

No. R. 107

3 February 2006

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

**APPROVAL OF THE CONSTITUTION OF THE LOCAL GOVERNMENT SECTOR
EDUCATION AND TRAINING AUTHORITY (LGSETA)**

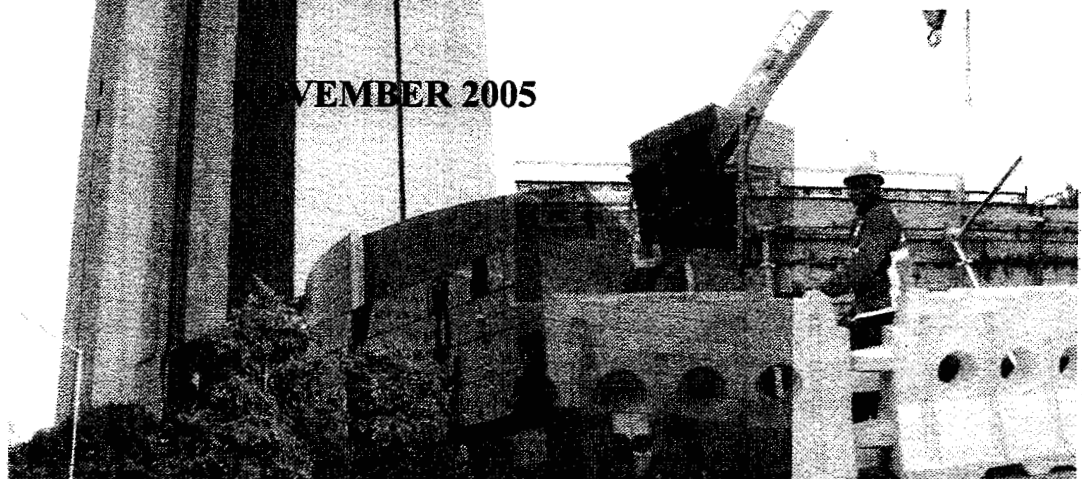
The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the LOCAL GOVERNMENT SECTOR EDUCATION TRAINING AUTHORITY as set out in the Schedule.

SCHEDULE



*CONSTITUTION
OF THE
LOCAL GOVERNMENT
SECTOR EDUCATION
AND TRAINING
AUTHORITY*

NOVEMBER 2005



CONSTITUTION OF THE LOCAL GOVERNMENT SECTOR EDUCATION AND TRAINING AUTHORITY

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CONSTITUTION OF THE LOCAL GOVERNMENT SECTOR EDUCATION AND TRAINING AUTHORITY

1 DEFINITIONS

1.1 In this Constitution, any word or phrase that is defined in the **Skills Development Act, 1998** has the same meaning as in that Act, unless the context indicates otherwise.

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

1.1.2 "Alternate" means an alternate to a member, as contemplated in clause 7.4 of this Constitution.

1.1.3 "Authority" means the Local Government Sector Education and Training Authority.

1.1.4 "Director-General" means the Director-General of Labour.

1.1.5 "Local government" means local government as generally contemplated in section 40(1) and chapter 7 of the Constitution of the Republic of South Africa 1996, (Act No. 108 of 1996)

1.1.6 "Member" means a person who is a member of the Authority as contemplated in clause 7.1 of this Constitution.

1.1.7 "Minister" means the Minister of Labour.

1.1.8 "Office-bearer" means the chairperson or vice-chairperson of a structure of the Authority.

1.1.9 "Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999)

1.1.10 "Skills Development Levies Act" means the Skills Development Levies Act, 1999 (Act No. 9 of 1999)

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

2 CHARACTER

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2.1 Name

The name of this sector education and training authority ("SETA") is the Local Government Sector Education and Training Authority referred to in this Constitution as the "Authority".

416 Skeen Boulevard

Bedfordview

2007

2.2 Legal status

2.2.1 The Authority is a juristic person.

2.2.2 The Authority may authorise any person or persons to act on its behalf and to sign all documents and to take all steps as may be necessary in connection with any legal proceedings brought by or against the Authority.

2.2.3 The Authority is governed by the Act, the Skills Development Levies Act, the Public Finance Management Act and this Constitution.

2.3 Scope

The scope of the Authority is local government as determined by the Minister in terms of section 9 of the Act, and Government Notice No.R.316 published in Government Gazette No. 27445 of 31 March 2005. The scope of the Authority is set out in Annexure "A".

3 OBJECTIVES OF AUTHORITY

In performing the functions contemplated in the Act and in this Constitution, the Authority must seek to promote the objectives contemplated in the Act and this Constitution, and must comply with the Skills Development Levies Act, and to the extent that it is necessary with the Public Finance Management Act.

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31 General objectives

The general objectives of the Authority are to –

- 3.1.1 Develop the skills of employees and employers in local government;
- 3.1.2 Facilitate the development of the skills of employees;
- 3.1.3 Improve the quality of life, prospects and labour mobility of employees in local government through skills development initiatives;
- 3.1.4 Facilitate and strengthen the institutional capacity of local government in order to improve productivity and the quality of services thereby enhancing the quality of life of the community and the country at large;
- 3.1.5 Increase the levels of investment in skills development and to improve returns on such investment: and
- 3.1.6 Promote the inclusion of contextual knowledge in respect of issues of local government and governance within learnerships and skills development programmes.

3.2 Objectives in relation to employers

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

- 3.2.1 **Develop** their capacity to **manage** and provide education and training.
- 3.2.2 **Use** their workplaces and facilities to create active learning environments.
- 3.2.3 Develop workplace skills plans in the context of integrated development planning.

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- 3.2.4 Provide new entrants to the labour market with opportunities to learn through exposure to work experience in learnership programmes.
- 3.2.5 Provide appropriate education and training interventions in relation to **job** creation or local economic development initiatives.
- 3.2.6 Provide employment opportunities for persons who might otherwise find it difficult to obtain employment.
- 3.2.7 Support education and training interventions linked to the objectives and mechanisms of the Employment Equity Act, **1998** and:
- 3.2.8 Develop appropriate partnerships between themselves and other public, private and non-governmental organisations.

3.3 Objectives in relation to employees

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

- 3.3.1 Participate in learnerships and other education and training programmes.
- 3.3.2 Participate in the governance and evaluation of the programmes they undertake and;
- 3.3.3 Develop an ethos of responsibility in respect of their work.

3.4 Objectives in relation to local communities

The objectives of the Authority in relation to the communities served by local government are to:

- 3.4.1 Assist work-seekers to gain access to work experience;
- 3.4.2 Assist retrenched workers to re-enter the labour market; and

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3.4.3 Promote skills for self-employment.

4 FUNCTIONS OF AUTHORITY

4.1 Authority must perform certain functions

The Authority must, in accordance with any requirements that may be prescribed:

- 4.1.1 Develop a sector skills plan within the framework of the national skills development strategy.
- 4.1.2 Implement its sector skills plan by establishing learnerships, approving workplace skills plans, and allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers.
- 4.1.3 Promote learnerships by identifying workplaces for practical work experience, supporting the development of learning materials, improving the facilitation of learning, and assisting in the conclusion of learnership agreements.
- 4.1.4 Register learnership agreements.
- 4.1.5 Perform the functions of a body contemplated in section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act.
- 4.1.6 Perform such functions as may be assigned to it by the South African Qualifications Authority.
- 4.1.7 Subject to sections 7, 9 and 10 of the Skills Development Levies Act, disburse the skills development levies in its sector.
- 4.1.8 Liaise with the National Skills Authority on the national skills development policy, the national skills development strategy, and its sector skills plan.

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- 4.1.9 Submit to the Director-General any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act and plans and reports on the implementation of its sector skills plan and service level agreement.
- 4.1.10 Liaise with the employment services of the Department and relevant education bodies established under any law regulating education in the Republic to improve information about employment opportunities, and between education and training providers and the labour market.
- 4.1.11 Subject to section 14 of the Act, appoint the Chief Executive Officer and staff necessary for the performance of its functions.
- 4.1.12 Promote the national standard established in terms of section 30(B) of the Act.
- 4.1.13 Conclude with the Director-General a service level agreement concerning the Authority's performance of its functions in terms of the Act and the national skills development strategy, the Authority's annual strategic plan and any assistance that the Director-General will provide to the Authority to enable it to perform its functions and.
- 4.1.14 Perform any other duties imposed by the Act or the Skills Development Levies Act or consistent with the purposes of this Act.

4.2 The Authority may perform certain functions

The Authority may:

- 4.2.1 Adopt general and specific policies to promote the achievement of such objectives and functions as contemplated in clauses 3 and 4;
- 4.2.2 Exercise any other powers conferred on the Authority by the Act, the Skills Development Levies Act or this Constitution; and

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4.2.3 Make decisions on any matter related to the performance of its functions on which this Constitution is silent.

4.3 Delegation of powers and functions

4.3.2 The Authority, subject to any conditions that it may impose, may delegate any of its powers or functions to:

4.3.1.1. The Executive Committee.

4.3.1.2. Any Provincial Committee.

4.3.1.3. Any other committee of the Authority or;

4.3.1.4. Its members and employees.

4.3.2 Every delegation by the Authority must be in writing, setting out the terms and conditions of such delegation, and must be recorded in a book of record.

4.3.3 The Authority is not divested of any power, duty or function by virtue of the delegation and may vary or set aside any decision made under any delegation.

4.3.4 The Authority may delegate **particular** powers, duties or functions to **certain** Provincial Committees and not to others.

5 LEARNERSHIPS

5.1 Establishment of learnerships

The Authority may establish a learnership if:

5.1.1 The learnership consists of a structured learning component.

5.1.2 The learnership includes practical work experience of a specified nature and duration.

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

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

5.2 Agreements of learnership

5.2.1 A learnership agreement must be in the prescribed form and registered with the Authority in the prescribed manner.

5.2.2 A learnership agreement may not be terminated before the expiry of the period of duration specified in the agreement unless-

5.2.2.1. The learner meets the requirements for the successful completion of the learnership or;

5.2.2.2. The Authority approves of this termination.

5.2.3 The employer or training provider that is a party to a learnership agreement may be substituted with-

5.2.3.1. The consent of the learner and;

5.2.3.2. The approval of the Authority.

5.2.4 The Authority must, in the prescribed manner, provide the Director-General with a record of learnership agreements registered by the Authority.

6 SKILLS PROGRAMMES

6.1 Grants for skills programmes

6.1.1 The Authority may fund a skills programme if:

6.1.1.1. It is occupationally based.

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6.1.1.2. When completed it will constitute a credit towards a qualification registered in terms of the National Qualifications Framework.

6.1.1.3. It uses an accredited training provider.

6.1.1.4. It complies with any prescribed requirements and;

6.1.1.5. It is in accordance with the skills development plans of the Authority and there are funds available.

6.1.2 The Authority may fund a short course if:

6.1.2.1. The course is part of structured learning;

6.1.2.2. The course satisfies any criteria set by the Authority; and

6.1.2.3. The course supports the skills development plans of the Authority.

6.1.3 The Authority may set any terms and conditions for funding it considers necessary.

6.2 Monitoring of skills programmes

6.2.1 The Authority must monitor any skills programme it funds.

6.2.2 The Authority may withhold funds or recover any funds paid if it is of the opinion that:

6.2.2.1. The funds are not being used for the purpose for which they were made available.

6.2.2.2. Any term or condition of funding is not complied with or;

6.2.2.3. The standard of the training is unsatisfactory.

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7 MEMBERS OF AUTHORITY**7.1 Composition of the Authority**

7.1.1 The Authority is constituted on the basis of parity of representation between voting members representing (on the one hand) ~~organised employers and (on the other hand)~~ registered trade unions.

7.1.2 The Authority is composed of :

7.1.2.1. Ten members representing registered trade unions within the scope of the Authority in accordance with Annexure "B" (if necessary) and Annexure "F".

7.1.2.2. Ten members representing registered employer organisations within the scope of the Authority in accordance with Annexure "B" (if necessary) and Annexure "F".

7.1.3 As far as reasonably practicable:

7.1.3.1. At least sixty percent (60%) of members representing registered trade unions should be employees employed within the scope of the Authority and;

7.1.3.2. At least sixty percent (60%) of members representing organised employers must be local government councillors.

7.1.4 A member representing the Department of Provincial and Local Government must preferably be drawn from senior management.

7.1.5 The Authority must be sufficiently representative of designated groups.

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7.2 Terms of office of members of Authority

Subject to sub-clause 7.9 a member of the Authority holds office for a period of three years and on expiry of his or her term of office *is* eligible for re-appointment.

7.3 Nomination and appointment of Authority members

7.3.1 At least three months before the expiry of the term of office of members of the Authority, the Chief Executive Officer must invite nominations from registered trade unions and organised employers within the scope of the Authority for members for the forthcoming term of office.

7.3.2 The outgoing members of the Authority are eligible for nomination and re-appointment as members of the Authority for further terms of office.

7.4 Alternates to members of Authority

7.4.1 The organisations contemplated in Annexure "F" must appoint alternates to act in the place of each member that represents their organisation, in the event that such member **is** unable to attend a meeting of the Authority.

7.4.2 The Authority must circulate agendas, documents and minutes to keep alternates and Provincial Committees abreast with developments in the Authority.

7.5 First meeting of each new term of office of Authority

7.5.1 The Chief Executive Officer must notify the members of the date, time and venue of the first meeting of their term of office.

7.5.2 At the first meeting of each new term of office the members must:

7.5.2.1. Elect a Chairperson and Vice-chairperson as contemplated in clause 8.

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7.5.2.2. Set the dates for the forthcoming meetings of that year and;

7.5.2.3. Take such other decisions as are necessary to ensure the prompt and effective functioning of the Authority.

7.6 Meetings of Authority

The Authority must meet at least twice a year.

7.7 Meeting procedures

Meetings of the Authority must comply with the requirements contemplated in clause 12.

7.8 Suspension of members of Authority

7.8.1 The Authority may suspend a member pending an inquiry:

7.8.1.1. If he or she is alleged to have committed a serious offence, or;

7.8.1.2. If his or her presence at the Authority's offices may jeopardise an investigation or endanger employees or places at risk the safety of property belonging to the Authority, or;

7.8.1.3. On any other reasonable ground.

7.8.2 Before suspending a member, the Authority must –

7.8.2.1. Give notice to that member of its intention to suspend him or her;

7.8.2.2. Give reasons for the intention to suspend; and

7.8.2.3. Give the member a reasonable opportunity in the circumstances to make representations to the Executive Committee.

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7.9 Vacation of office by members of Authority

- 7.9.1** A member of the Authority, vacates office if that member-
- 7.9.1.1.** Is removed from office as contemplated in sub-clause 7.9.2; or 7.9.3, or;
 - 7.9.1.2.** Resigns by written notice addressed to the Authority and the Chief Executive Officer.
- 7.9.2** The Authority must remove a member of the Authority on the written request of the organisation represented by that member.
- 7.9.3** The Authority may, remove a member –
- 7.9.3.1.** For absence from three consecutive meetings of the Authority without prior approval unless the member **shows** good cause or unless the member has ensured the attendance of an alternate at each meeting;
 - 7.9.3.2.** For permanent incapacity;
 - 7.9.3.3.** For serious misconduct; or
 - 7.9.3.4.** For failure to comply with any provision in the **Code** of Conduct contained in Annexure "C".
- 7.9.4** Before removing a member **as** indicated under 7.9.3 the Authority must:
- 7.9.4.1.** Give notice to that member and nominating organization as contemplated in Annexure "F" of its intention to remove him or her;
 - 7.9.4.2.** Give reasons for the intention to remove him or her; and

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- 7.9.4.3.** give the member a reasonable opportunity in the circumstances to make representations to the Executive Committee or an appointed body.
- 7.9.5** If the Executive Committee contemplates removing a member in terms of sub-clauses **7.9.3.3** or **7.9.3.4**, the Executive Committee must hold an inquiry to determine whether or not the member should be removed from office.
- 7.9.6** The Executive Committee must appoint ~~two~~ of its members, who will normally be the Chairperson and the Vice-chairperson, to preside over the inquiry.
- 7.9.7** The Chief Executive Officer must inform the nominating organization as contemplated in annexure "F" and the member concerned in sufficient detail in writing of the allegations against him or her; and of the date, time and venue of the inquiry.
- 7.9.8** The member must be given adequate time to prepare for the inquiry and may be represented at the inquiry.

7.10 Filling of vacancies on Authority

- 7.10.1** If a member of the Authority vacates office before the expiry of his or her period of office for any reason contemplated in sub-clause **7.9.1** the organisation, which was represented by that member, must nominate a new member for the unexpired portion of that **period.**
- 7.10.2** Subject to sub-clause **7.1**, the Authority must appoint any person so nominated as a member of the Authority.
- 7.10.3** If the organisation contemplated in sub-clause **7.10.1** 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 registered trade unions, organised employers or a government department, as the case **may be.**

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8 CHAIRPERSON AND VICE-CHAIRPERSON**8.1 Elections of Chairperson and Vice-chairperson**

8.1.1 As contemplated in clause 7.5.2, the Authority must elect from among its members-

8.1.1.1. A Chairperson; and

8.1.1.2. A Vice-chairperson

8.1.2 The chairperson of the meeting must call for nominations for Chairperson of the Authority. If there is only one nomination, then the chairperson must declare the member concerned elected as Chairperson. **If** there is more than **one** nomination, then the chairperson must conduct a closed ballot.

8.1.3 The nominee who receives the highest number of votes must be declared elected as Chairperson ~~of~~ the Authority.

8.1.4 If *two* nominees receive the same number of votes, then the chairperson of the meeting must draw one ~~of~~ the names from a hat or box and that person must be declared elected **as** the Chairperson ~~of~~ the Authority.

8.1.5 **The** Vice-chairperson must be elected in the same manner as the Chairperson, provided that if the chairperson **is** a member who represents organised employers, then the Vice-chairperson must be **a** member who represents registered trade unions and vice versa.

8.2 Terms of office

8.2.1 The Chairperson and Vice-chairperson hold office for a period of one (1) year.

8.2.2 Each year, each office contemplated in sub-clause 8.1.1 must alternate between a member of the Authority representing

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registered trade unions and a member of the Authority representing organised employers.

- 8.2.3** The Chairperson **and** Vice-chairperson of the Authority may not serve as chairperson or vice-chairperson of any Chamber or provincial committee of the Authority.

8.3 Chairperson

The Chairperson of the Authority must:

- 8.3.1** Preside at meetings of the Authority;
- 8.3.2** Conduct such meetings in accordance with clause 12; **and**;
- 8.3.3** Perform any further duties or functions determined by the Executive Committee.

8.4 Vicethairperson

The Vice-chairperson must-

- 8.4.1** Assist the Chairperson to perform his or her duties;
- 8.4.2** Exercise the powers and duties of the Chairperson in his or her absence; and
- 8.4.3** Perform any further functions determined by the Executive Committee.

8.5 Temporary absence or incapacity of Chairperson or Vice-chairperson

- 8.5.1** If the Chairperson is temporarily absent or incapacitated then the Vice-chairperson must perform the functions of the office of Chairperson for the period of such absence or incapacity.
- 8.5.2** If the Chairperson **and** Vice-chairperson is temporarily absent or incapacitated then the Executive Committee must appoint a

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member to perform the functions of that office for the period of such absence or incapacity.

8.6 Vacation of office

8.6.1 The Chairperson or Vice-chairperson vacates office if:

8.6.1.1. He or she resigns or is removed as a member as contemplated in clause 7.9.2 or 7.9.3; or

8.6.1.2. 75% of the members of the Authority pass a resolution to remove him or her from office.

8.6.2 If the Chairperson or Vice-chairperson vacates office as contemplated in sub-clause 8.6.1, the Authority must replace him or her in the manner contemplated in sub-clause 8.1.1 and the new office bearer must fill the vacancy for the unexpired duration of the previous office bearer's term of office.

9 EXECUTIVE COMMITTEE**9.1 Establishment of Executive Committee**

The Authority must establish an Executive Committee comprising equal representation from registered trade unions and organised employers.

9.2 Composition of Executive Committee

The Executive Committee of the Authority consists of:

9.2.1 The Chairperson and Vice-chairperson contemplated in clause 8.1.1;

9.2.2 Five members representing registered trade unions as contemplated in Annexure "F"; and

9.2.3 Five members representing registered employer organisations as **contemplated in Annexure "F"**.

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9.3 Alternates to members of Executive Committee

9.3.1 The organisations contemplated in Annexure "F" must appoint alternates to act in the place of each member that represents their organisation, in the event that such member is unable to attend a meeting of the Executive Committee.

9.3.2 The Executive Committee must circulate agendas, documents and minutes to keep alternates abreast with developments in the Executive Committee.

9.4 Terms of office of Executive Committee

A member of the Executive Committee holds office for a period of one (1) year and is eligible for re-appointment on the expiry of his or her term of office.

9.5 Functions of Executive Committee

9.5.1 Subject to the directions of the Authority, the Executive Committee must exercise the powers and perform the functions and duties of the Authority relating to the supervision and control of the everyday management and administration of the Authority.

9.5.2 Without limiting the powers, functions and duties, the Executive Committee must-

9.5.2.1. Supervise the proper management of all financial matters;

9.5.2.2. Co-ordinate and supervise the implementation of the policies of the Authority;

9.5.2.3. Monitor national policy issues and developments and make recommendations for the adoption of policy;

9.5.2.4. Attend to the suspension and removal of members of the Authority

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9.5.2.5. **Co-ordinate** the functioning of any **Provincial Committees** and other committees of the Authority and monitor their activities and ensure that they are acting within the terms of any powers delegated to them by the Authority of by this Constitution;

9.5.2.6. Manage staff employment issues;

9.5.2.7. Consider and advise on Skills Programmes which have been recommended by committees within approved policy guidelines;

9.5.2.8. Consider and advise on Quarterly Management Reports:

9.5.2.9. **Monitor** the relations and interactions of the Authority *with* the National Skills Authority and other **SETAs**; and

9.5.2.10 Perform any other function or duty, delegated to it by the Authority.

9.5.3 The Executive Committee may establish committees to assist it in the performance of its functions.

9.6 Meetings of Executive Committee

The Executive Committee must meet at least four (4) times each year.

9.7 Meeting procedures

Meetings of the Executive Committee must comply with the procedures contemplated in clause 12.

9.8 Suspension of members, vacation of office and filling of vacancies

The provisions concerning the suspension of members, vacation of office and the filling of vacancies as contemplated in clauses 7.8, 7.9 and 7.10 read with the changes required by the context apply to the Executive Committee.

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10 PROVINCIAL COMMITTEES**10.1 Establishment and composition of Provincial Committees**

- 10.1.1 The Authority may establish a Provincial Committee for each province.
- 10.1.2 A Provincial Committee must comprise equal representation from registered trade unions and organised employers nominated in accordance with Annexure "B" (if necessary) and any other members determined by the Authority, which may include representatives of relevant provincial government departments.
- 10.1.3 The Authority must ratify the number of members of a Provincial Committee, which must not exceed ten members.
- 10.1.4 **The** Authority must designate the Chief Executive Officer or a member of its staff nominated by the Chief Executive Officer to act as the Provincial Officer of a Provincial Committee in circumstances in which the Provincial Manager has yet to be appointed.

10.2 Functions and duties of Provincial Committees

- 10.2.1 A Provincial Committee must perform such functions as are determined or delegated to it by the Authority as contemplated in clause 4.3.4
- 10.2.2 **In** respect of strategic planning and development, a Provincial Committee may-
- 10.2.2.1. Conduct participatory research in support of needs analysis and skills planning;
- 10.2.2.2. Promote the adoption by local government of skills development plans and ensure that these plans are consistent with their *human* resource development plans;

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- 10.2.2.3. Liaise with any relevant provincial structures of other **SETAs**;
 - 10.2.2.4. Make proposals on skills development for incorporation into the sector skills plan.
 - 10.2.2.5. Ensure proper consultation at municipal level with regard to the development of skills plans.
- 10.2.3** In respect of implementing the sector skills plan a Provincial Committee may-
- 10.2.3.1. Promote co-operation between municipalities to develop local capacity for the management and provision of education and training; and
 - 10.2.3.2. Encourage major urban municipalities to provide assistance to weaker municipalities.
- 10.2.4 In respect of education and training quality assurance functions, a Provincial Committee may-
- 10.2.4.1. Identify potential providers for **possible** accreditation and promote quality amongst such providers; and
 - 10.2.4.2. Monitor the activities and performance of any of the persons performing accreditation **and quality** assurance functions in the province and report thereon to the Authority.
- 10.2.5** The Provincial Manager must perform functions as may **be** determined by the Chief Executive Officer.

10.3 Chairperson and Vice-chairperson of Provincial committee

- 10.3.1 A Provincial Committee must elect a Chairperson and Vice-chairperson of the Provincial Committee.

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10.3.2 The provisions concerning the election, term of office, the functions and the circumstances concerning the absence, incapacity and vacation of office of the chairperson and Vice-chairperson of the Authority as contemplated in clauses 8.2, 8.3, 8.4, 8.5 and 8.6 read with the changes required by the context apply to the chairperson or Vice-chairperson of a Provincial Committee.

10.4 Meeting procedures

Meetings of a Provincial Committee must comply with the procedures contemplated in clause 12.

10.5 Suspension of members, vacation of office and filling of vacancies

The provisions concerning the suspension of members, vacation of office and the filling of vacancies as contemplated in clauses 7.8, 7.9 and 7.10 read with the changes required by the context apply to the Provincial Committees.

11 AUDIT COMMITTEE, CHAMBERS AND OTHER COMMITTEES**11.1 Audit Committee****11.1.1 Composition**

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

11.1.2 Duties and functions

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

11.1.2.1. The effectiveness of the Authority's internal control systems;

11.1.2.2. The effectiveness of the Authority's internal audit;

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- 11.1.2.3. The risk areas of the Authority's operations to be covered in the scope of internal and external audits;
 - 11.1.2.4. the adequacy, reliability and accuracy of financial information provided to management and other users of such information;
 - 11.1.2.5. Any accounting and auditing concerns identified as a result of internal and external audits;
 - 11.1.2.6. The Authority's compliance with legal and regulatory provisions: and
 - 11.1.2.7. The activities of the internal audit function, including its annual work programme, co-ordination with the external audits or the reports of significant investigations and the responses of management to specific recommendations; and
 - 11.1.2.8. Where relevant, the independence and objectivity of the external auditors.
- 11.1.3 The audit committee must:
- 11.1.3.1. Report and make recommendations to the Authority;
 - 11.1.3.2. Report on the effectiveness of internal controls in the annual report: and
- 11.1.4 Comment on its evaluation of the financial statements in the annual report.

11.2 Chambers

- 11.2.1 The Authority may, (in terms of section 12 of the Act) establish in its sector, chambers.

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11.2.2 A chamber so established must consist of an equal number of members representing employees and employers and may include such additional members as the Authority determines.

11.3 Establishment of other committees

11.3.1 The Authority may approve the establishment of ad hoc committees. The Executive Committee or a Provincial Committee may with the approval of the Authority establish any standing committee or ad hoc committees to assist it in the performance of its functions and must determine-

11.3.1.1. The membership of the committee;

11.3.1.2. Its functions; and

11.3.1.3. Its written terms of reference.

11.3.2 Unless otherwise determined in terms of sub-clause 11.3.1 membership of a committee –

11.3.2.1. Must consist of an equal number of members representing registered trade unions and representing organised employers; and

11.3.2.2. Is not restricted to members of the Authority, the Executive Committee, a Provincial Committee or a Chamber of the Authority.

11.4 Meeting procedures

Meetings of any committee must comply with the meeting procedures as contemplated in clause 12.

12 MEETING PROCEDURES**12.1 Annual General Meetings**

The purpose of the Annual General Meeting is to report to the employers, sector stakeholders and to various interest groups and strategic partners on:

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- 12.1.1 Financial position of the local government seta
- 12.1.2 Achievements and challenges of the seta
- 12.1.3 Annual report and audited financial statements
- 12.1.4 Progress made on strategic and business plan of the seta

12.2 Ordinary meetings

- 12.2.1 In respect of meetings of the Authority and Executive Committee, the Chief Executive Officer must –
 - 12.2.1.1. Give at least seven (7) working days written notice of the forthcoming meeting to members; and
 - 12.2.1.2. Include an agenda with the notice.
- 12.2.2 In respect of meetings of a Provincial Committee or any other committee of the Authority, the chairperson must:
 - 12.2.2.1. Give at least seven (7) working days notice to the members of the forthcoming meeting; and
 - 12.2.2.2. include an agenda with the notice.

12.3 Special meetings

- 12.3.1 The Chief Executive Officer in consultation with the office-bearers, may, on grounds of urgency, call a special meeting of the Authority or Executive Committee on **48** hours notice.
- 12.3.2 If the Chief Executive Officer receives a request signed by at least half of the members of the Authority or the Executive Committee, as the case may **be**, he or she must as soon as practicable give notice of a special meeting of the Authority and that special meeting must be **held** within 15 working **days** of receiving the request.
- 12.3.3 The chairperson of a Provincial Committee may, on grounds of urgency, call a special meeting on **48** hours notice.

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12.3.4 If the chairperson receives a request signed **by** at least half of the members of a Provincial Committee as the case may be, he or she must give notice of a special meeting of the Provincial Committee as soon as practicable and that special meeting must be held within 15 working days of receiving the request.

12.4 Chairperson

The Chairperson must preside at meetings of the Authority and conduct the meetings in accordance with the provisions of clause 12.

12.5 Quorum at meetings

12.5.1 A quorum at a meeting consists of at least half of the total members plus one member provided that at least *two* of the members representing registered trade unions and at least ~~two~~ of the members representing organised employers are present.

12.5.2 If a meeting is not ~~quorate~~ within an hour of the time scheduled *for* the commencement of the meeting and the chairperson has made reasonable attempts to investigate the reasons for the absence of members then subject to sub-clauses 12.5.3 to **12.5.8** the members present may still proceed to conduct the meeting and attend to the items on the agenda.

12.5.3 The Chairperson must ensure that a minute taker records all the provisional decisions (and a motivation for the decisions) taken at the meeting.

12.5.4 The Chairperson must ensure that a list of the provisional decisions and motivations are faxed to each member who was absent at the meeting.

12.5.5 The Chairperson must ensure that fax confirmation slips are kept safely as proof of service.

12.5.6 Each absent member has one week to respond in writing to each provisional decision.

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12.5.7 If the absent member does not respond in time then, the Chairperson may presume that the absent member agrees with all the provisional decisions taken at the meeting.

12.5.8 The Chairperson must consider the responses received by absent members and prepare a final list of decisions which must be circulated to all members prior to the next meeting as contemplated in clause 12.7.1.2.

12.6 Voting rights and decisions at meetings

12.6.1 Every effort shall be made to reach decisions through consensus.

12.6.2 In the event of voting each member has a single vote on any matter for decision.

12.6.3 A matter to be voted on shall be reduced to writing prior to voting.

12.6.4 Voting shall be by show of hand unless a proposal for a ballot is supported by 50 % of members present.

12.6.5 Decisions are made by way of a simple majority.

12.7 Minutes of meetings

12.7.1 The Chief Executive Officer must appoint a person to –

12.7.1.1. Take minutes of the meeting;

12.7.1.2. Forward the minutes to the members within two weeks of the meeting;

12.7.1.3. Table the minutes at the next meeting, for approval by the members.

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12.7.2 The chairperson of the meeting must sign the minutes as confirmation of their correctness.

12.8 Advisors

12.8.1 Members representing registered trade unions or organised employers of any structure of the Authority may approach advisors to advise them on any relevant issue.

12.8.2 Advisors may speak to a particular item on an agenda for which the members have sought assistance from the advisor.

12.8.3 Advisors may only be present in the meeting when the issue for which they have been invited arises on the agenda. Thereafter the advisor must leave the meeting.

12.8.4 Advisors may not make decisions, only members may.

12.8.5 The members requesting assistance from an advisor are responsible for logistical arrangements for that advisor and for payment of any fees the advisor may charge.

12.8.6 The Chief Executive Officer must be informed before hand of any Advisors attending the meeting.

13 APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND OTHER STAFF**13.1 Appointment**

The Authority must, subject to section 14 of the Act-

13.1.1 Appoint a Chief Executive Officer for the effective performance of the functions of the Authority: and

13.1.2 Develop and implement a policy determining staff employment procedures as well as the terms and conditions of their employment.

13.2 Duties of Chief Executive Officer

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The Chief Executive Officer shall be "

- 13.2.1 The Accounting Officer;
- 13.2.2 Responsible to the Authority for performing all functions and responsibilities of the Authority as set out in the Constitution;
- 13.2.3 Tender at all times, considered advice on the issues affecting the office of the Authority and shall ensure that the Authority is adequately informed about the activities of the office;
- 13.2.4 Responsible for the general administrative functions of the office. This includes the appointment and effective utilization of staff, promotion of sound labour practices and sound financial management in accordance with the policies and resolutions of the Authority.

14 FINANCES AND FIDUCIARY RESPONSIBILITIES

14.1 Fiduciary duties of Authority

- 14.1.1 The Authority must, as contemplated in section 50 of the Public Finance Management Act:
 - 14.1.1.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of the Authority;
 - 14.1.1.2. act with fidelity, honesty, integrity and in the best interest of the Authority in managing the financial affairs of the Authority;
 - 14.1.1.3. on request, disclose to the Minister all material facts, including those reasonably discoverable, which in any way may influence the decisions of the Minister; and
 - 14.1.1.4. Seek, within the sphere of influence of the Authority to prevent any prejudice to the financial interests of the state.

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14.1.2 A member may not:

14.1.2.1. Act in a way that is inconsistent with the responsibilities assigned to the Authority in terms of the Public Finance Management Act; or

14.1.2.2. Use the position or privileges of, or confidential information obtained for personal gain *or* to improperly benefit another person.

14.1.3 A member must:

14.1.3.1. Disclose to the Authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the Authority; and

14.1.3.2. Withdraw from the proceedings of the Authority when that matter is considered, unless the Authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

14.2 Financial and general responsibilities of Authority**14.2.1 The Authority must ensure that the Authority has and maintains:**

14.2.1.1. Effective, efficient and transparent systems of financial and risk management and internal control:

14.2.1.2. A system of internal audit under the control and direction of an audit committee complying *with* the operating in accordance with regulations and instructions prescribed in terms of sections **76** and **77** of the Public Finance Management Act:

14.2.1.3. An appropriate procurement and provisioning system which *is* fair, equitable, transparent, competitive *and* cost-effective; and

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- 14.2.1.4.** A system for properly evaluating all major capital projects prior to a final decision on the project,
- 14.2.2** The Authority must take effective and appropriate steps to:
- 14.2.2.1** Disburse funds in terms of section 14 of the Act all revenue **due** to the Authority; and
- 14.2.2.2** Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the Authority; and
- 14.2.2.3** Manage available working capital efficiently and economically.
- 14.2.3** The Authority is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the Authority.
- 14.2.4** The Authority must comply with any tax, levy, **duty**, pension and audit commitments as required by legislation.
- 14.2.5** The Authority must take effective and appropriate disciplinary steps against any employee of the Authority **who**:
- 14.2.5.1** Contravenes or fails to comply with a provision of the Act;
- 14.2.5.2** Commits an act which undermines the financial management and internal control system of the Authority; or
- 14.2.5.3** Makes or permits an irregular expenditure or a fruitless and wasteful expenditure.
- 14.2.6** The Authority is responsible for the submission of all reports, returns, notices and other information to Parliament or the Minister, **as may be required by** the Public Finance Management Act.

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14.2.7 The Authority must comply with the provisions of the Public Finance Management Act and any other applicable legislation.

14.3 Sources of finance

The Authority is financed from-

14.3.2 The skills development levies collected in its sector;

14.3.3 Moneys paid to it from the National Skills Fund;

14.3.4 Grants, donations and bequests made to it;

14.3.5 Income earned on surplus moneys deposited or invested;

14.3.6 Income earned on services rendered in the prescribed manner; and

14.3.7 Money received from any other lawful source.

14.4 Investments

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

14.4.2.1 Savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution:

14.4.2.2 Internal registered stock contemplated in section 21 (1) of the Exchequer Act, 1975 (Act 66 of 1975); and

14.4.2.3 Any other manner approved by the Minister.

14.4.3 All investments must comply with the approved investments policy of the Authority and be consistent with relevant legislation

14.5 Purpose for which funds may be used

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

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14.5.2 Fund the performance of its functions; and

14.5.3 Pay for its administration within the prescribed limit.

14.6 Financial records of Authority

16.6.1 The Authority must, in accordance with the standards of **generally** accepted accounting practice-

14.6.2.1 Keep proper record of **all** its financial transactions, assets and liabilities; and

14.6.2.2 Within ~~six~~ months after the end of each financial year, prepare accounts reflecting income and expenditure and a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

14.6.3 The Authority must prepare-

14.6.3.1 Annual budgets, annual **reports** and financial statements in accordance with Chapter **6** of the **Public Finance Management Act**; and

14.6.3.2 Furnish the Director-General with copies of **all** budgets, reports and statements contemplated **above** and any other information that it is required to **submit** in terms of the **Public Finance Management Act**.

14.7 Audit of Authority

14.7.2 The Auditor-General must –

14.7.2.1 audit the accounts, financial statements **and** financial management of the Authority; and

14.7.2.2 report on that audit to the Authority and to the Minister and in that report express an opinion as to whether the Authority has complied with the provisions of the Act, and this Constitution, relating to financial matter.

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14.7.3 Sub-clause 14.7.1 does not preclude the appointment of some other auditor to audit the accounts and financial statements of the Authority.

14.8 Signatories to accounts

14.8.2 The Authority must appoint three signatories to authorise any payment on their behalf.

14.8.3 At least ~~two~~ of the three signatories must be required to authorise any payment by the Authority.

14.8.4 All payments must be made in terms of the relevant legislation and policies of the Authority.

15 CODE OF CONDUCT

The members of the Authority, the Executive Committee, Provincial Committees and any other committee of the Authority are bound by the Code of Conduct contained in Annexure "C".

16 ARBITRATION

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

17 AMENDMENTS AND INTERPRETATION OF CONSTITUTION

17.1.1 The Minister after consultation with the Authority may amend this Constitution in the prescribed manner.

17.1.2 The Authority may, by resolution of 75% of its members, recommend to the Minister that this constitution ~~be~~ amended in accordance with the resolution.

17.1.3 The Authority may by resolution of **75%** of its members make a ruling on the interpretation of this constitution.

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18 INDEMNIFICATION

Every member of the Authority, *Executive Committee, Provincial Committee, Chamber or other committee* and the staff of the Authority are indemnified by the Authority against any civil liability arising *from the performance* of his or her duties in good faith.

19 AMALGAMATION or DISSOLUTION OF THE SETA**19.1 The role of the Minister**

19.1.1 The Authority may on good cause recommend *to the* Minister the amalgamation or dissolution of the Authority in terms of section GA of the Act.

19.1.2 A recommendation contemplated in subclause 99.1.1 requires a resolution of the Authority supported by *not less than* 75% of its members.

19.1.3 If the Minister approves the amalgamation or dissolution of the Authority then the Authority must be amalgamated or dissolve in accordance with law; and any residue must be transferred to the National Skills Fund.

20. TAKING OVER THE ADMINISTRATION OF THE AUTHORITY

The minister may after consultation with the National Skills Authority and the Authority appoint an Administrator to take over the *administration* of the Authority in terms of section 15 of the Act.

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ANNEXURE "A": SCOPE OF LGSETA

SIC CODE	DESCRIPTION
30101	Production, processing and preservation of meat products by Local Governments
41110	Production, collection and distribution of electricity
41117	Generation of electric energy by Local Governments
50223	Construction of pylons for electric transmission lines by Local Government
50493	Any utility or agency, wholly or partially owned by a municipality providing local government services under contractors or municipality
62520	Retail trade via stalls and markets
71213	Urban, suburban and inter-urban bus and coach passenger lines operated by Local Government
71220	Other non-scheduled passenger land transport
74132	Salvaging of distressed vessels and cargoes
74133	Maintenance and operation of harbour works, pilotage, lighthouses, etc., pilotage
74134	Operation of airports, flying fields and air navigation facilities
88217	Roads
88218	Municipal public works functions (specifically assigned)
88219	Municipal fencing and fences

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8821A	Municipal Roads
88216	Street Lighting
88930	Building and industrial plant cleaning activities
91200	Regional services council activities
91201	All functions, services and facilities provided by a metropolitan council as determined by 84(1); (2) and (3) of Act 117 of 1991 – Local Government Municipal Structure Act of 1998
91202	Category B Municipalities: All functions, services and facilities provided by local council as determined by 84(1), (2) and (3) of Act 117 of 1998
91203	Category C Municipalities: All functions, services and facilities provided by a district council and district area management as per Act 117 as determined by 84(1), (2) and (3) of Act 117 of 1998 local government municipal structures Act 1998
91204	Organised local government – any statutory or regulatory body assigned the function as per constitution of RSA, to deal with the matters at the executive level within local government
91300	Local government activities
91301	Metro Police
91302	Traffic management/law enforcement
91303	Air pollution
91304	Municipal planning
91305	Trading regulations

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31 306	Billboards and the display of advertisement in public places
31307	Control of public nuisances
31 308	Control of undertakings that sell liquor to the public
91 309	Licensing of dogs
9130A	Licensing and control of undertakings that sell food to the public
91 308	Noise pollution
91 30C	Street trading
9130F	Land use planning
92006	Pre-primary education and activities of after school centres by local authorities
93304	Social work in local governments
94001	Refuse and sanitation
94002	Health and community services
94005	Other community work in local governments
96001	Recreational, cultural and sporting activities by local governments
96191	Beaches and amusement facilities and fairs
96192	Pounds
96193	Public places
96313	Provision and operation of libraries of all kinds by local

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	government
96321	Museum activities and <i>preservation of historical sites and buildings</i> by local governments
96331	Parks and gardens
96332	Zoos
96414	Local sports facilities
96493	Municipal parks
99001	Building regulations
99031	Cemeteries
99032	Facilities for <i>the accommodation, care and burial of animals</i>

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ANNEXURE "B": FORMULA FOR PROPORTIONAL ALLOCATION OF MEMBERS:

If organisations within a particular constituency, e.g. organised employers or registered trade unions (respectively) cannot reach agreement on the allocation of seats per organisation, then the principle of proportionality must apply. The formula below may be followed.

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

2 A represents either-

- 2.1 the number of employees employed by the members of an employers' organisation listed in Annexure "E"; or
- 2.2 the number of members of a registered trade union listed in Annexure "E".

3 B represents either-

- 3.1 the total number of employees employed by all the employers who are members of all employers' organisations listed in Annexure "E"; or
- 3.2 the total membership of all the registered trade unions listed in Annexure "E".

4 C represents 10

5 D represents either-

- 5.1 The number of members which an employer's organisation may nominate to the Authority; or
- 5.2 The number of members which a registered trade union may nominate to the Authority.

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Example: If there are only two registered trade unions, one with 600 members and the other with 1000 members, they would be represented as follows on the Authority-

$$\frac{600}{1600} \times \frac{10}{1} = 3.75 \qquad \frac{1000}{1600} \times \frac{10}{1} = 6.25$$

The trade union with 600 members would nominate 4 members

The trade union with 1000 members would nominate 6 members.

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ANNEXURE "C": CODE OF CONDUCT

- 1 The members of the Authority, the Executive Committee, Chambers, Provincial Committees and any other committee 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.

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ANNEXURE "D": ARBITRATION PROCEDURE

- 1 Any party to a dispute concerning the application or interpretation of this Constitution may refer the dispute to the Chief Executive Officer.
- 2 The dispute may be resolved by a decision of the Executive Committee or Authority supported by not less than 75% of members representing registered trade unions and by not less than 75% of members representing organised employers.
- 3 If the dispute remains unresolved, then the parties may agree on an arbitrator to arbitrate the dispute.
- 4 If the parties cannot agree on an arbitrator, then the Chief Executive Officer must select an arbitrator from the panel of arbitrators selected by the South African Local Government Bargaining Council.
- 5 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible then the arbitrator must arbitrate the dispute.
- 6 The arbitrator must conduct the arbitration, in a manner that the arbitrator 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 formalities.
- 7 Subject to the arbitrator's discretion as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question witnesses of any other party, and address concluding arguments to the arbitrator.
- 8 A party to the dispute may be represented.
- 9 If the party who referred the dispute fails to appear in person or to be represented at the arbitration proceedings, the arbitrator may dismiss the matter.

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- 10 If a party, other than the party who referred the dispute, fails to appear in person or be represented at the arbitration proceedings, the arbitrator may-
- 10.1 continue with the arbitration proceedings in the absence of that party; or
 - 10.2 adjourn the arbitration proceedings to a later date.
- 11 Within 14 days of the conclusion of the arbitration proceedings-
- 11.1 the arbitrator must issue an arbitration award with reasons, signed by the arbitrator; and
 - 11.2 the Chief Executive Officer **must** serve a copy of that award on each party to the dispute.
- 12 The arbitration **award** is final and binding on the parties to the dispute.
- 13 The arbitrator may not include an order for **costs** in the arbitration award, provided however that in the case of a non-appearance by any party or delay caused by the fault of any party or if the arbitrator is of the view that the party pursuing or resisting the claim did so vexatiously or frivolously or that it **had no** reasonable prospect of succeeding, the arbitrator may make an appropriate award of **costs**.
- 14 An arbitrator may at his or her own initiative or **as** a result of an application by *an affected party*, vary or rescind an *award*-
- 14.1 erroneously sought or made in the absence of any party affected by the award;
 - 14.2 in which there is ambiguity, or any obvious error or omission, **but** only to the extent of that ambiguity, error or omission; or
 - 14.3 granted **as** a result of a mistake common to the parties to the proceedings.

CONSTITUTION OF THE LOCAL GOVERNMENT SECTOR EDUCATION AND TRAINING AUTHORITY

ANNEXURE "E": REGISTERED TRADE UNIONS, EMPLOYER ORGANISATIONS AND RELEVANT GOVERNMENT DEPARTMENTS WITHIN SCOPE OF AUTHORITY

1 Registered trade unions

- 1.1 **South** African Municipal Workers Union (SAMWU)
- 1.2 Independent Municipal and Allied Trade Union (IMATU)

2 Registered employers organisation

- 2.1 South African Local Government Association (SALGA)

3 Relevant government departments

- 3.1 All provincial and local governments
- 3.2 National Department of provincial and local government
- 3.3 Any **other** relevant department in the national sphere of government.

CONSTITUTION OF THE LOCAL GOVERNMENTSECTOR EDUCATION AND TRAINING AUTHORITY

**ANNEXURE "F": ORGANISATIONS WHICH MAY NOMINATE MEMBERS TO
AUTHORITY****1. The Authority****1.1 Trade Unions****1.1.1 SAMWU (6 members)****1.1.2 IMATU (4 members)****1.2 Organised Employers****1.2.1 SALGA (8 members)****1.2.2 DPLG (2 members)****2. Executive Committee****2.1 Trade Unions****2.1.1 SAMWU (3 members)****2.1.2 IMATU (2 members)****2.2 Organised Employers****2.2.1 SALGA (4 members)****2.2.2 DPLG (1 members)**