

Butterfly Art Project

ENCOURAGING CREATIVITY AND HEALING THROUGH ART

CONSTITUTION OF THE BUTTERFLY ART PROJECT

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1. NAME

THE BUTTERFLY ART PROJECT (hereafter referred to as the "organisation") is a voluntary association.

2. OBJECTIVES OF THE ORGANISATION

The organisation is a public benefit, non-profit organisation established for the following sole object: BAP encourages creativity and healing through art to build strong communities of active, artistic and stable citizens that are able to recognise and utilise opportunities. By partnering with diverse educational institutions, offering mentorships, training for educators and art practitioners to run healing art classes in vulnerable communities, we build resources for a creative network for a greater South Africa and beyond.

3. LEGAL STATUS

The organisation has its own legal identity which is separate from its individual members and shall continue to exist even when the members change and there are different office bearers. The organisation may own property, enter contracts, and sue or be sued in its own name.

4. NON-PROFIT DISTRIBUTING CHARACTER

The organisation is a Non-Profit Organisation. Income and property of the organisation shall be used solely for the promotion of its stated objectives. Member/s of the Board of Directors shall have no rights to the property or other assets of the organisation solely by virtue of them being members of the Board of Directors/office-bearers. No portion of the income or property of the organisation shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member/s of the Board of Directors, except as:

- reasonable compensation for services actually rendered to the organisation;
- reimbursement of actual costs or expenses reasonably incurred on behalf of the organisation.

The organisation is a Non-Profit Organisation established to achieve the objectives stated in 2. above. The organisation is registered as a Public Benefit Organisation, in terms of The Income Tax Act No 58 of 1962., The organisation must ensure that the requirements and regulations are met, in particular:

- If funds are received from another PBO, the organisation must ensure that the funds are utilized for the purpose for which they have been provided.
- When the organisation provides funds to another PBO, reasonable steps must be taken by the organisation to ensure that the funds are used for the purposes for which it has been provided and in line with the objectives of the organisation.

5. DISSOLUTION OF THE ORGANISATION

Upon the dissolution of the organisation, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to:

- A public benefit organisation, which has been approved in terms of section 30 of the Income Tax Act.
- Any institution, board or body which is exempt from the payment of income tax in terms of section 10(i) (ca)(i) of the Act, which has as its sole principle object the carrying on of any public benefit activity.
- A public benefit organisation that any division of the High Court considers appropriate and which has objectives the same or similar to the objectives of the organisation.

6. POWERS

The Board of Directors shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the general investment and administrative powers set out below:

- To ratify the appointment of the Managing Director and to jointly produce a document on duties and responsibilities that shall form the basis of an annual performance appraisal.
- To endorse the HR Policy of the organisation for enabling the recruitment of other personnel and delegate this responsibility to the Managing Director.
- To institute or defend any legal or arbitration proceedings and to settle any claims made by or against the organisation.
- To appoint an auditing firm to advise and operationalise all the fiduciary matters including legal procedures and protocols to ensure adequate oversight over all financial matters. This would include any investments of funds received.
- To maintain, manage, develop, exchange, lease, sell, or in any way deal with the property and assets of the organisation.
- To work in collaboration with other organisations and to amalgamate with any organisation with the same or similar objectives and the same exemptions from taxes and duties to those of the organisation.
- The founding members of the organisation (Angela Katschke, Audrey Spijker, Dr. Bärbel Brandes & Nerina de Villiers) are the guardians of the organisation and have the power to intervene, if needed, against the Board of Directors regarding the Managing Director's employment, changes to the Constitution and investments.

7. STRUCTURE OF THE ORGANISATION

The structure of the organisation shall consist of:

- The Board of Directors
- The Managing Director (MD) and the BAP staff

Composition

- The Board of Directors shall comprise at least five (5) members and a maximum of seven (7). The members of the Board of Directors shall elect a Chairperson, Secretary, Treasurer; and any other officials that they deem necessary.
- The Treasurer will be responsible for ensuring that adequate financial controls and systems are in place and report to the Board of Directors thereon.
- The Secretary will be responsible for maintaining the required records of the activities of the Board of Directors.
- The Managing Director with the staff team are fully accountable to the Board of Directors.
- The Board of Directors may delegate, by resolution any of its powers to the Managing Director.
- The Board of Directors may co-opt additional members as it may consider appropriate in terms of expertise required from time to time. These appointments have ex-officio status.

Vacation of office

The office of a member of the Board of Directors shall be vacated if a member:

- resigns; or
- becomes unfit and/or incapable of acting as such; or
- would be disqualified, in terms of the NPO Act or equivalent legislation in force from time to time, from acting as a member of the Board of Directors of a NPO.

Powers of the Board of Directors

The affairs of the organisation shall be controlled and managed by the Board of Directors in consultation with the Managing Director. Subject to the terms of this Constitution, the Board of Directors may exercise all the powers of the organisation.

Election

- Members of the Board of Directors are elected for a term of three (3) years from the confirmation of their appointment. Members of the Board of Directors must retire at the end of their term and shall be eligible for re-election or co-option for a maximum of two (2) more terms.
- The Board of Directors may fill any vacancy or appoint new members to the Board of Directors by a resolution adopted by two-thirds (2/3) of its members attending a duly constituted meeting in terms of this Constitution.
- Should a position on the Board of Directors fall vacant suddenly; and if that vacancy reduces the number of members to less than three (3), the remaining members of Board of Directors shall co-opt at least one more member to fill the vacancy immediately.

Procedure at Board of Directors Meetings

The Board of Directors shall conduct its meetings and regulate its proceedings as it finds convenient, provided that:

- The Chairperson, or in his or her absence, a member nominated by the Chairperson, shall chair all meetings of the Board of Directors which she or he attends.
- In the absence of the Chairperson and the nominated member, the remaining members of the Board of Directors shall elect a Chairperson from those attending.
- The Chairperson shall convene a meeting of the Board of Directors, quarterly and at the written request of any three (3) members of the Board of Directors and may convene such a meeting at any other time.
- The quorum necessary for the transaction of any business by the Board of Directors shall be two-thirds (2/3) of the members of the Board of Directors serving at any given time.
- Proper minutes shall be kept of the proceedings of the Board of Directors, and a record of the persons present at each meeting. The minutes shall be signed by the member who chaired the meeting, and shall be available at all times for inspection or copying by any member of the Board of Directors. All minutes have to be adopted and seconded as a true reflection of proceedings at each subsequent meeting.
- A resolution signed by all members of the Board of Directors shall be as valid as if passed at a duly convened meeting of the Board of Directors.
- The Board of Directors may appoint sub committees with specific tasks and powers provided such committees remain accountable to the Board of Directors. Final decisions must be endorsed by the Board of Directors.
- In the spirit of the culture of inclusiveness of the organisation the Managing Director is regarded as a full member of the Board of Directors and would only be recused if any matter being discussed involves a conflict of interest.

8. NOTICES

- Notice of all meetings provided for in this Constitution, shall be delivered personally, or sent by electronic mail (email), or by prepaid post, to the last address notified by each member or in any other manner as the Board may decide from time to time.
- The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.
- If posted, notices shall be deemed to have been received seven (7) days after posting.

9. FINANCIAL MATTERS

Bank Account

- The Board Chairperson shall open a bank account in the name of the organisation with a registered Bank or Building Society.
- The Board of Directors shall ensure that all monies received by the organisation are deposited in the abovementioned bank account as soon as possible after receipt.
- All legal documents pertaining to financial matters needs to be signed by at least two members of the Board of Directors and the Managing Director.
- By resolution the financial activities of the organisation shall be delegated to the Directorship team, subject to the financial procedures set down and agreed to by the Board of Directors in BAP's Financial Management Policy.

Financial Year End

The organisation's financial year end shall be on the 31st December.

Financial Records

The Board of Directors shall ensure that the organisation keeps proper records and books of account which fairly reflect the affairs of the organisation.

Annual Narrative Report and Financial Statements

- The Managing Director shall ensure that the organisation prepares an annual narrative report describing the organisation's activities and an Annual Financial Statement for each financial year.
- These reports must be submitted to the Department of Social Development NPO Directorate within nine (9) months of the organisation's financial year end.
- The Annual Financial Statements shall conform to generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.
- The Board of Directors shall ensure that the books of account and financial statements are audited and certified in the customary manner by an independent practising-chartered accountant within a maximum of five (5) months of the organisation's financial year end.
- A copy of the Annual Financial Statements and Annual Narrative Report shall be made available to the public as soon as possible after the close of the financial year.
- The organisation will ensure the submission of all required returns for income tax together with the required supporting documents.

10. AMENDMENTS TO THE CONSTITUTION

- The terms of this Constitution may be amended provided that proper notice of the nature of the required changes is given not less than twenty-eight (28) days prior to the date of the Board of Directors meeting where the changes will be ratified.
- A copy of all amendments to the Constitution under which the public benefit institution was established, will be submitted to Department of Social Development NPO Directorate within one (1) month of such changes being adopted.

11. INDEMNITY

- Subject to the provisions of any relevant statute, members of the Board of Directors and other office bearers shall be indemnified by the organisation for all acts done by them in good faith on its behalf. It shall be the duty of the organisation to pay all costs and expenses which any such person incurs or becomes liable for because of any contract entered into, or act done by him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the organisation.
- Subject to the provisions of any relevant statute, no member of the Board of Directors and or other office bearer of the organisation shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the organisation, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.