



CONSTITUTION

21 March 2015

PREAMBLE

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

This current Constitution is a revision of a prior Constitution approved in March 2011. The changes relate to the substitution of the Council by an Executive Board and Governance Committee; the membership structure and categories; and other incidental matters.

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.

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 Services Board Act (No. 97 of 1990) 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;
 - 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, 75% 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 on accounts at banks and other financial institutions under the signatures of not less than two persons authorised thereto by the Executive 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; and

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 Executive 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 Executive 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 Executive 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 Executive 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 Executive 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 Executive Board and after due and proper enquiry, is expelled.

8 EXECUTIVE BOARD

8.1 Function

The Executive 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 8.5 below, and will assist the Chief Executive Officer in the supervision and general management of the organisation.

8.2 Composition and Election

The Executive Board, all of whose members, except the Chief Executive Officer, shall not be employees of the organisation, shall comprise the following members:-

- 8.2.1 the Chairman who shall be elected by members in general meeting;
- 8.2.2 the Treasurer of the organisation who shall be elected by members in general meeting;
- 8.2.3 the Chief Executive Officer who shall be appointed by the Executive Board;
- 8.2.4 three (3) representatives of Regional Forums;
- 8.2.5 a maximum of five (5) co-opted members who shall have skills in one or more of the following areas, namely finance and audit, legal, marketing, and general business management, who shall be appointed by the Executive Board members referred to in paragraphs 8.2.1 to 8.2.4 above;
- 8.2.6 proposed, seconded and accepted nominations shall be lodged in writing with the Secretary at least fourteen (14) days prior to the General Meeting.

8.3 Tenure of Members of the Executive Board

- 8.3.1 the Chairman shall be elected for a period of four (4) years only;
- 8.3.2 the Chief Executive Officer shall remain an ex officio member of the Executive Board as long as he remains in that office;
- 8.3.3 the Treasurer, the representatives of the Regional Forums and the co-opted members shall be elected for a period of three (3) years but, if willing to continue in office, shall be eligible to be elected for one or more further periods of three (3) years;
- 8.3.4 should a vacancy occur among the group of co-opted members, the Chairman shall have the right to appoint a replacement, and should a vacancy occur among the representatives of the Regional Forums, the remaining representatives of the Regional Forums shall have the right to appoint a replacement; in each case to hold office until the next Annual General Meeting.

8.4 Meetings

- 8.4.1 the Executive Board shall meet on a monthly basis or, should circumstances so require, on a less frequent basis as its members in their sole discretion shall decide. It may also meet on an ad hoc basis if required;
- 8.4.2 the quorum for any meeting shall be 60% (sixty percent) of the number of members of the Executive Board in office at that time.

8.5 Powers

The Executive 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:-

- agree and articulate overall strategy;
- appoint members to the Executive Board in terms of paragraph 8.2.5 above;
- approve the organisational structure and the appointment of the Chief Executive Officer;
- approve the corporate strategy and action plans;
- approve the annual budget;
- assume responsibility for the preparation of the annual financial statements;
- manage the investments of the organisation;
- approve marketing and fundraising strategies;
- review monthly reports submitted by the Chief Executive Officer and the Treasurer;
- decide and approve membership categories and subscription levels;
- review and approve the recommendations of the Chief Executive Officer and any remuneration committee regarding annual and periodic (other than minor) salary adjustments;
- appoint committees and determine their terms of reference and composition and the conditions under which they shall operate;
- draft and confirm a Code of Conduct to regulate the operation of the Executive Board and the conduct and contribution of its members;
- make all such further regulations and guidelines as are necessary for the due and proper functioning of the Executive Board.

9 GOVERNANCE COMMITTEE

9.1 Function

The Governance 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 Executive Board and the organisation as a whole.

9.2 Composition

The Governance Committee (which, it is intended, should retain a meaningful measure of independence from the Executive Board) shall comprise the following members:-

9.2.1 a Chairman, who shall not be a member of the Executive Board, but who will be entitled to attend meetings of the Executive Board as an observer, and who will be elected by members in general meeting;

9.2.2 a maximum of four (4) additional members of whom two (2) may be members of the Executive Board but shall not be the Chairman of the Executive Board or the Chief Executive Officer. These additional members shall be appointed by an electoral college comprising the Chairman of the Governance Committee, the three (3) Regional Forum representatives and the Honorary President of BirdLife South Africa;

9.2.3 the tenure of all members of the Governance Committee shall be three (3) years but they shall be eligible for further periods of three (3) years if they are so willing;

9.2.4 should a vacancy occur among the members referred to in 9.2.2 above, the Chairman shall have the right to appoint a replacement to hold office until the next Annual General Meeting;

9.2.5 proposed, seconded and accepted nominations for the Chairman of the Governance Committee shall be lodged in writing with the Secretary at least fourteen (14) days prior to the General Meeting.

9.3 Meetings

The Governance 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

The powers of the Governance Committee, in both its audit and general oversight role, shall include but not be limited to the following;

- liaise with the organisation's auditors in the planning and execution of the annual audit;
- act on any and all recommendations arising out of the audit;
- report to the Executive Board on the completion of the audit;
- regularly assess risks that the organisation does or may face and make recommendations to the Executive Board in regard thereto;
- supervise and approve the organisation's insurance programme and other risk control measures;
- ensure that resolutions of members are properly and timeously dealt with;
- ensure that the election of the Chairman of the Executive Board, the Treasurer, the Chairman of the Governance Committee and the Honorary President are properly conducted;
- approve annually a schedule of competencies for the Executive Board and the Chief Executive Officer;

- commission an annual review at the year end, and with such input and on such terms as the Governance Committee shall deem appropriate, specifically in regard to the conservation activities of the organisation; which review's results and findings shall be included in the report referred to below;
- conduct an annual review, at year end, of the performance of the organisation as a whole, as well as the performance of the Executive Board and submit its report to the Chairman of the organisation.

9.5 Reporting

The Governance Committee shall, within one month of the calendar year end, prepare an annual review including, where appropriate, recommendations of the activities and functioning of the organisation as a whole and the Executive Board. This report shall be submitted to the Chairman of the Executive Board for consideration and will be made available to direct members on request. The Governance Committee will also express an opinion, based on the contents of their report, regarding the effectiveness and performance of both the Executive Board as a whole and the organisation, which opinion shall be included in the annual financial statements and annual report of the organisation.

10 CHIEF EXECUTIVE OFFICER, HONORARY PRESIDENT AND VICE PRESIDENTS

10.1 The Executive Board shall appoint a Chief Executive Officer of the organisation, who shall be an ex officio member of the Executive Board, for such period and on such terms as it shall determine.

10.2 The Chief Executive Officer shall have those powers and responsibilities normally associated with such office and shall report to the Executive Board at its regular meetings on the business and the affairs of the organisation.

10.3 Between regular meetings of the Executive Board, the Chief Executive Officer shall be also responsible to, and report to, the Chairman of the Executive Board.

10.4 An Honorary President of the organisation shall be elected at the Annual General Meeting for a period of four (4) years, and he/she may appoint an additional maximum of three (3) Honorary Vice Presidents who shall serve for a similar term of four (4) years; provided that the Executive Board may fill any vacancy that may arise in any intervening period.

11 GENERAL MEETINGS OF MEMBERS

11.1 The Executive 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:-

- confirmation of the minutes of the previous meeting and any general meetings;
- consideration and adoption of the annual report of the Chief Executive Officer;
- consideration and adoption of the annual report of the Chairman of the Executive Board, including the opinion and report of the Governance Committee;
- consideration and adoption of the report of the Treasurer;
- consideration and adoption of the audited annual financial statements;
- when necessary, the election of the Chairman of the Executive Board, Treasurer, the Chairman of the Governance Committee, and the Honorary President;
- appointment of the external auditor;
- 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;
- any other business allowed by the Chairman of the Executive Board.

11.2 The financial year of the organisation shall be the twelve-month period preceding the 31 December each year.

11.3 The Secretary of the organisation shall, at the request of the Executive 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.

11.4 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.

11.5 The quorum for a meeting shall be thirty (30) members present and entitled to vote.

11.6 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.

11.7 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.

11.8 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.

12 VOTING

12.1 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.

12.2 All direct members shall have a single vote each.

12.3 The Chairman presiding at the meeting shall have a deliberative and a casting vote.

12.4 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 Chairman 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.

13 REGIONAL FORUMS

13.1 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.

13.2 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.

13.3 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.

13.4 The Regional Forums shall be entitled to nominate and elect a representative from each region to the Executive Board as referred to in paragraph 8.2.4 above. In the event that more than three (3) Forums exist the Forums shall form an electoral college comprising the Forum chairmen to select the three (3) representatives to the Executive Board.

13.5 Each Regional Forum will prepare a set of rules covering, *inter alia*, the objectives and obligations of the Forum, the rights of its member clubs and voting procedures. These rules must be approved by the Executive Board of the organisation before the Forum can participate in the affairs of the organisation.

14 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.



ROGER RM WANLESS
Chairman
BirdLife South Africa

20 October 2015