

CONSTITUTION

STATUTORY COUNCIL OF THE PRINTING, NEWSPAPER AND PACKAGING INDUSTRY OF SOUTH AFRICA

**FINALISED AND AGREED TO ON 6 DECEMBER
2000 UNDER THE AUSPICES OF THE CCMA
PRESIDED OVER BY SENIOR COMMISSIONER
NAD MURUGAN IN TERMS OF SECTION 40 (3) OF
THE LABOUR RELATIONS ACT 66 OF**

1995

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1 Name

1.1 The name of this Statutory Council is the Statutory Council of the Printing, Packaging Industry of South Africa.

1.2 The name of the Council shall only be changed if:

1.2.1 (two-thirds) majority of the representatives of the parties to the Council vote in favour of such change.

and

1.2.2 The Minister agrees to such change of name.

1.3 The Council is a legal persona capable of suing and being sued in its own name.

2 Registered Scope

The registered scope of the Council is specified in the Council's certificate of registration attached to this Constitution. (See Annexure "A")

3 Definitions

In this constitution the following words and/or expression shall have the following meaning set opposite them respectively unless the contrary appears:

- | | |
|---|---|
| 3.1 Act: | Labour Relations Act, 1995 (Act 66 of 1995) |
| 3.2 Alternate: | An Alternate as provided for in in the Constitution. |
| 3.3 Constitution: | This constitution to which this definition clause forms part. |
| 3.4 Council: | the Statutory Council of the Printing, Newspaper and Packaging Industry of South Africa |
| 3.5 Executive Committee: | The Executive Committee provided for n clause 7 of this Constitution. |
| 3.6 Imprint Act: | Imprint Act, 1993 (Act 43 of 1993). |
| 3.7 Managing Executive Committee Members: | The Managing Executive Committee Members provided for in clause 8 in this constitution. |
| 3.8 Minister: | The Minister of Labour. |
| 3.9 Parties: | The Parties to this Council. |

3.10 Registrar:	The Registrar as defined in the Act.
3.11 Secretary:	The Secretary provided for in Clause 10 of this Constitution.
3.12 Sector:	The Printing, Newspaper and Packaging Sector as demarcated by the Minister in the Council's Certificate of Registration attached to this Constitution.
3.13 Small Enterprises	Refer to the definition in terms of the Small Business Act.

4 Powers and Functions

4.1 The Powers and functions of the Council shall be:

- 4.1.1 To perform the dispute resolution functions referred to in Section 51 of the Act;
- 4.1.2 To promote and /or establish training and education schemes through the vehicle of the Media, Advertising, Publishing, Printing, and Packaging Sector Education and Training Authority or any other entity decided on from time to time.
- 4.1.3 To establish and/or administer pension, provident, medical aid, sick pay, holiday and unemployment schemes of funds or any similar schemes or funds for the benefit of one or more of the parties to the Council or their members;
- 4.1.4 To conclude and enforce collective agreements to give effect to the matters mentioned in Clauses 4.1.1,4.1.2,and 4.1.3 above
- 4.1.5 To promote the complete organisation of employers and employees throughout the sector;
- 4.1.6 To promote good relationships between employers and employees and in so doing, to secure co-operation and recognition of mutual interests;
- 4.1.7 To secure the right of consultation to Employees in respect of the determination and observance of conditions of health, safety and comfort under which work is carried on;
- 4.1.8 To consider, report, advise and make representations upon any proposed legislation affecting the industry;
- 4.1.9 To promote the establishment of Dispute Resolution Boards;
- 4.1.10 To receive and raise monies by such means as the Council may, from time to time, consider advisable for the purpose of furthering the objects of the Council in the interests of Employers and Employees in the sector, including the disbursement of monies to such persons,

bodies or organisations on behalf of the Council, whether resident or situated in the Republic of South Africa or elsewhere;

4.1.11 To do such other things as may tend to the furtherance of the above objects or any of them and to the maintenance of industrial peace;

and

4.1.12 To secure due administration of the Imprint Act.

4.2 The Council may agree to the inclusion of any of the functions of a Bargaining Council referred to in Section 28 (1) (a), (b), (c), (e), (h), (i) and (j) of the Act as functions of the Council.

4.3 The Council is only able to exercise these powers and perform these functions within its registered scope.

5 Parties

5.1 The parties to the Council shall be registered Employers' organisations and registered trade unions, the members of which are engaged in the sector.

5.2 The founding parties to the Council are:-

5.2.1 the following Employers' organisation(s) :-

5.2.1.1 Printing Employees Association of South African

5.2.1.2 Independent Packaging Employers Association of South Africa

5.2.1.3 Print Media SA

5.2.1.4 Packaging Employers Association

(Hereinafter referred to as the "Employers' Organisation of the one part)

5.3 Any registered trade union or registered Employers' organisation that has members that fall within the registered scope of the Council may apply in writing to the Council for admission as a party.

5.4 The application must be accompanied by:-

5.4.1 a certified copy of the applicant's registered constitution;

5.4.2 a certified copy of the applicant's certificate of registration;

5.4.3 details of the applicant's membership within the registered scope of the Council, including, in the case of

an Employers' organisation, the number of Employees that its members employ within the Council's registered scope;

- 5.4.4 a statement of the reasons why the applicant ought to be admitted as a party to the Council;
 - 5.4.5 in the case of a registered Trade Union a certificate issued by the external auditors of such Trade Union certifying the number of fully paid-up members of such Trade Union falling within the sectoral definition of the Council.
 - 5.4.6 any other information on which the applicant relies in support of the application.
- 5.5 The Council, within 90 (ninety) days of receiving an application for admission, must decide whether to grant or refuse the applicant admission, must decide whether to grant or refuse the applicant admission and must advise the applicant of its decision.
- 5.6 If the Council refuses to admit an application it must, within 30 (thirty) days of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

6 Appointment of Representatives

6.4 The Council consists of:-

- 6.4.4 15 (fifteen) representatives of the Employers' organisations that are parties to the Council, 5 (five) of whom represent small enterprises;

And

- 6.4.5 15 (Fifteen) representatives of the trade union that are parties to the Council.
- 6.4.6 Any person representing any of the parties to the Council shall either be actively involved in the sector or, alternatively, be paid officials of the party, which they represent.

6.5 The percentage allocation of representatives of each party to the Council shall be determined annual general meeting of the Council according to the following formula

$$a = \frac{100}{b} \times c$$

where

a = number of representatives of Employers organisation of trade unions (as the case may be)

b = number of fully paid-up members of the trade union concerned or the number of members of the Employers' organisation concerned as the case may be

c = total number of Employers or members belonging to

Employers organisations or trade unions (as the case may be)

If the formula used results in a fraction then the fraction shall be rounded off as follows

, 50 and less: to the lower number

, 51 and more: to the next full number

- 6.6 Any party to the Council may withdraw from it by giving six months notice, in writing, to the Executive Committee.
- 6.7 Representatives shall be appointed by the Employers' Organisations and the Trade Unions in the manner prescribed in their respective constitutions, shall hold office during the pleasure of the party which appointed them, and shall be eligible for reappointment. For each representative there shall be an alternate appointed in the same manner as such representative.
- 6.8 A Party to the Council may at any time withdraw any of its representatives by giving 14 days notice in writing to the Secretary of the Council and appoint other representatives in their places.
- 6.9 Any representative may resign giving one month's notice to the party he represents and to the Secretary.
- 6.10 Any vacancy on the Council shall be filled by the party, which appointed the representative whose seat has become vacant.
- 6.11 The number of representatives may be increased or decreased at the discretion of the Council, provided always that there shall be an equal number of representatives of Employers and Employees on the Council.
- 6.12 Any representative who, without good cause, is absent from three out of five consecutive meetings of the Council, is disqualified from continuing in that office.
- 6.13 For the purpose of appointment of representatives to the Council, Executive Committee, Dispute Resolution Board or any sub-committee established in terms hereof, the principle of proportional representation shall, at all times be applicable.
- 6.14 The parties to the Council recognise it as the supreme authority in the sector and no party may affiliate with any other organisation, which would tend to subvert that authority or which serves the same interests or industry as the Council.

7 Meetings of Council

7.4 The Council must hold:

7.4.4 An annual general meeting on the month of June each year;

7.4.5 An ordinary meeting at least once every four month(s)

- 7.5 A special meeting of the Council
- 7.5.4 May be Called at any time by the Chairperson with a view to dispose of urgent business; and
- 7.5.5 Must be called by the Chairperson within 14 (fourteen) days of:
- 7.6 Notice of any meeting of the Council together with an agenda showing the business to be transacted, shall be given to the parties by the Secretary, in writing, at least four weeks before the date of such meeting, provided that in the case of special meetings, the Executive Committee of Chairperson may authorise the giving of shorter notice. Notice of any matter shall not be necessary at any meeting of the Council should the meeting unanimously resolve to dispense with such notice.
- 7.7 The quorum for meetings of the Council shall be 8 (eight) of the representatives each of the Employers and Employees. For the purposes of determining whether a quorum is present, alternates shall be regarded as representatives in the absence of their principals. If within 30 minutes of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to a date to be fixed by the Executive Committee, and at such adjourned meeting the representatives present shall form a quorum. The quorum for special meetings summoned in terms of sub-clause 7.2 hereof shall be 8(eight) persons, consisting of 4 (four) representatives each of the Employers and Employees.
- 7.8 If any representative is absent from any meeting and place is not taken by an alternate, the voting power of the Employers or Employees, as the case may be, shall be reduced as may be necessary to preserve equality of voting between the parties
- 7.9 At the annual general meeting the Council must:
- 7.9.4 Elect the members of the Executive Committee.
- 7.9.5 Elect the Chairperson and the deputy Chairperson of the Council.
- 7.9.6 Appoint the members of an Exemption Board to consider and dispose of applications for exemption from the provisions of any collective.
- 7.9.7 Consider the annual financial statements of the Council and the auditor's report on those statements.
- 7.9.8 Consider and approve, with or without any amendments, the budget of the Council for the next financial year.
- 7.10 Minutes of all meetings of the Council shall be taken by the Secretary, and copies shall be circulated to all representatives.
- 7.11 All motions shall be reduced to writing and shall be read by the Secretary. No motion shall be considered unless seconded. Except where otherwise provided in this Constitution, all matters forming the subject of motions shall be decided by simple majority of those present who are entitled to vote, and voting shall be by show of hands.

- 7.12 Employers shall give to any of the Employees who are representatives on the Council, Executive Committee or Dispute Resolution Board, every reasonable facility to attend to their duties in connection with these bodies.
- 7.13 Each representative has one vote on any matter before the Council for its decision. However, if at the meeting the Employer representatives and employee representatives are not equal in number, the side that is in the majority must withdraw so many of its representatives from voting at that meeting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.
- 7.14 If any question which the Executive Committee considers to be extremely urgent arises between meetings of the Council, and it is possible to answer that question by a simple 'yes' or 'no', the Executive Committee may direct the Secretary to cause a vote of the representatives on the Council to be taken by post or facsimile transmission. A proposal subjected to a postal or facsimile vote may be adopted if it is supported by a simple majority of the total number of representatives who are entitled to vote.
- 7.15 The Executive Committee may adopt general rules of procedure for its meetings and for the meetings of the Council and its other Committees. However, in the event of any conflict between those rules and the provisions of this constitution will prevail.

8 Executive Committee

- 8.1 An Executive Committee consisting of 4 (four) representatives each of the Employers and of the Employees, which number shall exclude the Chairperson and Deputy Chairperson of the Council, with an equal number of alternates, shall be elected by the Council. Members of the Executive Committee shall hold office for a period of two years, or until successors are elected.
- 8.2 The Executive Committee shall meet as occasions arise at such time and place as may be convenient or necessary but, in any event, at least, at least once every three months. Special meetings may be called upon or requisitioned by no less than 4 (four) representatives on the committee. At least 7 (seven) days notice of special meetings shall be given to representatives.
- 8.3 The quorum for meetings of the Executive Committee shall be 4 (four) representatives on the committee, 2 (two) of whom shall be representatives of the Employers' organisations and 2 (two) of whom shall be representatives of the Trade Unions.

Each member of the Executive Committee, excluding the chairperson who shall have no vote, has one vote on any matter before the committee for its decision. However, if at the meeting the members representing Employers and those representing Employees are not equal in number, decided that is the majority must withdraw so many of

its members from voting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.

- 8.4 The votes of not less than the simple majority of the representative present at the meeting of the Executive Committee shall be required to favour to carry any proposal before such meeting.
- 8.5 The Executive Committee shall have power, subject to the direction and control of the Council:
 - 8.5.1 To carry out the objects of the constitution and give effect hereto;
 - 8.5.2 To administer any agreements arrived at by the Council and parties thereto or Employers and Employees, and give effect thereto and interpretations thereon.
 - 8.5.3 To appoint sub-committees consisting of an equal number of representatives of Employers and Employees, and to delegate to such sub-committee any of its powers.
 - 8.5.4 To investigate and report to the Council on any connected with the sector in respect of which the Council is registered.
 - 8.5.5 Do anything necessary to give effect to decisions of the Council
- 8.6 The Secretary must prepare a written notice of every Executive Committee meeting showing the date, time and venue of the meeting and the business to be transacted, and must send the notice to each member of the Committee by registered post at least 15 (fifteen) days before the date of the meeting. However the Chairperson may authorise shorter notice for a special meeting.
- 8.7 The majority Employers' Organisation and the majority Trade Union shall each appoint 1 (one) of their representatives to the Executive Committee to act as joint managing Executive Committee members who shall deal with those matters delegated to them which may arise between meetings of the Executive Committees. Decisions thus taken by the joint managing Executive Committee shall be binding on the Executive Committee and shall be ratified by the Executive Committee at its first meeting following upon the taking of the said decision. For the purposes of this clause "majority" insofar as it refers to the Employers' Organisation means that Employers' Organisation which enjoys the majority representative of members calculated by the numbers of Employers which conduct business within the definition and realm of the registered scope as defined in the Council certificate of Registration attached to this Constitution. Moreover, insofar as it refers to the Trade Union, means that Trade Union which enjoys, as its members, the majority representative of Employees employed in the business conducted within the definition and realm of

registered scope as defined in the Council Certificate of Registration attached to its Constitution.

9 Chairperson and Deputy Chairperson

- 9.1 At the Annual general Meeting the Council shall elect on motion:
- 9.1.1 A chairperson shall be elected from either Employer Representatives or the Employee Representatives of the Council.
 - 9.1.2 A Deputy Chairperson shall be a representative of either the Employers Representatives or the Employees Repetitive from amongst the Representatives.
- 9.2 The Chairperson shall preside and enforce order at all meetings at which he is present. He shall, in addition, perform such other duties as by usage and custom pertain to the office
- 9.3 The Deputy Chairperson shall exercise the powers and perform the duties of the Chairperson in the absence of the latter.
- 9.4 In the event of the Chairperson or the Deputy Chairperson, or both officers, being unable to perform their duties, the Council shall elect from amongst the representatives a temporary Chairperson and / or Deputy Chairperson to act until the resumption of duty by either or both of these officers.
- 9.5 The Chairperson shall have a deliberative vote, but not a casting vote, irrespective of whether they attend a meeting as a Chairperson or Acting Chairperson.

10 Officials and Employees

- 10.1 The Council must appoint a Secretary who will be responsible for the administration and secretarial work arising from the functioning of the Council and for performing the functions and duties imposed on the Secretary by or in terms of the Act and this constitution. That work and those duties and functions include-
- 10.1.1 to keep maintain the books and records of account that the Council may direct in order fully to reflect the financial transactions and state of affairs of the Council
 - 10.1.2 to attend all meetings of the Council and it's Executive Committee and record the minutes of the proceedings at those meetings;
 - 10.1.3 to conduct the correspondence of the Council, keeping originals of letters received and copies of the letters sent;
 - 10.1.4 at each meeting of the Council, to read significant correspondence that has taken place since the previous meeting;

- 10.1.5 to bank all monies received on behalf of the Council within three days of receipt;
 - 10.1.6 whenever required by the Council, but at least once in every quarter of the financial year, to submit to the Council statements of it's financial affairs and position;
 - 10.1.7 to prepare for submission at the annual general meeting of the Council, a budget for the next financial year and an annual report summarising the key activities of the Council; and
 - 10.1.8 to countersign cheques drawn on the Council's bank account.
- 10.2 The Secretary must:-
- 10.2.1 Retain a copy of the confirmed and signed minutes of every meeting of the Council, the Executive Committee and any other committee of the Council in safe custody at the office of the Council for a period of at least three years from the date those minutes were confirmed;
 - 10.2.2 Retain every financial statement referred to in sub-clause 10.1.6, and all vouchers and records relating to statements of that nature, for at least three years from date of the statement; and
 - 10.2.3 Sign the certificates of the appointment by the Minister as designated agents of the Council.
- 10.3 The Council may appoint any additional officials and any number of employees that may be necessary to assist the Secretary in performing the functions and duties of the office.
- 10.4 The Council may request the Minister to appoint any number of persons as designated agents to help it enforce any collective agreement concluded in the Council.
- 10.5 Where there are two or more suitable candidates for appointment to the position of Secretary or a designated agent, the Council must elect the Secretary or designated agent by conducting a ballot of the representatives present at the meeting at which the appointment is to be made, with the candidate receiving the highest number of votes being appointed.
- 10.6 The Secretary, designated agents and other officials and employees of the Council must not be biased in favour of or prejudiced against any party in the performance of their respective functions.

11 Finances

- 11.1** The Council may raise funds by charging a levy on Employees and Employers within the registered scope of the Council.
- 11.2** The Council must open and maintain an account in its name with a bank of its choice that is registered in the Republic, and:-
 - 11.2.1** Deposit all monies it receives in that account within three days of receipt; and
 - 11.2.2** Pay the expenses of and make all payments on behalf of the Council by cheques drawn on that account.
- 11.3** the Council may invest any surplus funds not immediately required for current expenditure or contingencies, in:-
 - 11.3.1** savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - 11.3.2** internal registered stock as contemplated in section 2.1 of the Exchequer Act, 1975 (Act No.66 of 1975);
 - 11.3.3** a registered unit trust;
 - 11.3.4** any other manner approved by the registrar.
- 11.4** All payments from the Council's funds must be:-
 - 11.4.1** Approved by the Council; and
 - 11.4.2** Made by cheques drawn on the Council's bank account and signed by one of the managing Executive Committee members and counter-signed by the Secretary. However, the Council, by special resolution, may authorise any representative in the Council, official or employee of the Council, to sign or counter-sign cheques drawn on the Council's bank account in the event of both of the managing Executive Committee members and Secretary not being readily available for that purpose.
- 11.5**
 - 11.5.1** despite sub-clause 11.4 the Council may maintain a petty cash account, out of which the Secretary may make such cash payments as authorised by the Executive Committee from time to time.
 - 11.5.2** Funds required for the petty cash account may be transferred to that account only by drawing a cheque issued and signed in the manner required by sub-clause 11.4.2.
 - 11.5.3** Except with the approval of the Council, cheques drawn to transfer funds to petty cash may not exceed such amount as the Executive Committee may specify from time to time.

- 11.5.4** The Council may determine the form of the records to be kept for the petty cash account.
- 11.6** At the end of each quarter of the financial year, the Secretary must prepare a statement showing the income and expenditure of the Council for that quarter, and another reflecting its assets, liabilities and financial position as at the end of that period.
- 11.7** The financial year of the Council begins on 1 January in each year and ends on 31 December of the same year, except the first financial year, which begins on the day that the Council is registered and ends on 31 December of that year.
- 11.8** Not later than 30 (thirty) days after the end of the financial year, the Secretary must prepare a statement of the Council's financial activity in respect of that financial year, showing:-
- 11.8.1** All monies received for the Council:-
- 11.8.1.1** In terms of any collective agreement published in terms of the Act; and
 - 11.8.1.2** From any other sources;
- 11.8.2** Expenditure incurred on behalf of the Council, under the following
- 11.8.2.1** Remuneration and allowances of officials and Employees;
 - 11.8.2.2** Amounts paid to representatives and alternates in respect of their attendance at meetings, the travelling and subsistence expenses incurred by them, and the salary or wage deducted or not received by them due to their absence from work by reason of their involvement with the Council;
 - 11.8.2.3** Remuneration and allowances of members of the pool of conciliators and arbitrations;
 - 11.8.2.4** Office accommodation
 - 11.8.2.5** Printing and stationery requirements; and
 - 11.8.2.6** Miscellaneous operating expenditure; and
- 11.8.3** The Council's assets, liabilities and financial position as at the end of that financial year.
- 11.9**
- 11.9.1** The annual financial statements must be signed by the Secretary and counter- signed by the Chairperson, and submitted to an auditor for auditing and preparing a report to the Council.

- 11.9.2** Certified copies of the audited statements and the auditors report must be available for inspection at the office of the Council to members and representatives of the parties, who are entitled to make copies of those statements and the auditors report.
- 11.9.3** The Secretary must send certified copies of the audited financial statement and the auditors report to the registrar within 30 days of receipt thereof.
- 11.10** Every year the Secretary must prepare, for submission at the annual general meeting of the Council, a budget for the Council for the next financial year.
- 11.11** At the annual general meeting the Council must appoint an auditor to perform the audit of the Council for the next financial year.
- 11.12** The books of account and other financial records of the Council shall be audited once annually by Public Accountant appointed by the Executive Committee. The Secretary shall make available to the parties to the Council and to the Members of the Executive Committee, copies of all financial accounts and statements and the auditors report thereon.

12 Pool of Conciliators and Arbitrators

- 12.1 At its annual general meeting, the Council must appoint:
 - 12.1.1 A pool of conciliators consisting of not less than 6 (six) members, for the purpose of conciliating disputes: and
 - 12.1.2 A pool of arbitrators, consisting of not less than 6 (six) members, for the purpose of determining disputes.
- 12.2 The Council may remove a member of the pool of conciliators or arbitrators from office-
 - 12.2.1 For serious misconduct;
 - 12.2.2 Due to incapacity; or
 - 12.2.3 If the employer representatives and the employee representatives have voted on a simple majority in favour of the removal of that member from office.
- 12.3 If for any reason there is a vacancy in the pool of conciliators or the pool of arbitrators, the Council may appoint a new member to the relevant pool for the unexpired portion of the predecessors' term of office.
- 12.4 Unless the Parties to a dispute have agreed on a member of the pool of conciliators or the pool of arbitrators to conciliate or

arbitrate their dispute, the Secretary must appoint a member of the relevant pool to conciliate or arbitrate the dispute.

12.5

12.5.1 a person may be appointed to both of the pool of conciliators and the pool of arbitrators.

12.5.2 A member of the pool of conciliators or the pool of arbitrators, whose term of office expires, will be eligible for re-appointment to the relevant pool at the end of that term.

13 Disputes referred to a Council for conciliation

13.1 In this clause, a dispute means any dispute between any of the parties to the Council that may be referred to a Council in terms of the Act except a dispute contemplated in Clause 15.

13.2 For the purposes of sub-clause 13.1, a party to the Council includes the members of any party to the Council.

13.3 Any party to a dispute may refer the dispute in writing to the Council.

13.4 The party who refers the dispute must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.

13.5 If satisfied that the referral has been served in compliance with sub-clause 13.4, the Secretary:

13.5.1 may, if there is a collective agreement binding on the parties to the dispute that provides for an alternative procedure for resolving disputes, refer the dispute for resolution in terms of that procedure;
Or

13.5.2 must appoint a member of the pool of conciliators to attempt to resolve the dispute through conciliation.

13.6 Nothing in this clause prevents an officer or an employee of the Council investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator in terms of sub-clause 13.5.2

14 Disputes referred to a Council for arbitration:

14.1 For the purpose of this clause, a dispute means any dispute between any of the parties to the Council that:

14.1.1 has been referred to a conciliator in terms of Clause 13, but remains unresolved: and

14.1.1.1 the act requires that the dispute be arbitrated and any party to the dispute has requested

that the dispute be resolved through arbitration; or

14.1.1.2 all the parties to the dispute consent to arbitration; or

14.1.2 it is a dispute about the interpretation or application of the provisions of this Constitution.

14.2 Any party to a dispute may request that the dispute be resolved through arbitration.

14.3 The Secretary must appoint a member of the pool of arbitrators to arbitrate the dispute.

14.4 The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

14.5 The arbitration proceedings must be conducted in accordance with the provisions of Sections 138 and 142 and, if applicable, Section 139, 140 and 141, of the Act read with the changes required by the context.

15 Procedure for negotiation of collective agreements:

15.1 Any party to the Council may introduce proposals for the conclusion of a collective agreement in the Council.

15.2 The proposal must be submitted to the Secretary in writing and must identify the other parties to the proposed agreement.

15.3 Within 7 (seven) days of submission of the proposals, the Secretary must serve copies of the proposals on the other parties to the Council.

15.4 Within 21 (twenty-one) days of submission of the proposals, the Chairperson must call a special meeting of the Executive Committee to consider the proposals and decide on a process for negotiating the proposals including:

15.4.1 the introduction of counter-proposals;

15.4.2 whether the negotiations should be conducted by the Council, the Executive Committee, or any other Committee of the Council;

15.4.3 the appointment of a conciliator from the pool of conciliators to facilitate the negotiations; and

15.4.4 the timetable for the negotiations.

15.5 If no negotiation process is agreed:

- 15.5.1 the Secretary must appoint a conciliator from the pool of conciliators to facilitate negotiations and the conclusion of a collective agreement;
- 15.5.2 the Council must meet at least twice within 30 days of the meeting of the Executive Committee to negotiate on the proposals and any counter-proposals, unless a collective agreement has been concluded;
- 15.5.3 the conciliator must facilitate the negotiations at those meetings and the conclusion of a collective agreement.
- 15.6 If no collective agreement is concluded in the course of a process or procedure contemplated in this clause:
 - 15.6.1 The Parties to the Council may:
 - 15.6.1.1 agree to refer the dispute to arbitration; or
 - 15.6.1.2 Resort to a strike or a lock-out that conforms with the provisions of Chapter IV of the Act; or
 - 15.6.2 Any party to the dispute whose members are engaged in an essential service may request that the dispute in respect of the Employers and Employees engaged in that service be resolved through arbitration.
- 15.7 In the circumstances contemplated in sub-clause 15.6.1.1 or 15.6.2, the Secretary must appoint a member of the pool of arbitration to arbitrate the dispute.
- 15.8 The provisions of Clause 14.4 and 14.5 will apply to arbitration proceedings conducted in terms of this clause.
- 15.9
 - 15.9.1 During the strike or lock-out the parties to the dispute must attend every meeting convened by the conciliator to resolve the dispute.
 - 15.9.2 If any party to the dispute fails to attend, without good cause, a meeting so convened, the members of that party:
 - 15.9.3 If they participate in a strike, will forfeit the protection they would have enjoyed in terms of Section 67 of the Act.

16 Exemption

- 16.1 To the extent that exemption may be applied for from the provisions of any rule or requirement of any fund or scheme to which reference is made in Section 4(c), such application shall be dealt with in accordance with the rules of such fund or scheme as the case may be. With regard to any other application for exemption from the provisions of any agreement of the Council, such application shall be forwarded to the Secretary, in writing. The grounds upon which such exemption is

sought shall be fully and properly motivated and the application will be forwarded by the Secretary to the Executive Committee for consideration at its next meeting subject to the proviso that the Executive Committee may, from time to time, delegate its functions, for the purposes of this section, to the Joint Managing Executive Committee members of the Council.

- 16.2 Any party whose application for exemption has been refused may, within 14 days of having been notified of the refusal of the application, appeal in writing to the Council which shall, at its next meeting, consider such appeal. The decision of the Council in this regard shall be final and binding.

17 Indemnity

Any person occupying any position on the Council , Executive Committee, Dispute Resolution Board or any other committee shall not be personally liable for any act or omission committed by him by virtue of his occupying such position, save and except where such act or omission was committed as a consequence of dishonesty or wilful misconduct.

18. Proportional Representation

Notwithstanding what may be provided for elsewhere in this Constitution, where by virtue of proportional representation and the lack of representivity of any Employer Organisation or Trade Union, the Employers' Organisations and Trade Union, which are representative and occupy positions on the Council, Executive Committee, Dispute Resolution Board or any sub-Committee established in terms of this Constitution, shall, at all times, have due and proper regard to the interests of those Employer Organisations and Trade Unions which are not represented at any of the aforementioned bodies.

19. Winding-up

- 19.1 Subject to the provisions of the Act, the Council may be dissolved by its own resolution to that effect upon any party giving 6 months notice, in writing, to the other parties but dissolution shall not take place for a period of three years calculated from the date upon which this Constitution is registered.
- 19.2 If a resolution for the dissolution of the Council is adopted as provided for in sub-Section (1), or if at any time the Council is for any reason unable to continue to function, it shall be wound up and the following provisions shall apply to such winding-up:

- 19.2.1 The last appointed Chairman of the Council shall forthwith transmit to the Registrar a statement signed by him setting forth a resolution adopted or the reasons for the Council's inability to continue to function, as the case may be, and the available representatives on the Council shall appoint a Trustee to carry out the winding-up. The Trustee shall not be a representative on the Council and shall be paid such fees as may be agreed upon between himself and the available representatives on the Council. Should they fail to agree upon the fees to be paid, the Registrar shall fix the basis upon which payment shall be made to the Trustee. The Trustee's appointment shall be subject to confirmation by the Registrar before he assumes duty.
- 19.2.2 Trustee so appointed shall call upon the last appointed Secretary of the Council to deliver to him the Council's books of account showing the Council's assets and liabilities and also to hand over to him any unexpended monies in the general fund of the Council.
- 19.2.3 The Trustee shall take the necessary steps to liquidate the debts of the Council from such monies and any other monies realised from any assets of the Council, and if the said monies are insufficient to pay all creditors after the Trustee's 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 paragraph 19.2.5, be the same as that prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, and as though the expenses were a Trustee in a insolvent estate, and as though the expenses were the costs of sequestratic, of an insolvent estate.
- 19.2.4 After the payment of all debts in accordance with paragraph 19.2.3 the remaining monies, if any, shall be paid in equal shares to the Employer Organisations and Trade Unions, which are parties to the Council. The monies so paid shall thereafter be distributed on a prorata basis between the Employers' Organisation on the representivity of each Employers' Organisation and Trade Union on the Council.
- 19.2.5 for the purposes of this Sub-Clause, the liability of the parties to the Council shall be limited to the unpaid liabilities(if any) to the Council as at the

date on which the resolution for winding –up was passed, or the dates as from which the Council was unable to continue to function, as the case may be.

20 Amendment

- 20.1 The Council may change this Constitution at any time:
 - 20.1.1 By a resolution adopted by unanimous vote of all the representatives in the Council on a motion to amend tabled without prior notice; or
 - 20.1.2 By a resolution adopted but at least 2/3 (two thirds) of all the representatives in the Council after at least:
 - 20.1.2.1 One month’s notice of that motion to amend had been given to the Secretary; and
 - 20.1.2.2 Two weeks notice of that motion had been given to all
 - 20.1.3 Any amendment to this Constitution becomes effective after the resolution effecting that amendment, has been certified by the Registrar in terms of Section 57 (3) of the Act.

21 Defects

No defect in any provision in this Constitution shall effect the remaining provisions thereof or invalidate the Constitution and the remaining provisions shall be the Constitution of the Council.