and 8.4. The Board may resolve to meet more frequently if necessary to perform its duties effectively and to avoid delays.

8.6. The Secretary will advise the applicant of the Board's decision as soon as possible. If the applicant is admitted, the Secretary must enroll the applicant as a member. If the applicant's application is declined, the Secretary must advise the applicant and give written reasons.

8.7 ABP membership may be terminated by:

8.7.1. The insolvency, dissolution or closure of the member's legal entity;

8.7.2 On written notice of termination to the Secretary; or

8.7.3 A resolution of the Board to terminate a member's membership for good cause which could include -

- a) Misconduct; or
- b) Proven non-performance of duties required by the Act or the Codes; or
- c) Failure to comply with the criteria for membership of ABP; or
- d) Blacklisting by SANAS, SAIPA; the B-BBEE Commission, or the **dtic**; or
- e) For any other reason recognized by law.

8.8 The Member concerned, as the case may be, must have a reasonable opportunity to hear the case against it and to state its own case in response to the allegations before a final decision is made.

8.9 The liability of the Members will be limited to the amount of their unpaid subscriptions, if any, or any amounts specifically provided for in this Constitution. No members will be personally liable for any debts, obligations or liabilities incurred by the ABP.

9. CONFLICTS OF INTEREST

9.1. Members must therefore not create any conflict of interest between activities conducted in their roles as BEE Professionals

9.2. Members must act at all times as independent service providers when performing their duties as BEE Professionals.

10. POWERS OF ABP

10.1 ABP will have such powers that are reasonably required to enable ABP to achieve its objectives.

11. STRUCTURE AND MANAGEMENT OF ABP

11.1. ABP will be governed and managed by the following structures:-

11.1.1. A **Chairperson of the Board**, elected at the AGM to hold office for two years;

11.1.2. A **Board of Directors** consisting of a minimum of 8 members, elected at an AGM to hold office for two years;

11.1.3. An Executive **Committee consisting** of a minimum of 5 (five) members, which will be appointed by the Board.

- 11.1.4. A **Secretary**, appointed and employed by the Board on a part-time or full-time basis for remuneration and other benefits determined by the Board, to manage the administration and finances of ABP;
- 11.1.5. The Members of ABP will each be entitled to nominate 1 (one) person for appointment as a Director on the inaugural ABP Board of Directors;
- 11.1.6. The members at an AGM who will vote for the election of the Board members and the Chairperson will vote on the basis of a simple majority;
- 11.2. The general governance of ABP will vest in the Board.
- 11.2. The general management of ABP will vest in Exco whose duties will be -
- a) To arrange meetings
 - b) To hold an annual general meeting
 - c) To control income, expenditure and assets
 - d) Arrange workshops, seminars, courses, training sessions and related events
 - e) Request a member to fulfil a specific duty and reimburse the member for reasonable travel and accommodation costs incurred in the course of performing the duties
 - f) Co-opt up to six members for any purpose that falls within the scope of ABP's objectives or activities
 - g) Make recommendations to the Board for the admission of new Members and Associate Members and the termination of existing Members and Associate Members for good cause, which may include proven misconduct, non- or poor performance
 - i) Perform any other activity, which it believes will promote the objectives of ABP and the proper implementation of the Constitution
- 11.4. A Board member, who is absent without good reason from two (2) consecutive scheduled meetings, will be deemed to have resigned from the Board.
- 11.5. Only paid-up Full Members of ABP in good standing may be elected or appointed as members of the Board.
- 11.6. The Secretary will report to Exco.

12. MEETINGS OF ABP MEMBERS

- 12.1. ABP meetings will be conducted generally in accordance with the protocols described in the Companies Act, with which the Board Directors are required to familiarise themselves.
- 12.2. The Board will have the power to organise any event and to invite any person or member, provided that decisions to be taken by ABP may only be taken at a general meeting.
- 12.3. At a Board meeting, a minimum of 50% of Directors will constitute a quorum.
- 12.4. At a general meeting of members, a minimum of 10% of Full Members will constitute a quorum – with a minimum number of 20 Members present and including proxies
- 12.5. In the absence of a quorum, the meeting will be adjourned once to a date not less than 14 days later and not more than 21 days later. If no quorum is obtained at the next date of the meeting, the members then present will proceed to constitute a quorum and will proceed to transact the business on the agenda.
- 12.6. Fourteen (14) days' notice of the holding of any general meeting of ABP will be given. The notice will specify the place, the day and hour of the meeting, and in the case of special business, the nature of such business.
- 12.7. An Annual General Meeting will be held within 6 months after the close of ABP's financial year, at a date and place to be determined by the Board.
- 12.7.1. The business of the annual meeting of ABP will include:
- a) receiving the annual report of ABP's affairs and the duly audited financial balance sheet and accounts of ABP;
 - b) the election of auditors;
 - c) the approval of membership fees, and
 - d) the transaction of any other matters which the Board may deem expedient.
- 12.7.2. The Board will maintain minutes duly entered in minute books provided for the purpose.
- Records will be kept of:
- a) all appointments of members of the Exco and officers of ABP.
 - b) the names of elected the Board members; and
 - c) all resolutions and proceedings of meetings of the Board and Exco, and all resolutions made at meetings of ABP.

13. FINANCIAL

- 13.1. The financial year of ABP will be from 1 January to 31 December.
- 13.2. Proper books of account of ABP's affairs will be kept by the Financial Committee appointed by the Board. The accounts will be examined at least once every year and the correctness of the statement of income and expenditure and balance sheet will be ascertained by ABP's auditors. The auditors and their remuneration will be fixed by the Annual General Meeting.
- 13.3. The Board will appoint a Financial Committee from within its ranks to oversee the proper management of ABP's financial affairs.
- 13.4. Any financial decision should be made upon approval of the Financial Committee

14. AMENDMENTS

- 14.1. This constitution may be amended by resolution passed by not less than two-thirds of members of ABP present at a general meeting or a special meeting called for the purpose by notice specifying the amendment proposed to be effected or the resolution to be taken.
- 14.2. Twenty-one (21) days written notice will be given of such special meeting.

15. DISSOLUTION

- 15.1. ABP may be wound-up or liquidated by a resolution passed by not less than two-thirds of the members of ABP present at a special meeting called for the purpose by notice specifying the resolution proposed to be taken at such meeting.
- 15.2. Twenty-one (21) days written notice will be given of such special meeting.
- 15.3. If upon winding up or dissolution of ABP there remains, after the satisfaction of its debts and liabilities, any property or assets whatsoever, the same will not be paid to or distributed among the members of the ABP.
- 15.4. Any remaining amount may be given or transferred to such other institution or institutions having objects similar to those of ABP as may be determined by the ABP at or before the time of dissolution provided that such institution or institutions qualify or raise funds in terms of the Fund-raising Act (No. 107 of 1978), and in default thereof, by the Director of Fund-raising.