

WEBSTER WINTZEL  
B. J. J. J. J.  
10 FRICKER ROAD  
ILLOVO BOULEVARD  
JOHANNESBURG 2196



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## PUBLICATIONS DIVISION

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(i.e. CORNER OF PAUL KRUGER AND PROES STREETS)**  
with effect from **3 May 2005**.

For enquiries and information:

**Mr M Z Montjane**  
**Tel: (012) 334-4653**  
**Cell: 083 640 6121**



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**GOVERNMENT NOTICES**

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**DEPARTMENT OF LABOUR****No. R. 886****8 September 2005****SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)****APPROVAL OF CONSTITUTION FOR: AGRICULTURE SECTOR EDUCATION  
AND TRAINING AUTHORITY (AGRISETA)**

The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the AGRICULTURE SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Schedule.

**SCHEDULE**

**CONSTITUTION  
OF THE AGRICULTURE  
SECTOR EDUCATION AND  
TRAINING AUTHORITY  
("AgriSETA")**

**27 June 2005**



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**Chairperson PAETA**

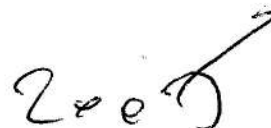
**Date: 29 June 2005**



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**Chairperson SETASA**

**Date: 29 June 2005**



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## INTRODUCTION

On 20 March 2000 the Minister of Labour established the Primary Agriculture Education and Training Authority ("PAETA") and the Sector Education and Training Authority for Secondary Agriculture ("SETASA"), as two of 25 sector education and training authorities.

On 1 July 2005 in order to co-ordinate education and training activities more effectively within the broader agricultural sector the Minister of Labour amalgamated PAETA and SETASA to form the Agriculture Sector Education and Training Authority ("AgriSETA").

## CHAPTER ONE: DEFINITIONS, PURPOSE AND IDENTITY

### 1 Definitions

In this constitution any word or expression to which a meaning has been assigned in the Skills Development Act 97 of 1998 shall bear that meaning, and unless the context otherwise indicates:

- 1.1 **"AgriSETA"** means the Agriculture Sector Education and Training Authority;
- 1.2 **"Alternate"** means an alternate to a member as contemplated in clause 12.7 of this constitution;
- 1.3 **"Chairperson"** means the chairperson of the Governing Board;
- 1.4 **"Clause"** means a clause in this constitution;
- 1.5 **"Department"** means the Department of Labour;
- 1.6 **"Deputy chairperson"** means the deputy chairperson of the Governing Board;
- 1.7 **"Director-General"** means the Director-General of Labour;
- 1.8 **"Executive officer"** means the executive officer appointed in terms of this constitution;



- 1.9 **"Governing Board"** means the Governing Board contemplated in clause 12.2 of this constitution;
- 1.10 **"Member"** means a natural person who is a member of the Governing Board as contemplated in clause 12.2 of this constitution; or a member of the Executive Committee as contemplated in clause 27.1 of this constitution;
- 1.11 **"Minister"** means the Minister of Labour;
- 1.12 **"Organised employers"** means employers organised for the purpose of furthering their interests as employers;
- 1.13 **"Organised labour"** means trade unions registered in terms of the Labour Relations Act 66 of 1995;
- 1.14 **"Public Finance Management Act"** means the Public Finance Management Act 1 of 1999;
- 1.15 **"Representative"** means a natural person representing organised labour or organised employers on a standing committee of AgriSETA;
- 1.16 **"Skills Development Levies Act"** means the Skills Development Levies Act 9 of 1999;
- 1.17 **"South African Qualifications Authority Act"** means the South African Qualifications Authority Act 58 of 1995;
- 1.18 **"The Act"** means the Skills Development Act 97 of 1998; and
- 1.19 **"Trade union"** means a trade union registered in terms of the Labour Relations Act, 1995.

## 2 Purpose of constitution

The purpose of this constitution is to set out the objectives, functions, governance structures and incidental matters pertaining to the establishment of AgriSETA.

**3 Name**

The name of this sector education and training authority is the Agriculture Sector Education and Training Authority.

**4 Establishment**

The Minister has established AgriSETA in accordance with sections 9A(1), 9A(2) and 13 of the Act.

**5 Place of business**

The place of business of AgriSETA is:

529 Belvedere Street,

Arcadia,

0083.

**6 Scope of coverage**

The scope of coverage of AgriSETA has been determined by the Minister in terms of sections 9(2) and 9A(3) of the Act. A detailed description of the scope of coverage is set out in Schedule 1 to this constitution.

**7 Organisations in sector**

The trade unions, employer organisations and relevant government departments in the sector are set out in Schedule 2 to this constitution.

**8 Legal status**

8.1 AgriSETA is a statutory body and body corporate with an identity and existence separate from that of its members, office bearers and employees and shall continue to exist despite changes in the composition of its membership.

8.2 AgriSETA may sue or be sued in its own name and is capable of having its own rights, obligations, and duties. AgriSETA may enter into contracts as far as this constitution and relevant legislation permits.

8.3 The income and property of AgriSETA must be applied solely towards the promotion of its objectives as contemplated in the Act.

No portion may be paid, or transferred directly or indirectly to AgriSETA's members, representatives or employees except for the payment of reasonable remuneration to employees or for the payment of allowances to any member or representative or for the reimbursement of expenses reasonably incurred in the performance of a member or representative's duties.

## **9 Limitation of liability**

9.1 No member, office-bearer, representative or employee of AgriSETA shall be liable for any of the obligations and liabilities of AgriSETA solely by virtue of his or her status as a member, office bearer, representative or employee.

9.2 No member, office-bearer, representative or employee of AgriSETA shall in any way be personally liable for any loss or damage suffered by any person as a result of the execution or non-execution, in good faith, of the member's, office bearer's representative's or employee's duties and powers under this constitution. Such members, office bearers, representatives and employees will be indemnified by AgriSETA for any such loss or damage.

## **CHAPTER TWO: OBJECTIVES AND FUNCTIONS**

### **10 Objectives of AgriSETA**

10.1 The objectives of AgriSETA are to promote the purposes of the Act within the sector.

10.2 The purposes of the Act are-

10.2.1 to develop the skills of the South African workforce-

10.2.1.1. to improve the quality of life of workers, their prospects of work and labour mobility;

10.2.1.2. to improve productivity in the workplace and the competitiveness of employers;

10.2.1.3. to promote self-employment; and

10.2.1.4. to improve the delivery of social services;



- 10.2.2 to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
- 10.2.3 to encourage employers-
  - 10.2.3.1. to use the work-place as an active learning environment;
  - 10.2.3.2. to provide employees with the opportunities to acquire new skills;
  - 10.2.3.3. to provide opportunities for new entrants to the labour market to gain work experience; and
  - 10.2.3.4. to employ persons who find it difficult to be employed;
- 10.2.4 to encourage workers to participate in learnerships and other training programmes;
- 10.2.5 to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;
- 10.2.6 to ensure the quality of education and training in and for the workplace;
- 10.2.7 to assist-
  - 10.2.7.1. work-seekers to find work;
  - 10.2.7.2. retrenched workers to re-enter the labour market; and
  - 10.2.7.3. employers to find qualified employees.

## **11 Functions of AgriSETA**

AgriSETA must in accordance with any requirements that may be prescribed:

- 11.1 develop a sector skills plan within the framework of the national skills development strategy;
- 11.2 implement its sector skills by –
  - 11.2.1 establishing learnerships;
  - 11.2.2 approving work-place skills plans;
  - 11.2.3 allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers,
  - 11.2.4 monitoring education and training provision in the sector;
- 11.3 promote learnerships by –
  - 11.3.1 identifying workplaces in the sector for practical work experience;
  - 11.3.2 supporting the development of learning materials;
  - 11.3.3 improving the facilitation of learning; and
  - 11.3.4 assisting in the conclusion of learnership agreements;
- 11.4 register learnership agreements;
- 11.5 perform the functions of an education and training quality assurance body as provided in the South African Qualifications Authority Act and relevant regulations;
- 11.6 when required to do so collect the skills development levies and disburse the levies allocated to it in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;
- 11.7 liaise with the National Skills Authority on-
  - 11.7.1 the national skills development policy;
  - 11.7.2 the national skills development strategy; and
  - 11.7.3 AgriSETA's sector skills plan;

11.8 submit to the Director-General:

11.8.1 any budgets, reports and financial statements on AgriSETA's income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and

11.8.2 plans and reports on the implementation of AgriSETA's sector skills plan and service level agreement;

11.9 liaise with the employment services of the Department and any education body established under any law regulating education in the Republic to improve information-

11.9.1 about employment opportunities; and

11.9.2 between education and training providers and the labour market;

11.10 subject to section 14 of the Act, appoint staff necessary for the performance of its functions;

11.11 promote the national standard established in terms of section 30B of the Act;

11.12 conclude a service level agreements for each financial year, with the Director-General concerning:

11.12.1 AgriSETA's performance of its functions in terms of the Act and the national skills development strategy;

11.12.2 AgriSETA's annual strategic plan; and

11.12.3 any assistance that the Director-General is to provide to AgriSETA in order to enable it to perform its functions;

11.13 perform any other duties imposed by the Act or the Skills Development Levies Act or consistent with the purposes of the Act and this constitution;

11.14 perform its functions in accordance with the Act, the Skills Development Levies Act and this constitution.



### CHAPTER THREE: MEMBERSHIP OF GOVERNING BOARD

#### 12 Composition

12.1 The Governing Board must consist of an equal number of members representing organised employers (on the one hand) and organised labour (on the other hand).

12.2 The Governing Board consists of twenty members:

12.2.1 ten members nominated by organised employers; and

12.2.2 ten members nominated by organised labour.

12.3 Members representing organised employers and members representing organised labour must be sufficiently representative of designated groups.

12.4 The organised employers and trade unions which are eligible to participate in the process of nominating members are listed in Schedule 2.

12.5 Members are nominated and appointed in accordance with this clause and Schedule 3.

12.6 The Governing Board must elect from its members a chairperson and a deputy chairperson provided that the respective offices must be occupied by one employer representative and one employee representative simultaneously.

12.7 Every organisation that nominates a member to the Governing Board must also nominate an alternate to that member to substitute for a member who may be temporarily absent and unable to attend a meeting of the Governing Board.

12.8 An alternate contemplated in clause 12.7 has all the rights and duties of the member of the Governing Board whilst substituting for that member.

**13 Functions**

13.1 The Governing Board must ensure that AgriSETA performs the functions contemplated in clause 11.

13.2 The Governing Board must ensure that AgriSETA complies with this constitution, the Act, the Skills Development Levies Act, the Public Finance Management Act and any other applicable law.

**14 Financial and general responsibilities of Governing Board**

14.1 The Governing Board must ensure that AgriSETA has and maintains:

14.1.1 effective, efficient and transparent systems of financial and risk management and internal control;

14.1.2 a system of internal audit under the control and direction of an audit committee complying with the operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77 of the Public Finance Management Act;

14.1.3 an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and

14.1.4 a system for properly evaluating all major capital projects prior to a final decision on the project.

14.2 The Governing Board must take effective and appropriate steps to:

14.2.1 collect all revenue due to AgriSETA ; and

14.2.2 prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of AgriSETA; and

14.2.3 manage available working capital efficiently and economically.

14.3 The Governing Board is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of AgriSETA.

14.4 The Governing Board must comply with any tax, levy, duty, pension and audit commitments as required by legislation.

14.5 The Governing Board must take effective and appropriate disciplinary steps against any employee of AgriSETA who:

14.5.1 contravenes or fails to comply with a provision of this Act;

14.5.2 commits an act which undermines the financial management and internal control system of AgriSETA; or

14.5.3 makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

14.6 The Governing Board is responsible for the submission by AgriSETA of all reports, returns, notices and other information to Parliament or the Minister, as may be required by the Public Finance Management Act.

14.7 The Governing Board must comply, and ensure compliance by AgriSETA, with the provisions of the Public Finance Management Act and any other legislation applicable to AgriSETA.

## **15 Procedure at meetings**

15.1 The Governing Board may regulate its meetings as it deems fit.

15.2 The quorum necessary for the transaction of business is six members representing organised employers and six members representing organised labour.

15.3 If within one hour after the time appointed for the meeting, a quorum is not present, the meeting must be rescheduled to another day within two weeks of the meeting, at the same time and place.

15.4 If there is no quorum at the rescheduled meeting within half an hour after the time appointed for the meeting, the members then

present must continue and may make recommendations, to be ratified at the next meeting of the Governing Board.

15.5 The chairperson must preside at all meetings of the Governing Board.

15.6 The chairperson must ensure that minutes of Governing Board meetings are kept and are circulated to members within three weeks after each Governing Board meeting.

## **16 Voting**

16.1 Each member has one vote.

16.2 There may be no voting by proxy.

16.3 Members must attempt to make decisions by consensus.

16.4 If consensus cannot be reached then the meeting must make decisions by way of majority vote.

16.5 Members must reach a decision by way of a secret ballot unless the meeting is of the general view that a show of hands would be appropriate in the circumstances.

## **17 Term of office and vacancies**

17.1 A member holds office for a period of two years from the date of the member's appointment.

17.2 A vacancy occurs if, during the member's term of office:

17.2.1 the organisation that nominated the member recalls the member by notice in writing to AgriSETA;

17.2.2 the member resigns, dies or otherwise becomes incapable of performing the functions of a member; or

17.2.3 the Governing Board removes the member from office for a reason contemplated in clause 18 after affording the member an opportunity to be heard.

## **18 Removal from office**

The Governing Board may remove a member for:

- 18.1.1 being absent from three consecutive meetings of the Governing Board without good cause or the prior submission of a written apology;
- 18.1.2 any conduct that may undermine the integrity of AgriSETA or which may bring AgriSETA or any of its members into disrepute;
- 18.1.3 serious misconduct;
- 18.1.4 any violation of the Code of Conduct contemplated in clause 44; or
- 18.1.5 any material violation of this constitution.

## **19 Filling of vacancies**

19.1 If a vacancy occurs as contemplated in clause 17.2, the Governing Board must appoint the member's alternate to replace the member of the Governing Board.

19.2 Any person appointed to fill a vacancy in terms of this clause must fill the vacancy for the unexpired duration of the original member's term of office.

19.3 The Governing Board must as soon as practicable after appointing the member as contemplated in clause 19.1 request the nomination of an alternate to that member from the relevant nominating body.

## **20 Powers**

20.1 The Governing Board has all such powers as are necessary to enable it to perform its functions set out in clause 13.

20.2 The Governing Board has such other powers as are conferred by this constitution, the Act or the Skills Development Levies Act.



**21 Delegation of powers and duties**

21.1 The Governing Board may delegate its powers and duties to members, committees and employees, provided that the Governing Board may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation.

21.2 A delegation must be in writing and must specify the period for which it is valid and any limitations or conditions on the delegation.

21.3 The Governing Board may continue to exercise or perform a power, or function which it has delegated.

21.4 The Governing Board remains responsible for all actions taken under a delegation.

**22 Annual General Meeting**

22.1 The Governing Board must meet for its Annual General Meeting at least once in each year within six months after the end of each financial year.

22.2 The chairperson in consultation with the Executive Committee shall determine the time, date and place of the Annual General Meeting.

22.3 Representatives of organisations in the sector set out in Schedule 2 may be invited to attend the Annual General Meeting.

22.4 Voting at the Annual General Meeting is restricted to members of the Governing Board only.

22.5 At the Annual General Meeting the members must :

22.5.1 consider the annual financial statements of AgriSETA, the annual report of AgriSETA's affairs and the report of the Auditor General;

22.5.2 appoint an internal auditor;

22.5.3 discuss any matter of which notice must have been given to the executive officer at least 15 days before the date of the annual general meeting;

22.5.4 elect office bearers; and

22.5.5 transact such other business as is required to be transacted by AgriSETA under this constitution or applicable legislation.

#### **CHAPTER FOUR: OFFICE BEARERS**

### **23 Appointment**

23.1 The office bearers of AgriSETA are:

23.1.1 the chairperson of the Governing Board; and

23.1.2 the deputy chairperson of the Governing Board.

23.2 If the chairperson is appointed from members representing organised labour then the deputy chairperson may be appointed only from members representing organised employers and vice versa.

23.3 Office bearers are appointed for one year.

### **24 Functions**

24.1 The chairperson must chair all meetings of the Governing Board.

24.2 The chairperson must perform all functions and duties entrusted to the chairperson by the constitution as well as those that are generally associated with the office of the chairperson.

24.3 The deputy chairperson must chair meetings of the Governing Board and perform the duties and functions of the chairperson whenever the chairperson is absent or for any reason is unable to perform those functions and duties.

**25 Absence or vacancies**

25.1 In the temporary absence of the chairperson, the deputy chairperson must act as chairperson.

25.2 If both the chairperson and the deputy chairperson are absent from a meeting of the Governing Board, then the members present must appoint a chairperson from amongst their number to chair the meeting.

25.3 If the office of chairperson or deputy chairperson becomes vacant then the constituency which nominated the chairperson or deputy chairperson must nominate a replacement as the chairperson or the deputy chairperson (as the case may be).

25.4 A replacement contemplated in clause 25.3 holds office for the unexpired period of the previous office bearer's term of office. During this period, the acting office bearers shall have all the powers, rights, duties and privileges which this constitution confers upon the officer in whose place they stand.

**26 Removal of office bearers**

26.1 The Governing Board may remove an office bearer for:

26.1.1 being absent from three consecutive meetings of AgriSETA without good cause or the prior submission of a written apology;

26.1.2 any conduct that may undermine the integrity of AgriSETA or which may bring AgriSETA or any of its members into disrepute;

26.1.3 serious misconduct;

26.1.4 any violation of the Code of Conduct contemplated in clause 44; or

26.1.5 any material violation of this constitution;

- 26.2 The Governing Board may replace an office bearer who has been removed in terms of this clause in the manner contemplated in clause 23.

## **CHAPTER FIVE: EXECUTIVE COMMITTEE**

### **27 Composition**

- 27.1 The Executive Committee consists of six members:

- 27.1.1 the chairperson;
- 27.1.2 the deputy chairperson;
- 27.1.3 two members nominated by organised employers; and
- 27.1.4 two members nominated by organised labour.

### **28 Terms of office**

- 28.1 The office bearers hold office as members of the Executive Committee for as long as they hold the office to which they have been appointed.
- 28.2 Ordinary members of the Executive Committee hold office for two years or until their term of office as members of the Governing Board expires, whichever occurs first.

### **29 Duties and functions**

- 29.1 The Executive Committee is responsible for overseeing the management of the operational affairs of AgriSETA.
- 29.2 With respect to finances, the Executive Committee must:
- 29.2.1 receive, consider and approve the financial reports of AgriSETA;
  - 29.2.2 recommend the appointment of an independent auditor and receive and consider the auditor's reports;
  - 29.2.3 monitor and report on the financial operations, internal financial controls and budget performance of AgriSETA;

29.2.4 approve AgriSETA's insurance portfolio;

29.2.5 approve tenders for items of major expenditure;

29.2.6 present the business plan, sector skills plan and budget for the approval of the Governing Board;

29.3 With respect to employees, the Executive Committee must :

29.3.1 recommend human resources policies to the Governing Board and monitor their implementation;

29.3.2 recommend the appointment of the executive officer of AgriSETA to the Governing Board;

29.3.3 recommend the terms and conditions of employment of the executive officer to the Governing Board;

29.3.4 direct and supervise the executive officer in the performance of his or her duties;

29.3.5 monitor staffing requirements;

29.3.6 recommend any other policies applicable to AgriSETA's employees to the Governing Board and monitor their implementation.

29.4 With respect to reporting, the Executive Committee must:

29.4.1 submit to the Governing Board the audited annual accounts of AgriSETA for incorporation into AgriSETA's annual report; and

29.4.2 submit, for the consideration of the Governing Board, an annual report on its activities.

29.5 Generally the Executive Committee may –

29.5.1 manage, co-ordinate and monitor the activities of standing committees and any other committees;

29.5.2 receive and consider the reports and recommendations of standing committees and any other committees; and

29.5.3 appoint ad hoc committees as may be required.

### **30 Powers**

30.1 The Executive Committee has the powers to perform the functions contemplated in clause 29.

30.2 The Governing Board may delegate further functions and powers to the Executive Committee in accordance with clause 21.

30.3 The Executive Committee may refer matters to a standing committee or ad hoc committee for advice.

30.4 The Executive Committee may act on behalf of AgriSETA in an emergency. In such event, the Executive Committee must report its actions and the reasons for them as soon as possible to the Governing Board.

## **CHAPTER SIX: STANDING COMMITTEES**

### **31 General**

31.1 The standing committees of the Governing Board are:

31.1.1 Sub-Sectoral Committees ("SSCs");

31.1.2 the Learnership Committee;

31.1.3 the ETQA Committee;

31.1.4 the Skills Planning Committee; and

31.1.5 the Audit Committee.

31.2 The Governing Board may establish any other standing committee that it deems necessary for the effective functioning of AgriSETA and may determine its composition, duties and functions.

31.3 The Governing Board may determine any procedural or substantive matter with respect to a particular standing committee or to the standing committees in general.

31.4 The standing committees may, in addition to their functions in this constitution make recommendations of policy to the Executive Committee.

## **32 Meetings and procedure**

32.1 Each committee shall meet as often as necessary for the proper conduct of its affairs but at least once in every six months and shall regulate its meetings as it deems fit.

32.2 At meetings of each committee, each representative present shall have one vote and all questions shall be decided by a majority of votes.

32.3 A resolution in writing signed by all the representatives of a committee and inserted in the minute book of that committee shall be as valid and effective as if it had been passed at a meeting of the committee, duly convened and held.

32.4 A resolution shall be deemed to have been signed if consent has been given in a message transmitted by telegram, e mail or telefax and purporting to emanate from the person whose signature to such resolution is required.

32.5 The person presiding at any meeting of a committee shall ensure that minutes of such meetings are kept and circulated to relevant representatives.

## **33 Sub-Sectoral Committees (SSCs)**

### **33.1 Number of SSCs**

33.1.1 The Governing Board may establish SSCs as agreed to by the different industry groupings within the sector.

### **33.2 Composition**

33.2.1 Each SSC shall consist of the following voting representatives:



33.2.1.1. a minimum of 3 and a maximum of 5 representatives representing organised employers; and

33.2.1.2. a minimum of 3 and a maximum of 5 representatives representing organised labour.

33.2.2 There must be an equal representation of organised employers and organised labour in each SSC.

33.2.3 The SSCs may invite any person to attend any meeting of the SSC for a specific period or purpose but such person will not be entitled to participate in any voting.

33.2.4 Each SSC must appoint a chairperson and deputy chairperson who must generally supervise, manage and co-ordinate the functions of the SSC.

### 33.3 Functions of SSCs

The SSCs may:

33.3.1 develop and make recommendations regarding the Sector Skills Plan for submission to the Governing Board;

33.3.2 facilitate the development of the Sector Skills Plan for approval by the Governing Board;

33.3.3 collate information in respect of retrenchments from individual companies within the SSC;

33.3.4 report the results of implementation of the Skills Development Strategy within the SSC to the Executive Committee; and

33.3.5 perform any other function determined by the Governing Board.

## 34 Learnership Committee

### 34.1 Composition

34.1.1 The Learnership Committee consists of six representatives:

34.1.1.1. three representatives nominated by organised employers; and

34.1.1.2. three representatives nominated by organised labour.

34.1.2 The Learnership Committee may appoint a chairperson who must generally supervise, manage and co-ordinate the functions of the Learnership Committee.

#### 34.2 Duties and functions -

34.2.1 The Learnership Committee may:

34.2.1.1. develop policies, principles, criteria and guidelines related to learnerships in accordance with Chapter 4 of the Act; and

34.2.1.2. develop and recommend plans for the implementation of learnerships.

### 35 Education and Training Quality Assurance ("ETQA") Committee

#### 35.1 Composition

35.1.1 The ETQA consists of six representatives :

35.1.1.1. three representatives nominated by organised employers; and

35.1.1.2. three representatives nominated by organised labour.

35.1.2 The ETQA Committee may appoint a chairperson who shall must generally supervise, manage and co-ordinate the functions of the ETQA Committee.

#### 35.2 Duties and functions -

35.2.1 the ETQA Committee may:

- 35.2.1.1. develop policies, principles, criteria and guidelines pertaining to AgriSETA's ETQA functions in accordance with the South African Qualifications Authority Act and relevant regulations;
- 35.2.1.2. make recommendations to the Governing Board on the accreditation of providers in the sector or sub-sectors for specific standards or qualifications;
- 35.2.1.3. promote quality amongst the various constituent providers;
- 35.2.1.4. register constituent assessors of national qualifications in the sector or sub-sectors in respect of specific standards or qualifications in terms of such criteria which may be established for this purpose;
- 35.2.1.5. monitor the development of, and requirements for, new standards, qualifications or modifications to existing standards or qualifications for the sector or sub-sectors;
- 35.2.1.6. ensure that AgriSETA maintains an appropriate data base for its quality assurance and certification functions; and
- 35.2.1.7. report to the Executive Committee on such matters as may be necessary.

## **36 Skills Planning Committee**

### **36.1 Composition**

36.1.1 The Skills Planning Committee consists of six representatives:

- 36.1.1.1. three representatives nominated by organised employers; and

36.1.1.2. three representatives nominated by organised labour.

36.1.2 The Skills Planning Committee may appoint a chairperson who must generally supervise, manage and co-ordinate the functions of the Sector Skills Planning Committee.

36.2 Duties and functions -

36.2.1 the Skills Planning Committee may:

36.2.1.1. develop such policies, principles, criteria and guidelines relating to sector skills planning for recommendation to the Governing Board;

36.2.1.2. identify the data which may be necessary for the development of a sector skills plan and to propose a means of collecting or acquiring such data;

36.2.1.3. determine the enterprise, employee, occupational and skills profile of the sector or sub-sectors with which it may be entrusted;

36.2.1.4. establish such skills, needs and employment growth developments in the economic sub-sectors and regions or provinces;

36.2.1.5. determine education and training priorities in the sector or sub-sectors with which it is entrusted;

36.2.1.6. develop policies, principles, guidelines and criteria related to workplace skills plans for recommendations to the Executive Committee;

36.2.1.7. report to the Executive Committee on the implementation of workplace skills plans;

36.2.1.8. develop sector skills plans for consideration by the Executive Committee; and

- 36.2.1.9. monitor and report to the Executive Committee on the implementation of the sector skills plan.

### 37 Audit Committee

#### 37.1 Composition

The Governing Board must appoint an audit committee in accordance with the provisions of the Public Finance Management Act and any relevant treasury regulations.

#### 37.2 Duties and functions

- 37.2.1 The audit committee must, amongst others, review the following:

- 37.2.1.1. the effectiveness of the internal control systems;

- 37.2.1.2. the effectiveness of internal audit;

- 37.2.1.3. the risk areas of AgriSETA's operations to be covered in the scope of internal and external audits;

- 37.2.1.4. the adequacy, reliability and accuracy of financial information provided to management and other users of such information;

- 37.2.1.5. any accounting and auditing concerns identified as a result of internal and external audits;

- 37.2.1.6. the AgriSETA's compliance with legal and regulatory provisions; and

- 37.2.1.7. the activities of the internal audit function, including its annual work programme, co-ordination with the external audits, the reports of significant investigations and the responses of management to specific recommendations; and

37.2.1.8. where relevant, the independence and objectivity of the external auditors.

37.2.2 The audit committee must:

37.2.2.1. report and make recommendations to the AgriSETA;

37.2.2.2. report on the effectiveness of internal controls in the annual report of the institution; and

37.2.2.3. comment on its evaluation of the financial statements in the annual report.

## **CHAPTER SEVEN: FINANCES AND FIDUCIARY RESPONSIBILITIES**

### **38 Finances**

38.1 AgriSETA is financed from:

38.1.1 80 per cent of the skills development levies, interest and penalties collected in respect of AgriSETA, as allocated in terms of sections 8(3)(b) and 9 (b) of the Skills Development Levies Act;

38.1.2 the moneys paid to it from the National Skills Fund;

38.1.3 grants, donations and bequests made to it;

38.1.4 income earned on surplus moneys deposited or invested;

38.1.5 income earned on services rendered in the prescribed manner; and

38.1.6 money received from any other source.

38.2 The money received by AgriSETA must be paid into a banking account at any registered bank and may be invested only in:

38.2.1 savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;

38.2.2 internal registered stock as contemplated in section 21(1) of the Exchequer Act 66 of 1975 any other manner approved by the Minister.

38.3 The moneys received by AgriSETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to:

38.3.1 fund the performance of its functions; and

38.3.2 pay for its administration within the prescribed limit.

38.4 AgriSETA must be managed in accordance with the Public Finance Management Act.

38.5 AgriSETA must:

38.5.1 prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and

38.5.2 furnish the Director-General with copies of all budgets, reports and statements contemplated in clause 38.5.1 or other information that it is required to submit in terms of the Public Finance Management Act.

### **39 Fiduciary duties of Governing Board**

39.1 The Governing Board must, as contemplated in section 50 of the Public Finance Management Act:

39.1.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of AgriSETA;

39.1.2 act with fidelity, honesty, integrity and in the best interest of AgriSETA in managing the financial affairs of AgriSETA;

39.1.3 on request, disclose to the Minister all material facts, including those reasonably discoverable, which in any way may influence the decisions of the Minister; and



- 39.1.4 seek, within the sphere of influence of AgriSETA to prevent any prejudice to the financial interests of the state.

39.2 A member may not:

- 39.2.1 act in a way that is inconsistent with the responsibilities assigned to AgriSETA in terms of the Public Finance Management Act; or
- 39.2.2 use the position or privileges of, or confidential information obtained for personal gain or to improperly benefit another person.

39.3 A member must:

- 39.3.1 disclose to the Governing Board any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before AgriSETA; and
- 39.3.2 withdraw from the proceedings of AgriSETA when that matter is considered, unless the Governing Board decides that the member's direct or indirect interest in the manner is trivial or irrelevant.

## **CHAPTER EIGHT: EXECUTIVE OFFICER**

### **40 Appointment**

- 40.1 The Governing Board must appoint a suitably qualified person as executive officer of AgriSETA.
- 40.2 The Governing Board may, subject to the provisions of this constitution, appoint persons as employees of AgriSETA to assist in the performance of the functions of the executive officer.

### **41 Functions**

- 41.1 The executive officer must perform such functions as may be assigned to the executive officer by the Act or by the Governing Board.

41.2 If the executive officer is absent or for any reason is unable to perform the functions entrusted to him or her, or there is a vacancy in office of the executive officer, the chairperson of the Governing Board may designate an employee of AgriSETA to act as executive officer until the executive officer is able to resume his or her, functions.

41.3 The executive officer must attend all meetings of the Governing Board and the Executive Committee.

## **CHAPTER NINE: GENERAL**

### **42 Amendments to constitution**

42.1 Any member may propose amendments to this constitution. The member must submit the proposed amendments with a written motivation to the executive officer.

42.2 The provisions of this constitution may be amended only:

42.2.1 by the decision of at least two-thirds of the members present at an Annual General Meeting or a special general meeting; and

42.2.2 if they are approved by the Minister.

42.3 The Executive Committee in consultation with the chairperson may call a special general meeting to consider the proposed amendments and motivation.

42.4 The executive officer must send copies of the proposed amendments and motivation together with the agenda for the meeting to all members. At least 30 days notice of an Annual General Meeting or a special general meeting at which an amendment will be considered is required.

### **43 Taking over administration of AgriSETA**

43.1 The Minister may, after consultation with the National Skills Authority and AgriSETA, direct the Director-General to appoint an administrator to take over the administration of AgriSETA or to perform the functions of AgriSETA if-

- 43.1.1 AgriSETA fails to perform its functions;
- 43.1.2 there is mismanagement of finances;
- 43.1.3 its membership no longer substantially represents the composition contemplated in section 11 of the Act;
- 43.1.4 AgriSETA has failed to comply with its service level agreement; or
- 43.1.5 AgriSETA has failed to comply with an instruction issued by the Minister in terms of section 14A of the Act.

#### **44 Code of conduct**

44.1 Every member of the Governing Board and every representative on a standing or other committee of AgriSETA is bound by this code of conduct.

##### **44.2 Members and representatives-**

- 44.2.1 must perform their functions in good faith;
- 44.2.2 must act honestly and in the utmost good faith;
- 44.2.3 must exercise reasonable care and diligence;
- 44.2.4 must give full effect to the obligations and spirit of the Act;
- 44.2.5 must avoid any material conflict between their own interests and those of AgriSETA, and in particular must not derive any personal economic benefit to which they are not entitled; and must protect and promote the reputation and goodwill of AgriSETA;
- 44.2.6 must exercise their powers for the benefit and in the interests of AgriSETA;
- 44.2.7 must not abuse the resources of AgriSETA;
- 44.2.8 must not disclose to any unauthorised person any privileged or confidential information of AgriSETA; and

44.2.9 must promote and advance the interests and objectives of AgriSETA.

#### 45 Dispute resolution

45.1 Any party to a dispute concerning the interpretation or application of this constitution may refer the dispute to the executive officer.

45.2 The referral must:

45.2.1 be in writing;

45.2.2 adequately describe the dispute; and

45.2.3 be delivered to every other party to the dispute by the party referring the dispute.

45.3 The executive officer must, as soon as reasonably practicable, refer the dispute to the Executive Committee which must endeavour to resolve the dispute by conciliation within 30 days of referral of the dispute.

45.4 If the Executive Committee fails to resolve the dispute within 30 days of its referral, then any party to the dispute may refer it to for arbitration by an arbitrator.

45.5 The arbitrator must be agreed to by the parties to the dispute with the approval of the chairperson or, failing such agreement or approval, by an arbitrator appointed by the Arbitration Foundation of Southern Africa.

45.6 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.

45.7 The arbitrator must conduct the arbitration in a manner that he or she considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formality.

45.8 Within 14 days of conclusion of the arbitration proceedings:

45.8.1 the arbitrator must issue a signed arbitration award with reasons; and

45.8.2 the executive officer must provide a copy of the award to every party to the dispute.

45.9 The arbitration award is final and binding on the parties to the dispute.

45.10 The costs of the arbitrator must be borne:

45.10.1 equally by the parties to the dispute if the dispute involves a party who is not a member of the Governing Board; or

45.10.2 by AgriSETA if the parties to the dispute are members of the Governing Board.

45.11 The arbitrator may however make a different and appropriate award of costs if:

45.11.1 a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings; or

45.11.2 the arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.

45.12 An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:

45.12.1 erroneously sought or made in the absence of any party affected by the award;

45.12.2 in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or

45.12.3 granted as a result of a mistake common to the parties to the proceedings.

**Schedule 1: Scope**

1	11110	Growing of cereals and other crops n.e.c.
2	11120	Growing of vegetables, horticultural specialities and nursery products
3	11121	Growing of vegetables, horticultural specialities (including ornamental horticulture) and nursery products
4	11122	Sugar Plantation including sugar cane and sugar beet etc.
5	11130	Growing of fruit, nuts, beverage and spice crops
6	11221	Ostrich Farming
7	11222	Game Farming
8	11210	Farming of cattle, sheep, goats, horses, asses, mules and hinnies; dairy farming
9	11300	Growing of crops combined with farming of animals (mixed farming)
10	11301	Growing of coffee and tea including coconuts, cocoa, nuts, olives, dates etc.
11	11400	Agricultural and animal husbandry services, except veterinary activities
12	11402	Other animal farming N.E.C
13	12109	Growing of trees as second crop by farmers
14	13000	Fishing, operation of fish hatcheries and fish farms
15	11140	Seed production and marketing
16	11141	Production of animal products N.E.C.

17	11142	Manufacture of Tobacco Products
18	11220	Other animal farming, production of animal products, N.E.C
19	30111	Slaughtering, dressing and packing of livestock including poultry and small game for meat
20	30114	Poultry and egg production including the slaughtering, dressing and packing of poultry
21	30115	Production, sale and marketing of agricultural by-products e.g. bones, hides)
22	30117	Slaughtering, dressing and packing of livestock, including small game for meat and processing of ostrich products
23	3011B	Grading, ginning and packaging of wool and cotton raw material
24	30132	Fruit packed in cartons, fruit juice concentrate drummed and fruit juice in container ready for human consumption
25	30133	Fruit exporters and importers
26	30300	Manufacture of grain mill products, starches and starch products and prepared animal feeds
27	30311	Manufacture of flour and grain mill products, including rice and vegetable milling; grain mill residues
28	30313	Handling and storage of grain
29	30330	Manufacture of prepared animal feeds
30	30331	Manufacture of pet products
31	30332	Manufacture of starches and starch products



32	30421	Manufacture of sugar, including golden syrup and castor sugar
33	30493	Growing and marketing of coffee and tea
34	61210	Wholesale trade in agricultural raw materials and livestock
35	61502	Wholesale and retail trade in agricultural machinery
36	62111	Sale and distribution of agricultural raw materials and other farming inputs
37	62112	Service for nut farmers and companies
38	62208	Processing and dispatching of tobacco
39	74136	Transport of livestock as supporting activity
40	87120	Agricultural and livestock research
41	99003	Pest control

**Schedule 2: Organisations in sector****Trade Unions**

1	Food and Allied Workers Union
2	Food and General Workers Union
3	Forestry, Farm & Allied Trade Union
4	National Union for Food Beverage Wine Spirits and Allied Workers
5	National Union of Farmworkers
6	Solidarity
7	South African Agricultural Plantation and Allied Workers Union
8	South African Commercial Catering Allied Workers Union
9	South African Food and Allied Trade Union

**Employer Organizations**

10	Agricultural Employers' Organisation
11	Agri South Africa and Affiliates
12	Cape Agri Employers' Organisation
13	Chamber of Milling
14	Co operative Wine Cellars Committee
15	Cotton SA
16	Grain SA
17	South African Sugar Association
18	Fruit Packaging Employers Organisation
19	Fruit Processors Association

20	Grain SA
21	National Association of Maize Millers
22	National African Farmers Union
23	Pet Food Manufacturing Institute
24	Red Meat Abattoir Association
25	South African Feedlot Association
26	South African Green Industries Council
27	South African Meat Industry Company
28	South African National Seed Organisation
29	South African Pest Control Association
30	South African Pig Produces Association
31	South African Poultry Association
32	TAU SA
33	Tobacco RSA

#### Relevant Government Departments

32	Department of Agriculture
33	Department of Land Affairs
34	Department of Education
35	Department of Health
36	Department of Labour
37	Department of Trade and Industry

**Schedule 3: Nomination and appointment of members****1. Nominations by organised employers**

- 1.1. Organised employers listed in Schedule 2 may by agreement nominate 10 members to represent their interests on the Governing Board.
- 1.2. Subject to section 11(b) of the Act only organised employer groups representing employers that have registered with the South African Revenue Services to pay the levies prescribed by the Act to AgriSETA may nominate persons as members.

**2. Nominations by organised labour**

Trade unions listed in Schedule 2 may by agreement nominate 10 members to represent their interests on the Governing Board.

**3. Stakeholder participation**

- 3.1. The Governing Board must review Schedule 2 every two years. If it is deemed appropriate the Governing Board must publish an advert in newspapers widely read by stakeholders in the sector, calling on organised employers and trade unions (not employers and employees) to apply in writing to be recognised by the Governing Board as stakeholders in the sector. The purpose of such an invitation is to ensure that the Governing Board is properly represented by members representing organised employers and organised labour.
- 3.2. Any organisation which is not listed in Schedule 2 may apply to the Governing Board to participate in the nomination of members to represent organised employers or organised labour (as the case may be).
- 3.3. The organisation must submit -
  - 3.3.1. their constitution or founding document;

3.3.2. the size of their membership and with respect to organised employers the size of the workforce employed by their members;

3.3.3. a motivation for consideration by the Governing Board; and

3.3.4. any other information the Governing Board considers relevant.

3.4. The Governing Board must consider the organisation's representations.

3.5. If the Governing Board is of the view that the organisation is sufficiently representative of organised employers or organised labour within the sector, then the Governing Board must list the organisation in Schedule 2. The organisation may thereafter participate in the nomination of members.

#### **4. Consulting on proportional representation**

4.1. Before the election of board members as provided for in this constitution, the Governing Board must invite organised employers and trade unions listed in Schedule 2 (respectively) to nominate persons as members.

4.2. The listed organised employers assisted by the chairperson or deputy chairperson of the Governing Board (whichever officer bearer has been elected by organised employers) must by way of consultation attempt to reach agreement on the proportional division of the ten employer seats.

4.3. The listed trade unions assisted by the chair or deputy chairperson of the Governing Board (whichever office bearer has been elected by organised labour) must by way of consultation attempt to reach agreement on the proportional division of the ten employee seats.

4.4. Once the said organised employers and organised labour have reached agreement (respectively) on the division of seats, then the organisation allocated a seat(s) shall decide on the appropriate person(s) to sit as a member(s) on the Governing Board.

- 4.5. If agreement cannot be reached then the organised employers and trade unions (as the case may be) must apply the principle of proportionality to allocate the seats on the Governing Board. The formula set out below may be followed.

5. **Formula for proportional representation**

5.1. With respect to organised employers:

The formula is:

$$\frac{A}{B} \times \frac{C}{1} = D$$

**A** represents the number of employees employed by members of an employer's organisation listed in Schedule 2.

**B** represents the total number of employees employed by members of all employers' organisations listed in Schedule 2.

**C** represents 10 (number of members allocated to represent organised employers on the Governing Board).

**D** represents the number of members which the organisation representing organised employers is entitled to nominate to the Governing Board.

Example: if there are only two employers organisations, one representing members with 7500 employees and the other representing members with 10 500 employees (the total number of employees would be 18 000) each employers organisation would be represented as follows on the Governing Board:

$$\begin{array}{rclclcl} 7500 & & 10 & & 10\,500 & & 10 \\ \hline & \times & \hline & & & \times & \hline 18000 & & 1 & & 18\,000 & & 1 \end{array} \quad \begin{array}{l} = 4.16 \\ \\ \\ \end{array} \quad \begin{array}{l} \\ \\ \\ \end{array} \quad \begin{array}{l} = 5.83 \end{array}$$

The employer's organisation representing members employing 7 500 employees could nominate 4 members onto the Governing Board to represent organised employers.

The employer's organisation representing members employing 10 500 employees could nominate 6 members onto the Governing Board to represent organised employers.

5.2. With respect to organised labour:

$$\frac{\text{A}}{\text{B}} \times \frac{\text{C}}{1} = \text{D}$$

**A** represents the number of members of a trade union listed in Schedule 2.

**B** represents the total number of members of trade unions listed in Schedule 2.

**C** represents 10 (number of members allocated to represent organised labour on the Governing Board).

**D** represents the number of members which the trade union is entitled to nominate to the Governing Board.

**Example :** If there are only two organisations representing labour, one with 3000 members and another with 10 500 members (13 500 in total) then those organisations would be represented as follows on the Governing Board:

$$\begin{array}{rclcl} 3\,000 & & 10 & & \\ \hline & \times & & = & 2.22 \\ 13\,500 & & 1 & & \\ \\ 10\,500 & & 10 & & \\ \hline & \times & & = & 7.78 \\ 13\,500 & & 1 & & \end{array}$$



The organisation with 3 000 members could nominate 2 members onto the Governing Board to represent organised labour.

The organisation with 10 500 members could nominate 8 members onto the Governing Board to represent organised labour.

**6. Appointment of members**

The persons nominated to the Governing Board in accordance with this Schedule are deemed to be appointed as the members of the Governing Board.

**7. Resolving disputes**

If there is a dispute regarding the interpretation or application of this schedule which cannot be resolved amicably and informally then the organisations involved must refer the dispute for arbitration as contemplated in clause 45 of the constitution.

**No. R. 887****8 September 2005****SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)****APPROVAL OF CONSTITUTION FOR: PUBLIC SERVICE SECTOR EDUCATION  
AND TRAINING AUTHORITY (PSETA)**

The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Schedule.

**SCHEDULE**

# CONSTITUTION

PUBLIC

SERVICE

SECTOR

EDUCATION

&

TRAINING

AUTHORITY

## - I - CONSTITUTION OF THE PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY

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**CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**

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**1. INTRODUCTION**

The Public Service Sector Education and Training Authority (PSETA) strives for the development of a skilled workforce to provide a better service to the people of South Africa. This SETA is inspired by the vision of a skilled workforce, appropriately educated, trained and empowered to render quality services, which are comparable with world-class standards.

**2. DEFINITIONS**

In this Constitution, unless the context indicates otherwise, any word or phrase that is defined in the Skills Development Act, 1998 (Act No. 97 of 1998) has the same meaning as in that Act, and –

- (a) **“Accounting Standards Board”** means the board established in terms of section 87 of the PFMA;
- (b) **“Act”** means the Skills Development Act, 1998 (Act No. 97 of 1998);
- (c) **“Authority”** means PSETA;
- (d) **“Board”** means the PSETA Board
- (e) **“Chief Executive Officer”** means the Chief Executive Officer of the Authority appointed in terms of clause 14;
- (f) **“Constitution”** means this Constitution and any Annexures to it.
- (g) **“Department”** means the Department of Labour;
- (h) **“Designated Groups”** means black people, women and people with disabilities;
- (i) **“Director-General”** means the Director-General of Labour;
- (j) **“DPSA”** means the Department of Public Service and Administration
- (k) **“GPSSBC”** means the General Public Service Sectoral Bargaining Council
- (l) **“Employer”** means any government department and organisational component listed in Schedules 1 to 3 of the Public Service Act, 1994 and participating Parastatals as listed in Annexure “B” to this Constitution;
- (m) **“Exempt Employers”** means those employers within the Sector who are exempt from paying levies in terms of section 4 of the SDLA;

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- (n) **"Line-function"** means officials who perform line functions, which have a direct impact on the core functions of the Institution that is the reason for that institution's existence
- (o) **"Member(s)"** means the PSETA Board Member
- (p) **"Minister"** means the Minister of Labour;
- (q) **"NSA"** means the National Skills Authority established in terms of section 4 of the Act;
- (r) **"NSDS"** means the National Skills Development Strategy
- (s) **"Organised Labour"** means any trade union or federation of trade unions registered as such in terms of the provisions of the Labour Relations Act, 1995, and admitted to the GPSSBC;
- (t) **"Parastatal"** means any public entity, board, commission, company, corporation, fund or other entity listed in Schedules 1, 2 and 3 of the Public Finance Management Act, 1999 (PFMA), and that is not elsewhere committed.
- (u) **"PFMA"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (v) **"SAQA"** means the South African Qualifications Authority established in terms of section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
- (w) **"SDLA"** means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- (x) **"Sector"** means the Public Service sector as defined in clause 3 (3) of this constitution;
- (y) **"SETA"** means a Sector Education and Training Authority contemplated in Chapter 3 of the Act; and

### 3. CHARACTER

#### (1) Name

The name of this SETA is the Public Service Sector Education and Training Authority, referred to in this Constitution as "the Authority".

#### (2) Legal status

- (a) The Authority is a juristic person.
- (b) The Authority, through the Board, may authorise any person or persons to act on its behalf and to sign all documents and to take all



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steps as may be necessary in connection with any legal proceedings brought by or against the Authority.

(c) The Authority is governed by the Act, the PFMA, the SDLA, and this Constitution.

(d) The Authority is an organisation not for gain.

**(3) Scope of Coverage**

The scope of coverage of the Authority is the Public Service as proposed in Annexure "A" of this Constitution as determined by the Minister of Labour in terms of section 9(2) of the Act.

**(4) Organisations in the sector**

The Employer, Organised Labour and Parastatals in the sector are set out in Annexure "B" to this Constitution.

**4. OBJECTIVES OF AUTHORITY**

In performing the functions contemplated in the Act and in this Constitution, the Authority must seek to promote the objectives contemplated in clauses 4(1), 4(2), and 4(3) of this Constitution.

**(1) General objectives**

The general objectives of the Authority are –

- (a) to facilitate, coordinate and monitor the implementation of the NSDS in the Public Service;
- (b) to attend to the transversal training needs of government departments in the Public Service and participating parastatals;
- (c) to identify skills shortages in the Sector;
- (d) to develop the skills of employees in the Sector;
- (e) to improve the quality of life, prospects and labour mobility of employees in the Sector;
- (f) to strengthen the institutional capacity of Public Service services in order to improve productivity and the quality of services;
- (g) to increase the levels of investment in skills development and to improve returns on such investment;
- (h) to improve performance and productivity in the workplace;

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- (i) to improve the employment prospects of persons previously disadvantaged by unfair discrimination;
- (j) in liaison with employment services and private employment services agencies, to assist work-seekers to gain access to work experience;
- (k) in liaison with employment services and private employment services agencies, to assist retrenched workers to re-enter the labour market;
- (l) to assist employers to find suitably qualified employees;
- (m) to liaise with employers in skills development programmes;
- (n) to access additional funds from the National Skills Fund in accordance with any prescribed procedure, or any applicable law, for the benefit of the Sector;
- (o) to promote skills for self-employment;
- (p) to promote the quality of education and training in the Sector;
- (q) to approve and accredit providers of education and training in the Sector;
- (r) to promote effective communication and participation between bodies involved in skills development both inside and outside the Sector; and
- (s) to support the development of the National Qualifications Framework.

**(2) Objectives in relation to employers**

The objectives of the Authority in relation to employers are to encourage them –

- (a) to develop their capacity to manage and provide education and training;
- (b) to provide employees with the opportunities to acquire new skills;
- (c) to use their workplaces and facilities to create active learning environments;
- (d) to identify transversal skills needs in the public sector;
- (e) to ensure quality education and training in the workplace;
- (f) to provide new entrants to the labour market with opportunities to learn through exposure to work experience in learnerships;

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- (g) to provide employment opportunities for persons who might otherwise find it difficult to obtain employment;
- (h) to develop appropriate partnerships between themselves and other public, private and non-governmental organisations.

**(3) Objectives in relation to employees**

The objectives of the Authority in relation to employees are to encourage them –

- (a) to participate in learnerships and other education and training programmes;
- (b) to participate in the governance and evaluation of the programmes they undertake; and
- (c) to develop an ethos of responsibility in respect of their work.

**5. POWERS AND FUNCTIONS OF AUTHORITY**

**(1) Authority must perform certain functions**

The Authority must, in accordance with any prescribed requirements, -

- (a) develop a sector skills plan within the framework of the national skills development strategy;
- (b) implement its sector skills plan by establishing learnerships, approving workplace skills plans, allocating grants, and monitoring education and training in the Sector;
- (c) promote learnerships and any other learning programmes that include work experience by:
  - (i) identifying workplaces for practical work experience,
  - (ii) improving the facilitation of learning,
  - (iii) assisting in the conclusion of Learnership Agreements;
- (d) register Learnership Agreements;
- (e) apply to SAQA for accreditation as a body contemplated in section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act, 1995;
- (f) perform such functions as may be assigned to it by SAQA;
- (g) liaise with the NSA on the national skills development policy, the national skills development strategy, and the sector skills plan;

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- (h) submit to the Director-General any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the PFMA, and plans and reports on the implementation of its sector skills plan and service level agreement;
- (i) liaise with the employment services of the Department and relevant education bodies established under any law regulating education in the Republic to improve information about employment opportunities;
- (j) appoint staff necessary for the performance of its functions; and
- (k) perform any other functions and duties imposed by the Act, the SDLA, or this Constitution or consistent with the purposes of the Act or this Constitution.

**(2) Authority may exercise certain powers**

The Authority may-

- (a) exercise all such powers as are necessary to enable it to perform its functions referred to in clause 5(1);
- (b) accredit any relevant professional bodies or other bodies to perform quality assurance functions in accordance with the accreditation requirements stipulated by SAQA;
- (c) make decisions on any matter related to the performance of its functions on which this Constitution is silent; and
- (d) exercise any other powers conferred on it by the Act, the PFMA, the SDLA, or this Constitution.

**(3) Delegation of powers and functions**

- (a) The Authority, subject to any conditions that it may impose, may delegate any of its functions-
  - (i) to the Executive Committee;
  - (ii) to any other committee or structure of the Authority; or
  - (iii) to the Chief Executive Officer.
- (b) Every delegation by the Authority must be in writing, setting out the terms and conditions of such delegation, and must be recorded in a book of record.
- (c) The Authority is not divested of any power, duty or function by virtue of the delegation and may vary or set aside any decision made under any delegation.

CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**6. SERVICE LEVEL AGREEMENT**

- (1) For every financial year the Authority shall conclude with the Director-General a service level agreement concerning –
  - (a) the Authority's performance of its functions in terms of the Act and the national skills development strategy;
  - (b) the Authority's annual business plan;
  - (c) any assistance the Director-General is to provide to the Authority in order to enable it to perform its functions; and
  - (d) any other prescribed matters.
- (2) The service level agreement must be concluded in the prescribed manner and within the prescribed period.
- (3) If the Authority and the Director-General are unable to agree on the contents of the service level agreement within the prescribed period, the Minister must determine the contents of the service level agreement after consulting the NSA.
- (4) The determination by the Minister in respect of the service level agreement is final and binding.

**7. LEARNERSHIPS****(1) Establishment of learnerships**

The Authority may establish a learnership if-

- (a) the learnership consists of a structured learning component;
- (b) the learnership includes practical work experience of a specified nature and duration;
- (c) the learnership would lead to a qualification registered by SAQA and related to an occupation; and
- (d) the intended learnership is registered with the Director-General in the prescribed manner.

**(2) Learnership Agreements**

- (a) A Learnership Agreement must be in the prescribed format and registered with the Authority in the prescribed manner.
- (b) A Learnership Agreement may not be terminated before the expiry of the period of duration specified in the Learnership Agreement unless-

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- (i) the learner meets the requirements for the successful completion of the learnership;
  - (ii) the Authority approves of the termination; or
  - (iii) the learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee, or the employer's operational requirements.
- (c) The employer or training provider that is a party to a Learnership Agreement may be substituted with-
- (i) the consent of the learner; and
  - (ii) the approval of the Authority.
- (d) The Authority must, in the prescribed manner, provide the Director-General with a record of Learnership Agreements registered by the Authority.

**8. SKILLS PROGRAMMES****(1) Grants for skills programmes**

- (a) The Authority may facilitate a skills programme if-
- (i) it is occupationally based;
  - (ii) when completed it will constitute a credit towards a qualification registered in terms of the National Qualifications Framework;
  - (iii) it uses an accredited training provider;
  - (iv) it complies with any prescribed requirements;
  - (v) it is in accordance with the skills development plans of the Authority and the NSDS; and
  - (vi) such programs address the skills imperatives of the public service based on the Human Resources development Strategy priorities.
- (b) The Authority may set any additional terms and conditions for facilitation it considers necessary.

**(2) Monitoring of skills programmes**

- (a) The Authority must monitor any skills programme implemented in the Public Sector on behalf of its members.

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- (b) The Authority may cause funds to be withheld or recovered if it is of the opinion that -
  - (i) the funds are not being used for the purpose for which they were made available;
  - (ii) any term or condition of funding is not complied with; or
  - (iii) the standard of the training is unsatisfactory.

**9. MEMBERS OF BOARD****(1) Composition of Board**

The Board shall consist of 20 Members, comprising:

- (a) Eight non-executive Members representing the State as employer, appointed by the Minister for Public Service and Administration as follows:
  - (i) One Member representing DPSA
  - (ii) Two Members representing national government departments;
  - (iii) Three Members representing provincial government departments, and
  - (iv) Two Members representing Parastatals (i.e. schedule 1, 2, and 3 entities according to the PFMA)
- (b) Eight Members representing Organised Labour, appointed by the trade union parties to the GPSSBC based on the principle of proportionality.
- (c) The Chief Executive Officer of the PSETA
- (d) The Employer and Organised Labour – additional to their prescribed numbers in terms of clauses 9(1)(a) and 9(1)(b) of the this Constitution - shall EACH appoint an expert in any field listed in Annexure "C" to this Constitution to serve on the PSETA board as a Member.
- (e) The Members of the Board of the PSETA so appointed in terms of clauses 9(1)(a), 9(1)(b) and 9(1)(d) of this Constitution, shall appoint a chairperson of the Board from a list of NO LESS than 5 names submitted by themselves.
- (f) From amongst the Members of the board, the Members shall appoint a vice-chairperson.



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- (g) Members representing government departments must be drawn from senior management.

**(2) Terms of office of Members of Board**

Subject to clause 9(9)(a), a Member of the Board holds office for a period of five years and on expiry of his or her term of office is eligible for re-appointment.

**(3) Nomination and appointment of Members of Board**

- (a) At least three months before the expiry of the term of office of Members of the Board, the Chief Executive Officer must invite nominations from Organised Labour and the Employer within the Sector for Members for the forthcoming term of office.
- (b) The Chief Executive Officer must set a date for the first meeting of the new term and the new Board must meet within three months of the expiry of the term of office of the previous Board.
- (c) The outgoing Members of the Board are eligible for nomination and re-appointment as Members of the Board for further terms of office.

**(4) Alternates to Members of Board**

The organisations contemplated in clauses 9(1)(a) and 9(1)(a) must appoint alternates to act in the place of each Member that represents their organisation, in the event that such Member is unable to attend a meeting of the Board.

**(5) First meeting of each new term of office of Board**

- (a) The Chief Executive Officer must notify the Members of the date, time and venue of the first meeting of their term of office.
- (b) At that meeting, Members must -
  - (i) appoint a chairperson as contemplated in clause 9(1)(e);
  - (ii) elect a vice-chairperson as contemplated in clause 11(1);
  - (iii) set the dates for the forthcoming meetings of that year; and
  - (iv) take such other decisions as are necessary to ensure the prompt and effective functioning of the Board.
- (c) The Chief Executive Officer will preside over the first meeting of the new term of office until the chairperson has been appointed.



CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**(6) Meetings of Board**

- (a) The Board must meet at least FOUR times each year, one of which must be the Annual General Meeting.
- (b) The business of the Board at the Annual General Meeting shall include:
  - (i) the consideration of the annual financial statements of the Authority;
  - (ii) the annual report of the Authority's affairs;
  - (iii) the report of the Auditor-General;
  - (iv) the appointment of an auditor;
- (c) The business of the Board at meetings shall include:
  - (i) the discussion of any matter referred to in or arising out of the financial statements or the reports;
  - (ii) the appointment of the Members of the Board;
  - (iii) the discussion of any matter of which notice shall have been given to the Chairperson at least 10 days before the date of the meeting;
  - (iv) the transaction of such other business as is required to be transacted by the Authority under this Constitution, the Act, the PFMA or the SDLA;
  - (v) the approval of the Authority's annual budget and business plan for submission to the Minister; and
  - (vi) the delegation of the functions, rights, duties and powers to Members, employees, or committees.

**(7) Meeting procedures**

Meetings of the Board must comply with the requirements contemplated in clause 13.

**(8) Suspension of Members of Board**

- (a) The Authority may on reasonable grounds contemplated in clauses 9(9)(b)(iv) and 9(9)(b)(vii) suspend a Member pending an inquiry contemplated in clause 9(9)(d).
- (b) Before suspending a Member, the Board must –

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- (i) give notice to that Member of its intention to suspend him or her;
- (ii) give reasons for the intention to suspend; and
- (iii) give the Member a reasonable opportunity in the circumstances to make representations to the Board.

**(9) Vacation of office by Members of Board**

- (a) A Member of the Board shall vacate his or her office if that Member-

- (i) is removed from office as contemplated in clause 9(9)(b);
- (ii) resigns by written notice addressed to the Board; or
- (iii) dies.

- (b) The Board may remove a Member-

- (i) on the written request of the organisation represented by that Member;
- (ii) for absence from three consecutive meetings of the Board without the prior permission of the Board, unless the Member shows good cause;
- (iii) for permanent incapacity;
- (iv) for serious misconduct;
- (v) for failure to comply with any provision in the Code of Conduct contained in Annexure "D";
- (vi) for conduct that undermines the Board or Authority or brings the Board or Authority or any of its Members into disrepute; or
- (vii) for any other good reason.

- (c) Before removing a Member, the Board must –

- (i) give notice to that Member of its intention to remove him or her;
- (ii) give reasons for the intention to remove him or her; and
- (iii) give the Member a reasonable opportunity in the circumstances to make representations to the Board.

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- (d) If the Board contemplates removing a Member in terms of clauses 9(9)(b)(iv) or 9(9)(b)(vii), the Board must hold an inquiry to determine whether or not the Member should be removed from office.
- (e) The Board must appoint three of its Members to preside over the inquiry.
- (f) The Chairperson must inform the Member in sufficient detail in writing -
  - (i) of the allegations against him or her; and
  - (ii) of the date, time and venue of the inquiry.
- (g) The Member must be given adequate time to prepare for the inquiry and may be represented by a fellow Member at the inquiry.

**(10) Filling of vacancies on Board**

- (a) If a Member of the Board vacates office before the expiry of his or her period of office for any reason contemplated in clauses 9(9)(a) or 9(9)(b), the organisation which was represented by that Member may nominate a new Member for the remaining portion of that period, and in the case of a Member appointed in terms of clause 9(1)(e), the board shall appoint a Member for the remaining period.
- (b) Subject to clause 9(1), the Board must appoint any person so nominated as a Member of the Board.
- (c) If the organisations contemplated in clause 9(1)(a) or 9(1)(b) has not nominated a new Member within a reasonable period of a written request by the Board to do so, the Board may appoint a Member to represent the interests of such an organisation, as the case may be.

**10. EXECUTIVE COMMITTEE****(1) Establishment of Executive Committee**

The Board must establish an Executive Committee.

**(2) Composition of Executive Committee**

The Executive Committee of the Board consists of –

- (a) the Chairperson and vice-chairperson contemplated in clause 11(1);
- (b) the Chief Executive Officer and Chief Financial Officer in an ex-officio capacity;

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**CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**

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- (c) 2 members nominated by the Members of the Board representing Organised Labour;
- (d) 2 members nominated by the Members of the Board representing the Employer; and
- (e) One member drawn from the experts appointed in terms of clause 9(1)(d)

**(3) Terms of office of Executive Committee**

A member of the Executive Committee holds office for the period of that Member's term of office as a Member of the Board.

**(4) Functions of Executive Committee**

- (a) Subject to the directions of the Board, the Executive Committee must exercise the powers and perform the functions and duties of the Board relating to the supervision and control of the everyday management and administration of the Authority.
- (b) Without limiting the powers, functions and duties contemplated in clause 10(4)(a), the Executive Committee must-
  - (i) supervise the proper management of all financial matters;
  - (ii) co-ordinate and supervise the implementation of the policies of the Authority;
  - (iii) monitor national policy issues and developments and make recommendations for the adoption of policy;
  - (iv) co-ordinate the functioning of committees and structures of the Authority and monitor their activities to ensure that they are acting within the terms of any powers delegated to them by the Authority;
  - (v) manage staff employment issues;
  - (vi) consider and approve skills programmes which have been recommended by committees and structures if the skills programmes comply with approved policy guidelines;
  - (vii) determine budgets and business plans;
  - (viii) monitor the relations and interactions of the Authority with the NSA and other SETA's; and
  - (ix) perform any other function or duty, delegated to it by the Board or contained elsewhere in this Constitution.

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- (c) The Executive Committee may establish committees and structures to assist it in the performance of its functions and in this regard may determine –

- (i) terms of reference;
- (ii) membership (which may include persons who are not members of the Executive Committee);
- (iii) Chairperson or facilitator; and
- (iv) meeting procedures.

**(5) Meetings of Executive Committee**

The Executive Committee must meet at least 8 times each year.

**(6) Meeting procedures**

Meetings of the Executive Committee must comply with the procedures contemplated in clause 13 read with the necessary changes.

**11. CHAIRPERSON AND VICE-CHAIRPERSON**

**(1) Elections of Chairperson and vice-chairperson**

- (a) The Board must at the first meeting of each new term appoint a chairperson in terms of clauses 9(1)(e), 11(1)(b), 11(1)(c) or 11(1)(d);
- (b) The Members of the Board shall nominate at least 5 independent candidates from a list compiled by Members of the Board to be voted as Chairperson of the Board.
- (c) The nominee who receives the highest number of votes must be declared elected as Chairperson of the Board.
- (d) If two nominees receive the same number of votes, then the Chief Executive Officer must draw one of the names from a hat or box and that person must be declared elected as the Chairperson of the Board.
- (e) The Board must at the first meeting of each new term of office elect from among its Members a vice-chairperson.

**(2) Terms of office**

The Chairperson and vice-chairperson shall hold office for the period of their term of office as Members of the Board.

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**(3) Chairperson**

The chairperson of the Board must-

- (a) preside at meetings of the Board and Executive Committee;
- (b) conduct such meetings in accordance with clause 13; and
- (c) perform any further duties or functions determined by the Board or Executive Committee.

**(4) Vice-chairperson**

The vice-chairperson must-

- (a) assist the Chairperson perform his or her duties;
- (b) exercise the powers and duties of the Chairperson in his or her absence; and
- (c) perform any further functions determined by the Board or Executive Committee.

**(5) Temporary absence or incapacity of Chairperson or vice-chairperson**

- (a) If the Chairperson is temporarily absent or incapacitated then the vice-chairperson must perform the functions of the office of Chairperson for the period of such absence or incapacity.
- (b) If the vice-chairperson is temporarily absent or incapacitated then the Executive Committee must appoint a member to perform the functions of that office for the period of such absence or incapacity.

**(6) Vacation of office**

- (a) The Chairperson or vice-chairperson shall vacate his or her office if-
  - (i) he or she is removed as a Member as contemplated in clause 9(9); or
  - (ii) 75% of the Members of the Board pass a resolution to remove him or her from office, notice of which must be given at least 10 days before the convening of the meeting at which the resolution is passed.
- (b) If the Chairperson or vice-chairperson vacates his or her office as contemplated in clause 11(6)(a), the Board must replace him or her in the manner contemplated in clause 9(10)(e) read with clause 11(1).

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**CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**

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**12. ESTABLISHMENT OF COMMITTEES AND STRUCTURES****(1) Establishment and membership of committees and structures**

- (a) The Board may establish any standing committee, ad hoc committee or structure to assist it in the performance of its functions and must determine-
  - (i) the membership of the committee or structure;
  - (ii) the chairperson or facilitator;
  - (iii) its functions;
  - (iv) its written terms of reference; and
  - (v) clear timeframes.
- (b) Unless otherwise determined in terms of clause 12(1)(a), membership of a committee or structure -
  - (i) must consist of an equal number of members representing Organised Labour and representing Employers; and
  - (ii) is not restricted to Members of the Board.

**(2) Meeting procedures**

Meetings of any committee or structure established in terms of clause 12(1)(a) must comply with the procedures contemplated in clause 13, read with the necessary changes.

**13. MEETING PROCEDURES****(1) Ordinary meetings**

In respect of meetings, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, of the Board and any other committee or structure of the Board, the Chairperson must -

- (a) give at least 10 working days written notice of the forthcoming meeting to Members; and
- (b) include an agenda with the notice.

**(2) Special meetings**

- (a) The Chairperson, may, on grounds of urgency, call a special meeting, whether in the form of a physical meeting, telephone

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conference call, video conference, internet meeting or e-mail meeting, of the Board or Executive Committee on 48 hours notice.

- (b) If the Chairperson receives a request signed by at least half of the Members of the Board or the Executive Committee, as the case may be, he or she must as soon as practicable give notice of a special meeting of the Board or the Executive Committee and that special meeting must be held within 15 working days of receiving the request.
- (c) The chairperson of any committee or structure of the Board may, on grounds of urgency, call a special meeting, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, of that committee or structure on 48 hours notice.

**(3) Chairperson**

- (a) The Chairperson must preside at meetings of the Board and the Executive Committee.
- (b) If the Chairperson is absent from the meeting then the vice-chairperson must preside at the meeting.
- (c) If the vice-chairperson is absent then Members at the meeting must elect a Member from amongst themselves to act as chairperson at that meeting.

**(4) Quorum at meetings**

- (a) A quorum at a meeting, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, consists of at least half of the total Members plus one Member provided that at least half of the Members representing Organised Labour and at least half of the Members representing the Employer is present.
- (b) If, within one hour of the time fixed for a scheduled meeting, a quorum is not present, then that meeting must stand adjourned to a day, time and place determined by the Chairperson and the Members present at the adjourned meeting shall form a quorum.
- (c) The Chairperson must notify Members who were absent from the scheduled meeting of the adjourned meeting.

**(5) Voting rights and decisions at meetings**

- (a) Each Member has a single vote on any matter before a meeting for its decision.
- (b) Proxy votes will not be allowed.



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- (c) Any policy decision at a meeting requires the support of at least two thirds of Members present.
- (d) Any operational decision at a meeting requires the support of at least 50% plus one of the Members present.
- (e) Decisions must be made by way of a show of hands or, if at least half the Members present so require, by way of closed ballot.
- (f) In the event of an equality of votes, the Chairperson has a casting vote.

**(6) Minutes of meetings**

- (a) The Chairperson must appoint a person to –
  - (i) take minutes of the meeting;
  - (ii) forward the minutes to the Members within two weeks of the meeting; and
  - (iii) table the minutes at the next meeting, for approval by the Members.
- (b) The Chairperson of the meeting must sign the minutes as confirmation of their correctness.

**14. APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF AUTHORITY****(1) Appointment**

The Board must-

- (a) appoint a Chief Executive Officer and such other employees necessary for the effective performance of the functions of the Authority; and
- (b) determine the terms and conditions of their employment.
- (c) the Chief Executive Officer appointed in terms of section 14(1) (a) of this constitution shall demonstrate competency.

**(2) Duties of Chief Executive Officer**

The Chief Executive Officer must-

- (a) implement decisions of the Board;
- (b) manage the day to day affairs of the Authority;

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- (c) attend the meetings of the Board and the Executive Committee in an ex-officio capacity;
- (d) promote strategic planning and policy development;
- (e) as accounting officer of the Authority ensure strict and responsible control over the finances of the Authority;
- (f) supervise and direct the staff of the Authority; and
- (g) perform such other functions as are determined by the Board and the Executive Committee from time to time.

## 15. FINANCES

### (1) Sources of finance

- (a) A dedicated transfer from National Treasury via the DPSA to the Authority to fund total administrative and management expenses.
- (b) grants made by relevant government departments as may be agreed from time to time;
- (c) moneys paid from the National Skills Fund;
- (d) grants, donations and bequests received;
- (e) income earned on surplus moneys deposited or invested;
- (f) income earned on services rendered in the prescribed manner; and
- (g) money received from any other lawful source.

### (2) Investments

The money received by the Authority must be paid into a banking account at any registered bank and may be invested only in-

- (a) savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution; and
- (b) any other manner approved by the Minister.

### (3) Purpose for which funds may be used

The moneys received by the Authority may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to-

- (a) fund the performance of its functions; and
- (b) pay for its administration within the prescribed limit.

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**(4) Financial records of Authority****(a) The Authority must –**

- (i) prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the PFMA; and
- (ii) furnish the Director-General with copies of all budgets, reports and statements contemplated in clause 15(4)(a)(i) and any other information that the Authority is required to submit in terms of the PFMA;
- (iii) keep full and proper records of the financial affairs of the Authority;
- (iv) prepare financial statements for each financial year in accordance with generally accepted accounting practices, unless the Accounting Standards Board approves the application of generally recognised accounting practices for the Authority;
- (v) submit the financial statements referred to in clause 15(4)(a)(iv) within two months after the end of the financial year to the Auditor-General for auditing; and
- (vi) submit within five months of the end of a financial year to the Minister, after adoption by the Board, an annual report of its activities during that financial year, the financial statements for that financial year after the statements have been audited, and the report of the Auditor-General on those statements.

**(b) The annual report and financial statements referred to in clause 15(4)(a)(i) must-**

- (i) fairly present the state of affairs of the Authority, its business, financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned;
- (ii) include particulars of any material losses through criminal conduct, irregular, fruitless and wasteful expenditure, criminal or disciplinary steps taken as a consequence of such losses, any losses recovered or written off, any financial assistance received from the state and commitments made by the state on its behalf, and any other matters that may be prescribed.

**(5) Audit of Authority****(a) The Auditor-General must -**

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**CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**

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- (i) audit the accounts, financial statements and financial management of the Authority; and
  - (ii) report on that audit to the Authority and to the Minister and in that report express an opinion as to whether the Authority has complied with the provisions of the Act and this Constitution relating to financial matters.
- (b) Clause 15(5)(a) does not prevent the appointment of some other auditor to audit the accounts and financial statements of the Authority.
- (6) Financial responsibility of Executive Committee**

The Executive Committee is responsible for ensuring that the Authority complies with the financial requirements of the Act, this Constitution and any other applicable law.

**(7) Signatories to accounts**

- (a) The Authority must appoint at least three signatories to each account of the Authority.
- (b) At least two of the three signatories must be required to authorise any payment by the Authority.

**16. CODE OF CONDUCT**

The members of the Authority, its committees and structures and its staff must abide by the Code of Conduct contained in Annexure "D".

**17. DISPUTE RESOLUTION**

Any dispute concerning the interpretation or application of this Constitution must be determined in accordance with Annexure "E".

**18. AMENDMENTS TO CONSTITUTION**

- (1) The Minister, after consultation with the Authority, may amend this Constitution in the prescribed manner.
- (2) The Authority may, by resolution of 75% of its members, recommend to the Minister that this Constitution be amended in accordance with the resolution.
- (3) The Chairperson must give notice of any proposed amendments at least 30 days before any meeting of the Board convened to discuss the amendment.

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CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY

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**19. INDEMNIFICATION**

The Authority indemnifies office bearers, committee members and employees of the Authority against any claims that may be made against them which may arise during the course and scope of their employment or performance of their duties, provided that such claim did not arise due to dishonesty, fraud, breach of trust, wilful default or wilful breach of duty and the Code of Conduct of the Authority.

**20 DISSOLUTION/ WINDING UP**

- 20.1 The Minister may, after consultation with the NSA and the Authority, by notice in the Government Gazette direct the Director-General to close down the Authority.
- 20.2 When the Authority closes down it has to payoff all its debts. Any assets remaining after all liabilities have been met, will be transferred to the National Skills Fund.

**21 TRANSITIONAL ARRANGEMENT**

- 21.1 The current Board shall act as the interim Board, with all powers and functions as assigned in this Constitution, until such time the new Board is established and convened in keeping with this Constitution.

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**CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**

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**22. TAKING OVER ADMINISTRATION OF AUTHORITY**

- (1) The Minister may, after consultation with the NSA and the Authority concerned, by notice in the Government Gazette direct the Director-General to appoint an administrator to take over the administration of the Authority or perform the functions of the Authority if the Minister is of the opinion that –
  - (a) the Authority fails to perform its functions;
  - (b) there is mismanagement of the Authority's finances;
  - (c) the Authority's membership no longer substantially represents the composition contemplated in clause 9;
  - (d) the Authority has failed to comply with its service level agreement;  
or
  - (e) the Authority has failed to comply with an instruction by the Minister in terms of section 14B of the Act.
- (2) The Director-General must publish a notice in the Government Gazette appointing an administrator and in that notice the Director-General –
  - (a) must determine the powers and duties of the administrator, which may include the performance by the administrator of the Authority's functions in terms of the PFMA;
  - (b) may suspend or replace one or members of the Authority for a reason contemplated in clause 19(1);
  - (c) may suspend the operation of the Constitution of the Authority; and
  - (d) may direct the transfer of all or some of the funds in the Authority's bank account to the National Skills Fund.
- (3) If a notice is published in terms of clause 19(1) the Minister may, to assure that the Authority resumes the performance of its functions –
  - (a) amend its Constitution;
  - (b) reinstate any of its members; and
  - (c) withdraw or amend any provision of the notice mentioned in clause 19(2) on such conditions that the Minister considers appropriate.
- (4) The Minister may act in terms of clause 19(1) without consulting the NSA and the Authority if there is financial mismanagement of the Authority and the delay caused by the consultation would be detrimental to the Authority's capacity to perform its functions.

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CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY

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**ANNEXURE "A": SCOPE OF THE AUTHORITY**

The scope of coverage for this period of the NSDS II – as determined by the Minister of Labour is as follows:

- (a) Government Departments
- (b) Provincial Administrations
- (c) Parastatals NEC
- (d) Department of Foreign Affairs
- (e) Department of Trade and Industry

**Notes:-**

1. The above scope covers all Government Departments and Provincial Administrations for transverse skills development.
2. The scope of coverage with regard to the attached list at Appendix 1 of National Departments extends to all areas of skill development.
3. NEC means "Not Elsewhere Committed".
4. Attached at Annexure B is a list of identified Parastatals that are currently with the PSETA.

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**ANNEXURE "B": ORGANIZATIONS IN THE SECTOR****Organised Labour**

- (a) The following trade unions admitted in the GPSSBC namely -
  - (i) National Education and Allied Workers Union (NEHAWU)
  - (ii) Public Service Association of South Africa (PSA)
  - (iii) Police and Prisons Civil Rights Union (POPCRU)

**Parastatals**

- (b) Eastern Cape Appropriate Technology Agency
- (c) Eastern Cape Development Corporation
- (d) Commission on Gender Equality
- (e) Commission for Conciliation Mediation and Arbitration
- (f) The Competition Tribunal
- (g) Defence Research Centre (Pty) Ltd
- (h) Deeds Registration Trading Account
- (i) Federal Council-National
- (j) Independent Electoral Commission, National
- (k) Independent Electoral Commission, Gauteng
- (l) Independent Electoral Commission Wilderness TLC
- (m) Public Protector
- (n) National Director of Public Prosecutions
- (o) National Economic Development and Labour Council
- (p) National Nuclear Regulator
- (q) European Union Parliamentary Support Programme
- (r) Water Research Commission



CONSTITUTION OF PUBLIC SERVICE SECTOR EDUCATION AND TRAINING AUTHORITY**Government Departments**

- (s) Departments listed in Schedule 1 of the Public Service Act, 1994
- (t) Provincial Departments listed in Schedule 2 of the Public Service Act, 1994
- (u) Organisational Components listed in Schedule 3 of the Public Service Act, 1994

**Statutory Councils****Levy Exempt Sector**

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**ANNEXURE C:**

- (a) The organisations representing the State as employer and organised labour on the Board must nominate their representatives on the basis of their competency (knowledge, expertise and experience) by selecting from the following areas of expertise but not limited to-
- (b) Client / Stakeholder / sector knowledge (Public Sector, Public Service or organised Labour).
- (c) Strategic leadership and influence.
- (d) Management and business planning skills.
- (e) Education, training, skills development and human resource development.
- (f) Quality assurance, assessor and moderator expertise.
- (g) Service delivery.
- (h) Skills development legislation and strategy.
- (i) Corporate governance.
- (j) Financial management.
- (k) Human resource management.
- (l) Communication and marketing.

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**ANNEXURE D: CODE OF CONDUCT**

The Members of the Authority, all members of any committee or structure of the Authority, and all staff -

- (a) stand in a fiduciary relationship to the Authority;
- (b) must perform their functions in good faith giving full effect to the obligations, and spirit of the Act and this Constitution;
- (c) must avoid any material conflict between their own interests and those of the Authority, and in particular-
  - (i) must not derive any personal economic benefit to which they are not entitled because that benefit is obtained in conflict with the interests of the Authority; and
  - (ii) must notify the Authority, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which they may have in any dealings of the Authority;
- (d) must protect and promote the reputation and goodwill of the Authority;
- (e) must exercise their powers for the benefit and in the interests of the Authority;
- (f) must not abuse the resources of the Authority; and
- (g) must not disclose to any unauthorised person any privileged or confidential information of the Authority.

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- (11) An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:
- (a) erroneously sought or made in the absence of any party affected by the award;
  - (b) in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or
  - (c) granted as a result of a mistake common to the parties to the proceedings.

**No. R. 888****8 September 2005****SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)****APPROVAL OF CONSTITUTION FOR: SAFETY AND SECURITY SECTOR  
EDUCATION AND TRAINING AUTHORITY (SASSETA)**

The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the SAFETY AND SECURITY SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Schedule.

**SCHEDULE**

**CONSTITUTION OF THE  
SAFETY AND SECURITY  
SECTOR EDUCATION AND  
TRAINING AUTHORITY  
("SASSETA")**

**20 JUNE 2005**



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## INTRODUCTION

On 20 March 2000 the Minister of Labour established the Police, Private Security, Legal and Correctional Services Sector Education and Training Authority ("POSLEC") and the Diplomacy Intelligence, Defence and Trade Education and Training Authority ("DIDTETA"), as two of twenty-five sector education and training authorities.

In order to co-ordinate education and training activities more effectively within the sectors falling under POSLEC and DIDTETA the Minister of Labour amalgamated POSLEC and DIDTETA to form the Safety and Security Sector Education and Training Authority ("SASSETA") on 1 July 2005.

## CHAPTER ONE: DEFINITIONS, PURPOSE AND IDENTITY

### 1 Definitions

In this constitution any word or expression to which a meaning has been assigned in the Skills Development Act 97 of 1998 shall bear that meaning, and unless the context otherwise indicates:

- 1.1 "Alternate" means an alternate to a member;
- 1.2 "Board" means the Board of SASSETA;
- 1.3 "Certificate of Establishment" means the certificate of establishment of the SASSETA issued in terms of regulation 3 of the Regulations Regarding the establishment of Sector Education and Training Authorities, GNR1082, Government Gazette 20442 of 7 September 1999;
- 1.4 "Chairperson" means the chairperson of the Board;
- 1.5 "Chief Executive Officer" means the Chief Executive Officer appointed in terms of this Constitution;
- 1.6 "Clause" means a clause in this constitution;



- 1.7 **"Day"** means an ordinary working day excluding a weekend and a public holiday and **"days"** has a corresponding meaning;
- 1.8 **"Department"** means the Department of Labour;
- 1.9 **"Deputy-chairperson"** means the deputy-chairperson of the Board;
- 1.10 **"Designated groups"** means black people, women and people with disabilities;
- 1.11 **"Director-General"** means the Director-General of Labour;
- 1.12 **"Member"** means a member of the Board;
- 1.13 **"Minister"** means the Minister of Labour;
- 1.14 **"Organised employers"** means employers organised for the purpose of furthering their interests as employers;
- 1.15 **"Organised labour"** means trade unions registered in terms of the Labour Relations Act 66 of 1995 and any staff or employees' organisation or professional association which has been formed to promote or advance or represent the interests of their members as employees;
- 1.16 **"Prescribed"** means prescribed by the Act;
- 1.17 **"Public Finance Management Act"** means the Public Finance Management, 1999 (Act No. 1 of 1999);
- 1.18 **"SASSETA"** means the Safety and Security Sector Education and Training Authority;
- 1.19 **"Sector"** means the sector for which the SASSETA has been established;
- 1.20 **"Skills Development Levies Act"** means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- 1.21 **"South African Qualifications Authority Act"** means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);



1.22 "The Act" means the Skills Development Act, 97 (Act No.97 of 1998); and

1.23 "Trade Union" means a trade union registered in terms of the Labour Relations Act 66 of 1995.

## **2 Purpose of constitution**

The purpose of this constitution is to set out the objectives, functions, activities, governance structures and incidental matters pertaining to the establishment of SASSETA.

## **3 Name**

The name of this sector education and training authority is the Safety and Security Sector Education and Training Authority ("SASSETA").

## **4 Scope**

The scope of SASSETA has been determined by the Minister in terms of section 9(2) and 9A (3) of the Act and is set out in Schedule 1 to this constitution.

## **5 Organisations in sector**


The trade unions, employers organisations and relevant government departments in the sector are set out in Schedule 2 to this Constitution.

## **6 Legal status**

6.1 SASSETA is a statutory body and body corporate with an identity and existence separate from that of its members, office bearers and employees and shall continue to exist despite changes in the composition of its membership.

6.2 SASSETA may sue or be sued in its own name and is capable of having its own rights, obligations and duties.

6.3 The income and property of SASSETA must be applied solely towards the promotion of its objectives as contemplated in the Act. No portion may be paid, or transferred directly or indirectly to SASSETA's members or employees except for the payment of



reasonable remuneration to employees or for the reimbursement to any member for expenses reasonably incurred in the performance of a member's duties.

## **7 Limitation of liability**

7.1 No member, office bearer, representative or employee of SASSETA shall be liable for any of the obligations and liabilities of SASSETA solely by virtue of his or her status as a member, office bearer, representative or employee.

7.2 No member, office bearer, representative or employee of SASSETA shall in anyway be personally liable for any loss or damage suffered by any person as a result of the execution or non execution, in good faith, of the member's, office bearer's, representative's or employee's duties and powers under this constitution. Such members, office bearers, representatives or employees will be indemnified by SASSETA for such loss or damage.

## **CHAPTER TWO: OBJECTIVES AND FUNCTIONS**

## **8 Objectives of SASSETA**

The objectives of SASSETA are to promote the purposes of the Act within the sector.

8.1 The purposes of the Act are-

- 8.1.1 to develop the skills of the South African workforce-
- 8.1.2 to improve the quality of life of workers, their prospects of work and labour mobility;
- 8.1.3 to improve productivity in the workplace and the competitiveness of employers;
- 8.1.4 to promote self-employment;
- 8.1.5 to improve the delivery of social services;



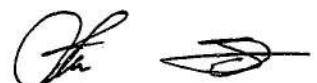
- 8.1.6 to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
- 8.1.7 to encourage employers-
  - 8.1.7.1. to use the work-place as an active learning environment;
  - 8.1.7.2. to provide employees with the opportunities to acquire new skills;
  - 8.1.7.3. to provide opportunities for new entrants to the labour market to gain work experience; and
  - 8.1.7.4. to employ persons who find it difficult to be employed;
- 8.1.8 to encourage workers to participate in learnership and other training programmes;
- 8.1.9 to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;
- 8.1.10 to ensure the quality of education and training in and for the workplace;
- 8.1.11 to assist-
  - 8.1.11.1. work-seekers to find work;
  - 8.1.11.2. retrenched workers to re-enter the labour market; and
  - 8.1.11.3. employers to find qualified employees.

## 9 Functions of SASSETA

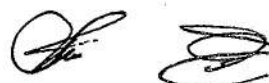
SASSETA must in accordance with any requirements that may be prescribed:



- 9.1 develop a sector skills plan within the framework of the national skills development strategy;
- 9.2 implement its sector skills plan by –
  - 9.2.1 establishing learnerships;
  - 9.2.2 approving work-place skills plans;
  - 9.2.3 allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers;
  - 9.2.4 monitoring education and training provision to the sector;
- 9.3 promote learnerships by –
  - 9.3.1 identifying workplaces in the sector for practical work experience;
  - 9.3.2 supporting the development of learning materials;
  - 9.3.3 improving the facilitation of learning; and
  - 9.3.4 assisting in the conclusion of learnership agreements;
- 9.4 register learnership agreements;
- 9.5 perform the functions of an education and training quality assurance body as provided in the South African Qualifications Authority Act and relevant regulations;
- 9.6 when required to do so, collect the skills development levies and disburse the levies allocated to it in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;
- 9.7 liaise with the National Skills Authority on-
  - 9.7.1 the national skills development policy;
  - 9.7.2 the national skills development strategy; and
  - 9.7.3 SASSETA's sector skills plan;



- 9.8 submit to the Director-General:
- 9.8.1 any budgets, reports and financial statements on SASSETA's income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and
  - 9.8.2 plans and reports on the implementation of SASSETA's sector skills plan and service level agreement;
- 9.9 liaise with the employment services of the Department and any education body established under any law regulating education in the Republic to improve information-
- 9.9.1 about employment opportunities; and
  - 9.9.2 between education and training providers and the labour market;
- 9.10 subject to section 14 of the Act, appoint staff necessary for the performance of its functions;
- 9.11 promote the national standard established in terms of section 30B of the Act;
- 9.12 conclude a service level agreement for each financial year, with the Director-General concerning-
- 9.12.1 SASSETA's performance of its functions in terms of the Act and the national skills development strategy;
  - 9.12.2 SASSETA's annual business plan; and
  - 9.12.3 any assistance that the Director-General is to provide to SASSETA in order to enable it to perform its functions;
- 9.13 perform any other duties imposed by the Act or the Skills Development Levies Act or consistent with the purposes of the Act; and
- 9.14 perform its functions in accordance with the Act, the Skills Development Levies Act and this constitution.





**CHAPTER THREE: BOARD****10 Composition**

- 10.1 The Board consists of members nominated by the chambers. Each chamber must nominate four members to the Board, two representing employers and two representing employees.
- 10.2 The chairperson and deputy-chairperson of a chamber automatically qualify as chamber nominees for appointment to the Board.
- 10.3 Each chamber must elect two other persons from among its members, one representing employees and one representing employers as additional nominees for appointment to the Board.
- 10.4 Members nominated by chambers in accordance with this clause are deemed to be appointed as members of the Board.
- 10.5 The Board must elect one of the members as chairperson and one of the members as deputy chairperson.
- 10.6 The Board must ensure that its members are sufficiently representative of designated groups.
- 10.7 If the chairperson is appointed from members representing employees, then the deputy-chairperson may be appointed only from members representing employers and vice versa.
- 10.8 The office of chairperson and deputy chairperson shall alternate between members representing employers and employees as the case may be after a period of thirty months from inception of the Board.

**11 Procedure at meetings**

- 11.1 The Board may regulate its meetings, as it deems fit.
- 11.2 The quorum necessary for the transaction of business shall be at least fifty percent plus one of members.



- 11.3 If after one hour of the time appointed for the meeting a quorum is not present the meeting must be adjourned for a period of ten days and must convene at the same time and place.
- 11.4 If there is no quorum at the rescheduled meeting after half an hour of the time appointed for the meeting, the members then present shall be considered to duly form a quorum.
- 11.5 The chairperson shall preside at all meetings of the Board.
- 11.6 The chairperson must ensure that minutes of Board meetings are taken and a register of resolutions is kept. Minutes of the Board meetings must be circulated to members within three weeks after each Board meeting.

## 12 Voting

- 12.1 Each member has one vote.
- 12.2 There may be no voting by proxy.
- 12.3 Members must attempt to make decisions by consensus.
- 12.4 If consensus cannot be reached then the meeting must make decisions by way of majority vote.
- 12.5 Members may reach a decision by way of a secret ballot unless the meeting is of the general view that a show of hands would be appropriate in the circumstances.

## 13 Term of office and vacancies

A member holds office from the date of the member's appointment until:

- 13.1 expiry of the period of establishment of the SASSETA as contemplated in its certificate of establishment;
- 13.2 the member's term ends; provided that a member shall be eligible for re-election;
- 13.3 the organisation that nominated the member recalls the member by notice in writing to SASSETA;



- 13.4 the member resigns, dies or otherwise becomes incapable of performing the functions of a member; or
- 13.5 the Board removes the member from office for a reason contemplated in clause 14.2 after affording the member an opportunity to be heard.

#### **14 Removal from office**

The Board may remove a member for:

- 14.1 being absent from three consecutive meetings of the Board without good cause or the prior submission of an apology;
- 14.2 any conduct that may undermine the integrity of SASSETA or which may bring SASSETA or any of its members into disrepute;
- 14.3 serious misconduct;
- 14.4 any violation of the Code of Conduct; or
- 14.5 any material violation of this Constitution.

#### **15 Filling of vacancies**

- 15.1 If a vacancy occurs, the Board must as soon as practicable request the nomination of a replacement from the relevant chamber to fill the vacancy.
- 15.2 Any person appointed to fill a vacancy in terms of this clause shall fill the vacancy for the unexpired duration of the original member's term of office.

#### **16 Powers of Board**

- 16.1 The Board has all such powers as are conferred by this constitution, the Act or the Skills Development Levies Act.
- 16.2 The Board must ensure that SASSETA performs the functions contemplated in clause 8.



- 16.3 The Board must ensure that SASSETA complies with the Act, the Skills Development Levies Act, the Public Finance Management Act and any other applicable law.

**17 Delegation of powers and duties**

- 17.1 The Board may delegate its powers and duties to members, committees and employees, provided that the Board may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation.
- 17.2 A delegation must be in writing and must specify the period for which it is valid; and any limitations or conditions on the delegation.
- 17.3 The Board may continue to exercise or perform a power, or function which it has delegated.
- 17.4 The Board remains responsible for all actions taken under a delegation.

**18 Meetings of Board**

- 18.1 The Board must meet at least once every quarter.
- 18.2 One of the Board meetings must be an annual general meeting, which must be held within six months after the end of each financial year.
- 18.3 The chairperson in consultation with the Executive Committee must determine the time, date and place of the annual general meeting.
- 18.4 At the annual general meeting the members must:
- 18.4.1 consider the annual financial statements of SASSETA, the annual report of SASSETA's affairs and the report of the Auditor General;
- 18.4.2 approve the business plan of SASSETA;



18.4.3 discuss any matter of which notice must have been given to the Chief Executive Officer at least fifteen days before the date of the annual general meeting; and

18.4.4 transact such other business as is required to be transacted by SASSETA under this Constitution or applicable legislation.

## 19 Requisitioned meetings

19.1 The chairperson must, on the requisition of not less than four of the chambers of SASSETA and within fourteen days of the lodging of the requisition issue a notice to members convening a meeting of the Board for a date not less than twenty-one and not more than thirty-five days from the date of the notice.

19.2 The requisition must-

19.2.1 state the objects of the meeting which must be to transact some business required or permitted to be transacted by SASSETA;

19.2.2 be signed by the requisitioners; and

19.2.3 be lodged with the Chief Executive Officer.

19.3 The requisitioners may themselves on twenty-one days notice convene a meeting if the chairperson does not issue a notice as required within fourteen days of the lodging of the requisition and the requisitioners must state the objects of the meeting.

19.4 A requisitioned meeting may not be held after the expiry of three months from the date on which the notice was lodged.

19.5 A minimum of fifty percent plus one of the Board members constitutes a quorum.

19.6 If after one hour of the scheduled time for the meeting there is no quorum, the provisions of clauses 11.3 and 11.4 must apply.



## CHAPTER FOUR: CHAMBERS

### 20 Establishment of Chambers

20.1 The following chambers of SASSETA are hereby established:

20.1.1 the Policing Chamber;

20.1.2 the Justice Chamber;

20.1.3 the Legal Services Chamber;

20.1.4 the Corrections Chamber;

20.1.5 the Defence Chamber;

20.1.6 the Statutory Intelligence Chamber; and

20.1.7 the Private Security Chamber.

20.2 Each chamber must consist of an equal number of members representing employees and employers and may include such additional members as the Board may determine.

20.3 Every organisation that is entitled to nominate a member to a chamber may also nominate an alternate to that member to substitute when that member is temporarily absent and unable to attend a meeting of the chamber.

20.4 An alternate member contemplated in clause 20.3 has all the rights and duties of the member of the chamber whilst substituting for that member.

20.5 The members of the chambers must be nominated and appointed as contemplated in Schedule 3 to this constitution.

### 21 Office bearers of chambers

21.1 Each chamber must elect from amongst its members the following office bearers—

21.1.1 a chairperson; and

21.1.2 a deputy chairperson.

21.2 If the chairperson is elected from members representing employees then the deputy chairperson must be appointed from members representing employers and visa versa.

## 22 The functioning of chambers

Clauses 11 through to 15 apply with the changes required by the context to the functioning of chambers.

## 23 Powers and functions of chambers

23.1 A chamber may take such steps, as it deems necessary to protect its interests with regard to the confidentiality and security of its information and may, for that purpose, and with the approval of the Board, be exempted from some of the provisions of this constitution.

23.2 Each chamber has the power to-

23.2.1 elect its own office bearers;

23.2.2 establish its own secretariat and committees subject to any conditions that the Board may determine;

23.2.3 liaise through the chamber co-ordinator and in consultation with the Chief Executive Officer with other chambers of SASSETA or other SETAs as it may deem necessary for the execution of its duties.

23.3 A chamber may with the approval of the Board, perform such functions as may be necessary in its sub-sector including but not limited to-

23.3.1 formulating sub-sector skills plans;

23.3.2 promoting learnerships;

23.3.3 quality assurance;

23.3.4 making recommendations on the funding and allocation of grants;

23.3.5 management information services;



- 23.3.6 employment services; and
- 23.3.7 formulating a business plan.
- 23.4 A chamber is entitled to such percentage of the skills development levies collected in its jurisdiction as the Minister after consultation with the SETA may determine.

## CHAPTER FIVE: OFFICE BEARERS

### 24 Appointment

- 24.1 The office bearers of SASSETA shall be:
  - 24.1.1 the chairperson; and
  - 24.1.2 the deputy chairperson.
- 24.2 Subject to clause 13.1, office bearers are appointed for the duration of the term of office of the Board.
- 24.3 At the first meeting of the Board the members must elect the chairperson and the deputy chairperson.
- 24.4 If the chairperson is appointed from members representing employers then the deputy chairperson may be appointed only from members representing employees and vice versa.
- 24.5 The office of chairperson and deputy chairperson shall alternate between members representing employers and employees as the case may be after a period of thirty months from inception of the Board.

### 25 Functions

- 25.1 The chairperson must chair all meetings of the Board.
- 25.2 The chairperson must perform all functions and duties entrusted to the chairperson by the constitution as well as those that are generally associated with the office of the chairperson.





- 25.3 The deputy chairperson must chair meetings of the Board and perform the duties and functions of the chairperson whenever the chairperson is absent or for any reason is unable to perform those functions and duties.

**26 Absence or vacancies**

- 26.1 If both the chairperson and the deputy chairperson are absent from a meeting of the Board, then the members present must appoint a chairperson from amongst their number to chair the meeting.
- 26.2 If the office of chairperson or deputy chairperson becomes vacant then the Board must as soon as practicable appoint a replacement to assume the office of chairperson or deputy chairperson as the case may be.
- 26.3 An office bearer appointed in terms of clause 26.2, holds office for the unexpired period of the previous office bearer's position as contemplated in clause 24.2. During this period, the office bearer shall have all the powers, rights, duties and privileges that this Constitution confers upon his or her predecessor.

**27 Removal of office bearers**

- 27.1 The Board may remove an office bearer for:
- 27.1.1 being absent from three consecutive meetings of SASSETA without good cause or the prior submission of an apology;
  - 27.1.2 any conduct that may undermine the integrity of SASSETA or which may bring SASSETA or any of its members into disrepute;
  - 27.1.3 serious misconduct;
  - 27.1.4 any violation of the Code of Conduct; or
  - 27.1.5 any material violation of this Constitution



**CHAPTER FIVE: EXECUTIVE COMMITTEE****28 Composition**

28.1 The Executive Committee consists of fourteen members:

28.1.1 the chairperson;

28.1.2 the deputy chairperson;

28.1.3 six members nominated by members representing employers; and

28.1.4 six members nominated by members representing employees.

28.2 The quorum necessary for the transaction of business shall be fifty percent plus one of members.

**29 Terms of office**

The members of the Executive Committee hold office for the period for which they have been appointed to the Board.

**30 Duties and functions**

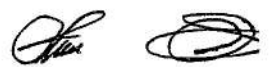
The Executive Committee, together with the relevant standing committee is responsible for the performance of the duties delegated to it by the Board acting in terms of clause 17 .

**31 Powers**

31.1 The Executive Committee may refer matters to a committee of the SASSETA for the committee's advice.

31.2 The Executive Committee may not decide questions of general policy.

31.3 The Executive Committee may act on behalf of SASSETA in an emergency and must in such event, report its actions and the reasons for the actions as soon as possible to the Board for ratification.



## CHAPTER SIX: COMMITTEES

### 32 General

32.1 The standing committees of the Board are:

32.1.1 the Learnership Committee;

32.1.2 the ETQA Committee;

32.1.3 the Sector Skills Planning Committee;

32.1.4 the Finance Committee; and

32.1.5 the Audit Committee.

32.2 The chairperson and the deputy chairperson are ex-officio members of committee of the Board.

32.3 The Board may establish any other standing or ad hoc committees that it deems necessary for the effective functioning of the SASSETA and may determine its composition, duties and functions.

### 33 Meetings and procedure

33.1 Each committee shall meet as often as necessary for the proper conduct of its affairs but at least once every quarter and shall regulate its meetings, as it deems fit.

33.2 At meetings of each committee, each member present shall have one vote and all questions shall be decided by a majority of votes.

33.3 A resolution in writing signed by all the members of a committee must be recorded in a minute register of that committee and shall be as valid and effective as if it had been passed at a meeting of the committee, duly convened and held.

33.4 A resolution shall be deemed to have been signed if consent has been given in a message transmitted by telegram, e-mail or



telefax and purporting to emanate from the person whose signature to such resolution is required.

- 33.5 The person presiding at any meeting of a committee shall ensure that minutes of such meetings are kept and circulated to members.

#### **34 Learnership Committee**

##### **34.1 Composition**

34.1.1 The members of the Learnership Committee shall be nominated by the chambers:

34.1.2 Each chamber may nominate two members, one representing employees and one representing employers.

34.1.3 The Learnership Committee may appoint a chairperson who must generally supervise, manage and co-ordinate the functions of the Learnership Committee.

##### **34.2 Duties and functions**

The Learnership Committee must-

34.2.1 develop policies, principles, criteria and guidelines related to learnerships in accordance with Chapter 4 of the Skills Development Act; and

34.2.2 develop and recommend plans for the implementation of learnerships.

#### **35 Education and Training Quality Assurance ("ETQA") Committee**

##### **35.1 Composition**

35.1.1 The members of the Education and Training Quality Assurance Committee shall be nominated by the chambers

35.1.2 Each chamber may nominate two members, one representing employers and one representing employees.

- 35.1.3 The ETQA Committee may appoint a chairperson who must generally supervise, manage and co-ordinate the functions of the ETQA Committee.

## 35.2 Duties and functions

The ETQA Committee must-

- 35.2.1 develop policies, principles, criteria and guidelines pertaining to SASSETA's ETQA functions in accordance with the South African Qualifications Authority Act and relevant regulations;
- 35.2.2 make recommendations to the Board on the accreditation of providers in the sector or sub-sectors for specific standards or qualifications;
- 35.2.3 promote quality amongst the various constituent providers;
- 35.2.4 register constituent assessors of national qualifications in the sector or sub-sectors in respect of specific standards or qualifications in terms of such criteria which may be established for this purpose;
- 35.2.5 monitor the development of, and requirements for, new standards, qualifications or modifications to existing standards or qualifications for the sector or sub-sectors;
- 35.2.6 ensure that SASSETA maintains an appropriate data base for its quality assurance and certification functions; and
- 35.2.7 report to the Board on such matters as may be necessary.

## 36 Sector Skills Planning Committee

### 36.1 Composition

- 36.1.1 The members of the Sector Skills Planning Committee shall be nominated by the chambers
- 36.1.2 Each chamber may nominate two members, one representing employers; and one representing employees.



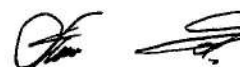
- 36.1.3 The Sector Skills Planning Committee may appoint a chairperson who must generally supervise, manage and co-ordinate the functions of the Sector Skills Planning Committee.

## 36.2 Duties and functions

The Sector Skills Planning Committee must-

- 36.2.1 develop such policies, principles, criteria and guidelines relating to sector skills planning for recommendation to the Board;
- 36.2.2 identify the data which may be necessary for the development of a sector skills plan and to propose a means of collecting or acquiring such data;
- 36.2.3 determine the enterprise, employee, occupational and skills profile of the sector or sub-sectors with which it may be entrusted;
- 36.2.4 establish such skills, needs and employment growth developments in the economic sub-sectors and regions or provinces;
- 36.2.5 determine education and training priorities in the sector or sub-sectors with which it is entrusted;
- 36.2.6 develop policies, principles, guidelines and criteria related to workplace skills plans for recommendations to Board;
- 36.2.7 report to the Executive Committee on the implementation of workplace skills plans;
- 36.2.8 develop sector skills plans for consideration by the Board; and
- 36.2.9 monitor and report to the Executive Committee on the implementation of the sector skills plan.

## 37 Audit Committee



### 37.1 Composition

The Audit Committee consists of at least three persons:

- 37.1.1 one member nominated by members representing employers;
- 37.1.2 one member nominated by members representing employees; and
- 37.1.3 one person from outside the public service nominated by the Board.

### 37.2 Duties and functions

The Audit Committee must-

- 37.2.1 assess risk and the control environment;
- 37.2.2 oversee reporting on the annual financial statements;
- 37.2.3 evaluate the audit process;
- 37.2.4 review the violation of ethics and the actions taken to address the violations;
- 37.2.5 review items highlighted by the internal auditors and the Auditor-General in order to provide the necessary assistance to the Board;
- 37.2.6 recommend such measures as in the Committee's opinion may be necessary to ensure the reliability, integrity and objectivity of the affairs of SASSETA; and
- 37.2.7 generally perform the functions of an Audit Committee as contemplated in the Public Finance Management Act.

## 38 Finance Committee

### 38.1 Composition

- 38.1.1 The members of the Finance Committee shall be nominated by the chambers.

38.1.2 Each chamber may nominate two members, one representing employers and one representing employees.

38.1.3 The Chief Executive Officer and the Chief Financial Officer must attend meetings of the Finance Committee.

## 38.2 Duties and functions

The Finance Committee must –

38.2.1 be responsible for the consideration and recommendation of the budget to the Board.

38.2.2 deal with such financial matters as may from time to time be referred to it by the Management and the Board.

38.2.3 Scrutinise policies with financial implications and make recommendations to the Board.

38.2.4 consider the cash flow and financial statements for recommendations to the Board.

38.2.5 determine the financial impact of any change to the current structure and/or establishment tables and staffing and make recommendation to the Board.

38.2.6 consider changes to the Business Plan and Budget and make recommendations to the Board.

## CHAPTER SEVEN: FINANCES AND FIDUCIARY RESPONSIBILITIES

### 39 Finances

39.1 SASSETA is financed from:

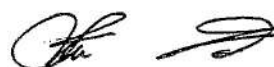
39.1.1 80 per cent of the skills development levies, interest and penalties collected in respect of SETA, as allocated in terms of sections 8(3)(b) and 9 (b) of the Skills Development Levies Act;

39.1.2 the moneys paid to it from the National Skills Fund;





- 39.1.3 grants, donations and bequests made to it;
  - 39.1.4 income earned on surplus moneys deposited or invested;
  - 39.1.5 income earned on services rendered in the prescribed manner; and
  - 39.1.6 money received from any other source.
- 39.2 The money received by SASSETA must be paid into a banking account at any registered bank and may be invested only in:
- 39.2.1 savings accounts, or fixed deposits in any registered bank or other financial institution;
  - 39.2.2 internal registered stock contemplated in section 21(1) of the Exchequer Act 66 of 1975;
  - 39.2.3 in any other manner approved by the Minister or authorised in terms of treasury regulations.
- 39.3 The moneys received by SASSETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to:
- 39.3.1 fund the performance of its functions; and
  - 39.3.2 pay for its administration within the prescribed limit.
- 39.4 SASSETA must be managed in accordance with the Public Finance Management Act.
- 39.5 SASSETA must:
- 39.5.1 prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and
  - 39.5.2 furnish the Director-General with copies of all budgets, reports and statements contemplated in clause 39.5.1 any other information that it is required to submit in terms of the Public Finance Management Act.



#### **40 Fiduciary duties of Board**

40.1 The Board must, as contemplated in section 50 of the Public Finance Management Act:

40.1.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of SASSETA;

40.1.2 act with fidelity, honesty, integrity and in the best interest of SASSETA in managing the financial affairs of SASSETA;

40.1.3 on request, disclose to the Minister all material facts, including those reasonably discoverable, which in any way may influence the decisions of the Minister; and

40.1.4 seek, within the sphere of influence of SASSETA to prevent any prejudice to the financial interests of the state.

40.2 A member may not:

40.2.1 act in a way that is inconsistent with the responsibilities assigned to SASSETA in terms of the Public Finance Management Act; or

40.2.2 use the position or privileges of, or confidential information obtained for personal gain or to improperly benefit another person.

40.3 A member must:

40.3.1 disclose to the Board any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before SASSETA; and

40.3.2 withdraw from the proceedings of SASSETA when that matter is considered, unless the Board decides that the member's direct or indirect interest in the manner is trivial or irrelevant.

#### **41 Financial and general responsibilities of Board**

- 41.1 The Board must ensure that SASSETA has and maintains:
- 41.1.1 effective, efficient and transparent systems of financial and risk management and internal control;
  - 41.1.2 a system of internal audit under the control and direction of an audit committee complying with the operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77 of the Public Finance Management Act;
  - 41.1.3 an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
  - 41.1.4 a system for properly evaluating all major capital projects prior to a final decision on the project.
- 41.2 The Board must take effective and appropriate steps to:
- 41.2.1 collect all revenue due to SASSETA; and
  - 41.2.2 prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of SASSETA; and
  - 41.2.3 manage available working capital efficiently and economically.
- 41.3 The Board is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of SASSETA.
- 41.4 The Board must comply with any tax, levy, duty, pension and audit commitments as required by legislation.
- 41.5 The Board must take effective and appropriate disciplinary steps against any employee of SASSETA who:
- 41.5.1 contravenes or fails to comply with a provision of the Act;



- 41.5.2 commits an act which undermines the financial management and internal control system of SASSETA; or
- 41.5.3 makes or permits an irregular expenditure or a fruitless and wasteful expenditure.
- 41.6 The Board is responsible for the submission by SASSETA of all reports, returns, notices and other information to Parliament or the Minister, as may be required by the Public Finance Management Act.
- 41.7 The Board must comply, and ensure compliance by SASSETA, with the provisions of the Public Finance Management Act and any other legislation applicable to SASSETA.

## CHAPTER EIGHT: GENERAL

### 42 Chief Executive Officer

- 42.1 The Board must appoint a suitably qualified person as Chief Executive Officer of SASSETA.
- 42.2 The Chief Executive Officer is the accounting officer of the Board.
- 42.3 The Chief Executive Officer must perform such functions as may be assigned to the Chief Executive Officer by the Act or by the Board.
- 42.4 The Chief Executive Officer may on behalf of the Board, appoint persons as employees of SASSETA to assist in the performance of its functions; provided that the Board must be consulted on the appointment of senior managers.
- 42.5 If the Chief Executive Officer is absent or for any reason is unable to perform the functions entrusted to him or her, or there is a vacancy in office of the Chief Executive Officer, the chairperson of the Board may designate an employee of SASSETA to act as Chief Executive Officer until the Chief Executive Officer is able to resume his or her, functions.



- 42.6 The Chief Executive Officer must attend all meetings of the Board and the Executive Committee.

**43 Amendments to constitution**

- 43.1 Any member may propose amendments to this constitution. The member must submit the proposed amendments with a written motivation to the Chief Executive Officer.
- 43.2 The Chief Executive Officer must send copies of the proposed amendments together with the agenda for the meeting to all members. At least thirty days notice of a meeting at which an amendment will be considered is required.
- 43.3 The provisions of this Constitution may be amended only:
- 43.3.1 by the decision of at least two-thirds of the members present at a meeting of the Board; and
  - 43.3.2 if they are approved by the Minister in the prescribed manner.

**44 Code of conduct**

- 44.1 Every member of the Board, chambers, standing and other Committees of the Board is bound by this code of conduct.
- 44.2 Members-
- 44.2.1 must perform their functions in good faith;
  - 44.2.2 must act honestly and in the utmost good faith;
  - 44.2.3 must exercise reasonable care and diligence;
  - 44.2.4 must give full effect to the obligations and spirit of the Act;
  - 44.2.5 must avoid any material conflict between their own interests and those SASSETA, and in particular-
    - 44.2.5.1. must not derive any personal economic benefit to which they are not entitled; and



44.2.5.2. must protect and promote the reputation and goodwill of SASSETA;

44.2.6 must exercise their powers for the benefit and in the interests of SASSETA;

44.2.7 must not abuse the resources of SASSETA;

44.2.8 must not disclose to any unauthorised person any privileged or confidential information of SASSETA; and

44.2.9 must promote and advance the interests and objectives of SASSETA.

#### **45 Dispute resolution**

45.1 Any party to a dispute concerning the interpretation or application of this Constitution may refer the dispute to the Chief Executive Officer.

45.2 The referral must:

45.2.1 be in writing;

45.2.2 adequately describe the dispute; and

45.2.3 be delivered to every other party to the dispute by the party referring the dispute.

45.3 The Chief Executive Officer must, as soon as reasonably practicable, refer the dispute to the Board, which must endeavour to resolve the dispute by conciliation within thirty days of referral of the dispute.

45.4 If the Board fails to resolve the dispute within thirty days of its referral, then any party to the dispute may refer it to the Arbitration Foundation of Southern Africa for arbitration by an arbitrator.

45.5 The arbitrator must be agreed to by the parties to the dispute with the approval of the chairperson or, failing such agreement or approval, by an arbitrator appointed by the chairperson.

- 45.6 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- 45.7 The arbitrator must conduct the arbitration in a manner that he or she considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formality.
- 45.8 Within fourteen days of conclusion of the arbitration proceedings:
- 45.8.1 the arbitrator must issue a signed arbitration award with reasons; and
- 45.8.2 the Chief Executive Officer must provide a copy of the award to every party to the dispute.
- 45.9 The arbitration award is final and binding on the parties to the dispute.
- 45.10 The costs of the arbitration must be borne equally by the parties to the dispute. The arbitrator may however make a different and appropriate award of costs if:
- 45.10.1 a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings; or
- 45.10.2 the arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.
- 45.11 An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:
- 45.11.1 erroneously sought or made in the absence of any party affected by the award;
- 45.11.2 in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or



45.11.3 granted as a result of a mistake common to the parties to the proceedings.

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**Schedule 1: Scope**

The scope of SASSETA is the following:

88110	LEGAL ACTIVITIES
88920	INVESTIGATION AND SECURITY SERVICES
9110A	POLICING
9110B	CORRECTIONAL SERVICES
9110C	JUSTICE
91104	NATIONAL INTELLIGENCE AGENCY
91105	SOUTH AFRICAN SECRET SERVICE
9110D	DEPARTMENT OF DEFENCE



**Schedule 2: Trade Unions, Employer Organisations and relevant Government Departments**

<b>ORGANISED EMPLOYERS</b>
ESDA
SECURITY INDUSTRY ASSOCIATION OF SOUTH AFRICA
SOUTH AFRICAN BLACK SECURITY EMPLOYERS' UNION
SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS' ASSOCIATION
<b>SAIDSA</b>
NORTHERN PROVINCE SECURITY ASSOCIATION
SECURITY SERVICES EMPLOYERS' ORGANISATION
LOCKSMITH ASSOCIATION OF SOUTH AFRICA

<b>ORGANISED LABOUR</b>
SOUTH AFRICAN NATIONAL SECURITY OFFICERS FORUM
SOUTH AFRICAN CLEANERS, SECURITY & ALLIED WORKERS UNION
NATIONAL SECURITY & UNQUALIFIED WORKERS UNION
<b>PTWU</b>
SECURITY OFFICERS CIVIL RIGHTS UNION
<b>KAWU</b>
UNITED PRIVATE SECTOR WORKERS' UNION
NATIONAL UNION OF MINEWORKERS
POLICE & PRISONS CIVIL RIGHTS UNION
SOUTH AFRICAN POLICE UNION

PUBLIC SERVANTS ASSOCIATION
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SOUTH AFRICAN NATIONAL DEFENCE UNION
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SOUTH AFRICAN SECURITY FORCES UNION
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NATIONAL INTELLIGENCE ORGANISATIONAL STAFF FORUM
--

<b>GOVERNMENT DEPARTMENTS</b>
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DEPARTMENT OF SAFETY AND SECURITY
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DEPARTMENT OF CORRECTIONAL SERVICES
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DEPARTMENT OF TRADE AND INDUSTRY
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DEPARTMENT OF DEFENCE
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DEPARTMENT OF JUSTICE AND CONSTITUTIONAL AFFAIRS
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DEPARTMENT OF INTELLIGENCE
----------------------------



**Schedule 3: Chambers in the sector**

- 1 The employers or employer organisations listed below in respect of each chamber must endeavour to reach agreement amongst themselves on the number of members of the chamber that each is entitled to nominate.
- 2 The employee organisations listed below in respect of each chamber must endeavour to reach agreement amongst themselves on the number of members of the chamber that each is entitled to nominate.
- 3 The organisations referred to in 1 and 2 above must nominate members to the chamber in accordance with any agreement or, if agreement cannot be reached, in accordance with the principle of proportionality, based –
  - 3.1 in respect of employers or employer organisations, on the number of employees employed by the employer or by the number of the organisation as the case may be;
  - 3.2 in respect of employees and other organisations on the number of their members.
- 4 The persons nominated by organisations in accordance with this Schedule are deemed to be appointed as members of the chamber concerned.
- 5 Any organisation which is not listed in this schedule but is representative of employers or employees in a sub sector of a chamber may apply in writing to the Board to be listed in this Schedule.
- 6 The organisation concerned must submit-
  - 6.1 its constitution or founding documents;
  - 6.2 its size of its membership or, in respect of employers or employer organisations the number of its employees or the number of employees employed by its members as the case may be;
  - 6.3 a motivation for consideration by the Board; and



6.4 any other information the Board considers relevant.

- 7 If the Board, after considering the organisation's representations, is of the view that it is sufficiently representative of employers or employees within the sub sector, the Board may amend this schedule to include the organisation in respect of the chamber concerned.
- 8 The organisations listed below are entitled to nominate members of the Chamber concerned:

#### 8.1 POLICING CHAMBER

EMPLOYER ORGANISATION
SOUTH AFRICAN POLICE SERVICES
EMPLOYEE ORGANISATION
POLICE & PRISONS CIVIL RIGHTS UNION
SOUTH AFRICAN POLICE UNION
PUBLIC SERVANTS ASSOCIATION

#### 8.2 JUSTICE CHAMBER

EMPLOYER ORGANISATION
COMPETITION COMMISSION



DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
NATIONAL PROSECUTING AUTHORITY
MAGISTRATES
EMPLOYEE ORGANISATION
NATIONAL UNION OF PUBLIC SERVANTS AND ALLIED WORKERS
NATIONAL EDUCATION, HEALTH AND ALLIED WORKERS UNION
PUBLIC SERVANTS ASSOCIATION
SOUTH AFRICAN STATE & ALLIED WORKERS UNION

### 8.3 LEGAL SERVICES CHAMBER

ORGANISATIONS
LAW SOCIETY OF SOUTH AFRICA
SOUTH AFRICAN HUMAN RIGHTS COMMISSION
SA LAWYERS FOR HUMAN RIGHTS
SOUTH AFRICAN BOARD FOR SHERIFFS
NATIONAL COMMUNITY BASED PARALEGAL ASSOCIATION OF SOUTH AFRICA
LEGAL AID BOARD
GENERAL COUNCIL OF THE BAR

### 8.4 CORRECTIONS CHAMBER

<b>EMPLOYER ORGANISATION</b>
DEPARTMENT OF CORRECTIONAL SERVICES
SOUTH AFRICAN CUSTODIAN MANAGEMENT
GLOBAL SOLUTIONS
<b>EMPLOYEE ORGANISATION</b>
POLICE AND PRISONS CIVIL RIGHTS UNION
PUBLIC SERVANTS ASSOCIATION

#### 8.5 DEFENCE CHAMBER

<b>EMPLOYER ORGANISATION</b>
SOUTH AFRICAN NATIONAL DEFENCE FORCE
<b>EMPLOYEE ORGANISATION</b>
SOUTH AFRICAN NATIONAL DEFENCE UNION
SOUTH AFRICAN SECURITY FORCES UNION

#### 8.6 STATUTORY INTELLIGENCE CHAMBER

<b>EMPLOYER ORGANISATION</b>
NATIONAL INTELLIGENCE AGENCY
<b>EMPLOYEE ORGANISATION</b>
NATIONAL INTELLIGENCE ORGANISATIONAL STAFF FORUM



<b>EMPLOYER ORGANISATION</b>
SOUTH AFRICAN SECRET SERVICE
<b>LABOUR ORGANISATION</b>
SOUTH AFRICAN SECRET SERVICE ORGANISATIONAL STAFF FORUM

#### 8.7 PRIVATE SECURITY CHAMBER

<b>EMPLOYER ORGANISATION</b>
ESDA
SECURITY INDUSTRY ASSOCIATION OF SOUTH AFRICA
SOUTH AFRICAN BLACK SECURITY EMPLOYERS' UNION
SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS' ASSOCIATION
<b>SAIDSA</b>
NORTHERN PROVINCE SECURITY ASSOCIATION
SECURITY SERVICES EMPLOYERS' ORGANISATION
LOCKSMITH ASSOCIATION OF SOUTH AFRICA
<b>EMPLOYEE ORGANISATION</b>
SOUTH AFRICAN NATIONAL SECURITY OFFICERS FORUM
SOUTH AFRICAN CLEANERS, SECURITY & ALLIED WORKERS UNION
NATIONAL SECURITY & UNQUALIFIED WORKERS UNION
<b>PTWU</b>
SECURITY OFFICERS CIVIL RIGHTS UNION



KAWU
UNITED PRIVATE SECTOR WORKERS' UNION
NATIONAL UNION OF MINeworkERS

Approved by-



CHAIRPERSON: DITETA



CHAIRPERSON: POSLEC



No. R. 889

8 September 2005

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)

**APPROVAL OF CONSTITUTION OF BANK SECTOR EDUCATION AND  
TRAINING AUTHORITY (SETA 2)**

The Minister of Labour has on 1 April 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the BANK SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Schedule.

**SCHEDULE**



# **BANKING SECTOR EDUCATION**

**AND**

**TRAINING AUTHORITY**

**CONSTITUTION**

May 2005

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## CONSTITUTION

### BANKING SECTOR EDUCATION AND TRAINING AUTHORITY

#### 1. NAME

The name of the Banking Sector Education and Training Authority shall be the BANKSETA, and hereinafter referred to as the Authority.

#### 2. SCOPE OF COVERAGE

The scope of coverage of the SETA is the banking sector determined by the Minister of Labour in terms of section 9 (2) of the Act.

#### 3. DEFINITIONS AND INTERPRETATION OF TERMS

Unless the context requires otherwise, the terms listed below shall be interpreted as defined:

- 3.1 "Act" means the Skills Development Act, 1998 (Act No. 97 of 1998);
- 3.2 "Authority" means the Banking Sector Education and Training Authority established in terms of Section 9 of the Act and read with Government Gazette No. 27445 of March 2005;
- 3.3 "Chief Executive Officer" means the officer appointed by the Council as described in clauses 14.2 and 14.3 below.
- 3.4 "Council" shall mean the members of the Authority as described in clause 9 below;
- 3.5 "Council Member" shall mean a member of the Council as described in clause 9 below;
- 3.6 "Department" means the Department of Finance;
- 3.7 "employee" includes an employee as defined in the fourth schedule of the Income Tax Act and means:
  - 3.7.1 any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; or

- 3.7.2 any other person who in a manner assists in carrying on or conducting the business of an employer;
- 3.8 "Employee Forum" shall mean the body that nominates and elects representatives of employees in the banking sector, in accordance with its Constitution, to serve on the Council;
- 3.9 "employer" includes an employer as defined in the fourth schedule to the Income Tax Act;
- 3.10 "Employer Forum" shall mean the body that nominates and elects representatives of employers in the banking sector, in accordance with its Constitution, to serve on the Council;
- 3.11 "Income Tax Act" means the Income Tax Act 1962, (Act No. 58 of 1962);
- 3.12 "Minister" means the Minister of Labour;
- 3.13 "NPO Act" shall mean the Non-profit Organisations Act 1997, (Act No. 71 of 1997);
- 3.14 "National Skills Authority" means the National Skills Authority established by section 4 of the Act;
- 3.15 "national skills development policy" means the national skills development policy referred to in section 5(1)(a)(i) of the Act;
- 3.16 "national skills development strategy" means the national skills development strategy referred to in section 5(1)(a)(ii) of the Act;
- 3.17 "National Skills Fund" means the National Skills Fund established by section 27 of the Act;
- 3.18 "Nominating Body" shall mean an organisation belonging to either the Employer Forum or the Employee Forum.
- 3.19 "office-bearers" shall mean all Trustees, Directors, Secretaries, Principals, Regional Representatives, Managers, Liaison Officers or other persons holding any office by virtue of their appointment as an office-bearer of the Authority in terms of this Constitution and the Act;
- 3.20 "regulation" means a regulation made and in force in terms of section 36 of the Act;

- 3.21 "SETA" means a Sector Education and Training Authority established in terms of section 9(1) of the Act;
- 3.22 "SARS" shall mean the South African Revenue Service;
- 3.23 "Skills Development Levies Act" means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- 3.24 "skills development levies" means the skills development levy payable in terms of section 3 of the Skills Development Levies Act;
- 3.25 "South African Qualifications Authority" means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act 1995 (Act No. 58 of 1995);
- 3.26 "Worker" includes an employee, an unemployed person and a work-seeker.

Unless inconsistent with the context of this agreement, any expression which denotes any gender, shall include the other gender and vice versa.

#### 4. PREAMBLE

- 4.1 The Act was passed to provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act; to provide for learnerships that lead to recognised occupational qualifications; to provide for the financing of skills development by means of a levy-financing scheme and a National Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith.
- 4.2 In terms of Section 9 of the Act, the Minister may, in a prescribed manner, establish a discrete SETA with a constitution for any national economic sector by reference to categories of employers.
- 4.3 On the establishment of a SETA, the Minister may provide assistance to the SETA to enable it to perform its functions.
- 4.4 The national banking sector wishes to establish the Authority with a constitution as provided for herein.

## 5. FUNCTIONS AND OBJECTIVES OF THE AUTHORITY

The sole objective of the Authority will be to:

- 5.1 develop a sector skills plan within the framework of the national skills development strategy for the Authority;
- 5.2 implement the skills sector plan by:
  - 5.2.1 approving workplace skills plans;
  - 5.2.2 establishing learnerships;
  - 5.2.3 allocating grants in the prescribed manner to employers, education and training providers and workers; and
  - 5.2.4 monitoring education and training in the sector;
- 5.3 promote learnerships by:
  - 5.3.1 identifying workplaces for practical work experience;
  - 5.3.2 supporting the development of learning materials;
  - 5.3.3 improving the facilitation of learning; and
  - 5.3.4 assisting in the conclusion of learnership agreements;
- 5.4 register learnership agreements;
- 5.5 be accredited as a body contemplated in section 5(1)(a)(ii)(bb) of the South African Qualifications Authority Act and to act as such;
- 5.6 collect and disburse the skills development levies in the banking sector in terms of the Act and the Skills Development Levies Act;
- 5.7 liaise with the National Skills Authority as well as other SETAs on inter alia:
  - 5.7.1 national skills development strategy;
  - 5.7.2 national skills development policy;
  - 5.7.3 its own sector skills plan;

- 5.8 report to the Director – General on the implementing of its sector skills plan and any budgets, reports and financial statements on its income and expenditure in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- 5.9 liaise with employment services of the Department of Labour and any educational body established in terms of educational laws of South Africa to improve the quality of information :
  - 5.9.1 about employment opportunities; and
  - 5.9.2 between education and training providers and the labour market;
- 5.10 appoint office bearers and staff necessary for the performance of its functions;
- 5.11 facilitate the involvement of the relevant government departments in the activities of the Authority; to
  - 5.11.1 address the competency requirements for social delivery;
  - 5.11.2 address the learning needs of the most vulnerable segments of the sector;
  - 5.11.3 promote training of SMEs to enable them to qualify for public contract;
- 5.12 perform any other duties imposed by the Act or any other function not specifically mentioned, in order to fulfil the objectives of the Authority and the Act;
- 5.13 notwithstanding the above functions and objectives, the Authority must at all times give effect to the purposes of the Act, being:
  - 5.13.1 to develop the skills of the South African workforce;
  - 5.13.2 to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
  - 5.13.3 to encourage employers:
    - 5.13.3.1 to use the workplace as an active learning environment;
    - 5.13.3.2 to provide employees with opportunities to acquire new skills;
    - 5.13.3.3 to provide opportunities for new entrants to the labour market to gain work experience; and



- 5.13.3.4 to employ persons who find it difficult to be employed;
- 5.13.4 to encourage workers to participate in learnerships and other training programmes;
- 5.13.5 to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those
- 5.13.6 advantages through training and education;
- 5.13.7 to ensure the quality of education and training in and for the workplace;
- 5.13.8 to assist :
  - 5.13.8.1 work-seekers to find work;
  - 5.13.8.2 retrenched workers to re-enter the labour market;
  - 5.13.8.3 employers to find qualified employees;
- 5.13.9 to provide and regulate employment services;
- 5.14 in applying this constitution, the Authority must interpret its provisions to give effect to:
  - 5.14.1 its functions and objectives as set out herein;
  - 5.14.2 the objectives of the Act, the Skills Development Levies Act, the South African Qualifications Authority Act, Regulations regarding the establishment of SETAs No. 20442 of 1999 and the Regulations for Education and Training Quality Assurance No. 19231 of 1998.

## 6. LEGAL PERSONALITY

- 6.1 The Authority must, as soon as possible after the appointment of its members, adopt this constitution.
- 6.2 The Authority is:
  - 6.2.1 a juristic person with an identity and existence distinct from its Council Members or office-bearers;
  - 6.2.2 an institution of public character established under Section 9 of the Act;

- 6.2.3 has perpetual succession notwithstanding changes in its Membership or office-bearers;
- 6.2.4 has the capacity to acquire rights and obligations and to sue and be sued in its own name; and
- 6.2.5 is at all times subject to the provisions of the Act.
- 6.3 The income and funding of the Authority shall be applied solely towards the promotion of its functions and objectives as described herein, and no portion thereof shall be paid or transferred, directly or indirectly, to any Council member, holding company or subsidiary except as provided for in the Act : Provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any servant or officer of the Authority or Council thereof in return for services actually rendered to or on behalf of the Authority in terms of this constitution.
- 6.4 The Authority's rights and obligations are independent of its Council members and office-bearers, and in particular, ownership of all funds and assets shall vest in the Authority. The Council members and office-bearers shall have no rights in the property or other assets of the Authority solely by virtue of their being Council members or office-bearers.
- 6.5 The Authority has all such powers as are necessary to enable it to perform its duties as conferred on it by this constitution, the Act or the Skills Development Levies Act, and as more fully set out in the clause 13 headed "Powers of the Authority and Council".

## **7. FINANCES OF THE AUTHORITY**

- 7.1 The Authority will be financed from:
  - 7.1.1 80 per cent of the skills development levies, interest and penalties collected in respect of the Authority, as allocated in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;
  - 7.1.2 moneys paid to it from the National Skills Fund;
  - 7.1.3 grants, donations and bequests made to it;

- 7.1.4 income earned on surplus monies deposited or invested;
- 7.1.5 income earned on services rendered in the prescribed manner; and
- 7.1.6 money received from any other source.
- 7.2 The money received by the Authority will be paid into a bank account at a registered bank and will only be invested in:
  - 7.2.1 savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;
  - 7.2.2 internal registered stock contemplated in section 21(1) of the Exchequer Act, 1975 (Act No. 66 of 1975);
  - 7.2.3 any other manner approved by the Minister.
- 7.3 The moneys received by the Authority will be used only in the prescribed manner and to:
  - 7.3.1 fund the performance of its functions; and
  - 7.3.2 pay for its administration within the prescribed limits.
- 7.4 In each financial year ending on the prescribed date, the Authority will, at a time determined by the Minister, submit to the Minister a statement of the Authority's estimated income and expenditure for the following financial year.
- 7.5 The Authority will, in accordance with the standards of generally accepted accounting practice:
  - 7.5.1 keep proper record of all its financial transactions, assets and liabilities; and
  - 7.5.2 within two months after the end of each financial year, prepare accounts reflecting income and expenditure and a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.
- 7.6 All funds entrusted to or administered by the Authority shall be administered by the CEO who shall be appointed by the Council..
- 7.7 The Council shall elect a finance committee which shall report to the Council and which shall be responsible for:

- 7.7.1 ensuring that the books of account kept by the Authority accurately reflect its financial activities and status;
- 7.7.2 ensure that proper accounts are rendered to the Authority for all funds received, collected, expended, or disbursed;
- 7.7.3 ensure that all funds handled by the Authority are properly disbursed in accordance with the conditions laid down by the Act and this constitution;
- 7.7.4 furnish such financial information as may be required by the Council;
- 7.7.5 in general, ensure that the particular duties delegated to it by the Council are satisfactorily carried out.

## **8. GRANT OF LEVIES**

- 8.1 An employer that falls within the jurisdiction of the Authority must apply to the Authority in such manner as the Authority determines to be registered as an employer for purposes of the payment of the levy.
- 8.2 Such employer will pay the determined levy to the Commissioner for the South African Revenue Service, which will be paid into the National Revenue Fund.
- 8.3 The Director-General will allocate:
  - 8.3.1 20 per cent of the levies, interest and penalties collected to the National Skills Fund;
  - 8.3.2 80 per cent of the levies, interest and penalties to the Authority.
- 8.4 The costs of collection by the Commissioner must be defrayed from the levies paid to the National Skills Fund and will not exceed 2 per cent of the total amount of levies calculated at the rate referred to in section 3(1)(b) of the Skills Development Levies Act.
- 8.5 The Authority may apply to the Minister to collect the levies from employers that fall into its jurisdiction in terms of section 7 of the Skills Development Levies Act.
- 8.6 A levy payable by an employer to the Authority is regarded as a debt due to the Authority.

- 8.7 If an employer fails to pay any amount of the levy payable to the Authority, or any interest or penalty in respect thereof, the Authority may proceed to recover the outstanding amount by action in a court having jurisdiction in the area in which the person liable for the levy, interest or penalty carries on business in terms of chapter 2 of the Skills Development Levies Act.
- 8.8 Should the Minister determine that the levies so payable be paid directly to the Authority in terms of section 7 of the Skills Development Levies Act, the Authority may withhold from its payment of 20 percent thereof to the National Skills Fund the cost of collection of the levies which amount shall not exceed 2 (two) per cent of the total amount of levies collected.
- 8.9 The funds received by the Authority shall be used to fund the performance of its functions and to pay for its administration within the prescribed limit as set out in section 14 of the Act.
- 8.10 The levies, interest and penalties allocated to the Authority, or collected from employers, as the case may be, will be disbursed by the Authority to employers in the same proportionate amount as the said employer has contributed to the total amount of levies allocated or collected from all the employers under the jurisdiction of the Authority and done in accordance with the provisions of the Act and its applicable regulations.
- 8.11 No amount of levy paid by a particular employer shall be disbursed by the Authority as a grant to any other employer under the jurisdiction of the Authority.
- 8.12 The Authority may in its own discretion fund any employer that has developed a skills programme as defined in the Act, provided that –
- 8.12.1 the employer complies with any requirements imposed by the Authority;
- 8.12.2 it is in accordance with the sector skills development plan of the Authority;
- 8.12.3 there are funds available, as provided by such employer; and
- 8.12.4 where an employer has already been granted and/or received funding from the Authority for one or more other skills programme, and such skills programmes in their totality form a series which qualifies an employee to receive a learnership qualification, the total amount of funding of such series of skills programmes cannot

exceed the amount of funding that an employer would have received for implementing such an aforementioned learnership.

8.13 The Authority may set any terms and conditions for such funding or grants as the Authority considers necessary in terms of the relevant funding regulations.

8.14 The Authority may withhold funds or recover any funds paid if the Authority is of the opinion that the funds are not being used for the purposes for which they were made available, any term or condition of the funding is not complied with or if it is not satisfied that the training is up to standard.

## **9. MEMBERSHIP AND COMPOSITION OF THE AUTHORITY**

9.1 The Council Members will at all times consist only of persons representing designated groups in

9.1.1 organised labour;

9.1.2 organised employers, including small business;

9.1.3 relevant government departments; and

9.1.4 if the Minister, after consultation with the Council Members considers it appropriate for the sector:

9.1.4.1 any interested professional body;

9.2 The Council Members shall at all times be the duly appointed representatives of:

9.2.1 the Banking Employers Forum (representing organised employers);(See schedule B)

9.2.2 the Banking Employees Forum (representing organised labour);(See schedule B) and

9.2.3 the Department of Finance (representing the government) (See schedule B).

9.3 The Banking Employers Forum and Banking Employees Forum will be separately constituted and each of their duly authorised and nominated representatives will become independent Council Members. Each forum and its method of appointing and of removing or terminating the appointment of representatives who will act as Council Members will be regulated in terms of its own rules and regulations. Copies of these rules and regulations will be kept by the Authority.

9.4 The Council Members will always comprise the persons as set out above and the Authority has no power to replace such Council Members.

9.5 The Council Members shall constitute a Council, which will be responsible for the operation and functioning of the Authority in terms of the Act.

9.7 The office of a Council Member shall, notwithstanding any other provision be terminated, *ipso facto*, if :

9.7.1 he ceases to be employed within the national banking sector;

9.7.2 he is removed in terms of the rules and regulations of the Banking Employers Forum, the Banking Employees Forum or the Department depending on whose nominated representative the removed Council Member was;

9.7.3 he is removed by resolution of the Council;

9.7.4 he becomes of unsound mind or insane;

9.7.5 he becomes insolvent or compromises with his creditors or is sequestrated whether provisionally or finally.

9.8 Any vacancy resulting from the termination of office of a Council Member will be filled in terms of the rules and regulations of the Banking Employers Forum, the Banking Employees Forum or the Department of Finance, depending on whose appointed representative the removed Council Member was.

9.9 Where the office of a Council Member terminates, any concurrent office held by that member on any committee and/or chamber will automatically be terminated as well, unless the Council determines otherwise.

#### **10. ORGANISATIONAL STRUCTURES AND MECHANISMS FOR GOVERNANCE – THE COUNCIL AND OFFICE BEARERS**

10.1 The general direction, policy, and finances of the Authority shall vest in a Council elected by the Members of the Banking Employers Forum, the Banking Employees Forum and the Government as follows –

10.1.1 the Banking Employers Forum shall nominate six (6) representatives onto the Council, such representatives to represent the interests of organised employers;



- 10.1.2 the Banking Employees Forum shall nominate six (6) representatives onto the Council, such representatives to represent the interests of organised labour; and
- 10.1.3 the Government shall appoint one (1) representative onto the Executive Council, who shall represent the State.
- 10.1.4 the Authority must consist of an equal number of members representing employees and employers
- 10.2 The nominations and appointments to the Council in the proportion as set out in 10.1 will be made by the Banking Employers Forum, the Banking Employees Forum or the Department as the case may be. The rules and regulations of which fora will be provided to the Authority on request of the Chairman of the Council.
- 10.3 The term of office of each Councillor shall be two (2) years, and such Councillor will thereafter be eligible for re-appointment by his respective nominator for a further period of two (2) years.
- 10.4 The Council shall meet at least quarterly at such time and place, and subject to such conditions as it may from time to time determine.
- 10.5 The names of these nominees to the Council shall be listed in a schedule and annexed (see Schedule D) to the constitution.
- 10.6 The Council shall draw up a Code of Conduct to which it will at all times adhere, which will be annexed to this constitution and form part thereof. Such Code of Conduct (See Schedule C) will be subject to the approval of the Minister and will be finalised within 90 (ninety) days of the Authority being constituted.
- 10.7 The Council shall elect, from amongst its members, a Chairman and a Vice-Chairman..
- 10.8 The term of office of such elected office-bearers shall run concurrently with their term of office as Councillors.
- 10.9 The appointment of such office bearers shall take place within one month of the Authority's first annual general meeting and the terms of office of the respective office bearers shall commence immediately.



- 10.10 Nominations for the respective office bearers shall be put forward by the Councillors at such first meeting which nomination will need to be seconded by a further Councillor. A majority vote by show of hands by the Councillors will cause such member to be appointed to the respective office bearer position.
- 10.11 The office of a Councillor shall, notwithstanding the provision of any agreement with the Authority or the Council be vacated, *ipso facto*, if:
- 10.11.1 he ceases to be employed within the national banking sector;
  - 10.11.2 his nomination to the Council is withdrawn by his nominator ;
  - 10.11.3 he is removed by resolution of the remaining Councillors.
  - 10.11.4 he becomes of unsound mind or insane;
  - 10.11.5 he becomes insolvent or compromises with his creditors or is sequestrated whether provisionally or finally.
- 10.12 Additionally, should an Councillor for any reason fail to attend three (3) consecutive meetings without the leave of absence of the Chairperson, or should the remaining Councillors by majority vote be of the opinion that it is no longer suitable for such a person to be a Councillor, the Chairperson shall write to such Councillor and his nominating body advising them that he has ceased to be a member of the Council and setting out the reasons therefore.
- 10.13 Such Councillor will be entitled to a hearing of their nominating body, and the decision of the nominating body shall be final.
- 10.14 Should a vacancy occur on the Council, whether by death, resignation, exclusion as set out above, or otherwise, the nominating body shall have the power to fill such vacancy, subject to the number of Councillors at all times consisting of an equal number representing organised labour and organised employers as stipulated in clause 10.1.
- 10.15 Vacancies so arising in the Council shall be filled by appointment by the member of the nominating body who nominated such departing Councillor as per the rules and regulations of the respective nominating body, within 30 (thirty) days of such notification being received.

10.16 The Council shall at all times retain the proportionality as set out in 10.1 above.

## 11. MEETINGS OF THE COUNCIL AND PROXY

11.1 Subject to the proviso that the Councillors shall meet at least quarterly, they shall meet together for the despatch of business, adjourn and otherwise regulate meetings as and when they deem fit.

11.2 For meetings of the Councillors, a quorum shall consist of at least seven (7) Councillors, either personally present or represented by proxy in terms of clause 11.3.

11.3 Any motions considered at a meeting of the Council shall be carried by a simple majority vote of the Councillors present in person or represented by proxy and voting. Each Councillor shall be entitled to one vote.

11.4 The motion shall be decided on a show of hands.

11.5 A declaration by the Chairperson that a motion has been carried on a show of hands, shall be conclusive evidence of this fact, without proof of the number, or proportion of the votes recorded in favour or against such resolution.

11.6 Any Councillor may appoint a proxy to attend, speak and to vote in his place. The instrument appointing a proxy shall be in writing under the hand of the appointer, the form of which shall be approved by the Council.

11.7 The instrument appointing a proxy shall be deposited with the Chairperson before the meeting at which the person empowered proposes to vote, and no effect shall be given to any instrument of proxy unless such instrument is deposited in this manner.

11.8 No instrument appointing a proxy shall be valid after the end of a period of 1 (one) month commencing on the date on which it is signed unless otherwise expressly stated in the proxy, and no proxy shall be used at an adjourned meeting, which could not have been used at the original meeting. If a proxy is received and is duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may not vote and the proxy may not be counted in the calculation of the quorum for that meeting.

11.9 Each Councillor shall be given seven (7) days clear notice in writing of each meeting.

11.10 In the event of any meeting having been called and insufficient notice having been given to any Councillor, then in that instance, the Council shall be entitled to waive such notice period provided that there is a quorum. In such event such proceedings will be valid as if due notice had been given.

## 12. ADJOURNMENT

12.1 If within one half hour after the time appointed for any meeting a quorum is not present, the meeting shall be adjourned to a date to be determined by the Chairperson (which date shall not be earlier than 7 (seven) days and not later than 14 (fourteen) days after the date of the meeting) at the same time and place (or if such place be not available at such other place as the Chairperson may appoint).

12.2 If at such adjourned meeting a quorum is not present within one hour after the time appointed for the meeting, the Councillors present in person or by proxy shall be a quorum.

12.3 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting, which was adjourned.

## 13. POWERS OF THE AUTHORITY AND COUNCIL

The Authority, through its Council shall, subject to the provisions of the Act, have the powers to act in pursuance of and in accordance with the objectives and functions of the Authority and shall possess and enjoy all rights and powers necessary for such purpose. Without limitation of the general powers and discretion granted by any of the provisions of this Constitution or the Act, the Authority shall have the following powers:

13.1 to appoint the Council and to regulate, control and terminate such appointment subject to the terms of the Constitution;

13.2 establish committees/chambers as is more specifically provided for in Sections 13 of the Act;

13.3 appoint a Management Committee and such other employees necessary for the effective running of the Authority and to determine their terms and conditions of appointment;

- 13.4 formulate the general policy of the Authority subject to the provisions of the Act;
- 13.5 approve the annual budget of the Authority;
- 13.6 approve the business plan of the Authority;
- 13.7 determine the scale of remuneration and other related matters for office bearers and other employees of the Authority;
- 13.8 make rules relating to Council meetings, financial matters, general procurement and administrative matters which are in accordance with the provisions of this Constitution, the Act or any other law;
- 13.9 to report on skills development within the banking sector;
- 13.10 to administer the funds accruing to the Authority in whatever manner it shall so decide, subject to the contents of this Constitution;
- 13.11 to open and operate any bank accounts at a bank or other financial institution, which the Council in its discretion decides, and draw, issue and receive cheques, promissory notes and/or bills of exchange and to endorse any of the same for collection by a bank and/or financial institution at which the said account was opened.
- 13.12 to purchase, hire or lease any premises, equipment or vehicles in the furtherance of its objectives and to improve, alter or maintain such premises, equipment or vehicles;
- 13.13 to institute, defend or settle actions and proceedings at law including arbitration and mediation proceedings by or against the Authority, which said actions and proceedings shall be instituted or defended in the name of the Authority;
- 13.14 to enter into contracts and agreements for the use and benefit of the Authority;
- 13.15 to engage the services of professional practitioners/consultants of whatsoever nature and tradesmen of whatsoever nature for the performance of work and rendering of services necessary or incidental to the Authority;
- 13.16 to appoint auditors and to fix their remuneration;

- 13.17 to collect and receive funds by way of grants from the State, Provincial Authorities and Local Authorities and to solicit, collect and receive monies by way of bequests, donations, grants, collections, commercial ventures or in any other manner from public and private bodies, from individuals and from the general public as provided for in the Act;
- 13.18 to do all such things as are incidental or conducive to the attainment of carrying out its functions and objectives;
- 13.19 to frame Regulations for the Authority in terms of, and to achieve the objectives as stated in this Constitution and the Act;
- 13.20 to delegate any of its powers to its members, chambers, committees and employees to enable it to achieve the objectives as stated in this Constitution and the Act;
- 13.21 to procure the resignation or recognition of the Authority in any country or place, including registration under the laws of South Africa;
- 13.22 the above powers are limited as follows:
  - 13.22.1 the Authority shall use any funds acquired by it in terms of the Act and this constitution, solely in the furtherance of its aims and objectives and is prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by way of payment in good faith of reasonable remuneration to any consultant, officer or employee of the Authority for any services actually rendered to the Authority, other than as provided for in the Act;
  - 13.22.2 all transactions, of whatever nature, that may affect the distribution of funds of the Authority, shall be subject to the approval of the Council;
  - 13.22.3 the Authority shall not have the power to carry on any business other than the business of the Authority as set out in the Act and elsewhere in this Constitution.

**14. MANAGEMENT COMMITTEE**

- 14.1 The Management Committee shall comprise the Chief Executive Officer and his/her Managers.
- 14.2 The Chief Executive Officer shall be appointed by the Council.
- 14.3 The Chief Executive Officer shall, in accordance with the policies developed by the Council, be responsible for the management, execution and administration of all facilities, services, programmes and divisions of the Authority. He/she shall attend all meetings of the Council and have a voice but no vote at such meetings.
- 14.4 The Management Committee shall initiate and formulate organisational policy, and recommend such policy for approval of the Council, and shall be responsible for the application, implementation and interpretation of such policy.
- 14.5 The Chief Executive Officer shall be accountable to the Council and report to it on the functioning, performance and administration of all facilities, services, programmes and divisions of the Authority.

**15. CHAIRPERSON**

- 15.1 The Chairperson shall be elected from within the Council as set out in clause 10 of this Constitution.
- 15.2 The Chairperson shall preside over all meetings and carry out all such duties and responsibilities as may be required by this Constitution or a resolution duly passed at a meeting; provided that in the absence of the Chairperson, the Vice-chairperson shall preside and/or assume all such duties and responsibilities, and in the absence of both, the Council shall elect one of its Councillors to preside and/or assume such duties and responsibilities for the time being.

**16. OTHER STAFF**

- 16.1 The Chief Executive Officer shall prescribe the duties of all staff members of the Authority.
- 16.2 He shall submit to the Council, which shall take the final decision, recommendations for the appointment of Managers and Principals of various operating committees.



- 16.3 The staff of each and every facility, service, programme and division of the Authority shall be accountable to the Chief Executive Officer, in accordance with the policies approved by the Council.
- 16.4 The staff of each and every facility, service, programme and division of the Authority shall be appointed by the Chief Executive Officer, in accordance with the policies approved by the Council.
- 16.5 The decision to dismiss a member of staff shall be made by the Chief Executive Officer. In the event of a staff member believing his or her dismissal to be unfair, he/she shall by written notice to the Council, request the Council to review such decision. The Council shall consider the request and if necessary appoint a sub-committee to investigate the circumstances surrounding the dismissal and shall be entitled either to reinstate or confirm the dismissal of such staff member.

#### **17. CHAMBERS AND COMMITTEES OF THE AUTHORITY**

- 17.1 The Council may establish separate committees from time to time to facilitate the achievement of the Authority's objects and prescribe the functions of such committees.
- 17.2 The Authority hereby establishes the following committees:
- 17.2.1 a management committee (ad hoc);
- 17.2.2 an audit committee;
- 17.2.3 a finance committee;
- 17.2.4 a remuneration committee;
- 17.3 The Authority may, with the Minister's approval establish chambers as per the Act.
- 17.3.1 A chamber so established must consist of an equal number of members representing employees and employers and may include such additional members as the Authority determines.
- 17.3.2 That chamber must perform those functions of the Authority as delegated to it in terms of this Constitution.

- 17.3.3 A chamber so established will be entitled to such percentage of the skills development levies collected in its jurisdiction as the Minister after consultation with the Authority determines.
- 17.4 The Council will define the functions of each committee and chamber, which shall be presented to the Minister on request of the Minister.
- 17.5 The Council shall appoint all members of the Committees and shall have the power to remove and replace any such committee on written notice to the committee.
- 17.6 The members of staff of such committees shall not be limited in their number and shall be determined according to their needs.
- 17.7 The functions and objectives of such Committees or chambers will be to add value and render practical assistance to the Council to fulfil its objects in terms of this Constitution and the Act.
- 17.8 Subject to the power of the Council to curtail, abrogate, regulate, or discontinue the delegation of Authority conveyed to each Committee or chamber, each Committee or chamber shall be empowered to:
- 17.8.1 establish rules for the convening of meetings, the conducting of meetings and the required quorum of meetings as is deemed fit;
- 17.8.2 establish rules governing voting rights of the chamber or committee's members and the manner in which decisions are to be taken by the chambers and committees, as is deemed fit;
- 17.8.3 constitute one or more working committees to deal with any specific portion of its work;
- 17.8.4 nominate members as members of Committees;
- 18.9.5 keep Minutes of all meetings in which shall be recorded the names of Members attending such meetings.
- 17.9 A member or members of the Council, may attend the meetings of such Committees or chambers and their various sub-committees in an advisory capacity.



**18. LEARNERSHIPS**

18.1 The Authority may establish a learnership if:

18.1.1 the learnership consists of a structured learning component;

18.1.2 the learnership includes practical work experience of a specified nature and duration;

18.1.3 the learnership would lead to a qualification registered by the South African Qualifications Authority and related to an occupation; and

18.1.4 the intended learnership is registered with the Director-General in the prescribed manner.

18.2 The terms of the learnership agreement shall be in the prescribed form and comply with the Act in all respects.

18.3 The Authority will, in the prescribed form, provide the Director-General with a record of learnership agreements registered by it.

**19. INDEMNITIES**

19.1 In the exercise of its powers, the Councillors shall not be liable for any loss to the Authority or third parties from whatsoever cause arising, save and except where claims, demands and/or actions arise from or are caused by the personal wilful bad faith or fraud of such Councillors.

19.2 The Authority shall be deemed to indemnify and hold each Council member harmless against all claims, demands and actions of whatsoever nature that may be made upon or brought against them, whether individually and/or jointly and severally, arising out of or in connection with the administration of the Authority, save and except where the claims, demands and/or actions are caused by the personal wilful bad faith or fraud of such Council member.

**20. AMENDMENTS TO THE CONSTITUTION**

20.1 At least 30 days notice must be given for a meeting of the Council at which an amendment of this Constitution is to be considered.

20.2 A supporting vote of at least two thirds of all the Council members is required for an amendment to its Constitution together with the approval of the Minister.

20.3 This Constitution may only be altered or amended by resolution of a special meeting of the Council provided that:

20.3.1 Such amendment or alteration shall not become effective until it has been approved in writing by the Council Members and the Minister as prescribed;

## **21. STATUTORY REQUIREMENTS**

### **21.1 Income Tax Act, 1962 (Act No. 58 of 1962)**

The Council shall submit this Constitution to the SARS to confirm the Authority's exemption from payment of income tax on the receipt by or accruals to the Authority in terms of Section 10(1)(f) of the Income Tax Act, on the basis that it is a non-profit institution of public character.

### **21.2 Donations**

The Council shall confirm the exemption of the Authority from donations tax in terms of Section 56(1)(i) and (j) of the Income Tax Act.

### **21.3 Stamp Duties Act, 1968 (Act 77 of 1968)**

The Council shall confirm the exemption of the Authority from payment of stamp duty in terms of Section 4(1)(f) of the Stamp Duties Act on any instrument which is executed by or on behalf of the Authority, if duty thereon would be legally payable and borne by the Authority.

## **22. TAKING OVER OF THE AUTHORITY**

22.1 The Minister may take over the administration of the authority in terms of the provisions of section 15 of the Act.

## **23. DISSOLUTION OF THE AUTHORITY**

23.1 The Authority may only be dissolved or wound up in terms of section 9 A (5).

## **24. Dispute Resolution**

24.1 Any party to a dispute concerning the interpretation or application of this Constitution may refer the dispute to the Chief Executive Officer of the SETA.

- 24.2 The referral must:
- (a) be in writing;
  - (b) adequately describe the dispute; and
  - (c) be delivered to every other party to the dispute by the party referring the dispute.
- 24.3 The Chief Executive Officer must, as soon as reasonably practicable, refer the dispute to the Council, which must endeavour to resolve the dispute by conciliation within 30 days of referral of the dispute.
- 24.4 If the Council fails to resolve the dispute within 30 days of its referral, then any party to the dispute may refer it for arbitration by an arbitrator.
- 24.5 The arbitrator must be agreed to by the parties to the dispute with the approval of the Chairperson of the Authority or, failing such agreement or approval, by an arbitrator appointed in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).
- 24.6 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- 24.7 The arbitrator must conduct the arbitration in a manner that he or she considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formality.
- 24.8 Within 14 days of the arbitration proceedings:
- (a) the arbitrator must issue a signed arbitration award with reasons; and
  - (b) the Chief Executive Officer must provide a copy of the award to every party to the dispute
- 24.9 The arbitration award is final and binding on the parties to the dispute.
- 24.10 The costs of the arbitration must be borne equally by the parties to the dispute. The arbitrator may however make a different and appropriate award of costs if:
- (a) a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings; or

- (b) the arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.

24.11 An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:

- (a) erroneously sought or made in the absence of any party affected by the award;
- (b) in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or
- (c) granted as a result of a mistake common to the parties to the proceedings.

**25. PRINCIPAL OFFICE**

The principal office of the Authority shall be situated at Block 15, Thornhill Office Park, 94 Bekker Road, Midrand, Gauteng.

SIGNED for and on behalf of the Seta at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2005

Organised Labour – Employee Forum Chairman

.....  
Name Signature

.....  
Organised Business – Employer Forum Chairman

Chairman of the BANKSETA Council

.....  
Name Signature

Vice- Chairman of the BANKSETA Council

.....  
Name Signature

**BANKSETA CONSTITUTION****SCHEDULE A****Scope of coverage of the BANKSETA**

The scope of coverage of the SETA will include but is not limited to:

- Central Banking
- Discount Houses, commercial and other banking
- Building Societies
- Financial mediation
- Lease financing
- Securities dealing
- Activities ancillary to financial mediation

## **BANKSETA CONSTITUTION**

### **SCHEDULE B**

Employers in the banking sector are those that are represented in terms of the scope of coverage.

- Central Banking
- Discount Houses, commercial and other banking
- Building Societies
- Financial mediation
- Lease financing
- Securities dealing
- Activities ancillary to financial mediation

The Trade Unions in the banking sector are the following:

- SASBO the Finance Union
- The Insurance and Banking Staff Association

The Government Department that is relevant to the banking sector is the Department of Finance

**BANKSETA CONSTITUTION**

**SCHEDULE C**

**BANKSETA CODE OF CONDUCT**



**BANKSETA CONSTITUTION****SCHEDULE D****Members of the Council**Employers

S.Ngidi  
B. Anderson  
L.Mlotshwa  
S.Motsepe  
H.Ferreira

Trade Unions

B.Venter  
J.Kokela  
T. Dell  
E.Ebersohn  
N.Nkonki-Mati  
E.Zeeman

# BANKSETA



## CODE OF CONDUCT AND ETHICS

May 2005

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## **CODE OF CONDUCT AND ETHICS**

### **1 PURPOSE OF THIS CODE**

- 1.1 The Banking Sector Education and Training Authority (BANKSETA), its Council and employees are committed to conducting themselves in accordance with the highest standards of integrity and ethics and in compliance with the Skills Development Act, 1998 (Act No. 97 of 1998) and other State Laws related to objectivity, independence and conflict of interest.
- 1.2 The Code should act as a guideline to Council Members and employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationships with others. Compliance with the Code of Conduct can be expected to enhance professionalism and help to ensure service confidence in the sector.
- 1.3 The primary purpose of the Code of Conduct is a positive one, viz. to promote exemplary conduct. Notwithstanding this, a Council Member or an employee shall be guilty of misconduct and may be dealt with in accordance with this Code of Conduct agreement if s/he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.

### **2 STATUS OF THE CODE**

- 2.1 Except where otherwise stated, this Code of Conduct is a rule for all Council Members and employees of the BANKSETA, whether on full-time, part-time or contractual basis.
- 2.2 The spirit of this Code of Conduct is at least as important as all the relevant legislation and a breach of, or failure to observe any of the provisions of the Code may be considered as improper conduct. Such behaviour will, for employees, be dealt with in terms of the BANKSETA's Disciplinary Code and Grievance Policy and Procedures. For Council Members a special disciplinary sub-committee will be convened.

### 3 GENERAL

- 3.1 The work of a public entity, such as the BANKSETA must not only be fair and equitable, but must be seen to be as such.
- 3.2 The BANKSETA therefore requires its Council Members and employees to display loyalty to the country's Constitution, and all relevant legislation above personal gains.

### 4 DEFINITIONS

- 4.1 "Act" means the Skills Development Act, 1998 (Act No. 97 of 1998);
- 4.2 "Authority" – means the Banking Sector Education and Training Authority established in terms of section 9 of the Act and read with Government Gazette No 27445 of March 2005;
- 4.3 "Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1995 (Act No. 55 of 1995);
- 4.4 "Constitution" means the Constitution of the BANKSETA;
- 4.5 "Council" shall mean the members of the Authority as described in clause 9 of the Constitution.
- 4.6 "Council Member" shall mean a member of the Council as described in clause 9 of the Constitution;
- 4.7 "SETA" means a Sector Education and Training Authority established in terms of section 9(1) of the Act
- 4.8 "Employee" includes an employee as defined in the fourth schedule of the Income tax Act and means:
- 4.8.1 any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; or

4.8.2 any other person who in a manner assists in carrying on or conducting the business of an employer;

4.9 "Indirect interest" – refers to interest held by a spouse, dependants or immediate family members;

4.10 "Labour Relations Act means the Labour Relations Act 1995 (Act No. 55 of 1995).

## **5 The BANKSETA's RESPONSIBILITY AS EMPLOYER**

5.1 Availability of Code of Conduct and Ethics and Other Conduct Related Regulations

5.1.1 The Authority shall furnish each Council Member or new employee, against signature, on his /her appointment or employment, with copies of the BANKSETA's Code of Conduct and Ethics, the Financial Policy and Procedures Manual and the Constitution.

5.2 Obligations

5.2.1 The Authority, as an employer, shall satisfy, in good faith, all its obligations (especially those such as the payment of VAT, Employee's tax, UIF and any other local and provincial levies).

5.3 Protection of Witnesses

5.3.1 The Authority should, whenever necessary or on request, protect or refuse to disclose the identity of the individual(s) reporting the breach of this Code of Conduct or any other rule or regulation of the Authority.

## **6 COUNCIL MEMBERS' RESPONSIBILITY**

6.1 Duty Against Bias

The Council, as a decision-making body, has a duty to act fairly to all persons or stakeholders who have an interest in all functions relevant to the Authority.

## 6.2 Integrity of the Decision-making Process

In order to protect the integrity, impartiality and independence of the Authority, all decisions made by the Council or its members should stand up to the closest public scrutiny.

## 6.3 Making Fair and Equitable Decisions

### 6.3.1 Acting According to the Law

Council Members need to know and understand any law pertaining to their function as a Sector Education and Training Authority so that they can make sound decisions knowing that they:

- are authorised by law to do so; and
- have complied with procedures required by law.

6.3.2 Council Members must be consistent in their treatment of stakeholders and should not act in a way which is unreasonable or discriminatory. This means that decisions should be made according to natural justice (procedural fairness).

6.3.3 The rules of natural justice require Council Members to:

- Inform people against whom an adverse decision may be made, as fully as possible of any allegations made against them, which could account for the adverse decision.
- Provide a stakeholder or individual with the opportunity to put their case, whether at an oral hearing or otherwise, wherever possible.
- Hear all parties and consider arguments where a decision involves a choice between competing applicants.
- Ensure that no Council Member judges a case in which s/he has, or appears to have, any interest.



- Act fairly and without bias in making decisions.
- Deal with similar cases in the same way.

#### 6.4 Properly Exercising Powers

6.4.1 Council Members make decisions using delegated powers provided by the Act. Any discretionary powers provided under this Act, must be used for the purpose for which they were intended and to make decisions on the basis of merit.

6.4.2 In particular, Council Members should not:

- take account of any irrelevant consideration in exercising power
- fail to take account of any relevant consideration in exercising power
- exercise power in bad faith
- exercise power in a way that constitutes or could be seen to constitute an abuse of power
- exercise power at the direction of another person
- exercise power in accordance with any rule or policy without regard to the merits of the particular case
- exercise power in a way that would be regarded as unreasonable by most people
- exercise a rigid interpretation of their mandate
- delegate any power unless sanctioned by law
- exercise powers outside the ambit of their jurisdiction.

#### 6.5 Explaining the Reasons for Decisions

6.5.1 The general responsibility to be fair and equitable in making decisions is complemented by a specific duty which requires Council Members to be reasonable and to consider only the merits of a particular case or application in making decisions.

### 6.5.2 This means that:

- the decision must be justifiable in relation to the reasons
- a written record of all decisions should be kept
- the facts and evidence in relation to decisions made should be systematically recorded
- the facts and evidence should be objectively evaluated or assessed and should lead reasonably to the decision.

## 6.6 Conflict of Interest and Enforcement of the Act

6.7.1 Council Members may not have any direct or indirect financial interest in any provision of any service that is regulated by the BANKSETA. Also, Council Members may not participate personally and substantially in an official capacity in any matter, which to his/her knowledge would result in some financial gain whether directly or indirectly.

6.7.2 If a Council Member has any doubts about the existence of a conflict of interest, the matter should be resolved at a meeting of the full Council.

Note : It is necessary that the extent of the possible gain or loss to the Council Member be known.

6.7.3 If at any stage during the course of any case before the Council, it appears that any Council Member has or may have an interest, which may cause such conflict of interest to arise on his/her part:

- such Council Member shall forthwith and fully disclose the nature of his/her interest and leave the meeting so as to enable the remaining Council Members to discuss the matter
- Such disclosure and the decision taken by the remaining Council Members regarding such determination shall be recorded in the minutes of the meeting.

6.7.4 If any Council Member fails to disclose any interest or contravenes the Act as required by Section 32 and 33 of the Act or, subject to the provisions of that section, and if s/he is present at a venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings of the Council, the relevant proceedings of the Council shall be null and void.

## **7 COUNCIL MEMBERS AND EMPLOYEES RESPONSIBILITY AND CONDUCT**

### **7.1 Acceptance of Gifts**

#### **7.1.1 The Basic Rule**

Council Members or employees of the Authority must not accept or solicit any gift, hospitality or other benefit that could influence, be seen to influence his/her judgement, integrity and independence.

7.1.2 Usually this will pertain if the gift/benefit comes from any person or organisation that:

- seeks official action by the Authority
- conducts business regulated by the Authority
- has an interest that may be substantially influenced by the performance or non-performance of the Council Members or the employees
- gives the gift/benefit because of the Council Member's or employee's position.

7.1.3 A Council Member or employee may not accept gifts from the same source or different sources on a basis so frequent that a reasonable person could be led to believe that the Council Member or the employee is using his/her position for private gain.

#### **7.1.4 Exception to the Basic Rule**

Acceptance of gifts, hospitality or other benefits are not prohibited if they are incidental to a Council Member or employee's official duties and:

- are a normal expression of courtesy or within the normal standards of hospitality
- are not such as to cause suspicion of the Council Member or employee's independence and integrity
- would not compromise the independence and integrity of the Authority

7.1.5 Where there is doubt as to the appropriateness of a gift, hospitality or other benefit, the Council Member or employee concerned should discuss the matter with the full Council in consultation with the Audit Committee.

## 7.2 Gifts Register

7.2.1 Gifts in excess of the value of R100 must be declared and registered in the Gifts Register, to be kept in the Office of the CEO.

## 7.3 Confidentiality of Employer Information

A Council Member or employee should –

7.3.1 honour the confidentiality of matters, documents and discussions, classified by any stakeholder as being confidential or secret

7.3.2 not use or disclose any official information for personal gain or the gain of a third party

7.3.3 not use or allow to be used privileged BANKSETA information to further their own private interests or the private interests of others. (If any Council Member or employee has doubts about the privileged status of any information, this should be discussed at a meeting of a full Council).

## 7.4 Outside Employment

An employee should not –

7.3.4 undertake remunerative work outside his/her official duties; or use office equipment for such work, without

the approval of the Chairperson of the Council. This should also be done with the knowledge of the CEO;

- 7.3.5 use office equipment for any activity outside the Authority, whether or not for compensation.

## 7.5 Financial Interest

A Council Member or employee should not –

- 7.5.1 engage in any transaction that is in conflict with or infringes on the execution of his/her duties
- 7.5.2 involve him/herself with an official action or decision-making process which may result in improper personal gain. This should be properly declared by the employee
- 7.5.3 use his/her official position to obtain private gifts or benefits for him/herself or a third party
- 7.5.4 accept gifts of benefits when offered, that may be construed as bribes
- 7.5.5 have direct or indirect financial interest, nor should s/he perform any management to any of the Authority's stakeholders or its subsidiaries
- 7.5.6 be dishonest in dealing with the funds of the Authority
- 7.5.7 be involved in relationships or interests, whether direct or indirect, which could adversely influence, impair or threaten his/her capacity to act with integrity and objectivity
- 7.5.8 use the Authority's property and other resources ineffectively or for personal gain
- 7.5.9 withhold the submission of a "Conflict of Interest" questionnaire, when required to do so
- 7.5.10 use Authority funding to pay for any accommodation or travel of anyone not directly involved in an authorised Authority purpose, including a spouse or an immediate family member.

## 7.6 Personal Conduct

A Council Member or employee should :

- 7.6.1 dress and behave (during official duties) in a manner that enhances the reputation of the Authority

- 7.6.2 act responsibly (during working hours) as far as the use of alcoholic beverages or any other substance with intoxicating effect is concern
- 7.6.3 be honest, truthful and conscientious in his/her approach to and in the performance of his/her duties
- 7.6.4 conduct him/herself with courtesy and consideration towards all with whom s/he comes into contact during his/her official duties.

## 7.7 Relations with other Legislature and Sector Role Players

A Council Member or employee should-

- 7.7.1 put the sector's interests first in the execution of his/her duties
- 7.7.2 strive to be familiar with and abide by all statutory and other instructions applicable to his/her conduct and duties
- 7.7.3 co-operate with public institutions established under legislation and the Constitution in promoting the sector's interests
- 7.7.4 serve the sector in an unbiased and impartial manner in order to create confidence in the work of the Authority
- 7.7.5 be committed to the development and upliftment of all South Africans
- 7.7.6 not discriminate unfairly against any member in the sector on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, culture, belief or language
- 7.7.7 not abuse his/her position in the Authority to promote or prejudice the interest of any political party or interest group
- 7.7.8 respect and protect every person's dignity and his/her rights as contained in the Constitution and
- 7.7.9 recognise the sector's rights of access to information, excluding information that is specifically protected and designated as such.



## 7.8 Relationship with a Council Member or Employee

A Council Member or employee must-

- 7.8.1 co-operate fully with other employees to meet the goals of the Authority
- 7.8.2 conduct him/herself in a manner which will promote co-operation and good relations between the employees of the Authority
- 7.8.3 assist his/her colleagues in complying with this code of conduct and co-operate with appropriate disciplinary authorities in applying this code
- 7.8.4 not irresponsibly criticise the professional work or attainments of other employees
- 7.8.5 execute all reasonable instructions by persons in their official capacity provided that these are not contrary to the provisions of the Constitution, this Code and/or any other law
- 7.8.6 refrain from favouring relatives and friends in work-related activities
- 7.8.7 never abuse his/her authority to influence another employee, nor allow him/herself to be influenced to abuse his/her authority
- 7.8.8 use the appropriate channels to air his/her grievances or to direct representations
- 7.8.9 commit to the optimum development, motivation and utilisation of his/her staff and the promotion of sound labour and interpersonal relations
- 7.8.10 deal fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, culture, belief or language and
- 7.8.11 refrain from party political and religious activities in the workplace.

## 7.9 Performance of Duties

A Council Member or employee must-

- 7.8.12 strive to achieve the objectives of the Authority cost-effectively and in the sector's interests

- 7.8.13 be creative in thought and in the execution of his/her duties, seeking innovative ways to solve problems, and enhancing effectiveness and efficiency within the context of the law
- 7.8.14 be punctual in the execution of his/her duties
- 7.8.15 execute his/her duties in a professional and competent manner
- 7.8.16 accept responsibility to avail him/herself of ongoing training and self development throughout his/her career with the Authority
- 7.8.17 promote sound, efficient, effective, transparent and accountable administration
- 7.8.18 in the course of his/her official duties, report to the appropriate authorities, any corruption, fraud, nepotism, misadministration or any other act, which constitutes an offence
- 7.8.19 not permit others to carry out on his/her behalf either with or without remuneration, acts which if carried out by him/herself, would constitute a contravention of this code
- 7.8.20 make no unauthorised commitments or promises of any kind purporting to bind the Authority.

## **8 ENFORCEMENT OF THE CODE OF CONDUCT AND ETHICS**

- 8.1 This code applies to the Council and all employees of the Authority and is supplementary to the Skills Development Act, 1998 (Act No. 97 Of 1998) the Labour Relations Act 1995 (Act No. 55 of 1995), the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) and all other applicable legislation. All persons subject to this Code of Conduct are expected to comply fully and promptly with it.
- 8.2 The Council, as the supreme body of the Authority must approve the Code of Conduct and Ethics. Once approved, it is enforceable on all Council Members and employees with immediate effect.



## **9 REMEDIAL ACTION**

### **9.1 Employees**

9.1.1 Any violation of any part of this Code of Conduct may be cause for appropriate disciplinary action.

9.1.2 The employee concerned shall be provided with the opportunity to explain the alleged misconduct.

9.1.3 After consideration of the employee's explanation, the CEO will decide what remedial action is required. S/he shall then take appropriate remedial action.

9.1.4 The CEO will designate an Internal Auditor or Council Member who will promptly investigate all incidents or situations in which it appears that employee(s) may have engaged in improper conduct. The Internal Auditor or Council Member will conduct such investigations in all cases where complaints are brought to the attention of the CEO or Chairperson including adverse comments appearing in publications, complaints from members of the sector and formal complaints referred to the CEO.

9.1.5 Remedial action may include, but is not limited to:

- 9.1.5.1 Changes in assigned duties
- 9.1.5.2 Disclosure of his/her conflicting interest
- 9.1.5.3 Written warning
- 9.1.5.4 Disqualification for a particular assignment
- 9.1.5.5 Suspension, and/or
- 9.1.5.6 Dismissal.

9.1.6 Remedial action, whether disciplinary or otherwise, shall be effected in accordance with all the applicable laws of the country e.g. the Labour Relations Act, 1995 (Act No. 55 of 1995) and the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

9.1.7 Other issues of conflict that may arise must be dealt with in accordance with Section 24, Dispute Resolution in the BANKSETA's Constitution.

## 9.2 Council Members

9.2.1 Any violation of any part of this Code of Conduct may be cause for appropriate disciplinary action.

9.2.2 The Council Member concerned shall be provided with the opportunity to explain the alleged misconduct.

9.2.3 After consideration of the Council Member's explanation, the Council Chairperson will decide what remedial action is required. S/he shall then take appropriate remedial action.

9.2.4 The Council Chairperson will designate an Internal Auditor or Council sub-committee to promptly investigate all incidents or situations in which it appears that Council Member(s) may have engaged in improper conduct. The Internal Auditor or Council sub-committee will conduct such investigations in all cases where complaints are brought to the attention of the CEO or Chairperson including adverse comments appearing in publications, complaints from members of the sector and formal complaints referred to the Chairperson or CEO.

9.2.5 Remedial action may include, but is not limited to:

- 9.2.5.1 Changes in assigned duties
- 9.2.5.2 Disclosure of his/her conflicting interest
- 9.1.5.3 Written warning
- 9.1.5.4 Disqualification for a particular assignment
- 9.1.5.5 Suspension, and/or
- 9.1.5.6 Dismissal.

9.2.6 Remedial action, whether disciplinary or otherwise, shall be effected in accordance with all the applicable laws of the country e.g. the Labour Relations Act, 1995 (Act No. 55 of 1995) and the Basic Conditions of Employment Act, 1997 (Act 75 of 1997).

9.2.7 Other issues of conflict that may arise must be dealt with in accordance with Section 24, Dispute Resolution in the BANKSETA's Constitution.

## 10 REFERENCE SOURCES

In drawing up this Code of Conduct, the following documents were consulted:

- 10.1 CG Guidelines on Official Conduct of Commonwealth Public Servants Canberra 1995.
- 10.2 Report of the Rules Committee of the National Assembly and Senate on CODE OF CONDUCT IN REGARD TO FINANCIAL INTEREST. (Printed by order of the Speaker of the National Assembly and the President of the Senate) 1996.
- 10.3 Code of Personal Conduct ITC, May 1991.
- 10.4 US Ethics for Executive Branch Employees, 1992.
- 10.5 Ethical Code of Conduct, CRTC.
- 10.6 FCC Handbook on Ethical Conduct.
- 10.7 Public Accountants and Auditors Council-Code of Professional Conduct, 1999.
- 10.8 Government Gazette No. 18065 Chapter M – Code of Conduct for the Public Service, 1997.
- 10.9 BANKSETA Constitution, May 2005.

No. R. 890

8 September 2005

**SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)****APPROVAL OF CONSTITUTION OF CLOTHING, TEXTILE, FOOTWEAR AND  
LEATHER SECTOR EDUCATION AND TRAINING AUTHORITY (SETA 4)**

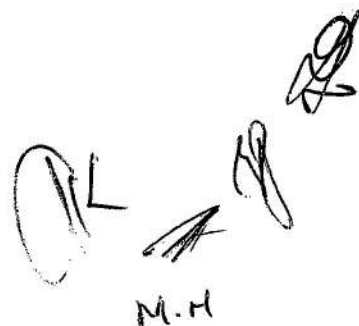
The Minister of Labour has on 1 April 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the CLOTHING, TEXTILE, FOOTWEAR AND LEATHER SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Shedule.

**SCHEDULE**



**Constitution of the  
Clothing, Textiles, Footwear  
and Leather Sector Education  
and Training Authority**

**28 November 2004**

  
M.H.

## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004

1

**1. Legal Entity****Name**

- 1.1 The name of this Sector Education and Training Authority (SETA) is the Clothing, Textiles, Footwear and Leather Sector Education and Training Authority hereinafter referred to as "the SETA".

**Purpose of SETA**

- 1.2 The purpose of the SETA is to devise and implement strategies to develop and improve the skills of employees and work seekers in the Sector.

**Legal status and purpose of Constitution**

- 1.3 The Constitution of the SETA is established in accordance with sections 9 and 13 of the Skills Development Act, 1998 (Act No. 97 of 1998), as amended from time to time, hereinafter referred to as "the Act".

- 1.4 The purpose of this Constitution is to –

- 1.4.1 regulate the SETA;
- 1.4.2 provide an institutional framework to enable the SETA to fulfil its functions.

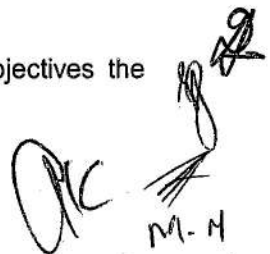
**Place of business**

- 1.5 The primary place of business of the SETA is 3<sup>rd</sup> Floor, Umdoni Centre, 28 Crompton Street, Pinetown, KwaZulu Natal or any other such place as the Council may determine.

**Personality**

- 1.6 The SETA is a body corporate and as such –

- 1.6.1 has perpetual succession;
- 1.6.2 may hold property distinct and apart from its members;
- 1.6.3 is required to use its funds for the objects as prescribed in the Act;
- 1.6.4 is capable in law of suing and being sued, of investing funds and of operating banking and other accounts, of entering into contracts and doing or performing such other acts or things as bodies corporate may do or perform subject to the provisions of this Constitution and the Act;
- 1.6.5 may not carry on any business which has as its objectives the acquisition of financial gain for itself or its members;



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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 2

- 1.6.6 may not distribute any of its profits to any members or any persons, save for the purpose of pursuing its objects as required by this Constitution.

**Legislative Framework**

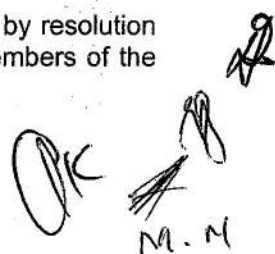
- 1.7 The Constitution must be read in compliance with the following legislation:

- 1.7.1 Labour Relations Act, 1995 (Act No 66 of 1995).
- 1.7.2 Basic Conditions of Employment Act, 1997 (Act No 75 of 1997).
- 1.7.3 Skills Development Act, 1998 (Act No 97 of 1998).
- 1.7.4 Skills Development Levies Act, 1999 (Act No 9 of 1999).
- 1.7.5 South African Qualifications Authority Act, 1995 (Act No 58 of 1995).
- 1.7.6 Regulations regarding the Establishment of Sector Education and Training Authorities, No 27445 of 3 March 2005.
- 1.7.7 Regulations for National Standards Bodies, No. 452 (1998).
- 1.7.8 Regulations for Education and Training Quality Assurers, No 1127 (1998).
- 1.7.9 Employment Equity Act, 1998 (Act No. 55, 1998).
- 1.7.10 The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).
- 1.7.11 The Public Finance Management Act, 1999 (Act No 1 of 1999).
- 1.7.12 Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities, issued in terms of the Public Finance Management Act, 1999 as amended.
- 1.7.13 National Small Business Act, 1996.
- 1.7.14 Any other relevant Acts, regulations, or amendments as gazetted from time to time.

**Process of amending the Constitution**

- 1.8 The process of amending the Constitution is as follows -

- 1.8.1 the provisions of this Constitution may be amended by resolution adopted by at least seventy percent (70%) of the members of the Council;



## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 3

- 1.8.2 at least 30 days' written notice of any meeting at which an amendment of the Constitution is to be considered, must be given to Council members and the notice must include full details of the proposed amendments;
- 1.8.3 alternative proposed amendments may be circulated prior to the meeting or, if this is not possible, may be tabled at the meeting scheduled to discuss the proposed amendments; and
- 1.8.4 no amendments to this Constitution will have force or effect until approved by the Minister.

## 2. Definitions

- 2.1 In this Constitution, unless the context indicates otherwise –

**"Act"**

means the Skills Development Act, 1998 (Act no. 97 of 1998) as amended from time to time;

**"Constitution"**

includes the schedules to the Constitution;

**"Council"**

means the governing body of the SETA;

**"Executive Officer"**

means the Executive Officer of the SETA appointed in terms of this Constitution;

**"Levies"**

means levies payable in terms of the Skills Development Levies Act, 1999 (Act No. 9 of 1999), as amended from time to time;

**"Member"**

means, depending on the context, a voting or a non-voting member of any SETA structure, including the Council, but does not include –

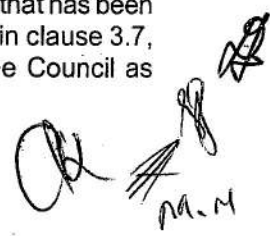
- a non-voting representative who participates in the SETA in terms of clause 3.3;
- a person co-opted to serve on any SETA structure in terms of clause 5.4;
- an employee who sits in an *ex officio* capacity on any SETA structure;

**"NQF"**

means the National Qualifications Framework as provided for in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995) as amended from time to time;

**"Qualifying organisation"**

means a registered trade union or registered employer organisation that has been admitted as a qualifying organisation by the Council as envisaged in clause 3.7, and that may participate in appointing or electing members to the Council as envisaged in clauses 6.8 and 6.9;





## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004

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**"Sector"**

means the Clothing, Textiles, Footwear and Leather Sector as determined by the Minister in terms of section 9(2) of the Act and described in Schedule 1 annexed hereto;

**"Specialist advisory committee"**

means a permanent or *ad hoc* committee established in terms of clause 8;

**"SMME "**

means an enterprise that satisfies the criteria for a small business, as set out in the National Small Business Act, 102 of 1996;

**"Sub-sectors"**

means the differentiated sectors of -

- clothing;
- textiles;
- footwear and leather

as identified and described in Schedule 1 annexed hereto;

**"Training provider"**

means a body accredited by an Education, Training and Quality Assurer (ETQA) to provide training in areas within its primary focus.

- 2.2 A word or expression which is not defined in this clause, but which is defined in the Act will, unless the context indicates otherwise, bear the meaning assigned to it in the Act.

**3. Scope of Coverage****Minister's Determination**

- 3.1 The scope of coverage of the SETA is the Clothing, Textiles, Footwear and Leather Sector determined by the Minister in terms of section 9(2) of the Act. A detailed description of the scope is set out in Schedule 1 annexed to this Constitution.

**Area of Jurisdiction**


- 3.2 In terms of the Minister's determination, the SETA has jurisdiction over the Sector, as defined, within the borders of the Republic of South Africa.

**Non-voting participation**

- 3.3 The Council may, subject to any conditions, allow non-voting participation in the activities of the SETA by representatives of bodies -

- 3.3.1 that have a common interest or association with the SETA but that are not entitled to be members in terms of section 11 of the Act;

- 3.3.2 that fall within the Sector as defined, but that operate in other Southern African states.

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 5

- 3.4 A representative who participates in the activities of the SETA in terms of clause 3.3, is not a member of the SETA and –

3.4.1 may not vote;

3.4.2 must comply with any conditions imposed on him or her; and

3.4.3 must comply with the code of conduct annexed to this Constitution as Schedule 3.

**Sub-sector**

- 3.5 The following sub-sectors are established in the Sector:

3.5.1 the sub-sector representing the interests of clothing manufacturing;

3.5.2 the sub-sector representing the interests of textiles manufacturing;  
and

3.5.3 the sub-sector representing the interests of footwear and leather manufacturing.

**Organisations in the Sector**

- 3.6 The trade unions and organisations of employers in the Sector are set out in Schedule 2 annexed hereto.

- 3.7 The Council must admit as a qualifying organisation a registered trade union or registered organisation of employers if the Council is satisfied that the admission of the trade union or organisation of employers will make the SETA more representative, and if the trade union or organisation of employers is –

3.7.1 listed in Schedule 2;

3.7.2 substantially representative;

3.7.3 a party to a bargaining council in the Sector.

**4. Functions of the SETA**

The functions of the SETA are to –

4.1 assist to promote job creation, economic growth and decent work in the Sector;

4.2 co-ordinate the development of an overall training and education strategy for the Sector;



4.3 develop an integrated sector skills plan, incorporating sub-sector skills training requirements and objectives, within the framework of the national skills strategy;

4.4 implement the sector skills plan by –

## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004

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- 4.4.1 approving workplace skills plans;
- 4.4.2 establishing learnerships;
- 4.4.3 disbursing grants in terms of the Act, and its regulations;
- 4.4.4 monitoring education and training in the Sector.
- 4.5 promote learnerships in each of the sub-sectors of the SETA;
- 4.6 perform the functions of an Education and Training Quality Assurance Body;
- 4.7 liaise with the National Skills Authority on –
  - 4.7.1 national skills development policy;
  - 4.7.2 the national skills development strategy; and
  - 4.7.3 its sector skills plan;
- 4.8 conclude a service level agreement with the Director-General of Labour in terms of section 10A of the Act;
- 4.9 promote the national standard established in terms of section 30B of the Act;
- 4.10 submit to the Director-General of Labour –
  - 4.10.1 any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act, 1999; and
  - 4.10.2 plans and reports on the implementation of its Sector Skills Plan and service level agreement;
- 4.11 liaise with the employment services of the Department of Labour and any education body established under any law regulating education in the Republic, to improve information –
  - 4.11.1 about employment opportunities; and
  - 4.11.2 between education and training providers and the labour market;
- 4.12 facilitate the involvement of relevant government departments in the activities of the SETA to –
  - 4.12.1 address the competency requirements for social delivery;
  - 4.12.2 address the learning needs of the most vulnerable segments of the Sector;

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 7

- 4.12.3 promote training in SMMEs to enable them to qualify for public contracts; and
- 4.13 perform any duties imposed by the Act and to actively pursue concrete measures to achieve the objectives of the Act.

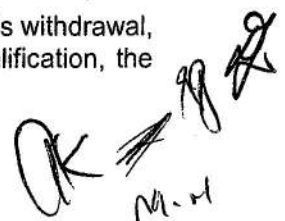
## 5. Structure of the SETA

### SETA Structure

- 5.1 The SETA consists of -
  - 5.1.1 a Council that is the governing body of the SETA and the accounting authority;
  - 5.1.2 an Executive Committee that must perform the functions of Council on a day-to-day basis;
  - 5.1.3 specialist advisory committees responsible for assisting and advising the Council on the implementation of SETA strategy in defined functional areas;
  - 5.1.4 other committees of Council appointed by the Council as and when required.
- 5.2 The Audit Committee established by the Council in terms of clause 9, does not form part of the structure of the SETA.
- 5.3 All structures of the SETA must have equal membership from registered employer organisations and registered trade unions, who will be the only members on the structure with voting rights.
- 5.4 Any structure of the SETA may co-opt any person to serve on that structure. A person co-opted to serve on any structure of the SETA -
  - 5.4.1 may not vote;
  - 5.4.2 must comply with any conditions imposed on him or her; and
  - 5.4.3 must comply with the code of conduct annexed to this Constitution as Schedule 3.

### Replacement

- 5.5 Any constituency represented by a voting or non-voting member on any SETA structure, may, on giving fourteen (14) days notice in writing to the Council, withdraw that member from any structure of the SETA, and appoint another member in the principal member's stead.
- 5.6 Should a vacancy arise on any SETA structure through a member's withdrawal, resignation, removal from office by the Council, death or disqualification, the

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004

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vacancy must be filled by the organisation that appointed or nominated the member within three (3) weeks after such vacancy has arisen. Any member appointed to fill a vacancy will hold office for the unexpired portion of the period of office of his or her predecessor and be subject to the same conditions as his or her predecessor.

**Removal from office or membership of the SETA**

5.7 A member of any structure of the SETA may be removed from office by the Council -

- 5.7.1 on the written request of the member;
- 5.7.2 on the written request of the organisation that appointed or nominated the member;
- 5.7.3 for serious misconduct;
- 5.7.4 for permanent incapacity;
- 5.7.5 for absence from three (3) consecutive meetings without good reason or prior permission of the Council or the relevant committee; or
- 5.7.6 for engaging in any activity that may undermine the integrity of the SETA.

**Code of conduct**

5.8 Members, non-voting participants, employees and people co-opted onto a SETA structure must -

- 5.8.1 perform their functions in good faith, giving full effect to the obligations and spirit of the Act and the SETA's code of conduct as reflected in Schedule 3 annexed hereto;
- 5.8.2 declare any possible conflicts of interest held by them or by members of their immediate families.

**General procedures for all SETA structures**

5.9 Unless the context indicates otherwise, the following procedures apply to meetings of all SETA structures -

- 5.9.1 subject to clause 5.9.2, a quorum for all meetings must not be less than two-thirds (66.7%) of the voting members or their alternates;
- 5.9.2 in respect of Council meetings only, and for the purposes of calculating whether a Council meeting is quorate, members who have given a written proxy to another member to vote on their behalf are deemed to be present at the meeting;
- 5.9.3 the Council must determine rules for proxy voting;



## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 9

- 5.9.4 subject to clauses 5.9.5 and 5.9.6, a decision of any structure is a decision by seventy percent (70%) of the members present at the meeting and entitled to vote;
- 5.9.5 if any voting member is absent from any meeting, one member representing the other constituency (i.e. labour or employer) will not be allowed to vote at the meeting in order to ensure equal voting power. The members of the constituency whose vote is to be reduced, must determine which of their members will be excluded from voting;
- 5.9.6 for the purposes of clause 5.9.5, a member will not be absent from a meeting if –
- 5.9.6.1 an alternate is present in that member's stead;
- 5.9.6.2 in respect of Council meetings only, the principal member has voted by way of letter, facsimile, electronic mail or by way of a proxy vote;
- 5.9.7 Council members may vote by way of a letter, facsimile or electronic mail on any issue, provided that –
- 5.9.7.1 the written vote is received by the Executive Officer no less than five (5) working days before the meeting;
- 5.9.7.2 a quorum in terms of clauses 5.9.1 and 5.9.2 is present at the meeting; and
- 5.9.7.3 any alternate appointed in the stead of the member voting by way of, letter, facsimile or electronic mail does not vote on the issue;
- 5.9.8 *ex officio* members are not entitled to vote on any structure;
- 5.9.9 minutes of all meetings must be produced and circulated to members of that meeting by the Executive Officer within ten (10) working days following the meeting. The minutes must be confirmed as being a true record of the proceedings by the next meeting of that structure and must thereafter be signed by the chairperson of the meeting;
- 5.9.10 there must be an attendance register at every meeting, which every member present in the meeting must sign;
- 5.9.11 members are deemed to be present at a meeting if they link into the meeting by way of a teleconference or videoconference.

## 6. The Council

### Functions of Council

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004

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- 6.1 The Council is accountable to the Minister and is the highest decision-making structure of the SETA.
- 6.2 The Council must –
- 6.2.1 manage and control the affairs of the SETA;
  - 6.2.2 provide strategic direction to the SETA;
  - 6.2.3 formulate general policy for the SETA, including an employment policy;
  - 6.2.4 approve the Sector Skills Plan, annual budget and business plan of the SETA.

**Powers of the Council**

- 6.3 Subject to the provisions of the Act, the Council has such powers as may be necessary to enable it to carry out its functions including the power to –
- 6.3.1 allow non-voting participation in the SETA in terms of clause 3.3;
  - 6.3.2 admit qualifying organisations as envisaged in clause 3.7;
  - 6.3.3 invite representatives to the Council in terms of clause 6.4.3.;
  - 6.3.4 establish committees, including specialist advisory committees, as and when required;
  - 6.3.5 appoint an Executive Officer, and if necessary terminate the services of the Executive Officer in accordance with the employment policy of the SETA;
  - 6.3.6 determine the terms and conditions of employment, code of conduct and areas of responsibility of the Executive Officer;
  - 6.3.7 determine the scale of remuneration and other related matters for members of any SETA structure, including the Council;
  - 6.3.8 make rules and formulate procedures relating to –
    - 6.3.8.1 meetings;
    - 6.3.8.2 financial matters; and
    - 6.3.8.3 general procurement, tendering procedures and other administrative matters which are in accordance with the provisions of this Constitution, the Act or any other law;
  - 6.3.9 delegate any of its powers or duties in terms of clause 10, and subject to section 13 (3)(b)(i) of the Act;

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 11

6.3.10 appoint and set the scale of remuneration, of a properly qualified auditor; and

6.3.11 report on skills development in the Sector.

**Composition of the Council**

6.4 The Council is made up as follows –

6.4.1 Voting Members (24)

6.4.1.1 A maximum of four (4) members representing organised employers from each of the sub-sectors as defined, namely:

- clothing;
- textiles; and
- footwear and leather; and

6.4.1.2 A maximum of four (4) members representing organised labour from each of the sub-sectors as defined, namely:

- clothing;
- textiles; and
- footwear and leather.

6.4.2 Non-voting members appointed by the Minister (4).

If the Minister considers it appropriate for the Sector, the Minister may, after due consultation with the Council, appoint –

6.4.2.1 up to two (2) representatives of interested professional bodies, and

6.4.2.2 up to two (2) representatives to represent bargaining councils within the jurisdiction in the Sector.

6.4.3 By Council invitation (non-voting members)

The Council may, subject to any conditions determined by the Council, invite –

6.4.3.1 any government department that has an active interest in the SETA to nominate a representative to sit on the Council;

6.4.3.2 any trade union or employer organisation listed in Schedule 2 that has an active interest in the SETA but that is not a qualifying organisation, to nominate a representative to sit on the Council.

6.5 An alternate may be appointed by each constituency with a voting or non-voting member. The alternate will act in the absence of the principal member.

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 12

6.6 The following employees sit on the Council in an *ex officio* capacity –

6.6.1 the Executive Officer;

6.6.2 any other SETA staff as decided by Council from time to time

**Appointments to the Council**

6.7 Qualifying employer organisations must appoint or elect by majority vote, the members referred to in clause 6.4.1.1.

6.8 Qualifying trade unions must appoint or elect by majority vote, the members referred to in clause 6.4.1.2.

6.9 The Council must approve a plan for ensuring that each constituency contemplated in section 11 of the Act that has members on the SETA, is represented by members who are sufficiently representative of black people, women and people with disabilities.

**Term of office**

6.10 Subject to clauses 5.5 and 5.6, members of the Council hold office for a period of two (2) years and may be reappointed thereafter.

**Office Bearers**

6.11 The Council must elect by a simple majority vote from amongst its members –

6.11.1 a chairperson who will hold office for a period of two (2) years; and

6.11.2 a vice-chairperson who will similarly hold office for a period of two (2) years, provided that the chairperson and vice-chairperson may not be from the same constituent party as defined in sections 6.4.1.1 and 6.4.1.2 above.

6.12 The chair must rotate every two (2) years between the constituent parties as defined in section 6.4.1.1 and 6.4.1.2.

6.13 The chairperson must preside and enforce order at meetings, sign minutes of meetings after confirmation of the minutes by the meeting, and perform such other duties assigned to him or her by the Council.

6.14 In the absence of the chairperson, the vice-chairperson will perform the chairperson's functions and, in the event of both being absent, the Council may appoint a temporary chairperson from amongst their members.

**Meetings of the Council**

6.15 The Council must meet at least twice a year.

6.16 The chairperson must arrange additional meetings –

## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 13

- 6.16.1 at the written request of at least fifty percent (50%) plus one (1) of the members of the Council; or
- 6.16.2 of his or her own volition and in consultation with the Executive Committee.
- 6.17 Notice of at least twenty one (21) days must be given of any additional meeting called in terms of clause 6.16.
- 6.18 The first meeting of each financial year will serve as an Annual General Meeting at which audited accounts and an annual report of the activities of the SETA must be tabled.
- 6.19 The Council may at its discretion require meetings to be held in private.
- 6.20 If within sixty (60) minutes of a time fixed for any Council meeting a quorum is not present, the meeting will be adjourned to the same day in the following week, at the same time and place, and at such adjourned meeting those present will constitute a quorum notwithstanding the fact that there may be less than 2/3rds of the voting members present.

**Notice of Meetings**

- 6.21 The Executive Officer, on the instruction of the chairperson, must give at least eight (8) days' written notice to members of meetings of the Council.
- 6.22 Notwithstanding sub-clause 6.21, a meeting may be called on shorter notice if the chairperson decides that there are good grounds for doing so.
- 6.23 The following documents must be attached to a notice of a meeting –
- 6.23.1 the agenda of the meeting; and
- 6.23.2 proposed amendments to the Constitution, if applicable.

**Disputes**

- 6.24 In the event of a deadlock arising in regard to a proposed resolution of the Council, the matter may be dealt with in accordance with clause 12 of the Constitution.

**7 Committees of the Council****Executive Committee**

- 7.1 An Executive Committee must be appointed by the Council and must be constituted as follows –
- 7.1.1 a maximum of six (6) Council members, nominated by employer organisations, provided that each sub-sector is represented by two (2) employer members, and one of whom must be the chairperson or vice-

## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004

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chairperson of the Council;

- 7.1.2 a maximum of six (6) Council members, nominated by labour, provided that each sub-sector is represented by two (2) labour members, and one of whom must be the chairperson or vice-chairperson of the Council;
  - 7.1.3 the Executive Officer of the SETA, in an *ex officio* capacity; and
  - 7.1.4 any other SETA staff as decided by Council from time to time
- 7.2 Alternates must be appointed by Council to act on behalf of Executive Committee members appointed in terms of 7.1.1 and 7.1.2, should these members be unable to attend a meeting.
- 7.3 An Executive Committee member who ceases to be a member of Council, will at the same time cease to be a member of the Executive Committee.
- 7.4 The Executive Committee, subject to the direction of the Council, provisions of this Constitution and any applicable legislation, has the following powers and duties -
- 7.4.1 to deal with the day-to-day business of the SETA;
  - 7.4.2 to make recommendations to the Council;
  - 7.4.3 to effect financial decisions and transactions in furtherance of the objectives of the SETA;
  - 7.4.4 to implement the general policy and directives laid down by the Council;
  - 7.4.5 to oversee the work of the specialist advisory committees and any other committees established by Council;
  - 7.4.6 to monitor progress on achieving targets set by the SETA;
  - 7.4.7 to appoint appropriate people to the staff establishment of the SETA, and if necessary terminate their services in accordance with the employment policy of the SETA;
  - 7.4.8 to determine the terms, conditions of employment, code of conduct and areas of responsibility of employees of the SETA.
- 7.5 The Executive Committee must meet as often as is necessary for the proper conduct of the SETA's affairs but not less than four (4) times per year and shall regulate its meetings as it deems fit.
- 7.6 Subject to clauses 5.5 and 5.6, members of the Executive Committee hold office for a period of 2 (two) years and may be reappointed thereafter.

**Other committees of Council**

- 7.7 The Council may from time to time establish such other committees as are required to enable the SETA to fulfil its functions.

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**7.8 The Council –**

- 7.8.1 must determine the powers, functions and membership of a committee established in terms of clause 7.7;
- 7.8.2 may at any time alter the powers, functions or membership of a committee established in terms of clause 7.7;
- 7.8.3 must regularly review the activities of any committee established in terms of clause 7.7.
- 7.8.4 has the powers to dissolve any committees.

**8 Specialist advisory committees****Establishment of specialist advisory committees**

- 8.1 The Council may establish specialist advisory committees as either permanent or *ad hoc* committees.
- 8.2 A permanent specialist advisory committee must meet at least three times per year.
- 8.3 An *ad hoc* specialist advisory committee must meet as often as is required.

**Appointment to specialist advisory committees**

- 8.4 The total number of voting members on a specialist advisory committee may not exceed six (6).
- 8.5 In appointing members to a specialist advisory council, the Council must ensure –
  - 8.5.1 that the specialist advisory committee has members with the necessary expertise to carry out the functions of that committee;
  - 8.5.2 that as far as possible, members of a specialist advisory committee are drawn from the same region, determined by the Council.

**General functions of specialist advisory committees**

- 8.6 Specialist advisory committees must –
  - 8.6.1 provide expert advice to Council on their particular functional area;
  - 8.6.2 make recommendations to Council with regard to their particular functional area;
  - 8.6.3 carry out any other task or duty delegated to them by Council in terms of clause 10.

**Term of office**

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CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 16

- 8.7 Appointed members of permanent specialist advisory committees will hold office for a period of two (2) years.
- 8.8 The term of office of members of *ad hoc* specialist advisory committees must be determined by the Council.
- 8.9 Members of permanent and *ad hoc* specialist advisory committees may be reappointed for further terms of office.

## 9 The Audit Committee

- 9.1 The Audit Committee is an independent committee established in terms of the Public Finance Management Act, 1999.
- 9.2 The Audit Committee operates in terms of written terms of reference approved by the Council. The terms of reference must be reviewed annually to ensure their relevance. The terms of reference must deal with at least –
  - 9.2.1 the membership of the Audit Committee, subject to clause 9.3;
  - 9.2.2 the authority of the Audit Committee;
  - 9.2.3 the responsibilities of the Audit Committee.
- 9.3 The Audit Committee must be made up of at least three members, appointed annually by the Council, in consultation with the Minister.
- 9.4 The chairperson of the Audit Committee –
  - 9.4.1 must be independent;
  - 9.4.2 must be knowledgeable of the status of the position;
  - 9.4.3 must have the requisite financial, and leadership skills;
  - 9.4.4 may not be a political office bearer.
- 9.5 Other members of the Audit Committee must –
  - 9.5.1 have appropriate experience;
  - 9.5.2 be appointed on one year contracts, renewable by agreement.
- 9.6 The Audit Committee must meet at least twice a year.
- 9.7 The following people should be invited to attend all meetings of the Audit Committee–
  - 9.7.1 the Executive Officer;
  - 9.7.2 the Chief Financial Officer of the SETA;
  - 9.7.3 the internal auditor of the SETA;

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9.7.4 a representative from the office of the Auditor-General.

9.8 The services of a member of the Audit Committee may only be terminated prematurely, with the consent of the Minister.

9.9 The Audit Committee must report and make recommendations to the Council and must annually provide written comment for inclusion in the annual report of the SETA on –

9.9.1 the effectiveness of internal controls;

9.9.2 the quality of management reports submitted in terms of the Public Finance Management Act, 1999.

## 10 Delegation of powers and functions

10.1 The Council may delegate any of its powers and duties to the Executive Committee, a specialist advisory committee, any other committee, the office bearers or employees of the SETA.

10.2 A delegation by Council may include the power to sub-delegate:

10.3 A delegation or sub-delegation in terms of this clause –

10.3.1 may be made subject to any conditions;

10.3.2 does not divest the Council or any other committee of any power or duty by virtue of the delegation or sub-delegation; and

10.3.3 does not prevent the Council or any other relevant committee from varying or setting aside any decision made under any delegation or sub-delegation.

## 11 Financing the SETA

11.1 All employers covered by the scope of the SETA or admitted as a levy payer to the SETA, must pay a skills levy to the SETA in accordance with the provisions of the Skills Development Levies Act, 1999. The skills levies will be collected via the offices of the South African Revenue Services (SARS).

11.2 The SETA will be financed from –

11.2.1 eighty percent (80%) of the skills development levies, interest and penalties collected in respect of the SETA, as allocated in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;

11.2.2 monies disbursed from the National Skills Fund;

11.2.3 any grants, donations or bequests made to the SETA;

11.2.4 monies received from any other source;

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 18

11.2.5 income earned from invested surplus funds; and

11.2.6 income earned from services rendered.

11.3 Monies received by the SETA must be managed as contemplated in accordance with the provisions of sections 14(2), 14(3), 14(3A), 14(3B) 14(4) and 14(5) of the Act.

11.4 The financial control procedures and financial administration must be undertaken in terms of the standards of generally accepted accounting practice. Account will be taken of relevant legislation that may be enacted, for example, the Public Finance Management Act as referred to in sub clause 1.6.11.

11.5 The income of the SETA must be distributed proportionally, in terms of a formula developed by the Council, between the sub-sectors referred to in clause 3.5.

11.6 Funds received by the SETA from an Industrial Training Board may only be used to fund the particular sub-sector that fell under the jurisdiction of that Training Board.

## 12 Dispute Resolution

### Types of disputes

12.1 The provisions of this clause apply to any dispute –

12.1.1 concerning the interpretation and application of this Constitution;

12.1.2 between one or more members of the Council arising out of an unresolved deadlock at Council as contemplated in clause 6.29.

### Declaration of dispute

12.2 A member of Council that wishes to invoke the dispute resolution procedures set out in this clause must –

12.2.1 deliver a written dispute to the Executive Officer;

12.2.2 set out in the written dispute sufficient detail to enable any other member of Council to respond to the dispute;

12.2.3 deliver a copy of the written dispute to all member of Council affected by the dispute.

### Written responses

12.3 Any member of Council with an interest in the dispute may, within ten (10) days of receiving the written declaration of dispute, deliver a written response to –

12.3.1 the Executive Officer;

12.3.2 the member that declared the dispute;

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 19

12.3.3 any other member that has indicated it wishes to be a party to the dispute.

**Conciliation**

12.4 The Executive Officer must as soon as is reasonably practicable, refer the dispute to the Executive Committee which must endeavour to resolve the dispute by conciliation within twenty (20) days of receiving any written responses or within 30 days of the referral if no written responses are received.

**Arbitration**

12.5 If the Executive Committee fails to resolve the dispute or thirty (30) days since the referral of the dispute have lapsed, whichever occurs earlier, the members that are in dispute may appoint by joint agreement an arbitrator from a panel determined by Council.

12.6 If the members in dispute fail to agree on an arbitrator, the Executive Officer must appoint an arbitrator from a panel referred to in clause 12.5.

12.7 The arbitrator must determine the matter by arbitration within fifteen (15) days of being appointed.

12.8 The arbitrator must conduct the arbitration in accordance with guidelines agreed by the Council.

12.9 Within fourteen (14) days of the conclusion of the arbitration proceedings, the arbitrator must issue a signed arbitration award with reasons and as soon as possible thereafter, the Executive Officer must provide a copy of the award to every member who was a party to the dispute.

12.10 The decision of the arbitrator will be final and binding on the members in dispute and on their respective organisations.

12.11 The costs of the arbitration must be borne by the SETA unless the arbitrator determines otherwise in terms of clause 12.12.

12.12 The arbitrator may award appropriate costs against any member who is in dispute, or against the organisation or organisations that that member represents, if –

12.12.1 that member, without reasonable cause, refuses or fails to attend the arbitration or unduly delays the arbitration proceedings; or

12.12.2 the arbitrator is of the view that a member pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospects of succeeding.

12.13 An arbitrator may, on his or her own initiative or as a result of an application by an affected member vary or rescind an award or a ruling –

12.13.1 erroneously sought or made in the absence of any member affected by the award;

12.13.2 in which there is ambiguity, or any obvious error or omission, but only to

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 20

the extent of the ambiguity, error or omission; or

12.13.3 granted as result of a mistake common to the members in dispute.

### 13 Indemnity

13.1 The SETA indemnifies office bearers, members, non-voting participants, employees and persons co-opted onto any structure of the SETA against any claims that may be made against them for anything done or omitted to be done by them during the course and scope of their employment or the performance of their duties.

13.2 Sub-clause 13.1 will not apply if a claim arises due to dishonesty, fraud, breach of trust, willful default or willful breach of duty on the part of the office bearer, member, non-voting participant, employee or co-opted person.

### 14 Assets, Liabilities and Obligations of Abolished Industry Training Boards

The Council assumes responsibility for the assets, liabilities and obligations of the abolished Industry Training Boards where legally applicable in terms of Schedule 2 of the Act.

### 15 Written instructions to the SETA

15.1 If the Minister issues a written instruction to the SETA in terms of section 14A of the Act the Council must –

15.1.1 comply with the instruction; or

15.1.2 request the Minister to extend the period for complying or revise the terms of the instruction.

15.2 If the Minister directs the SETA, in terms of section 14A(5) of the Act, to institute disciplinary proceedings against any employee, the Executive Committee must take the necessary steps to institute disciplinary proceedings against the employee.

### 16 Taking Over Administration of the SETA

16.1 The Minister may after consultation with the National Skills Authority and the SETA, by Notice in the gazette, direct the Director-General of Labour to appoint an administrator to take over the administration of the SETA or to perform the functions of the SETA as contemplated in section 15 of the Act.

16.2 If the Minister has issued a written instruction to the SETA in terms of section 14A of the Act, and the SETA has failed to comply with that instruction, the Minister may act in terms of clause 16.1 without further notice to the SETA.

16.3 If there is financial mismanagement of the SETA, the Minister may act in terms of clause 16.1 without consulting the National Skills Authority or the SETA.

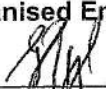
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CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 21

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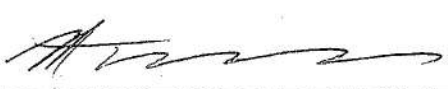
**Signed for and on behalf of the SETA:**

**1. For Organised Employers:**

  
Signed on behalf of the Clothing Employers Associations as listed in Schedule 2:


Mr G.J. van Zyl  
c/o Cape Clothing Association  
6<sup>th</sup> Floor Cape Chamber House  
19 Louis Gradner Street  
Foreshore, Cape Town  
Tel: (021) 4181913

at Durban on this 13th day of July 2005.

  
Signed on behalf of the Textile Employers Associations as listed in Schedule 2:

Mr F.P. Barnard  
c/o Aranda Textile Mills (Pty) Ltd  
1Wol Street, Homelake Extension  
Randfontein, 1760  
Tel: (011) 6933721

at Durban on this 13th day of July 2005.

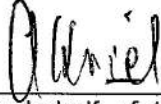
  
Signed on behalf of the Footwear and Leather Employers Associations as listed in Schedule 2:

Mr D.J.F. Linde  
c/o Southern African Footwear and Leather Industries Association  
Suite 202, 2<sup>nd</sup> Floor Charter House  
Cnr Crompton & Union Avenue, 3610  
Pinetown  
Tel: (031) 7014111

at Durban on this 14th day of July 2005.

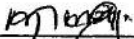
## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 22

## 2. For Organised Labour:



Signed on behalf of the Southern African Clothing and Textiles Workers Union (SACTWU) representing employees in the Clothing, Textiles, Footwear and Leather sub-sectors by: Mr A.T Kriel - SACTWU Deputy-General Secretary  
c/o Southern African Clothing and Textiles Workers Union  
350 Victoria Road  
Salt River, 7925  
Tel: (021) 4474593

at Durban on this 13th day of July 2005.



Signed on behalf of the National Union of Leather and Allied Workers (NULAW) representing employees in the Footwear and Leather sub-sector by:  
Mr M.M. Ngwenya  
c/o National Union of Leather and Allied Workers  
6<sup>th</sup> Floor, Mercury House  
Tel: (031) 3076420

at Durban on this 13th day of July 2005.



## SCHEDULE 1

### DEFINITIONS OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SUB SECTORS

#### Clothing Sub Sector

**"Clothing Sub Sector"** without in any way limiting the ordinary meaning of the expression, means the sub-sector in which employers and employees are associated for the making in whole or in part of all classes of ladies, men's and children's outer and undergarments, including uniforms, protective garments, nightwear, knitwear, headwear, helmets, caps, stitched utility hats, blocked or trimmed and/or modelled hats including the alteration or repair thereof, (except alterations done incidentally to the sale by retail of a hat in a shop), ties, scarves, hosiery, socks, mittens, gloves, suspenders, brasiers, collars, foundation garments, shirts, belts, braces, bags, umbrellas, handkerchiefs, linen and including the making of zips, buttons, hangers and badges for garments or the manufacture in whole or in part of all classes of garments to the order of any Government Department, Provincial Administration, the South African Transport Services and/or Local Authorities and all other classes of garments whether made from knitted, woven or non-woven fabric or any other material and includes any process in or branches of manufacture and all operations incidental thereto or consequent thereon, comprising inter alia, the designing and making of patterns, marking-in, cutting or chopping-out, machining, cleaning, finishing, embroidery and pressing whether or not some or all of such operations are performed in establishments which make such garments and includes bespoke tailoring or bespoke dressmaking and the manufacture of wearing apparel made from furs and pelts and the making of tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers as well as knitted garments for day or nightwear (including fully fashioned garments and/or any part thereof) by means of a knitting process on circular, flat or fully-fashioned machinery, which shall include the marking-in or cutting of such garments and/or all succeeding processes of operations performed in connection therewith including the making up of garments from knitted fabric in the establishment in which the said fabric was knitted.

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004

II

**Textiles Sub Sector**

**"Textiles Sub Sector"** means the manufacture in whole or in part of all classes of textile products including blankets, blanketing, bedding, travelling rugs, shawls, sheeting, whether plain, raised, dyed or printed or treated; duck-webbing, interlinings, bias binding and tapes whether elasticated or not, flocks, foam, wadding or padding including shoulder padding, dusters, feather dusters, towels and towelling; all classes of fabric trimmings including bows, rosettes, tassels, frills and similar finishings; lace, crocheted fabrics and embroidery; all Manchester goods and curtaining; all classes of fabrics whether knitted, woven or made by any other process whatsoever; all types of worsted products; all classes of non-woven products including but not limited to flock, felt, underfelt, wadding and stitch-bonded, spun-bonded, chemically-bonded and thermo-bonded textile fibres; yarns or thread spun from natural or synthetic fibre or any combination or blend thereof; automotive textile goods including seat covers, safety belts and upholstering; all classes of matting, mats, cord, ropes, twine, nets and netting including braided and plaited packings made of fibres and lubricants but excluding ropes, cables and mats manufactured from wire; all classes of bag manufacture; all braided and plaited products including shoe laces; all classes of carpets, rugs, carpet tiles and carpeting; all types of industrial/technical textiles including, but not limited to, woven and/or yarns such as: tyre-cord, belting, hose, tank fabrics, conveyor belts, textiles used to reinforce plastics, mining and civil engineering textiles like separation, drainage and reinforcement materials, mine props, backfill fabrics, ventilation curtains, blast barricades, textiles used in agriculture/horticulture, like those for weed control, hail and frost protection, early crop ripening, bags for fertilisers/produce, textiles for tents, tarpaulins, awnings, furnishings, footwear, automotive trim, luggage, sail cloth, airbags, spinnakers, parachutes, hot air balloons, print screens, paper felts, arrestor fabrics, medical textiles like blood filters, membranes, bandages, cotton wool, lints, gauze, swabs, surgical dressing, and sanitary towels, fabrics used to filter gas or liquids, fabrics used for protective garments such as breathable fabrics, flame proof fabrics, acid proof fabrics, bullet proof fabrics, brake and clutch linings, gland packings, and seals; and including workers engaged either wholly or partly in cotton ginning, fibre working, carding, spinning, winding, twisting, drawing-in, warping, weaving, knitting, plaiting, braiding, dyeing, bleaching, printing or finishing, raising, cleaning of any textile products or in rag picking, cutting, combing, blending, mixing or weighing of waste yarns and fabrics.

**"Wool/Mohair Processing Generic Sector"** means the washing, cleaning, scouring, blending and/or processing in any way whatsoever of raw wool, and/or mohair and/or any other animal fibre; and includes the making of tops.

**"Knitting Generic Sector"** means the generic sector in which employers and their employees are associated for the purpose of manufacturing hosiery, knitted fabric, other knitted clothing and miscellaneous knitted products on circular, flat or fully fashioned machinery and includes the making up of garments from knitted fabrics in the establishment in which the said fabric was knitted; and further includes all operations incidental to or consequent upon such operations and manufacture, including sale delivery, distribution, storage and administration.

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 III

"Canvas and Ropeworking Generic Sector" means the generic sector in which employers and employees are associated for:

- (a) the making up of goods or articles mainly from any of the following:
  - (i) canvas made from cotton, flax, jute, hemp, or any similar decorticated vegetable or manufactured fibres or mixtures thereof;
  - (ii) rope made from manila, sisal, cotton, hemp, coir or any similar decorticated vegetable or manufactured fibres or mixtures thereof; and includes the manufacture of articles from hessian, bunting, calico, webbing or any similar material; whether unproofed, proofed or otherwise treated, provided that the activities are prescribed in sub-paragraphs (i) and (ii) above, and shall include the manufacture of articles from a plastic fabric where such articles form part and are manufactured by employers who are engaged in the manufacture of the articles described in sub-paragraphs (i) and (ii) above;
- (b) the repair, renovation and alteration of goods and articles made from materials referred to in paragraph (a);
- (c) the making of wooden and/or metal frames, components and/or accessories of goods or articles made from materials referred to in paragraph (a);
- (d) the installation, erection or fixing in buildings of any produce of the generic sector.

"Laundry, Dry-cleaning & Dyeing Generic Sector" shall mean the generic sector carried on in establishments in which employers and employees are associated for the purpose of laundering, washing, cleaning, bleaching or dyeing of all types of woven, non-woven, spun, knitted or crocheted fabrics; or articles made from such fabrics; (including upholstery or upholstered articles), to the order of customers, and shall include depots and/or vehicles where such articles are received in order to be laundered, cleaned, bleached or dyed, and includes any other operations incidental thereto or consequent thereon.

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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 IV

**Footwear and Leather Sub Sector**

**"Footwear and Leather Sub Sector"** means the sub-sector in which employers and employees are associated -

1. for the manufacture, mainly from leather, of -
  - (a) footwear, including all types but not including bespoke-made footwear;
  - (b) attaché cases, bags and all other containers designed to hold personal effects, sporting kit, tools and documents;
  - (c) harnesses, bridles, saddlery, saddle bags, leggings, girths, stirrup straps, military equipment other than clothing, ladies' bags, shopping bags, knitting bags, wallets, purses, watch straps, wrist straps, dog collars, dog leads, rug straps, braces, belts, suspenders, garters, armlets, and all other like articles irrespective of their description but which are designed as substitutes for any of the aforementioned;
  - (d) ladies and/or children's handbags;
2. for the tanning, dressing and fellmongering of hides and skins;
3. in establishments in which leather goods are also manufactured, for the manufacture, from materials other than leather, of the articles mentioned in paragraph 1: provided that this paragraph does not include the manufacture of shopping bags made mainly of paper;
4. for the manufacture of all types of footwear from material other than leather;
5. for the manufacture of traveling requisites, including trunks, mainly from leather, fibre, wood, cloth, canvas or fabric or any combination thereof;
6. for the manufacture of handbags from materials other than leather, in establishments in which leather goods referred to in paragraph 1 are not manufactured, but excluding the manufacture of handbags -
  - (a) wholly or mainly from metal;
  - (b) from cardboard (corrugated or otherwise) and/or paper or any compound of paper and/or any like material a constituent part of which is cardboard and/or paper and/or any constituent of paper;
  - (c) wholly or mainly from plastics other than plastic sheeting material;
7. for the manufacture -
  - (a) wholly or mainly from leather, of footballs, punch balls, netball balls, and boxing gloves;
  - (b) of leather-covered hockey and/or cricket balls;



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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 V

8. in establishments in which leather goods are not manufactured for the manufacture from materials other than leather of -

- (a) attaché cases, bags and all other containers designed to hold personal effects, sporting kit and documents;
- (b) harnesses, bridles, saddlery, leggings, stirrup straps, shopping bags, wallets, purses, watchstraps, wrist straps, rug straps, braces and all other like articles, irrespective of their description, but which are designed as substitutes for any of the aforementioned;
- (c) travelling requisites, including trunks, from materials other than leather, fibre, wood, cloth, canvas or fabric or any combination thereof;

Provided that paragraphs (a), (b) and (c) shall not be construed to include -

- (i) the manufacture of metal components and/or attachments;
- (ii) the manufacture of canvas bank bags, canvas kit bags, canvas rucksacks, canvas haversacks, canvas sampling bags and canvas explosive bags;
- (iii) the manufacture of any article from rubber;
- (iv) the manufacture of any article or the practice of any trade or occupation covered by the Printing Industry which, without in any way limiting the generally accepted meaning thereof, means that industry which, or undertaking in which employers and employees are associated in the production of printed matter of any nature whatsoever.
- (v) the manufacture of any articles from metal and of any kind of container (with or without metal parts) from fibre and/or cardboard (corrugated or otherwise) and/or paper or any compound of paper and/or any like material a constituent of which is fibre and /or cardboard and/or paper and/or any constituent of paper and/or plastics, but excluding the manufacture, wholly or mainly from fibre or plastic sheeting material, of trunks, attaché cases, bags and all similar containers designed to hold personal effects, musical instruments and sporting kit.

Provided further that the word "plastic" as contained in paragraph (v) means any of the group materials which consists of or contains as an essential ingredient an organic substance of a large molecular mass and which while solid in the finished state, at some stage in its manufacture has been or can be forced i.e. cast, calendered, extruded or moulded, into various shapes by flow, usually through the application, singly or together, of heat and pressure.

9. for the -

- (a) preparation of cured and uncured hides and/or skins for tanning; for this purpose "preparation of hides and/or skins for tanning" without detracting from its ordinary or technical meaning, includes any of the following: Washing, soaking, fleshing, deburring, liming, unhairing, dewooling, the removal of scales, deliming, bating and pickling; and
- (b) tanning of the cured or uncured hides and/or skins; and/or



  
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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 VI

- (c) retanning and/or dyeing and/or drying and/or softening and/or buffing and/or dressing and/or finishing and/or laminating of leather and/or the combing and/or shearing and/or ironing of hides and/or skins with the wool or hair on; and
- (d) cutting of upholstery panels from leather.

Provided that, for the purposes of subparagraphs (a) to (c), "hides and skins" includes the following: Pelts with or without the fur on; sheepskins with or without the wool on; game and goatskins with or without the hair on: all types of reptile skins, and bird skins with or without the feathers on.


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**SCHEDULE 2:****ORGANISATIONS IN THE SECTOR****1. Trade Unions**

- 1.1 Southern African Clothing and Textile Workers Union (SACTWU)
- 1.2 National Union Of Leather and Allied Workers (NULAW)

**2. Sectoral Employers' Organisations**

- 2.1 South African Cotton Textile Processing Employers' Association (SACTPEA)
- 2.2 National Manufactured Fibres Employers' Association (NMFEA)
- 2.3 National Worsted Manufacturers Employers' Association (NWMEA)
- 2.4 South African Wool and Mohair Processors Employers' Organisation (SAWAMPEO)
- 2.5 National Textile Manufacturers' Association (NTMA)
- 2.6 South African Carpet Manufacturing Employers' Association (SACMEA)
- 2.7 Woven, Crochet & Knitted Narrow Fabric Manufacturers Employers' Association (WCA)
- 2.8 South African Home Textiles Manufacturers Employers' Organisation (HOMETEX)
- 2.9 South African Blanket Manufacturers Employers' Organisation (SABMEO)
- 2.10 Southern African Footwear and Leather Industries Association (SAFLIA)
- 2.11 Association of SA Manufacturers of Luggage, Handbags and General Goods
- 2.12 SA Tanners Employers Organisation (SATEO)
- 2.13 Cape Clothing Association
- 2.14 Eastern Province Clothing Manufacturers' Association
- 2.15 Garment Manufacturers' Association
- 2.16 Lower South Coast Clothing Manufacturers' Association
- 2.17 Natal Clothing Manufacturers' Association
- 2.18 Northern Decentralised Clothing Manufacturers' Association
- 2.19 Northern KwaZulu Natal Clothing Manufacturers' Association
- 2.20 OFS/Northern Cape Clothing Manufacturers' Association
- 2.21 Transvaal Clothing Manufacturers' Association
- 2.22 South African Clothing Employer Federation (SACLEF)



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CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 VIII

### SCHEDULE 3

#### CODE OF CONDUCT FOR COUNCIL AND COMMITTEE MEMBERS

##### 1. INTRODUCTION

Members of any SETA structure, employees of the SETA, and any person co-opted onto a structure of the SETA are subject to this Code of Conduct and are expected to heed both the written word and the spirit of this Code.

The Clothing, Textiles, Footwear and Leather Sector Education and Training Authority is committed to a policy of fair dealing and integrity in the conduct of its business. This commitment, which is actively endorsed by the Council, is based on a fundamental belief that the SETA's affairs should be conducted honestly, fairly and legally. The SETA expects all members, representatives and SETA employees to share in its commitment to high moral, ethical and legal standards.

##### 2. DEFINITIONS

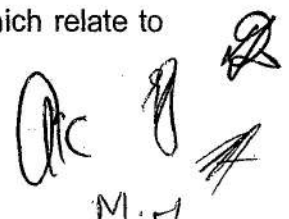
**In this Code of Conduct, unless the context otherwise indicates-**

"Act"	means the Skills Development Act;
"Constitution"	means the Constitution of the SETA
"Council"	means the Council of the SETA;
"Committee"	means the Executive Committee, a specialist advisory committee or any other committee established by the Council;
"Executive Officer"	means the Executive Officer of the SETA;
"Member"	means a member of the Council or a member of any committee of the Council, and for the purposes of this Code of Conduct is deemed to include a person co-opted onto any structure of the SETA;

##### 3. CONDUCT OF MEMBERS AND EMPLOYEES

3.1. Members and employees of the SETA must uphold the SETA Constitution and in the exercise of their responsibilities must -

3.1.1. comply with all applicable laws and regulations which relate to

  
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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 IX

their activities for and on behalf of the SETA;

- 3.1.2. promote the interests of and advance the objects of the SETA;
  - 3.1.3. act honestly and in the utmost good faith;
  - 3.1.4. perform their duties conscientiously and in the best interests of the SETA;
  - 3.1.5. ensure that a conflict or an appearance of conflict does not arise between the SETA's interests and their personal interests;
  - 3.1.6. declare any conflict or interests as provided for in this Constitution;
  - 3.1.7. exercise reasonable care and diligence;
  - 3.1.8. not make any improper use of any information acquired as a member or employee of the SETA.
- 3.2. In addition to the above, members must to the best of their ability, act –
- 3.2.1. for the benefit of their constituency;
  - 3.2.2. for the benefit of the SETA and the SETA's reputation.

#### 4. CONFIDENTIALITY

- 4.1. Members and employees must at all times maintain as confidential the SETA's affairs, methods of business, and business operations.
- 4.2. No member or employee may at any time disclose any of the confidential information referred to in clause 4.1 made known to them whilst involved in the SETA, to any person, persons or body of persons, corporate or incorporate except to consult with their constituencies. In such a case the Council's deliberations must be presented in a full and fair manner.
- 4.3. The information gained by virtue of being a member or employee of the SETA may not be used for personal gain.
- 4.4. The Council must determine when information is to be placed in the public domain. At this time members will be expected to promote the interests of the SETA providing always that this is not for personal gain.

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**5. DISCLOSURE OF INTERESTS**

- 5.1. A member or employee who has a direct or indirect interest in any business being conducted by the SETA, or who holds any office or possesses any property which might cause a conflict of duties or interest must declare such interest or potential conflict.
- 5.2. A member or employee must disclose any conflict of interests or duties to a meeting of the Council or to a committee of the Council if that person is not a Council member, as soon as practicable after he or she becomes aware of the relevant facts.
- 5.3. A member or employee undertakes not to take part in any transaction between the SETA and any company or firm in which he or she, or any member of his or her family, has an interest without declaring such interest and having been specifically authorised by the Council to do so.
- 5.4. All disclosures made to a meeting of the Council or committee must be recorded in the minutes of such meeting.

**6. MEDIA STATEMENTS**

- 6.1. Media statements concerning aspects relevant to the activities and meetings of the Council or its committees, may only be issued by the Executive Officer, or a person nominated by the Council.
- 6.2. If a member of the SETA is requested to appear on television or to take part in a radio talk show on behalf of that member's constituency, that member must obtain telephonic approval from the chairperson to speak on behalf of the Council or its committees. Opinions expressed must be in keeping with the SETA policy.

**7. CONTRAVENTION OF THE CODE**

- 7.1. It is a serious offence to contravene this Code. Any employee or member who suspects that they may have contravened the Code must immediately advise the Executive Officer.
- 7.2. Employees or members who suspect a contravention of the Code by another employee or member must report this, preferably in writing, to the Executive Officer.
- 7.3. The Executive Officer must investigate any allegation that the Code has been contravened impartially and must, as far as possible, maintain confidentiality during the course of the investigation.



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## CONSTITUTION OF THE CLOTHING, TEXTILES, FOOTWEAR AND LEATHER SETA 28 NOVEMBER 2004 XI

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- 7.4. A contravention of the Code may result in disciplinary action being taken and could result in the termination of employment of an employee or the termination of the membership of a member of the Council or a committee of Council.
- 7.5. Any contravention of this Code will be dealt with in terms of current Council policies or other applicable laws.



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No. R. 891

8 September 2005

**SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)****APPROVAL OF CONSTITUTION OF FINANCIAL AND ACCOUNTING  
SERVICES SECTOR EDUCATION AND TRAINING AUTHORITY (SETA 01)**

The Minister of Labour has on 1 April 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the FINANCIAL AND ACCOUNTING SERVICES SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Schedule.

**SCHEDULE**

Final Draft – April 2005



**F A S S E T**

# **FASSET CONSTITUTION**

*M. M. M. M.*  
*D.*



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## 1. LEGAL ENTITY

### 1.1 Scope of Fasset

The scope of coverage of Fasset is the financial and accounting sector, as determined by the Minister of Labour in terms of section 9(2) of the Skills Development Act, 1998 (Act No. 97 of 1998) as amended, read with government gazette No 21012 of the 20<sup>th</sup> March 2000. The Minister's determination is reproduced in **Schedule 1** of this Constitution.

### 1.2 Purpose for the establishment of Fasset

The purpose for which Fasset has been established is to provide an institutional framework to devise and implement national, sectoral and workplace strategies that are aligned with the objectives of national economic and social development. These strategies will be developed within the context of:

Supporting the development and improvement of skills development interventions;

Providing an assurance of quality in education and training;

Enhancing access to learning opportunities;

Encouraging active employer participation;

Supporting the objectives of the Employment Equity Act; and

Addressing the needs of the South African labour market including that of:

1.2.1.1 Employers;

1.2.1.2 Workers; and

1.2.1.3 Small, medium and micro enterprises.



### 1.3 Legal status

Fasset is a body corporate, established in accordance with Section 9 of the Skills Development Act No. 97 of 1998 ("**the Act**") and having all the powers granted to it in terms of the Act.

### 1.4 Interpretation

In this constitution, unless consistent with the context or subject matter:

Chapter, clause and paragraph headings are for purposes of reference only and shall not be used in the interpretation of this constitution;

Unless the context clearly indicates a contrary intention, words connoting:

1.4.1.1 one gender include a reference to the other gender;

1.4.1.2 the singular includes the plural and vice versa;

1.4.1.3 natural persons include legal persons and *vice versa*.

Schedules to the constitution will be deemed to form part of the constitution.

### 1.5 Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:

"**Act**" means the Skills Development Act, 1998 (Act No. 97 of 1998), as amended;

"**chairperson**" means any person elected or appointed to chair any meeting of Fasset or its committees;

"**chief executive officer**" means the person appointed by the management board as the chief executive officer of Fasset;

"**committee**" means any permanent committee, *ad hoc* committee or sub committee



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**"competencies"**

established by the management board or committees of Fasset;

means clear specifications or criteria for successful performance of a particular activity or function and may include knowledge, skills, abilities, personal characteristics and values;

**"constituency"**

means the employers registered with and paying their levies to Fasset, government departments and trade unions representing employees within the sector and employee organisations whose constituencies carry on their business activities or are employed, as the case may be, in the sector;

**"constituents"**

means those persons and organisations that make up the constituency;

**"designated groups"**

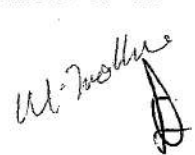
means black people, women and people with disabilities;

**"education and training standards"**

means registered statements of desired education and training outcomes and their associated assessment criteria, as defined in Section I of the SAQA Act;

**"employee"**

means any person, excluding an independent contractor, who works for another person in the sector or for the State Department within the sector and who receives, or is entitled to receive, any remuneration or any other person who in any manner assists in carrying on or conducting the business of an employer within the sector;



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**"employer"**

means an employer as defined in the fourth schedule to the Income Tax Act, No. 58 of 1962;

**"EXCO"**

means the Executive Committee, appointed by the management board and chaired by the Chairperson of the management board, which will be charged with overseeing the business plans and implementation of strategies of Fasset;

**"Fasset"**

means the Sector Education and Training Authority for Finance, Accounting, Management Consulting and Other Financial Services;

**"general meeting"**

means a meeting of all constituents of Fasset;

**"the legislation"**

means the legislation referred to in 1.10;

**"levy disbursement"**

means the funds disbursed to employers in accordance with the levy disbursement policies of Fasset, the Skills Development Levies Act, No. 9 of 1999, the PFMA and the Act;

**"learning"**

means the process by which a person gains the competencies required to perform a particular function or activity;

**"majority vote"**

means a two-thirds vote of the representatives present at a meeting of the management board, executive committee or working committee of Fasset at which a quorum is present;



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**"management board"**

means the duly elected body, which is charged with the strategy, governance and direction of Fasset, in accordance with the requirements of the Act, the PFMA and the needs of all stakeholders;

**"Minister"**

means the Minister of Labour;

**"PFMA"**

means the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended;

**"professional bodies"**

means associations representing the interests of professional persons, employees and learners, employer organisations and within professions, that are constituents of this sector;

**"public entity"**

means a public entity as defined in the PFMA;

**"quorum"**

means the requisite number of constituents who must be present at any meeting, for decisions of that meeting to have any binding effect;

**"representative"**

means any person elected or appointed to serve on the management board or a committee of Fasset;

**"SAQA Act"**

means the South African Qualifications Authority Act 1995, (Act No. 58 of 1995);

**"sector"**

means the Finance, Accounting, Management Consulting and Other Financial Services as defined in the Minister's Notice GN. 265, GG 21012 of 20 March 2000, as amended;



**"SETA"**

means a Sector Education and Training Authority;

**"stakeholder"**

means a constituent, as well as any other party that has an interest in Fasset, including but not limited to, the Department of Labour and workers;

**"unemployed person"**

means any person who would fall into the definition of the economically active population who is unable to find employment in the formal or informal sector; and

**"worker"**

means an employee, an unemployed person and a work-seeker within the sector.

**1.6 Dispute resolution**

Any party to a dispute concerning the interpretation or application of this constitution may refer the dispute to the Chief Executive Officer of Fasset.

The referral must:

1.6.1.1 be in writing;

1.6.1.2 adequately describe the dispute; and

1.6.1.3 be delivered to every other party to the dispute by the party referring the dispute.

The Chief Executive Officer must, as soon as reasonably practicable, refer the dispute to EXCO, who must endeavour to resolve the dispute by conciliation within 30 days of referral of the dispute.

If EXCO fails to resolve the dispute within 30 days of its referral, then any party to the dispute may refer it for arbitration by an arbitrator appointed in terms of the Arbitration Act, 1965 (Act 42 of 1965).



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The arbitrator must be agreed to by the parties to the dispute with the approval of the chairperson of Fasset or, failing such agreement or approval, by an arbitrator appointed by the chairperson of Fasset.

The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.

The arbitrator must conduct the arbitration in a manner that he or she considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formality.

Within 14 days of conclusion of the arbitration proceedings:

1.6.1.4 the arbitrator must issue a signed arbitration award with reasons; and

1.6.1.5 the chief executive officer must provide a copy of the award to every party to the dispute.

The arbitration award is final and binding on the parties to the dispute.

The costs of the arbitration must be borne equally by the parties to the dispute. The arbitrator may however make a different and appropriate award of costs if:

1.6.1.6 a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings; or

1.6.1.7 the arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.

An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:

1.6.1.8 erroneously sought or made in the absence of any party affected by the award;

1.6.1.9 in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or

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- 1.6.1.10 granted as a result of a mistake common to the parties to the proceedings.

**1.7 Place of business**

Fasset chooses as its place of business and its *domicilium citandi et executandi* suite A-306, 3<sup>rd</sup> Floor, Eva Office Park, Corner Beyers Naude & Judges Avenue, Blackheath, South Africa or such other address as may be substituted by notice given to all constituents.

**1.8 Legal personality**

Fasset is a public entity listed in Part A of Schedule 3 of the PFMA and will: have a separate legal identity and existence distinct from its office bearers, constituents and representatives;

hold property and assets distinct from its office bearers, constituents and representatives;

not be entitled to carry on any business which has for its object the acquisition of gain for itself or its office bearers, representatives or constituents;

be required to use its funds solely for the objects for which it has been established or for investment in terms of an investment policy as approved by the National Treasury;

be entitled to raise funds, generate income and charge fees in accordance with any relevant legislation;

be capable at law of suing and being sued, of investing funds and of operating banking and other accounts, of entering into contracts and doing or performing such other acts or things as body corporates may do or perform, subject to the provisions of this constitution and the Act;

continue to exist, and have perpetual succession, notwithstanding changes in its office bearers, constituents or representatives; and

be dissolved in accordance with the requirements of the Act, should dissolution become necessary for any reason.

### 1.9 Limitation of liability

A constituent or representative of Fasset does not incur any civil liability because of doing or failing to do something which such constituent or representative may do or is required to do in terms of the Act, provided that person has acted without negligence and in good faith.

Fasset does not incur any civil liability because a constituent, representative or employee of Fasset has taken any action or failed to take any action under or in terms of the Act, and in failing to take that action or in taking that action such person acted without negligence and in good faith.

### 1.10 Legislative framework

The constitution must be read in conjunction with the legislation detailed below, as may be amended from time to time, and any other pertinent legislation that exists or may come into existence:

Skills Development Act 1998, (Act No. 97 of 1998);

Skills Development Levies Act, 1999 (Act No. 9 of 1999);

South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended;

regulations, guidelines and government notices published from time to time in support or clarification of the legislation listed above.

### 1.11 Process of amending the constitution

The procedures for amending the constitution are documented in Section 3 of Fasset's Rules of Procedure, attached as **Schedule 3**. These procedures are defined in accordance with the Act and the regulations published in Government Gazette No. 24035 of 8 November 2002, governing the amendments to SETA constitutions.

### 1.12 Scope and coverage

Fasset shall have jurisdiction, as determined by the Minister in terms of section 9(2) of the Act, read in conjunction with Government Gazette No.

21012 of 20 March 2000, as amended, over all training and learning and all aspects thereof in the sector, and as may be amended by the Minister from time to time.

Any undertakings having common interests or associations with the sector may participate voluntarily in the activities of Fasset under such conditions as may be determined by the management board.

## 2. OBJECTS, FUNCTIONS AND DUTIES OF FASSET

### 2.1 Objectives of Fasset

The objectives of Fasset are:

- 2.1.1.1 to develop the competence of workers in the sector;
- 2.1.1.2 to increase the levels of investment in education and training and to seek to improve the return on this investment;
- 2.1.1.3 to position the sector as the 'sector of career choice' for workers;
- 2.1.1.4 to encourage employers and workers to adopt a culture of life long learning through:
  - using the workplace as an active learning environment;
  - providing workers with the opportunities to acquire new skills;
  - providing opportunities for workers in the sector labour market and enhancing access to opportunities to gain work experience;
- 2.1.1.5 to support the objectives of the Employment Equity Act, 1990 (Act No. 55 of 1998);
- 2.1.1.6 to enhance access to learning opportunities and to facilitate the recognition of prior learning;
- 2.1.1.7 to ensure the quality of education and training in the sector;

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- 2.1.1.8 to expand the provision of education and training in the sector through sound partnerships with public and private sector service providers;
- 2.1.1.9 to encourage greater co-operation between the public and private sectors in relation to the development of workplace skills; and
- 2.1.1.10 to co-operate with the South African Qualifications Authority and other SETAs, in support of the objectives of the Act.

Fasset must ensure that all relevant legislation and policies are implemented in order to enable it to achieve its objectives.

## 2.2 Powers of Fasset

Fasset shall have all such powers as are granted to SETAs in terms of the Act, and any other applicable legislation, to enable it to perform its duties and functions and to fulfil its objectives. Without limiting the generality hereof, Fasset shall have, *inter alia*, the following powers, subject always to the applicable legislation:

to acquire assets;

to raise funds, generate income and charge fees;

to enter into contracts;

to establish rules, regulations and guidelines relating to meetings, financial matters, general procurement and operational and administrative matters;

to establish committees to assist it in its functions; and

to delegate any functions or activities to a committee or to an official of Fasset.

## 2.3 Functions of Fasset

Fasset will serve to:

- 2.3.1.1 facilitate strategic human resource development planning within the sector;



- 2.3.1.2 facilitate the proposal of education and training standards and qualifications with bodies registered with the South African Qualifications Authority and be responsible for the facilitation of the development of education and training standards;
- 2.3.1.3 monitor and audit achievements in terms of those standards and qualifications;
- 2.3.1.4 accredit providers, assessors and moderators of education and training in the sector;
- 2.3.1.5 assure the quality of education and training in the sector without itself being a provider of education and training;
- 2.3.1.6 analyse and prioritise education and training needs within the sector and develop skills development strategies to address identified priorities;
- 2.3.1.7 enhance access to learning opportunities, including:
- career paths and progression pathways;
  - national qualifications framework qualifications; and
  - learnerships;
- 2.3.1.8 manage and administer all learnerships within the sector;
- 2.3.1.9 manage the administration of levy disbursements in the sector;
- 2.3.1.10 promote a culture of learning within the sector and encourage stakeholder participation in the strategies and activities of Fasset;
- 2.3.1.11 promote and market Fasset through regular communication with all stakeholders and potential stakeholders;
- 2.3.1.12 perform any other function required by the South African Qualifications Authority in terms of Fasset's registration as an Education and Training Quality Authority; and



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- 2.3.1.13 perform any other function that must be performed by Fasset in accordance with the Act, the constitution or any other applicable legislation.

Fasset will specifically, in accordance with the Act:

- 2.3.1.14 develop a sector skills plan within the framework of the national skills development strategy;

- 2.3.1.15 implement a sector skills plan by:

- approving and monitoring workplace skills plans;
- establishing learnerships;
- allocating grants in the prescribed manner, and in accordance with any prescribed standards and criteria, to employers, education and training service providers and in respect of workers; and
- monitoring education and training in the sector;

- 2.3.1.16 promote learnerships by:

- identifying appropriate workplaces where individuals can gain practical work experience;
- supporting the development of learning materials;
- improving and supporting learning through the development of learning methodologies and materials;
- improving the facilitation of learning; and
- assisting in the conclusion, registration and monitoring of learnerships agreements;

- 2.3.1.17 registering learnership agreements;

- 2.3.1.18 liaise with the National Skills Authority, as well as other SETAs, on issues including:

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- the national skills development strategy;
- the national skills development policy; and
- its own sector skills plan;

2.3.1.19 submit to the Director-General of Labour:

2.3.1.19.1 any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the PFMA; and

2.3.1.19.2 plans and reports on the implementation of its sector skills plan and service level agreement;

2.3.1.20 liaise with the employment services of the Department of Labour, education councils and other regulatory bodies established in terms of education laws of South Africa in order to improve the quality of information:

- about employment opportunities; and
- between education and training providers and the labour market;

2.3.1.21 facilitate the involvement of the relevant government departments in the activities of Fasset in order to:

- address the competency requirements for social delivery;
- address the learning needs of the most vulnerable segments of the sector; and
- promote training in Small, Medium and Micro Enterprises (SMME's) to enable them to qualify for public contracts;

2.3.1.22 subject to section 14 of the Act, appoint staff necessary for the performance of its functions;

2.3.1.23 promote the national standard established in terms of section 30B of the Act;





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- 2.3.1.24 perform any other duties imposed by the Act or other functions not specifically mentioned, in order to fulfil the objectives of Fasset;
- 2.3.1.25 collect the Skills Development levies, and disburse the levies allocated to it when required to do so, as contemplated in sections 8(3)(b) and 9(b) of the Skills Development Levies Act; and.
- 2.3.1.26 for each financial year, conclude a service level agreement with the Director-General concerning:
  - 2.3.1.26.1 Fasset's performance of its functions in terms of the Act and the national skills development strategy;
  - 2.3.1.26.2 Fasset's annual business plan; and
  - 2.3.1.26.3 any assistance that the Director-General is to provide to Fasset in order to enable it to perform its functions;

Provided that if Fasset and the Director-General cannot agree on the contents of a service level agreement within a prescribed time period, the Minister shall determine the contents after consultation with the National Skills Authority.

### 3. FASSET CONSTITUENCY

- 3.1 Fasset shall maintain a database of the constituency.
- 3.2 In amplification of the definition of "constituency" it is recorded that the categories of persons and entities forming the constituency are those listed in **Schedule 2** of this constitution.
- 3.3 Each constituency shall be represented by members who are sufficiently representative of designated groups.

### 4. MANAGEMENT BOARD

- 4.1 The management of Fasset shall be under the control of the management board.

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#### 4.2 Role and powers

The management board must retain full and effective control over Fasset, monitor the performance of the chief executive officer and management staff and ensure that decisions take place in accordance with the framework approved by the management board. The role and powers will include specifically, but will not be limited to:

providing strategic leadership;

ensuring sound governance, including appropriate risk management;

determining strategies and policies;

managing performance against agreed strategies and business plans;

appointing the chief executive officer and determining and reviewing the terms and conditions of employment;

managing the performance of the chief executive officer in accordance with agreed performance outputs;

monitoring effective financial management including the approval of budgets and all capital expenditure, fund raising and income generation;

promoting the objectives and interests of Fasset;

establishing committees and chambers as is more specifically provided for in sections 12 and 13(3)(vii) of the Act;

terminating the employment of the chief executive officer or any other employee;

approving the strategic plan that is submitted to the Department of Labour for final approval; and

approving the annual budget.

*at. Zoller*  


### 4.3 Composition

The management board will consist of members representing:

- 4.3.1.1 organised Labour within the jurisdiction of Fasset;
- 4.3.1.2 organised employers, including small business;
- 4.3.1.3 relevant government departments; and
- 4.3.1.4 if the Minister, after consultation with members referred to in clauses 4.3.1.1, 4.3.1.2, and 4.3.1.3, considers it appropriate for the sector:
  - 4.3.1.4.1 any interested professional body; or
  - 4.3.1.4.2 any bargaining council with jurisdiction in the sector.

As such, 17 seats will be allocated and will be comprised as follows:

- 4.3.1.5 8 employee representatives, including representatives of professional bodies, as approved by the Minister;
- 4.3.1.6 8 employer representatives, including representatives of relevant state departments and public entities; and
- 4.3.1.7 the chief executive officer, who will not have any voting rights on the management board.

The chairperson and deputy chairperson shall be elected at the first meeting of the management board from amongst their number, in accordance with the principles of a two-thirds majority vote.

### 4.4 Nomination process: employee constituency

The procedures for the nomination of the employee constituency of the management board are detailed in Section 4.1 of Fasset's Rules of Procedure and are in accordance with this constitution and the Act.



#### 4.5 Election process: employer constituency

The procedures for the election of the employer constituency of the management board are detailed in Section 4.2 of Fasset's Rules of Procedure and are in accordance with this constitution and the Act.

#### 4.6 Responsibilities of management board

All representatives either nominated or elected to the management board will be required to:

be representative of the interests of constituents in their discipline, who are registered with Fasset;

demonstrate that they fall within the appropriate constituency;

demonstrate that they have a sufficient mandate to act on behalf of the constituents they represent;

commit time and effort to attending to the affairs of Fasset;

demonstrate their involvement in and commitment to the national interests of education and training; and

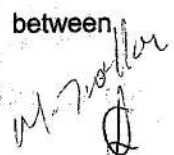
consult regularly with the constituents, whose interests they are representative of, and provide regular feedback to such constituents.

#### 4.7 Term of office

Subject to clause 0, representatives elected to the management board will hold office for a period of two years, effective from 1 June in the year in which they are elected.

On 31 May of each year one half of the employee representatives and one half of the employer representatives elected to the management board shall retire from office. If the number of employee representatives or the number of employer representatives is not divisible by two then the nearest number to one half, rounded downwards, shall retire from office.

The representatives to retire by rotation in each year in terms of clause 0 shall be those who have held office for the longest time, but as between



representatives who became representatives on the same day, those to retire shall, unless they otherwise agree among themselves or unless otherwise determined by the constituency nominating them, shall be determined by lot.

Retiring representatives will be eligible for re-election at the end of their terms of office. In the event that the chairperson is re-elected to the management board such person may stand for re-appointment as the chairperson of the management board.

A representative of the management board, other than the chief executive officer, shall cease to hold office if:

- 4.7.1.1 he ceases to hold a qualification necessary under the Act or this constitution for appointment or his nomination is revoked by notice in writing to Fasset by the constituents whom he represents;
- 4.7.1.2 he resigns by notice in writing to Fasset or dies or otherwise becomes incapable of discharging his duties;
- 4.7.1.3 his estate is sequestrated, whether provisionally or finally;
- 4.7.1.4 he is found guilty of committing an offence, of which dishonesty is an element; or
- 4.7.1.5 he is removed from office, in accordance with the requirements of clause 4.13.

#### **4.8 Annual general meetings and extraordinary general meetings**

The management board shall convene an annual general meeting of constituents each financial year.

The management board, in consultation with the chief executive officer, shall determine the time, date and place of such meeting. The procedures for convening and running such meetings, including notification and quorum, are detailed in Section 7 of Fasset's Rules of Procedure.

The chairperson shall, at the request of not less than two-thirds of the constituents, convene an extraordinary general meeting, within 30 days of receipt of the written request thereof signed by the requisitioning constituents.



The requisition shall include the purpose of the meeting, which shall be to transact some business that, by this constitution, is required or permitted to be transacted by Fasset. Any extraordinary general meeting shall be convened in the same manner as an annual general meeting.

#### **4.9 Meetings of management board**

The management board shall meet on at least four occasions during the financial year at such time, date and place as the management board may determine.

The chairperson of the management board may also convene additional general meetings, as may be necessary, to ensure that the management board fulfils its responsibilities to the constituency and other relevant constituents.

A representative on the management board will be required to recuse himself in the event that a conflict of interest arises. No member of the management board may vote on any issue in which a conflict of interest may exist or may arise.

The management board shall regulate its meetings as it deems fit and the procedures relating to these meetings are detailed in Section 5 of Fasset's Rules of Procedure. Alternates will not be permitted at meetings of the management board.

#### **4.10 Voting procedures at meeting of management board**

These procedures are detailed in Section 6 of Fasset's Rules of Procedure.

#### **4.11 Office bearers**

The office bearers of Fasset shall be:

- 4.11.1.1 the chairperson; and
- 4.11.1.2 the deputy chairperson;
- 4.11.1.3 the chief executive officer.

Should the chairperson be absent or incapacitated, the deputy chairperson shall perform the duties of the chairperson, except in the case of chairing EXCO, where a member of EXCO shall be elected by the members of EXCO to perform the duties of the chairperson. Should any of the office bearers be incapacitated or absent, the management board may appoint temporary office bearers. The temporary appointment will be specified in terms of both time and task. The appointment shall end at the end of the specified task or time and/or if the official office bearers become available again.

**4.12 Terms and conditions of service of representatives on the management board**

Representatives on the management board, excluding the chief executive officer, shall serve in a voluntary capacity and will accordingly receive no remuneration for their services other than market related reasonable travel reimbursement and, where applicable, accommodation.

**4.13 Removal from office**

Where it is alleged by the constituent organisation that nominated the member, or by Fasset itself, that a representative of the management board has failed to meet the performance or behavioural standards required of such an appointment, the chairperson, or the deputy chairperson in the absence of the chairperson, (or in the event that the allegation is directed at the chairperson, the management board) will convene an enquiry.

The chairperson, or the deputy chairperson in the absence of the chairperson, may invite any person who may assist in the enquiry to participate therein. The representative against whom the complaint is made may be assisted at the enquiry by one of the constituents of the discipline that he represents. The participation of legal practitioners in such internal procedures is specifically excluded.

Notwithstanding the above, the following acts or omissions by a representative will result in the immediate removal from office of such representative:

- 4.13.1.1 failure by a representative to attend more than two consecutive meetings of the management board or EXCO, without good cause,



as defined by the chairperson, or the deputy chairperson in the absence of the chairperson, of the management board; or

- 4.13.1.2 if the representative has at any time been guilty of conduct, which at common law, may result in a representative's immediate removal from the management board.

Any representative so removed from office may not stand for re-election to that office.

Enquiries as contemplated in clause 4.13 above will not be convened to address the matters stipulated in clauses 4.13.1.1 and 4.13.1.2. The chairperson, or the deputy chairperson in the absence of the chairperson, will convey his decision in writing to the representative and the constituents he represents and the constituents, in turn, will be required to elect / nominate a new representative within a period of 30 calendar days of receipt of such notification.

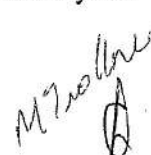
Where a voting member of the management board is removed from office, or is no longer able to fulfil his responsibilities for whatever reason, the relevant constituency will be responsible for nominating and appointing a replacement to serve out the remaining term of office, within a period of 30 calendar days from the date of such removal.

The chairperson or deputy chairperson may be removed from office according to the same conditions as described above. Should this occur, the members of the management board must within 30 calendar days, elect from the representatives currently on the management board a replacement chairperson or vice- chairperson, as the case may be, to act as the office bearers of Fasset.

## 5. AUDIT COMMITTEE

- 5.1 The management board must appoint an audit committee, consisting of two representatives from the management board, and 4 further persons who are not members of the management board, who have the necessary standing and expertise to provide the management board with assurance that risks associated with Fasset are being appropriately managed.

- 5.2 Audit committee external members will be appointed for a 3 year term. The management board representatives will be appointed every election year.





Audit Committee member's fees shall be approved by the management board.

- 5.3 The management board will establish the audit committee's written terms of reference in accordance with the audit charter of Fasset.
- 5.4 The audit committee will be required to report to the chairperson of the management board on a bi-annual basis.
- 5.5 The audit committee will meet at least on a bi-annual basis or more regularly, if the risk profile of Fasset so indicates.
- 5.6 The chief executive officer will attend audit committee meetings on the invitation of the chairperson of the audit committee. Fasset will provide secretarial services to support the audit committee in fulfilling its responsibilities.

## **6. EXECUTIVE COMMITTEE (EXCO)**

### **6.1 Composition**

The management board will appoint an EXCO from amongst its members.

EXCO will consist of 7 representatives, being the chairperson and vice chairperson of the management board, the chairpersons of the finance and communications committees, one employer representative, one employee representative and the chief executive officer.

The chairperson of the management board or, in his absence a designee of his, will chair this committee.

### **6.2 Term of office**

Representatives appointed to the EXCO will hold office for a period of 2 years, in alignment with the terms of office of the management board.

### 6.3 Meetings of the Executive Committee (EXCO)

EXCO shall meet at least 4 times a year, at such times as it may determine.

The chairperson of the management board may schedule such additional meetings as may be necessary.

EXCO will report, through the chairperson of the management board and/or the chief executive officer, to the management board on a quarterly basis.

EXCO will at no time have decision-making authority save for that authority delegated to it by the management board, which authority may be withdrawn at any time.

### 6.4 Meeting procedures (EXCO)

EXCO shall regulate its meetings as it deems fit. The procedures for the meetings of EXCO, including quorum, minutes and chairing, are detailed in Section 8 of Fasset's Rules of Procedure. Alternates will not be permitted at meetings of EXCO.

### 6.5 Voting procedures

The voting procedures for EXCO are detailed in Section 8 of Fasset's Rules of Procedure.

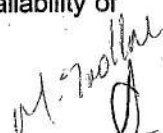
## 7. WORKING COMMITTEE

### 7.1 Composition

The management board will appoint the chairperson of the working committee from representatives on the management board.

While working committee representatives may be appointed from employer and employee organisations the need for specialist input may dictate the inclusion of Fasset employees as well as outside consultants to support the working committee's efforts.

While every effort will be made to ensure equal representation of employer and employee representatives as members of working committees, the expertise requirements of a particular committee, as well as the availability of



representatives to give sufficient effort to the work of such committees, will be the final determinants of the working committee's composition.

## **7.2 Role and functions of the working committees**

The role and functions of the working committees, are defined in the committee terms of reference, as approved by the management board from time to time. The key role of each working committee is summarised below.

### **Communication working committee**

The communication working committee will be responsible for developing and implementing communication policy, strategy and procedures across all 9 provinces.

### **Learnerships and Quality Assurance working committee**

The learnerships and quality assurance working committee will be responsible for the development of all strategies, policies, processes and procedures relating to learnerships, for final approval by the management board, and the monitoring of same, as well as all strategies, policies, processes and procedures relating to the effective management of the quality assurance obligations of Fasset in its role as an Education and Training Quality Assurance Body as provided in the SAQA Act, and the Regulations for Education and Training Quality Assurers, No. 1127 of 1998.

### **Finance working committee**

The finance working committee will be responsible for the development of all strategies, policies, processes and procedures relating to the effective financial management of Fasset, for final approval by the management board, and the monitoring thereof.

### **Skills planning working committee**

The skills planning working committee shall be responsible for the preparation and recommendation to the management board of the sector skills plan for Fasset, and for its implementation and monitoring. This



working committee will also be responsible for guiding employers in the preparation of workplace skills plans and the monitoring of such plans.

#### **Remunerations working committee**

The remunerations working committee shall be responsible for advising the management board on matters relating to remuneration, so that the management board may develop consistent, fair and impartial strategies, policies, procedures and processes for the compensation of its staff in order to attract, motivate and retain talented people.

#### **Other working committees**

The management board may create or convene any other working committee that it may deem necessary in support of the performance of its duties and responsibilities in terms of this constitution.

#### **7.3 Term of office**

The working committee representatives shall be appointed and will function for a period of 2 years, in alignment with the term of office of the management board.

Where outside consultants are appointed to a working committee, independent fixed term contracts must be entered into, clearly specifying the outputs required in terms of the contract and the fees that will be payable upon delivery of the output.

#### **7.4 Meetings of the working committees**

A working committee shall meet as regularly as shall be required for that committee to fulfil its obligations, as detailed in the business plan and the committee terms of reference.

#### **7.5 Meeting procedures**

The working committees shall regulate their meetings, as they deem fit.

The chairperson shall cause a record to be kept of all meetings, in accordance with accepted company secretarial procedures.

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**7.6 Office bearers**

The management board will appoint representatives from the management board to serve as the chairpersons of the respective working committees.

**7.7 Terms and conditions of representatives on the working committees**

The management board will determine the terms and conditions of representatives.

**8. CHAMBERS**

Fasset may, with the Minister's approval, establish chambers in accordance with section 12 of the Act. All arrangements in respect of convening meetings, conducting meetings, meeting quorums required, voting rights, minute taking and decision-making for chamber executive and chamber working committees shall be consistent with the provisions outlined above and will be formally documented and approved by the management board.

**9. ADDITIONAL CORE CORPORATE GOVERNANCE REQUIREMENTS****9.1 Corporate governance and the PFMA**

As a Schedule 3A public entity, Fasset must comply with all provisions pertaining to sound financial management as detailed in section 14 of the Act and the relevant sections of the PFMA.

It is the duty of the management board to present a balanced and understandable assessment of Fasset's position in communicating with stakeholders. The information must be consistent with the guidelines of openness and substance over form. Communication should address, in a timely manner, material matters of interest and concern to all stakeholders. Reports and communications must be made in the context of society's demands for greater transparency and accountability.

The management board is accountable for ensuring that Fasset has effective internal controls in place aimed at reducing, in a cost-effective manner, risk or loss. These controls include the proper delegation of responsibilities, effective accounting procedures and the adequate segregation of duties.



## 9.2 Human resource management

Fasset is an Investor In People and, as such, the management board will ensure that Fasset, as an employer:

implements practices that lead to the effective sharing of relevant information to enable employees to gain a better understanding of Fasset and in particular, its code of conduct;

conducts effective consultation with employees before Fasset takes decisions that affect these employees;

has in place a process to identify and resolve conflict situations in a timely manner; and

has in place an effective employment equity programme, which will be monitored by the management board on a bi-annual basis.

## 10. CODE OF CONDUCT

10.1 Constituents, representatives of the management board, executive committee, working committees, and employees of Fasset are subject to Fasset's code of conduct, a copy of which will be made available on request, and are expected to comply with both the letter and the spirit of the code.

### 10.2 Policy

Fasset is committed to a policy of fair dealing and integrity in the conduct of its business. This commitment, which is actively endorsed by the management board, is based on a fundamental belief that Fasset's affairs should be conducted honestly, fairly and legally. Fasset expects all constituents, representatives and employees to share in its commitment to high moral, ethical and legal standards and be aware of and adhere to Fasset's Code of Conduct policy.

A constituent, representative or employee must, in the exercise of his responsibilities:

10.2.1.1 comply with all applicable laws and regulations which relate to his activities for and behalf of Fasset;



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- 10.2.1.2 act honestly and in good faith;
- 10.2.1.3 perform duties conscientiously and in the best interests of Fasset;
- 10.2.1.4 ensure that a conflict or an appearance of conflict does not arise between Fasset's interests and their personal interests;
- 10.2.1.5 declare any such conflicts of interests as provided for in 10.3;
- 10.2.1.6 exercise reasonable care and diligence;
- 10.2.1.7 not make any improper use of any information acquired as a constituent, representative or employee; and
- 10.2.1.8 promote the interests and advance the objects of Fasset.

### 10.3 Disclosure of interests

A constituent, representative or employee of Fasset who is directly or indirectly interested in any business of Fasset or the committee of which he is a member, or who holds any office or possesses any property which might cause a conflict of interest or duties or such possible perception, must declare such interest or potential conflict.

A constituent, representative or employee of Fasset or of any committee must disclose any conflict of interest or duties, or such possible perception, to the management board as soon as practicable after he becomes aware of the relevant facts and shall not partake in the discussion or decision in relation thereto.

A constituent, representative or employee must not take part in any transaction between Fasset and any company, firm or enterprise in which he, or any member of his family, has an interest without declaring such interest and having been specifically authorised by the management board to do so.

All disclosures made to a meeting of the management board, must be recorded in the minutes of such meeting as well as the related decision and motivation therefore.



#### 10.4 Confidentiality and non-disclosure

A constituent, representative or employee shall not, while he is a constituent, representative or employee of Fasset, or thereafter:

disclose to any person any information, which he acquired while exercising or performing any functions or duties, which is confidential to Fasset, any of its committees, or any other constituent or to any employer or employee in the sector. Such information may only be disclosed if it must be disclosed in terms of the Act, the Skills Development Levies Act, any other applicable law or an order of court;

copy or reproduce, by any means, such secret or confidential information for use otherwise than by the officials of Fasset unless authorised or instructed to do so by the management board.

#### Hand over of documents

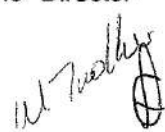
A constituent, representative or employee shall hand over to the chief executive officer, upon the termination of his participation, term of office or employment, all papers, drawings, plans, recording tapes, samples, models and any other information, equipment or accessories in his possession or under his control which may contain secret or confidential information or which relates to or are in any way connected to the business and affairs of Fasset or any of Fasset's constituents.

#### 10.5 Assignment of patent rights to Fasset

A constituent, representative or employee of Fasset will be required, free of any consideration, forthwith to disclose to Fasset all discoveries, processes and inventions and assign to Fasset all his rights in and to such discoveries, processes and inventions made or conceived by him in the course and within the scope of his involvement in any of the affairs of Fasset and whether alone or in conjunction with others, relating to or useful to any business carried out by Fasset.

### 11. TAKING OVER ADMINISTRATION OF AUTHORITY

1. The Minister may, after consultation with the NSA and the Authority concerned, by notice in the Government Gazette direct the Director-





General to appoint an administrator to take over the administration of the Authority or perform the functions of the Authority if the Minister is of the opinion that –

- (a) the Authority fails to perform its functions;
  - (b) there is mismanagement of the Authority's finances;
  - (c) the Authority's membership no longer substantially represents the composition contemplated in clause 4;
  - (d) the Authority has failed to comply with its service level agreement; or
  - (e) the Authority has failed to comply with an instruction by the Minister in terms of section 14B of the Act.
2. The Director-General must publish a notice in the Government Gazette appointing an administrator and in that notice the Director-General –
- (a) must determine the powers and duties of the administrator, which may include the performance by the administrator of the Authority's functions in terms of the PFMA;
  - (b) may suspend or replace one or members of the Authority for a reason contemplated in clause 1;
  - (c) may suspend the operation of the Constitution of the Authority; and
  - (d) may direct the transfer of all or some of the funds in the Authority's bank account to the National Skills Fund.
3. If a notice is published in terms of clause 1 the Minister may, to assure that the Authority resumes the performance of its functions –
- (a) amend its constitution;
  - (b) reinstate any of its members; and
  - (c) withdraw or amend any provision of the notice mentioned in clause 0 on such conditions that the Minister considers appropriate.
4. **The Minister may act in terms of clause 1 without consulting the NSA and the Authority if there is financial mismanagement of the Authority and the delay caused by the consultation would be detrimental to the Authority's capacity to perform its functions.**

*W. Zolnow*  
*[Signature]*

## Schedule 1

## SCOPE OF COVERAGE OF FASSET

- 81904 Investment entities and trusts
- 83110 Administration of financial markets
- 83120 Security dealing activities
- 83121 Stock broking activities
- 83180 Development corporations and organizations
- 83190 Activities auxiliary to financial intermediation n.e.c.
- 88101 Tax services
- 88102 Asset portfolio management
- 88103 Company secretary services
- 88120 Accounting, bookkeeping and auditing activities; tax consultancy
- 88121 Activities of accountants and auditors registered in terms of the Public Accountants' and Auditors' Act
- 88122 Activities of cost and management accountants
- 88123 Bookkeeping activities, including relevant data processing and tabulating activities
- 88140 Business and management consultancy activities
- 91108 South African Revenue Service (SARS)
- 9110E Departments of state expenditure and finance,

Together with such further categories of employers as may be determined from time to time by the Minister.

n.e.c. = Not elsewhere classified

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**Schedule 3**



SETA FOR FINANCE,  
ACCOUNTING,  
MANAGEMENT CONSULTING  
AND OTHER  
FINANCIAL SERVICES

# **RULES OF PROCEDURE**

Signed:   
Fasset Chairperson

Signed:   
Fasset CEO

February 2004

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## 1. Overview

The aim of this document is to detail the specific procedures for the effective management and running of the Fasset committees and governing structures.

## 2. Context

- 2.1 The Fasset constitution, as accepted by the Minister, is the principle and guiding document for all issues relating to the management and governance of Fasset. This document, which will be deemed to form part of the constitution, is designed as a support in order to detail those elements of procedure not contained in the constitution and as are required by Section 13 of the Skills Development Act, No 97 of 1998, as amended ("the Act").
- 2.2 The objectives of these Rules of Procedure are to create consistent and effective procedures to ensure the most efficient and effective governance and management of Fasset.
- 2.3 Terms defined in the constitution will have the same meaning in these Rules of Procedure.

## 3. Amendments to the Constitution

- 3.1 Where a constituent or the Department of Labour wishes to submit a proposal to amend the constitution, such submission must be made in writing to the management board.
- 3.2 Upon receipt of the submission, the management board will, within a period of 30 calendar days, communicate the submission in writing to all constituents of Fasset and at the same time convene an extraordinary general meeting of constituents, in the same manner, as is provided in section 7 of the Rules of Procedure and clause 4.8 of the constitution, for the purpose of considering and, if deemed appropriate, of adopting the proposed amendment.
- 3.3 Notwithstanding the provisions of 3.1 and 3.2 above, the constitution may be amended only:

in accordance with the regulations published in Government Gazette No. 24035 of 8 November 2002 stating that Fasset must submit to the Minister, in

duplicate, the text of the proposed amendments to the constitution, a certified copy of its resolution approving the proposed amendments and a brief memorandum explaining the rationale for such amendments; and

by a majority vote of the constituents present at a general meeting.

3.4 The Minister may, after considering the submission and after consultation with Fasset, wholly or in part effect the amendments proposed by Fasset by notice in the Government Gazette.

3.5 Notwithstanding anything contained in this section 3 of the Rules of Procedure, the Minister may amend the constitution in accordance with the Act and the regulations published in Government Gazette No. 24035 of 8 November 2002, governing the amendment to SETA constitutions.

3.6 If the Minister wishes to amend the constitution, he or she must submit to Fasset the text of the proposed amendments, together with a memorandum explaining the rationale for such amendments. The management board is entitled, within 30 working days, to make written representations concerning the proposed amendments. After considering such representations, the Minister may, wholly or in part, effect his proposed amendments by notice in the Government Gazette. The Minister must thereafter submit to Fasset a certified copy of any amendments to its constitution and direct the Director-General of Labour to retain a certified copy of such amendments.

3.7 Fasset must retain an updated version of its constitution, which indicates the date on which any amendments to the constitution took effect.

3.8 Whenever Fasset's constitution is amended, Fasset must supply the Director-General of Labour with a copy of its updated constitution, which must reflect the latest amendment.

#### **4. Management Board Election and Nomination Processes**

##### **4.1 employee constituency**

Having regard to the limited number of trade unions presently operating in the sector, and the need to ensure adequate employee representation, an arrangement will be

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implemented whereby the seats allocated to employee representatives will be assigned as follows:

- 4.1.1.1 4 seats will be allocated to representative trade unions; and
- 4.1.1.2 4 seats will be allocated to representatives nominated from employee organisations, including the professional bodies, who represent the interests of their constituents.

The employee constituency, which includes employee organisations, trade unions, and professional bodies, will submit the names of the employee representatives nominated by them to represent their interests on the management board.

By not later than *31 March* in each year the chief executive officer of Fasset will inform the trade unions and professional bodies of the call for nominations by means of a notice to all members of the employee constituency of Fasset and the placing of an advertisement in the national press.

By not later than *30 April* in each year the employee organisations, trade unions and professional bodies must forward a list of the candidates they have nominated to represent their interests to the chief executive officer.

The representatives so appointed will take up office from *1 June* of each year and, subject to the constitution, will hold office for a period of 2 years. Retiring representatives will be eligible for re-nomination.

#### 4.2 employer constituency

Representatives of the employer constituency, which includes employers registered with and paying levies to Fasset and the relevant state departments and public entities, will elect employer representatives subsequent to a proper process of nomination.

The election process to be followed is:

- 4.2.1.1 The Chief executive officer will inform the constituents of the call for nominations;
- 4.2.1.2 By not later than *31 March* of each year nominations will be returned to Fasset in the form that has been designed for this purpose;

4.2.1.3 Voting will be restricted to those disciplines in which more than one candidate has been nominated. By not later than *30 April* of each year, ballot papers will be sent to all constituents in the form that has been designed for this purpose;

4.2.1.4 Ballot papers will be returned and accepted from all levy-paying constituents of Fasset. This will be done by not later than *31 May* of each year.

The duly nominated representatives will take up office from *1 June* of each year and, subject to the constitution, will hold office for a period of 2 years.

In respect of the 8 employer seats on the management board:

4.2.1.5 The disciplines detailed below will each be entitled to occupy a single seat:

- (a) Large accounting and auditing practices;
- (b) Small accounting and auditing practices;
- (c) Business and management consulting;
- (d) State departments and public entities representing the Provincial Treasuries, the National Treasury, the Auditor-General and the South African Revenue Services;
- (e) Investment entities and trusts;
- (f) Stock brokers, the JSE Securities Exchange South Africa, securities exchanges including the Bond Exchange of South Africa and the South African Futures Exchange; and
- (g) Taxation services.

4.3 Where nominations are not received from one of the disciplines, the seat will automatically be allocated as an employer seat and any constituent may nominate a candidate to stand for election to this seat.

4.4 The management board reserves the right to amend the list of disciplines that will comprise the 8 employer seats on the management board.



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## 5. Meetings of the Management Board

- 5.1 The quorum necessary for the transaction of business at the management board shall be 50% of the representatives, present at the commencement and throughout the meeting.
- 5.2 The management board may act, despite representative vacancies, so long as there are sufficient representatives to form a quorum.
- 5.3 Acts or decisions of the management board will not be invalid only because of a defect or irregularity in the appointment of a representative, or the election of the chairperson or other office bearers.
- 5.4 If within half an hour after the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to a day not earlier than 7 calendar days and not later than 30 calendar days after the date of the meeting, at the same place and time. If no quorum is then present within half an hour after the time appointed for the adjourned meeting, the representatives then present shall constitute a quorum and may transact the business for which the meeting was called. The chairperson shall give notice in writing to all members of the management board of the time, date and venue of the adjourned meeting.
- 5.5 The chairperson or the deputy chairperson, acting in the place of the chairperson, shall preside at meetings of the management board.
- 5.6 The chairperson shall cause minutes to be kept of all meetings, in accordance with accepted company secretarial procedures.

## 6. Voting Procedures of the Management Board

- 6.1 At all meetings of the management board:

Each representative on the management board, excluding the chief executive officer, shall have one vote;

Proxy votes will not be allowed;

All questions and issues of business shall be determined by a *two-thirds* majority vote.

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- 6.2 An entry in a book containing the minutes of the management board, signed by the chairperson, shall be conclusive evidence of the fact, without proof of the vote recorded in favour of or against any such resolution, that a resolution by the chairperson at the meeting has been approved.

## 7. Annual General Meetings


- 7.1 The management board shall convene an annual general meeting of constituents each financial year, within *6 months* after the end of the financial year.
- 7.2 The time, date and place of such meeting shall be determined by the management board, in consultation with the chief executive officer.
- 7.3 Constituents must be given at least 30 calendar days' written notification of the annual general meeting.
- 7.4 The management board will be responsible for ensuring that the agenda and any other documentation pertinent to the annual general meeting are made available to the constituents.
- 7.5 The quorum for an annual general meeting will be 20 constituents registered with Fasset. If, within half an hour after the time appointed for the meeting, a quorum is not present, the annual general meeting shall stand adjourned to a day not earlier than 7 calendar days and not later than 30 calendar days after the date of the annual general meeting at the same place and time. If no quorum is then present within half an hour after the time appointed for the adjourned annual general meeting, the constituents then present shall constitute a quorum and may transact the business for which the annual general meeting was called. The chairperson shall give written notice to all constituents of the time, date and venue of the adjourned meeting.

## 8. Meetings of the Executive Committee (EXCO)

- 8.1 The quorum necessary for the transaction of business shall be at least 4 representatives present at the commencement and throughout the meeting.
- 8.2 EXCO may act despite representative vacancies, so long as there are sufficient representatives to form a quorum.

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- 8.3 If, within half an hour after the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned to a day not earlier than 7 calendar days and not later than 30 calendar days after the date of the meeting at the same place and time. If no quorum is then present within half an hour after the time appointed for the second meeting, the representatives then present shall constitute a quorum and may transact the business for which the meeting was called. The chairperson shall give notice to all members of the management board of the time, date and venue of the adjourned meeting.
- 8.4 In the event of the absence of the chairperson of the Board, one of the representatives of the committee, as designated by the chairperson, will be required to preside over the meeting.
- 8.5 The chairperson shall cause minutes to be kept of all meetings, in accordance with accepted company secretarial procedures.
- 8.6 At all meetings of EXCO:
- each representative of EXCO, including the chief executive officer, shall have one vote;
- proxy votes will not be allowed;
- all questions and issues of business shall be determined by a *two-thirds* majority vote; and
- an entry in a book containing the minutes of EXCO meetings, signed by the chairperson of the committee, shall be conclusive evidence of the fact, without proof of the vote recorded in favour of or against any such resolution, that a resolution at the meeting has, on a show of hands, been approved.

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**Schedule 2****FASSET CONSTITUENCY**

1. Employers registered with and paying levies to Fasset whose main business activities fall within the standard industrial classification categories as outlined in clause 1.1 of the constitution.
2. Trade unions, whose constituents carry on their business in the sector, including but not limited to the National Education, Health and Allied Workers Union (NEHAWU) and the Public Servants Association of South Africa (PSA).
3. Government departments whose main activities fall within the standard industrial classification categories as outlined in clause 1.1 of the constitution, including but not limited to, the National and Provincial Treasuries and the Departments of State Finance.
4. Employee organisations including the professional bodies (subject to the approval of the Minister) and organised employee bodies whose constituents are employed in the sector.

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**No. R. 892****8 September 2005****SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)****APPROVAL OF CONSTITUTION FOR: HEALTH AND WELFARE SECTOR  
EDUCATION AND TRAINING AUTHORITY (HWSETA)**

The Minister of Labour has on 1 April 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the HEALTH AND WELFARE SECTOR EDUCATION AND TRAINING AUTHORITY as set out in the Schedule.

**SCHEDULE**



Health and Welfare Sector  
Education and Training Authority

**HWSETA**

## **CONSTITUTION**

# **HEALTH AND WELFARE SECTOR EDUCATION AND TRAINING AUTHORITY**

**MAY 2005**

CONSTITUTION OF THE HEALTH AND WELFARE SECTOR EDUCATION AND TRAINING  
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**1. INTRODUCTION**

The Health and Welfare Sector Education and Training Authority strives for the development of a skilled workforce to meet the health and welfare needs of South Africans. This SETA is inspired by the vision of a skilled workforce, appropriately educated, trained and empowered to render quality services which are comparable with world class standards.

**2. DEFINITIONS**

In this Constitution, unless the context indicates otherwise, any word or phrase that is defined in the Skills Development Act, 1998 (Act No. 97 of 1998) has the same meaning as in that Act, and –

- (a) **“Accounting Standards Board”** means the board established in terms of section 87 of the PFMA;
- (b) **“Act”** means the Skills Development Act, 1998 (Act No. 97 of 1998);
- (c) **“Authority”** means the Health and Welfare Sector Education and Training Authority;
- (d) **“Chief Executive Officer”** means the Chief Executive Officer of the Authority appointed in terms of clause 14;
- (e) **“Constitution”** means this Constitution and any Annexures to it.
- (f) **“Department”** means the Department of Labour;
- (g) **“Designated Groups”** means black people, women and people with disabilities;
- (h) **“Director-General”** means the Director-General of Labour;
- (i) **“Exempt Employers”** means those employers within the Sector who are exempt from paying levies in terms of section 4 of the SDLA;
- (j) **“Learnership Agreement”** means an agreement as contemplated in section 17 of the Act;
- (k) **“Minister”** means the Minister of Labour;
- (l) **“NSA”** means the National Skills Authority established in terms of section 4 of the Act;
- (m) **“Organised Employer”** means the State, any employer’s organisation registered as such in terms of the provisions of the

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Labour Relations Act, 1995 (Act 66 of 1995) and operative in the Sector, and any other association of employers in the Sector representing the interests of its members as employers;

- (n) **“Organised Labour”** means any trade union or federation of trade unions registered as such in terms of the provisions of the Labour Relations Act, 1995, and operative in the Sector and any other association of employees in the Sector representing the interests of its members as employees;
- (o) **“PFMA”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (p) **“prescribed”** means prescribed by a regulation made and in force in terms of the Act;
- (q) **“Professional Councils”** means those councils in the Sector that have been established by Acts of Parliament;
- (r) **“SAQA”** means the South African Qualifications Authority established in terms of section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
- (s) **“SDLA”** means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- (t) **“Sector”** means the health and welfare sector as determined by the Minister in terms of section 9 of the Act and in Government Gazette No 21012 of 20 March 2000 as amended and reproduced in Annexure "A" to this Constitution;
- (u) **“SETA”** means a Sector Education and Training Authority contemplated in Chapter 3 of the Act; and

### 3. CHARACTER

#### (1) Name

The name of this SETA is the Health and Welfare Sector Education and Training Authority, referred to in this Constitution as “the Authority”.

#### (2) Legal status

- (a) The Authority is a juristic person.
- (b) The Authority may authorise any person or persons to act on its behalf and to sign all documents and to take all steps as may be necessary in connection with any legal proceedings brought by or against the Authority.

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(c) The Authority is governed by the Act, the SDLA, and this Constitution.

(d) The Authority is an organisation not for gain.

**(3) Scope of Coverage**

The scope of coverage of the Authority is the Health and Social Development sector determined by the Minister in terms of section 9(2) of the Act. The Minister's determination is reproduced in Annexure "A" to this Constitution.

**(4) Organisations in the sector**

The trade unions, employer organizations and relevant government departments in the sector are set out in Annexure "B" to this Constitution.

**4. OBJECTIVES OF AUTHORITY**

In performing the functions contemplated in the Act and in this Constitution, the Authority must seek to promote the objectives contemplated in clauses 4(1), 4(2), and 4(3).

**(1) General objectives**

The general objectives of the Authority are –

- (a) to identify skills shortages in the Sector;
- (b) to develop the skills of employees in the Sector;
- (c) to improve the quality of life, prospects and labour mobility of employees in the Sector;
- (d) to strengthen the institutional capacity of health and welfare services in order to improve productivity and the quality of services;
- (e) to increase the levels of investment in skills development and to improve returns on such investment;
- (f) to improve productivity in the workplace and the competitiveness of employers;
- (g) to improve the employment prospects of persons previously disadvantaged by unfair discrimination;
- (h) in liaison with employment services and private employment services agencies, to assist work-seekers to gain access to work experience;

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- (i) in liaison with employment services and private employment services agencies, to assist retrenched workers to re-enter the labour market;
- (j) to assist employers to find suitably qualified employees;
- (k) to liaise with employers in skills development programmes;
- (l) to access additional funds from the National Skills Fund in accordance with any prescribed procedure, or any applicable law, for the benefit of the Sector;
- (m) to promote skills for self-employment;
- (n) to promote the quality of education and training in the Sector;
- (o) to approve and accredit providers of education and training in the Sector;
- (p) to promote effective communication and participation between bodies involved in skills development both inside and outside the Sector; and
- (q) to support the development of the National Qualifications Framework.

**(2) Objectives in relation to employers**

The objectives of the Authority in relation to employers are to encourage them –

- (a) to develop their capacity to manage and provide education and training;
- (b) to provide employees with the opportunities to acquire new skills;
- (c) to use their workplaces and facilities to create active learning environments;
- (d) to identify skills needs in the workplace;
- (e) to ensure quality education and training in the workplace;
- (f) to develop workplace skills plans in the context of integrated development planning;
- (g) to provide new entrants to the labour market with opportunities to learn through exposure to work experience in learnership programmes;

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- (h) to provide appropriate education and training interventions in relation to job creation and local economic development initiatives;
- (i) to provide employment opportunities for persons who might otherwise find it difficult to obtain employment;
- (j) to support education and training interventions linked to the objectives and mechanisms of the Employment Equity Act, 1998 (Act No. 55 of 1998); and
- (k) to develop appropriate partnerships between themselves and other public, private and non-governmental organisations.

**(3) Objectives in relation to employees**

The objectives of the Authority in relation to employees are to encourage them –

- (a) to participate in learnerships and other education and training programmes;
- (b) to participate in the governance and evaluation of the programmes they undertake; and
- (c) to develop an ethos of responsibility in respect of their work.

**5. POWERS AND FUNCTIONS OF AUTHORITY****(1) Authority must perform certain functions**

The Authority must, in accordance with any prescribed requirements, -

- (a) develop a sector skills plan within the framework of the national skills development strategy;
- (b) implement its sector skills plan by establishing learnerships, approving workplace skills plans, allocating grants, and monitoring education and training in the Sector;
- (c) promote learnerships by identifying workplaces for practical work experience, supporting the development of learning materials, improving the facilitation of learning, and assisting in the conclusion of Learnership Agreements;
- (d) register Learnership Agreements;
- (e) apply to SAQA for accreditation as a body contemplated in section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act, 1995 and, within 18 months from the date of that application, be so accredited;

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- (f) perform such functions as may be assigned to it by SAQA;
- (g) subject to sections 7, 9 and 10 of the SDLA, disburse the skills development levies in its sector;
- (h) liaise with the NSA on the national skills development policy, the national skills development strategy, and the sector skills plan;
- (i) submit to the Director-General any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the PFMA, and plans and reports on the implementation of its sector skills plan and service level agreement;
- (j) liaise with the employment services of the Department and relevant education bodies established under any law regulating education in the Republic to improve information about employment opportunities, and between education and training providers and the labour market;
- (k) appoint staff necessary for the performance of its functions; and
- (l) perform any other functions and duties imposed by the Act, the SDLA, or this Constitution or consistent with the purposes of the Act or this Constitution.

**(2) Authority may exercise certain powers**

The Authority may-

- (a) exercise all such powers as are necessary to enable it to perform its functions referred to in clause 5(1);
- (b) accredit any relevant professional bodies or other bodies to perform quality assurance functions in accordance with the accreditation requirements stipulated by SAQA;
- (c) make decisions on any matter related to the performance of its functions on which this Constitution is silent; and
- (d) exercise any other powers conferred on it by the Act, the SDLA, or this Constitution.

**(3) Delegation of powers and functions**

- (a) The Authority, subject to any conditions that it may impose, may delegate any of its functions-
  - (i) to the Executive Committee; or
  - (ii) to any other committee or structure of the Authority.



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- (b) Every delegation by the Authority must be in writing, setting out the terms and conditions of such delegation, and must be recorded in a book of record.
- (c) The Authority is not divested of any power, duty or function by virtue of the delegation and may vary or set aside any decision made under any delegation.

**6. SERVICE LEVEL AGREEMENT**

- (1) For every financial year the Authority shall concluded with the Director-General a service level agreement concerning –
  - (a) the Authority's performance of its functions in terms of the Act and the national skills development strategy;
  - (b) the Authority's annual business plan;
  - (c) any assistance the Director-General is to provide to the Authority in order to enable it to perform its functions; and
  - (d) any other prescribed matters.
- (2) The service level agreement must be concluded in the prescribed manner and within the prescribed period.
- (3) If the Authority and the Director-General are unable to agree on the contents of the service level agreement within the prescribed period, the Minister must determine the contents of the service level agreement after consulting the NSA.
- (4) The determination by the Minister in respect of the service level agreement is final and binding.

**7. LEARNERSHIPS****(1) Establishment of learnerships**

The Authority may establish a learnership if-

- (a) the learnership consists of a structured learning component;
- (b) the learnership includes practical work experience of a specified nature and duration;
- (c) the learnership would lead to a qualification registered by SAQA and related to an occupation; and



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- (d) the intended learnership is registered with the Director-General in the prescribed manner.

**(2) Learnership Agreements**

- (a) A Learnership Agreement must be in the prescribed format and registered with the Authority in the prescribed manner.
- (b) A Learnership Agreement may not be terminated before the expiry of the period of duration specified in the Learnership Agreement unless-
  - (i) the learner meets the requirements for the successful completion of the learnership;
  - (ii) the Authority approves of the termination; or
  - (iii) the learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee, or the employer's operational requirements.
- (c) The employer or training provider that is a party to a Learnership Agreement may be substituted with-
  - (i) the consent of the learner; and
  - (ii) the approval of the Authority.
- (d) The Authority must, in the prescribed manner, provide the Director-General with a record of Learnership Agreements registered by the Authority.

**8. SKILLS PROGRAMMES**

**(1) Grants for skills programmes**

- (a) The Authority may fund a skills programme if-
  - (i) it is occupationally based;
  - (ii) when completed it will constitute a credit towards a qualification registered in terms of the National Qualifications Framework;
  - (iii) it uses an accredited training provider;
  - (iv) it complies with any prescribed requirements;
  - (v) it is in accordance with the skills development plans of the Authority and the national skills development strategy; and

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- (vi) there are funds available.
- (b) The Authority may set any additional terms and conditions for funding it considers necessary.
- (2) **Monitoring of skills programmes**
  - (a) The Authority must monitor any skills programme it funds.
  - (b) The Authority may withhold funds or recover any funds paid if it is of the opinion that -
    - (i) the funds are not being used for the purpose for which they were made available;
    - (ii) any term or condition of funding is not complied with; or
    - (iii) the standard of the training is unsatisfactory.

**9. MEMBERS OF AUTHORITY****(1) Composition of Authority**

- (a) Subject to clauses 9(1)(b)(iii) and 9(1)(b)(iv) there are twenty-six members of the Authority.
- (b) The Authority is composed of -
  - (i) twelve members representing Organised Labour within the scope of the Authority;
  - (ii) twelve members representing Organised Employers within the scope of the Authority and contemplated as follows:
    - (a) six members representing employer organisations in the private sector;
    - (b) three members representing the Department of Health, as an employer in the public sector; and
    - (c) three members representing the Department of Social Development, as an employer in the public sector; and
  - (iii) one member representing the Professional Councils if the Minister, having consulted the members of the Authority representing Organised Labour, Organised Employers, and relevant governmental departments, considers it appropriate; and

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- (iv) one member representing Exempt Employers if the Minister, having consulted the members of the Authority representing Organised Labour, Organised Employers, and relevant governmental departments, considers it appropriate.
  - (c) Members representing government departments must be drawn from senior management.
  - (d) Each constituency contemplated in clause 9(1)(b) must be represented by members who are sufficiently representative of Designated Groups.
- (2) **Terms of office of members of Authority**
- Subject to clause 9(9)(a), a member of the Authority holds office for a period of five years and on expiry of his or her term of office is eligible for re-appointment.
- (3) **Nomination and appointment of members of Authority**
- (a) At least three months before the expiry of the term of office of members of the Authority, the Chief Executive Officer must invite nominations from Organised Labour, Organised Employers, relevant government departments, and the Professional Councils and Exempt Employers within the Sector for members for the forthcoming term of office.
  - (b) The relevant government departments must jointly nominate their members.
  - (c) The Chief Executive Officer must set a date for the first meeting of the new term.
  - (d) At the final meeting of the term the outgoing members will appoint the new members of the Authority. Such appointment will take effect on the first day after the expiry of the outgoing member's term of office.
  - (e) The outgoing members of the Authority are eligible for nomination and re-appointment as members of the Authority for further terms of office.
- (4) **Alternates to members of Authority**
- The organisations contemplated in clause 9(1)(b) must appoint alternates to act in the place of each member that represents their organisation, in the event that such member is unable to attend a meeting of the Authority.

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**(5) First meeting of each new term of office of Authority**

- (a) The Chief Executive Officer must notify the members of the date, time and venue of the first meeting of their term of office.
- (b) At that meeting, members must -
  - (i) elect a chairperson and vice-chairperson as contemplated in clause 11(1);
  - (ii) set the dates for the forthcoming meetings of that year; and
  - (iii) take such other decisions as are necessary to ensure the prompt and effective functioning of the Authority.
- (c) The Chief Executive Officer will preside over the first meeting of the new term of office until the chairperson has been appointed.

**(6) Meetings of Authority**

- (a) The Authority must meet at least twice each year.
- (b) The business of the Authority at these meetings shall include:
  - (i) the consideration of the annual financial statements of the Authority, the annual report of the Authority's affairs and the report of the Auditor-General;
  - (ii) the appointment of an auditor;
  - (iii) the discussion of any matter referred to in or arising out of the financial statements or the reports;
  - (iv) the appointment of the members of the Authority;
  - (v) the discussion of any matter of which notice shall have been given to the Chairperson at least 10 days before the date of the meeting;
  - (vi) the transaction of such other business as is required to be transacted by the Authority under this Constitution, the Act, or the SDLA;
  - (vii) the approval of the Authority's annual budget and business plan for submission to the Minister; and
  - (viii) the delegation of the functions, rights, duties and powers to members, employees, or committees.

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**(7) Meeting procedures**

Meetings of the Authority must comply with the requirements contemplated in clause 13.

**(8) Suspension of members of Authority**

(a) The Authority may on reasonable grounds contemplated in clauses 9(9)(b)(iv) and 9(9)(b)(vii) suspend a member pending an inquiry contemplated in clause 9(9)(d).

(b) Before suspending a member, the Authority must –

- (i) give notice to that member of its intention to suspend him or her;
- (ii) give reasons for the intention to suspend; and
- (iii) give the member a reasonable opportunity in the circumstances to make representations to the Authority.

**(9) Vacation of office by members of Authority**

(a) A member of the Authority shall vacate his or her office if that member –

- (i) is removed from office as contemplated in clause 9(9)(b);
- (ii) resigns by written notice addressed to the Authority; or
- (iii) dies.

(b) The Authority may remove a member–

- (i) on the written request of the organisation represented by that member;
- (ii) for absence from three consecutive meetings of the Authority without the prior permission of the Authority, unless the member shows good cause;
- (iii) for permanent incapacity;
- (iv) for serious misconduct;
- (v) for failure to comply with any provision in the Code of Conduct contained in Annexure “B”;
- (vi) for conduct that undermines the Authority or brings the Authority or any of its members into disrepute; or

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- (vii) for any other good reason.
- (c) Before removing a member, the Authority must –
  - (i) give notice to that member of its intention to remove him or her;
  - (ii) give reasons for the intention to remove him or her; and
  - (iii) give the member a reasonable opportunity in the circumstances to make representations to the Authority.
- (d) If the Authority contemplates removing a member in terms of clauses 9(9)(b)(iv) or 9(9)(b)(vii), the Authority must hold an inquiry to determine whether or not the member should be removed from office.
- (e) The Authority must appoint three of its members, who will normally include the Chairperson and the Vice-chairperson, to preside over the inquiry.
- (f) The Chairperson must inform the member in sufficient detail in writing –
  - (i) of the allegations against him or her; and
  - (ii) of the date, time and venue of the inquiry.
- (g) The member must be given adequate time to prepare for the inquiry and may be represented by a fellow member at the inquiry.

**(10) Filling of vacancies on Authority**

- (a) If a member of the Authority vacates office before the expiry of his or her period of office for any reason contemplated in clauses 9(9)(a) or 9(9)(b), the organisation which was represented by that member may nominate a new member for the remaining portion of that period.
- (b) Subject to clause 9(1), the Authority must appoint any person so nominated as a member of the Authority.
- (c) If the organisation contemplated in clause 9(10)(a) has not nominated a new member within a reasonable period of a written request by the Authority to do so, the Authority may appoint a member to represent the interests of Organised Employers, Organised Labour, the Professional Councils, or Exempt Employers, as the case may be.

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**10. EXECUTIVE COMMITTEE****(1) Establishment of Executive Committee**

The Authority must establish an Executive Committee.

**(2) Composition of Executive Committee**

The Executive Committee of the Authority consists of –

- (a) the chairperson and vice-chairperson contemplated in clause 11(1);
- (b) the Chief Executive Officer in an ex-officio capacity;
- (c) four members nominated by the members of the Authority representing Organised Labour; and
- (d) four members nominated by the members of the Authority representing Organised Employers.

**(3) Terms of office of Executive Committee**

A member of the Executive Committee holds office for the period of that member's term of office as a member of the Authority.

**(4) Functions of Executive Committee**

- (a) Subject to the directions of the Authority, the Executive Committee must exercise the powers and perform the functions and duties of the Authority relating to the supervision and control of the everyday management and administration of the Authority.
- (b) Without limiting the powers, functions and duties contemplated in clause 10(4)(a), the Executive Committee must-
  - (i) supervise the proper management of all financial matters;
  - (ii) co-ordinate and supervise the implementation of the policies of the Authority;
  - (iii) monitor national policy issues and developments and make recommendations for the adoption of policy;
  - (iv) co-ordinate the functioning of committees and structures of the Authority and monitor their activities to ensure that they are acting within the terms of any powers delegated to them by the Authority;
  - (v) manage staff employment issues;

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- (vi) consider and approve skills programmes which have been recommended by committees and structures if the skills programmes comply with approved policy guidelines;
  - (vii) determine budgets and business plans;
  - (viii) monitor the relations and interactions of the Authority with the NSA and other SETA's; and
  - (ix) perform any other function or duty, delegated to it by the Authority.
- (c) The Executive Committee may establish committees and structures to assist it in the performance of its functions and in this regard may determine –
- (i) terms of reference;
  - (ii) membership (which may include persons who are not members of the Executive Committee); and
  - (iii) meeting procedures.
- (5) **Meetings of Executive Committee**
- The Executive Committee must meet at least four times each year.
- (6) **Meeting procedures**
- Meetings of the Executive Committee must comply with the procedures contemplated in clause 13.

**11. CHAIRPERSON AND VICE-CHAIRPERSON****(1) Elections of chairperson and vice-chairperson**

- (a) The Authority must at the first meeting of each new term of office elect from among its members-
  - (i) a chairperson; and
  - (ii) a vice-chairperson.
- (b) At the first meeting of each new term of office the Chief Executive Officer must call for nominations for chairperson of the Authority. If there is only one nomination, then the Chief Executive Officer must declare the member concerned elected as chairperson. If there is more than one nomination, the Chief Executive Officer must conduct a closed ballot.



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- (c) The nominee who receives the highest number of votes must be declared elected as chairperson of the Authority.
- (d) If two nominees receive the same number of votes, then the Chief Executive Officer must draw one of the names from a hat or box and that person must be declared elected as the chairperson of the Authority.
- (e) The vice-chairperson must be elected in the same manner as the chairperson, provided that if the chairperson is a member who represents Organised Employers, then the vice-chairperson must be a member who represents Organised Labour and vice versa.

**(2) Terms of office**

The chairperson and vice-chairperson shall hold office for the period of their term of office as members of the Authority.

**(3) Chairperson**

The chairperson of the Authority must-

- (a) preside at meetings of the Authority;
- (b) conduct such meetings in accordance with clause 13; and
- (c) perform any further duties or functions determined by the Executive Committee.

**(4) Vice-chairperson**

The vice-chairperson must-

- (a) assist the chairperson perform his or her duties;
- (b) exercise the powers and duties of the chairperson in his or her absence; and
- (c) perform any further functions determined by the Executive Committee.

**(5) Temporary absence or incapacity of chairperson or vice-chairperson**

- (a) If the chairperson is temporarily absent or incapacitated then the vice-chairperson must perform the functions of the office of chairperson for the period of such absence or incapacity.
- (b) If the vice-chairperson is temporarily absent or incapacitated then the Executive Committee must appoint a member to perform the functions of that office for the period of such absence or incapacity.

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**(6) Vacation of office**

- (a) The chairperson or vice-chairperson shall vacate his or her office if -
  - (i) he or she is removed as a member as contemplated in clause 9(9); or
  - (ii) 75% of the members of the Authority pass a resolution to remove him or her from office, notice of which must be given at least 10 days before the convening of the meeting at which the resolution is passed.
- (b) If the chairperson or vice-chairperson vacates his or her office as contemplated in clause 11(6)(a), the Authority must replace him or her in the manner contemplated in clause 9(10) read with clause 11(1).

**12. ESTABLISHMENT OF COMMITTEES AND STRUCTURES****(1) Establishment and membership of committees and structures**

- (a) The Authority may establish any standing committee, ad hoc committee or structure to assist it in the performance of its functions and must determine-
  - (i) the membership of the committee or structure;
  - (ii) its functions; and
  - (iii) its written terms of reference.
- (b) Unless otherwise determined in terms of clause 12(1)(a), membership of a committee or structure -
  - (i) must consist of an equal number of members representing Organised Labour and representing Organised Employers; and
  - (ii) is not restricted to members of the Authority.

**(2) Meeting procedures**

Meetings of any committee or structure must comply with the procedures contemplated in clause 13.

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**13. MEETING PROCEDURES****(1) Ordinary meetings**

In respect of meetings, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, of the Authority and any other committee or structure of the Authority, the Chairperson must -

- (a) give at least 10 working days written notice of the forthcoming meeting to members; and
- (b) include an agenda with the notice.

**(2) Annual General Meeting**

- (a) An Annual General Meeting will be held once a year.
- (b) The HWSETA will advertise the Annual General Meeting thirty (30) days in advance of the meeting in the media.
- (c) The HWSETA Board will direct the CEO on the details of the Annual General Meeting.

**(3) Special meetings**

- (a) The Chairperson, may, on grounds of urgency, call a special meeting, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, of the Authority or Executive Committee on 48 hours' notice.
- (b) If the Chairperson receives a request signed by at least half of the members of the Authority or the Executive Committee, as the case may be, he or she must as soon as practicable give notice of a special meeting of the Authority or the Executive Committee and that special meeting must be held within 15 working days of receiving the request.
- (c) The Chairperson of any committee or structure of the Authority may, on grounds of urgency, call a special meeting, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, of that committee or structure on 48 hours' notice.

**(4) Chairperson**

- (a) The chairperson must preside at meetings of the Authority or any committee or structure.

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- (b) If the chairperson is absent from the meeting then the vice-chairperson must preside at the meeting.
- (c) If the vice-chairperson is absent then members at the meeting must elect a member from amongst themselves to act as chairperson at that meeting.

**(5) Quorum at meetings**

- (a) A quorum at a meeting, whether in the form of a physical meeting, telephone conference call, video conference, internet meeting or e-mail meeting, consists of at least half of the total members plus one member provided that at least half of the members representing Organised Labour and at least half of the members representing Organised Employers are present.
- (b) If, within one hour of the time fixed for a scheduled meeting, a quorum is not present, then that meeting must stand adjourned to a day, time and place determined by the chairperson and the members present at the adjourned meeting form a quorum.
- (c) The Chairperson must notify members who were absent from the scheduled meeting of the adjourned meeting.

**(6) Voting rights and decisions at meetings**

- (a) Subject to clause 13(6)(b), each member has a single vote on any matter before a meeting for its decision.
- (b) Proxy votes will not be allowed.
- (c) Any policy decision at a meeting requires the support of at least two thirds of members present.
- (d) Any operational decision at a meeting requires the support of at least 50% plus one of the members present.
- (e) Decisions must be made by way of a show of hands or, if at least half the members present so require, by way of closed ballot.
- (f) In the event of an equality of votes, the chairperson has a casting vote.

**(7) Minutes of meetings**

- (a) The Chairperson must appoint a person to –
  - (i) take minutes of the meeting;
  - (ii) forward the minutes to the members within two weeks of the meeting; and

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(iii) table the minutes at the next meeting, for approval by the members.

(b) The chairperson of the meeting must sign the minutes as confirmation of their correctness.

**14. APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF AUTHORITY****(1) Appointment**

The Authority must-

- (a) appoint a Chief Executive Officer and such other employees necessary for the effective performance of the functions of the Authority; and
- (b) determine the terms and conditions of their employment.

**(2) Duties of Chief Executive Officer**

The Chief Executive Officer must-

- (a) implement decisions of the Authority;
- (b) manage the day to day affairs of the Authority;
- (c) attend the meetings of the Authority and the Executive Committee in an ex-officio capacity;
- (d) promote strategic planning and policy development;
- (e) as accounting officer of the Authority ensure strict and responsible control over the finances of the Authority;
- (f) supervise and direct the staff of the Authority; and
- (g) perform such other functions as are determined by the Authority and the Executive Committee from time to time.

**15. FINANCES****(1) Sources of finance**

The Authority is financed from-

- (a) 80% of the levies, interest and penalties collected in respect of the Authority, as allocated in terms of sections 8(3)(b) and 9(b) of the SDLA;

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- (b) grants made to it by relevant government departments as may be agreed from time to time;
- (c) moneys paid to it from the National Skills Fund;
- (d) grants, donations and bequests made to it;
- (e) income earned on surplus moneys deposited or invested;
- (f) income earned on services rendered in the prescribed manner; and
- (g) money received from any other lawful source.

**(2) Investments**

The money received by the Authority must be paid into a banking account at any registered bank and may be invested only in-

- (a) savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution; and
- (b) any other manner approved by the Minister.

**(3) Purpose for which funds may be used**

The moneys received by the Authority may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to-

- (a) fund the performance of its functions; and
- (b) pay for its administration within the prescribed limit.

**(4) Financial records of Authority**

- (a) The Authority must –
  - (i) prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the PFMA; and
  - (ii) furnish the Director-General with copies of all budgets, reports and statements contemplated in clause 15(4)(a)(i) and any other information that the Authority is required to submit in terms of the PFMA;
  - (iii) keep full and proper records of the financial affairs of the Authority;
  - (iv) prepare financial statements for each financial year in accordance with generally accepted accounting practices, unless the Accounting Standards Board approves the

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application of generally recognised accounting practices for the Authority;

- (v) submit the financial statements referred to in clause 15(4)(a)(iv) within two months after the end of the financial year to the Auditor-General for auditing; and
- (vi) submit within five months of the end of a financial year to the Minister and to the Executive Committee, an annual report of its activities during that financial year, the financial statements for that financial year after the statements have been audited, and the report of the Auditor-General on those statements.

(b) The annual report and financial statements referred to in clause 15(4)(a)(i) must-

- (i) fairly present the state of affairs of the Authority, its business, financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned;
- (ii) include particulars of any material losses through criminal conduct, irregular, fruitless and wasteful expenditure, criminal or disciplinary steps taken as a consequence of such losses, any losses recovered or written off, any financial assistance received from the state and commitments made by the state on its behalf, and any other matters that may be prescribed.

**(5) Audit of Authority**

(a) The Auditor-General must -

- (i) audit the accounts, financial statements and financial management of the Authority; and
- (ii) report on that audit to the Authority and to the Minister and in that report express an opinion as to whether the Authority has complied with the provisions of the Act and this Constitution relating to financial matters.

(b) Clause 15(5)(a) does not prevent the appointment of some other auditor to audit the accounts and financial statements of the Authority.



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**(6) Financial responsibility of Executive Committee**

The Executive Committee is responsible for ensuring that the Authority complies with the financial requirements of the Act, this Constitution and any other applicable law.

**(7) Signatories to accounts**

- (a) The Authority must appoint at least three signatories to each account of the Authority.
- (b) At least two of the three signatories must be required to authorise any payment by the Authority.

**16. CODE OF CONDUCT**

The members of the Authority, its committees and structures and its staff must abide by the Code of Conduct contained in Annexure "C".

**17. DISPUTE RESOLUTION**

Any dispute concerning the interpretation or application of this Constitution must be determined in accordance with Annexure "D".

**18. AMENDMENTS TO CONSTITUTION**

- (1) The Minister, after consultation with the Authority, may amend this Constitution in the prescribed manner.
- (2) The Authority may, by resolution of 75% of its members, recommend to the Minister that this Constitution be amended in accordance with the resolution.
- (3) The Chairperson must give notice of any proposed amendments at least 30 days before any meeting of the Authority convened to discuss the amendment.

**19. INDEMNIFICATION**

The Authority indemnifies office bearers, committee members and employees of the Authority against any claims that may be made against them which may arise during the course and scope of their employment or performance of their duties, provided that such claim did not arise due to dishonesty, fraud, breach of trust, wilful default or wilful breach of duty and the Code of Conduct of the Authority.



**20 DISSOLUTION/ WINDING UP**

- 20.1 The Minister may, after consultation with the NSA and the Authority, by notice in the Government Gazette direct the Director-General to close down the Authority.
- 20.2 When the Authority closes down it has to payoff all its debts. Any assets remaining after all liabilities have been met, will be transferred to the National Skills Fund.

**21. TAKING OVER ADMINISTRATION OF AUTHORITY**

- (1) The Minister may, after consultation with the NSA and the Authority concerned, by notice in the Government Gazette direct the Director-General to appoint an administrator to take over the administration of the Authority or perform the functions of the Authority if the Minister is of the opinion that –
- (a) the Authority fails to perform its functions;
  - (b) there is mismanagement of the Authority's finances;
  - (c) the Authority's membership no longer substantially represents the composition contemplated in clause 9;
  - (d) the Authority has failed to comply with its service level agreement; or
  - (e) the Authority has failed to comply with an instruction by the Minister in terms of section 14B of the Act.
- (2) The Director-General must publish a notice in the Government Gazette appointing an administrator and in that notice the Director-General –
- (a) must determine the powers and duties of the administrator, which may include the performance by the administrator of the Authority's functions in terms of the PFMA;
  - (b) may suspend or replace one or members of the Authority for a reason contemplated in clause 21(1);
  - (c) may suspend the operation of the Constitution of the Authority; and
  - (d) may direct the transfer of all or some of the funds in the Authority's bank account to the National Skills Fund.