

# Template: Constitution Of A Voluntary Association (50)

## 1. CONTEXT AND PURPOSE

1.1 Various businesses, organisations and individuals involved in the tourism industry from the area known as \_\_\_\_\_ decided to form a destination route to develop the local tourism product offering and market the destination route to potential national and international tourists, with the intended outcome of increased local economic growth and improvement in the quality of life in local communities.

1.2 It was decided by the above-mentioned "Founding Members" that the route shall:

1.2.1 Be governed through the formation of an voluntary association without profit motive, empowered to carry on business in the furtherance of its objectives, as provided for in this constitution.

1.2.2 Form part of the Open Africa network of destination routes, subscribe to the "Open Africa Charter" and follow the applicable Open Africa route policies, as it may be adjusted from time-to-time.

## 2. NAME AND STATUS

2.1 The name of the voluntary association shall be \_\_\_\_\_ (here-in after referred to as "**The Association**"). The shortened name of The Association is \_\_\_\_\_.

2.2 The Association shall be a body corporate with its own legal identity which is separate from the office bearers and

members; and The Association will continue to exist even if the members change.

2.3 The liability of the members and office bearers shall be limited to unpaid commissions and membership fees.

2.4 The members and office bearers shall have no rights in the property or the assets of The Association and the income and property of The Association shall be used solely for the promotion of its stated objectives and shall not be paid or distributed directly or indirectly to any person or to any member of The Association or office-bearers, except as reasonable compensation for services actually rendered to The Association or reimbursement of actual costs or expenses reasonably incurred on behalf of The Association.

### **3. OBJECTIVES**

3.1 The Association's purpose is to to develop, support and market tourism activities in the Route Area (which area is defined in paragraph 4 below) with the intention of stimulating local tourism activity and increasing economic growth to the benefit of the local communities at large.

3.2. The Association is an organisation without profit motive established to pursue the following objectives:

3.2.1 Recruit businesses, agencies, organisations and other entities involved in tourism activities within the Route Area, to join The Association as members.

3.2.2 Expose the unique cultural experiences present within the Route Area and build understanding between people of different cultures.

3.2.3 Identify new tourism opportunities and support members in incorporating those opportunities into their activities and product offerings.

3.2.4 Support owners of new tourism products within the Route Area to develop these products into viable and sustainable attractions.

3.2.5 Market and promote the cultural experiences within the Route Area as well the tourism products of members of The Association.

3.2.6 Set and maintain good standards which all members of The Association must uphold.

3.2.7 Share information amongst The Association membership and facilitate the giving of advice and support to The Association members.

3.2.8 Generally give effect to any actions necessary or expedient to achieve the objectives of The Association.

#### **4. ROUTE AREA**

4.1 The Association shall carry on business in and around the \_\_\_\_\_ (area), \_\_\_\_\_ (province), \_\_\_\_\_ (country), herein after referred to as the **"Route Area"**.

4.2. The Head Office of The Association shall be based in the \_\_\_\_\_ magisterial area or any other area as deemed necessary from time to time.

4.3. The provisions of paragraphs 1.1, 4.1 and 4.2 above shall not preclude The Association from carrying on business elsewhere in the world should this be deemed necessary by the Executive Committee for the attainment of The Association's objectives.

#### **5. PUBLIC BENEFIT STATUS**

The Association may apply to the Commissioner for the South African Revenue Service for approval as a Public Benefit Organisation in terms of section 30 of the Income Tax Act. Upon approval, the provisions set out in the attachment to the constitution (titled "*REQUIREMENTS FOR APPROVAL AS PUBLIC BENEFIT ORGANISATION*") shall be binding on The Association.

## **6. ORGANISATIONAL STRUCTURE**

The structure of The Association will comprise of the following:

6.1 "**Active Members**" which is defined as follows:

6.1.1 Active Members are individuals, businesses, agencies, government departments, associations or any other legal entity or person involved in the tourism industry in the Route Area who subscribe to the objectives of The Association and the Open Africa Charter (which is attached to the end of the constitution), who are compliant to the various provisions of the constitution of The Association.

6.1.2 The "Founding Member" who have signed this constitution at the "Founding Meeting" are automatically afforded the status of Active Member; and will be obliged to maintain their membership in accordance to all other provisions of the constitution and will not have any special privileges.

6.1.3 Individuals or entities who are not Founding Members will become Active Members when the following criteria are met:

6.1.3.1 Have been nominated for membership by an existing Active Member of The Association.

6.1.3.2 Written nomination for membership was received by the Executive Committee (defined in paragraph 6.3 below) more than six months prior to the date of becoming an Active Member.

6.1.3.3 Membership was approved by the Executive Committee after a trial period of not more than six months, which approval was based on the commitment shown by the applicant to the objectives of The Association.

6.1.4 The status as Active Member is maintained when:

6.1.4.1 All membership obligations are fully met, including payment of membership fees (which non-refundable fees become payable on submission of nomination and again annually as determined by the Executive Committee).

6.1.4.2 Membership was not placed under suspension by the Executive Committee or cancelled by the General Members Meeting (defined in paragraph 6.2 below) for whatever reason.

6.1.5 If a member is not an individual, the member shall nominate an individual representative, a first alternate representative and a second alternate representative through a formally recorded decision, of which The Association is informed of on the letterhead of the member. Reference to actions and obligations to be performed by such an Active Member but which can only be performed by an individual shall be binding on the assigned representative of the member and his/her alternates.

6.1.6 The Secretary of the Executive Committee (defined in paragraphs 7 below) shall keep a register with the names, contact details and addresses of all the members.

6.1.7 Active Membership may be suspended for a period of up to six months if the Executive Committee concluded at a properly constituted meeting that the actions of the member is disruptive to the functioning of the route or when the member caused damage to the reputation of the route or Open Africa, provided that the member has been given an opportunity to make verbal or written representations.

6.1.8 Active Membership terminates if a member is removed by a

resolution of the General Members Meeting passed with a two-thirds majority of the Active Members present at a properly constituted General Members Meeting meeting, provided that the member has been given an opportunity to make verbal or written representations.

6.2 The “**General Members Meeting**” is a meeting of at least half plus one of all Active Members, which meeting was constituted in accordance to paragraph 8 below.

6.3 The “**Executive Committee**”, which as the governing body of The Association, has the powers to carry out the duties described in paragraph 7 below, in accordance to the following:

6.3.1 Seven (7) Active Members of the Executive Committee are elected by the Active Members at each Annual General Meeting to serve for a term of maximum two years, after which they will qualify for re-election. For this purpose, the Founding Meeting will serve as the first Annual General Meeting of The Association.

6.3.2 Each year at the Annual General Meeting at least half of the Executive Committee shall stand down (and qualify for re-election), providing that if the term of less than half of the Executive Committee is coming to an end, that the Executive Committee shall identify from amongst themselves the members who will stand down (and qualify for re-election) so that each year at least half of the Executive Committee is re-elected.

6.3.3 Nominations for the Executive Committee shall be in writing, signed by the proposer, seconded and accepted by the nominee. Such nominations shall be delivered to the Secretary at least seven (7) days before the Annual General Meeting.

6.3.4 The Executive Committee may co-opt any number of Active Members onto the Executive Committee in the event of vacancies or if the Executive Committee identify the need for additional members of the Executive Committee, with the proviso that co-

opted members shall hold office only until the next Annual General Meeting (when these members shall qualify for nomination for re-election).

6.3.5 At the first meeting of the Executive Committee immediately following the Annual General Meeting, the members of the Executive Committee shall elect from amongst themselves office bearers to fill the portfolios specified in paragraph 7.2 below, plus any additional portfolios as may be decided by the Executive Committee.

6.3.6 The Executive Committee will aim to assign each and every route project to a member of the Executive Committee as Project Co-ordinator so that each route project is represented on the Executive Committee, whether a long-term or short-term project.

6.3.7 Membership of the Executive Committee will terminate when:

6.3.7.1 The term of the member comes to an end and the member is not re-elected onto the Executive Committee.

6.3.7.2 The members resigns from office in writing.

6.3.7.3 The member's Active Membership is suspended or terminated.

6.3.7.4 The member becomes incapable by reason of mental illness or other serious impairment.

6.3.7.5 The member is removed from office through a two-thirds resolution of the remaining Executive Committee members, consisting of not less than four (4).

## **7. POWERS AND DUTIES OF EXECUTIVE COMMITTEE**

7.1. The powers and duties of the Executive Committee are to:

7.1.1 Implement and generally give effect to the objectives, aims and decisions pertaining to the management of The Association.

7.1.2 Determine any business to be considered at the Annual General Meeting or any other general meeting.

7.1.3 Prepare an Annual General Report and Financial Statements of the affairs of The Association for submission to the Annual General Meeting.

7.1.4 Engage and dismiss staff or service providers when and if so required.

7.1.5 Transact the business of The Association.

7.1.6 Delegate, in its sole discretion, any of the above powers and duties, provided that such delegation and conditions are reflected in the minutes of an Executive Committee meeting.

7.2. The office bearers of the Executive Committee have the following duties:

7.2.1 The Chairperson shall lead The Association and preside over the meetings of the Executive Committee and the General Members Meeting. In the absence of an employed Route Manager or Route Co-ordinator, the Chairperson shall also be responsible for the duties of the route "chief executive".

7.2.2 The Treasurer shall be responsible for the management of The Association's assets, finances and membership fees and the implementation of The Association decisions and policies in this regard; and shall in the absence of the Chairperson take responsibility for the duties of the Chairperson.

7.2.3 The Secretary shall perform the normal functions of an organisational secretary and implement The Association's administrative policies and decisions, and shall in the absence of the Chairperson and the Treasurer take



responsibility for the duties of the Chairperson.

7.2.4 The Route Development Co-ordinator shall be responsible for the co-ordination of the ongoing development of the route, recruitment of new members and support to members in the improvement of their products.

7.2.5 The Route Marketing Co-ordinator shall be responsible for co-ordinating the promotion of the route and route projects.

7.2.6 The Additional Members shall assist in implementing the objectives of the The Association and can, only if so designated by the office bearers above, act in an executive capacity in the absence of an office bearer. They may also be assigned the duties of Project Co-ordinator for any route project.

7.3 The Executive Committee shall maintain effective control over the finances of The Association and shall specifically:

7.3.1 Open a bank account (or accounts) in the name of The Association with a registered bank.

7.3.2 Ensure that instructions to the bank require signature on behalf of The Association by at least two (2) persons authorised by the Executive Committee.

7.3.3 Ensure that proper records and books of accounts which fairly reflect the affairs of The Association are kept, and within six months of its financial year (which financial year shall end in February) a report is compiled by an independent practicing Auditor or Accounting Officer, stating whether or not the financial statements of The Association are consistent with its accounting records, the accounting policies are appropriate and have been appropriately applied in preparing the financial statements and The Association has complied with the financial provisions of this constitution.

7.4 Any actual, potential or perceived conflict of interests on the part of any member of the Executive Committee on a matter pertaining to The Association, must be disclosed in writing to the Executive Committee which shall record such conflict of interest in the minutes of the Executive Committee meeting. Such member may be requested by the Executive Committee to state his/her position in the matter or to respond to pertinent questions, but not vote or use his/her influence on the matter and shall not be counted for purposes of determining a quorum for the meeting where the voting takes place.

## **8. MEETINGS**

8.1 Unless otherwise specified or otherwise determined by the meeting concerned, all proceedings at meetings (including Annual General Meetings, other general meetings, and Forum meetings) shall be conducted with normal meeting practices, with the following provisions specifically applicable:

8.1.1 At least 7 days notice shall be given for all meetings.

8.1.2 All notices in terms of this constitution must be given to members in writing (personally, post or electronic communication) to the addresses provided by the members.

8.1.3 The accidental omission to address notices to any member shall not nullify the proceedings of any meeting.

8.1.4 A member present in person at any meeting shall be deemed to have received notice of such meeting.

8.1.5 If posted, notices shall be deemed to have been received seven days after sending; and if sent by electronic communication (email), notices shall be deemed to have been received two days after sending.

8.1.6 A meeting shall be properly constituted when one member

more than half of those present represent a quorum. In the absence of a quorum at any meeting within 30 minutes of that meeting's scheduled starting time, the meeting shall be adjourned to the a time and place designated by the Chairperson (failing whom the Treasurer, failing whom the Secretary, failing whom the chairperson of that meeting) may determine.

8.1.7 All motions shall be proposed and seconded.

8.1.8 Voting, unless a ballot is demanded by any Active Member, shall be a show of hands.

8.1.9 Except where this constitution requires a higher threshold, motions or questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have the casting vote.

8.1.10 At membership meetings each Active Member present or represented by proxy shall be entitled to one vote on each motion and at Executive Committee meetings each Executive Committee member shall be entitled to one vote.

8.1.11 An Active Member may issue a written proxy for another Active Member to represent him/her.

8.1.12 Proper minutes and attendance records must be kept of all meetings. The Chairperson must sign the minutes which shall be available at all times for inspections or copying by any Active Member.

## 8.2. Meetings of the Forum:

8.2.1 All Active Members may attend and participate in Forum meetings while those whose nomination as members have been received by the Executive Committee may attend as observers.

8.2.2 The Forum shall meet from time-to-time but not less than quarterly, including the Annual General Meeting, which meetings shall be called by the Executive Committee or

Chairperson.

#### 8.4. The Annual General Meeting:

8.4.1 The Annual General Meeting shall be held not later than three months after the end of the financial year and shall be at such times and venue as the Chairperson, failing whom the Treasurer, failing whom the Secretary, may determine.

8.4.2 The Annual General Meetings shall consider, amongst other things, the following:

- The Annual Financial Statements.
- The election of the Executive Committee members.
- The appointment of auditors if so required.
- All motions which may be properly proposed and other business, which may arise.

#### 8.3. Meetings of the Executive Committee:

8.3.1 The Executive Committee shall meet at least six (6) times per year and with an interval of not more three (3) months between meetings, at such times and venues as it or the Chairperson, failing whom, the Treasurer, failing whom the Secretary, may determine.

8.3.2 Any member of the Executive Committee may call an emergency meeting, should it be necessary, by giving 48 hours notice to Executive Committee members by telephone, to discuss any issues of urgency, which require immediate attention and which may affect the reputation, operations and standards of The Association. Discussions at such emergency meetings may be converted into decisions at the very next properly constituted Executive Committee meeting.

8.3.3 The Executive Committee may convene a disciplinary meeting should it be necessary to discipline any member who may be jeopardising the reputation of The Association in any manner or failing to upholding the standards of The Association, to which meeting the Executive Committee may

invite any member(s) or non-member(s) to bring testify or to be consulted with.

8.3.4 The Executive Committee may at any time appoint committees with such terms of reference as may be considered desirable.

## **9. INDEMNITY**

9.1 Subject to the provisions of any relevant law, members or office-bearers or appointed delegates of The Association shall be indemnified by The Association for all acts done by them in good faith on its behalf.

9.2 Subject to the provisions of any relevant law, no member of The Association or appointed delegates shall be liable for the acts, receipts, neglects or defaults of any other member or office-bearer, or for any loss, damage or expense suffered by The Association which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty or failure to exercise the degree of care, diligence and skill required by law.

## **10. AMENDMENT OF THE CONSTITUTION**

Any provision of this constitution, or the constitution in its totality may be amended providing that:

10.1 A "Special General Meeting" is called by the Executive Committee after receiving proposed amendments to the constitution signed by at least seven Active Members.

10.2 At least fourteen (14) days written notice is given of the meeting.

10.3 The proposed amendment(s) are received in writing by the

Executive Committee who will circulate it to the Active Members at least fourteen (14) days prior to the scheduled Special General Meeting.

10.4 The Special General Meeting is properly constituted and the motion to amend the constitution is carried by a two-thirds majority vote of those present at the meeting, with the exemption of this paragraph 10 of the constitution, which may only be amend by a motion supported by two thirds of the total Active Members.

## **11. DISSOLUTION OF THE ASSOCIATION**

The Association may be dissolved providing that:

11.1 A "Special General Meeting" is called by the Executive Committee after receiving proposed dissolution of The Association in writing by at least seven (7) Active Members.

11.2 At least twenty-eight (28) days written notice is given of the meeting.

11.3 The proposed dissolution is made in writing to the Executive Committee who will circulate it to the Active Members at least twenty-eight (28) days prior to the scheduled Special General Meeting.

11.4 The Special General Meeting is properly constituted and the motion to dissolve The Association is carried by a two-thirds majority vote of the total Active Members.

11.5 If upon dissolution of The Association any assets remain after all debts and liabilities have been satisfied, such assets shall not be paid or distributed amongst its members, but shall be donated to such other organisation(s) with similar objectives to that of The Association, which organisations shall be identified in the motion carried at the Special General Meeting.

THUS DONE AND SIGNED BY THE FOUNDING MEMBERS AT

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ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

(Signature, full name of individual and name of entity if member is not an individual)

#### REQUIREMENTS FOR APPROVAL AS PUBLIC BENEFIT ORGANISATION

As provided for in Clause 5 of this constitution, The Association intends to apply to the Commissioner for SARS for approval as a Public Benefit Organisation in terms of Section 30 of the Income Tax Act. Upon approval the Association shall:

1. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation.
2. Ensure that no single directly or indirectly controls the decision making powers relating to the Association.
3. Is prohibited from distributing any of it's funds to any person ( otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established.
4. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regards to tax deductibility

thereof in terms of section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

5. Ensure that it is not knowingly a party to and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or have become payable by any person under the Act administered by the Commissioner.
6. Submit to the Commissioner a copy of any amendment to this constitution.
7. Not pay any remuneration to any employee, office bearer member or any person, which is excessive, having regard to the what is generally considered reasonable in the sector and in relation to the service rendered.
8. Comply with such reporting requirements as may be determined by the Commissioner.
9. Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph 10 (iii) of Part 1 of the Ninth Schedule of the Act are utilised for the purpose for which they are provided.
10. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.