



CONSTITUTION

OF THE

PAYROLL AUTHORS GROUP OF SOUTH AFRICA

PREAMBLE

The **Payroll Authors Group of South Africa** is a non-profit organisation that represents the computerised payroll industry in South Africa. In its role as payroll industry representative, the PAGSA's mandate is to focus on employment-related legislation, and to engage with the statutory bodies whose legislation and administration requirements impact on employers and payroll systems.

1. NAME

The name of the ASSOCIATION hereby constituted is:

Payroll Authors Group of South Africa abbreviated as **PAGSA**.

2. DEFINITIONS

In this Constitution, unless the context otherwise requires:-

- 2.1 **"ASSOCIATE MEMBER"** shall mean a member as constituted in terms of Clause 8 hereof;
- 2.2 **"ASSOCIATION"** means the Payroll Authors Group of South Africa (PAGSA), a voluntary non-profit association of members as envisaged by section 30B of the Income Tax Act No. 58 of 1962 and as constituted in terms hereof;
- 2.3 **"CONSTITUTION"** means this subsisting and duly adopted constitution of the ASSOCIATION;
- 2.4 **"CORPORATE MEMBERS"** shall mean a member as constituted in terms of Clause 9 hereof;
- 2.5 **"EXCO"** shall mean the Executive Committee constituted in terms of Clause 15 hereof;
- 2.6 **"FULL MEMBERS"** shall mean a member as constituted in terms of Clause 7 hereof;
- 2.7 **"HONORARY MEMBERS"** shall mean a member as constituted in terms of Clause 10 hereof;
- 2.8 **"ITA"** means the Income Tax Act No. 58 of 1962;
- 2.9 **"MANCO"** shall mean the Management committee constituted in terms of Clause 17 hereof;
- 2.10 **"MEMBER"** shall mean a member as constituted in terms of Clause 6 hereof.

3. TERMINOLOGY

- 3.1 Words in the singular number shall include the plural and vice versa.
- 3.2 Words importing gender shall include a reference to the masculine, feminine and other genders.
- 3.3 Words importing natural persons shall include a reference to bodies corporate and other legal personae and vice versa.
- 3.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

4. OBJECTIVES

The PAGSA objectives are:

- 4.1 To represent the computerised payroll industry and to present a united voice when discussing legislation and operational issues that impact on payroll systems and employers with the various statutory bodies.
- 4.2 To provide MEMBERS with regular communications and guides to keep them abreast of all current and proposed legislation and operational requirements which would impact on payroll systems and employers.
- 4.3 To provide MEMBERS with an approved channel for the submission of proposals for changes to legislation and operational requirements.
- 4.4 To supply services and products as specified from time to time by the ASSOCIATION to its MEMBERS and to statutory bodies.
- 4.5 The promotion, advancement and protection of the group interest of the MEMBERS of the ASSOCIATION generally.

5. LEGAL STATUS OF THE ASSOCIATION

- 5.1 The PAGSA shall be a voluntary association of a public character established not for gain but for the benefit of its MEMBERS, with corporate personality and perpetual succession.
- 5.2 No MEMBER shall have any right, title or interest to or in the property, funds or assets of PAGSA, which property, funds or assets shall be managed by the MANCO in terms of this CONSTITUTION.
- 5.3 The liability of the MEMBERS shall be limited to the amount of their unpaid subscription or any other debt owing to the ASSOCIATION, if any.
- 5.4 The PAGSA may sue and be sued in its own name.

6. MEMBERS

- 6.1 MEMBERS shall be the persons recorded as such in the membership register in one of the classes specified in this CONSTITUTION, who have been accepted into membership by the MANCO.
- 6.2 There shall be four (4) categories of membership, namely:
 - 6.2.1 Full
 - 6.2.2 Associate
 - 6.2.3 Corporate
 - 6.2.4 Honorary

7. FULL MEMBERSHIP

- 7.1 FULL MEMBERS of the ASSOCIATION shall be limited to persons who develop computerised payroll systems, and also to persons who install, customise or support computerised payroll systems on a commercial basis.
- 7.2 The rights and obligations of a FULL MEMBER shall not be transferable and every FULL MEMBER shall:
 - 7.2.1 to the best of their ability further the objectives and interests of the ASSOCIATION at all times;
 - 7.2.2 comply with the policies and rules of the ASSOCIATION as determined from time to time;
 - 7.2.3 at all times observe the principles of good faith in their dealings with the ASSOCIATION.
- 7.3 A FULL MEMBER's membership of the ASSOCIATION shall ipso facto cease:
 - 7.3.1 when a FULL MEMBER ceases to carry on the business set out in Clause 7.1, or
 - 7.3.2 when a FULL MEMBER fails to pay any fees determined by the MANCO to be payable, on due date being 30 days from date of invoice, or
 - 7.3.3 when a FULL MEMBER resigns in writing from the ASSOCIATION, or
 - 7.3.4 by majority decision of the MANCO and EXCO when a FULL MEMBER breaches any provisions of this CONSTITUTION or any of the policies or rules of the ASSOCIATION and fails to remedy such breach despite having received notice to do so.

8. ASSOCIATE MEMBER

- 8.1 ASSOCIATE MEMBERSHIP, being a limited form of membership of the ASSOCIATION shall be available to persons by subscribing as an ASSOCIATE MEMBER for an annual fee.
- 8.2 An ASSOCIATE member shall be entitled to receive such information, services and products from the ASSOCIATION as the MANCO shall determine from time to time.
- 8.3 An ASSOCIATE MEMBER's membership of the ASSOCIATION shall cease when
 - 8.3.1 The ASSOCIATE MEMBER fails to pay any fees determined by the MANCO to be payable, on due date being 30 days from date of invoice, or
 - 8.3.2 The ASSOCIATE MEMBER resigns in writing from the ASSOCIATION, or
 - 8.3.3 By majority decision of the MANCO and EXCO when an ASSOCIATE MEMBER breaches any provisions of this CONSTITUTION or any of the policies or rules of the ASSOCIATION and fails to remedy such breach despite having received notice to do so.

9. CORPORATE MEMBER

The MANCO may grant Corporate Membership to a corporation that, in the opinion of the MANCO, subscribes to the objectives of the PAGSA and is willing to provide revenue, educational information and help to advance

the objectives of the PAGSA. The terms and conditions, period of membership and fees shall be decided from time to time by the MANCO.

10. HONORARY MEMBER

The MANCO may grant Honorary membership for such period as it deems fit to persons of distinction who have made significant contributions to the objectives of the ASSOCIATION. Honorary members shall have no voting rights and need not pay fees.

11. REGISTER OF MEMBERS

11.1 The MANCO shall keep a register of the names and particulars of the MEMBERS. Each MEMBER must ensure that the register has the correct information in the prescribed form, at all times.

11.2 The records kept by the MANCO shall be deemed to be correct for the purposes of the MANCO activities.

12. APPLICATION FOR MEMBERSHIP

12.1 A person wishing to become a MEMBER must follow the process as prescribed by the MANCO.

12.2 Each member by virtue of their application is deemed to have agreed to be bound by this CONSTITUTION.

12.3 When recorded in the Register, the MEMBER shall enjoy all the rights and shall be subject to all obligations of the relevant category of membership as specified in this constitution.

13. MEMBERSHIP FEES

The MANCO shall decide what entrance fees, annual subscriptions and other levies shall be paid by any class, group or sub-group of members determined by the MANCO from time to time.

14. STRUCTURE OF THE PAGSA MANAGEMENT

The PAGSA management shall consist of the Management committee (MANCO), the Executive committee (EXCO), and any other committee or sub-committee that may be constituted by the EXCO and the MANCO from time to time.

15. THE EXECUTIVE COMMITTEE (EXCO)

15.1 The EXCO shall consist of not less than 3 (three) and not more than 5 (five) FULL MEMBERS who develop and supply computerised commercial payroll systems, and who shall be elected by the FULL MEMBERS at an annual general meeting of FULL MEMBERS.

15.2 MANCO members nominated by a majority of the MANCO shall also be members of the EXCO, and while performing services for the EXCO, are subject to its rules and requirements.

15.3 Nominations of candidates to the EXCO shall be in writing signed by the nominating FULL MEMBER and

a seconding FULL MEMBER, accompanied by the written consent of the nominee, and shall be delivered or posted so as to be received by MANCO within 7 (seven) days of an annual general meeting of the FULL MEMBERS. Nominations from the floor at the annual general meeting will also be accepted if they are properly proposed, seconded and the nominee consents.

- 15.4 Each elected EXCO member shall continue to hold office from the date of his commencement of office until the Annual General Meeting following his said appointment, at which meeting each EXCO member shall be deemed to have retired from office as such and at the member's choice will be eligible for re-election to the EXCO at such meeting.
- 15.5 Upon any vacancy occurring in the EXCO prior to the next Annual General Meeting, the vacancy in question shall be filled by a FULL MEMBER nominated by the remaining members of the EXCO and approved by the MANCO.
- 15.6 The EXCO shall within 14 (fourteen) days after the Annual General Meeting appoint a Chairperson who shall hold office until the following Annual General Meeting. In the event of any vacancy occurring, the EXCO shall immediately appoint one of their members as a replacement in such office.
- 15.7 Except as otherwise provided, the Chairperson shall preside at all meetings of the EXCO and all general meetings of the FULL MEMBERS and, in the event of his not being present within 5 (five) minutes of the scheduled time for the start of the meeting or in the event of his inability to act, a Chairperson shall be appointed by the members present for the meeting.
- 15.8 The EXCO has the power to co-opt additional members to form special working groups for ad hoc projects or where the workload is too high for the regular EXCO. Such working groups will be subject to the same rules as the EXCO but this does not extend to voting rights or approval rights with respect to any rules or the CONSTITUTION of the ASSOCIATION.
- 15.9 EXCO members can be MANCO members if appointed by MANCO as prescribed.

16. DUTIES OF THE EXECUTIVE COMMITTEE (EXCO)

- 16.1 Whilst at all times furthering the objectives of the ASSOCIATION and the EXCO, the primary functions and duties of the EXCO are to:
 - 16.1.1 engage in discussions with, and provide input to, the statutory bodies;
 - 16.1.2 communicate approved information back to MEMBERS;
 - 16.1.3 provide support services to assist payroll authors where possible;
 - 16.1.4 assist and liaise with the MANCO as specified in this CONSTITUTION.
- 16.2 Subject to majority approval by the EXCO and MANCO the primary functions and duties of the EXCO can be extended as circumstances require.

17. THE MANAGEMENT COMMITTEE (MANCO)

- 17.1 A MANCO consisting of at least 3 and not more than 5 natural persons shall be responsible for managing the business of the ASSOCIATION.
- 17.2 The MANCO members shall convene and regulate their meetings and the manner of conducting their business as they see fit.
- 17.3 The appointment of a MANCO member shall be terminated if:
 - 17.3.1 they make an application for the surrender of their estate or application for an administration order or if they commit an act of insolvency as defined in the insolvency law for the time being in force;
 - 17.3.2 they resign their office by written notice to the remaining MANCO members;
 - 17.3.3 they are medically certified as being of unsound mind or are judicially declared incapable of managing their own affairs;
 - 17.3.4 they would under the Companies Act of 2008, as amended, or any corresponding statutory provision for the time being in force be disqualified from acting as a director of a public company;
 - 17.3.5 they are guilty of conduct justifying a summary dismissal according to the common law;
 - 17.3.6 they have breached the rules of the ASSOCIATION, in particular the duty of confidentiality, or are guilty of conduct which is likely to bring themselves or the ASSOCIATION into disrepute;
 - 17.3.7 they have been convicted of an offence involving dishonesty;
 - 17.3.8 they have suffered from some illness or disability which has precluded them from performing their duties for a period in excess of 90 (ninety) days;
 - 17.3.9 the majority of the MANCO and EXCO members agree that they are not furthering the objectives and interests of the ASSOCIATION.
- 17.4 Each MANCO member shall have the power to appoint any other person to act as their alternate during their absence or for their inability to act as MANCO member for a period of no longer than 3 (three) consecutive months in any calendar year, provided that such alternate shall have been approved by the remaining MANCO Members. An alternate acting in place of the MANCO member who appointed them shall exercise and discharge all of the duties and functions of the MANCO member that they represent.
- 17.5 Subject to the approval of the majority of MANCO members and after consultation with the EXCO:
 - 17.5.1 should a MANCO member die, resign or their appointment be terminated, the remaining MANCO members shall be entitled to appoint a successor;
 - 17.5.2 MANCO is empowered to appoint additional members to the MANCO if these additional members are required to further the objectives and interests of the ASSOCIATION;

- 17.6 EXCO members can be MANCO members if appointed and approved as prescribed by this CONSTITUTION.

18. DUTIES OF THE MANAGEMENT COMMITTEE (MANCO)

- 18.1 Whilst at all times furthering the objectives of the ASSOCIATION, the primary functions of the MANCO are to:
- 18.1.1 assist the EXCO with its primary functions;
 - 18.1.2 provide continuity of experience and knowledge of ongoing projects;
 - 18.1.3 provide management, administration and communication services;
 - 18.1.4 provide financial and strategic planning services;
 - 18.1.5 take fiduciary responsibility for the ASSOCIATION.
- 18.2 Subject to majority approval by MANCO, the primary functions of the MANCO can be extended as circumstances require.
- 18.3 The MANCO may
- 18.3.1 From time to time set the membership fees payable by the MEMBERS for the purpose of meeting all the expenses which the ASSOCIATION has incurred or will incur, or which the MANCO in discussion with the EXCO reasonably anticipates the ASSOCIATION will require for the attainment of its objectives and the pursuit of its business.
 - 18.3.2 Appoint and pay persons out of the funds of the ASSOCIATION to provide the various services and products necessary to give effect to the objectives of the ASSOCIATION and the pursuit of its business.
 - 18.3.3 Determine, from time to time, the remuneration which shall be paid to EXCO members and to MANCO members, provided that the remuneration so determined for such persons shall not exceed what is generally considered reasonable in relation to the services rendered.
- 18.4 The MANCO shall
- 18.4.1 Obtain such legal and other professional advice required by the ASSOCIATION from time to time at the cost of the ASSOCIATION.
 - 18.4.2 Draft and prescribe the policies and conduct rules by which all MEMBERS, the EXCO and MANCO are bound. Such policies and conduct rules may be amended by the MANCO, subject to not less than 50% of the persons comprising the MANCO and EXCO consenting to such amendment.
 - 18.4.3 Perform duties as required as a member of the EXCO committee.

19. INTERESTS OF MEMBERS TO BE DECLARED

No MANCO or EXCO member shall be disqualified by virtue of their office from contracting with the PAGSA, whether as a vendor or otherwise. The MANCO or EXCO member shall declare full details of their interest to the MANCO prior to a decision being taken on whether any such contract or arrangement shall be entered into, and such member shall not vote on such matter.

20. INDEMNITY

The PAGSA shall be deemed to indemnify and hold each MANCO member and each EXCO member harmless against all claims, demands and actions of whatsoever nature that may be made upon or brought against them, whether individually and/ or jointly and severally, arising out of or in connection with the administration of the ASSOCIATION, save and except where the claims and/or actions are caused by the personal wilful bad faith or fraud of such MANCO or EXCO member.

21. MEETINGS OF THE ASSOCIATION

21.1 The ASSOCIATION shall within 6 (six) months after the end of each financial year hold its Annual General Meeting in addition to any other general meetings that year and shall specify the meeting as such in the notices convening the same. Such Annual General Meeting shall be held at such time and place as the MANCO shall decide from time to time.

21.2 All general meetings other than Annual General Meetings shall be called Extraordinary General Meetings.

21.3 Only FULL MEMBERS shall be entitled to attend or vote at Annual General Meetings or Extraordinary General Meetings of the ASSOCIATION.

21.4 An Annual General Meeting shall be called with at least 21 (twenty one) days' notice by email to each FULL MEMBER to the email address provided to the ASSOCIATION by such MEMBER, and an Extraordinary General Meeting shall be called by at least 7 (seven) days notice by email to each FULL MEMBER. Each notice shall specify the place, the day and hour of meeting and the general nature of the business to be discussed.

21.5 Matters to be dealt with at the Annual General Meeting include but are not limited to:

21.5.1 the consideration of the Chairperson's Report;

21.5.2 the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting, of which due notice has been given to all members, and voting on any such resolutions;

21.5.3 the consideration of the financial accounts of the ASSOCIATION for the preceding year;

21.5.4 the election of the EXCO members.

21.6 No business shall be transacted at any meeting of the MEMBERS unless a quorum is present when the

meeting proceeds with the business:

21.6.1 20% (twenty per cent) of the FULL MEMBERS personally present or by proxy will form a quorum;

21.6.2 If within 15 (fifteen) minutes after the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned for 15 minutes and if at such adjourned time a quorum is still not present, the FULL MEMBERS present in person or by proxy, shall form a quorum.

21.7 The MANCO shall supply a copy of the board pack and agenda to each member at least one week prior to a meeting.

21.8 A MEMBER may be represented at a general meeting by a proxy, who need not be a FULL MEMBER of the ASSOCIATION. The instrument appointing a proxy shall be in writing signed by the FULL MEMBER concerned, and shall be tabled at the meeting.

22. VOTING

22.1 Every FULL MEMBER shall be entitled to one vote.

22.2 No person other than a FULL MEMBER duly registered and who shall have paid every membership fee and other sum, if any, which is due and payable to the ASSOCIATION in respect of or arising out of their membership, shall be entitled to vote at any meeting.

22.3 At any general meeting a resolution put to the vote shall be decided upon by the show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the meeting.

22.4 If a poll is duly demanded it shall be taken in such a manner as the Chairperson directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

22.5 Every resolution proposed for adoption shall be seconded at the meeting, and if not so seconded, shall be deemed not to have been proposed.

22.6 Any resolution shall be carried on the simple majority of all votes cast provided that any resolution to amend the CONSTITUTION:

22.6.1 shall be preceded by a notice in terms of Clause 21.5.2 and shall set out the specific amendment proposed and the reason for the proposal; and

22.6.2 shall be carried by at least 75% (seventy five percent) of all votes cast.

22.7 Where reference is made to a decision being carried by agreement of the majority of the MANCO and/or EXCO, this decision will be decided by a casting vote by the Chairperson of the MANCO should this be necessary.

23. COMPLIANCE WITH SECTION 30B OF THE INCOME TAX ACT NO. 58 OF 1962 (ITA)

- 23.1 The ASSOCIATION confirms its compliance with section 30B of the ITA as amended from time to time and confirms that all the provisions thereunder have been considered and will be applied in the operations of the ASSOCIATION.
- 23.2 All members of the EXCO and the MANCO will be required to undertake under pain of expulsion from the ASSOCIATION that they will not disclose to any person any confidential information obtained from official sources, nor will they knowingly publish or utter incorrect or irresponsible opinions while at the same time stating their status as an EXCO or MANCO member of the ASSOCIATION, so as to imply that those opinions are the opinion of the ASSOCIATION.
- 23.3 The members of MANCO accept fiduciary responsibility for the ASSOCIATION, and undertake that it will never consist of fewer than three members, none of whom will be connected persons in relation to each other.
- 23.4 No person may directly or indirectly control the decision making powers relating to the ASSOCIATION.
- 23.5 The ASSOCIATION may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives.
- 23.6 Substantially the whole of the funds of the ASSOCIATION must be utilised for the sole or principal objectives for which the ASSOCIATION has been established.
- 23.7 No member may directly or indirectly have any personal or private interest in the ASSOCIATION.
- 23.8 Substantially the whole of the activities of the ASSOCIATION must be directed to the furtherance of its sole or principal objectives and not for the specific benefit of an individual or minority group.
- 23.9 The ASSOCIATION may not have a share or other interest in any business, profession or occupation carried on by the MEMBERS.
- 23.10 No remuneration will be paid to any employee, office bearer, member or other person that is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
- 23.11 Substantially the whole of the ASSOCIATION's funding must be derived from its annual or other long-term members.
- 23.12 Upon the winding up or liquidation or within six months from the withdrawal of its exemption (or such longer period as the Commissioner may allow), the ASSOCIATION will transfer its assets remaining after the satisfaction of its liabilities to-
 - 23.12.1 another entity with similar objectives and which is approved in terms of section 10(1)(d)(iv) of the ITA

23.12.2 a public benefit organisation approved in terms of section 30 of the ITA;

23.12.3 any institution, board or body approved in terms of section 10(1)(cA)(i) of the ITA; or

23.12.4 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of the ITA, which is required to use those assets solely for purposes of carrying on one or more public benefit activities.

23.13 Any amendments to the CONSTITUTION must be submitted to the Commissioner South African Revenue Service within 30 days of its amendment.

23.14 The ASSOCIATION will comply with such reporting requirements as may be determined by the Commissioner from time to time.

23.15 The ASSOCIATION will not knowingly become a party to, and does not and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the ITA, or a transaction, operation or scheme as contemplated in section 103(5) of the ITA.

24. DETERMINATION OF DISPUTES BY ARBITRATION

24.1 Any dispute between the EXCO and a MEMBER or between FULL MEMBERS arising out of or in connection with or related to the CONSTITUTION or rules made in terms of the CONSTITUTION or their membership of the ASSOCIATION, save where an interdict or any form of urgent or other relief may be required or obtained from a court having jurisdiction, shall be determined in terms of this clause.

24.2 Any party to such dispute may demand that the dispute be determined by arbitration in terms of this clause, by written notice given to the other party and the EXCO.

24.3 Such dispute shall be referred to arbitration in accordance with the then current Rules of the Arbitration Foundation of Southern Africa (AFSA). Each Party agrees that the Arbitration will be held as an expedited arbitration in Johannesburg in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the Parties, including any appeal against the arbitrator's decision. If the Parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) Business Days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA. The provisions of this clause constitute an irrevocable consent by the parties to submit to arbitration, are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity or alleged invalidity for any reason of this agreement or any part thereof; and shall not preclude either party from instituting any injunctive proceedings in any appropriate court.

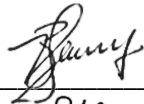
25. EFFECTIVE DATE OF THE CONSTITUTION

The first constitution came into effect from 1 January 2012 after approval by all parties and signature by the following MANCO members:

1. Robert Frederick Cooper (Chairperson)
2. Robert Heinz Gerard Nowicki
3. Ronald Claude Warren

The first revision of the constitution was approved at the PAGSA Annual General Meeting on 20th June 2016 and subsequently by the SARS Commissioner, and came into effect retrospectively from 1 January 2016 after approval and signature by the following MANCO members:

1. Beatrie Gouws



2. Robert Frederick Cooper
(Chairperson)



3. Robert Heinz Gerard Nowicki



4. Veronica van Taak

