



Audit Bureau of Circulations of South Africa

# Byelaws

Version 1

Issued 1 October 2018

**DEFINITIONS**

|                         |   |
|-------------------------|---|
| ABC/We/Us/Our           | Audit Bureau of Circulations of South Africa  |
| You                     | The member  |
| ABC Data or Information | Data or information published or certified by ABC in relation to Registered Products  |
| ABC Logo                | Any official logo issued by ABC   |
| Approved Auditor        | Auditor appointed by the member and approved by ABC to conduct audit work for ABC purposes in accordance with the relevant Reporting Standards  |
| ABC Board               | Governing body of ABC as defined in Memorandum of Incorporation   |
| Byelaws                 | These ABC byelaws as updated from time to time  |
| General Manager         | ABC General Manager or official acting in that capacity   |
| Fees                    | Any fees or charges including annual subscriptions levied by ABC  |
| Official/ABC Official   | Employee or other person acting for ABC in an official capacity   |
| Registered Product      | Publication, website, exhibition, associate member’s service or other media product that ABC has confirmed in writing is ABC registered and has not subsequently ceased to be ABC registered through resignation, cancellation, suspension or other means |
| Reporting Standards     | ABC rules and requirements that detail how ABC Data or Information claims are compiled, reported and audited  |
| Input Form              | Submission in which circulation / distribution / attendance/other data or information are reported to ABC for certification   |
| Member                  | Any proprietor or publisher of a product for which certification is provided by the ABC in terms of the applicable Reporting Standards  |
| Written/in writing      | Includes communication only by post, fax or email   |

*Brief introductions to certain sections (shown in Italics) are for convenience only, do not form part of the byelaws and will not affect their interpretation.*

**1. CONSTITUTION**

- a) We operate according to our Memorandum of Incorporation, byelaws and Reporting Standards. The ABC Board approves changes to the byelaws and Reporting Standards, and the ABC Guarantors ratify those changes.
- b) It is a condition of your membership of ABC that you will comply with the byelaws and relevant Reporting Standards, as well as the spirit embodied therein. Any breach of this condition will entitle ABC to terminate your membership and/or registration of any relevant Registered Product.
- c) In the event of any conflict or inconsistency between ABC Reporting Standards and any other Reporting Standards, the ABC Reporting Standards shall prevail.

**2. APPLICATION FOR MEMBERSHIP AND REGISTRATION**

- a) To apply to become a member of ABC you must submit the relevant online application/application form and any other documentation which we may request. We cannot approve your membership application until we have received payment of the relevant fees.
- b) To register a product with ABC you must submit the relevant online application/application form and any other documentation which we may request. We may need to inspect the relevant records/systems before registering your product.
- c) If we are not able to publish a product’s initial ABC certificate by the second reporting period after the product’s registration, we reserve the right to cancel the product’s registration.

### 3. PUBLICITY RULES

#### ABC Association

- a) Any claim associating an organisation, product, data or information with ABC must be a statement of fact and not be likely to materially mislead.
- i. You can only make claims of ABC membership while a product is registered with ABC.
  - ii. You must not make inaccurate or misleading statements relating to relevant Reporting Standards, procedures or decisions, either expressly or by implication.
  - iii. Statements must not mislead by omitting information or presenting it in an unclear or ambiguous manner. Whether or not statements are likely to mislead may depend on the context and medium.

#### ABC Logo

- b) You can only use the ABC Logo when we have authorised you in writing to do so, in relation to Registered Products with a published ABC Certificate.
- i. You cannot use the ABC Logo in relation to a Registered Product until we have published that product's initial ABC Certificate. Should a member, or prospective member, publish a claim of membership in an unregistered product or marketing material, a penalty equivalent to one full page colour advertisement in the publication at full rate card price is payable before an application for registration will be considered.
  - ii. If a product ceases to be ABC registered you must stop using the ABC Logo immediately.
  - iii. If a product is suspended, you must stop using the logo for the period of suspension.
  - iv. You must stop using the ABC Logo if we instruct you to do so in writing because a product has ceased to comply with the requirements of an ABC scheme.
  - v. You must not use or position the ABC Logo in a manner that might inaccurately or misleadingly associate an organisation, product, data or information with ABC.

#### Use of ABC Data or Information

- c) ABC Data or Information must be presented in a clear and reasonable manner that is not likely to mislead.

In relation to any data or information sourced or attributed to ABC:

- i. The data or information must have been published by us.
- ii. The nature of the data or information must be clear and not be likely to mislead. *For example if it is an extracted figure or subset of a total.*
- iii. Any description of the data or information must be accurate. *For example: 1) Copies distributed must not be described as readers. 2) When quoting a subset circulation figure, such as subscriptions, this must be stated.*
- iv. Latest ABC data or information must be included, unless the context means this is not relevant or appropriate, as soon as practical. *For example: A webpage quoting ABC circulation figures that is aimed at advertisers for trading purposes should include the latest ABC certified figure and period. However a journalist's article analysing historic figures for a given period need not include the latest data.*
- v. You must make it clear to which period the data or information relates.
- vi. If you interpret or adapt ABC Data or Information and source or attribute this to ABC, you must make clear how this has been done and what the data or information represents. *For example: If ABC certified circulation or web traffic data is aggregated in a manner that is not certified by ABC you must make clear what has been combined.*
- vii. Different data can only be aggregated if it relates to the same period. *For example you cannot combine print subscribers from the July to December 2012 period with digital edition subscribers from the January to June 2013 period.*
- viii. You must not release or publicise any data (or trends in data) or information relating to a product that is included in a concurrent release of data, or published report, before the official release date and time set by us.

#### **Use of non-ABC Data or Information**

- d) If you quote non-ABC Data or Information, this must not be presented in a manner that means it could be mistaken as or confused with ABC Data or Information. Whether this is the case may depend on the context and medium.

#### **Claims and Statements**

- e) Claims or statements based on ABC Data or Information that are attributed to ABC must be factually correct.
  - i. Where a claim appears to be contradicted by ABC Data or Information but you are using data or information from another source to support the claim then you must identify that alternative source.

#### **Comparisons**

- f) Comparisons using ABC Data or Information must be objective, fair and not be likely to materially mislead.
  - i. You must compare ABC Data or Information for the same reporting period or, if this is not possible, the differences must be made clear.
  - ii. The conditions under Use of ABC Data or Information section 3(c) and Use of non-ABC Data or Information section 3(d) above, also apply to comparisons.

#### **Reporting Standards and other publicity requirements**

- g) You must comply with any further publicity requirements stipulated under relevant ABC Reporting Standards, other publicity requirements notified by ABC or as a result of specific ABC decisions.

### **4. AUTHORISATION AND PAYMENT OF FEES**

- a) Applicants who become members before 1 July of any year shall pay the full fee for the year. Applicants who apply for membership on or after 1 July shall pay half the annual fee.
- a) You must pay all Fees within 30 days of the invoice date.
- b) A product's annual subscription will not be refunded in whole or part if its registration ceases part way through the year.
- c) If Fees remain unpaid 60 days after the invoice date we reserve the right to:
  - i. Withdraw benefits of membership for the product to which the outstanding Fees relate. This may include removing a product's information from the ABC website, withholding the issue of a product's ABC certificate or excluding it from a concurrent release.
  - ii) Cancel your membership and/or the registration of the product to which the outstanding Fees relate.

### **5. AUDITS AND RETURN SUBMISSION**

- a) All ABC audits and inspections towards ABC certification or verification will be governed by the byelaws and Reporting Standards in force for the particular membership sector.
- b) If we are to conduct an audit we will send you a letter of engagement that details both our and your duties and responsibilities, the terms of which will prevail over the terms of these Byelaws in the event of conflict.
- c) If we are not your auditor, then for ABC purposes:
  - i. You must use an auditor who is a registered auditor and member of Independent Regulatory Board of Auditors. In exceptional circumstances, and in the case of SADC country members, you may apply to us to use an auditor who is not a member of the above body.
  - ii. If you change your Approved Auditor you must send us their details for approval.

- iii. You must send us in advance of any audit a letter of engagement between you and your Approved Auditor. We must be satisfied this covers a number of standard terms. We cannot issue an ABC certificate until we receive this letter of engagement.
  - iv. Your Approved Auditor must submit an audit report to us, and initial the certificate as evidence of its correctness. Both documents must be submitted simultaneously.
  - v. Check audits will be conducted on all initial certificates in their first cycle of publication.
- d) We will verify the Input Form before issuing the ABC certificate.
- e) If we do not receive an Input Form by an applicable submission deadline, you will have a further 24 hours to submit the Input Form. Failure to do so will result in the product's suspension.
- f) If we are not able to complete an audit or check audit in relation to a product then we reserve the right to cancel the product's registration and withdraw any ABC certificates upon which an audit or check audit was not completed.

#### **6. TRANSFER OF A REGISTERED PRODUCT TO ANOTHER MEMBER**

We will allow a product to remain registered following its transfer to another member (who has other certified products) as long as, without undue delay, following the transfer:

- i. we are able to satisfactorily confirm the transfer has taken place
- ii. we have received all outstanding Fees
- iii. the new owner has agreed to keep the product in continuous certification and submitted the relevant online registration/registration form.

We reserve the right to audit or check audit the subsequent Input Form before issuing the ABC certificate.

If any of these conditions are not fulfilled we reserve the right to cancel the product's registration.

Note: It is the responsibility of the new owner to ensure that the records specified by the Reporting Standards for the membership category exist for the whole audit period and to make these available for audit/check audit.

#### **7. TRANSFER OF A REGISTERED PRODUCT TO A NON-MEMBER**

- a) A product's registration will cease immediately upon its transfer to a non-member, unless it has any audits or check audits outstanding, in which case the former owner will first be given the option to complete the audit at their expense. If however we cannot complete an audit or check audit, then we reserve the right to cancel the product's registration and withdraw any ABC certificates upon which an audit or check audit was not completed.
- b) The right to use an ABC Logo ceases on the date of the transfer of a product to a non-member.
- c) The non-member may apply for membership and registration of the product in accordance with section 2.
  - i. We reserve the right to decide whether an interim audit must be undertaken in addition to the normal audit

#### **8. MERGER OF PRODUCTS OR CHANGE IN THE NAME OF A PRODUCT**

If you merge a registered product with one or more other products or change the name of a registered product then you must apply to us, without undue delay, to keep the resultant product registered.

We will examine the circumstances surrounding the change (including any other changes to the Registered Product(s) made at the same time) and tell you in writing if the change is accepted as valid for ABC purposes.

We reserve the right to refuse the product's continued registration if we consider the changes are so extensive or such that we consider it should be treated as a new product requiring separate registration.

## ABC Byelaws

Below is a non-exhaustive list of other changes which, if made at the same time as a merger of products or change of name, may affect our decision.

- i. A change in format
- ii. A change in publishing frequency
- iii. A break in the continuity of issue identification
- iv. Identification of the change (e.g. 'formerly known as...' or '...incorporating...')
- v. How the change is presented/communicated in the product and elsewhere to both readers and advertisers

If you are planning a merger of products or change of name we recommend you contact us for advice as early as possible.

### 9. RESIGNATION / CANCELLATION

- a) You may resign a product's registration and/or your membership as long as there is no complaint, audit, or Fees outstanding against the product.
- b) We may cancel or suspend a product's registration and/or your membership because of non-compliance with relevant Byelaws or Reporting Standards
- c) If for strategic reasons (and in our sole discretion) we decide to withdraw our services in relation to a particular ABC product, sector or geographic region we will terminate affected registrations and/or memberships with a minimum of three months' notice. We will notify those affected of any outstanding requirements before the termination can be effected (such as the completion of an audit) which if not met may result in the termination being deemed a cancellation rather than a resignation. Subject to compliance with any outstanding requirements, members and/or products affected by a strategic withdrawal may be entitled to a pro-rata refund of membership fees and/or a refund of any fees paid for work not carried out.

### 10. RE-REGISTRATION

- a) You may apply at any time to re-register a product as long as there are no Fees outstanding in relation to the product (whether owing by you or a previous owner of the product).
- b) In cases where the same media owner re-registers a product the first audit must be undertaken within 6 months of the registration being accepted.
  - i. We may impose such conditions as we see fit on the re-registration of a product (either to be met before acceptance of the re-registration or after). For example, these conditions may include a requirement:
  - ii. For us to carry out additional audit or inspection work, or require you to provide us with reports on issues related to the previous resignation or cancellation
  - iii. For you to submit an Input Form for a particular audit period or within a specified timescale. In cases where the same media owner re-registers a product the first audit must be undertaken within 6 months of the application being approved
  - iv. For you to submit an Input Form for any audit period not reported as a result of the resignation or cancellation of the product's previous registration
  - v. For us to complete any inspection or audit that was outstanding on an issued ABC certificate at the date the product's previous registration was cancelled.
  - vi. For you or us to make particular publicity statements (or specify 'no publicity') as appropriate
  - vii. To delay the re-registration of the product for a period of up to 12 months from the date of the previous cancellation as a result of the circumstances that led to that previous cancellation, and a bar on retrospective audits covering the excluded period.

## **11. AVAILABILITY OF RECORDS**

*ABC's credibility relies on the accuracy of the data or information it certifies. Therefore it requires the following rights of access to records, in order that the accuracy of any data or information to be certified may be verified.*

You must allow us access to any records that we request for the purpose of checking the accuracy of any Input Form or compliance with the Reporting Standards and byelaws:

- i. whether held by you or a third-party agent
- ii. within 10 working days of our written request

## **12. COMPLAINTS PROCEDURE**

*If a member wishes to make a complaint that a member is not complying with the ABC byelaws or relevant Reporting Standards then this section sets out the procedure that should be followed. It is intended to allow both parties to the complaint the opportunity to make their representations and for ABC to ensure it has all the information required to make a fair and informed decision. This procedure is based on written submission only.*

### **Stage 1 - Making a complaint**

- a) If a member ("the complainant") considers that a member ("the member complained of") has not complied with or is not complying with relevant Reporting Standards or the byelaws, he may make a complaint to that effect in accordance with this complaints procedure.
- b) Complaints will not be accepted under this process if:
  - i. They relate to an infringement of publicity requirements that was published or distributed in material more than 6 months prior to the date of the complaint (unless the infringement continues to be published in material in the public domain – for example on a website, or in a publication still being distributed)
  - ii. They relate to the accuracy of certified data for an audit period with an end date more than 18 months prior to the date of the complaint.
  - iii. They relate to section 17 (data protection), in which case they will be subject to section 18 (governing law and jurisdiction).
- c) The complainant will send to the General Manager a written notification of complaint ("the notification of complaint"), setting out the matters of which he complains accompanied by copies of any documents on which the complaint relies. ABC supplies a standard form for this purpose, which is available from the ABC website.

### **Stage 2 – Forwarding the complaint and member's right to reply**

- d) Unless the General Manager considers the complaint to be manifestly ill founded, he will send a copy of the notification of complaint and any related documents to the member complained of.
- e) Within 7 working days of receipt of the notification of complaint, or within such further time as the General Manager may allow, the member complained of may send to the General Manager a written statement of response to the matters raised by the complainant accompanied by copies of any documents on which he relies. Where the General Manager considers that a reply is required from the complainant, he will send the complainant a copy of the response, in which case section 12(f) will apply.
- f) Within 7 working days of receipt of the statement of response, or within such further time as the General Manager may allow, the complainant may send to the General Manager a written statement of reply setting out his reply to the matters raised by the member complained of accompanied by copies of any documents on which he relies.

### **Stage 3 – Complaint Decision**

- g) The General Manager will make a decision on the complaint and will notify the complainant and the member complained of accordingly. This will normally be within 7 working days of the receipt of the information, however if there are reasons why this is not possible ABC will notify both parties as to the reason for the delay in the decision.

## ABC Byelaws

- h) If the General Manager decides that the member complained of has complied with the Reporting Standards and byelaws, he will notify the complainant and the member complained of and, with the following exception, all parties must keep all matters relating to the complaint confidential, including all correspondence and the fact that a complaint was made. However, if the General Manager decides special circumstances require it, he may issue a ruling that the complaint has not been upheld and authorise the publication of that ruling on the ABC website and/or the circulation of that ruling to other members and the Trade Media.
- i) If the General Manager decides that the member complained of has not complied with the Reporting Standards or byelaws, he will issue a ruling to that effect, and, if no appeal is received as specified in Section 12(n), he will publicise that ruling on the ABC website and will decide on the required method (if any) to correct the information in the marketplace. If an appeal is made under Section 12(n), the decision will only be publicised once the process of appeal is completed.
- j) Should the General Manager believe that a penalty other than one set out in section 12(i) be applied, he may in addition and subject to the approval of the Board implement any or all of the following sanctions:
  - i. withdraw any ABC certificate already issued and issue a revised ABC certificate;
  - ii. require the member complained of to submit or resubmit any Returns;
  - iii. direct that the member complained of be expelled, temporarily suspended from membership and/or subject to the fulfilment of conditions;
  - iv. direct that the registration of the product in question be cancelled or temporarily suspended.
  - v. direct that a re-audit take place by the member's Approved Auditor or ABC (at the member's cost).

### Stage 4 – Appeal to Board

- n) Should the complainant or member complained of disagree with a decision taken by the General Manger under section 12(h) or 12(i), they will have the right to appeal to the Board, by giving notice in writing and detailing the grounds for appeal to the General Manager within 5 working days of notification of the decision. If the General Manager receives such a notice he will refer the complaint to the Board who will reconsider the complaint and decision and will normally respond to each party within 10 working days of receipt of the appeal. However if there are reasons why this is not possible ABC will notify both parties as to the reason for the delay in the decision.

## 13. COPYRIGHT

- a) We hold joint copyright in your product's ABC certificates with you.
- b) We have the right to use and publish without restriction all information provided to us for certification.

## 14. LIMITATION OF LIABILITY

Nothing in these Byelaws excludes or limits our liability in respect of death or personal injury caused by negligence, fraud, and/or fraudulent misrepresentation and liability which may not otherwise be limited or excluded under applicable law. The entire aggregate liability of us to you or any third party arising out of or in connection with your membership of and relationship with ABC, and whether arising from contract, tort, negligence or otherwise, shall be limited to the value of three times the Fees paid by you in the calendar year of the act or omission said to give rise to the liability. Under no circumstances shall we be liable to you or any third party for any type of special loss, indirect loss, consequential loss, loss of profits or any anticipated savings, or loss of data.

## 15. USE OF ELECTRONIC COMMUNICATION

We each agree that we may communicate electronically with each other. The electronic transmission of information cannot be guaranteed to be secure or free from viruses or error, and consequently such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or otherwise be adversely affected or unsafe to use. You and we recognise that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards but we each agree to use commercially reasonable procedures to prevent such hazards including undertaking checks for the most commonly known viruses before sending information electronically.



## 16. DATA PROTECTION

a) This section:

- i. Will apply when we are to carry out an audit, inspection or other services for which we have been engaged and is supplemental to the duties and responsibilities set out in the Terms of Audit letter or other agreement.
- ii. Will not be subject to the complaints procedure detailed in section 12, but will be subject to the jurisdiction of the courts of South Africa.

b) You acknowledge that under the terms of these byelaws and the Reporting Standards, we will act as a Data Processor appointed by you who will be a Data Controller, and the data you (and/or third parties acting your behalf) make available to us from time to time to which we have access may include Personal Data and Sensitive Personal Data (such Personal Data and Sensitive Personal Data shall be defined as the "The Personal Data").

c) We will:

- i. Only process the Personal Data for the purposes of carrying out audits/inspections and/or other services for which you have engaged us
- ii. Use our reasonable endeavours to keep The Personal Data secure.

d) You warrant, represent and undertake that:

- i. You (and/or any third party acting on your behalf) are entitled to provide The Personal Data to us for the purposes of us carrying out audits and/or other services for which you have engaged us; and
- ii. Our processing of The Personal Data for such purposes shall not cause us to be in breach of any applicable laws or regulations.

e) You will indemnify us, keep indemnified and hold us harmless from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which we incur or suffer as a result of a direct or indirect breach by you of section 16 (d).

f) We reserve the right to return to you (or any third party acting on your behalf), and refuse to audit and/or provide any other services in respect of The Personal Data where we reasonably consider that any Processing of that data by us could cause us to be in breach of any applicable laws or regulations.

## 17. GOVERNING LAW AND JURISDICTION

The formation, existence, construction, performance, validity and all aspects whatsoever of the Byelaws, Reporting Standards and other regulations governing the workings of ABC as laid down by the Board and all other aspects of the relationship between you and ABC will be governed by the law of the Republic of South Africa and the courts of the Republic of South Africa will have exclusive jurisdiction to settle any disputes which may arise. ABC and you irrevocably agree to submit to that jurisdiction except that ABC may seek injunctive relief in any court of competent jurisdiction.

