

No. R. 831

11 August 2006

DEPARTMENT OF LABOUR

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

**APPROVAL OF CONSTITUTION OF THE TOURISM, HOSPITALITY AND SPORT
TRAINING AUTHORITY (SETA 25)**

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

SCHEDULE

TOURISM, HOSPITALITY AND EDUCATION AND
TRAINING AUTHORITY
(**THETA**)

AMENDED CONSTITUTION

CHAPTER 1

NAME, PURPOSE AND LEGAL STATUS

1. Name and Physical Address

The name of the Sector education and training authority is the Tourism, Hospitality and Sport Education and Training Authority. The shortened form of the name is THETA. The physical address of THETA is situated at 38 Homestead Road, Rivonia, Johannesburg.

2. Sector

- 2.1 The national economic sector for which THETA is constituted is the Tourism, Hospitality and Sports sector as determined and Prescribed by the Minister in terms of Notice No R316 of 31 March 2005 as published in Government Gazette 27445. The existing scope of coverage of THETA is set out in Annexure "A".

3. Legal status

- 3.1 THETA is a body corporate with an identity and existence distinct from its office-bearers or members. It will continue to exist notwithstanding changes in the composition of its membership or office-bearers. It may sue or be sued in its own name and is capable of having its own rights, duties and obligations.
- 3.2 THETA is an association not for gain.

4. Purpose

- 4.1 The purpose of this constitution is to:
- 4.1.1 establish the legal parameters within which the THETA may exercise its functions and duties; and to
- 4.1.2 establish a legal institutional framework within which the THETA shall be entitled and empowered to act in order to give appropriate effect to its functions.

CHAPTER 2

INTERPRETATION

5. In this constitution, unless inconsistent with the context or subject matter:
- 5.1 chapter, clause and paragraph headings are for purposes of reference only and shall not be used in interpretation;
- 5.2 unless the context clearly indicates a contrary intention, words connoting:
- 5.2.1 any gender include the others;
- 5.2.2 the singular includes the plural and vice-versa;
- 5.2.3 natural persons include juristic persons and vice-versa;
- 5.3 the following expressions shall bear the meanings assigned to them below and related expressions shall bear corresponding meanings:
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| 5.3.1 | "Act" | - means the Skills Development Act, 1998 (Act No 97 of 1998); |
| 5.3.2 | "Audit Committee" | - means the Audit Committee of THETA established in terms of clause 19.1.1 of this constitution; |
| 5.3.3 | "Chamber" | - means a specific sector focus group established in terms of the Act and this constitution; |
| 5.3.4 | "Chief Executive Officer" | - means the Chief Executive Officer of THETA appointed in terms of clause 30 of this constitution; |
| 5.3.5 | "Department" | - means the Department of Labour; |
| 5.3.6 | "Designated Groups" | - means black people, women and people with disabilities; |
| 5.3.7 | "Director-General" | - means the Director-General of Labour; |

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| 5.3.8 | "Employees' Organisation" | - means any registered trade union or federation of trade unions under the provisions of the Labour Relations Act and any other association of employees whose principal purpose is to regulate relations between employees and employers, including any Employers' Organisations; |
| 5.3.9 | "Employers' Organisation" | - means any registered Employers' Organisation under the provisions of the Labour Relations Act and any other number of employers, associated together for the purpose, whether by itself or with others, of regulating relations between employers and employees or trade unions; |
| 5.3.10 | "ETQA" | - means education, training and quality assurance; |
| 5.3.11 | "Executive Committee" | - means the Executive Committee of THETA established in terms of clause 18.1.1 of this constitution; |
| 5.3.12 | "Labour Relations Act" | - means the Labour Relations Act, 1995 (Act No 66 of 1995); |
| 5.3.13 | "Levies Act" | - means the Skills Development Levies Act, 1999 (Act No 9 of 1999); |
| 5.3.14 | "Member" | - unless the context indicates otherwise, means a Member of the Board of the THETA as contemplated in section 11 of the Act; |
| 5.3.15 | "Minister" | - means the Minister of Labour; |

- 5.3.16 **"National Skills Authority"** - means the National Skills Authority established by section 4 of the Act;
- 5.3.17 **"National Skills Development Policy"** - means the National Skills Development Policy referred to in section 5(1)(a)(i) of the Act;
- 5.3.18 **"National Skills Development Strategy"** - means the National Skills Development Strategy referred to in section 5(1)(a)(ii) of the Act;
- 5.3.19 **"Public Finance Management Act"** - means the Public Finance Management Act, 1999 (Act No 1 of 1999);
- 5.3.20 **"Prescribed"** - means Prescribed by Regulation;
- 5.3.21 **"Regulation"** - means a Regulation made and in force in terms of legislation;
- 5.3.22 **"Service Level Agreement"** - means a Service Level Agreement concluded in terms of Section 10A of the Act;
- 5.3.23 **"Sector"** - means the Tourism, Hospitality and Sports national economic sector as determined and prescribed by the Minister in terms of Notice No R316 of 31 March 2005 as published in Government Gazette 27445;
- 5.3.24 **"SETA"** - means a sector education and training authority established by the Minister under section 9 of the Act;

- 5.3.25 **"THETA"** - means the Tourism, Hospitality and Sport Education and Training Authority;
- 5.3.26 **"Worker/s"** - includes an employee, an unemployed person and a work-seeker;
- 5.4 any word or expression in this constitution that is defined in the Act has that meaning unless the context indicates otherwise.

CHAPTER 3

FUNCTIONS AND DUTIES

6. Functions and Duties of THETA

In accordance with any requirements that may be Prescribed, the functions and duties of THETA are to:

- 6.1 develop a skills plan for the Sector within the framework of the National Skills Development Strategy;
- 6.2 implement its Sector Skills Plan by:
- 6.2.1 establishing learnerships;
- 6.2.2 approving workplace skills plans;
- 6.2.3 allocating grants in the Prescribed manner and in accordance with any Prescribed standards and criteria to employers, education and training providers and Workers; and
- 6.2.4 monitoring education and training provision in the Sector;
- 6.3 promote learnerships by:
- 6.3.1 identifying workplaces in the Sector for practical work experience;
- 6.3.2 supporting the development of learning materials;
- 6.3.3 improving the facilitation of learning; and

- 6.3.4 assisting in the conclusion of learnership agreements;
- 6.4 register learnership agreements;
- 6.5 perform the functions of an education and training quality assurance body as provided in the South African Qualifications Authority Act, 1995 (Act No 58 of 1995) and other relevant legislation;
- 6.6 when required to do so as contemplated in section 7(1) of the Levies Act, collect the skills development levies, and disburse the levies, allocated to it in terms of sections 8(3)(b) and 9(b) of the Levies Act, in its sector;
- 6.7 submit to the Director General:
 - 6.7.1 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
 - 6.7.2 plans and reports on the implementation of its sector skills plan and Service Level Agreement;
- 6.8 liaise with the National Skills Authority on:
 - 6.8.1 the National Skills Development Policy;
 - 6.8.2 the National Skills Development Strategy; and
 - 6.8.3 its sector skills plan;
- 6.9 liaise with the employment services of the Department and any education body established under any law regulating education or training in the Republic to improve information:
 - 6.9.1 about employment opportunities; and
 - 6.9.2 between education and training providers and the labour market;
- 6.10 subject to section 14(3A)(b) of the Act, appoint staff necessary for the performance of its functions;
- 6.11 promote the national standard of good practice in skills development established in terms of section 30B of the Act; and

- 6.12 perform any other duties imposed by the Act or the Levies Act or consistent with the purposes of the Act;
- 6.13 In the performance of its functions and duties and in respect of each financial year THETA shall conclude with the Director-General a Service Level Agreement concerning:
 - 6.13.1 THETA's performance of its functions in terms of the Act and the National Skills Development Strategy;
 - 6.13.2 the THETA's annual business plan; and
 - 6.13.3 any assistance that the Director-General is to provide to the THETA in order to enable it to perform its functions and duties.

7. Powers of THETA

- 7.1 THETA has:
 - 7.1.1 all such powers as are necessary to enable it to perform its duties and functions in terms of the Act, the Regulations and this constitution; and
 - 7.1.2 the other powers conferred on it by the Act or the Levies Act.
- 7.2 The THETA shall perform its functions in accordance with the Act, the Levies Act, the Public Finance Management Act and this constitution.
- 7.3 THETA may delegate its powers, duties and functions to its members, employees, chambers and committees, provided that the THETA:
 - 7.3.1 may impose conditions for the delegation;
 - 7.3.2 may not be divested of any power or duty by virtue of the delegation; and
 - 7.3.3 may vary or set aside any decision made under any delegation.
- 7.4 THETA may for the purposes of achieving its objectives and performing its duties and functions establish Committees and Chambers.
- 7.5 A Committee or Chamber so established shall have the terms of reference and organisational structures determined by THETA provided that such terms

of reference and organisational structures shall not conflict with any provision of this constitution.

- 7.6 THETA may at any time dissolve any such Committee and may amend or revoke its terms of reference and organisational structures.
- 7.7 THETA may at any time dissolve any such Chamber or suspend any Chamber with a view to its dissolution, in the event that THETA is satisfied that the said Chamber is redundant, has defaulted or is unable to perform its functions.
- 7.8 A Committee or Chamber shall have the powers and functions delegated to it by THETA and shall operate, subject to any such conditions as may be imposed by THETA.

CHAPTER 4

COMPOSITION OF THETA

8. Constituency of THETA

The constituency of THETA shall be determined as follows:

- 8.1 THETA shall compile and shall maintain from time to time a schedule of employee and employer organisations as defined whose members carry on their business activities or are employed, in the Sector, together with national, provincial and local government departments relevant to the Sector.
- 8.2 as at the date of submission of this constitution for approval by the Minister, the employee and employer organisations as defined and relevant government departments in the Sector are set out in **Annexure "C"** to this constitution;
- 8.3 THETA may recognise any new Employees' or Employers' Organisation, which apply for recognition, if it is satisfied that such recognition will make THETA more representative of the employees or employers in the Sector, as the case may be;
- 8.4 an application for recognition by an Employers' or Employees' Organisation shall be in such form as may be determined by THETA and shall include:

TOURISM, HOSPITALITY AND EDUCATION AND
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(**"THETA"**)

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- 7.4 THETA may for the purposes of achieving its objectives and performing its duties and functions establish Committees and Chambers.
- 7.5 A Committee or Chamber so established shall have the terms of reference and organisational structures determined by THETA provided that such terms

of reference and organisational structures shall not conflict with any provision of this constitution.

- 7.6 THETA may at any time dissolve any such Committee and may amend or revoke its terms of reference and organisational structures.
- 7.7 THETA may at any time dissolve any such Chamber or suspend any Chamber with a view to its dissolution, in the event that THETA is satisfied that the said Chamber is redundant, has defaulted or is unable to perform its functions.
- 7.8 A Committee or Chamber shall have the powers and functions delegated to it by THETA and shall operate, subject to any such conditions as may be imposed by THETA.

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- 8.1 THETA shall compile and shall maintain from time to time a schedule of employee and employer organisations as defined whose members carry on their business activities or are employed, in the Sector, together with national, provincial and local government departments relevant to the Sector.
- 8.2 as at the date of submission of this constitution for approval by the Minister, the employee and employer organisations as defined and relevant government departments in the Sector are set out in **Annexure "C"** to this constitution;
- 8.3 THETA may recognise any new Employees' or Employers' Organisation, which apply for recognition, if it is satisfied that such recognition will make THETA more representative of the employees or employers in the Sector, as the case may be;
- 8.4 an application for recognition by an Employers' or Employees' Organisation shall be in such form as may be determined by THETA and shall include:

- 8.4.1 details of the applicants' membership within the Sector and, if the applicant is an Employers' Organisation, the number of employees that its members employ within the Sector;
- 8.4.2 the reasons the applicant ought to be recognised; and
- 8.4.3 any other information that may be required by THETA or on which the applicant relies in support of its application;
- 8.5 only Employees' and Employers' Organisations as defined shall be recognised by THETA. The following factors shall be taken into account by THETA in determining whether or not an organisation is as defined and therefore entitled to recognition:
 - 8.5.1 registration with the Registrar of Labour Relations in terms of the Labour Relations Act; and
 - 8.5.2 sufficient representation of Designated Groups as contemplated in Section 13(4) of the Act;
- 8.6 the name of any recognised Employees' or Employers' Organisation will be removed from the schedule:
 - 8.6.1 upon the written request of that organisation; or
 - 8.6.2 by THETA if, after giving the organisation a reasonable opportunity to demonstrate otherwise, THETA is satisfied that the organisation in question no longer enjoys sufficient representation in the Sector or is no longer sufficiently representative of Designated Groups or is not registered with the Registrar of Labour Relations in terms of the Labour Relations Act or no longer satisfies the other criteria for recognition set out in this constitution. In this regard any organisation set out in **Annexure "C"** which is not registered with the Registrar of Labour Relations in terms of the Labour Relations Act and which is not sufficiently representative of Designated Groups shall have a period of 6 months from the date of publication of this constitution in the Government Gazette to secure such registration and sufficient representativity. Organisations not so registered and sufficiently representative at the expiry of this 6 months period shall have their

names removed from the schedule unless it is an association representing organized employers which would be excluded from the above requirement.

9. Membership

The Board of the THETA contemplated in section 11 of the Act shall consist of the following Members:

- 9.1 to represent organised labour;
 - 9.1.1 9 persons who are appointed from nominations received from Employees' Organisations as defined listed in **Annexure "C"** and other Employees' Organisations relevant to the Sector and who are not listed in **Annexure "C"** but who are able to demonstrate registration with the Registrar of Labour Relations in terms of the Labour Relations Act and sufficient representativity of Designated Groups at the time that nominations are made;
- 9.2 to represent organised employers, including small business;
 - 9.2.1 9 persons who are appointed from nominations received from Employers' Organisations as defined listed in **Annexure "C"** and other Employers' Organisations relevant to the Sector and who are not listed in **Annexure "C"** but who are able to demonstrate registration with the Registrar of Labour Relations in terms of the Labour Relations Act and sufficient representativity of Designated Groups at the time that nominations are made;
- 9.3 to represent relevant government departments;
 - 9.3.1 one person to be nominated by the Minister of Environmental Affairs and Tourism; and
 - 9.3.2 one person to be nominated by the Minister of Sports and Recreation;
- 9.4 if the Minister, after consultation with the Members referred to in 9.1, 9.2 and 9.3 considers it appropriate for the Sector:
 - 9.4.1 one person representing any interested professional body;

- 9.4.2 one person representing any bargaining council with jurisdiction in the Sector; and
- 9.4.3 two additional members by virtue of their expertise.
- 9.5 each constituency represented on the Board of the THETA shall be represented by Members who are sufficiently representative of Designated Groups and THETA shall be entitled to take any necessary steps to ensure that the constituencies comply with this provision of the constitution.

10. Terms and conditions of office of Members of THETA

- 10.1 Subject to this constitution, each Member of the Board of the THETA shall hold office for a period of five years from the date of his appointment. Each Member shall hold office until the member:
 - 10.1.1 reaches the end of his term;
 - 10.1.2 ceases to hold a qualification necessary under the Act or this constitution to be appointed, or his nomination is revoked by notice in writing to THETA by the organisation that nominated him;
 - 10.1.3 resigns, dies or otherwise becomes incapable of discharging his duties; or
 - 10.1.4 becomes insolvent or commits any act of insolvency;
 - 10.1.5 is removed from office by THETA, after being afforded an opportunity to be heard, as a result of:
 - 10.1.5.1 serious misconduct;
 - 10.1.5.2 any violation of the Code of Conduct in this constitution or any other provisions of this constitution;
 - 10.1.5.3 being absent from three consecutive meetings of the Board of THETA without good cause or the prior permission of the Chairperson;
 - 10.1.5.4 any conduct that may undermine the integrity of THETA or which may bring THETA or any of its Members into disrepute; or

10.1.5.5 any other good reason.

10.2 Whenever a vacancy occurs in a Ministerial nominee Board Member position, THETA must inform the Minister concerned of the vacancy in writing within 2 calendar months. THETA shall provide the Minister concerned with a list of recommended suitable candidates, and in selecting Ministerial nominees, the Minister concerned shall not be bound to consider any candidates who have been recommended by THETA.

10.3 Whenever a vacancy occurs in any recognised organised labour or employer Board Member position, THETA must within 14 days invite the relevant recognised Employees' or Employers' Organisation that had nominated the vacating Board Member, as the case may be, to appoint a Member to fill the vacancy. A new Member shall be appointed within 2 calendar months of the vacancy occurring.

10.4 Any Member appointed to fill a replacement vacancy shall occupy such position from the time of his appointment for the remaining period of the term of office.

Members of the Board of THETA may not serve for more than two five-year terms that follow each other.

11. Nominations

11.1 Immediately after the date of publication of this constitution in the Government Gazette, the exiting Board of THETA shall appoint a sub-committee to determine the process of re-constitution of a new Board.

11.2 The sub-committee shall consist of at least 5 members who will be drawn from representatives of organised labour and organised business, the Chief Executive Officer and any member appointed by virtue of his expertise.

11.3 The sub-committee shall have the power to determine the process of re-constitution of a new Board, including calling for nominations from the organisations entitled to make nominations in terms of this constitution, and will take measures to procure the ratification of the new Board appointed by it at a general meeting of the stakeholders of the THETA called for this purpose.

The general meeting envisaged in this clause shall take place within 2 months from the date of publication of this constitution in the Government Gazette.

- 11.4 The sub-committee shall ensure that the new Board is appointed within one month of the date of publication of this constitution in the Government Gazette and is ratified at a general meeting within 2 months from the date of publication of this constitution in the Government Gazette.

CHAPTER 5

OFFICE-BEARERS OF THETA

12. Office-bearers

The office-bearers of the Board of THETA shall be:

- 12.1 the Chairperson; and
12.2 the Deputy Chairperson.

13. Functions of the Office-bearers

- 13.1 The Chairperson shall preside at all meetings of the THETA Board and shall ensure that minutes of such meetings are kept. In the absence of the Chairperson, the Deputy Chairperson shall act as Chairperson.
- 13.2 In consultation with the Executive Committee, the Chairperson or such person as shall be acting in the place of the Chairperson shall ensure that the Annual General Meeting and other meetings of THETA are called and held as provided in this constitution.
- 13.3 The Chairperson and Deputy Chairperson shall be Members of the Executive Committee. The Chairperson shall preside at all meetings of the Executive Committee. In the absence of the Chairperson, the Deputy Chairperson shall preside at meetings of the Executive Committee.
- 13.4 The Chairperson of the Board of THETA shall be a Member of the Audit Committee but shall not chair that Committee.

14. Election

- 14.1 Each of the Office-bearers of the Board of the THETA shall be elected from amongst appointed and ratified Board Members representing Employees' Organisations as defined and Employers' Organisations as defined. The Chairperson and Deputy Chairperson shall not be elected from the same constituency group and after each 2 year period of office the respective positions shall be alternated between the respective constituency groups.
- 14.2 The first election of the office-bearers of the Board shall take place at the general meeting called for the purpose of ratifying the new Board as envisaged in this constitution and thereafter and, where applicable, the subsequent election of the Office-bearers of the Board of the THETA shall take place at the Annual General Meeting of THETA and the persons so elected shall hold office for a period of 2 years from the general meeting or Annual General Meeting that elected them.

15. Term of Office

The term of office of each of the office bearers will not be more than 2 years from the time of their election at a general meeting or an Annual General Meeting.

16. Absence or vacant office

- 16.1 In the absence of the Chairperson or should the office of Chairperson be vacant, the Deputy Chairperson shall act as Chairperson. If the Chairperson and the Deputy Chairperson are absent, or if each of these offices is vacant, the Board shall appoint an acting Chairperson and acting Deputy Chairperson from amongst the Board Members of THETA representing organised business and organised labour. A vacant office shall be filled with a member from the constituency from whom the incumbent is drawn.
- 16.2 Such acting Chairperson or Deputy Chairperson shall hold office during the absence of the officer in whose place they stand, or until the next Annual General Meeting of THETA, at which a Chairperson or Deputy Chairperson as the case may be shall be elected as provided in this constitution. During this acting period, the acting Chairperson or Deputy Chairperson shall have all the powers, rights, duties and privileges which this constitution confers upon the officer in whose place they stand.

CHAPTER 6

STANDING COMMITTEES

17. General

- 17.1 The Standing Committees of the Board of the THETA shall be:
- 17.1.1 the Executive Committee;
 - 17.1.2 the Audit Committee;
 - 17.1.3 the ETQA Committee;
 - 17.1.4 the Operations Committee;
 - 17.1.5 the Remuneration Committee;
 - 17.1.6 the Tender Committee.
- 17.2 The Standing Committees shall have the duties, functions and composition provided for in this constitution and may seek and consider the advice of the Chambers and other standing committees.
- 17.3 Each Standing Committee, save for the Executive Committee, shall have the power to co-opt, for a period of not longer than one year, a maximum of 3 additional Members who need not be Board Members of THETA or of a Chamber but who have expertise, knowledge or experience in matters relevant to the duties and functions of that committee. Co-opted Members will have the right to attend and speak at meetings of the committee, but not to vote.
- 17.4 The term of office of each of the Committee Members shall be for a period of 2 years from the date of their appointment.
- 17.5 The composition of the Standing Committees of THETA is laid out in annexure "B" to this constitution.
- 17.6 The Chairperson and Deputy Chairperson of the Board of the THETA shall hold office on any Committee to which they are appointed, in terms of this constitution, for the period that they remain Office-bearers.

17.7 Any Member of the Board of the THETA who is not elected to a Standing Committee shall be entitled to attend by invitation and speak at meetings of that Committee but not to vote.

17.8 Any staff Member of THETA who is required from time to time to attend a meeting of a Committee shall be entitled to speak at the meeting but not to vote.

18. The Executive Committee

18.1 Duties and functions

18.1.1 THETA must establish an Executive Committee whose composition shall be in accordance with **Annexure "B"**. The Executive Committee shall be responsible for the management of the operational affairs of THETA. It shall exercise such further powers and functions as may be entrusted or delegated to it by the Board of the THETA. The Executive Committee shall be responsible to and shall report to the Board of THETA.

18.1.2 In particular, but without limiting the generality of this, the Executive Committee shall have the following specific functions:

18.1.2.1 to present the annual budget, business plan, sector skills plan and quality plan for the approval of THETA;

18.1.2.2 to receive, consider and approve the financial reports of THETA;

18.1.2.3 to monitor and report on the financial operations, internal financial controls and budget performance of THETA;

18.1.2.4 to determine policies for the effective management of human resources and to monitor their implementation;

18.1.2.5 to manage and co-ordinate the activities of other Standing Committees and the Chambers;

18.1.2.6 whenever any question or issue of business arises, to determine which Standing Committee or Chamber should deal with it;

- 18.1.2.7 to appoint and to agree the terms of service of the Chief Executive Officer of THETA and to determine the functions, rights and duties of the Chief Executive Officer and to direct and supervise the Chief Executive Officer in the performance of his duties;
 - 18.1.2.8 to appoint such ad hoc Committees as may be required;
 - 18.1.2.9 to seek and consider the advice of the other Committees and Chambers;
 - 18.1.2.10 to submit, for the consideration of THETA, an annual report on the affairs of THETA and of its own activities;
 - 18.1.2.11 to approve the THETA's insurance portfolio;
 - 18.1.2.12 to consider and approve plans for the provision of capital resources, to facilitate achievement of the THETA's objectives and to monitor the progress of major capital and infrastructure works; and
 - 18.1.2.13 to consider legal matters.
- 18.1.3 The Executive Committee shall have the power to refer such matters as it may deem fit to any other Standing Committee or to any ad hoc Committee it may establish or to any Chamber and to withdraw or vary such reference at any time.
- 18.1.4 The Chairperson of the Board of the THETA or such person as shall be acting in the place of the Chairperson in accordance with this constitution shall preside at all meetings of the Executive Committee.

19. The Audit Committee

19.1 Duties and functions

- 19.1.1 THETA must establish an Audit Committee whose composition shall be in accordance with **Annexure "B"**. The role of the Audit Committee is an advisory one to the Board of the THETA and the Executive Committee and its activities shall be directed towards:

- 19.1.1.1 scrutinising the performance of the internal and external auditors of THETA;
- 19.1.1.2 facilitating the imposition of financial and administrative discipline and control;
- 19.1.1.3 strengthening the objectivity and credibility of financial reporting;
- 19.1.1.4 improving communication and increasing contact, understanding and confidence between management and the internal auditors and the Auditor General.
- 19.1.2 The Audit Committee shall be responsible to and report directly to the Executive Committee and shall exercise any such further powers and functions as may be entrusted or delegated to it by the THETA Board.
- 19.1.3 In particular, but without limiting the generality of this, the Audit Committee shall have the following specific duties:
 - 19.1.3.1 make recommendations on the appointment or retention of internal auditors;
 - 19.1.3.2 review and discuss the scope of the audit;
 - 19.1.3.3 satisfy itself that the audit plan sufficiently addresses the critical risk areas at the THETA;
 - 19.1.3.4 review the effectiveness of THETA's systems of internal control;
 - 19.1.3.5 monitor management's responses to reported weaknesses in controls, deficiencies in systems and recommendations for improvement;
 - 19.1.3.6 evaluate the performance of the audit entities and management;
 - 19.1.3.7 consider the quality of the financial information presented;
 - 19.1.3.8 review the financial statements prior to approval by the Executive Committee, including the accounting policies adopted, before submission to the Auditor General.

- 19.1.4 The Chairperson and Deputy Chairperson of the Audit Committee must be elected from the Members of the Committee who are Members of the Board of the THETA.

20. The ETQA Committee

20.1 Duties and functions

- 20.1.1 The ETQA Committee shall, on behalf of THETA, be responsible for the management of the quality assurance functions and obligations of THETA in its role as an Education and Training Quality Assurance Body as provided in the South African Qualifications Authority Act, 1995 (Act No 58 of 1995) and the relevant Regulations in terms of that Act. It shall deal with such matters as may be referred to it by the Board of the THETA.
- 20.1.2 The ETQA Committee shall be responsible to and shall report to THETA through the Executive Committee.
- 20.1.3 In particular, but without limiting the generality of this, the ETQA Committee shall have the following specific functions:
- 20.1.3.1 to approve the THETA quality plan;
 - 20.1.3.2 to oversee the establishment of and monitor the implementation of a quality management system to:
 - 20.1.3.2.1 accredit constituent providers of education and training in the Sector for specific standards or qualifications registered on the National Qualifications Framework;
 - 20.1.3.2.2 promote quality amongst constituent providers;
 - 20.1.3.2.3 monitor provision by constituent providers;
 - 20.1.3.2.4 evaluate assessment and facilitate moderation amongst constituent providers;

- 20.1.3.2.5 register constituent assessors of national qualifications in the Sector for specific standards or qualifications in terms of the criteria established for this purpose;
 - 20.1.3.2.6 certify constituent learners; and
 - 20.1.3.2.7 co-operate in the moderation of assessment and of quality assurance across sectors;
 - 20.1.3.3 to monitor the development by THETA of new standards or qualifications or modifications to existing standards or qualifications for the Sector, and to recommend such standards or qualifications to National Standards Bodies and the South African Qualifications Authority;
 - 20.1.3.4 to ensure that THETA maintains an appropriate data-base for its quality assurance and certification functions; and
 - 20.1.3.5 to monitor the implementation of quality assurance processes for the operational and administrative procedures of THETA.
- 20.2 The Chairperson and Deputy Chairperson of the ETQA Committee must be elected from the Members of the Committee who are Members of the Board of the THETA.

21. The Remuneration Committee

21.1 Duties and functions

- 21.1.1 The Remuneration Committee shall be responsible for all remuneration related matters of THETA. It shall be responsible to and shall report to THETA through the Executive Committee and shall exercise such powers and functions as may be entrusted or delegated to it by the Executive Committee.
- 21.1.2 The Remuneration Committee shall at all times exercise its powers and functions subject to the Act and in particular section 14(3A)(b) thereof and this constitution.

- 21.1.3 In particular, but without limiting the generality of this, the Remuneration Committee shall have the following specific functions:
- 21.1.3.1 to monitor the implementation of the performance management system of THETA and to ensure that the performance management system is fair and rewards good performance, identifies training and development opportunities of staff and is aligned to the objectives of THETA;
- 21.1.3.2 to consider and approve the remuneration of the Chief Executive Officer as recommended by the Chairperson and Senior Managers of THETA, as recommended by the Chief Executive Officer. Any such consideration and approval shall be undertaken in accordance with the Act and in particular section 14(3A)(b) thereof;
- 21.1.3.3 to consider and approve the bonus payments payable to THETA staff;
- 21.1.3.4 to review and authorise the recommended annual salary increases for staff;
- 21.1.3.5 to set the allowances of THETA Members for attendance of meetings of THETA and its Committees;
- 21.1.3.6 to ensure that the remuneration levels at THETA are fair; market related and in accordance with good governance;
- 21.1.3.7 to oversee remuneration related matters of all projects managed by THETA.

22. The Operations Committee

22.1 Duties and functions

- 22.1.1 The Operations Committee shall be responsible for the Chambers that THETA may establish to represent the views, interests and expertise of the sub-sectors of the Sector and to provide expert advice and strategic information to THETA.

- 22.1.2 The Committee shall report to the Executive Committee to enable appropriate recognition of the sub-sectors' education and training needs in the sector skills plan, business plan and budget, learnerships, skills programmes and other training programmes, quality assurance activities and such activities as are undertaken by THETA.
- 22.1.3 In the absence of the establishment of any or all Chambers the Operations Committee shall to the extent possible, fulfil the functions of the Chambers.
- 22.1.4 To advise THETA on the implementation of learnerships, to enable reporting to the Department, and other bodies.
- 22.1.5 To review outcomes and expenditure under the learnership plans.
- 22.1.6 The Chairperson and Deputy Chairperson of the Operations Committee must be elected from the Members of the Committee who are Members of the Board of the THETA.

22.2 The Tender Committee

22.2.1 Duties and functions

- 22.2.1.1 The Tender Committee shall be responsible for the procurement and tender processes of THETA. It shall be responsible to and shall report to THETA through the Executive Committee and shall exercise such powers and functions as may be entrusted or delegated to it by the Executive Committee.
- 22.2.1.2 The Tender Committee shall at all times exercise its powers and functions subject to the Act, this constitution and any applicable legislation, policies and procedures.
- 22.2.1.3 In particular, but without limiting the generality of this, the Tender Committee shall have the following specific functions:
- 22.2.1.3.1 to monitor the implementation of the procurement and tender policies and procedures of the THETA;

- 22.2.1.3.2 to consider, review and authorise advertisements of the THETA calling for tender submissions;
- 22.2.1.3.3 to consider, review and authorise requests for proposals in relation to the THETA's tender processes;
- 22.2.1.3.4 to adjudicate and determine the award of tenders at the THETA.

CHAPTER 7

CHAMBERS

22.3 Duties and functions

- 22.3.1 The Chambers of THETA are established to represent the views, interests and expertise of the sub-sectors in the Sector and to provide expert advice and strategic information to THETA through the Executive Committee to enable appropriate recognition of the sub-sectors education and training needs in the Sector skills plan, business plan and budget, learnerships, quality assurance activities and such other activities as are undertaken by THETA.
- 22.3.2 Chambers shall exercise such further powers and functions as may be entrusted or delegated to them by the Executive Committee.
- 22.3.3 Chambers shall be entitled to such percentage of the skills development levies collected in their jurisdiction as the Minister after consultation with THETA determines.

22.4 Composition of Chambers

- 22.4.1 With the Minister's approval, Chambers shall be established for the following sub-sectors:
 - 22.4.1.1 Hospitality Chamber;
 - 22.4.1.2 Travel and Tourism Services Chamber;
 - 22.4.1.3 Gambling and Lotteries Chamber;

- 22.4.1.4 Conservation and Tourism Guiding Chamber;
- 22.4.1.5 Sport, Recreation and Fitness Chamber.
- 22.4.2 Pursuant to consultation by the THETA with stakeholders in the sub-sector Chambers may, with the Minister's approval, be established for any other appropriate sub-sector grouping.
- 22.4.3 Each Chamber shall consist of:
 - 22.4.3.1 no more than 8 persons who shall be selected by THETA from nominees of the employee and employer organisations listed in **Annexure "C"**, provided that they shall be chosen so as to ensure a representative coverage of the industries, occupations and enterprises that make up the sub-sector, including small business and Designated Groups;
 - 22.4.3.2 an equal number of persons representing organised employers and employees;
 - 22.4.3.3 not more than two additional persons by virtue of their relevant expertise;
 - 22.4.3.4 one Member of the THETA Board with subject matter expertise in the relevant sub-sector.
- 22.4.4 The Members of each Chamber shall elect the Chairperson and Deputy Chairperson of their Chamber from amongst themselves.

22.5 Terms of Office and Meetings

- 22.5.1 The term of office of persons serving on a Chamber shall be 2 years.
- 22.5.2 Chambers shall hold no fewer than 2 meetings each year or as often as necessary for the proper performance of their duties and functions, and they shall regulate their meetings in terms of chapter 8 of this constitution.

CHAPTER 8

MEETINGS OF THETA

23. Annual General Meeting

- 23.1 The Annual General Meeting shall be an open session to which all key stakeholders shall be invited.
- 23.2 THETA shall meet for its Annual General Meeting at least once in each year within not more than six months after the end of each financial year of THETA and within not more than 13 months after the date of the last preceding Annual General Meeting of THETA. The time, date and place of such meeting shall be determined by the Chairperson in consultation with the Executive Committee.
- 23.3 The business of THETA, when meeting as the Annual General Meeting of THETA, shall include:
- 23.3.1 the consideration of the consolidated annual financial statements of THETA, the annual report of THETA's affairs and projects and the report of the Auditor General;
 - 23.3.2 the ratification of the appointment of the External Auditor;
 - 23.3.3 the ratification of the appointment of an Internal Auditor;
 - 23.3.4 the discussion of any matter referred to in or arising out of the financial statements or the reports;
 - 23.3.5 the discussion of any matter of which notice shall have been given to the Chief Executive Officer at least 28 days before the date of the Annual General Meeting;
 - 23.3.6 the transaction of such other business as is required to be transacted by THETA under this constitution or the Act; and
 - 23.3.7 Where applicable under the provisions of this constitution, the ratification of the Board of THETA and the election of the office bearers of the Board of THETA.

24. Other Meetings

Other meetings of THETA may be held at a time, date and venue and for the transaction of such business as may be determined by THETA itself and may further be convened by the Chairperson at a time, date and venue and for the transaction of such business as may be determined by the Chairperson when, in the Chairperson's opinion and after consultation with the Executive Committee, circumstances justify such a step.

25. Requested meetings

- 25.1 The Chairperson shall, on the written request of not less than one-third of the Members of THETA, within 14 days of the lodging of the written request issue a notice to Members of THETA convening a meeting of THETA for a date not less than 21 and not more than 35 days from the date of the notice.
- 25.2 The written request shall state the objects of the meeting, which shall be to transact some business which by this constitution is required or permitted to be transacted by THETA. The written request shall be signed by the members of THETA requesting the meeting and lodged at the registered office of THETA. It may consist of several documents in like form, each signed by the members of THETA requesting the meeting.
- 25.3 If the Chairperson does not within 14 days from the date of the lodging of the written request issue a notice as required under this clause, the members of THETA requesting the meeting may themselves on 21 days' notice convene a meeting, stating the objects thereof, but no meeting so convened shall be held after the expiration of 3 months from the date upon which the written request was lodged.
- 25.4 Any meeting convened by the members of THETA who requested the meeting under this clause shall be convened in the same manner as nearly as possible as that in which meetings of THETA are to be convened by the Chairperson.

26. Committee Meetings

- 26.1 Each THETA Standing Committee shall meet at least 4 times per year and thereafter as necessary.

26.2 Meetings shall be convened on the directions of the Chairperson of that Committee or in consultation with the Chief Executive Officer.

26.3 Meetings may be requested by at least one-third of the Members of a Committee in accordance with the provisions of clause 25 of this constitution.

27. Notice of Meeting of THETA

27.1 The Annual General Meeting of THETA shall be called by not less than 21 clear days' notice in writing. Any other general meeting or meeting of THETA shall be called by not less than 14 clear days' notice in writing. Notice of a general meeting, other than the Annual General Meeting, may be dispensed with if two thirds of the Members of THETA so agrees.

27.2 A meeting of THETA shall, notwithstanding the fact that it is called by shorter notice than that specified in this constitution, be deemed to have been duly called if it so agreed by ninety per cent of the Members of THETA.

27.3 The notice shall be exclusive of the day on which it is served, or deemed to have been served, and of the day for which it is given. It shall specify the place, the day, the hour and the business of the meeting and shall be given in the manner provided for in this constitution to each Member of THETA.

27.4 Any notice required or permitted to be given to any Member of THETA under this constitution shall be given in the manner and in accordance with the provisions of clauses 27.5 and 27.6.

27.5 A notice may be given by THETA to any Member of THETA either personally, by telefax, or by electronic mail, or by post in a pre-paid letter, or by courier addressed to such Member of THETA, at the telefax, or electronic mail or delivery address, as the case may be, supplied by him to THETA at the time when he became a Member of THETA or at such other address within the Republic of South Africa as he may have notified THETA in writing from time to time.

27.6 Any notice by post shall be deemed to have been served on the fifth day after the day when the letter containing it was posted. Notice sent by telefax or by electronic mail or by courier shall be deemed to have been received on the next business day after transmission. In proving the giving of the notice by

post, it shall be sufficient to prove that the letter containing the notice was properly addressed, pre-paid and posted. In the case of telefax or electronic mail, it shall be sufficient to prove that the notice was transmitted to the correct address.

28. Procedure

- 28.1 Subject to this constitution, THETA shall regulate its meetings, as it deems fit. The quorum necessary for the transaction of business of any meeting of THETA shall be two fifths of its Members from time to time, one half of whom shall be Members representing organised labour and organised business.
- 28.2 The Board of the THETA may act despite vacancies in its Membership so long as a quorum is present.
- 28.3 If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon a requisition of Members, shall be dissolved. In any other case, the meeting shall stand adjourned to a day not earlier than 7 days and not later than 21 days after the date of the meeting at the same time and place. If no quorum be then present within half an hour after the time appointed for the meeting, the Members then present shall constitute a quorum and may transact the business for which the meeting was called. If the same place is not available, the Members present shall by majority vote adjourn to an available place.
- 28.4 The Chairperson of THETA or such person as shall be acting in the place of the Chairperson in terms of this constitution shall preside at all meetings of the THETA Board and the Executive Committee.
- 28.5 The elected Chairperson of any other Committee or Chamber, or in the absence of that person the Deputy Chairperson of the Committee or Chamber shall preside at all meetings of that Committee or Chamber.
- 28.6 In the absence of the elected Chairperson and Deputy Chairperson the Members present and forming a quorum shall elect a Chairperson, for the meeting only, from amongst their number.
- 28.7 The person presiding at any meeting of THETA shall ensure that minutes of such meetings are kept.

29. Voting

At all meetings of THETA, its Committees and Chambers:

- 29.1 Members of the THETA Board excluding the ex officio Members shall each have one vote;
- 29.2 proxy votes will not be allowed;
- 29.3 all decisions shall be determined by a majority of votes. In the case of an equality of votes, whether on a show of hands or on a ballot paper, the presiding officer of the meeting shall have a second or casting vote;
- 29.4 all decisions shall be decided on a show of hands unless a ballot paper is (before or on the declaration of the result of the show of hands) demanded by the presiding officer of the meeting or by 5 Members personally present. The demand for a ballot paper may be withdrawn;
- 29.5 unless a ballot paper is so demanded, a declaration by the presiding officer at the meeting that a resolution has, on a show of hands, been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of THETA shall be conclusive evidence of the fact, without proof of the number or proportion of the vote recorded in favour or against any such resolution;
- 29.6 if a ballot paper is duly demanded, it shall be taken in such a manner and either at once or after an interval or adjournment as the presiding officer at the meeting directs. The result of such ballot paper shall be deemed to be the resolution of the meeting. Scrutineers shall be elected to determine the result of the ballot paper.

CHAPTER 9**GENERAL PROVISIONS****THE CHIEF EXECUTIVE OFFICER**

- 30. The Chief Executive Officer of THETA shall be appointed by the Executive Committee on such terms of service as may be determined by the Executive Committee.

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- 29.1 Members of the THETA Board excluding the ex officio Members shall each have one vote;
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- 29.5 unless a ballot paper is so demanded, a declaration by the presiding officer at the meeting that a resolution has, on a show of hands, been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of THETA shall be conclusive evidence of the fact, without proof of the number or proportion of the vote recorded in favour or against any such resolution;
- 29.6 if a ballot paper is duly demanded, it shall be taken in such a manner and either at once or after an interval or adjournment as the presiding officer at the meeting directs. The result of such ballot paper shall be deemed to be the resolution of the meeting. Scrutineers shall be elected to determine the result of the ballot paper.

CHAPTER 9**GENERAL PROVISIONS****THE CHIEF EXECUTIVE OFFICER**

- 30. The Chief Executive Officer of THETA shall be appointed by the Executive Committee on such terms of service as may be determined by the Executive Committee.

31. The Chief Executive Officer shall be responsible to and shall report to the Executive Committee. The Executive Committee shall give the Chief Executive Officer such direction and supervision as may be necessary to enable performance of the functions of the position in a fit and proper manner and as set out in his contract of employment.
32. The powers, functions, rights, duties and delegated powers of the Chief Executive Officer shall be as determined from time to time by THETA.
33. Subject to this constitution and any applicable legislation, policies and procedures, the Chief Executive Officer, in conjunction with the Executive Committee, shall be responsible and accountable for the recruitment, appointment and management of all employees of THETA.

34. Financial Matters

- 34.1 The financial year of THETA shall be from 1 April to 31 March in the following year.
- 34.2 The final authority and responsibility in all matters relating to finance shall rest with the Board of the THETA.
- 34.3 THETA shall be financed from:
- 34.3.1 the skills development levies, interests and penalties collected in its sector;
 - 34.3.2 monies paid to it from the National Skills Fund;
 - 34.3.3 income earned on surplus moneys invested or deposited as Prescribed;
 - 34.3.4 income earned from services rendered in the Prescribed manner;
 - 34.3.5 grants, donations and bequests made to it;
 - 34.3.6 funds incorrectly transferred to other SETAs by the South African Revenue Service and which funds should have been allocated and transferred to THETA; and
 - 34.3.7 money received from any other source.

- 34.4 THETA shall be managed in accordance with and in compliance with the Public Finance Management Act and all applicable regulations, determinations and Ministerial directions pertaining thereto.
- 34.5 The monies received by THETA may be used only in the Prescribed manner and in accordance with any Prescribed standards or criteria to fund the performance of its functions and pay for its administration within the Prescribed limit. The administration of THETA includes any aspect of the administration or management of THETA, irrespective of who performs it.
- 34.6 For the purposes of THETA paying for its administration within the Prescribed limit THETA shall take cognisance of the Prescribed total expenditure that a SETA may make on its administration and of other matters that may be Prescribed in respect of:
- 34.6.1 the amount that a SETA may spend on any aspect of its administration;
 - 34.6.2 salary bands within which categories of employees must be remunerated;
 - 34.6.3 the conditions under which employees may receive performance related payments and the maximum payment that may be made to an employee in this regard; and
 - 34.6.4 the allowances that may be paid to Members and office-bearers of SETAs or any other persons who serve on a committee or other structure of a SETA.
- 34.7 All money, property, funds or other assets owned, vested in, held or acquired or received by THETA shall be controlled and administered by the Executive Committee and shall be applied to the achievement of the objects of THETA in accordance with relevant legislation, the policies determined by THETA and the provisions of this constitution, to fund the performance of its functions and to pay for its administration.
- 34.8 All immovable property of THETA shall be registered in the name of THETA. No acquisition, purchase or otherwise, nor sale, transfer, mortgage or other alienation or encumbrance of or dealing with such immovable property shall

take place save with the approval of the Executive Committee and in terms of relevant legislation.

34.9 The financial transactions of THETA must be conducted by means of banking accounts. All money received by THETA must be paid into banking accounts at a National Treasury approved registered bank. Any banking account opened in the name of THETA shall have at least five signatories:

34.9.1 the Chairperson and Deputy Chairperson;

34.9.2 the Chief Executive Officer;

34.9.3 the Chief Operations Officer;

34.9.4 the Chief Financial Officer.

34.10 The Executive Committee must develop and design an investment policy which permits for the investment of THETA monies only in:

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

34.10.2 internal registered stock contemplated in section 21(1) of the Exchequer Act, 1975 (Act No 66 of 1975); and

34.10.3 any other manner approved by the Minister.

34.11 The THETA must, in accordance with the standards of generally accepted accounting practice:

34.11.1 keep a proper record of all its financial transactions, assets and liabilities; and

34.11.2 within 6 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.

34.11.3 It shall be the responsibility of the Executive Committee acting on the advice of the Audit Committee to ensure that THETA complies with its obligations under this clause.

- 34.12 The Executive Committee shall ensure that the annual financial statements of THETA are made available to the Annual General Meeting of THETA.
- 34.13 Subject to the Act and this constitution, THETA shall pay to Board Members of the THETA, its Committees and Chambers, other than employees of THETA, an amount to cover the reasonable travel, accommodation and subsistence expenses incurred by them in connection with attending meetings and performing any of their functions as Members. Payment of any allowance or stipend for attending a meeting shall be in accordance with the Constitution, Act and THETA policy. Subject to the Act, the Remuneration Committee shall determine the amount to be paid and the procedures for claiming and authorising any such payment from time to time.
- 34.14 THETA must prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act.
- 34.15 THETA must furnish the Director-General with copies of all budgets, reports and statements contemplated in this clause and any other information that it is required to be submitted in terms of the Public Finance Management Act.
- 34.16 THETA accounts, financial statements and financial management shall be subject to an audit by the Auditor-General and the Auditor-General shall report on that audit to THETA and the Minister and in that report express an opinion as to whether THETA has complied with the provisions of the Act and this constitution relating to financial matters.

CHAPTER 10

CONDUCT OF MEMBERS

Duties of Members of the Board of the THETA, its Committees and Chambers

35. Code of conduct

A Member of the Board of the THETA, its Committees and Chambers must in the exercise of his functions:

- 35.1 act honestly and in the utmost good faith;

- 35.2 give effect to the spirit and obligations in the Act;
- 35.3 exercise reasonable care and diligence;
- 35.4 not make improper use of any information acquired as a Member of THETA or of any committee or Chamber of THETA;
- 35.5 avoid any conflict between their personal interests and those of THETA;
- 35.6 declare any such conflict of interest as provided for in this constitution;
- 35.7 promote the interests of and advance the objects of THETA; and
- 35.8 act professionally, objectively and responsibly at all times.

36. Disclosure of interest

- 36.1 A Board Member of the THETA, or of any Committee or Chamber of THETA who is directly or indirectly interested in any business of THETA or the Committee or Chamber of which he is a Member or who holds any office or possesses any property which may cause a conflict of duties or interest must declare that interest or potential conflict.
- 36.2 A disclosure of any conflict of interest or duties made by a Member of THETA or of any Committee or Chamber of THETA must be made to the relevant meeting of THETA or the committee or Chamber as soon as practicable following the Member's becoming aware of the relevant facts giving rise to the conflict .
- 36.3 All such disclosures must be reported to the next meeting of THETA and all disclosures must be recorded in the minutes of THETA.
- 36.4 Non-compliance with the code of conduct is a serious transgression that can result in the relevant person being removed from the relevant committee and facing criminal and civil action.

37. Governance Issues

All Members shall familiarise themselves with the Guidelines contained in annexure "D".

38. Confidentiality

A Member or employee of THETA or of any of its Chambers or Committees shall not, while he or she is a Member or employee or thereafter, disclose to any person any information which he or she acquired while exercising or performing any function or duty under this constitution and which is confidential to THETA, any of its committees or Chambers, or any other Member or to any employer or employee in the Sector. However, such information may be disclosed if required by law or an order of court.

39. Terms of Office

- 39.1 Any person elected or appointed to hold any position or office under this constitution shall be eligible for re-election to that position or office for a maximum of one further term of office. The fact that such person has served two terms in a particular capacity shall not preclude them from holding any other different position or office in THETA nor shall it preclude them from holding that office again after the expiry of the term of office of their successor.
- 39.2 Any person who attends a meeting in more than one capacity shall be entitled to exercise one vote only.

40. Amendment of this Constitution

- 40.1 Whenever THETA wishes to and a need to amend this constitution has arisen, it must in writing, submit in duplicate to the Minister:
- 40.1.1 the text of the proposed amendments to its constitution;
- 40.1.2 a certified copy of its resolution approving the proposed amendment and which resolution shall have been supported by not less than two-thirds of the Members of THETA present at a general meeting of which not less than 21 days' notice setting out the proposed amendment shall have been given to all Members of THETA; and
- 40.1.3 a brief memorandum explaining the rationale for such amendments.

-
- 40.2 After considering the submission and after consultation with THETA, the Minister may wholly or in part effect the amendments proposed by THETA by notice in the Gazette.
- 40.3 No amendment shall have any force or effect until it has been approved by the Minister and published in the Gazette.
- 40.4 If the Minister wishes to amend THETA's constitution he shall submit to THETA:
- 40.4.1 The text of the proposed amendments; and
- 40.4.2 A memorandum explaining the rationale for such amendments.
- 40.5 The Minister must allow THETA 30 working days to make written representations concerning the amendments proposed by the Minister.
- 40.6 After considering the representations made by the THETA, the Minister may wholly or in part effect his proposed amendments by notice in the Gazette.
- 40.7 The Minister shall:
- 40.7.1 submit to THETA a certified copy of any amendments to its constitution; and
- 40.7.2 direct the Director-General to retain a certified copy of such amendments.
- 40.8 THETA shall retain an updated version of its constitution which indicates the date on which any amendment to the constitution took effect.
- 40.9 Whenever this constitution is amended, THETA must supply the Director-General with a copy of its updated constitution which reflects the latest amendment.

CHAPTER 11

DISPUTE PROCEDURE

41. Any party to a dispute about the interpretation or application of this constitution may refer the dispute in writing to the Chief Executive Officer. The Chief Executive Officer shall serve copies of such referral on each of the Members of THETA.
42. The Executive Committee must try to resolve the dispute through conciliation within 21 days after the date on which the Chief Executive Officer received the referral. If it is unable to do so within this period, the Executive Committee shall decide the dispute.
43. A party who does not accept the decision of the Executive Committee may refer the dispute to arbitration to a person mutually agreed upon. Such referral must take place within 14 days after the decision of the Executive Committee. If the parties do not, within 14 days, agree upon an arbitrator, the arbitrator shall be a person appointed by the Executive Committee. The arbitration must commence within 28 days after the appointment of the arbitrator.
44. The arbitrator so appointed may 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 formalities. Within 14 days after the conclusion of the arbitration proceedings, the arbitrator must issue an award and must give reasons.
45. The arbitrator may only include an order for costs if a party to the proceedings has acted in a frivolous or vexatious manner or had no reasonable prospects of succeeding:
 - 45.1 by proceeding with or defending the dispute in the arbitration proceedings;
and
 - 45.2 in its conduct during the arbitration proceedings.

Unless such an order is made, the costs of the arbitration, excluding the costs incurred by any of the parties to the dispute, shall be borne by THETA.

46. The decision of the arbitrator shall be final and binding on the parties.

ANNEXURE A

**List of SIC codes published by the Minister as forming the Sector base for
THETA Membership**

SIC CODES	SCOPE OF COVERAGE	GAZETTE NO.	DATE
11520	Hunting and trapping, including related services	21012	March 2000
64101	Hotels, motels, boatels and inns not registered with SA tourism board	22230	May 2001
64102	Caravan parks and camping sites	21012	March 2000
64103	Guest houses and guest farms	21012	March 2000
64104	Hotels, motels, boatels and inns registered with SA tourism board	22230	May 2001
64105	Bed and Breakfast	21012	March 2000
64106	Management and operation of game lodges	22230	May 2001
64201	Restaurant or tea-rooms with liquor licence	21012	March 2000
64202	Restaurant or tea-rooms without liquor licence	21012	March 2000
64203	Take-away counters	21012	March 2000
64204	Caterers	21012	March 2000
64205	Take-away restaurants	21012	March 2000
64206	Fast food establishment	21012	March 2000
64207	Other catering services n.e.c including pubs, taverns, night clubs	22230	May 2001
64209	Other catering services n.e.c.	21012	March 2000
71214	Tour operators (inbound and outbound)	22230	May 2001
71222	Safaris and sightseeing bus tours	21012	March 2000
71223	Safaris and sightseeing trip operators	22230	May 2001
73002	Inbound international flights	21012	March 2000
74140	Travel agency and related activities	21012	March 2000
84111	Time sharing	21012	March 2000
89999	Event and conference management	21012	March 2000
93195	Operation and management of health and well-being centres incl. but not limited to hydros, spas, fitness centres etc.	2230	May 2001
96000	Recreational, cultural and sporting activities	21012	March 2000
96002	Recreational, fitness and outdoor adventure activities incl. management and operation of facilities, government departments	22230	May 2001
96195	Operation & management of convention centres	21012	March 2000
96196	Amusement parks	22230	May 2001
96320	Museum activities and preservation of historical and buildings	21012	March 2000
96322	Provision for management and operation of monuments historic sites and buildings	22230	May 2001
96323	Management and operation of museum, cultural heritage activities	22230	May 2001
96333	Game parks, reserves incl. but not limited to wildlife, parks, zoological and/or animal parks and botanical gardens	22230	May 2001
96334	Activities of conservation bodies	21012	March 2000
96335	Wildlife conservation incl. wildlife, game parks, game reserves, zoological establishments, botanical gardens etc	22230	May 2001
96336	Tourist information centres	22230	May 2001

SIC CODES	SCOPE OF COVERAGE	GAZETTE NO.	DATE
96410	Sporting activities	21012	March 2000
96411	Operation and management of sporting facilities and clubs	22230	May 2001
96412	Operation and management of sporting academies	22230	May 2001
96413	Promotion and management of sporting events and activities	22230	May 2001
96417	Sporting activities incl. but not limited to sport federations etc	22230	May 2001
96418	Management and operation of motorised activities	22230	May 2001
96491	Operation and management of horse racing events and clubs and academies	22230	May 2001
96491	The operation and management of recreation parks and beaches, fairs and shows of a recreational nature and recreational transport activities	21012	March 2000
96494	Gambling, licensed casinos and national lottery incl. but not limited to book makers, totalisators, casinos, bingo operators	22230	May 2001
99028	Car hire	22230	May 2001
99048	Tourism authorities incl. but not limited to tourism marketing, tourist information centres, publicity associations	22230	May 2001
99049	Guides incl. tourist, river, mountain, etc Grading Council , Sports	22230	May 2001

ANNEXURE B**Composition of Committees**

Appointees	Exco	AuCom	ETQA	RemCom	OpsCom	Tenco
Chairperson of THETA	1	1				
Deputy Chairperson of THETA	1					
Employee appointed Members	2	2	2	2	2	2
Employer appointed Members	2	2	2	2	2	2
Ministerial appointed Members	2	0	1	0	2	
THETA Nominated and Expert Members	0	2	1	1	2	
Total	8	7	6	5	8	4

The Chief Executive Officer of the THETA shall be a Member of all the committees.

ANNEXURE C

Trade Unions, Employer Organisations and Relevant Government Departments in the Sector

Organisation

1. TO REPRESENT ORGANISED LABOUR

- Entertainment, Catering, Commercial & Allied Workers Union of South Africa (ECCAWUSA)
- Food and Allied Workers Union (F AWU)
- Hotel and Restaurant Workers Union of South Africa (HARWUSA)
- Natal Liquor and Catering Employees' Trade Union (NLCETU)
- Gauteng Tourist Guide Association (GTGA)
- Hospitality Industries Allied Workers Union (HIAWU)
- National Council of Trade Unions (NACTU)
- South African Chefs Association (SACA)
- South African Commercial Catering and Allied Workers Union (SACCAWU)
- Travel Agents Employee Association (TAEA)

2. TO REPRESENT ORGANISED EMPLOYERS

- Association of South African Travel Agents (ASATA)
- Board of Airline Representatives (BARSA)
- (The Federated Hospitality Association of South Africa)The Federated Hospitality Association of South Africa
- Hotel Industry Liaison Group (Hotel Industry Liaison Group)
- National African Federated Chamber of Commerce (NAFCOC)
- Restaurant & Food Services Association of South Africa (CATRA)
- South African Tourism Services Association (SATSA)
- Tourism Business Council of South Africa (TBCSA)

3. TO REPRESENT THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

- One representative nominated by the Minister of Environmental Affairs and Tourism

4. TO REPRESENT THE DEPARTMENT OF SPORT AND RECREATION

- One representative nominated by the Minister of Sport and Recreation

5. IF THE MINISTER, AFTER CONSULTATION WITH THE ABOVE CONSTITUENCIES CONSIDERS IT APPROPRIATE FOR THE SECTOR

- One person representing any interested professional body
- One person representing any bargaining council with jurisdiction in the Sector
- Two persons appointed by virtue of their expertise

Other Employee and Employer Organisations relevant to the Sector

AssCSA	Associated Clubs of South Africa
ACTMO	Association Of Community Tourism Marketing Organization
ASATA	Association of South African Travel Agents
-ASINTO	- Council of South African Inbound Tour Operators
-ATP	- ASATA Travel Partners
-RTAS	- Retail Travel Agents Section
BARSA	Board of Airline Representatives of South Africa
B & B	Bed and Breakfast Section
CATRA	Restaurant and Food Services Association of South Africa
CCRAWU	Club Caterers, Retail & Allied Workers Union
CITW	Conservation Industry Training Work Group
EXSA	Exhibition Association of South Africa
FAWU	Food & Allied Workers Union
FEDHASA	The Federation Hospitality Association of South Africa
-CGSA	- Caterers Guild of South Africa
-FEDSAS	- Federation of the South African Self Caterers & Accommodation Industry
-NHAS	- National Hotel Association Of South Africa
SARA	- South African Restaurant Association

-SATCHI	- South African Trainers, Consultants & Services Providers for the Hospitality Industry
FGASA	Field Guide Association of South Africa
GAA	Game Rangers Association of Africa
HIAWU	Hospitality Industries And Allied Workers Union
HILG	Hospitality Industries Liaison Group
NBI	National Botanical Institute
PHASA	Professional Hunting Association of South Africa
PROVINCES	Provincial Department of Tourism
SAACI	South African Association of Conference Industry
SAARTG	South African Association of Registered Tour Guides
SABTOA	South African Black Tourism Association
SACA	South African chefs Association
SACCAW U	South African Commercial Catering Allied Workers Union
SALTA	South African Liquor Traders Union
SAMGA	South African Mountaineering & Guiding Association
SANREC	South African National Recreation Council
SAN PARKS	South African National Parks
SASC	South African Sports Commission
BATA	South African Taverners Association
SATSA	South African Tourism Services Association
SA TOURISM	South African Tourism
SAVRALA	South African Vehicle Rental & Leasing Association
SITE	Society for Incentive Travel Executives
SRSA	Sport and Recreation South Africa
TBCSA	Tourism Business Council of South Africa
TGG	Tourism Guide Guild
TGWU	Transport & General Workers Union
TISA	Timeshare Institute of South Africa
TTAC	Tourism Training Advisory Committee
UWUSA	United Workers Union of South Africa

ANNEXURE D

GOVERNANCE - Roles of and Guidelines for Members

□ All Members

The following excerpts from the King Report deal with the responsibilities of directors of companies and have relevance as general guidelines for all Members.

1. THETA individually and collectively, is responsible to the stakeholders,
2. Members should ensure that they have the time to devote to and carry out properly their duties and responsibilities to THETA.
3. Members should be informed about the financial, social and political milieu in which THETA operates.
4. Members must be satisfied that they are in a position to make informed decisions.
5. Members must never permit a conflict of duties and interest.
6. Members must disclose potential conflicts on interests at the earliest possible opportunity.
7. Members must act independently of any outside fetter or instruction.
8. Members must act with enterprise and always strive to optimise the interests of all stakeholders.
9. Members must ensure that all interested parties are fully informed of any material matters affecting THETA and that openness and substance will be guidelines rather than mere formality.
10. Members must exercise the utmost good faith, honesty and integrity in all dealings with or on behalf of THETA.
11. Members must exercise the care and skill, which may reasonably be expected of a person of their expertise.
12. Members must always act in the interests of THETA and never for any sectoral interest.

13. Members must ensure that THETA strategy and structure has been collectively agreed to.
14. Members must insist that papers and information be given to them timeously so that they have adequate time to study and make properly informed decisions.
15. Confidential matters of THETA, learnt in their capacity as a Member, should be treated as such and should not be divulged to anyone without the authority of THETA.
16. If a Member is in doubt about any aspect of his duties they should obtain independent advice, e.g. Department of Labour, professional consultants, etc.
17. Members must ensure that THETA prepares annual budgets against which performance can be monitored.
18. Members must ensure that procedures and systems are in place to act as checks and balances of the information being received by the Board.
19. Members must ensure that the Board monitors the performance of Executive management against budgets, business plans, SSP's, National norms, prior year's performance etc.
20. Members must ensure that THETA has equity plans in place/advances Members of formerly disadvantaged (designated) communities.
21. As set above, Members have two categories of duties, viz. the duty of care and skill:
 - 21.1 particularly in the case of non-Executive Members (non-Exco Members) their appointments are onerous in the context of the present test of their duty, care and skill;
 - 21.2 Members should not be liable for a breach of their duty and skill if they have exercised a judgement in good faith in a matter which the under mentioned three criteria are satisfied, viz.:
 - 21.2.1 that the decision is an informed one based on all the facts of the case;
 - 21.2.2 that the decision is a rational one; and

21.2.3 that there is no self-interest.

22. Not every stakeholder is aware of the responsibilities of Members and consequently reports by THETA should incorporate statements on the following:

22.1 the financial statements fairly presents the state of affairs of THETA;

22.2 adequate accounting records have been maintained;

22.3 suitable accounting policies consistently applied and supported by reasonable and prudent judgement and estimates, have been used in the preparation of the financial statements;

22.4 applicable accounting standards have been applied, but if there has been any departure in the interests of presentation, it must be disclosed and explained. An effective system of internal control has been maintained;

22.5 if the Members are in any doubt about the ability of THETA to continue as a going concern in the year ahead this should be stated.

23. There should be a procedure for Members in the furtherance of their duties to take independent professional advice if necessary at the expense of THETA. Before doing so the matter should be discussed with the Chairperson and if is appropriate, then with other Members. Whatever the outcome of that they must take a decision on their own but satisfying themselves that their conduct is in the best interests of THETA.

24. The Members have to ensure that the THETA remains a going concern, i.e. that it thrives and survives.

25. **Non-Executive Members**

25.1 Every Member has equal responsibility regardless of their position on Exco. All Members have an equal responsibility when it comes to the question of good faith.

25.2 THETA collectively, and more particularly the non-Executive Members individually, are reliant on the information placed before them at meetings. It is on this information that decisions are made. It follows logically that THETA

must ensure that there are checks and balance to maintain a level of accurate reporting.

26. Non-Executives have four important functions

- 26.1 They need to bring their special expertise and knowledge to bear on the strategy. They should be driven by a broad strategic perspective.
 - 26.2 They can monitor and review the performance of the Executive Management more objectively than the Executive Member.
 - 26.3 They can act as a check and balance against the Executive Members.
 - 26.4 A non-Executive Member must develop a working knowledge of THETA, be cognisant of the economic social and political milieu in which THETA operates and have understanding of the availability of finance, staff and technical resources and level of current and proposed expenditure. They must use their best endeavours to ensure that THETA operates within the law and also ethically.
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