

# CONSTITUTION

of the

## The South African Freight and Logistics Association

### 1. DEFINITIONS AND INTERPRETATION

In this constitution, unless the context indicates otherwise:

- 1.1 **"Affiliate Member"** means any person (natural or juristic) who carries on a business as an association or federation within or outside the Republic of South Africa with objectives that are related to or associated with international freight forwarding or customs broking as determined by the Executive Committee from time to time, and who has been approved as an Affiliate Member.
- 1.2 **"Associate Member"** means any person (natural or juristic) who carries on the business related to a freight forwarder, SARS licensed customs broker, harbour carrier, importer, exporter, warehouseman, logistics service provider or any other business determined by the Executive Committee from time to time, and who has been approved as an Associate Member
- 1.3 **"Association"** means the entity described in clause **Error! Reference source not found.**;
- 1.4 **"Executive Committee"** means the committee appointed in terms of clause 8.3;
- 1.5 **"Executive Committee Member"** means a member of the Executive Committee;
- 1.6 **"Industry"** means the freight forwarding industry;
- 1.7 **"Honorary Member"** means any individual who has been conferred an honorary membership by the Association at a general meeting in recognition of their services to the Association, and who has accepted that honorary membership.
- 1.8 **"Member"** means an Ordinary Member or an Associate Member or an Affiliate Member or an Honorary Member. **"Members"** and **"Membership"** shall have a corresponding meaning;

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- 1.9 “**Ordinary Member**” means any person (natural or juristic) who carries on the business of a freight forwarder, SARS licensed customs broker, harbour carrier, importer, exporter, warehouseman, logistics service provider or any other business determined by the Executive Committee from time to time, and who has been approved as a Member in accordance with clause 5;
- 1.10 a reference to a "business day" means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 1.11 the use of the word "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example or examples; and
- 1.12 when any number of days is prescribed, same shall be reckoned exclusively of the first and inclusively of the last unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in South Africa

## 2. **NAME**

- 2.1 The name of the Association is the South African Freight and Logistics Association and the abbreviated name is SAFLA
- 2.2 The Association was formed by the following businesses: JLOG International, Freitan (Pty) Ltd and Clear Freight (Pty) Ltd
- 2.3 The registered office of the Association is: 8 Greenstone Place, Stoneridge, Edenvale, Johannesburg 1609.
- 2.4 This constitution shall govern the Association.

## 3. **PURPOSE AND OBJECTIVES**

- 3.1 The main purpose of the Association shall be to promote, advance and protect certain interests of its Members. In this regard, the Association’s objectives are to:
- 3.1.1 promote the legitimate and lawful interests of Members and the Industry as a whole in a lawful manner;

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- 3.1.2 promote, support or oppose any proposed legislative or other regulatory measures which affect, or potentially affect, its members or the Industry;
  - 3.1.3 seek direct representation on such parts of government, and on other forums, which affect, or potentially affect, Members or the Industry;
  - 3.1.4 lobby government and other authorities and stakeholders to introduce measures which support and promote the Industry and ensure the sustainability and growth of the Industry through the formulation of specific strategies and priorities;
  - 3.1.5 encourage and promote ethical and compliant business practices by all its Members;
  - 3.1.6 frame rules, agreements and/or a Code of Conduct for observance by Members;
  - 3.1.7 affiliate or co-operate with, or subscribe to, any association, society, corporation or other body in the Republic of South Africa, whose objects are in general similar or complementary to the objects of the Association;
  - 3.1.8 seek legal advice or to institute legal proceedings to the extent necessary to safeguard the interest of members; and
  - 3.1.9 do such other lawful things as may appear to be in the interests of the Association and the Members and which are not inconsistent with the objects or any matter specifically provided for in this constitution.

#### **4. LEGAL STANDING, LIABILITY, INDEMNITY AND DISSOLUTION**

- 4.1 The Association is a corporate body under the common law of the Republic of South Africa known as a *universitas personarum*. Accordingly:
  - 4.1.1 the Association has perpetual succession and the Association continues as an entity notwithstanding changes in and of its Membership;
  - 4.1.2 the Association holds its assets distinct from its Members;
  - 4.1.3 no Member has any right, title, claim or interest in or to the assets of the Association by reason of its Membership;
  - 4.1.4 no Member may directly or indirectly have any personal or private interest in the Association; and

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- 4.1.5 the Association, and not its Members, is responsible for the payment of the Association's debts.
- 4.2 The Association shall have powers to borrow, invest or lend money, or to acquire or dispose of movable or fixed property for the objects of the Association, and to deal therewith.
- 4.3 The liability of the Association shall be limited to its assets, and without limiting the generality of clause 4.1.5, Members shall not have any further liability other than for the amount of any unpaid subscriptions, if any, from time to time.
- 4.4 Any committee member, office bearer, servant or agents acting in the bona fide exercise of their powers on behalf of the Association, shall be indemnified against all loss, costs or expenses arising from such acts, out of the assets of the Association.
- 4.5 The income and property of the Association shall be applied solely towards the promotion and objects of the Association as determined by the Executive Committee from time to time. Any of its profits or gains shall not be distributed to any person and shall be invested by the Association to meet its objects.
- 4.6 Should the Association be dissolved, any assets remaining after satisfaction of its liabilities shall be given or transferred to any other Association or persona with objects similar to those of this Association, and no assets shall be distributed amongst the Members, or to another person, not itself, nor for gain.

## 5. **FUNDING**

The Association shall be funded by:

- 5.1 Membership fees and/or other contributions (including annual Membership fees or special Membership fees from time to time);
- 5.2 ad hoc project specific contributions by Members.

## 6. **COMPETITION LAW CAUTIONARY**

- 6.1 The Association and the Members must comply with the Competition Act, 1998. All Members must familiarise themselves with the Competition Act, 1998.
- 6.2 All Members and the Association are prohibited from, and agree not to, discuss or engage with each other in relation to any actual or potential agreement, contract, arrangement,

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understanding, cooperative or coordinated conduct, practice, or discussions which directly or indirectly has the purpose or effect of contravening the Competition Act, 1998 including by directly or indirectly fixing a purchase or selling price or any other related trading condition, or dividing markets by allocating customers, suppliers, territories or specific types of goods or services, or tendering collusively, or substantially lessening or preventing competition in the market.

## **7. MEMBERSHIP**

### **MEMBERSHIP CATEGORIES**

- 7.1 The Association shall have 4 categories of Members, namely Ordinary Members and Associate Members, Affiliate Members and Honorary Members.

### **MEMBERSHIP APPLICATIONS**

- 7.2 Membership shall be by application only.
- 7.3 Any person (natural or juristic) who carries on the business of a freight forwarder, SARS licensed customs broker, harbour carrier, importer, exporter, warehouseman, logistics service provider or any other business determined by the Executive Committee from time to time may apply to the Association to become an Ordinary Member. Such an application must be made in the manner and form determined by the Executive Committee from time to time.
- 7.4 Any person (natural or juristic) who carries on a business that is aligned or related to freight forwarding or customs broking (including for example training providers or industry employment agencies) or who are affiliate members of national association members of the International Federation of Freight Forwarders Associations or its successor. Such an application must be made in the manner and form determined by the Executive Committee from time to time.
- 7.5 Within a reasonable time after receiving a membership application, the Executive Committee shall, at its sole discretion, decide to approve or reject the application. As soon as possible after making its decision in this regard, the applicant of its decision in writing.

### **MEMBERSHIP FEES AND/OR CONTRIBUTIONS**

- 7.6 Membership fees and/or other contributions for Ordinary Members and Associate Members shall be determined by the Executive Committee annually. As far as

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reasonably possible, the Executive Committee shall determine the annual Membership fees at least 2 months before the start of a new financial year.

7.7 Membership fees will be billed on an annual basis and are payable quarterly in advance.

7.8 Should the annual Membership fees at any time be found by the Executive Committee to be insufficient to meet the Association's expenditure, the Executive Committee at its discretion may determine a special Membership fee to be paid by Members it shall be competent for the Executive to make such levy upon members in its discretion as will be sufficient to meet the shortfall.

#### **MEMBERSHIP RIGHTS AND BENEFITS**

7.9 Each Ordinary Member shall enjoy;

7.9.1 the right of audience at any meeting of the Association;

7.9.2 the right to vote at any meeting of the Association, it being recorded that each Ordinary Member has 1 vote; and

7.9.3 the right to nominate a person to be elected to the Executive Committee.

7.10 An Ordinary Member shall not be entitled to exercise its right to vote on any matter, or to nominate a person for election to the Executive Committee, if any of its Membership fees (including annual or special Membership fees) are outstanding.

7.11 Each Associate Member, Affiliate Member and Honorary Member shall enjoy the right of audience at any meeting of the Association. For clarity, Associate Members, Affiliate Members and Honorary Members shall not have a right to vote and shall not be entitled to nominate a person to be elected to the Executive Committee.

7.12 Membership benefits shall be determined by the Executive Committee annually and shall be presented at the annual general meeting of the Association.

#### **MEMBERSHIP TERMINATION**

7.13 The Executive Committee may at any time for good cause shown, terminate a Membership provided that the Executive Committee has given written notice setting out the reasons for such termination and provided the Member concerned with an opportunity to reply to the notice.

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- 7.14 Without limiting the generality of the above, failure by a Member to pay any Membership fee within 60 days from date of issue of an invoice for that fee may result in the termination of that Member's Membership.
- 7.15 If the Member concerned fails to submit a reply within 14 days of receipt of a notice referred to above which, in the reasonable opinion of the Executive Committee, exonerates the Member, that Member's membership shall be terminated by the Executive Committee.

## **RESIGNATIONS**

- 7.16 Any Member wishing to resign from the Association may do so by giving notice in writing to that effect. Such Member, however, shall remain liable for full Membership fees up to 31 December of the year in which resignation took place.

## **8. MANAGEMENT AND CONTROL**

### **COMPOSITION AND ELECTION**

- 8.1 The management of the business and control of the Association shall be vest in the Executive Committee which committee shall be elected by Ordinary Members annually at the Association's annual general meeting.
- 8.2 The Executive Committee shall consist of not less than 3 (three) nor more than 8 (eight) members provided that any reduction in this number caused by a temporary vacancy does not invalidate any decisions or acts taken by it.
- 8.3 The Executive Committee shall be elected at the Annual General Meeting.
- 8.4 Every Executive Committee member must:
- 8.4.1 be a person in good standing with the Association;
  - 8.4.2 be nominated by an Ordinary Member; in good standing
  - 8.4.3 accept a nomination; and
  - 8.4.4 be elected by a majority of Ordinary Member votes at an annual general meeting.
- 8.5 Executive Committee members serve for a period of 3 (three) years until the end of the meeting at which elections for a new Executive Committee take place and shall be eligible for re-election for a further term or terms.

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- 8.6 Notwithstanding clause 8.5, an Executive Committee member must resign if the Member with which he/she is affiliated/associated ceases to be an Ordinary Member for whatsoever reason.
- 8.7 Any Executive Committee member may resign in writing to the remainder of the members of the Executive Committee.
- 8.8 Vacancies on the Executive Committee by retirement or death shall be filled by the Executive Committee and the new member or members shall hold office until the next annual general meeting.

#### **CHAIRPERSON AND VICE-CHAIRPERSON**

- 8.9 As soon as possible after its election, the Executive Committee must appoint a chairperson and vice-chairperson from amongst its members. If the Executive Committee cannot reach a decision about the appointment of the chairperson and vice-chairperson, the chairperson of the previous Committee shall have a casting vote.

#### **POWERS AND DUTIES OF THE COMMITTEE**

- 8.10 The Executive Committee must manage the day to day affairs of the Association in such a manner as it may consider necessary and proper, subject to the provisions of this constitution.
- 8.11 In particular, the Executive Committee:
- 8.11.1 may appoint an executive officer and such other staff as it deems necessary to manage the day-to-day affairs of the Association at the direction of the Executive Committee;
  - 8.11.2 may determine the remuneration to be paid to a [Secretary General] and other staff appointed in terms of clause 8.11.1;
  - 8.11.3 must keep audited accurate books of account of the Association and make those books of account available to Members upon reasonable request;
  - 8.11.4 must ensure that the activities of the Association are adequately administered;
  - 8.11.5 must open and maintain a bank account in the name of the Association;
  - 8.11.6 must implement the decisions of the Association (using the Association's funds to implement those decisions if necessary);

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- 8.11.7 must ensure that the assets of the Association are maintained in good stead;
  - 8.11.8 may make decisions in pursuance of the purpose and objectives of the Association as set out in clause 3;
  - 8.11.9 may adopt rules and policies for the Executive Committee, sub-committees and/or for Members;
  - 8.11.10 may co-opt additional committee members at its discretion and appoint sub-committees or working groups (comprising Executive Committee members and/or other representatives of Members) to assist the Executive Committee in carrying on its work and delegate any tasks to such sub-committees or working groups;
  - 8.11.11 may contract on behalf of the Association;
  - 8.11.12 may institute and defend actions and proceedings at law on behalf of the Association;
  - 8.11.13 may exercise a discretion in respect of individual Membership fees on good cause shown;
  - 8.11.14 must maintain a record of the decisions of the Executive Committee and must make this record available to Members upon request; and
  - 8.11.15 must report to Members annually on decisions made and implemented by the Committee.

#### **EXECUTIVE COMMITTEE MEETINGS AND DECISIONS**

- 8.12 The Committee must meet at least 4 times a year.
- 8.13 A Committee meeting is quorate if at least half of the Committee members are present whether in person or on-line.
- 8.14 Each member of the Committee is entitled to one vote.
- 8.15 Decisions of the Committee are made by majority vote. In the case of an equality of votes the chairman is entitled to a casting vote in addition to the deliberative vote.

#### **SUB-COMMITTEES**

- 8.16 Without limiting the generality of clause 8.11.10, the Executive Committee may appoint the following sub-committees as follows:

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- 8.16.1 Members in Kwa-Zulu Natal, Western Cape, Eastern Cape, Gauteng and Border Regions may each (but are not compelled to) establish a regional executive sub-committee.
- 8.16.2 Each regional executive sub-committee shall comprise at least 4 (four) and no more than 8 (eight) members. The appointees to such sub-committees shall be nominated by the Members within the applicable region for election by the Ordinary Members within that applicable region.
- 8.16.3 The members of each regional executive sub-committee shall appoint a chairperson from amongst its members.
- 8.16.4 The chairman of each regional management sub-committee shall be a member of the Executive Committee.
- 8.16.5 Furthermore, Airfreight, Harbour Carriers and Warehousing Members shall, be allowed representation on the regional management sub-committees.
- 8.16.6 The duties of the regional management sub-committees shall be to represent and protect the interests of the Members within their respective regions in all operational and other matters affecting their individual Membership in accordance with this constitution, but external action on other than normal day-to-day operational matters may **not** be taken without express authorization by the Executive Committee.

#### **REMOVAL OF COMMITTEE MEMBERS & OFFICE BEARERS**

- 8.17 Any member of the Executive Committee, member of a sub-committee or other office bearer may be removed from office by majority vote of the members of the Executive Committee (or the other members of the Executive Committee, as the case may be):
- 8.17.1 if the Member with which he/she is affiliated / associated ceases to be an Ordinary Member and he/she refuses to resign as contemplated in clause 8.6.
- 8.17.2 if he/she infringes any of the provisions of this constitution; or
- 8.17.3 if he/she acts in a manner which is detrimental to the interests of the Association,
- provided that such person may not be removed from office unless he/she has been afforded an opportunity to state his/her case personally at a meeting of the Executive Committee.

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- 8.18 A member of the Executive Committee, member of a sub-committee or other office bearer who has appeared before the Executive Committee and who is dissatisfied with the decision of the Executive Committee shall have the right to appeal to the Ordinary Members at the first ensuing general meeting of the Association. Notice of appeal shall be given to the secretary, in writing, within fourteen (14) days of the date on which the decision of the Executive Committee was communicated to the individual concerned. At the general meeting the Members may confirm or reverse the decision of the Executive Committee and that decision by the Members shall be final.

#### **SECRETARY, AUDITORS AND MINUTES**

- 8.19 The Executive Committee must appoint a Secretariat from amongst its members.
- 8.20 The Members must appoint auditors at an annual general meeting.
- 8.21 The resolutions and records of all Member meetings shall be recorded by the secretary in a minute book, which shall be signed by the chairperson when confirmed at the next ensuing meeting. Copies of minutes shall be circulated to all Members.

#### **LIMITATION OF LIABILITY AND INDEMNITY**

- 8.22 No Executive Committee member or sub-committee member shall be liable in any way for the Association's debts or legal obligations.
- 8.23 The Association shall not hold any Executive Committee member or sub-committee member liable for, and hereby indemnifies each such Member or Executive Committee member or sub-committee member against –
- 8.23.1 any loss, damage or costs arising out of any acts performed by him/her/it for or on behalf of the Association and which is:
- 8.23.1.1 done on a voluntary basis for no reward;
- 8.23.1.2 done in good faith; or
- 8.23.1.3 authorised by the Executive Committee and/or the Association or otherwise within the ordinary course and scope of his/her authority as a Committee Member;
- unless those acts constitute fraud, willful misconduct or gross negligence.

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## 9. **BANKING**

- 9.1 All subscriptions and any other revenue of the Association shall be deposited in a bank account in the name of the Association.
- 9.2 The Executive Committee may invest any surplus funds of the Association in a registered commercial bank.
- 9.3 All expenses incurred by the Association shall, where by the Executive Committee, be defrayed out of the funds of the Association.
- 9.4 Payments shall only be made from such funds with the written approval of two of the authorised bank signatories.
- 9.5 The financial year of the Association shall end on 31 December.

## 10. **ASSOCIATION MEETINGS**

- 10.1 The Association must hold an annual general meeting and may hold any number of special general meetings every year. An annual period shall, for this purpose, be a calendar year.

### **ANNUAL GENERAL MEETING**

- 10.2 The annual general meeting of the Association shall be held not later than the month of April in each year at a venue to be confirmed in the notice of the meeting. Such written notice must be given at least fourteen (14) days in advance of the annual general meeting. The Executive Committee may provide a virtual link to the annual general meeting for those Members who are unable to attend in person.
- 10.3 At least the following matters must be presented, discussed, and/or decided at the annual general meeting:
- 10.3.1 presentation of the annual report and financial statements of the Association;
  - 10.3.2 the election of the chairman, vice-chairman and Executive Committee if an election year
  - 10.3.3 election and appointment of an auditor;
  - 10.3.4 presentation of the Executive Committee's report detailing decisions made and implemented during the year;

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- 10.3.5 presentation of the Association's audited books of accounts for the year;
  - 10.3.6 the annual budget of the Association for the following year;
  - 10.3.7 ratification of the appointment of regional executive and divisional sub-committee members;
  - 10.3.8 ratification of the appointment of Regional Executive Sub-Committee members if an election year and
  - 10.3.9 any other business of which due notice has been given.

#### **SPECIAL GENERAL MEETING**

- 10.4 A special general meeting may be called by the Executive Committee at any time and must be called by the Executive Committee at the written request of at least 12 (twelve) Members.
- 10.5 At least 14 days' notice of such a special general meeting must be given to Members stating the business for which the meeting is called and no other business shall be dealt with thereat.

#### **QUORUM AND VOTING**

- 10.6 An annual or special general meeting of the Association shall be quorate if at least 20% (twenty percent) Members are present in person or by proxy.
- 10.7 If no quorum of members is present at any meeting of members, then such meeting shall stand adjourned for fifteen minutes.
- 10.8 Notwithstanding anything hereinbefore contained as to a quorum, the number of members present at such adjourned meeting shall constitute a quorum for such meeting.
- 10.9 Each Ordinary Member shall be entitled to one vote at any annual general meeting or any special meeting.
- 10.10 Decisions shall be made by simple majority vote. In the event of an equality of votes the chairman of the Executive Committee shall exercise a casting vote in addition to the deliberative vote.

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**PROXIES**

- 10.11 A Member may be represented at an annual or special general meeting by a proxy, who must also be a Member. The instrument appointing a proxy must be in writing, signed by the Member concerned and must be on the Association's proxy document and delivered to the chairman of the Executive Committee prior to the meeting.

**MATERIAL DECISIONS**

- 10.12 Despite anything to the contrary elsewhere in this constitution, the following matters require the approval of 75% (seventy five percent) of Members present at the meeting where it is tabled/discussed:
- 10.12.1 the carrying on of any business other than the business referred to in paragraph 3;
  - 10.12.2 the disposal by the Association of any assets of the Association;
  - 10.12.3 the conclusion of contracts with service providers for a period longer than 2 years or a value greater than R240 000 (two hundred and forty thousand Rand) per annum;
  - 10.12.4 ad hoc projects in pursuance of the purpose and objectives set out in paragraph 3; and
  - 10.12.5 material changes to the approved annual budget of the Association.
- 10.13 The chairman of the Executive Committee shall be the chairman of all meetings of Members, or, in his absence, the vice-chairman, and failing either, a member to be chosen from those present shall preside.

**11. NOTICES**

- 11.1 Unless otherwise specified any notice or communication in terms of this constitution:  
must be in writing to be effective
- 11.1.2 may be hand delivered or preferably via SMS or email to:
- Members at the contact details on record with the Executive Committee, it being recorded that it is the responsibility of a Member to ensure that the Executive Committee is notified of any changes to a Member's contact details.

- to the Associations executive officer or to the chairman of the Executive Committee whose contact details will be made available by the Executive Committee upon request.

11.2 Any notice or communication will be deemed to have been received on the first business day following the date on which it has been transmitted from the cellphone or information system under the control of the sender.

11.3 Any written notice or communication which has actually been received by a Member must be regarded as sufficient notice even if it has not been sent in the manner or to the address/fax number provided for above.

## 12. **AMENDMENT OF THE CONSTITUTION**

This constitution may only be repealed or amended by resolution passed by a vote of 75% (seventy five percent) of the voting power of Members present at an annual general meeting or special general meeting of the Association, provided that at least 14 (fourteen) days written notice of any proposed repeal or amendment has been given to the Members.

## 13. **DISSOLUTION**

The Association shall be dissolved if:

13.1 the Association is insolvent; or

13.2 at an annual general meeting or special general meeting of Members specifically called for the purpose of dissolving the Association, a majority of the Ordinary Members vote in favour of a resolution dissolving the Association.

## 14. **DISPUTES**

Any dispute as to the interpretation of this constitution shall be referred to the Members at the annual general meeting or a special general meeting. A majority vote of the Members personally present or represented by proxy in writing at such meeting shall be binding.