

DRAFT – FOR DISCUSSION PURPOSES ONLY

M1

**AMENDED MEMORANDUM OF ASSOCIATION OF A COMPANY
NOT HAVING A SHARE CAPITAL**

[Section 54(1) and Regulation 17(3)]

Registration Number of Company : 2000/029897/08

FINANCIAL YEAR END : 28 February of each year

1. **NAME**

1.1. The name of the Company is :

**THE ASSOCIATION OF BUSINESS ASSESSMENT &
RECOVERY PROFESSIONALS**

1.2. The name of the Association in any other official language of the Republic is :-

NOT APPLICABLE

1.3. The shortened form of the name of the Association is :-

ABARP

2. **THE PURPOSE FOR DESCRIBING THE MAIN BUSINESS**

The business of the Association is to promote the common interests of persons carrying on the profession of business assessment and business recovery professionals within the Republic of South Africa (hereinafter referred to as “the professionals”).

3. **MAIN OBJECTIVE**

The main objective of the Association shall be :

- 3.1. To regulate all the activities of its members who shall at all times be registered members of a recognized professional body as approved by the Association.
- 3.2. To put in place such regulatory processes and procedures necessary and which may become necessary to ensure that all its members carry out their duties in a professional and ethical manner and with a view to achieving the objectives of the Association.
- 3.3. To facilitate and promote the practice of business assessment and recovery.
- 3.4. To enhance and uplift all its members from previously disadvantaged groups, particularly such individuals specifically defined as designated people in the Employment Equity Act, Act 55 of 1998.
- 3.5. To provide such training and courses necessary to facilitate skills transfer amongst all its members, particularly in the practice of business assessment and recovery.
- 3.6. To ensure equal representation of members of the Association in respect of gender and race.
- 3.7. To work together with and in furtherance of such objectives and aims of all the Masters of the High Court, State Attorneys and professional bodies in respect of such Legislation and proposed Legislation relating to business recovery and business assessment, and any and all Legislation aimed at curtailing and/or preventing unemployment within the country.
- 3.8. To maintain and enhance the prestige, status and dignity of the professionals.
- 3.9. To encourage and promote efficiency and responsibility of the professionals in relation to the practice of business assessment and recovery.
- 3.10. To uphold the integrity of the professionals.

- 3.11. To uphold and improve the standards of professional conduct and qualifications of professionals.
- 3.12. To provide for the effective control of the conduct of the professionals.
- 3.13. To promote uniform practice and discipline among the professionals.
- 3.14. To encourage the study of law relating to business recovery, business assessment and any other similar Statutes and laws concerning the administration, the assets, liabilities and financial affairs of any individual, Close Corporation company or any other legal entity.
- 3.15. To advance the theory and practice of business assessment and business recovery in all its aspects.
- 3.16. To represent generally the views of the professionals insofar as same may relate to business assessment and business recovery.
- 3.17. To co-operate with the Minister of Justice and all Masters with the view to enacting such necessary Legislation to promote, extend and consolidate the objects, powers and scope of the Association.

4. **ANCILLARY OBJECTS EXCLUDED**

- 4.1. None of the ancillary objects referred to in Section 33(1) of the Act are excluded from the unlimited ancillary objects of the Association.
- 4.2. The funds of the Association will be utilized solely for the investment in the promotion and implement of its main objectives as recorded in clause 3 above.

5. **POWERS**

- 5.1. The specific powers or part of any powers of the Association, which are excluded from the plenary powers or the powers set out in Schedule 2 to the Act.

5.2. The specific powers or part of any specific powers of the Association set out in Schedule 2 to the Act, which are qualified under Section 34 of the Act, are the following powers, which are to be amended to read as follows :-

5.2.1. Clause (k) of Schedule 2 is amended to read :

“To form and have an interest in any business/es, Company/ies, institution/s or Association/s, having the same or similar objects to the Association for the purpose of acquiring the undertaking of all or any of the assets or liabilities, which may seem, directly or indirectly, calculated to benefit the Association and to transfer to any such Business/es, Company/ies, Institution/s, Association/s, the undertaking of or all or any of the assets or liabilities of the Association.”

5.2.2. Clause (l) of Schedule 2 is amended to read :

“To amalgamate with other businesses, companies, institutions, Associations having the same or similar objects to the Association.

5.2.3. Clause (m) of Schedule 2 is amended to read:

“To take part in the management, supervision and control of the business or operations of any other company, institution, Association or business having the same or similar objects as the Association and to enter into partnerships with other companies, institutions,

***Associations or businesses
having the same or similar
objects as the Association."***

5.2.4. Clause (n) of Schedule 2 is amended to read :

“To remunerate a person/s in cash for services rendered in its formation or in the development and conduct of its business.”

5.2.5. Clause (o) of Schedule 2 is amended to read :

“To make a donation to any company, institution, Association or business having the same or similar objects to the Association.”

5.2.6. Clause (p) of Schedule 2 is amended to read :

“To undertake and execute any Trust provided the Trust shall have the same or similar objects as the Association.”

5.2.7. Clause (q) of Schedule 2 is amended to read :

“To act as principals, agents, contractors or trustees”.

5.2.8. Clause (r) of the Schedule is amended to read:

“To pay any gratuities and pensions and establish pension schemes and other incentive schemes in respect of its bona fide employees.”

5.2.9. With specific reference to the amended powers as contained and referred to in clauses 5.2.1, 5.2.2, 5.2.3 and 5.2.5 the aforesaid amended powers may only be exercised if such other companies, institutions, Associations or businesses have the same or

similar objects as that of the Association and that such other companies, institutions, Associations or businesses have been approved in terms of Section 30 of the Income Tax Act, 1962 as amended.

6. **CONDITIONS**

The special conditions which apply to the Association, and the requirements additional to those prescribed in the Act for their alteration are as follows :-

- 6.1. The income and property of the Association from wherever derived shall be applied solely towards the promotion of its main object and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the members of the Association; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any member thereof in return for any services actually rendered to the Association.
- 6.2. Upon its winding-up, deregistration, or dissolution, the assets of the Association, other than cash, remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or associations or members of the Association on or before the time of its dissolution or, failing such determination, by the Court; subject to the provisions of clause 6(3) below. Any cash assets shall be paid to the members pro rata.
- 6.3. Upon the winding up, deregistration or dissolution of the Association, the remaining assets which cannot be sold and reduced to cash will be distributed to association(s) and/or institution(s) within the Republic of South Africa which are themselves exempt from tax failing which such assets may be distributed to the members of the Association.

7. **PRE-INCORPORATION CONTRACTS (IF ANY)**

NONE

8. **GUARANTEE**

- 8.1. The liability of members is limited to the amount referred to in paragraph 8.2 hereunder.

8.2. Each member undertakes to contribute to the assets of the Association in the event of it being wound-up while he is a member or within 1 (one) year thereafter, for payment of the debts and liabilities of the Association contracted before he ceases to be a member and of the costs, charges and expenses of the winding up and for the adjustment of the rights to the contributions amongst themselves, an amount of R10.00 (Ten Rand).

9. **ASSOCIATION CLAUSE**

We, the several persons, whose full names, occupations, residential, business and postal addresses are subscribed, respectively agree to the provisions of this Memorandum.