

No. R. 106

3 February 2006

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)**APPROVAL OF THE CONSTITUTION OF THE MINING QUALIFICATIONS
AUTHORITY (MQA)**

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 **MINING QUALIFICATIONS AUTHORITY** as set out in the Schedule.

SCHEDULE

MINING QUALIFICATIONS AUTHORITY

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28 September 2005

The Director-General
Department of Labour
Attention: Mr Benedict Mogadime
Sector Liaison Manager: ~~Seta~~ Performance
Private Bag x 117
PRETORIA
0001

Dear Sir

CONSTITUTION: MINING QUALIFICATIONS AUTHORITY [MQA]

Our telephonic discussions in the abovementioned regard has reference.

Please find attached MQA Constitution approved by the MQA Board at its meeting held on 28 April 2005. Please note that the Constitution have been signed by all Stakeholders, namely State, Employers and Labour.

Yours faithfully

Original signed by CEO

LIVHU NENGOVHELA
CHIEF EXECUTIVE OFFICER



CONSTITUTION

OF THE

MINING QUALIFICATIONS AUTHORITY

(MQA)

23 SEPTEMBER 2005

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PREAMBLE

The Mining Qualifications Authority (the "Authority"? was originally established by the Mine Health and Safety Act, (Act no 29 of 1996) (the "MHSA") on 15 January 1997. It's constitution was subsequently published in the Government Gazette by the Minister of Minerals and Energy on 24 April 1998 in terms of section 97(4) of the MHSA as Schedule 7 of that Act.

*The Skills Development Act, (Act no 97 of 1998) (the "SDA") was passed by Parliament on 20th of October 1998. In order to avoid any unnecessary duplication of institutions responsible for education and training in the mining and minerals industry the Minister of Labour designated the Authority as the SETA for the mining and minerals industry on 20 March 2000 in terms of section 9 of the SDA. The Authority was therefore required to exercise its **powers** and functions under two distinct pieces of legislation (the MHSA and the SDA).*

The SDA and MHSA were amended in 2003 to promote the effective performance of the Authority's functions under both laws. This amendment introduced item 4A(b) into Schedule 2 to the SDA, empowering the Minister of Labour, in consultation with the Minister of Minerals and Energy and after consulting the Authority, to amend Schedule 7 to the Mine Health and Safety Act, 1996 in order to bring the constitution of the Authority into line with the constitutions of other SETAs.

The Minister of Labour has, in accordance with Schedule 2 to the SDA, amended the constitution of the Authority as follows-

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I Definitions

In this Constitution unless the context indicates otherwise any word or expression to which a meaning has been assigned in the Skills Development Act, 1998, Act no 97 of 1998 has the meaning so assigned:

- 1.1 “alternate” means any person appointed as an alternate to a member;
- 1.2 “Authority” means the Mining Qualifications Authority;
- 1.3 “chairperson” means the chairperson of the Authority or a committee;
- 1.4 “Chief Executive Officer” means the Chief Executive Officer appointed in terms of clause 15.1 of this Constitution;
- 1.5 “committee” means any standing committee, *ad hoc* committee or subcommittee of the Authority;
- 1.6 “consensus” means unanimous agreement;
- 1.7 “constituencies” means organised labour, organised employers and the relevant government department;
- 1.8 “employee” means any person who is employed or working at a working place;
- 1.9 “employer” means any person who employs an employee;
- 1.10 “establishing authority” means:
 - 1.10.1 in the case of a committee, the Authority; and
 - 1.10.2 in the case of *ad-hoc* committees or subcommittees, the Authority or any committee that establishes the *ad-hoc* committee or subcommittee as the case may be;

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- 1.11 "ETQA" means Education, Training and Quality Assurance;
- 1.12 "learning" means a process by which a person gains skills, knowledge and values;
- 1.13 "Levies Act" means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- 1.14 "member" means any member of the Authority, or any committee and includes any alternate designated by **such** member to attend a meeting of the Authority **of** any committee on behalf of such member;
- 1.15 "Mine Health and Safety Act" means the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- 1.16 "Mine Health and Safety Regulations" means **the** regulations contemplated in section 98 **of** the Mine Health and Safety Act;
- 1.17 "Minister" means the Minister of Labour;
- 1.18 "National Qualifications Framework" means the National Qualifications Framework as defined in section 1 of **the** SAQA Act;
- 1.19 "prescribed" means prescribed by regulation as contemplated in section 36 of the **Act**;
- 1.20 "Public Finance Management Act" means the Public Finance Management Act, 1999, (Act No. 1 of 1999);
- 1.21 "qualification" means the formal recognition of the achievement of the required number and range of credits and **such** other requirements **at** specific levels of the National Qualifications Framework **as** may be proposed by the Mining Qualifications Authority and determined **by the** South African Qualifications Authority;
- 1.22 "relevant government department" means the Department of Minerals and Energy;

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1.23 "SAQA Act" means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

1.24 "sector" means the sector for the Authority determined by the Minister as contemplated in section 9(2) of the Act;

1.25 "SMME's" means Small, Medium and Micro Enterprises;

1.26 "South African Qualifications Authority" means the South African Qualifications Authority established by section 3 of the SAQA Act; and

1.27 "the Act" means the Skills Development Act (Act No. 97 of 1998).

2 Purpose of Constitution

To provide for the Constitution of the Authority; to provide an institutional framework to implement national, sector and workplace strategies; to develop and improve the skills of the South African workforce in the Mining and Minerals sector as contemplated in section 9(2) of the Act; to promote the objectives of the National Qualifications Framework in the sector; to advise the Minister of Minerals and Energy and the Minister on matters relating to education and training in the sector: and for matters connected therewith.

3 Name

The name of this sector education and training authority is the Mining Qualifications Authority, hereafter referred to as the "Authority".

4 Place of Business

The place of business of the Authority shall be:

74-78 Marshall Street
Union Corporation Building
5th Floor
Marshalltown
Johannesburg

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5 Legal status

The Authority is established in terms of section 41(3) of the Mine Health and Safety Act, (Act no 29 of 1996) and section 9(1) of the Act.

1.1 The Authority is a juristic person.

1.2 All actions, suits or other proceedings at law, by or against any committee must be brought by or against the Authority.

1.3 The Authority may authorise any person or persons to act on behalf of the Authority and to sign all such documents and to take all such steps as may be necessary in connection with any proceedings at law brought by or against the Authority.

6. Scope of coverage

The scope of coverage of the Authority is determined by the Minister in terms of section 9(2) of the Act. The Minister's determination is reproduced as Schedule "A" to this Constitution.

7. Organisations in sector

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

8. Objects of Authority

The Authority **must** ensure the implementation of applicable legislation and policies pertaining to sector education and training authorities, as may be amended from time to time, including but not limited to:

8.1 the Act;

8.2 the Mine Health and Safety Act;

8.3 the Levies Act;

8.4 the SAQA Act; and

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8.5 the Public Finance Management Act.

9 Powers of Authority

Subject to the provisions of the Act, the Authority has all such powers as may be necessary to enable it to carry out its functions and fulfil its objectives in terms of the Act, the Mine Health and Safety Act and the Levies Act and without limiting the generality thereof has the following powers:

- 9.1 to propose members and alternates of the Authority for appointment as contemplated in clause 13.2;
- 9.2 to establish committees as is more specifically provided for in section 13(3)(vii) of the Act;
- 9.3 to appoint a Chief Executive Officer and such other employees **necessary** for the effective running of the Authority¹;
- 9.4 to formulate the general policy and strategy of the Authority;
- 9.5 to approve the business plan of the Authority;
- 9.6 to approve the annual budget of the Authority;
- 9.6 to approve the annual targets of the sector skills plan;
- 9.7 subject to any requirements that may be prescribed to determine the terms and conditions of employment of the Chief Executive Officer and other employees of the Authority;
- 9.8 to make rules relating to Authority meetings, financial matters, general procurement and administrative matters which are in accordance with the provisions of this Constitution, the Act, the Public Finance Management Act or any other law; and

¹ The power to appoint other employees may be delegated to the Chief Executive Officer as Contemplated in clause 17.

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9.9 to report on skills development within the sector.

10 Functions

10.1 The Authority in terms of the Act must in accordance with any requirements that may be prescribed:

10.1.1 develop a sector skills plan within the framework of the **national** skills development strategy;

10.1.2 implement the sector skills plan by:

10.1.2.1 approving workplace skills plans:

10.1.2.2 establishing learnerships;

10.1.2.3 allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers; and

10.1.2.4 monitoring education and training in the sector;

10.1.3 promote learnerships by:

10.1.3.1 identifying the relevant workplace where individuals can gain practical work experience;

10.1.3.2 improving and **supporting** learning and the development of learning materials;

10.1.3.3 assisting in the conclusion and registration of learnership agreements;

10.1.4 liaise with the National Skills Authority and other **SETAs** on issues amongst others like:

10.1.4.1 the national skills development strategy;

10.1.4.2 ~~skills~~ development policy;

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20.1.4.3 its own sector skills plan.

10.1.5 submit to the Director-General:

10.1.5.1 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; and

10.1.5.2 plans and reports on the implementation of its sector skills plan and service level agreement;

10.1.6 liaise with the employment services of the Department of Labour and educational councils established in terms of educational laws of **South** Africa in order *to* improve *the quality* of information:

10.1.6.1 about employment opportunities;

10.1.6.2 between education providers and the labour market;

10.1.7 facilitate the involvement of the relevant government department in the activities of the Authority, inter alia by *concluding a memorandum of understanding with the* Director-General of the Department of Minerals and Energy, to:

10.1.7.1 address the competency requirements for social delivery;

10.1.7.2 address the learning needs of the most vulnerable segments of the sector;

10.1.7.3 *conclude a* service level agreement with the Director-General of the Department of Labour for each financial year;

10.1.7.4 promote the training of SMMEs to enable them to qualify for procurement contracts;

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- 10.1.7.5 promote the national standard established in terms of section 30B of the Act; and
 - 10.1.7.6 perform any other duties imposed by the Act or any other function not specifically mentioned, in order to fulfil the objectives of the Authority.
- 10.2 The Authority must in terms of the Mine Health and Safety Act advise the Minister of Minerals and Energy *on-*
- 10.2.1 qualifications and learning achievements in the mining industry to improve health and safety standards through proper training and education;
 - 10.2.2 standards and competency setting, assessment, examinations, quality assurance and accreditation in the mining industry; and
 - 10.2.3 proposals for the registration of education and training standards and qualifications in the mining industry on the National Qualifications Framework referred to in the South African Qualifications Authority Act.
- 10.3 The Authority must in terms of the Mine Health and Safety Act-
- 10.3.1 propose education and training standards and qualifications to bodies registered with the South African Qualifications Authority and responsible for developing education and training standards;
 - 10.3.2 generate education and training standards and qualifications in the mining industry;
 - 10.3.3 monitor and audit achievements in terms of those **standards** and qualifications;

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- 10.3.4 promote health and safety standards in the sector through proper education and training;
 - 10.3.5 accredit providers, assessors and moderators of education and training in the mining industry;
 - 10.3.6 analyse and prioritise education and training needs in the mining industry and recommend on the provision of such education and training;
 - 10.3.7 promote a culture of learning in the mining industry;
 - 10.3.8 assure the quality of education and training in the mining industry, without itself being a provider *of education and training*;
 - 10.3.9 facilitate strategic human resources development planning in the mining industry;
 - 10.3.10 liaise with the South African Qualifications Authority, or other bodies, persons or institutions concerned with or directly affected by education and training in the mining industry;
 - 10.3.11 keep a record of learning for people in the mining industry;
 - 10.3.12 perform any other function required by the South African Qualifications Authority in terms of the Authority's registration or accreditation.
- 10.4 The Authority may perform any other function that may be performed by the Authority in terms of the Act, that is consistent with the purposes of the Act, the Mine Health and Safety Act, the Levies Act or any other applicable law.

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1 ■ Members of Authority

- 11.1 Members nominated to the Authority must be knowledgeable about the sector in order to advance skills development in the sector.
- 11.2 Each constituency represented on the Authority must be represented by members who are sufficiently representative of designated groups.²
- 1 ■ 3 The Authority consists of:
 - 11.3.1 five members representing organised employers in the sector, including small business in accordance with Schedule “C” read with Chapter 18 of the Mine Health and Safety Regulations;
 - 1 ■ 3.2 five members representing organised labour in the sector *in* accordance with Schedule “C” read **with** Chapter 18 of the Mine Health and Safety Regulations;
 - 11.3.3 five members (including the Chief Inspector of Mines) representing the relevant government department; and
 - 11.3.4 if the Minister, after consulting the Authority, considers it appropriate for the sector, persons representing interested professional bodies and any bargaining council with jurisdiction in the sector.
- 11.4 The Authority must consist of an equal number of members representing organised employers and organised labour.
- 11.5 The Minister of Minerals and Energy must appoint the members of the Authority as contemplated in clause 13.2.

² Section 13(4)(a) of the SDA requires that a clause to this effect be incorporated in SETA constitutions.

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11.6 The Chief Inspector of Mines is the Chairperson of the Authority.

11.7 Subject to clause 13.7 every member of the Authority is appointed for a period of five years coinciding with the period of establishment of the Authority and may be re-appointed on expiry of his or her term of office.

42 Committees

12.1 The Authority may establish committees, ad-hoc committees and subcommittees for such periods as the Authority may consider necessary to achieve the objects or perform the functions of the Authority.

12.2 Every committee may, subject to such conditions as the Authority may determine, establish ad-hoc or subcommittees for such periods as the committee may consider necessary to achieve the objects or perform the functions of that committee.

12.3 The establishing authority must provide terms of reference which should include, in respect of any committee:

12.3.1 its name;

12.3.2 membership;

12.3.3 quorum;

12.3.4 powers and functions;

12.3.5 period of establishment;

12.3.6 accountability;

12.3.7 funding; and

12.3.8 the chairperson.

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- 12.4** The Authority may establish the following standing committees to advise the Authority and perform its functions as set out in its terms of reference contemplated in clause 11.3-
- 12.4.1** Executive committee, to make urgent decisions between the meetings of the Authority;
 - 12.4.2** Skills Planning committee, to oversee the development and implementation of the sector skills plan;
 - 12.4.3** Learnerships committee, to oversee the promotion and registration of learnerships and skills programmes;
 - 12.4.4** **ETQA** committee, to ensure the quality of learning provision in the sector;
 - 12.4.5** Standards Generating Body, to lead the development of unit standards and qualifications in the Sector;
 - 12.4.6** Finance and levies committee, to oversee the management of the funds of the Authority and the disbursement of the skills development levies;
 - 12.4.7** Audit committee, to ensure that the Authority complies with the requirements of the Public Finance Management Act.
- 12.5** **The** committees of the Authority contemplated in clause 11.4 (apart from the Audit Committee) must be composed of an equal number of members representing organised employers and organised labour.
- 12.6** The Authority must appoint a member of the Authority to chair a particular standing committee (apart from the Audit Committee, in
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respect of which the Authority may appoint an independent person as chairperson).

12.7 The members of a particular standing committee must appoint **one** among its members to act as a chairperson of the committee for the meeting when the chairperson is absent.

12.8 Every other committee consists of the number of members determined **by** *the* relevant establishing authority.

13 Executive Committee

13.1' The Executive Committee is composed of-

13.1.1 three members representing each constituency;

13.1.2 the Chief Executive Officer, the chief financial officer and the chief operating officer in their official capacities and as non-voting members.

13.2 The chair of the Authority is the chair of the Executive Committee.

13.3 The Executive Committee must:

13.3.1 oversee the execution of the operational affairs of the Authority based on policy decisions **of** the Authority;

13.3.2 monitor the implementation of the Authority's financial and human resources policies;

13.3.3 take urgent decisions on operational matters between the meetings of the Authority following approved procedures;

13.3.4 direct and oversee the performance of the Chief Executive Officer;

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- 13.3.5 present the annual budget, business plan, and annual report including the audited financial statements for approval by the Authority;
 - 13.3.6 recommend to the Authority the establishment or disbandment of committees;
 - 13.3.7 consider recommendations by the Chief Executive Officer **on** the appointment or termination of employment;
 - 13.3.8 refer matters ~~to~~ the committees of the Authority for investigation; and
 - 13.3.9 investigate and report to the Authority on any matter delegated to it by the Authority.
- 13.4 The Executive Committee may not decide on questions of general policy.
 - 13.5 The Executive Committee may act on behalf of the Authority in an emergency. In such event the Executive Committee must report its actions and the reasons for its actions in writing to the Authority as soon as reasonably practicable and raise the issue at the next meeting of the Authority.
- 14** Nomination and appointment ~~of~~ members of Authority and committees
- 14.1 Members of the Authority are nominated in accordance with clause 10.2 and Schedule "C" read with Chapter 18 of the Mine Health and Safety Regulations. Members of any committee are nominated and appointed in accordance with clauses 13.3 and 13.4.
 - 14.2 Members of the Authority are appointed by the Minister of Minerals and Energy in terms of Chapter 18 of the Mine Health and Safety Regulations, after consulting the Minister of Labour.

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- 14.3 The organisations contemplated in Schedule "C" may nominate persons as members to represent their interests on any committee.
- 14.4 The relevant establishing authority:
- 14.4.1 must appoint the members of the committee; and
- 14.4.2 must appoint one ~~of~~ the members as chairperson.
- 14.5 If the relevant establishing authority does not appoint a chairperson, the members of the committee may appoint the chairperson from amongst their number.
- 14.6 Members representing the relevant government department, employees, or employers on any committee may hold office for such period as the relevant establishing authority may determine, which period may not exceed five years. A member whose period *of office expires*, may be reappointed.
- 14.7 If the office of a member of the Authority or any committee is vacated before the end of the period of office of such member, a person to replace such member must, subject to the provisions of this Constitution:
- 14.7.1 be nominated by the organisation that was represented by the member; and
- 14.7.2 be appointed for the balance of the period of office of the member in whose place the person ~~is~~ appointed.
- 14.8 The appointment of any member of any committee is subject to any condition that the relevant establishing authority may determine.
- 14.9 The Chief Executive Officer must in writing notify the members of their appointment.
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14.10 If a member appointed in terms of clause 13.9 does not accept such appointment, a person to replace such person must be appointed in accordance with clause 13.3 and 13.4.

14.11 Every organisation must appoint alternates ~~for~~ its members on the Authority, or any committee and must notify the chairperson of the Authority or the relevant committee, as the case may be, of such appointment.

14.12 The relevant establishing authority:

14.12.1 may appoint alternates for subcommittees; and

14.12.2 must notify the alternates of their appointment and the members of their alternates.

15 Vacation of office of Authority and committee members

15.1 A member vacates office:

15.1.1 on expiry of the member's period of office; or

15.1.2 if such member :

15.1.2.1 is absent from ~~two~~ consecutive meetings of the Authority ~~or~~ committee for which such member is appointed without notifying the chairperson before the meeting that the member will ~~be~~ absent;

15.1.2.2 resigns as a member;

15.1.2.3 is required to vacate office ~~by~~ the organisation which that member represents; or

15.1.2.4 is required to vacate office by the Authority as contemplated ~~in~~ clause 14.2;

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- 15.1.3 if such member was nominated by an organisation and that organisation **no** longer meets the criteria allowing it to nominate members as contemplated in Chapter 18 of the Mine Health and Safety Regulations, or if the Authority or committee on which the member serves, is abolished.
 - 15.2 The Authority may replace a member:
 - 15.2.1 for permanent incapacity;
 - 15.2.2 for serious misconduct; or
 - 15.2.3 for failure to comply with any provision in the Code of Conduct contained in Schedule "E" to this Constitution.
 - 15.3 Before removing a member as indicated under clause **14.2** the Authority must give the member-
 - 15.3.1 notice of its intention to remove the member;
 - 15.3.2 reasons for its intention to remove him or her; and
 - 15.3.3 a reasonable opportunity in the circumstances to make written or verbal representations to the Authority.
 - 15.3.4 If a member of the Authority vacates office before the expiry **of** his or her period of office for any reason contemplated in clauses 14.1 or 14.2 the organisation, which was represented by that member must nominate a new member for the unexpired period. The Minister of Minerals and Energy must appoint any person **so** nominated as a member of the Authority.
 - 15.3.5 **if** the organisation contemplated in clause 14.3 no longer satisfies the criteria permitting it to nominate members as contemplated in clause 15.1.3, then a person must be
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nominated and appointed to ~~fill~~ the vacancy in accordance with Regulation 18.6(2) of the Mine Health and Safety Regulations.

- 15.3.6 If an organisation 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 employees, organised labour or a government department, as the case may be.

16 Appointment and functions of Chief Executive Officer

- 16.1 The Authority must appoint a person with experience and expertise in matters relating to functions of the Authority ~~as~~ Chief Executive Officer of the Authority.
- 16.2 The Chief Executive Officer must perform such functions as may be assigned to the Chief Executive Officer by the Act, this Constitution ~~or~~ by the Authority.
- 16.3 The Chief Executive Officer must attend all Authority meetings³ and Executive Committee meetings and may attend any committee meetings.
- 16.4 If the Chief Executive Officer is absent or for any reason is unable to perform the functions of the Chief Executive Officer or *if there is* a vacancy in the office of the Chief Executive Officer, the chairperson of the Authority may designate an employee of the Authority to ~~act~~ as Chief Executive Officer until the Chief Executive Officer is able to resume the functions of Chief Executive Officer or until a new Chief Executive Officer is appointed in terms of clause 16.1.

³ ie meetings composed of members as contemplated in clause 1 1.

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16.5 The Chief Executive Officer may recruit and appoint persons as employees of the Authority, in accordance with the Authority's recruitment: policy and selection criteria, to assist in the performance of the functions of the Chief Executive Officer.

16.6 The terms and conditions of service of the Chief Executive Officer and employees are determined by the Authority subject to any prescribed requirements regarding salary bands and matters related to remuneration.

17 Delegation and assignment of functions

17.1 The Authority may delegate any of its powers or assign any of its functions by or under this Act, the Mine Health and Safety Act or any other law to any committee, the Chief Executive Officer or any employee of the Authority.

17.2 The Authority may delegate any of its powers under the Public Finance Management Act only to the Chief Executive Officer or any employee of the Authority, as contemplated in section 56 of the Public Finance Management Act.

17.3 Any committee may delegate or assign any of its functions to any of its subcommittees.

17.4 The Chief Executive Officer may delegate any power or assign the performance of any function or duty imposed upon the Chief Executive Officer to any employee of the Authority.

17.5 A delegation or assignment under clauses **17.1**, **17.2**, **17.3** or **17.4**:

17.5.1 must be in writing;

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17.5.2 may be subject to such conditions and restrictions as determined by the Authority, a committee or the Chief Executive Officer, as the case may be; and

17.5.3 does not prevent the exercise of that power or performance of that function by the Authority, committee or the Chief Executive Officer, as the case may be.

17.5.4 The Authority, committee or Chief Executive Officer may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under the delegation.

18 Appointment and functions of chairperson

18.1 The Chief Inspector of Mines is the chairperson of the Authority.

18.2 The members of the Authority must appoint one among their members to act as chairperson of the Authority at any meeting when the chairperson is absent.

18.3 Every chairperson must, with regard to the Authority or committee which the person chairs –

18.3.1 allow each constituency to appoint from among its members a person to act as convenor of such constituency for communication purposes. If a constituency does not appoint such convenor, the chairperson may appoint any member of that constituency as convenor of the constituency;

18.3.2 cause meetings to be convened; and

18.3.3 ensure the orderly conduct of meetings and that all resolutions are recorded.

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- 18.4** A chairperson may order any member to leave a meeting if in the opinion of the chairperson the behaviour of such member is disruptive to the orderly conduct of the meeting.

19 Appointment and functions of secretary

- 19.1** The Chief Executive Officer must appoint a secretary for:

19.1.1 the Authority; and

19.1.2 any committee, if the establishing authority so requires.

- 19.2** If a secretary is not appointed for a committee, the members of that committee must keep a record of and report to the relevant establishing authority on their activities.

- 19.3** A secretary must, with regard to the Authority or committee for which the secretary is appointed:

19.3.1 prepare the agenda for every meeting;

19.3.2 prepare the minutes of every meeting;

19.3.3 record every resolution of such meeting and if so requested by a member, the view of that member, and keep general records, records of members, minutes, documents and files of the Authority or such committee.

20 Rights and obligations of members

- 20.1** Any member who is unable to attend a meeting of the Authority or any committee:

20.1.1 may designate any alternate of that member's constituency on the Authority or that committee, as the case may be, to represent the member at the meeting; and

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- 20.1.2 must at least ~~two~~ working days before the meeting give notice that they are unable to attend, to the chairperson.
- 20.2 An alternate designated under clause 19.1.1 has the rights and obligations of the member ~~whom~~ that alternate represents.
- 20.3 Every member has the right to:
- 20.3.1 be heard on any matter considered at the meeting;
- 20.3.2 take part in the resolution of any matter before the meeting; and
- 20.3.3 have their views on any matter considered at the meeting, recorded in the minutes of the meeting and in any report or recommendation ~~of~~ the meeting.
- 20.4 Members of the Authority and committees, ~~may~~ claim compensation for expenses reasonably incurred as determined by the Authority within any limits which have been prescribed, but may not ordinarily claim compensation for time spent attending meetings.

21 Meetings

- 21.1 The Authority must meet at least once every three months.
- 21.2 The Authority must convene an annual conference to consult ~~with~~ sector stakeholders on the performance ~~of~~ the Authority's functions.
- 21.3 Committees must meet ~~at~~ such intervals ~~and~~ frequency ~~as~~ determined by their activities and the dates for the completion of their ~~tasks~~ as specified in their terms of reference.

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- 21.4** An urgent meeting of the Authority or any committee may be called by the chairperson at the written request of at least two members or when the chairperson deems it necessary.
- 21.5** The Authority may direct any committee to call an urgent meeting to resolve any matter determined by the Authority.
- 21.6** An establishing authority may direct any of its committees to call an urgent meeting to resolve any matter determined by such committee.
- 21.7** A secretary must, with regard to the Authority or committee for which the secretary is appointed serve every member with:
- 21.7.1** a convening notice and the agenda of a meeting at least five working days before the meeting or two working days before an urgent meeting;
 - 21.7.2** any reports of documentation to be considered at a meeting, within a reasonable period before the meeting; and
 - 21.7.3** the minutes of every meeting.

22 Quorum

- 22.1** A quorum for any meeting of the Authority, except for Executive Committee meetings must include a minimum of two members from each constituency.
- 22.2** A quorum for any other committee must be determined by the relevant establishing authority;
- 22.3** Despite clauses **22.1** and **22.2**, if the convenors of all the constituencies in the Authority or any committee so agree, a

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smaller number may constitute a quorum for an urgent meeting of the Authority or that committee, as the case may be.

- 22.4** If after thirty minutes of the scheduled time for the meeting, a quorum is not present the meeting must be postponed to a later date, time and place determined by the chairperson. The members present at the subsequent meeting form a quorum for that meeting.

23 Procedures at meetings

- 23.1** Items may be added to the agenda of any meeting if the meeting so decides.
- 23.2** Any member who has a direct or personal financial interest in any matter before the meeting must, before the matter is discussed by the meeting, declare such interest to the meeting and must leave the meeting when that matter is considered or discussed.
- 23.3** If the chairperson is not present at a meeting the members may elect from among their number a chairperson for that meeting.

24 Decision-making at meetings

- 24.1** The Authority or any committee must endeavour to reach consensus on any matter that requires resolution.
- 24.2** If consensus cannot be reached on any matter after sincere endeavours to do so, a decision of the majority of members present and voting at a meeting constitutes the resolution on that matter by the Authority or any committee, as the case may be.
- 24.3** In the event of voting, each member has a single vote on any matter for decision.
- 24.4** Voting is by show of hands unless a proposal for a ballot is supported by 50% percent of members present.

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24.5 Any report or advice of the Authority or any committee which reflects a resolution that was not reached by consensus, must reflect:

24.5.1 the different views of the members on the matter so resolved; and

24.5.2 which members supported each view.

24.6 No resolution nor any act authorised by the Authority or any committee is invalid merely because of a vacancy on the Authority, or that committee, or because any person not entitled to sit as a member sat at such meeting at the time the resolution was taken - if a quorum was constituted by the rest of the members present at the meeting and entitled to sit as members at the meeting.

24.7 The chairperson of a committee has no voting rights if that chairperson is an employee of the Authority.

25 Funds of Authority

25.1 The Authority must administer and control its financial **affairs** in accordance with the Act and the Public Finance Management Act.

25.2 The Authority is the accounting authority as contemplated in Part 2 of chapter 6 of the Public Finance Management Act and must accordingly exercise the powers and perform the functions required of an accounting authority by the Public Finance Management Act.

25.3 The funds of the Authority consist of:

25.3.1 moneys appropriated by Parliament to perform its functions;

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- 25.3.2 moneys which accrue to the Authority in terms of regulations made under this Act or in terms of any other applicable law;
- 25.3.3 the skills development levies collected in the sector;
- 25.3.4 moneys paid to the Authority from the National Skills Fund;
- 25.3.5 revenue obtained from investments;
- 25.3.6 fees obtained from services provided by the Authority.
- 25.3.7 grants, donations and bequests made to it by any person, body, government or administration; and
- 25.3.8 money received from any other legal source.
- 25.4 The money received by the Authority must be paid into a banking account at any registered bank or financial institution registered in South Africa and approved in writing by the National Treasury. May be invested only in-
- 25.4.1 savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
- 25.4.2 internal registered stock contemplated in section 21(1) of the **Exchequer Act, 1975 (Act No. 66 of 1975); or**
- 25.4.3 any other manner approved by the Minister,
- 25.5 The moneys received by the Authority must be used only in the prescribed manner and in accordance with any prescribed standards and criteria to-
- 25.5.1 fund the performance of its functions; and
- 25.5.2 pay for its administration within the prescribed limit.

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25.6 In each financial year, ending on the prescribed date, the Authority must, 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.

25.7 The Authority must-

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

25.7.2 furnish the Director-General with copies of all budgets, reports and statements contemplated in clause 25.7.1 and any other information that it is required to submit in terms of the Public Finance Management Act.

26 Accounting officer of Authority

26.1 The Chief Executive Officer is the accounting officer of the Authority.

26.2 The accounting officer is responsible for all monies received and payments made by the Authority.

26.3 The financial year of the Authority ends on 31 March of each year.

26.4 The accounting officer must cause records to be kept in accordance with the Generally Accepted Accounting Principles that are necessary to represent fairly the state of affairs and business of the Authority and to explain the transactions and financial position of the Authority.

26.5 Annual financial statements must be prepared in respect of every financial year that consist of:

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- 26.5.1 a balance sheet dealing with the state of affairs of the Authority;
 - 26.5.2 a return of income received and expenses incurred **by** the Authority; and
 - 26.5.3 a statement of cash flow information.
- 26.6 The books of account, statements of account and annual financial statements of the Authority must be audited annually by the Auditor-General. The Auditor-General must compile a report on the audit and submit a copy of it to the Minister and the chairperson of the Authority.
- 26.7 The Chief Executive Officer of the Authority must supply each member of the Authority with a copy of the report of the **Auditor-General**.
- 26.8 As soon as practicable **after** the report of the Auditor-General has been submitted to the Minister in terms of clause 25.6, the Minister must table it in Parliament.
- 26.9 The responsibilities of the accounting officer **do** not in any way derogate from the responsibilities of the Authority as the accounting authority in terms of the Public Finance Management Act.

27 Dissolution of Authority and Committees

- 27.1 The Authority may be dissolved by the Minister after consulting the National Skills Authority and the Authority if the Authority is unable to continue to perform its functions.
- 27.2 The Authority may at any time dissolve any committee.

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- 27.3** A committee may at any time dissolve any *ad hoc* committee or subcommittee established by that committee.

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28 Limitation of liability

28.1 A member does not incur any civil liability only because of doing or failing to do something, which such member may do or is required to do in terms of this Constitution.

28.2 The Authority does not incur any **civil** liability only because a member or employee of the Authority took an action or failed to take an action **under** or in terms of **this** Act, the Mine Health and Safety Act, the Public Finance Management Act and this constitution and in taking or failing to take that action such person acted without negligence and in good faith.

29 Arbitration

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

30 Code of conduct

The members of the Authority, and committees of the Authority are **bound** by the Code of Conduct contained in Schedule "E".

31 Amendments to Constitution

This Constitution may be amended by a resolution of not less than **two-thirds** of the members of the Authority present at a meeting of which **not less** than 21 days notice setting out the proposed amendment has been given to all members of the Authority. No amendment has any force **or** effect until it has been approved by the Minister, in consultation with the Minister of Minerals and Energy.

32 Taking over administration **Of** Authority

The Minister, in consultation with the Minister of Minerals and Energy, may, after consultation with the National **Skills** Authority, **by** notice in the

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Government Gazette, direct the Director-General of Labour to appoint an administrator to take over the administration of the Authority as contemplated in section **15** of the Act.

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AUTHORITY BY:****1. ORGANISED LABOUR:**

Mr A. Teteme, Skills Development Officer
National Union of Mineworkers

2. ORGANISED BUSINESS:

Mr V. Mabena, Skills Development Advisor
Chamber of Mines

3. RELEVANT GOVERNMENT DEPARTMENT

Ms M. Hermanus, Chief Inspector of Mines
Department of Minerals and Energy

AT _____ ON THIS ____ DAY OF
_____ 2005

CERTIFICATION

SIGNED AT _____ ON THIS ____ DAY OF
_____ 2005

M M S MDLADLANA
Minister of Labour

L HENDRICKS
Minister of Minerals and Energy

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Schedule "A": Scope of coverage

SIC Code	Scope of Coverage
21000	Mining of coal and lignite
22100	Extraction of crude petroleum and natural gas; service activities incidental to oil and gas extraction except surveying
23000	Mining of gold and uranium ore
23001	Thin tabular operations
23002	Thick tabular operations
23003	Massive mining operations
24000	Mining of metal ores, except gold and uranium
24100	Mining of iron ore
124200	Mining of non-ferrous metal ores, except gold and uranium
125000	Other mining and quarrying
25101	Quarrying/dimension stone operations
25102	Open cast/strip mining operations
25103	Open pit operations
25201	Marine mining operations
25202	Coastal mining operations
25320	Extraction and evaporation of salt
25391	Mining of precious and semi-precious stones, except diamonds
29000	Service activities incidental to mining of minerals
134240	Manufacture of cement, lime and plaster

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37601	Manufacture of watches, clocks and related articles
3921 0	Manufacture of jewellery and related articles
3921 1	Jewellery and related articles composed of precious metals, precious and semi-precious stones and pearls
39219	Other precious and semi-precious stone cutting and polishing
85291	Supply of mining equipment

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Schedule "B" : Organisations in sector

Organisations representing organised employers

Chamber of Mines

Jewellery Council of South Africa

South African Mining Development Association

Aggregate and Sand Producers Association of South Africa

Organisations representing organised labour

National Union of Mineworkers ("NUM")

United Association of South Africa ("UASA")

Solidarity

Government departments

Department of Labour

Department of Minerals and Energy

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Schedule "C" : Organisations which may nominate members to Authority

Organised employer

Chamber of Mines

South African Mining Development Association

Organised labour

National Union of Mineworkers

United Association of South Africa ("UASA")

Relevant Government Department

Department of Minerals and Energy.

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Schedule "D" : Arbitration *process*

The determination through Arbitration of any dispute concerning the interpretation or Application ~~of~~ the Constitution.

- 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 Authority.
- 2 The referral must:
 - 2.1 be in writing;
 - 2.2 adequately describe the dispute; and
 - 2.3 be delivered to every other party to the dispute by the party referring the dispute.
- 3 The Chief 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.
- 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 for arbitration by an arbitrator.
- 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 by the Chairperson ~~of~~ the Authority.
- 6 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- 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.

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- 8 Within 14 days of conclusion of the arbitration proceedings:
- 8.1 the arbitrator must issue a signed arbitration award with reasons: and
 - 8.2 the Chief Executive Officer must provide a copy of the award to every party to the dispute.
- 9 The arbitration award is final and binding on the parties to the dispute.
- 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:
- 10.1 a party to the dispute, without reasonable cause, refused or fails to attend the arbitration or unduly delays arbitration proceedings; or
 - 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.
- 11 An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary to rescind an award:
- 11.1 erroneously sought or made in the absence of any party affected by the award;
 - 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
 - 11.3 granted as a result of a mistake common to the parties to the proceedings.

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Schedule "E" : Code of Conduct

- 1 The members of the Authority, the Executive Committee, and any committees of the Authority –
 - 1.1 stand in a fiduciary relationship to the Authority;
 - 1.2 must perform their functions in good faith;
 - 1.3 must avoid any material conflict between their own interests and those of the Authority, and in particular –
 - 1.3.1 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;
 - 1.3.2 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 dealing of the Authority;
 - 1.4 must protect and promote the reputation and goodwill of the Authority;
 - 1.5 must exercise their powers for the benefit and in the interests of the Authority;
 - 1.6 must not abuse the resources of the Authority; and
 - 1.7 must not disclose to any unauthorised person any privileged or confidential information of the Authority.