

CONSTITUTION

BirdLife South Africa, previously known as the Southern African Ornithological Society, and tracing its history back to the 1930s, is the South African partner of BirdLife International.

1. NAME

The name of the organisation shall be “BirdLife South Africa” (hereinafter referred to as “the organisation”).

2. DEFINITIONS

The Act: The Income Tax Act, No 58 of 1962 and any and all amendments thereto.

SARS: The South African Revenue Service or the Commissioner, South African Revenue Service, as the context requires.

Republic: The Republic of South Africa.

The Board: The Board of Directors as defined in paragraph 8.

Secretary: The Secretary of the Board of Directors.

3. LEGAL STATUS

The organisation shall have legal personality distinct from its members who shall have no right to its assets. The liability of members shall be limited to the amount of unpaid subscriptions, if any.

4. OBJECTIVE

The objective of the organisation is to promote the conservation, study, understanding and enjoyment of birds and their habitats.

5. PUBLIC BENEFIT ORGANISATION – SPECIAL CONDITIONS

The organisation shall comply with the following and any future relevant requirements of SARS:

- 5.1. The sole objective of the organisation is to carry on, in a non-profit making manner, one or more public benefit activities as defined in Section 30(1) of the Act.
- 5.2. Such public benefit activities, or substantially the whole thereof, shall be carried on in the Republic.
- 5.3. At least three of the persons who accept fiduciary responsibility for the organisation shall not be connected persons as defined in the Act. No single person may directly or indirectly control the decision-making powers relating to the organisation.
- 5.4. No funds shall be distributed to any person other than in the course of undertaking any public benefit activity.
- 5.5. The funds of the organisation shall be used solely for the objects for which it was established, or shall be invested with registered financial institutions as defined in Section 1 of the Financial Sector Regulation Act (No. 9 of 2017) or in securities listed on a Stock Exchange as defined in the Stock Exchanges Control Act (No. 1 of 1985).
- 5.6. The organisation shall not carry on any business undertaking or trading activity unless specifically permitted in terms of Section 30(3)(b)(iv) of the Act.
- 5.7. On dissolution, any remaining assets shall be transferred to:
 - 5.7.1. Any similar public benefit organisation which has been approved in terms of Section 30 of the Act,
 - 5.7.2. Any institution, board or body which is exempt from the payment of income tax in terms of Section 10(1)(cA)(i) of the Act, which has as its sole or principal object the carrying on of any public benefit activity, or
 - 5.7.3. Any department of state or administration in the national, provincial, or local sphere of government in the Republic as contemplated in Section 10(1)(a) or (b) of the Act.
- 5.8. No donation will be accepted which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including misrepresentation with regard to the tax deductibility thereof in terms of Section 18A of the Act; provided that a donor may not impose any conditions which could enable such donor or any

connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

- 5.9. A copy of all amendments to the constitution shall be submitted to SARS.
- 5.10. No remuneration will be paid 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.
- 5.11. The organisation shall submit, as and when due, all required income tax returns together with supporting documentation when requested.
- 5.12. In the event that the organisation provides funds to any association of persons contemplated in the definition of “public benefit activity” in the Act, reasonable steps will be taken to ensure that the funds are utilised for the purpose for which they had been provided.
- 5.13. The organisation shall, within such period as SARS shall determine, register in terms of Section 13(5) of the Non-profit Organisations Act (No. 71 of 1997), and comply with any requirements imposed in terms of that Act.
- 5.14. Where the organisation has been approved in terms of Section 18(A) of the Act, 50% of the funds received by or accrued to the organisation by way of donations that qualify for a deduction in terms of that section, will be distributed (or an obligation will be incurred to so distribute) within twelve months from the financial year-end during which such donations were received.

6. POWERS

Subject to the special conditions contained in paragraph 5 above, the organisation may do all things required to achieve its objectives and, without in any way limiting its general powers, may operate in the Republic and elsewhere, in co-operation with like-minded organisations where appropriate, and may:

- 6.1. Purchase, acquire, invest in, lease and let out, improve, pledge, mortgage and alienate movable or immovable property.
- 6.2. Lend and borrow money, with or without security, and on such terms as considered appropriate.
- 6.3. Employ, pay and indemnify agents, trustees, and advisers and establish trusts, corporations and associations.
- 6.4. Engage in legal proceedings and sue or be sued in its own name.
- 6.5. Open and operate accounts at banks and other financial institutions under the signatures of not less than two persons authorised thereto by the Board (referred to more fully in paragraph 8 below).
- 6.6. Engage in educational activities relating to birds and the environment.
- 6.7. Co-operate with and assist other environmental, conservation, scientific and educational institutions, both governmental and non-governmental.
- 6.8. Accept as members of the organisation both natural persons and legal persona, including bird clubs.

7. MEMBERS

- 7.1. The members of the organisation shall be:
 - 7.1.1. Natural persons in good standing and who qualify to be a member and who are admitted to membership by the Board, (which natural persons may or may not also be members of affiliated clubs as referred to in paragraph 7.1.3 and 7.2 below).
 - 7.1.2. Legal persona, excluding bird clubs, admitted to membership by the Board.
 - 7.1.3. Bird clubs (which shall have their own separate legal status) which have signed an affiliation agreement with the organisation and paid a nominal affiliation fee set by the Board.
 - 7.1.4. Honorary members who shall be natural persons and number no more than 20 (twenty) at any given time who, in the opinion of the Board, have made a significant contribution towards the work of the organisation.
- 7.2. Those members referred to in paragraph 7.1 shall be referred to as “direct members”. Individual members of bird clubs that are affiliated to the organisation but who are themselves not direct members shall be referred to as “affiliated members”.
- 7.3. Applications for membership shall be submitted to the Secretary of the organisation.

- 7.4. Any person, legal persona or club (as referred to in paragraph 7.1 above) applying for membership shall be bound by the Constitution of the organisation, a copy of which shall be available for inspection at the organisation's offices and/or shall be made available to such member.
- 7.5. A register of members reflecting their names, addresses and category of membership shall be maintained by the organisation. The contents of the register shall be deemed to be correct and members shall be responsible for ensuring that the information on the register is correct.
- 7.6. The Board shall determine the different membership categories and shall from time to time prescribe the membership fees payable by such categories as well as the time and manner of payment, and shall determine the different benefits accruing to the various membership categories.
- 7.7. Membership shall terminate when:
 - 7.7.1. A member has not paid the annual subscription or affiliation fee within two (2) months of due date, provided that the organisation shall have the right to reinstate membership on such terms as it may impose.
 - 7.7.2. A written notice of resignation is received from a member.
 - 7.7.3. A member acts in a manner contrary to any of the objectives or interests of the organisation as determined by the Board and, after due and proper enquiry, is expelled.

8. BOARD OF DIRECTORS

- 8.1. Function

The Board shall be the primary authority and decision-making body of the organisation and will guide its business and operations subject to the powers and duties set out in paragraph 8.6 below, and will assist the Chief Executive Officer, where appropriate, in the execution of his duties.
- 8.2. Composition

The Board shall comprise the following members:

 - 8.2.1. The Chairman.
 - 8.2.2. The Treasurer.
 - 8.2.3. The Chief Executive Officer.
 - 8.2.4. The Chief Financial Officer.
 - 8.2.5. A maximum of four members of the organisation of at least two years standing, referred to as Members' Directors.
 - 8.2.6. A maximum of six co-opted members.
- 8.3. Nomination and election of Directors
 - 8.3.1. The Chairman and Treasurer shall be elected by members in General Meeting.
 - 8.3.2. The Chief Executive Officer and the Chief Financial Officer shall be appointed as such by the Board and act ex officio.
 - 8.3.3. The Members' Directors referred to in paragraph 8.2.5 above shall be elected in accordance with the provisions of Paragraph 8.4 below.
 - 8.3.4. Co-opted members shall be appointed by the Board as and when required.
- 8.4. Nomination and election of Members' Directors specifically
 - 8.4.1. The Secretary shall, at least sixty days before every Annual General Meeting, circulate to all members a note:
 - 8.4.1.1. Specifying the number and identities of the Members' Directors referred to in 8.2.5 above who have or will have retired by the date of the Annual General Meeting as a result of their term of office having expired or for any other reason.
 - 8.4.1.2. Calling for nominations for Members' Directors.
 - 8.4.1.3. Requiring that all nominations be accompanied by a proposer and seconder, a form of acceptance by the person nominated and a short curriculum vitae.
 - 8.4.1.4. Specifying that all nominations should be lodged with the Secretary in the form and manner prescribed by him/her no later than thirty days before the Annual General Meeting.
 - 8.4.2. All nominations shall be referred by the Secretary to the Chairman of the organisation's Nominations Committee. The Nominations Committee shall, following the comprehensive procedure set out in its Term of Reference for the purpose of facilitating the election and appointment of Board members, prepare a short list of nominees for Members' Directors.
 - 8.4.3. The names of the short-listed nominees shall be circulated by the Secretary with the agenda for the Annual General Meeting in a form and manner in his/her sole discretion.
 - 8.4.4. The agenda for the meeting shall contain a provision for the election of Members' Directors and the Secretary shall decide the method of voting and announce the outcome of the election before the conclusion of the Annual General Meeting.

- 8.5. Tenure of Members of the Board
- 8.5.1. The Chairman, Treasurer and Members' Directors shall all be elected for a period of four years but if willing to continue in office shall be eligible for re-election for a further period of four years only.
- 8.5.2. The Chief Executive Officer and Chief Financial Officer shall remain ex officio members of the Board as long as they remain in office.
- 8.5.3. Co-opted members shall serve for a period of four years, and shall be permitted to serve one further period of four years only if so invited and appointed by the Board.
- 8.5.4. Should a vacancy occur among that group comprising, the Chairman, the Treasurer and Members' Directors, the remaining members of the Board shall have the right to co-opt a replacement, to serve only until the end of the next Annual General Meeting.
- 8.5.5. Should a vacancy occur amongst the group of co-opted members, the remaining members of the Board shall have the right to co-opt a replacement to serve until the expiry of the term of the outgoing director.
- 8.6. Meetings
- 8.6.1. The Board shall meet on a bi-monthly basis or, should circumstances so require, on a more or less frequent basis as its members in their sole discretion shall decide. It may also meet on an ad hoc basis if required.
- 8.6.2. The quorum for any meeting shall be 60% (sixty percent) of the number of members of the Board in office at that time.
- 8.6.3. Members of the Board not resident in Johannesburg at the time may join the meeting via Skype or similar communication method and shall for all purposes be deemed to have attended the meeting in person.
- 8.7. Powers and responsibilities
- The Board shall, without derogating from the generality of its powers in executing its duty to manage the affairs of the organisation in all its aspects, have the following specific powers, namely to:
- 8.7.1. Agree and articulate overall strategy.
- 8.7.2. Appoint members to the Board in terms of paragraph 8.2.6 above.
- 8.7.3. Approve the organisational structure and the appointment of the Chief Executive Officer.
- 8.7.4. Approve the annual budget.
- 8.7.5. Assume responsibility for the review and approval of the annual financial statements.
- 8.7.6. Manage the investments of the organization.
- 8.7.7. Approve marketing and communication, and fundraising strategies.
- 8.7.8. Review bi-monthly reports submitted by the Chief Executive Officer and the Chief Financial Officer.
- 8.7.9. Decide and approve membership categories and subscription levels.
- 8.7.10. Review and approve the recommendations of the Chief Executive Officer and any Remuneration Committee regarding annual and periodic (other than minor) salary adjustments.
- 8.7.11. Appoint committees and determine their terms of reference and composition and the conditions under which they shall operate.
- 8.7.12. Draft and confirm a Board Charter to regulate the operation of the Board and the conduct and contribution of its members.
- 8.7.13. Make all such further regulations and guidelines as are necessary for the due and proper functioning of the Board.
- 8.7.14. Commission a review and submit to members a report as more fully described in paragraph 10 hereunder.

9. AUDIT AND RISK COMMITTEE

- 9.1. Function
- The Audit and Risk Committee shall fulfil the function traditionally allocated to an Audit Committee and shall, in addition, act on behalf of members by ensuring that the election of office bearers is carried out in accordance with the Constitution and that an opinion is expressed annually regarding the effectiveness and performance of both the Board and the organisation as a whole.
- 9.2. Composition
- 9.2.1. The Committee shall comprise a maximum of five (5) members appointed by the Board in terms of its powers as specified in Paragraph 8.7.11. above.
- 9.2.2. A maximum of two (2) members may be members of the Board, but shall not be the Chairman of the Board, the Chief Executive Officer or any other executive of the organisation.
- 9.2.3. The members of the committee shall elect from their number a Chairman from among those members who are not members of the Board.

- 9.2.4. The tenure of all members of the Committee shall be three (3) years but they shall be eligible for further periods of three (3) years if they are so willing.
- 9.2.5. Should a vacancy occur among the members referred to in 9.2.2 above, the Board shall have the right to appoint a replacement to hold office until the next Annual General Meeting.
- 9.3. Meetings
The Audit and Risk Committee shall meet twice in each calendar year or, at the sole discretion of its Chairman, more frequently if required, and the dates of all meetings shall be decided by the Chairman.
- 9.4. Powers and responsibilities
The powers and responsibilities of the Audit and Risk Committee, in both its audit and general oversight role, shall include but not be limited to the following:
 - 9.4.1. Liaise with the organisation's external auditors in the planning and execution of the annual audit.
 - 9.4.2. Act on any and all recommendations arising out of the audit.
 - 9.4.3. Report to the Board on the completion of the audit.
 - 9.4.4. Review and evaluate adequacy and effectiveness of internal controls, including financial controls.
 - 9.4.5. Regularly assess risks that the organisation does or may face and make recommendations to the Board in regard thereto.
 - 9.4.6. Supervise and approve the organisation's insurance programme and other risk control measures.
 - 9.4.7. Approve annually a schedule of competencies for the Board and the Chief Executive Officer.
 - 9.4.8. Review the Annual Financial Statements and recommend approval by the Board.
 - 9.4.9. Recommend to the Board the appointment or reappointment of the organisation's external auditor.

10. GOVERNANCE

The Board shall commission an annual review, at each year end, of the performance of the organisation as a whole as well as of the Board itself; which review shall result in a report prepared by the Chairman of the Board, reviewed by the Audit and Risk Committee for its members' comment and input, and finally included in the organisation's annual report presented to members at the Annual General Meeting.

11. CHIEF EXECUTIVE OFFICER AND HONORARY PRESIDENT

- 11.1. The Board shall appoint a Chief Executive Officer of the organisation, who shall be an ex officio member of the Board, for such period and on such terms as it shall determine.
- 11.2. The Chief Executive Officer shall have those powers and responsibilities normally associated with such office and shall report to the Board at its regular meetings on the business and the affairs of the organisation.
- 11.3. Between regular meetings of the Board, the Chief Executive Officer shall be also responsible to, and report to, the Chairman of the Board.
- 11.4. An Honorary President of the organisation shall be elected at the Annual General Meeting for a period of four (4) years

12. GENERAL MEETINGS OF MEMBERS

- 12.1. The Board shall each year convene an Annual General Meeting within six months of the organisation's financial year-end. The business of the Annual General Meeting shall include:
 - 12.1.1. Confirmation of the minutes of the previous meeting and any general meetings.
 - 12.1.2. Consideration and adoption of the annual report of the Chief Executive Officer.
 - 12.1.3. Consideration and adoption of the annual report of the Chairman of the Board, including the annual review referred to in paragraph 10 above.
 - 12.1.4. Consideration and adoption of the report of the Treasurer.
 - 12.1.5. Consideration and adoption of the audited annual financial statements.
 - 12.1.6. When necessary, the election of Board members, the Treasurer and the Honorary President.
 - 12.1.7. Appointment of the external auditor.
 - 12.1.8. Consideration of resolutions submitted by members, notice of which shall have been submitted to the Secretary not less than 2 months before the date of the meeting.
 - 12.1.9. Any other business allowed by the Chairman of the Board.
- 12.2. The financial year of the organisation shall be the twelve-month period preceding the 31 December each year.

- 12.3. The Secretary of the organisation shall, at the request of the Board or on receipt of a requisition signed by one hundred (100) direct members, or 10% (ten percent) of the direct membership, whichever is the lesser, convene a Special General Meeting. A meeting convened in such manner shall be subject to the provisions of this constitution, mutatis mutandis, relating to Annual General Meetings.
- 12.4. Notice of any General Meeting of members shall be sent to members by post, facsimile or electronic mail not less than four (4) weeks before the meeting and shall be deemed to have been received if sent to the postal address, facsimile number or electronic mail address of the member as recorded in the register.
- 12.5. The quorum for a meeting shall be thirty (30) members present and entitled to vote.
- 12.6. If insufficient members are present to constitute a quorum, a meeting convened in terms of paragraph 11.4 may be adjourned for not more than sixty (60) days and notice of the adjourned meeting shall be despatched to all members within fourteen (14) days of the original meeting.
- 12.7. If within thirty (30) minutes of the time fixed for the adjourned meeting insufficient members are present to constitute a quorum, the adjourned meeting shall be deemed to form the requisite quorum.
- 12.8. Proxy forms and nomination forms for the posts of the elected officials referred to in paragraphs 8, 9 and 10 above shall be included with the notice of the Annual General Meeting.

13. VOTING

- 13.1. Unless otherwise provided in this Constitution, the vote of the majority of those direct members present and entitled to vote at any meeting shall prevail. Voting shall be by show of hands unless a ballot is demanded by a majority of those direct members present in person or by proxy who are entitled to vote.
- 13.2. All direct members shall have a single vote each.
- 13.3. The Chairman presiding at the meeting shall have a deliberative and a casting vote.
- 13.4. A direct member entitled to vote may appoint another person for one (1) meeting as his proxy to represent him and to vote. This proxy shall be delivered in writing to the Secretary before a meeting. The proxy form shall be signed by the direct member and shall specify the date of the meeting and the name of the proxy.

14. REGIONAL FORUMS

- 14.1. Those bird clubs that have become members of the organisation and signed an affiliation agreement, as provided in paragraph 7.1.3 above shall be encouraged to form a minimum of three (3) Regional Forums representing the geographical areas in which the said clubs are located.
- 14.2. The purpose of the Regional Forums shall be to co-ordinate the affairs of the clubs in their specific regions, to promote and where possible further the aims and ethos of the organisation, and to act as a link between the clubs and their members and the organisation.
- 14.3. Each affiliated club will be admitted to the Regional Forum of its choice. Each club so admitted shall have at least one (1) vote in the affairs of the Regional Forum.
- 14.4. Each Regional Forum will elect a chairperson who will be responsible for preparing a report, in the prescribed manner, after every meeting of the Regional Forum. Such report, which will contain details of the activities of the Regional Forum and its associated bird clubs as well as any recommendations for the organisation, will be submitted within 30 days of such meeting to the Secretary who shall table the report at the next Board meeting.

15. AMENDMENT OF CONSTITUTION AND DISSOLUTION

The Constitution may be amended or the organisation may be dissolved by a resolution passed by two-thirds of the direct members present in person and entitled to vote or by proxy at a General Meeting of direct members, provided that the notice of the meeting shall have set out the proposed amendments and the reasons therefore or the proposed dissolution and the reasons therefore as the case may be. The provisions of paragraph 5.7 shall apply in the case of dissolution.

10 March 2022