

**CONSTITUTION
OF THE
SOUTHERN AFRICAN JUDGES COMMISSION**

**As amended in terms of a resolution passed
by extraordinary majority vote at the Annual General Meeting of the Southern
African Judges Commission,
on 13 August 2005, in Windhoek, Namibia**

1. **NAME**

The name of the association is the Southern African Judges Commission, and in this Constitution is referred to as the "Commission".

2. **LEGAL PERSONALITY**

2.1. The Commission shall be a juristic person capable of acquiring rights, incurring obligations, entering into binding legal transactions and of suing and being sued in its own name.

2.2. Any immovable property acquired by the Commission shall be registered in the name of the Commission.

3. **DOMICILE**

The Commission shall be domiciled, and its headquarters located, in the Republic of South Africa unless determined otherwise by a majority of the members of the Commission.

4. **OBJECTS**

4.1. The objects of the Commission are as follows:

4.1.1. to promote contact and co-operation among the courts in the southern African region;

4.1.2. to promote the rule of law, democracy and the independence of the courts in the region;

4.1.3. to promote and protect the welfare and dignity of judges in the member countries;

4.1.4. to establish a website at which judgments of the highest courts in the region can be collected;

4.1.5. to provide assistance to courts and to promote cooperation among judicial training institutions;

4.1.6. to arrange colloquia at which links between courts in the region can be strengthened and matters of common interest discussed;

4.1.7. to maintain contact and exchanges with other institutions in Africa and elsewhere having similar objects;

4.1.8. to encourage the publication and dissemination of judgments of the superior courts and the use of information technology; and

4.1.9. generally to promote the interests of the judiciaries of member countries and, where it is considered appropriate to do so, of any other country in the region.

4.2. It is the intention of the Commission to conduct its operations in such manner as facilitates and fosters co-operation with the Venice Commission.

5. MEMBERSHIP

5.1. The Commission shall have only one class of membership.

5.2. The persons eligible for membership of the Commission shall be the incumbent Chief Justices or equivalent officers, including Acting Chief Justices (where applicable), in their capacity as such, of:

5.2.1. the countries designated at **Annexure A** hereto, and

5.2.2. any other country designated by the members of the Commission by resolution at a general meeting.

5.3. In the event that the members designate countries as contemplated in clause 5.2.2, the Management Committee shall, notwithstanding the provisions of clause 14, have the power to amend **Annexure A** accordingly.

5.4. A member of the Commission who ceases to hold his or her post as Chief Justice or equivalent office, for any reason, shall automatically cease to be a member of the Commission.

5.5. Notification by persons referred to in clause 5.2 of their intention to become members of the Commission shall be made in writing, signed by or on behalf of the applicant and addressed to the Management Committee.

5.6. No person eligible for membership of the Commission shall be admitted as a member unless he or she agrees to be bound by this Constitution.

5.7. The successor-in-title of a member of the Commission shall be entitled to become a member upon taking up his or her position as Chief Justice or equivalent office, subject to written notification thereof to the Management Committee, which notification shall include his or her agreement to be bound by this Constitution.

5.8. The Commission may, on good cause shown:

5.8.1. suspend any person's membership, by resolution of the members; or

5.8.2. terminate any person's membership, by resolution of at least 75% (seventy five percent) of the remaining members at a general meeting of the Commission.

5.9. A member of the Commission may resign from the Commission at any time by notice in writing to the Management Committee.

5.10. No individual member of the Commission shall take any public action or make any public announcement in the name of the Commission or otherwise do anything directly or indirectly to represent that any proposal, action or statement of facts or opinion has the approval of the Commission, except when doing so under a specific mandate by the Management Committee as set out in clause 9.3.2.

6. **STRUCTURE**

6.1. The Commission shall consist of a body of members, from amongst whom a management committee, which shall be the principal executive organ of the Commission, shall be elected by the members (the "Management Committee").

6.2. The Management Committee shall be entitled to appoint such employees as it considers necessary in order to assist with the carrying out of the functions of the Management Committee, including a Co-ordinator, for such period and on such terms as it considers appropriate.

7. **LANGUAGE**

The Commission shall conduct its business in English.

8. **MEETINGS OF AND DECISION-MAKING BY THE COMMISSION**

8.1. The Commission shall hold an annual general meeting of its members once in every calendar year, in order to determine general policy and direction of the Commission and transact the following business:

8.1.1. to elect the Management Committee;

8.1.2. to receive and, if approved, to adopt the annual report and an audited statement of the accounts of the Commission to the end of the preceding financial year;

8.1.3. to appoint an auditor, who shall be registered as such in accordance with applicable legislation of the country of the auditor;

8.1.4. to approve any programmes and activities of the Commission; and

- 8.1.5. to deal with any matter which the Management Committee desires to bring before the members and to consider suggestions from the members for consideration by the Management Committee.
- 8.2. An extraordinary general meeting of the Commission may be called at any time by the Management Committee and shall be called within 30 (thirty) days of receipt by the Management Committee of a request in writing signed by not less than 50% (fifty percent) of the members stating the purpose for which such meeting is desired and setting out any resolution which it is desired to propose at such meeting. No business shall be transacted at such meeting other than that specified in the notice and no amendment to any resolution proposed at the meeting shall be allowed.
- 8.3. The chairperson of a general meeting shall be the chairperson of the Commission, or, in the event of his or her absence therefrom, nominated by the Management Committee.
- 8.4. A notice convening any general meeting shall, with the annual report and accounts of the Commission (in the case of the annual general meeting) be delivered to all members by the Management Committee not less than 30 (thirty) days before the meeting, and shall specify the business of the meeting, provided that a general meeting may be convened on reasonable notice less than 30 (thirty) days, if in the view of the chairperson urgency requires it.
- 8.5. Any resolution for consideration at any general meeting must be received by the Management Committee not less than 14 (fourteen) days before the date appointed for the meeting, unless all the members agree in writing to a shorter period.
- 8.6. Each member of the Commission shall have one vote.
- 8.7. A quorum for general meetings of the Commission shall be 50% (fifty percent) of the members of the Commission.
- 8.8. Decisions of the Commission that must be decided by a vote shall, unless a special majority is required by this Constitution, be decided by a simple majority of those members of the Commission present and voting at the applicable meeting.
- 8.9. A resolution in writing signed and agreed to by the requisite majority of the members of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission duly called and held, and may consist of several documents in like form each signed by one or more members of the Commission.

- 8.10. A member of the Commission may, for any purpose related to the affairs of the Commission, be represented by an alternate who must be a judge of the same country, designated by him or her in writing to the chairperson, if he or she is unable to attend to such matter him or herself.
- 8.11. Non-member observers shall be admitted to a general meeting of the Commission, at the request of any member and subject to the approval of such request by the chairperson, provided that no such observer shall be entitled to vote or, without the express permission of the chairperson, participate in any discussions at such meeting.
- 8.12. Notice of any meeting may be given by mail, email or fax, as per the indicated preference of the members of the Commission. Notification shall be deemed to have been received at the end of the day following its transmission by email or fax, and by the end of the 5th (fifth) working day after transmission by mail. Each member shall be required to provide his or her contact details to the Management Committee and to give notification of any changes thereto.
- 8.13. Subject to this Constitution, general meetings of the Commission may regulate their own procedure.

9. MANAGEMENT COMMITTEE

9.1. Composition

9.1.1. The Management Committee shall consist of the following three office-bearers, who shall be from different member countries, and who shall accept the fiduciary responsibility of the Commission:

9.1.1.1. chairperson;

9.1.1.2. deputy chairperson; and

9.1.1.3. immediate past chairperson.

9.1.2. The Management Committee may fill, by co-option, any vacancy that may occur during the course of a year but the person so filling the vacancy shall retire at the annual general meeting following his or her co-option and shall be eligible for election.

9.1.3. The Management Committee may, in addition, co-opt one or more additional members, either on an *ad hoc* basis for a particular purpose or for the balance of a year, but such co-opted members shall retire, if not earlier in accordance with the terms of their *ad hoc* co-option, at the annual general meeting following their

9.1.4.

9.1.5.

9.3.3. In order to carry out its functions, the Management Committee shall have the general investment and administrative powers set out in **Annexure B** hereto.

9.3.4. The Management Committee shall not have the power to carry on any trade or business except to the extent permitted by section 30(3)(b)(iv) of the Income Tax Act (No 58 of 1962) of the Republic of South Africa (the "Income Tax Act").

9.4. **Meetings**

9.4.1. The Management Committee shall meet from time to time as may be necessary.

9.4.2. The chairperson on his or her own initiative, or at the request of any other member of the Management Committee, may by signed written notice to the remaining members, call a meeting of the Management Committee, provided that such notice is delivered at least 30 (thirty) days prior to the date of the proposed meeting or, if in the view of the chairperson urgency requires it, such notice is delivered within a reasonable period less than 30 (thirty) days prior to the date of the proposed meeting.

9.4.3. Meetings of the Management Committee shall be held at locations to be agreed by the members, or by video conference, conference call, circulation of documentation or other medium as agreed by the members.

9.5. **Proceedings at meetings**

9.5.1. Two out of the three elected members of the Management Committee shall form a quorum, provided that wherever possible, all three elected members shall participate in meetings of the Management Committee, either themselves or represented by a designated alternate.

9.5.2. Each member of the Management Committee shall have one vote, and the chairperson of the Management Committee shall have no second or casting vote in the case of an equality of votes.

9.5.3. Decisions of the Management Committee that must be decided by a vote shall be by a majority of the members of the Management Committee entitled to vote.

9.5.4. The Management Committee may regulate its own proceedings as it thinks fit, except to the extent specified otherwise in this Constitution.

10. SUB-COMMITTEES

- 10.1. The Management Committee may appoint sub-committees from amongst the members of the Commission, to consider and report on any matter, provided that at least one member of each sub-committee shall be a member of the Management Committee.
- 10.2. Unless otherwise decided by the Management Committee, all sub-committees shall elect their own chairperson and have power to co-opt not more than three members.
- 10.3. The Management Committee may alter the membership or terminate the mandate of any sub-committee at any time.
- 10.4. No sub-committee shall have power to act on behalf of the Commission unless expressly authorised to do so by a resolution in writing of the Management Committee.

11. RECORDS AND MINUTES

- 11.1. Minutes shall be taken and records maintained by such person and in such form as the Management Committee may direct, of the proceedings at all general meetings of the Commission, all meetings of the Management Committee and of all sub-committees.
- 11.2. The minutes of every such meeting shall be confirmed at and signed by the chairperson of a subsequent meeting and when so confirmed and signed shall be conclusive as to all matters and things therein recorded and purported to have been done or directed to be done.
- 11.3. A resolution in writing signed and agreed to by all the members of the Management Committee shall be as valid and effectual as if it had been passed at a meeting of the Management Committee duly called and held, and may consist of several documents in like form each signed by one or more members of the Management Committee.
- 11.4. The minutes of all meetings of the Commission, the Management Committee and all sub-committees shall be made available to any member of the Commission upon request.

12. FINANCES AND ACCOUNTING

- 12.1. The sources of funding of the Commission may include donations, bequests, grants, payments, fundraising activities, sale of publications and other activities approved by the Commission, subject to section 30(3)(b)(iv) of the Income Tax Act.
- 12.2. The financial year-end of the Commission shall be 31 March of each year, or such other date as determined by the members of the Commission in general meeting.
- 12.3. The income and property of the Commission and all money received by or on behalf of the Commission shall be applied solely to wards the furtherance, promotion and execution of the

objects of the Commission and no portion thereof shall be paid by way of dividend, bonus or profit to any member of the Commission, provided that nothing herein contained shall prevent the payment in good faith of remuneration or expenses or both to any officer or employee of the Commission, or to any other person for services actually rendered by him or her to the Commission.

- 12.4. All moneys payable to the Commission shall be received by the Management Committee or such bank as shall be appointed to receive it.
- 12.5. All funds belonging to the Commission shall (unless invested) be deposited in a banking account in the name of the Commission and no sum shall be drawn from this account except as authorised by the Management Committee.
- 12.6. Any moneys not required for immediate use may be invested by the Management Committee in accordance with the provisions of **Annexure B** to this Constitution.
- 12.7. The Management Committee shall cause true accounts to be kept of the receipts, expenditures, assets, credits and liabilities of the Commission and shall place before the members of the Commission at each annual general meeting a properly audited financial statement made up to the end of the previous financial year.
- 12.8. Wherever practicable and possible, members shall endeavour to acquire funding for the attendance of meetings of the Commission from their respective governments. Further, it shall be endeavoured to convene general meetings, meetings of the Management Committee or any sub-committee to coincide with any other gathering of Chief Justices generally attended by members of the Commission. These endeavours notwithstanding, reasonable office, travelling and subsistence expenses incurred by officers and members of the Commission or by any person duly authorised by the Commission may be paid by the Commission. Rates of allowance shall be fixed by the Commission from time to time. All claims for reimbursement of expenses must be sent to the Management Committee, which may require such information in regard thereto as it may see fit.
- 12.9. The Commission is hereby empowered to accept and acquire for the purpose of achieving its objects, any gifts, bequests or payments that may be given, bequeathed or paid to it, whether such gifts, bequests or payments consist of stocks, shares, moneys, movable or immovable property, and any gifts, bequests or payments so accepted and acquired shall form part of the property of the Commission and shall be administered and dealt with subject to the terms of this Constitution.
- 12.10. The Management Committee shall be entitled to charge levies to members of the Commission from time to time for purposes which are necessary for or ancillary to the

Commission's objects, provided that such a levy is approved by resolution of a majority of the members of the Commission at a general meeting, either on a uniform or differential basis, and subject to such exemptions as may be approved.

13. INDEMNITY

- 13.1. Each member of the Commission shall be indemnified out of the funds of the Commission, against all losses, charges, costs, damages and other liability which that member may suffer or incur as a result of exercising his or her rights or performing his or her duties as a member of the Commission, save to the extent that such member acted negligently or fraudulently.
- 13.2. No member of the Commission shall be answerable or deemed in any way to be responsible for any act or default of any other member of the Commission or the Commission itself, save to the extent that such member acted negligently or fraudulently.
- 13.3. No member of the Commission shall be liable for any losses, charges, costs, damages or other liability suffered or incurred by the Commission, save to the extent that such member acted negligently or fraudulently.

14. ALTERATION OF THE CONSTITUTION

- 14.1. This Constitution shall not be altered without the approval of 75% (seventy five percent) of all those members present and voting at a general meeting of the Commission or an extraordinary meeting convened for this purpose.
- 14.2. An amendment of the Constitution shall come into effect on the date of approval by the Commission unless determined otherwise by the members in accordance with clause 14.1.
- 14.3. The notice of a meeting at which proposed alterations to the Constitution are to be considered shall state in full the proposed alteration/s.
- 14.4. Copies of any approved amendment of this Constitution shall be submitted by the Management Committee to the Commissioner for the South African Revenue Service.

15. DISSOLUTION

- 15.1. The Commission shall have perpetual existence but may at any time be dissolved upon a resolution to that effect, passed by 75% (seventy five) of all those members present and voting at a general meeting of the Commission or an extraordinary meeting convened for this purpose.
- 15.2. Upon dissolution of the Commission, the management committee shall, after making provision for the liabilities of the Commission and the costs of dissolving the Commission, distribute the accumulated funds of the Commission, if any, to:

- 15.2.1. any public benefit organisation which has been approved in terms of section 30 of the Income Tax Act and which promotes justice; or
- 15.2.2. any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity,

as may be determined by the members.

Adopted at Benoni, Johannesburg (Republic of South Africa) on this the 7th day of December 2003.

SIGNED BY:

Chief Justice Lehohla of the Kingdom of Lesotho
Acting Chief Justice Annandale of the Kingdom of Swaziland
Justice Espalanga on behalf of the Chief Justice of the Republic of Angola
Chief Justice Nganunu of the Republic of Botswana
Chief Justice Unyolo of the Republic of Malawi
Chief Justice Pillay of the Republic of Mauritius
Chief Justice Mangaze of the Republic of Mozambique
Justice Mainga on behalf of the Chief Justice of the Republic of Namibia
Chief Justice Alleear of the Republic of Seychelles
Chief Justice Chaskalson of the Republic of South Africa
Chief Justice Odoki of the Republic of Uganda
Deputy Chief Justice Lewanika on behalf of the Chief Justice of the Republic of Zambia
Chief Justice Chidyausiku of the Republic of Zimbabwe
Chief Justice Samatta of the United Republic of Tanzania

ASSENTED TO BY:

Chief Justice Gicheru of the Republic of Kenya

ANNEXURE A – DESIGNATED COUNTRIES

Kingdom of Lesotho

Kingdom of Swaziland

Republic of Angola

Republic of Botswana

Republic of Kenya

Republic of Malawi

Republic of Mauritius

Republic of Mozambique

Republic of Namibia

Republic of South Africa

Republic of Seychelles

Republic of Uganda

Republic of Zambia

Republic of Zimbabwe

United Republic of Tanzania

ANNEXURE B – GENERAL INVESTMENT AND ADMINISTRATIVE POWERS

The Management Committee shall have the following general investment and administrative powers and duties, which shall be exercised in order to fulfil its functions and further the objects of the Commission:

1. to invest the funds of the Commission as follows:
 - 1.1. with one or more financial institutions as defined in section 1 of the Financial Services Board Act (Act No. 97 of 1990) of the Republic of South Africa;
 - 1.2. in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act (Act No. 1 of 1985) of the Republic of South Africa; or
 - 1.3. in such other prudent investments in financial instruments and assets as the Commissioner of the South African Revenue Service may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Nonprofit Organisations,

provided that the provisions of this clause shall not prohibit the Commission from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance;

2. to deal from time to time with the Commission's income and assets as the Management Committee in its discretion may deem to be in the best interests of the Commission and to exercise all powers relative thereto;
3. to leave any property (whether movable or immovable, corporeal or incorporeal) which is donated or bequeathed to or otherwise acquired by the Commission in the form in which it receives it for such period as the Management Committee in its discretion deems fit, or to turn any of the said assets to account from time to time by way of exchange, sale or otherwise without limitation and, in exercising any powers of sale, whether conferred in this sub-paragraph or otherwise, to cause such sale to be effected by public auction, public tender or private treaty, as it may consider fit, with power to invest the proceeds of any realisation and any other amount from time to time in the Management Committee's hands in such manner and in such place as it in its discretion deems fit and to realise and vary any such investments from time to time, provided that, until invested in such manner as is permitted in terms of this Constitution, the cash resources of the Commission may be deposited or placed only with one or more financial institutions as defined in section 1 of the Financial Services Board Act (Act No. 97 of 1990) of the Republic of South Africa;

4. in its discretion to accept and acquire for the purpose of the Commission or to reject any donations (provided that all donations to the Commission shall be irrevocable), bequests or payments from any person, firm, company or association that may be given, bequeathed or paid to it as an addition or with the intention to add to the funds previously donated to it, and any additions so accepted and acquired shall be deemed to form part of the Commission's assets to be administered and dealt with subject to the terms of this Constitution;
5. to borrow from time to time such sums of money on such terms and conditions as the Management Committee considers fit but in accordance with standard business practices, with power from time to time to consent to any variations or alterations of the terms of any such borrowing and to secure such borrowing or any other obligations of the Commission by the mortgage or pledge, either generally or specially, of any asset constituting portion of the Commission's assets and, if considered fit, to borrow afresh on security or otherwise for the purpose of repaying any such mortgage or pledge;
6. to open and operate (either themselves or by a person or persons authorised by them) upon accounts in registered banks and other financial institutions;
7. to reimburse the members of the Management Committee from the Commission's funds for all expenses which may be incurred by them in or about the execution of the powers conferred upon them, and, without detracting from the foregoing, to employ professional advisers, consultants, agents and other people whomsoever to carry out the objects of the Commission and to pay their fees, commissions, remuneration and other charges out of the Commission's funds and to confer upon any agents so appointed the right to exercise any discretion which may be vested in the Management Committee;
8. to call in, recover, collect and sue for all monies owing to the Commission, to foreclose bonds, to buy in securities, to institute or defend legal proceedings and to sign all deeds, powers of attorney and other documents that may be necessary for those purposes;
9. to sign and execute transfers and cessions of property, bonds, consents to cancellations of bonds, leases, servitudes and other deeds and powers of attorney relating thereto, and generally all documents of any nature whatsoever as may be necessary from time to time in connection with the acquisition, realisation, disposal or encumbrance of assets of or for the Commission and the carrying out of the terms of this Constitution;
10. to exercise the voting power attached to any shares in any such manner as it may consider in the best interests of the Commission and, either solely or in conjunction with any other person or persons, to enter into such arrangements as they consider fit for the purpose of causing the liquidation, reconstruction or amalgamation of any of the companies of whose capital the said shares shall form portion, and to enter into and carry out any such agreement or agreements as they may consider appropriate in regard thereto;

11. to exercise all the voting powers attaching to any debentures or other securities at any time held by the Commission;
12. either solely or in conjunction with other persons, to cause any reorganisation, consolidation, merger or readjustment of the capital of any company shares in which may at any time be held as portion of the Commission's assets, and arising out of any such reorganisation, consolidation, merger or readjustment to receive and continue to hold as portion of the Commission's assets, any assets accruing by reason of the Commission's participation in any such matters;
13. to exercise any rights of conversion or subscription appertaining to any shares at any time held in the capital of any company which are portion of the Commission's assets or, at its discretion, to sell or realise any such rights, but whenever investments shall be made by the exercise of conversion or subscription rights the shares or other rights received shall be deemed to form portion of the capital of the Commission;
14. to enter into any voting trust or agreement in respect of any shares held by the Commission in any companies relating to or restricting the disposal of those shares and in particular granting rights of pre-emption to other shareholders of the said companies and also relating to voting arrangements;
15. for the purpose of allocating or distributing funds and generally for the purpose of the performance of its duties hereunder, to determine, as the Management Committee in its discretion shall consider fit –
 - 15.1. to what extent receipts and accruals shall be treated as income (and, without derogating from the generality of the foregoing, the Management Committee may, if and to the extent that it in its discretion from time to time considers it appropriate, treat capitalisation shares not issued out of a company's share premium account, as income); and
 - 15.2. to what extent they shall be treated as capital; and
 - 15.3. to what extent, if any, the income of the Commission shall be appropriated to meet depreciation of the capital value of any assets forming part of the Commission's assets,and generally to decide, *inter alia*, by apportioning or allocating receipts and accruals and losses and expenditure (including provisions) in such manner as the Management Committee in its discretion sees fit, any difficulty which may arise as to what constitutes capital and what constitutes income, and any determination made by the Commission shall be final and binding and not open to challenge by anyone;
16. to transfer into the name of the Commission or a nominee of the Commission any shares forming part of the Commission's assets;

17. to agree to any alteration or conversion of the capital of any company if shares of the company form part of the Commission's assets;
18. to deposit with and to allow to remain in the possession of a registered bank or a trust company or trust companies or other depository or depositories, as the Management Committee may think fit, any securities and other assets at any time held by the Commission;
19. to compromise, compound, submit to arbitration or settle upon such terms and conditions as it may deem advisable, all claims made by or against the Commission or matters arising in relation to the Commission and all compromises and settlements effected by them shall be final and binding on all members of the Commission;
20. subject also to restrictions contained elsewhere in this Constitution, to authorise one or more of its members to enter into contracts on behalf of the Commission and to adopt and accept for the Commission benefits under contracts entered into for the benefit of the Commission, whether before or after its creation;
21. to ensure that the Commission will not pay any remuneration to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects;
22. to ensure that the Commission will not economically benefit any person in a manner which is not consistent with its objects;
23. to comply with such reporting requirements as may be determined by the Commissioner for the South African Revenue Service; and
24. to not use the resources of the Commission directly or indirectly to support, advance or oppose any political party.