



CONSTITUTION

(Consolidated as at 23 May 2011)

METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL

I N D E X

CLAUSE	PAGE	DETAILS
1	3	Name
2	3	Definitions
3	4	Objects
4	5	Membership
5	6	Appointment of Representatives and Alternates -
6	6	Election of Presiding Officers and Duties
7	7	Committees
8	8	Meetings
9	10	Code of Good Practice for Conduct of Meetings
10	10	Collective Agreements
11	11	Negotiation and Dispute Procedures
12	11	Procedural Agreements at Company Level
13	13	Appointment of Officers and Duties of Council Secretary and Agents
14	14	Exemption Procedure from Collective Agreements
15	14	Expenses of the Council
16	15	Signature of Agreements
17	15	Amendments
18	16	Dissolution
Annexure A		Parties to the Council
Annexure B		Number of Employer and Employee Representatives
Annexure C		Addresses of Regional Councils
Annexure D		Code of Good Practice for Conduct of Meetings
Annexure E		Negotiation` and Dispute Procedures
Annexure F		Dispute Procedures for the Interpretation, Application, or Enforcement of Collective Agreements

CONSTITUTION

1. NAME

The name of the Council shall be the **Metal and Engineering Industries Bargaining Council**.

2. DEFINITIONS

Any expressions used herein which are defined in the Labour Relations Act, No.66 of 1995, shall have the same meaning as in the Act, and any reference to an Act shall include any amendments to such Act: further, unless inconsistent with the context –

‘Act’ means the Labour Relations Act, No.66 of 1995;

‘Alternate’ means a person appointed to act on behalf of a representative in the absence of the representative;

‘Council’ means the Metal and Engineering Industries Bargaining Council registered in terms of Section 29 Of the Act;

‘Industry’ means the Iron, Steel, Engineering and Metallurgical Industries, as defined in the Council’s Certificate of Registration;

“Member” means, in the appropriate context, the member or his/her alternate;

‘Party’, unless otherwise indicated, means one of the Employers’ Organisations or one of the Trade Unions admitted as parties to this Council;

‘Regional Council’ means a Committee formed by the Council in terms of Section 7 of the Constitution;

‘Council Secretary’ means the Chief Executive Officer of the Council.

3. OBJECTS

The objects of the Council shall be –

- (a) to consider and regulate, in accordance with the provisions of the Act, matters of mutual interest to the parties and to prevent and settle disputes;
- (b) to promote good relationship between employers and employees;
- (c) to use its endeavours generally in the direction of maintaining industrial peace;

- (d) to secure the complete organisation of employers and employees in the Industry;
- (e) to secure for employees regular employment and to minimise unemployment;
- (f) to administer agreements arrived at by the parties;
- (g) to consider, advise and make representations on any legislation or proposed legislation affecting employers and employees;
- (h) to consider and deal with such other matters as may affect the interests of employers and employees;
- (i) to establish and regulate uniform working hours and conditions of employment;
- (j) to secure the recognition and observance by all persons in the Industry of any agreement negotiated by the parties;
- (k) to receive and raise moneys 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 interest of employers and employees in the Industry, including the disbursement of moneys to such persons, bodies or organisations on behalf of the Council;
- (l) subject to Section 53(5) of the Act to purchase, take on lease or in exchange or otherwise acquire and sell, dispose of and otherwise deal with movable and immovable property for the Council's own needs of all kinds for the purpose of furthering the objects of the Council in the interests of employers and employees in the Industry;
- (m) to borrow or raise money in such manner as the Council may think fit, and in security of such money so borrowed or raised, to mortgage, pledge or charge the whole or any part of the property, assets or revenue of the Council for the purpose of furthering the objects of the Council in the interests of employers and employees in the Industry;
- (n) to do such other things as may tend to the furtherance of the above objects or any of them.

4. MEMBERSHIP

- (1) The parties to the Council shall be registered employers' organisations and registered trade unions, as set out in Annexure "A" hereto and hereinafter referred to as the "employers" or "employers organisations" and/or "employees" or "trade unions" respectively as the case may be, whose members are engaged or employed in the Industry.
- (2) Any employers' organisations or trade union registered in terms of Section 96 of the Act in respect of persons engaged or employed in the Industry may be admitted to membership of the Council, on such conditions as the Council may determine, and the terms "the employers" or "the employers organisations" and "the employees" or "the trade unions" shall thereupon be deemed to include any employers' organisation or trade union, as the case may be, so admitted.

Provided that such trade unions shall have not less than 5000 members in the Industry. Membership figures submitted in support of the application to be party to the Council, must be certified by auditors.

The Council shall advise any trade union whose membership has fallen below 5000 members, that unless the situation is corrected within 3 years of the date of notification, the trade union will forfeit any seats it has on the Council, and cease to be a party to the Council

- (3) Any party may withdraw from the Council on giving three months notice in writing to the Council Secretary.

5. APPOINTMENT OF REPRESENTATIVES AND ALTERNATES

- (1) The Council shall consist of the number of representatives from Regions “A”, “B”, “C”, “D”, “E”, and “F”, as defined in Annexure “C”, of whom one half shall be appointed by the employers’ organisations and the other half by the trade unions in accordance with the proportions as set out in Annexure “B”.
- (2) (a) Subject to paragraph (b) below, the employers’ seats on the Council shall be filled upon a basis agreed upon between all the employers’ organisations jointly by such of the employers’ organisations as may be determined from time to time, and this provision shall mutatis mutandis apply to the seats to be filled by the trade unions and to the appointment of alternates by either side. An alternate or alternates not exceeding two in number may be appointed for each representative: provided that any case where an additional alternate is appointed, not more than two of the three persons who are representative, alternate and additional alternate respectively shall be eligible to attend any meeting at the same time.
- (b) In terms of section 30(1)(b) of the act an employer seat on the Council is hereby made available to registered employer organisations representing Small and Medium Enterprises (“SMEs”) which become parties to the Council in terms of Clause 4 above. This seat shall be filled upon a basis agreed upon between such employer organisations representing SMEs as may join the Council from time to time.
- (3) Representatives and alternates shall be appointed by the employers’ organisations and the trade unions in the manner prescribed in their respective constitutions, shall hold office for a period of one year and thereafter until their successors are appointed, and shall be eligible for re-election. They shall be persons engaged or employed in the Industry or full-time paid officials of the parties: Notwithstanding the aforesaid, a person who is not engaged or employed in the Industry or a full-time paid official of a party may be admitted as a representative or alternate provided the Council so agrees at the Annual General Meeting by a majority vote of not less than two-thirds to his appointment. Any representative or alternate who ceases to be eligible in terms hereof shall automatically forfeit his seat as a representative or alternate as the case may be.

- (4) A representative or alternate may resign from the Council by giving to the Council and to the party which appointed him one month's notice in writing, and a party may at any time withdraw a representative or alternative by giving fourteen days' notice to the Council in writing and appoint another in his stead.
- (5) If a seat on the Council becomes vacant through the withdrawal, resignation, disqualification, in terms of subsection (3), or death of a representative or alternate, the vacancy shall be filled by the party which appointed such representative or alternate. Any person so appointed to be a representative or an alternate shall hold office for the unexpired period of office or his predecessor.

6. ELECTION OF PRESIDING OFFICERS AND DUTIES

- (1) The Council shall, at each Annual General Meeting, upon a motion duly moved and seconded and voted upon by a show of hands in each case, elect a President and Vice-President, one of whom shall be a representative of the employers and one a representative of the employees.
- (2) The President and Vice-president shall also be the Chairman and vice-Chairman of the Management Committee and shall hold office until the next Annual General Meeting of the Council, or until they cease to be representative on the Council, whichever is the earlier. Should either post become vacant between Annual General Meetings, the Council or the Management Committee shall appoint a temporary incumbent pending the next Annual General Meeting.
- (3) The President shall preside and enforce order at all meetings at which he is present of the Council or the Management Committee, when he will preside as Chairman, sign Minutes of meetings after confirmation and perform such other duties as by usage and custom pertain to the office of a Chairman, and the Vice-Chairman shall exercise those powers and perform those duties in his absence.
- (4) In the event of both the President and Vice-President unable to perform their duties, the Council or Management Committee shall elect an Acting President or Acting Chairman, as the case may be, who shall exercise the powers and perform the duties of the President or Chairman while so acting.

7. COMMITTEES

- (1) The Council, shall appoint a Management Committee consisting of the President and Vice President and an equal number of members from each of the employers and employees party representatives. It is specifically required that the composition of the Management Committee should reflect the national character of the Council.
- (2) Members, the President and Vice-President shall hold office until the next Annual General Meeting of the Council or until they cease to be representatives on the Council, whichever is the earlier date, and they shall be eligible for re-election for as long as they remain as representatives of parties on the Council. They may resign by giving one month's notice in writing to the Council Secretary.

- (3) If a seat becomes vacant on the Management Committee, the remaining members shall co-opt from the employer or the employee representatives on the Council, as the case may be, a person to fill the vacancy. Any person so co-opted shall hold office for the unexpired period of office of the predecessor, or for the period for which he was appointed to the Council, whichever is the shorter.
- (4) The Management Committee shall perform the following functions:
- (i) administer the affairs of the Council and determine the Council's policy, direction and functions;
 - (ii) establish an Administration Committee to deal with any routine administrative functions of the Council which are allocated to it by the Management Committee;
 - (iii) establish a Standing Committee to deal with any non-administrative matters allocated to it by the Management Committee;
 - (iv) to determine the composition and powers to be delegated to the Administration and Standing Committees;
 - (v) establish regional Councils for the Regions defined in Annexure C comprising of the employer and employee representatives on the Council, to discuss regional specific issues and, if necessary, to agree on issues to be raised through their representatives on the appropriate national committee;
 - (vi) debate and consider regional specific issues raised by members on behalf of Regional Councils;
 - (vii) engage, vary the terms of employment of, dismiss, and recommend the appointment of Regional Council Managers, Agents and other Senior Administrative personnel (as may be defined by the Committee from time to time) on behalf of the Council.
- (5) It is specifically desired that representatives from all regions play a role in the decision making processes through their participation in the proceedings of the Management, Administration and Standing Committees.
- (6) Delegation of Powers:
In addition to and without prejudice to any powers previously delegated to the Management Committee or conferred upon it by the Constitution, the entire functions, powers and duties of the Council shall be hereby delegated to the Management Committee, which shall administer the affairs of the Council between General Meetings of the Council. Provided always that the performance by the Management Committee of any function, power or duty of the Council shall at all times be subject to the direction and control of the Council, which may at any time or times withdraw the delegation to the Management Committee of any function, power or duty: and provided further that the aforesaid delegation shall in no way impair the Council's right and power to perform any function, power or duty.

8. MEETINGS

- (1) The Council shall meet as occasion requires but a General meeting shall be held at least once a year at such place as the Management Committee may decide and such meeting shall be known as the Annual General Meeting of the Council. Special Meetings may be called at the discretion of the President or Acting President, as the case may require, and shall be called on the decision of the Management Committee or on a requisition by a majority of the representatives of either side.
- (2) The Management and Administrative Committees shall meet on alternate months and special meetings may be called by the President at any time at his discretion.
- (3) Two consecutive days in each month shall be set aside for meetings of the Standing Committee
- (4) Meetings of the Regional Councils shall take place monthly or less often should the majority of the Regional Council members so decide. Special meetings may be called by the Regional Council Chairman at the request of the majority of Regional Council members.
- (5) Notice of any meetings showing the business to be transacted shall be given to representatives by the Council Secretary in writing at least two weeks, in the case of the Annual General Meeting of the Council, and at least one week, in the case of other meetings of the Council, or its Committees before the date of such meeting, provided that in the case of a special meeting the president may authorise the giving of shorter notice.
- (6) The quorum for a Meeting of the Council shall be a minimum of fifteen representatives each of the employers and employees.
- (7) The quorum for meetings of committees of the Council shall be the following minimum number of representatives each of the employers and employees:

Management Committee	-	5 per side
Administration Committee	-	2 per side
Standing Committee	-	2 per side

The quorum for the meeting of any other committees of the Council shall be the majority of the members thereof.

- (8) If a quorum is not present within fifteen minutes of the time and date fixed for any meeting of the Council or its Committees, the meeting shall stand adjourned to a date to be fixed by the Presiding Officer not more than one month distant, and at such adjourned meeting, of which notice shall be given, the representatives present shall form a quorum.
- (9) If any representative is absent from any meeting and is not represented by his 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 power.
- (10) The Chairman of meetings shall have a deliberative but not a casting vote.

- (11) Subject to the provisions of Section 5(2), alternates shall be entitled to attend meetings of the Council but shall not vote unless their principals are absent.
- (12) Any members or alternates representing any party on the Council which has refused to become a party to any Agreement which has been arrived at between any or all of the parties shall not be entitled to vote at any meeting of the Council, or its Committees on any matter in any way connected with or arising from any such Agreement, or to speak on any such matter without the permission of the Presiding Officer, provided that where by reason of this provision any representative or alternate is disenfranchised, the value of the votes recorded for or against any proposition shall be reduced to a common denominator in order to ascertain the result of the voting.
- (13) No motion shall be considered unless seconded, and unless otherwise provided, all matters should be voted upon by show of hands and decided by a majority vote except in the case of elections, when the candidates up to the required number receiving the highest votes shall be declared elected.
- (14) Points of procedure on which this Constitution is silent shall be decided by a majority of the votes of those present at a meeting and entitled to vote.
- (15) Minutes of meetings of the Council and its Committees shall be taken by the Council Secretary or persons appointed by the Secretary to do so. At any meeting the Minutes of the last preceding meeting of the body concerned shall be submitted for confirmation and signature by the Presiding Officer.
- (16) The Council and the Management Committee shall have power to appoint sub-committees, for the purpose of performing any function delegated to them. The provisions of this constitution relating to the calling and conduct of meetings of the Management Committee shall mutatis mutandis apply to the calling and conduct of meetings of sub-committees, provided that the quorum for such sub-committee meeting shall be majority of the members thereof.
- (17) The Council Secretary shall submit to the Council at each Annual General Meeting a report on the principal matters which have been dealt with since the previous meeting and copies of the audited statement referred to in Section 15(6) of this Constitution.

9. CODE OF GOOD PRACTICE FOR THE CONDUCT OF MEETINGS.

The Parties to the Metal and Engineering Industries Bargaining Council, and their appointed representatives, accept that they will be bound by, and observe, the procedures set out in Annexure D regulating their conduct at all MEIBC meetings and accept that all meetings will be conducted in accordance with the Code.

10. COLLECTIVE AGREEMENTS

- (1) The parties accept in principle that basic Agreements shall regulate the Industry in continuity, and that amendments and modifications may be made thereto from time to time at intervals not more frequent than once every six months.
- (2) Any party or group of parties may submit to the Council Secretary any proposals in writing, for the amendment of the Council's existing Agreements or for the introduction of a new Agreement, through its or their Head Office or through any Organisation representing such group.
- (3) Any proposals received relating to Agreements shall be dealt with in terms of the provisions of item (2) of Annexure E of this Constitution. When negotiations have clarified the issues upon which amendment of any existing Agreement or the introduction of a new Agreement is desired, the Management Committee shall arrange that a vote of all representatives of the Council be taken by post and/or facsimile upon the said proposals, placing the question or questions upon the ballot paper in such form as it may determine, together with a general question as to whether the proposals as a whole are accepted, provided that the total number of votes returned by post and/or fax by the return date set by the Council, shall determine the outcome of the ballot provided that if the date of the next Annual General Meeting is within three months of the conclusion of such negotiations, the proposals shall be voted upon at the said Annual General Meeting and not by post/fax. Provided further that a vote may also be taken at a Special General Meeting where the Management Committee so decides.
- (4) The provisions of paragraph (1) of this sub-section may be departed from and amendments or modifications may be made at any time which the Council deems convenient or expedient on an unopposed motion to that effect being carried at any meeting of the Council.

11. NEGOTIATION AND DISPUTE PROCEDURES

The negotiation procedures and the procedures to be followed for the resolution of disputes arising within the jurisdiction of the Council, are contained in Annexure E and F.

12. PROCEDURAL AGREEMENTS AT COMPANY LEVEL

Subject to the provisions of the Labour Relations Act, No.66 of 1995:

Individual employers and any trade union having membership in that employer's establishment may enter into a procedural agreement to regulate the relationship between management and employees on company level matters and may lodge such an agreement with the Council for administration purposes. Where there is more than one union with membership in the establishment, every effort shall be made to obtain the agreement of all such trade unions to the procedural agreement.

Such procedural agreements may provide for the following and any other matters deemed to be of mutual interest:

- (a) Procedure for determining the extent of membership of the trade unions.
- (b) Access for the trade union officials to-
 - (i) management;
 - (ii) shop stewards and union members on company premises at acceptable times and venues.
- (c) Placing trade union notices on company notice boards after clearance with management.
- (d) Accreditation of shop stewards:
 - (i) number of shop stewards to be elected and their areas of responsibility.
 - (ii) election of shop stewards by secret ballot subject to the provisions of the trade union/s constitution/s.
 - (iii) terms of office of the shop stewards.
 - (iv) access of shop stewards to union members at acceptable times and venues.
 - (v) training of shop stewards.
 - (vi) format and frequency of meetings between shop stewards and management.
 - (vii) specified times and arrangements for shop stewards to carry out their duties.
 - (viii) deduction of trade union dues subject to the provisions of the Labour Relations Act, the Main Agreement and any procedures issued by the Council from time to time.
- (e) Grievance and disciplinary procedures:

Such procedures should clearly distinguish between the management function of supervisors and the employee representation function of shop stewards.

- (i) supervisors and the employee/s to attempt to resolve any problems that may arise between them at shop floor level before involving the shop stewards.
- (ii) the involvement of the shop steward at the employee's request at any subsequent discussion of the problem referred to in subparagraph (i) of this subsection;
- (iii) clear procedures regarding verbal and/or written warnings which may lead to dismissal;
- (iv) the holding of an inquiry under the chairmanship of a senior manager and with all interested parties present in the event of a serious problem, particularly where dismissal of an employee is involved;

- (v) time deadlines between each stage of the procedures so that unnecessary delays cannot obstruct the resolution of the problem;
- (vi) the reporting to the Regional Council where it has not been possible to resolve the problem utilising the company grievance or disciplinary procedure to enable the Regional Council to invoke its dispute settlement procedures.

(f) Joint consultation through Works Council:

The procedural agreement may provide for the establishment of Works Councils on a mutually acceptable basis to provide a forum for joint consultation between management and all employees. Works Councils may provide for the representation of both unionised and non-unionised employees.

Provisions should be made for a constitution for the Works Council and this should be included as part of the procedural agreement.

- (g) Procures to regulate matters concerning the redundancy and/or laying –off of employees.
- (h) Sample procedural agreements shall be made available by the Regional Councils on request.

13. APPOINTMENT OF OFFICERS AND DUTIES OF COUNCIL SECRETARY AND AGENTS

- (1) The Council shall appoint a Council Secretary, whose duty it shall be to conduct the correspondence of the Council, attend all meetings of the Council and the Management Committee, record minutes of such meetings and circulate copies thereof to representatives and alternates. He shall keep such books of account as shall be prescribed by the Management Committee, and shall, in addition, perform such duties as may be assigned to him by the Council or Management Committee.
- (2) The Council shall appoint one or more specified persons as agents to assist in giving effect to the terms of any Agreement. For the purpose of enforcing or monitoring compliance with agreements, as the case may be, an agent of the Council shall have the right to enter and inspect premises, examine records and question the employer and/or his employees in any manner that he deems appropriate provided that such rights be exercised only as is reasonably required for the purpose of enforcement of, or monitoring compliance with the Agreement.

After each inspection of an employer's records and operations the Agent shall prepare a report for the attention of the employer, worker representatives and in the case of an individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions. Any disclosure of information shall comply with the provisions of the Labour Relations Act, 1995.

Such Agents may be required to attend meetings of the Council or its Committees, but shall not be entitled to vote.

- (3) The employment of all paid officers, including the Council Secretary and Agents, shall be subject to one month's notice on either side, provided that the Council may dismiss any paid officer without further notice for serious neglect of duty or misconduct.

14. EXEMPTION PROCEDURE FROM COLLECTIVE AGREEMENTS

All exemption applications concerning any collective agreement of the Council shall be considered in accordance with the exemption procedure contained in that particular agreement from which exemption is sought.

15. EXPENSES OF THE COUNCIL

- (1) Expenses of the Council shall be met from a fund which shall be raised by levies on employers and employees, on such basis as may be agreed upon by the parties, and vested in the Council, and which may be augmented by donations from any sources; provided that if such donation is coupled with any conditions the Council shall, in the administration of such funds, give effect thereto.
- (2) All moneys received shall be deposited to the credit of the Council within three days after receipt, at a Bank to be decided upon by it.
- (3) The fund shall be applied to the payment of expenses arising from the administration of the affairs of the Council or to the making of grants to anybody engaged in research designed to advance the interests and well-being of persons employed in the Industry.
- (4) All payments from the funds of the Council shall be made in terms of procedures approved by the Council from time to time provided that individual payments may be made in cash, subject to proper evidence of payment being obtained. Subject to sub-Section (5) hereof, cheques shall be signed by the President or Vice-President of the Council or such other signatory as the Management Committee approves from time to time and counter-signed by the Council Secretary, Regional or Financial Manager.
- (5) The Council may place any accumulated funds on deposit at a bank or with a registered Building Society, or may purchase shares in a registered Building Society with such accumulated funds, or may transfer any amounts standing to its credit at the Bank to a current account opened in the name of the Council with a registered Building Society.

The interest earned on such shares or deposit shall be credited to the funds of the Council.

No amount so deposited shall be withdrawn and no shares purchased shall be sold without the approval of the Council.

The signatories appointed in terms of sub-Section (4) of this Section shall be required to approve such deposits, withdrawals or sale.

- (6) Statements showing the income and expenditure and the financial position of the Council shall be submitted to it by the Council Secretary of such intervals as the Council may determine, but not less than once every quarter.
- (7) The Council Secretary shall, not later than May each year, prepare a statement of income and expenditure, together with a statement showing the Council's assets and liabilities, in respect of the financial year ended on 28 February preceding.

These statements, which shall be counter-signed by the President, shall be prepared in a form determined by the Management Committee and shall be submitted for audit to a registered accountant and auditor to be appointed by the Management Committee.

Copies of the audited statements and of the auditor's reports thereon shall be available for inspection at the office of the Council to members or representatives of the parties, who shall be entitled to make copies thereof or to take extracts therefrom. Certified copies of both statements and of the auditor's reports thereon shall forthwith be transmitted to the Registrar of Labour Relations.

16. SIGNATURE OF AGREEMENTS

All Agreements regarding wages and working conditions arrived at by the parties to the Council shall be signed as required by the Act.

17. AMENDMENTS

- (1) The number of representatives on the Council and the number of employer and employee members on Regional Council as set out in Annexure "B" hereto may be amended by the Management Committee, provided the purpose of such amendment is to accommodate the representative/s of any newly admitted party to the Council which requires to be accommodated on the Regional Councils in order to represent its membership; provided further that the Management Committee has satisfied itself that the provisions of Section 56 of the Act have been complied with in admitting the new party to the Council.
- (2) Subject to the provisions of paragraph (1) above, this Constitution may be amended or added to by resolution of a majority of the representatives on both sides, but no amendment shall be considered unless at least one month's notice has been given to the Secretary of the Council and circulated to representatives at least two weeks before the date of the meeting at which it is to be considered, or in the case of a postal vote in which case the provisions of subsection 10(3) shall mutatis mutandis apply, two weeks before the date upon which the votes are required; provided that the Council may, by unanimous vote, amend the Constitution without notice.

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

18. DISSOLUTION

- (1) At a special meeting called for that purpose, the council, by resolution adopted by a majority of the total number of representatives in the council may decide to be wound up.
- (2) Upon adoption of a resolution to wind up, the secretary must take the necessary steps to ensure that-
 - (a) application is immediately made to the Labour Court for an order giving effect to the resolution; and
 - (b) the council's books 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.
- (3) Each party to the council remains liable for any unpaid liabilities to the council as at the adoption of a resolution to wind-up the council.
- (4) After the payment of all debts in accordance with sub-Section (3) any remaining funds shall be dealt with by the liquidator in accordance with the following provisions:-
 - (a) one-third of such funds shall be paid to the employers who and the employers' organisations which were parties to the council at its dissolution, and one-third to the trade unions which were parties to the council at its dissolution; and the share which shall be paid to each such employer, employers' organisation or trade union shall be determined by agreement between the employers and employers' organisations, or, as the case may be, between the trade unions, and if no agreement is reached within a period of 30 days from the date of the dissolution or such further period or periods as the register may fix, before or after the expiry of any such period, by decision of the registrar;
 - (b) the balance of such funds, or any portion thereof be paid to any new bargaining council which may be registered in respect of the same industry, as that in respect of which the council which has been dissolved was registered;
 - (c) for the purpose of paragraph (b) 'same industry, means an industry, the new council of which takes the place of the dissolved council, in respect of the whole or any part of the industry, and area in respect of which the dissolved council was registered.
- (5) The provisions of subsection (4) shall not apply to any fund established by a council for a purpose as are referred to in sections 28(3),(f) and (g)of the Act, which shall be disposed of in accordance with the provisions of the constitution or agreement under which they were established, or, if that constitution or agreement does not contain any provisions in regard thereto, then in accordance with the directions of the registrar.

- (6) For the purpose of this Section, the liability of the parties to the Council shall be limited to their unpaid liabilities (if any) to the Council as at the date on which the resolution for winding-up was passed or the date as from which the Council was unable to continue to function.

Signed for and on behalf of the parties at JOHANNESBURG on

VICE-CHAIRMAN OF THE COUNCIL
W. P. COETZEE

ACTING SECRETARY OF THE COUNCIL
J. BEUKES

PARTIES TO THE COUNCIL**REGISTERED EMPLOYERS ORGANIZATIONS PARTY TO THE COUNCIL:**

Association of Electric Cable Manufacturers of South Africa;
Association of Metal Service Centres of South Africa;
Bright Bar Association;
Cape Engineers' and Founders' Association
Constructional Engineering Association (South Africa);
Covered Conductor Manufacturers' Association;
Electrical Engineering and Allied Industries' Association;
Electrical Manufacturers' Association of South Africa;
Electronics and Telecommunications Industries' Association;
Federated Employers Organisation of S.A. (FEOSA)
Ferro Alloy Producers' Association;
Gate and Fence Association;
Hand Tool Manufacturers' Association (HATMA)
Iron and Steel Producers' Association of South Africa;
KwaZulu Natal Engineering Industries' Association;
Lift Engineering Association of South Africa;
Light Engineering Industries' Association of South Africa;
National Employers Association of S.A. (NEASA)
Non-Ferrous Metal Industries' Association of South Africa;
Plumbers and Engineers Brassware Manufacturers' Association;
Port Elizabeth Engineers' Association;
Pressure Vessel Manufacturers' Association of South Africa;
Radio, Appliance and Television Association of South Africa; (RATA)
Refrigeration and Air Conditioning Manufacturers' and Suppliers' Association;
Sheetmetal Industries' Association of South Africa;
S A Electro-Plating Industries' Association;

S A Engineers' and Founders' Association;
S A Fasteners Manufacturers' Association; (SAFMA)
S.A. Refrigeration and Air Conditioning Contractors' Association; SARACCA)
S A Post Tensioning Association; (SAPTA)
S A Pump Manufacturers' Association;
S A Reinforced Concrete Engineers' Association; (SARCEA)
S A Valve & Actuator Manufacturers' Association; (SAVAMA)

REGISTERED TRADE UNIONS OR “EMPLOYEE ORGANISATIONS” PARTY TO THE COUNCIL

Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union (CEPPWAWU)

Metal and Electrical Workers' Union of South Africa (MEWUSA)

Solidarity MWU / Solidariteit / MWU

United Association of S.A. (UASA)

National Union of Metalworkers' of South Africa (NUMSA)

S.A. Equity Workers' Association (SAEWA)

(Amended by the Registrar of Labour Relations on 23 May 2011)

“ANNEXURE B”

REGION	NUMBER OF EMPLOYER REPRESENTATIVES	NUMBER OF EMPLOYEE REPRESENTATIVES
A (Border)	7	7
B (Cape)	5	5
C (KZN)	8	8
D (Midlands)	7	7
E (Gauteng)	9	9
F (FS & Northern Cape)	8	8

**MAGISTERIAL DISTRICT GEOGRAPHIC DEMARCATION
AND ADDRESSES OF REGIONAL COUNCILS**

‘**Region A**’ means the Magisterial Districts of Beaufort West, Bellville, Bredasdorp, Caledon, Calvinia, The Cape, Carnarvon, Clanwilliam, Ceres, Fraserburg, George, Goodwood, Heidelberg (CP), Hermanus, Hopefield (CP), Knysna, Kuils River, Ladismith (CP), Laingsburg, Malmesbury, Montagu, Mitchells Plain, Moorreesburg, Mosselbay, Namaqualand, Paarl, Piketberg, Prince Albert, Riversdale, Robertson, Simon’s Town, Somerset West, Stellenbosch, Strand, Sutherland, Swellendam, Tulbagh, Vanrhynsdorp, Victoria West, Vredenburg, Vredendal, Wellington, Williston, Worcester and Wynberg, and for the purposes of these particular areas the address of the Regional Council shall be: **Metal and Engineering Industries Bargaining Council** (Cape Region) P O Box 6096, Roggebaai, 8012 or Room 507, Pearl Assurance House, Heerengracht, Foreshore, Cape Town, 8001;

‘**Region B**’ means the Magisterial District of Albert, Aliwal North, Barkly East, Cathcart, East London, Elliot, Indwe, King William’s Town, Komga, Lady Grey, Maclear, Molteno, Queenstown, Sterkstroom, Stutterheim, Tarkastad and Wodehouse, and for the purposes of these particular areas, the address of the Regional Council shall be: **Metal and Engineering Industries Bargaining Council** (Border Region), P O Box 13162, Vincent, 5217 or 1st Floor, 12 St Georges Road, Southernwood, East London 5201;

‘**Region C**’ means the Province of Natal and for the purposes of this particular area the address of the Regional Council shall be: **Metal and Engineering Industries Bargaining Council** (KwaZulu-Natal Region), P O Box 5900, Durban, 4000, or 11th Floor, Sangro House, 417 Smith Street, Durban, 4001.

‘**Region D**’ means the Magisterial Districts of Aberdeen, Adelaide, Albany, Alexandria, Bathurst, Bedford, Calitzdorp, Cradock, Fort Beaufort, Graaf-Reinet, Hankey, Hanover, Hofmeyr, Humansdorp, Jansenville, Joubertina, Kirkwood, Middelburg (CP), Noupoot, Oudtshoorn, Pearston, Port Elizabeth, Richmond (CP), Somerset East, Steytlerville, Steynsburg, Uniondale, Uitenhage, Venterstad and Willowmore, and for the purposes of these particular areas the address of the Regional Council shall be: **Metal and Engineering Industries Bargaining Council** (Midland Region), P O Box 12848, Centrahill, 6006, or 30 Pearson & Whitlock Str, Central, Port Elizabeth, 6001

‘**Region E**’ means the Province of the Transvaal excluding the Magisterial Districts of Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp and Wolmaransstad, and for the purposes of these particular areas the address of the Regional Council shall be: **Metal and Engineering Industries Bargaining Council** (Transvaal Region), P O Box 3998, Johannesburg, 2000, or Engineering Industrial Council House, 5 Andrea Road, Reuven, Booyens, 2091, Johannesburg;

‘**Region F**’ means the Province of Orange Free State and includes the Magisterial Districts of Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp and Wolmaransstad, in the province of the Transvaal, and the Magisterial Districts of Barkly West, Britstown, De Aar, Douglas, Gordonia, Griekwastad, Hartswater, Hometown, Kenhardt, Kimberley, Kuruman, Postmasburg, Philipstown, Prieska, Vryburg and Warrenton in the Cape Province, and for the purposes of these particular areas the address of the Regional Council shall be: **Metal and Engineering Industries Bargaining Council** (Orange Free

State and Northern Cape Region), P O Box 95, Welkom, 9460, or Shoprite Centre, Corner Arrarat and Heeren Streets, Offices 39-41, Welkom. 9459.

ANNEXURE "D"**CODE OF GOOD PRACTICE FOR ALL MEETINGS OF ALL
COMMITTEES OF THE METAL AND ENGINEERING
INDUSTRIES BARGAINING COUNCIL**

The Parties to the Metal and Engineering Industries Bargaining Council, and their appointed representatives, accept that they will be bound by, and observe, the following procedures regulating their conduct at all MEIBC meetings and accept that all meetings will be conducted in accordance with this Code:

- All meetings will start at the scheduled time.
- The MEIBC Office must be given at least three working days prior notice of a representative's inability to attend a scheduled meeting in order to facilitate cancellation of the meeting, should this become necessary.
- All representatives accept that the appointed Chairperson of a meeting will control the order of proceedings at the meeting; control the behaviour and conduct of all persons at the meeting and take any necessary steps to ensure a productive and successful outcome of the meeting.
- All representatives will recognise and respect the authority vested in the Chairperson of a meeting.
- Representatives will respect the right of other representatives to express their views free from interruption of any nature whatsoever.
- Representatives attending meetings will indicate, to the Chairperson, their desire to speak. They shall wait for the Chairperson's decision as to when they may speak.
- The Chairperson shall, upon conclusion of discussion on each agenda item, seek the meeting's agreement to the following (to be incorporated into the Minute of the meeting):
 - The decision reached in respect of that agenda item;
 - Where appropriate, the person, or persons, who will be responsible for acting upon the decision; and
 - Where appropriate, the timeframe within which the agreed action will be taken.
- The MEIBC Office shall ensure that each representative receives at least seven calendar days' prior written notice of meetings. All documents for discussion at meetings shall be attached to the agenda of the meeting.
- The parties will endeavour to apply the principle of sufficient consensus as a basis for decision-making at all meetings.

NEGOTIATION AND DISPUTE PROCEDURES**(OTHER THAN DISPUTES RELATING TO THE APPLICATION, INTERPRETATION OR ENFORCEMENT OF COLLECTIVE AGREEMENTS)****1. PREAMBLE**

- (a) Subject to paragraph (c) below, the procedures set out in this Procedure shall be adopted to deal with all disputes arising within the Council's jurisdiction.
- (b) Different processes shall be adopted for different types of disputes, as set out below. In the event of a dispute over which section should be applied, the dispute shall be processed in accordance with sub-section 6 below. Notwithstanding this Procedure, Parties may agree to meet whenever they mutually deem it necessary for the purpose of resolving a dispute. They may give consideration at their own cost to privately appointing a mediator, arbitrator or referring the dispute to any other process, as agreed between them.
- (c) Notwithstanding paragraph (a) above, parties may through a collective agreement establish their own disputes procedure which does not necessitate them having to refer disputes to the Council, even though the parties fall within the Council's jurisdiction.
- (d) If at any stage after a dispute has been referred to the Council, it becomes apparent that the dispute ought to have been resolved through private dispute resolution in terms of a collective agreement or in terms of a private agreement between the parties to the dispute, the Council may refer the dispute to the appropriate person or body for resolution in terms of the relevant agreement.
- (e) Until such time as the Governing Body of the Commission for Conciliation, Mediation and Arbitration has made a decision in terms of section 127 of the Labour Relations Act with regard to the Councils application for accreditation, this agreement is to be applied subject to and within the context of item 21A of Schedule 7 of the Labour Relations Act (Transitional arrangements).

2. NEGOTIATING PROCEDURES

- (a) Where any party to the Council wishes to initiate negotiations for the amendment of any existing agreement or the introduction of a new agreement, that party shall submit its proposals in writing to the Secretary of the Council.
- (b) The Secretary shall immediately arrange for the proposals to be circulated to all interested parties and shall take steps to arrange a negotiating meeting within 45 days of receipt of the proposal. Where the Secretary, in consultation with the President of the Council, decides that the proposal relates to the negotiation of an industry matter, the date of the first negotiating meeting shall be decided at the next meeting of the

Council's Management Committee, and such negotiating meeting shall be held within 30 days of that Management Committee meeting.

- (c) Further negotiating meetings may be held by agreement between the parties, who may also agree on any procedures, documentation, or any other matters for the purposes of assisting the negotiations.
- (d) If the negotiations have not been resolved in terms of paragraph (b) above, or as otherwise agreed between the parties, any party to those negotiations may declare a dispute by notice in writing to the Council and must satisfy the Council that a copy of the referral has been served on all other parties to the dispute. Industry disputes shall be processed in accordance with sub-section 3 below, and other disputes shall be processed in accordance with sub-section 4 below.

3. INDUSTRY DISPUTE SETTLEMENT PROCEDURES

- (a) In the event that the Secretary, in consultation with the President of the Council, decides that a dispute declared in terms of subsection 2(d) above is an industry matter, he/she shall arrange for the Management Committee to meet within 14 days of the declaration of such dispute, for the purposes of considering the matter.
- (b) The Management Committee shall use its best endeavours to settle the dispute and shall meet as often as it deems necessary for this purpose. In the course of its deliberations the Committee may give consideration to the following:-
 - (i) to appoint a sub-committee to meet within a specified number of days, for the purposes of attempting to resolve the dispute or to recommend to the Management Committee a process by which the dispute can be resolved;
 - (ii) referring the dispute to conciliation in terms of sub-section 7 below, provided that this shall be compulsory, in the case of a dispute involving a non-party to the Council;
 - (iii) referring the dispute to arbitration in terms of sub-section 8 below;
 - (iv) instructing the Secretary to issue a certificate stating that the dispute remains unresolved
- (c) Subject to this Procedure, if the dispute has not been settled within 30 days from the date on which the dispute was referred to the Council, and if the parties have not within that period agreed on a process to resolve the dispute, any party to the dispute shall be entitled to pursue whatever means are available in the Act to process that dispute.

4. GENERAL DISPUTE SETTLEMENT PROCEDURES

- (a) Any dispute within the Council's jurisdiction which does not fall within the scope of sub-section 3 above, including an alleged unfair labour practice dispute, shall be dealt with in terms of this section provided that:

- (i) disputes concerning dismissals shall be processed in terms of sub-section 5 below;
 - (ii) dispute concerning the interpretation and/or application of the Council's Constitution, and/or this Dispute Procedure, shall be processed in terms of section 6 below.
 - (iii) Disputes referred to in Section 127(2) of the Act shall be referred by the Secretary to the Commission for Conciliation, Mediation and Arbitration (CCMA) for processing.
 - (iv) Disputes over the interpretation or application of collective agreements entered into through the Council, shall be processed in accordance with Annexure 'F'.
- (b) A party which refers a dispute to the Council in terms of this procedure, must satisfy the Council that a copy of the referral has been served on all the other parties to the dispute.
- (c) The Secretary shall arrange a meeting of the parties to the dispute within 21 days of having received the declaration of the dispute. The parties shall use their best endeavours to resolve the dispute between themselves, and shall meet as often as they deem to be necessary for the purposes of resolving the dispute
- (d) If the dispute remains unresolved, the parties may give consideration to the following:
- (i) to appoint a sub-committee to meet within a specified number of days, for the purposes of attempting to resolve the dispute or to recommend to the parties a process by which the dispute can be resolved.
 - (ii) Referring the dispute to conciliation in terms of sub-section 7 below: provided that this shall be compulsory, in the event of a dispute involving a non-party to the Council or if required by the Act;
 - (iii) Referring the dispute to arbitration in terms of sub-section 8 below;
 - (iv) Instructing the Secretary to issue a certificate stating that the dispute remains unresolved.
- (e) Subject to this Agreement, if the dispute has not been resolved within 30 days from the date on which the dispute was referred to the Council, and if the parties have not within that period agreed on a process to resolve the dispute, any party to the dispute may utilise whatever means are available in the Act to process that dispute and the dispute shall be deemed to have been dealt with in accordance with the Councils constitution.

5. DISPUTE CONCERNING UNFAIR DISMISSALS

- (a) Any dispute relating to the unfair dismissal of one or more employees and referred to the Council, shall be dealt with in terms of this Section. Any such dispute must be referred to the Council in writing within 30 days of the date of dismissal, provided that the Council may condone the late referral of such a dispute on good cause shown.
- (b) The party referring the dispute must satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (c) Council shall appoint a conciliator in accordance with sub-section 7 below and shall arrange a conciliation meeting for the parties to the dispute to take place within 21 days of receipt of notification of the dispute, for the purposes of attempting to resolve the dispute. In attempting to resolve the dispute, the parties may agree to meet as often as they deem necessary.
- (d) Subject to this procedure, if the dispute has not been resolved within 30 days from the date the dispute was referred to the Council, or if the conciliator at any stage has certified that conciliation has failed, any party to the dispute may instruct the Council to refer the dispute to adjudication in terms of the Act. In terms thereof, disputes are adjudicated as follows:
 - (i) through arbitration, either by consent between the parties to the dispute, or if the dismissed employee-
 - (aa) has alleged that the reason for dismissal is related to his/her conduct or capacity, unless sub-paragraph (ii)(cc) below applies;
 - (ab) has alleged that the reason for dismissal is that the employer made continued employment intolerable; or
 - (ac) does not know the reason for dismissal;
 - (ii) by the Labour Court, if the employee has alleged that the reason for dismissal is-
 - (aa) automatically unfair;
 - (ab) based on the employer's operational requirements;
 - (ac) the employee's participation in a strike that does not comply with the provisions of the Act; or
 - (ad) because the employee refused to join, was refused membership of or was expelled from a trade union party to a closed shop agreement.

- (e) Any arbitration in terms of paragraph (d)(i) above, shall be conducted in accordance with sub-section (8) below. In any such arbitration proceedings, the employee must establish the existence of the dismissal, and the employer must then prove that the dismissal was fair.

6. INTERPRETATION, APPLICATION OR ENFORCEMENT OF DISPUTES

- (a) In the event of any dispute arising relating to the interpretation and/or application of the Council's constitution, it shall be processed in terms of this sub-section.
- (b) A party wishing to refer such a dispute, shall notify the Council in writing, setting out the details of the dispute, having served a copy of such notification on all other parties to the dispute. The Council shall arrange a meeting of the parties to the dispute within 14 days of the dispute having been referred in terms of this section, unless otherwise agreed between the parties. The parties may meet as often as they deem to be necessary, and may agree on any process for the purposes of resolving the dispute.
- (c) If the dispute is not resolved in terms of paragraph (b) above, any party may refer it to arbitration. Arbitration in terms of this section shall be of an expedited nature, and the Council shall appoint an arbitrator who is available to commence the arbitration within 14 days, and the arbitration shall take place accordingly. The arbitrator shall be granted the power to determine the procedure to be followed at the arbitration and to regulate any other matter incidental thereto, bearing in mind the proposed expeditious nature of arbitration in terms of this sub-section. The arbitrator shall for a brief period determined by him/her, attempt to resolve the dispute by conciliation prior to the commencement of the arbitration, and shall do so in a manner that does not undermine or unnecessarily extend the arbitration process.

The arbitrator shall normally be required to make a determination within 7 days of the completion of the hearing, provided that this may be varied by agreement with the parties to the dispute

- (d) Subject to paragraph (c) above, any arbitration in terms of this sub-section shall be conducted in accordance with sub-section 8 below.

7. CONCILIATION

- (a) Any referral to conciliation in terms of this Procedure shall be referred in terms of this sub-section;
- (b) The Council shall establish a panel of conciliators, to whom matters shall be allocated at the discretion of the Secretary, provided that;
 - (i) in the event of parties to the dispute agreeing on a conciliator, the Secretary or his/her nominee, shall attempt to appoint that person chosen; and

- (ii) in the event of the dispute involving a non-party to the Council, the Council shall ensure that the accreditation requirements of the Act are complied with.
- (e) Any conciliator so appointed must determine a process to attempt to resolve the dispute, which may include:
 - (i) mediating the dispute;
 - (ii) conducting a fact finding exercise;
 - (iii) making a recommendation to the parties, which may be in the form of an advisory arbitration award.
- (f) In any conciliation proceedings, a party to the dispute may appear in person or be represented only by a co-employee or by a bona fide member or official of that party's trade union or employer's organisation and, if that party is a juristic person, by a director or an employee. These provisions may be varied by agreement between the parties to the dispute.
- (g) In any conciliation proceedings, if a party to the dispute fails to appear in person or to be represented in accordance with paragraph (d) above, after having given written notification thereof, and that party-
 - (i) had referred the dispute to the Council, the conciliator may dismiss the matter; or
 - (ii) had not referred the dispute to the Council, the conciliator may continue with the proceedings in the absence of that party or adjourn the proceedings.
- (h) By no later than the end of the 30 day period calculated from the date the dispute was referred to the Council, or any further period agreed between the parties, the conciliator must provide all parties to the dispute with a copy of a certificate stating whether or not the dispute has been resolved: Provided that the conciliator may, prior to the expiry of this period, confirm that conciliation has failed, in the event that he/she believes no further purpose would be gained by continuing with the process.

8. ARBITRATION

- (a) In the event of any dispute being referred to arbitration in terms of this Procedure, it shall be done in accordance with this Section. Parties to a dispute may at any stage agree to invoke the arbitration provisions of this Procedure.
- (b) The Council shall establish a panel of arbitrators, to whom matters, shall be allocated at the discretion of the Secretary provided that:-
 - (i) in the event of parties to the dispute agreeing on an arbitrator, the Secretary shall attempt to appoint that person chosen; and

- (ii) subject to sub-paragraph (i) above, in the event of the Council having a direct interest in any dispute being processed, it shall be arbitrated by a member of the panel who is independent of the Council; and
 - (iii) in the event of the dispute involving a non-party to the Council, the Council shall ensure that the accreditation requirements of the Act are complied with.
- (c) After consultation with the parties and the appointed arbitrator, the Secretary must serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (d) The arbitrator may conduct the arbitration in a manner that he/she 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. Subject thereto, a party to the dispute may file evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the arbitrator.
- (e) The appointed arbitrator may at any stage prior to or during the arbitration proceedings attempt to resolve the dispute through conciliation with the consent of the parties to the dispute. If appropriate, the arbitrator may refer the dispute to be conciliated by another conciliator.
- (f) In the event that the arbitrator attempts conciliation prior to the commencement of arbitration, any party to the dispute may, prior to the commencement of the arbitration object to that person continuing to arbitrate the dispute, by written notice to the Secretary. In that event, the Secretary shall appoint another arbitrator from the Council's panel as soon as possible.
- (g) In any arbitration proceedings, a party to the dispute may appear in person or be represented in accordance with Section 138(4) and 140(1) of the Act. For the purposes of applying Section 140(1) of the Act, the arbitrator shall have the powers granted to a Commissioner in terms of that Section. These provisions may be varied by agreement between the parties to the dispute.
- (h) Unless otherwise provided for in terms of this procedure any arbitration in terms of this Procedure is conducted in terms of the Arbitration Act 42 of 1965. In this regard it is agreed as follows:
 - (i) in terms of Section 17 of that Act, no formal record of proceedings shall be kept;
 - (ii) arbitration awards may be delivered other than in the presence of the parties, thereby enabling arbitrators to deliver awards to parties by fax, post or other similar means.
- (i) If the party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings, after having been given written notification thereof, the arbitrator may dismiss the matter. Subject to paragraph (o) below, the arbitrator's decision shall be final and binding on all parties to the dispute.

- (j) If a party, other than the party who referred the dispute to the Council, fails to appear in person or be represented at the arbitration proceedings, the arbitrator may-
 - (i) continue with the arbitration proceedings in the absence of that party; or
 - (ii) adjourn the arbitration proceedings to a later date.
- (k) Within 14 days of the conclusion of the arbitration proceedings, the arbitrator must issue a signed arbitration award with reasons, and the Council must, as soon thereafter as possible, serve a copy of that award on each party to the dispute. The award shall be final and binding on all parties to the dispute.
- (l) On good cause shown by the arbitrator concerned, the Secretary may extend the period during which the arbitration award is to be issued.
- (m) The arbitrator must take into account any relevant code of good practice established in terms of the Act and may make any appropriate award including, but not limited to, an award-
 - (i) that gives effect to any collective agreement;
 - (ii) that gives effect to the provisions and primary objects of the Act;
 - (iii) that includes, or is in the form of, a declaratory order.
- (n) The arbitration may not include an order in the arbitration award for costs incurred by the parties, unless a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner, or such award is in accordance with a mandate agreed between the parties.
- (o) An arbitrator may at his/her own initiative or as a result of an application by an affected party, vary or rescind an award;
 - (i) erroneously sought or erroneously made in the absence of any party affected by the award;
 - (ii) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - (iii) granted as a result of a mistake common to the parties to the proceedings.
- (p) The Secretary or any of the parties may apply to make the arbitration award an order of the Labour Court under section 158(1) of the Act.
- (q) Review proceedings may be instituted within six weeks of the date of service of the award, by any party who alleges a defect in the arbitration proceedings, or if the alleged defect involved corruption, within six weeks of the date that the party discovers the corruption. For the purposes of this section, a defect shall mean where-

- (i) an arbitrator has committed misconduct in relation to his/her duties as arbitrator, or
- (ii) an arbitrator has committed a gross irregularity in the conduct of the arbitration proceedings or has exceeded his/her powers; or
- (iii) an award has been improperly obtained.

9. GENERAL

- (a) Functions to be performed by the Council in terms of the above procedures shall be performed by the Secretary. The Secretary may delegate any of his/her functions and responsibilities as set out in this Procedure.
 - (b) If required by the Act, the Council shall process as an accredited agency any dispute referred in terms of this Procedure by a non-party to the Council, or appoint an accredited agency to conciliate and/or arbitrate that dispute. In the event of an accredited agency being appointed, the conciliation and/or arbitration shall nevertheless be conducted in accordance with this Procedure.
 - (c) Subject to sub-section 8(n) above, expenses incurred through conciliation and arbitration proceedings may be charged in any manner determined by the Council.
 - (d) Any Court application in relation to this Procedure, be it urgent or otherwise, shall be made to the Labour Court.
 - (e) The Council shall establish and maintain a record of all arbitration awards given under its jurisdiction, which shall be available to all parties within the industry.
 - (f) The Council shall establish and maintain panels of sufficient arbitrators and conciliators to carry out the arbitration and conciliation functions in terms of this Procedure. The Council may at any stage decide to remove a person from a panel for whatever reason it considers appropriate, including but not limited to incapacity or serious misconduct.
 - (i) Any notice or service required in terms of this Procedure may be given by means of telefax, hand delivery or registered post.
 - (j) The Council may be a party to a dispute which is processed in terms of this Procedure.
 - (i) Without in any way detracting from the rights and obligations emanating from this Procedure, it shall be interpreted and applied in a manner that promotes effective dispute resolution.
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**DISPUTE RESOLUTION PROCEDURE FOR THE
INTERPRETATION, APPLICATION, OR ENFORCEMENT OF
COLLECTIVE AGREEMENTS**

1. Preamble

Words and phrases in this Section, unless the context otherwise indicates, have the same meaning as those defined in the Labour Relations Act No. 66 of 1995 (“the Act”).

2. Referral of complaint

Any person or party may in writing refer a complaint about the interpretation, application or enforcement of any collective agreement entered into through the Council, to the Secretary of the Council (“the secretary”) for investigation and resolution in terms of this section.

Any such referral must be made within 60 days of either that person or party becoming aware of the problem giving rise to that complaint or the parties’ failure to resolve the problem in accordance with their internal procedures, provided that the Administration Committee may condone a late referral on good cause shown.

3. Investigation of complaint

The Secretary shall initiate an investigation of the complaint referred to in sub-section (2) and inform any party against whom a complaint has been made, and may require a designated agent to investigate the matter. Any complaint which on investigation is disputed, may be deemed to be a dispute for the purposes of this Procedure.

4. Designated agents

In the event of a designated agent being appointed in terms of sub-section (3) above, or if a designated agent discovers an apparent breach of a collective agreement in the course of performing his/her duties, the designated agent shall have the powers granted designated agents in the Act and-

- (a) shall investigate the alleged breach and/or dispute;
- (b) may endeavour to secure compliance with the collective agreement through conciliation
- (c) may issue a compliance order, which calls upon a person or party to comply in a special manner and within a specified time period, with the terms of a collective agreement; and
- (d) as soon as possible after the investigation shall submit a written report to the Secretary, outlining steps taken to secure compliance, the outcome of these steps, and recommendations for resolving the matter (if not resolved). The Secretary shall provide the parties involved with a copy of the report.

5. Secretary's functions

On receipt of any report in terms of paragraph (4)(d) above, or based on the outcome of any investigation resulting from sub-section (3) above, the Secretary may:-

- (a) require a designated agent to make (further) investigations;
- (b) appoint a conciliator from the Council's panel of conciliators to conciliate the dispute;
- (c) issue a compliance order as contemplated in paragraph (4)(c) above, (if not issued previously).

6. Conciliation

- (a) If the dispute is not resolved within 30 days of a party providing written notice to the Council in terms of sub-section(2) above or of a designated agent initiating an investigation in terms of paragraph (4)(a) above, or any further period agreed between the parties, the Secretary shall refer it to conciliation if it has not previously

been referred to conciliation in terms of this Procedure. The Secretary shall appoint a conciliator from the Council's panel of conciliators, for this purpose.

- (b) In any conciliation proceedings conducted in terms of this Procedure, the conciliator may use whatever process he/she feels is appropriate in an attempt to resolve the dispute, which may or may not require meetings with the parties or their representatives. The conciliation shall be deemed to have failed, if the conciliator declares it so in writing or if the dispute has not been resolved within 14 days of the appointment of a conciliator or the initiation of conciliation by a designated agent in terms of paragraph (4)(b) above. This period may be extended by agreement between the conciliator and the parties involved.
- (c) At any conciliation meeting, a party to the dispute may appear in person or be represented only by a co-employee or by a bona fide member, office bearer or official of that party's registered trade union or registered employer's organisation and, if that party is a juristic person, by a director or an employee. These provisions may be varied by agreement between the parties to the dispute.

7. Arbitration

- (a) A dispute shall be referred to arbitration at the written request of any party to the dispute, provided such request is made to the Secretary within 30 days of the failure of conciliation in terms of paragraph (6) above
- (b) If the dispute is referred to arbitration, the Secretary shall appoint an arbitrator from the Council's panel of arbitrators. In making the appointment, the Secretary shall take into consideration any views the parties may express about their choice of

arbitrator, and shall appoint an arbitrator who is independent of the Council in the event of the Council having a direct interest in the dispute.

- (c) After consultation with the parties and the appointed arbitrator, the Secretary must serve notice of the date, time and venue of the arbitration on:-
 - (i) the parties to the dispute;
 - (ii) any other person(s) or parties who he/she is aware may have a direct interest in the outcome of the arbitration
- (d) In the event that the "other person(s) or parties" contemplated in sub-paragraph (c)(ii) above are employees of a party to the dispute, notice shall be deemed to be served if:-
 - (i) it is served on a trade union of which they are a member; or
 - (ii) it is prominently displayed on a notice board at their workplace.
- (e) Any notice contemplated in terms of sub-paragraph (d)(ii) above, shall provide for a process whereby such persons or parties, through their representatives, may elect to participate in the arbitration proceedings. The right of representation is subject to paragraph (j) below
- (f) The arbitrator may at any stage prior to or during the arbitration proceedings attempt to resolve the dispute through conciliation with the consent of the parties to the dispute. If appropriate, the arbitrator may refer the dispute to be conciliated by another conciliator.
- (g) In the event that the arbitrator attempts conciliation prior to the commencement of arbitration, any party to the dispute may, prior to the commencement of the arbitration object to that person continuing to arbitrate the dispute, by written notice to the secretary. In that event, the secretary shall appoint another arbitrator from the Council's panel as soon as possible.
- (h) The arbitrator may conduct the arbitration in the manner that he/she 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.
- (i) Subject to the arbitrator's discretion as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses of any other party, and address concluding arguments to the arbitrator.
- (j) In any arbitration proceedings conducted in terms of this Procedure, a party to the dispute may represent him/herself or be represented only by a legal practitioner, co-employee or by a bona fide member, office bearer or official of that party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee. These provisions may be varied by agreement between the parties to the dispute.
- (k) Any arbitration in terms of this Procedure is conducted in terms of the Arbitration Act, 1965, provided that in terms of Section 17 of that Act, it is agreed that no formal record of proceedings shall be kept. It is further agreed that arbitration awards may be delivered other than in the presence of the parties, thereby enabling arbitrators to deliver awards to parties by fax, post or other similar means.

- (l) If the party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings after having been given written notification thereof, the arbitrator may dismiss the matter. Subject to paragraph (q) below, the arbitrator's decision shall be final and binding on all parties to the dispute.
- (m) If a party other than a party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings the arbitrator may:
 - (i) continue with the arbitration proceedings in the absence of that party; or
 - (ii) adjourn the arbitration proceedings to a later date.
- (n) Within 14 days of the conclusion of the arbitration proceedings, the arbitrator must issue a signed arbitration award with reasons, and the Council must, as soon thereafter as possible, serve a copy of that award on each party to the dispute. The award shall be final and binding on all parties to the dispute
- (o) On good cause shown by the arbitrator concerned, the secretary may extend the period during which the arbitration award is to be issued.
- (p) The arbitrator may make any appropriate award that gives effect to the collective agreement. In considering the retrospective application of any award, the arbitrator shall consider, inter alia, the period of operation of the collective agreement in question and the reasons for any delays in processing the dispute. The arbitrator may not include an order in the arbitration award for costs incurred by the parties, unless a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner, or unless such award is in accordance with a mandate agreed between the parties.
- (q) An arbitrator may at his/her own initiative or as a result of an application by an affected party, vary or rescind an award-
 - (i) erroneously sought or erroneously made in the absence of any party affected by the award;
 - (ii) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - (iii) Granted as a result of a mistake common to the parties to the proceedings.
- (r) The secretary or any of the parties may apply to make the arbitration award an order of the Labour Court under section 158(1) of the Act.
- (s) Review proceedings may be instituted within six weeks of the date of the award, by any party who alleges a defect in the arbitration proceedings, or if the alleged defect involves corruption, within six weeks of the date that the party discovers the corruption.

For the purposes of this section, a defect shall means where:

- (b) an arbitrator has committed misconduct in relation to his/her duties as arbitrator, or
 - (iii) an arbitrator has committed a gross irregularity in the conduct of the arbitration proceedings or has exceeded his/her powers; or
 - (ii) the award has been improperly obtained

8. General

- (a) The provisions of this section stand in addition to any other legal remedy through which the Council may enforce a collective agreement.
 - (b) Functions to be performed by the Council in terms of this section shall be performed by the secretary. The secretary may delegate any of his/her functions and responsibilities as set out in this Procedure.
 - (c) If required by the Act, the Council shall process as an accredited agency any dispute referred in terms of this Procedure by a non-party to the Council, or appoint an accredited agency to conciliate and/or arbitrate that dispute. In the event of an agency being so appointed, the conciliation and/or arbitration shall nevertheless be conducted in accordance with this Procedure.
 - (d) This procedure is concluded by the Council in accordance with section 24(1) of the Act, and disputes over the interpretation, application or enforcement of any collective agreement entered into through the Council shall be processed in terms of this Procedure, unless otherwise agreed by the parties to any such collective agreement.
 - (e) The Council may be a party to a dispute which is processed in terms of this section.
 - (f) Subject to sub-section (7)(p) above, expenses incurred through conciliation and arbitration proceedings may be charged in any manner determined by the Council.
 - (g) Any Court application in relation to this Procedure, be it urgent or otherwise, shall be made to the Labour Court.
 - (h) Any notice or service required in terms of this Procedure may be given by hand, fax or registered post.
 - (i) Without on any way detracting from the rights and obligations emanating from this Procedure, it shall be interpreted and applied in a manner that promotes effective dispute resolution.
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