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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. 848

2 July 1999

HIGHER EDUCATION ACT, 1997 STATUTE OF MANGOSUTHU TECHNIKON

The council of Mangosuthu Technikon has made this Statute set out in the Schedule hereto, in accordance with section 32 of the Higher Education Act, which is, in terms of the provisions of section 33 of the said Act, hereby published with the approval of the Minister of Education and which comes into operation on the date of this publication.

SCHEDULE

To introduce a new Statute for Mangosuthu Technikon to give effect to any law relating to the Technikon, and to promote the effective management of the Technikon in respect of matters not expressly prescribed by any law

PREAMBLE

WHEREAS the VISION of Mangosuthu Technikon is to be a leader amongst institutions of technology whose management, employees, students and alumni are committed to the advancement and application of knowledge through teaching and research,

AND WHEREAS the Technikon, by engaging in community service and development, seeks to create an enriched, more prosperous, and self-sufficient society for the residents of the province of KwaZulu-Natal and of the nation,

AND WHEREAS the mission of the Technikon, as an institution of technology, is to provide superior quality, technologically advanced instructional programmes and service in the fields of engineering, the sciences and management to contribute to reducing inequalities in higher education and to respond to local, regional and national needs,

THEREFORE, the Technikon must from time to time adopt policy and set in place procedures and mechanisms to ensure the realisation of these objectives.

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DEFINITIONS

Definitions

1. (1) In this Statute any word or expression to which a meaning has been assigned by the Higher Education Act, 1997 (Act No. 101 of 1997) has the same meaning so assigned to it, and unless it is inconsistent with the context -
- "academic board"** means a senate as defined in section 28 of the Act;
- "academic employee"** means an employee appointed by the Technikon to teach or do research or who provides academic task support to such teaching and research;
- "Act"** means the Higher Education Act, 1997 (Act No. 101 of 1997);
- "administrative and technical employee"** means an employee who is employed in an administrative or technical division;
- "chancellor"** means the chancellor of the Technikon contemplated in paragraphs 2 and 3;
- "convocation"** means the convocation of the Technikon as contemplated in paragraph 33;
- "council"** means the council of the Technikon and includes its executive committee;
- "donor"** means any body or person that donates or has donated cash or kind to the Technikon, as may at its discretion be determined by the council from time to time, or who has undertaken to so donate or whose name appears on the Technikon's donors' list compiled for purposes of an election contemplated in paragraph 15;
- "employee"** means a person employed full-time or part-time in a permanent or temporary capacity or on contract at the Technikon and who receives, or is entitled to receive, any remuneration, but does not include an independent contractor;
- "employee organisation"** means an organisation which consists of employees as are defined in a recognition agreement, or if none exists, in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), formally associated together and organised in an employee association or trade union for the purpose of regulating relations between themselves and the Technikon;
- "executive management"** means the principal and vice chancellor, the vice principal : academic and the vice-principal: administration and equates with the term "senior management" as contemplated in section 31 of the Act;
- "external member"** means a member of the council who is neither an employee nor a student of the Technikon;
- "faculty board"** means a committee duly constituted by the academic board to deal with matters pertaining to the faculty concerned;
- "foundation"** means the body representing donors;

"grade" means the grading according to the Peromnes system;

"institutional forum" means a forum as contemplated in section 31 of the Act;

"majority" means more than one-half of the members of the council holding office at the time;

"meeting" means a meeting of the council or any other body or group of persons contemplated herein or any committee or subcommittee thereof at which there exists a quorum;

"nominate" and **"nomination"** mean the act of submitting names for election;

"principal and vice-chancellor" means the principal of the Technikon as defined in the Act;

"qualification" means a degree, diploma or certificate awarded by the Technikon;

"quorum" means one-third of the members of the council or other body or group of persons contemplated herein or any committee or subcommittee thereof, present and who are holding office at the time;

"registrar" means an employee of the Technikon appointed by the council in that capacity;

"Rules" means the Rules of the Technikon and includes resolutions of the council;

"students' representative council" means the council of student representatives as elected by the student body in terms of its constitution;

"Technikon" means the Mangosuthu Technikon; and

"vice-principal" means the vice-principal or vice-principals of the Technikon;

(2) If a quorum or required majority of votes is expressed as a mathematical fraction and it happens that the consequent quorum or majority is not an integral number, the next greater integral number shall be the quorum or majority of votes.

(3) Due notice is deemed to have been given if written notice is hand delivered or sent by pre-paid registered post to the last known address of the person concerned no later than the day before the commencement of the required period of notice.

CHANCELLOR

Powers and functions

2. (1) The chancellor is the titular head of the Technikon and confers all qualifications on behalf of the Technikon.

(2) The chancellor performs such other functions as are assigned to him or her by the council as contemplated in terms of the Act.

Manner of election, term of office and vacating of office

3. (1) If the office of chancellor becomes vacant the chairperson of the council must as soon as practicable determine the date upon which a meeting of the council must be held for the purpose of electing a chancellor.

(2) The secretary to the council must, after being so instructed by the council, give written notice to all members of the council of the date, time and place of the meeting contemplated in subparagraph (1) and also invite all members of the council to submit nominations for the office of chancellor.

(3) A person is eligible for the position of chancellor only if he or she is nominated in writing by at least two members of the council and such nomination reaches the secretary to the council at least 15 days before the meeting contemplated in subparagraph (1).

(4) The secretary to the council notifies each member of the council in writing of all nominations received at least ten days before the meeting contemplated in subparagraph (1).

(5) The chancellor is elected at the meeting contemplated in subparagraph (1) by a two-thirds majority of the members present at such meeting and the election must be conducted by secret ballot.

(6) If no candidate receives a two-thirds majority of votes, successive rounds of voting must be held.

(7) In each successive round of voting the candidate receiving the least votes in the previous round is eliminated.

(8) After the council has elected a chancellor, the name of the chancellor must be announced by the chairperson of the council.

(9) The term of office of the chancellor is six years and he or she is eligible for re-election when his or her term of office expires

(10) Notwithstanding subparagraph (9), the chancellor may be removed from office by a resolution of at least two-thirds of all the members of the council on account of incapacity to carry out his or her official duties or for any other reason that the council may deem adequate.

PRINCIPAL AND VICE-CHANCELLOR**Powers and functions**

4. (1) In terms of section 30 of the Act, the principal and vice-chancellor as the chief executive officer of the Technikon is responsible for the management, control, supervision and administration of the Technikon.

(2) The principal and vice-chancellor is directly responsible to the council.

(3) In the absence of the chancellor, the principal and vice-chancellor executes the powers and performs the functions pertaining to the office of chancellor.

(4) The principal and vice-chancellor is by virtue of his or her office a member of all committees and joint committees of the council and the academic board.

(5) The council whenever it deems it necessary, appoints in writing a vice-principal to act as principal and to exercise his or her powers and perform his or her functions for any period during which he or she is absent.

(6) Included in and without derogating from the powers and functions contemplated in subparagraph (1), the principal and vice-chancellor has, if the power has been delegated to him or her by the council, the authority to appoint all staff up to and including grade four.

Manner of appointment

5. (1) The secretary to the council must at least six months before the term of office of the principal and vice-chancellor expires or so soon as practicable after a vacancy in the office of the principal and vice-chancellor occurs for a reason other than the expiry of such term, inform the council of such expiry or vacancy.

(2) The institutional forum must assume the task of placing an advertisement for the post of principal and vice-chancellor in national newspapers.

(3) As soon as practicable after the closing date of the application mentioned in the advertisement, a meeting of the institutional forum must be called with the purpose of compiling a short-list of candidates for the office of principal and vice-chancellor after consultation with the academic board, and to arrange for personal interviews with the short-listed candidates.

(4) The institutional forum must, after having held personal interviews with all candidates, recommend one candidate to the council for appointment to the office of principal and vice-chancellor, provided that the names of all the short-listed applicants are also submitted to the council.

(5) The council at a meeting, must vote by secret ballot on the appointment of the recommended candidate to the office of principal and vice-chancellor and a two-thirds majority of the votes carries the proposal.

(6) If a candidate does not receive a two-thirds majority vote, the council must vote by a secret ballot on all the short-listed candidates.

(7) If no candidate receives a two-thirds majority vote, successive rounds of voting must be held.

(8) In each round of voting the candidate receiving the least votes in the previous round voting is eliminated.

(9) The chairperson of the council appoints the successful candidate in writing.

Term of office and vacating of office

6. (1) The principal and vice-chancellor holds office for a period determined by the council which may not extend beyond the mandatory retirement age of employees of the Technikon, provided that the council may extend the appointment beyond such age by means of annual contracts save that the accumulative period thereof may not exceed two years.

(2) The principal and vice-chancellor may resign at any time during his or her term of office by giving six months' written notice to the council.

(3) The principal and vice-chancellor's term of office may be terminated by the council at any time on any of the grounds contemplated in subparagraph (4) or for any other justifiable reason, provided that such termination is in accordance with the applicable labour relations legislation and is effected by a resolution passed by a majority of at least two-thirds of the members of the council holding office at the time.

(4) The principal and vice-chancellor's office lapses if he or she -

- (a) subject to subparagraph (1) reaches the mandatory retirement age or any extension thereof as may have been agreed to;
- (b) resigns; or
- (c) is diagnosed with a physical or mental illness that compromises his or her ability to carry out his or her functions properly.

Filling of vacancy

7. If the office of the principal and vice-chancellor becomes vacant, the council appoints an acting principal and vice-chancellor until a successor appointed in terms of paragraph 5 assumes office.

VICE-PRINCIPAL**Appointment**

8. (1) A vice-principal is appointed in writing after consultation with the academic board at a meeting of the council by a majority of its members;

(2) A vice-principal supports the principal and vice-chancellor in managing the Technikon and must in particular assume such portfolios as are allocated to him or her by the council.

(3) Subject to subparagraph (1), the procedures contemplated in paragraph 5, apply to the appointment of a vice-principal.

Term of office and vacating of office

9. Save that the vice-principal is obliged to give only three months' notice of an intention to resign,

the provisions of paragraph 6, with the necessary changes, apply to the term of office of and the vacating thereof by a vice-principal.

COUNCIL

Membership of council

10. (1) The members of the council contemplated in sections 27(4) (a), (b), (d), (e), (f) and (g) of the Act are -

- (a) the principal and vice-chancellor;
- (b) the vice-principals;
- (c) two representatives of the academic board;
- (d) one representative of the academic employees;
- (e) two representatives of students; and
- (f) one representative of the administrative and technical employees.

(2) Five members of the council must be appointed by the Minister in terms of section 27(4)(c) of the Act.

(3) The members of the council contemplated in section 27(4)(h) of the Act are -

- (a) one person, who may not be an employee of the Technikon, elected in the manner contemplated in paragraph 14 by the convocation;
- (b) two persons elected in the manner contemplated in paragraph 15 by the foundation;
- (c) one person designated by the Durban Metro Council or its successors;
- (d) one person designated by the Inner West City Council or its successors;
- (e) one person designated by the South Central Council or its successors;
- (f) one person designated by the North Central Council or its successors;
- (g) one person designated by the Community Outreach Committee;
- (h) one person designated by the Chamber of Commerce;
- (i) one person designated by industry;
- (j) one person designated by labour; and
- (k) one representative of the institutional forum.

(4) To ensure that at least 60 per cent of the members of the council are external members, the council must appoint as many external members as may be required to meet this percentage.

(5) The secretary to the council and of its committees must be elected, provided that the council may assign any other employee to assist the secretary or to act in his or her place.

Election of representatives of academic board on council

11. (1) Whenever it becomes necessary for the academic board to elect its representatives to the council as contemplated in paragraph 10(1)(c), such representatives must be elected by secret ballot and by a majority of the members present at an ordinary meeting of the academic board.

(2) No member of the academic board may be elected unless he or she has been nominated in writing by two members and he or she has confirmed by his or her signature that he or she accepts the nomination.

(3) The signed nomination and acceptance contemplated in subparagraph (2) must reach the secretary to the academic board at least five days before the date of the meeting of the academic board.

Election of representatives of employees on council

12. (1) Whenever it becomes necessary for employees of the Technikon to elect persons as members of the council as contemplated in paragraphs 10(1)(d) and 10(1)(f) respectively, the secretary to the council must invite the representative employee organisation or organisations as well as all employees, including those who are not members of the representative employee organisation or organisations, to nominate in writing candidates to be elected as members of the council.

(2) A nomination contemplated in subparagraph (1) must be lodged with the secretary to the council on a date determined by him or her.

(3) Each nomination contemplated in subparagraph (1) must be signed by at least ten employees and countersigned by the nominee to denote his or her acceptance of the nomination.

(4) If only one candidate is nominated in accordance with subparagraph (1), the secretary to the council declares such candidate to be duly elected.

(5) If more than one candidate is nominated in accordance with subparagraph (1), the secretary to the council determines a date for an election and notifies in a manner as determined by him or her the employees of such election and the names of all such candidates.

(6) The election is conducted by way of secret ballot.

(7) Each academic employee is entitled to one vote in respect of nominations made in terms of paragraph 10(1)(d) and each administrative and technical employee is entitled to one vote in respect of nominations made in terms of paragraph 10(1)(f).

(8) A ballot paper sealed in the return envelope must be returned to the secretary to the council.

(9) A ballot paper is invalid if -

(a) it is received after the date determined for the election; or

(b) it is not sealed in the return envelope; or

- (c) it is spoilt because it does not clearly indicate the candidate in whose favour the vote has been cast or because more than one vote has been cast.

(10) The secretary to the council must take steps to ensure that employees cast one vote each.

(11) The secretary to the council is the returning officer and may be assisted by two scrutineers nominated by the principal and vice-chancellor.

(12) The secretary to the council declares the persons obtaining the highest number of votes in each category to have been elected and in the event of an equality of votes, a further election must be held in accordance with subparagraphs (5) to (11).

Election of representatives of students on council

13. (1) Whenever it becomes necessary for students to be elected to the council as contemplated in paragraph 10(1)(e) the secretary to the council notifies the president of the students' representative council accordingly.

(2) The students' representative council by secret ballot elects two of its members to the council at an ordinary meeting of the students' representative council.

(3) The president of the students' representative council submits the names of the members duly elected, to the secretary to the council.

Election of representatives of convocation on council

14. Whenever it becomes necessary for the convocation to elect a member as a member of the council as contemplated in paragraph 10(3)(a), such person is elected by secret ballot by a majority of the members present at an ordinary meeting of convocation or in accordance with the provisions of the constitution of the convocation.

Election of representatives of foundation on council

15. (1) Whenever it becomes necessary for the foundation to elect a person as a member of the council as contemplated in paragraph 10(3)(b), the secretary to the council, by written notice posted at least 90 days before the date determined by him or her for the election of members of the council, invites the foundation to nominate in writing two candidates to be elected as members of the council.

(2) Nominations must be lodged with the secretary to the council at least 60 days before the date contemplated in subparagraph (1).

(3) If only two candidates are nominated in terms of subparagraph (1), the secretary to the council declares the candidates nominated to be duly elected.

(4) If more than two candidates are nominated, the secretary to the council, at least 30 days

before the date contemplated in subparagraph (1), posts to the foundation ballot papers containing the names of all such candidates in alphabetical order and prescribing such Rules of procedure as may be necessary to achieve a fair election.

(5) A ballot paper must be returned to the secretary in a manner prescribed by him or her.

(6) A ballot paper which is received by the secretary to the council after the date contemplated in subparagraph (1) is invalid.

(7) At any such election the secretary to the council is the returning officer and may be assisted by two scrutineers nominated by the principal and vice-chancellor.

(8) The secretary to the council declares the two persons obtaining the highest number of votes to have been duly elected and in the event of an equality of votes the result is determined by lot by the secretary to the council in the presence of the scrutineers contemplated in subparagraph (7).

Election of chairperson, vice-chairperson and secretary to council

16. (1) Whenever it becomes necessary the members of the council elect from among its external members, a chairperson and a vice-chairperson and from among all its members a secretary who each hold office for a period of three years or for such shorter period as he or she remains a member of the council, provided that the council may appoint any employee to assist the secretary in the performance of his or her functions.

(2) The principal and vice-chancellor acts as chairperson and electoral officer for the duration of the election of a chairperson, a vice-chairperson or a secretary.

(3) Nominations for the chairperson, vice-chairperson or secretary to the council must be submitted in writing to the principal and vice-chancellor on a date determined by him or her.

(4) Each nomination must be signed by at least three members of the council and countersigned by the nominee to signify his or her acceptance of the nomination.

(5) If more than one candidate is nominated for any of the offices, voting is by secret ballot.

(6) A candidate may only be elected to the office of chairperson, vice-chairperson or secretary by a majority of the members present at a meeting of the council.

(7) If no candidate receives a majority of votes, successive rounds of voting are held.

(8) In each successive round of voting the candidate receiving the least votes in the previous round is eliminated.

(9) The chairperson, the vice-chairperson and the secretary are eligible for re-election.

(10) If a vacancy occurs in the office of chairperson, vice-chairperson or secretary for any reason, the provisions of subparagraphs (1) to (8) apply with the necessary changes, in regard to the filling of such vacancy.

(11) The person elected in terms of subparagraph (10) holds office for the unexpired term of office of his or her predecessor.

Term of office of members of council

17. (1) The members of the council contemplated in section 27(4)(c), (d), (e), (g) and (h) of the Act hold office for three years.

(2) The members of the council contemplated in section 27(4)(a) and (b) of the Act hold office for the duration of their appointment at the Technikon in those capacities.

(3) The members of the council contemplated in section 27(4)(f) of the Act hold office for such periods as coincide with their terms of office on the students' representative council.

(4) Whenever a member of the council ceases to possess the status or qualification by virtue of which he or she becomes a member of the council, his or her membership of the council terminates.

Termination of membership and filling of vacancies

18. (1) A person ceases to be a member of the council upon the expiry of his or her term of office.

(2) A person also ceases to be a member of the council if he or she -

- (a) resigns by giving written notice to the secretary to the council; or
- (b) is absent from three consecutive meetings of the council without leave of the chairperson or, in the case of the chairperson, without leave of the executive committee of the council, provided that this subparagraph does not apply to those members of the council referred to in paragraph 10(1)(a) and (b); or
- (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine; or
- (d) is declared unable to attend to his or her personal affairs by a court of law; or
- (e) is in fact no longer a member or is no longer entitled to be a member of the organisation or body which appointed or elected or is purported to have appointed or elected him or her to the council.

(3) A person's term of office may, on the written recommendation of the council, be terminated in writing by the body or organisation which elected such person if such member -

- (a) misleads or attempts to mislead the council in its consideration of or decision making on any matter serving before it; or
- (b) influences or attempts to influence the council in its consideration of or

decision making on any matter serving before it so as to gain some direct or indirect benefit whether in monetary terms or otherwise for himself or herself or any other person to whom he or she is related or any other person or body with whom or with which he or she is associated; or

- (c) directly or indirectly encourages, advocates, incites or participates in the taking of any unlawful decision by the council; or
- (d) directly or indirectly encourages, advocates, incites or participates in any debate, consultation, meeting or decision with any other person or body, the aim or effect of which would be the abrogation by the council of any right in its favour or the breach by the council of any agreement or the breach by any other person or body of any agreement with the council or any other breach or loss of any right or the neglect of any obligation to the extent that the Technikon suffers loss or is in any way prejudiced or improperly or unlawfully burdened with any obligation; or
- (e) places or attempts to place any pressure on any employee of the Technikon to insert in or omit from any document prepared by such employee any fact, view or information or to frame a recommendation in such document in a particular manner; or
- (f) instructs or orders any employee of the Technikon not to implement any decision of the council or any decision of any committee of the council or to implement any such decision contrary to the intention and purpose thereof; or
- (g) conducts himself or herself in a manner which in the opinion of at least two-thirds of the council members constitutes a hindrance or obstruction to the performance by the council of its lawful aims and objectives.

(4) Save for those members of the council contemplated in paragraph 10(1)(a) and (b), if a member of the council vacates his or her office before the expiry of his or her period of office, the secretary to the council must give written notice thereof to the organisation or body which elected, appointed or designated that member and such organisation or body must be called upon to elect, appoint or designate a successor who thereupon holds office for the unexpired period of office of his or her predecessor.

(5) A member who is an employee of the Technikon ceases to be a member of the council if his or her employment contract with the Technikon is for any reason terminated by the Technikon.

(6) An external member ceases to be a member of the council if he or she is appointed as an employee of the Technikon.

Meetings of council

19. (1) There must be at least four meetings of the council per year and the notice of the dates and venues of such meetings and the matters to be dealt with at such meetings are determined by the council from time to time.

(2) The meeting procedure, discussion on motions, voting procedures, rulings by the chairperson, recording of votes, minuting of meetings, Rules relating to financial or other interests of members and attendance by non-members are determined by the Rules.

(3) The chairperson of the council may at any time call an extraordinary meeting of the council, but is obliged to call such a meeting if requested in writing to do so by any ten members of the council, provided that at least three such members are external members and the object of the meeting is clearly stated in the request.

(4) An extraordinary meeting of the council may be held only if at least seven days' notice of the meeting has been given to the members.

(5) No matters other than those appearing on the agenda of the extraordinary meeting may be dealt with at such a meeting except with the unanimous consent of the meeting.

(6) An emergency meeting may be called by the chairperson of the council, provided that the members, if possible, are given not less than twenty-four hours' notice of such a meeting.

(7) The notice of a meeting contemplated in subparagraph (6) may be given in a manner deemed expedient in the circumstances.

(8) Members of the council must be notified of the object of an emergency meeting and no business other than that of which members have been notified may be transacted at such a meeting.

Standing committees of council

20. (1) The executive committee of the council -

(a) consists of -

- (i) the chairperson of the council who is the chairperson;
- (ii) the vice-chairperson of the council;
- (iii) the principal and vice-chancellor;
- (iv) the vice-principals;
- (v) the chairpersons of the standing sub-committees of the council established in terms of subparagraphs (2), (3) and (4);
- (vi) the member of the council who represents the institutional forum;
- (vii) such other members of the council as the council may appoint to it;

(b) the vice-principal: administration is the secretary; and

(c) the powers and functions of the executive committee of the council are

determined by the council, provided that when the council is not in session the executive committee of the council is vested with all the powers and functions of the council subject to instructions or resolutions which the council may have made, given or passed.

(2) The finance committee of the council -

(a) consists of -

- (i) one external member of the council who has financial expertise and who is appointed as chairperson;
- (ii) the chairperson of the council;
- (iii) the vice-chairperson of the council;
- (iv) the principal and vice-chancellor;
- (v) the vice-principals;
- (vi) the director: finance in an advisory capacity;
- (vii) the internal auditor in an advisory capacity;
- (viii) one member of the council who is a representative of the students' representative council;
- (ix) the member of the council who represents the institutional forum;
- (x) one member of the council who represents the academic board;
- (xi) one further external member of the council; and

(b) the vice-principal: administration is the secretary.

(3) The building committee -

(a) consists of -

- (i) one external member of the council who has building or related expertise, who is the chairperson;
- (ii) the principal and vice-chancellor;
- (iii) the vice-principals;
- (iv) the director: finance in an advisory capacity;
- (v) the works manager in an advisory capacity;
- (vi) the chairperson of the council;
- (vii) one member of the council who represents the academic board;
- (viii) one member of the council who represents the students' representative council;
- (ix) the member of the council who represents the institutional forum;
- (x) one further external member of the council; and

(b) the vice-principal: administration is the secretary.

(4) The staffing committee -

(a) consists of -

- (i) the principal and vice-chancellor who is the chairperson;
- (ii) the vice-principals;
- (iii) the dean of students in an advisory capacity;
- (iv) a member of the council who represents the academic board;
- (v) a member of the council who represents the students' representative council;
- (vi) the senior director: human resources in an advisory capacity;
- (vii) the member of the council who represents the institutional forum;
- (viii) one external member of the council; and

(b) the vice-principal: administration is the secretary.

(5) The standing committees of the council contemplated in subparagraphs (1) to (4) may invite persons who are not members to attend meetings of the standing committees on condition that such persons may take part in discussions but may not vote.

(6) The members of the council contemplated in subparagraphs (1) to (4) must be nominated by the members present at an ordinary meeting of the council.

(7) The meetings procedure contemplated in paragraph 19(2) applies with the necessary changes, to meetings of the standing committees of council.

(8) A standing committee of the council may be dissolved only by the council.

(9) The powers and functions of the standing committees referred to in subparagraphs (2), (3) and (4) are determined by the Rules.

EXECUTIVE MANAGEMENT

Executive management

21. (1) The executive management consists of those persons as defined.

(2) The executive management is responsible for the management and administration of the day-to-day activities of the Technikon under the control and supervision of the principal and vice-chancellor in whom such responsibilities vest in terms of section 30 of the Act;

(3) The principal and vice-chancellor as the chief executive officer of the Technikon acts as chairperson at meetings of the executive management.

ACADEMIC BOARD

Membership of academic board

22. (1) The members of the academic board contemplated in section 28(2) of the Act are -

- (a) the principal and vice-chancellor;
- (b) the vice-principals;
- (c) the deans of faculties;
- (d) the dean of students;
- (e) the director of the resource centre;
- (f) the director of the academic support unit;
- (g) the director of co-operative education;
- (h) the directors of administrative departments as the academic board may from time to time determine, being currently -
 - (i) marketing and communication;
 - (ii) student counselling; and
 - (iii) community outreach;
- (i) the heads of academic departments;
- (j) two representatives of the council who are external members of the council;
- (k) two representatives of the students' representative council;
- (l) a representative of each representative employee organisation;
- (m) one representative nominated by the institutional forum;
- (n) the senior director: human resources;
- (o) the registrar: academic; and
- (p) such other persons as may be appointed to the academic board by the council on the recommendation of the academic board;

(2) Any person officially appointed in an acting capacity in any of the above positions enjoys the same voting rights as the person on whose behalf he or she acts.

(3) The academic board is accountable to the council for the academic and research functions of the Technikon and must perform such other functions as may be delegated or assigned to it by the council.

Appointment and election of members of academic board

23. (1) The persons contemplated in paragraph 22(1) are appointed in their official capacities as members of the academic board.

(2) Whenever it is necessary for the council to elect its representatives to the academic board as contemplated in paragraph 22(1)(j), such representatives are nominated by a majority of the members present at an ordinary meeting of the council.

(3) The persons contemplated in paragraphs 22(1)(l) and (m) are appointed to the academic board by their respective constituencies and the names of such persons must be submitted to the

secretary to the academic board.

(4) Whenever it is necessary for members of the students' representative council to be elected to the academic board as contemplated in paragraph 22(1)(k).

- (a) the secretary to the academic board notifies the president of the students' representative council accordingly;
- (b) the students' representative council elects by secret ballot two of its members to the academic board at an ordinary meeting of the students' representative council; and
- (c) the president of the students' representative council submits the names of the members so elected to the secretary to the academic board.

Terms of office of academic board members

24. (1) The academic board members contemplated in paragraph 22(j) hold office for a period of three years.

(2) The academic board members contemplated in paragraphs 22(k), (l) and (m) hold office for a period of one year.

(3) When a member of the academic board ceases to possess the status or qualification by virtue of which he or she became a member of the academic board, his or her membership of the academic board terminates.

(4) If for any reason a member of the academic board is temporarily unable to perform his or her functions, the secretary must advise the chairperson thereof.

(5) Resignation of a member of the academic board must be by way of a letter addressed to the secretary to the academic board.

(6) Permanent vacancies on the academic board owing to death, resignation or any other cause, must be filled as prescribed in paragraph 23 for the unexpired term of office of the predecessor of the person so appointed.

Chairperson and secretary to academic board

25. (1) The members of the academic board elect from among its members, excluding the members contemplated in paragraph 22(1) (j), (k), (l), (m) and (p), a chairperson and a secretary whilst keeping in mind the specific academic and administrative nature of such offices.

Standing committees of academic board

26. (1) The executive committee of the academic board consists of -

- (a) the principal and vice-chancellor as chairperson;

- (b) the vice-principals;
- (c) the registrar academic who is the secretary;
- (d) the deans of faculties;
- (e) one member of the academic board who is a representative of the students' representative council;
- (f) representatives of the academic staff consisting of two heads of department per faculty; and
- (g) the member of the academic board who represents the institutional forum.

(2) When the academic board is not in session, the executive committee of the academic board is vested with all the functions of the academic board, subject to instructions or resolutions which the academic board may have made, given or passed.

(3) The detailed terms of reference and delegated powers and duties of the executive committee of the academic board are determined by the Rules.

(4) A faculty board for each of the engineering, natural sciences and management sciences faculties consists of -

- (a) the dean of the faculty;
- (b) the principal and vice-chancellor;
- (c) the vice-principal: academic;
- (d) all academic employees in the faculty concerned;
- (e) such other persons as may be appointed to a faculty board by the academic board on the recommendation of the faculty board concerned;
- (f) two students in the faculty concerned as determined by the faculty board after consultation with the students' representative council;
- (g) the registrar: academic who is the secretary; and
- (h) such representatives of the other faculty boards as may be invited by the faculty board concerned, to attend any of its meetings.

(5) The dean of the faculty is the chairperson of the faculty board concerned, provided that at any meeting at which the dean of the faculty cannot be present, the vice-dean must chair the meeting and in his or her absence the meeting may elect some other member of the faculty board to preside at such meeting.

(6) Faculty boards ordinarily meet at such times as determined by the academic board, provided that any extraordinary meeting of a faculty board may be called by the chairperson upon the request in writing of at least five members of the faculty board with the matter to be discussed at the meeting stated in the request.

(7) No matter other than that of which notice has been given shall be dealt with at an

extraordinary meeting.

(8) The terms of office, terms of reference and delegated powers of faculty boards are determined by the Rules.

(9) Other standing committees of the academic board are -

- (a) the research and publications committee;
- (b) the resource centre committee;
- (c) the bursaries, loans and awards committee;
- (d) the calendar and time-table committee;
- (e) the computer committee;
- (f) the co-operative education committee;
- (g) the students' support and development committee;
- (h) the academic disciplinary committee;
- (i) the students' disciplinary committee;

(10) The composition, terms of office, terms of reference and delegated powers and duties of the standing committees of the academic board and any other standing committees that may be established are determined by the academic board from time to time.

Academic functions of academic board

27. (1) Subject to section 32(2)(d) of the Act, the academic functions of the Technikon including all curricular instruction, examinations and research are subject to the ultimate control thereof by the council, organised and supervised by the academic board.

(2) The requirements for the obtaining of any qualification offered by the Technikon are, subject at all times to the applicable legislation, determined by the council on the recommendation of the academic board.

(3) The academic board furthermore carries out any other function that may be properly assigned to it by the council.

Joint committees of council and academic board

28. There are the following joint committees of the council and the academic board -

(1) the professorial selection committee -

(a) consists of -

- (i) the principal and vice-chancellor who is the chairperson;
- (ii) the vice-principals;
- (iii) the two members of the council who serve on the academic board;
- (iv) three representatives of the academic board nominated by the

- academic board; and
 - (v) such external experts as may be considered appropriate by the professorial selection committee;
 - (b) must consider applications or nominations for awarding professorships in accordance with prescribed criteria;
 - (c) in the event that one of the members of the professorial selection committee is a candidate for a professorship, must consist of the remaining members only;
 - (d) elects members for a period of three years or for the duration of their employment or the period of their tenure with the bodies whom they represent, whichever is the lesser; and
 - (e) acts in terms of the criteria and procedures for conferring a professorship which are determined by the Rules.
- (2) The honorary degrees committee -
- (a) consists of -
 - (i) the principal and vice-chancellor who is the chairperson;
 - (ii) the chairperson of the council;
 - (iii) the vice-principals;
 - (iv) three members of the academic board nominated by the academic board; and
 - (v) three representatives of the council nominated by the council;
 - (b) considers proposals to confer an honorary doctorate on a person in accordance with the prescribed criteria and makes a recommendation in this regard to the academic board and to the council;
 - (c) must in each case consult with the dean of the faculty in which it is proposed that the degree be conferred; and
 - (d) elects members for a period of three years or for the duration of their employment or tenure, whichever is the lesser.
- (3) The Technikon may without examination confer an honorary degree on any person who has rendered distinguished service in the advancement of any branch of learning or technology.
- (4) The criteria and procedures for conferring an honorary degree are determined by the Rules.

Meetings procedure of standing committees of academic board and joint committees of council and academic board

29. The Rules governing the conduct of meetings of the council, unless determined otherwise, apply

with the necessary changes to the meetings of the standing committees of the academic board and the joint committees of the council and the academic board.

Dissolution of standing committees of academic board and joint committees of council and academic board

30. Standing committees of the academic board and joint committees of the council and the academic board may be dissolved only by the council.

INSTITUTIONAL FORUM

Institutional forum

31. (1) The institutional forum as contemplated in section 31 of the Act consists of -
- (a) management as defined herein;
 - (b) two members of the council nominated by the council;
 - (c) two members of the academic board nominated by the academic board;
 - (d) two members of the academic employees nominated by that body of persons;
 - (e) two members of the administrative and technical employees nominated by that body of persons;
 - (f) two members of the students' representative council nominated by the students' representative council;
 - (g) one member of each representative employee organisation nominated by such organisation or organisations; and
 - (h) one member of the convocation nominated by the convocation.
- (2) The term of office of the members of the institutional forum is two years, except for -
- (a) members referred to in subparagraph (1)(a) who serve for as long as they retain their offices; and
 - (b) members referred to in subparagraph (1)(f) whose term of office coincides with their term of office on the students' representative council.
- (3) The procedures of the council in respect of the filling of vacancies, the vacating of office, the suspension of members and the manner in which meetings are conducted apply with the necessary changes to the institutional forum.
- (4) The institutional forum acts as an advisory body to the council.
- (5) The chairperson of the institutional forum is elected by the members of the institutional forum from among its members.
- (6) The institutional forum must act in accordance with the provisions of section 31(1) of the Act.

STUDENTS' REPRESENTATIVE COUNCIL**Students' representative council**

32. (1) The students' representative council contemplated in section 35 of the Act is subject to the authority of the council.

(2) If a conflict arises between the provisions of this Statute and the constitution of the students' representative council, the former takes precedence.

(3) The students' representative council consists of -

- (a) the president;
- (b) the deputy president;
- (c) the general secretary;
- (d) the treasurer;
- (e) the residence liaison officer;
- (f) the projects officer;
- (g) the entertainment officer;
- (h) the media and publicity officer;
- (i) the religious officer;
- (j) the faculties officer;
- (k) the evening programme officer; and
- (l) the student development officer.

(4) The electoral committee -

- (a) is appointed by the students' representative council in office to administer students' representative council elections; and
- (b) appoints a chief electoral commissioner from amongst its members.

(5) The chief electoral commissioner compiles a voters' roll subject to the following conditions -

- (a) all registered Technikon students are eligible to vote;
- (b) notification of the drawing up of the voters' roll is given at least fourteen days prior to the holding of students' representative council elections;
- (c) the voters' roll is open to students for inspection;
- (d) objections and requests for the inclusion or exclusion of names must be submitted in writing with supporting arguments to the chief electoral officer not later than forty-eight hours after the closure of the voters' roll for inspection; and
- (e) any objections in terms of subparagraph (d) must be considered by the chief

electoral commissioner whose decision is final.

(6) Nominations for candidates for the students' representative council elections are called for by the chief electoral commissioner by means of a notice in which he or she states the place where nomination forms may be obtained and the deadline for their submission.

(7) Nominations must be submitted within two weeks of the date of the notice contemplated in subparagraph (6).

(8) A nomination is only valid if it contains -

- (a) the name, student number, faculty and postal address of the nominee;
- (b) the name, student number, faculty and signature of the enfranchised proposer;
- (c) the names, student numbers, faculties and signatures of two enfranchised seconders; and
- (d) a written signed acceptance of the nomination by the nominee.

(9) The chief electoral commissioner must ensure that each nominee is a registered student at the Technikon.

(10) The chief electoral commissioner must consider all nominations and determine whether nominations are accepted or not and his or her decision is final.

(11) After the decision contemplated in subparagraph (10) has been taken, notice must be given to the persons nominated as candidates for the election.

(12) The election of the students' representative council takes place as follows -

- (a) the electoral committee determines the election programme in consultation with the students' representative council in office;
- (b) the electoral committee gives notice of the day, time and venue of the election;
- (c) the election takes place on the appointed day, time and place by means of secret ballot under the supervision of the electoral committee and its workers;
- (d) the chief electoral commissioner is in full control of the election process and is empowered to deal with any irregularities that arise;
- (e) only ballot papers supplied by the electoral committee may be used;
- (f) each voter must vote in person;
- (g) no voter may vote for more than one candidate per portfolio and any such voting renders the ballot spoilt and the vote is thus disqualified;
- (h) the chief electoral commissioner may request that a photograph of every candidate, a summary of the candidate's *curriculum vitae* and a summary of the candidate's policy appear on the notice boards indicated by him or her for that purpose;
- (i) the students' representative council as well as any recognised Technikon

- student society may appoint one monitor each to observe the counting of votes;
- (j) notices with names of elected candidates must be posted on a notice board as soon as possible after the votes have been counted;
 - (k) in the case of a by-election to fill a vacant position on the students' representative council, the above procedures with the necessary changes, are applicable;
 - (l) a by-election contemplated in subparagraph (k) may take place only during the first semester of the academic year, but, should a vacancy occur which but for this provision would have necessitated a by-election during the second semester, the students' representative council must co-opt a student to fill such vacancy; and
 - (m) after the election of the students' representative council, the chief electoral commissioner must convene a meeting of all the elected members at a pre-determined date, time and place and declare the students' representative council as properly constituted and empowered to function in accordance with the provisions of the constitution of the students' representative council.
- (13) The students' representative council in office continues to operate until the handing over function contemplated in subparagraph (12)(m) where the newly elected students' representative council officially assumes its responsibilities.
- (14) The functions of the students' representative council are to -
- (a) preserve and promote the interests of the student community and of the Technikon;
 - (b) carry out all duties and responsibilities as agreed upon in meetings of the students' representative council;
 - (c) respect and uphold the constitution and the code of conduct of the students' representative council;
 - (d) protect and promote the good image of the students' representative council at all times;
 - (e) enhance unity and co-operation amongst students;
 - (f) affiliate to any external non-partisan structure whose operations are in the interests of students of the Technikon and technikon education in general;
 - (g) manage society life on campus and render any assistance as may be necessary; and
 - (h) convene all students' general meetings on campus.
- (15) Subject to subparagraphs (16) and (17), the term of office of the students' representative

council is twelve months.

(16) If a member ceases to be a student of the Technikon, he or she automatically ceases to be a member of the students' representative council.

(17) A member forfeits membership if he or she is absent from three consecutive meetings of the students' representative council without an acceptable reason, provided that he or she has a right to appeal to the students' representative council in the event that an appropriate appeal procedure exists in the students' representative council's constitution

(18) A member has the right to resign from the students' representative council.

(19) If a member ceases to be a member of the students' representative council, he or she simultaneously forfeits any office in connection therewith.

(20) The privileges of members of the students' representative council are determined by the council after consultation with the students' representative council.

CONVOCATION

Convocation

33. (1) The convocation consists of -

- (a) persons to whom the Technikon has awarded a qualification;
- (b) persons nominated to the convocation in terms of its constitution which must together with any amendments thereto be approved by the council;
- (c) members of the academic staff permanently appointed to posts at the Technikon; and
- (d) such other persons and employees of the Technikon as the council may determine.

(2) The establishment and composition of the convocation, the manner of election, term of office, functions, privileges of its members, procedures at meetings, the recording thereof and the manner of election of membership to the council are determined in accordance with its constitution.

CONDITIONS OF SERVICE

Appointment, promotion, transfer, temporary secondment and termination of services

34. (1) An employee is considered for promotion to a post of higher rank by the council on the recommendation of the staffing committee.

(2) An employee may be transferred or temporarily seconded from the post in which he or she is employed to another post in the Technikon only with his or her consent, provided that a transfer or temporary secondment may be made without his or her consent if he or she is found guilty of

misconduct as hereinafter defined.

(3) All employees are appointed in accordance with and subject to the Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), any other applicable legislation, their contracts of employment, the terms of this Statute, the Rules, any conditions of service that have been approved by the council and any recognition agreement that may be in force from time to time.

(4) Subject to the provisions of the Act, the Labour Relations Act, 1995 (Act No. 66 of 1995) any other applicable legislation, individual contracts of employment, this Statute, the Rules, conditions of service, and any recognition agreement, the service of an employee may be terminated by the body or person who appointed him or her or such body or person's successor -

- (a) on the employee having reached his or her retirement age;
- (b) on receipt of a written notice of resignation from the employee;
- (c) on account of continued ill-health;
- (d) owing to the abolition of his or her post or any reduction in or re-organisation of the departments or employees of the Technikon on operational grounds;
- (e) if in the case of an employee appointed on probation, his or her appointment is not confirmed within one month after the expiry of the probation period;
- (f) in the event that the employee absents himself or herself from his or her official duties without approved leave or justifiable reason, for a period exceeding fourteen days;
- (g) on account of his or her being unfit for his or her duties or on account of his or her incapacity to carry them out efficiently; and
- (h) on account of misconduct.

Misconduct

35. (1) An employee is guilty of misconduct if it is proven that he or she -

- (a) has contravened or failed to comply with a provision of the Act, this Statute or the Rules with which it is his or her duty to comply; or
- (b) has or caused or permitted to be done or connived at an act, or has failed to act in a situation where there existed a legal duty upon him or her to do so, the results whereof were prejudicial to the administration, safety, discipline or efficiency of the Technikon or to its employees, students, visitors or property; or
- (c) (i) disobeyed, disregarded or wilfully defaulted in carrying out a lawful and reasonable instruction given to him or her, provided that such instruction must at all times be reasonable and appropriate and where

- possible, in writing; or
- (ii) by word or conduct displayed insubordination; or
 - (d) was negligent or indolent in the discharge of his or her duties; or
 - (e) undertook without the prior written permission of the principal and vice-chancellor and of the council any private agency or private work; or
 - (f) maliciously or without attempting to ascertain the factual situation, publicly commented adversely on the management or administration of the Technikon; or
 - (g) attempted to secure intervention through any person who was not an employee of the Technikon, including any member of council, in relation to his or her position or conditions of employment save where such person was ordinarily employed and authorised so to intervene; or
 - (h) conducted himself or herself in a disgraceful, improper or unbecoming manner; or
 - (i) used intoxicating liquor or drugs while he or she was or should have been on duty or is under the influence of intoxicating liquor or drugs to an extent which is prejudicial to the Technikon or any of its employees, students, visitors or property, or the efficient performance of his or her duties, unless it is proved that this was not due to any improper conduct or action on his or her part; or
 - (j) without the prior written permission of the principal and vice-chancellor disclosed otherwise than in the usual performance of his or her official duties, information gathered or obtained by him or her through his or her employment at the Technikon or used such information for any purpose other than for the usual performance of his or her official duties, whether or not he or she disclosed such information, provided that an employee of the Technikon may publish with or without remuneration articles in any journal on any matter related to his or her duties at the Technikon so long as it is factual and is not prejudicial to the management and administration of the Technikon; or
 - (k) accepted or demanded in respect of the performance of or any omission to perform his or her duties, any commission, fee or other reward to which he or she would not have been entitled by virtue of his or her office or, failed to report to the principal and vice-chancellor, the offer of any such commission, fee or reward; or
 - (l) misappropriated or improperly used any property of the Technikon or failed to take reasonable care of such property under his or her supervision and control;

or

(m) has been convicted of a criminal offence :

- (i) where the sentence imposed was a period of imprisonment without the option of a fine or the sentence imposed was a fine in excess of R10,000; or
- (ii) which involves dishonesty; or
- (iii) where the nature thereof is such that it could be prejudicial to the maintenance of safety, discipline or efficiency at the Technikon or of its employees, students, visitors or property; or

(n) is or was absent from his or her office or from duty for a period exceeding fourteen days without leave or a valid and justifiable reason therefor; or

- (o) (i) made a false or incorrect statement, knowing it to be false or incorrect; or
- (ii) omitted to disclose information to a person who had a duty to receive same the result whereof constituted a material non-disclosure;

with a view to obtaining any privilege or advantage in connection with his or her actual or prospective official position or duties or causing prejudice or damage to the Technikon or its educational or administrative functions; or

(p) contravened any provision of the Rules of the constitution of any medical aid fund, medical aid society, pension fund, group life scheme, car scheme or any other scheme of or pertaining to the Technikon of which he or she is or was or was required or had applied to be a member, or failed to comply with any of the provisions of the said Rules with which it was his or her duty to comply by virtue of his or her membership; or

(q) borrowed from or lent money to an employee of the Technikon or a non-employee who is associated with the Technikon including a member of the council with the result that it did or could have compromised the efficient, impartial and trustworthy conduct of those obligations and duties associated with his or her position at the Technikon; or

(r) carried a firearm or any other dangerous weapon upon the campus without the prior written permission of the principal and vice-chancellor; or

(s) failed to adhere to the lines of communication as prescribed in the Rules.

(2) Procedure in case of misconduct -

(a) if an employee is charged with misconduct as defined in subparagraph (1):

- (i) the principal and vice-chancellor may, with or without salary, suspend

- an employee so charged from service for such period as he or she may deem necessary, whether or not such employee has yet been charged before a criminal court;
- (ii) an employee appointed in writing by the principal and vice-chancellor as prosecutor must charge the accused, under his or her signature, with that misconduct, provided that such prosecutor is higher in rank than the accused;
 - (iii) the prosecutor may in conjunction with the principal and vice-chancellor withdraw at any time a charge of misconduct; and
 - (iv) if no charge of misconduct is prosecuted against an employee referred to in subparagraph (1) within a period of twelve months after the date of his or her suspension, he or she must be allowed to resume duty as soon as it is practically possible;
- (b) the charge of misconduct must be served upon the accused by causing it to be delivered by hand or sent by registered post to him or her, or be left at his or her place of residence or last known place of residence and the charge must be accompanied by a request that the accused must within ten days after the charge has been served upon him or her, submit to the prosecutor a written admission or denial of the charge, provided that nothing hereinbefore contained precludes an accused from furnishing to the prosecutor in elaboration of the admission or denial, a written explanation in connection with the charge;
- (c) if the accused admits all of the elements of the charge, he or she is deemed to have been found guilty of the misconduct with which the accused was charged, on the date upon which the prosecutor receives the admission;
- (d) if the accused either denies the charge or fails to comply fully with the request referred to in subparagraph (b), a disciplinary hearing must follow and the executive committee of the council must appoint a person who need not be an employee of the Technikon as presiding officer to enquire into the charge, to preside over the procedures during such disciplinary hearing and to furnish to the principal and vice-chancellor his or her recommendations as to appropriate disciplinary steps if any, provided that at the request of the presiding officer, no more than two assessors who need also not be employees of the Technikon, may be appointed by the council to form a disciplinary panel to assist the presiding officer in the execution of his or her duties;
- (e) if the accused has been convicted by a court of law for an offence or offences

as contemplated in subparagraph (1)(m) which includes the misconduct for which he or she has been charged in terms hereof, a certified copy of the record of his or her trial and conviction by that court must, after he or she has been identified as the person who according to the record was so convicted, constitute sufficient proof of the commission by him or her of that offence unless the conviction has been set aside by a competent court of law;

- (f) the prosecutor must after consultation with the presiding officer fix the time, date and place of the disciplinary hearing and the prosecutor must give the accused reasonable written notice of the time, date and place so fixed, provided that the presiding officer may postpone the enquiry on good cause shown;
- (g) the accused has the following rights concerning the disciplinary charge preferred against him or her -
 - (i) to be notified in writing of the nature of the offence, such notice to contain sufficient particularity to enable the accused to prepare his or her defence;
 - (ii) to have the charge or charges preferred, explained to him or her;
 - (iii) to raise an objection on factual and reasonable grounds against the presiding officer or the composition of the disciplinary panel;
 - (iv) to prepare;
 - (v) to be present at the enquiry;
 - (vi) to give evidence;
 - (vii) to call witnesses and to cross-examine witnesses;
 - (viii) to inspect any document produced in evidence;
 - (ix) to an interpreter to interpret proceedings in his or her mother tongue;
 - (x) to representation by a co-employee;
 - (xi) to state a case in defence;
 - (xii) to a finding;
 - (xiii) to have any previous disciplinary records considered only after having been found guilty;
 - (xiv) to present mitigating circumstances before disciplinary steps are decided upon;
 - (xv) to be advised of disciplinary steps; and
 - (xvi) to appeal;
- (h) the accused furthermore has the right to be disciplined timeously and to be protected against victimisation as a result of any statement or allegation made

or actions taken during a disciplinary hearing;

- (i) the presiding officer may subpoena to appear before him or her any person who in his or her opinion is able to furnish information or documentation of material importance concerning the charge being enquired into;
- (j) the legal Rules in respect of the privilege that applies in a case of a person who has been subpoenaed to give evidence before a court of law, are applicable to the provisions of subparagraph 2(i);
- (k) the prosecutor may adduce evidence and argument in support of the charge and cross-examine any person who gives evidence in rebuttal of the charge;
- (l) the failure of an accused to be present at an enquiry does not invalidate the proceedings and the enquiry must be heard in the absence of the accused and the record must reflect this;
- (m) the presiding officer must keep a record of the proceedings at the enquiry and of the evidence given thereat;
- (n) the burden of proof required to be discharged by the prosecutor must be established on a balance of the probabilities;
- (o) the presiding officer must after the conclusion of the enquiry find the accused either guilty or not guilty of the misconduct with which he or she has been charged;
- (p) if the accused is found not guilty and he or she had been suspended in terms of subparagraph (2)(a)(i), he or she must be allowed to resume duty immediately or, if this is not possible, as soon as circumstances reasonably permit, provided that if a criminal trial relating to an offence or offences which include the misconduct in respect of which he or she has been charged in terms hereof has not yet been concluded, the provisions of paragraph 38 apply and such resumption of duty may at the discretion of the principal and vice-chancellor be postponed in accordance therewith;
- (q) an accused who had been suspended from service and upon whom disciplinary steps referred to in subparagraph (3)(a)(i) to (iii) have been imposed, must be allowed to resume duty in an appropriate post immediately, or if this is not possible as soon as circumstances reasonably permit, provided that if a criminal trial relating to an offence or offences which include the misconduct in respect of which he or she has been charged in terms hereof has not yet been concluded, the provisions of paragraph 38 apply and such resumption of duty may at the discretion of the principal and vice-chancellor be postponed in

accordance therewith;

(r) if the finding is one of guilty, the accused must be given an opportunity to lead evidence in mitigation of sentence which must be taken into consideration by the presiding officer when he or she makes a recommendation in relation to the disciplinary steps which are to be considered, if any;

(s) if the presiding officer finds an accused guilty of the misconduct for which he or she has been charged, the presiding officer must submit to the principal and vice-chancellor -

(i) the record of the proceedings, including all evidence given and all documents admitted at the enquiry;

(ii) a written exposition of his or her findings and the reasons therefor;

(iii) a written exposition containing any extenuating or aggravating circumstances that he or she may have found; and

(iv) a recommendation in relation to the disciplinary steps if any, which should be imposed.

(3) Disciplinary steps -

(a) if an accused is found guilty of misconduct or if an accused admits that he or she is guilty of all of the elements of the charge, the principal and vice-chancellor may, after taking into account the documents referred to in subparagraph (2)(s) -

(i) caution and reprimand the accused; or

(ii) as an alternative to the imposition of a more severe disciplinary step or steps and with the agreement of the accused -

(a) order that the accused's annual increment be withheld; or

(b) order a forfeiture of any service benefits to which the accused is entitled, excluding membership of a pension fund or medical aid or provident society; or

(c) reduce his or her salary or rank or both his or her salary and rank; or

(d) impose upon the accused a fine not exceeding a sum equal to ten per cent of his or her annual salary; or

(iii) if the accused is found guilty of a contravention of subparagraph 35(1)(l) order the accused to refund to the Technikon an amount representing the reasonable and foreseeable damages suffered by the Technikon as a result of the accused's conduct; or

- (iv) dismiss the accused or call upon the accused to resign;
- (b) the principal and vice-chancellor may -
 - (i) except in the case of subparagraphs (a)(i) or (iv) impose more than one of the penalties indicated in subparagraph (a);
 - (ii) order that the accused submit himself or herself to psychological or psychiatric counselling, medical treatment or treatment for alcohol or drug abuse or dependency;
 - (iii) determine that the accused be transferred or temporarily seconded to some other post in the Technikon; or
 - (iv) suspend the imposition of the penalty subject to such conditions as the principal and vice-chancellor may deem appropriate, including the condition that the accused not be found guilty of the misconduct of a similar misconduct in respect of which he or she has been found guilty, for a period not exceeding twelve months after the date of the enquiry;
- (c) the fact that a person has been convicted or acquitted of the commission of an offence by a court of law, does not preclude the Technikon from taking any steps against such person in terms of these provisions;
- (d)
 - (i) if an accused is dismissed in terms of subparagraph (a)(iv) the dismissal takes effect on a date to be fixed by the principal and vice-chancellor;
 - (ii) if an accused is called upon to resign in terms of subparagraph (a)(iv) and the accused fails so to resign with effect from the date fixed by the principal and vice-chancellor, he or she is deemed to have been dismissed on account of misconduct with effect from the date so fixed; and
- (f) nothing hereinbefore contained precludes the Technikon from instituting in addition to the procedures herein contemplated a civil action against an employee or ex-employee arising from misconduct by that employee.

Appeal

36. (1) An accused may appeal to the council against his or her conviction or the disciplinary steps imposed or both.

(2) An appeal referred to in subparagraph (1) must be in writing setting out the grounds of appeal and must be lodged with the secretary to the council within ten days from the date upon which the accused was notified by the principal and vice-chancellor of the conviction or the disciplinary steps

imposed upon him or her, whichever is the later.

(3) The appeal does not involve a re-hearing of the evidence.

(4) After consideration of the record of the proceedings and of all relevant information, the council may either allow or dismiss the appeal or may set aside, amend or confirm the decision or any part thereof of the presiding officer or the principal and vice-chancellor, as the case may be.

Inefficiency or incompetence

37. (1) If it is contended by an employee's superior that the employee is inefficient or incompetent to carry out the duties attached to his or her post, the employee may in writing be charged with being inefficient or incompetent to perform such duties, provided that the procedure contemplated in this paragraph has first taken place -

- (a) the employee's immediate superior must conduct informal discussions with the employee;
- (b) after hearing the explanations of the employee concerning the perceived incompetency or inefficiency, the immediate superior may recommend appropriate counselling, supervision or corrective and training programmes, and such recommendations must be in writing; and
- (c) if the procedure referred to in subparagraph (b) fails to bring about improvements in the employee's levels of efficiency or competency and the employee's immediate superior contends that the employee's efficiency or competency remains of a standard that is inadequate for the proper performance of his or her duties, an enquiry must be held at which those procedures contained in paragraph 35(2) apply.

(2) If it is found that the employee concerned is inefficient or incompetent to perform the duties attached to his or her post, the principal and vice-chancellor may -

- (a) order that further counselling, supervision or corrective and training programmes be undertaken; or
- (b) order that the employee be transferred to another post; or
- (c) order that the employee's rank be reduced and, if the employee's emoluments are more than the maximum for the reduced rank, that such emoluments be reduced to that maximum; or
- (d) withhold a salary increment; or
- (e) dismiss the employee.

Suspension in cases of criminal offences

38. Notwithstanding anything to the contrary herein contained, any employee who is charged with the commission of a criminal offence may at the discretion of the principal and vice-chancellor be suspended, either with or without salary, pending the final conclusion of his or her trial.

STUDENTS**Disciplinary measures applicable to students**

39. Subject to section 32(2)(d) of the Act, disciplinary measures and procedures applicable to students are determined by the Rules.

QUALIFICATIONS**Qualifications**

40. (1) No students may be admitted to an examination in a course in which the Technikon provides tuition, unless that student was enrolled by the Technikon in that course in the year or semester in question and has paid the prescribed fees or with the approval of the academic board was enrolled at another institution recognised by the council for this purpose.

(2) Subject to the provisions of the Act and this Statute, no Technikon qualification may be conferred upon any person who has not attained in an examination or other test, the standard of proficiency prescribed by the council upon the recommendations of the academic board.

(3) For purposes of conferring Technikon qualifications, a meeting of the members of the Technikon, to be called a congregation, must be held at least once a year.

(4) No person is entitled to any of the privileges attached to a Technikon qualification until such time as such qualification has been conferred upon that person at a congregation.

(5) A congregation is summoned in a manner determined by the council and must be presided over by the chancellor, or, in his or her absence the principal and vice-chancellor.

(6) The principal and vice-chancellor determines at which congregation a qualification is to be conferred upon a person.

(7) The procedure with regard to the presentation of candidates, the conferring of Technikon qualifications in the absence of candidates, academic dress and all other matters relating to congregations not provided for elsewhere, are determined by the council upon the recommendation of the academic board.

GRIEVANCE PROCEDURES**Grievance procedures**

41. The grievance procedures are in accordance with the Rules.

REPEAL OF PREVIOUS STATUTE**Repeal of previous Statute**

42. (1) The Statute applicable to Mangosuthu Technikon published by Government Gazette No. 17106 Notice No. 641 of 19 April 1996 as amended by Government Gazette No. 17657 Notice No. 2037 dated 13 December 1996 and Government Gazette No. 18003 Notice No. 702 dated 16 May 1997 is hereby repealed with effect from the date upon which this Statute comes into operation.

(2) Anything done, any body established and any person appointed to an office under a provision of the Statute repealed by subparagraph (1) are deemed to have been done, established or appointed under the corresponding provision of this Statute, provided that such provisions of the repealed Statute are not inconsistent with any provision of the Act.

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