



# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

## HEAD OFFICE

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## NATIONAL MAIN COLLECTIVE AGREEMENT

### PART E: PROVISIONS FOR THE NORTHERN REGION (KNITTING)

Herewith follows the preamble and Part E of the Agreement published under Government Notice No R.1154 in Government Gazette No 28280 of 15 December 2005, as Amended, Extended, Re-Enacted, Corrected and Renewed as per the Government Notices below:

<b>Amended/Extended/Re-Enacted/ Corrected/Renewed</b>	<b>Government Notice</b>	<b>Government Gazette</b>	<b>Date of Publication</b>
Correction Notice	R.647	28976	07.07.2006
Renewed from 08/09/06 to 31/08/07	R.884	29174	08.09.2006
Cancellation Notice	R.1078	29332	03.11.2006
Re-Enacted, Amended & Extended further to 31/08/08	R.1079	29332	03.11.2006
Correction Notice	R.1232	29434	08.12.2006
Renewed from 14/09/07 to 31/08/12	R.844	30276	14.09.2007
Cancellation Notice	R.1052	30443	09.11.2007
Re-Enacted, Amended & Extended further to 31/08/12	R.1053	30443	09.11.2007
Cancellation Notice	R.582	31084	30.05.2008
Amended	R.583	31084	30.05.2008
Cancellation Notice	R.1008	31434	19.09.2008
Re-Enacted, Amended & Extended	R.1009	31434	19.09.2008
Cancellation Notice	R.214	33040	19.03.2010
Re-Enacted, Amended & Extended	R.215	33040	19.03.2010
Cancellation Notice	R.1219	33893	24.12.2010
Re-Enacted, Amended & Extended	R.1220	33893	24.12.2010

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### DISCLAIMER

Whilst every care has been taken to ensure that this Consolidated Agreement is accurate in all respects, the Council does not accept responsibility for any inaccuracy or deviation from the original text of the Agreements as published under the Government Notices listed on the front cover of this document.

The text of the agreement, amendments thereto and correction notices where applicable, as published in the abovementioned Government Notices are binding in terms of each thereof.

### REGIONAL CHAMBERS:

#### CAPE

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#### KWAZULU NATAL

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**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY  
NATIONAL MAIN COLLECTIVE AGREEMENT  
PART E: PROVISIONS FOR THE NORTHERN REGION (KNITTING)**

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## **GOVERNMENT NOTICE**

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**DEPARTMENT OF LABOUR**

**No. R. 1154**

**15 December 2005**

**LABOUR RELATIONS ACT, 1995**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING  
INDUSTRY: EXTENSION TO NON-PARTIES OF NATIONAL MAIN  
COLLECTIVE AGREEMENT**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 19 December 2005 and for the period ending 31 August 2006.

**M M S MDLADLANA  
Minister of Labour**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**

**NATIONAL MAIN COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

Cape Clothing Association

Consolidated Association of Employers of Southern Africa Region

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

Natal Clothing Manufacturers' Association

Northern Decentralised Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisations")  
of the one part, and the

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"),  
of the other part, being the parties to the National Bargaining Council for the  
Clothing Manufacturing Industry.

## **1. SCOPE OF APPLICATION**

- (1) The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

Part G Provisions for the Western Cape Region (Country Areas)

Part H Provisions for the Western Cape Region (Knitting)

Part I Provisions for the Non-Metro Areas

- (b) by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.
- (2) Clauses 1 (1) (b), 2 and 3 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and the trade union respectively.

## **2. PERIOD OF OPERATION OF THIS AGREEMENT**

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 31 August 2013. This Agreement shall bind the Parties and their members and shall remain effective beyond the expiry date determined by the Minister or until the Parties agree otherwise.

## **3. SPECIAL PROVISIONS**

The provisions contained in clause 11.1 (1) and (5), 14.4B and 14.6(5) of Part A; clauses 19B, 23A (1) and (5) and 34 (5) of Part B; clauses 4 (5), 23B, 27 (1) and (4) and 38 (5) of Part C; clauses 19B, 22(5), 25 (1) and 26A (1) and (2) of Part D; clauses 13A(1) and (2), 16B and 28(5) of Part E; clauses 11(4)(b), 14(1) and (5), 19B, 26(13)(a) to 26(13)(g)(v) and 37(5) of Part F; clauses 11 (4) (b), 14 (1) and (5), 19B, 26 (13) (a) to 26 (13) (g) (v) and 37 (5) of Part G; clauses 11 (4) (b), 14 (1) and (5), 19B, 26 (13) (a) to 26 (13) (g) (v) and 37 (5) of Part H and clause 34 (5) of Part I of the Agreement published under Government Notices Nos. R. 1154 of 15 December 2005, R. 884 of 8 September 2006 and R. 844 of 8 September 2007 (hereinafter referred to as the "Former Agreement"), as further amended, extended and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

## **4. GENERAL PROVISIONS**

The provisions contained in clauses 3 to 10, 11.1 (2) to (4), 11.2 to 14.4A, 14.5 to 14.6 (4) and 14.6 (6) to 18 of Part A; clauses 3 to 19A, 20 to 22, 23A (2) to (4), 23B to 34 (4) and 34 (6) to 38 of Part B; clauses 3 to 4(4), 4(6) to 23A, 24 to 26, 27(2) and (3), 27(5) to 38(4) and 38(6) to 41 of Part C; clauses 3 to 19A, 20 to 22 (4), 22 (6) to 24, 25 (2) to (12) and 26A (3) to 29 of Part D; clauses 3 to 12, 13A (3) to 16A, 17 to 28 (4) and 28 (6) to 33 of Part E; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of Part F; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of Part G; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of part H; clauses 3 to 34 (4) and 34 (6) to 42 of

Part I of the Former Agreement (as further amended, extended and re-enacted from time to time), shall apply to employers and employees.

Original Agreement signed at CAPE TOWN on behalf of the Parties the 14th day of SEPTEMBER 2005. Latest amendments signed on 24 December 2010.

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**D ARENDS**  
Chairperson

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**F OOSTHUYSEN**  
Vice-Chairperson

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**S D NDUNA**  
General Secretary

**PART E : PROVISIONS FOR THE NORTHERN REGION (KNITTING)****1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Knitting Industry, and by all employees who are members of the trade union and who are employed in the Industry;
- (b) in the Magisterial Districts of Alberton, Benoni, Germiston, Johannesburg and Roodepoort as well as only those portions of the City of Tshwane, including only those portions of the Southern Pretoria Metropolitan Substructure, the Central Pretoria Metropolitan Substructure and the Northern Pretoria Metropolitan Substructure established in terms of the Premier of the Province of PWV Proclamation No 38 of 1994 published in Provincial Gazette Extraordinary No 5064 of 8 December 1994 as amended by the Premier's Notice No 43 of 1995 published in Provincial Gazette Extraordinary No 66 of 1 September 1995, which previously made up the 'municipal area of Pretoria' as such existed immediately prior to the establishment of the Transitional Metropolitan Council with Transitional Metropolitan Substructures in respect of the Greater Pretoria Metropolitan Area published under aforementioned Proclamation No 38 of 1994.
- (2) Clauses 1 (1) (a), 2, 13A(1) to (3) and (5), 16B and 28(5) of this part of the Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.
- (3) The Table of contents of this Part E of the Main Collective Agreement are as follows:

<b>CLAUSE NO:</b>	<b>DESCRIPTION</b>
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT .....
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT .....
3.	DEFINITIONS .....
4.	REMUNERATION.....
5.	PAYMENT OF AMOUNTS DUE TO EMPLOYEES .....
6.	HOURS OF WORK.....
7.	OVERTIME AND SUNDAY WORK.....
8.	ANNUAL LEAVE AND PAID HOLIDAYS .....
9.	TERMINATION OF EMPLOYMENT .....
10.	ENGAGEMENT IN EMPLOYMENT .....
11.	COUNCIL FUNDS .....
12.	EXTRACTS FROM WAGE REGISTERS .....
13.	TRADE UNION LABOUR .....
14.	PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR .....
15.	REGISTRATION OF AN EMPLOYER .....
16.	EXEMPTIONS .....

17.	POWERS OF DESIGNATED AGENTS .....
18.	FIXED-TERM CONTRACTS .....
19.	MEDICAL BENEFIT SOCIETY.....
20.	SICK PAY FUND .....
21.	SHORT TIME.....
22.	KNITTING INDUSTRY PROVIDENT FUND (NORTHERN AREAS).....
23.	SAFEGUARD OF WORKERS' EARNINGS .....
24.	SEVERANCE PAY .....
25.	OVERALLS.....
26.	AGENCY SHOP: EMPLOYERS' ORGANISATION .....
27.	PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT .....
28.	DISPUTE PROCEDURE .....
29.	EXHIBITION OF AGREEMENT .....
30.	INDUSTRY PROTECTION FUND.....
31.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION.....
32.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING .....
33.	PRODUCTIVITY .....
34.	HIV/AIDS .....
35.	CONTRACT EMPLOYEES .....
36.	WORKING IN ARRANGEMENTS .....

## 2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

## 3. DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, any reference to an Act shall include any amendment of such Act, and unless the contrary appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa; further, unless inconsistent with the context-

**"Act"** means the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended.

**"agency shop"** means the compulsory payment of a monthly levy by non-party employers, calculated in terms of clause 26 (3);

**"boiler attendant"** means an employee who, under general supervision, maintains the water level and steam pressure of a boiler and who may make, maintain or draw the fire in such boiler, and who removes ashes;

**"casual employee"** means an employee who is employed by the same employer on not more than three days in any week and for not more than eight weeks in any year;

**"colouring mass-measurer"** means an employee who, under the supervision of a dyer, is responsible for the mass-measuring of dyestuffs and chemical byproducts;

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a Council which amalgamated to form the Council, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

**"continuous service"** means, without restricting the ordinary meaning of the phrase, all periods of employment with the same employer and includes any kind of leave due in law or agreed to between an employee and his employer: Provided that any periods of employment with the same employer interrupted by a period of unemployment resulting from retrenchment of less than one year shall be deemed continuous;

**"Council"** means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

**"cutter or shaper"** means an employee who is engaged in cutting fronts, backs and/or sleeves of a fully-fashioned garment and/or trimmings, and marking and/or cutting attachments, points of necks and/or armholes and/or trimmings and who may use a template for this purpose;

**"despatch clerk"** means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

**"despatch packer"** means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

**"driver of a motor vehicle"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

**"dyer"** means an employee who is responsible for and engaged in dyeing and/or other finishing processes and who decides on the nature, mass blending and application of the dyes or other chemicals to be used;

**"dyer's assistant"** means an employee who, under the supervision of a dyer, is responsible for the mixing of colours and/or formulae and who may attend or operate the machines used in the dyeing and finishing processes;

**"employee"** includes all those employees who fall within the jurisdiction of the Council;

**"employee not elsewhere specified"** means any person who is employed in the Knitting Industry for whom wages are not specified in clause 4 (1)(a) (i)-(xvii), but excludes any person who works in an office;

**"employer"** means any person who employs or provides work for any person who is employed within the Knitting Industry;

**"experience"** means the total period or periods of employment which an employee has had in his class of work in the Knitting Industry or similar work in the Clothing and Textile Industries and allied industries;

**"factory clerk"** means an employee who is engaged in any one or more of the following duties:



- (a) Checking attendance records or recording particulars of employees at work or absent from work, collating time cards and/or envelopes;
- (b) checking or recording production control; and
- (c) recording particulars of waste;

**"fixed-term contract employee"** means an employee who is employed on a full-time basis for a predetermined fixed period or until the completion of a specific short-term task;

**"floorwalker/runner"** means an employee who is engaged in carrying garments or parts of garments from one place to another within the workplace;

**"foreman or forewoman"** means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his care in the workplace or a department of the workplace;

**"fully-fashioned garments"** means garments whose form or body, or body and sleeves, or sleeves and back and front are fully shaped on a knitting machine;

**"general worker"** means an employee who is engaged in one or more of the following activities:

- (a) Carrying, moving, stacking or unpacking goods or other articles;
- (b) cleaning or washing premises;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) gardening work;
- (e) lime-washing or colour-washing buildings, or other structures;
- (f) loading or unloading;
- (g) making or maintaining fires, or removing refuse or ashes; and
- (h) opening or closing or unpacking or strapping cartons, boxes, bags and other containers;

**"half-year"** means the six-monthly periods commencing on the first day of January and/or July;

**"handyman"** means an employee, other than a knitting machine operator, mechanic or mechanic's assistant, who is engaged in making minor repairs and adjustments to machinery, plant, building and other equipment;

**"head warper"** means an employee who exercises control and supervision over two or more warpers;

**"hourly wage"** means, in the case of an employee, the weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class;

**"Knitting Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the term, the industry in which employers and their employees are associated for the purpose of manufacturing hosiery and fully-fashioned garments and/or any part thereof by means of a knitting process and includes the marking-in or cutting of such garments and/or all succeeding processes or operations performed in connection therewith but excludes:

- (i) the marking-in or cutting of, and all succeeding processes or operations performed in connection with, all classes of garments other than fully-fashioned garments;
- (ii) the manufacture of any article of wearing apparel by any employer from knitted fabrics not manufactured by himself; and
- (iii) the manufacture by any employer or trimmings for use by such employer in the making of any wearing apparel from fabrics not produced by himself;

**"knitting machine operator"** means an employee who is engaged in changing needles, sliders and sinkers, straightening tricks, including chain and card control, and running on after press-offs, but excludes the resetting of the machine and pattern changing;

**"linker"** means an employee who is engaged in operating a linking machine used for the purpose of toe-closing in osiery and/or joining parts of a fully-fashioned garment and/or attaching trimmings to a fully-fashioned garment or parts of a garment;

**"mechanic"** means an employee who is engaged in the operation, maintenance, rebuilding and refitting of knitting machines and other machines used in the Knitting Industry and who is also proficient in pattern designing and making;

**"mechanic's assistant"** means an employee who, in addition to performing the duties of a knitting machine operator, is engaged in the resetting of machines, including pattern drum, pattern wheel and jacquard set-outs, and, under the supervision of a mechanic, carrying out minor repairs and generally stripping and assembling machines;

**"medical practitioner"** means a person entitled to practise as a medical practitioner in terms of the Medical Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

**"mender"** means an employee who is engaged in repairing knitting faults in fabric, garments, blanks and/or hosiery;

**"night work"** means work performed after 18:00 and before 06:00 the next day;

**"normal shift worker"** means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

**"old age"** means 60 years of age;

**"operational requirements"** means requirements based on the economic, technological, structural or similar needs of an employer;

**"ordinary hours of work"** means 42½ hours per week of five days and in respect of a watchman, 45 hours in any one week;

**"overtime"** means the time that a employee works during a day or a week in excess of the ordinary hours of work;

**"parcel maker"** means an employee who is engaged in closing and/or sealing parcels and cartons prior to despatch and delivery;

**"part-time driver of a motor vehicle"** means an employee who is ordinarily engaged on duties other than driving a motor vehicle but who, on more than two days in any week, is engaged in driving a motor vehicle for not more than three hours in the aggregate of any such day, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver while in charge of the vehicle, on work in connection with the vehicle or the load;

**"plain sewer"** means an employee who performs one or more of the following operations by hand:

Fastening edge-stays and odds and ends of sewing; sewing on buttons; hand knitting and/or hand crocheting; and all hand sewing not elsewhere specified;

**"pre- or post-boarder or former"** means an employee who is engaged in placing hosiery and/or garments on forms and subsequently removing them;

**"qualified employee"** means, in the case of an employee referred to in clause 4 (1) (a) (ii), (iv) and (v), an employee who has had not less than five years' experience; in the case of an employee referred to in clause 4 (1) (a) (ix), an employee who has had not less than three years' experience; in the case of an employee referred to in clause 4 (1) (a)(iii), (viii), (x) and (xiv), an employee who has had not less than two years' experience; and in the case of an employee referred to in clause 4(1) (a) (xvii), an employee who has had not less than one and a half years' experience;

**"Regional Chamber"** for the purposes of this part of the Agreement, means the Northern Chamber [formerly the Knitting Industry Bargaining Council (Northern Areas)] of the Council;

**"seamer"** means an employee who is engaged in joining seams in hosiery by means of a seaming machine;

**"security officer"** means an employee who is in charge of staff engaged in guarding the safety of premises and/or the property of the workplace, and who may be in charge of searching staff and who carries out such security work as may be assigned to him by the management;

**"set leader" or "team leader"** means an employee who is in a set or team and who is generally responsible for the work executed by the employees comprising such set or team;

**"sewing machinist"** means an employee who is engaged in operating a sewing machine using a needle and thread;

**"short time"** means a temporary reduction in the number of ordinary hours of work owing to slackness of trade or shortage of raw materials;

**"sorter and/or grader"** means an employee who is engaged in sorting and/or grading hosiery into pairs according to length and size and/or sorting trimmings, materials and/or parts of fully-fashioned garments;

**"storeman"** means an employee who is in general charge of stocks of incoming goods or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse or delivering goods from a store or warehouse to the consuming departments in the workplace or for despatch;

**"store clerk"** means an employee who is employed in the store or warehouse of the workplace under the general supervision of a storeman and who is engaged in the general handling of goods in the workplace, but does not include a general worker;

**"supervisor"** means an employee who, under the supervision of a foreman and/or manager, is in charge of a group of employees;

**"trade union representative"** means a member of a trade union who is elected to represent employees in a workplace;

**"trainee"** means, in the case of an employee referred to in clause 4(1) (a) (ii), (iv) and (v), an employee who has had less than five years' experience; in the case of an employee referred to in clause 4 (1) (a)(ix), an employee who has had less than three years' experience; in the case of an employee referred to in clause 4 (1) (a) (iii), (viii), (x) and (xiv), an employee who has had less than two years' experience; and in the case of an employee referred to in clause 4 (1) (a) (xvii), an employee who has had less than one and a half years' experience;

**"traveller's assistant"** means an employee who, under the supervision of a traveller, is engaged in such tasks as may facilitate the execution of the work of the traveller, but does not include the driving of a motor vehicle;

**"twilight shift"** means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

**"twilight shift worker"** means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

**"union with the majority membership in the workplace"** means any trade union of which more than 50 per cent of the employees in the workplace are members;

**"unladen mass"** means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or autocycle or cycle fitted with an auxiliary engine, the unladen mass shall be deemed not to exceed 453,5 kg;

**"wage"** means the amount of money payable to an employee in terms of clause 4 (1) in respect of his ordinary hours of work as specified in clause 6: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that specified in clause 4 (1), it means such higher amount;

**"warp knitting machine operator"** means an employee who operates one or a set of warp knitting machines, and who is capable of correcting faults, changing and/or straightening needles, filling bars, and making minor adjustments, and includes a threader and needle fixer;

**"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and who prepares the beam;

**"watchman"** means an employee who is engaged in guarding premises or other property;

**"winder"** means an employee who is engaged in operating a yarn-winding machine;

**"working day"** means any day on which work is usually performed in the Knitting Industry;

**"workplace"** means the place or places where the employees of an employer work; and if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation;

**"yarn changer/pig tailor"** means an employee who is responsible for loading and unloading the yarn on knitting machines, or an employee who brings yarn to and from the machines, removes fabric and cleans the machines, and who may stop the machine to change the yarn and restart the machine only if it was stopped for the purpose of changing the yarn and who shall not carry out any other functions of the knitting machine operator.

#### 4. REMUNERATION

- (1) (a) An employer shall, subject to the provisions of subclauses (1) (b), (c) and (d), (2),(4) (5) and (6), pay to each of his employees, from the date of coming into operation of this part of the Agreement, not less than the weekly wage prescribed for an employee of his class as set out below:

DESCRIPTION OF OCCUPATION			Wage per week - Group A (i.e Employers contributing to the Productivity Incentive Scheme)	Wage per week - Group B (i.e Employers NOT contributing to the Productivity Incentive Scheme)
			R	R
(i)	Foreman:		1386.40	1392.90
(ii)	Dyer: (See (iv) below)			
(iii)	Storeman:			
	(i) Qualified:		1334.60	1340.70
	(ii) Learners:			
		first six months of experience	481.80	484.00
		second six months of experience	695.00	698.20
		third six months of experience	908.20	912.50
		next four months of experience	1121.40	1126.60
		Thereafter, the wage specified in (iii)(i) i.e.	1334.60	1340.70
(iv)	Mechanic/Dyer:			
	(i) Qualified:		1386.40	1392.90
	(ii) Learners:			
		first six months of experience	481.80	484.00
		second six months of experience	572.10	574.70
		third six months of experience	662.60	665.60
		fourth six months of experience	753.10	756.50
		fifth six months of experience	843.70	847.60
		sixth six months of experience	933.80	938.20
		seventh six months of experience	1024.50	1029.30
		eighth six months of experience	1114.90	1120.20
		ninth six months of experience	1205.30	1210.80
		next four months of experience	1296.20	1302.20
		Thereafter, the wage specified in (iv)(i) i.e.	1386.40	1392.90
(v)	Mechanic's Assistant:			
	(i) Qualified:		907.90	912.00
	(ii) Learners:			
		first six months of experience	481.80	484.00
		second six months of experience	523.90	526.20
		third six months of experience	557.00	569.80
		fourth six months of experience	609.40	612.20
		fifth six months of experience	652.20	655.30
		sixth six months of experience	695.10	698.30
		seventh six months of experience	737.40	740.80
		eighth six months of experience	780.20	783.70
		ninth six months of experience	822.60	826.40
		next four months of experience	865.40	869.40
		Thereafter, the wage specified in (v)(i) i.e.	907.90	912.00
(vi)	Supervisor:		959.90	964.40
(vii)	Final Examiner of fully-fashioned garments:		891.30	895.50
(viii)	Factory Clerk, Despatch Clerk, Stores Clerk:			
	(i) Qualified		872.80	876.90
	(ii) Learners:			
		first six months of experience	481.80	484.00
		second six months of experience	579.40	582.10

DESCRIPTION OF OCCUPATION			Wage per week - Group A (i.e Employers contributing to the Productivity Incentive Scheme)	Wage per week - Group B (i.e Employers NOT contributing to the Productivity Incentive Scheme)
			R	R
		third six months of experience	677.20	680.30
		next four months of experience	775.10	778.70
		Thereafter, the wage specified in (viii)(i) i.e.	872.80	876.90
(ix)	<b>Knitting Machine Operator, Warp Knitting Machine Operator, Dyer's Assistant, Colouring Mass-Measurer and/or Cutter or Shaper of fully-fashioned garments, Handyman and Warper:</b>			
		(i) Qualified:	872.80	876.90
		(ii) Learners:		
		first six months of experience	481.80	484.00
		second six months of experience	546.80	549.20
		third six months of experience	611.80	614.60
		fourth six months of experience	677.20	680.30
		fifth six months of experience	742.30	745.80
		next four months of experience	807.50	811.30
		Thereafter, the wage specified in (ix)(i) i.e.	872.80	876.90
(x)(a)	<b>Loader of magazine or comb, Linker, Overlocker other than an overlocker of seconds in socks, Mender and Plain Sewer:</b>			
		(i) Qualified:	761.50	765.00
		(ii) Learners:		
		first six months of experience	481.80	484.00
		second six months of experience	551.40	553.90
		third six months of experience	621.40	624.30
		next four months of experience	691.60	694.70
		Thereafter, the wage specified in (x)(i) i.e.	761.50	765.00
(x)(b)	<b>Sewing Machinist including a button, buttonhole and hemming machinist:</b>			
		(i) Qualified:	761.50	765.00
		(ii) Learners:		
		first six months of experience	481.80	484.00
		second six months of experience	551.40	553.90
		third six months of experience	621.40	624.30
		Thereafter, the wage specified in (x)(i) i.e.	761.50	765.00
(xi)	<b>Driver of a Motor Vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle—:</b>			
		(a) does not exceed 453,5 kg	728.00	731.30
		(b) exceeds 453,5 kg but not 2 721 kg	859.50	863.50
		(c) exceeds 2 721 kg but not 4 535 kg	915.30	919.50
		(d) exceeds 4 535 kg	993.30	998.00
(xii)	<b>Security Officer:</b>		1112.00	1117.10
(xiii)	<b>Watchman:</b>		858.00	862.00
(xiv)	<b>Employee not elsewhere specified:</b>			
		(i) Qualified:	893.30	897.50
		(ii) Learners:		

DESCRIPTION OF OCCUPATION				Wage per week - Group A (i.e Employers contributing to the Productivity Incentive Scheme)	Wage per week - Group B (i.e Employers NOT contributing to the Productivity Incentive Scheme)
				R	R
			first six months of experience	481.80	484.00
			second six months of experience	584.50	587.10
			third six months of experience	687.60	690.80
			next four months of experience	790.30	794.00
			Thereafter, the wage specified in (xiv)(i) i.e.	893.30	897.50
(xv)	Seamer, Mender of socks, Sorter, Cleaner (i.e. an employee engaged in cleaning garments and/or fabrics), Grader, Sampler (i.e. an employee engaged in the making up of sample cards), Winder, Overlocker for seconds in socks and/or Examiner of knitted fabrics and articles, Backwinder, Drawthreader, Pre-and Post-boarder or Former, Precutter, Presser, Turner, Operator of calender, slitting, setting or steaming machine, Operator of brushing, raising and/or cropping machine, Operator of dye machine, Operator of drying and/or hydro-extracting machine, employee engaged in Transferring and/or Labelling, Trimming off surplus threads, Folding, Carding and/or Packing, Waxring Maker, Boiler Attendant, Creeler, Teamaker, Despatch Packer, Parcel Maker, General Worker and Floor Walker/Runner:			727.10	730.40
(xvi)	General Worker/Traveller's Assistant, Cloakroom Supervisor and/or Attendant, Teamaker employed after 30-06-1987:			625.90	628.80
(xvii)	All employees classified in (xv) and who were employed after 30-06-1987, other than general worker, traveller's assistant, cloakroom supervisor and/or attendant and teamaker:				
		(i) Qualified:		625.90	628.80
		(ii) Learners:			
			first six months of experience	481.80	484.00
			second six months of experience	529.60	532.10
			third six months of experience	578.00	580.70
			Thereafter, the wage specified in (xvii) (i) i.e.	625.90	628.80

The wage levels specified in the table above shall be increased by 0,5%, for those companies who do not have an agreed productivity incentive scheme in place, by 1 November 2008 and as per Clause 33.

Provided that-

- (i) any trainee who, immediately prior to the date of coming into operation of this part of the Agreement, was in receipt of a wage higher than that then payable to an employee of his class shall, on the first pay day following the date of coming into operation of this part of the Agreement and on each subsequent pay day, be paid as a weekly wage the next higher wage prescribed for an employee of his class; and any such increase granted to

a trainee on such dates shall not affect the actual experience of such trainee for the purpose of granting further increases;

- (ii) the wage of an employee other than a trainee who, immediately prior to the date of coming into operation of this part of the Agreement, was in receipt of a wage higher than that then payable to an employee of his class shall be increased with effect from the first pay day following the date of coming into operation of this part of the Agreement by an amount equal to the increase which an employee of his class would receive if he earned the prescribed wage, as from the said date;
  - (iii) an employee, other than a trainee, in receipt of a wage higher than that prescribed for an employee of his class, who was employed for a period of 13 weeks or more prior to the incremental date, shall be entitled to the prescribed increase, notwithstanding the provisions of clause 4 (1)(b).
- (b) **Incremental dates:** An employer shall pay the increase due to each of his trainee employees on the basis of the experience of each of his trainee employees on the first pay day in the month of January and again on the first pay day in July of each year. For the purpose of computing a trainee employee's experience, employment for 16 weeks in any half-year shall be deemed to have been in employment for the whole half-year: Provided that a trainee employee in his first half-year of employment who has less than 16 weeks' experience but more than 13 weeks' experience on the last day of the half-year shall be deemed to have been in employment for the whole half-year.
- (c) **Set or team leader or head warper:** Any employee who is called upon to perform the duties of a set or team leader or head warper shall be paid, in addition to the wage prescribed in paragraph (a) for a qualified employee of his class, an additional 10 per cent of such wage for an employee of his class.
- (d) **Traveller's assistant:** A traveller's assistant shall, in addition to his ordinary wage, be paid a subsistence allowance of R3,00 for each day away from the workplace, plus a further allowance of R6,00 for each night he is away from his home town; and, in addition, the employer shall be responsible for the payment of accommodation expenses for each night he is away from home.
- (2) **Differential rates of pay:**
- (a) **Temporary work:** An employer who requires or permits an employee of one class to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefor, work of another class for which a higher wage for a qualified employee than that of his own class is prescribed in subclause (1), shall pay such an employee in respect of that day not less than the daily wage calculated at the higher rate as if such employee had the period of experience in the class for which the higher rate is prescribed.
  - (b) **Transfer:** An employer shall inform the Regional Chamber within 14 days of transferring an employee from one class of work to another by completing a transfer form in the form and manner specified by the Council or Regional Chamber.
  - (c) **Night shift remuneration:** In addition to the remuneration prescribed for an employee of his class in subclause (1) (a), an employee shall in respect of each night shift worked in any week, be paid an additional 12,5 per cent of such employee's daily wage in respect of any time worked, other than overtime, falling outside of the ordinary hours worked in the workplace in which he is employed.
- (3) **Calculation of wages:** The daily wage of an employee, other than a casual employee, shall be his weekly wage, divided by five, and his hourly wage shall be his weekly



wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class.

- (4) **Reduction of wages:** Nothing in the Agreement shall operate to reduce the wage paid to an employee prior to the date of coming into operation of this part of the Agreement if that wage was higher than the wage prescribed in the Agreement for that class of employee.
- (5) **Casual employee:** A casual employee shall be paid in respect of everyday or part of a day of employment not less than one-fifth of the weekly wage prescribed for an employee who performs the same class of work as the casual employee is required to do: Provided that, where the employer requires a casual employee to perform the work of a class of employee for whom wages on a rising scale are prescribed, the expression "weekly wage" shall mean the weekly wage prescribed for a qualified employee of that class: Provided further that where the employer requires a casual employee to work for a period of not more than four consecutive hours on any day, his wage may be reduced by not more than 50 per cent of his daily wage.
- (6) (a) **Attendance bonuses:** In any workplace where attendance bonuses are regularly paid, no deduction or nullification of such bonuses shall be 'effected for absenteeism of two days' or less duration owing to the death of an employee's child, spouse or parent: Provided that the employer may require the employee concerned to produce the death certificate of the deceased.
- (b) **Bonus schemes:** Any employer who introduces an incentive and/or attendance bonus scheme or who already has such a scheme in operation shall within 30 days after introducing such scheme or within 30 days after the coming into operation of this part of the Agreement, submit to the Regional Secretary of the Regional Chamber full details of such scheme and shall similarly within 30 days after effecting any alterations to such scheme submit full details of such alterations to the Regional Secretary of the Regional Chamber. An employee employed on incentive bonus work shall be paid in any week not less than the wages to which he would have been entitled had he been employed on the basis of time worked, and the rate and/or amount or incentive bonus paid to such employee before the dates on which wage increases are due in terms of this part of the Agreement shall not be decreased so as to reduce or nullify the amount of the wage increase to which an employee of his class is entitled in terms of subclause (1). No bonus scheme may be changed without the consent of the employees.
- (7) **Transitional provision following the 2010 negotiations:** In addition to the wage that an employee is entitled to in terms of this part of the Agreement, he shall be entitled to received, by no later than six weeks from the date from which the Minister declares this part of the Agreement binding by publication in the Gazette (hereinafter referred to as implementation date) and in equal weekly installments, an amount equal to the difference between the remuneration paid to him calculated from 1 September 2010 until the implementation date and the remuneration based on his wage, as specified in this part of the Agreement, calculated from 1 September 2010 until the implementation date.

## 5. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

- (1) Wages and other amounts due to employees shall be paid weekly in cash, during working hours, on the nominated pay day of a workplace, or may be deposited into the employee's account with a financial institution: Provided that where an employee's services terminate on a day other than a nominated pay day, any amounts due to him shall be paid immediately on such termination: Provided further that when an employee

is working short time or the nominated pay day is a holiday, payment in terms of this subclause shall be made before the employee finishes work for the week.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (2) No deductions of any description shall be made from amounts due or paid to an employee except as provided below.
- (a) Where an employee is absent from work or arrives late at work, a pro rata amount of the actual time lost may be deducted from his total remuneration: Provided that where the doors of the workplace are locked, thus preventing an employee, other than an employee working a night shift, from entering the premises on arrival at work, the employee shall be paid in full for the whole day.
  - (b) Subject to the provisions of clause 21, whenever the ordinary hours of work prescribed in clause 6 are reduced on account of short time, a pro rata deduction from the employee's wage may be made: Provided that no deduction shall be made in the case of short time arising out of slackness of trade or shortage of supplies, unless the employer has made an agreement with the employees as to short time working and has given notice to such employees and to the Regional Chamber of his intention to reduce ordinary hours of work.
  - (c) If, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wages of such employee only for time lost in excess of two hours.
  - (d) An employee shall, at the written request of any of his employees, make deductions weekly from the employee's remuneration of any amount or amounts of subscription, specified in the said written request, to the funds of the trade union party to the Agreement, and shall forward the amount or amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month immediately succeeding the month during which such deductions were made.

This paragraph shall apply in respect of clerical employees, notwithstanding that no wages are prescribed in this part of the Agreement for such employees.

- (e) With the consent of the employee, deductions may be made for insurance, death benefits, pension and/or provident funds: Provided that such funds shall be approved by the Council or Regional Chamber and that no deduction shall be made unless this subclause which has the effect of circumventing paragraph (d) above.
- (f) Deductions shall be made for contributions to the Council's or Regional Chamber's Funds, Medical Benefit Society, Sick Pay Fund and Provident Fund as provided for in this part of the Agreement, or to any other fund established by this part of the Agreement or any other agreement reached by the Council or Regional Chamber.
- (g) Any amount which an employer is legally required to deduct from his employee's wage may be deducted.
- (h) With the written consent of the employee, deductions may be made in respect of amounts owing to the employer in respect of money borrowed or goods

purchased by the employees from, the employer: Provided that the amount so deducted shall not exceed one-third of the employee's wage.

- (i) An employer shall deduct trade, union subscriptions and levies from trade union members on written authorisation other than where an exemption has been granted by the Council or Regional Chamber: Provided such monies have been determined in terms of the union's Constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, for transmission to the union.
- (3) (a) All cash payments to employees; shall be made in sealed envelopes which shall be retained by the employee.
  - (b) Payments in terms of subclause (1) may be made by bank transfer, bank deposit or by cheque.
  - (c) Payments shall be accompanied by a payslip with the following information:  
  
Name of the workplace, name, occupation and number of the employee, the weekly wage, number of hours worked on ordinary time; number of hours, worked on overtime. and/or Sunday, time., .amount earned for the time worked, amount of any bonuses earned, amount of, holiday pay, (if any); details of all deductions made from such amount, the amount contained in the envelope and the week in respect of which wages are paid.
- (4) Particulars of all deductions made shall be entered in the wage register.
- (5) (a) Each employee shall be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to 2,57% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
  - (b) The bonus shall be inclusive of and not additional to any annual bonus paid by an employer.
  - (c) For the purpose of calculating this bonus, absence of any nature may not be taken into consideration.
- (6) An employee, on commencement of maternity leave, shall be entitled to a payment in terms of clause 20 (6) of this part of the Agreement.

## 6. HOURS OF WORK

- (1) **Ordinary hours of work:** Provided that the status quo prior to the coming into operation of this part of the Agreement remains at a workplace where the normal working hours were less than in the Agreement, an employer shall not require or permit an employee other than an employee referred to in subclause (5) to work for more than-
  - (i) 42½hours, excluding meal intervals but including rest intervals, in any week from Monday to Friday, inclusive;
  - (ii) nine hours per day in any one week; and
  - (iii) five hours without a meal interval.

- (2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive.
- (3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than 10 minutes as near as practicable to-
- (a) the middle of each morning work period; and
  - (b) the middle of each afternoon work period;
- during which such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work.
- (4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour, during which interval such employee shall not be required or permitted to perform any work: Provided that-
- (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous; and
  - (b) here normal shifts are worked in any workplace, a normal shift worker shall be granted one interval of not less than 30 minutes per normal shift, during which interval such employee shall not be required or permitted to perform any work.
- (5) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work-
- (a) for more than 45 hours per week; or
  - (b) for more than six days in any one week; or
  - (c) for more than 12 hours in any one day/shift:
- Provided further that the employer may require his watchman to work on the seventh day of the week and pay the watchman in addition to his weekly wage, an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.
- (6) **Twilight Shift**
- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
    - (i) Only unemployed people may be recruited for working this shift.
    - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
    - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
  - (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
    - (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.

- (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
  - (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
  - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

## 7. OVERTIME AND SUNDAY WORK

- (1) Payment of overtime worked shall be made at the rate of one and a half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (2) An employer shall pay an, employee who works on. a Sunday double the employee's rate of pay for the number of hours worked.
- (3) No employer shall require or permit an employee to work overtime for more than 12½ hours per week.
- (4) No employee shall be required to work overtime without his consent.
- (5) No employee shall be dismissed from or prejudiced in his employment by reason of his refusal to work overtime.
- (6) Every employee who is required to work overtime of one and a half hours or more shall be paid an allowance of R5,00 to enable the employee to obtain a meal before the overtime is due to commence, unless the employer has notified the employee thereof not less than 24 hours before the overtime commences.
- (7) Exclusions: The provisions of subclauses (2) (b), (3) and (4) shall not apply to a watchman.

### (8) **Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 6 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
- (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
- (iii) time not worked as a result of the employer having declared short time;

- (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (v) the three days family responsibility leave provided for in clause 6 of this part of the Agreement.
- (9) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

### **8. ANNUAL LEAVE AND PAID HOLIDAYS**

- (1) Every employer shall, subject to the provisions of subclause (2), in the month of December of each year, and not later than the 24th day of the month, grant to each of his employees who have been in his employ from any date prior to the first day of February of the same year, and whose services have not been terminated before 1 December, 15 working days' holiday on full pay: Provided that an employee who, during any year, has been absent from work for a continuous period of more than six months on confinement, or for 12 weeks or more, shall be paid holiday pay in terms of subclause (2). No such employee shall be paid less than three weeks' wages as annual leave pay. The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before commencement of the period of holiday leave.
- (2) Any employee-
- (a) who commenced work with an employer on or after 1 February in any year; or
  - (b) whose employment terminated before 1 December of that year shall, if his contract of employment with the same employer endured for a period of not less than four weeks in that year, in the case of an employee referred to in paragraph (a), be paid as holiday pay for that period of employment an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment and, in the case of an employee referred to in paragraph (b), be paid in lieu of holiday leave for that period of employment, an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment. The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of that year and if the employee's employment terminates before that day, on the day he leaves the employer's service.
- (3) In computing the amount upon which the five per cent holiday pay is to be calculated in terms of subclause (2), the amount which would have been payable to an employee had he not been absent from work shall be deemed to be amounts actually received by him if such absence is-
- (a) on the instructions or at the request of the employer;
  - (b) because of sick leave, provided a medical certificate for the period or periods of absence has been produced; or
  - (c) because of maternity leave, provided a medical certificate to this effect has been produced.
- (4) Every employer shall grant to each of his employees as paid holidays: New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill and no employer shall employ an employee and no employee shall work on these 12 days and, in addition, each employer shall grant to all his employees who have worked the morning period of the Thursday, preceding Good Friday, time off from the commencement of the normal meal time until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on

the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday.

Provided further that if an employee has to work on any public holiday, such employee will be remunerated at time-and-a-half the ordinary hourly rate for the time so worked, in addition to the entitlement of the day's pay.

- (5) In the event of an employer closing his workplace in terms of subclause (1) for a period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day, such employer shall pay a full day's pay in respect of each such day to each of his employees in his employ on the day before the date he so closes his workplace. Payment for such days shall also be made to an employee whose contract of service is terminated by the employer on or after the 15<sup>th</sup> day of November but before the date he closes his workplace: Provided that the employee concerned has been in the continuous employ of his employer for a period of not less than six months immediately prior to the 15th day of November: Provided further that the contract is not terminated by the employee concerned or that he is not summarily dismissed for any cause recognised by law as sufficient.

The provisions of this subclause shall not apply to cases where the reason for the employer's closing his factory is his Intention forthwith to discontinue business in the Industry. For the purposes of this subclause, the expression "employment" shall have the same meaning as in subclause (1).

- (6) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill falling on a Saturday or a Sunday, the employer shall, subject to subclause (5) of this clause, pay to each of his employees an extra day's pay on the first pay day after such day or when payment for these days is payable in terms of this clause, or alternatively shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (7) For the purposes of this clause, "day's pay" means the weekly wage divided by five, and "full pay" means the wage paid immediately prior to the commencement of the holiday leave prescribed in subclause (1).
- (8) Notwithstanding the provisions of subclause (4), an employer may close his workplace on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days; Provided that he afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay, should the majority of his employees agree: Provided further that the employer notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Regional Chamber be notified thereof in writing.
- (9) (a) An employee shall be entitled to six consecutive months' unpaid maternity leave.
- (b) An employee may commence maternity leave-
- (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
- (ii) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

- (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
  - (e) An employee shall notify an employer, in writing, unless the employee is unable to do so, of the date on which the employee intends to-
    - (i) commence maternity leave; and
    - (ii) return to work after maternity leave.
  - (f) Notification in terms of subclause (9) (e) shall be given-
    - (i) at least four weeks before the employee intends to commence maternity leave; or
    - (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10) (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
- (i) the employee is required to perform night work or work that poses a danger to her health or safety or that of her child; and
  - (ii) it is practicable for the employer to do so.
- (11) (a) An employer shall grant an employee who has been in his employment for longer than four months, three days' unpaid family responsibility leave which the employee shall be entitled to take-
- (i) when the employee's child is born;
  - (ii) when the employee's child is sick; and
  - (iii) in the event of the death of-
    - (aa) the employee's spouse or life partner; or
    - (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (b) An employee may take family responsibility leave in respect of the whole of or a part of a day.
- (c) Before granting an employee family responsibility leave in terms of this subclause, an employer may require reasonable proof of an event contemplated in subclause (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause shall lapse at the end of the annual leave cycle in which it accrues.



- (12) Exclusions: The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months' employment: Provided further that should such watchman's employment be terminated before such leave is granted, he shall be paid in lieu of such leave two and a fifth times his daily wage in respect of each completed month of employment, calculated from the date of commencement of his employment or from the first day after the last 12-month period in respect of which he was granted four weeks' holiday leave, as specified in this subclause.

For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.

## 9. TERMINATION OF EMPLOYMENT

- (1) Written notice, in the form and manner specified by the Council or Regional Chamber, of not less than five working days which for the purpose of this clause shall include paid holidays, to take effect from the working day following that on which it is given, shall be given by an employer or an employee to terminate contract of service:
- (a) Provided that this shall not affect-
- (i) the right of an employer or employee to terminate the contract of service without notice for any cause recognised by law as sufficient;
  - (ii) any agreement between the employer and the employee providing for a longer period of notice than one week:
- (b) Provided further that-
- (i) an employer may pay an employee wages for and in lieu of the period of notice specified in this clause or agreed upon in terms of subclause (1) (a) (ii);
  - (ii) an employee who is working short time may terminate his employment without giving notice;
  - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 days, in respect of monthly paid employees, of the period of employment of an employee by an employer shall (unless otherwise stated in a written agreement) be deemed to be a trial period and such employment may be terminated by either the employer or by the employee at any time within such trial period by giving 24 hours' notice;
  - (iv) monthly paid employees shall give or be given not less than one calendar month's notice, in writing, to take effect from the first day of the month following that in which notice is given.
- (2) (a) In the event of an employer failing to give notice or permitting the employee to work the required notice period, or an employee failing to give notice and to work the required notice period, the employer shall pay or the employee shall forfeit, subject to the provisions of paragraph (b), an amount equal to the full weekly remuneration which the employee was receiving immediately prior to the date of such termination.
- (b) If an employee leaves without notice or is unaccountably absent, the employer shall send his service card to the Regional Chamber not earlier than the sixth nor later than the 11<sup>th</sup> day of such absence, together with any wages due, holiday pay and any other moneys due in terms of this part of the Agreement, together with a statement by the employer detailing circumstances surrounding the

employee's absence from work and requesting a refund of the amount to be forfeited in terms of paragraph (a).

- (3) Subject to the provisions of subclause (2) (a) and (b), an employee who is discharged or leaves without giving notice during the currency of any period of notice given in terms of subclause (1) shall receive full pay if discharged, or shall forfeit such wages for the unexpired period of such notice if the employee left without giving notice.
- (4) No employer shall terminate the services of any employee by reason of such employee's-
  - (a) approaching confinement: Provided that the employee shall return not later than six months after having gone off on confinement;
  - (b) absence from work through illness: Provided that a medical certificate for any period of absence of more than two consecutive days, or on more than two occasions during an eight-week period be provided on the employee's return to work;
  - (c) absence on leave, the written permission of the employer having been obtained;
  - (d) partial disablement through injury on duty.
- (5) Subject to the provisions of subclause (3), the employment of an employee who absents himself from work or is absent from work through illness for a period of five consecutive working days without notifying his employer, in writing, may be terminated by the employer without notice as required in subclause (1): Provided that-
  - (i) the employer shall attempt to contact the employee in writing at the last-known address supplied by the employee;
  - (ii) the employee be allowed to lodge with his employer a written appeal against his dismissal.
- (6) Whenever an employer terminates the services of an employee in terms off subclause (4), notice of such termination shall be given by notifying the Regional Secretary of the Regional Chamber in writing. Any such notification to the Regional Chamber shall be accompanied by the employee's service card and wages or other amounts due to the employee on such termination, for transmission to the employee on application. The provisions of this subclause shall mutatis mutandis apply to any termination of employment in terms of subclause (1) (i).
- (7) Notwithstanding the provisions of subclauses (4), (5) and (6), no employer shall, in terms of the Act, unfairly terminate the services of an employee. Furthermore, for the purposes of determining the length of an employee's employment with an employer, previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

## **10. ENGAGEMENT IN EMPLOYMENT**

- (1) An employer shall, before engaging an applicant for work, require such applicant to produce a service card issued by the Regional Chamber: Provided that, in the case of persons who have not previously been employed in the Industry in the Northern Areas, a period of seven days may elapse before production of the service card shall be required. The service card shall be in the form and manner specified by the Council or Regional Chamber.
- (2) If, during or on completion of the trial period in terms of clause 9 (1) (b) (iii), the contract of service is confirmed, the employer shall, immediately on such confirmation, enter in

the service card the name of his workplace, the occupation of the employee, the date of commencement of employment and the prescribed wage of such employee, and within three days forward the service card to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000.

- (3) Such information as is required by the Regional Chamber shall be taken from the service card as soon as reasonably possible after which the card shall be returned to the employer who shall retain it until the employed leaves his employ, whereupon the employer shall enter on the card the date of termination of employment and the prescribed wage on termination and return the card to the employee. The employee shall thereupon surrender his medical benefit card in exchange for his service card: Provided that if the employee is unable to surrender his medical benefit card the employer shall immediately forward the service card to the Regional Chamber's office, where the employee may make application for the service card.

### 11. COUNCIL FUNDS

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.
- (2) (a) Every employer shall, on the pay day of each week and from the first pay day after this part of the Agreement comes into operation, deduct an amount of 0.21% of each employee's wages per week, calculated at the qualified machinist's rate of pay, up to a maximum of R1.61 per week for whom minimum wages are prescribed in this part of the Agreement: Provided that no deductions shall be made from the wage of an employee who has worked for less than 20 hours in the week in which the deductions fall due.
- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount of 0.23% of each employee's wages per, calculated at the qualified machinist's rate of pay, week up to a maximum of R1.74 per week.
- (3) The employer shall pay the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the end of the month in which the deductions fall due.
- (4) Where an employer has failed to deduct contributions from his employees he shall not be permitted to deduct arrear contributions, but shall make good these contributions himself.
- (5) Should any amount due in terms of subclause (1) not be received by the Regional Chamber by the 10th day after the date on which it is payable, the employer shall pay weekly interest on such amount or such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two % per annum: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Regional Chamber, the interest may accrue to the general Funds of the Regional Chamber.

### 12. EXTRACTS FROM WAGE REGISTERS

Every employer shall, in respect of each calendar month, forward a return in the form and manner specified by the Council or Regional Chamber to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, showing in respect of each employee, the Regional Chamber number, clock number (if any), the weekly amounts deducted in terms of clauses 11, 19, 20, 21 and 22 of this part of the Agreement and the date of engagement (if the employee was engaged during the calendar month to which the return relates), the occupation, and the date of termination (if the employee's services were

terminated during the calendar month to which the return relates). This return shall be submitted to the Regional Chamber not later than the 10th day of the month following the calendar month to which the return relates.

### **13. TRADE UNION LABOUR**

#### **A. EMPLOYMENT OF TRADE UNION LABOUR**

- (1) No employer who is a member of the employers' organisation shall continue to employ an employee-
  - (a) who, while being eligible for membership of the trade union, is not a member of the trade union as at the date of coming into operation of this part of the Agreement; or
  - (b) who does not become a member of the trade union within a period of 90 days from such date.
- (2) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the trade union or employers' organisation, or who have been refused membership of or expelled from the trade union or employers' organisation.
- (3) Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward the amounts to the secretary of the trade union, together with such analyses of the amounts as are received from employers.
- (4) For the purposes of this part of the Agreement no union membership subscriptions
  - (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

#### **B. RIGHTS AND ACCESS TO PREMISES**

- (1) Any office-bearer or official of a representative trade union shall be entitled to enter the employer's premises in order to recruit members or communicate with members or otherwise serve members' interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workplace.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
  - (a) Such facilities shall be available during the normal working hours of the business and while normal output is maintained, including lunch and tea breaks.
  - (b) The granting of facilities shall be available subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry related matters. Such industry-related matters shall be defined by the Council or Regional Chamber from time to time.
  - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (8) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.
- (9) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

#### **C. TRADE UNION REPRESENTATIVES-TIME OFF**

- (1) Representatives from the representative trade union shall be granted paid time off on the following basis:
  - (a) Ten days per annum per trade union representative, pooled for each workplace and divided between various trade union representatives at the discretion of the union: Provided that-
    - (i) all such leave shall be subject to the operational requirements of the workplace;
    - (ii) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time of in terms of this clause;
    - (iii) in the case of employers not referred to in paragraph (ii), the union shall give the employer one day's notice of the activity for which it seeks time off in terms of this clause; and
    - (iv) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

#### **D. MEMBERSHIP FEES**

Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the end of the month in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward to the General Secretary of the Trade Union the amounts, together with such analysis of the amounts as are received from the employers.

**E. SACTWU EDUCATION BURSARY SCHEME**

- (1) For the purposes of establishing a SACTWU Educational Trust, every employer to whom this part of the Agreement applies, shall each week contribute 25 cents for each employee in his workplace, The moneys so paid shall be utilised by the SACTWU Education Bursary Scheme to award bursaries to all employees and their children in the Industry to further their education.
- (2) The total amount per month shall be submitted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the month in which the contributions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward such contribution to the General Secretary of the Trade Union, together with an analysis of the amounts as received from employers.

**F. SACTWU HIV/AIDS PROJECT**

- (1) There is hereby a HIV/AIDS Project established, known as the SACTWU HIV/AIDS PROJECT.
- (2) Every employer to whom this part of the Agreement applies shall each week contribute an amount of 37 cents for each employee in his employ to the SACTWU HIV/AIDS Project. The amount shall be submitted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the contributions fall due.
- (3) The total amount so collected by the Regional Chamber shall be transferred to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, on a quarterly basis.

**G. TRADE UNION AGENCY SHOP**

- (1) **Scope-** Agency fees will apply to employees who –
  - (a) are not members of the trade union party, but are eligible for membership thereof;
  - (b) are not bound by the provisions of the closed shop clause; and
  - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
  - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
  - (b) shall pay such monies to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the contributions fall due.
  - (c) the deduction of the agency fee may be made from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -

- (a) paid to a political party as an affiliate fee;
- (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
- (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

#### **14. PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR**

- (1) No person may employ a child-
  - (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 years or older.
- (2) No person may employ a child in employment
  - (a) that is inappropriate for a person of that age;
  - (b) that places at risk a child's well-being, education, physical and mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour shall be prohibited.
- (4) No person may for his own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who contravenes subclauses (1) to (4) shall be guilty of an offence.

#### **15. REGISTRATION OF AN EMPLOYER**

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous Agreement shall within seven days of the date on which this part of the Agreement becomes binding on him, furnish to the Regional Secretary of the Regional Chamber the particulars set out in the form and manner specified by the Council or Regional Chamber.
- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars set out in the form and manner specified by the Council or Regional Chamber, shall be provided in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Regional Secretary of the Regional Chamber notice of the change, in writing, setting out full particulars of such change within seven days of its taking place:
  - (a) Change of name;
  - (b) change of address;
  - (c) change in the composition of its members or partners or directors;
  - (d) sequestration or liquidation of the business;

- (e) transfer or abandonment of the business;
- (f) acquisition of another business which is covered by this part of the Agreement;
- (g) commencement of any other business covered by this part of the Agreement.

## 16. EXEMPTIONS

### **A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement**

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
  - (a) The period for which the exemption is sought;
  - (b) the number of employees affected and how many of such employees are members of a registered trade union;
  - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
  - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
  - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4)
  - (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
  - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
  - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the



applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.

- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) The conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal;
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so

completely without merit that it would be justified in doing so.

- (6)
  - (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
  - (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
    - (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
    - (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
  - (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding monies. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions that remain unpaid as at the last day of the month following the month in respect of which the payment is due.
  - (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the Industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
  - (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.

- (d) The terms of the exemption sought, including the period thereof.
  - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

**B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) Exemption from the provisions of this part of the Agreement shall be granted in the following circumstances:

- (a) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
  - (i) the collective agreement does not contravene the minimum employment standards set out in this part of the Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
  - (ii) wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
  - (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

#### **17. POWERS OF DESIGNATED AGENTS**

- (1) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and for purposes of routine inspections to enforce compliance with this part of the Agreement in terms of clause 27 of the Agreement or the Dispute Procedure in terms of clause 28 of this part of the Agreement may-
  - (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
  - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the designated agent or be questioned or produce that book, document or object;
  - (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
  - (d) at any reasonable time, but only after obtaining the necessary written authorization-

- (i) enter and inspect any premises on or in which any book, document or object relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found;
    - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
    - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;
  - (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to or seized by the designated agent.
- (2) A subpoena issued for any purpose in terms of subclause (1) shall be signed by the General Secretary of the Council or Regional Secretary of the Regional Chamber or the designated agent and shall-
- (a) specifically require the person named in it to appear before the designated agent;
  - (b) sufficiently identify the book, document or object to be produced; and
  - (c) state the date, time and place at which the person is to appear.
- (3) The written authorisation referred to in subclause (1) (d)-
- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on application by the designated agent setting out under oath or affirmation the following information-
    - (i) the nature of the dispute;
    - (ii) the relevance of any book, document or object to the resolution of the dispute;
    - (iii) the presence of any book, document or object on the premises; and
    - (iv) the need to enter, inspect or seize the book, document or object; and
  - (b) in all other cases, may be given by the General Secretary of the Council or Regional Secretary of the Regional Chamber.
- (4) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier shall provide any facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The designated agent shall issue a receipt for any book, document or object seized in terms of subclause (4).
- (6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, shall apply equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.
- (7) The designated agent shall pay the prescribed witness fee to each person who appears before him in response to a subpoena issued in terms of section 208 of the Act, where

such fee has been specified by the Minister of Labour or, in the absence of such fee, as may be determined by the Council from time to time.

- (8) A person shall be guilty of contempt of the designated agent-
- (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
  - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
  - (c) by refusing to take the oath or make an affirmation as a witness when a designated agent so requires;
  - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to subclause (6);
  - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;
  - (f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of the Act;
  - (g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent's recommendations;
  - (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
  - (i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.
- (9) The designated agent may, on recommendation of the Council or Regional Chamber, refer any contempt to the Labour Court for an appropriate order.

#### **18. FIXED-TERM CONTRACTS**

- (1) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task.
- (2) Any employee engaged on a fixed-term contract shall be employed subject to the same terms and conditions as prescribed in this part of the Agreement for other employees of the same class/job category.
- (3) Fixed-term contracts shall be reduced to writing and shall stipulate the commencement and termination dates and/or completion date of the contract task.
- (4) Copies of all fixed-term contracts (as well as accompanying exemption applications where applicable) concluded in the Industry shall be forwarded to Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, for registration and processing by no later than seven days after commencement of duty of such employee.

#### **19. MEDICAL BENEFIT SOCIETY**

- (1) There is hereby continued a society known as the Knitting Industry Medical Benefit Society (Northern Areas), (hereinafter referred to as the "Society"), originally established on 4 June 1971 in terms of Government Notice No. R. 911.

- (2) The purpose of the Society shall be assist members and their spouses with medical, dental and specialists' attention, medicines, medical appliances, hospitalisation, and such other benefits as may be determined by the Management Committee.
- (3) Every employer shall on the pay day of each week deduct R8,37 from the wages of each of his employees for whom minimum wages are prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
- (4) In addition to the amount prescribed in paragraph (3), for a member whose spouse is included in this scheme, an additional deduction of R8,37 shall be made from the wages of each of those employees for whom minimum wages are prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
- (5) The employer shall pay the amounts so deducted, together with an amount added by the employer equal to R9,24, within seven days from the end of the month in which the deductions fall due in respect of employees and their spouses to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a statement in the form and manner specified by the Council or Regional Chamber.
- (6) Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the date of which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

## **20. SICK PAY FUND**

- (1) The Knitting Industry Sick Pay Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911, is hereby continued.
- (2)
  - (a) Every employer shall on the pay day of each week and from the first pay day after this part of the Agreement comes into operation, deduct R2,89 from the wages of each of his employees for whom minimum wages as prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
  - (b) The employer shall pay the amounts so deducted from the wages of his employees, together with an amount of R2,47 in respect of each employee from whose wage deductions were made in terms of paragraph (a) above.
  - (c) The total sum representing the employer's contributions and the member's contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a return in the form and manner specified by the Council or Regional Chamber within 10 days of the end of the month in which the deductions fall due.
  - (d) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof, and at the

discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

- (3) The moneys of the Fund shall, subject to the provisions of this clause, be applied to provide members of the Fund with sick pay in case of absence from work owing to illness and shall be administrated by a Management Committee appointed by the Council or Regional Chamber and consisting of four representatives of the employers' organisation and four representatives of the trade union in accordance with the rules of the Fund, as set out hereunder.
- (4) Should a dispute arise at any time as to the provisions of this clause, the rules, the administration of the Fund or any other matter in regard to which the members of the Management Committee are equally divided, the matter in dispute shall be referred to the Council or Regional Chamber for a decision.
- (5) Sick Pay benefits shall be paid to employees for whom minimum wages are specified in this part of the Agreement, subject to the following provisions:
  - (a) No sick pay shall be paid to any employee in respect of any day of illness falling on a public holiday as specified in clause 8(4).
  - (b) No sick pay shall be paid to any employee in respect of any day of illness in respect of which the employee has been paid holiday pay as specified in clause 8 (1) or in the case of employees referred to in clause 8 (2) (a) in respect of a period of 12 working days calculated from the first working day after the date on which the factory closed for annual leave.
  - (c) No sick pay shall be paid in respect of periods of illness resulting from obesity, sterility and cosmetic surgery or for injuries covered by the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or injuries in respect of which a claim may be made in terms of the provisions of the Road Accident Fund Act, 1996 (Act No. 56 of 1996).
  - (d) Only members in good standing with the Fund shall be entitled to the benefits set out hereunder.
  - (e) Any member whose payment of contributions to the Fund is more than 13 weeks in arrears shall not be entitled to any benefits provided by the Fund.
  - (f)
    - (i) Notwithstanding the provisions of subclause (5)(a), during the first 6 months of employment, an employee shall be entitled to one day's sick leave on full pay in respect of each completed period of 26 days of employment.
    - (ii) After completion of 6 months of employment, an employee shall be entitled to 10 working days' sick leave on full pay in any calendar year reckoned from 1 January to 31 December.
- (6) Sick pay benefits shall be paid to all employees entitled thereto in terms of the provisions of subclause (5). A member who has been in the employ of the same employer for at least 10 months shall, on production of a medical certificate, be paid a maternity benefit equal to 20 days, wages.
- (7) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all moneys received into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts shall be kept in the Regional Chamber's books for the Fund.



- (8) The Council or Regional Chamber shall appoint a public accountant as auditor whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the period ending 31 December. The audited statement and balance sheet shall thereafter lie for inspection at the offices of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and to the General Secretary of the Council who shall transmit a copy thereof to the Registrar Labour, Relations.
- (9) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Council or Regional Chamber until it be either liquidated or transferred by the Council or Regional Chamber to any other fund or funds whose objects shall be solely to benefit the employees of the Knitting Industry (Northern Area): Provided that, if no new agreement providing for the continuation of the Fund is entered into within one year after the date of expiration of this part of the Agreement or the Fund is not transferred as aforesaid within such period, the Fund shall be liquidated.
- (10) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of section 32 (2) of the Act, the Fund shall be administered by a Committee consisting of three representatives of the employers' organisation and three representatives, of the trade union. In the event of such committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar: Labour, he may appoint a trustee or trustees to carry out the duties of the committee. If there is no Council in existence, the, Fund shall on the expiration of this part of the Agreement be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause (11): Provided that if on such expiration the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.
- (11) On liquidation of the Fund in terms of subclauses (9) and (10), the monies remaining to the credit of the Fund after payment of all claims against the Fund, including the administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber.
- (12) All administration and liquidation expenses shall be a charge against the Fund.
- (13) The disbursements from this Fund shall cease whenever the amount to the credit of the Fund falls below R10 000,00.
- (14) The Sick Pay Fund hereby assumes responsibility for the maternity benefits previously paid by the Maternity Benefit Fund.

## **21. SHORT TIME**

- (1) Where short-time has been or is introduced in any workplace and the Regional Chamber has been notified in the form and manner specified by the Council or Regional Chamber, an employee who is not required to work on any day shall be given notice of that fact not later than closing time on the working day prior to the day on which his services are not required, except that, if short-time is to be worked on a Monday or starting from a Monday, an employee who is not required to work on such Monday shall be given notice of the fact not later than closing time on the preceding Thursday.
- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) that his services will not be required on such day, be employed or be paid a full day's wages.

- (3) Where full time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.

## **22. KNITTING INDUSTRY PROVIDENT FUND (NORTHERN AREAS)**

- (1) The Knitting Industry Provident Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911 for the purpose of providing benefits to members on leaving the Industry as provided for in this clause, is hereby dissolved with effect from 1 April 2008.
- (a) The assets and the liabilities of the Fund on that date will be transferred to the Provident Fund for the Clothing Industry (Northern Areas), to be renamed the Provident Fund for the Clothing Industry (Northern Chamber) on 1 April 2008, (hereinafter referred to as the "Northern Chamber Fund") and to the Fashion Industry Protection Fund, provided that the split between the Northern Chamber Fund and the Fashion Industry Protection Fund shall be as recommended by an Actuary appointed for this purpose, and agreed to by the Administrative Committee, in consultation with their advisor;
- (b) If the actual transfer of assets and liabilities takes place on a date other than 1 April 2008, the liabilities shall be increased by interest as recommended by the actuary and approved by the Administrative Committee, and the full value of assets as at 1 April 2008, with further investment returns to the date of transfer, less any expenses, shall be transferred;
- (c) The administration and management of, and contributions and benefits paid by the Northern Chamber Fund will be governed by the collective agreement to be gazetted and an agreed set of Rules for the Northern Chamber Fund, the Rules ultimately being registered with the Registrar of Pension Funds in terms of the Pension Funds Act;
- (d) For each member of the Fund, the balance held in that member's account in the Fund on 1 April 2008 will be transferred to an account established for that member in the Northern Chamber Fund;
- (e) The mechanism used for the dissolution of the Fund is the Transfer of Fund provision contained in sub-clause 22(11) in this Part E of the Main Agreement. The transfer of assets and liabilities between the Fund and the Fashion Industry Protection Fund is a once-off transfer;
- (f) Notice of the dissolution of the Fund shall be provided to the Registrar: Labour, who shall gazette such notice, and such further regulatory action as is required shall be complied with; and
- (g) Any requirements of a fiscal nature shall be fulfilled.
- (2) The Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all below will cease in the Fund, given the full transfer of the Fund to that fund and the Clothing Industry Protection Fund, and read as such) shall consist of-
- (a) contributions paid into the Fund in terms of the provisions of subclause (5);
- (b) interest derived from the investment of any moneys of the Fund;
- (c) any other sums to which the Fund may become entitled or which may be donated to the Fund.

- (d) Any values transferred as a result of an amalgamation, merger, or a bulk transfer of assets and a liabilities as a result of sub-clause 1 (1) (a) above;
- (e) Any values transferred from any other retirement provision, with the approval of the Administrative Committee (or its successor) subject to meeting the fiscal requirements by an individual member

**(3) Administration of the Fund:**

- (a) The administration of the Fund shall be vested in an administrative committee consisting of three employers' representatives and three employees' representatives appointed by the Council or Regional Chamber. For each representative an alternate shall be appointed.
- (b) Two employers' representatives and two employees' representatives shall constitute a quorum and all matters shall be determined by a majority vote.
- (c) All expenses of administration shall be a charge against the Fund.
- (d) The Council or Regional Chamber shall appoint a public accountant or accountants whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the annual period ending 31 December. The audited statements and balance sheet shall thereafter lie for inspection at the office of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
- (e) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all monies received into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts for the Fund shall be kept in the Regional Chamber's books.
- (f) Fund Accounts

The Administrative Committee may, upon advice from their advisors, establish such accounts in the Fund as may be deemed appropriate to ensure the sound ongoing functioning of the Fund, and may, having received advice from their advisors, credit such amounts to those accounts at establishment as the Administrative Committee determines, subject to the establishment of the accounts with these recommended amounts not placing the Fund in a financially unsound position. The Rules of the Northern Chamber Fund will reflect these reserve accounts, and will specify the provisions for the operation of these accounts. These reserve accounts will at all times be operated in compliance with any applicable legislation.

- (4) Members of the Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all members and their benefit entitlements of the Fund transfer to that fund, and read as such) shall consist of:
  - (a) Active members, for whom contributions are made on a regular basis;
  - (b) Inactive members, who are currently dormant in the Fund, because they are not currently employed in the industry as defined in Clause 3, but who are expected to return to the industry; and
  - (c) Unclaimed members who last paid a contribution to the Fund more than six months ago, are no longer employed in the industry, and have not come forward to claim their benefit in the Fund, provided that where the Unclaimed Members of

the Fund are transferred to the Northern Chamber Fund on 1 April 2008, and become Unclaimed Members of the Northern Chamber Fund on that date, any tax obligations which lay with the Fund in relation to these Unclaimed Members are transferred to the Northern Chamber Fund.

(5) **Contributions:**

- (a) (i) Every employer shall on the pay day of each week and from the first pay day after the coming into operation of this part of the Agreement, deduct from the wage of each contributor in his employ, 5,75 per cent of the prescribed wage payable to such contributor, calculated to the nearest cent: Provided that no deduction shall be made from the wage of a contributor who has worked for less than 20 hours in the week in which the deductions fall due.
  - (ii) To the aggregate amount deducted under subparagraph (i), every employer shall contribute an amount equal to 6,5% in respect of each employee. The employer shall forward the total amounts deducted under subparagraph (i), together with his own contributions in terms of this subparagraph to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a statement in the form and manner specified by the Council or Regional Chamber, within seven days from the date on which the deductions were made.
  - (b) Should an employer fail to make the required deduction from the wages of his employees, he shall not be entitled to recover the arrear amounts from said employees.
  - (c) Notwithstanding anything to the contrary which may be contained in this clause, deductions shall not be made from the wage of a worker who has been in the Industry for less than 20 days.
  - (d) Notwithstanding the provisions of paragraph (a) of this subclause, other employees in the employ of the employer who are members of the trade union and who elect to become contributors may at the discretion of the Administrative Committee contribute to the Fund, and the provisions of this clause shall mutatis mutandis apply in respect of such employee and the employer of such employees.
  - (e) Should any amount due in terms of this clause not be received by the Regional Chamber by the seventh day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: The interest received shall be added to the interest income of the Fund and form part of the general investment returns of the Fund.
- (6) Benefits (subject to the transfer of all benefit entitlement to the Northern Chambers Fund upon the merger and dissolution of the Fund):
- (a) Benefits as are specified in subclause (7) shall be provided to members.
  - (b) Members who have left the Industry may apply for a withdrawal of accumulated benefits. Application for benefits shall be made in writing in the form of and manner specified by the Council or Regional Chamber.
  - (c) Every employee shall be required to nominate a beneficiary to whom, in the event of the death of the member, any benefits due to such member shall be paid. In the event of the Fund not being advised of such beneficiary, any benefits due at the time of a member's death shall be paid into the estate of such

deceased member. The nomination of a beneficiary shall be made in the form specified in the rules of the Fund.

- (d) When a member returns to the Industry before payment has been made on an application for withdrawal of benefits, the application shall automatically lapse and contributions be resumed forthwith.
- (7) **Amount of benefits:** The minimum benefits that shall be paid to a member shall be the total amount contributed by such member plus-
- (a) 100% of the amount contributed on his behalf by his employer, less any allocation for expenses that have been made from the employer's contribution;
- (b) in the case of the death, retrenchment or retirement at the stipulated retirement age of a member, 100 per cent of the amount contributed on his behalf by his employer, plus any amounts that the member may be entitled to.
- (8) **Payment of interest:** In addition to the refund of contributions and the payment of such benefits as may have accrued to him, a member shall be entitled to interest, the rate of which shall be determined by the Administrative Committee, upon the advice of the Actuary, and will be related to the investment returns earned on the assets of the Fund. The interest accruing to members shall be credited to the members' accounts and paid to them, together with the refund of contributions and any other benefits which may be due.
- (9) **Additional benefits:**
- (a) The Council or Regional Chamber may, from time to time, increase the benefits stated herein by declaration of a bonus in the light of improvement in the finances of the Fund through-
- (i) accrual of interest;
- (ii) contributors leaving the Industry before qualifying for the full 100 per cent of the employer's contributions: Provided that any such bonus shall be determined only after an investigation by a public accountant into the assets and liabilities of the Fund: Provided further that such bonus shall not be in excess of any amount recommended by such accountant. Any such bonus shall be credited to the member's account and shall be payable to such member at the same time as and in addition to the benefits specified in subclause (7) and (8).
- (b) The Council or Regional Chamber may use moneys arising out of subclause (9) (a) (i) and (ii) to augment the following benefits:
- (i) Retirement/Enhanced Benefit paid to contributors who leave the Industry from the age of 50 years, owing to retirement or retrenchment on the following basis:
- | Age      | % of total benefit |
|----------|--------------------|
| 50 years | 5%                 |
| 51 years | 10%                |
| 52 years | 15%                |
| 53 years | 20%                |
| 54 years | 25%                |
| 55 years | 30%                |
| 56 years | 35%                |
| 57 years | 40%                |

58 years	45%
59 years	50%
60 years	55%

On 1 April 2008 the retrenchment enhancement described above will cease, and a value is to be calculated by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the future severance benefit offset as described in Clause 24 that the employer would have enjoyed had the retrenchment enhancement benefit not been discontinued. Upon acceptance of the recommendation by the Actuary, this amount will be transferred to the account established in the Fashion Industry Protection Fund for the employer of that member, to be dealt with in accordance with the provisions of this agreement that relates to the Fashion Industry Protection Fund.

On 1 April 2008 the retirement enhancement benefit shall cease, and a value is to be calculated for each member by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the previous enhanced retirement benefit that the member may have enjoyed had he reached retirement, and the benefit not been discontinued. Upon acceptance by the Administrative Committee of the recommendation by the Actuary, this amount will be added to the members' share of each active member of the Fund. For any dormant member who has reached retirement age, that dormant member shall be assumed to retire on that date, and have their benefit enhanced appropriately.

- (ii) payment of a death benefit of R10 000,00 to the estate, the beneficiary or beneficiaries, or any person defraying the funeral expenses of such deceased contributor.

(c) **Housing loans:**

- (i) The Administrative Committee may grant housing loans to contributors: Provided that loans granted in terms of this subclause shall be subject to such conditions as may be laid down by the Administrative Committee from time to time with the approval of the Registrar: Labour.
  - (ii) Housing loans shall be repayable at such rates as the Administrative Committee may from time to time determine.
  - (iii) On receipt of a stop order in respect of a housing loan duly signed by the employee concerned, an employer shall deduct from his employee's wages the weekly amount stipulated in the stop order, and shall forward the amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month.
- (10) Benefits not to be ceded or assigned: No benefit or right to a benefit shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall any contribution made by a member or on his behalf be liable to be attached or be subject to any form of execution under a judgment or order of a court of law, and if a member attempts to assign, transfer or otherwise cede or pledge or hypothecate any benefit or right to a benefit, payment of benefits may be withheld, suspended or entirely discontinued if the Administrative Committee so determines.
- (11) **Transfer of Fund:** Notwithstanding anything to the contrary herein contained, the Council or Regional Chamber may formally dissolve the Fund as constituted and transfer all funds, assets and liabilities of this Fund to another fund/s and/or society duly constituted for substantially the same purposes for which this Fund was created. In

the event of such decision, all amounts standing to the personal credit of members of the Fund shall be transferred to their credit under the new fund or society and the benefits due to members, as at the date of such transfer, shall in no way be diminished by virtue of such transfer except where particularly provided for by agreement by the parties:

- (a) On the dissolution date, all contributions to the fund shall cease, and accrual of benefits shall terminate.
- (b) Notice of the dissolution of the Fund shall be provided to the Registrar of Labour, who shall gazette such notice and such further regulatory action as is required shall be complied with.

**(12) Dissolution of Fund:**

- (a) In the event of the Council being dissolved during the currency of this part of the Agreement or any extension thereof, then, notwithstanding anything to the contrary contained in this part of the Agreement, contributions to the Fund shall cease as from the day following the date of coming into operation in the Gazette of the dissolution of the Council in terms of section 59 of the Act. The Fund shall be administered by a committee consisting of three representatives of the employers' organisation and three representatives of the trade union. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar: Labour, he may appoint a trustee or trustees to carry out the duties of the Committee for such purpose until expiration of this part of the Agreement by effluxion of time or cessation for any other cause, upon which the Fund shall be liquidated mutatis mutandis as though the employees had left the Industry: Provided that the duties in connection with such liquidation shall be performed by such other body or persons as the Registrar: Labour may appoint.

- (b) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Administrative Committee until it be either liquidated or transferred by the Council or Regional Chamber to another Fund in terms of subclause (11): Provided that if no new agreement providing for the continuation of the Fund is entered into within one year after the expiration of this part of the Agreement or the Fund not being transferred as aforesaid within such period, the Fund shall be liquidated by the Council or Regional Chamber in the manner set forth in paragraph (a) and in subclause (13).

- (13) Liquidation:** On liquidation of the Fund in terms of subclause (12) and payment of money due to members in terms of that subclause, the monies remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber. If the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

**(14) Payment of benefits in the event of death:**

- (a) Every contributor shall, on joining the Fund, appoint a beneficiary and shall advise the Provident Fund of the address of such beneficiary. In the event of the contributor wishing to change his beneficiary at a later date, he shall advise the said Fund, in writing, of such change of name and address. Every contributor shall further furnish the said Fund with the name and address of dependants and any change of address of dependants.

- (b) In the event of a contributor failing to appoint a beneficiary in terms of paragraph (a) hereof, or of the beneficiary predeceasing the contributor, the Administrative Committee shall pay the benefits to such dependants of the contributor as it may in its discretion deem fit.
- (c) Every employer shall notify the Regional Secretary of the Regional Chamber of the death of any contributor in his employ and the Regional Secretary shall, as soon as possible, on receiving information from any source of the death of a contributor, notify the dependants or beneficiary, as the case may be, by letter or circular stating the name and last-known place of work of the deceased contributor and the fact that benefits may be claimed at an address specified by the Administrative Committee.
- (d) In the event of the Regional Secretary not having been notified of the latest address of a dependant or appointed beneficiary, the Administrative Committee shall take such measures as it may deem expedient to trace such dependant or appointed beneficiary.
- (e) If within 12 months after the death of a contributor no claim is made by a dependant or beneficiary, or the Administrative Committee has, in terms of this subclause, been unable to trace any dependants or beneficiaries, it shall be assumed that there are no dependants or beneficiaries, and the benefits shall revert to the Fund for the benefit of the remaining contributors and there shall thereafter be no further claim against the Fund in respect of that contributor: Provided that the Administrative Committee shall, in the event of a claim being received within a period of three years after the death of a contributor, be entitled, in its entire and absolute discretion, to make payments to the dependants or beneficiaries concerned out of the moneys which have reverted to the Fund.

### **23. SAFEGUARD OF WORKERS' EARNINGS**

- (1) Every employer shall within two months of the date of coming into operation of this part of the Agreement or within two months of the establishment of a new factory, give a banker's guarantee or other guarantee acceptable to the Regional Chamber, to be completed in the form and manner specified by the Council or Regional Chamber, payable on demand on the employer's insolvency or otherwise. Such guarantee shall be used to cover the payment of holiday pay and wages due to the employers' employees: Provided that the money so guaranteed shall be equal to five week's wages for every employee.
- (2) Should any employer fail to provide an acceptable guarantee to the Regional Chamber in terms of the above paragraph, he shall within two months of the date of coming into operation of this part of the Agreement or within two months of the establishment of a new factory deposit a sum of money with the Regional Chamber equal to five weeks' basic wages.

### **24. SEVERANCE PAY**

- (1) An employer shall pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer: Provided that previous employment with the same employer shall be taken into account if the break between the period of employment is less than one year.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this part of the Agreement.



- (4) Until 1 April 2008, where an employee who is aged 50 years or older, subject to sub-clause (5) below, is retrenched, such employee shall receive the stipulated enhanced benefits due in terms of clause 22 (9) (b) (i) of this part of the agreement. With effect from 1 April 2008, the benefit enhancement will cease, as described in sub-clause 4 (f) above. Until 1 April 2008, the employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in sub-clause (1) above where the enhanced Provident Fund benefit is less than the severance benefit. With effect from 1 April 2008, the employer's liability in respect of retrenchment benefits will be the amount of severance pay reflected in sub-clause (1) above. However, to the extent that the employer is compliant, the employer may claim an offset from the Fashion Industry Protection Fund as is provided for in sub-clause 30 (21).
- (5) Where an employee has reached the stipulated retirement age of 60 years of age or older, the employer shall have no liability for severance pay.

## **25. OVERALLS**

The employer shall within three months of the commencement of employment of an employee, or within three months of the date of coming into operation of this part of the Agreement, issue every employee with one new overall/protective garment of the required size and as approved by the Council or Regional Chamber. Thereafter, one overall shall be issued to every employee every 1 July.

## **26. AGENCY SHOP: EMPLOYERS' ORGANISATION**

- (1) Every employer that belongs to the employers' organisation shall pay the membership fee referred to in subclause (3).
- (2) Every employer that does not belong to the employers' organisation shall pay the levy referred to in subclause (3).
- (3) The amount of the monthly membership fee or monthly levy shall be calculated in accordance with the following formulae:
- (i) an employer employing 60 or fewer employees, a total of R250.00 per month (inclusive of VAT);
  - (ii) an employer employing 61 or more employees, R4,25 per employee (inclusive of VAT) times the number of employees for whom wages are prescribed in this part of the Agreement.
- (4) Every employer shall pay the monthly amount to the Regional Secretary of the Northern Chamber of the National Council, P.O. Box 5101, Johannesburg, 2000, before the 15th day of each month, together with an analysis of the amounts received, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.
- (5) The Regional Secretary of the Northern Chamber of the National Council shall deposit all monies received in terms of this clause into the Northern Chamber's account and at the end of each month-
- (a) pay all membership fees received to the employers' organisation; and
  - (b) deposit all the levies received into a separate account administered by

- (6) The monies held in the separate account may be used only for expenditure incurred by the employers' organisation relating to collective bargaining or dispute resolution in the Industry and may not be-
  - (a) paid to a political party as an affiliation fee; or
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office.
- (7) The employers' organisation shall arrange for an annual audit of the separate account within six months of its financial year by an auditor who-
  - (a) conducts the audit in accordance with generally accepted auditing standards;
  - (b) reports in writing to the employers' organisation, and in this report expresses an opinion as to whether or not the employers' organisation has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (6).
- (8) The employers' organisation shall submit to the Northern Chamber of the National Council, within 30 days of receipt of the auditor's report referred to in subclause (7), a certified copy of that report.
- (9) Any person may inspect the auditor's report submitted to the Northern Chamber of the National Council in terms of subclause (8) at the Northern Chamber's offices, 148 Kerk Street, Johannesburg.
- (10) The Northern Chamber of the National Council shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (11) The Independent Exemptions Body may, on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs, grant an exemption from the provisions of this clause.
- (12) Any dispute about the application, including enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator: Provided that the parties mutually agree on such conciliator and arbitrator. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator, who must be senior counsel, shall be appointed from the ranks of an accredited agency.

## **27. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT**

- (1) The Council or Regional Chamber shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether owing to its own investigations or owing to any other source, it appears that the provisions of this part of the Agreement have been breached, then the following procedure shall apply to enforce compliance:
  - (a) The General Secretary of the Council or Regional Secretary of the Regional Chamber shall request a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber.
  - (b) If, on completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
  - (c) At the end of the conciliation process, the designated agent shall submit a report to the Regional Secretary of the Regional Chamber and/or General Secretary of the Council as to the result of the investigation, the steps taken to secure

compliance with this part of the Agreement through conciliation and the outcome thereof.

- (d) On receipt of the report, the Regional Secretary of the Regional Chamber and/or General Secretary of the Council may-
  - (i) require the designated agent to make further investigation; or
  - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
  - (iii) take such other steps as may be deemed reasonable.
- (e) If the Regional Secretary of the Regional Chamber and/or General Secretary of the Council decides to refer the matter to arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this part of the Agreement.
- (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The Regional Secretary of the Regional Chamber and/or General Secretary of the Council shall serve notices of the date, time and venue of the arbitration hearing on all the parties who may have a legal interest in the outcome of the arbitration.
- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to-
  - (i) give evidence;
  - (ii) call witnesses;
  - (iii) question the witnesses of any other party;
  - (iv) address concluding arguments to the arbitrator;
  - (v) be represented by-
    - (aa) a legal practitioner; or
    - (ab) an office-bearer or official of his registered trade union or registered employer's organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
  - (i) To determine whether there has been a breach of the Agreement;
  - (ii) to make any appropriate award that gives effect to the Collective Agreement and ensures compliance therewith;
  - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
  - (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its cost of providing the arbitration service: Provided that where the Council's or Regional Chamber's accredited conciliator has made an advisory award in terms of clause 28(3)(c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make

costs order, as set down by the Council or National Association of Bargaining Councils, against the party concerned which shall, as a minimum, cover the Council's and/or Regional Chamber's costs of dealing with the dispute;

- (v) to make an award in the absence of a party who is alleged to have breached the Agreement if-
  - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
  - (ab) proof is presented that such party has been notified of the proceedings and notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
  - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this part of the Agreement;
- (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown; and without limiting the generality hereof, the arbitrator shall have this power if-
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
  - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (j) Any award made by the arbitrator, together with any reasons shall be served on all interested parties by the Council or Regional Chamber.
- (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.
- (l) The provisions of this procedure, shall stand in addition to any other legal remedy which the Council or Regional Chamber or a party to the Council may have to enforce an agreement or a unilateral change to an employee's conditions of service and which is in contravention of the agreements of the Council and which is binding on a party or non-party to such an agreement.

## **28. DISPUTE PROCEDURE**

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
  - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
  - (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.

- (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

**(2) Accreditation**

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

**(3) Panel of conciliators, arbitrators and senior arbitrators**

- (a) The Council shall appoint:
  - (i) a panel of conciliators, for the purpose of conciliating disputes;
  - (ii) a panel of arbitrators, for the purpose of determining disputes;
  - (iii) a panel of senior arbitrators, for the purpose of determining disputes where
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
    - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.

- (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or
  - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

**(4) *Dispute involving non-parties to the Council***

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

**(a) *Referral and conciliation of disputes:***

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.

- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings:
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

**(b) Adjudication of disputes referred to the Council for arbitration:**

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
  - (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the

arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.

- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
  - (aa) give evidence;
  - (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, the arbitrator shall have this power if:
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council -**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.



- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause 5 (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

**(6) Compliance procedure and enforcement of collective agreements by Council -**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
  - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-
    - (aa) publicising the contents of the agreement;
    - (bb) conducting inspections;
    - (cc) investigating complaints;
    - (dd) endeavouring to secure compliance with the agreement through conciliation; or
    - (ee) issuing a compliance order requiring any person bound by the

agreement to comply with the agreement within a specified period.

- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause 4(b)(v) to (4)(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
  - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
  - (ff) any award contemplated in section 138(9) of the Act;
  - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal

remedy through which the Council may enforce a collective agreement.

**(7) Non-Compliance**

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

**29. EXHIBITION OF AGREEMENT**

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this part of the Agreement in one of the official languages.

**30. INDUSTRY PROTECTION FUND**

- (1) In terms of section 29(1)(g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the Parties to the Regional Chamber, which programmes are aimed at protecting the industry in the Northern Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the Parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 11 cents: Provided that no deduction shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an equal amount per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deductions fall due. Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the due date in which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.
- (7) The monies collected by the Regional Chamber shall be paid monthly into the Regional Chamber's bank account and, for the purposes of receiving these funds and for disbursing them for the purpose for which they are intended, shall be accounted for separately.

- (8) The monies collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2)-
- (a) "Buy Local" campaigns;
  - (b) combating customs fraud and illegal imports.
- or for such other strategies that meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Transvaal Clothing Manufacturers' Association (TCMA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar: Labour.
- (10) The Fund's monies shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the TCMA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the TCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No monies of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the TCMA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund monies at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the TCMA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan will be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure
- (a) is in terms of the approved plan;
  - (b) is clearly classified by strategy, activity and the nature of the expense; and
  - (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the TCMA.
- Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure will be presented to the Regional Chamber for approval prior to payment.
- (16) Any expenses that have been incurred by SACTWU or the TCMA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the

TCMA, may be recovered by the Regional Chamber from SACTWU or the TCMA, as the case may be.

- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every three months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the TCMA shall be obliged to report back to the Regional Chamber every three months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the Parties as to whether any activity or expenditure or proposed activity expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.
- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

### **31. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION**

- (1) This part of the Agreement shall remain in force until 31 August 2011: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2010.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in subclause (2) above shall mean negotiations as contemplated in subclause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

### **32. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING**

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

### 33. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
  - (i) The memorandum of Understanding as conclude between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
  - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

### 34. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

#### **World International HIV/AIDS Day**

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

### 35. CONTRACT EMPLOYEES

Contained in Annexure D.

### 36. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

**ANNEXURE A****CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS  
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING  
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
  - eliminating unfair discrimination in the workplace based on HIV status;
  - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
  - promoting appropriate and effective ways of managing HIV in the workplace;
  - creating a balance between the rights and responsibilities of all parties.

**2. OBJECTIVES**

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
  - (i) creating a non-discriminatory work environment;
  - (ii) dealing with HIV testing, confidentiality and disclosure;
  - (iii) providing equitable employee benefits;
  - (iv) dealing with dismissals; and
  - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
  - (ii) developing procedures to manage occupational incidents and claims for compensation;
  - (iii) introducing measures to prevent the spread of HIV;
  - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
  - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
  - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

### **3. POLICY PRINCIPLES**

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

### **4. APPLICATION AND SCOPE**

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.



- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

## 5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:
- (i) Employment Equity Act, No. 55 of 1998;
  - (ii) Labour Relations Act, No. 66 of 1995;
  - (iii) Occupational Health and Safety Act, No. 85 of 1993;
  - (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
  - (v) Basic Conditions of Employment Act, No. 75 of 1997; and
  - (vi) Medical Schemes Act, No. 131 of 1998.
  - (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.
- 5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].

5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.

5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

## **6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT**

6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:

- (i) recruitment procedures, advertising and selection criteria;
- (ii) appointments, and the appointment process, including job placement;
- (iii) job classification or grading;
- (iv) remuneration, employment benefits and terms and conditions of employment;
- (v) employee assistance programmes;
- (vi) job assignments;
- (ix) training and development;
- (x) performance evaluation systems;
- (xi) promotion, transfer and demotion;
- (xiii) termination of services.

6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
- (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
- (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
- (iv) providing support for all employees infected or affected by HIV and AIDS; and
- (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

## **7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE**

### **7.1. HIV Testing**

7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. <sup>1<sup>[1]</sup></sup>

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item

7.1.4. Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;
- (iv) as an eligibility requirement for training or staff development programmes; and
- (v) as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

- (i) At the initiative of an employee;
- (ii) Within a health care worker and employee-patient relationship;
- (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
- (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.

7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

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<sup>1<sup>[1]</sup></sup> The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.<sup>2[2]</sup> Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

## **7.2. Confidentiality and Disclosure**

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
  - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
  - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

## **8. PROMOTING A SAFE WORKPLACE**

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
  - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
  - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
  - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
  - (v) the procedures to be followed in applying for compensation for occupational infection;
  - (vi) the reporting of all occupational accidents; and
  - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

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<sup>2[2]</sup> See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

## **9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV**

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

## **10. EMPLOYEE BENEFITS**

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

## **11. DISMISSAL**

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

## **12. GRIEVANCE PROCEDURES**

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

### **13. MANAGEMENT OF HIV IN THE WORKPLACE**

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
  - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
  - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
  - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

### **14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE**

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

## **15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE**

### **15.1. A Workplace HIV/AIDS Policy**

15.1.1. Every workplace should develop an HIV/AIDS policy<sup>3[3]</sup>, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

15.1.3. The policy should reflect the nature and needs of the particular workplace.

15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

### **15.2. Developing Workplace HIV/AIDS Programmes**

15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;

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<sup>3[3]</sup> This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

## **16. INFORMATION AND EDUCATION**

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.



**GLOSSARY**

<b><i>Affected employee</i></b>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<b><i>AIDS</i></b>	AIDS is the acronym for “acquired immune deficiency syndrome”. AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<b><i>Epidemiological</i></b>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<b><i>HIV</i></b>	HIV is the acronym for “human immuno deficiency virus”. HIV is a virus which attacks and may ultimately destroy the body’s natural immune system.
<b><i>HIV testing</i></b>	taking a medical test to determine a person’s HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of ‘risk behaviour’ (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee’s or job applicant’s HIV status.
<b><i>HIV positive</i></b>	having tested positive for HIV infection.
<b><i>Infected employee</i></b>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<b><i>Informed consent</i></b>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<b><i>Policy</i></b>	a document setting out an organisation’s position on a particular issue.
<b><i>Pre and post test counselling</i></b>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<b><i>Reasonable Accommodation</i></b>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<b><i>STDs</i></b>	acronym for “sexually transmitted diseases”. These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<b><i>Surveillance Testing</i></b>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

**ANNEXURE B****PRODUCTIVITY****The following provisions shall be applicable to the plant level productivity incentive schemes:**

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

**ANNEXURE D**

**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.