

Code of Conduct

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PUBLISHERS' ASSOCIATION OF SOUTH AFRICA

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Code of Conduct (Part I) and Guiding Principles & Ground Rules (Part II) 2014

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Introduction

This document consists of two parts, Part I and Part II, followed by procedural aspects and some definitions.

Part I constitutes the Code of Conduct applicable to all PASA sector councils.

Part II has a special focus on the education sector council and establishes so-called Guiding Principles and Ground Rules of acceptable conduct.

Annex I to this document provides also for an enforcement mechanism in the form of a pre-disciplinary complaints procedure which in suitable cases will be followed by a full Disciplinary Procedure before a Disciplinary Committee to be convened for such purpose.

The complaints' and disciplinary procedures allow PASA to receive, assess and dispose of complaints in relation to ethical and legal transgressions that are more closely described in Part I, Part II and Annex 1. Annex 2 adds a non-exhaustive list of certain transgressions proscribed under paragraph 2.1 of Annex 1.

Annex 3 outlines the PASA Competition Guidelines.

Part I: The Code of Conduct

1. Purpose of the Code of Conduct

Publishers should at all times strive to present a positive image of the publishing industry. Compliance with the PASA Code of Conduct is intended to enhance professionalism and to maintain confidence in the publishing industry, without however in any way constraining the commercial and innovative aspects of the publishing business, or to interfere with the publishing market in which PASA members and their employees operate and where they are subject to healthy competition on the merits.

Thus, the PASA Code of Conduct serves a dual role: Firstly, as a minimum guideline or standard of ethical and responsible conduct by PASA members and their employees, the Code of Conduct is intended to instill the necessary business confidence and trust in the publishing industry; Secondly, the Code of Conduct is an undertaking, a binding obligation on PASA members in accordance with the PASA Constitution, to refrain from any illegal conduct (whether or not listed herein) and unethical behavior as listed herein, or potentially face PASA disciplinary action (apart from any other applicable legal action or sanctions). In this second function, the PASA Code of Conduct binds not only the publishing companies that are PASA members, but also their employees as individuals when they are acting as representatives of PASA member companies.

Transgression of the PASA Constitution or the Code of Conduct may lead to PASA disciplinary procedures, which are themselves outlined in Appendix 1 to the Code of Conduct. The disciplinary procedures are intended to guarantee a level playing field not only in substance, but also by way of formal due process.

All Appendixes to the Code are integral to this Code of Conduct.

2. Identity of PASA

PASA is the largest body representing South African publishers, including trade publishers and those involved in the business of developing books and other learning support materials for South African schools, vocational colleges, tertiary institutions, as well as libraries. As such, PASA is a key role-player and stakeholder in education and in promoting a general book culture.

3. Founding Principles

The Association is founded by and on behalf of South African Publishers, in recognition of their particular role and responsibility in protecting and promoting the Bill of Rights which forms part of the Constitution of the Republic; with particular reference to the fundamental rights provisions which have reference to the Freedom of Expression, including the specific freedoms referred to therein, namely:

- "A. freedom of the press and other media;*
- B. freedom to receive or impart information or ideas;*
- C. freedom of artistic creativity;*
- D. academic freedom and freedom of scientific research."*

4. Aims and Objectives

In order to promote its Founding Principles, the Association is constituted with the following Aims and Objects, viz:

- 4.1. To promote and protect the rights and responsibilities of the independent publishing sector in South Africa; and to co-ordinate industry representation, including negotiations with Government legislators and other relevant public and private bodies with reference to matters affecting South African publishers;
- 4.2. To promote creativity, literacy, "*a culture of reading*"; and the free flow of ideas, information, and opinion;
- 4.3. To establish and adjudicate policy guidelines and codes of conduct for South African Publishers; and to promote best practice and the highest standards of ethics in publishing;

- 4.4. To examine policy or legislative proposals likely to affect publishing in the Republic; and to take such measures in support of or in opposition to such proposals, and where appropriate to make representations with a view to securing amendments thereto as may be considered appropriate;
- 4.5. To liaise with representative international publishing organisations, and to promote the enactment and enforcement of effective legislation to protect copyright and other intellectual property rights, in order to secure the legitimate interests of authors, publishers and the general public;
- 4.6. To provide information, support and resources with reference to new technologies and publishing media, in order to enable South African Publishers to maintain their viability and competitiveness, and to advance the best interests of the publishing industry;
- 4.7. To organise and arrange participation by South African authors and publishers in competitions, exhibits, fairs, displays and other events organised to promote a culture of reading and excellence in writing and publishing in South Africa;
- 4.8. To provide general assistance and support services to South African Publishers, including training, workshops, seminars, and access to a statistical and informational database;
- 4.9. Generally, to promote the best interests of the publishing industry in the Republic and to do all such other things as may be reasonably ancillary thereto.

5. Statement of Beliefs

PASA members believe that they should act ethically in accordance with the following statement of beliefs and should avoid, resist and eliminate/refrain from the transgressions as outlined in Appendices 1, 2 and 3, specifically:

- 5.1 Avoid bringing the publishing industry into serious disrepute, by whatever means;
- 5.2 promote **literacy** and a **reading culture** in South Africa through the media of books and all relevant technologies;
- 5.3 foster writing talent in all sectors of society and in all South African languages;
- 5.4 foster a life-long love of reading for pleasure, knowledge and entertainment;
- 5.5 promote South African literature & books in and outside of the country;

- 5.6 foster good relationships with the wider publishing community locally, in Africa and the rest of the world;
- 5.7 support the wide distribution and availability of books of general interest within the country;
- 5.8 engage in activities which foster the growth and development of a **healthy, competitive and independent** South African publishing industry;
- 5.9 in all instances act in the best **interests of** the ongoing development and transformation of South African society;
- 5.10 maintain a relationship of mutual respect and trust with the departments of education and other role-players so that PASA is included where relevant in departmental structures as a valuable partner in education and the cultural industries;
- 5.11 have the right to be **competitively involved** in the business of creating books and learning materials;
- 5.12 be committed to the collation, management and dissemination of relevant industry statistics;
- 5.13 promote open and transparent procurement procedures;
- 5.14 develop quality products at competitive prices, taking account of social responsibility in fostering a healthy and sustainable educational materials market; and
- 5.15 actively support teachers in their endeavour to provide quality learning in their classrooms.

These statements of belief complement the Aims and Objectives as they appear in the previous paragraph.

Part II: Guiding Principles and Ground Rules for publishers working within the educational environment, and the PASA Education Sector Council with particular emphasis on the Roles and Functions of Education Executive (National) and Provincial bodies

1. Interrelationship between the *Guiding Principles and Ground Rules (Part II)* with the *Code of Conduct (Part I)*.

The Statement of Beliefs in Part I, *the Code of Conduct*, relates directly to this Part II, the *Guiding Principles and Ground Rules for the publishers involved in the educational environment*. The Guiding Principles & Ground Rules and the Code of Conduct apply to all members of PASA involved in educational or academic publishing. For avoidance of doubt, nothing in the Guiding Principles & Ground Rules or in the Code of Conduct may be interpreted to detract or curtail relevant regulations or codes of conduct that may apply to or bind civil servants. Moreover, where relevant, this Part II also binds and applies to the Trade, FET Colleges and Academic sector councils of PASA.

Disciplinary measures may be applicable if transgressions of the Statements of Belief, or the Guiding Principles & Ground Rules have not been resolved to the satisfaction of the committee formed from the Executives of the relevant sectors (refer to Annex 1), and as outlined in section 1.4, dealing with the complaints procedure preceding the possible convening of a Disciplinary Committee.

2. The Role and Function of the Education Executive:

- 2.1. To represent the publishing industry at a national level: to speak for PASA with a national voice.
- 2.2. To network on behalf of and build relationships at national level for the benefit of the whole industry.
- 2.3. As an informed structure, to strategize for the industry nationally.
- 2.4. To provide constant contact and liaison between publishers and the national education department.
- 2.5. To mandate action and allocate tasks.
- 2.6. To ensure the accurate, regular, unbiased and immediate relaying of information to PASA.

- 2.7. Education Executive members are required to:
- attend a minimum of two provincial meetings per year
 - accompany local structures to important meetings
 - inform on all national developments
 - give clear guidance on policy matters and the Code of Conduct
 - support the province in crisis.

3. The Roles and Functions of the Provincial Committee

- 3.1. To represent the national publishing industry at a provincial level.
- 3.2. To network on behalf of and build relationships for the benefit of the whole industry.
- 3.3. To provide constant contact and liaison between the publishers and education departments; to "activate" this two-way communication.
- 3.4. To provide advice to departments on the practicalities and feasibility of provisioning decisions insofar as they affect publishers.
- 3.5. To ensure the accurate, regular, unbiased and immediate relaying of information to members.

4. Guiding Principles and Ground Rules

- 4.1. The Education Executive should adhere strictly to the PASA Constitution and Code of Conduct and:
- 4.1.1 Represent the publishing industry at a national level: to speak for PASA with a national voice.
- 4.1.2 Network on behalf of and build relationships at national level for the benefit of the whole industry.
- 4.1.3 As an informed structure, strategize for the industry nationally.
- 4.1.4 Provide constant contact and liaison between publishers and the National Education Department.
- 4.1.5 Mandate action and allocate tasks.
- 4.1.6 Ensure the accurate, regular, unbiased and immediate relaying of information to PASA.
- 4.1.7 Ensure that Education Executive members:
- attend a minimum of two provincial meetings per year

- accompany local structures to important meetings
- inform on all national developments
- give clear guidance on policy matters and the Code of Conduct.

4.2 The Provincial Committees should:

- 4.2.1 Adhere strictly to the PASA Constitution and Code of Conduct.
- 4.2.2 Follow the procedures and principles outlined in this document and the Code of Conduct.
- 4.2.3 Act only within given mandates, including financial mandates.
- 4.2.4 Not commit PASA to financial liabilities.
- 4.2.5 Recognise and adhere to the principle of confidentiality. All internal PASA information or correspondence is to be kept confidential from outside parties unless a clear mandate has been given to communicate specific information.
- 4.2.6 Act in the collective interest of educational publishers and the publishing industry as a whole.

5. Provincial levels of Authority

Authority is delegated by PASA National, therefore any major decisions should be cleared with PASA National. "PASA National " may be interpreted in two ways: The Education Executive, and the National Executive, including the chairs of all of the interest groups, secretary, treasurer and chair.

The Provincial Committees are voted in by regional membership, while the Education Executive is voted in from nominations submitted nationally. Authority is thus vested in the national bodies, and is delegated to the provinces.

The distinction between 'in consultation with' (i.e. joint decision) and 'after consultation with' (i.e. independent execution) applies below.

Examples of Provincial Authority:

- 5.1) Provincial Committees may **not**
 - 5.1.1 Negotiate with departments on discounts.
 - 5.1.2 Commit the industry or particular publishers to sponsorship.

5.1.3 Fix deadlines or dates for submissions, orders, payments etc.

5.1.4 Speak on behalf of PASA National on national issues or those affecting the industry.

Given that these are sensitive issues, they must at all times be referred immediately to the Provincial Edex member – who in turn must consult immediately with the Edex Chair.

5.2) Provincial Committees may:

5.2.1 Organize local events, meetings etc.

5.2.2 Set up structures to facilitate improved relationships, effective exhibitions.

5.2.3 Represent PASA on regional bodies.

5.2.4 Allocate and effect portfolios at a provincial level.

5.2.5 Speak on behalf of PASA with respect to the aims and objectives of PASA, its perceived function, its constitution and its relationship with departments.

5.3) The Provincial Committee is expected to do the following on an ongoing basis:

5.3.1 Gather information on

- submission time-frames
- likely spend
- categories and levels of spend (e.g. schools, colleges and libraries)
- progress and distribution of catalogues
- requisition dates
- expected delivery time frames
- changes in top hierarchy
- all matters relating to provincial policy
- any pending legal action.

5.3.2 Communicate all of the above immediately – verbally and in writing – to the relevant Education Executive member. In the absence of an Edex member, this is to be copied to the Executive Director.

5.3.3 To develop and maintain effective relationships with key stakeholders.

6. Composition of the Committees & Frequency of Meetings

6.1 Composition of Education Executive:

The Education Sector Council should, when voting for the Education Executive -

- 6.1.1 Include senior members of the industry with understanding of the full context of publishing.
- 6.1.2 Include some of the provincial chairs.
- 6.1.3 Include 11 members: one chair and ten members who, in conjunction with the Chair of the Provincial Committee (or who is the Chair of a specific Provincial Committee) monitors the province, and acts as the liaison person for the Provincial Committee.
- 6.1.4 Ensure balance of representativity of companies without introducing quotas.
- 6.1.5 Balance experience with opportunities for leadership development.
- 6.1.6 Elect a Chair and Vice-Chair.
- 6.1.7 Ensure that the tenure of Chair and Education Executive members is within PASA's Constitution.

6.2 Composition of Provincial Committees, frequency of meetings:

Provincial Committees should:

- 6.2.1 try to include as many different publishers as possible.
- 6.2.2 try for a minimum of 5 members, including the Chair and Secretary, and optimally 8 members; provision is made to co-opt members.
- 6.2.3 meet as needed, but ideally bi-monthly.
- 6.2.4 meet before national quarterly meetings, to facilitate current report-backs.
- 6.2.5 include meetings open to any PASA members in the region, and ensure notification of national membership of all open meetings, and minutes.

7. Consequences if the Principles or Ground Rules are transgressed

Publishers should always try to present a positive image of the publishing industry. If the Constitution, Principles or Ground Rules, or Statements of Belief are transgressed, the disciplinary procedures outlined in the Code of Conduct will apply.

8. Conclusion:

Principles outlining the composition, role, functioning, responsibilities, and limits of authority of the Education Executive and Regional Committees are seen as necessary to ensure the effective and

accountable functioning of all publishers working within the educational environment, PASA structures and the current educational context in South Africa.

ANNEX 1

COMPLAINTS PROCEDURE, CONVENING OF DISCIPLINARY COMMITTEE, DISCIPLINARY PROCEDURE AND SANCTIONS

1. Complaints Procedure: Initial processes to be followed in cases of alleged transgressions

To ensure professional, fair and accurate identification of those transgressing the Code of Conduct, its Guiding Principles or Ground Rules, the following procedures should be instituted:

- 1.1. Should a member of the Publishers' Association of South Africa believe that there are serious grounds for laying a complaint against an individual or company, the complainant needs to submit a written complaint to the relevant sector chair; PASA's Chair and Executive Director. Where more than one sector is involved, the PASA's Executive Director will inform any other sector chair of the lodging of a complaint.
- 1.2. The complaint needs to comply with the following criteria:
 - 1.2.1 A substantive outline of the complaint.
 - 1.2.2 A motivation as to how the behaviour has transgressed the Code of Conduct.
 - 1.2.3 Relevant substantiation in the form of documentation, data and /or written & signed statements from witnesses.
- 1.3. Complaints may be lodged with PASA structures by:
 - 1.3.1 A company or group of companies.
 - 1.3.2 A Provincial Committee.
 - 1.3.3 An individual or group of individuals.
- 1.4. Process to be followed:
 - 1.4.1 The complainant is to lodge the complaint with the Chairperson of the involved sector, and also inform the Chairperson and Executive Director of PASA.

- 1.4.2 The Chairperson of the involved sector should, in consultation with the PASA Chair and one other member of the Executive Committee of PASA, nominated by the Chair of the involved sector decide whether to:
- 1.4.2.1 Refer back to the complainant, asking for additional information, or
 - 1.4.2.2 Decide that there is sufficient substance to take the matter further and to convene a disciplinary committee to consider the complaint. At this point, the Chair should notify the alleged transgressing company or companies; (even if involving an individual, the process of the Disciplinary Committee sitting will continue).
- 1.4.3 The disciplinary committee will hear the matter and determine the next steps. (See Disciplinary Procedure set out in paragraph 3.3 of this Annex 1)
- 1.4.4 Should any of the above office-bearers be employed by a company or companies against which complaint has been made or which is a complainant, then the said office-bearer is to declare a possible conflict of interest and refer the matter to the next level of authority in the relevant sector, failing which to the next level of authority in PASA's Executive Committee (e.g. a Vice-Chair of PASA or available GENCO member).

2. Applicable Transgressions

Should a publisher's representative or management or owner, or any PASA committee member participate in activities that have not been resolved satisfactorily or amicably in the course of the Complaints Procedure set out in Paragraph 1 above, the Disciplinary Committee shall hear the complaint, if the complaint substantiates that the alleged transgressors have engaged in conduct set out in paragraph 2.1 (read with Annex 2), paragraph 2.2, or paragraph 2.3, or if transgressions of the Guiding Principles & Ground Rules are alleged, in particular, where transgressions of the Guiding Principles or Ground Rules amount to unethical or anti-competitive conduct in the sense of unethically favouring a single publisher's interests (monopoly behaviour at the level of the sale, merger or acquisition of publishing houses falls outside the scope of this Code of Conduct, being governed by company law and the Competitions Act).

- 2.1. Bringing the publishing industry into serious disrepute, by whatever means – which may be seen to include any of the following actions or lack thereof:

- 2.1.1 Committing any corrupt act.
- 2.1.2 Spreading rumours or making or repeating spurious allegations against another publisher/their staff and/or departmental officials, without any factual basis or with the intention to mislead.
- 2.1.3 Maligning another publishers' product or good name.
- 2.1.4 Conducting business in a manner that is anti-competitive and/or damaging to the industry.
- 2.1.5 Repeatedly failing to publish product on time, or deliver according to reasonable departmental deadlines and expectations.
- 2.1.6 Unreasonably withholding credit from emerging businesses.
- 2.1.7 Disruption of teaching or learning activities.

Note: **Annex 2** to this Code of Conduct provides some **examples** of what might constitute “**corrupt acts**”, “**anti-competitive conduct**” and “**disruption of learning activities**”. The examples provided are necessarily a **non-exhaustive list**. Moreover, all concepts should also be read with the provisions 2.2 and 2.3 below (examples of manipulation and bribery) and against the background of applicable legislation, such as the **Prevention and Combating of Corrupt Activities Act**, 12 of 2004, and the **Competition Act**, 89 of 1998.

- 2.2 Manipulating departmental officials, or departmental procedures to their own unethical advantage. This may be seen to include any of the following:
 - 2.2.1 By deliberately providing misleading information or failing to disclose relevant information which failure would give rise to a misconception, in order to gain competitive edge, e.g. discarding official approved lists in favour of lists containing only the product of a particular publisher, and leading schools to believe that the abridged list is the official list; or any other technique to mislead schools into believing that a particular publisher's products are the only products approved.
 - 2.2.2 By gaining access to data-capturing officials in order to influence them in their company's favour.
 - 2.2.3 By offering school officials inducements to let the publishers' representatives fill in requisition forms; and
 - 2.2.4 By inducing key officials (like subject advisors who may also include authors) to abuse their positions of power by putting pressure on teachers to purchase books of a

particular publisher, more especially if the officials stand to gain financially by their intervention.

2.3 Bribery is not defined in terms of the size of any inducement. No matter how big or small, what makes an inducement "bribery" is the attempt to cause an illegal or dishonest action by offering the inducement. In other words, it is the expected action that makes something a bribe, not the size of the inducement. Bribery may be seen to include any of the following:

2.3.1 Offering officials in charge of product approval a percentage of the profits or a lump sum, or a percentage of the royalties in order to place a prescribed book or textbook on an approved list.

2.3.2 Offering officials in charge of product approval an inducement *not to approve* a competitor's product.

2.3.3 Offering officials *in charge of purchasing* an inducement to purchase quantities of books other than those ordered by schools.

2.3.4 Offering officials in charge of purchasing an inducement to bypass the usual decision-making/ordering processes, in favour of ordering large quantities of any particular publisher's books.

2.3.5 Offering officials an inducement not to buy a specific kind of product and thus harm competitors, e.g. not to buy integrated products if a company does not have integrated products.

2.3.6 Offering officials an inducement to give a publisher information of a confidential and/or time-sensitive nature that will allow the publisher an unfair competitive advantage, and by ensuring that these officials purposefully withhold such information from other publishers.

2.3.7 Offering decision-makers at school level, inducements to allow publishers' representatives to fill in requisition forms on behalf of a school, so as to favour a particular publisher's product and,

2.3.8 Offering subject advisors inducements to abuse their position by persuading and/or pressurising teachers to purchase any particular publisher's books.

2.3.9 Tampering with catalogues, ordering procedures or final lists.

- 2.3.10 Dominating the printing, advertising and distribution of official departmental catalogues - in order to favour a single publisher's products - by seeking exclusive advertising or sponsorship opportunities through unethical means like bribery.
- 2.3.11 Appearing not to accept any responsibility for the irregularities perpetuated by staff, or
- 2.3.12 Undermining the publishing industry in any way which could include:
- 2.3.13 Threatening to destroy the publishing industry by attempting to become the exclusive provincial or state publisher.

Then, should a complaint be lodged linked to any of the above transgressions, the constituted Disciplinary Committee, will lodge a formal complaint with the identified organisation or individual, outlining its concerns, and naming the parties who have transgressed the Guiding Principles, Ground Rules or Statements of Beliefs.

3. Disciplinary Committee: Composition, Independence, Disciplinary Procedure

3.1. Composition: the Disciplinary Committee will comprise of three persons as follows:

- 3.1.1 An independent third party nominated by the Chairperson of PASA;
- 3.1.2 The chair of the relevant sector; and
- 3.1.3 A senior representative of another PASA member company which is nominated by the foregoing two members of the Disciplinary Committee

3.2. Independence: The Disciplinary Committee members may not:

- 3.2.1 Be involved in the current alleged transgression, or
- 3.2.2 Be employed by a Company that is alleged to have broken the Code of Conduct, or
- 3.2.3 Be employed by a Company whose staff member/s are alleged to have broken the Code of Conduct, or
- 3.2.4 Include any personnel from the company/companies laying the complaint.

3.3 Procedure of Disciplinary Committee –

In deciding on its own disciplinary procedure, the Disciplinary Committee is to:

- 3.3.1 Ensure that the principles of transparency, confidentiality, clarity and fairness apply at all times.
- 3.3.2 Ensure that those making the allegations and participating in the investigation do so in a responsible manner, where allegations can be substantiated with sound facts, and where those who appear to be supporting the allegations are prepared to commit themselves to the investigation.
- 3.3.3 Request PASA's Executive Director to assist with any correspondence, provision of venue for a hearing, creating a record of proceedings, logistics, etc.
- 3.3.4 Institute a hearing where all parties will be able to defend themselves against any allegations, providing at least five business days' notice to all parties (complainants and defendants). Parties should notify the Disciplinary Committee of their intention to call upon legal counsel to be present at any hearing.
- 3.3.5 Ensure that any allegation brought before the Disciplinary Committee is thoroughly substantiated and all parties are accorded a fair hearing with an opportunity to rebut and test evidence by way of cross-examination. The Disciplinary Committee will make its findings of fact on a preponderance of probabilities standard.
- 3.3.6 Arrive at a determination by consensus.
- 3.3.7 Ensure that procedures follow normal disciplinary practice analogous to labour legislation. The procedures and practices may also include the following mechanisms, depending on the alleged transgression and whether it is attributable to an individual employed at or to a PASA member company:
 - 3.3.8 If the Disciplinary Committee deems the offence to be at the level of an individual rather than a company:
 - 3.3.8.1 They will approach the MD/CEO of the publishing company in question and ask for an explanation, apology (where applicable), and undertaking - in writing - that the transgression will not occur again.
 - 3.3.8.2 and if the matter is not satisfactorily dealt with at company level, the Disciplinary Committee will reconvene to take the matter further.
- 3.3.9 In the event of the perceived transgression being at company level:

- 3.3.9.1 Action against an individual will be deemed to be making a complaint against the employee's company.
- 3.3.9.2 If the perceived transgressing company refuses to comply with procedure or attend a hearing, there will be no hearing, and the matter will be referred to GENCO which will make the decision as to the appropriate action to be taken (depending on seriousness of offence, there may be suspension of the perceived transgressing company for a certain period).
- 3.3.9.3 If the transgressing company attends the hearing and is found to have breached the Code of Conduct, Disciplinary Committee will refer to remedies and sanctions; the company has the right to appeal against the findings or the sanctions within 30 days of receiving a written confirmation of Disciplinary Committee's findings and sanctions, provided that Disciplinary Committee's findings may only be appealed on questions of correct application of the Code of Conduct or in the event of gross errors in the determination of material facts underlying the findings. An appeal limited to the question of sanctions lies for any reason, and is not limited to the question of correct application of the Code of Conduct or gross errors in factual determinations.
- 3.3.10 In the case of an appeal, a separate Appeals Body will be constituted to preside over an appeal process which will follow the same format as the original hearing. The Appeals Body of five shall be nominated and constituted by the Chairperson of PASA and may include representatives of any of the PASA sectors, as well as an independent chair. The decision of this body will be deemed final.

4. Remedies and/or Sanctions

The Disciplinary Committee may:

- 4.1 Notify relevant or affected Education Departments of Disciplinary Committee's final determination and sanction and, where applicable, enable them to take appropriate action against the involved company, individual and/or department official (if any).
- 4.2 Request a publishing house to hold an investigation against the individual allegedly implicated in the matter.

- 4.3 Fine a PASA member in proportion to the alleged transgression/offence, the transgression/offence proven, or as a deterrent against repeated transgressive behaviour (size of fine to be determined by Genco).
- 4.4 Reprimand or otherwise censure the company/individual by letter or at a PASA General Assembly.
- 4.5 Suspend membership temporarily or permanently.
- 4.6 Withdraw PASA membership benefits.
- 4.7 Determine whether a civil or criminal case may be feasible, and advise complainants accordingly; and
- 4.8 Ensure feedback to the membership.

For avoidance of doubt, none of the remedies and sanctions curtails or limits applicable legislation imposing sanctions or duties to report findings of fact under applicable laws.

5. Conclusion

The need for and adherence to the Guiding Principles, Ground Rules and Code of Conduct are recognised as imperative to maintain and promote the integrity of the publishing industry.

ANNEX 2

Additional information on concepts and definitions used in the Code of Conduct

(ANNEX 1, Paragraph 2.1 “Applicable Transgressions”)

1. A Corrupt Act under the Code of Conduct includes Bribery (examples listed under G.2 of the Code of Conduct) but must also be read in conjunction with the Prevention and Combating of Corrupt Activities Act: 12 of 2004 (as amended). Under this act there is an obligation on the part of persons in authority to report any act of corruption of which they may have knowledge if the value exceeds R100,000. Failure to report such activities is a criminal offense.
2. A Corrupt Act or bribery may also involve the following activities, if no appropriate policy or process has been put in place by the PASA member in question:
 - 2.1 Payments to officials: this includes payments to the official him or herself, or to persons connected to such persons or by associated persons of the PASA member and need to be assessed in advance as to legality and value.
 - 2.2 Gifts and hospitality: A PASA member organisation should have a policy on the receipt and provision of gifts and hospitality; under the policy, reasonable, proportionate and bona fide hospitality or promotional expenditure may be an established part of business. Gifts and hospitality should be recorded on a central register where the value falls above a certain threshold and the register should be checked regularly by Top Level Management.
 - 2.3 Promotional expenditure involving public officials: promotional expenditure will usually be acceptable, if managed and reviewed and found to be limited to transparently reported, reasonable and bona fide expenditure. Policies and procedures must reflect the assessed risk.
 - 2.4 Sponsorship and donations: sponsorship to departments or to political parties needs to be strictly guided by policy and, where appropriate, amounts should be tied or ring-fenced to intended and specified purposes.

3. Anti-competitive Practices

These include but are not limited to:

- 3.1 Publishers' representatives accepting inducements from retail shops in order to channel business to specific retailers and giving the inducing bookshop an unfair/unethical advantage.
- 3.2 Deliberately providing misleading information, in order to gain competitive edge, e.g. discarding official approved lists in favour of lists containing only the product of a particular publisher, and leading schools to believe that the abridged list is the official list; or any other technique to mislead schools into believing that a particular publisher's products are the only products approved.
- 3.3 Gaining access to data-capturing officials in order to influence them in their company's favour.
- 3.4 Offering school officials inducements to let the publishers' representatives fill in requisition forms and,
- 3.5 Inducing key officials (like subject advisors who may also include authors) to abuse their positions of power by putting pressure on teachers to purchase books of a particular publisher, more especially if the officials stand to gain financially by their intervention.
- 3.6 Dominating the printing, advertising and distribution of official departmental catalogues - in order to favour a single publisher's products - by seeking exclusive advertising or sponsorship opportunities through unethical means like bribery.

4. Activities which disrupt learning: These include but are not limited to:

- 4.1 Requesting teachers to leave their classes where they are actively engaged in teaching to attend a product presentation.
- 4.2 Arranging training workshops that take place during class time or that result in teachers leaving their classes.

PASA COMPETITION GUIDELINES

adopted by the Annual General Meeting of the General Assembly of the Publishers' Association of South Africa (PASA) on 29 August 2018

Introduction

PASA is a voluntary association of South African publishers, the largest publishing industry body in South Africa. As an industry association, its members compete with each other in participating in the national economy, but are bound by PASA's own rules and the law not to act in a manner that is anti-competitive.

PASA has a number of objects and aims, the first listed in its constitution being to promote and protect the rights and responsibilities of the independent publishing sector in South Africa. It represents the industry in submissions to and negotiations with Government legislators and other relevant public and private bodies in matters affecting South African publishers.

Its objects also include providing information, support and resources about new technologies and publishing media, to enable South African publishers to maintain their viability and competitiveness, and to advance the best interests of the publishing industry, and generally, to promote the best interests of the publishing industry in South Africa.

In terms of its constitution, PASA has a Code of Conduct for its members intended to enhance professionalism and to maintain confidence on the publishing industry, without constraining the commercial and innovative aspects of the publishing business or interfering with the publishing market in which PASA's members operate (clause 1). To this end, anti-competitive practices are transgressions under the Code of Conduct (clause 2, as read with Annex 2 para. 3), and each member has the right to be competitively involved in the business of creating books and learning materials (clause 5.11) and to develop quality products at competitive prices, taking account of social responsibility in fostering a healthy and sustainable market for educational materials (clause 5.14).

South Africa's competition law is regulated by the Competition Act, no 89 of 1998 (the "Act"), which is concerned amongst other things with restraining trade practices which compromise a competitive economy and establishes the Competition Commission. The Act is supplemented by non-binding guidelines which the Competition Commission may issue to indicate its policy approach to any matter which is within its jurisdiction it terms of the Act.

At the time of the adoption of PASA's Competition Guidelines, the Competition Commission was deliberating Guidelines which would deal with industry associations, provisionally entitled "Guidelines on the Exchange of Information between Competitors under the Competition Act."

PASA has adopted these Competition Guidelines as an Appendix to complement its Code of Conduct.

Responsibility for compliance with competition law

- One of the main purposes of competition law is to prevent collective action by competitors to undermine a competitive economy. In the Act, these are referred to as 'restrictive horizontal practices.'
- The Competition Commission has wide-reaching powers to investigate businesses and industries, with or without a complaint being lodged with them.
- Breaches of competition law are widely publicised and can lead to negative publicity for all involved.
- The consequences for non-compliance are severe, both for juristic persons and for individuals. A company can be fined up to 10% of its turnover together with exports from South Africa for each year in which a competition law infraction occurred. Individuals in positions of authority (directors or managers) can also face personal criminal liability if they -
 - caused the firm to engage in cartel conduct (price fixing, market division or collusive tendering between competitors); or
 - had knowledge of but turned a blind eye to the firm engaging in cartel conduct.
- Individuals can receive a fine of up to R500 000 or 10 years' imprisonment for an infraction of the above nature.
- The Competition Commission is aware that there is uncertainty about when exchanges of information between competitors within an industry association are permissible or not in terms of section 4 of the 1998 (constraining 'restrictive horizontal practices', such as collusion between businesses that should be competitors)

What types of conduct are of concern?

An industry association should be particularly careful with regards to:

- Cartel behaviour
 - Cartels are considered to be the most serious types of anti-competitive agreements, where two or more businesses agree (whether in writing, verbally, through conduct or otherwise) not to compete with each other.
 - These include agreements between competitors to fix purchase or selling prices (or any portion of such prices such as rebates, discounts and the like), engage in bid rigging, limit production, and to share or divide customers or markets.
 - Seemingly coordinated conduct between competitors can lead to complaints or to the Competition Commission initiating an investigation.
- Disclosure/exchange of sensitive information
 - Information exchange between competitors is viewed suspiciously, as it can lead to cartel behaviour and/or alignment of market strategy. It also disadvantages those who are not party to the discussions.
 - The concern about information exchange does not only relate to official industry body meetings, but also to informal interactions between competitors and their representatives.

Legitimate activities

Legitimate activities of an industry association include the following kinds of political activity:

- Approach legislatures and government agencies responsible for policy decisions and implementing legislation to ascertain their intended course of action.
- Obtain industry reaction to any such proposed legislation or regulation and present these reactions to governmental bodies to point out problems or suggest changes.
- Gather information to support PASA's positions with regard to proposed legislation or regulation, but do not exchange confidential, competitive information. (To the extent such information is important for presentation, a third party may be permitted, under appropriate procedures, to gather such information and present it in proper form without disclosing individual members' information.)
- Seek legislative changes.
- Work with government bodies in reviewing the effectiveness of existing legislation or regulation in order to identify problem areas and to suggest improvements, provided that such efforts are not designed to, and do not produce anti-competitive effects.

Economic information on the publishing industry collected through initiatives supported by PASA must be managed by an independent third party under an appropriate obligation of confidentiality so that the resultant report contains information that is aggregated and anonymised. Generally, information provided by an industry association that is aggregated nationally, with limited forms of disaggregation allowed (but not per supplier or per customer), and delayed annually or quarterly, is not problematic from the perspective of competition law.

Conduct to be avoided

Information that cannot be shared or exchanged includes:

- How a specific company intends to operate its business in the future.
- Pricing, including level and timing of price increases, discounts, rebates, etc.
- Costs, such as those relating to printing and distribution.
- Terms and conditions agreed with suppliers or customers and any changes to these.
- Market strategy, including new ways of working.

The following kinds of *exchanges of information between members must be avoided*:

- Any form of conduct from which it may be argued that members discussed or agreed to fix purchase or sales prices or engaged in concerted behaviour on prices.
- Allocation of customers, products or territories or to boycott customers, suppliers and vendors.
- Conduct from which it may be argued is an attempt to prevent any person or entity from gaining access to any market, customer or territory.
- Confidential or non-public information regarding the development or the release of new products or services.
- Limiting the development and innovation of certain new products or services.

On interacting with government and government agencies, ***an industry association must avoid influencing:***

- decisions of governmental bodies or agents when acting in a purely commercial, as opposed to a policy, capacity
- enforcement of legislation or regulations when such enforcement is dependent upon false information provided by the joint effort
- courts or administrative agencies when the maintenance of repetitive, unfounded actions, rather than the ultimate judicial decision, will foreclose competitors from access to the forum and cause them prejudice
- governmental action by employing coercive tactics or threats to gain favourable results; or
- governmental action - especially judicial-type proceedings (in courts or agencies) - by any form of misrepresentation.

Practical steps to facilitate compliance

The risk of anti-competitive behaviour by participating in an industry association can be mitigated by taking these practical steps in the conduct of meetings of members and committees:

- Circulate a written agenda in advance and ensure it does not include sensitive topics.
- The chair of every meeting opens the meeting with the following statement:
PASA is committed to complying with the Competition Act of 1998. If a discussion occurs that any member believes involves competitively sensitive information or might raise issues under the Act, that member should interrupt to point out their objections and to request that the conversation cease and leave the meeting if it does not.
- Avoid off-agenda topics.
- Do not disclose or discuss information about individual companies that is competitively sensitive, and do not solicit this type of information from others.
- Where appropriate in the light of the topic of a given meeting or otherwise where practicable, have legal counsel attend the meeting to prevent the discussion of sensitive information and to make an accurate, agreed record of the meeting.
- Raise concerns quickly.
- Pay attention – before disclosing commercially sensitive information or agreeing to any proposed common course of action or a recommendation for a common strategy be very sure it does not create risks.
- Ensure that each entity makes its decisions in the competitive domain independently.

The following can be discussed at industry association meetings:

- Public information about market developments.
- The state of the industry or industry trends.
- Technical standards.
- Data compiled by independent third parties where such data is compiled annually or quarterly in arrears, has been aggregated nationally, and, to the extent disaggregated, only in manners

permitted by competition law, and provided in an anonymised format where the confidential information of individual competitors or of individual customers cannot be identified.

- A joint approach to legislative proposals or advocacy.

Conclusion

These PASA Competition Guidelines are directed at the relationships between members of PASA in participating in PASA's activities. Individual members should consider adopting a policy of their own. These Guidelines are no substitute for individual members' compliance.