

**CONSTITUTION  
OF THE  
*TRANSNET BARGAINING COUNCIL***

***FINAL***

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# CONSTITUTION OF THE *TRANSNET* BARGAINING *COUNCIL*

## 1. NAME AND LEGAL PERSONALITY

- 1.1 The name of the *Council* is the Transnet Bargaining *Council*.
- 1.2 The *Council* is a body corporate.
- 1.3 Unless otherwise provided by the constitution, no *party*, by reason only of the fact that it is a *party* to the *Council*, shall be liable for any of the obligations or liabilities of the *Council*.

## 2. DEFINITIONS

- 2.1 Unless the context indicates otherwise –

“*Act*” means the Labour Relations *Act*, 1995 (Act No. 66 of 1995);

‘*bargaining unit*’ means employees below the level of junior manager;

“*Chamber*” means a committee of the *Council* as contemplated in section 55(1) of the *Act* and established in terms of clause 11 and 12 of the Constitution .;

“*Council*” means the Transnet Bargaining Council;

“*employer*” means an employer who is a *party* to the *Council* in terms of Clause 6;

“*industry*” means the whole of the undertakings, industries, trades and occupations of *Transnet*

“*party*” means an *employer*, *employers’ organisation* or *trade union* which is a *party* to the *Council* in terms of Clause 6,

“*public holiday*” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No 36 of 1994).

“*representative*” means a person appointed as a *representative* in terms of Clause 7;

“*rules*” mean the collective agreement concluded by the *Council* on the Rules for Conciliating and Arbitrating Disputes in the *Council*;

“*secretary*” means the *secretary* of the *Council* appointed in terms of Clause 9;

“*a sufficiently representative trade union*” means a trade union that represents:

(a) fifteen percent (15 %) of paid up employees in the *bargaining unit* of the *employer parties* in the *Council*; and also

(b) fifteen percent (15%) of paid up employees in the *bargaining unit* of the *employer parties* in a Chamber;

“*trade union*” means a *trade union* registered in terms of section 96 of the *Act* which is a *party* to the *Council* in terms of Clause 6;

“*Transnet*” means *Transnet Limited* a public company registered in terms of the Companies Act, 1973;

2.2 Unless the context indicates otherwise:-

2.2.1 words used in this constitution, excluding words defined in sub-clause 2.1, shall have the same meaning as in the *Act*;

2.2.2 words in the singular shall include the plural and vice versa;

2.2.3 references to the male gender shall include the female gender and vice versa

### **3. REGISTERED SCOPE**

The registered scope of the *Council* includes the whole of the undertakings, industries, trades and occupations of *Transnet* in the Republic of South Africa

### **4. FUNCTIONS**

The functions of the *Council* are:-

- 4.1 to negotiate, to bargain collectively, to conclude collective agreements and to consult on issues which affect or may affect the relationship between the *parties*;
- 4.2 to consider matters of mutual interest between the parties in accordance with the provisions of the *Act*, and this constitution and to prevent resultant disputes;
- 4.3 to promote a sound relationship between the *parties*;
- 4.4 to generally maintain and enhance industrial peace;
- 4.5 to endeavour to prevent disputes from arising, the negotiation and conclusion of agreements on substantive issues of employment and procedures;
- 4.6 to endeavour to settle disputes which have arisen or may arise in the *industry*;
- 4.7 to conclude, administer, supervise, publish and enforce the agreements of the *Council*;
- 4.8 to perform the dispute resolutions functions referred to in section 51 of the *Act*;
- 4.9 to consider matters relating to the relationship between the *parties* and give advice in connection therewith;
- 4.10 to make representations to the relevant Ministers, NEDLAC or any other appropriate forum concerning legislation or proposed legislation concerning the sector which may affect the relationship between the *parties* and the employment relationship;
- 4.11 to promote and establish training education schemes;
- 4.12 to consider and deal with any other matters that may be of interest to the *parties*;
- 4.13 to comply with its duties and functions in terms of the *Act*;
- 4.14 to establish and administer a fund to be used for resolving disputes;
- 4.15 to manage the administration of the *Council* including its finances, co-ordination of chambers and asset management;

- 4.16 to vote to extend collective agreements, concluded in any *Chamber* of the *Council*, in terms of section 32 of the *Act*,
- 4.17 to manage the dispute resolution functions of the *Council*, including the administration of the dispute resolution system and the appointment of conciliators and arbitrators;
- 4.18 to manage all constitutional issues that may arise including—the interpretation of the constitution, amendments to the constitution, admission of parties to the *Council*, thresholds and quorums and the election of the Executive Committee;
- 4.19 to manage the governance of the *Council* including the appointment of the chairperson and the election of the vice chairpersons, appointment of the *secretary* and agents, conditions of employment of staff and discipline; or
- 4.20 to perform any additional function agreed to by the *parties*.
- 4.21 The *Council* may delegate any of its the functions to the Executive Committee.

## **5. POWERS OF THE COUNCIL**

The *Council* shall have the power to:-

- 5.1 conclude contracts and perform other juristic acts;
- 5.2 acquire and dispose of movable and immovable property and to acquire and dispose of rights in movable and immovable property;
- 5.3 borrow, lend and invest money;
- 5.4 take part in any form of litigation, arbitration or other dispute resolution proceedings, including the institution and defence of legal actions and applications;
- 5.5 establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes and any other similar funds or scheme;
- 5.6 determine by collective agreement the matters which may not be an issue in dispute for the purpose of a strike or a lockout at the workplace;
- 5.7 confer on workplace forums additional matters for consultation;

5.8 appoint an accredited agency to perform any function referred to in section 51 of the *Act*; and

5.8.1 exercise any other power that may be necessary or desirable to achieve the functions of the *Council*.

## **6. PARTIES TO THE COUNCIL**

6.1 The parties to the *Council* comprise of *Transnet* Ltd. and the following *trade unions*:-

6.1.1 South African Transport and Allied Workers Union (SATAWU)

6.1.2 United Association of South Africa (UASA)

6.1.3 United Transport and Allied Trade Union (UTATU).

6.2 A registered employer's organisation or a registered *trade union* who has members engaged or employed in the *industry* may apply to be admitted as a *party* to the *Council*.

6.3 An application for admission to the *Council* shall be made in writing, accompanied by a certified copy of the applicant's registered constitution and certificate of registration and must include:-

6.3.1.1 details of the applicants' membership within the registered scope of the *Council* and within the chambers;

6.3.1.2 the reasons why the applicant ought to be admitted as a *party* to the *Council*; and

6.3.1.3 any other information on which the applicant relies in support of its application.

6.4 The *Council*, within 90 days of receiving the application, must decide whether to grant or refuse admission taking into account all relevant factors, including:-

6.4.1 if the applicant is an organisation representing small and medium enterprises, whether the applicant is sufficiently representative of those enterprises in the *industry*;

- 6.4.2 if the applicant is an employer organisation whether the *employers* in the employer organisation operates within the *industry*; and
- 6.4.3 if the applicant is a *trade union*, whether it is a *sufficiently representative trade union* in the *bargaining unit* to justify a seat at the *Council*. This means considering whether the *trade union* represents fifteen percent (15%) of paid up employees in the *bargaining unit* of the *employer parties* in the *Council* and fifteen percent (15 %) of paid up employees in the *bargaining unit* of the *employer parties* in a any one of the chambers.
- 6.5 If the *Council* grants admission to a party, it shall, within thirty (30) days of the date of admission inform the party in writing into which chamber it has been admitted.
- 6.6 If the *Council* refuses the application, it shall, within thirty (30) days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.
- 6.7 Should a *trade union's* membership fall below the threshold, the Secretary must, in writing, inform the trade union and the *Council* and give the trade union 90 days to remedy the situation.
- 6.8 If after 90 days of receiving the notice referred to in sub-clause 6.7, the trade union is still below the threshold, the trade union's membership of the Council automatically terminates.
- 6.9 Any party to the Council may resign from the Council by notifying the Secretary in writing of its decision and the reasons for the decision. The notice must also specify the date of the resignation, which must be at least six months after the delivery of the notice.
- 6.10 Should the Registrar of Labour Relations terminate any *party's* registration that *party's* membership shall automatically terminate.

## **7. APPOINTMENT AND/OR DISQUALIFICATION OF REPRESENTATIVES AND ALTERNATES**

- 7.1 Subject to sub-clause 7.2 the employer parties in the Council shall be represented by persons the employer parties appoint from time to time, subject to a maximum of one representative for each *representative* of a *trade union party* to the *Council*.

- 7.2 If one or more parties to an employer organisation represents small and medium enterprises in the Council, at least one of the employer parties representatives must be appointed from persons representing those organisations.
- 7.3 The trade union parties to the Council shall be represented:
- 7.3.1 by a minimum of one *representative* each based on the minimum required fifteen percent (15%) threshold of paid-up *bargaining unit* members; and
- 7.3.2 by one additional *representative* calculated annually on the basis of one *representative* for every additional fifteen percent (15%) paid up *bargaining unit* members up to a maximum of three (3) *representatives* per union party.
- 7.4 The *employer parties* will annually provide to the *secretary* all necessary information to allow the *secretary* to determine the number of *trade union* representatives to the *Council* in accordance with sub-clause 7.3.
- 7.5 The secretary shall determine membership of a trade union from the month-end immediately prior to the annual general meeting of the Council.
- 7.6 The number of representatives for each trade union party, as determined by the secretary, shall be the number of representatives for the following year and until the next annual general meeting of the Council provided that the minimum threshold requirements provided in this constitution are met.
- 7.7 In the event of any dispute arising out of the secretary's determination, the dispute may be referred to arbitration in terms of Clause 19 and the arbitrator's decision shall substitute the secretary's determination and shall be final and binding.
- 7.8 A *party* may appoint an alternate for each *representative*.
- 7.9 A *representative* or alternate shall be an employee of the *employer parties* or an official of a *trade union* who is *party* to the *Council*.
- 7.10 A *party* may at any time substitute any of its *representatives* or alternates by written notice to the *secretary*.
- 7.11 In the event of a substitution in terms of sub-clause 7.10, such *party* shall as soon as possible appoint a new *representative* or alternate, as the case may be.

- 7.12 A *representative* or alternate may resign by giving written notice to the *secretary* and the *party* who appointed him/her.
- 7.13 In the event of a resignation in terms of sub-clause 7.12, a new *representative* or alternate, as the case may be, shall be appointed as soon as possible.
- 7.14 Should a vacancy arise in the *Council* as a result of the resignation, death or otherwise of a *representative* or an alternate, the vacancy shall be filled by the *party* who previously appointed the relevant *representative* or alternate.
- 7.15 Any *representative* or alternate appointed to fill a vacancy shall hold office for the unexpired portion of the term of office subject to the same conditions of his predecessor.

#### **7.16 DISQUALIFICATION OF REPRESENTATIVES**

- 7.16.1 A person shall not be appointed as a representative to the Council or a regional committee, as the case may be, and any representative shall cease to hold office if:
- 7.16.2 He is or becomes of unsound mind;
- 7.16.3 He surrenders his estate as insolvent or if his estate is sequestrated;
- 7.16.4 If he is convicted of an offence which involves dishonesty;
- 7.16.5 He is absent from 3 (three) consecutive meetings of the Council, unless an explanation to the satisfaction of the other representatives is given.
- 7.16.6 He persists in conducting himself at meetings in a manner which is unprofessional, discourteous, obstructive, insulting or in other way undermines the proper functioning of the Council.

#### **8. CHAIRPERSON AND VICE CHAIRPERSON**

- 8.1 The outgoing chairperson shall preside over the annual general meeting of the *Council* and shall call for nominations for a new chairperson for a forthcoming year.

- 8.2 A person other than a *representative* or alternate of the parties may be nominated as chairperson.
- 8.3 A person to be nominated shall be duly proposed and seconded.
- 8.4 The person receiving the highest number of votes, shall be declared as the newly elected chairperson.
- 8.5 Should an equal number of votes be cast for two or more candidates, the chairperson shall write the name of each candidate on a separate piece of paper and place the papers in a ballot box or similar suitable container and draw one of the papers.
- 8.6 The candidate whose name is so drawn shall be declared to be the elected chairperson.
- 8.7 The term of office of the chairperson is twelve months unless the chairperson is removed by a two thirds decision of *Council*. The chairperson may be re-elected.
- 8.8 The provisions of sub-clauses 8.1 to 8.7 shall *mutatis mutandis* apply in respect of the election of two vice chairpersons of the *Council*, provided that one shall be nominated by the *employer parties* and the other by the *trade unions*.
- 8.9 The Chairperson presides over any meeting of the *Council* and the Chambers, including meetings at which the following matters are considered:-
- 8.9.1 salary increases, salary claims and other salary related matters;
- 8.9.2 service conditions should one of the members of the *Council* specifically request that the chairperson is present;
- 8.9.3 the constitution and composition of the *Council*;
- 8.9.4 the appointment of a *secretary*;
- 8.9.5 the approval of the yearly budget of the *Council*.
- 8.10 The chairperson shall:-
- 8.10.1 preside over and enforce order at all meetings at which he is present in accordance with normal meeting procedure;

8.10.2 sign the minutes of a meeting after confirmation;

8.10.3 perform such other duties as by usage and custom pertain to the office of chairperson.

8.11 Whenever the chairperson is not available, one of the vice chairperson's exercises the powers and performs the functions and duties of the chairperson.

8.12 Whenever the chairperson or the vice-chairpersons are not available or they are unable to perform their duties, the *Council* shall, by a show of hands on a motion duly seconded, elect an acting chairperson from among those present who shall exercise the powers and perform the duties of the chairperson while so acting.

8.13 The chairperson or the vice-chairpersons, shall not be entitled to vote on any matter, unless he is a *representative* or otherwise specifically herein empowered to vote concerning a particular matter.

8.14 The *Council* may, after a resolution and on written notice, terminate the term of office of the chairperson or vice-chairpersons, due to serious neglect of duty or misconduct.

## **9. OFFICIALS**

9.1 The Council shall appoint a secretary.

9.2 The secretary shall:-

9.2.1 attend the meetings of the *Council* and record the minutes of the meetings;

9.2.2 keep books of account in accordance with general accepted accounting practice and the instructions of the Council;

9.2.3 conduct all correspondence of the Council;

9.2.4 keep originals of letters received and copies of those dispatched;

9.2.5 table at the respective meetings of the Council all relevant correspondence which has taken place since the last meeting;

- 9.2.6 bank all monies received on behalf of the Council within three (3) days of receipt thereof;
- 9.2.7 submit statements of the financial position of the Council whenever required to do so by the Council;
- 9.2.8 countersign cheques on the Council's banking account;
- 9.2.9 perform any such duties as required by the Council or this constitution or the Council's dispute resolution procedures;
- 9.2.10 perform any duties or comply with the obligations provided for in the Labour Relations Act; and
- 9.2.11 perform such other duties as the *Council* may direct.
- 9.3 The secretary shall keep in safe custody at the offices of the Council:-
- 9.3.1 a copy of the approved minutes of every meeting of the *Council* and its committees;
- 9.3.2 the statements referred to in sub-clause 16.7 and all records in relation thereto, for a period of three years as from date of:
- 9.3.2.1 approval of the minutes, or
- 9.3.2.2 the latest date to which such statements and records bear reference or the end of the financial year to which they relate (as the case may be).
- 9.4 The secretary may appoint officials as he may deem necessary with the prior approval of the Council.
- 9.5 The Council shall determine the service conditions of the relevant officials.
- 9.6 The duties of the secretary may be exercised by any of the other appointed officials of the Council acting under the directions of the secretary.
- 9.7 The secretary shall perform all duties and functions, not specifically provided for in this Constitution on behalf of the Council as required by the Act.

## 10. MEETINGS OF THE COUNCIL

10.1 The Council shall meet at least four times per year, at such place, date and time as determined by the chairperson, provided that one of these meetings shall be the annual general meeting.

10.2 The Council shall hold an annual general meeting during the month of October of each year.

10.3 The following matters shall be dealt with at the annual general meeting:-

10.3.1 the appointment of a chairperson and/or election of vice-chairpersons should it be necessary;

10.3.2 the appointment of a *secretary* should it be necessary;

10.3.3 the consideration and approval of the audited financial statements of the previous financial year;

10.3.4 the report of the auditor in respect of the financial statements referred to in sub-clause 10.3.3;

10.3.5 the annual report of the chairpersons or the vice-chairpersons and the *secretary*;

10.3.6 the appointment of:

10.3.6.1 a panel of conciliators; and

10.3.6.2 a panel of arbitrators; and

10.3.6.3 if necessary, an accredited agency to perform the *Councils'* statutory dispute resolution functions in terms of section 51 of the *Act*.

10.3.6.4 if necessary, a accredited agency to perform Applications for Exemption from a Collective Agreement from a Party or a Non-Party in terms of Section 30(1)(k) of the *Act*.

10.3.7 the approval of the budget;

- 10.3.8 the levies to be raised on the *employer* and employees of the *employer*; and
- 10.3.9 the allocation of seats in the *Council* based on the representivity of the *parties*.
- 10.4 If a party, based on reasonable grounds, requests a meeting of the Council, the chairperson may convene the Council, on a date and venue the chairperson decides, within thirty (30) days of the request by the party for the meeting, unless a meeting of Council has already been scheduled to take place within thirty (30) days of the date of the request and the urgency of the matter does not warrant an earlier meeting.
- 10.5 The *secretary* shall give the *representatives* at least fourteen (14) days written notice of a meeting, called in terms of sub-clause 10.1 and 10.2, showing the business to be transacted.
- 10.6 The chairperson may authorise shorter notice of a meeting should all the interested parties consent to the shorter notice.
- 10.7 Notice is deemed to be given to a *party*, if notice of the meeting is given by:-
- 10.7.1 effecting personal service of the notice on the *party* concerned;
- 10.7.2 posting a registered letter containing the notice to the *party's* chosen address; or
- 10.7.3 telefaxing or e-mailing the notice to the office of the *party* provided that the telefax/ e-mail receipt shows that the notice has been transmitted to the addressee.
- 10.7.4 A written notice actually received by a *party* will be an adequate notice notwithstanding that it was not sent to or delivered at its chosen address.
- 10.8 A quorum of a meeting of the Council or of a Chamber, or of a Committee of the Council consists of at least a majority of the representatives of the trade unions and at least a majority of the representatives of the employer parties in that particular forum.
- 10.9 For the purpose of determining whether a quorum is present, alternates of *representatives* who are absent are regarded as *representatives*.
- 10.10 If within 30 minutes of the time fixed for any meeting a quorum is not present, the meeting shall, subject to written notice to members by the *secretary*, stand adjourned to a date, not less than seven (7) days thereafter. At such adjourned meeting the

*representatives* present shall form a quorum.

- 10.11 Should any *representative* be absent at any meeting and no alternate is present, the voting power of the employer's *representatives* or the *trade union representatives*, as the case may be, shall be reduced as may be necessary to achieve parity of voting power between the *representatives* of the *employer* parties and the *trade unions*.
- 10.12 An alternate is entitled to attend the meetings of the *Council* but,
- 10.12.1 is not entitled to take part in any debate unless permitted to do so by the *parties* present; and
- 10.12.2 may not vote unless the relevant *representative* is absent.
- 10.13 The chairperson may require that a proposal is submitted in writing and read by the chairperson before any debate or decision is taken in respect thereof.
- 10.14 No proposal shall be considered unless it has been properly seconded.
- 10.15 Unless otherwise determined in this constitution, all matters that form the subject of a proposal shall be decided by a vote of not less than two-thirds of the *representatives* present at the meeting who are entitled to vote.
- 10.16 Voting shall be by show of hands unless a *representative* requests a ballot in which event the voting shall be by way of secret ballot.
- 10.17 The *secretary* shall act as electoral officer.
- 10.18 The *representative* having the right to vote at a meeting shall decide by way of a majority of votes any procedural matters that are not regulated in this constitution.
- 10.19 In the case of an equal division of votes on a procedural matter in a meeting, the chairperson shall have a casting vote in addition to any deliberative vote that he may have.
- 10.20 A person who is not a *representative* may be allowed to address the *Council* subject to the approval of the *Council*.

- 10.21 Every meeting of the *Council* shall be conducted in private unless the *Council* otherwise decides.
- 10.22 No decisions taken at a meeting of the *Council* shall be invalidated by the absence of any *party*, if the *party* has been properly notified of the *Council* meeting.
- 10.23 The *secretary* shall forward the minutes of meetings, within twenty (20) days of the meeting, to all *parties*.
- 10.24 Unless it has been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting by the *secretary* and signed by the chairperson after confirmation thereof .

## **11. COMMITTEES OF THE COUNCIL**

- 11.1 The *Council* may from time to time establish and dissolve committees or chambers in terms of section 55 of the *Act* and may subject to such conditions as it may determine, delegate any of its functions to any such committee.
- 11.2 The *Council* shall establish an executive committee.
- 11.3 An executive committee established in terms of sub-clause 11.2, shall perform the following functions:-
- 11.3.1 the management and administration of the daily affairs of the *Council*;
- 11.3.2 any other functions delegated to the committee by the *Council* except the functions contemplated in sub-clause 6.4, clauses 17 and 20.
- 11.4 The members of the executive committee shall consist of *representatives* of the *Council* or their alternates.
- 11.5 The executive committee shall consist of equal numbers of *representatives* of the employer parties and *trade unions* who shall elect a Chairperson from amongst the *representatives* to chair its meetings.
- 11.6 The *Council* shall have the following permanent committees called chambers:-

- 11.6.1 **Spoornet Chamber** in respect of matters concerning *Transnet* employees employed in the division of *Transnet* known as Spoornet;
- 11.6.2 **Freight Dynamics Chamber** in respect of matters concerning *Transnet* employees employed in the division of *Transnet* known as Freight Dynamics;
- 11.6.3 **National Ports Authority (NPA) Chamber** in respect of matters concerning *Transnet* employees employed in the division of *Transnet* known as NPA;
- 11.6.4 **South African Ports Operations (SAPO) Chamber** in respect of matters concerning *Transnet* employees employed in the division of *Transnet* known as SAPO.
- 11.6.5 **Technical Chamber** in respect of matters concerning *Transnet* employees employed in the division of *Transnet* known as Transtel and Transwerk.
- 11.6.6 **Metrorail Chamber** in respect of matters concerning *Transnet* employees employed in the division of *Transnet* known as Metrorail;
- 11.6.7 **Petronet Chamber** in respect of matters concerning *Transnet* employees employed in the division of *Transnet* known as Petronet;
- 11.6.8 **General Chamber** in respect of matters concerning *Transnet* employees employed in all other divisions, business undertakings, units, departments or sections of *Transnet* not covered by chambers mentioned in sub-clauses 11.6.1 to 11.6.7.
- 11.7 Should a matter only concern a particular *trade union/s* and a particular division, business undertaking, unit, department or section such matter shall be dealt with in terms of this constitution in a committee or chamber comprising only the division, business undertaking, unit, department or section and that particular *trade union/s*.

## 12. CHAMBERS

- 12.1 The major function of the chamber is to facilitate collective bargaining.
- 12.2 A decision or a collective agreement concluded in a chamber only applies to the employees employed by *Transnet* in the division, business undertaking, unit, department or section of *Transnet* in respect of which the relevant chamber functions.

- 12.3 The *employer* parties to a chamber shall be represented by such persons as such parties may from time to time appoint, subject to a maximum of one *representative* for each *representative* of a *trade union* to the chamber.
- 12.4 *Trade union parties* to the *Council* who meet the *Council's* admission criteria for a *sufficiently representative trade union* shall be represented by:
- 12.4.1 a minimum of one *representative* each, based on the minimum required fifteen percent (15%) threshold of paid-up *bargaining unit* members; and
- 12.4.2 by one additional *representative*, calculated annually on the basis of one *representative* for every additional fifteen percent (15%) paid up *bargaining unit* members up to a maximum of three (3) *representatives* per union party.
- 12.5 The *secretary* shall annually determine the number of *trade union representatives* in each of the chambers on information supplied by the *employer* parties to the *Council*.
- 12.6 The *secretary* shall assess membership of the *trade union parties* at the end of the month immediately prior to the annual general meeting of the *Council*.
- 12.7 In the event of a dispute arising out of the *secretary's* determination, the dispute may be referred to arbitration in terms of Clause 19 and the arbitrator's decision shall substitute the *secretary's* determination and shall be final and binding.
- 12.8 The *Council* may at any time, by a two thirds majority decision, vary or set aside a decision or agreement of any committee or chamber.
- 12.9 An agreement, decision or settlement of a chamber shall be regarded as a collective agreement, decision or settlement of the *Council*, unless set aside or varied in terms of sub-clause 12.8.
- 12.10 The secretary shall decide on whether or not a matter should be dealt with by a chamber, based on the following:-
- 12.10.1 Chambers shall deal with matters concerning terms and conditions of employment that apply to the employees employed by the *employer parties* in the division, business undertaking, unit or department or section of the *employer parties* in respect of which the relevant chamber functions; and

- 12.10.2 Chambers shall not deal with matters concerning the constitution, which shall be dealt with by the *Council*;
- 12.11 In the event of a dispute arising over whether a matter is dealt with by a particular chamber, the dispute may be referred to arbitration in terms of Clause 19 and the decision of the arbitrator substitutes the decision of the *secretary* and is final and binding.
- 12.12 A chamber shall meet on such dates and at such venues as the chamber may determine, provided that at least one meeting shall be held every year.
- 12.13 The *secretary* shall give the *parties* at least fourteen (14) days written notice of a meeting showing the business to be transacted.
- 12.14 The *parties* may agree to a shorter notice for a meeting.
- 12.15 Notice is deemed to be given to a *party*, if notice of the meeting is given in terms of sub-clause 10.7.
- 12.16 Sub-clauses 10.8 to 10.24 apply mutatis mutandis to meetings of chambers.

### **13. DISPUTES PROCEDURES**

The Council shall adopt by way of collective agreement Rules for Conciliating and Arbitrating Disputes, which rules shall apply to all disputes that arise within the jurisdiction of the *Council*, unless the constitution specifically provides a different dispute resolution procedure.

### **14. NEGOTIATION PROCEDURE**

- 14.1 Should any party wish to initiate negotiations for the amendment of an existing agreement or the conclusion of a new agreement, such party shall submit its proposal in writing to the secretary.
- ~~14.2 Should any party wish to initiate negotiations for the amendment of an existing agreement or the conclusion of a new agreement, such party shall submit its proposal in writing to the secretary.~~

- 14.3 The secretary shall immediately transmit the proposal to all interested parties and shall convene a meeting of the appropriate forum in terms of the procedures set out in this constitution.
- 14.4 At the conclusion of each negotiating meeting the parties may decide on the date on which the next negotiating meeting is to be held and agree on what further documentation is required.
- 14.5 Where one or more parties to the negotiation decides that further negotiations will not secure an agreement, the party or parties may advise the Council that they are in dispute in which event the secretary shall appoint a conciliator who is available, from the panel of conciliators agreed to by the Council, to conciliate in the dispute.
- 14.6 The conciliation shall commence within seven (7) days from the conciliator's appointment, unless agreed otherwise by the parties.
- 14.7 If the dispute is not settled within thirty (30) days of its referral to the Council or such longer periods as the parties to the dispute agree upon, the Council would have failed to settle the dispute and any party may take such further lawful action as it deems fit.

## **15. STRIKES AND LOCKOUTS**

- 15.1 No strike or lockout shall take place:-
- 15.1.1 unless the procedure provided for in Clause 14 has been followed and exhausted; and
- 15.1.2 if the strike or lock-out does not comply with the provisions of chapter 4 of the *Act*.
- 15.2 No *party* to a collective agreement may take part in a strike or a lock-out in respect of a matter contained in that agreement during the currency of the agreement.

## **16. EXPENDITURE OF THE COUNCIL**

- 16.1 The expenditure of the *Council* shall be met from a fund raised by levies on the employees or a specified group of employees and the *employer parties* as determined by the *Council* annually and any donations received and will be payable to the Council within 30 days after the Annual General Meeting.

- 16.2 The *secretary* shall deposit all monies received by the *Council* to the credit of the *Council* with a registered bank appointed by the *Council*, provided that any surplus funds that are not required for the purpose referred to in sub-clause 16.3, may be invested on such terms and conditions as the *Council* may determine in:-
- 16.2.1 internal registered stock within the meaning of section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);
- 16.2.2 a savings account, permanent shares or fixed deposit in any registered bank or financial institution;
- 16.2.3 any other investment approved by the registrar; or
- 16.2.4 a registered unit trust.
- 16.3 The fund shall be used to pay for expenses arising from the administration of the affairs of the *Council*.
- 16.4 The *Council* shall approve all disbursements to be made from the fund, which shall be paid by cheque or electronic bank transfer, provided that the *secretary* is entitled to authorise the payment of miscellaneous expenses up to a maximum as determined by the *Council* from time to time.
- 16.5 Funds required for petty cash account shall:-
- 16.5.1 be kept safely by the *secretary* in such a manner as the *Council* may determine from time to time;
- 16.5.2 be provided by the drawing of a cheque;
- 16.5.3 not exceed the limit determined by the *Council*.
- 16.6 The *secretary* shall monthly submit statements of the income and expenditure that reflect the financial position of the *Council* to a meeting of the executive committee.
- 16.7 The *secretary* shall prior to the annual general meeting of each year in respect of the previous financial year:-

16.7.1 prepare a statement showing:-

16.7.1.1.1 money received from any source;

16.7.1.2 expenditure (if any) incurred under the following headings:-

16.7.1.2.1 salaries of officials;

16.7.1.2.2 meeting costs, including amounts paid to *representatives* and alternates in respect of attendance at meetings, accommodation and travelling costs;

16.7.1.2.3 office accommodation;

16.7.1.2.4 printing and stationery;

16.7.1.2.5 sundry expenditure;

16.7.1.2.6 dispute resolution.

16.7.2 prepare a statement indicating the assets and liabilities of the *Council*.

16.8 The financial year of the *Council* is from 1 July of a particular year to 30 June of the following year.

16.9 The financial statements of the Council shall be:-

16.9.1 countersigned by the chairperson and *secretary*;

16.9.2 submitted for audit to a public accountant appointed by the *Council*.

16.10 Certified copies of the audited financial statements of the *Council* and of the auditor's report thereon, shall be made available for inspection at the office of the *Council* to members of *representatives* of the *parties* who shall be entitled to make copies of both the statements and of the auditor's report.

16.11 The *secretary* shall transmit to the Registrar of Labour Relations certified copies of the *Council's* financial statements as well as the auditor's report, within thirty (30) days of receipt of the auditor's report

## **17. AMENDMENT OF CONSTITUTION**

- 17.1 Subject to the provisions of sub-clause 17.4 the constitution may be amended by way of a resolution voted for by not less than two-thirds of the *representatives* of the *Council*.
- 17.2 No amendment shall be considered unless at least 30 days prior notice of the proposed amendment is given to the *secretary*.
- 17.3 The *secretary* shall transmit a notice to amend the constitution to all *representatives*, at least two weeks prior to the meeting at which it is to be considered, provided that the *Council* may at any time amend the constitution on the unanimous vote of all the *representatives* of the parties to the *Council*.
- 17.4 The *secretary* must send the amendments to the Registrar of Labour Relations for certification in terms of section 57 of the *Act*, including a copy of the resolution and the certificate signed by the *secretary* stating that the resolution complies with the constitution.
- 17.5 An amendment of the constitution will only take effect from the date that the Registrar of Labour Relations certifies the amendment.

## **18. INTERPRETATION**

Any dispute concerning the interpretation or application of the constitution, shall be resolved by the unanimous vote of the *Council* and failing such vote, may be referred to arbitration in terms of Clause 19 where the arbitrator's decision is final and binding.

## **19. ARBITRATION**

- 19.1 Should any dispute arise between any parties to the *Council* in respect of:-
- 19.1.1 the interpretation or application of this constitution;
- 19.1.2 the interpretation or application of any collective agreement of the *Council*;
- 19.1.3 representation of a *trade union* in the *Council* in terms of Clause 7;
- 19.1.4 whether a *trade union* may be a party to a committee referred to in sub-clause 11.7; or

19.1.5 a dispute contemplated in sub-clause 12.7;

any party to the dispute may refer the dispute to arbitration for determination in terms of this Clause.

19.2 The arbitrator shall be a person who is willing and able to perform his duties in terms of this constitution and who is:

19.2.1 agreed upon by the parties within fourteen (14) days of the declaration of the dispute, or failing such agreement;

19.2.2 appointed by the *secretary* from the panel of arbitrators agreed upon by the parties at the annual general meeting for such purpose.

19.2.3 The arbitrator shall determine the dispute within fourteen (14) days (or such longer period as agreed to by the parties to the dispute) within the conclusion of the arbitration .

19.2.4 The award of the arbitrator is final and binding on the parties.

19.2.5 The parties to the dispute shall share the costs of the arbitration, including the arbitrator's fees.

## **20. DISSOLUTION AND WINDING-UP**

20.1 The *Council* may resolve to be wound up at any time provided that:-

20.1.1 any *party* to the *Council* gives at least one month's notice of its intention to move a resolution to wind up the *Council* at its next meeting to the *secretary* and to the other parties to the *Council*; and

20.1.2 two thirds of the total number of the parties to the *Council* vote in favour of the resolution.

20.2 Upon adoption of a resolution to wind up, the *secretary*, or any other official appointed by this Council, shall take the necessary steps to ensure that:-

20.2.1 An application is immediately made to the Labour Court for an order giving effect to

the resolution; and provision in terms of the Labour Relation Act.

20.2.2 the *Council's* book and records of account and an inventory of its assets, including funds and investments, are *delivered* to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the *Council* at the disposal and under the control of the liquidator.

20.3 Each *party* to the *Council* remains liable for any unpaid liabilities to the *Council* as at the date of the adoption of a resolution to wind-up the *Council*.

20.4 If all the liabilities to the *Council* have been discharged, the *Council* must transfer any remaining assets to:-

20.4.1 a bargaining council within the same or similar sector; that has been agreed upon at the special meeting referred to in sub-clause 20.1; or

20.4.2 can be divided among the remaining parties;

20.4.3 the Commission for Conciliation Mediation and Arbitration if:-

20.4.3.1 there is no bargaining council within the same or similar sector; or

20.4.3.2 the parties to the *Council* fail to agree on a bargaining council that is to receive the remaining assets.

## **21. PROCEDURE FOR EXEMPTION FROM A COLLECTIVE AGREEMENT FOR PARTIES AND NON-PARTIES TO THE COUNCIL**

21.1 In terms of Section 30(1)(k) of the Labour Relations Act a Party or a Non-Party may apply to the Bargaining Council for Exemption from certain clauses of a Collective Agreement –

21.2 All applications for exemption must be fully motivated and supported by any relevant documentation and in addition must contain the following information:-

21.3 The period for which the exemption is sought;

21.4 The number of employees affected;

- 21.5 The clauses and sub-clauses of the agreement from which the exemption is requested;
- 21.6 Satisfactory proof that the exemption applied for has been discussed between the Employer, the Employees affected and/or their Respective Representatives, including the response resulting from such discussions either in support of or in opposition to the application;
- 21.7 The terms of the exemptions sought, including the period thereof;
- 21.8 Any possible infringement of basic conditions of employment rights which may result if the exemption is granted;
- 21.9 Whether or not a competitive advantage will be afforded to the applicant should the exemption be granted; including its broader impact on the industry as a whole and on other stakeholders within the industry who may be disadvantaged by the granting of an exemption;
- 21.10 The extent to which the proposed exemption may undermine collective bargaining and labour peace in the industry or sector concerned;
- 21.11 Any possible alternatives which may be acceptable to the applicant and/or any other interest party in the circumstances;
- 21.12 The Council shall notify an applicant of its decision within fourteen days of such decision having been reached.

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**UNITED ASSOCIATION OF SOUTH AFRICA**

Tuesday, 23 August 2005