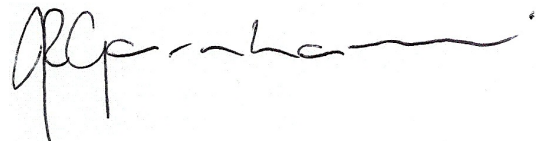


Constitution of Visual Arts Network of South Africa (VANSA)

As amended and adopted
by the members at the
annual general meeting held
on 27 September 2014

A handwritten signature in black ink, appearing to read 'A. C. ...', written over a horizontal line.

Chair

1 Introduction

- 1.1 The Visual Arts Network of South Africa (VANSA) is a voluntary association of persons.
- 1.2 VANSA operates as an industry body and development agency for the visual arts in South Africa, promoting connection, access and innovation in the visual arts industry. As a national organisation, VANSA seeks to develop knowledge, resources, networks and projects that are concerned with realising new social, cultural and economic possibilities for contemporary art practice. As a voluntary association, VANSA consults and represents its members in its activities.

2 Definitions and interpretation

- 2.1 In this Constitution the headings to the clauses reference purposes only and do not affect the terms of this Constitution.
- 2.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- (1) **Board** means the governing body of VANSA;
 - (2) **Commissioner** means the Commissioner for the South African Revenue Service;
 - (3) **Director** means a member of the Board and his or her alternate, if any;
 - (4) **Income Tax Act** means the *Income Tax Act, 1962*, as amended, together with any regulations published in terms of it;
 - (5) **Industry** means the Visual Arts industry;
 - (6) **Object** means the object set out in clause 4.1
 - (7) **Visual Arts** means all forms of fine art, photography, new media art, performance art, design, art education, art therapy and related fields in the value chain.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Constitution.
- 2.4 Unless inconsistent with the context, an expression which denotes:
- (1) any gender includes the other genders;
 - (2) a natural person includes an artificial person (including a trust) and vice versa; and
 - (3) the singular includes the plural and vice versa.
- 2.5 The schedules to this Constitution, if any, form an integral part of it and words and expressions defined in this Constitution shall bear, unless the context otherwise requires, the same meaning in such schedules.
- 2.6 When, in this Constitution, a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by:
- (1) excluding the day on which the first such event occurs;
 - (2) including the day on or by which the second event is to occur; and

(3) excluding any public holiday in South Africa, Saturday or Sunday that falls on or between the days contemplated in clauses 2.6(1) and 2.6(2), respectively.

2.7 Where any term is defined within the context of any particular clause in this Constitution, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation clause.

2.8 Any reference in this Constitution to any agreement or document will be construed as a reference to that agreement or document as initially concluded, and as amended, varied, novated or supplemented afterwards from time to time.

3 Status of VANSA

VANSA:

3.1 exists in its own right;

3.2 continues to exist even when its membership changes, its Board changes, or there is change in office bearers;

3.3 is able to own property;

3.4 is able to encumber and/or alienate property; and

3.5 is able to sue and be sued in its own name.

4 Object

4.1 The Object of VANSA is the advancement, promotion or preservation of the arts, culture or customs.

4.2 This Object will be achieved by:

(1) Growing a network of creative practitioners in the Industry to promote the interests of the Visual Arts by:

(a) Creating a platform for innovation, awareness and dialogue;

(b) Facilitating connections and interactions;

(c) Providing access to resources, information and advice;

(2) Conducting research into the Industry to identify trends and challenges and develop plans and strategies to overcome the challenges;

(3) Working in conjunction with various Department to promote the Visual Arts; and

(4) Conducting any other activities that may be necessary, useful or desirable for the furtherance or accomplishment of the Object, provided that those activities would not endanger VANSA's tax-exempt status.

5 Public benefit organisation

5.1 For so long as VANSA is a public benefit organisation:

(1) VANSA will comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of VANSA are directed in the furtherance of its Objects;

- (2) VANSA will submit to the Commissioner a copy of this Constitution and in terms of this clause 5.1(2) it is:
- (a) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of VANSA and no single person directly or indirectly controls the decision making powers relating to VANSA;
 - (b) prohibited from directly or indirectly 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 Objects for which it has been established;
 - (c) a public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) of the Income Tax Act, required on dissolution to transfer its assets to any public benefit organisation which has been approved in terms of section 30(3)(iii)(aa) of the Income Tax Act which is required to use those assets solely for purposes of carrying on one or more public benefit activities;
 - (d) 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 the donation, including any misrepresentation with regard to the tax deductibility of the donation in terms of section 18A of the Income Tax Act and no donor may impose conditions which could enable that donor or any connected person in relation to that donor to derive some direct or indirect benefit from the application of that donation; and
 - (e) required to submit to the Commissioner a copy of any amendment to this Constitution;
- (3) VANSA is not, has not been and will not be knowingly a party to, or permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner;
- (4) VANSA has not and will not pay any remuneration, as defined in the Fourth Schedule, 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 and has not and will not economically benefit any person in a manner which is not consistent with its Objects;
- (5) VANSA will comply with such reporting requirements as may be determined by the Commissioner; and
- (6) VANSA has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

5.2 To the extent that the provisions of any of this Constitution conflict with the provisions of this clause, the provisions of this clause shall prevail over such conflicting clause.

6 Membership of VANSA

6.1 All persons supporting the work of VANSA who wish to become members, who comply with the membership criteria as determined by the Board from time to time in its sole and absolute discretion, and who are accepted as such by the Board, in the Board’s sole and absolute discretion, will from the date of such acceptance, become members (**members**).

6.2 A members’ register will be maintained and all members’ details entered therein.

- 6.3 Members must abide by the decisions of the Board.
- 6.4 Membership may be terminated in writing by either the member or by the Board on one month's notice. Failure to comply with the membership criteria as determined by the Board from time to time in its sole and absolute discretion will result in revocation of membership.

7 Meetings and procedures of members

- 7.1 Within six calendar months of each financial year end, VANSAs will hold an annual general meeting to report back to members on VANSAs's activities, the budget, the planned activities for the year ahead and the financial position of VANSAs as at the most recent financial year end.
- 7.2 Proceedings at annual general meetings will include, but not be limited to:
- (1) approval of the agenda;
 - (2) reading and approval of minutes from the previous annual general meeting;
 - (3) tabling of the chair's report;
 - (4) adoption of the financial statements;
 - (5) nomination of Directors;
 - (6) proposals for programmes and the content thereof; and
 - (7) ratification of amendments to the constitution adopted by the Board.
- 7.3 Special meetings may be called by the chair, or at the written request of the majority of Directors or by 10 members giving 15 days' notice of such special meeting.
- 7.4 A quorum will be constituted by not less than 10 members present at a meeting in person. Each member will have one vote. No proxies will be accepted.

8 Board

- 8.1 The composition of the Board will comply with the provisions of 5.1(2)(a) and must comprise a minimum of three Directors.
- 8.2 Each Director must be elected by the Directors from the nominations made by the members to serve for a term of three years, with a maximum of two terms.
- 8.3 In any election of Directors, the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy.
- 8.4 In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- 8.5 Should there be no Directors, then the chair for the time being of the Johannesburg Society of Advocates or its successor will be entitled to appoint three directors who each satisfies the requirements for election as a Director and has all the powers, functions and duties, and is subject to all the liabilities, of a Director, to fill the vacancies.
- 8.6 The national director of VANSAs will be an *ex officio* Director, in addition to Directors appointed in terms of this Constitution.
- 8.7 The Board is responsible for directing the business and affairs of VANSAs and is empowered to do all such things as may be necessary or desirable to achieve this.

- 8.8 The Board has the authority to adopt such rules, practices and procedure as it deems fit.
- 8.9 Office bearers will be appointed by the Board for such term of office as the Board will determine, but may be re-appointed by the Board for additional terms of office thereafter in the sole discretion of the Board.
- 8.10 The office bearers will have specific duties but will not be limited to these duties and may be called upon to carry out varied functions as decided by the Board.

9 Meetings and procedures of Board

- 9.1 The Board shall meet at least once a year.
- 9.2 A quorum for a meeting will be a majority of the Directors.
- 9.3 Special meetings of the Board may be called by the chair, or at the written request of the majority of the Directors giving 10 days' notice of such special meeting.
- 9.4 At each meeting of the Board a record of attendees and absentees will be kept together with apologies for failure to attend, which record constitutes prima facie proof of attendance.
- 9.5 Minutes of all meetings will be kept and approved at the next succeeding meeting of the Board, signed by the chair, and thereafter retained in the minute book.
- 9.6 Members, employees and third parties may be allowed to attend meetings of the Board on written invitation of the Board. They will not be counted for purposes of constituting a quorum and neither will they be entitled to speak or vote on any proceedings of the Board. Such persons may be invited by the chair to provide feedback to and comment at meetings of the Board.
- 9.7 The Board may conduct a meeting entirely by electronic communication, or provide for participation in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all person participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 9.8 The Board may adopt a decision by way of written consent of the majority of Directors, in person or by electronic communication, provided that each Director receives notice of the matter to be decided. Any decision adopted in this manner has the same effect as if it had been approved by voting at a meeting.
- 9.9 Each Director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve the resolution.
- 9.10 In the case of a tied vote, the chair will not have a deciding vote and the resolution will fail.
- 9.11 A 75% vote of the Board is required for any one of the following decisions:
- (1) any restructuring of VANSA;
 - (2) any amendment to VANSA's constitution;
 - (3) the liquidation or winding-up of VANSA;
 - (4) any material change in the nature of VANSA.

10 Committees

- 10.1 Committees may be appointed and constituted by the Board and may include the Directors, members, employees of VANSA, members of the community, and those with a particular

expertise required for the functioning of the particular committee. The composition of any committee is in the Board's sole discretion.

- 10.2 Committees will be established for the purpose of dealing with any subject or topic which in the opinion of the Board requires specific attention.

11 Authentication of documents

11.1 Any Director will have power to authenticate any resolutions passed by the members or the Directors, and any books, records, accounts and other documents relating to VANSA, and to certify copies or extracts from those documents as true copies or extracts.

11.2 A document purporting to be a copy of a resolution of the Directors or members or an extract from the minutes of a meeting of the Directors or members which is certified in accordance with clause 11.1 is *prima facie* evidence in favour of all persons dealing with VANSA that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors or members.

12 Property and income

12.1 None of the income and property of VANSA will be distributable to anyone in VANSA, except as reasonable compensation for services rendered, or expenses incurred on behalf of VANSA.

12.2 No office bearers will have any right to or ownership over VANSA's property, intellectual property or any other assets solely by virtue of their being members or employees.

12.3 Use of any property belonging to VANSA by members, the Board, employees, or any third parties is limited to the use thereof for furthering the objectives of VANSA or necessary for the proper functioning of VANSA, and is subject to the Board's permission and discretion.

13 Finance

13.1 The Board will open the necessary bank accounts to enable VANSA to conduct its affairs. All the financial affairs of VANSA will be conducted through the designated bank accounts.

13.2 The Board must keep accurate and complete accounting records.

13.3 All funds received by VANSA, will be deposited into VANSA's bank account as soon as possible after receipt thereof.

13.4 All withdrawals from the bank account will be made by cheque, electronic funds transfer or such other method as the Board may approve. All withdrawals are to be signed and/or authorised, as the case may be, by the authorised person/s appointed by the Board for such purposes.

13.5 Funds, which are not immediately required, may be invested prudently:

- (1) in an institution registered in terms of the Financial Services Board Act, No. 97 of 1990 (**FSB Act**),
- (2) in mutual funds operated by a financial institution registered in terms of the FSB Act,
- (3) in shares, debentures or other instruments issued by companies listed on the Johannesburg Stock Exchange Limited; and / or
- (4) in government stock or treasury bonds.

13.6 Proceeds from investment or savings accounts may be recapitalised in their original form or be paid into VANSA's bank account.

- 13.7 VANSAs financial year end will be end of May each year.
- 13.8 Accounting records and reports are to be forwarded to the Commissioner for South African Revenue Service, or his successor in title, within six months of each financial year end.

14 **Indemnification**

None of the members, the Board or employees will be held liable for any debts or liabilities of VANSAs, save for instances where such debts or liabilities have been incurred by such persons who may be responsible as a result of criminal or grossly negligent conduct.

15 **Amendments to Constitution**

- 15.1 This Constitution may be changed by:
- (1) a resolution passed by 75% of the Directors; and
 - (2) ratification of the Directors' resolution by 67% of the members present at an annual general meeting or a special general meeting of the members convened in accordance with paragraph 7.3. No proxy votes will be acceptable.
- 15.2 Notice of such meeting to amend this Constitution will be convened by the Board giving 15 days' notice in writing to the members and indicating that the purpose for the meeting is the proposed amendment of this Constitution, and detailing the resolutions containing the proposed amendments.
- 15.3 No amendment will be made which has the effect that VANSAs ceases to exist. If the dissolution of VANSAs is required, a special meeting of Directors will be convened for that specific purpose.

16 **Dissolution or winding-up**

- 16.1 A resolution for the winding-up or dissolution of VANSAs must be passed by 75% of the Directors present at a special meeting convened in accordance with the provisions of clause 9.3 and specifying the purpose of the meeting is the winding up or dissolution of VANSAs. No proxy votes will be acceptable.
- 16.2 The quorum for the winding-up or dissolution of VANSAs will be a majority of the Directors.
- 16.3 Should there be no quorum present the special general meeting will be adjourned to the following week, and a majority will constitute a quorum at the reconvened special general meeting.
- 16.4 Should there be no quorum at the reconvened special general meeting, a resolution for the winding-up or dissolution of VANSAs may be passed by a majority of the Directors present in attendance at the reconvened meeting, subject that such resolution must be sanctioned by way of application, showing good and sufficient cause, to the High Court having jurisdiction to be of any force and effect.
- 16.5 On the dissolution of VANSAs, all property, assets and monies remaining, after payment of all debts, will, subject to clause 5.1(2)(c), be donated to one or more non-profit organisations with the same or similar objectives, chosen by the Board.