



# The South African Dispute Settlement Accreditation Council

## OPERATIONAL FRAMEWORK OF THE DISPUTE SETTLEMENT ACCREDITATION COUNCIL

### **PREAMBLE**

The Dispute Settlement Accreditation Council emerges from the need for a national accrediting body which will promote professional and ethical standards and integrity of dispute settlement practitioners and service providers in South Africa, and that will promote transformation in the industry.

### **1) INTERPRETATION**

In this document the following terms must be given the meaning here indicated, unless the context otherwise indicates:

- a) "ACDS" refers to the Africa Centre for Dispute Settlement at the University of Stellenbosch Business School
- b) "Council" refers to The Dispute Settlement Accreditation Council
- c) "dispute settlement practitioner" refers to a natural person that performs services as an arbitrator or mediator (or any other variant or hybrid of these processes), and "practitioner" shall have the same meaning
- d) "dispute settlement services" refers to mediation and arbitration processes (and includes variants and hybrids of these processes), and all ancillary and support services relating to such processes (including management and training)
- e) "member" refers to a service provider who is an affiliated member of the Council, and "member organisations" shall have the same meaning
- f) "service provider" refers to an organisation whose principle activity is to offer dispute settlement services



## 2) NAME AND LEGAL STATUS

- a) The Dispute Settlement Accreditation Council [“the Council”] is established as a standing committee of the Africa Centre for Dispute Settlement at the University of Stellenbosch Business School.
- b) The Council is not a distinct legal entity, and does not have the power to acquire, to hold and to alienate property of every description whatsoever, nor has it the capacity to acquire rights and obligations.
- c) It is recorded that the Africa Centre forms part of the University of Stellenbosch, and is subject to the governance of a control committee, established by the University.

## 3) OBJECTIVES OF THE COUNCIL

The Council is a industry representative body that:

- a) Defines and publishes a national accreditation standards for practitioners (mediators, arbitrators, facilitators, etc as well), as well as trainers and courses aimed at developing skills in these fields. These standards should cater for specific requirements in various fields of expertise (eg family disputes, environmental disputes, etc)
- b) Defines and publishes affiliation requirements for dispute settlement service providers
- c) Maintains and publishes a national register of accredited service providers, practitioners, trainers and courses
- d) Actively promotes transformation and representivity in the dispute settlement industry;
- e) Actively engages with all role players involved with or affected by the dispute settlement industry on matters of mutual interest.
- f) Monitors adherence to the affiliation requirements by all member organisations;

## 4) ACCREDITATION STANDARDS AND AFFILIATION REQUIREMENTS

- a) The Council shall from time to time define and publish minimum accreditation standards for each of the following:
  - i) Individual practitioners engaged in dispute settlement. Accreditation standards shall be developed for different areas of skill (eg mediation, arbitration, etc) and different areas of expertise (eg family disputes, environmental disputes, etc)



- ii) Trainers and courses aimed at developing mediation, arbitration and other dispute settlement skills and expertise.
- b) The Council shall from time to time define and publish affiliation requirements for service providers.
- c) In defining accreditation standards and affiliation requirements the Council shall be obliged to give due consideration to the following:
  - i) Established South African and international best practice for accreditation of dispute settlement practitioners and organisations;
  - ii) The diversity of cultural, social and religious practices in South Africa;
  - iii) Established indigenous traditions and usage regarding mediation and inclusive dispute resolution;
- d) In defining accreditation standards and affiliation requirements the Council shall be allowed to investigate, develop and establish different categories of accreditation and affiliation, each with specific accreditation criteria and fields of application.
- e) The Council shall by no later than 30 April 2010 adopt and publish its first official national accreditation standard and affiliation requirements.

## **5) NATIONAL REGISTER**

- a) In accordance with one of its primary objectives, the Council shall collate and at all times maintain and publish a national register of:
  - i) Accredited dispute practitioners
  - ii) Accredited training courses
  - iii) Accredited trainers
  - iv) Affiliated service providers
- b) The national register shall accommodate any specific categories of accreditation and affiliation that may from time to time be specified by the Council, and such details of the accredited and affiliated parties as the Council may from time to time direct.
- c) The details of practitioners, training courses, trainers and service providers may only be entered into the national register if they meet the accreditation standards defined and published by the Council.

## **6) ACCREDITATION OF PRACTITIONERS**



- a) Any dispute settlement practitioner that meets the accreditation standard may apply for accreditation with the Council. Any such application shall be submitted on in a standard format prescribed by the Council, and be accompanied by an application fee, as determined by the Council;
- b) The Executive Committee of the Council shall consider all such applications in the context of the accreditation standards as approved and published by the Council from time to time, and shall within 30 days either approve the application, or decline the application with reasons;
- c) Where an application is approved:
  - i) The details of the practitioner shall be entered into the register of accredited practitioners; and
  - ii) The practitioner shall be issued with a certificate of accreditation.
- d) Any accreditation shall be valid for a stipulated period that may not exceed 24 months. Thereafter accreditation shall terminate automatically, and the practitioner shall be obliged to apply for renewal of his accreditation. Any such application shall be in the standard format prescribed by the Council, and be accompanied by an application fee, as determined by the Council.
- e) All accredited members shall be liable for an annual accreditation fee, in an amount to be determined by the Council. Non-payment of the fee within 30 days of the due date shall result in automatic suspension of accreditation.
- f) All member organisations will afford dispute practitioners a grace period until 30 April 2011 to meet the national accreditation standard, failing which their recognition (through admission to panels, allocating of briefs, etc) by that organisation must be terminated.

## **7) ACCREDITATION OF TRAINING COURSES AND TRAINERS**

- a) Any person may apply to the Council to register a training course, or to register as a trainer. Any such application must be supported by full particulars of the training course and or the trainer.
- b) The Council shall consider any such applications in the context of the accreditation standards, and may at its discretion accredit such training courses and or trainers. Any such accreditation may be made subject to specific conditions or limitations.

## **8) AFFILIATION OF MEMBER ORGANISATIONS**

- a) The ACDS shall ex officio (the Council being a sub-committee of the ACDS) be registered as an affiliated organisation.



- b) Any service provider that wishes to affiliate with the Council may apply to the Administrator. Any organization making such an application shall submit to the Administrator an application setting out the affiliation requirements, as prescribed by the Council from time to time.
- c) The Executive Committee reserves the right to:
  - i) set and amend minimum requirements for inclusion of an organization as a member;
  - ii) refuse an application by any organization that does not meet the affiliation requirements.
- d) Any organisation shall be deemed to be an affiliate member as from the date of receipt of a letter from the Secretary accepting the application.
- e) The membership of any organization:
  - i) Shall be subject to annual renewal. Such renewal application shall be submitted in a format prescribed by the Council from time to time.
  - ii) Shall terminate if:
    - (1) the organization submits a resignation in writing to the Secretary, and the resignation is accepted by the Executive Committee;
    - (2) the organization fails to pay any subscription or registration fees for which the member organisation may be liable within three (3), months of the date upon which such subscription or fee becomes due, subject to the provision that the Executive Committee may on good cause shown, permit it additional time in which to pay its subscription.
- f) The membership of any organization may be terminated if:
  - i) the organisation after the grace period referred to continues to recognise practitioners (through admission to panels, allocating of briefs, etc) who do not meet the national accreditation standards;
  - ii) the Executive Committee resolves that such membership be terminated on other reasonable grounds.
  - iii) The membership of a member organisation shall not be terminated on any of these grounds without that organisation being given an opportunity to be heard.

## 9) TRANSFORMATION AND REPRESENTIVITY

- a) The Council recognises that for historic reasons:



- i) The dispute settlement industry is not yet representative of South African society in terms of its racial, gender, cultural and religious composition, or in terms of representation of people with disabilities;
  - ii) Dispute settlement practice has not yet assimilated many of the positive aspects of indigenous traditions and usage regarding mediation and inclusive dispute resolution;
  - iii) Dispute settlement practice is not yet organised and active in all geographical areas of South Africa.
- b) In accordance with one of its primary objectives, the Council shall actively promote transformation and representivity in the industry through the following:
- i) Ensuring wide representivity on the Executive Committee of the Council;
  - ii) Requesting representivity on the governance structures of its member organisations;
  - iii) Encouraging innovative and indigenous forms of dispute settlement practice, also through accreditation standards;
  - iv) Promoting regional member organisations to be established in geographical areas that lack formal organisation.

## 10) PROFESSIONAL CONDUCT

- a) In accordance with one of its primary objectives, the Council shall facilitate adherence by all its members and all practitioners to professional conduct standards that meets certain recommended minimum requirements:
- i) The Council shall by no later than 30 April 2010 adopt and publish a recommended code of conduct.
  - ii) The Council may from time to time consider and publish minimum service delivery standards to be expected from affiliated members.
- b) All member organisations shall be required to, with effect from 1 August 2010, adopt a code of conduct that meets the minimum requirements of the recommended code of conduct published by the Council.
- c) Where the Council publishes minimum service delivery standards, affiliated members shall be required to disclose, as part of their membership (renewal) application, the extent to which they comply with these standards.
- d) All practitioners who apply for accreditation shall be required to be affiliated with one or more affiliated service providers, and to confirm their commitment to the Code of Conduct and minimum service delivery standards (if any) adopted by those service providers to which they are affiliated.



- e) Any written allegations of improper conduct received by the Council shall:
  - i) Where the person complained of is affiliated with a member organisation, be referred to the relevant member organization under whose auspices the practitioner provided his services, which shall be obliged to deal with such allegation in accordance with that organisation's code of conduct.
  - ii) Where no member organisation was involved, the Council shall deal with the complaint in a manner to be prescribed from time to time.
- f) Should a member organization fail to promptly deal with a breach of the Code of Conduct to the satisfaction of the Council, or should it become apparent that a member organisation is unable to ensure its individual members' compliance with the Code of Conduct, that organisation's membership of the Council may be reviewed by the Executive Committee and appropriate action taken by the Committee, including the suspension and or termination of that organisation's membership of the Council.
- g) Member organisations shall on a quarterly basis submit a report to the Council detailing all complaints received against its accredited practitioners, and provide details of steps taken by the member organisation, and the outcome of those steps.
- h) Where any breach of the Code of Conduct by a practitioner or member organisation is reported, the Council shall:
  - i) Consider whether or not to suspend or terminate the accreditation of the relevant practitioner or member organisation;
  - ii) Publish the details of any adverse findings against any such practitioner or member organisation, and of the disciplinary action taken, in the national register.

## 11) RIGHTS & DUTIES OF MEMBERS

- a) Once enrolled, a member organisation:
  - i) Must adhere to and implement the national accreditation standards by at least prescribing these standards as the minimum requirement for admission to its panels;
  - ii) Accept and implement a code of conduct that is aligned with the minimum recommended standards of code of conduct published with the Council
  - iii) Will be bound by this operational framework.
- b) Every member organisation will be liable for an annual subscription fee, in an amount to be determined by the Executive Committee. [not yet determined]. No refund of any subscription or part thereof shall be made to an organization ceasing



to be a member and it shall in any event remain liable to the Council for any subscription or other debts or obligations due.

- c) Every member organization shall be entitled:
- i) to be entered onto the database of member organizations;
  - ii) to be issued with a certificate of affiliation;
  - iii) to refer any dispute between itself and any accredited practitioner to the Council for settlement and or determination. Any such referral shall be dealt with in a manner to be prescribed by the Council from time to time.
  - iv) to receive all notices, circulars, balance sheets, agendas of general meetings and other documents issued to members;
  - v) to take part in any discussion on any matter at any general meeting of members;
  - vi) to attend and participate in all conferences, lectures, workshops, symposia, courses or other activities organized or sponsored by the Council subject to such limitations and on such terms and on payment of such fees as the Executive Committee shall determine;
  - vii) to vote on any resolution at any general meeting of members and to vote for candidates for election to the Executive Committee.
  - viii) to nominate a representative/s to stand for election to the Executive Committee or hold any office in the Council.

## 12) GOVERNANCE AND STRUCTURES

- a) The management of the Council shall be conducted by its Executive Committee. Any power, decision or activity that the Council is authorised to conduct in terms of these rules, may be exercised by the Executive Committee, except insofar as these rules otherwise indicate.
- b) The Executive Committee shall be constituted as follows:
  - i) The ACDS shall ex officio (the Council being a sub-committee of the ACDS), have one person serving on the Executive Committee
  - ii) For a period of two years from the formal inception date of the Council, the Executive Committee shall be constituted as follows:
    - (1) One person to be nominated by each of the founder members. The founder members of the Council shall be Tokiso, Conflict Dynamics, Equillore, AFSA, AASA, Accord, CCR, LEAD, the Justice College, Wits University,





Pretoria University and the CCMA. [THIS REMAINS SUBJECT TO THE APPROVAL OF THE BOARDS OF THE VARIOUS ORGANISATIONS]

- (2) Two additional persons to be nominated and elected by the members on an annual basis.
  - (3) Any additional persons co-opted from time to time by the Council. The Council shall give specific attention to co-opting additional members in order to address any issues regarding the representivity of the Executive Committee.
- iii) After a period of two years from the formal inception date of the Council, and at an annual general meeting to be held on or near that date:
- (1) One half of the members will step down (to be selected by lot or consensus);
  - (2) The members shall elect persons to serve in the vacant seats;
  - (3) Every year thereafter the longest service half of the Executive Committee shall automatically vacate their seats at the next annual general meeting, and the vacant seats be filled through election by the members. Persons who vacate their seats shall be eligible for re-election.
- c) In nominating persons to serve on the Executive Committee the members shall take into account the need for the Executive Committee to be representative;
- d) There shall be a Chairperson, a Vice Chairperson and an Executive Officer of the Council who shall be elected at an annual general meeting of the Council to serve for a period of one year;
- e) The Chairperson shall not hold office as such for more than two terms.
- f) The Chairperson shall preside at all meetings of the Council and its executive committee.
- g) The Executive Officer shall:
- i) Carry out the duties of the Secretary set out in this operational framework and/or delegate those functions to other committee members.
  - ii) Keep a record of the proceedings of all meetings of the Council.
  - iii) Issue notices of all meetings.
  - iv) Keep a record of the members of the Council
  - v) Do and prepare such other matters as the Executive Committee may from time to time require.
  - vi) Collate and maintain the register of mediators and liaise with the member organizations in regard to any matter relating thereto.



- h) The Executive Committee shall on an annual basis hold a general meeting of member organisations, for purposes of nominating and electing persons to the Executive Committee, and for dealing with any other issues that the Executive Committee may from time to time refer to the general membership. Each member organisation shall be entitled to one vote at such general meeting.
- i) The activities of the Council and its Executive Committee shall at all times be subject to the directives and governance of the Control Committee of the Africa Centre for Dispute Settlement.

### **13) FUNDING AND SUPPORT**

- a) The Africa Centre shall support the Council through the following:
  - i) Providing venues for regular Council Meetings
  - ii) Facilitating the use of University premises for annual and general meetings of members
  - iii) Provide the use of the name of the Africa Centre for the hosting of workshops, conferences, and other networking activities
  - iv) Providing publicity to the Council, its activities, and its accredited members and mediators through the Africa Centre's web site, and where appropriate, through the University's publication network
  - v) Provide the use of the name of the Africa Centre for fund raising activities to support transformation and other specific projects of the Council
  - vi) Subject to specific agreement regarding included duties, the use of the Africa Centre's administrative assistance.
- b) The Africa Centre shall not be required to make any direct financial contribution to the Council or any of its activities
- c) Any membership fees paid by members shall be held in trust by the Africa Centre, and is to be allocated to activities of the Council, at the discretion of the Executive Committee
- d) Neither the Council nor any of its members shall be required to make any payments to the Africa Centre for hosting the Council, or for providing the above support services. Any other services required by the Council shall be provided by the Africa Centre subject to specific agreement regarding fees and payment thereof.

### **14) AMENDMENT OF OPERATIONAL FRAMEWORK**



- a) The provisions of this operational framework may be amended by the Executive Committee of the Council, provided that any amendment must be approved by no less than two thirds of the members of the Executive Committee. Any persons co-opted onto the Council shall not participate in any vote to amend the operational framework.

## **15) OFFICIAL LAUNCH**

The Council was officially launched on 5 March 2010.