

CONSTITUTION

of

Fossil Free South Africa

Adopted on 25 July 2017



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1. ESTABLISHMENT AND NAME OF ASSOCIATION

- 1.1. Fossil Free South Africa (“the Association”) is a voluntary association established on 2 February 2015, and is formalised upon signature of this constitution by agreement between the persons listed as founding members in Annex A.
- 1.2. The shortened name of the Association is “FFSA”

2. DEFINITIONS AND INTERPRETATION

- 2.1. The words and phrases in this constitution have the meanings set out below:

“fossil fuel”	Means hydrocarbon fuels (including coal, oil, petroleum and natural gas and the many derivatives thereof);
“divestment”	means selling off investments or other business interests and refraining from future investments related to the prospecting for, extraction, production and distribution of fossil fuels;
“renewable energy”	means energy derived from replenishable sources, such as sunlight, wind, rain, tides, waves, ocean currents and geothermal heat. These, generally speaking, are not ‘fuels’, but technologies for capturing renewable energy sources and thus are not burned, nor do they pollute.

- 2.2. Unless inconsistent with the context, any expression contained in this constitution, which denotes:
 - 2.2.1. any gender, includes the other gender;
 - 2.2.2. a natural person, includes a juristic person and *vice versa*;
 - 2.2.3. the singular, includes the plural, and *vice versa*.
- 2.3. Clause headings appear in this constitution for purposes of reference only and shall not influence the interpretation of the clause.
- 2.4. A reference to legislation, or to a legislative provision, that has been amended or replaced by new legislation or a new provision, must be interpreted as a reference to the amended or replaced legislation or provision.

3. AIM AND OBJECTIVES

- 3.1. The Association is a voluntary, non-profit organisation established for the public benefit, and with the aim of reducing emissions of greenhouse gases that cause

climate change by advocating reductions in and ultimately elimination of the combustion of fossil fuels through human activities.

3.2. The main objectives of the Association include:

3.2.1. to encourage universities, companies, organizations, and public and private investors to divest from fossil fuel and related investments, and to cease activities that support the fossil fuel economy and in other ways worsen climate change and ocean acidification through emissions of greenhouse gases; and

3.2.2. to encourage the investment of divested funds and future investments in a manner that will accelerate a transition to renewable energy systems that lower environmental and human impact, and that builds a more democratic, equitable, diversified and distributed energy infrastructure.

4. LEGAL STATUS

4.1. The Association is a body corporate, having its own legal identity which is separate from its members and Management Committee.

4.2. The Association shall continue to exist, despite any change in its membership or Management Committee.

4.3. The Association is capable of owning property, may enter into contracts, and sue and be sued in its own name.

5. POWERS OF ASSOCIATION

5.1. The Association shall have the same powers as that of a non-profit company under the Companies Act 71 of 2008, as amended.

5.2. The powers of the Association, acting through its Management Committee, shall include the powers:

5.2.1. to open and operate a bank account, in accordance with the provisions of this constitution;

5.2.2. to accept donations made to the Association, and retain them in the form in which they were received, or sell them and re-invest the proceeds;

5.2.3. to prudently invest funds of the Association, provided that such investment shall be with a reputable financial institution;

5.2.4. to institute or defend any legal or other proceedings and to settle any claims made by or against the Association;

5.2.5. to involve the Association in administrative and legal processes and to make any decisions that may be necessary or desirable in that regard, including: appointing legal and other professional advisors, submitting or withdrawing objections, comment and appeals in environmental impact assessment and land use planning and control processes;

- 5.2.6. to buy, attain, maintain, manage, lease, sell, or in any way deal with property and assets of the Association;
- 5.2.7. to borrow and to use the property or assets of the Association as security for borrowing;
- 5.2.8. to execute any act or deed in any deeds registry, mining titles or other public office;
- 5.2.9. to exercise all the management and executive powers ordinarily vested in the Board of Directors of a Company;
- 5.2.10. to exercise all the powers and authority of the Association in South Africa and in any other part of the world;
- 5.2.11. donate and transfer the property and assets of the Association to public benefit organisations with similar objectives; and
- 5.2.12. work in collaboration with other organisations with the same or similar objectives, and the same exemptions from taxes and duties to those of the Association;
- 5.2.13. employ staff and hire professional services in furtherance of the aim and objectives of the Association;
- 5.2.14. do anything which may be lawfully done necessary to achieve the aim and objectives of the Association.

6. INCOME AND PROPERTY OF THE ASSOCIATION

- 6.1. The income and property of the Association shall be used solely for the promotion of its stated aim and objectives.
- 6.2. Members and office-bearers have no rights in the property or other assets of the Association solely by virtue of their being members or office-bearers.
- 6.3. No portion of the income or property of the Association shall be paid or distributed directly or indirectly to any person, or to any member of the Association, except as reasonable remuneration for services actually rendered to the Association, or reimbursement of actual costs or expenses reasonably incurred on behalf of the Association in furtherance of its stated objectives.

7. TAXATION OF ASSOCIATION

- 7.1. The Association may apply to the Commissioner for the South African Revenue Service for approval as a Public Benefit Organisation in terms of section 30 of the Income Tax Act. Upon approval the provisions set out in Annex B shall bind the Association.

8. MEMBERSHIP

- 8.1. The founding members of the Association shall sign Annex A of this constitution.

- 8.2. The Association may admit further members by resolution of the Management Committee.
- 8.3. The Management Committee may by resolution require any person wishing to become a member of the Association to complete an application form, which shall be available from the Secretary or Vice-Secretary, and to agree in writing to be subject to and to comply with any reasonable conditions of membership which the Management Committee may stipulate from time to time
- 8.4. Membership is not transferable.
- 8.5. The Management Committee shall keep a register with the names, addresses and contact details of all members.
- 8.6. Membership shall automatically terminate upon the receipt by the Association of:
 - 8.6.1. notification of the death of a natural member;
 - 8.6.2. notification of the dissolution of an organisational member;
 - 8.6.3. a written resignation from any member.
- 8.7. The Management Committee, may by resolution terminate the membership of any member provided that:
 - 8.7.1. the member has been given reasonable written notice of the proposed termination, and of the meeting of the Management Committee pertaining to the proposed termination;
 - 8.7.2. the member has been given an opportunity to make written or oral representations at a meeting of the Management Committee pertaining to the proposed termination; and
 - 8.7.3. the Management Committee's decision to terminate membership is confirmed by resolution of two-thirds of the members present at the next General Meeting, otherwise the decision will lapse and the membership will be reinstated with effect from the date of lapsing.

9. THE MANAGEMENT COMMITTEE

Powers

- 9.1. The Association shall be managed by a Management Committee in accordance with the resolutions of members in a General Meeting.
- 9.2. The Management Committee shall exercise the powers described at clause 5.2, in furtherance of the Association's aim and objectives.
- 9.3. All members of the Association must abide by decisions that are taken by the Management Committee.

Members of the Management Committee

- 9.4. A minimum of four members shall serve on the Management Committee, bearing the following portfolios:
 - 9.4.1. the Chairperson;
 - 9.4.2. the Vice-Chairperson;
 - 9.4.3. the Treasurer;
 - 9.4.4. the Secretary; and
 - 9.4.5. the Vice-Secretary.
- 9.5. All members of the Management Committee shall be members of the Association.
- 9.6. The first members of the Management Committee are recorded in Annex C.
- 9.7. Save for the first members, the Management Committee shall be elected by the members of the Association at an Annual General Meeting.
- 9.8. The Management Committee may co-opt additional non-voting members as it may consider appropriate.
- 9.9. The Management Committee must, as soon as reasonably possible, appoint a member to the Management Committee to fill any vacancy that reduced the number of management committee members to less than four. The next General Meeting must confirm the office of any Management Committee member appointed, otherwise it will lapse.

Term of office

- 9.10. Office-bearers, including the Chairperson and Treasurer, shall serve for a period of one year, but may be re-elected for subsequent terms.
- 9.11. If a member of the Management Committee does not attend three Management Committee meetings in a row without having applied for and obtained leave of absence from the other members of the Management Committee, the Management Committee may recruit another member of the Association to take that person's place.
- 9.12. Members may be appointed to the Management Committee for first a period of 3 years and may then be re-appointed for a further period of 3 years, provided that no person shall serve on the Management Committee for more than 9 years consecutively.
- 9.13. After having served 9 years consecutively on the Management Committee, a member may be re-appointed as a trustee after a 2 year absence from the Management Committee.

Sub-committees

- 9.14. The Management Committee may set up one or more sub-committees if it considers this to be necessary or convenient. A sub-committee may be set up to expedite certain tasks or to undertake an inquiry. There must be at least three people on a sub-committee.
- 9.15. A sub-committee must report regularly to the Management Committee on its activities.
- 9.16. A sub-committee must refer its decision to the Management Committee which may approve them (with or without changes) or reject them within a reasonable period after the meeting of the sub-committee. In approving a decision of a sub-committee the Management Committee ratifies that decision and it becomes a decision of the Association.

Resignation, disqualification and removal

- 9.17. A Management Committee member may resign from office in writing.
- 9.18. A Management Committee member shall be disqualified from office upon termination of membership to the Association and/or becoming incapable by reason of mental illness.
- 9.19. A member can be removed from office through a two-thirds resolution of the remaining Management Committee members, consisting of not less than four, provided that:
- 9.19.1. the member has been given reasonable written notice of the proposed removal from office, and of the meeting of the Management Committee pertaining to the proposed removal;
 - 9.19.2. the member has been given an opportunity to make written or verbal representations at a meeting of the Management Committee pertaining to the proposed removal; and
 - 9.19.3. the Management Committee's decision to remove a member from office was confirmed by resolution of two-thirds of the members present at the next General Meeting, otherwise it will lapse.

Delegation of powers

- 9.20. The Management Committee may delegate any of its powers or functions to a sub-committee or member(s) of the Association provided that:
- 9.20.1. such delegation and conditions are reflected in the minutes for that meeting;
 - 9.20.2. at least one Management Committee member serves on the sub-committee;
 - 9.20.3. the Management Committee in advance approves all expenditure incurred by the committee or member; and
 - 9.20.4. the Management Committee may revoke the delegation or amend the

conditions.

10. MEETINGS OF THE MANAGEMENT COMMITTEE

Meeting procedures

- 10.1. The Management Committee may regulate its meetings and proceedings as it finds fit, subject to clauses 10.2 to 10.17 below.
- 10.2. The Management Committee must hold at least three ordinary meetings each year.
- 10.3. The Chairperson, or two members of the Management Committee, may call a special meeting provided that the other members of the Management Committee are informed of the date of the proposed meeting and the issues to be discussed not less than 7 days before it is due to take place. Provided that if one of the matters to be discussed is appointment of a new Management Committee member, those calling the meeting shall give the other committee members not less than 30 days' notice.
- 10.4. The Chairperson shall chair all meetings of the Management Committee. In the Chairperson's absence, the Vice-Chairperson shall chair the meeting. In both their absence, the Management Committee members present at the meeting shall elect a chairperson for that meeting.
- 10.5. Meetings of the Management Committee may be conducted face-to-face or electronically through teleconference, video conference or other similar means provided that the members are able to hear each other.
- 10.6. The quorum for a meeting of the Management Committee shall be two-thirds of the serving Management Committee members.
- 10.7. If no quorum is present, the Management Committee may make no decision, except to preserve the assets of the Association and to call a meeting of the general members.
- 10.8. Each Management Committee member present or represented through written proxy shall have one vote.
- 10.9. Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
- 10.10. Proper minutes and attendance records must be kept of all meetings of the Management Committee. The draft minutes of each meeting shall be given to Management Committee members at least seven days before the next meeting.
- 10.11. A meeting of the Management Committee shall confirm the minutes of the previous meeting as a true record of proceedings at that meeting and those minutes shall then be signed by the Chairperson.
- 10.12. The minutes shall be available at all times for inspection or copying by any member of the Association on two days' notice to the Secretary or the Vice-Secretary.

10.13. A resolution signed by all members of the Management Committee shall be as valid as if passed at a duly convened meeting of the Management Committee. Each Management Committee member may vote for or against the resolution by communicating their decision to the Chairperson in writing (whether by letter, fax, e-mail or similar means of electronic communication). In such a case the decision shall be deemed to have been taken at the place where the Chairperson is located.

Conflicts of interest

10.14. Any actual, potential or perceived conflict of interest on the part of any member of the Management Committee, on a matter pertaining to the Association, must be disclosed in writing to the Management Committee.

10.15. The conflict of interest shall be recorded in the minutes of the Management Committee meeting.

10.16. The member who has disclosed the conflict of interest may be requested by the Management Committee to state his/her position in the matter or to respond to pertinent questions, but shall not vote or use his/her influence on the matter and shall not be counted for purposes of determining a quorum for the meeting where the voting takes place.

Confidentiality

10.17. All matters pertaining to litigation, security measures, contractual negotiations, employment matters and any other matters deemed confidential by the Management Committee, must be treated as confidential and only the actual decisions may be disclosed to the general public.

11. MEETINGS OF MEMBERSHIP

Annual General Meeting

11.1. The Chairperson must call the Annual General Meeting (“AGM”), which must be held towards the end of the Association’s financial year.

11.2. At least 30 days’ written notice of the AGM must be given to all members stating the date, time, place and proposed agenda of the AGM.

11.3. The agenda of the AGM must include:

11.3.1. agreement in the items on the agenda;

11.3.2. the Chairperson’s report;

11.3.3. the presentation of the Association’s Annual Financial Statements;

11.3.4. the election of the Management Committee members;

11.3.5. the appointment of auditors; and

11.3.6. other appropriate matters.

Special General Meetings

11.4. The Management Committee or not less than one-third of the members may call a Special General Meeting of the Association.

11.5. At least 14 days' written notice must be given to all members stating the date, time, place and proposed agenda of the Special General Meeting.

11.6. If the Management Committee fails to give notice within seven days of the request of one-quarter of the members, such members shall be entitled themselves to give notice of and to convene the meeting.

Procedure at General Meetings

11.7. The members may regulate its meeting and proceedings as it finds fit, subject to clauses 11.8 to 11.17 below.

11.8. The Chairperson shall chair all General Meetings. In the Chairperson's absence, the Vice-Chairperson shall chair such meeting. In both their absence, the members present at the General Meeting shall elect a chairperson for that meeting.

11.9. General Meetings of the Association may be conducted face-to-face or electronically which would allow members to be present and participate through electronic means.

11.10. The quorum for General Meetings of the Association shall be one quarter of the members of the Association.

11.11. If a quorum is not present within fifteen minutes of the appointed time of the meeting, the meeting must be adjourned to another date, within fourteen days thereafter. Notice, as provided for under the constitution, must be given to all members of the Association of such adjournment.

11.12. If no quorum is present at the reconvened meeting within fifteen minutes of the appointed time, the members present, or represented by proxy, shall deem to constitute a quorum for that meeting.

11.13. A resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot can be demanded by not less than one third the members present, or represented by proxy.

11.14. Each member present or represented by proxy shall be entitled to 1 vote.

11.15. If a draft resolution of the general meeting is circulated to members before a general meeting, any member who communicates to the Chairperson in writing prior to the general meeting that he or she wishes to vote for or against that draft resolution is deemed to have validly cast that vote at the general meeting.

11.16. Except where this constitution requires a higher threshold, questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

11.17. Proper minutes and attendance records must be kept of all General Meetings. The Chairperson must sign the minutes which shall be available at all times for inspection or copying by any member of the Association on two days' notice to the Secretary or the Vice-Secretary.

12. NOTICES OF MEETINGS

12.1. All notices in terms of this constitution must be given to members in writing (personally, post or electronic communication) to the address provided by each member.

12.2. The accidental omission to address notices to any member shall not nullify the proceedings of any meeting.

12.3. A member present in person at any meeting shall be deemed to have received notice of such meeting.

12.4. If posted, notices shall be deemed to have been received seven days after posting.

13. FINANCES AND REPORTS

13.1. The Management Committee must open a bank account in the name of the Association with a registered bank. The Treasurer shall arrange for all funds to be put into a bank account in the name of the Association.

13.2. Whenever funds are to be paid from the bank account, whether via cheque or otherwise, the Chairperson and at least two other members of the Association shall authorise the withdrawal or cheque.

13.3. All cheques, promissory notes and other documents requiring signature on behalf of the Trust shall be signed in such manner as the Management Committee has resolved in writing provided that at least two signatories authorised by the Management Committee sign such documents.

13.4. The financial year end of the Association shall be end of February.

13.5. The Treasurer shall administer the day-to-day finances of the Association, and shall keep a proper record of all transactions.

13.6. The Management Committee must ensure that proper records and books of account which fairly reflect the affairs of the Association are kept.

13.7. The Management Committee must appoint a person who would qualify under regulation 29(4) of the Companies Regulations, 2011 to perform an independent review of a company with a public interest score of less than 100, to undertake an independent review of the financial affairs of the Association and provide the

Management Committee with a report on that independent review within six months of its financial year end, unless the Management Committee resolves unanimously:

- 13.7.1. to dispense with the appointment of a person to conduct an independent review on the basis that the limited volume and scope of the Association's financial transactions renders an independent review unnecessary, and/ or on the basis that the costs of undertaking an independent review are out of proportion to the means or affairs of the Association; or
- 13.7.2. to appoint an independent practicing auditor registered in terms of the Auditing Profession Act to provide an audit report within six months of the financial year end."

14. AMENDMENTS TO THE CONSTITUTION

- 14.1. This constitution may be amended and the name of the Association changed by resolution of two-thirds of the members present at a General Meeting.
- 14.2. At least 21 days' notice of the General Meeting stating the nature of the resolution to be proposed must be given to all the members of the Association.
- 14.3. A General Meeting cannot amend the constitution in a way that would have the effect of making the Association cease to exist.

15. DISSOLUTION

- 15.1. The Association may be dissolved by resolution of two-thirds of the members present at a General Meeting convened for the purpose of considering dissolving the Association.
- 15.2. Any remaining assets shall not be paid to or distributed amongst the members, but shall be transferred to one or more other non-profit organisations of a public character which the Management Committee (failing which, the members in a General Meeting, or failing that any division of the High Court) may consider appropriate, and which have the same or similar objectives to those of the Association. If the Trust is an approved public benefit organisation further to clause 7 then such transfer may only be made to shall be transferred to:
 - 15.2.1. similar public benefit organisations approved in terms of section 30 of the Income Tax Act;
 - 15.2.2. institutions, boards or bodies which are exempt from tax under the provisions of section 10 (1)(cA)(i) of the Income Tax Act, which have as their sole or principal object the carrying on of any public benefit activity, or
 - 15.2.3. departments of state or administration in the national or provincial or local sphere of government of the Republic.

16. INDEMNITY

- 16.1. Subject to the provisions of any relevant law, members, office-bearers or appointed delegates of the Association shall be indemnified by the Association for all acts done by them in good faith on its behalf.
- 16.2. Subject to the provisions of any relevant law, no member of the Association or appointed delegates 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 Association, 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.

17. DISPUTE RESOLUTION

- 17.1. In the event of a dispute arising between the members relating to:
- 17.1.1. the interpretation or application of any provision of this constitution;
 - 17.1.2. the proper attainment of the aim or objectives of the Association; or
 - 17.1.3. any other matter whatsoever pertaining to the carrying out of their duties as members of the Management Committee,
- the members commit themselves to resort to mediation, or, failing that, arbitration on the terms set out more fully in this trust deed.
- 17.2. Within fifteen days of the dispute arising, the dispute shall be referred to a mediator agreed upon by the members.
- 17.3. In the event that the members are unable to agree on a mediator within the fifteen day period, the mediator will be appointed by the Arbitration Foundation of South Africa, which shall nominate a person with expertise, appropriate to the nature of the matter in dispute.
- 17.4. In the event of the mediator failing to resolve the dispute within a further period of fifteen days from his or her appointment, the dispute shall be referred to an arbitrator agreed upon by the members whose decision in regard to the dispute shall be final and binding. In the event that the trustees are unable to agree upon an arbitrator, he or she shall be appointed by the Arbitration Foundation of South Africa, and either party may approach the said Foundation for such appointment.
- 17.5. The procedure for such arbitration shall be governed by the rules of the Arbitration Foundation of South Africa, provided that the arbitrator shall have due regard to the need for the dispute to be resolved expeditiously and shall endeavour to ensure that his or her decision thereon is made available to the trustees within twenty one days of his or her appointment as arbitrator.

This constitution was approved and accepted by the members of Fossil Fuel South Africa at a special (general) meeting held at ___(via email)___ on this the 25th day of July 2017

Chairperson: Dr Nicholas King



ANNEX A: SCHEDULE OF FOUNDING MEMBERS

Nr.	Name	Address	Date	Signature
1.	David Le Page (680922 5303 088)	4 St James Mansions, Carisbrook Road, St James, Cape Town, 7945		
2.	Nicholas David King (6001095121085)	4 Squire Rd, Glencairn, 7975		
3.	Cormac Patrick Cullinan (6206105127085)	16 Ascot Rd, Kenilworth, 7708, Cape Town		
4.	Happy Khambule (900623 5855 085)	36 Arlington Close, Puntersway, Kenilworth, 7708		
5.	Robert Zipplies (671017 5112 083)	8 Gladiolus Ave, Vredehoek, Cape Town, 8001		
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10.				
11.				
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ANNEX B: SCHEDULE OF REQUIREMENTS FOR APPROVAL AS A PUBLIC BENEFIT ORGANISATION

As provided for in clause 7 of this constitution, should the Association apply to the Commissioner for SARS for approval as a Public Benefit Organisation in terms of Section 30 of the Income Tax Act, upon approval the Association shall:

1. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation.
2. Ensure that no single person directly or indirectly controls the decision making powers relating to the Association.
3. Is prohibited from 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 object for which it has been established.
4. Be 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 such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor may not impose 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. Ensure that it is not knowingly a party to, and does not knowingly 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 Act or any other Act administered by the Commissioner.
6. Submit to the Commissioner a copy of any amendment to this constitution.
7. Not pay any remuneration 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.

8. Comply with such reporting requirements as may be determined by the Commissioner.
9. Take reasonable steps to ensure that the funds which it may provide to any association of persons as contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule of the Act are utilised for the purpose for which they are provided.
10. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

ANNEX C: FIRST MEMBERS OF THE MANAGEMENT COMMITTEE

- Chairperson:** Nicholas King
- Vice-Chairperson:** David Le Page
- Treasurer:** Cormac Cullinan
- Secretary:** Robert Zipplies
- Vice-Secretary:** Happy Khambule