



NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

HEAD OFFICE

Address: 7th Floor, Industria House, 350 Victoria Road, Salt River, 7925
Tel: 021 460 4000, Fax: 021 447 0628, Post: P O Box 1142, Woodstock, 7915 Website: www.nbc.org.za

CONSTITUTION OF THE NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY (as last amended on 10 November 2020)

Original Constitution (Annexure "B" to NBC Founding Agreement) was signed at CAPE TOWN on the 14th day of MAY, 2002 by elected representatives on behalf of the Cape Clothing Association (CCA), Eastern Province Clothing Manufacturers' Association (EPCMA), Free State and Northern Cape Clothing Manufacturers' Association (FS & NCCMA), Natal Clothing Manufacturers' Association (NCMA), Northern Decentralised Clothing Manufacturers' Association (NDCMA), Northern KwaZulu-Natal Clothing Manufacturers' Association (NKZNCMA), Transvaal Clothing Manufacturers' Association (TCMA) and Southern African Clothing and Textile Workers' Union (SACTWU) and was adopted by the Registrar of Labour Relations on 24/05/2002.

The Constitution has subsequently been Amended as follows:-

Clause No / Sub-clause No	Amendment Adopted by Council on:	Amendment Approved & Registered by Registrar on:
Clause 2 (2.1.5.3) (2.1.5.3)	15.05.2019 17.09.2020	08.10.2019 10.11.2020
Clause 3 (3.9)	09.12.2003	04.02.2004
Clause 5 (5) (5) (5)	15.10.2009 29.09.2015 25.08.2016	19.01.2010 23.11.2015 20.09.2016
Clause 6 (6.8 + 6.9)	09.12.2003	04.02.2004
Clause 8 (8.1 + 8.2.1)	15.10.2009	19.01.2010
Clause 12 (12.1) (12) (12.1 + 12.2)	24.07.2002 09.12.2003 15.10.2009	29.08.2002 04.02.2004 19.01.2010
Clause 13 (13.1.1) (13.3.1) (13.3.2) (13.12.1) (13.12.3) (13.3.2) (13.12.1) (13.12 + 13.12.1)	09.12.2003 15.10.2009 15.06.2006 22.09.2005 20.04.2006 29.09.2015 29.09.2015 15.05.2019	04.02.2004 19.01.2010 25.08.2006 25.10.2005 22.05.2006 23.11.2015 23.11.2015 08.10.2019
Clause 15 (15.4.1.6)	15.06.2006	25.08.2006
Clause 16 (16.10)	09.12.2003	04.02.2004
Clause 18 (18.2.2) (18.4)	29.09.2015 29.09.2015	23.11.2015 23.11.2015

REGIONAL CHAMBERS:

CAPE
Industria House
350 Victoria Road
Salt River 7925
P.O. Box 1142
Woodstock 7915
Tel: 021 460 4000
Fax: 021 447 0628

KWAZULU NATAL
127/129 Magwaza Maphalala Street (Gale Street)
Umbilo, Durban 4001
P.O. Box 18354
Dalbridge 4014
Tel: 031 362 0700
Fax: 031 307 6716

NORTHERN
1st Floor, Solly Sachs House
111 Commissioner Street
Johannesburg (CBD) 2001
P.O. Box 5105
Johannesburg 2000
Tel: 011 402 2737
Fax: 011 402 7375

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

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CONSTITUTION OF THE
NATIONAL BARGAINING COUNCIL
FOR THE CLOTHING MANUFACTURING INDUSTRY
(AS AMENDED ON 10 NOVEMBER 2020)

1. **NAME**

The name of the Bargaining Council shall be "**National Bargaining Council for the Clothing Manufacturing Industry**" and is referred to in this Constitution as "the Council".

2. **DEFINITIONS¹**

2.1 Unless inconsistent with the context :

2.1.1 any expressions used herein which are defined in the Labour Relations Act No. 66 of 1995 (as amended) shall have the same meaning as in the Act, as amended;

2.1.2 any reference to any one gender shall include the other and vice versa;

¹ Amended 08/10/2019: Clause 2: New sub-clause 2.1.5.3 inserted and subsequent sub-clauses renumbered – refer *
Amended 10/11/2020: Clause 2: Sub-clause 2.1.5.3 amended – refer *

- 2.1.3 the singular shall include the plural and vice versa;
- 2.1.4 the reference to persons shall include both natural persons and juristic persons;
- 2.1.5 the following expressions shall bear the meanings ascribed to them below :
- 2.1.5.1 "**the Act**" means the Labour Relations Act No. 66 of 1995, as amended from time to time;
- 2.1.5.2 "**collective agreement**" means an agreement concluded as contemplated in clause 14 of this Constitution;
- 2.1.5.3* "**Complying employer**" means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the National Bargaining Council, which has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union, employer subscriptions

* Amended 08/10/2019: New sub-clause 2.1.5.3 inserted

Amended 10/11/2020: Sub-clause 2.1.5.3: "complying employer" definition amended to include companies that have a Council-approved arrears repayment plan.

or who has implemented a signed Council-approved arrears repayment plan and who has registered all permanent and contract employees with the Council;

2.1.5.4 "**Council**" means the National Bargaining Council for the Clothing Manufacturing Industry;

2.1.5.5 "**days**" means calendar days;

2.1.5.6 "**employee**" means those employees as defined and/or presumed to be employees in terms of the Act;

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

2.1.5.8 "**employer party**" means the employer organisations party to this Constitution in terms of clause 5 and any other registered employer organisation admitted as a party to the Council in terms of clause 6;

2.1.5.9 "**founding agreement**" means the agreement entitled as such entered into between the founding

parties to this constitution on 14 May 2002;

- 2.1.5.10 "**party**" means a party to this Constitution as set out in terms of clause 5 below and subject to the provisions of clause 6 below;
- 2.1.5.11 "**Industry**" means the interests in respect of which the Council is, from time to time, registered in terms of the Act;
- 2.1.5.12 "**Regional Chamber**" means a Regional Chamber appointed in terms of Clause 10 below;
- 2.1.5.13 "**representative**" means a person appointed by any party to represent such party on the Council;
- 2.1.5.14 "**union**" means the Southern African Clothing and Textile Workers Union and any other registered trade union admitted as a party to the Council in terms of clause 6;
- 2.1.5.15 "**arbitrator**" means a suitably qualified person appointed by the Council to the panel and "senior arbitrator" means a suitably qualified person of senior standing appointed by the Council to the

senior panel, having had regard in both instances to the provisions of clause 15.3 below;

2.1.5.16 "**panel**" means a panel of arbitrators appointed by the Council from time to time and "**senior panel**" means a panel of senior arbitrators appointed by the Council from time to time, having had regard in both instances to the provisions of clause 15.3 below.

2.1.5.17 "**commission**" means the Commission for Conciliation Mediation and Arbitration (CCMA).

3. **POWERS AND FUNCTIONS**²

The Council is empowered, subject to the agreement of the parties, to do all or any of the following :

- 3.1 to conclude collective agreements;
- 3.2 to enforce those collective agreements;
- 3.3 to prevent and resolve labour disputes;

² Amended 04/02/04: Clause 3: Sub-clause 3.9 amended – refer *

- 3.4 to perform the dispute resolution functions referred to in clause 15, below;
- 3.5 to establish and administer a fund to be used for resolving disputes;
- 3.6 to promote and establish training and education schemes;
- 3.7 to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the Council or their members;
- 3.8 to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or lockout at the workplace;
- 3.9* to delegate rights, powers and duties in terms of this constitution to the Regional Chambers referred to in clause 10 below and/or the Executive Committee established in terms of clause 12 and/or any special committee established in terms of clause 11 below.

* Amended 04/02/04: Sub-clause 3.9: Extended to include the expression: "and/or Executive Committee established in terms of clause 12 and/or any special committee established in terms of clause 11 below".

- 3.10 to develop proposals for submissions to NEDLAC or any other appropriate forum on policy and legislation that may affect the Industry;
- 3.11 to confer on workplace forums additional matters for consultation.
- 3.12 to provide industrial support services within the industry.
- 3.13 to extend the services and functions of the Council to workers in the informal sector.
- 3.14 to institute or defend legal proceedings in its own name.
- 3.15 to exercise such other powers and perform such other functions as may be provided in the Labour Relations Act including those in s28 of the Act.
- 3.16 to buy, sell, lease, pledge, mortgage, hypothecate or otherwise encumber moveable, immovable and intellectual property, to invest, borrow or lend money and all powers incidental thereto.
- 3.17 to do whatever else may be necessary to give effect to the foregoing.

4. **RULES**

4.1 The Council shall be entitled to make rules :

4.1.1 in respect of any matter permitted or prescribed by this Constitution; or

4.1.2 in respect of any matter on which the Council considers it necessary to prescribe rules for the purpose of achieving the functions of the Council.

4.2 The procedures which shall be followed in promulgating or amending any rules, are those prescribed in clauses 13.10 and 13.11 of this Constitution.

5. **PARTIES TO THE COUNCIL**³

The parties to the Council are the :

5.1 Apparel & Textile Association of South Africa (ATASA);

5.2 Eastern Province Clothing Manufacturers' Association (EPCMA);

³ Amended 19/01/10: Clause 5: (i) After the phrase "The parties to the Council....." (the first line of the clause), deleted the words ".....at the date of adoption of this Constitution.....". (ii) Northern KwaZulu-Natal Clothing Manufacturers' Association deleted as a Party to the Council after being deregistered by Registrar of Labour. Amended 23/11/15: Clause 5: (i) Coastal Clothing Manufacturers' Association added as a Party to the Council. (ii) Free State & Northern Cape Clothing Manufacturers' Association deleted as a Party to the Council after applying for voluntary deregistration via the Department of Labour and resolving to "merge" with the TCMA. (iii) Natal Clothing Manufacturers' Association old name deleted and newly registered name, South African Clothing Manufacturers' Association, inserted. (iv) Northern Decentralised Clothing Manufacturers' Association deleted after deregistration by Registrar of Labour Relations. Amended 20/9/16: Clause 5: Cape Clothing Association (CCA)'s name changed to South African Apparel Association (SAAA) and Coastal Clothing Manufacturers' Association (CCMA)'s name changed to Apparel & Textile Association of South Africa (ATASA).

5.3 South African Apparel Association (SAAA);

5.4 South African Clothing Manufacturers' Association (SACMA);

5.5 Transvaal Clothing Manufacturers' Association (TCMA);

and the

5.6 Southern African Clothing and Textile Workers' Union
(SACTWU).

6. **ADDITIONAL PARTIES**⁴

6.1 Any registered trade union or registered employer's organisation may apply in writing to the Council for admission as a party.

6.2 The application must be accompanied by a certified copy of the applicant's registered constitution and certificate of registration and must include the details, reasons and other information provided for in Section 56(2) of the Act.

6.3 The Council must decide, within 90 days of receiving such an application or such extended period as it may require, provided that this is no later than within 180 days of receiving such an application, whether to grant or refuse an applicant admission, and must advise the applicant of its decision,

⁴ Amended 04/02/04: Clause 6: New sub-clauses 6.8 & 6.9 inserted

failing which the Council is deemed to have refused the applicant admission.

6.4 If the Council grants admission it shall be in terms of proportional representation principles including appropriate thresholds as agreed to by the Parties to the Council from time to time, or as set out in Schedule 1 hereto.

6.5 any employer organisation to be granted admission to the Council will be obliged to adhere to, and operate within, any existing protocols entered into between any existing employer parties with a view to regulating the affairs of the employer parties, inter se, and shall also be obliged to comply with the Constitution.

6.6 If the Council refuses to admit the applicant, it must within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

6.7 Any party may withdraw from the Council by giving three calendar months' notice, in writing to the General Secretary of the Council.

- 6.8* Should any organisation admitted as a party to the Council:
- 6.8.1 breach any existing protocols to which it is a signatory, entered into between existing parties with a view to regulating the affairs of the parties inter se; and/or
- 6.8.2 breach any written commitment or undertaking made by such organisation on application for admission as a party to the Council; and/or
- 6.8.3 fail or refuse to comply with the Constitution of the Council; and/or
- 6.8.4 fail or refuse to be bound by any collective agreements or provisions therein, of the Council that are binding on such organisation; and/or
- 6.8.5 fail or refuse to be bound by any applicable law or determination; and/or

* Amended 04/02/04: New sub-clause 6.8 inserted

6.8.6 fail or refuse to require its members to honour and be bound by any applicable collective agreement, determination or law; and/or

6.8.7 be wound up or lose its registration; and/or

6.8.8 cease to meet the criteria for admission as a party to the Council, including but not limited to the principles of proportional representation including appropriate thresholds agreed to by the parties from time to time as envisaged by clause 6.4 of this Constitution:-

Then such organisation may be expelled as a party to the Council.

6.9* In respect of an Employer organisation, such expulsion as envisaged in clause 6.8 above may be effected by and at the instance of, one or more employer's organisations:

6.9.1 Whose members employ the majority of the employees employed by the members of the employer's organisations which are party to the Council; and

* Amended 04/02/04: New sub-clause 6.9 inserted

- 6.9.2 Who represent at least 75% of the votes allocated in terms of an applicable voting protocol between employer organisations to which the employer organisation sought to be expelled is either a party or bound thereby.

7. **STATUS OF THE COUNCIL**

- 7.1 The Council, upon registration, will become a body corporate, as prescribed by the Act and capable of doing any act which the Act and/or its Constitution requires or permits it to do.
- 7.2 The Council shall exist independently of its members and shall have perpetual succession.
- 7.3 Unless otherwise provided by the Constitution, no party, by reason only of its affiliation to the Council, shall be liable for any of the obligations of the Council.

8. **REPRESENTATIVES AND ALTERNATES**⁵

- 8.1* The Council shall consist of 22 representatives of whom one half shall be appointed by the employer party and one half by the union.

⁵ Amended 19/01/10: Sub-clauses 8.1 & 8.2.1 amended – refer*. *Sub-clause 8.1: Number of representatives reduced from 30 to 22

8.2.1* The employer party shall appoint its 11 representatives as follows:

Each of the employers' organisations listed in clause 5 shall be entitled to appoint one representative. The balance of the representatives, if any, shall be appointed by agreement between the employers' organisations party to the constitution in terms of clause 5 and admitted as a party to the Council in terms of clause 6, on the principle of proportionality.

8.2.2 Should the employers' organisations party to the Constitution in terms of clause 5 and admitted as a party to the Council in terms of clause 6 not be able to agree upon the balance of the representatives, then the issue of who shall comprise the balance of representatives shall be referred, forthwith upon deadlock being reached and a dispute being declared by any employer's organisation, to final and binding arbitration to an arbitrator as agreed between the disputing parties and failing agreement on the identity of the arbitrator, to an arbitrator appointed by the Industry Arbitrator in terms of Annexure "D" to the Founding Agreement.

* Sub-clause 8.2.1: Number of employer party representatives reduced from 15 to 11

- 8.2.3 The arbitration contemplated in 8.2.2 shall be conducted on an expedited basis by the appointed arbitrator in accordance with such procedure that he/she determines and at a venue, time and place set by the arbitrator after consultation with the disputing parties. The costs of the arbitration shall be borne equally by the employer organisations who are party to the Constitution in terms of clause 5 and admitted as a party to the Council in terms of clause 6.
- 8.3 For each representative there shall be an alternate.
- 8.4 The employer party and the union must appoint their respective representatives and alternatives, who shall each hold office for a period of one year and thereafter until their successors are appointed, and who shall be eligible for reappointment.
- 8.5 A representative or alternate may resign from the Council by giving to the Council and the party which appointed him one month's notice in writing, and the employer party or the union may at any time withdraw one of its representatives or alternates by giving 14 days' notice to the Council.

8.6 Any vacancy shall be filled by the employer party or the union, as the case may be, by appointing a successor for the unexpired period of office.

8.7 In the appointment of its representatives, the employer party must provide for at least one representative to represent the interests of small and medium enterprises.

9. **ELECTION OF OFFICE BEARERS AND THEIR DUTIES**

9.1 **Chairperson and other office bearers**

9.1.1 The Council shall, at its first meeting, following the appointment of representatives, elect a Chairperson and a Vice-Chairperson by show of hands.

9.1.2 In the event of an equal number of votes being cast for two or more candidates, the Acting Chairperson shall write the name of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is thus drawn shall be declared elected.

- 9.1.3 The Council shall appoint a General Secretary and such officers and employees as are appropriate.

9.2 Terms of Appointment

The Council shall prescribe the terms of appointment applicable to the Chairperson or other officers and employees of the Council.

9.3 Period of Office of Chairperson

The Chairperson appointed to the Council shall hold office from one Annual General Meeting to the next, or until the appointment of a successor.

9.4 Vacancy

- 9.4.1 If the office of Chairperson or Vice Chairperson to the Council becomes vacant for any reason, prior to the expiry of his period of office, the appointment of a replacement Chairperson or Vice-Chairperson, as the case may be, shall be made at a general meeting following the occurrence of such vacancy and for the unexpired portion of such period of office.

9.4.2 If the Chairperson is unable to perform his functions for any reason, or if the office of Chairperson becomes vacant for any reason and no successor has been appointed, the functions of the Chairperson shall be assumed by the Vice Chairperson.

9.5 Voting Powers of the Chairperson

The Chairperson to the Council, and the Vice-Chairperson when he performs the function of the Chairperson, shall not be entitled to vote, provided that, where a Chairperson or Vice Chairperson, as the case may be, is appointed from amongst the representatives, he will retain his deliberative vote, but will not have a casting vote.

9.6 Appointment of General Secretary and other Officers

9.6.1 The General Secretary appointed in terms of clause 9.1.3 may also act as Treasurer to the Council.

9.6.2 The appointment of the General Secretary and such other Officers as are provided for in this Constitution shall be upon such terms as may be appropriate and adopted by the Council.

9.7 Functions of Officers and Office Bearers

The functions of the Chairperson, Vice Chairperson, General Secretary and other Officers of the Council may be prescribed by the Council or specified from time to time in rules to this Constitution.

10. REGIONAL CHAMBERS AND SUB-REGIONAL CHAMBERS

10.1 The Council shall establish Regional Chambers and, where appropriate, Sub-Regional Chambers for the areas prescribed by the Council.

10.2 Regional Chambers and/or Sub-Regional Chambers shall be funded in terms of the provisions of clause 16.1 of this Constitution.

10.3 Each Regional Chamber and/or Sub-Regional Chamber shall, subject to any decision of the Council, the provisions of this Constitution and the provisions of the Act, control its own finances. The expenses of each Regional Chamber and/or Sub-Regional Chamber will accordingly be met from grants made for this purpose by the Council on criteria as may be agreed by the Council from time to time.

- 10.4 Each Regional Chamber shall consist of such number of members as may be determined by the Council from time to time, provided that one half of the members shall be representatives of the employer party, and one half shall be representatives of the union.
- 10.5 Having due regard to the spirit and intent of clause 3.9 above, the Council shall prescribe :
- 10.5.1 the areas in respect of which the Regional Chambers are constituted;
 - 10.5.2 the powers and functions of the Regional Chambers;
 - 10.5.3 the procedures applicable to the Regional Chambers;
 - 10.5.4 the procedures applicable to the appointment of office bearers to the Regional Chambers;
 - 10.5.5 the accounting requirements for the Regional Chambers in order to ensure compliance with the provisions of the Act;
 - 10.5.6 any other matters which the Council considers necessary for the functioning of the Regional Chambers.

- 10.6 In the absence of an applicable rule or an agreement to the contrary by the representatives to the Regional Chamber, the provisions of this Constitution as they relate to the appointment of a Chairperson, other office bearers and committees as well as the holding of meetings and all matters incidental thereto, shall *mutatis mutandis* apply to each of the Regional Chambers.
- 10.7 All funds of any former bargaining council registered in respect of the clothing industry for a particular area which existed immediately prior to the registration of this Council, including any social benefit funds established by the parties to that council shall be transferred to this Council on registration of this Council.
- 10.8 Despite 10.7, the funds referred to in 10.7 shall be separate entities and shall be managed and controlled by the Regional Chamber and/or Sub-Regional Chamber which is appointed for the geographic area that includes the area previously covered by the registered scope of the applicable former bargaining council.
- 10.9 In the event that no Regional Chamber is appointed which covers the registered scope of a former bargaining council, the Council shall manage and control the funds.

- 10.10 The Council may decide provided that it is not inconsistent with any provision of this Constitution, that the functions and duties performed immediately prior to the registration of the Council by the bargaining councils that amalgamated to form the Council, shall in future be performed by each respective Regional Chamber established under this Constitution which has responsibility for an area that includes the area described in the registered scope of an amalgamated bargaining council.
- 10.11 Any liabilities incurred by any amalgamating bargaining council prior to the registration of the Council shall first be recovered from that portion of the Council's assets managed by the Regional Chamber that assumed the duties and responsibilities of the amalgamating Council in question. Where such funds are insufficient to meet the liability incurred, the Regional Chamber shall be required and entitled to adopt measures to raise funds to meet the shortfall.
- 10.12 Unless otherwise agreed to by the Council, the provisions applicable to Regional Chambers shall *mutatis mutandis* apply to Sub-Regional Chambers.

11. **SPECIAL COMMITTEES**

11.1 In addition to the Regional Chambers, the Council may appoint such other committees as it may consider necessary :

11.1.1 for the purpose of performing any function which may be delegated to the committee by the Council; or

11.1.2 for the purpose of investigating and reporting on any matter referred to such committees by the Council.

11.2 Such committee shall comprise such numbers of members as may be designated by the Council provided that there shall be an equal number of representatives of the employer party and the union.

11.3 The Council may prescribe :

11.3.1 the appointment of office bearers to Special Committees;

11.3.2 the procedures applicable to Special Committees including decision-making powers and voting procedures;

- 11.3.3 any other matters which the Council may consider necessary for the functioning of the Special Committees.

12. **EXECUTIVE COMMITTEE**⁶

- 12.1 * The Council will appoint an Executive Committee consisting of six (6) representatives per Side. Each representative may be represented in his or her absence by an alternate appointed by the Side from a pool of no more than six (6) alternates which each Side may appoint for this purpose. The Council may prescribe:

- 12.1.1 The procedures applicable to the appointment and functions of the Executive Committee;

- 12.1.2 Any other matters which the Council considers necessary for the function of the Executive Committee.

- 12.2* A quorum for meetings of the Executive Committee shall be a majority of the representatives present or represented by proxy of each of the employer party and the union respectively (i.e. a minimum of 4 per Side).

⁶ Amended 29/08/02: Clause 12: *Sub-clause 12.1 amended to allow for alternates to serve on the Executive Committee
Amended 04/02/04: Clause 12: Entire clause replaced
Amended 19/01/10: Clause 12: *Sub-clause 12.1 amended to reduce number of representatives and alternates from ten (10) to six (6) per Side and a new sub-clause 12.2 inserted.

- 12.3 Notwithstanding the provisions of clause 18.2 below, the Executive Committee is empowered on such terms as it may prescribe to delegate some or all of its functions in respect of exemptions to an "Exemptions Committee" established by the Council for the purpose of considering any applications for exemption which have been received by or referred to it.
- 12.4 The Executive Committee is empowered to:
- 12.4.1 appoint any committee or sub-committee to execute any of its functions it may wish to delegate to such committee and/or sub-committee;
- 12.4.2 ratify or confirm the establishment of any committee and/or sub-committee by itself and/or any Regional Chamber of the Council;
- 12.4.3 where necessary or deemed desirable, ratify, confirm, refuse, or amend, all decisions taken by any of the Regional Chambers and/or their respective sub-committees in respect of applications for exemption considered as from 23 May 2002 to the date of the adoption by Council of this clause, and thereafter;

- 12.4.4 where necessary or deemed desirable, ratify, confirm, refuse, or amend, any decision taken by any other sub-committee established by the Council or the Executive Committee itself, since 24 July 2002 to the date of the adoption of this amending clause by the Council, and thereafter;
- 12.4.5 appoint an "Independent Exemptions Body" to be established by Collective Agreement in terms of clause 18.4 of the Constitution and to determine the date of implementation of such "Independent Exemptions Body."

13. **MEETINGS**⁷

- 13.1 There shall be the following types of meeting :
- 13.1.1* the Annual General Meeting of the Council which shall take place in July, or as near as possible to that month, but by not later than three months from July, in each calendar year and at such time and place as may be called at the discretion of the Chairperson after prior consultation with the parties;

⁷ Amended 04/02/04: Clause 13: Sub-clause 13.1.1 amended by replacing the month of February with July.
Sub-clause 13.3.1 amended on 19/01/10; Sub-clause 13.3.2 amended on 25/08/06 and amended further on 23/11/15; Sub-clause 13.12.1 amended on 25/10/05, amended further on 23/11/15 and on 8/10/19 re-numbered to 13.12 and wording altered; Sub-clause 13.12.3 amended on 22/05/06. Refer * for full description of amendment to each aforementioned sub-clause.

13.1.2 ordinary meetings of the Council which shall be held at such times and places as the Council or the Chairperson may determine, and shall be called :

13.1.2.1 at the written request of any party; or

13.1.2.2 at the discretion of the Chairperson after consultation with the parties.

13.2 Notice of any meetings of the Council :

13.2.1 shall be in writing, detailing :

13.2.1.1 the time;

13.2.1.2 the date;

13.2.1.3 the venue;

13.2.1.4 the business to be transacted;

13.2.2 shall be transmitted by the General Secretary to the representatives :

13.2.2.1 by post; or

13.2.2.2 by telefax; or

13.2.2.3 by any other agreed electronic medium;

13.2.2.4 by hand

13.2.3 shall be given not less than 7 days prior to the meeting provided that the Chairperson may authorise the giving of shortened notice.

13.3.1* The quorum for meetings of the Council shall be a majority of the representatives present or represented by proxy of each of the employer party and the union respectively (i.e. a minimum of six (6) per Side).

13.3.2* Should a representative not be able to attend the meeting he/she may lodge a written proxy in favour of a representative who will attend the meeting, which must be lodged with the Chairman at least 1 hour prior to the commencement of the meeting, and which must be expressed in general terms in favour of the proxy, without limiting the proxy's vote on any particular issue.

If the representative intends to permit the representative to whom the proxy is given to delegate the proxy further by passing it on to another representative, or that representative's representative, such power must be expressly stated in the written proxy lodged with the

* Amended 19/01/10: Sub-clause 13.3.1: Amended to reduce the quorum for meetings of the Council from a minimum of 8 per Side to 6 per Side.

* Amended 25/08/06: Sub-clause 13.3.2: Amended the phrase "...must be lodged with the Chairman within 12 hours of commencement of the meeting..." to read, "...must be lodged with the Chairman at least 1 hour prior to the commencement of the meeting..."

* Amended 23/11/15: Sub-clause 13.3.2: Amended by adding the 2nd and 3rd paragraphs.

Chairman. In the absence of a written recordal of such intent a proxy may not be further delegated by the representative to whom it was given and no vote cast pursuant to such a delegated proxy will be valid.

If a proxy wishes to give a proxy received from a representative to another representative such further proxy must also be in writing and lodged with the Chairman 1 hour before the meeting. No vote cast pursuant to a proxy which has been further delegated shall be valid unless it has been lodged as described.

- 13.3.3 For the purpose of determining whether a quorum is present, alternates of representatives who are absent, shall be regarded as representatives.
- 13.4 If, within 30 minutes of the time and date fixed for any meeting of the Council, a quorum is not present, the meeting shall stand adjourned to a date to be fixed by the Chairperson, not less than 7 and not more than 10 days from the date of the meeting which stands adjourned. Notice in writing shall be given by the General Secretary to each representative stating the date and time of the adjourned meeting. At such adjourned meeting, the representatives present shall form a quorum.
- 13.5 Alternates shall be entitled to attend meetings of the Council

but shall not take part in debate or vote, unless their principals are absent.

- 13.6 Provided there is a quorum present, the total number of votes that may be exercised by the Trade Union representatives in aggregate, shall equal the total number of employer votes in respect of employer representatives who are present in person or by proxy to be determined in accordance with the formula set out in clause 13.12.1.
- 13.7 Minutes of Council meetings shall be kept by the General Secretary.
- 13.8 The General Secretary shall submit the Minutes of every meeting of the Council to the representatives, not later than 21 days after the date of the meeting. If in agreement with the Minutes, the Council shall confirm such Minutes by way of resolution at the next meeting, and the Chairperson shall sign the Minutes as confirmed.
- 13.9 The General Secretary shall be responsible for ensuring that the Council's obligations to keep records and provide information to the Registrar as prescribed by sections 53(4) and 54 of the Act are complied with.

- 13.10 All proposals on issues to be considered by the Council shall, unless otherwise permitted by the Chairperson, be submitted to the Chairperson in writing, and read by him to the meeting of the Council. No proposal shall be considered unless seconded.
- 13.11 Except as otherwise decided by the Council, all matters forming the subject matter of proposals excluding those referred to in clauses 14.4, 14.5 and 14.6 shall be decided by the vote of a 75% majority of votes cast by the Trade Union representatives and a 75% majority of the votes cast by the employer representatives who are present in person or by proxy and who are entitled to vote, on the basis that the votes allocated to the employer party are apportioned in terms of clause 13.12. Voting shall be by a show of hands.
- 13.12* One vote shall be allocated to each of the employers' associations who are founding parties in terms of clause 4.3.8 of the Founding Agreement. Thereafter and subject to clause 13.12.1 below, votes shall be allocated proportionally

* Amended 25/10/05: Clause 13.12.1 (*re-numbered as 13.12 on 8/10/19*): Inserted the words "and on 1 July" after the word "January" and inserted the following new sentence between the words "occurs." and "Founding": "The number of employees shall be as certified by the Council's General Secretary as at 1 January and 1 July, as the case may be each year, derived from actual registration of employer and employees in the records of the Council."

* Amended 8/10/19: Clause 13.12: (i) re-numbered from 13.12.1 to 13.12. (ii) In line three of the clause, after the word "Thereafter", inserted the phrase "and subject to clause 13.12.1 below". (iii) In line nine of the clause, after the words "The number of employees", inserted the phrase "of compliant members". (iv) Inserted the word "compliant" before the word "members" wherever it appears in the clause.

according to the number of employees employed by the compliant members of the employers' associations party to this Constitution in terms of clause 5 and admitted as a party to the Council in terms of clause 6, on 1 January and on 1 July of the year in which voting occurs. The number of employees of compliant members shall be as certified by the Council's General Secretary as at 1 January and 1 July, as the case may be each year, derived from actual registration of employer and employees in the records of the Council. Founding parties will be allocated a further vote for every additional 1000 employees their compliant members employ - thus if a founding party's compliant members employ 2000 or more employees, it will have a total of two votes; if their compliant members employ 3000 or more employees, it will have three votes and so forth;

13.12.1* Provided that an employer may at any time only be a member of one employer party to the Council.

13.12.1A* Should a party entity to the Council, be it a founding party or otherwise or be it an employer's organisation/ association or trade union, as the case may be, choose to de-register as such or cancel its registration and merge

* Amended 23/11/15: New sub-clause 13.12.1A inserted

* Amended 08/10/19: New sub-clause 13.12.1 inserted

with an existing party entity (the merging and absorbing parties respectively) resulting in a merged entity (the merged party entity) then the following shall apply:

- (i) The merging party shall cease to be a member of or party to the Council from the effective date of its de-registration or cancellation of registration, and may not sign any collective agreement in its erstwhile capacity as a party to the Council;
- (ii) All rights, obligations and privileges which previously vested in the merging party by virtue of its membership of the Council will cease on the effective date of its de-registration or cancellation of registration which rights, obligations and privileges shall transfer to the merged party entity with effect from the effective date of the merger between the merging party and the absorbing party;
- (iii) The merging party, absorbing party and the merged party entity will be obliged to furnish to the parties to the Council and/or the Council's secretariat all and any such documents and information that they may require pursuant to the

de-registration, cancellation and merger which resulted in the formation of the merged party entity so as to satisfy themselves as to the facts and the legal status and standing of the merged party entity;

- (iv) It is expressly recorded that such voting rights and strengths that the merging party enjoyed under the Constitution immediately prior to its de-registration or cancellation as an employer's organisation /association or trade union as the case may be, shall with immediate effect upon the effective date of the merger with the merged party entity be transferred to the latter, which shall then be able to exercise such voting rights and strengths under the Constitution as possessed by both the merging party and the absorbing party prior to the merger, in aggregate, thus not disturbing the prior voting representivity which was enjoyed under the Constitution;
- (v) The effective date of this resolution and any consequent amendment to the Constitution shall be the later of 11 July 2014, being the date upon which the Free State Northern Cape Clothing

Manufacturers Association de-registered and the effective date of its merger with the Transvaal Clothing Manufacturers Association, if these dates are different;

- (vi) Existing employer member/party protocols provided for in the Constitution will continue to apply to the merged party entity with effect from the effective date of any merger contemplated in this Clause.

13.12.2 New employer parties who are admitted to the Council will receive one vote if their members employ 1000 or more employees and the number of votes they may exercise will increase on the same basis as that of the founding employer parties as set out in 13.12.1 above.

13.12.3* The employees counted for the purpose of voting strength shall be the number of employees employed within the scope of the Council as certified by the Council at its inaugural meeting, and, thereafter, by the Council's General Secretary in respect of the 1st of January and the 1st of July of the year in which voting occurs.

* Amended 22/05/06: Clause 13.12.3: Inserted the words "by the Council's General Secretary" after the word "thereafter," and, further, inserted the words "and the 1st of July" after the word "January".

13.12.4 The number of votes exercised by the Trade Union shall be equal to the total number of votes exercised by and on behalf of the employer parties.

13.13 No decision taken at a meeting of the Council shall be invalidated by the absence of any representatives, if they have been properly notified in terms of clause 13.2, provided there is a quorum present.

14. **NEGOTIATION PROCEDURES**

14.1 All parties to the Council accept the principle of industry-wide bargaining on terms and conditions of employment and matters incidental thereto in respect of the bargaining unit as defined by the Parties from time to time.

14.2 Negotiations shall :

14.2.1 commence annually, unless otherwise agreed by the parties, and upon such date as may be agreed from time to time by the parties;

14.2.2 be conducted :

- 14.2.2.1 in respect of :
- 14.2.2.1.1 terms and conditions of employment in respect of employees; and/or
- 14.2.2.1.2 any other matter of mutual interest to the employers, the employer party, the employees and the union; and
- 14.2.2.2 in accordance with such procedures as may be laid down from time to time by the Council; and
- 14.2.2.3 in order to conclude an agreement which creates rights and obligations as between the employers, the employees and the union.
- 14.3 Any collective agreement concluded in the Council shall be operative from such date as may be agreed between the parties and which is referred to within the collective agreement, and shall remain operative for the period specified in the agreement.
- 14.4 The collective agreement which is concluded shall be in writing, signed by the parties to the collective agreement and binding upon:

- 14.4.1 The parties to the Council who are also parties to the collective agreement;
- 14.4.2 Each party to the collective agreement and the members of every other party to the collective agreement in so far as the provisions thereof apply to the relationship between such a party and the members of such other party; and
- 14.4.3 The members of a registered trade union that is a party to the collective agreement and the employers who are members of a registered employers' organisation that is such a party, if the collective agreement regulates:
- 14.4.3.1 Terms and conditions of employment; or
- 14.4.3.2 The conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers.
- 14.5 The provisions of clause 13.11 in relation to a vote by a 75% majority shall not be applicable to the conclusion of collective agreements or the extension thereof, which shall be regulated in terms of the Act.

- 14.6 The Council shall, subject to any qualification agreed to by the parties, seek extension of the collective agreement to non-party employers and employees in terms of the Act.
- 14.7 The Council shall be the sole forum for the purposes of negotiating wages and terms and conditions of employment and neither party shall seek to change the remuneration of employees or re-negotiate any matter or provision during the currency of an agreement dealt with in or regulated by a collective agreement of the Council or any other existing agreement between the Parties concluded in the Council, provided that:
- 14.7.1 this shall not limit the parties from entering into any collective agreement in the Council which provides for certain matters to be agreed at plant level; and
- 14.7.2 the parties agree that notwithstanding the fact that certain provisions of a main collective agreement may be gazetted for a lengthy period of time, either party shall have the right to pursue industrial action in compliance with the Labour Relations Act and this constitution after utilising applicable procedures, in the event of agreement not being reached on any issues in annual negotiations

between the parties on wages and other substantive issues.

14.8 Either party will be entitled to submit demands to the other in the Council for the sole purpose of commencing negotiations with a view to reaching a new collective agreement to replace an existing collective agreement at the expiry of its period of currency;

14.8.1 a dispute may be declared and a strike or lock-out may be resorted to for the purpose of ensuring compliance with the terms and conditions of an existing agreement or in pursuance of negotiations as contemplated in clause 14.7 above;

14.8.2 the union may submit demands to an employer who proposes to change the terms and conditions of employment of his employees in a manner that adversely affects such employees, and may take any lawful action in pursuit of any such demands, provided that the sole purpose of any such demands or lawful action shall be to remedy the adverse effect caused by the employer concerned.

15. **DISPUTE PROCEDURE**⁸

15.1 Unless otherwise provided in this Constitution or any collective agreement ratified by the Council, any dispute within the registered scope of the Council must be resolved as set out below.

15.1.1 The General Secretary of the Council must decide, after consultation with the Secretary of any relevant Regional Chamber, whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.

15.1.2 The Council must, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.

15.1.3 When any dispute is allocated to a Regional Chamber in terms of this clause then such Regional Chamber will have the same rights, powers and obligations as the Council.

⁸ Amended 25/08/06: Clause 15: Sub-clause 15.4.1.6 amended – refer *

15.2 Accreditation

15.2.1 With a view to performing its dispute resolution functions in terms of Section 51(3) of the Act only, the Council must by decision apply to the governing body of the Commission for accreditation to perform these functions as appropriate.

15.2.2 In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the Commission in terms of which the Commission is to perform, on behalf of the Council, its dispute resolution functions in terms of Section 51(3) of the Act.

15.3 Panel of Conciliators, Arbitrators and Senior Arbitrators

15.3.1 The Council must appoint:

15.3.1.1 a panel of conciliators, for the purpose of conciliating disputes;

15.3.1.2 a panel of arbitrators, for the purpose of determining disputes;

15.3.1.3 a panel of senior arbitrators, for the purpose of determining disputes where:

15.3.1.3.1 the nature of the questions of law raised by the dispute;

15.3.1.3.2 the complexity of the dispute;

15.3.1.3.3 conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents;
and/or

15.3.1.3.4 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.

15.3.2 The Council must determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.

15.3.3 All parties to the Council must 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:

- 15.3.3.1 the union parties to the Council must prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council must do likewise;
- 15.3.3.2 the lists prepared by the parties must be exchanged, and the union parties must rank the nominees of the employer parties in order of their preference, and the employer parties must do likewise in respect of the nominees of the union parties;
- 15.3.3.3 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;
- 15.3.3.4 in the event that the number of remaining vacancies is an odd number, then the appointments from the

parties' lists must 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 will draw the name of the remaining appointee.

15.3.4 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 must attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies will be filled according to the method described in clause 15.3.3 above.

15.3.5 Despite clause 15.3.4 above, the Council may remove a member of the panel of conciliators or arbitrators from office:

15.3.5.1 for serious misconduct; or

15.3.5.2 due to incapacity; or

- 15.3.5.3 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.
- 15.3.6 If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel according to the method described in clause 15.3.3 above for the unexpired portion of the predecessor's term of office.
- 15.3.7 Subject to paragraph 15.3.9, a person may be appointed to one or more of the panel of conciliators and the panel of arbitrators or senior arbitrators.
- 15.3.8 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 will not be eligible to arbitrate the dispute.
- 15.3.9 An employee of the Council shall not be eligible for appointment to the senior panel of arbitrators.

15.3.10 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 other designated official must 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.

15.4 Disputes 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 in terms of clauses 5 and 6 above, must be resolved by the Council according to the following procedure:

15.4.1 Referral and conciliation of disputes

15.4.1.1 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;

- 15.4.1.2 the party who refers the dispute to the Council must satisfy the Council that a copy of the referral has been served on all other parties to the dispute;
- 15.4.1.3 the General Secretary or other designated official must appoint a member of the panel of conciliators who must attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute;
- 15.4.1.4 The conciliator may, during conciliation proceedings:
- 15.4.1.4.1 mediate the dispute;
 - 15.4.1.4.2 conduct a fact-finding exercise; and
 - 15.4.1.4.3 make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- 15.4.1.5 Representation of a party to the dispute in the conciliation proceedings must be in accordance with

the provisions of the Act in relation to conciliation proceedings at the Commission.

15.4.1.6* At the end of the thirty (30) day period, referred to in clause 15.4.1.3 above or any further period agreed to in writing by the parties to the dispute, the conciliator/s who was/were appointed to attempt to resolve the dispute must issue a certificate stating whether or not the dispute has been resolved.

15.4.1.7 Nothing in this Constitution prevents an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

15.4.2 Adjudication of disputes referred to the Council for arbitration.

15.4.2.1 If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:

* Amended 25/08/06: Sub-clause 15.4.1.6: After the phrase "...in writing by the parties to the dispute," deleted the words "the General Secretary or other designated office of the Council", which have been replaced with the words "the conciliator/s who was/were appointed to attempt to resolve the dispute....".

- 15.4.2.1.1 the Act requires that the dispute be arbitrated;
or,
- 15.4.2.1.2 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 Commission or Labour Court in terms of the Act.
- 15.4.2.2 Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council must appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- 15.4.2.3 Such written request for arbitration must be made within the time period prescribed in the Act, provided that the arbitrator may permit the late request for arbitration on good cause.
- 15.4.2.4 The General Secretary or other designated official of the Council must serve notice of the date, time and venue of the arbitration on the parties to the dispute.

- 15.4.2.5 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.
- 15.4.2.6 Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of 15.4.2.5 above has been granted by the arbitrator, shall have the right to:
- 15.4.2.6.1 give evidence;
 - 15.4.2.6.2 call witnesses;
 - 15.4.2.6.3 question the witnesses of any other party;
 - 15.4.2.6.4 address arguments to the arbitrator;
 - 15.4.2.6.5 be represented in accordance with the provisions of Section 138 and Section 140 of the Act.

- 15.4.2.7 The arbitration proceedings must 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.
- 15.4.2.8 Representation at arbitration proceedings will be in accordance with the provisions of the Act in relation to arbitration proceedings at the Commission.
- 15.4.2.9 The arbitrator who has been appointed to resolve the dispute has the powers of a Commissioner in terms of Sections 138 and 142 of the Act.
- 15.4.2.10 Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute is 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:

15.4.2.10.1 the award was erroneously sought or erroneously made in the absence of any party affected by the award;

15.4.2.10.2 the award is ambiguous or contains an obvious error or omission;

15.4.2.10.3 the award was granted as a result of a mistake common to the parties to the proceedings.

15.4.2.11 The Council must serve the award, together with any written reasons, on all parties to the dispute.

15.4.2.12 Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council must apply to the director to certify that the arbitration award is an award contemplated in Section 143 (1) of the Act.

15.5 Disputes involving parties to the Council

15.5.1 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.

- 15.5.2 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 must appoint a member of the panel of conciliators, who must 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 the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- 15.5.3 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 Constitution and/or any collective agreement between the parties to the dispute, must be resolved by the Council in accordance with the procedure set out in clause 15.4 above, subject to the proviso in 15.5.4 below.

15.5.4 Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this Constitution and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council must appoint a member of the panel of senior arbitrators to arbitrate the dispute.

15.6 Compliance procedure and enforcement of collective agreements by Council

15.6.1 The Council must request the Minister to appoint certain identified persons as the designated agents of the Council to promote, monitor and enforce compliance with any collective agreement concluded in the Council.

15.6.2 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 a designated agent shall have the power to issue a compliance order.

15.6.3 The Council shall take all reasonable steps necessary to ensure compliance with this Constitution 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:

- 15.6.3.1 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;
- 15.6.3.2 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:
 - 15.6.3.2.1 publicising the contents of the agreement;
 - 15.6.3.2.2 conducting inspections;
 - 15.6.3.2.3 investigating complaints;

- 15.6.3.2.4 endeavouring to secure compliance with the agreement through conciliation; or
- 15.6.3.2.5 issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- 15.6.3.3 The designated agent must 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.
- 15.6.3.4 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.
- 15.6.3.5 The General Secretary or other designated official of the Council or Regional Chamber must appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- 15.6.3.6 The General Secretary or other designated agent of the Council or Regional Chamber must serve notice

of the date, time and venue of the arbitration on the parties to the dispute.

15.6.3.7 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 must request the Commission 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 Commission.

15.6.3.8 The provisions of clause 15.4.2.5 to 15.4.2.12 above apply to an arbitration in terms of this clause.

15.6.3.9 In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:

15.6.3.9.1 ordering any person to pay any amount owing in terms of a collective agreement;

15.6.3.9.2 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;

15.6.3.9.3 charging a party to the arbitration an arbitration fee;

15.6.3.9.4 ordering a party to the arbitration to pay the costs of the arbitration;

15.6.3.9.5 confirming, varying or setting aside a compliance order issued by a designated agent;

15.6.3.9.6 any award contemplated in Section 138(9) of the Act;

15.6.3.9.7 any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.

15.6.3.10 Subject to the provisions of the Act, an award in an arbitration conducted in terms of this clause 15.6 is final and binding on the parties to the dispute.

15.6.3.11 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.

- 15.6.3.12 The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

16. **FINANCIAL MATTERS**⁹

- 16.1.1 The Council shall be funded by:

- 16.1.2 Levies raised through collective bargaining upon employers and employees who fall within the scope of the Council;

- 16.1.3 Fees earned as a consequence of the Council or its Regional Chambers' administration of social and related funds;

- 16.1.4 Any other sources as may be agreed by the Parties from time to time.

⁹ Amended 4/2/04: Clause 16: Sub-clause 16.10 amended – refer *

- 16.2 The Regional Chambers shall collect levies on behalf of the Council and shall deposit such monies into accounts as specified by the Council.
- 16.3 The General Secretary of the Council shall perform those functions in regard to the control of the financial matters of the Council, as may be specified by the Council from time to time or set out in any rules to this Constitution.
- 16.4 The funds received by the Council shall be applied to the payment of expenses arising from the administration of the affairs of the Council and its Funds.
- 16.5 The Council must open and maintain an account in its name at a bank of its choice that is registered in the Republic and deposit monies received within three working days of receipt thereof.
- 16.6 All payments from the Council shall be made by cheques signed by signatories authorised and mandated by Council from time to time, or by electronic means as Council deems appropriate.
- 16.7 The Council may invest any surplus funds not immediately required for current expenses or contingencies in -

- (a) Internal registered stock as contemplated in Section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);
- (b) Savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
- (c) a registered unit trust;
- (d) any other manner approved by the registrar.

16.8 Annual financial statements shall be prepared by the General Secretary subject to the provisions contained in any Rule of this Constitution, which shall be countersigned by the Chairperson and which shall, together with the annual financial statements of the Regional Chambers, be submitted for audit to a public accountant as appointed from time to time by the Council.

16.9 Certified copies of the audited financial statements and of the auditor's report in respect of such statements, shall be tabled at the following meeting of the Council.

- 16.10* Such statements and the auditor's report shall be prepared and transmitted to the Registrar as provided for in the Act.

17. **AMENDMENTS**

- 17.1 This Constitution may be amended or amplified by a Resolution adopted by a 75% majority of those present in person or by proxy and who are entitled to vote as provided in clause 13.11 above, with the votes allocated to the employer party, being apportioned in terms of clause 13.12.

- 17.2 No amendment will be considered unless at least one month's notice in writing has been given to the General Secretary and circulated to representatives at least 14 days prior to the date of the meeting at which the amendment is to be considered, provided that the Council may, by unanimous vote, amend the Constitution without notice.

- 17.3 No amendments or additions shall have any force or effect until approved as required by the Act.

* Amended 4/2/04: Sub-clause 16.10: Inserted the expression "prepared and" before the word "transmitted" and deleted the expression "within six months of the financial year end." after the word "Act".

18. EXEMPTIONS AND EXCLUSIONS¹⁰

18.1 An application for an exemption or exclusion must be made in writing on the prescribed form to the General Secretary of the Council who may refer it to the relevant Regional Chambers or Executive Committee of the Council.

18.2 In the event that:

18.2.1 the exclusion being sought is in respect of an agreement having application throughout the Industry; or

18.2.2* the exemption(s) being sought is in respect of a term or provision which has application throughout the Industry;

then, the application shall be referred to the Executive or the Council, if no Executive exists, within 30 days of receipt of an application for an exemption or exclusion, which must decide whether to grant or refuse the application wholly or in part, and must advise the applicant of its decision, failing which the Council is deemed to have refused.

18.3 In the event that an application is referred to a Regional

¹⁰ Amended 23/11/2015: Clause 18: Sub-clauses 18.2.2 and 18.4 amended - refer *

* Amended 23/11/15: Sub-clause 18.2.2 amended to reduce the number of days within which an exemption application must be considered from 45 days to 30 days, in accordance with the provisions of the amended LRA.

Chamber in terms of 18.1 above, it must determine the application in accordance with the provisions of 18.2 above with any changes required by the context.

- 18.4* In the event of the applicant being dissatisfied with the decision of the Council, such applicant may, within not more than 30 days of the date of refusal, refer the application in writing on the prescribed form to an independent body established by the Council by collective agreement in terms of the Act, which independent body will consider and decide upon the application within 30 days of receipt.

19. **WINDING UP**

- 19.1 The Council shall be wound up if a resolution is passed by it that it should be wound up or if the Council is unable to continue to function for any reason, which cannot be remedied.
- 19.2 If a resolution for the winding up of the Council has been passed or the Council is unable to continue to function for any reason which cannot be remedied, the following provisions shall apply:

* Amended 23/11/15: Sub-clause 18.4 amended as follows: The phrase at the end of the sub-clause which read "...application in such manner as it deems appropriate.", was deleted and replaced by the phrase "...application within 30 days of receipt".

- 19.2.1 The chairperson of the Council, or if he is not available, the available representatives of the Council, shall forthwith transmit to the Labour Court, a statement signed by him or them setting forth the resolution adopted or the reason for the Council's inability to continue to function as the case may be, and request the Labour Court to grant an Order in terms of section 59 of the Act;
- 19.2.2 The liquidator appointed by the Labour Court shall call upon the last appointed office bearers of the Council to deliver to him the Council's books of account showing the Council's assets and liabilities and also to hand to him any unexpended funds of the Council and to deliver to him the Council's assets and the documents necessary in order to liquidate the assets.
- 19.2.3 The liquidator shall take the necessary steps to liquidate the debts of the Council from its unexpended funds and any other monies realised from any assets of the Council and if the said funds and monies are insufficient to pay all creditors after the liquidators fees and the expenses of winding up have been met, the order in which the creditors shall be paid shall, subject to the provisions of clause 19.2.4, be the same as prescribed in any law for the time being in force relating to the distribution of the

assets of an insolvent estate and the liquidators fees and the expenses of winding up shall rank in order of preference as though he were a liquidator of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.

19.2.4 After the payment of all debts and the satisfaction of all liabilities in accordance with clause 19.2.3, the remaining funds and other assets of the Council shall be shared equally between the employer party and the union.

19.2.5 The liability of the parties to the Council shall, for the purpose of this clause, be limited to their unpaid levies (if any) and other obligations (if any) to the Council as at the date on which the resolution for winding up was passed or from the date upon which the Council was unable to continue to function, as the case may be.

20. **REMOVAL OF OFFICE BEARERS AND OFFICIALS**

20.1 Office bearers or officials of the Council may be removed from office if any such office bearer or official infringes any of the provisions of this Constitution or if any such office bearer acts in a manner which is detrimental to the interests of the Council.

20.2 No office bearer or official may be removed from office unless he has been afforded a reasonable opportunity of stating his case.

SCHEDULE 1
to the Constitution
dated 14/05/2002**CRITERIA APPLICABLE TO A REGISTERED TRADE UNION FOR
ADMISSION AS A PARTY TO THE COUNCIL**

- 1.1 The Council believes it to be in the best interests of the industry for there to be: stability within the industry; cohesion of representation amongst both the employer and trade union parties to the Council; as little fragmentation as possible and avoidance of an unnecessary multiplicity of organisations represented in the Council;
- 1.2 With the foregoing criteria in mind, the Council is of the view that representation of trade union parties to the Council should comprise of registered trade unions which have significant representivity across the country and as the parties have preferred a centralised industrywide bargaining format, that there not be an "all comers" system of representivity in place.
2. Against these criteria, the parties are of the view that for a trade union to be represented on the Council, the applicant trade union, whose application will be duly and seriously considered, should possess the following threshold qualifications in addition to any other qualifications or criteria that may be agreed at the Bargaining Council:
 - 2.1 that paid up membership of the applicant trade union consists of no less than 10% of all employees employed within the industrial scope of the Council within the industry, which at commencement of the National Bargaining Council was approximately 120 000 employees. 10% of this figure is 12 000 employees.
 - 2.2 That the applicant trade union has possessed these member strengths for a minimum period of one year prior to the date of application being made.