



**THE HEALTH PRODUCTS
ASSOCIATION
OF
SOUTHERN AFRICA
FOUNDED 1976
(Association not for Gain) SARS
Reference: 930 026 286/RG/0030/01/08)**

CONSTITUTION

JULY 2020

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

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CONSTITUTION OF THE HEALTH PRODUCTS ASSOCIATION OF SOUTHERN AFRICA

1. INTERPRETATION

In this Constitution, unless the context otherwise requires:

- 1.1 “**Annual General Meeting**” shall mean the annual general meeting of the Association duly called or constituted.
- 1.2 “**Association**” shall mean the Health Products Association of Southern Africa.
- 1.3 “**Auditors**” shall mean the appointed auditors of the Association.
- 1.4 “**Chairperson**” shall mean the Chairperson of the Association and member of the Executive Council.
- 1.5 “**Code of Conduct**” shall mean the Code of Conduct of the Association referred to in Article 5.
- 1.6 “**DOH**” shall mean the South African Department of Health.
- 1.7 “**Executive Council**” shall mean the Executive Council referred to in Article 8.
- 1.8 “**General Meeting**” shall mean a meeting of the Association duly called for Members by the Executive Council.
- 1.9 “**CAMS Industry**” shall mean the Complementary and Alternative Medicines Industry, dietary supplements, foods, and fortified foods.

- 1.10 “**Member**” shall mean a member of the Association. For the avoidance of doubt, a Member shall be any of the 3 (three) types of Members contemplated in Article 6.2.
- 1.11 “**MCA**” shall mean the Marketing Code Authority.
- 1.12 “**Office Bearer**” shall mean full time or part time employee of the Association.
- 1.13 “**Organisation**” shall mean a company, closed corporation, partnership or other juristic or natural person.
- 1.14 “**Secretary**” shall mean the executive secretary of the Association.
- 1.15 “**Southern Africa**” shall mean countries which are members of Southern African Development Community (SADC).
- 1.16 “**Subscription Fees**” shall mean the annual membership fees of the Association as determined by the Executive Council.
- 1.17 “**Treasurer**” shall mean the Treasurer of the Association and member of the Executive Council.
- 1.18 “**Vice-Chairperson**” shall mean the Vice-Chairperson of the Association and member of the Executive Council.
- 1.19 any word signifying one gender shall include the other gender.
- 1.20 any word signifying the singular shall include the plural and *vice versa*.
- 1.21 the headings in this Constitution are used for the sake of convenience and shall not govern the interpretation hereof.

2. **NAME**

The Association shall be called “The Health Products Association of Southern Africa”. The official abbreviation used for the Association will be “HPASA” or “HPA”.

3. **GOVERNANCE AND LEGAL STATUS**

- 3.1 The Association is a trade association not for gain established to represent the interests of the CAMS Industry in Southern Africa and such other interest as may be approved of by the Executive Council.
- 3.2 The Association shall be a distinct and separate legal entity with the power to acquire, to hold and to alienate property of every description whatsoever and with the capacity to acquire rights and obligations.
- 3.3 The Association shall have perpetual succession and continue to exist notwithstanding any changes in its structure, Office Bearers or Members.
- 3.4 The Members and Office Bearers shall have no interest in any assets, distribution or incomes for the Association save for reasonable compensation for services rendered.
- 3.5 The Association shall be governed according to the Code of Conduct and mechanisms outlined herein.
- 3.6 The Association shall be a juristic person and can act and be acted against in its own name

4. OBJECTIVES AND POWERS

4.1 The Association is a voluntary members' organisation for the CAMS Industry in Southern Africa. The Association was formed in 1978 to promote the health products industry as a whole.

4.2 The main objectives and powers of the Association are:

- ✦ to ensure **high profile visibility** of the CAMS Industry as a dynamic, organised and responsible force.
- ✦ to **protect the CAMS Industry** and ensure long-term viability.
- ✦ to **create a unified CAMS Industry voice** when dealing with external entities such as government bodies and the media.
- ✦ to **maintain high ethical standards** of production, quality control, marketing, and advertising within the CAMS Industry.
- ✦ to **act as a body** that promotes the protection of consumers against exploitation from unethical practices.
- ✦ to **act as a central information point** to promote and co-operate with the media, in representing the interests of the CAMS Industry.
- ✦ to **provide a forum** for education for both the consumer and professional through seminars, conventions, and exhibitions.
- ✦ to **promote co-operation** between other international and local associations, medical bodies, and fraternities to encourage mutual understanding.
- ✦ to **promote and develop opportunities** for export and import for its Members.

and in pursuance of the main objectives and powers of the Association, the Association shall have all such powers as are necessary for the proper attainment of thereof.

5. **CODE OF CONDUCT**

The Association shall be governed according to the Code of Conduct. The vision of the Association is to present, promote and develop the CAMS Industry in a professional and ethical manner. The Code of Conduct is directed to ensuring the highest standards of integrity and ethics in the dealings of Members with consumers and other Members. It is a mandatory condition of membership for Members to comply fully with all aspects of the Code of Conduct.

5.1 **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, model, and availability.

5.2 **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 product or service.

5.3 **Misrepresentation**

Members must give no misrepresentation in their approach to customers or consumers.

5.4 **Quality of Merchandise**

Members must ensure that 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.

5.5 **Legislative Requirements**

Members shall timeously abide by and/or judicially challenge all applicable legislation.

5.6 **Collusion**

Members shall not collude in setting prices or dividing markets, or in adopting marketing activities that are not in the consumer's interest, as per the Competition Act, No. 89 of 1998.

5.7 **Undesirable Trade Practices**

Members shall not engage in any practice or conduct themselves in any manner that the Executive Council may from time to time determine to be undesirable, or that does or is likely to bring the HPA into disrepute.

6. **MEMBERSHIP**

6.1 Membership of the Association shall be open to any Organisation, regardless of race, age, gender, or ability, who:

6.1.1 complies with the eligibility requirements set out in Article 6.2.1, 6.2.2 or 6.2.3.

6.1.2 completes an Association Application for Membership form.

6.1.3 pays the relevant Subscription Fees; and

6.1.4 subscribes to and agrees to abide by all the provisions of this Constitution, including the Code of Conduct.

6.2 **Membership Classes**

The Association shall have 3 classes of memberships.

6.2.1 **Ordinary Member**

There shall be eligible for membership any business/trading entity engaged in the manufacture, importation, marketing, distribution and/or

complementary medicine, dietary food supplements, health foods or health beverages in Southern Africa, provided that the business/trading entity agrees to abide by and are seen and known to be complying with the Code of Conduct. In the event of any dispute as to whether a business/trading entity meets the eligibility requirements, the decision of the Executive Council shall be final.

6.2.2 Associate Member

There shall be eligible for Associate Membership any business/trading entity that is considered by the Executive Council to be supportive of the objectives of the Association and whose activities support the activities of the ordinary Members. These individuals/companies do not manufacture, market or sell their own complementary medicines, health supplements, health foods or health beverages. Associate members also include those individuals/companies who provide services in some form or another (e.g. pharmacists, raw material suppliers, third-party manufacturers, marketing, merchandising and/or sales agents, retailers who do not have their own brands and consultants) to the Association's membership.

6.2.3 Affiliate Member

There shall be eligible for membership any business/trading entity/individual that/who is considered by the Executive Council to be supportive of the objectives of the Association and whose activities are affiliated to the industry. These companies/individuals do not manufacture, market or sell their own complementary medicines, health supplements, health foods or health beverages and do not provide services in any form to the Association's membership but who would add value to the Association itself (e.g academics, institutions such as a university, an accredited individual or recognised expert in the field)

6.2.4 Honorary Member

There shall be eligible for Honorary Membership any person who has made an extensive and significant contribution towards the status and

reputation of the CAMS Industry in Southern Africa. The Executive Council shall have the right to terminate or suspend such Honorary Membership at its sole discretion. Admittance as an Honorary Member shall occur when the Executive Council has proposed a person and that nomination has been confirmed by a majority vote at a General Meeting. An Honorary Member shall have voting rights and shall be eligible to serve on the Executive Council.

6.3 Application for Membership

6.3.1 Application for membership of the Association shall be made on the official Application for Membership form, from time to time, of the Association.

6.3.2 Without in any way limiting the process of the Executive Council such form shall contain an undertaking by the applicant that upon admission to membership, it shall be bound by and accept the provisions of the Constitution and any by-laws or codes laid down by the Association, including the Code of Conduct.

6.3.3 Every Organisation admitted to membership of the Association shall nominate from time to time a person of such body as its representative. Such person shall be permitted to attend meetings of Members of the Association and such representative shall be permitted to vote thereat on behalf of the body that so nominated that person.

6.3.4 A proposed Member shall not be deemed admitted to membership until the Subscription Fees have been paid to the Association in full.

6.3.5 Every Member shall lodge with the offices of the Association, the physical address, fax number, telephone number and e-mail address to which communications may be directed by the Association's office. The Member is obliged to timeously advise the Association of any changes to a foregoing.

6.4 Subscription Fees

6.4.1 The Subscription Fees of the Association shall be for such amounts as the General Meeting of the Association may from time to time decide by simple majority, following a recommendation from the Executive Council.

6.4.2 In addition, a special levy to meet any special, unusual, or other expense may be imposed from time to time by the decision of a simple majority at a General Meeting on the recommendations of the Executive Council.

6.4.3 All Subscription Fees shall become due on the 1st day of January and shall be payable within 30 (thirty) days. Failure to pay any Subscription Fees or special levy within 90 (ninety) days from due date shall automatically terminate membership unless the Executive Council grants an extension in writing to the said Member.

7. COMPLIANCE WITH THE CODE OF CONDUCT AND MEMBERSHIP OF OTHER SELF-REGULATORY ASSOCIATIONS

7.1 The Association supports ethical, honest, defensible, and responsible advertising, marketing, and promotion. It is therefore compulsory for all Members to sign and be bound by the Code of Conduct. Should any Member decline to sign the Code of Conduct or be in material breach of the Code of Conduct, the Member may face disciplinary action, which may result in the termination of membership and referral of such Member to the relevant law enforcement authority of the DOH, including the Medicines Control Council (or its successor in title).

7.2 Although all Members are, at the very least, required to comply with the provisions of the Association's Code of Conduct, Members are encouraged to

subscribe to additional independent and accredited marketing authorities that are applicable to such Members' businesses, such as the Advertising Standards Authority of South Africa, the MCA and/or any other recognised body.

8. TERMINATION OF MEMBERSHIP

A Member shall cease to be a Member:

- 8.1 upon the passing of a resolution by the majority of 75% (seventy-five percent) of the Members present or represented at an Executive Council Meeting, ruling that it is undesirable in the interest of the Association that the Member shall remain a Member, provided that the Member has been given a fair and reasonable opportunity to state its case as to why it ought not to be suspended or expelled. No legal representation shall be allowed; however, the Member may be represented by any of its staff, or another Member, at its election (naturally with the consent of such other Member).
- 8.2 upon any Member giving 3 (three) months calendar notice in writing of resignation to the Executive Council. The Executive Council shall determine, in its unfettered discretion, whether to refund *pro rata* the relevant membership fee, based on the Member's conduct in leading up to the said voluntary termination.
- 8.3 if the Member does not comply with the eligibility requirements envisaged in Article 6.1.
- 8.4 upon being provisionally or finally wound up or removed from the Register of Companies in the case of a Member who is a juristic person;
or
- 8.5 upon the death of a Member who is a natural person.

9. EXECUTIVE COUNCIL

- 9.1 The determination of the general policy and direction and control of the operations of the Association and its affairs shall be vested in the Executive Council. The Executive Council shall consist of not less than 6 (six) members and not more than 8 (eight) members duly elected by the Members at the Annual General Meeting.
- 9.2 The members of the Executive Council shall every two (2) years, on or about the same day as the Annual General Meeting, elect a Chairperson, Vice-Chairperson and Treasurer (as and when they become vacant after each two (2) year period).
- 9.3 Members of the Executive Council, including the Chairperson, Vice-Chairperson and Treasurer shall automatically retire after a two (2) year period on or about the same day as the Annual General Meeting. The Association at the Annual General Meeting shall elect, by a secret ballot, the Executive Council positions as and when they become vacant for the forthcoming year. A retiring member shall be eligible for re-election.
- 9.4 Any member who wishes to resign from the Executive Council, must submit a two (2) month letter of termination. It is the decision of the Executive Council to co-opt, if necessary, a replacement from a fully paid up member company.
- 9.5 Any member of the Executive Council who shall have been absent without leave for any 3 (three) consecutive Executive Council meetings shall be deemed to have vacated his/her office.
- 9.6 Vacancies on the Executive Council during its year of office shall be filled or co-opted at the discretion of the Executive Council.
- 9.7 Any person may be co-opted onto the Executive Council, irrespective of the employer Organisation of such person and shall have the right to vote, provided

that the employer Organisation of such co-opted person is a fully paid up Member.

9.8 A Member of the Executive Council shall vacate his/her office if:

9.8.1 he/she resigns his/her office by notice in writing to the Chairperson;
or

9.8.2 he/she or the Organisation of which he/she is the representative ceases to be a Member; or

9.8.3 a resolution by majority is passed by the other members of the Executive Council declaring that it is undesirable in the interest of the Association that he/she remains a member of the Executive Council. No such resolution shall be effective unless the notice convening the meeting has indicated that the meeting would consider such resolution and the said member has had the opportunity of attending in order to state his/her case and to answer any charge or charges made against him/her.

10. **POWERS OF THE EXECUTIVE COUNCIL**

The Executive Council shall have the power from time to time:

10.1 to make codes and/or by-laws consistent with this Constitution.

10.2 to pass resolutions which shall be binding upon the Association and its Members in all matters save where otherwise specifically provided for in this Constitution.

10.3 to initiate consideration of matters of broad policy affecting the affairs of the Association and to direct investigations arising therefrom and/or the implementation of such policy.

10.4 to control and manage the financial affairs and transactions of the Association and to prepare and authorise the preparation annually of statements of account and balance sheet reflecting the affairs of the Association and to prepare and authorise the preparation of the annual budget and to authorise expenditure in terms thereof. Without limiting a foregoing, to open bank accounts in the name of the Association and to draw, accept, endorse, and execute bills of exchange, promissory notes, cheques and other negotiable instruments connected with the business and affairs of the Association.

10.5 to appoint full or part time salaried officials and/or employees including but not limited to an Executive Director and a Secretary who shall hold office for such period and perform such duties and receive such remunerations as the Executive Council from time to time may determine; and

10.6 regulate its meetings as it deems fit.

10.7 Members of the Executive Council may only be voted onto the Executive Council if the Organisation they represent is a fully paid up Member of the Association and they are employed by or are a director of such Organisation.

10.8 For the transaction of business, the quorum shall be 4 (four) of the Executive Council members.

10.9 All questions at a meeting shall be decided by a majority of votes and in the case of an equality of votes, the presiding Chairperson of the meeting shall have a second vote.

10.10 Each member of the Executive Council shall have one vote.

10.11 The Secretary shall give 14 (fourteen) days written notice of a meeting. The Chairperson may authorise shorter notice to be given.

10.12 The Executive Council may appoint committees and sub-committees for such objects and purposes and with such powers and such duties as may be decided upon consistent with carrying out the objective and interest for which the Association had been formed.

10.13 The Executive Council may determine the remuneration of the Auditors and/or salaried staff.

10.14 The Executive Council may institute, conduct, defend, compound, or abandon any legal proceedings by or against the Association or its Office Bearers, or otherwise concerning the affairs of the Association.

10.15 The Executive Council shall cause minutes for the purpose:

10.15.1 of all appointments of members of the Executive Council.

10.15.2 of the names of members of the Executive Council present at each meeting; and

10.15.3 of all resolutions and proceedings of meetings of the Executive Council.

10.16 The Executive Council shall be responsible for:

10.16.1 keeping a register of Members of the Association.

10.16.2 keeping a register of the Executive Council together with a record of their addresses to which notices are to be sent.

10.16.3 safe-guarding all documents of title; and

10.16.4 for keeping all other records that are required to be maintained.

10.17 Upon such terms and conditions as the Executive Council may deem fit, the Executive Council may purchase, sell, hire, let or otherwise acquire or dispose of or deal with any property, movable or immovable, which may be required for the purposes of, or be capable of being used in connection with, any of the objectives of the Association.

11. MEETINGS

11.1 The Association shall once in every financial year hold an Annual General Meeting at such time and place that may be determined by the Executive Council, provided not more than 15 (fifteen) months shall lapse between any two such Annual General Meetings.

11.2 Other General Meetings may be held at any time, subject to the relevant provisions contained in this Constitution. At least 2 (two) General Meetings other than the Annual General Meeting should be held within a financial year.

11.3 An extraordinary General Meeting shall be called upon receipt of a formal request, signed by not less than 20 (twenty) Members or 25% (twenty-five percent) of membership stating fully the reasons for the request. Notice of the meeting and the reason shall be given no less than 21 (twenty-one) days prior to the meeting. The Executive Council may call for an extraordinary General Meeting should circumstances justify such a meeting.

11.4 Not less than 21 (twenty-one) days' notice in writing shall be given of every Annual General Meeting and of every meeting called to pass a special resolution and not less than 14 (fourteen) days' notice in writing shall be given 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.

11.5 No business shall be conducted at any General Meeting unless a quorum of

Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, one third of the Members entitled to be present and vote at such meeting, shall be a quorum.

11.6 At all Annual General Meetings or General Meetings, the Chairperson or Executive Director shall have an additional or casting vote in the case of an equality of votes. In all cases of dispute, in matters of procedure, the decision of the Chairperson and/or Executive Director shall be final and conclusive.

11.7 At any General Meeting a resolution put to date of the meeting shall be decided on a show of hands, unless a poll is demanded by the Chairperson, or at least 5 (five) Members present in person.

11.8 On a vote, either by show of hands or a poll, each Member present or by proxy shall have one vote.

11.9 A resolution submitted by Members for consideration at an Annual General Meeting shall be placed on the agenda for the meeting, provided that 14 (fourteen) days' notice of such resolution has been given in writing. The Executive Council shall at its discretion have the right to submit resolutions for discussions at any annual General Meeting.

12. **DISCIPLINARY PROCEDURES**

Whenever the Executive Council or a sub-committee, appointed by the Executive 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 provision of the Code of Conduct, the Executive Council may implement the rules of such Code as may be published by it, from time to time.

13. ADMINISTRATION

- 13.1 The financial year of the Association shall be from 1 January to 31 December of the same year.
- 13.2 Proper books of accounts shall be kept to exhibit and explain the transactions and financial position of the Association.
- 13.3 The Executive Council shall at least once in every year lay before the Association at the Annual General Meeting a statement of income and expenditure and a balance sheet in such a form and containing all such particulars as required, both made up to date not more than 6 (six) months before the meeting.
- 13.4 At least once 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 auditor or auditors, including the Auditors.

14. ALTERATIONS TO THE CONSTITUTION

Any proposed alterations to the Constitution of the Association may only be considered at an Annual General Meeting or a specially convened general meeting with the required written notice of the proposal. Any alteration or amendment must be proposed in writing by an ordinary Member of the Association and seconded by another. Such alterations shall be passed if supported by not less than two-thirds of the Members in good standing.

15. 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.

Amended July 2020