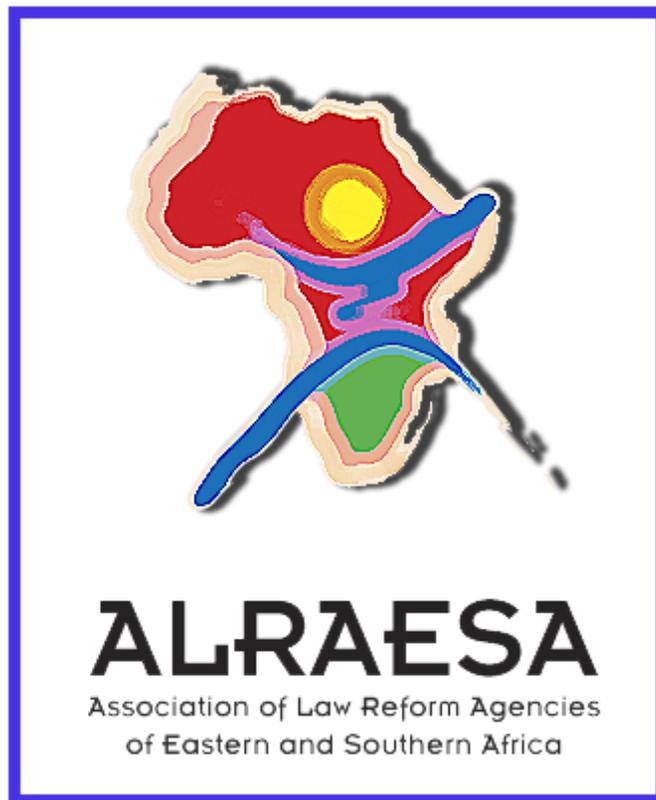


Adopted on the 17<sup>th</sup> day of March 2015



**ADMINISTRATIVE & FINANCIAL  
REGULATIONS**

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# CHAPTER 1

## BACKGROUND AND OVERVIEW

### 1. Establishment

1.1 Article 35 of the Association of Law Reform Agencies of the Eastern and Southern Africa (ALRAESA) Constitution provides that there shall be Administrative and Financial Regulations of the Association, which shall govern the smooth running of the Association and the implementation of this Constitution. The Executive Committee shall be responsible for the drafting of the regulations and the submission thereof to the Annual General Meeting for adoption.

1.2 ALRAESA was formally established in Windhoek, Namibia, in August 2003, at which occasion a draft Constitution for ALRAESA was also approved. Article 1(2) of the Constitution adopted in Lesotho on 11 October 2010 provides that the Association shall be a body corporate with perpetual succession and a common seal and capable of suing and being sued in its name.

1.3 The law reform agencies of Kenya, Lesotho, Malawi, Namibia, South Africa, Tanzania, Uganda, Zambia, Zanzibar and Zimbabwe formed part of ALRAESA at the time of its establishment. At a general meeting of ALRAESA in South Africa in March 2004, it was decided to expand the membership to include Mauritius, Swaziland, Botswana and Rwanda.

### 2. Objectives

1.4 The **objectives** of the Association as stated in Article 4 of the Constitution are to undertake, on behalf of its members, all or any of the following activities:

- (a) *to facilitate Regional co-operation in the reform and development of the law;*
- (b) *to foster co-operation among the members in the acquisition of knowledge and skills through reciprocal exchange of publications, research findings, conducting Regional conferences and exchange, on attachment, of member agencies' personnel;*
- (c) *to propose measures on legislative and administrative action to combat international crimes within the Region;*
- (d) *to effectively disseminate the work of the Association through publication of a journal or a bulletin and to encourage members to make contribution towards the publications;*
- (e) *to promote approximation and harmonization of legislation within the Region;*
- (f) *to draft model legislation for adaptation in the enactment of domestic law;*
- (g) *to assist in strengthening existing Law Reform Agencies in the Region;*

- (h) *to contribute to protection and promotion of human rights, the rule of law, constitutionalism and good governance in the Region, in particular, and on the whole African continent, in general, through publications, conferences and any other means, the Association may, from time to time, determine;*
- (i) *to observe and contribute to the realization of gender equality in all processes and to promote legislation that promotes gender equality;*
- (j) *to promote meaningful and effective approaches to harmonization of customary law, common law and civil law with international norms and practices;*
- (k) *to constantly scrutinize the impact of international influence in all its manifestations and recommend legal safeguards against the detrimental side-effects in the African Milieu;*
- (l) *to undertake Regional legislative action in adapting to the emerging technological and business developments;*
- (m) *to apply local jurisprudence in development of home-grown laws for the specific socio-economic well-being of the Region;*
- (n) *to entrench respect for the rule of law, protection of human rights and use of law in the resolution of conflicts among civil leaders, non-governmental organizations and the general public;*
- (o) *to popularize the role of the Law Reform Agencies at the national, Regional and international level;*
- (p) *to promote amicable relationships between the Law Reform Agencies on the one hand and their respective Governments and political organizations on the other hand with a view to facilitating the successful execution of the mandate of the members of the Association;*
- (q) *to harmonize methodologies of operation for member agencies;*
- (r) *to forge co-operation and alliances with other Law Reform Agencies in Africa and beyond for the better pursuit of the objectives of the Association; and*
- (s) *to establish effective methods of cooperating with legal or any other education institutions that can contribute to the law reform process.*

### **3. Instruments informing the Administrative and Financial Regulations**

1.5 The Administrative and Financial Regulations are informed by, inter alia, the following legislative and policy instruments:

- (a) Constitution of the Republic of South Africa, 1996;
- (b) ALRAESA Constitution;
- (c) Public Finance Management Act, 1991 (Act No.1 of 1999);
- (d) Public Audit Act, 2004 (Act No. 25 of 2004);
- (e) Preferential Procurement Policy Framework Act (Act 5 of 2000) and Preferential Procurement Regulations, 2001;
- (f) Department of Justice and Constitutional Development (of South Africa) Financial Instructions (DFI);
- (g) Judges Remuneration and Conditions of Employment Act, 2001 (Act No.47 of 2001) and
- (h) Terms and Conditions Applicable to the Opening of a Current Account issued by ABSA Bank Limited.

**(a) Constitution of the Republic of South Africa, 1996**

1.6 The Constitution is the supreme law of the land. No other law or government action can supersede the provisions of the Constitution.

**(b) ALRAESA Constitution**

1.7 Article 34 of the Constitution provides that-

- (1) *There shall be Administrative and Financial Regulations of the Association, which shall govern the smooth running of the Association and the implementation of this Constitution.*
- (2) *The Executive Committee shall be responsible for the drafting of the regulations and the submission thereof to the Annual General Meeting for adoption.*

**(c) Public Finance Management Act, 1999 (Act No.1 of 1999)**

1.8 The Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) is one of the most important pieces of legislation passed by the first democratic government in South Africa. The Act promotes the objective of good financial management in order to maximise service delivery through the effective and efficient use of the limited resources. The key objectives of the Act may be summarized as being to:

- (a) Modernise the system of financial management in the public sector;
- (b) Enable public sector managers to manage, but at the same time be held more accountable;
- (c) Ensure the timely provision of quality information; and
- (d) Eliminate the waste and corruption in the use of public assets.

1.9 This Act confers specific responsibilities on accounting officers. The Act vests four key responsibilities, which are:

- (a) the operation of basic financial management systems, including internal controls in departments and any entities they control;
- (b) to ensure that departments do not overspend their budgets;
- (c) to report on a monthly and annual basis, including the submission of annual financial statements two months after the end of a financial year; and
- (d) to publish annual reports in a prescribed format which will introduce performance reporting.

**(d) Public Audit Act, 2004 (Act No. 25 of 2004)**

1.10 The objects of the Act are, among others, to give effect to the provisions of the Constitution establishing, and assigning supreme auditing functions to, an Auditor-General; and to provide for the auditing of institutions and accounting entities in the public sector.

**(e) Preferential Procurement Policy Framework Act (Act 5 of 2000) and Preferential Procurement Regulations, 2001**

1.11 The purpose of the Act read with the Regulations is to give effect to section 217(3) of the Constitution of the Republic of South Africa, 1996 by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution. Sections 217(1) and (2) of the Constitution provides as follows:

- (a) *when an organ of State in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*
- (b) *Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-*
  - 1) *categories of preference in the allocation of contracts; and*
  - 2) *the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*

**(f) Department of Justice and Constitutional Development Financial Instructions (DFI)**

1.12 The objectives of the DFI are mainly to-

- (a) *Ensure that the policies, procedures, processes are in line with the Department's business needs;*
- (b) *Promote the control over income and expenditure and compliance with financial prescripts;*
- (c) *Determine cost-effective and efficient management control;*
- (d) *Facilitate supervision, control and training;*
- (e) *Promote fair, equitable, transparent, competitive, effective and efficient financial processes; and*
- (f) *Determine whether financial administration is being performed according to prescripts.*

**(g) Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001)**

1.13 The Judges Remuneration and Conditions of Employment Act, 2001 makes provision for the remuneration and conditions of service of judges of the Constitutional Court, the Supreme Court of Appeal and the High Courts.

**(h) Terms and Conditions Applicable to Opening of Current and Investment Account issued by ABSA Bank Limited**

1.14 The ABSA Bank Terms and Conditions regulate a number of issues relating to the operation of the Association's accounts by the authorised persons. These include deposits; fees and charges; changes to interest rate; changes to pricing structure; interest; bank statements; swift payment and others.

## **CHAPTER 2**

### **RECEIPT, CONTROL, ACCOUNTING AND REPORTING PRESCRIPTS**

#### **1. Subscriptions**

##### **Regulation 1**

Every member of the Association, except an honorary member, shall pay an annual subscription to the Association.

##### **Regulation 2**

The amount of the annual subscription has been fixed by the Executive Committee at US \$1000 per year.

##### **Regulation 3**

The Treasurer shall issue invoices to all Members in January of every year. All invoices shall reflect the amount of subscription payable by the Member for the financial year in question, including any arrear amount outstanding by the Member.

#### **2. Bank accounts**

##### **Regulation 4**

All monies received by or on behalf of the Association shall be paid into a bank account the Executive Committee may, from time to time, direct.

##### **Regulation 5**

The bank accounts referred to in Regulation 4 shall include the following accounts:

- (a) A current account;
- (b) An interest earning (Investment) account; and
- (c) Any other account, the Executive Committee may determine.

##### **Regulation 6**

The bank accounts of the Association shall be operated by the Treasurer and at least one other person nominated by the Executive Committee who is involved in the management of the Law Reform Agency to which the Treasurer is attached.

### **Regulation 7**

The Treasurer shall apply the funds management principles associated with financial reporting by non-profit organisations for purposes of accounting and financial reporting on the Association's bank accounts.

### **Regulation 8**

Two general ledgers shall be opened by the Treasurer similar to the accounts held in the bank. All expenses incurred against the Current Account shall be debited against the Current Account. All income received into the Current Account shall be credited against the Current Account. All expenses incurred against the Investment Account shall be debited against the Investment Account. All income received into the Investment Account shall be credited against the Investment Account. The balances on the two accounts shall be reconciled with the bank statements received on monthly basis to ensure that the balances on the Treasurer's manual and computerised accounting system reconcile with bank account balances at all times.

### **Regulation 9**

The Treasurer shall, in respect of each bank account held by the Association, keep the following manual records up to date for auditing purposes:

- (i) Invoices for subscriptions distributed to Members;
- (ii) Proof of payments (subscriptions) received;
- (iii) Proof of payments (electronic funds transfer payment statements) made;
- (iv) Quotations / invoices received for goods procured/ services rendered; and
- (v) Authorisation for payment by EXCO.

### **(a) Current account**

### **Regulation 10**

The Current Account shall be utilised for purposes of making payments by cheque or through electronic funds payment via internet banking.

### **(b) Investment Account**

### **Regulation 11**

Members shall use the Investment Account in order to deposit subscriptions due to the Association.

### **3. Financial Statements**

#### **Regulation 12**

The following statements shall be compiled by the Treasurer on annual basis for purposes of reporting to EXCO and the AGM:

#### **(a) Subscriptions received from Members**

The Income Statement reflects annual subscriptions received from Members. The statement is compiled in two-fold: (1) Contributions paid in US \$ (dollars); and (2) Payments converted into South African currency (ZAR).

#### **(b) Arrears Statement**

Although Article 6(1) of the Constitution provides that “*every member of the Association shall, except an honorary member, pay an annual subscription to the Association*”, however, the realisation concept in terms of which income earned during a given period is brought into account during that period, is not applicable. As a result, the Association does not have trade debtors. The Arrears Statement is compiled for control purposes only and to determine the amount of subscription fees payable by Members.

#### **(c) Expenditure Statement**

The Expenditure Statement is compiled in respect of each bank account held by the Association. Since the Current Account serves as a general fund from which all sundry payments are made, most of the expenditure incurred by the Association is incurred from the Current Account.

#### **(d) Bank Accounts Balances**

This Statement reflects the bank accounts balances at a given period. The bank balances are reflected in US \$ and in ZAR.

#### **Regulation 13**

The Financial Statements of the Association comprises only of the four Statements mentioned in Regulation 12(a)-(d) above. Since the Association only has cash at bank as its current assets, and does not have any other assets or liabilities, a statement reflecting the Association’s financial position (balance sheet) is not applicable.

## **4. Auditing of accounts of the Association**

### **Regulation 14**

#### **(a) Appointment of auditors**

Auditors for the Association shall from time to time be appointed by Members at the Annual General Meeting and approved by EXCO. The procurement procedure prescribed in the Preferential Procurement Policy Framework Act No.5 of 2000, read with the Preferential Procurement Regulations, 2001 shall be followed.

#### **(b) Terms and conditions for the audit**

The terms and conditions for auditing of the financial statements of the Association shall from time to time be determined by Members at the Annual General Meeting and approved by EXCO, taking into account the accounting framework applicable to non-profit organisations and the availability of funds in the Association's bank accounts.

## CHAPTER 3

# DISBURSEMENT PRESCRIPTS APPLICATION OF THE DOJ FINANCIAL INSTRUCTIONS

### 1. Approval of expenditure

#### Regulation 15

The funds of the Association shall only be applied to the attainment of the objectives of the Association: Provided that the Executive Committee may direct the manner or activities to which the funds may be used.

#### Regulation 16

The Executive Committee shall, subject only to any general or special directions of the Association, be responsible for exercising authority over all persons, property or resources of the Association. Approval shall be granted in writing by the Chairperson, Vice-Chairperson and Secretary-General, to the Treasurer, before any funds are committed and paid.

### 2. Procurement of goods and services

#### Regulation 17

All Procurement of Goods and or Services shall be in terms of the prescripts of the DOJ DFI. The following prescripts shall, depending upon the context, be applicable to the procurement of all Goods and Services by all Members:

Monetary value of Goods & Services	Quotations	Source of suppliers	Authority to Approve
>R2000	Single quotation	JYP Database if Goods / Services are supplied in RSA	EXCO
R2000-R29 999	At least three written quotations	JYP Database (or from prospective suppliers) if Goods / Services are supplied in RSA	EXCO
R30 000–R50 0000	Written quotations from as many suppliers as possible.	JYP Database (or from prospective suppliers) if Goods / Services are supplied in RSA	EXCO

### **Regulation 18**

If it is not possible to obtain at least three written quotations, the reasons should be recorded and approved by EXCO.

### **Regulation 19**

A Member, or representative of a Member, may not spend, or enter into a commitment to spend, ALRAESA money except with the express approval of EXCO.

### **Regulation 20**

In urgent and emergency cases, the Association may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations by preferably making use of the database of prospective suppliers, or otherwise in any manner to the best interest of the Association. Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, a lack of proper planning should not be constituted as an urgent case). Emergency cases are cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery. The reasons for the urgency/emergency and for dispensing of competitive bids, should be clearly recorded and subsequently approved by EXCO.

### **Regulation 21**

The principle of competition should, however, be adhered to as far as possible. Procurement of supplies and/or services above R30 000 per case in respect of emergencies must be submitted to EXCO for approval.

### **Regulation 22**

Before approving expenditure or incurring a commitment to spend the Association's money, EXCO must ensure the following:

- (a) that any limitations or conditions attached to the instrument of delegation or authorization are complied with;
- (b) that the expenditure or commitment is strictly in accordance with the objectives of the Association;
- (c) that the amount of the expenditure or commitment can be met within the monetary limit of the budget allocation otherwise the requisition will be rejected and that it will not give rise to unauthorized, irregular, or fruitless and wasteful expenditure;
- (d) that the purpose of the expenditure will contribute positively to the achievement of the objectives of the Association;
- (e) that the expenditure represents best value for money for the Association;
- (f) that the amount to be paid is correct and that the goods or services have been delivered in accordance with the original approval or, if the goods and services have not been delivered, that payment in advance of delivery has been duly authorized by EXCO; and
- (g) A progress or part payment in respect of stores, equipment and services rendered or work done shall not be made unless it is supported by a certificate that the amount of the payment is fully

covered by the stores or equipment already delivered and the services already rendered or work done.

### **3. Effecting payments to service providers outside the Republic of South Africa**

#### **Regulation 23**

All approvals for payment of expenditure by EXCO must be executed by means of the following procedure:

- (a) The Treasurer shall be notified of the event (EXCO or AGM meeting; workshop; conference; etc.) requesting for payment of expenditure from the ALRAESA bank account at least **eight weeks (or two months)** prior to the date of the event;
- (b) Original invoices/ quotations as per the guidelines for procurement of goods and services stated in regulation 17 above shall be submitted to Treasurer at least **six weeks** prior to the date of the event;
- (c) The Treasurer has at least **two weeks** to obtain approval from EXCO members for the payment of expenditure from the ALRAESA bank accounts;
- (d) The Treasurer and the co-signatory shall complete the Application for Overseas Payment Forms (**Annexure "A"**) at the relevant ABSA Branch and submit the Forms and all original invoices/ quotations to the Branch officers for payment.
- (e) Proof of payment shall be forwarded by the Treasurer to the hosting Member as confirmation of payment.

### **4. Expenses of travel, subsistence and accommodation**

#### **Regulation 24**

Every member of the Association shall, unless otherwise agreed by the Executive Committee, be responsible for all expenses of travel, board and lodging of the member or its representative, as the case may be.

#### **Regulation 25**

Circumstances in which the Executive Committee may grant approval for a member's expenses of travel, board and lodging include the following:

- (a) when a Member, or representative of a Member, is required to attend an international seminar or conference in his / her official capacity as an office bearer of the Association;
- (b) when a Member, or representative of a Member, is required to attend a committee meeting of the Association abroad;
- (c) when a Member, or representative of a Member, is required to assist in the arrangements of the Association's Executive Committee Meeting and/ or Annual General Meeting abroad.

## **Regulation 26**

All reasonable expenditure regarding official travelling by DOJ officials, including accommodation, meals, hired vehicles, parking and toll fees will be charged to the Department's account. Expenditure such as private calls, alcohol, excess luggage etc. must be settled by the traveller. Special approval is required for travelling abroad i.e. to a foreign country.

### **(a) Air travel**

## **Regulation 27**

**Air travel classes for domestic trips.** The air travelling classes are as follows:

- (i) Judges: Business Class
- (ii) Chief Magistrate: Business Class
- (iii) Regional Court Presidents: Business Class
- (iv) Deputy Director-General (equivalent): Business Class
- (v) All other employees: Economy Class

## **Regulation 28**

**Air travel for international trips.** The air travelling classes are as follows:

- (i) Judges: Business Class
- (ii) Chief Magistrate: Business Class
- (iii) Regional Court Presidents: Business Class
- (iv) Deputy Director-General (equivalent): Business Class
- (v) All other employees: Economy Class

### **(b) Car hire and other ground transportation**

## **Regulation 29**

General arrangements with regard to vehicle and other ground transportation:

- (i) Director-General, Judges, Deputy Directors-General (or equivalent), Regional Court Presidents and Chief Magistrates may make use of the executive parking at Airports.
- (ii) Other employees, Senior Magistrates and Magistrates may however make use of the public undercover parking facilities and claim the actual parking costs.

### **(c) Size and class of vehicles allowed**

## **Regulation 30**

The following groups of vehicle may be used:

- (i) Judges: 2000 CC
- (ii) Chief Magistrate: 2000 CC
- (iii) Regional Court Presidents: 2000 CC
- (iv) Deputy Director-General (equivalent): 2000 CC
- (v) Other employees: 1400 CC

## **(d) Accommodation**

### **Regulation 31**

Accommodation grading will be as follows:

- (i) Judges, Deputy Director-General (or equivalent), Regional Court Presidents and Chief Magistrates should make use of accommodation with a grading which suits their status, but have reasonable tariffs.
- (ii) Other employees, Regional Magistrates, Senior Magistrates and Magistrates should make use of economical accommodation not exceeding a maximum spend of R1.400,00 per night including breakfast excluding dinner, lunch, parking, etc.

## **5. Advances in respect of subsistence and other relevant incidental expenses**

### **Regulation 32**

Where justified by circumstances the Accounting Officer or a person or the occupier of a post duly authorized by him in writing, may, as he/she deems fit, grant standing advances in respect of subsistence and other relevant expenses subject to the limits laid down in Departmental Financial Instruction 8.4.10.9.1. As soon as the necessity for an advance so approved ceases to exist, it shall be repaid immediately.

## **6. Tariff of subsistence allowances payable to judges, magistrates and employees**

### **Regulation 33**

Subsistence allowances are payable to Judges at the rate contained in the Regulations emanating from the Judges Remuneration and Conditions of Employment Act (Act 47 of 2001). Allowances for local trips are to be calculated when employees/magistrates are away from their headquarters for 24 hours or longer, and hourly, thereafter. The calculation of the allowance will take effect from the hour of departure from the headquarters or home (whichever is the later) and will end on the hour, when the employee/magistrate returns to the headquarters or home (whichever is the earlier).

## **(a) Domestic trips**

### **Regulation 34**

#### **Guidelines for meals for domestic trips**

Breakfast	R110,00 including non-alcoholic drinks (Max 500ml per drink)	Please note breakfast can only be claimed if not included in hotel arrangements. breakfast can only be claimed when employee/ magistrate leaves her/his residence before 06:00
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Lunch	R110,00 including non-alcoholic drinks (Max 500ml per drink)	If not supplied by the host
Dinner	R220,00 including non-alcoholic drinks (Max 500ml per drink)	Dinner can only be claimed when the employee/ magistrate returns to her/his residence after 20:00

### Regulation 35

Receipts for meals should be kept and attached to the claim form to be submitted to the Treasurer on return. The Treasurer will only pay for two non-alcoholic (Max 500ml per drink) drinks per meal but not exceeding four non-alcoholic drinks per day. These guidelines are not applicable to employees/ magistrates claiming fixed daily subsistence allowances.

### Regulation 36

The under-mentioned rates may be claimed in circumstances where receipts were not kept:

Breakfast	R40, 00	Please note breakfast can only be claimed if not included in hotel arrangements. breakfast can only be claimed when employee/ magistrate leaves her/his residence before 05:00
Lunch	R50,00	If not supplied by the host
Dinner	R70,00	Dinner can only be claimed when the employee/ magistrate returns to her/his residence after 20:00
Non-alcoholic drinks (Max 500ml per drink)		Maximum per day.

## (b) International trips

### Regulation 34

The tariffs of special daily allowances for official visits abroad as determined by the Accounting Officer of the Department of Justice and Constitutional Development and / or the Minister for Public Service and Administration in terms of the Public Service Act, 1994 read with the Public Service Regulations, 2001 shall be applicable (see Annexure "B").

## **7. Scope of application**

### **Regulation 37**

These Administrative and Financial Regulations are applicable to all Founding Members of ALRAESA and /or their representatives, and to all Ordinary; Associate and Honorary Members of the Association and / or their representatives.

## Abbreviations

- ‘ALRAESA’** means Association of Law Reform Agencies of Eastern and Southern Africa.
- ‘AGM’** means ALRAESA Annual General Meeting.
- ‘Constitution’** means ALRAESA Constitution.
- ‘EXCO’** means ALRAESA Executive Committee.
- ‘DOJ DFI’** means Department of Justice and Constitutional Development of the Republic of South Africa’s Financial Instructions.
- ‘JYP’** means Department of Justice and Constitutional Development of the Republic of South Africa Yellow Pages.
- ‘Member’** means Member as defined in Article 5 of the Constitution.