

The Botanical Society of South Africa Kirstenbosch Branch

Stone Cottage No.1, Cnr. Kirstenbosch & Rhodes Drives, Newlands
P.O. Box 53445, Kenilworth, 7745
003-394 NPO



Summary of the salient features of the proposed Constitutions of The Botanical Society of South Africa

In previous communications to members and Council, the Kirstenbosch Branch Committee (KB) undertook to initiate a process that would ensure a modern and democratic constitution for BotSoc. We summarise in this note the salient features of the new national constitution (the "National Constitution").

The lawyers with whom this committee has consulted specialise in corporate, constitutional, administrative law and litigation and are senior people in one of the 5 major law firms in the country.

This National Constitution is the founding document of the Society, informed by the principles that govern corporations, companies and major NGO's. It is also constructed to be compliant both with the Non-Profit Organisations Act and with the Income Tax Act. It seeks to enshrine the guiding principles of BotSoc in its Mission Statement:

Mindful of the role of the people of South Africa as custodians of amongst the world's richest floral heritage, it is our mission to win the hearts, minds and material support of individuals and organisations, wherever they may be, for the conservation, cultivation, study, enjoyment and wise use of the indigenous flora and vegetation of southern Africa.

As is essential in democratically run bodies, the National Constitution creates a series of checks and balances between the Council, Executive Committee, Branches and Members. Ultimately, the National Constitution ensures that Members, by means of passing resolutions at a duly constituted general meeting, have the final say. Basic corporate governance rules, non-existent in the existing constitution, have now been incorporated. It aligns the interest of these parties and that of stakeholder(s), such as SANBI.

The National Constitution provides the following structure and governing mechanisms for the Society:

Membership

In order to provide continuity for the Society's long-established membership categories, the National Constitution retains those categories as closely as possible. The Council of the Society may determine criteria for membership and may refuse or cancel membership, but must only do so for good reason and in the best interests of the Society. Should the Council wish to create further classes of membership, the approval of Members by resolution at a general meeting of the Society is required.

The Council

The Council of the Society is the governing body of the Society, similar to a board of directors of a company. It consists of nine voting members, each of whom must be elected by the Society's members. It comprises a Chairperson, a suitably qualified Treasurer, and seven other persons. It also has two *ex-officio* but non-voting members, being SANBI's

CEO or someone nominated by the CEO, and the General Manager of the Society (the current Executive Director).

Nominations for the election of Councillors, who must be members of the Society, may be made by a Branch or by a written nomination signed by not less than ten members. In order to protect minority interests, no Branch may nominate more than the Chairperson and four other persons.

A simplification in the new National Constitution is that all Councillors must be re-elected annually at each AGM of the Society by the Members only. They may not serve more than 4 consecutive years on the Council (3 for the Chairperson). Councillors may now also be dismissed by a resolution of members at a duly convened Special General Meeting.

To manage the transition process from the previous Council of the Society and the former constitution which this National Constitution replaces, an Interim Council is appointed at the same time that the National Constitution is adopted by the Members. These are people who have the future of BotSoc at heart and are committing their considerable skills, experience and time to manage the recovery of BotSoc. At the first AGM following the acceptance of this new National Constitution, Members will be afforded the opportunity to nominate and vote in Council members as described above.

The Executive

The Council, as the governing body, will establish an Executive Committee of not more than 5 Council members to oversee the day to day running of the Society. The General Manager shall be an *ex officio* member of the Executive Committee.

Branches

Branches of the Society will be enabled to operate as independent separate legal entities with their own governing councils/committee, bank accounts, and management and corporate governance principles all subject to the overriding provisions of the Society's National Constitution. Branches are required to adopt their own constitutions and shall report their financial affairs to the Council.

Only members of the Society may be Branch members. Membership is generally determined by geographical area, or a specific garden or a specific theme.

Branches will continue to receive financial allocations from the Society for their legitimate expenses and shall be permitted to raise funds. The Council will as far as possible allocate and return assets of the Society that were historically operated and/or managed by each Branch.

Allocation and control of funds left to or donated to the Society

Whilst testators or donors to the Society may specify how such funds should be allocated, the existing constitution allows the Council to control the funds and invest them as it deems fit. An important feature of the new National Constitution is that it provides the assurance to testators and donors, who choose to leave funds to a particular Branch for a specific purpose, that the wishes of such testators or donors will be carried out. In the absence of such stipulation, 100% of funds arising from a legacy or donation to the Society are paid into a special account managed as before jointly by SANBI and the Society.

Annual General Meeting and Special General Meetings

The provisions relating to all meetings of Members have been considerably improved and modernised.

The first AGM of the Society must be held within six months of the date of adoption of the National Constitution to give the Interim Council time to bed down the new structure of the Society and to ensure that the 2016 and 2017 financial statements are properly reviewed and presented to Members.

Thereafter AGM's are to be held within 5 months after the Society's year end (presently 31 March). For two out of each three years, AGM's must be held in the city where the Society's Head Office is located. The third year shall be in a different town or city.

Special General Meetings may be convened by the Council at any time with 14 days notice. They also must be convened by the Council within 7 days of any written request signed by not less than 30 members.

In addition to voting by persons present at a General Meeting, and to postal votes as previously provided for, the National Constitution allows for proxies to be appointed by Members unable to attend the General Meeting. The quorum for both an AGM and a Special General Meeting is not less than 50 persons personally present or represented by proxy.

The National Constitution requires that an independent scrutineer must be appointed to ensure the proper, constitutional conduct of the voting and vote counting process.

Dissolution of the Society

Should a decision be taken to dissolve the Society, the National Constitution ensures that the net assets of the Society shall be distributed to one or more non-profit bodies having objects similar to BotSoc's main object.