

No. R. 889

8 September 2005

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)**APPROVAL OF CONSTITUTION OF BANK SECTOR EDUCATION AND
TRAINING AUTHORITY (SETA 2)**

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

SCHEDULE



BANKING SECTOR EDUCATION

AND

TRAINING AUTHORITY

CONSTITUTION

May 2005

CONSTITUTION

BANKING SECTOR EDUCATION AND TRAINING AUTHORITY

1. NAME

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

2. SCOPE OF COVERAGE

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

3. DEFINITIONS AND INTERPRETATION OF TERMS

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

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

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

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

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

4. PREAMBLE

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

5. FUNCTIONS AND OBJECTIVES OF THE AUTHORITY

The sole objective of the Authority will be to:

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

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

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

6. LEGAL PERSONALITY

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

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

7. FINANCES OF THE AUTHORITY

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

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

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

8. GRANT OF LEVIES

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

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

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

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

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

9. MEMBERSHIP AND COMPOSITION OF THE AUTHORITY

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

9.1.1 organised labour;

9.1.2 organised employers, including small business;

9.1.3 relevant government departments; and

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

9.1.4.1 any interested professional body;

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

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

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

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

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

- 9.4 The Council Members will always comprise the persons as set out above and the Authority has no power to replace such Council Members.
- 9.5 The Council Members shall constitute a Council, which will be responsible for the operation and functioning of the Authority in terms of the Act.
- 9.7 The office of a Council Member shall, notwithstanding any other provision be terminated, *ipso facto*, if :
- 9.7.1 he ceases to be employed within the national banking sector;
- 9.7.2 he is removed in terms of the rules and regulations of the Banking Employers Forum, the Banking Employees Forum or the Department depending on whose nominated representative the removed Council Member was;
- 9.7.3 he is removed by resolution of the Council;
- 9.7.4 he becomes of unsound mind or insane;
- 9.7.5 he becomes insolvent or compromises with his creditors or is sequestrated whether provisionally or finally.
- 9.8 Any vacancy resulting from the termination of office of a Council Member will be filled in terms of the rules and regulations of the Banking Employers Forum, the Banking Employees Forum or the Department of Finance, depending on whose appointed representative the removed Council Member was.
- 9.9 Where the office of a Council Member terminates, any concurrent office held by that member on any committee and/or chamber will automatically be terminated as well, unless the Council determines otherwise.

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

- 10.1 The general direction, policy, and finances of the Authority shall vest in a Council elected by the Members of the Banking Employers Forum, the Banking Employees Forum and the Government as follows –
- 10.1.1 the Banking Employers Forum shall nominate six (6) representatives onto the Council, such representatives to represent the interests of organised employers;

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

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

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

11. MEETINGS OF THE COUNCIL AND PROXY

- 11.1 Subject to the proviso that the Councillors shall meet at least quarterly, they shall meet together for the despatch of business, adjourn and otherwise regulate meetings as and when they deem fit.
- 11.2 For meetings of the Councillors, a quorum shall consist of at least seven (7) Councillors, either personally present or represented by proxy in terms of clause 11.3.
- 11.3 Any motions considered at a meeting of the Council shall be carried by a simple majority vote of the Councillors present in person or represented by proxy and voting. Each Councillor shall be entitled to one vote.
- 11.4 The motion shall be decided on a show of hands.
- 11.5 A declaration by the Chairperson that a motion has been carried on a show of hands, shall be conclusive evidence of this fact, without proof of the number, or proportion of the votes recorded in favour or against such resolution.
- 11.6 Any Councillor may appoint a proxy to attend, speak and to vote in his place. The instrument appointing a proxy shall be in writing under the hand of the appointer, the form of which shall be approved by the Council.
- 11.7 The instrument appointing a proxy shall be deposited with the Chairperson before the meeting at which the person empowered proposes to vote, and no effect shall be given to any instrument of proxy unless such instrument is deposited in this manner.
- 11.8 No instrument appointing a proxy shall be valid after the end of a period of 1 (one) month commencing on the date on which it is signed unless otherwise expressly stated in the proxy, and no proxy shall be used at an adjourned meeting, which could not have been used at the original meeting. If a proxy is received and is duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may not vote and the proxy may not be counted in the calculation of the quorum for that meeting.

- 11.9 Each Councillor shall be given seven (7) days clear notice in writing of each meeting.
- 11.10 In the event of any meeting having been called and insufficient notice having been given to any Councillor, then in that instance, the Council shall be entitled to waive such notice period provided that there is a quorum. In such event such proceedings will be valid as if due notice had been given.

12. ADJOURNMENT

12. If within one half hour after the time appointed for any meeting a quorum is not present, the meeting shall be adjourned to a date to be determined by the Chairperson (which date shall not be earlier than 7 (seven) days and not later than 14 (fourteen) days after the date of the meeting) at the same time and place (or if such place be not available at such other place as the Chairperson may appoint).
- 12.2 If at such adjourned meeting a quorum is not present within one hour after the time appointed for the meeting, the Councillors present in person or by proxy shall be a quorum.
- 12.3 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting, which was adjourned.

13. POWERS OF THE AUTHORITY AND COUNCIL

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

- 13.1 to appoint the Council and to regulate, control and terminate such appointment subject to the terms of the Constitution;
- 13.2 establish committees/chambers as is more specifically provided for in Sections 13 of the Act;
- 13.3 appoint a Management Committee and such other employees necessary for the effective running of the Authority and to determine their terms and conditions of appointment;

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

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

14. MANAGEMENT COMMITTEE

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

15. CHAIRPERSON

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

16. OTHER STAFF

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

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

17. CHAMBERS AND COMMITTEES OF THE AUTHORITY

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

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

18. LEARNERSHIPS

- 18.1 The Authority may establish a learnership if:
- 18.1.1 the learnership consists of a structured learning component;
 - 18.1.2 the learnership includes practical work experience of a specified nature and duration;
 - 18.1.3 the learnership would lead to a qualification registered by the South African Qualifications Authority and related to an occupation; and
 - 18.1.4 the intended learnership is registered with the Director-General in the prescribed manner.
- 18.2 The terms of the learnership agreement shall be in the prescribed form and comply with the Act in all respects.
- 18.3 The Authority will, in the prescribed form, provide the Director-General with a record of learnership agreements registered by it.

19. INDEMNITIES

- 19.1 In the exercise of its powers, the Councillors shall not be liable for any loss to the Authority or third parties from whatsoever cause arising, save and except where claims, demands and/or actions arise from or are caused by the personal wilful bad faith or fraud of such Councillors.
- 19.2 The Authority shall be deemed to indemnify and hold each Council member harmless against all claims, demands and actions of whatsoever nature that may be made upon or brought against them, whether individually and/or jointly and severally, arising out of or in connection with the administration of the Authority, save and except where the claims, demands and/or actions are caused by the personal wilful bad faith or fraud of such Council member.

20. AMENDMENTS TO THE CONSTITUTION

- 20.1 At least 30 days notice must be given for a meeting of the Council at which an amendment of this Constitution is to be considered.
- 20.2 A supporting vote of at least two thirds of all the Council members is required for an amendment to its Constitution together with the approval of the Minister.

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

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

21. STATUTORY REQUIREMENTS

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

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

21.2 Donations

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

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

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

22. TAKING OVER OF THE AUTHORITY

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

23. DISSOLUTION OF THE AUTHORITY

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

24. Dispute Resolution

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

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

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

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

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

BANKSETA CONSTITUTION

SCHEDULE A

Scope of coverage of the BANKSETA

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

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

BANKSETA CONSTITUTION

SCHEDULE B

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

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

The Trade Unions in the banking sector are the following:

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

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

BANKSETA CONSTITUTION

SCHEDULE C

• **BANKSETA CODE OF CONDUCT**

•

BANKSETA CONSTITUTION

SCHEDULE D

Members of the Council

Employers

S.Ngidi
B. Anderson
L.M lotshwa
S.Motsepe
H.Ferreira

Trade Unions

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

BANKSETA



CODE OF CONDUCT AND ETHICS

May 2005

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CODE OF CONDUCT AND ETHICS

1 PURPOSE OF THIS CODE

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

2 STATUS OF THE CODE

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

3 GENERAL

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

4 DEFINITIONS

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

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

- 4.9** "Indirect interest" – refers to interest held by a spouse, dependants or immediate family members;
- 4.10** "Labour Relations Act means the Labour Relations Act 1995 (Act No. 55 of 1995).

5 The BANKSETA's RESPONSIBILITY AS EMPLOYER

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

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

5.2 Obligations

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

5.3 Protection of Witnesses

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

6 COUNCIL MEMBERS' RESPONSIBILITY

6.1 Duty Against Bias

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

6.2 Integrity of the Decision-making Process

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

6.3 Making Fair and Equitable Decisions

6.3.1 Acting According to the Law

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

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

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

6.3.3 The rules of natural justice require Council Members to:

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

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

6.4 Properly Exercising Powers

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

6.4.2 In particular, Council Members should not:

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

6.5 Explaining the Reasons for Decisions

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

6.5.2 This means that:

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

6.6 Conflict of Interest and Enforcement of the Act

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

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

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

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

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

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

7 COUNCIL MEMBERS AND EMPLOYEES RESPONSIBILITY AND CONDUCT

7.1 Acceptance of Gifts

7.1.1 The Basic Rule

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

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

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

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

7.1.4 Exception to the Basic Rule

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

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

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

7.2 Gifts Register

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

7.3 Confidentiality of Employer Information

A Council Member or employee should –

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

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

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

7.4 Outside Employment

An employee should not –

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

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

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

7.5 Financial Interest

A Council Member or employee should not –

7.5.1 engage in **any** transaction that is in conflict with or infringes on the execution of his/her duties

7.5.2 involve him/herself with an official action or decision-making process which may result in improper personal gain. This should be properly declared by the employee

7.5.3 ~~use his/her official position to~~ obtain private gifts or benefits for him/herself or a third party

7.5.4 accept gifts of benefits when offered, that may be construed as bribes

7.5.5 have direct or indirect financial interest, nor should s/he perform any management to any of the Authority's stakeholders or its subsidiaries

7.5.6 be dishonest in dealing with the funds of the Authority

7.5.7 ~~be involved~~ in relationships or interests, whether direct or indirect, which could adversely influence, impair or threaten his/her capacity to act with integrity and objectivity

7.5.8 use the Authority's property and other resources ineffectively or for personal gain

7.5.9 withhold the ~~submi~~ sion of a "Conflict of Interest" questionnaire, ~~when~~ required to do so

7.5.10 use Authority funding to pay for any accommodation or travel of anyone not directly involved in an authorised Authority purpose, including a spouse or an immediate family member.

7.6 Personal Conduct

A Council Member or employee should :

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

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

7.7 Relations with other Legislature and Sector Role Players

A Council Member or employee should-

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

7.8 Relationship with a Council Member or Employee

A Council Member or employee must-

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

7.9 Performance of Duties

A Council Member or employee must-

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

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

8 ENFORCEMENT OF THE CODE OF CONDUCT AND ETHICS

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

9 REMEDIAL ACTION

9.1 Employees

- 9.1.1 Any violation of any part of this Code of Conduct may be cause for appropriate disciplinary action.
- 9.1.2 The employee concerned shall be provided with the opportunity to explain the alleged misconduct.
- 9.1.3 After consideration of the employee's explanation, the CEO will decide what remedial action is required. S/he shall then take appropriate remedial action.
- 9.1.4 The **CEO** will designate an Internal Auditor or Council Member who will promptly investigate all incidents or situations in which it appears that employee(s) may have engaged in improper conduct. The Internal Auditor or Council Member will conduct such investigations in all cases where complaints are brought to the attention of the CEO or Chairperson including adverse comments appearing in publications, complaints from members of the sector and formal complaints referred to the **CEO**.
- 9.1.5 Remedial action may include, but is not limited to:
- 9.1.5.1 Changes in assigned duties
 - 9.1.5.2 Disclosure of his/her conflicting interest
 - 9.1.5.3 Written warning
 - 9.1.5.4 Disqualification for a particular assignment
 - 9.1.5.5 Suspension, and/or
 - 9.1.5.6 Dismissal.
- 9.1.6 Remedial action, whether disciplinary or otherwise, shall be effected in accordance with all the applicable laws of the country e.g. the Labour Relations Act, 1995 (Act No. 55 of 1995) and the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).
- 9.1.7 Other **issues** of conflict that may arise must be dealt with in accordance with Section **24**, Dispute Resolution in the BANKSETA's Constitution.

9.2 Council Members

- 9.2.1 Any violation of any part of this Code of Conduct may be cause for appropriate disciplinary action.
- 9.2.2 The Council Member concerned shall be provided with the opportunity to explain the alleged misconduct.
- 9.2.3 After consideration of the Council Member's explanation, the Council Chairperson will decide what remedial action is required. S/he shall then take appropriate remedial action.
- 9.2.4 The Council Chairperson will designate an Internal Auditor or Council sub-committee to promptly investigate all incidents or situations in which it appears that Council **Member(s)** may have engaged in improper conduct. The Internal Auditor or Council sub-committee will conduct such investigations in all cases where complaints are brought to the attention of the CEO or Chairperson including adverse comments appearing in publications, complaints from members of the sector and formal complaints referred to the Chairperson or CEO.
- 9.2.5 Remedial action may include, but is not limited to:
- 9.2.5.1 Changes in assigned duties
 - 9.2.5.2 Disclosure of his/her conflicting interest
 - 9.1.5.3 Written warning
 - 9.1.5.4 Disqualification for a particular assignment
 - 9.1.5.5 Suspension, and/or
 - 9.1.5.6 Dismissal.
- 9.2.6 Remedial action, whether disciplinary or otherwise, shall be effected in accordance with all the applicable laws of the country e.g. the Labour Relations **Act**, 1995 (Act No. 55 of 1995) and the Basic Conditions of Employment Act, 1997 (Act 75 of 1997).
- 9.2.7 Other issues of conflict that may arise must be dealt with in accordance with Section **24**, Dispute Resolution in the BANKSETAs Constitution.

10 REFERENCE SOURCES

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

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