

**KWAZULU NATAL MASTER BUILDERS & ALLIED INDUSTRIES ASSOCIATION**  
**CONSTITUTION**

**1. DEFINITIONS AND INTERPRETATION**

Any expression used in these Clauses and which is defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act.

In the interpretation of these Clauses, unless repugnant to the context, the singular shall include the plural, and *vice versa* and the following words and expressions shall have the following meanings:-

- 1.1 "Association" – The KwaZulu/Natal Master Builders and Allied Industries Association.
- 1.2 "Building Industry" means the industry in which persons and enterprises are involved in undertaking the erecting, completing, renovating, repairing, maintaining or altering buildings and structures and/or the making of articles for use in erection, completion or alteration of buildings and structures, whether the work is performed, the material is prepared, or the necessary articles are made on the sites of the buildings or structures or elsewhere and shall include all work executed or carried out by persons therein.
- 1.3 "Constitution" – The Constitution of the Association as certified in terms of Section 101(3) of the Labour Relations Act.
- 1.4 "Employer" means any person who employs or provides work for any person who receives or is entitled to receive any remuneration.
- 1.5 "Month" – calendar month.
- 1.6 "Representative" means:
  - 1.6.1 In relation to a Company – any Director or Senior Executive of that Company.
  - 1.6.2 In relation to a Partnership – any Partner or Senior Executive of that Partnership.
  - 1.6.3 In relation to a Sole Proprietor – the Proprietor or his/her Nominee.
  - 1.6.4 In relation to a Close Corporation – any Member or Senior Executive of that Close Corporation.

- 1.7 "Working Day" shall mean any day other than Saturday, Sunday, any Public Holiday provided for by the Public Holidays Act, and the days falling within any customary annual holiday period observed by the Industry in KwaZulu-Natal.

## **2. NAME OF ASSOCIATION**

The name of the Association shall be the KwaZulu/Natal Master Builders & Allied Industries Association.

## **3. OBJECTIVES OF THE ASSOCIATION**

The Objectives of the Association are:-

- 3.1 To contribute towards the economic well being of Members by providing a high standard of services in an efficient manner.
- 3.2 To promote and protect the interests of Members.
- 3.3 To promote excellence in work and best practice in the conduct of business between Members and between Members and their clients.
- 3.3 To initiate reforms and improvements in the Industry within the context of a free enterprise market related business environment.
- 3.4 To foster and encourage the training of persons engaged in the industry, and participate broadly in maintaining and improving the standards of education and training of persons in the Industry.
- 3.5 To monitor, advise and, where mandated by Members, act on all matters affecting employment practices in the Industry.
- 3.6 To promote the adoption of standard forms of contract, subcontract and other documents used in the Industry.
- 3.9 To distribute to Members information on matters affecting employers and business in the Industry.
- 3.10 To provide facilities for social intercourse between the Members of the Association and others.

- 3.11 To encourage enterprises eligible for Membership of the Association to become Members.
- 3.12 To advise Members as to their rights and obligations.
- 3.13 To encourage and facilitate the settlement of disputes.
- 3.14 To represent Members in negotiations with all levels of Government and other organisations.
- 3.15 To plan and execute the administration and activities of the Association
- 3.16 To engage in appropriate commercial activities to increase the revenue of the Association for the achievement of its Objectives.

#### **4. STATUS OF THE ASSOCIATION**

The KwaZulu Natal Master Builders & Allied Industries Association shall be a body corporate with perpetual succession capable of entering into contractual and other relations and of suing and being sued in its own name and shall be an organisation not for gain.

#### **5. POWERS OF THE ASSOCIATION**

The Association may for the purpose of achieving its Objectives:

- 5.1 Acquire either by purchase, lease or otherwise, any movable or immovable property and sell, let, mortgage or otherwise deal in, or dispose of, movable or immovable property.
- 5.2 Borrow, invest, lend, or donate money or property.
- 5.3 Operate banking and savings accounts.
- 5.4 Establish, promote, administer and assist in the establishment and promotion and administration of:
  - 5.4.1 Insurance schemes.
  - 5.4.2 Medical aid schemes or medical benefit schemes.

- 5.4.3 Pension funds, provident funds, pension schemes and benevolent schemes.
- 5.4.4 Holiday pay funds and other fringe benefits for the employees of Members.
- 5.4.5 Educational and training schemes.
- 5.4.6 Defects Warranty\Guarantee and/or Construction Bond schemes.
- 5.4.7 Occupational Health and Safety Audits, Technical, Building Excellence and Best Practice Inspections and Audits.
- 5.5 Encourage and facilitate the settlement of disputes.
- 5.6 Regulate relations between Members and their employees and protect and further the interests of Members.
- 5.7 Regulate, monitor and advise upon working conditions and other questions affecting skilled and unskilled workers in the Building Industry.
- 5.8 Initiate, support or oppose legislative or other measures affecting the interests of the Building Industry.
- 5.9 Promote the adoption of standard forms of contract and standard forms of other documents used in the Building Industry.
- 5.10 Collect and distribute amongst Members, information on matters affecting the Building Industry.
- 5.11 Affiliate with or join any Federation of registered Employers' Organisations or otherwise co-operate with any other similar Business Association or Federation.
- 5.12 Provide facilities for social intercourse between the Members of the Association.
- 5.13 Encourage all employers who are eligible for Membership of the Association to become Members.
- 5.14 Sponsor a permanent Building Industry exhibition containing building materials, services a library, models and historical building objects.

- 5.15 Advise Members as to their rights and obligations.
- 5.16 Generally, do anything that is necessary for or conducive to the attainment of the Objectives of the Association.
- 5.17 Establish and manage companies, trusts and other legal entities which may be necessary to carry out the Objectives of the Association
- 5.18 Contract with any party for the purposes of the attainment of the Objectives of the Association.
- 5.19 If necessary and deemed appropriate, litigate for the purposes of the attainment or protection of the Objectives of the Association.
- 5.20 Promote the use of such categories of Members as is deemed appropriate by the Executive Council, on the basis of consumer protection and the promotion of best practice.
- 5.21 Formulate, develop, offer and deliver such benefits and services to Members as are conducive to the attainment of the Objectives of the Association.

## **6. CATEGORIES AND CONTROL OF MEMBERS**

- 6.1 Membership of the Association shall be limited to enterprises engaged in the Industry or in providing materials, goods and/or services to the Industry.
- 6.2 The Membership shall consist of Full, Ordinary, Associate, Retired, Honorary and Life Members as categorised hereunder:
  - 6.2.1 Full Member shall mean an enterprise operating in the Industry undertaking to execute and complete construction works as a combination of goods and services for the development, erection, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset, and observing at all times the Qualifying Criteria for Full Members as provided for in Annexure A of this constitution.

- 6.2.2 Ordinary Member shall mean an enterprise operating in the Industry undertaking to execute and complete construction works as a combination of goods and services for the development, erection, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset.
- 6.2.3 Associate Member shall mean a manufacturer, merchant, supplier and or/supplier of services used by Full and Ordinary Members of the Association; and enterprises, institutions and organised bodies with a direct interest in the Industry; and persons and organisations which perform work incidental to the work of Full and Ordinary Members of the Association, and observing at all times the Qualifying Criteria for Associate Members as provided for in Annexure A of this constitution.
- 6.2.4 The Executive Council, by unanimous resolution may elect as an Honorary Member of the Association, any person who has rendered meritorious service directed towards the fulfilment of the Objectives of the Association as a token of appreciation of such service. An Honorary Member shall be entitled to all the benefits of Associate Membership without the payment of any fee, subscriptions or levies as prescribed in Clauses 22 and 23.
- 6.2.5 The Executive Council by unanimous resolution, may as a token of appreciation for long and outstanding services rendered in the advancement of the Objectives of the Association, elect as a Life Member any person who is or was a Member or a Partner in a firm or a Director of a Company which is or was a Member of the Association. A Life Member shall, subject to the provisions of Clause 8, be regarded as a Member in his\her own right and be entitled to all the benefits of Ordinary Membership, without paying any fee, subscriptions or levies for such Life Membership, as provided in Clauses 22 and 23.
- 6.2.6 The Executive Committee, by a majority of Members present and voting at a regular meeting of the Executive Committee, may upon application elect as a Retired Member any person who has retired from active business in the Industry and who was a Member or a Partner in a firm or a Director of a Company which is or was a Member of the Association. Such Retired Member shall pay an annual subscription of 15% (fifteen percent) of the subscription payable by Members. A Retired Member shall be entitled to all the benefits of ordinary Membership subject to Clause 8.

- 6.3 The Association shall be entitled to perform all such investigations as may be necessary to ascertain if any Member is capacitated to adhere to, and is in fact adhering to, the Qualifying Criteria applicable to the category in which such Member is classified.
- 6.4 In recognition of the fact that this Constitution introduces a revised system of categories of Membership, the following provisions shall be observed in the transitional period:
- 6.4.1 All existing Full Members and so-called Emerging Members shall be deemed to be Full Members when this Constitution comes into effect, unless such Member does not observe all aspects of the Qualifying Criteria for Full Member, in which case it shall become an Ordinary Member; provided that there will be a 12 (twelve) months period of amnesty during which such Member shall endeavour to become fully capacitated to be able to observe the Qualifying Criteria for Full Members.
- 6.4.2 All Full Members who are Full Members by virtue of the deeming provision in Clause 5.3.1 shall be required to satisfy the Association that they do adhere to the Qualifying Criteria for Full Members, and shall co-operate fully with the Association's requirements in this regard.
- 6.5 A Partnership shall be admitted to Membership as a single Member irrespective of the number of Partners.
- 6.6 It shall be the duty of every Member to notify the Executive Director in writing of any change in the effective control of such Member within 30 (thirty) days of such change becoming effective.
- 6.6.1 A change in the effective control of a Company shall be deemed to have taken place if there is a change in the ownership of shares of that Company carrying more than 50% (fifty percent) of the total voting rights attaching to all of the issued shares of that Company or if the persons who were Directors of the Company at the time when the Company became a Member of the Association ceased to constitute a majority of the Directors of the Company.
- 6.6.2 A change in the effective control of a Partnership shall be deemed to have taken place when the identity of the Partners comprising the Partnership changes or the Partnership is otherwise reconstituted.
- 6.6.3 A change in the control of the business of a Sole Proprietor shall be deemed to have taken place whenever there is any change in the identity of the Proprietor.

- 6.6.4 If the Executive Council decides that the control of any Member has so changed as to warrant a new application for Membership being made, the Executive Council shall have the right to terminate the Membership of such Member by giving to the Member 14 (fourteen) days' notice in writing. A Member whose Membership has been terminated in terms of this Clause shall be eligible to re-apply for Membership in terms of Clause 7.
- 6.6.5 Each Member shall be obliged at all times to ensure that all persons who are associated in relation to that Member apply for Membership of the Association provided for in Clause 7.
- 6.6.6 In the event of any Member failing to comply with the provisions of Clause 6.6.4 above, the Executive Council shall have the right by written notice to such Member, to suspend such Member from Membership with immediate effect until such time as he/she remedies the failure. Refusal by any Member to comply with the provisions of Clause 6.6.4 above, shall constitute a ground for immediate termination of membership, and a Member shall be deemed to have refused to comply with his/her obligations if he/she fails so to comply within a period of 1(one) month from the date on which written notice of the decision of the Executive Council to suspend his/her membership is posted by pre-paid registered post to the address of his/her main place of business or registered office.
- 6.6.7 The power of the Executive Council to suspend and/or terminate the Membership of any Member under this Clause shall be in addition to the powers vested in the Executive Council in terms of Clause 27, save that a Member whose Membership has been suspended or terminated in terms hereof shall be entitled to appeal against such suspension or termination.
- 6.6.8 In the event of the Executive Council suspending or terminating the membership of any Member in terms of this Clause, it shall have no claim against the Association, the Executive Council or any of its Members in respect of such suspension or termination.

## **7. ADMISSION TO MEMBERSHIP**

- 7.1 A candidate applying for membership shall complete and sign the form of Application for Membership prescribed by the Executive Council, and shall at the same time deposit the

amount of the entrance fee and subscription for the current year, or shall conclude a debit order agreement, in favour of the Association, for a monthly pro rata portion of the subscriptions payable.

- 7.2 Such form of Application for Membership shall be brought before the Executive Council at its first meeting after the receipt thereof and the Executive Council shall by the votes of the majority present and voting, elect or reject the candidate.
- 7.3 All elected candidates shall be accepted as probationary Members for a period not exceeding 12 (twelve) months. A probationary Member shall be subject to the same conditions as a Member except that a probationary Member shall have no vote at general meetings of the Association.
- 7.4 The Executive Council may require the applicant to be interviewed by a Committee appointed for this purpose before the application is considered.
- 7.5 A candidate whose application has been rejected in terms of this Clause, shall have the right to claim reconsideration of the application by the Executive Council. At the meeting of the Executive Council at which the application is to be reconsidered, the applicant shall be entitled to attend and address the meeting and the previous decision shall be deemed to be rescinded and a further vote of the Executive Council shall be taken.
- 7.6 In the event of a candidate being rejected, no further application of such candidate shall be considered within 6 (six) months of the rejection of his\her application for Membership or within 12 (twelve) months if a previous application has been rejected.
- 7.7 Lists containing the names of the Members of the Association shall be made available to all Members, and to such other persons, firms, public or other bodies as the Executive Council shall decide. The lists shall be issued annually, or at such shorter intervals as the Executive Council may decide.

## **8. RIGHTS OF MEMBERS**

Members of the Association shall have the following rights:

- 8.1 Full and Ordinary Members shall be the only Members who are entitled to vote and shall be the only Members who are taken into consideration for determining the representativeness of the Association as an Employers' Organisation in terms of the provisions of the Labour Relations Act.

- 8.2 Full Members shall, subject to the provisions of Clause 13.3, be the only Members who are entitled to hold office or be eligible for election to the Executive Council.
- 8.3 Full Members may publicise their status as Members of the Association and display the Association's logo only in the manner and form prescribed by the Executive Council from time to time.
- 8.4 Associate Members may publicise their status as Members of the Association and display the Association's logo only in the manner and form prescribed by the Executive Council from time to time, provided that such manner and form shall clearly distinguish an Associate Member from Full Members.
- 8.5 No other category of Member shall be entitled to publicise their status as Member of the Association, nor shall they be entitled to display the Association's logo.

## **9. GENERAL DUTIES AND OBLIGATIONS OF MEMBERS**

- 9.1 A Member is required to conduct its business in a fair manner and shall in its dealings with others at all times maintain a high standard of business ethics.
- 9.2 A Member is required to ensure that all work is of the best standards and is carried out in an efficient manner.
- 9.3 A Member is required to satisfy the building requirements of its Clients by observing the spirit, as well as complying with the letter of its contractual obligations and to handle all business transactions with fairness.
- 9.4 A Member is required to maintain healthy and safe working conditions for all its employees and to respect and protect the environment.
- 9.5 A Member is required to organise its business administration effectively and maintain adequate financial resources for the proper discharge of all its contractual obligations.
- 9.6 A Member is required to assist wherever possible with the training of the future human resource needs of the Building Industry
- 9.7 A Member is required to comply with all applicable legislation.

- 9.8 A Member is required to endeavour to encourage all suitably qualified employers to apply for Membership of the Association.
- 9.9 A Member is required to make itself conversant with, and shall be bound by this Constitution.
- 9.10 A Member in a specific category of Membership is required to observe the Qualifying Criteria of that specific category.
- 9.11 If elected, appointed or co-opted into any office, or onto any structure of the Association, carry out the applicable duties with the diligence and commitment required for the benefit of the Association.

## 10. TERMINATION OF MEMBERSHIP

Any Member of the Association resigning his\her Membership must give written notice to the Association to that effect; such resignation shall be submitted to the Executive Council who shall accept or decline it at their discretion. If, however, such notice is not received before 1 March in any year, such Member shall be liable for the ensuing year's subscription.

## 11. DISQUALIFICATION OF MEMBERSHIP

If the estate of a Member is sequestrated or if a Member publishes a notice of surrender of his\her estate or if a Member, being a Company, is placed under a provisional winding-up order or under a provisional judicial management order or if in terms of a composition or arrangement, other than the compromise of a genuine dispute between a Member and his\her creditors, the creditors or a class of the creditors of a Member are obliged to accept payment of less than is owed to them by such Member an extension of time for payment, then that Member shall *ipso facto* cease to be a Member of the association, but may be reinstated as a Member by resolution of the Executive Council.

## 12. OFFICE-BEARERS OF THE ASSOCIATION

- 12.1 The Office-Bearers of the Association shall consist of not less than 3 (three) but not more than 5 (five) Vice-Presidents. The Vice-Presidents shall be Members or representatives of Members and shall be elected by ballot at the Annual General Meeting and upon election shall be *ipso facto* Members of the Executive Council. One of the elected Vice-Presidents shall be designated as the President of the Association by the Executive Council.

- 12.2 The President shall preside at all meetings at which he\she is present and with the Vice-Presidents and the Executive Director enforce observance of the Constitution of the Association and perform such other duties as by usage and custom pertain to the office.
- 12.3 In the event of the President being unable, either temporarily or permanently to perform his\her duties one of the Vice-Presidents shall be appointed by the Executive Council to act as President until the President is able to resume his\her duties or until the next election as the case may be.
- 12.4 An Office-Bearer may be removed from office –
- 12.4.1 if he\she infringes any of the provisions of this Constitution; or
- 12.4.2 if he\she acts in a manner which is detrimental to the interests of the Association.
- 12.5 No Office-Bearer may be removed from office unless he\she has been afforded a chance to state his\her case personally at a meeting of the Executive Council.
- 12.6 An Office-Bearer who has appeared before the Executive Council and who is dissatisfied with the decision of the Executive Council shall have the right to appeal to the first ensuing General Meeting of the Association. Notice of appeal shall be given to the Executive Director, in writing, within 14 (fourteen) days of the date on which the decision of the Executive Council was communicated to the person concerned. The General Meeting may confirm or reverse the decision of the Executive Council and the decision of the General Meeting shall be final.

### **13. EXECUTIVE COUNCIL**

- 13.1 The general management of the Association shall, subject to the direction and control of General Meetings of the Association be controlled by an Executive Council.
- 13.2 The Executive Council shall consist of:
- 13.2.1 The Office-Bearers as defined in Clause 12;
- 13.2.2 Not less than 7 and not more than 9 Member's representatives elected at the Annual General Meeting; provided that each of the regions of the Associations shall be represented, as far as possible, from among these Members.

- 13.2.3 Such further Members to a maximum of 3 (three) as may be co-opted by the Executive Council from time to time from among the Members and representatives of Members of the Association. Co-opted Members shall have voting powers in the Executive Council;
- 13.2.4 The Immediate Past President of the Association, if still an Employer or the representative of an Employer in the Building Industry or not otherwise disqualified, and willing to serve on the Executive Council.
- 13.3 Only representatives from Full Members shall be entitled to serve on the Executive Council; provided that a maximum of 1 (one) Associate Member's representative serve on the Council, and provided further that no person shall be qualified to serve on the Executive Council unless he/she is actively engaged in a business associated with the Building Industry.
- 13.4 When a vacancy occurs in the Executive Council, the Members of the Executive Council may elect a successor to fill the vacancy, provided that in the event of a vacancy occurring because of the non-availability of the immediate Past President for any reasons whatever, that vacancy shall not be filled.
- 13.5 Should a Member of the Executive Council be absent from 4 (four) consecutive Executive Council Meetings without leave of absence, his/her position shall become vacant.
- 13.6 Nominations for election of Office-Bearers and to the Executive Council shall be submitted in writing and lodged with the Executive Director at least 14 (fourteen) clear days prior to the Annual General Meeting. A preliminary notice of the Annual General Meeting shall be forwarded to each Member not later than 21 (twenty-one) days prior to the date of such meeting in which attention shall be drawn to the provisions regarding nominations and notifying the date by which nominations must be lodged. A list of the nominations received shall be posted to each Member with the Notice and Agenda of the Annual General Meeting.
- 13.7 The Executive Council shall remain in office until the election and appointment of their successors.
- 13.8 If it is not possible for the Executive Council to be composed as outlined above due to no candidates being available, the Executive Council shall continue to function but shall endeavour to rectify the defective composition as soon as possible, and shall notify the

Membership that such composition is defective, along with the reasons therefore, and shall further notify the Membership once the composition has been rectified.

#### 14. MEETINGS

- 14.1 General Meetings of the Association shall be held on such days as the Executive Council shall decide, when the Minutes of the last General Meeting shall be submitted for confirmation.
- 14.2 At least 14 (fourteen) days before any General Meeting of the Association is held, the Executive Director of the Association shall forward to each Member a notice giving the date and time of the meeting and the business to be transacted thereat.
- 14.3 At the Annual General Meeting of the Association, which shall be held on or before 30 June in each year the Executive Council shall present a Financial Report and Balance sheet for the past year and thereafter the Office-Bearers and Executive Council shall be elected for the ensuing year.
- 14.4 The President or, in his/her absence, the Vice-President acting as President of the Association, or 3 (three) Members of the Executive Council may at any time convene a General Meeting of the Association at such notice as in his/her their opinion the urgency of the case may require, or shall convene such a meeting upon a requisition signed by not less than 7 (seven) Members in good standing, setting forth the object of the meeting.
- 14.5 At all General Meetings or Annual General Meetings of the Association 5% (five percent) of the Members in good standing shall form a quorum. If after 30 (thirty) minutes from the appointed time no quorum be present, the meeting shall stand adjourned to the same day in the week following at the same time and place and if at such adjourned meeting no quorum be present those Members present shall carry on the business of the meeting. Written notice of adjourned meeting shall be given to Members.
- 14.6 No business other than that specified in the Notice convening the meeting shall be discussed at any General Meeting of the Association except that, by the unanimous decision of the Members present, a matter of urgency may be dealt with.
- 14.7 At each General Meeting of the Association the votes of the majority of the Members present shall be binding on the Association.

- 14.8 At all General Meetings of the Association or Executive Council Meetings the President shall preside. In his/her absence a Vice-President shall preside and in the absence of all the Office-Bearers of the Association, a Chairman elected by the meeting shall preside, and shall confine the proceedings to the objects of the meeting. The Presiding Officer shall have the right to vote on all questions and in the event of a deadlock or tie in voting, shall also have a casting vote.
- 14.9 At any General Meeting of the Association any number of persons may represent a Member but voting shall be confined to 1 (one) person representing the Member.
- 14.10 The accidental omission to give notice of a meeting to any of the Members, or the non-receipt of such notice, shall not invalidate any resolution passed at any such meeting.

## **15. EXECUTIVE COUNCIL MEETINGS**

- 15.1 An Executive Council Meeting may be held at least once a month, on such day the Members of the Executive Council of the Association shall decide.
- 15.2 At least one-quarter of the elected Members of the Executive Council shall form a quorum.
- 15.3 The proceedings of all Executive Council Meetings shall be confidential.

## **16. POWERS OF THE EXECUTIVE COUNCIL**

The Executive Council is entrusted with the following powers:-

- 16.1 To purchase, sell, rent or hire suitable premises for the purposes of the Association, and to provide all necessary equipment, and other articles.
- 16.2 To appoint, remove, and determine the duties, salaries and any other remuneration in cash or kind of the employees of the Association.
- 16.3 To regulate the form of procedure at meetings.
- 16.4 To suspend, fine (or both) or expel any Member from Membership for causes appearing sufficient to a properly constituted majority of any Executive Council Meeting, but only after giving such Member an opportunity of being present and hear in defence, or to

remove for such period decided upon by the Executive Council, any privileges which such Member may be entitled to in consequence of his\her Membership of the Association.

- 16.5 To elect Life, Honorary or Retired Members.
- 16.6 To have the custody of the funds and assets of the Association.
- 16.7 To apply the funds of the Association, for the promotion of the Objectives of the Association, or for any purpose in connection with it.
- 16.8 To prescribe the form of Application for Membership and to consider, determine and categorise applications for Membership.
- 16.9 To make regulations not inconsistent with this Constitution for and in relation to the above named Objectives, and the election of Members, and the management of the Association and from time to time to alter and amend and annul such regulations.
- 16.10 To appoint, from time to time, such Committees as it may deem fit for the purpose of investigating and reporting on any matter referred to them by the Executive Council.
- 16.11 To do, subject to the Constitution for the time being in force, all other things that they may consider conducive to the interests and good management of the Association or the promotion of its Objectives.
- 16.12 To deal with disputes between Members and their employees or Trade Unions and to endeavour to settle disputes.
- 16.13 To co-opt Members or representatives of Members to serve on the Executive Council from time to time as provided for in Clause 15 of this Constitution.
- 16.14 Upon application and at its discretion, to establish Regions and Regional Offices of the Association and to attend to all matters related thereto as provided for in Clause 19 of this Constitution.
- 16.15 To determine which services and benefits should be offered and delivered to Members, and on what conditions.

## **17. NOTICES OF MOTION AT GENERAL MEETINGS**

- 17.1 Any Member forwarding to the Executive Director or any Regional Secretary, 14 (fourteen) days before any General Meeting of the Association or Region a notice in writing of his/her intention to bring any subject or motion stated in such communication before the Association or Region for discussion or decision, shall be entitled to have such notice circulated to Members on the Agenda issued, and to bring the subject or motion before the meeting.

Any matter of urgent importance not on the Agenda, may be brought before a General Meeting of the Association or Region by the unanimous permission of the Members present at such General Meeting.

## **18. PLACE OF MEETINGS**

- 18.1 The Association shall hold its meetings of the Executive Council and General Meetings of the Association at such place as may from time to time be decided upon.
- 18.2 Any Region of the Association shall hold its meetings of the Regional Executive Committee and General Meetings of the Region at such place as may from time to time be decided by the Office-Bearers of the Region.

## **19. ESTABLISHMENT AND CONTROL OF REGIONS**

- 19.1 Regions of the Association shall be established wherever it is deemed prudent.

A Region of the Association shall not be established within the magisterial districts of Durban, Chatsworth, Pinetown and Inanda.

- 19.2 The Executive Council may, at its discretion, authorize the establishment of Regional Offices of the Association and define the geographical areas of jurisdiction of the Regions.
- 19.3 The Executive Council shall have the right to investigate the affairs of any Region at any time and shall have access to all the records of the Region and have power to take such records into custody.

- 19.4 If the Executive Council, after enquiry, is of the opinion that any Region has acted or is acting contrary to the interests of the Association, the Executive Council shall be empowered to wind up such Region.
- 19.5 A Region so wound up shall have a right of appeal to the next General Meeting of the Association whose decision shall be final. Notice of such appeal shall be lodged with the Executive Director in writing within 21 (twenty-one) days of the dispatch of a registered letter from the Executive Director notifying the decision of the Executive Council.

## 20. REGIONAL OFFICE-BEARERS

- 20.1 The management of the affairs of Regions between the four monthly Regional General Meetings shall be vested in a Chairman and Vice-Chairman. The Chairman and Vice-Chairman shall be elected on nomination, proposed, seconded and voted upon by ballot at the Annual General Meeting of the Region and hold office if not disqualified in anyway until the next election and be eligible for re-election on termination of that period of office.
- 20.2 Nominations for the election of a Regional Chairman and Vice-Chairman shall be lodged in writing with the Association Regional Secretary at least 7 (seven) days before the date of the Annual General Meeting of the Region.
- 20.3 Vacancies occurring in the offices occupied by a Regional Chairman and Vice-Chairman shall be filled at the first ensuing Regional General Meeting on nomination and voted upon by ballot. Where a vacancy occurs subsequent to the date on which the notice of that meeting was issued, it shall be filled at the next ensuing Regional General Meeting. Nominations for a vacancy shall be submitted in writing to the Association Regional Secretary at least 7 (seven) days before the meeting. A Member appointed to fill a vacancy shall hold office for the unexpired portion of the period of office of his/her predecessor.
- 20.4 A Regional Chairman and Vice-Chairman shall perform the same duties, *mutatis mutandis* in respect of the Region concerned as are imposed on the Office-Bearers of the Association in terms of Clause 12 of this Constitution.

## 21. REGIONAL GENERAL MEETINGS

- 21.1 A General Meeting of Members of each Region shall ordinarily be held every 4 (four) months on a date to be fixed by the Regional Chairman.

- 21.2 Notice of every General Meeting of the Regional showing the business to be transacted thereat shall be given to Members of the Region in writing not less than 7 (seven) days before the date of such meetings, provided that in the case of urgent General Meetings of the Region such shorter notice as may be decided upon by the Chairman may be given, provided that such notice shall not be less than 24 (twenty-four) hours.
- 21.3 The Annual General Meeting of each Region shall be held prior to the Annual General Meeting of the Association.
- 21.4 If the Chairman so decides, all motions at a General Meeting of a Region shall be reduced to writing and shall be delivered to the Presiding Officer to read to the meeting. No motion shall be considered unless seconded. All matters forming the subject of a motion, shall, unless otherwise provided herein, be voted upon by show of hands and shall be decided by a majority of those voting except in the case of elections for office when the voting shall be by ballot and candidates up to the required number receiving the highest number of votes shall be declared elected.
- 21.5 The quorum for Regional General Meeting shall be at least 15% (fifteen percent) of the Members in good standing of the Region. If within 30 (thirty) minutes of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following and the same time and place and at such adjourned meeting the Members present shall form a quorum. Written notice of adjourned meetings shall be given to Members.
- 21.6 At every General Meeting of the Region the Minutes of the last preceding General Meeting of the Region shall be tabled by the Regional Secretary and signed by the Presiding Officer after confirmation.
- 21.7 Copies of Minutes of all Regional Annual General and General Meetings shall be submitted to the Executive Director.
- 21.8 The proceedings of any meeting shall not be invalidated by reason of the non-receipt by or non-notification to any Members of the notice of meeting.
- 21.9 A Regional General Meeting shall, subject to the general discretion and control of the Executive Council and a General Meeting of the Association, and subject also to the provisions of this Constitution, have power:

- 21.9.1 To recommend to the Executive Council the admittance or refusal of Membership of the Association and to recommend that Member be suspended, fined or expelled for cause appearing sufficient to a majority of the Regional General Meeting;
- 21.9.2 To deal with disputes and to endeavour to settle disputes;
- 21.9.3 To appoint, from time to time, such Committees it may deem fit;
- 21.9.4 To operate a Regional banking account in the name of the Association;
- 21.9.5 A Region shall be bound not to exceed in their total expenditure in any one year the amount of revenue allocated to it for such year without the authority of the Executive Council;
- 21.9.6 To do such other lawful things, as in the opinion of the Region appear to be in the interests of the Region and the Association.

## **22. ENTRANCE FEE**

The entrance fee payable by each new Member on election shall not exceed the amount stipulated in Annexure B provided the Executive Council may exempt from payment of the entrance fee a new Member who at the time of election is a Member of any other Association affiliated to Master Builders South Africa.

## **23. SUBSCRIPTION AND LEVIES**

- 23.1 All Members shall pay an annual subscription which shall be determined annually by the Executive Council provided that such subscription shall not exceed the amount stipulated in Annexure B and shall be payable in advance on or before the 15 April in each year.
- 23.2 Members who are elected during a financial year shall pay a pro rata portion of the subscription.
- 23.3 No Member shall be entitled to exercise or have any right of Membership while his\her subscription and/or levies due are more than 3 (three) months in arrears and the Executive Council may at their discretion remove such Member's name from the published list of Members of the Association.

- 23.4 Notwithstanding the provisions of the preceding paragraphs of this Clause the amount of subscription payable by Members in terms thereof may be increased by means of levies payable as directed by the Executive Council and imposed either –
- 23.4.1 By resolution of the Executive Council provided that any levy imposed by the Executive Council shall not exceed the amount stipulated in Annexure B per Member in any financial year; or
- 23.4.2 By resolution of at least 75% (seventy-five percent) of those Members present or represented at a General Meeting of the Association provided the proposed increase appears as a specific item on the Agenda of that meeting and provided that such levy shall not exceed the amount stipulated in Annexure B in respect of persons employed by Members.

## 24. FINANCE

- 24.1 The financial year of the Association shall commence on the first day of March in every year and terminate on the last day of February in the following year.
- 24.2 The funds of the Association shall be used in furtherance of the Objectives of the Association. Profits or gains made by the Association shall not be distributed and shall be accumulated as part of the funds of the Association. The surplus funds of the Association shall be invested as determined by the Executive Council.
- 24.3 Auditors shall be appointed at the Annual General Meeting in each year whose duty it shall be to audit the books of the Association at least once a year between the last day of February and the day of the Annual General Meeting. Such audited financial reports of the Association shall be tabled and approved at the Annual General Meeting and open or inspection thereafter by any Member of the Association. Within 30 (thirty) days of the adoption of the audited financial reports the Executive Director shall provide the Registrar with a certified copy thereof.
- 24.4 The Bankers of the Association shall be appointed by the Executive Council. The banking accounts shall be operated upon by the Office-Bearers and the Executive Director jointly, or by such persons as shall be appointed for that purpose by the Executive Council. Regional Association banking accounts shall be operated upon by the Regional Chairman or the Regional Vice-Chairman and the Regional Secretary jointly, or by such persons as shall be appointed for the purpose by the Regional Executive Committee.

## 24.5 Funds

24.5.1 The funds of the Association shall be applied to the payment of expenses, the acquisition of property and for the Objectives specified in this Constitution as may be decided upon by the Executive Council. Funds required for any other purpose shall require the prior approval of the Members of the Association voting by ballot.

24.5.2 The Executive Director shall have power to collect all sums due to the Association. The funds received by the Executive Director on behalf of the Association shall be deposited to its credit as soon as possible but within 3 (three) days of receipt.

24.5.3 Unless otherwise decided by the Executive Council all payments shall require the prior approval of the Executive Council or the Region concerned and shall be made by cheque signed in accordance with the provisions of Clause 26(4).

## 24.6 Funds in the custody of Regions

24.6.1 Funds due to the Association and received by Regional Secretaries shall be deposited as soon as possible but within 3 (three) days of receipt to the credit of the Association.

24.6.2 A detailed schedule of funds deposited to the credit of the Association's bank accounts by Regional secretaries shall be forwarded immediately to the Executive Director showing from who received and the nature of the payment. Such schedule shall be accompanied by a duplicate copy of the deposit slip.

24.6.3 The expenses of Regions shall be met from funds allocated by the Executive Council from funds at its disposal in conformity with estimates of expenditure to be submitted by Regions to the Executive Council not later than the first day of February each year, covering the expenditure estimated to be required during the financial year commencing on the following first day of March.

24.6.4 The Executive Council shall be entitled to approve such estimates as received or to amend the same either by way of increase or decrease thereon and all funds paid over to Regions in respect of such estimates as approved shall be paid subject to

deduction of any surplus shown in the Revenue Accounts of the Regions for the immediate preceding financial year.

24.6.5 In the event of actual expenditure exceeding the estimated expenditure by any Region, the Region concerned may at any time submit a supplementary estimate to the Executive Council. If any Region incurs expenditure except as provided in this Constitution, the Members present at the Regional General Meeting at which such expenditure was authorized shall be jointly and severally liable for refunding the amount in question, provided that no liability shall rest on the Members who at the time specially requested that their protest against the incurring of such expenditure be recorded in the Minutes of the meeting.

24.6.6 The Executive Council shall have power to requisition any Association funds in the custody of any Region and to apply it for any of the purposes of the Association.

24.6.7 In the event of a Region ceasing to exist or being wound up by the Executive Council, all Association monies in the custody of the Region shall revert to the funds of the Association.

## **25. EXECUTIVE DIRECTOR**

25.1 The Executive Director shall be the Association's Chief Executive. He\She shall be responsible for convening all General Meetings of the Association, the Executive Council and its Committees. He\She shall be responsible for keeping or cause to be kept records of the Association, the Executive Council and its Committees. He\She shall be responsible for keeping and maintaining a list of the Members of the Association, collect all funds due to the Association by Member, Regions or otherwise, and shall keep and maintain books of account as may be required. He\She shall be responsible for conducting correspondence on behalf of the Association and except as directed by the Executive Council the same shall be conducted in his\her name. He\She shall be responsible for preparing and furnishing all notices and returns required to be given by or on behalf of the Association under any legislation and ensure compliance with Sections 98, 99 and 100 of the Labour Relations Act.

25.2 The Executive Director shall represent the Association or its Members at the Commission for Conciliation, Mediation and Arbitration.

25.3 He\She shall, subject to the direction of the Executive Council and the provisions of Clause 18(2) engage and discharge the employees of the Association. He\She shall

have full charge and management of the Association's employees and authority to delegate his\her powers and duties to such employees.

- 25.4 He\She shall carry out such duties as required by this Constitution or that may be directed by the Executive Council or General Meetings from time to time.
- 25.5 In the event of the position of the Executive Director becoming vacant, the Office-Bearers shall have the power to appoint a person to act as Executive Director, and a person so appointed shall be known as the Acting Executive Director. The Acting Executive Director so appointed, shall have the duties and authority of the executive Director; however, his\her acting appointment may be terminated in a manner and at the will of the Executive Council. Provided that where an Acting Executive Director is appointed, the Executive Council shall be informed of the fact at its next regular meeting and they shall confirm or reject such acting appointment.
- 25.6 The Executive Director shall be responsible to the Executive Council and in the furtherance of those responsibilities liaise regularly with the Office-Bearers.

With the unanimous consent of the Office-Bearers, the Executive Director may be suspended from duty for infringements of any of the provisions of this Constitution, inefficiency, misconduct and misappropriation of funds. In such case a meeting of the Executive Council shall be convened to consider the matter as soon as possible. The Executive Council shall by a 75% (seventy-five percent) majority of those present and voting at a meeting, have power to dismiss the Executive Director but only after he\she was afforded a chance to state his\her case personally at a meeting of the Executive Council.

If the Executive Director who appeared before the Executive Council and is dissatisfied with the decision of the Executive Council, he\she shall have the right to appeal to the first ensuing General Meeting of the Association. Notice of the appeal shall be given to the Office-Bearers, in writing, within 14 (fourteen) days of the date on which the decision of the Executive Council was communicated to the person concerned. The General Meeting may confirm or reverse the decision of the Executive Council and the decision of the General Meeting shall be final.

- 25.7 If it is brought or comes to the notice of the Executive Director that any Member or any region –

- 25.7.1 has acted or is acting in a manner which appears to be opposed or contrary to the Objectives of the Association; or
- 25.7.2 has committed or is committing a breach of the Clauses of Association and instructions for the time being of the Association; or
- 25.7.3 has engaged in or published or been party to or permitted or supported any untrue or misleading communication, either on his\her own behalf or on behalf of or as or purporting to be on behalf of, or as an Office-Bearer or representative of or Member of the Association;

the Executive Director shall furnish to the Executive Council and the Region concerned a report of the matters so brought or come to his\her notice at the first regular meeting of the Executive Council convened for the purpose of receiving and considering such report. If the Executive Council finds the allegations so reported to constitute a *prima facie* case for such Member to answer, the Office-Bearers shall instruct the Executive Director to inform such Member and to furnish him\her with a copy of statement of the allegations and request him\her to appear before the Executive Council on a day and at a time to be fixed by the Executive Council to answer the allegations.

- 25.8 The Executive Director shall attend all meetings of the Executive Council, Committees of the Executive Council and General Meetings of the Association unless leave of absence is granted by such General Meeting, Executive Council or Committee, in which case an employee of the Association designated by the Executive Director shall be in attendance.
- 25.9 The Executive Director shall upon request and at all reasonable times submit the confirmed Minutes of General Meetings of the Association for inspection by any Member of the Association.
- 25.10 The Executive Director shall be remunerated for his\her services in such manner as the Executive Council shall decide and perform his\her duties as are compatible with his\her position and at the direction of the Executive Council.

## 26. REGIONAL SECRETARIES

- 26.1 In addition to the other duties imposed by this Constitution, Regional Secretaries shall receive requisitions for all Regional meetings, issue notices of such meetings and keep or cause to be kept true records of the business transacted at all Regional meetings.

- 26.2 They shall receive and conduct all correspondence on behalf of the Region concerned. They shall prepare in consultation with the Region concerned all reports, notices, returns and estimates prescribed by the Executive Council.
- 26.3 Regional Secretaries shall keep lists of Members of the Region concerned. They shall keep on record the address of every Regional Member, date of enrolment and in the event of resignation, expulsion, suspension or transfer of a Member of the Region to another Region, the date thereof.
- 26.4 In the event of funds due to the Association being forwarded to Regional Secretaries they shall issue official receipts for the funds so received. They shall bank such funds received as soon as possible but within 3 (three) days of receipt to the credit of the Association, submit to the Executive Director a detailed schedule of all the funds deposited showing from whom received, the nature of the payment and a copy of the deposit slip.
- 26.5 All Regional Secretaries shall submit monthly reports in regard to the financial position of the Region concerned to the Executive Director.
- 26.6 They shall prepare annually in consultation with the Region an estimate of expenditure covering the expenditure estimated to be required during the financial year commencing the first day of March. Such estimate shall be submitted to the Executive Council by not later than the first day of February.
- 26.7 Regional Secretaries shall prepare statements of income and Expenditure reflecting the financial position of the Region at the last day of February each year and these shall be submitted to the Annual General Meeting of the Region and a true copy thereof, together with a report on the activities of the Region during the year to which the financial statement relates, shall be submitted to the Executive Council.
- 26.8 In addition Regional Secretaries shall also perform such other duties as the Executive Council and General Meeting of the Region may direct and attend all General Meetings of the Region and Executive Council unless leave of absence is granted and they shall have no voting power unless they are a Member or the representative of a Member of the Region of the Association in which event they may vote at General Meetings and Executive Council meetings if they are a Member of the Executive Council.

## 27. MISCONDUCT AND DISCIPLINE

All Members should make themselves conversant with and shall *ipso facto* be bound by this Constitution, whether the same may or may not have been signed by them.

27.1 In the event that the Executive Council becomes aware that any Member:

27.1.1 has departed from or contravened any provision of this constitution; or

27.1.2 had departed from or contravened any provision of the Qualifying Criteria applicable to the category of Membership in which that Member is classified; or

27.1.3 has acted in such a manner which appears to be contrary or opposed to the Objectives of the Association; or

27.1.4 has acted in any manner which may render the Member unworthy of Membership it shall appoint a Disciplinary Committee and invoke the Disciplinary Procedure as provide for in Annexure C of this Constitution.

27.2 If the finalised Disciplinary Procedure results in the Member being found guilty of misconduct, the Disciplinary Committee, or the Executive Council in the case of an appeal, shall impose such Disciplinary Action as it deems appropriate, as provided for in the Disciplinary Procedure being Annexure C hereto.

27.3 Upon the finalisation of the Disciplinary Procedure, the Executive Director shall forthwith advise all other Members of the Association of the outcome of the Disciplinary Procedure and the Disciplinary Action imposed and may also publicise this information to any other person or the public at large.

27.4 If the Disciplinary procedure is invoked as a result of a complaint received about a Member, the Association shall keep the complainant reasonably informed about the progress and outcome of the Disciplinary Procedure

27.5 If a Member, in respect of which the Disciplinary Procedure has been invoked or is about to be invoked, resigns or has its Membership terminated, such Member shall remain bound by the provisions of this Clause and the Disciplinary Procedure as though it were still a Member until such time as the matter in respect of which disciplinary proceedings have been invoked is finalised.

- 27.6 In the event of "the imposition of any Disciplinary Action being imposed on a Member in terms of the Disciplinary Procedure, such Member shall have no claim against the Association or any of its Members in respect thereof.
- 27.7 In the event of the suspension or expulsion of any Member he/she shall have no claim against the Association or any of its Members in respect thereof.
- 27.8 In the event of any Member presenting to the Executive Council a complaint in writing of the conduct of any Member, a meeting of the Executive Council shall as soon as practicable be held to consider same, and determine what course shall be taken with reference thereto.

## 28. VOTING AND BALLOTING

- 28.1 All Members shall have the right to vote at any General Meeting of the Association and each Member shall have 1 (one) vote only, irrespective of the number of representatives of that Member who may be present at the meeting. If more than 1 (one) vote is cast on behalf of a Member on any one motion, that Member's vote shall be null and void and shall not be counted. Voting on Labour Relations and Human Resource matters is restricted to Full Members.
- 28.2 Members having their place of business more than 50 (fifty) kilometres away from any venue at which a General Meeting of the Association or the Region to which he/she belongs is held, shall be entitled to a postal ballot in the event of any election in terms of this Constitution.
- 28.3 All voting, unless otherwise provided for in this Constitution, shall take place by show of hands, but at the request of any Member, the voting shall be by ballot.
- 28.4 In addition to those cases in respect of which the taking of a ballot of Members of the Association or of any Region is compulsory in terms of this Constitution a ballot on any question shall be taken if the Executive Council so decides, and shall also be taken –
- 28.4.1 if demanded by a Region; or
- 28.4.2 on any proposal to declare or take part in any lockout.
- 28.5 Ballots shall be conducted in the following manner:-

- 28.5.1 Notice of a ballot shall be given to each Member of the Region in writing by the Regional secretary at least 10 (ten) days before the ballot is to be taken, provided that a ballot may be taken without notice at any General Meeting of the Region on the unanimous decision of the Members present.
- 28.5.2 (Two) Scrutineers shall be appointed by the Regional General Meeting to supervise any ballot and to ascertain the result thereof.
- 28.5.3 Except in the case of postal votes and ballots taken at General Meetings on the decision of a majority of the Members present, ballots shall be conducted at the various Regional Offices of the Association or at such other places as may be specified in the notice referred to in paragraph 28.5.1 this clause on the date and during the hours specified in the said notice.
- 28.5.4 Ballot papers shall be supplied to Regional Secretaries by the Executive Director. 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 vote.
- 28.5.5 1 (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 of the Region who is entitled to vote.
- 28.5.6 Each Member or representative of a Member shall, in the presence of the Scrutineers, be issued with 1 (one) ballot paper which he/she shall thereupon complete, fold and deposit in a container provided for the purpose.
- 28.5.7 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.
- 28.5.8 On completion of a ballot or as soon as possible thereafter the result thereof in respect of each Region shall be ascertained by the Scrutineers appointed for such Region in the presence of the Regional Secretary and made known to the Regional General Meeting which shall immediately advise the Executive Council of the result of the ballot.
- 28.5.9 Ballot boxes shall be inspected by the Scrutineers and sealed by the Regional Secretary in their presence prior to the issue of ballot papers.

28.5.10 Ballot papers including spoilt papers, shall be placed in a container which shall be sealed after they have been counted and retained by Regional Secretaries for not less than 3 (three) years.

28.6 The Executive Council may decide that a postal ballot of Members be taken in which event the ballot shall be conducted in the following manner:-

28.6.1 The Executive Director shall forward to each Member of the Association a ballot paper and a stamped and addressed envelope marked 'Ballot'. The ballot paper shall on completion be inserted in the envelope provided for the purpose which shall be sealed and forwarded so as to reach the Executive Director within 7 (seven) days from the date of dispatch from the Association to such Member. On receipt of such sealed envelope, the Executive Director shall immediately place the sealed envelope in a sealed ballot box.

28.6.2 2 (Two) Scrutineers shall be appointed by the Executive Council 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 Executive Director who shall immediately advise the Executive Council of the result of the ballot.

28.6.3 The provisions of paragraphs 28.5.4, 28.5.7, 28.5.9 and 28.5.10 shall *mutatis mutandis* apply in the case of postal ballots.

28.6.4 The same procedure shall *mutatis mutandis* apply to a postal ballot confined to Members of the Executive Council or any Region or Regions of the Association.

28.6.5 Except as provided in the Labour Relations Act, and subject to the provisions of paragraph 28.6.2 of this clause, the Executive Council shall be bound to take action according to the decision of a majority of the Members voting in a ballot.

28.6.6 In any ballot for the election of persons to represent the Association on a Bargaining or Statutory Council, the nominees, up to the required number, securing the highest number of votes shall be declared duly elected as representatives. Of the remaining nominees, the person, up to the required number, securing the highest number of votes shall be declared elected as alternates. In any ballot conducted in connection with any other election, the candidates up to the required number receiving the highest number of votes shall be declared elected.

- 28.7 The Executive Council may confine a ballot to the Members of a particular Region or Regions in respect of matters affecting the Members of such Region or Regions only and may, on an application of not less than 3 (three) Members in good standing of any Region, authorize the taking of a ballot in respect of such Region. Ballots of Members of particular Regions shall be conducted *mutatis mutandis*, in the same way as ballots of the total Membership of the Association.
- 28.8 No ballot involving the declaration of or participation in a lockout shall be taken until the matter giving occasion therefore has been dealt with as provided in Section 95 of the Labour Relations Act.
- 28.9 Notwithstanding anything to the contrary contained in this Constitution, Members of the Association shall not be disciplined or have their Membership terminated for failure or refusal to participate in a lockout if –
- 28.9.1 no ballot was held about the lockout' or
- 28.9.2 a ballot was held but the majority of the Members who voted did not vote in favour of the lockout.

## 29. WINDING-UP

- 29.1 The Association shall be wound up if in a ballot conducted as prescribed in this Constitution not less than two-thirds of the total number of Members of the Association in good standing vote in favour of a resolution that the Association be wound up.
- 29.2 If a resolution for the winding-up of the Association has been passed as provided in Paragraph 29.1 or if for any reason the Association is unable to continue to function, the following provisions shall apply:-
- 29.2.1 The last appointed President of the Association, or if he\she is not available, the available Members of the last appointed Executive Council of the Association 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 Association's inability to continue to function as the case may be, request the Labour Court to grant an order in terms of Section 103 of the Labour Relations Act, 1995.

- 29.2.2 The available Members of the Association last appointed Executive Council shall appoint a Liquidator to carry out the winding-up. The Liquidator shall not be a Member of the Association and shall be paid such fees as may be agreed upon between him\her and the said Members of the Association's last appointed Executive Council. Should the parties fail to agree upon the fees to be paid, the Registrar of the Labour Court shall fix the basis on which the Liquidator shall be paid.
- 29.2.3 Should the available Members of the Association's last appointed Executive Council fail to appoint a Liquidator, the Labour Court shall be requested to appoint a Liquidator and fix his\her fees.
- 29.2.4 The Liquidator so appointed shall call upon the last appointed Office-Bearers of the Association to deliver to him\her the Association's financial records showing the Association's assets and liabilities together with the list of Members for the 12 (twelve) months prior to the date on which the resolution for winding-up was passed, or the date as from which the Association was unable to continue to function, as the case may be, hereinafter referred to as the date of dissolution, the contributions paid by each Member and his\her address as at the said date.
- 29.2.5 The Liquidator shall take the necessary steps to liquidate the debts of the Association from its unexpended funds and any other monies realised from any assets of the Association and if the said funds and monies 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, subject to the provisions of paragraph 29.5.6, 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 of preference as though he\she was a Liquidator of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.
- 29.2.6 After payment of debts in accordance with paragraph 29.5.5, the remaining funds shall not be paid or distributed by the Liquidator among the Members of the Association but shall be transferred to such Organisation not for gain having Objectives similar to the objects of the Association or if it cannot be disposed of in

accordance with the Clauses of Association, the Liquidator must realise the assets and pay the proceeds to the Commission for Conciliation, Mediation and Arbitration for its own use.

29.2.7 The liability of Members shall for the purposes of this Clause be limited to the amount of subscriptions due by them to the Association in terms of this Constitution as at the date of dissolution.

### **30. LEGAL PROCEEDINGS**

All summonses, notice of action, and the like, against the Association, shall be validly and effectively served if served at the office of the Executive Director of the Association.

### **31. INDEMNITY**

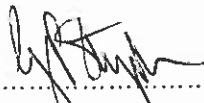
The Members of the Executive Council, the Office-Bearers of the Regions and the employees of the Association are indemnified by the Association against all costs, losses and expenses arising from anything done by them in the *bona fide* administration of the Association or in connection with any other matter or thing concerning the affairs of the Association save wilful or dishonest wrong doing on the part of the person who is sought to be made liable.

### **32. WINDING-UP OF ANY OTHER ASSOCIATION BECOMING PART OF THE ASSOCIATION**

If any employers' organisation registered as such in terms of the Labour Relations Act (hereinafter referred to as the 'other Association') resolves to wind-up its affairs with a view to its Members joining, and its unexpended funds being transferred to this Association, the notwithstanding anything to the contrary contained in this clause, the Members of the other Association who are in good standing with the Association on the date of its dissolution, shall be entitled to automatic admission to full Membership of this Association on conditions not less favourable than the conditions applying to existing Members of this Association, provided that the provisions of this clause shall cease to apply in respect of any such Member of the other Association who within 3 (three) months of the aforementioned date notifies this Association, in writing, that he/she does not wish to join it or who terminates his/her Membership of this Association at any time.

### 33. CHANGE OF THE CONSTITUTION

- 33.1 Any of the provisions of this Constitution may be repealed, changed or added to in any manner by unanimous resolution of the Executive Council provided that at least 21 (twenty-one) day's notice of any proposed alteration shall have been given to the Members of the "Association". If within that period 10 % of the Membership of the "Association" demands in writing that a ballot be taken on the matter, a ballot shall be taken; provided that all comments received from the Membership on the proposed alterations, shall be reduced to writing and tabled at the Executive Council meeting at which the alteration is considered for adoption.
- 33.2 The Annual general Meeting or any General Meeting of the Association shall also be empowered to change the Association's Constitution by a majority resolution provided the Members shall be notified within at least 7 (seven) day's notice by the Executive Director of the intended change and specified in the notice convening the meeting.
- 33.3 No change or addition shall have any force or effect until certified in terms of sub- section (3) of Section 101 of the Labour Relations Act.



.....  
PRESIDENT



.....  
EXECUTIVE DIRECTOR

DATE...6...AUGUST...2009

KwaZulu Natal Master Builders Association

40 Essex Terrace  
WESTVILLE 3629

P.O. Box 582  
WESTVILLE 3630

Telephone : 031-2667070

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## Code of Conduct

### Code of Conduct for all Members

1. A Member is required to conduct its business in a fair manner and shall in its dealings with others at all times maintain a high standard of business ethics.
2. A Member is required to ensure that all work is of the best standards and is carried out in an efficient manner.
3. A Member is required to satisfy the building requirements of its Clients by observing the spirit, as well as complying with the letter of its contractual obligations and to handle all business transactions with fairness.
4. A Member is required to maintain healthy and safe working conditions for all its employees and to respect and protect the environment.
5. A Member is required to organise its business administration effectively and maintain adequate financial resources for the proper discharge of all its contractual obligations.
6. A Member is required to assist wherever possible with the training of the future human resource needs of the Building Industry
7. A Member is required to comply with all applicable legislation.
8. A Member is required to endeavour to encourage all suitably qualified employers to apply for Membership of the Association.
9. A Member is required to make itself conversant with, and shall be bound by this Constitution.
10. A Member in a specific category of Membership is required to observe the Qualifying Criteria of that specific category.
11. If elected, appointed or co-opted into any office, or onto any structure of the Association, a Member is required to carry out the applicable duties with the diligence and commitment required for the benefit of the Association.

### **Qualifying Criteria for Associate Members**

In addition to the Code of Conduct for all Members, Associate Members shall also observe the following where applicable:

12. Associate Members who provide services to Members, shall ensure that such services comply with all legislation, and are performed to the highest standards and norms of best practice recognised within the industry or sector from which they originate.
13. Associate Members who manufacture Components or supply materials for use by Members, shall ensure that such Components or materials comply with all necessary legislation and prescribed performance standards, and attain the highest standards and norms of best practice recognised within the industry or sector from which they originate.

### **Qualifying Criteria for Full Members**

In addition to the Code of Conduct for all Members, Full Members shall also:

14. Perform their work to a standard that will not diminish the collective reputation of the Members and the Association's brand.
15. Observe reasonable standards of financial and business practice including:
  - 15.1. having up to date accounts that are audited if required
  - 15.2. maintaining up to date and accurate books of account and financial records
  - 15.3. not be an unrehabilitated insolvent
16. For Occupational Health and Safety purposes, manage their premises, yards and all construction sites and activities in such a manner as to achieve no less than a 4 star rating as defined in the Master Builder South Africa safety system.
17. Demonstrate a commitment to skills development and training that is practicable and commensurate with the size of the enterprise and the nature of the work it undertakes.
18. When undertaking work for clients, work at all times in terms of a generally recognised standard form of contract, or to a written contract which contains all of the essential elements to ensure efficiency, fairness and certainty in the dealings between the Member and its clients.
19. Ensure it adheres to reasonable standards of Human Resource and Labour Relations practice including:

- 19.1. Maintaining written contracts of employment with all personnel
- 19.2. Implementing and observing generally accepted HR policies and procedures.

20. Be registered with the following where required by legislation:

20.1. SARS for purposes of

20.1.1. PAYE

20.1.2. VAT

20.1.3. UIF

20.1.4. Skills Levies

20.2. The COID Commissioner or FEM

20.3. CIDB

20.4. NHBRC

20.5. All other bodies for which registration is required for the specific Member undertaking the specific work it performs.

**Annexure B****Table of Fees**

1. The Entrance Fee payable in terms of Clause 22 shall be an amount as determined by the Executive Council from time to time; Provided that such entrance fee shall not exceed R10 000 per annum.
2. The subscriptions payable in terms of Clause ~~22~~ shall be determined by the Executive Council from time to time, Provided that such subscription shall not exceed R10 000 per annum.
3. The levy referred to in paragraph 23.4.1 may not exceed R2000 per annum.
4. The levy referred to in paragraph 23.4.2 may not exceed R100 per week per person employed.
5. The maximum fine that may be imposed in terms of Clause 10.4 of Annexure C is R10 000.

## Disciplinary Procedure

### Disciplinary Committee

1. If the Executive Council is required to invoke the Disciplinary Procedure, it shall appoint a Disciplinary Committee which shall consist of:
  - 1.1. A Chairperson, who is not a Member or employed by a Member or has any interest in any Member, of the Association and who is sufficiently experienced in the field of dispute resolution or disciplinary investigations.
  - 1.2. Two Members of the Executive Council
2. No person shall serve on a Disciplinary Committee if he/she has any direct interest in the matter under consideration by the Committee.

### Disciplinary Investigation

3. In order to ascertain if a Member is guilty of misconduct, the appointed Disciplinary Committee shall conduct an enquiry into such alleged misconduct on the part of the Member, and such Committee shall be entitled to determine the time, place and procedure to be adopted at the enquiry. The Disciplinary Committee may also co-opt for the enquiry such experts, from the ranks of the Association's Members or officials, as it may require and may call witnesses, including any complainants in the matter, if necessary.
4. Any Member whose conduct is being investigated shall be entitled to not less than 14 (fourteen) days notice as to the place, date and time of the investigation, and shall be afforded ample opportunity to present its defence including the right to know the allegations against it, call witnesses and cross examine the Association's witnesses.
5. If the Member elects not to be present at the investigation, the investigation shall go ahead in the Member's absence. If the Member resigns or its Membership terminates, the Disciplinary Procedure shall continue as though the former Member was still a Member.
6. Where the conduct of a Member under investigation is sufficiently serious, in the opinion of the Executive Council, such Member may be suspended from Membership of the Association, pending the outcome of the investigation.


7. The decision of the Disciplinary Committee on the outcome of the enquiry, as well as any disciplinary action to be applied, shall be communicated to the Member by registered post, as well as any other expedited means, by the Executive Director, and shall be tabled at the next meeting of the Executive Council.
8. A Member who wishes to appeal against the decision of the outcome and / or the disciplinary action applied shall, within 7 (seven) days of receipt of such decision, forward to the Executive Director written notification that it is appealing along with the grounds of such appeal. The Executive Director shall table such appeal for discussion at the next meeting of the Executive Council. The Executive Council shall hear the appeal and shall uphold, vary or set aside the decision of the Disciplinary Committee.
9. Should the Member found guilty of misconduct fail to appeal within the prescribed time period, it shall have no further right of appeal.

#### **Disciplinary Action**

10. Subject to the provisions of this Constitution and the principles of natural justice, the Executive Council shall, *vis-à-vis* any Member found guilty of misconduct, have the power to:
  - 10.1. Expel such Member from the Association.
  - 10.2. Unconditionally suspend such Member from Membership of the Association, or from having access to such rights, benefits and services, for such period as the Council deems fit.
  - 10.3. Suspend such Member from Membership of the Association pending the fulfilment of such conditions as it may prescribe; Provided that if such conditions are not fulfilled after a prescribed or reasonable period of time has elapsed, the Committee may expel such Member. Conditions which may be prescribed in terms of this clause are:
    - 10.3.1. Requiring such Member to undergo such training or other remedial action, to the satisfaction of the Council, which the Council deems appropriate to address the cause of the misconduct in question.
    - 10.3.2. Requiring such Member to rectify any work found to be unacceptable and which forms the subject matter of the misconduct in question.
    - 10.3.3. Requiring such Member to issue an apology or other statement which may, as deemed by the Council, be necessary to rectify or mitigate the effects of the misconduct in question.

10.4. Impose a fine on such Member for any amount up to a maximum as reflected in Annexure B; Provided that such fine shall be a debt due, by such Member, to the Association recoverable in any court of competent jurisdiction.

10.5. Re-categorise any Member, either conditionally or unconditionally.

A handwritten signature in black ink, appearing to be 'Brandon Abdinor', written over a horizontal dotted line.

EXECUTIVE DIRECTOR  
BRANDON ABDINOR

10 JULY 2009

DATE