

**CONSTITUTION OF
THE HEALTH PRODUCTS ASSOCIATION OF SOUTHERN AFRICA**

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(Hereinafter referred to as the 'Association')

1. **NAME**

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The name of the Association shall be 'The Health Products Association of Southern Africa'.

2. **OBJECTIVES**

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The objectives of the Association are:-

- a) To represent, promote and develop the activities of manufacturers, importers and wholesale distributors of health and nutritional products including vitamins, homoeopathic, herbal, natural and allied substances.
- b) To negotiate with the Government, whether Central, Provincial or local in respect of all matters relating to the health industry and in particular with respect to any proposed (or existing) legislation which may impinge on the interests of members.
- c) To assist in the formulation and promotion of good manufacturing procedures which will progressively improve the standard of the industry.
- d) To convene conferences or meetings to discuss matters relating to the health industry.
- e) To establish affiliations and associations with other similar organisations in any part of the world.
- f) To co-operate or become associated with any other Association, Society or body of persons when such co-operation or association is calculated to further the interests of the Association.
- g) To incorporate a Code of Practice which will be mandatory in all points on each of its members.
- h) To provide a channel of communication for members.
- i) To make and enforce rules, regulations and by-laws for regulating the affairs and business of the Association of whatever nature and to alter, vary and repeal them.
- j) To cause a roll of members to be kept and to register the names of all members of the Association.
- k) To act as arbitrators in connection with any matter or dispute arising between members of the Association.
- l) To engage and retain the services of attorneys, advocates, auditors and bookkeepers when necessary in the interests of the Association.
- m) To elect a Council for the administering of the affairs and business of the Association.

- n) To purchase, exchange, hire, let, acquire, dispose of and otherwise movable or unmovable property.
- o) To engage staff and acquire offices as may be required from time to time for the proper and efficient conduct of the affairs of the Association.

3. **CODE OF PRACTICE**

The Code of Practice of the Association is directed to ensuring the highest standards of integrity and ethics in the dealings of members with their clients. It is mandatory in all points on each of its members.

- a) **Products or Services**  
 The description of products or services for sale by members of the Association shall be accurate and truthful as to price, grade, quality, make, value, performance, quantity, currency or model and availability.
- b) **Advertisements**  
 Members' advertisements, presentations at public meetings and promotional literature must not contain any descriptions, claims or illustrations that directly or by implications are misleading about the products or service. All advertisements shall conform to the Code of Advertising Practice as laid down by the Advertising Standards Authority of South Africa.
- c) **Misrepresentation**  
 Members must give no misrepresentation in their approach to customers.
- d) **Quality of Merchandise**  
 Members must ensure that strict quality control measures are employed in the manufacture of their products, and must be prepared for a reasonable time to replace free of charge products defective by reason of faulty material or workmanship. Members should also carry products liability and public liability insurance.
- e) **Local Chamber of Commerce**  
 Members should seek to belong to a local Chamber of Commerce or similar organisation.
- f) **Legislative Requirements**  
 Members shall abide by all Legislation
- g) **Collusion**  
 Members shall not collude in setting prices or adopting marketing activities that are not in the consumer's interest.
- h) **Undesirable Trade Practices**  
 Members shall not engage in any practice that the Council may from time to time designate as undesirable.

4. **MEMBERSHIP**

a) Ordinary Member

There shall be eligible for membership any company whether limited liability or public company or person or partnership engaged in the manufacture, importation or wholesale distribution of health and nutritional products in Southern Africa provided that the said members have agreed to follow and are seen and known to be complying with the 'Code of Practice' as described in point 3 of this Constitution.

b) Associate Member

There shall be eligible for Associate Membership any company, whether limited liability or public company or person or partnership where they are considered by the Council to be supportive of the objectives of the Association and whose activities support the activities of the ordinary members. Associate Members shall not have voting rights and may not serve on the Council.

c) Honorary Member

There shall be eligible for Honorary membership any person who has provided extensive and significant contribution towards the status and reputation of the Health Products Industry in South Africa. The Council shall have the right to terminate or suspend such Honorary Membership at the sole discretion of the Council. Admittance as an Honorary Member shall occur when the Council has proposed a person and that nomination has been confirmed by a majority vote at a general meeting of the Association. Honorary Members shall not have voting rights and may not serve on the Council (unless they are also Ordinary Members).

d) A company, person or partnership being admitted to ordinary or associated membership shall nominate some individual amongst its directorate or staff approved by the Council to be its representative and may remove any such representative and appoint any other individual approved by the Council to be its representative so removed or saying or otherwise vacating office. For all the purpose of this Constitution in relation to the convening and holding of meetings, membership of the Council and the giving of notice, such representative shall be deemed to be a member in the place of and on behalf of the company, person or partnership which he represents

e) The Council may from time to time prescribe the manner in which companies, persons or partnerships shall be admitted to ordinary or associate membership provided that no company person or partnership shall be admitted to membership until it shall have paid any entrance and/or subscription payable on admission to membership.

f) Every ordinary or associate member shall pay entrance fees and subscriptions as the Council may from time to time determine. The Council may in addition make such levies upon ordinary members, as it shall determine to be necessary to meet the liabilities of the Association.

In making such levy the Council may have regard to the turnover of each ordinary member company or such other matters, as it shall in its absolute discretion think fit.

Any levy imposed by the Council is to be ratified at a General Meeting of the Association

## 5. MEMBERSHIP INVESTIGATIONS

Whenever the Council or a Sub-Committee, appointed by the Council for this purpose, receives a written report or has reason to believe that a member or a member's employee, agent or distributor has committed or has attempted to commit a breach of any of the ethical standards stated in the 'Code of Practice' (or any additions or amendment thereto from time to time) then the following procedure shall be followed:-

- i.. No member of the Council for Sub-Committee:-
  - a. Shall investigate or sit at any meeting at which the conduct of that member of his employee, or of a company of which he is a director or shareholder or employee or of a partnership of which he is a partner or employee, in relation to that breach, is discussed or considered.
  - b. Shall be entitled to a copy of any report made to the Council or Sub-Committee in regard to that breach or attempted breach or otherwise in terms of this clause.
- ii. The conduct of that member or his employee, distributor or agent shall first be investigated and reported on to the Council or its Sub-Committee by one of its members or by anyone else (whether or not a member) authorised by the Council or Sub-Committee to do so but who before making any such report shall first give the member whose conduct or the conduct of whose employee, distributor or agent is being investigated written notice of the conduct complained of and should give such member the opportunity of answering any such complaint before making that report.
- iii.
  - a. If as a result of the report made to the Council or Sub-Committee in terms of sub-clause (ii) the Council or Sub-Committee considers that there are grounds for reasonably believing that the member or employee, distributor or agent in question has committed or attempted to commit a breach of those ethical standards of conduct then it shall appoint a committee of investigation to investigate that breach or attempted breach.
  - b. If the member in question admits the commission of or attempt to commit the breach in question, then there shall be no need to constitute the committee of investigation in terms of (a) and the Council or Sub-Committee shall then be entitled to deal summarily with that breach or attempted breach in terms of (v).
- iv. A committee of investigation so constituted shall consist of:-
  - a. An independent person selected by the Council, who shall be its Chairman and have a vote.
  - b. Two members of the Council, who shall be appointed by the Council according to a pre-determined roster but shall not be a director, or shareholder or employee or partner of a partnership in relation to that breach which the Council is investigating.
- v. The committee of investigation shall then investigate the breach or attempt to commit a breach in private and in such a manner as it is its sole and absolute discretion deems fit and for that purpose.
  - a. It shall not be bound by the strict rules of evidence but nevertheless shall carry out its investigation with the utmost fairness to the member, distributor, employee, marketer or agent concerned.
  - b. It shall give the member concerned details of the allegation made against him or his employee or distributor or agent with such particularity, having regard to the information available to the committee of investigation, as is possible in the circumstances and which in its opinion will be sufficient to enable that member to

know the allegations made against him or his employee, distributor or agent, but that member shall not be entitled to ask for or to compel the committee of investigation to give that member any additional information which is not relevant to the allegation which is being investigated.

- c. It shall be entitled, if it so deems fit, to examine any witness brought before it in support of the alleged breach or attempt to commit a breach which is being investigated and any witnesses whom that member chooses to bring before it.
- d. The member concerned shall be entitled to appear before the committee of investigation in person in the case of an individual or by one or more partners in the case of a partnership, or by one or more bona fide full-time directors or senior executives in the case of a company, but shall not be entitled to any legal or other representation before the committee of investigation.
- e. Each member shall be bound, if required to do so by the committee of investigation:-
  - .01 To make available for use by and for its inspection all such extracts (certified by that members auditors as being correct) from that members book of accounts, documents, records and assistance as the committee of investigation, in its sole discretion, reasonably requires for the carrying out of its said investigation.
  - .02 To be available for examination by the committee of investigation, in the case of:-
    - (aa) an individual, himself and such of employees, distributors or agents
    - (bb) a partnership, the partners thereof such of its employees or agents
    - (cc) a company, such of its full-time directors, employees or distributors or agents in the Republic of South Africa, as may be determined from time to time by the committee of investigation.
- f. The failure of any member to comply with the provisions of sub-clause (e) shall be a breach of this Constitution which, in the case of a member whose conduct or the conduct of whose employee, distributor or agent is being investigated, shall entitle the Council, if it so deems fit, to invoke the penalties referred to in sub-clause (I) against that member.
- g. A member whose conduct or the conduct of whose employee, distributor or agent is being investigated by the Council or a committee of investigation and who without good cause given in writing fails to attend a meeting of the Council or any of its sub-committees or a committee of investigation when called upon to do so, shall be regarded as having admitted the complaint against that member or the latter's employee or agent as the case may be.
- h.
  - 01. When the committee of investigation has completed its investigation and has given the member in question the opportunity of appearing and bringing before it and of addressing it, it shall support its finding to the Council with reasons thereof.
  - .02 The finding of the committee of investigation
    - (aa) shall be circulated only to the Council
    - (bb) shall not be disclosed by any member of the Council to anyone

- (cc) shall be final and binding on the member concerned and shall not be open to challenge under any circumstances whatever either by the Association or any of its members or by the member in question or by the Council in any court of law or in any other manner whatsoever.
- i. Should the committee of investigation find that a member whose conduct or whose employee or distributor or agent has been investigated by it has committed or attempted to commit the breach in question, or should any such member whose conduct has been investigated by it either admit or deemed to have admitted that he or his employee, distributor or agent has committed or attempted to commit that breach, then the Council shall be entitled in its sole and absolute discretion to,
  - a. warn that member or
  - b. suspend that member from membership of the Association for a definite or indefinite period or
  - c. impose a fine on that member up to but not exceeding an amount equivalent to three years (3 years) subscription and/or suspend that member for a definite or indefinite period or
  - d. expel that member from membership of the Association and/or
  - e. advise such governmental authorities and/or the South African Consumer Co-ordinating Council, as the Council deems fit, of its decision and the action taken by it thereunder.
- j. The Council shall notify the member concerned of its decision and if it expels the member concerned from the Association, then it shall give that member the grounds for that expulsion.
- k. The decision of the Council shall be final and binding and shall not be open to challenge by the member concerned or by any other member of the Association or in any court of law.
- l. Should a member be expelled in terms of sub-clause (l) then the amounts paid by that member to the Association in terms of subscription and entrance fee shall not be refunded to him.

**6. TERMINATION OF MEMBERSHIP**

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A member shall cease to be such:-

- i. If it be placed under provisional or final sequestration and/or in liquidation, or be found to be compromising with creditors.
- ii. If it shall cease to be a company engaged in the business or manufacturing, importing and/or distributing health and nutritional products.
- iii. If it shall be in default of upwards of three months in paying to the Council any subscription or levy payable by it.
- iv. If it shall fail to abide by the 'Code of Practice'.

7. COUNCIL

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- i. The Council shall consist of no less than four (4) members and no more than six (6) members duly elected by the members at an Annual General Meeting.
- ii. The elected Council members will appoint the
  - a. Chairman
  - b. Vice-Chairman
  - c. Secretary/Treasurer
- iii. The term of office of Council members shall be for one (1) year but they may offer themselves for re-election.
- iv. Only nominated representatives shall be eligible to hold office as a member of the Council.
- v. Election of members of the Council shall be decided by a majority of votes exercised by secret ballot, each member having one vote for each vacancy.
- vi. Written and duly signed by the authorised representative proxy nominations and votes much be lodged with the Secretary no later than he starting time of the Annual General Meeting.

8. **POWERS OF THE COUNCIL**

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- i. The business of the Association shall be managed by the Council who may pay all such expenses of the Association and do on behalf of the Association all such acts as may be necessary for the efficient running of the Association provided it is not inconsistent with the aforesaid regulations or provisions.
- ii. The Council shall make such By-Laws, as they may deem necessary or expedient or convenient for the proper conduct and management of the Association.
- iii. The Council may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meetings shall be decided by a majority of votes. A quorum of Council shall be three (3) Council members in good standing. In case of an equality of votes the Chairman shall have a second or casting vote.
- iv. The Council may delegate any of their powers to committees consisting of such member or members of the Council as they think fit and any committee so formed shall, in the exercise of the powers delegated, conform to any regulations imposed on it by the Council.
- v. Fourteen (14) days notice at least, specifying the venue, date and hour of all Council meetings shall be given to all members. A detailed Agenda shall be incorporated in all notices of meetings.
- vi. Any member of the Council who shall have been absent without leave at any three consecutive Council meetings shall be deemed to have vacated his office.
- vii. The individual members of the Council are hereby indemnified from all losses and expenses incurred in the discharge of their duties save in so far as such loss or expenses may have been occasioned by their own willful neglect or default.

- viii. Any vacancy occurring on the Council prior to an Annual General Meeting may be filled by a nominee of the Council.
- ix. An important function of the Council is the rapid dissemination to all members of all definitive rulings obtained from the Department of Health and other legislative and regulatory bodies.
- x. The Council may co-opt any member or members necessary to provide specialised expertise when deemed necessary.

9. **MEETINGS**

- i. The Association shall hold an Annual General Meeting in every calendar year at such time and place as may be determined by the Council and shall specify the meeting as such in the notices calling it, provided that every Annual General Meeting except the first shall be held not more than fifteen months after the holding of the last preceding Annual General Meeting. Any distributor, staff member or director of member companies shall be entitled to attend the Annual General Meeting although notice for this meeting will be sent by the Association to the nominated representative only.
- ii. All other meetings of members, other than the Annual General Meeting shall be called a General Meeting.
- iii. The Council may whenever they think fit convene a General Meeting provided that this occurs at least twice (2) a year.
- iv. A General Meeting shall be called upon receipt of a formal request, signed by not less than seven (7) members or twenty-five (25%) percent of membership stating fully the reasons for the request.
- v. Twenty-one (21) days notice in writing at least of every Annual General Meeting and of every meetings called to pass a special resolution and fourteen (14) days notice in writing at the least of every other General Meeting, specifying the place, the day and the hour of the meeting and in the case of special business the general nature of that business shall be given.
- vi. No business shall be transacted at an Annual General Meeting or a General Meeting unless a quorum is present. For all purposes a quorum shall be one-third of members in good standing.
- vii. At all Annual General Meetings or General Meetings, the Chairman shall have an additional or casting vote in the case of an equality of votes.
- viii. In all cases of dispute, in matters of procedure, the decision of the Chairman shall be final and conclusive.

10. **ADMINISTRATION**

- i. The Association may amend the Constitution necessary for the furtherance of the affairs of the Association at a properly constituted General Meeting provided that two-thirds of the members in good standing approve such a change.

- ii. ACCOUNTS: The Association shall cause proper books of accounts to be kept with respect to all sums of money received and expended by the Association and the matters in respect of which such receipts and expenditure take place.
- iii. The Treasurer shall present to the Annual General Meeting a Statement of Income and Expenditure and Balance Sheet for the preceding year.
- iv. AUDIT: Once at least in every year the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by one or more properly qualified auditor or auditors.
- v. FINANCIAL YEAR END: The Financial Year shall be the last day of December each year.
- vi. ASSOCIATION SEAL: The Association shall have a seal designed, which may be used by member companies on their company literature and in their advertisements.
- vii. DISSOLUTION: In the event of the winding up of the Association the surplus assets remaining after satisfaction of all liabilities and costs shall be contributed to a similar Association or will be given to a charity selected by the members and will not be distributed to any member of the Association.
- viii. Every applicant for membership shall sign an application form accepting the provisions of the Constitution and Code of Practice.

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