

CONSTITUTION OF THE FREEDOM OF EXPRESSION INSTITUTE

**AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
31 OCTOBER 1996**

**AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
26 JUNE 1998**

**AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
29 JUNE 2000**

**AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
29 JUNE 2002**

**AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
7 JUNE 2003**

**AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
24 JUNE 2006**

1. NAME

- 1.1 The organisation hereby constituted will be called the Freedom of Expression Institute.
- 1.2 Its shortened name will be FXI (hereinafter referred to as “the Institute”).

2. LEGAL NATURE AND PERSONALITY OF THE INSTITUTE

- 2.1 The Institute shall be a body corporate with perpetual succession, capable of entering into contractual and other relations and of suing and being sued in its own name. It shall hold assets. The Institute shall have an identity and existence distinct from its members or office bearers.
- 2.2 The Institute shall not be formed for the purpose of carrying on any business or enterprise which has, for its object, the acquisition of gain by the members of the Institute.
- 2.3 The Institute shall alone be liable for its debts and commitments.
- 2.4 Any income or property of the Institute shall be applied solely towards the promotion of its main and subsidiary objects and no proportion of the income or property shall be paid or transferred, directly or indirectly, to any members of the Institute or any other person, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Institute or any other member of it in return for any services actually rendered.

3. OBJECTS OF THE INSTITUTE

- 3.1 The principal objects of the Institute shall be:
 - 3.1.1. To fight for and defend freedom of expression;
 - 3.1.2. To oppose censorship;
 - 3.1.3. To fight for the right of equal access to information and knowledge; and
 - 3.1.4. To promote access to media and a free press.
- 3.2 To this end, its subsidiary objects shall be:
 - 3.2.1 Opposing any limitations imposed on the freedoms aforementioned, be they at the instance of the State, the private sector or civil society, that in the opinion of the Institute constitute censorship;
 - 3.2.2 To create a sense of unity and purpose among those subject to censorship;
 - 3.2.3 To educate the public about the dangers of censorship;
 - 3.2.4 To defend, support and extend solidarity to the victims of censorship;
 - 3.2.5 To monitor the effect and implementation of censorship in South Africa;
 - 3.2.6 To engage in solidarity with groups opposing censorship locally and internationally;
 - 3.2.7 To promote access to information and knowledge and information generally; to monitor legislation which makes this possible;
 - 3.2.8 Safeguarding the freedom and independence of all media, including:
 - 3.2.8.1 The right of the media to editorial independence;
 - 3.2.8.2 The strict separation of advertising and editorial functions, with the latter enjoying the freedom from influence by the former;
 - 3.2.8.3 The right of not to be forced and coerced to act as witnesses in trials involving their professional duties;
 - 3.2.8.4 The right of journalists not to disclose confidential sources of information;
 - 3.2.9 Helping to ensure a diversity of media;

- 3.2.10 To promote the right of all people to communicate;
- 3.2.11 To engage in campaigns, promotions, projects and other activities in furtherance of the above aims;
- 3.2.12 To raise and disburse funds for legal services as provided for in this constitution in support of victims of censorship;
- 3.2.13 To provide free legal services for poor and needy victims of censorship; and
- 3.2.14 To promote and advocate human rights and democracy within the principal objects contained in section 3.1 above.

4. EXECUTIVE COMMITTEE

- 4.1. The management of the Institute shall be vested in the Executive Committee which shall be composed of between 7 (seven) and 12 (twelve) members, who shall be elected by a secret ballot at the bi-annual general meeting. They shall serve in office for 2 (two) consecutive years but shall be eligible for re-election.
- 4.2 At their first meeting, which shall be not later than 1 (one) month after the annual general meeting (AGM), those Executive Committee members present shall elect a Chairperson and Deputy Chairperson.
- 4.3 The Executive Committee shall meet at least every 3rd (third) month.
- 4.4 The quorum for meetings of the Executive Committee shall be 4 (four) members.
- 4.5 Not less than 3 (three) days notice shall be given of the date, time and venue of an Executive Committee meeting.
- 4.6 Meetings of the Executive Committee shall be convened by the Chairperson or at the instance of any 3 (three) Executive Committee members who advise the purpose for which they desire such meeting to be convened, provided that the competency of the Executive to make decisions at such meetings shall not be limited to the matters for which it was convened.
- 4.7 In the absence of a Chairperson the Deputy Chairperson shall carry out all the duties of the Chairperson. In the absence of both, the members present shall elect an Acting Chairperson.
- 4.8 Only the Chairperson, or the Executive Director with the Chairperson's authorisation shall be entitled to issue press statements on behalf of the Institute and delegate that authority.

- 4.9 Any matter before the Executive Committee shall be resolved by a simple majority of the votes. In the event of an equal number of votes the chairperson shall have a casting vote.

5. VACANCIES

- 5.1 A member of the Executive Committee shall cease to hold office:
- 5.1.1 If such a member fails to attend 3 (three) consecutive meetings of the Committee without an apology and a valid excuse;
 - 5.1.2 If such member resigns; or
 - 5.1.3 If the majority of the Committee vote to remove such member from office for contravening the Committee's Code of Conduct after he or she has been given an opportunity of making representations to the Committee against such removal. Such a member will have the right to appeal against the decision. The appeal will be heard by an independent arbitrator, and the decision of the arbitrator will be binding on the Institute.
- 5.2 The Executive Committee shall have the powers to co-opt any member of the Institute onto the Executive Committee to fill any vacancy, or if the Committee considers that it is in the interests of the organisation to increase the size of the Committee. In the latter instance the Committee shall not be entitled to co-opt more members than are provided for in section 4.1 above.

6. POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE

- 6.1 The Executive Committee shall manage all the business and affairs of the Institute and shall have the full power and authority to carry out all the objects of the Institute except when such powers are expressly reserved to a general meeting and, without derogating from the generality of the Executive Committee, shall more particularly be to:
- 6.1.1 interpret, oversee the implementation and promotion of the aims and objectives of the Institute;
 - 6.1.2 obtain support, financial or otherwise, for the Institute, including support for the Institute's sustainability and investment plans;
 - 6.1.3 oversee the administration of the financial affairs of the Institute;
 - 6.1.4 to determine the conditions upon which other Institute or members thereof may become affiliated with the Institute or vice versa;

- 6.1.5 to invest the funds and assets of the Institute in securities nominated by it and to vary, realise and deal with such investments in its discretion;
 - 6.1.6 to decide what amount of the funds shall be invested and what amount should be retained for administrative and other expenses;
 - 6.1.7 to deposit any funds with a bank selected by them in the name of the Institute or any other name suitable to such bank and to nominate the person or persons to sign any cheques;
 - 6.1.8 to grant any honorarium to any members of the Institute for services rendered and to remunerate him or her accordingly;
 - 6.1.9 to employ any person in the interests of the Institute and remunerate him or her accordingly;
 - 6.1.10 to register the name and, if necessary, the constitution and rules of the Institute under any law;
 - 6.1.11 to approve annual organisational plans and budgets, as well as a sustainability and investment plan;
 - 6.1.12 to appoint an auditor to examine and report upon the accounts of the Institute and remunerate him or her accordingly;
 - 6.1.13 to institute or defend any legal proceedings in the name of the Institute;
 - 6.1.14 to appoint members from within or outside of the organisation to task committees. All decisions of such task committees shall be subject to ratification by the Executive Committee;
 - 6.1.15 to appoint an Executive Director; and
 - 6.1.16 to delegate certain management powers and functions in writing to the Management Committee, within the framework of Executive Committee policies.
- 6.2 Members of the Executive Committee are not liable for any of the obligations and liabilities of the Institute solely by virtue of their status as office bearers of the organisation.

7. THE EXECUTIVE DIRECTOR

7.1 The Executive Director shall:

- 7.1.1 be accountable to, and report to, the Executive Committee;

- 7.1.2 be responsible for the day to day running of the Institute;
- 7.1.3 ensure that proper accounts are kept and are submitted to the Executive Committee on a regular basis;
- 7.1.4 supervise the staff of the Institute;
- 7.1.5 submit an annual report to the AGM;
- 7.1.6 be responsible for fundraising;
- 7.1.7 act as spokesperson for the Institute;
- 7.1.8 enter into contracts on behalf of the Institute and authorise the signing of documents in the name of the Institute, but subject to the financial provisions in section 8 below;
- 7.1.9 be an *ex officio* non-voting member of the Executive Committee; and
- 7.1.10 provide overall strategic leadership and management of the Institute.

8. FINANCIAL AND COMPLIANCE-RELATED MATTERS

- 8.1 Subject to section 2.4 above, all funds received shall be banked in the name of the Institute and cheques, money orders or any withdrawal transaction shall be signed by two signatories from a list nominated for such purpose by the Executive Committee who shall inform the Institute's banking institution accordingly.
- 8.2 The financial year-end of the Institute shall be December 31.
- 8.3 The financial affairs are to be administered according to the Institute's Financial Policies and Procedures Manual.
- 8.4 In compliance with section 30 (3) Income Tax Act 58 of 1962 (as amended, "the Income Tax Act"), the Institute shall effect, or cause to be effected, approval from the Commissioner for the South African Revenue Service ("the Commissioner") of the Institute as a public benefit organisation, in pursuance of which the Institute shall submit to the Commissioner a copy of its constitution and in terms of which it is:
 - 8.4.1 required to have at least 3 (three) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation;
 - 8.4.2 prohibited from distributing any of its funds to any person (otherwise than

in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, or to invest such funds-

8.4.2.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);

8.4.2.2 in any listed financial instrument of a company contemplated in paragraph (a) of the definition of 'listed company' in such Act; or

8.4.2.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations:

Provided that the provisions of this subsection shall not prohibit any such organisation 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;

8.4.3 required on dissolution to transfer its assets to-

8.4.3.1 any similar public benefit organisation which has been approved in terms of this section;

8.4.3.2 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; or

8.4.3.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10 (1) (a) or (b) of the Income Tax Act;

8.4.4 prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that-

8.4.4.1 the gross income derived from all such business undertakings or trading activities do not in total exceed the greater of-

8.4.4.1.1 5% (five percent) of the gross receipts of such public benefit organisation; or

8.4.4.1.2 R50 000;

8.4.4.2 the undertaking or activity is-

- 8.4.4.2.1 integral and directly related to the sole object of such public benefit organisation; and
- 8.4.4.2.2 carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;
- 8.4.4.3 the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in subsection 8.4.4.2, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
- 8.4.4.4 the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to-
 - 8.4.4.4.1 the scope and benevolent nature of the undertaking or activity;
 - 8.4.4.4.2 the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;
 - 8.4.4.4.3 the profitability of the undertaking or activity; and
 - 8.4.4.4.4 the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;
- 8.4.5 prohibited from accepting any donation 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 any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms 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) may not impose 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; and
- 8.4.6 required to submit to the Commissioner a copy of any amendment to the constitution.

9. MEMBERS AND MEMBERSHIP

There shall be three classes of members, patrons, full members and associate members:

- 9.1 Patrons shall be people who are (a) recognised for their commitment to the cause of freedom of expression and (b) invited by the Executive Committee to serve as patrons.
- 9.2 Patrons shall be entitled to vote at an AGM and have the same rights as full members.
- 9.3 Full members shall be individuals and not-for-profit organisations as contemplated in section 10.2 below who have been duly accepted, and who have paid their subscriptions, if required, prescribed by the Executive Committee, and who have been duly accepted as such and have been enrolled.
- 9.4 Associate members shall be individuals and not-for-profit organisations as contemplated in section 10.2 below who choose not to become full members, and who have paid subscriptions, if required, prescribed by the Executive Committee, and have been duly accepted as such and have been enrolled.
- 9.5 Associate members shall not be entitled to vote at an AGM, but one representative of the associate member shall be entitled to speak at such a meeting. With the consent of the general meeting, additional representatives of an associate member shall be entitled to speak.
- 9.6 Members shall not become liable for any of the obligations and liabilities of the Institute solely by virtue of their status as members of the organisation.

10. ADMISSIONS AND EXPULSION OF MEMBERS

- 10.1 Members shall be admitted by making an application in writing to the Executive Committee, which shall have the sole discretion as to whether to admit a member or not within the requirements of the constitution. Provided that an individual or organisation who has been refused membership may require the Executive Committee to put such application for membership to an AGM for decision.
- 10.2 Not-for-profit organisations will be eligible for membership only if:
 - 10.2.1 their constitutional objects are consistent with those of the Institute;
 - 10.2.2 they promote, in a verifiable manner, freedom of expression and access to information;
 - 10.2.3 they are associations incorporated not for gain, and their members, if any,

are associations incorporated not for gain; and

10.2.4 they are not party political organisations or organs of state.

10.3 Not-for-profit organisations will be entitled to one vote each at meetings.

10.4 Annual subscriptions shall be determined by the Executive Committee, who shall also have the discretion to charge no subscription at all or to exempt particular classes of members from paying subscriptions or to levy different subscriptions for different classes of members.

10.5 The Executive Committee shall be entitled to expel any full or associate member from the Institute in the following circumstances:

10.5.1 when a member's membership fees, if required, have fallen 3 (three) months in arrears, after due notice has been given in writing 1 (one) month before of such arrears;

10.5.2 when any member of the Institute has materially contravened any of the objects or resolutions of the Institute, or any member who publicly supports objectives inconsistent with section 3 above or who engages in activities which are likely to bring the Institute into disrepute or to lead to an actual or apparent conflict of interest; or

10.5.3 In the case of an associate member, when that organisation ceases to exist.

10.6 The expelled member has a right to appeal to the AGM or a special meeting convened for that purpose.

11. BRANCHES OF THE INSTITUTE

11.1 Where there are 20 (twenty) or more members ordinarily resident in an area, the Executive Committee may on its own initiative, or on request from 10 (ten) or more such members, proceed with the formation of a branch for such area subject to the provisions of this paragraph.

11.2 All members ordinarily resident in that area shall be regarded as members of the Branch.

11.3 A Branch shall elect its own executive committee, to be known as the Branch Executive Committee (BEC) consisting of not less than 5 (five) and not more than 8 (eight) members.

11.4 A Branch Executive Committee meeting shall be conducted in accordance with the same provisions as those regulating meetings of the Executive Committee in

sections 4, 5 and 6 hereof, *mutatis mutandis*.

- 11.5 A Branch shall have an Annual General Meeting, to be known as the Branch AGM once in each calendar year within a period of 6 (six) months from the end of the financial year of the Institute, at such time, venue and place as determined by the BEC and upon not less than 21 (twenty-one) days' prior notice given to members of the Branch. The Branch AGM shall be conducted in the same manner as annual general meetings of the Institute, as provided for in this constitution *mutatis mutandis*.
- 11.6 No Branch shall collect funds or accept donations without the authority of the Executive Committee.
- 11.7 No Branch shall issue any statements to the media, without the authority of the Executive Committee.
- 11.8 The Branch shall be responsible for carrying on the activity of the Institute within its own area.
- 11.9 The Branch shall not have any independent legal capacity and shall not be entitled to secure any rights, or incur any obligations on behalf of the Institute.
- 11.10 Any property that may be acquired by a branch shall be regarded as having been acquired on behalf of the Institute.
- 11.11 The Executive Committee shall be entitled at any time to inspect all financial records and correspondence and any other documentation pertaining to the Branch, provided reasonable notice is given of such inspection in writing.
- 11.12 A Branch shall be designated as follows: "Freedom of Expression Institute" followed by the insertion of the name of the area of jurisdiction of the Branch.

12. ANNUAL GENERAL MEETINGS

- 12.1 The annual general meeting shall be held once in each calendar year within a period of 6 (six) months from the end of each financial year, at such venue, time and place as determined by the Executive Committee and upon not less than 21 (twenty-one) days' prior notice given to the members.
- 12.2 The annual general meeting shall:
 - 12.2.1 Receive and consider the Executive Committee's report and financial statements for the preceding year;

- 12.2.2 Elect members of the Executive Committee every second year;
 - 12.2.3 Consider any notice of motion which has been submitted to the Executive Director in writing at least 2 (two) two weeks prior to the annual general meeting; and
 - 12.2.4 Transact any competent business.
- 12.3 Procedure for annual general meetings and other general meetings:
- 12.3.1 Annual general meetings may be attended by any members or associate members of the Institute.
 - 12.3.2 A quorum shall be 10% (ten percent) of the paid up membership (if a membership fee is required) at the date of the AGM. If there is no quorum at the stipulated time of the meeting then the meeting shall be adjourned for a further period agreed by those present, provided that no less than 7 (seven) days' notice in writing is given to all members of the date, time and venue to which the meeting is adjourned. At the adjourned meeting all those present and voting shall constitute a quorum.
 - 12.3.3 The Chairperson of the Executive Committee shall preside, and in his or her absence, any other member of the Executive Committee elected by the members present.
 - 12.3.4 Any matter before any general meeting shall be resolved by a simple majority of those present. In the event of an equal number of votes on any ballot, the chairperson shall exercise a deciding or casting vote. Only members present shall be entitled to vote and there shall be no proxies.
- 12.4 Special general meetings of the Institute shall be called by the Executive Committee or on a written request signed by not less than 10% (ten percent) of the membership of the Institute. Not less than 21 (twenty-one) days' written notice shall be given of such a meeting and a notice convening a meeting shall state clearly its purpose.
- 12.5 Only those members who were enrolled up until the last Executive Committee meeting before a general meeting will be entitled to vote.

13. AMENDMENT OF THE CONSTITUTION

- 13.1 This constitution may only be amended by way of a resolution to amend such, taken at a general meeting at which 75% (seventy-five percent) of the votes cast at such a meeting are in favour of the amendment.

- 13.2 The notice convening a general meeting at which a motion to amend this constitution is put forward shall set forth fully the amendments to be proposed at such meeting, provided that the provision of this clause may be waived by a resolution at such general meeting at which 75% (seventy-five percent) of the votes cast are in support of such a waiver.
- 13.3 Notice of such proposed amendment shall be given at least 2 (two) weeks before the meeting.

14. DISSOLUTION

- 14.1 The Institute may be dissolved by a resolution at a general meeting at which 75% (seventy-five percent) of the votes cast are in support of such dissolution.
- 14.2 The notice convening such meeting shall state that a motion to dissolve the Institute is to be put at the meeting and notwithstanding any contrary provision of the constitution it shall not be competent for such meeting to waive the requirements of notice in terms of this clause.
- 14.3 The notice aforesaid shall be given not later than 3 (three) weeks before the date of the meeting.
- 14.4 Subject to the provisions of section 8.4 above, upon the winding-up and dissolution of the Institute the assets of the Institute remaining after the satisfaction of its liabilities shall be given or transferred to such other company, association, society or institution or any combination of them which shall:
 - 14.4.1 be committed to freedom of expression;
 - 14.4.2 be of a public character;
 - 14.4.3 be in the Republic of South Africa;
 - 14.4.4 be of such a nature that donations tax is not payable in respect of the value of any property which is disposed of under a donation to it;
 - 14.4.5 have objects similar to the Institute's main objects; and
 - 14.4.6 be determined by the members of the Institute at or before the time of the Institute's dissolution, or failing such dissolution, by the Local Division of the High Court of South Africa having jurisdiction.

15. INTERPRETATION

When any reference is made to the number of members required, or members present for the purpose of the constitution, such reference shall apply to full members only.
