

# CONSTITUTION OF THE SOCIETY OF STATE ADVOCATES OF SOUTH AFRICA

## 1. NAME AND STATUS

The name of the Society is "The Society of State Advocates of South Africa", a trade union duly registered in terms of section 96(7)(a) of the Labour Relations Act, 1995 (Act No 66 of 1995), as such a body corporate with perpetual succession capable of entering into contractual and other relations and of suing and being sued in its own name, formed not for gain.

(hereinafter referred to as the "Society")

The head office of the society is CHURCH SQUARE 28, CHURCH SQUARE, PRETORIA

## 2. DEFINITIONS

Any expression used in this Constitution and which is defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), shall have the same meaning as in the Act.

References to a Director(s) mean a Director of Public Prosecutions and include the National Director, his/her Deputies and any special Director, appointed in terms of the Act on the National Prosecuting Authority, Act No. 32 of 1998.

## 3. OBJECTS

The objects of the Society shall be –

- (a) to promote an effective prosecution service;
- (b) to regulate relations between its members and their employer.
- (c) to promote the status and interests of its members;
- (d) to plan and organise its administration and lawful activities;
- (e) to affiliate with and participate in the affairs of any international workers' organisation or the International Labour Organisation;
- (f) to promote, support or oppose any proposed legislative or other measures affecting the interests of members;
- (g) to use every legitimate means to induce professional members of the various Director's divisions to become members;
- (h) to encourage the settlement of disputes between members and their employer;
- (i) to do such lawful things as may appear to be in the interest of the Society and its members and which are not inconsistent with the objects or any matter specifically provided for in this Constitution; and
- (j) to invest, and/or subscribe money for the furtherance of the objects of the Society.

## 4. MEMBERSHIP

- (1) In order to qualify as a member a person must *be*:
  - (a) admitted as an advocates and practice or have practiced in the High Court on behalf of the State and
  - (b) fall within one or more of the categories of officials referred to :
    - (i) in section 5(2)(a)-(d) of the National Prosecuting Authority Act, No 32 of 1998, being the following –

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- a. The National Director;
  - b. Deputy National Directors;
  - c. Investigating Directors and Special Directors;
  - d. Other members of the prosecuting authority appointed at or assigned to the Office of the National Director, including prosecutors appointed to Investigating Directorates in terms of section 16(2)(c) of the National Prosecuting Authority Act, No 32 of 1998 (excluding administrative personnel) or
- (ii) in section 6(2)(a)-(c) of the National Prosecuting Authority Act, No 32 of 1998, being the following –
- a. the head of the office for the prosecuting authority at the seat of each High Court, who shall be either a Director or a Deputy Director;
  - b. Deputy Directors;
  - c. Prosecutors appointed to offices for the prosecuting authority at the seat of each High Court and stationed at satellite High Courts mentioned in sub-paragraph (i) above.
- (2) Applications for admission or re-admission to membership together with one month's membership fees shall be lodged in writing with the treasurer of the Society.
- (3) The executive committee may refuse an application for membership within 4 (FOUR) weeks of receipt thereof by the treasurer of the Society.
- (4) An applicant to whom admission to membership is refused shall be provided with reasons for such refusal and shall be entitled to refund of the membership fee paid by his/her on application.
- (5) If admission to membership is refused by the executive committee, the applicant concerned shall have a right of appeal to the Society in general meeting, which shall have the power to confirm or reverse the decision of the executive committee. Such an appeal shall be in writing and shall be submitted to the secretary of the Society at least three weeks before the general meeting of the Society.
- (6) Every member shall notify the treasurer of the Society, in writing, of his/her postal address and any change thereof within three weeks of the date on which the change occurred.
- (7) A member who has resigned or been expelled from the Society may be readmitted to membership on such conditions as the executive committee may determine.

## 5. HONORARY MEMBERSHIP

Honorary membership may be conferred by the Society in general meeting on a person on the ground of his/her close association with or distinctive service in the legal profession.

## 6. DISCIPLINE

- (1) A member may be suspended or expelled as may be determined by the executive committee -
- (a) if he/she fails within 30 (THIRTY) days of demand, in writing, by the treasurer to pay membership fees, which are more than 3 (THREE) months in arrear, or

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- (b) if he/she infringes any of the terms of this Constitution or acts in a manner which is detrimental to the interests of the Society;

provided that there shall be a right of appeal against any suspension or expulsion to the first ensuing general meeting. Notice of any such appeal shall be given to the secretary in writing within 30 (THIRTY) days of the date on which the decision of the executive committee was communicated to the person concerned.

- (2) No member may be suspended or expelled unless he/she has been afforded an opportunity to state his/her case personally at a meeting of the executive committee, of which he/she has received not less than 14 (FOURTEEN) days' notice in writing from the Secretary. The matter with which the member is charged shall be set out in such notice.
- (3) A member who has appeared before the executive committee in accordance with sub clause (2) shall, if he/she is dissatisfied with the decision of the executive committee and has lodged an appeal in the manner herein provided, have the right to restate his/her case personally to the general meeting which shall consider the matter.
- (4) A member shall be entitled to call witnesses in support of his/her case when attending a meeting of the executive committee or a general meeting in terms of sub clause (2) or (3), as the case may be.
- (5) Any decision taken by the executive committee in terms of this clause shall, when an appeal has been lodged, be subject to ratification or otherwise by the general meeting.
- (6) Upon expulsion of a member, all moneys due to the Society by such member shall become payable. If payment thereof is not made within 14 (FOURTEEN) days the executive committee may take such steps as it deems necessary to secure a settlement.
- (7) A member shall cease to be entitled to any of the benefits of membership, including the right to vote-
  - (a) if the membership fees or other charges due by him/her to the Society are more than 3 (THREE) months in arrear;
  - (b) during any period while he/she is under suspension in terms of this Constitution; and
  - (c) if he/she ceases to qualify as a member in terms of clause 4(1).

## 7. TERMINATION OF MEMBERSHIP

- (1) A member may resign by giving 1 (ONE) month's notice in writing to the secretary: Provided that no resignation shall take effect until all moneys due to the Society by the member concerned have been paid.
- (2) membership is further terminated by:
  - (a) the death, retirement or resignation;
  - (b) the non-compliance with any membership qualification; and/or
  - (c) a decision of the executive committee which may terminate or suspend membership of a member on account of misconduct or unprofessional conduct.

## 8. MEMBERSHIP FEES

A membership fee shall be payable by each member of the Society as determined from time to time by the General Meeting. The fee shall be paid monthly in advance to the treasurer or to such other person as may be authorised by the executive committee to receive it. The annual fee shall not be more than 0,4% of the annual income of any member.

## 9. MEETING

### 1. General Meeting

- (a) That the supreme governing body of the Society shall be the annual general meeting.
- (b) The general meeting shall be convened once every calendar year by the executive committee. Notice of its convocation shall be communicated by the secretary or such other person as may be authorised by the executive committee to members at least two months before it is held. This meeting shall be called the Annual General Meeting.
- (c) Proposals and matters for discussion at a general meeting shall be sent to the secretary and shall reach his/her office not later than 4 (FOUR) weeks prior to the general meeting. Copies of the agenda of the general meeting shall be distributed to all members by the secretary not less than 14 (FOURTEEN) days prior to the general meeting.
- (d) The business of the general meeting shall primarily be -
  - (i) the nomination and election by majority vote of members of the executive committee ;
  - (ii) the consideration of reports from the chairperson, secretary, treasurer and other special reports;
  - (iii) the formulation of policy;
  - (iv) the discussion of matters on the agenda; and
  - (v) the consideration of appeals.
- (e) The chairperson or, in his/her absence, the vice-chairperson or, in the latter' s absence, a member of the executive committee appointed by the executive committee, shall preside over the proceedings at the general meeting. Resolutions of the general meeting shall be adopted by majority vote of members. Voting on a resolution shall be by show of hands unless the general meeting decides otherwise. The chairperson or other presiding person shall have a casting vote only.
- (f) Candidates for the positions of office-bearers on the executive committee shall be nominated and seconded by members at the general meeting. Should there be only one candidate for a position, that candidate shall be regarded as having been duly elected to that position. Should there be two candidates, a ballot of members shall be held and the candidate who receives the most votes shall be duly elected. Should there be three or more candidates, two or more ballots shall be held so that the candidates who receive the least votes in each ballot shall be eliminated from the next ballot.
- (g) A special general meeting shall be convened by the chairperson whenever the executive committee requisition one, or whenever at least 20 (TWENTY) members request so in writing.

- (h) The requisition for a special general meeting shall be sent to the secretary and shall be accompanied by a statement setting out the reasons for such requisition. The secretary shall convey the requisition to the chairperson as soon as possible.
- (i) Should reasons of urgency be given in the notice, the chairperson may authorise the calling of a special general meeting as soon as possible and by the best practical means.
- (j) The quorum at a general meeting shall be at least one third of all members who have the right to vote and may be made up by members present in person or by way of proxy.

2. **Executive Committee**

- (a) The executive committee shall ordinarily meet at least once every six months on a date and place to be fixed by the chairperson. Special meetings of the executive committee may be called by the chairperson in consultation with the vice chairperson whenever he/she deems it advisable or upon a requisition signed by not less than 4 (FOUR) members of the committee, in which event the meeting shall be called as soon as possible after receipt of the requisition by the chairperson.
- (b) Members of the executive committee shall be notified in writing of the time and place of meetings by the secretary at least 14 (FOURTEEN) days before the dates of such meetings: Provided that shorter notice may in the discretion of the chairperson be given in respect of special meetings. To every notice of meeting an agenda shall be attached. Unless otherwise provided herein all matters for consideration by the executive committee shall be decided on motion duly seconded and voted upon by show of hands.
- (c) The quorum for meetings of the executive committee shall be 4 (FOUR) members.
- (d) If between meetings of the executive committee any question arises which is of extreme urgency and can be answered by a plain "yes" or "no", the chairperson may authorise a vote of the members of the committee to be taken by post or telefax.
- (e) No motion shall be considered unless seconded. All matters forming the subject of motions shall be voted upon by show of hands (unless otherwise provided) and shall be decided by the votes of the majority of those present.

3. **Minutes**

The secretary of the Society or a person appointed by him/her shall keep minutes of all meetings of the executive committee and of the general meeting.

10. **EXECUTIVE COMMITTEE**

1. The Society shall be managed by an Executive Committee consisting of 11 members who are to be elected at the annual general meeting and shall be composed as follows:
  - (i) the chairperson;
  - (ii) a trade union representative from the office of the Director, Transvaal or Venda;
  - (iii) a trade union representative from the office of the Director, Witwatersrand;
  - (iv) a trade union representative from the office of the Director, Western Cape;
  - (v) a trade union representative from the office of the Director, Kwazulu-Natal;
  - (vi) a trade union representative from the office of the Director, Eastern Cape, Ciskei or Transkei;
  - (vii) a trade union representative from the office of the Director, Northern Cape or North West;
  - (viii) a trade union representative from the office of the Director, Free State;
  - (ix) a trade union representative from the office of the Director Serious Economic Offences;(x) a trade union representative from the office of the National Director of Public Prosecutions;
  - (xi) a Director ex officio as envisaged in Sub-clause 2 (infra).

Provided that only members in the respective regions and or offices set forth in paragraph (ii) - (x) shall have the right to vote for their own trade union representative, that a vice-chairperson be appointed from the members of the executive committee by the general meeting and that a secretary as well as a treasurer be appointed by the executive committee.

2. The Director who will serve as the eleventh member ex officio shall be designated annually by the Director of Public Prosecutions.
3. Each member of the executive committee may appoint ad hoc an alternative representative to represent his office or area at a meeting of the executive committee if he is unable to attend the meeting.
4. Any vacancies which may arise shall be filled by the executive committee by the appointment of a member from the members of the office or area where a vacancy has arisen.
5. The executive committee may co-opt any member or members (to a maximum of three at any stage) to its ranks for specified purpose.
6. A member elected to fill a vacancy shall hold office for the unexpired portion of the period of office of his/her predecessor.
7. A member of the executive committee shall vacate his/her seat in any one of the following circumstances:
  - (a) on resignation, suspension or expulsion from membership of the Society;
  - (b) on absenting himself/herself, without the permission of the executive committee, from three consecutive meetings of the committee;
  - (c) on resigning as a member of the executive council by giving 2 ( TWO) months written notice to the secretary;
  - (d) if his/her subscriptions are more than 3 (THREE) months in arrear; or
  - (e) if he/she ceases to qualify as a member in terms of clause 4(1).
8. The executive committee shall, subject to the provisions of this constitution, have the

power -

- (a) to recommend the Society's participation in the establishment of a bargaining or statutory council and, subject to the constitution of any bargaining or statutory council, to determine the Society's representation thereon;
- (b) to engage and dismiss, except where otherwise provided in this Constitution, any employees of the Society, to fix their remuneration and to define their duties;
- (c) to appoint, from time to time, such sub-committees as it may deem fit for the purpose of investigating and reporting on any matter referred to them by the general meeting;
- (d) to institute legal proceedings on behalf of or to defend proceedings against the society;
- (e) to acquire, either by purchase, lease or otherwise, any movable or immovable property on behalf of the Society, and to sell, let, mortgage, or otherwise deal with or dispose of any movable or immovable property belonging to the Society. Provided that no immovable property shall be acquired or sold, nor shall it be mortgaged, let or leased for a period longer than ten years, unless at least 4 (FOUR) weeks' written notice of the intention to do so has been given to each member of the Society by the secretary; and if during this period any member demands that a ballot of the whole Society be taken on the proposed action, such ballot shall be taken;
- (f) to open and operate on a banking account in the name of the Society;
- (g) to make and enforce by-laws relating to procedural, administrative and disciplinary matters which are not inconsistent with the provisions of this Constitution, the Labour Relations Act, 1995, or any other law; .
- (h) to decide all matters of procedure on which this constitution is silent;
- (i) to do such other lawful things as, in the opinion of the executive committee, appear to be in the interest of the Society or its members and which are not inconsistent with the objects set out in clause 3 or any matter specifically provided for in this constitution; and
- (j) to consider appeals.

## 11. OFFICE-BEARERS. OFFICIALS AND TRADE UNION REPRESENTATIVES

The duties of the office-bearers, officials and trade union representatives shall be -

### (1) Office-Bearers

- (a) Chairperson:  
The Chairperson shall preside at all meetings at which he/she is present, enforce observance of the constitution of the Society, sign minutes of meetings after confirmation, endorse all accounts for payment after approval by the executive committee, sign all cheques on the banking account of the Society, generally exercise supervision over the affairs of the Society and perform such other duties as by usage and custom pertain to the office. He/she shall not have a deliberative vote, but shall, in the event of an equality of votes, have a casting vote.
- (b) Vice-Chairperson:  
The vice-chairperson shall exercise the powers and perform the duties of the chairperson in the absence of the latter.
- (c) Acting Chairperson :  
In the event of both the chairperson and the vice-chairperson being unable, either temporarily or permanently, to perform their duties, the executive committee shall appoint one of its members to act as chairperson, who shall hold office until the chairperson or vice-chairperson is able to assume his/her duties or in the event of the chairperson and vice-chairperson being permanently unable to perform their duties, until a new chairperson or vice-chairperson has been elected at the general meeting.
- (d) Secretary:

The secretary shall receive requisitions for meetings of the Society and the executive committee, issue notices of meetings, conduct all head office correspondence of the Society, keep originals of letters received and copies of those dispatched, and at each general meeting of the Society or executive committee lay on the table correspondence which has taken place since the previous meeting, attend all general meetings or executive committees meetings and record minutes of the proceedings, and perform such other duties as are imposed by this Constitution or as the general meeting and executive committee may direct. In addition to these duties the secretary shall perform the duties imposed by sections 99 and 100 of the Labour Relations Act, 1995, relating to the keeping of records and the furnishing of information to the Registrar.

(e) Treasurer:

The treasurer shall issue official receipts for all moneys received; submit reports in regard to the financial position on the Society to the general meeting or to the executive committee and perform such other duties as are imposed by this Constitution or as the general meeting and executive committee may direct. In addition to these duties the treasurer shall perform the duties imposed by section 98 of the Labour Relations Act 1995.

(f) Assistant Secretary:

The executive committee may appoint an assistant secretary who shall assist the secretary in the execution of his/her duties. Should the secretary temporarily be unable to perform his/her duties the assistant secretary shall act as secretary until such time he/she is able to assume his/her duties. The provisions of paragraph (d) above shall mutatis mutandis apply to the assistant secretary.

(2) Officials

Organisers

The executive committee may appoint an organiser or organisers. The main duties of the organiser(s) will be to enrol members, to investigate complaints from members regarding their employment as such, to represent the Society and its members at the Commission, to collect membership fees and to perform such other duties as the executive committee may direct.

(3) Trade union Representatives

The trade union representatives shall implement and give effect to decisions of the general meeting and, executive committee, recruit members and generally promote their interest, represent members in matters before the Commission and may perform any other functions as the executive committee may direct.

**12. ESTABLISHMENT AND CONTROL OF TRADE UNION REPRESENTATIVE COUNCILS**

- (a) A trade union representative council may be established in any workplace where the society has not less than 10 (TEN) members.
- (b) Application for the establishment of a trade union representatives council shall be made, in writing, to the executive committee by not less than 5 (FIVE) members in the workplace concerned.
- (c) If the executive committee approves of the establishment of a trade union representatives council the secretary shall notify the members from which the application has been received and arrange for the inaugural meeting. At this meeting nominations for membership of the executive committee of the trade union representatives council shall be called and the election shall take place by ballot. The executive committee shall consist of a chairperson, vice-chairperson, secretary and additional members as may be decided by the meeting.

- (d) Generally the trade union representatives council shall meet once a month and may be convened by the executive committee of such council whenever necessary.
- (e) The main duties of the trade union representative councils shall be to implement and give effect to decisions of the general meeting or executive committee of the Society, recruit members and promote their interest, investigate complaints from members in their workplace, represent members on the Commission and collect membership fees.

### **13. REMOVAL OFFICE OF OFFICE-BEARERS, TRADE UNION REPRESENTATIVES AND OFFICIALS**

1. An office-bearer, trade union representative or official may be removed from office:
  - (a) if he/she infringes any of the provisions of this Constitution ; and
  - (b) if he/she acts in a manner which is detrimental to the interest of the Society.
2. No office-bearer, trade union representative or official may be removed from office unless he/she has been afforded an opportunity to state his/her case personally at a meeting of the executive committee in the case an official and at a general meeting of the society where an office-bearer is concerned.
3. An official who has appeared before the applicable body and who is dissatisfied with the decision of the body concerned shall have the right to appeal to the Society in general meeting. Notice of appeal shall be given to the secretary, in writing, within 14 (FOURTEEN) days of the date on which the decision of the executive committee was communicated to the person concerned. The general meeting may reverse the decision of the executive committee.

### **14. BALLOTS**

- (1) In addition to those cases in respect of which the taking of a ballot of members of the whole Society is compulsory in terms of this Constitution, a ballot on any question shall be taken if the executive committee so decides, and shall also be taken-
  - (a) if demanded by at least 20 (TWENTY) members;
  - (b) on any proposal to declare or take part in any strike .
- (2) Ballots shall be conducted in the following manner:
  - (a) Notice of a ballot shall be given to each member in writing by the secretary, at least three days before the ballot is to be taken: Provided that a ballot may be taken without notice at any general meeting on the decision of a majority of the members present.
  - (b) Two scrutineers shall be appointed by the general meeting or the executive committee to supervise any ballot and to ascertain the result thereof.
  - (c) Except in the case of postal ballots and ballots taken at general meetings on the decision of a majority of the members present, ballots shall be conducted as such places as may be specified in the notice referred to in paragraph (a) of this sub clause on the date and during the hours specified in the said notice.
  - (d) Ballot papers shall be supplied to the member by the secretary. The issue to be voted upon shall be set forth clearly on the ballot papers and such papers shall not contain any information by means of which it will be possible to identify the voter.
  - (e) Ballot boxes shall be inspected by the scrutineer and sealed by the secretary in their presence prior to the issuing of ballot papers.
  - (f) One ballot paper only shall be issued on demand at the place and during the

- hours fixed for the taking of the ballot to each member who is entitled to vote.
- (g) Each voter shall, in the presence of the scrutineer, be issued with one ballot paper which he/she shall thereupon complete, fold and deposit in a ballot box provided for the purpose.
  - (h) Ballot papers shall not be signed or marked in any way apart from the mark required to be made by a member in recording his/her vote. Papers bearing any other marks shall be regarded as spoilt and shall not be counted.
  - (i) On completion of a ballot or as soon as possible thereafter, the results thereof shall be ascertained by the scrutineer appointed in the presence of the secretary and made known to the executive committee and/or general meeting.
  - (j) Ballot papers, including spoilt papers, shall be placed in a container which shall be sealed after they have been counted and retained by the secretary for not less than three years.
- (3) The executive committee may decide that a postal ballot of members shall be taken, in which event the ballot shall be conducted in the following manner:
- (a) The secretary shall send by registered post to each member of the Society ballot paper and a stamped and addressed envelope provided for the purpose which shall be sealed and posted so as to reach the secretary within 3 (THREE) weeks from the date of despatch from head office to such member. On receipt of such envelopes, the secretary shall immediately place such envelopes in a sealed ballot box.
  - (b) Two scrutineers shall be appointed by the executive committee to ascertain the result of the ballot. The ballot box shall be opened and the ballot papers counted by the scrutineers in the presence of the secretary, who shall immediately advise the executive committee of the result of the ballot.
  - (c) The same procedure shall mutatis mutandis apply to a postal ballot confined to members of the executive committee.
- (4) In any ballot conducted in connection with any election the candidates, up to the required number, receiving the highest number of votes shall be declared elected.
- (5) The general meeting or the executive committee shall be bound to take action according to the decision of a majority of members voting in a ballot.
- (6) The society shall, before calling a strike, conduct a ballot of those of its members in respect of whom it intends to call the strike.
- (7) Notwithstanding anything to the contrary contained in this Constitution, members of the society shall not be disciplined or have their membership terminated for failure or refusal to participate in a strike if -
- (a) no ballot was held about the strike; or
  - (b) a ballot was held but a majority of the members who voted did not vote in favour of the strike.

## 15. FINANCE

### 1. Head Office

- (a) The funds of the Society shall be applied to the payment of expenses, to the acquisition of property, towards the attainment of the objects specified in clause 3 and for such other lawful purposes as may be decided upon by the general meeting or the executive

committee or by members voting by ballot for the attainment of the said objects.

- (b) The funds received by the treasurer on behalf of the Society shall be deposited to its credit within 7 (SEVEN) days of receipt, at a bank decided upon the executive committee.
- (c) Payments shall require the prior approval of the executive committee and shall be made by cheque signed by the chairperson and the treasurer, except when the amount in question is less than R100,00 (ONE HUNDRED RAND) when payment may be made from petty cash. In the absence of the chairperson or treasurer cheques shall in his/her stead be signed by a member of the executive committee appointed by it for that purpose.

**2. General**

- (a) Statements of income and expenditure reflecting the financial position of the Society shall be prepared quarterly by the treasurer and submitted to the executive committee. The treasurer shall also be responsible for furnishing the annual general meeting with the Society's latest financial statements.
- (b) In accordance with the provisions of section 98(1)(b) of the Labour Relations Act, 1995, the treasurer shall prepare a statement of income and expenditure and a balance sheet in respect of each financial year ending on 28 February of each year. Such statements and balance sheets shall be audited and dealt with as required by section 98(2) of the Act.
- (c) A member who resigns or is expelled from membership shall have no claim on the funds of the society.
- (d) The executive committee shall, subject to confirmation by the general meeting, have the power to invest surplus Society moneys in such a manner that the Society stands to benefit from the investments.

**16. REPRESENTATION ON BARGAINING AND STATUTORY COUNCILS**

- (1) The executive committee may at any time recommend that the Society shall become a party to a bargaining or statutory council established in terms of the Labour Relations Act, 1995.
- (2) Representatives and their alternates shall be appointed by the executive committee.
- (3) Representatives or their alternatives on a bargaining or statutory council may be removed by the general meeting, and may resign on giving 2 (TWO) months' notice to the executive committee or such notice as may be prescribed in the constitution of the council concerned.
- (4) In the event of the resignation or death of a representative or an alternate or his/her removal by the general meeting the vacancy shall be filled by the executive committee.
- (5) Representatives or their alternatives shall have full power to enter into agreements on behalf of the Society, and such agreements shall not be subject to ratification by the executive committee or general meeting.

**17. CHANGING OF CONSTITUTION**

- (1) Any of the provisions of this Constitution may be repealed, changed or added to in any manner by resolution of the executive committee of the Society: Provided that at least 14 days' notice of any proposed change(s) shall first have been given to members. If within that period at least 10 (TEN) members demand a ballot of the whole Society be taken on the matter, such a ballot shall be taken.
- (2) No changes or additions shall have any force or effect until certified in terms of section 101(3) of the Labour Relations Act, 1995.

**18. WINDING-UP**

- (1) The Society shall be wound up if at a ballot conducted in the manner prescribed in the constitution not less than three-fourths of the total number of members of the society vote in favour of a resolution that the Society be wound up.
- (2) If a resolution for the winding-up of the society has been passed or if for any reason the Society is unable to continue to function the following provisions shall apply:
  - (a) The last-appointed chairperson of the Society, or if he/she is not available, the available members of the last-appointed executive committee of the Society, shall forthwith transmit to the Labour Court a statement signed by him/her or them setting forth the resolution adopted or the reasons for the Society's inability to continue to function, as the case may be, and request the Labour Court to grant an order in terms of section 103 of the Labour Relations Act, 1995.
  - (b) The liquidator appointed by the Labour court shall
    - (i) call upon the last- appointed office-bearers of the society to deliver to him/her the Society's books of accounts showing the assets and liabilities together with the register of members showing, for the 12 months prior to the date on which the resolution for winding-up was passed or to the date as from which the Society was unable to continue to function, as the case may be, (hereinafter referred to as the date of dissolution), the membership fees paid by each member and his/her address as at the said date, and
    - (ii) call upon the said office-bearers to hand over to him/her all unexpended funds of the Society and to deliver to him/her the Society's assets and the documents necessary to liquidate the assets.
  - (c) The liquidator shall take the necessary steps to liquidate the debts of the society from its unexpended funds and any other moneys realised from any assets of the trade union, and if the said funds and moneys are insufficient to pay all creditors after the liquidator's fees and the expenses of winding-up have been met, the order in which creditors shall be paid shall be the same as that prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, and the liquidator's fees and the expenses of winding-up shall rank in order as that of an insolvent estate and as though the expenses were the cost of sequestration of an insolvent estate.
  - (d) After the payment of all debts in accordance with paragraph (c), the remaining funds, if any, shall be distributed among the remaining members of the society on the basis of membership fees actually paid during the 12 months prior to the date of dissolution.
  - (e) After the payment of all the liabilities, any assets that cannot be disposed of in accordance with the provisions of this clause shall be realised by the liquidator and the proceeds paid to the Commission for Conciliation, Mediation and Arbitration ( in accordance with section 103 ( 5) of the Labour Relations Act, 1995).
  - (f) The liability of members shall for the purpose of this clause be limited to the amount of membership fees due by them to the society in terms of this Constitution as at the date of dissolution.

**19. TRANSITIONAL PROVISION**

A person, who at the commencement of this Constitution qualifies in terms of clause 4 (1) to be a member of the Society, shall continue so to qualify notwithstanding the fact that the title of such a person's position may be changed in the future.

**20. REPEAL OF PREVIOUS CONSTITUTION**

All previous Constitutions of the Society are hereby repealed.

**21. NAME AND COMMENCEMENT**

This Constitution will be known as the Constitution of the Society of State Advocates of South Africa and shall come into operation on 8 March 1997.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
SECRETARY

DATE : \_\_\_\_\_

**ADDENDUM**

The above constitution was adopted and signed on 8 March 1997. It was amended by special resolution and approved by the Annual General Meeting:

on 14 march 1998 \_\_\_\_\_

on 20 March 1999 \_\_\_\_\_

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