ORIGINAL

# CONSTITUTIONAL COURT OF SOUTH AFRICA

**CASE CCT: 279/20**

In the application between:

**FIDELITY SERVICES GROUP (PTY) LTD** First Applicant

(REGISTRATION NUMBER: 2002/030292/07)

**THE SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS ASSOCIATION (SANSEA)** Second Applicant

and

**THE MINISTER OF FINANCE** First Respondent

**AFRIBUSINESS NPC** Second Respondent

**THE MINISTER OF PUBLIC ENTERPRISES** Third Respondent

In re: the Application for leave to appeal between:

**MINISTER OF FINANCE** Applicant/Appellant

and

**AFRIBUSINESS NPC** First Respondent

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**DATED AT PRETORIA THIS 12th DAY OF APRIL 2021.**

**NFC ATTORNEYS INC.**
**ATTORNEYS FOR THE FIRST AND SECOND APPLICANT**
**PP Wynand Hendrik Fourie**
An Attorney with right of appearance in
terms of Section 4(2) of Act 62 of 1995
Waterford Court
Block G33, Unit 3
c/o Rabie Street & Glover Avenue
Lyttelton
Pretoria
Phone (Office): +27 (0)12 664 1617
Email: info@nfcattorneys.co.za
**OUR REF.: FID001/L/AB**

**TO:** **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
**JOHANNESBURG**

**AND TO:** **THE STATE ATTORNEYS, PRETORIA**
**THE FIRST RESPONDENT**
**SALU Building**
**316 Thabo Sehume Street**
**Pretoria**

STATE ATTORNEY
RECEPTION
2021-04-12
PRIVATE BAG/PRIVAATSAK X91 (7)
PRETORIA 0001
STAATSPROKUREUR

**AND TO:** **HURTER SPIES ATTORNEYS**
**THE SECOND RESPONDENT**
**1st Floor, AfriForum Building**
**Cnr Union and DF Malan Drive**
**Kloofsig**
**Centurion**

HURTER SPIES INCORPORATED
WITHOUT PREJUDICE
Received by: Martie Hough
Signature:
On this: 12-04-2021 at: 12:32

**AND TO:** **MINISTER OF PUBLIC ENTERPRISES**
**THE THIRD RESPONDENT**
**80 Hamilton Street**
**Arcadia**
**Pretoria**

11:30AM
MINISTRY OF PUBLIC ENTERPRISES
PRIVATE BAG/ PRIVAATSAK X15
2021 -04- 12
HATFIELD 0028
MINISTERIE VAN OPENBARE ONDERNEMINGS

ORIGINAL

**CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CASE CCT: 279/20**

In the application between:

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| **FIDELITY SERVICES GROUP (PTY) LTD** (REGISTRATION NUMBER: 2002/030292/07) | First Applicant |
| **THE SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS ASSOCIATION (SANSEA)** | Second Applicant |

and

| | |
|---|---|
| **THE MINISTER OF FINANCE** | First Respondent |
| **AFRIBUSINESS NPC** | Second Respondent |
| **MINISTER OF PUBLIC ENTERPRISES** | Third Respondent |

In re: the Application for leave to appeal between:

| | |
|---|---|
| **MINISTER OF FINANCE** | Applicant/Appellant |

and

**AFRIBUSINESS NPC** First Respondent

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## NOTICE OF MOTION

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**TAKE NOTICE** that Application will be made to the above Honourable Court on behalf of the abovenamed First and Second Applicant on 25 May 2021 at 10:00 or as directed by the Honourable Chief Justice upon such periods for the delivery of affidavits and for the hearing of the matter as envisaged in Rule 11 of the rules of Court for an order in the following terms:

1. That this Application be heard as an Urgent Application in terms of Rule 11 of the Rules of this Honourable Court and that the non-compliance with service and time periods be condoned;

2. That the First and Second Applicant's be granted direct access to this Honourable Court for purposes of all the prayers herein further;

3. That the First and Second Applicant be joined in the Application for Leave to Appeal of the First Respondent (as Respondent to the Leave to Appeal) as envisaged in Rule 8 of the Rules of this Honourable Court;

3.1. That the First and Second Applicants' Affidavit in support of this Application be included as part of the record in Opposition to the First Respondent's Application for leave to Appeal;

3.2. Together with any answer received from the First Respondent.

4. That the order delivered by the Supreme Court of Appeal be enforced in terms of Sections 18(1), (2), (3) and (4) of the Superior Courts act 10 of 2013 pending the final decision made by the above Honourable Court in relation to the validity the Preferential Procurement Regulations, 2017;

5. In the Alternative to prayer 4 above together with prayer 6 herein further, and in addition thereto (in circumstances where the Supreme Court of Appeal's Court order is suspended until 21 November 2021) that the First and Second Respondents be interdicted to apply the Preferential Procurement Regulations, 2017 in procurement process pending the final decision to be made by the above Honourable Court in relation to the validity the Preferential Procurement Regulations, 2017

6. In the Alternative to prayer 4 above together with prayer 5 above, and in addition thereto(in circumstances where the Supreme Court of Appeal's Court order is suspended until 21 November 2021) that the First and Second

4

Respondent's be compelled to issue directives to the organs of State and all state enterprises that the Preferential Procurement Regulations, 2017 may not be applied in the procurement process pending the final decision made by the above Honourable Court in relation to the validity the Preferential Procurement Regulations, 2017

7. Cost of the Application to be paid by the First and Third Respondents jointly and severally the one paying the other to be absolved;

8. Further and / or alternative relief

**FURTHER TAKE NOTICE** that the Affidavit of, **WAHL BARTMANN** and Annexures thereto will be used in support of this Application.

**KINDLY ALSO TAKE NOTICE** that the First and Second Applicant has appointed attorneys hereunder as the address where notices and processes may be served upon them.

**AND TAKE FURTHER NOTICE** the Honourable Chief Justice will be approached to issue out a directive in relation to the Opposition and the Hearing of the matter as aforesaid.



**KINDLY PLACE THE MATTER ON THE ROLL FOR ACCORDINGLY.**

**DATED AT PRETORIA THIS 12th DAY OF APRIL 2021.**

**NFC ATTORNEYS INC.**
**ATTORNEYS FOR THE FIRST AND SECOND APPLICANT**
**PP Wynand Hendrik Fourie**
An Attorney with right of appearance in
terms of Section 4(2) of Act 62 of 1995
Waterford Court
Block G33, Unit 3
c/o Rabie Street & Glover Avenue
Lyttelton
Pretoria
Phone (Office): +27 (0)12 664 1617
Email: info@nfcattorneys.co.za
**OUR REF.: FID001/L/AB**

**TO:** **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
**JOHANNESBURG**

**AND TO:** **MINISTER OF FINANCE**
**Old Reserve Bank Building**
**40 Church Square**

Pretoria

AND TO: MINISTER OF PUBLIC ENTERPRISES
80 Hamilton Street
Arcadia
Pretoria

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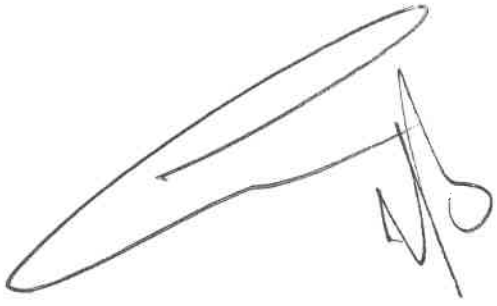
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**CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CASE CCT: 279/20**

In the application between:

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| **FIDELITY SERVICES GROUP (PTY) LTD** | First Applicant |
| (REGISTRATION NUMBER: 2002/030292/07) | |
| **THE SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS ASSOCIATION (SANSEA)** | Second Applicant |

and

| | |
|---|---|
| **THE MINISTER OF FINANCE** | First Respondent |
| **AFRIBUSINESS NPC** | Second Respondent |
| **MINISTER OF PUBLIC ENTERPRISES** | Third Respondent |

In re: the Application for leave to appeal between:

| | |
|---|---|
| **MINISTER OF FINANCE** | Applicant/Appellant |

**AFRIBUSINESS NPC** First Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned

**WAHL BARTMANN**

**(Identity number: 630613 5171 085)**

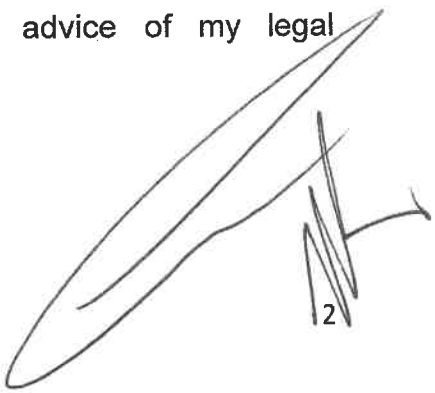
hereby make oath and state:

1. I am an adult male Chief executive officer, employed by Fidelity Group Services (Pty) Ltd with the work address at 104 C Mimosa Street, Roodepoort, Gauteng.

2. The facts herein fall within my personal knowledge unless otherwise stated or apparent and are both true and correct.

3. I am duly authorised to depose of this affidavit on behalf of the First and Second Applicants. I attach hereto a resolution by the Directors of the First Applicant and the Chairman of the Second Applicant respectively granting me the authority to depose to this Affidavit and to take all steps necessary in this Application for joinder and interdictory relief against the First and Third Respondents as **Annexures "FD1"** and **"FD2".**

4. Any legal submissions made are made on the advice of my legal representatives which I accept as true and correct.



**THE PARTIES**

5. The First Applicant is **FIDELITY SERVICES GROUP (PTY) LTD** a private company, with registration number: 2002/030292/07, with limited liability, duly incorporated and registered in accordance with the Company Laws of South Africa with its main place of business at 104 C Mimosa Street, Roodepoort, Gauteng.

5.1 The First Applicant *inter alia* does public and private security and other services and applies for public tenders from time to time with the various organs of state and public enterprises within the borders of South Africa.

6. The Second Applicant is **THE SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS ASSOCIATION (SANSEA),** an Association of members registered with the Department of Labor under Registration Number: LR2/ 6/3/216, consisting of 105 (one hundred and five) security service providers as set out in Annexure **"FD3"** attached hereto.

6.1 The Second Applicant represents in the region 105 security companies and who employ about 110 000 (one hundred and ten thousand) employees and respectfully has the *locus standi* to join these proceedings as elaborated upon herein further;

6.2 Similarly the Second Applicant's members consist of various security companies who does public and private security and guarding, who apply for public tenders from time to time with the various organs of state and public enterprises within the borders of South Africa;

6.3 The Second Applicant it is submitted has the *locus standi* to approach this Honourable Court in terms of Section 38 of the Constitution;

6.4 The Second Applicant's members upholds the code of ethics of the association to ensure a specific standard and quality of professional services delivered by all members of the Second Applicant. The Second Applicant sets a standard of operation for members to adhere to in its Constitution, which is attached hereto as **Annexure "FD4"**; and

6.5 The Second Applicant may have some members that are also members of the Second Applicant.

7. The First Respondent is the **MINISTER OF FINANCE** in his capacity as the representative for the Department of Treasury and in his capacity as the representative of the Government in the Preferential Procurement Policy as envisaged in section 217 of the Constitution with its address at Second Floor Old Reserve Bank Building, 40 Church Street, Pretoria, Gauteng alternatively c/o the State attorney, Manaka Heights, eighth floor, 167 Thabo Sehume Street, Pretoria, Gauteng.

8. The Second Respondent is **AFRIBUSINESS NPC**, a nonprofit orginisation duly incorporated in terms of the laws of South Africa, with Registration Number 2005/042861/08 and authorised by the members it represents with main place of business at cnr. DF Malan Drive and Union Road, Kloofsig, Centurion, Gauteng.

9. The First and Second Respondents are the main role players in the Application for Leave to Appeal. The relief for joinder of the First and Second Applicants to the Application for Leave to Appeal applies only to the First and Second

Respondents and the interdictory relief is essentially only relevant as against the First Respondent and the Third Respondent.

10. The Third Respondent is the **MINISTER OF PUBLIC ENTERPRISES**, in his capacity as responsible person for public enterprises such as Eskom Ltd (Eskom), South African Broadcasting Corporation (SABC), Telkom SA SOC Ltd ("Telkom") and other enterprises with his address at 80 Hamilton Street, Arcadia, Pretoria alternatively c/o the State attorney, Manaka Heights, eighth floor, 167 Thabo Sehume Street, Pretoria, Gauteng

10.1 The Third Respondent is cited in his representative authority of all the public enterprises as envisaged in Schedule 1, 2 and 3 of the Public Finance Management Act 1 of 1999 (Herein Further referred to as "the PFMA Act"). Attached hereto is a list of the public entities as aforesaid drawn from the website of the Public Treasury who is represented in these proceedings by the First Respondent as **Annexure "FD5".**

10.2 The various public enterprises are not cited and joined as parties to this Application as a result of the representative capacity of the Third Respondent so as not to over complicate and overburden this procedure.

**THE PURPOSE OF THIS APPLICATION**

11. The purpose of this application in the first instance is for the First and Second Applicants to be allowed to join the application for Leave to Appeal to:-

11.1 Oppose the First Respondent's Application for Leave to Appeal of the Supreme Court judgement handed down on 21 November 2020 to this Honourable Court (herein further referred to as "the judgement");

11.1.1 That Regulation 4 of the Preferential Procurement Policy Framework Act 2000: Preferential Procurement Regulations 2017, Government

Gazette nr.: 40553, under notice no.: R32 (herein further the Procurement Regulations 2017 will be referred to as "**the regulations**" and Regulation 4 of the Procurement Regulations as "**Regulation 4**") as enacted in terms of the Preferential Procurement Policy Framework act 5 of 2000 (herein after referred to as the **PPPFA act**) remain as envisaged in the judgement, invalid;

11.1.2 To support the Second Respondent's allegations and claims made in opposition to the First Respondent; and

12. In the second instance, the First and Second Applicants seek:

12.1 To approach this Honourable Court as First Instance being barred from approaching the High Court in that the validity of the regulations have been pronounced upon by the Supreme Court of Appeal in the judgement and is now in the process of being considered by this Honourable Court for:

12.1.1 Urgent relief that all current tenders' *status quo* before it was effected by Regulation 4's pre- qualifications be kept unchanged;

12.1.1.1 Either in terms of the Superior Courts Act section 18(1), (2) and (3) thereof that the effect of the judgement be enforceable pending the outcome of the appeal (to suspend the suspension caused by the Application for leave to appeal); or

12.1.2 Interdictory relief that the public enterprises such as Eskom, Telkom, SABC and the like be prohibited from requiring as pre-requisite that which is envisaged in regulation 4, that only QSE's (defined in regulation 1 of the regulations as Qualifying Small Business Enterprises) and EME's (defined in regulation 1 of the regulations as Exempted Micro Enterprises) pending and until the final Judgement

of this Honourable Court has been handed down in relation to the validity of regulation 4, to guide the way forward;

12.1.3 to prevent the harm and prejudice to: -

12.1.3.1 the First Applicant;

12.1.3.2 the Second Applicant and its members,

12.1.3.3 their employees; and in fact

12.1.3.4 (ironically) the QSE's, EME's (who the regulation seems to have been aimed at to be advantaged) referred to in the regulations,

12.1.3.5 the security industry as a whole; and

12.1.3.6 general administration of law, which is fully elaborated upon herein further.

**JOINDER OF THE APPLICATION FOR LEAVE TO APPEAL**

13. I will deal with the Joinder application and reasons in the initial part of this Affidavit under the Headings set out below.

**PARTICIPATION IN THE PROCESS**

14. The First and Second Applicants, if admitted to join, intend to confirm and support the factual allegations made by the Second Respondent and in relies on the case made out by the Second Respondent in its Founding Papers and Replying papers in the court a quo for the invalidity of the Regulation.

15. The First and Second Applicants add the facts that is specific to the practical application of Regulation 4 which falls exclusively in the knowledge of the First and Second Applicants.

16. The First and Second Applicants represent a substantial part of the security industry as a result of which the pre-requisites, which is currently being imposed in the industry directly impacts on the First Applicant and its employees, the Second Applicant and the employees as well as all the members of the Second Applicant. The Applicants are able to, as they set out herein, set forth the facts that show the devastatingly detrimental effects of the application of the Regulations upon which the tender process currently relies.

17. A substantial volume of affidavits and annexures have already been filed that deal with the relevant facts. The First and Second Applicants shall present their arguments based on the record as it stands, save for the facts referred to herein, which we submit should be allowed in the following exceptional circumstances:

    17.1 The First Respondent specifically makes the point that the Second Respondent fails to define the practical impact of the regulations and the financial prejudice which its members suffer. The Applicants, at least, as pertaining to the security industry, and other industries mentioned herein further have intimate knowledge of the facts in relation to the effect of the regulations on tender and procurement processes and the financial prejudice being suffered by the First Applicant and the members of the Second Applicant.

    17.2 This is not in any way delivered to derogate from the general submissions made by the Second Respondent, but rather to support and prove their allegations in this regard.

    17.3 It is respectfully submitted that the intimate knowledge that we propose to provide to this court cannot be contradicted because of the place in the industry that the First and Second Applicants hold in relation

specifically to the market share and stake that First and Second Applicants hold, more over it is respectfully relevant for the consideration of the questions before the Honourable Court and do not form part of the record before this Honorable Court currently. I mention this in consideration of how to deal with any conflicts of facts to be resolved.

17.4 The Applicants are of the view that our version can sufficiently be dealt with on the affidavits before this Honourable Court subject to this Affidavit being allowed to make out part of the record and oral evidence is not foreseen, in fact any factual disagreement would be very limited and not as it relates to the practical implications of the regulations as it is currently being employed.

17.5 If an affected party wishes to answer these allegations, it would be a simple matter for them to respond thereto, as there are no financial losses claimed in the affidavits filed to date by the other parties and none of them deal with tenders at the level the First and Second Applicants do.

17.6 The Applicants submit that there is sufficient time until the final hearing of the Leave to Appeal to accommodate our joinder and procedural participation.

17.7 The Notice of Motion in this application is framed in a manner that limits the participation to this affidavit. At this stage it is submitted that if this Affidavit is allowed as part of the record of proceedings that the First and Second Applicants version would be sufficiently placed before the Honourable Court.

17.8 By the limited participation, we agree with the First Respondent's view set out in the record and the basis on which the relief is sought, subject thereto that this affidavit being allowed.

**DIRECT ACCESS**

18. The First and Second Applicants approach this Honourable Court as first instance as regard to the facts they wish to place before this Honourable Court. By way of direct access for purposes of this joinder and for purposes of the suspension (obtained as a result of the Leave to Appeal) be suspended and that the order be enforced alternatively interdictory relief sought against the First and Third Respondents. I address direct access in addition to the allegations made under the previous heading, and the evidence set out herein further, which is referred to as if repeated herein.

19. The direct access sought by the First and Second Applicants will ensure that the matter be heard with insight into the process, facts and circumstances. The current tender process as conducted under the regulations forms the basis of the effects and questions before this Honourable Court which until now the Honourable Court does not have.

20. It is essential for the First and Second Applicants and those they represent and other entities in other fields as indicated herein further that the order of the Supreme Court of Appeal be sustained. The application of the regulation cause extreme prejudice and negative impact on the First and Second Applicants as set out herein further.

21. If the First and Second Applicants are allowed to join this application as sought the true facts and the negative effects, can be taken into consideration rather than theoretical principles of the effect of the regulations on the multitude of service providers.

22. The issue of direct access is mostly a legal question supported by the evidence already placed before this Court and the additional facts herein further.

23. The Application for leave to appeal by the First Respondent allows it, for the time being, to delay the correction of the Regulations as envisaged in the judgement. As a result of the Leave to Appeal the circumstances that currently prevail will continue until 21 November 2021 (date until which the judgement suspends the declaring of invalidity of the regulations), which is the sole and direct reason for the First and Second Applicants being in need of the interdictory relief.

## BACKGROUND, DIRECT AND SUBSTANTIAL INTEREST

## BACKGROUND

## THE FIRST APPLICANT

24. The First Applicant is the Holding Company of a group of companies divided into eight affiliates being aimed to deliver *inter alia* security and guarding services, cleaning services, hardware solutions for the industry, fire solutions and cash in transit services in the public and private sector. The First Applicant is responsible for 58 000 (Fifty-eight thousand) employees across South Africa, with 160 points of contact and depots across the country. The Group's highly successful strategies have made it South Africa's largest black economic owned integrated security solution provider, with a 51% BEE shareholding and being 100% South African. Attached hereto is the First Applicant's BBBEE Contribution certificate as **Annexure "FD6"** and the B-BBEE Draft verification, setting out the First Applicant's point structure as **Annexure "FD7"**

25. The First Applicant has been delivering these services for approximately 60 (sixty) years, albeit in various different companies since it was established as Springbok Security Services in 1957.

26. The First Applicant plays a significant role in the upliftment, training and supporting of previously disadvantaged persons and have a personal stake in their development as a result. The First Applicant has expended in the region

of R 140 000 000.00 (One Hundred and Forty Million Rand) in the past 3 years in this endeavor. Attached hereto is a Fidelity Cares Report dated March 2020 to February 2021 and a skills development report – training of unemployed individuals, giving an indication what the First Applicant expends and believe in, in relation to social upliftment of previously disadvantaged South African Communities as **Annexures "FD8" and "FD9".**

27. The First Applicant has in addition aimed to uplift and assist young entrepreneurs in the security business to start their own businesses and in certain instances together with the guidance and assistance of the First Applicant. Some of these entities have even been nominated and selected to tender on projects with the backing and assistance of the Second Respondent on its behalf.

28. I attach hereto as **Annexure "FD10"** a list of such entities, setting out the companies name, CSD Registration, BEE Shareholding, whether they are firearms compliant and proficient, their company registration number, Tax number, contact person and details. It is noteworthy that these represent entities across South Africa. These entities are in joint partnership with the First Applicant and received funding, assistance, guidance and training from the First Applicant and support to meet specialized requirements set by tender invitations of the various state enterprises.

29. The First Applicant has been severely prejudiced in the procurement processes followed by public enterprises that apply the pre-requisite envisaged in regulation 4.

30. Public enterprises such as the Eskom, Transnet and SABC all opted to add pre-qualification criteria to new tenders, that have the effect that the BEE level of the large entities such as the First Applicant tendering on the specific tenders and other qualifications as set out in the B-BBEE Act 53 of 2003 (The B-BBEE Act) are completely circumvented. This has already been dealt with in the record.

30.1 ESKOM

30.1.1 ESKOM falls under the umbrella of the Third Respondent, being the Honourable Minister Pravin Gordhan and the Department of Public Enterprises who is responsible for all public enterprises, including but not limited to:- TRANSNET, DENEL, SABC, SA EXPRESS and ALEXCOR and others as set out in the list in terms of the PMFA Act referred to and attached herein above as **Annexure "FD5".**

30.1.2 This includes all tenders submitted under the umbrella of ESKOM by applying and giving effect to their discretion envisaged in regulation 4.

30.1.3 I attach hereto a schedule reflecting all the tenders that have been influenced as a result of the application of regulation 4 as **Annexure "FD11".** Items 1 – 57 refer to the Eskom tenders which are effected. The schedule reflects the following: - the tender company (Eskom) a comment as to why the tender has been influenced, province, the reference, the submission date, contact person, and details. All these tenders included the pre-qualification criteria in their tender invitation stipulated as much.

30.1.4 Two examples of such tender invitations are attached hereto as **Annexure "FD12 and "FD13"** dated 11 February 2020 and 3 March 2020 so as not to overburden these papers. I submit that all of the Eskom tenders have placed a pre-qualification criteria as envisaged in the Regulations. "FD10" sets as requirement in paragraph 3.11 thereof "Pre-Qualification Criteria" and in the next column across the bullet that only EME's and QME's qualify and in terms of regulation 4 (2) a tender that fails to meet the pre-qualification is an "unacceptable tender", which directly results in the First Applicant never being considered for these tenders. The corresponding cover letters for the applications for Annexure "**FD12**" and "**FD13**" are

attached hereto as Annexure **FD12.1**, a cover letter for submission. The tender documents is to a certain extent confidential, in light thereof it may not be in the hands of the First Applicants competitors.

30.1.5 The First Applicant stopped tendering for a period of three months not being able to and being uncertain of what steps to take to mitigate the tremendous damages and harm that this has on the First Applicant. From about October 2020, and after consulting its legal representations if continued to tender as normal on all the invitations to tender even though the pre-qualification criteria have excluded the First Applicant from doing so for obvious reasons. Normally the First Applicant would have qualified to apply for these tenders in terms of the PPPF act, the PMFA act and the BBBEE act).

30.1.6 In an answer to an email enquiry on 17 February 2021, attached hereto as **Annexure "FD14"**, ESKOM official Jerry Tshoba replied and informed the First Applicant that:

*"Only QSE's and EME's with minimum 51% black ownership are allowed to tender"*

30.1.7 Further replies to the letter sent was received on 5 March 2021 and is attached hereto as **"FD14.1, FD14.2** and **FD14.3".** In Annexure "FD14.3" Refilwe Phetla replied and added the Notice to the Eskom employees setting out the directive on how to apply the new regulations. It seems that in the last paragraph of the answer that the application of the pre-qualification as envisage in the regulation is not a mere discretion but rather an instruction.

30.1.8 Eskom, in the tender process, delivers a presentation to explain requirements for specific tenders. Attached hereto is a power point presentation dated 11 March 2021, explaining the pre-qualification criteria of QSE and MME on page 3 thereof as **Annexure "FD15".**

30.1.9 The ESKOM tender invitation ("FD12" on typed page 8 and onwards) sets out the additional requirements, which the successful tenderee must adhere to and meet. These requirements must be met to be able to deliver an effective service to the public enterprise. A QSE, EME would hardly be in a position due to limited infrastructure and financial means to meet these requirements, yet this is set as a pre-requisite. In the letters addressed to Eskom, the First and Second Respondent the comment is made that the horse is placed before the cart, precisely for this reason.

30.1.9.1 To comply with all of the additional criteria set out in the invitation documents, the QSE, EME entities have to comply and set up an infrastructure which as a result of the nature of a QME and EME does not exist, which adds additional pressure on smaller entities.

30.1.9.1.1 Not to be labour the point, but to illustrate the point for an entity to comply with:

30.1.9.1.1.1 Certification must be applied;

30.1.9.1.1.2 Every employee must be audited and

30.1.9.1.1.3 Numerous other qualifications, structures and processes have to be employed to qualify for the certification. See attached "FD15.1 and 15.2". the First Applicant's certificate of registration and the assessment report date d March 2021.

30.1.9.2 The expenses to obtain and set up the infrastructure to qualify for the tenders will be, to a large extent, irrecoverable by the QSE's and MME's upon revision and setting aside of these tenders at the opportune time if in fact these expenses are

invested. The worst case scenario is that the QME's and MME's obtain a tender for which they are not qualified, they will not be able to deliver the services they were supposed to deliver, ultimately this leads to voluminous disputes in Courts as to the interpretation and additional costs expended by QME's and MME's or worst still additional entities have to be appointed at (normally) higher costs than initially tendered for and the infrastructure of the government is at stake in most instances in which the First and Second Applicants tenders for.

30.2 SABC

30.2.1 The First Applicant applied for the SABC tenders on 23 November 2020 and 23 March 2021. These are reflected as items 71 and 80 of the Schedule (**Annexure "FD11"**) sets out the information on these tenders;

30.2.2 Attached as **Annexure "FD16"** please find an example of the SABC's tender invitation documents ("Request for proposal") and Annexure **"FD16.1**" a cover letter for submission of same;

30.2.3 The pre-requisite qualification criteria are contained in paragraph 3.3;

30.2.4 The additional requirements are set out in paragraph 14 (typed page 11 to 13)

30.2.5 Similarly these represent requirements that are in some circumstances impossible to meet by QME's and MME's.

30.3 TRANSNET

30.3.1 The TRANSNET tenders applied for by the First Applicant on 10 March 2020, 2 June 2020, 16 July 2020,18 August 2020 and 9 September 2020 respectively. In Annexure FD11, items 85,96,104, 118 and 120 sets out the information on these tenders relating to TRANSNET.

30.3.2 I attach hereto an invitation to tender as **Annexure "FD18"** calling for the pre-requisite requirement that a QME and MME may only apply.

30.3.3 In paragraph 2 of "FD18" the pre-qualification is set out .

31. The First Applicant as it currently stands has lost in the region of a 130 (one hundred and thirty) tenders or the ability to in fact tender on those 130 tenders since implementation of regulation 4 as depicted in **Annexure "FD11"**

32. The impact is that 895 (eight hundred and ninety-five) security guards and employees and more than 30 motor vehicles have been left without employment to date due to the cancellation of these tenders mentioned above.

33. The First Applicant has held some of these tenders for long extensive periods and now after all this time stands to lose and is losing tenders at this stage. It has invested substantial amounts of monies and set up infrastructure around these tenders and areas, services must be rendered. The First Applicant is not afraid of fairly competing in a tender process through the regulation it is excluded from tendering at all.

34. These tenders have not been denied because of bad service, or disputes, or problems with the service the First Applicant provided, but only on the basis that the First Applicant does not qualify to hold such tenders due to the pre-qualification criteria of Regulation 4. The Regulation result herein that the B-

BBBEE Act and its criteria, the PMFA act and its criteria and the PPPFA act and its criteria and become a QSE and / or MME.

35. It is of paramount importance that this Honourable Court does not get the idea that the First Applicant does not want to compete. The First Applicant is completely ignored so it does not have the opportunity for a fair, transparent and reasonable competition with its competitors.

36. Big tenders lost in the region of more than a R 120 000 000.00 (one hundred and twenty million Rand) just for the ESKOM tenders. The SABC tenders amount to in the region of R 30 000 000.00. (thirty million Rand). The amounts are estimated upon the previous financial year contracts, that the First Applicant serviced for Eskom and SABC. The amounts may very well be increased and the equivalent will be suffered and lost in the following six months.

37. It is important to point out that properties, plants and places depicted in Annexure FD11, represent substantial importance in the infrastructure of South Africa's power, rail and health systems. The First Applicant has protected and secured these properties long periods in time and includes sites such as the Power stations, infrastructure of State Enterprises and alike.

38. With the current state of ESKOM and our power grid in general and our health system being under severe pressure, it is imperative that these sites are protected in the best possible ways to ensure that they can function without interruption and in a safe and secure environment. The First Applicant have ensured this for many years. I attach hereto a news article in relation to the power grid of South Africa published by News 24 as **Annexure "FD19".**

39. Conversely I attach hereto some articles published in relation to the judgement and how it is being interpreted as **Annexures "FD20"** and "**FD21"**

40. I also attach hereto 1 notification published seemingly by the South African Government explaining that the Supreme Court of Appeal's judgement and its

effect does not affect the B-BBEE Act and its regulations as **Annexure "FD22"**

## THE SECOND APPLICANT

41. There exists no logic or fairness why a service provider is awarded a tender if it is not equipped to provide the level of service as they do not even qualify on the documentation provided.

42. The members of the Second Applicant have suffered severe prejudice and losses and are losing tenders at this very moment.

43. The First Applicant is a member of the Second Applicant and the examples used by the First Applicant in these papers are also applicable on the Second Applicant.

## STEPS TAKEN BY THE FIRST APPLICANT

44. Taking all of the above circumstances into consideration the First Applicant was left with no option but to take steps in the attempt to stop the allocation and awarding of tenders based on Regulation 4 as pre-qualification criteria, which we submit respectfully is invalid.

45. As mentioned herein above the Application of the regulations was unclear to me and my management team albeit that we were cautiously in suspense to allow for the regulations not to be applied because of the B-BBEE Act, the PMFA act, and the PPPFA act and its regulations that as the notice herein above states are mandatory. This begs the question how the regulation seems to have the effect to ignore and circumvent these mandatory requirements.

46. As a fact I say that the First Applicant has lost 130 tenders in the last 6 months, stands to lose probably the equivalent of that in the following six months and more if this regulation continues to take effect after that. It serves to mention

that the work that the First Applicant does for state enterprises makes out 70% of the Applicant's revenue to date .

47. The First Applicant consulted with its legal representatives during the middle part of March 2021.

48. On or about 4 March 2021 the First Applicant wrote a letter to ESKOM officials personally regarding the tenders they control, see attached such an example as Annexure **"FD23"** and requested:

48.1 that the current ESKOM tender process is futile, flawed and discriminating as it is based on Regulation 4 which was already declared unconstitutional by the SCA;

48.2 that the discrimination and the aim of the BEE Act was to provide an interim relief for the disadvantage South Africans to enhance black owned businesses in South Africa since 1994. Fidelity has adhered to all the requirements as set out in the BEE Act to qualify in the level 1 BEE category but still ESKOM opt to not award the tenders to the highest point scorer when the tenders are awarded;

48.3 that in the circumstances these actions that arise after the point-scoring exercise is completed by allowing tenders to be awarded to bidders that do not score the highest points and does not satisfy the "objective" criteria as set out in the BEE Act. This is contrary to "objective competitive bidding" and inconsistent with Section 217 of the Constitution;

48.4 that ESKOM is hereby formally requested to take into consideration these exceptional circumstances and consequences flowing from this current elected tender process that ESKOM embarked on and to ensure that the ESKOM tender process is fair and objective to all parties as the Constitution requires;

48.5 that ESKOM is requested to immediately review and stop the current tender practice in light of the awaited Constitutional Court Judgement and to ensure that ESKOM set up their tender process in line with the legislation surrounding this delicate sensitive issue and to ensure that damage claims will not be brought against ESKOM in due course; and

48.6 that ESKOM is requested to with immediate effect freeze all tenders and keep the current *status quo* until the Judgement and/or 2 November 2021, whichever is first in time. To enable them to seek clarification on the issue at hand.

49. On or about 29 March 2021 the First and Second Applicants' attorneys of record addressed a letter to Mr Andre de Ruyter, on behalf of both First and Second Applicants and attached hereto as Annexure **"FD24"** and Annexure **FD25 respectively**, the head of ESKOM personally recording as follows:

49.1 Our client has suffered severely by not being awarded these tenders. Our client will continue tendering on future tenders even though the tender process elected by ESKOM is flawed at this stage and reserve it's right to do so. The prejudice and huge financial loss experienced by our client from the unlawful and discriminating implementation of the impugned Regulation 4, in specific the damages it imposes on a Level 1 BEE qualified company, like our client, is severe;

49.2 That the current ESKOM tender process is futile, flawed and discriminating as it is based on Regulation 4 which was declared unconstitutional and invalid by the SCA;

49.3 That our client hereby formally demands that ESKOM desists with immediate effect to award tenders that is not in line with the B-BBEE Act and Regulation 4 until the Constitutional Court's Judgement is handed down in this matter which will be in due course;

49.4 That our client further demands that the *status quo* on the tenders effected must remain until clarity is gained on the Constitutional Court's Judgement, failing which, our client is forced to take the necessary steps to claim the damages suffered from the elected tender process by Eskom. The impact of the decisions made in the above circumstances is having a huge impact on all SANSEA's members and the 110 000 employees; and

49.5 Alternatively, our client is open to set up a round table meeting with the key stake holders of ESKOM to address these issues and a possible way forward within 7 days from date of this letter, failing which our client will have no option but to join the Constitutional Court's proceedings and to recover the damages suffered from the non-compliance with the Act as well as the enforcement of an invalid declared Regulation.

50. Mr. Andre de Ruyter did receive the letters and sent a read receipt to the attorney of record. See attached **"FD26"** hereto a read receipt from Mr. Andre de Ruyter's personal email address.

51. To date hereof ESKOM has elected to ignore, failed to set up a round table and continue to apply the Regulations and pre-qualification criteria in their tenders. The 7 (seven) days given expired on 9 April 2021.

52. In anticipation thereof that no response were going to be given and in discussion with attorneys and counsel in the steps to be taken from this point forward two letter were addressed to the First and Third Respondents with similar recordals as set out herein above, which is attached hereto as Annexures **"FD27" and "FD28".**

53. Having decided that the First and Second Applicants would have no other choice but to intervene in the Application for Leave to Appeal and for the interdictory relief as set it herein further, keeping in mind that the First and Second Applicants should only be allowed to intervene with as little interruption

with the process before this Honourable Court much less time could be afforded to them.

54. The letters call for an undertaking that regulation 4 will no longer be applied as envisaged without which the First and Second Applicants no longer have any choice but to intervene and beg for interim relief, because of the tremendous impact the regulations have and is going to have in the future.

## DIRECT AND SUBSTANTIAL INTEREST

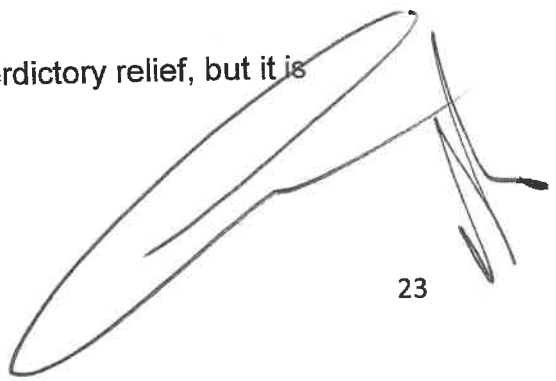
55. In light of what is stated herein above it is submitted that the First and Second Applicants have a direct and substantial interest in the adjudication of the Leave to Appeal of the judgement in the following respects:

55.1 If the regulation is found to be valid which is ultimately the relief sought by the First Respondent, the First and Second Applicants its members and its employees will continue to be prejudiced as set out above.

55.2 More pertinent that if the relief granted and seeked by the Applicant that the Second and Third Respondent and their members would have substantial claims for many years to come due to the fact that they have been discriminated against due to the BEE status they have and as set out in the B- BBEE Act of 53 of 2003.

56. Each of the awarded tenders under the auspices of regulation 4 is reviewable and stands to be set aside in the current application of the regulation. In the case of the First Applicant, this currently stands in the region of a 130 (one hundred and thirty) tenders as aforesaid.

57. This relates to the evidence in support of the interdictory relief, but it is submitted that it may also be considered here.



58. The Courts would be inundated with review application on each tender incorrectly and invalidly considered and awarded and in applicable circumstances the tenders that were ignored as a result of the pre-requisites envisaged in regulation 4.

59. The prejudicial effect of the regulations also needs consideration. Once the regulations are found to be invalid or considered in a review to be irregular or to be set aside the QME's and MME's would have entered into the various agreements, would have expended resources on each of the projects they have been awarded. If these are set aside those QME's and MME's, would be placed in the position that they have to recover these losses, which are often difficult to quantify and more specifically as a result of their limited resources may never be recovered from the Government.

    59.1 This has the potential that it would inundate the Courts for decades, occupying our courts and contributing to huge job losses and the closing down of security providers.

    59.2 The small security providers and members of the Second Applicant in specific, will ironically be the specific service provider the First Respondent is trying to provide an advantage for with regulation 4. They will be the ones who will be closing their doors leaving hundreds of security guards without employment in a country where our unemployment rate is already over 50% of the population.

    59.3 Worst still is if these reviews are brought at a stage where these QME's and EME's have been in that position for too long, or if those QME's and EME's stand to suffer too much hardship as a result of enforcing mandatory principles which state entities have failed to apply as a result of or as a consequence of the regulations the Courts may have to allow the unlawful effects of the regulations to continue.

60. It is respectfully submitted that the First and Second Applicants have a direct and substantial interest in the matter and that the ultimate result sought by the

First Respondent will be grossly unfair towards the First and Second Applicants, their members and their employees.

61. They therefore should have the opportunity to defend alternatively present their interests in the Application for Leave to Appeal.

62. Although the Second Respondent in this application made common cause and common ground with the First and Second Applicants, its interest is by no means identical to that of the First and Second Applicants.

63. In the premises, I respectfully submit that the First and Second Applicants have a direct and substantial interest in the outcome of the subject matter in this application.

**IT IS JUST AND EQUITABLE TO GRANT LEAVE TO INTERVENE**

64. This matter involves serious issues and is of great public importance. The First and Second Applicants, their members and employees are prejudiced by the application of the Regulations as well as the way it discriminates against the First and Second Applicants.

65. It is fundamental to legal fairness that the First and Second Applicants be heard before the judgement is passed and the implications of allowing such "invalid" implications be taken into consideration before this Honourable Court makes a Judgement in the issues at hand.

66. I respectfully submit that this is a matter where justice must not only be done, but must be seen to be done. The First and Second Applicants their members and employees are South Africans citizens and South African registered entities who *bona fide* wish to assert their constitutional rights.

67. I submit that it is in the interest of justice that the First and Second Applicants, be joined to these proceedings. They were unaware of the serious

consequences and the financial implications the application of the Regulations would have on their businesses until only recently after tenders were awarded and left them unemployed and faced with closing their doors.

**FIRST RESPONDENT'S ISSUES DEALT WITH AND THE MERITS**

68. Although the First and Second Applicants make common cause with the First Respondent as to the outcome of the matter, the First and Second Applicants will raise a number of different issues as well as give firsthand evidence about the impact and consequences of Regulations 4 in practice.

69. The First and Second Applicants remain vulnerable to any concessions that may be made either in negotiations or during these proceedings that they may not wish to align themselves with.

**THE TIMING OF THIS APPLICATION**

70. I am advised that an application for joinder may be brought at any time in the proceedings. Even so, I am advised that such an application must be brought within a reasonable time to ensure that sufficient time is allowed for all the necessary litigation processes to be adhered to.

71. At the same time, a party who wishes to join must show that it raises different issues than the other parties.

72. As indicated herein above the First Applicant has initially been made aware of regulation 4 in and during end February 2021. The effects of this regulation were initially thought to be of limited consequence for the following reasons:

72.1 The existence of the B- BBEE Act and its mandatory requirements placed on the government and public enterprises;

72.2 The existence of the PPPF Act and its mandatory requirements placed on the government and public enterprises;

72.3 The existence of the PFMA act and its mandatory requirements placed on the government and public enterprises;

72.4 The fact that the Second Applicant with support of the First Applicant would and should be able to tender as a result of the level1 BEE status of the First Applicant;

72.5 The fact that QSE's and EME's would not be able to meet the financial requirements of large tenders that now seem to set it as a pre-requisite;

73. The effects of the application of the regulations could only be seen after it was being implemented. In this instance the tender invitation allows for a three month period for invitations, thereafter a period is set by which date a qualified person is appointed.

74. From February 2021, the clear effect of the application of Regulation 4 became very apparent. The Applicants have lost numerous tenders due to the application of the Regulation and left the First Applicant and members of the Second Applicant with huge financial losses and retrenchments and ending of service contracts with its employees because of the loss of the tenders as set out above.

75. I respectfully submit in light of what is stated herein above, that the First and Second Applicants should be allowed to join the Leave to Appeal as parties thereto.

**URGENT INTERDICTORY RELIEF / RELIEF IN TERMS OF SECTIONS 18 (1) (2) AND (3) OF THE SUPERIOR COURTS ACT.**

**PURPOSE OF THIS APPLICATION**

76. This is an application for an order that regulation 4 is prohibited from being applied either:

76.1 By way of enforcing the judgement of the Supreme Court of Appeal pending the outcome of this Honourable Court's declaration on the validity of the regulations as envisaged in section 18(1), (2), (3) and (4) of the Superior Courts Act 10 of 2013; or

76.2 That the First and Third Respondents be interdicted to apply the regulations, or to compel the First and Third Respondents to direct that the regulations (specifically regulation 4) may not be applied in the procurement process.

76.3 The relief is sought pending the final relief in the Leave to Appeal and until such time as this Honourable Court declares on the validity of the Regulations; and

77. The First and Second Applicants approaches this Honourable Court directly for the reasons set out herein above under the heading direct access (paragraphs 18 - 23).

78. The evidence contained herein above is referred to as if repeated herein.

**URGENCY**

79. The matter is respectfully urgent because the Application for Leave to Appeal is set down for hearing on 25 May 2021.

80. The First and Second Applicants application to be joined as a party has to be adjudicated before that date in order for the First and Second Applicants' evidence which falls within their intimate knowledge, which is relevant and currently absent from the record to be placed before this Honourable Court.

81. As a consequence of the harm, prejudice and damages that is suffered by the First and Second Applicants, which is evident from the above, and herein further as a direct result of the regulations being applied to all state enterprises, which the First Applicant has previously tendered and successfully so, which they can no longer do, which will continue if this Honourable Court does intervene it has become necessary for the First and Second Applicants to approach this Honourable Court.

82. The harm, prejudice and damages can at this stage be mitigated to a certain extent.

83. Contrary thereto if the application of regulation 4 is left to continue the Applicants will continue to suffer the consequences.

84. These consequences automatically translate to the damages to the employees of the First Applicant, the members and their employees of the Second Applicant.

85. If the Regulations are to be found invalid, the QME's, EME's stands to suffer irreparable and irrecoverable damages as aforesaid. Alternatively, they may be granted advantages on invalid regulations, in instances where the correct enforcement of rights may cause undue hardship upon them.

86. As opposed thereto that if the regulations are found to be valid the First and Third Respondents, SQE's, MME's stand to suffer no prejudice. The effects of the regulations are merely postponed to a later date.

87. It is in the interest of justice that the Applicants approach this Honourable Court for the above relief to stop the bleeding of the industry is experiencing and to ensure the survival of the smaller entities, specifically the members of the

Second Applicant, at least for the interim and pending this Honourable Court's judgement on the validity of the Regulations.

88. This application is an interlocutory interdict and is a provisional order designed to protect the rights of the Applicants and coincidentally the rights of the SQE's and EME's for whom the regulations is designed pending pending this Honourable Court's determination. It is not aimed to determine the final determination of the rights of the parties and it does not affect such determination. The effect is to freeze the *status quo* until this Honourable Court decides where the right.

89. The Leave to appeal has the effect that the order is suspended, which may have the effect that the First Respondent's obligations to rectify their invalid Regulations will also be delayed until this Honourable Court has made declaration.

90. In the meantime the First and Second Applicants are prejudiced daily in not having certainty of the effect of the regulation, not being able to tender, or applying without being considered for tenders notwithstanding the public enterprises' mandatory duties in the procurement procedure.

91. The First and Second Applicants have suffered severe irreparable harm by the appeal by the Applicant and the delay of the finalization of the corrections as ordered by the Supreme Court of Appeal and will continue to do so until finality is reached.

92. It is respectfully submitted that while this Honourable Court considers the leave to appeal and until a final decision is made, the interim interdict will ensure the protection, and ensure consistent application of the B-BBEE Act in the tender process as was originally envisaged by the B-BBEE Act, the PFMA Act and the PPPF Act and more importantly give legal certainty albeit for the interim.

93. The irreparable and imminent harm of the application of the "invalid" Regulations on the security industry together with the substantial balance of convenience that favors the granting of the interdictory relief, sought by the

Applicants to immediately stop unfair and discriminating actions on already compliant BEE registered entities, favors the urgent granting of the interdict.

94. The above facts indicate that this application for interim relief is manifestly urgent. ESKOM has not replied to the letters sent and delivered to them, nor has the First and/or Second Respondent. ESKOM has also not changed their tender process and still uses the pre-qualifications as a qualification to tender for work in their invitation to tender documentation.

95. These are exceptional circumstances as the matter is in this Honourable Court and this Court is the only Court who can effectively deal with this matter at this stage.

96. The damages caused in certain tenders are unquantifiable because the First Applicant is not considered. It is in the current atmosphere impossible to know and most probably to prove which tenders should have been granted to the First Applicant.

**THAT THE RIGHT THAT FORMS THE SUBJECT MATTER OF THE MAIN APPLICATION AND THAT THE SECOND AND THIRD RESPONDENTS SEEK TO PROTECT IS A *PRIMA FACIE* RIGHT ESTABLISHED**

97. The Applicants have demonstrated as a matter of fact and law, that a *prima facie* right was established for the granting of the urgent interdict to protect their businesses and to ensure that the First and Third Respondent be compelled to procure goods and services in a process that is fair, equitable transparent, competitive and cost-effective by Section 217 of Constitution and the Acts regulating the tender process, which is the subject matter that this Honourable Court is seized with in adjudicating the Leave to Appeal and the ultimate declaration of the validity of the regulations.

98. The order of the Supreme Court of Appeal settles this issue conclusively.

**NO ALTERNATIVE REMEDY**

99. The Applicants have no other effective remedy to turn to, to ensure immediate urgent protection in these circumstances, ending the outcome of the leave to appeal.

100. The prevention of the harm aforesaid and herein further is always more preferable than recovering the damages after it has occurred.

101. A claim for damages will not prevent the harm.

**THERE IS A WELL-GROUNDED APPREHENSION OF IRREPARABLE HARM IF THE INTERIM RELIEF IS NOT GRANTED AND THE ULTIMATE RELIEF IS EVENTUALLY GRANTED**

102. At the heart of this matter is the question of the validity of Regulation 4 that has already been declared invalid but now in practice is still being applied to tender processes and causing huge financial loss for the Applicants Applying for tenders;

102.1.1 The test for irreparable harm is an objective one and based on the facts presented to the Court to ensure the Court can decide whether there is any basis for the entertainment of a reasonable apprehension of irreparable harm and injury by the Applicants;

102.1.2 The "harm" in this matter is the adjudication of tenders on "invalid" Regulation 4 and the disregard of the B-BBEE Act, PPFA and PMFA Acts; and

**A BALANCE OF CONVENIENCE IN FAVOR OF THE GRANTING OF THE INTERIM RELIEF**

103. The prejudice the Applicants are suffering because of the prejudicial application of the Regulation while this decision is pending before this Honourable Court clearly weighs in favor of the Applicants:-

103.1.1 In an application for temporary relief there will invariably be at least two compelling interests and those interest are inextricably linked to the harm the Second and Third Respondents are suffering and that in the event of the order being granted the harm will likely to be suffered will stop.; and

103.1.2 Although the future course of events is necessarily a matter of speculation, it is beyond doubt that, Regulation 4 was declared invalid and cannot be applied to a tender process. Application of the "invalid" declared Regulation is causing huge financial prejudice for the service provider on the ground who is affected by the unfair and unlawful pre-qualification criteria set out and now being applied in tender processes across the board.

**SEPERATION OF POWERS**

104. The First Respondent has acted outside of the scope of his powers and in this instance this Court will be more favorable to grant an interdict restraining the statutory powers of the First Respondent and that the actions are invalid and not in accordance with the law applicable.

105. In **National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012(6) SA 223 (CC)** the relevance of separation of powers are considered especially in circumstances where interim relief is sought against an order of state. Moseneke DCJ held that

> *"A Court must ….. be alive to and carefully consider whether the temporary restraining order would unduly trespass upon the sole terrain of other branches of government even before the final determination of the review grounds. A Court must be astute not to stop dead the exercise of executive or legislature power before the exercise has been successfully and finally impugned on review. This approach accords well with the comity the Courts owe to other branches of government, provided they act lawfully"*

106. The First Respondent, an organ of State, acted unlawfully as per the Supreme Court of Appeal Judgement dated 21 November 2020. The Applicant has acted out of it's scope and powers given to him and in these circumstances, the Court has a wider and stronger reason to ensure the unlawful application.

107. The invalid Regulation is stopped and the situation rectified before the damages caused by this action is out of control and the rectification of these unlawful awarded tenders will fill the Courts with law suites to fix and rectify the situations caused.

**SECTION 18 OF THE SUPREME COURTS ACT 10 of 2013**

108. Section 18 of the Superior Courts Act 10 of 2013 (the "SC Act") deals with the "Suspension of a decision pending appeal" and provides:-

> *"18 (1) Subject to subsections (2) and (3), and unless the Court under exceptional circumstances order otherwise, the operation and execution of a decision is subject of an application for leave to*

*appeal or of an appeal, is suspended pending the decision of the application or appeal.*

*(2) Subject to subsection (3) unless the Court under exceptional circumstances orders otherwise the operation and execution of a decision that is an interlocutory order not having effect of a final judgement, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application of appeal.*

*(3) A Court may only order otherwise as contemplated in subsection (1) and (2), if the party who applied to the Court to order otherwise in addition proves on a balance of probabilities that he or she will suffer irreparable harm in the Court does not so order and that the other party will not suffer irreparable harm if the Court so orders.*

*(4) If a Court orders otherwise as contemplated in subsection (1)-*

*(i) the Court must immediately record its reasons for doing so;*

*(ii) the aggrieved party has an automatic right of appeal to the next Highest Court;*

*(iii) the Court hearing such and appeal must deal with it as a matter of Extreme urgency;*

*(iv) such an order will be automatically suspended pending the outcome of such appeal.*

109. It is submitted that the effect of Section 18(4) (iii) exacerbates the Urgency of the relief required by the First and Second Applicant.

110. It is submitted that exceptional circumstances exist as set out herein above but summarized and reiterated herein for ease of reference:

110.1 The Applicants are in the precarious position that they cannot approach the High Court or Supreme Court of Appeal, while the validity of the regulations are pending before this Honourable Court;

110.2 It is therefore not in a position to limit the effects of the application of the regulations in practice as aforesaid, which is an ongoing harm that is suffered by both the First and Second Applicant's members;

110.3 The intervention of this Honourable Court is required, without which the harm is continuing;

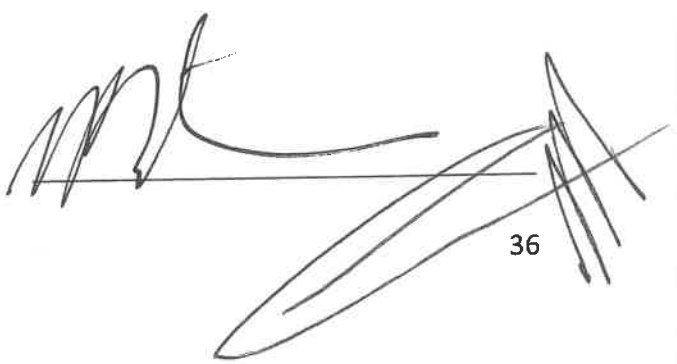
110.4 The current status in the validity of the regulations is that the High Court judgement of 18 September 2020 (contained on the record **pp327**) is the applicable status;

110.5 If this Court refuses the leave to appeal of the First Respondent, alternatively finds the regulations to be invalid the damages has continued nonetheless;

110.6 In contrast where if the Court finds it to be valid ultimately no prejudice is suffered the application is simply postponed; and

110.7 In any of the previous scenarios the Honourable Court (and other courts) would have difficulty to allow the setting aside of tenders awarded to the SQE's and EME's in circumstances where it causes hardship (seen differently illegal and unlawful actions may have to be ratified by this Honourable Court)

**WHEREFORE** the First and Second Applicants pray for an order as set in the preceding Notice of Motion.



**DEPONENT**

SIGNED AND SWORN TO BEFORE ME AT Roodepoort ON THIS 11 DAY OF April 2021, THE DEPONENT HAVING ACKNOWLEDGED THAT THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT THE DEPONENT HAS NO OBJECTION TO TAKING THE OATH AND THAT THE DEPONENT CONSIDERS THE OATH AS BINDING ON THE DEPONENT'S CONSCIENCE

COMMISSIONER OF OATHS

FULL NAME: CAREL PIETER CRAFFORD

BUSSINESS ADDRESS: _____

Commissioner of Oaths (Ex Officio)
Practising Attorney
Floor, Unit 3, Rivonia Close Office Park
Rivonia Boulevard, Rivonia, Gauteng
Republic of South Africa
Tel: +27 11 234 8789

DESIGNATION/RANK: _____

PLACE: Roodepoort.

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**FIDELITY SERVICES GROUP (PROPRIETARY) LIMITED**
**Registration Number: 2002/030292/07**
**("the Company")**

**RESOLUTIONS OF DIRECTORS PASSED AT ROODEPOORT ON 24th MARCH 2021**

**FIDELITY SERVICES GROUP - ESKOM TENDERS/CONSTITUTIONAL COURT**

**RESOLVED:**

That the Company be and hereby authorises Wahl Justice Bartmann, identity number: 630613 51710 8 5 to launch a joinder and urgent interdictory relief proceedings in the Constitutional Court Case under Case number: 279/20.

**RESOLVED FURTHER:**

That Wahl Justice Bartmann, in his capacity as CEO of the Company, be and is hereby authorised to conclude and sign all the necessary documentation on behalf of the Company to give effect to this resolution and ensure the Company's interest is protected.

CERTIFIED A TRUE COPY

G A Raw
Representing CorServ CC as Secretaries
24 March 2021

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**RESOLUTION OF THE SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS' ASSOCIATION (DEPARTMENT OF LABOR Registration Number: LR2/6/3/216) ("the Association") HELD AT ROODEPOORT on 24 March 2021**

**I HEREBY CERTIFY THAT IT WAS RESOLVED THAT:**

(1) the Association hereby authorize Mr Wahl Justice Bartmann, the President of the South African National Security Employers Association (SANSEA) with identity number: 6306135171085 to launch a joinder and urgent interdictory relief proceedings in the Constitutional Court Case under Case number: 279/20.

(2) Furthermore Mr Bartmann is authorised to sign all and any documentation to ensure the Association's members interest are protected.

**George Cecil John Chatwind**

**National Chairperson, South African Security Employers Association (SANSEA)**

IDENTITY NUMBER: 6811235476086

| | SANSEA SERVICE PROVIDERS |
|---|---|
| | |
| 1. | Red Guard Security |
| 2. | Grinnell Security Services |
| 3. | Wright Security (Pty) Ltd |
| 4. | JFH HOLDINGS (Pty) Ltd |
| 5. | Canine Security Tvl (Pty) Ltd |
| 6. | Sirius Risk Management (Pty) Ltd |
| 7. | Fidelity Security Services |
| 8. | Icon Security Services Group (Pty) Ltd |
| 9. | JSJ Security Services |
| 10. | PWV Security (Pty) Ltd |
| 11. | Mantis Security Group |
| 12. | Tactical Reaction Services CC |
| 13. | Imvula Quality Protection Services |
| 14. | Ethembekile Specialised Serv (Pty) Ltd |
| 15. | Exigent Security Group (Pty) Ltd |
| 16. | Rise Security Services |
| 17. | Linda Security |
| 18. | Chandel Security Services |
| 19. | EBS Security (Pty) Ltd |
| 20. | Vusela Risk Services |
| 21. | CORTAC PROJECTS PTY LTD |
| 22. | VEMISANI SECURITY SERVICES |
| 23. | LINDA INTEGRATED SECURITY |
| 24. | GOLDSTONE SEC INC AND PROJECTS |
| 25. | N A T Security Solutions |
| 26. | VUSA-ISIZWE SECURITY (Pty) Ltd |
| 27. | Mapogo A Mathamaga |
| 28. | SDS PROTECTION (Pty) Ltd |
| 29. | NIGHT GUARD CC |
| 30. | KMES INVESTMENTS (Pty) Ltd |
| 31. | Lodge Security Services (PTY) Ltd |
| 32. | MLC SECURITY SERVICES |
| 33. | RISKCON SECURITY HOLDINGS (Pty) Ltd |
| 34. | RISKCON SECURITY CONSULTANTS (Pty) |
| 35. | Khayalami security |
| 36. | Specialised Security Services |
| 37. | LAD Security Services |
| 38. | Beati Investments (Pty) Ltd |
| 39. | ISIDINGO SECURITY |
| 40. | MAGMA RISK SOLUTIONS (Pty) Ltd |
| 41. | GOTYA Protection Services |

| | |
|---|---|
| 42. | MVULA ENFORCEMENT SERVICES |
| 43. | R5 Security Services (Pty) Ltd |
| 44. | LION OF JUDAH SECURITY |
| 45. | Urban Africa Security (Pty) Ltd |
| 46. | MVIKELI PRODUCTION SERVICES |
| 47. | SPHILASETHU SEC SERVICES (Pty) Ltd |
| 48. | CSS Security Services (Pty) Ltd |
| 49. | CSL SECURITY COMPANY |
| 50. | GLADIATOR COMMUNITY PROTECTION |
| 51. | SECURIDA (Pty) Ltd |
| 52. | SKYCORP SECURITY |
| 53. | Sechaba Protection Services |
| 54. | Transcash (Pty) Ltd |
| 55. | DRAKENSTEIN SECURITY & CCTV ROOM |
| 56. | Compass Risk Mitigation (Pty) Ltd |
| 57. | HELIOS SECURITY AND RISK |
| 58. | SECURERITE SECURITY (Pty) Ltd |
| 59. | Star Security Services |
| 60. | SUPREME SECURITY SERVICES |
| 61. | ALL 4 SECURITY SERVICES |
| 62. | INTERNATIONAL BUSINESS INTELLIGENCE SEC SERV |
| 63. | BRINANT GROUP |
| 64. | SILVER SOLUTIONS 2616 CC |
| 65. | PROSHIELD SECURITY |
| 66. | CGS CORPORATE SERVICES (Pty) Ltd |
| 67. | PRINCETON FACILITIES (Pty) Ltd |
| 68. | PRINCETON PROTECTION SERVICES (Pty) Ltd |
| 69. | MONITOR NET CC |
| 70. | ILISO SECURITY |
| 71. | INVICTA SECURITY SOLUTIONS |
| 72. | LIBRA SECURITY (ISITHEBE) CC |
| 73. | VHUGI PROTECTION SERVICES |
| 74. | RSM SECURITY - RESOURCE SERVICE MANAGEMENT |
| 75. | CSG HOLDINGS |
| 76. | CSG SECURITY |
| 77. | CSG SECURITY NORTHERN CAPE |
| 78. | CSG PROJECTS |
| 79. | CSG HI TECH NELSPRUIT |
| 80. | CAPI SECURITY |
| 81. | BYL SECURITY |
| 82. | MBUBE SECURITY (Pty) Ltd |
| 83. | MBUBE SECURITY CENTRAL (Pty) Ltd |
| 84. | MBUBE SECURITY EASTERN (Pty) Ltd |
| 85. | MBUBE SECURITY WESTERN (Pty) Ltd |
| 86. | DEFENSOR SECURITY |

| | |
|---|---|
| 87. | USIZO SECURITY SERVICES CC |
| 88. | SECUNET SECURITY |
| 89. | BSURE SECURITY (Pty) Ltd |
| 90. | PHIRIPHIRI SECURITY SERVICES |
| 91. | SAVIKA ARMED RESPONSE |
| 92. | MAXI PHUMELELA SECURITY |
| 93. | RECALL EFFECTIVE CONTROL GAUTENG (Pty)Ltd |
| 94. | LEXUS SECURITY (Pty) Ltd |
| 95. | ADVANCED BUSINESS INFORMATIOM SERVICES CC |
| 96. | KMESH INVESTMENTS (Pty) Ltd |
| 97. | KOJO INVESTMENTS |
| 98. | ISIPINGO ALARMS |
| 99. | ALL NIGHT AND DAY GUARD CC |
| 100. | NORTH GUARDING |
| 101. | PHOENIX K9 AND MOUNTED SECURITY SQUAD |
| 102. | BASIC BLUE TRADING 740CC ((NATPRO) |
| 103. | SECRET EYE SURVEILANCE CC |
| 104. | MASINGITA SECURITY |
| 105. | NONZABA INVESTMENTS |

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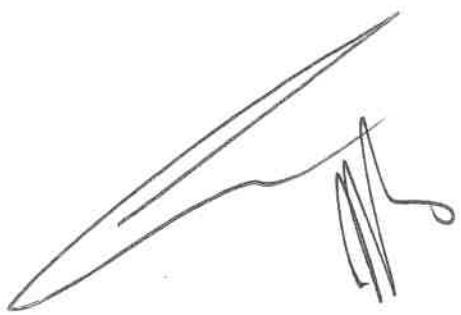
# CONSTITUTION

Of

# THE SOUTH AFRICAN NATIONAL

# SECURITY EMPLOYERS ASSOCIATION

2 March, 2001



# MISSION STATEMENT

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**TO BE THE PREFERRED EMPLOYERS ORGANISATION IN THE SECURITY SECTOR THROUGH SUSTAINED DILIGENCE, INTEGRITY AND EFFORT TOWARDS PROFESSIONAL AND MEASURABLE SERVICE LEVELS AND STANDARDS THAT WOULD BENEFIT THE EMPLOYER, THE EMPLOYEE AND, ULTIMATELY, THE CUSTOMER.**

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# CODE OF ETHICS

## PREAMBLE

**With the knowledge that the supply of a quality professional security service is dependent upon the integrity of companies, directors and members, the South African National Security Employers' Association adopts the following Code of Ethics and mandates its total compliance as a condition of membership of the Association.**

**1.**

**All members will discharge their duties in accordance with the laws of the country.**

**2.**

**All members will maintain the highest standards of honesty and integrity towards their clients, employees and each other.**

**3.**

**All members will discharge their professional responsibilities diligently and in good faith.**

**4.**

**All members must be competent to discharge their professional responsibilities.**

**5.**

**All members will maintain confidentiality and exercise due care to prevent unauthorised disclosure of confidential matters.**

**6.**

**A member shall not maliciously injure the reputation of his colleagues.**

SS

## 1. NAME

The name of the Association shall be THE SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS ASSOCIATION

## 2. DEFINITIONS

Any word or expression used in this Constitution shall have the meaning as herein defined, unless the context clearly indicates otherwise and unless contrary to the definition as defined in the Labour Relations Act No 66 of 1995 as amended in which case the meaning as defined in the aforesaid Act shall apply.

2.1 ASSOCIATION means THE SOUTH AFRICAN NATIONAL SECURITY EMPLOYERS ASSOCIATION

2.2 MEMBER means any sole trader, firm, partnership, company, close corporation, or in-house security operation, who are employers of employees as defined in clause 2.3, which has been accepted as a member of the ASSOCIATION and is in good standing.

2.3 EMPLOYEES shall mean those persons who are employed by any MEMBER.

2.4 SECURITY PROFESSION means the trade or work in which employers and EMPLOYEES are associated for the purposes of guarding or protecting premises, buildings, structures, any property, vehicles, vessels, boats, watercraft, persons or employees, and includes the depositing, withdrawal and cashing or transportation of money or negotiable instruments of any sort for and on behalf of any client, the making up thereof in specified amounts, the placing of specified envelopes or other packages and the handing over of such envelopes or packages to persons as instructed by the client, or the transportation of any other goods that are to be guarded or protected while in transit pursuant to any instruction given and any investigations or services carried out of a security or sensitive nature for or on

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behalf of any client, or the training of Security Personnel in accordance with the minimum standards as laid down by the Security Officers Act No. 92 of 1987 or any amendments thereto.

2.5 NATIONAL SECRETARY shall mean the SECRETARY of the ASSOCIATION

2.6 DIVISIONAL SECRETARY shall mean the SECRETARY of any DIVISION of the ASSOCIATION.

2.7 NATIONAL EXECUTIVE COMMITTEE shall mean the duly elected NATIONAL EXECUTIVE COMMITTEE of the ASSOCIATION whose members must be duly elected members of a Divisional Executive.

2.8 DIVISIONAL EXECUTIVE COMMITTEE means the duly elected executive committee of a DIVISION.

2.9 DIVISION shall mean the LOCAL DIVISION established in a particular area in terms if this CONSTITUTION.

2.10 NATIONAL PRESIDENT shall mean the PRESIDENT of the ASSOCIATION. This shall be an honorary post appointment being at the discretion of the National Executive Committee each year, who may if it so wishes, reappoint such National President who will have no voting power at the National Executive Committee. Unless the majority of National Executive vote otherwise this position will automatically be held by the NATIONAL CHAIRPERSON immediate past.

2.11 NATIONAL CHAIRPERSON shall mean the CHAIRPERSON of the ASSOCIATION.

2.12 DIVISIONAL CHAIRPERSON shall mean the CHAIRPERSON of a DIVISION.

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2.13 NATIONAL TREASURER shall mean the TREASURER of the ASSOCIATION.

2.14 The masculine gender may include the feminine and neuter genders.

2.15 The singular may include the plural and vice versa.

2.16 Any reference to a numbered paragraph shall mean a reference to the paragraph of that number in this constitution.

## 3. OBJECTS

The objects of the ASSOCIATION shall be:

3.1 To plan and organise its administration and lawful activities.

3.2 to regulate relations between MEMBERS and their EMPLOYEES and to protect, further and promote the interests of MEMBERS in relation to their EMPLOYEES;

3.3 to promote the interests of MEMBERS;

3.4 to encourage the settlement of disputes between MEMBERS and their EMPLOYEES or Trade Unions by conciliatory methods, mediation or arbitration.

3.5 to promote, support or oppose or suggest amendments additions or deletions as deemed expedient or reasonable to any proposed legislative measure affecting the interests of MEMBERS.

3.6 to provide and when necessary charge for such assistance to MEMBERS on any matter affecting the relationship between MEMBERS and their EMPLOYEES or

Trade Unions including, without limiting, the generality of same, any legal assistance as might be necessary.

3.7 to negotiate with other organisations of employers and EMPLOYEES or with the CCMA, ECC, Bargaining Council/Forum, Trade Union, Labour Court, Security Officers Board or any other Government or Quasi-Government body or any other body whatsoever which may be established to deal with any matter which might affect MEMBERS.

3.8 to affiliate with and participate in the affairs of any international employers organisation or the International Labour Organisation.

3.9 to acquire either by purchase lease or otherwise any movable or immovable property and to sell, let or otherwise deal with or dispose of any movable or immovable property or other assets belonging to the ASSOCIATION or use such property for such other purposes as the MEMBERS may decide on.

3.10 to borrow, invest, lend, subscribe or donate money for the furtherance of any of the objects of the ASSOCIATION.

3.11 to promote and use every legitimate means to induce employers to become members of the ASSOCIATION.

3.12 to establish, promote and encourage the science and professional practice of security and all operations and matters connected therewith ;

3.13 to promote and make more effective security measures and to improve the status of MEMBERS and to provide for the exchange, collection, collation, co-ordination and distribution of any knowledge, information, experience, and ideas in all matters of common interest and mutual concern ;

3.14 to foster and encourage ethical and professional standards of work and conduct of MEMBERS ;

3.15 to carry out any survey or study, hold conferences, forums, training courses and seminars, and to arrange for the presentation of lectures and the reading of papers on matters of interest to MEMBERS and to foster, promote, encourage and facilitate discussion, study and research on matters of interest to MEMBERS and to represent the MEMBERS of the ASSOCIATION in negotiations with any Government, Local or other authority, Committee, Board or any other body where now in existence or hereafter established ;

3.16 to canvas, collect, and accept subscriptions, donations, bequests of any kind from any source whatsoever and to utilize such funds for the benefit of the ASSOCIATION and MEMBERS ;

3.17 to acquire any rights or privileges which may be necessary or reasonably required for the ASSOCIATION ;

3.18 to establish and administer funds for the benefit of its members, their employees and or dependants ;

3.19 to do such other things as might be in the interests of MEMBERS of the ASSOCIATION which are not inconsistent with any of the objects set out herein ;

3.20 to institute or defend any action at law as deemed necessary by the NATIONAL EXECUTIVE COMMITTEE ;

3.21 the ASSOCIATION is not established for the purpose of gain, and accordingly – the association's income and assets, however derived, shall be applied only

towards the promotion of its objects and no part thereof shall be paid or transferred under any circumstances to any of its members

## 4. STATUS OF THE EMPLOYER'S ORGANISATION

This employer's organisation shall be a body corporate with perpetual succession capable of entering into contractual and other relations and of suing and being sued in its own name and shall be an organisation not for gain.

## 5. MEMBERSHIP

5.1 The following shall qualify as a member of the Association, providing that they can show documentary proof of Registration in terms of the Security Officers Act No. 92 of 1987 or any amendment thereto.

5.1.1 ACTIVE MEMBERS: Any sole trader, firm, partnership, company, close corporation or association which is engaged in the Security Profession in Southern Africa shall be eligible for election as an ACTIVE MEMBER and shall be entitled to vote at all meetings of the ASSOCIATION.

5.1.2 AFFILIATE MEMBERSHIP: Any institution or in-house security operation which performs duties associated with the Security Profession in Southern Africa, shall be eligible for acceptance as an AFFILIATE MEMBERSIP MEMBER, but shall have no vote. For the purpose of representation a non-voting member shall be regarded as a member of the Association.

5.1.3 HONORARY LIFE MEMBERS: Any person whom the ASSOCIATION wishes to honour may be appointed by a majority vote at an annual general meeting of the ASSOCIATION. Honorary life membership shall be considered the highest mark of esteem the ASSOCIATION can bestow and shall be given only to those who have rendered special and distinguished service to the country or to the Security

Profession or to the ASSOCIATION. Honorary Life Members may attend all general meetings of the Divisions or National General Meetings and enjoy all other ASSOCIATION privileges, but shall have no vote. This honour may be removed by the National Executive from any person on whom it was bestowed should it be found they have committed any act, which brings the ASSOCIATION or the profession into disrepute. This includes any action which by such action and their status in the association conflicts with the objectives and code of ethics ;

5.2 The number of HONORARY LIFE MEMBERS in the ASSOCIATION shall not exceed 10% of the total Active membership of the ASSOCIATION;

5.3 Application for admission or re-admission to membership together with the yearly membership fee shall be lodged in writing on the form prescribed by the NATIONAL EXECUTIVE COMMITTEE with the NATIONAL or DIVISIONAL SECRETARY of the ASSOCIATION.

5.4 Every application for membership shall be considered by the Divisional executive committee within **six** weeks of receipt thereof by the secretary ;

5.5 An applicant to whom admission to membership is refused need not be provided with reason for such refusal but entitled to a refund of the membership fee paid.

5.6 If admission to membership is refused by the DIVISIONAL EXECUTIVE COMMITTEE concerned the applicant shall be notified in writing of such fact by the DIVISIONAL SECRETARY and shall be informed that he has the right of appeal to the NATIONAL EXECUTIVE COMMITTEE. An applicant wishing to appeal shall lodge in writing with the NATIONAL SECRETARY such appeal and forward his application together with all payments required in terms hereof to the NATIONAL SECRETARY. Such an appeal shall be lodged by the prospective member within 21 (twenty one) days. A prospective MEMBER lodging an appeal with the NATIONAL EXECUTIVE

COMMITTEE shall be afforded an opportunity to state his case personally should he so wish and to call any witnesses in support of any statement made by him in support of his application should he so desire.

5.7 The decision of the NATIONAL EXECUTIVE COMMITTEE in regard to any appeal by a prospective MEMBER shall be final and binding and the NATIONAL SECRETARY shall notify the prospective MEMBER and the DIVISIONAL SECRETARY of the outcome of the appeal.

5.8 Every member shall notify the NATIONAL SECRETARY, in writing, of his/her postal address and any change thereof within four weeks of the date on which the change had occurred.

5.9 An employer who has resigned or been expelled from the organisation may be re-admitted to membership on such conditions as the NATIONAL EXECUTIVE COMMITTEE may determine.

5.10 The DIVISIONAL SECRETARIES shall inform the NATIONAL SECRETARY of any new members and shall forward a duplicate copy of the application to the NATIONAL SECRETARY within 21 (twenty one) days of admission to membership of the ASSOCIATION of any new member.

## 6 TERMINATION OF MEMBERSHIP.

6.1 A member may resign by giving **one** month's notice in writing to the SECRETARY provided that no resignation shall take effect until all moneys due to the organisation by the MEMBER concerned have been paid.

6.2 A MEMBER whose membership fees are more than **three** months in arrears shall automatically cease to be a member of the organisation. Such person shall,

however, be liable for all moneys due to the organisation as at the date on which he/she ceases to be a MEMBER of the organisation.

6.3 Any MEMBER who has resigned or has been expelled from the ASSOCIATION in terms of this CONSTITUTION shall be entitled to apply for re-admission to MEMBERSHIP.

## 7 CONDUCT AND DISCIPLINE.

7.1 A MEMBER may be suspended, fined or expelled as may be determined by the DIVISIONAL EXECUTIVE COMMITTEE -

(a) if he/she fails within **fourteen** days of demand, in writing, to the MEMBERS' last known address by the SECRETARY to pay membership fees, fines or levies which are more than **two** months in arrears.

(b) If he/she infringes any of the terms of this CONSTITUTION or acts in a manner which is detrimental to the interests of the ASSOCIATION.

Provided that there shall be a right of appeal against suspension. Notice of any such appeal shall be given to the SECRETARY in writing within **fourteen** days of the date on which the decision of the DIVISIONAL EXECUTIVE COMMITTEE was communicated to the MEMBER concerned. The decision of the NATIONAL EXECUTIVE COMMITTEE shall be final and binding.

7.2 No MEMBER may be suspended, fined, or expelled unless he/she has been afforded an opportunity to state his/her case personally at a meeting of the DIVISIONAL EXECUTIVE COMMITTEE, of which he/she has received not less than **seven** days notice in writing from the DIVISIONAL SECRETARY. The matter with which the member is charged shall be set out in such notice. This does not apply to a member in default in terms of 7.1(a).

7.3 A MEMBER who has appeared before the DIVISIONAL EXECUTIVE COMMITTEE in accordance with sub-clause (7.2) shall, if he/she is dissatisfied with the decision of the committee and has lodged an appeal in the manner herein provided, have the right to state his/her case personally to the NATIONAL EXECUTIVE COMMITTEE which shall consider the matter.

7.4 A MEMBER shall be entitled to call witnesses in support of his/her case when attending a meeting of the EXECUTIVE COMMITTEE in terms of sub-clause (7.2) or (7.3), as the case may be.

7.5 Any decision taken by the NATIONAL EXECUTIVE COMMITTEE in terms of this clause shall, when an appeal has been lodged, be final and binding.

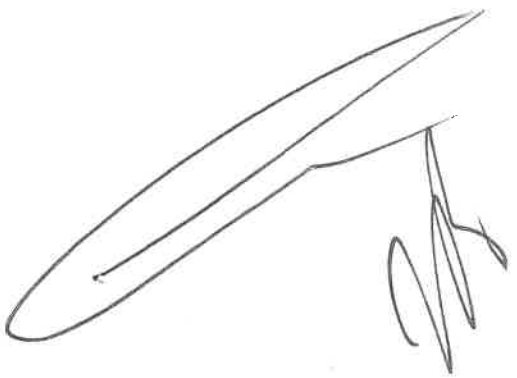
7.6 Upon expulsion of a MEMBER, all moneys due to the organisation by such MEMBER shall become payable. If payment thereof is not made within **fourteen** days the EXECUTIVE COMMITTEE may take such steps as it deems necessary to secure settlement.

7.7 A member shall cease to be entitled to any of the benefits of membership including the right to vote –

(a) if the membership fees or other charges due by him/her to the organisation are not more than **one** month in appears ;

(b) during any period while he/she is under suspension in terms of this CONSTITUTION.

7.8 Whatever this CONSTITUTION provides for the imposition of a fine on a MEMBER, such fine shall not exceed **R1000.00** in the case of a first offence and **R5000.00** in respect of every further offence.



**8. MEMBERSHIP FEES.**

8.1 The entrance fee payable by a MEMBER shall be determined by the NATIONAL EXECUTIVE COMMITTEE annually in accordance with Annexure A attached hereto.

8.2 Annual subscriptions shall be determined by the NATIONAL EXECUTIVE COMMITTEE on an annual basis, having prepared a Budget of expected expenses for the period covered by such annual subscriptions, and must be in accordance with Annexure A attached hereto.

8.3 Subscriptions shall be payable annually in advance to the NATIONAL TREASURER or on a monthly scale which shall be at the discretion of the NATIONAL EXECUTIVE COMMITTEE.

8.4 The NATIONAL EXECUTIVE COMMITTEE may at any time, with a view to securing funds for any particular purpose falling within the objects specified in clause 3 impose a levy on each MEMBER. In the event of such special levy exceeding 50% of the annual subscriptions, approval of such levy must be obtained from MEMBERS at a special general meeting called for that purpose.

8.5 Should subscriptions, levies or dues not have been paid by any MEMBER before any annual general meeting of the ASSOCIATION such MEMBER shall not be entitled to vote at the annual general meeting or at any subsequent meeting until such subscriptions, levies or dues have been paid.

8.6 No entrance and subscription fees shall be payable by an Honorary Member.

8.7 In addition to the membership fee a MEMBER shall also be liable for the payment in the same manner of such other fees as may be prescribed in terms of the rules governing any fund established in terms of clause 3.

## 9. DIVISIONS

9.1 The NATIONAL EXECUTIVE COMMITTEE shall have the power from time to time to consent to the formation of further DIVISIONS on such terms and conditions as it deems fit,

9.2 There shall initially be 3 (THREE) DIVISIONS established in terms of this Constitution namely :

9.2.1 Gauteng Division; (Incorporating Mpumalanga, Free State and Northern Cape).

9.2.2 Kwazulu Natal (Incorporating Eastern Cape).

9.2.3 Western Cape; (Incorporating Border).

9.3 DIVISIONS shall not make representations to any Government or Quasi Government Body or to any ECC, CCMA, Security Officers Board or Bargaining Council Forum without the express permission of the NATIONAL EXECUTIVE COMMITTEE. Should any DIVISION desire to make any representations to any such body same shall be forwarded to the NATIONAL EXECUTIVE COMMITTEE for the consideration of such committee and possible onward transmission.

## 10. DIVISIONAL EXECUTIVE COMMITTEE

10.1 The affairs of the DIVISION shall be managed by the DIVISIONAL EXECUTIVE COMMITTEE which shall consist of a DIVISIONAL CHAIRPERSON a DIVISIONAL VICE–CHAIRPERSON, a DIVISIONAL SECRETARY and two other divisional MEMBERS. All of the said divisional office bearers shall be elected at the annual general meeting of each DIVISION on nomination by any MEMBER duly seconded and voted upon by ballot. All provincial office bearers shall hold office subject to the provisions of clause 10 until the close of the next annual general meeting of

the DIVISIONS concerned. All office bearers shall be eligible for re-election. The DIVISIONAL CHAIRPERSON shall be chairperson at all DIVISIONAL EXECUTIVE COMMITTEE meetings and at any DIVISIONAL general meeting or annual general meeting. In the absence of the DIVISIONAL CHAIRPERSON the DIVISIONAL VICE – CHAIRPERSON shall be the CHAIRPERSON. If both are absent those MEMBERS present will elect a CHAIRPERSON for that meeting.

10.1.1 Nominations for election of the DIVISIONAL Executive Committee shall, subject to the provisions of Sub-Clause 7.1, be lodged in writing with the DIVISIONAL Secretary at least 14 (fourteen) days before the date of the Annual General Meeting of the provincial division.

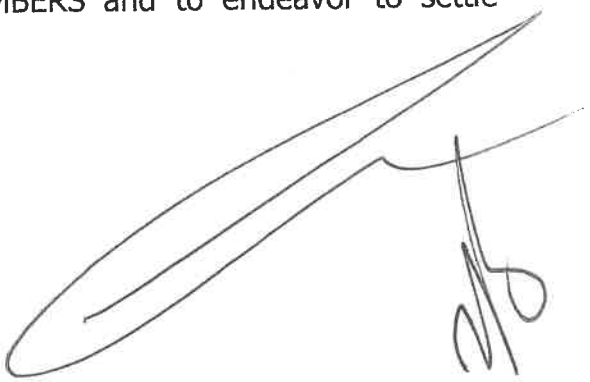
10.1.2 Not withstanding the provisions of Clause 7.1 and in the interest of continuity, under normal circumstances the Vice–Chairperson shall become the Chairperson the following year.

10.2 The DIVISIONAL EXECUTIVE COMMITTEE shall have the power of co-option to co-opt any MEMBER, as they deem fit. A co-opted MEMBER shall likewise hold office until the close of the next annual general meeting of the DIVISION but shall have no vote at meetings of the DIVISIONAL EXECUTIVE COMMITTEE.

10.3 The DIVISIONAL EXECUTIVE COMMITTEE shall have the power subject to the provisions of this Constitution to;

10.3.1 appoint from time to time any sub-committee as it may deem fit for the purpose of investigating and reporting on any matter;

10.3.2 deal with disputes between MEMBERS and to endeavor to settle disputes by conciliatory methods;



10.3.3 do such lawful things as is in the interests of the DIVISION which are not inconsistent with the objects set out in Clause 3 hereof.

10.4 DIVISIONAL office bearers shall be eligible for re-election to office, but the CHAIRPERSON may only stand for a maximum of three consecutive terms in office.

## 11. NATIONAL EXECUTIVE COMMITTEE

11.1 The affairs of the ASSOCIATION on a national basis shall be dealt with, co-ordinated, and managed by the NATIONAL EXECUTIVE COMMITTEE who shall determine matters of national interest, deal with negotiations with any CCMA, ECC, Security Officers Board or Government departments or Quasi Government organization and any other matter of common interest to MEMBERS as they might deem fit and to co-ordinate the activities of the DIVISIONS.

11.2 The NATIONAL EXECUTIVE COMMITTEE shall consist of the duly appointed CHAIRPERSON AND VICE-CHAIRPERSON, or their alternates, from each Division.

11.3 The NATIONAL EXECUTIVE COMMITTEE shall have the power to co-opt further executives, and employ the services of a professional to fulfill the duties of a NATIONAL SECRETARY and a NATIONAL TREASURER, as they may deem fit or necessary, but such co-opted or employed executives shall have no vote at meetings of the NATIONAL EXECUTIVE COMMITTEE.

11.3.1 The position of SECRETARY and TREASURER may be combined and given to one person or organisation.

11.4 A CHAIRPERSON and VICE-CHAIRPERSON, of the NATIONAL EXECUTIVE COMMITTEE shall be nominated and elected by the MEMBERS making up the

NATIONAL EXECUTIVE COMMITTEE from among themselves. Such appointments are to be made prior to the Annual General Meeting each year and to be announced at the Annual General Meeting of the ASSOCIATION. Office bearers shall be eligible for re-election on termination of their period of office. The NATIONAL CHAIRPERSON may not serve more than 3 (three) consecutive terms in office. The NATIONAL CHAIRPERSON and VICE CHAIRPERSON of the EXECUTIVE COMMITTEE shall be CHAIRPERSON and VICE CHAIRPERSON of the ASSOCIATION.

11.4.1 Notwithstanding the provisions of clause 11.4 in the interest of continuity under normal circumstances the NATIONAL VICE-CHAIRPERSON shall become NATIONAL CHAIRPERSON on the position of NATIONAL CHAIRPERSON requiring change either in terms of clause 11.4 or by vote, and the NATIONAL CHAIRPERSON shall become the NATIONAL PRESIDENT the following year.

11.5 The NATIONAL CHAIRPERSON shall be chairman of all NATIONAL EXECUTIVE MEETINGS. In the absence of the NATIONAL CHAIRPERSON the VICE – CHAIRPERSON shall be chairperson. If both are absent the MEMBERS then present shall elect a chairman for that meeting.

11.6 The NATIONAL EXECUTIVE COMMITTEE shall, subject to this Constitution, have the power to:

11.6.1 recommend the ASSOCIATION'S participation in the establishment of any Statutory body and Bargaining Council formed under the provisions of the Labour Relations Act of 1995 as amended;

11.6.2 appoint from time to time such sub-committees as it may deem fit for the purposes of investigating and reporting on any matter;

11.6.3 to hear any appeal by any proposed MEMBER as provided for herein;

11.6.4 to fix conditions under which any former member shall be readmitted and to suspend, fine or expel any MEMBER for cause appearing sufficient in the sole discretion of the NATIONAL EXECUTIVE COMMITTEE;

11.6.5 institute or defend legal proceedings on behalf of or against the ASSOCIATION;

11.6.6 acquire by purchase, lease or otherwise any movable or immovable property on behalf of the ASSOCIATION to sell, let or otherwise deal with or dispose of any movable or immovable property belonging to the ASSOCIATION;

11.6.7 make and enforce any by-law relating to procedural administrative and disciplinary matters not inconsistent with the provisions of this Constitution, The Labour Relations Act No. 66 of 1995 as amended, or any other law;

11.6.8 open and operate a banking account in the name of the ASSOCIATION;

11.6.9 Institute legal proceedings on behalf of MEMBERS and provide legal assistance to MEMBERS on matters effecting relationships between themselves and their EMPLOYEES and to institute legal proceedings against individual MEMBERS;

11.6.10 do such other lawful things as, in the opinion of the NATIONAL EXECUTIVE COMMITTEE, appear to be in the interests of the ASSOCIATION which are not inconsistent with the objects as set out in clause 3 hereof or provided elsewhere herein.

## 12. DUTIES OF OFFICE BEARERS OF THE ASSOCIATION AND OF THE PROVINCIAL DIVISION

The duties of office bearers of the ASSOCIATION and of the DIVISIONS where applicable shall be as set out hereunder;

## 12.1 THE CHAIRPERSON

The Chairperson shall preside over all meetings at which he is present, and enforce observance of the CONSTITUTION of the ASSOCIATION, and shall sign minutes of any meetings after confirmation and endorse all accounts for payment after approval by the relevant EXECUTIVE COMMITTEE and generally exercise supervision over the affairs of the organisation and perform such other duties as by usage and custom pertain to the office. A Chairman shall have in the event of deadlock or equality of voting a casting vote.

## 12.2 VICE CHAIRPERSON

The Vice-Chairperson shall exercise the powers and perform the duties of a chairperson in the absence of the latter.

## 12.3 ACTING CHAIRPERSON

In the event of both the CHAIRPERSON and VICE-CHAIRPERSON being unable, either temporarily or permanently, to perform their duties, the EXECUTIVE COMMITTEE shall appoint a MEMBER of the organisation to act as CHAIRPERSON or VICE-CHAIRPERSON until the CHAIRPERSON or VICE-CHAIRPERSON is able to resume his/her duties or until the next election, as the case may be.

## 12.4 SECRETARY

The Secretary shall keep proper records in such form as may be prescribed by the NATIONAL EXECUTIVE COMMITTEE and see to the proper recording of minutes, the relevant issue of notices of meetings, the conduct of all correspondence for and on behalf of the ASSOCIATION or the DIVISION and shall keep originals of all

letters received and dispatched and report on all correspondence entered into since the previous meeting, keep a register of MEMBERS, and record therein inter alai every MEMBER'S full names, address, date of enrolment and whether or not the annual subscription has been paid.

12.4.1 The NATIONAL SECRETARY shall take the necessary steps to ensure that the requirements of Section 99 of the Labour Relations Act No. 66 of 1995 as amended are complied with.

## 12.5 TREASURER

12.5.1 The TREASURER shall keep proper books in such form as may be prescribed by the NATIONAL EXECUTIVE COMMITTEE of accounts in accordance with normally accepted bookkeeping practice, shall issue receipts, bank all monies and cheques and the like received, see to the proper preparation of balance sheet and statement of income and expenditure, keep a register of all assets of the ASSOCIATION or of the PROVINCIAL DIVISION concerned, and record subscriptions received from MEMBERS and table at each and every GENERAL or EXECUTIVE MEETING a monthly statement of income and expenditure. Monthly accounts shall be submitted to the NATIONAL EXECUTIVE COMMITTEE each month.

## 13. ELECTION OF DIVISIONAL OFFICE BEARERS.

13.1 Two active members must nominate candidates for each office. Written nominations, duly signed by the proposer and the seconder, and by the nominee in token of his acceptance, must be handed to the DIVISIONAL SECRETARY no later than 14 (fourteen) days prior to the general meeting called for the election of the COMMITTEE. Voting for officers shall be by ballot if there are more than two

nominations for any office. The voting shall follow the preferential Electoral College System.

13.2 If there is only one nomination for a position, the electoral officer shall declare that candidate elected. If there is more than one candidate, the following procedure shall be adopted.

13.2.1 The electoral officer shall appoint a polling officer to assist him with the gathering and counting of votes.

13.2.2 The polling officer shall hand to each member entitled to vote, a ballot form on which the member shall record the name of the candidate for whom he is voting. The polling officer shall then collect the ballot forms and hand them to the electoral officer, who shall count them and announce the result.

13.2.3 If a candidate has an absolute majority, i.e. more than 50% of the votes, he shall be declared elected.

13.2.4 Should no candidates obtain an absolute majority, the candidate with the least number of votes shall be eliminated and the remaining candidates shall be voted upon by ballot again. If any candidate then obtains an absolute majority, then he shall be declared elected.

13.2.5 This procedure shall be followed until one candidate obtains an absolute majority.

13.2.6 Should two or more candidates tie for the least number of votes at any stage, the electoral officer shall secretly exercise a vote against any one of them and allow the others to continue in the election.

13.2.7 Should two candidates each obtain 50% of the votes, the matter shall be put to the vote by ballot again until one candidate obtains an absolute majority, if, after the third tie, no candidate obtains an absolute majority, the election shall be decided by the spinning of a coin by the electoral officer, the candidate whose name is first in alphabetical order having the right to call.

13.3 At any meeting where an election is held, the meeting may decide to adopt the preferential electoral college system of voting by ballot at that election.

## 14. VACATION OR REMOVAL OF OFFICE BEARERS AND OFFICIALS FROM OFFICE.

Any MEMBER of the NATIONAL EXECUTIVE COMMITTEE or of any DIVISIONAL EXECUTIVE COMMITTEE shall vacate his seat in any one of the Following circumstances;

14.1 On resignation, suspension or expulsion from membership of the ASSOCIATION ;

14.2 On absenting himself without permission from 3 (three) consecutive committee meetings ;

14.3 On ceasing to be in good standing ;

14.4 On any written resignation being filed by such office bearer and accepted by the next meeting of the NATIONAL EXECUTIVE COMMITTEE.

14.5 An office bearer or official may be removed from office-

(a) If he/she infringes any of the provisions of the CONSTITUTION ; or

(b) If he/she acts in a manner, which is detrimental to the interests of the organisation.

14.6 No office bearer or official may be removed from office unless he/she has been afforded a chance to state his/her case personally at a meeting of the EXECUTIVE COMMITTEE.

14.7 An office bearer or official who has appeared before either the NATIONAL or DIVISIONAL EXECUTIVE COMMITTEE and who is dissatisfied with the decision of the COMMITTEE shall have the right

to appeal to the first ensuing general meeting of the organisation. Notice of appeal shall be given to the SECRETARY, in writing within **seven** days of the date on which the decision of the EXECUTIVE COMMITTEE was communicated to the person concerned. The general meeting may confirm or reverse the decision of the EXECUTIVE COMMITTEE and the decision of the general meeting shall be final.

## 15. MEETINGS OF THE ASSOCIATION

15.1 The ASSOCIATION shall hold an annual general meeting. The annual general meeting shall, so far as is possible, be held in the month of June of each year. DIVISION annual general meetings shall be held in April of each year.

15.2 The NATIONAL CHAIRPERSON shall be chairman and in his absence the NATIONAL VICE CHAIRPERSON shall be chairperson of the ASSOCIATION'S general or Annual General Meetings. If both are absent the meeting shall elect a MEMBER to be chairperson of the annual general meeting or of any special general meeting.

15.3 Special meetings of the NATIONAL EXECUTIVE COMMITTEE shall be called by the CHAIRPERSON whenever he deems it advisable or upon a requisition signed by not less than 3 (three) MEMBERS of the NATIONAL EXECUTIVE COMMITTEE in which event a meeting shall be held within 14 (fourteen) days of the receipt of the requisition by the CHAIRPERSON.

15.4 Notices of annual general meetings or any special general meetings showing the business to be transacted thereat shall be given to MEMBERS in writing by the secretary not less than 21 (twenty one) days if sent by post and 14 (fourteen) days if sent by fax/e-mail before the date of such meeting provided in the event of a special general meeting such shorter

written faxed/e-mailed notice being not less than 48 (forty eight) hours as may be decided by the CHAIRPERSON.

15.5 All matters on which this Constitution is silent shall be decided on motion by simple majority of MEMBERS present at a meeting of the NATIONAL EXECUTIVE COMMITTEE or of any annual general meeting or special general meeting of the ASSOCIATION.

15.6 All matters for consideration by the NATIONAL EXECUTIVE COMMITTEE or by the ASSOCIATION or any DIVISION shall be decided on motion duly seconded and voted on by show of hands unless a ballot is demanded by a simple majority of MEMBERS.

15.7 A quorum for any annual general meeting or special general meeting or extra ordinary meeting of the ASSOCIATION or of any DIVISION or any general meeting of any DIVISION shall be 25% of the MEMBERS in good standing in person or by proxy. If within 30 minutes of the time fixed for any meeting a quorum is not present, those members then present will constitute a quorum. Each ACTIVE MEMBER shall have 1 (one) vote only on any matter to be voted on at any meeting.

15.8 At each general meeting the minutes of the last preceding meeting shall be Read or alternatively may be tabled, should MEMBERS unanimously agree and shall after confirmation be duly signed by the presiding CHAIRPERSON.

15.9 The proceedings of any meeting shall not be invalidated by reason of non -receipt by any MEMBER of the notice of a meeting.

15.10 The quorum at a meeting of the NATIONAL EXECUTIVE COMMITTEE of the

ASSOCIATION shall be 50% of MEMBERS in good standing. If within 30 (thirty) minutes of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following (and if that is a public holiday, then to the next seceding working day) at the same time and place. The MEMBERS of the NATIONAL EXECUTIVE COMMITTEE then present shall form a quorum.

15.11 The quorum for any DIVISIONAL EXECUTIVE COMMITTEE meeting of the ASSOCIATION shall be at least three (3) MEMBERS in good standing in person or by proxy.

15.12 A secret ballot shall be taken at any meeting on any issue should such secret ballot be demanded by not less than 25% of the MEMBERS then present and entitled to vote at such meeting. The provisions of clause 18.2 shall be applied to any such secret ballot.

## 16. FINANCES OF THE ASSOCIATION

16.1 All amounts due to or collected on behalf of the ASSOCIATION shall be paid to the NATIONAL TREASURER who shall deposit them in such bank as may be decided upon by the NATIONAL EXECUTIVE COMMITTEE. Receipts shall be issued for all cash monies received. All monies receivable shall be deposited within 4 (four) days of receipt thereof.

16.2 The funds of the ASSOCIATION shall be applied to the payment of expenses, the acquisition of property, the attainment of the objectives set forth in clause 3 and such other purposes as may be decided upon by a the EXECUTIVE COMMITTEE or by MEMBERS voting by ballot for the attainment of any of the said objects.

16.3 Payments shall require the prior approval of the EXECUTIVE COMMITTEE and shall be made by cheque signed by the CHAIRPERSON and the SECRETARY, except when the amount in question is less than R50-00, when payment may be made from petty cash. In the absence of the CHAIRPERSON or the SECRETARY, cheques shall in his/her stead be signed by a MEMBER of the NATIONAL EXECUTIVE COMMITTEE appointed by it for that purpose.

16.4 Funds required for petty cash both NATIONALLY and DIVISIONAL LEVEL shall be kept in such a form, as decided by the NATIONAL EXECUTIVE COMMITTEE

16.5 A COMMITTEE MEMBER who resigns or is expelled from membership shall have no claim on the funds of the organisation as from the date on which the resignation or expulsion takes place.

16.6 Statements of income and expenditure and the financial position of the ASSOCIATION shall be prepared monthly by the TREASURER and submitted to the EXECUTIVE COMMITTEE.

16.7 In accordance with the provisions of the Labour Relations Act, 1995 the TREASURER shall prepare a statement of income and expenditure and a balance sheet in respect of each financial year ending on the 28th February each year. Such statements and balance sheets shall be audited and within 30 days of receipt thereof the SECRETARY shall provide the registrar with a certified copy of the auditor's report and the financial statements. Such auditor may not be a MEMBER of the ASSOCIATION.

16.8 Such accounts shall be distributed to all MEMBERS at the next AGM of the ASSOCIATION.

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## 17. REPRESENTATION ON STATUTORY/BARGAINING COUNCILS

17.1 A general meeting or annual general meeting of the ASSOCIATION may at any time decide that the ASSOCIATION shall become a party to a Bargaining or Statutory Council, in terms of The Labour Relations Act No. 66 of 1995, as amended.

17.2 Candidates for election as representatives on any such council or board shall be nominated at the meeting and the election shall take place by ballot as provided for in terms of this Constitution. Only MEMBERS present and entitled to vote at such meeting shall be entitled to cast ballots. This procedure shall also apply if the board is established at the request of some other party.

17.3 ASSOCIATION representatives on such Councils may be removed by resolution taken at any general or annual general meeting of the ASSOCIATION. Representatives may resign on giving 2 (two) months' notice to the NATIONAL SECRETARY or such notice as may be prescribed in the Constitution of the Council concerned.

17.4 In the event of the resignation or death of a representative on any Council or his removal by general meeting the vacancy shall be filled by the NATIONAL EXECUTIVE COMMITTEE pending the next general or annual general meeting and pending election of a new representative.

17.5 Representatives shall have full power subject to prior ratification by the NATIONAL EXECUTIVE COMMITTEE or by any general or annual general meeting to enter into agreements on behalf of the

ASSOCIATION relating to the business for which they have been elected.

## 18. BALLOTS

18.1 In addition to those cases in respect of which the taking of a ballot of MEMBERS of the whole organisation is compulsory in terms of this CONSTITUTION, a ballot on any question shall be taken if the EXECUTIVE COMMITTEE so decides, and shall also be taken-

(a) if demanded in writing by at least 25% of the MEMBERS present of the organisation; and

(b) on any proposal to call a lock-out.

18.2 Such ballots shall be conducted in the following manner :

18.2.1 Notice of ballot shall be given to each MEMBER of the ASSOCIATION In writing at least 3 (three) days before the ballot is to be taken provided that a ballot may be taken without notice at any general meeting of the ASSOCIATION or DIVISION on the decision of a majority of the MEMBERS present.

18.2.2 Two scrutineers shall be appointed by the EXECUTIVE COMMITTEE at a general or annual general meeting of the ASSOCIATION or DIVISION at which such ballot is being taken to supervise any ballot and to ascertain the result thereof.

18.2.3 Except in the case of postal ballots and ballots taken at general meetings on the decision of a majority of MEMBERS present, ballots shall be conducted at the place on the date and during the hours as may be specified in the said notice.

18.2.4 Ballot papers shall be provided by the SECRETARY. The issue to be voted upon shall be set forth clearly on the ballot paper and such

paper shall not contain any information by means of which the identity of any voter can be ascertained.

18.2.5 One ballot paper only shall be issued on demand at the place during the hours fixed for the taking of the ballot to each MEMBER who is entitled to vote.

18.2.6 Each voter shall in the presence of the scrutineers be issued with one ballot paper, which shall be completed, folded and deposited in a ballot box provided for the purpose.

18.2.7 Ballot boxes shall be inspected by the scrutineers and sealed by the SECRETARY in their presence prior to the issuing of ballot papers. Ballot papers bearing marks other than the marks required in recording the vote shall be regarded as spoilt and shall not be counted.

18.2.8 On completion of the ballot or so soon thereafter as possible the result shall be ascertained by the scrutineers in the presence of the SECRETARY and made known to the EXECUTIVE COMMITTEE.

18.2.9 Ballot papers, including spoilt papers, shall be placed in a container which shall be sealed after they have been counted and retained by the SECRETARY for not less than three years unless **all** of those present agree the ballot papers be destroyed.

18.3 shall be taken, in which event the ballot shall be conducted in the following manner;

(a) The SECRETARY shall send by registered post to each MEMBER of the organisation a ballot paper and a stamped and addressed envelope marked "Ballot". The ballot paper shall on completion be inserted in the envelope provided for the purpose, shall be sealed and posted so as to reach the SECRETARY within 14 days from date of dispatch from head office to such MEMBER. On receipt of such envelopes, the

SECRETARY shall immediately place such envelopes in a sealed ballot box.

(b) Two scrutineers shall be appointed by the EXECUTIVE COMMITTEE to ascertain the result of the ballot. The ballot box shall be opened and the ballot papers counted by scrutineers in the presence of the SECRETARY, who shall immediately advise the EXECUTIVE COMMITTEE of the result of the ballot.

(c) The same procedure shall **mutatis mutandis** apply to a postal ballot confined to MEMBERS of the EXECUTIVE COMMITTEE.

18.4 In any ballot conducted in connection with any election, the candidates, up to the required number, receiving the highest number of votes shall be declared elected.

18.5 The EXECUTIVE COMMITTEE shall be bound to take action according to the decision of a majority of the MEMBERS voting in a ballot.

18.6 The organisation shall, before calling a lock-out, conduct a ballot of those of its MEMBERS in respect of whom it intends to call the lock-out.

18.7 Notwithstanding anything to the contrary contained in the CONSTITUTION, MEMBERS of the organisation shall not be disciplined or have their membership terminated for failure or refusal to participate in the lock-out if-

(a) no ballot was held about the lock-out; or

(b) a ballot was held, but a majority of the MEMBERS who voted did not vote in favour of the lock-out.

18.8 No ballot involving the declaration of or participation in a lock out shall be taken until the matter has been dealt with as provided for in The Labour Relations Act No. 66 of 1995 as amended.

## 19. NOTICES

All notices to be forwarded in terms hereof shall be forwarded by fax, prepaid registered post, post or electronic mail, and shall be presumed to have been received on the third business day after posting, or in the case of a fax or electronic mail, the day of transmission.

All notices posted shall be forwarded to the last address of the MEMBER.

## 20. RESIGNATION

Any MEMBER of the ASSOCIATION may resign by giving 1 (one) months notice in writing to the NATIONAL SECRETARY.

## 21. WINDING UP

21.1 The ASSOCIATION shall be wound up if a ballot conducted in the manner prescribed in this CONSTITUTION indicates that not less than seventy five percent of the total number of MEMBERS of the ASSOCIATION entitled to vote, vote in favour of a resolution that the ASSOCIATION be wound up in terms of the provisions of The Labour Relations Act No 66 of 1995 as amended or if for any reason the ASSOCIATION is unable to continue to function.

21.2 The last-appointed CHAIRPERSON of the ASSOCIATION, or if he/she is not available, the available MEMBERS of the last-appointed EXECUTIVE COMMITTEE of the ASSOCIATION, shall forthwith transmit to the Labour Court a statement signed by him/her or them setting forth the resolution adopted of the reasons for the organisation's inability to continue to function, as the case may be, and request the Labour Court to grant an order in terms of section 103 of the Labour Relations Act 66/1995.

21.3 (a) The liquidator appointed by the Labour Court shall call upon the last appointed office bearers of the organisation to deliver to him/her the organisation's books of accounts showing the assets and liabilities together with the register of MEMBERS for the 12 months prior to the date on which the resolution for winding-up was passed or to the date as from which the organisation was unable to continue to function, as the case may be (hereinafter referred to as the date of dissolution), showing the membership fees paid by each MEMBER and his/her address as at said date.

**or**

21.3 (b) The liquidator shall also call upon the said office bearers to hand over to him/her all unexpended funds of the organisation and to deliver to him/her the organisation's assets and the documents necessary in order to liquidate the assets.

21.4 The liquidator shall take the necessary steps to liquidate the debts of the organisation from its unexpended funds and any other moneys realised from any assets of the organisation, and if the said funds and moneys are insufficient to pay all creditors after the liquidator's fees and the expenses of winding-up have been met, the order in which creditors shall be paid shall be the same as prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, and the liquidator's fees and expenses of winding-up shall rank in order as though the expenses were the costs of sequestration of an insolvent estate.

21.5 After the payment of all debts in accordance with paragraph (21.4), the remaining funds, if any, shall be distributed among the remaining MEMBERS of the organisation on the basis of membership fees actually paid during the 12 months prior to the date of dissolution.

21.6 After payment of all the liabilities any assets that can not be disposed of in accordance with the provisions of this clause shall be realised by the liquidator and the proceeds paid to the Commission of Conciliation, Mediation and Arbitration in accordance with section 103(5) of the Labour Relations Act 66/1995.

21.7 The liability of MEMBERS shall for the purpose of this clause be limited to the amount of subscriptions due by them to the organisation in terms of this Constitution as at the date of dissolution.

## 22. AMENDMENTS

22.1 The provisions of this Constitution may be repealed, amended, deleted or added to by resolution duly passed by any special or annual general meeting of the ASSOCIATION provided that at least 14 (fourteen) days notice of any proposed alteration shall have been given to MEMBERS. No amendments, alterations, additions or deletions shall have any force or effect until certified in terms of Section 101 (3)(b) of The Labour Act. No 66 of 1995, as amended.

22.2 Not less than two-thirds of the votes of members present and voting at the meeting shall be required to authorise the alteration of this Constitution or By-laws.

## 23. REPRESENTATION AND ALTERATIONS

A MEMBER shall be entitled to nominate another MEMBER of the ASSOCIATION to represent him to act as his alternative. The name and address of the person so nominated shall be communicated to the NATIONAL SECRETARY in writing by the

MEMBER concerned. If a change is made to such representative or alternate MEMBER such change shall be notified to the NATIONAL SECRETARY.

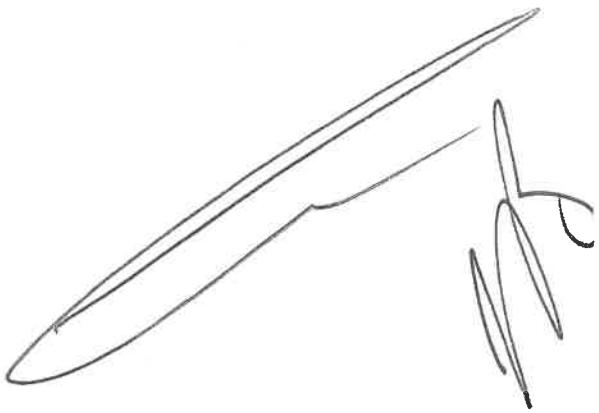
## 24. VOTING

24.1 Each ACTIVE MEMBER shall have one vote, except that the chairman of a meeting shall have both a deliberative and a casting vote, either of which he may exercise at his own discretion.

24.2 Unless otherwise stated, all motions put to the vote at meetings shall be decided by the vote of a majority of the MEMBERS present and voting, on a show of hands, unless a secret ballot is beforehand demanded by at least 25% of the MEMBERS then present and entitled to vote at such meeting.

24.3 ACTIVE MEMBERS who are unable to attend a meeting, and whose alternatives are unable to attend that meeting, may vote by proxy. Proxy votes must be submitted in writing, recorded on the official letterhead of the ACTIVE MEMBER, or any special form circulated by the SECRETARY for this purpose and signed by the nominated representative of the ACTIVE MEMBER, to the SECRETARY, clearly identifying the person nominated to vote on behalf of that ACTIVE MEMBER.

24.4 Whereas the NATIONAL EXECUTIVE COMMITTEE consists of duly elected representatives from each DIVISION, and each representative is entitled to a vote at the NATIONAL EXECUTIVE COMMITTEE which he may cast at his discretion; the duly elected representatives may be instructed by a majority vote of members present at a meeting of a DIVISION to vote for or against a particular motion at a meeting of the NATIONAL EXECUTIVE MEETING, which instruction shall be binding.



## 25. LIABILITY OF MEMBERS AND OFFICE BEARERS

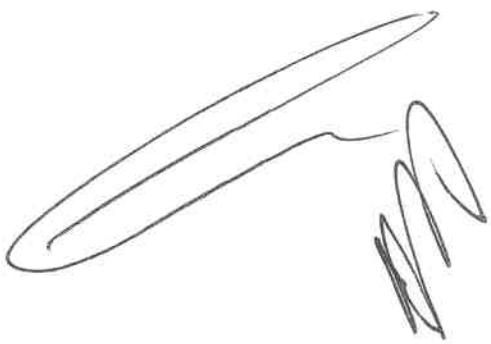
25.1 The fact that a person is a MEMBER of the ASSOCIATION does not make the MEMBER liable for any of the obligations or liabilities of the ASSOCIATION.

25.2 A MEMBER or OFFICE BEARER of the ASSOCIATION will not be personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith by the MEMBER or OFFICE BEARER while performing their functions for and on behalf of the ASSOCIATION

NATIONAL SECRETARY: .....

NATIONAL CHAIRMAN: .....

DATE: .....



Certificate in terms of Section 95 (b) Of the Labour Relations Act 66/1995

We, the undersigned, hereby certify that the provisions of the Constitution of the South African National Security Employers Association regulating the alteration of the said Constitution have been duly complied with in respect of the alterations adopted by the Special General Meeting held on _____.

NATIONAL SECRETARY: .....

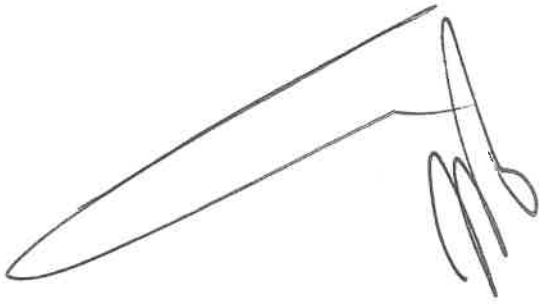
NATIONAL CHAIRMAN: .....

**RESOLUTION**

**AT A GENERAL MEETING OF THE SOUTH AFRICAN NATIONAL**
SECURITY EMPLOYERS ASSOCIATION HELD AT MEGAWATT PARK, SANDTON
ON _____ IT WAS:

RESOLVED THAT

The existing constitution be amended by being replaced in Toto by the proposed constitution submitted to the members by the constitutional sub committee.



CHAIRMAN: .....

SECRETARY: .....

"F05"
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national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

# PUBLIC INSTITUTIONS LISTED IN PFMA SCHEDULES 1, 2, 3A, 3B, 3C AND 3D

# AS AT 24 MAY 2019

## SCHEDULE 1

## CONSTITUTIONAL INSTITUTIONS

1. Independent Communications Authority of South Africa
2. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
3. The Commission on Gender Equality
4. The Financial and Fiscal Commission
5. The Human Rights Commission
6. The Independent Electoral Commission
7. The Municipal Demarcation Board
8. The Pan South African Language Board
9. The Public Protector of South Africa

## SCHEDULE 2

## MAJOR PUBLIC ENTITIES

1. Air Traffic and Navigation Services Company
2. Airports Company
3. Alexkor Limited
4. Armaments Corporation of South Africa
5. Broadband Infrastructure Company (Pty) Ltd
6. CEF Pty (Ltd)
7. DENEL
8. Development Bank of Southern Africa
9. ESKOM
10. Independent Development Trust

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11. Industrial Development Corporation of South Africa Limited
12. Land and Agricultural Bank of South Africa
13. SA Broadcasting Corporation Limited
14. SA Forestry Company Limited
15. SA Nuclear Energy Corporation
16. SA Post Office Limited
17. South African Airways Limited
18. South African Express (Pty) Limited
19. Telkom SA Limited
20. Trans-Caledon Tunnel Authority
21. Transnet Limited

Any subsidiary or entity under the ownership control of the above public entities

## SCHEDULE 3

## OTHER PUBLIC ENTITIES

### Part A: National Public Entities

1. Accounting Standards Board
2. African Renaissance and International Cooperation Fund
3. Afrikaanse Taalmuseum, Paarl
4. Agrément South Africa
5. Agricultural Research Council
6. AGRISETA
7. Artscape
8. Banking Sector Education and Training Authority
9. Boxing South Africa
10. Brand SA
11. Breede-Gouritz Catchment Management Agency
12. Castle Control Board
13. Chemical Industries Education and Training Authority
14. Commission for Conciliation, Mediation & Arbitration
15. Community Schemes Ombud Service
16. Companies and Intellectual Property Commission
17. Companies Tribunal
18. Compensation Fund, including Reserve Fund
19. Competition Commission
20. Competition Tribunal
21. Construction Education and Training Authority
22. Construction Industry Development Board
23. Council for Geoscience
24. Council for Medical Schemes

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25. Council for the Built Environment (CBE)
26. Council on Higher Education
27. Cross-Border Road Transport Agency
28. Culture, Arts, Tourism, Hospitality and Sports Education and Training Authority (CATHSSETA)
29. Ditsong: Museums of South Africa
30. Education, Training and Development Practices SETA (ETDP)
31. Electricity Distribution Industry Holdings (Pty) Ltd
32. Energy and Water Sector Education and Training Authority (EWSETA)
33. Estate Agency Affairs Board
34. Fibre Processing Manufacturing Sector Education and Training Authority (FPMSETA)
35. Film and Publication Board
36. Financial and Accounting Services SETA (FASSET)
37. Financial Intelligence Centre
38. Financial Sector Conduct Authority
39. Food and Beverages Manufacturing Industry (FOODBEV)
40. Freedom Park Trust
41. Health and Welfare Sector Education and Training Authority
42. Housing Development Agency
43. Human Sciences Research Council
44. Independent Regulatory Board for Auditors
45. Information Systems, Electronics and Telecommunications Technologies Training Authority
46. Ingonyama Trust Board
47. Inkomati-Usuthu Catchment Management Agency
48. Insurance Sector Education and Training Authority
49. International Trade Administration Commission
50. iSimangaliso Wetland Park
51. Iziko Museums of South Africa
52. KwaZulu-Natal Museum
53. Legal Aid South Africa
54. Local Government Education and Training Authority (LGSETA)
55. LUTHULI MUSEUM
56. Manufacturing, Engineering and Related Services Education and Training Authority
57. Marine Living Resources Fund
58. Market Theatre Foundation
59. Media Development and Diversity Agency
60. Media, Information and Communication Technologies Sector Education and Training Authority (MICTS)
61. Mine Health & Safety Council
62. Mining Qualifications Authority
63. National Agricultural Marketing Council
64. National Arts Council
65. National Consumer Commission
66. National Consumer Tribunal
67. National Credit Regulator

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68. National Development Agency
69. National Economic, Development and Labour Council
70. National Electronic Media Institute of SA
71. National Empowerment Fund
72. National Energy Regulator of South Africa
73. National Film and Video Foundation
74. National Gambling Board of SA
75. National Health Laboratory Service
76. National Heritage Council (NHC)
77. National Home Builders Registration Council—NHBRC
78. National Housing Finance Corporation
79. National Library, Pretoria/Cape Town
80. National Lotteries Commission
81. National Metrology Institute of South Africa
82. National Museum, Bloemfontein
83. National Nuclear Regulator
84. National Regulator for Compulsory Specifications
85. National Research Foundation
86. National Student Financial Aid Scheme
87. National Urban Reconstruction and Housing Agency—NURCHA
88. National Youth Development Agency
89. Nelson Mandela Museum, Umtata
90. Office of Health Standards Compliance
91. Office of the Ombudsman for Financial Services Providers
92. Office of the Pension Funds Adjudicator
93. Office of the Valuer-General
94. Performance Arts Council of the Free State
95. Perishable Products Export Control Board
96. Ports Regulator of South Africa
97. Private Security Industry Regulatory Authority
98. Productivity SA
99. Public Service Sector Education and Training Authority
100. Quality Council for Trades and Occupations (QCTO)
101. Railway Safety Regulator
102. Road Accident Fund
103. Road Traffic Infringement Agency (RTIA)
104. Road Traffic Management Corporation
105. Robben Island Museum, Cape Town
106. Rural Housing Loan Fund
107. SA Civil Aviation Authority
108. SA Council for Educators
109. SA Heritage Resources Agency
110. SA Heritage Resources Agency, Cape Town

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111. SA Institute for Drug-free Sport
112. SA Library for the Blind, Grahamstown
113. SA Local Government Association
114. SA Maritime Safety Authority
115. SA Medical Research Council
116. SA National Accreditation System
117. SA National Roads Agency
118. SA Qualifications Authority
119. SA Revenue Service
120. SA Tourism Board
121. Safety and Security Education and Training Authority (SASSETA)
122. Servcon
123. Services Sector Education and Training Authority
124. Small Enterprise Development Agency (SEDA)
125. South African Diamond and Precious Metals Regulator
126. South African Health Products Regulatory Authority (SAHPRA)
127. South African National Biodiversity Institute (SANBI)
128. South African National Energy Development Institute (SANEDI)
129. South African National Parks
130. South African National Space Agency
131. South African Social Security Agency
132. South African Weather Service
133. Special Investigation Unit
134. State Information Technology Agency
135. State Theatre, Pretoria
136. Technology Innovation Agency
137. The Co-operative Banks Development Agency
138. The National English Literary Museum, Grahamstown
139. The National Radioactive Waste Disposal Institute (NRWDI)
140. The National Skills Fund (NSF)
141. The Playhouse Company, Durban
142. The Social Housing Regulatory Authority (SHRA)
143. Thubelisha Homes
144. Transport Education and Training Authority
145. Umalusi Council for Quality Assurance in General and Further Education and Training
146. uMsunduzi Museum
147. Unemployment Insurance Fund
148. Universal Service and Access Agency of South Africa
149. Universal Service and Access Fund
150. Urban Transport Fund
151. Vredefort Dome World Heritage Site
152. War Museum of the Boer Republics, Bloemfontein
153. Water Research Commission

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154. Wholesale and Retail Sector Education and Training Authority
155. William Humphreys Art Gallery

Any subsidiary or entity under the ownership control of the above public entities

## Part B: National Government Business Enterprises

1. Amatola Water Board
2. Aventura
3. Bloem Water
4. Council for Scientific and Industrial Research
5. Export Credit Insurance Corporation of South Africa Limited
6. Inala Farms (Pty) Ltd
7. Lepelle Northern Water
8. Magalies Water
9. Mhlathuze Water
10. Mintek
11. Onderstepoort Biological Products
12. Overberg Water
13. Passenger Rail Agency of South Africa
14. Public Investment Corporation Limited
15. Rand Water
16. SA Bureau of Standards
17. Sasria Limited
18. Sedibeng Water
19. Sentech
20. State Diamond Trader
21. Umgeni Water

Any subsidiary or entity under the ownership control of the above public entities

## Part C: Provincial Public Entities

### EASTERN CAPE

1. Eastern Cape Gambling and Betting Board
2. Eastern Cape Liquor Board
3. Eastern Cape Parks and Tourism Agency (ECPTA)
4. Eastern Cape Provincial Arts and Culture Council
5. Eastern Cape Provincially Aided Libraries
6. Eastern Cape Rural Development Agency
7. Eastern Cape Socio-Economic Consultative Council

### FREE STATE

1. Free State Gambling, Liquor and Tourism Authority

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## GAUTENG

1. Gauteng Enterprise Propeller
2. Gauteng Gambling Board
3. Gauteng Growth and Development Agency (GGDA)
4. Gauteng Partnership Fund (GPF)
5. Gauteng Tourism Authority
6. Gautrain Management Agency
7. XHASA ATC Agency

## KWAZULU-NATAL

1. Agri-Business Development Agency
2. Amafa Akwazulu-Natali
3. Dube TradePort Corporation (DTPC)
4. Ezemvelo Kwazulu-Natal Wildlife
5. Kwazulu-Natal Film Commission
6. KwaZulu-Natal Gaming and Betting Board
7. KwaZulu-Natal House of Traditional Leaders
8. KwaZulu-Natal Liquor Authority
9. KwaZulu-Natal Provincial Planning and Development Commission
10. KwaZulu-Natal Tourism Authority
11. Natal Sharks Board
12. Royal Household Trust
13. Trade and Investment KwaZulu-Natal

## LIMPOPO

1. Limpopo Gambling Board
2. Limpopo Roads Agency
3. Limpopo Tourism and Parks Board

## MPUMALANGA

1. Mpumalanga Economic Empowerment Corporation
2. Mpumalanga Economic Regulator
3. Mpumalanga Investment Inititiative
4. Mpumalanga Regional Training Trust
5. Mpumalanga Tourism and Parks Board

## NORTHERN CAPE

1. Kalahari Kid Corporation (KKC)
2. McGregor Museum (Kimberley)
3. Northern Cape Economic Development, Trade and Investment Promotion Agency (NCEDA)
4. Northern Cape Gambling Board

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5. Northern Cape Liquor Board
6. Northern Cape Tourism Authority

## NORTH WEST

1. Mmabana Arts Culture and Sport Foundation
2. North West Parks Board
3. North West Tourism Board
4. North West Youth Entrepreneurship Services Fund
5. NW Gambling Board
6. NW Housing Corporation
7. Provincial Arts and Culture Council

## WESTERN CAPE

1. Commissioner for the Environment
2. WC Gambling and Racing Board
3. Western Cape Cultural Commission
4. Western Cape Language Committee
5. Western Cape Liquor Authority
6. Western Cape Nature Conservation Board
7. Western Cape Tourism, Trade and Investment Promotion Agency

Any subsidiary or entity under the ownership control of the above public entities

# Part D: Provincial Government Business Enterprises

## EASTERN CAPE

1. East London Industrial Development Zone
2. Eastern Cape Development Corporation
3. Mayibuye Transport Corporation

## FREE STATE

1. Free State Development Corporation

## KWAZULU-NATAL

1. Cowslip Investments (Pty) Ltd
2. Ithala Development Finance Corporation
3. KwaZulu-Natal Mjindi Farming (Pty) Ltd
4. Mjindi Farming (Pty) Ltd
5. Mpendle Ntambanana Agricultural Company (Pty) Ltd
6. Richards Bay Industrial Development Zone Company

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## LIMPOPO

1. Gateway Airport Authority Limited
2. Limpopo Economic Development Agency

## MPUMALANGA

1. Mpumalanga Economic Growth Agency

## NORTH WEST

1. Northwest Transport Investments (Pty) Ltd
2. NW Development Corporation

## WESTERN CAPE

1. Casidra (Pty) Ltd
2. Saldanha Bay IDZ Licencing Company SOC Ltd

Any subsidiary or entity under the ownership control of the above public entities

ADDENDUM

# AMENDMENTS TO SCHEDULES OF THE PFMA

The Minister of Finance, acting in terms of Sections 47 and 48 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), made the following additions and removals to the listing and classification of public entities in the Schedules. The amendments were effected in Government Gazette No. 42474, Notice number 693 dated 24 May 2019.

## SCHEDULE 3

OTHER PUBLIC ENTITIES

**Part A: National Public Entities**

Listings

| | Name | Effective date |
|---|---|---|
| 1. | **Financial Sector Conduct Authority** | 24 May 2019 |

Removals

| | Name | Effective date |
|---|---|---|
| 1. | **Financial Services Board** | 24 May 2019 |

**Part B: National Government Business Enterprises**

Removals

| | Name | Effective date |
|---|---|---|
| 1. | **Ncera Farms (Pty) Ltd** | 24 May 2019 |

**Part C: Provincial Public Entities**

Removals

| Province | | Name | Effective date |
|---|---|---|---|
| Limpopo | 1. | **Limpopo Liquor Board** | 24 May 2019 |

end

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TRANSFORMEX
constant change

# FIDELITY SERVICES GROUP (PTY) LTD

BBBEE Contribution Level:

**1**

BEE Supplier Recognition:

**135%**

## A Transformex Generic Verification Scorecard

Ownership based on Ownership Report dated July 2019

| | |
|---|---|
| **Products and Services** | **Security and Other Related Services** |
| **Physical Address** | 104D Mimosa Street, Helderkruin, Roodepoort,1724 |
| **Registration Number** | 2002/030292/07 |
| **Vat Number** | Refer to VAT numbers below |

| Name of divisions/subsidiaries included in analysis | Registration Number | VAT Number |
|---|---|---|
| FIDELITY SECURITY SERVICES (PTY) LTD | 1997/013274/07 | 4150170407 |
| FIDELITY CASH SOLUTIONS (PTY) LTD | 2000/025082/07 | 4510199989 |
| CSG GUARDING (PTY) LTD | 1964/008829/07 | 4820185017 |
| FIDELITY CLEANING AND HYGIENE SERVICES (PTY) LTD | 2014/002453/07 | 4900285562 |
| KUSELA OUTSOURCING (PTY) LTD | 2013/186480/07 | 4120248325 |

| Scorecard Elements | Maximum Score | Company Score | Analysis | Results |
|---|---|---|---|---|
| BEE Ownership | 25.00 | 25.00 | Black Economic Ownership: | 52.03% |
| BEE Management Control | 19.00 | 13.46 | Black Voting Rights: | 52.03% |
| Skills Development | 25.00 | 17.87 | Black Women Ownership: | 11.24% |
| Enterprise & Supplier Development | 44.00 | 42.68 | Black Designated Ownership: | 6.16% |
| Socio-Economic Development | 5.00 | 5.00 | Principles Used (FTP/MFT/CCP) | FTP/CCP |
| Total Score | 118.00 | 104.00 | Empowering Supplier | YES |
| Certificate Number | FID001G5260720 | | Issue Date | 31 July 2020 |
| Issue Number | 1 | | Expiry Date | 30 July 2021 |

This verification is an analysis of information collated as at June 2020 and is based on the methodology as per the Department of Trade and Industry's Amended Codes of Good Practice on BBBEE (Gazette 36928) released 11 October 2013

| BEE Contributor Status | BEE Procurement Recognition Levels |
|---|---|
| Level One Contributor | 135% |
| Level Two Contributor | 125% |
| Level Three Contributor | 110% |
| Level Four Contributor | 100% |
| Level Five Contributor | 80% |
| Level Six Contributor | 60% |
| Level Seven Contributor | 50% |
| Level Eight Contributor | 10% |
| Non-Compliant Contributor | 0% |

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