

**CONSTITUTION OF THE SOUTHERN AFRICAL SOLAR THERMAL AND
ELECTRICITY ASSOCIATION**



SOUTHERN AFRICA THERMAL AND ELECTRICITY ASSOCIATION

CONSTITUTION

Version: March 2014

Preamble

Pursuant to the desires of its founding members, the Southern Africa Solar Thermal and Electricity Association is a voluntary association of persons with a common aim and purpose as set out in this Constitution and the articles contained herein.

Article 1 - Name

The registered name of this Association is the Southern Africa Solar Thermal and Electricity Association and its abbreviated title is SASTELA, (hereinafter referred to as "**the Association**").

Article 2 - Domicile

The Association's main registration office will be located in Johannesburg, South Africa.

Article 3 - Duration

The duration of the Association is indefinite. It can be dissolved at any time by a special resolution passed by a 75% majority vote of its Ordinary Members at an Annual General Meeting ("**AGM**").

Article 4 - Interpretation and Definitions

In this Constitution, unless the context otherwise requires:

- 4.1 "**Association**" means the Southern Africa Solar Thermal and Electricity Association;
- 4.2 "**Associate Member**" means a Member of the Association as contemplated in Article 8.2.4;
- 4.3 "**Business Days**" means any day other than a Saturday, Sunday or public holidays;
- 4.4 "**Business and Industry Members**" means corporations or their duly appointed representatives or their branches or subsidiaries and/or international companies which are active in the solar thermal electricity sector in the SADC region;

- 4.5 **"Companies Act"** means the Companies Act No. 71 of 2008, as amended or replaced from time to time;
- 4.6 **"Constitution"** means the constitution of the Association as contained in this document and any amendments hereto from time to time;
- 4.7 **"Executive Committee"** means the committee of the Association elected and/or appointed in terms of Article 21 -;
- 4.8 **"Founding Member"** means Members of the Association that provided the start-up funding or pro-bono services for the Association, namely, Exxaro Resources, the Development Bank of Southern Africa ("DBSA"), the Industrial Development Corporation ("IDC"), Siemens, Areva Solar and Emvelo as contemplated in Article 8.2.1;
- 4.9 **"Green Collar"** involves actions for protecting the environment; **"green collar jobs"** relates to workers who are employed in the environmental sector of the economy including workers involved in clean, renewable, sustainable future energy development;
- 4.10 **"Member"** means a person referred to in the Constitution who are eligible and become members of the Association in accordance with the different classes of membership in Article 8 - and have not been excluded or dismissed as contemplated in Article 9 -;
- 4.11 **"Ordinary Member"** means a Member of the Association as contemplated in Article 8-;
- 4.12 **"Register"** means the list of Members maintained in terms of Article 10 -;
- 4.13 **"Sponsor Member"** means a Member of the Association as contemplated in Article 8.2.2;
- 4.14 **"Southern Africa Power Pool"** or **"SAPP"** means an organisation set up by members of the national electricity companies in Southern Africa under the auspices of the

Southern African Development Community ("**SADC**"). The members of SAPP have created a common power grid between their countries and a common market for electricity in the SADC region.

- 4.15 References to Members represented by proxy shall include Members represented by an agent under a general or special power of attorney and references to Members present or acting in person shall include corporations represented or acting in the manner prescribed by its articles of incorporation;
- 4.16 The singular shall include the plural and vice versa;
- 4.17 A reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 4.18 Any reference to a person includes, without being limited to, any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
- 4.19 References to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Constitution or any transaction entered into in accordance with this Constitution;
- 4.20 A "law" shall be construed as any law (including common law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of any government, local government, statutory or regulatory body or court and shall be deemed to include the rules and other requirements of any applicable stock exchange; and
- 4.21 Any word and expression defined in any article shall, unless the application of the word or expression is specifically limited to the article in question, bear the meaning ascribed to the word or expression throughout this Constitution.

Article 5 - Objective

The objective of the Association is:

- 5.1 To promote the roll out of Concentrating Solar Power ("CSP") plants for the production of sustainable peak, mid merit and base load solar thermal electricity in Southern Africa.
- 5.2 To promote CSP in Southern Africa at policy and administrative levels (local, regional, national and international) through bi- and multi-lateral agreements.
- 5.3 To promote the manufacture of CSP components in Southern Africa and to explore the "airbus model" where different SADC countries can manufacture different components.
- 5.4 To promote excellence in the planning, design, construction and operation of CSP plants.
- 5.5 To support research and innovation, including vocational training and support for equal opportunities and transformation.
- 5.6 To participate and contribute to combating climate change, promote the migration to a low carbon future and sustainable development.
- 5.7 To promote the creation of new sustainable and Green Collar jobs in Southern Africa.
- 5.8 To promote the use of the Southern Africa Power Pool ("**SAPP**") for cross border transmission of solar thermal electricity.
- 5.9 To promote the SADC Desertec Concept ("**SADCTEC**") which is a concept to establish a broad area within the SADC region in which solar derived electrical energy will be generated and distributed throughout the region.
- 5.10 To work with the relevant regional institutions in Africa like the African Union's New Partnership for Africa's Development ("**NEPAD**") and the SAPP to promote interconnection of the transmission infrastructure so as to best enable the adoption

of solar electrical energy in the region and thereafter to engage with other regional bodies outside of Africa like the European Union and other CSP stakeholders to promote the Africa-Europe grid interconnection concept by 2050.

- 5.11 To work to promote the aspirations of the CSP industry in Southern Africa through association and collaboration with organisations in other parts of the world with similar goals and objectives like the European Solar Thermal and Electricity Association (“ESTELA”).
- 5.12 To collaborate with other renewable energy and energy organisations in Southern Africa in strategic issues where it would help promote the goals and objectives of SASTELA.
- 5.13 To act impartially in the interests of the entire CSP industry, and all members of the industry, in the promotion of concentrating solar thermal power in Southern Africa.

In particular, the Association carries out the following activities in order to achieve its objectives:

- 5.14 Engage with key Government officials and other stakeholders dealing with energy policy, energy planning and job creation potential and opportunities within the SADC region in which CSP can play a critical role.
- 5.15 Actively participate in key policy and regulation formulation initiatives in the SADC region in a way that strategically positions the CSP industry for ramping up growth and investment in the region.
- 5.16 Undertake, complete or coordinate studies on scientific, technological, economical, sociological, financial, legal and political questions which are related to the objectives of the Association.
- 5.17 Cooperate with African and International Institutions, standardisation bodies, research institutes and others with the aim to develop and update technical norms and certification procedures concerning the specific technical equipment which is necessary for the generation of solar thermal power.

- 5.18 Publish and distribute online information in line with the objectives of the Association.
- 5.19 Organise meetings, working groups, conferences and other events in line with the objectives of the Association.
- 5.20 Focus on the establishment of the Association in South Africa initially, and subsequently to increase its presence in the other countries in the SADC region.
- 5.21 Conduct any other activities which could support the objectives of the Association.

Article 6 - Powers of the Association

The Association shall have such powers as are required to realise its main and ancillary objectives including the powers to open and conduct bank accounts, to sue and be sued, and to enter into contracts with other parties.

Article 7 - Special Conditions

The following special conditions shall apply to the Association and its assets:

- 7.1 the income and property of the Association whencesoever derived shall be applied solely towards promotion of its main objects and ancillary objects and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to Members of the Association; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officers or servant of the Association or to any Member thereof in return for any services actually rendered to the Association in accordance with the procurement governance rules of the applicable organisation;
- 7.2 upon its winding up or dissolution, the assets of the Association remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to the main object of the Association, to be determined by the Members of the Association, by majority vote at or before the time of its dissolution;

- 7.3 the Association shall not carry on any business other than a business which is directly connected to its main objects; and
- 7.4 all donations, contributions or levies payable to the Association from whatsoever source shall be irrevocable.

Article 8 - Members

- 8.1 Membership is open to persons, corporate entities and state owned enterprises or their branches or subsidiaries and/or local branches or subsidiaries of international companies that are active in the solar thermal electricity sector as Business and Industry Members.
- 8.2 Membership shall be divided into four main classes, namely:
- 8.2.1 Founding Members, a class of membership that carries the right to vote and to obtain a seat on the executive committee of the Association for a period of three (3) years from the date of inception, in addition to the elected executive committee members. Founding Members have all the rights of Ordinary Members, and where reference is made to rights pertaining to Ordinary Members in this Constitution, such reference shall be inclusive of Founding Members.
- 8.2.2 Sponsor Members, a class of membership that carries the right to vote and any additional rights as determined by the executive committee and/or in the provisions of a sponsorship agreement entered into between the Sponsor Member and the Association, taking into consideration the financial contribution that the Sponsor Member makes to the Association. Sponsor Members shall in any event enjoy all the rights of Ordinary Members, and where reference is made to rights pertaining to Ordinary Members in this Constitution, such reference shall be inclusive of Sponsor Members.
- 8.2.3 Ordinary Members, a class of membership that carries the right to vote and stand for election to the various bodies of the Association; and

8.2.4 Associate Members, a class of membership that does not carry the right to vote and stand for election to the various bodies of the Association. Associate Members consist of other persons that are partly or totally active in the solar thermal sector in the SADC region and are one or more of the following:

- (a) research institutions and technology centres;
- (b) standardisation, control and testing authorities;
- (c) public services;
- (d) commercial banks;
- (e) Non-Government institutions; and
- (f) individuals with relevant CSP experience.

8.3 National and International associations of a similar nature and with objectives similar to those of SASTELA are eligible to become Ordinary or Associate Members.

8.4 The membership of the Association shall further only consist of such persons who have accepted membership and have agreed to be bound by the terms of this Constitution and any code of good practice adopted by the Association from time to time. Subject to the provisions of this Constitution, any such persons who makes a written application to become a Member of the Association and whose application is accepted in accordance with Article 9 - shall become a Member of the Association.

Article 9 - Applications

9.1 Application for membership shall be in writing and addressed to the Chairman or the Executive Director. Candidates are required to complete an application form in writing in order to provide the necessary information concerning their organisation.

9.2 The Executive Committee, by simple majority decision, may admit new Members. The Executive Committee shall be obliged to give reasons for its decisions to the applicant. Should a membership application be rejected by the Executive Committee, the candidate may appeal to the Ordinary Members at a General Meeting for a revision of its decision.

Article 10 - Membership Register

A list of Founding, Sponsor, Ordinary and Associate Members of the Association and their addresses, as well as details of the SASTELA Executive Committee and the secretariat staff, is to be kept in the Register of the Association. The Register will also be published on the Association's website. The Register will be maintained at all times at the registered address of the Association.

Article 11 - Exclusions and dismissals

- 11.1 A Member may withdraw from the Association by sending a letter of resignation to the Chairman or the Executive Director by hand or by registered mail. The membership will end immediately after the registered letter has been received.
- 11.2 Without prejudice to Article 12 -, any Member failing to pay its membership fee on due date will be terminated as a Member of the Association if the outstanding fee is not paid within 28 Business Days after a demand note has been sent to such Member by hand or by registered mail.
- 11.3 In addition, a Member shall *ipso facto* be excluded and cease to be a Member of the Association:
- 11.3.1 if, being a natural person, he ceases to represent the body which nominated him to membership or his nomination is withdrawn;
 - 11.3.2 if, being a natural person, he dies or his estate is finally sequestrated, or is placed in curatorship or he is no longer capable of managing his affairs;
 - 11.3.3 if, being a corporate body, an order for the final winding-up or judicial management of the Member is granted or a special resolution for the winding-up of the Member is passed and registered in terms of the Companies Act;
 - 11.3.4 if, being an Ordinary Member he is removed as a Member by a simple majority vote of the Members in a General Meeting of the Association; and

11.3.5 if being an Associate Member, he is removed as a Member by a simple majority vote of the SASTELA Executive Committee.

A Member that withdraws or has been excluded does not dispose of any right or interest in the assets of the Association. The excluded Member remains liable for all unpaid membership fees and cannot claim the reimbursement of membership fees or other sums.

Article 12 - Membership fee

12.1 A candidate that has been accepted will only become a Member after the payment of its membership fee.

12.2 Every Member is responsible for the annual payment of the membership fee, but it does not assume any personal responsibility for any engagement in the name of the Association.

12.3 The Members share the costs of the Association by paying an annual membership fee.

12.4 Membership fees for each category of membership will be determined by the Executive Committee each year.

Article 13 - Annual General Meeting

The Association shall hold its first Annual General Meeting ("**AGM**") within eighteen months after the date of adoption of this Constitution and shall thereafter in each year hold an AGM, provided that not more than fifteen months shall elapse between the date of one AGM and that of the next.

The AGM is the sovereign authority of the Association. It has the comprehensive competence for acting for the Association and its role comprises, in particular, but not limited to:

13.1 Determining the general policy of the Association in order to give direction to the Executive Committee;

- 13.2 Accepting new Members whenever the admission has not been authorised by the Executive Committee and an appeal has been filed; exclude Members, except if the exclusion is automatic;
- 13.3 Electing the Chairman and the Vice-Chairman and the further members of the Executive Committee;
- 13.4 Approving the annual report of the Executive Committee, the budget and the accounts;
- 13.5 Setting the annual membership fee based on the proposal of the Executive Committee;
- 13.6 Amending the Constitution; and
- 13.7 Voluntarily dissolving the Association.

Each Ordinary Member shall have one vote at the AGM either in person or by proxy and each Ordinary Member has the right to appoint an alternate from their respective organisation. The decisions and resolutions of the Association will be passed and made by a simple majority vote, through the showing of hands in favour or against any proposal on the agenda.

Article 14 - General Meetings

The Executive Committee may, at their discretion, convene a General Meeting upon at least twenty-one (21) Business Days prior notice. A General Meeting may also be called by Ordinary Members representing not less than ten percent of the total voting rights of all the Ordinary Members of the Association having at the date of lodgement of the requisition a right to vote at AGM's of the Association in accordance with the provisions of this Constitution.

Article 15 - Proceedings at Meetings

- 15.1 General Meetings are composed of the Members of the Association. The Chairman of the Association presides over the General Meetings.
- 15.2 General Meetings are convened by the Executive Committee by notice via ordinary mail or fax or electronic mail addressed to each Member at least twenty-one (21)

Business Days before the General Meeting and signed by the Executive Director on behalf of the Chairman. In the event that the Executive Director is not available to sign the notice for any reason, the Chairman shall sign the notice in his absence.

- 15.3 Each meeting shall have a written agenda that shall be distributed before the meeting. No agenda may contain items like „general“ or „any other business“. Items may be added to the agenda at the beginning of a meeting if nobody in attendance objects to their inclusion. Such items shall be clearly identified on the minutes as „matters added at the commencement of the meeting“. Only items on the agenda may be discussed at any meeting. The Chairman shall approve the Agenda prior to each meeting.
- 15.4 Decisions are made and resolutions are passed by simple majority through the showing of hands in favour or against any proposal on the agenda.
- 15.5 A quorum for a General Meeting shall consist of at least 25% of all Ordinary Members (present or represented by proxy or agents). In the absence of a quorum, an alternative General Meeting must be held within four weeks and in any event no less than one week, from the adjourned General Meeting, at which alternative General Meeting no quorum will be required.
- 15.6 The decisions of General Meetings are recorded in a register of acts of the Association in the form of a protocol, signed by the Chairman.
- 15.7 Minutes of each meeting shall be drawn up by the Association secretary and circulated to all Members. Following approval, the minutes shall be signed by the Chairman at the next General Meeting and pasted into the Association minute book.
- 15.8 The Chairman and Members attending any meeting shall be vigilant in ensuring that no topic is discussed that may in any way be construed as constituting any of the following:
 - 15.8.1 exchanging price sensitive information or price fixing;
 - 15.8.2 market allocation or dividing markets among companies;
 - 15.8.3 terms and conditions of sale;

15.8.4 methods of distribution;

15.8.5 collusive tendering; and

15.8.6 measures, arrangements and activities that may be construed as anti-competitive.

15.9 Any queries or objections relating to the discussion of any matter shall, unless the person raising the query or objection can immediately be satisfied, lead to termination of the discussion, recording of the concern, and seeking advice on how to proceed.

15.10 An attendance register shall be completed and signed at each meeting. A statement on the attendance register must indicate that signing the register implies an undertaking to comply with the requirements of the Competition Act.

Article 16 - Anti-Competitive Behaviour

16.1 The Association is committed to compliance with the Competition Act, 1998 ("**the Act**"). These Articles have been developed in line with the requirements of the Act in order to formalise the Association's stance regarding anti-competitive behaviour by its Executive Committee and all classes of Members.

16.2 The Association is transparent in all its activities. By the very nature of being an association SASTELA brings competitors together. It is the responsibility of the Members of SASTELA to be vigilant and to ensure that they comply with the requirements of the laws relating to competition in South Africa and in other countries where they may operate while they are involved in Association activities and during normal business activities.

16.3 Members and the Executive Committee shall not pursue any arrangement that will have the effect of substantially preventing or lessening competition, unless it can prove a technological, efficiency or other competitive gain.

16.4 Members of the Association shall therefore not engage in any of the following, and avoid discussing such matters with representatives of other interested parties:

16.4.1 exchanging price sensitive information or price fixing;

- 16.4.2 market allocation or dividing markets among Members;
 - 16.4.3 terms and conditions of sale;
 - 16.4.4 methods of distribution; and
 - 16.4.5 collusive tendering.
- 16.5 When participating in activities or meetings of the Association, Members should read minutes and agendas and prepare for meetings to ensure that neither the Executive Committee of the Association nor any of the Members use meetings for purposes in conflict with the Competition Act.
- 16.6 Further information on the Competition Act and Anti-Competitive Practices is provided in Appendix A, annexed to this Constitution and Members are encouraged to familiarise themselves with the information provided.

Article 17 - Decisions and Votes of Members

- 17.1 Every Ordinary Member shall have one vote at any General Meeting of Members.
- 17.2 Associate Members shall not have any vote at meetings of Members.
- 17.3 The Ordinary Members shall endeavour to pass all decisions and/or resolutions on a consensus basis. However, if consensus cannot be achieved, at any meeting of Members a resolution put to the vote of the quorum present at the meeting shall be decided by simple majority vote on a show of hands. A declaration by the Chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is given. Any such objection shall be referred to the Chairman of the meeting, whose decision shall be final and conclusive.
- 17.4 In the case of an equality of votes, the Chairman of the meeting shall be entitled to a second or casting vote, in addition to his deliberative vote as an Ordinary Member.

- 17.5 A resolution in writing signed by all the persons for the time being entitled to receive notice of and to attend and vote at a meeting of Members or by duly authorised representatives on their behalf shall be as valid and effectual as if it had been passed at a meeting of the Association duly convened and held.
- 17.6 On show of hands, each Ordinary Member present in person or by proxy or, if the Ordinary Member is a body corporate, duly represented by an alternate, at any meeting of the Association shall have one vote.

Article 18 - Proxies

- 18.1 The form appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or, if the appointer is a body corporate, under the hand of an officer or agent authorised by that body. The same applies to the holder of a general or special power of attorney given by a Member to attend and take part in the meetings and proceedings of the Association or companies generally, whether or not he himself is a Member of the Association. A proxy need not be a Member of the Association.
- 18.2 A form appointing a proxy may be in any usual or common form.

Article 19 - Chairman

- 19.1 The Chairman will be elected by the AGM for a two-year period, or if not held within two years until the following AGM, and is eligible for re-election.
- 19.2 The Chairman represents the Association vis-à-vis third parties and is responsible for the image and the promotion of the Association especially vis-à-vis government institutions, SADC states, other international organisations and associations and media.
- 19.3 The Chairman represents the Association in all legal actions as defendant or plaintiff, in case of the latter only upon the decision of the Executive Committee.
- 19.4 Apart from legal actions the Chairman can delegate within the provisions of South African law either permanently or on a case by case basis part of his functions to the other members of the Executive Committee or the Executive Director.

Article 20 - Executive Director

- 20.1 The Executive Director is appointed by the Executive Committee;
- 20.2 He is responsible for the day to day administration of the Association. In addition, his responsibilities include in particular:
 - 20.2.1 the management of the secretariat of the Association;
 - 20.2.2 representing the Association to government, institutions, other organisations and groups as well as the media; and
 - 20.2.3 assisting the Association in pursuing its objectives in the broadest sense.
- 20.3 The remuneration of the Executive Director is determined by the Executive Committee.

Article 21 - Executive Committee

- 21.1 The Executive Committee is composed of one (1) appointed Executive Director and ten (10) representatives of the Ordinary Members and/or Founding Members, elected at the AGM for a two-year period and members remain eligible for re-election. The initial Executive Committee for the first three (3) years of the Association from induction shall be composed of the Executive Director, the six (6) Founding Members and four (4) Ordinary Members elected at the AGM.
- 21.2 The Executive Committee is responsible for the administration of the Association. The Executive Committee shall conduct all the affairs of the Association and be entitled to do all matters and things not specially required to be done at an AGM or General Meeting. Without limiting their rights of management, the Executive Committee shall be responsible for:
 - 21.2.1 drafting and implementing strategy;
 - 21.2.2 drafting the annual report, the budget and the accounts; and
 - 21.2.3 implementing the decisions of the AGM.
- 21.3 The Executive Committee shall comprise, at a minimum, the following:

- 21.3.1 The Chairman;
 - 21.3.2 Vice-Chairman;
 - 21.3.3 Executive Director; and
 - 21.3.4 Six (6) Founding Members (for the initial three (3) year period).
 - 21.3.5 representative of developers; and
 - 21.3.6 representative of suppliers and manufacturers of CSP equipment.
- 21.4 The Executive Committee can delegate its duties to the Executive Director.
- 21.5 The Executive Committee may not delegate the responsibility for preparing and overseeing the budget to the Executive Director.
- 21.6 The Executive Committee takes its decisions by simple majority.
- 21.7 The Executive Committee appoints a treasurer from among its members.
- 21.8 The Executive Committee shall open an Association bank account which shall be operated on by the signatures of any two of the Chairman, Vice-Chairman, Executive Director or Treasurer.
- 21.9 The Executive Committee may invite Associate members to participate and provide input on specific issues at its meetings.

Article 22 - Finances

- 22.1 The financial resources of the Association consist of contributions from its Members as well as any other kind of income. The financial contributions from Members shall be determined in accordance with Article 12 -.
- 22.2 The financial year end is February of each year. Each year end the annual statement of account will be prepared by the treasurer and submitted to the Members within two months of the year end for consideration by the Members at the AGM. In addition, a budget for the following year of operation will be drafted by the Executive Committee and will be presented to the AGM for approval by the Members.

22.3 The annual accounts are to be audited by a reputable firm of auditors in South Africa as appointed by the Executive Committee.

Article 23 - Reserves

The Executive Committee may set aside out of the surplus of the Association and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserve shall at the discretion of the Executive Committee be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the Association, for repairing, improving or maintaining any property of the Association, or for any other purpose to which surplus of the Association may appropriately be applied. Pending such application such sums may either be employed in the business of the Association or be invested.

Article 24 - Language

The main working language of the Association is English.

Article 25 - Notices

25.1 A notice by the Association to any Member shall be regarded as validly given if it is either delivered personally to the Member, sent by prepaid post to him at his registered address, sent to him by telefax at his telefax number or sent by electronic mail.

25.2 The Association shall not be bound to enter any person in the Register of Members until that person gives the Association an address for entry in the Register.

Article 26 - Amendments

This Constitution may be amended by a two-thirds majority of Ordinary Members present or represented at an AGM or Special General Meeting of Members. No proposed amendment or alteration shall be considered at any meeting unless the proposed amendment or alteration has been notified to Members in writing not less than twenty one (21) Business Days before the date of the meeting.

Article 27 - Dissolution

In case of deliberate dissolution, the AGM or Special General Meeting will nominate two executors and determine their powers. In all cases of deliberate or judicial dissolution,

regardless of the timing or cause of the dissolution, the remaining net worth of the dissolved association will be allocated to organisations with similar objectives to that of SASTELA and such allocations shall be approved by the Members of the Association who remained immediately prior to dissolution at a special dissolution meeting convened for the purpose. If the Association is wound up, the liquidator shall comply with the provisions of this Constitution.

Article 28 - General and Miscellaneous

- 28.1 These Articles constitute the sole record of the Articles in respect of SASTELA and between the Members in relation to its subject matter. No party shall be bound by any representation, warranty, promise or the like not recorded in these Articles. No addition to, variation, novation or agreed cancellation of these Articles shall be of any force or effect unless adopted by resolution, agreed in writing and signed by or on behalf of the Members.
- 28.2 No indulgence which a party may grant to another party shall constitute a waiver of any of the rights of the grantor unless in writing signed by both parties.
- 28.3 All provisions in these Articles are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of these Articles which are or become unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be deemed *pro non scripto*, and the remaining provisions of these Articles shall be of full force and effect. The parties declare that it is their intention that these Articles would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 28.4 These Articles supersede and cancels all prior articles, statutes, agreements and/or arrangements relating to the subject matter hereof.
- 28.5 Each of the Members acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of these Articles

and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so.

28.6 Each Member by its membership to SASTELA agrees to adhere to the provisions of these Articles.

APPENDIX A

THE COMPETITION ACT AND ANTI-COMPETITIVE PRACTICES

The information provided below is derived from the Competition Commission website at <http://www.compcomm.co.za>. Members are encouraged to visit the website for further information and useful examples of what is, and is not, anti-competitive behaviour.

In terms of the Competition Act prohibited practices fall into three categories:

- A) Those that may occur between companies in the same market (horizontal relationship), consisting of agreements or concerted practices or decisions by associations of companies; or
- B) Those practices that may occur between a firm and other parties such as suppliers or customers (vertical relationship); and
- C) The abusive conduct by a firm considered to be in a dominant position in a particular market.

1. Prohibited Horizontal Practices

Section 4(1) of the Act states that agreements between, or concerted practices or decisions by, associations of firms are prohibited if:

- (a) They are made by firms in a horizontal relationship. This means that the companies concerned are doing business in the same product or geographic market (which includes companies that import the same or substitute products into the market); and
- (b) The agreements, concerted practices or decisions of the association are restrictive. This means that they have, or are likely to have, the effects of substantially preventing or lessening competition in a market.

The law recognises that businesses cannot operate without agreements with other firms on a variety of matters. Thus, agreements that can be considered to have positive pro-competitive effects that outweigh the negative ones are excluded. For example, where the

agreements may lead to efficiencies or technological gains, even if they are restrictive in nature, they would still be allowed.

In particular, the law prohibits the following types of agreements:

Agreements to fix prices

These agreements include fixing a purchasing or selling price, as well as other trading conditions such as discounts, credit terms, price differentials (or price increases) and agreements to charge prices that are the same.

Price fixing happens in various ways and could include the setting of a minimum price below which prices are not to be reduced; or establishing an amount or percentage by which prices are to be increased; or establishing a range outside of which prices are not to move.

Price-fixing agreements are set up to effectively eliminate competition in a market. This is true, regardless of whether the price is reasonable or the agreement is meant to raise, lower or stabilise prices. The effects of such agreements are obviously to interfere with the free play of market forces.

Price fixing can also be indirect. Typically, this involves a conspiracy among competitors that does not involve price per se, but rather involves standardising other terms which have anti-competitive effects. For example, agreements to use uniform delivery fees or minimum order requirements, or to limit discounts all constitute a fixing of an element of the ultimate price.

Similarly, agreements to reduce output, limit or set quotas, limit business hours, or discontinue a product constitute indirect price fixing. In these cases, the price ultimately paid by end-users would have been determined by means outside the operation of free market forces of demand and supply.

Market-sharing agreements

These agreements may be between suppliers to the effect that parties may not approach each other's customers - either nominated companies or those in a particular area. It could also be a decision to allocate customers, suppliers, territories or specific types of goods or services.

Firms may agree to share markets, whether by territory, type or size of a client, with the aim of preventing or lessening competition among themselves. This may be done in addition to, or instead of, agreement about prices that parties may charge.

Market sharing could also be where firms agree, for example, to specialise in the manufacture of certain products in a range, or of certain components of a product, if the arrangement would or is likely to have the effects of substantially preventing or lessening competition. This would be the case even if the agreement was a consequence of the objective to produce efficiently in the long term.

Collusive tendering or bid-rigging agreements

Tendering procedures are designed to promote competition among prospective suppliers. Tenders submitted as a result of joint activities are, therefore, likely to have the effect of preventing or lessening competition and are prohibited.

The techniques of collusive tendering may include:

- (a) Bid suppression: when a number of potential competitors do not tender, or withdraw from the process of tendering; or
- (b) Complementary tendering: when some potential competitors agree to submit tenders that are too high to be accepted; or
- (c) Bid rotation: when all potential competitors submit tenders but only one of them submits the lowest and winning tender at any one time. Over time, the conspirators receive the agreed share of the value of the contracts.

2. Prohibited Vertical Agreements

Vertical agreements involve firms at different levels in the supply chain. For example, a manufacturer and a wholesaler, or a wholesaler and a retailer. These agreements, therefore, connect two markets that either do or could constitute a relationship between supplier and customer.

Under Section 5(1) the Act states that agreements between parties in a vertical relationship are prohibited if:

The restrictive practices occur between firms in a vertical relationship;

- (a) The restrictive practices occur between firms in a vertical relationship;
- (b) The agreement is restrictive: i.e. it has, or is likely to have, the effect of substantially preventing or lessening competition in the market.

In general, these restrictive practices are made between parties operating at different levels in the supply chain. The agreement, for example, might be between a manufacturer and a retailer, a manufacturer and a wholesaler, wholesalers who operate at different levels regarding particular goods or services, a retailer and a customer, or a franchisor and a franchisee.

Few of these types of agreements raise questions of competition concerns because competition is affected only when market power is present at one or both levels in the chain. For example, if both the manufacturer and the distributor have market power in their respective sectors, the retail sector would then be restricted by the vertical agreement between the manufacturer and the distributor.

Even where such agreements raise competition concerns, there may be benefits that outweigh the negative anti-competitive effects and the agreements may therefore be allowable.

Resale Price Maintenance

Resale price maintenance is vertical price fixing. It refers to agreements between firms at different levels of the market structure which establish the price at which their goods or services should be resold. It can take the form of setting either the minimum price, below which the goods or services may not be sold to the ultimate user, or a maximum price, above which sales cannot occur.

This form of price fixing, as is the case with any other form of price fixing, is per se prohibited. This means that the practice is prohibited from the beginning and that no further

deliberations shall be entered into with the parties, or any defence made available or accepted from the guilty parties.

3. Abuse by dominant companies

The Act recognises two elements when evaluating whether a company is dominant: market share and market power. A company is considered to have market power if it can set prices, terms or other business conditions and not be adversely affected by its action.

It is anti-competitive when a company abuses its market power or dominant market share.

The Competition Commission provides examples of abusive behaviour such as excessive or discriminatory pricing and exclusionary acts such as tying or refusing to supply. Interestingly the Act does not force any business to supply to or buy from any other company. It does, however, prohibit a company from imposing conditions or giving incentives for a company to not deal with its competitors.

Confirmed on behalf of the members on this day 18th day of March 2014 at Bryanston.

Chairman