



CONSTITUTION OF THE FURNITURE BARGAINING COUNCIL

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CONSTITUTION OF THE FURNITURE BARGAINING COUNCIL

1. NAME

The name of the Bargaining Council shall be the “Furniture Bargaining Council”.

2. REGISTERED SCOPE

The registered scope of the Furniture Bargaining Council is specified in the Bargaining Council’s Certificate of Registration attached to this Constitution.

3. DEFINITIONS

- 3.1 In this Constitution, unless the context indicates otherwise any expression used herein which is defined in the Act, shall have the same meaning as in the Act, any reference to the singular includes the plural and conversely, any reference to natural persons includes legal entities and conversely and any reference to the male gender includes the female gender and conversely.
- 3.2 “the Act” means the Labour Relations Act 1995, (Act 66 of 1995)(as amended)(hereinafter referred to as the Act);
- 3.3 “agent” means an employee appointed by the Bargaining Council or the General Secretary to assist with the enforcement of collective agreements, etc.
- 3.4 “alternate” means a person appointed to act on behalf of a party representative on the Bargaining Council in the absence of such party representative;
- 3.5 “area” means the area as specified in the bargaining council’s certificate of registration from time to time.
- 3.6 “auditor” means an auditor registered under the Public Accountant’s and Auditor’s Act, 1991 (Act 80 of 1991);
- 3.7 “Bargaining Council” means the Furniture Bargaining Council referred to in clause 1;

- 3.8 “chairperson” means the chairperson of the Bargaining Council.
- 3.9 “collective agreement” means any agreement concluded between the parties to the Bargaining Council;
- 3.10 “commission” means the Commission for Conciliation, Mediation and Arbitration established in terms of the Act and CCMA has the same meaning;
- 3.11 “council” means the Furniture Bargaining Council referred to in Clause 1;
- 3.12 “designated agent” means an employee of the Bargaining Council who has been appointed in terms of section 33 of the Act in that capacity to perform the functions referred to in that section and/or elsewhere in the Act;
- 3.13 “dispute” means any dispute that may be entertained by the council within its scope of registration and includes all alleged disputes;
- 3.14 “dispute resolution” means the resolution of disputes through a process of conciliation, and if required, through a process of arbitration;
- 3.15 “employee of the Bargaining Council” means any person appointed by the Bargaining Council or the General Secretary to perform work for the Council on a permanent or temporary basis;
- 3.16 “employer organisation” means the same as defined in the Act;
- 3.17 “executive committee” means the executive committee as contemplated in clause 9;
- 3.18 “financial year” means the period of financial activities by the Bargaining Council commencing on 1 October of any year and ending on 30 September of the next year.
- 3.19 “industry” means the industry as specified in the Bargaining Council’s Certificate of Registration;
- 3.20 “large enterprise employer” means an employer who employs twenty one (21) or more employees;

- 3.21 “medium enterprise employer” means an employer who employs from eleven (11) to twenty (20) employees;
- 3.22 “micro enterprise employer” means an employer who employs less than four (4) employees or who employs no employees;
- 3.23 “minister” means the Minister of the Department of Labour;
- 3.24 “non-party employer” means an employer who is not a member of an employers’ organisation who is a party to the Bargaining Council;
- 3.25 “office” means the office of the Bargaining Council;
- 3.26 “officer” means a person appointed by the Bargaining Council or the General Secretary to assist the General Secretary with specified functions and the promotion of the Bargaining Council’s objectives;
- 3.27 “official” means a person representing any trade union, employers organisation or the Bargaining Council;
- 3.28 “party” means the employers’ organisations or trade unions mentioned in Clause 5(2) or any other registered employers’ organisation or trade union admitted as a party to the council in terms of clause 5(3);
- 3.29 “registrar” means the Registrar of Labour Relations appointed in terms of the Act and includes:
- 3.29.1 any deputy registrar appointed in terms of the Act when acting on the direction or under a general or special delegation of the Registrar; and
- 3.29.2 an acting registrar appointed in terms of the Act;
- 3.30 “representative” means a person appointed by a party to the Bargaining Council to represent such party on the same Bargaining Council;
- 3.31 “secretariat” means the executive managerial division of the Bargaining Council.

- 3.32 “secretary” means the General Secretary of the Bargaining Council and it also includes the designation General Secretary whenever it is used in correspondence or documents in relation to the affairs of the Bargaining Council and Secretary has the same meaning.
- 3.33 “small enterprise employer” means an employer who employs from four (4) to ten (10) employees;
- 3.34 “trade union” means the same as defined in the Act;
- 3.35 “trustee” or “trustees” means a person or persons appointed unanimously by the Bargaining Council or during an official voting procedure of the Bargaining Council, to perform certain specific tasks;
- 3.36 “vice-chairperson” means the deputy chairperson of the Bargaining Council.

4. POWERS AND FUNCTIONS

- 4.1 The powers and functions of the Bargaining Council are-
- 4.1.1 to conclude collective agreements and promote centralised bargaining;
 - 4.1.2 to enforce those collective agreements;
 - 4.1.3 to prevent and resolve labour disputes;
 - 4.1.4 to perform the dispute resolution functions referred to in sections 24, 33, 33A and 51 of the Act;
 - 4.1.5 to establish and administer a fund to be used for resolving disputes;
 - 4.1.6 to promote and establish industry training and education schemes;
 - 4.1.7 to establish and administer death, disability, funeral, housing, emergency, pension, provident, medical aid, sick pay, leave pay, holiday pay and unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the Bargaining Council and/or their members;

- 4.1.8 to develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and/or area;
- 4.1.9 to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out at a workplace;
- 4.1.10 to confer on workplace forums such matters as may be deemed necessary and appropriate for purposes of consultation;
- 4.1.11 to provide industrial support services within the sector;
- 4.1.12 to extend the services and functions of the Bargaining Council to workers in the informal sector and home workers;
- 4.1.13 to establish an exemptions body to consider applications for exemptions from the prevailing Collective Agreement and an independent appeal body to hear and decide any appeals against any outcomes of the exemptions body on exemption applications or withdrawals of exemptions previously granted by the exemptions body received from party and non-party employers and/or employees.
- 4.1.14 to consider and deal with any other matter that may affect the individual or mutual interests of the parties;
- 4.1.15 to establish procedures in terms of section 51(8) of the Act for the conduct of dispute resolution proceedings;
- 4.1.16 to prescribe by collective agreement the amount which can be awarded against a party or non-party in terms of section 33A of the Act who is in breach of any obligation or requirement of a collective agreement of the Bargaining Council.
- 4.1.17 to promote good relationships between employers and employees and to maintain industrial peace;

4.2 The Bargaining Council may perform the functions in clause 4.1 only within its registered scope.

5. MEMBERSHIP AND PARTIES

- 5.1 The parties to the Bargaining Council shall be the registered employers' organisations and the registered trade unions whose members are engaged or employed in the Bargaining Council's scope.
- 5.2 On the adoption of this constitution the parties to the Bargaining Council are-
- 5.2.1 the following employers' organisation-
- 5.2.1.1 the Furniture, Bedding & Upholstery Manufacturers' Association for the Greater Northern Region (FBUMA);
- 5.2.2 and the following trade unions-
- 5.2.2.1 the National Union of Furniture & Allied Workers of South Africa (NUFAWSA) and
- 5.2.2.2 the Chemical, Energy, Paper, Printing, Wood & Allied Workers Union (CEPPWAWU)
- 5.3 Any employers' organisation or trade union registered in terms of the Act in respect of persons engaged or employed in the scope of the Bargaining Council may be admitted as a party to the Bargaining Council subject to the provisions of the Act, this Constitution or any prevailing Collective Agreement;
- 5.4 Any party may withdraw from the Bargaining Council by giving at least six (6) calendar months' written notice to the General Secretary.
- 5.5 Any registered trade union or registered employers' organisation that has members that fall within the registered scope of the Bargaining Council, may apply in writing to the Bargaining Council for admission as a party, as long as they can prove compliance with the following membership thresholds:

5.5.1 Admittance Threshold – Furniture, Bedding and Upholstery Manufacturing Sector - Employer Organisations

Any employers organisation duly registered in terms of section 96 of the Labour Relations Act and which can prove to the satisfaction of the Council and by means of reasonable identification, that its members employ at least twenty five percent (25%) of the employees in the industry's furniture, bedding and upholstery sector, shall be recognised as a sufficiently representative employers organisation and may apply in writing to this Council for admission as an employer party to this Council in terms of section 56 of the Labour Relations Act, 1995.

5.5.2 Maintenance Threshold – Furniture, Bedding and Upholstery Manufacturing Sector – Employer Organisations

Any employers organisation duly admitted as an employer party to this Council in terms of clause 5.5.1 above, are expected to continuously maintain this threshold of 25%. Should any allegation to the contrary comes into existence, any interested individual, trade union or organisation may give the concerned employers' organisation written notice of this allegation and must allow the same organisation at least 90 days from the date of notice to prove that it is representative in terms of the threshold.

If after the expiry of the 90-day period, the employers' organisation fails to prove that it is representative in terms of the threshold then the interested individual, trade union or employers' organisation may give the concerned employers' organisation notice of their disqualification and their intention to notify the Council and the Registrar of Labour Relations of such failure and to effect deregistration of the employers' organisation as a party to the Council.

5.5.3 Admittance Threshold – Furniture, Bedding and Upholstery Manufacturing Sector – Trade Unions

Any trade union duly registered in terms of section 96 of the Labour Relations Act and which can prove to the satisfaction of the Council and by means of reasonable identification, that its membership represents at least fifteen percent (15%) of the total number of employees in the industry's furniture, bedding and upholstery manufacturing sector, shall be recognised as a sufficiently representative trade union and may apply in writing to this Council for admission as a trade union party to this Council in terms of section 56 of the Labour Relations Act, 1995.

5.5.4 Maintenance Threshold – Furniture, Bedding and Upholstery Manufacturing Sector – Trade Unions

Any trade union duly admitted as a trade union party to this Council in terms of clause 5.5.3 above, are expected to continuously maintain this threshold of 15%. Should any allegation to the contrary comes into existence, any interested individual, trade union or organisation may give the concerned trade union written notice of this allegation and must allow the same trade union at least 90 days from the date of notice to prove that it is representative in terms of the threshold.

If after the expiry of the 90-day period, the trade union fails to prove that it is representative in terms of the threshold then the interested individual, trade union or employers' organisation may give the concerned trade union notice of their disqualification and their intention to notify the Council and the Registrar of Labour Relations of such failure and to effect deregistration of the trade union as a party to the Council.

5.6 The application contemplated in sub-clause 5 must be accompanied by:-

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

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

5.6.3 details of the applicant's membership within the registered scope of the Bargaining Council, and, if the applicant is a registered employers' organisation, the number of employees that its members employ within the Bargaining Council's registered scope;

5.6.4 a statement of the reasons why the applicant ought to be admitted as a party to the Bargaining Council; and

5.6.5 any other information which the applicant relies upon in support of the application.

5.7 The Bargaining Council shall, within 90 days of receiving an application for admission as a party to the Bargaining Council, decide whether to grant or refuse the applicant's admission to the Bargaining Council, and must advise the applicant within 30 days of its decision and the reasons for that decision failing which the Bargaining Council is deemed to have refused the applicant's admission.

6. APPOINTMENT OF REPRESENTATIVES AND ALTERNATES

- 6.1 The Bargaining Council shall consist of nine (9) employer and nine (9) employee representatives and will be constituted as follows-
- 6.1.1 representatives of the Furniture, Bedding & Upholstery Manufacturers' Association for the Greater Northern Region (FBUMA), of which at least one (1) representative shall represent micro and small enterprise employers, at least one (1) representative shall represent medium enterprise employers;
 - 6.1.2 representatives of the National Union of Furniture and Allied Workers of South Africa (NUFAWSA) shall either be paid officials who are employees of the trade union, or shall be members of the trade union who are actively engaged or employed in the industry; and
 - 6.1.3 representatives of the Chemical, Energy, Paper, Printing, Wood & Allied Workers Union (CEPPWAWU), shall either be paid officials who are employees of the trade union, or shall be members of the trade union who are actively engaged or employed in the industry.
 - 6.1.4 The number of trade union representatives, when more than one (1) trade union is party to the Bargaining Council, shall be determined on a pro-rata basis, based on the unions' audited membership in the industry.
- 6.2 If more than one (1) employers' organisation or trade union is a party to the Bargaining Council, the allocation of representative seats shall be re-assessed if requested by any party. Such request shall be in writing and delivered to the General Secretary and also furnished to all other parties to the Bargaining Council and shall contain the reasons for the request as well as a proposal as to how the future representation of seats should be allocated and shall also contain the motivation for the proposal. The General Secretary shall table the request for the first executive meeting of the Bargaining Council to follow, provided that such meeting is not less than thirty (30) days after the delivery of the written request to all parties and the General Secretary. The Bargaining Council shall consider the matter and pass a resolution on the matter, whereafter the General Secretary shall notify the requesting party in writing of the outcome.

- 6.3 Subject to the respective constitutions of the parties to the Bargaining Council, each party to the Bargaining Council may appoint-
- 6.3.1 its representatives to the Bargaining Council; and
 - 6.3.2 alternates for each of its representatives.
- 6.4 Representatives shall hold office for twelve (12) months unless replaced earlier by their trade union(s) or employer organisation(s) and shall be eligible for re-election.
- 6.5 A party may at any time withdraw any of its representatives or alternates on the Bargaining Council by giving at least fourteen (14) days' notice in writing to the General Secretary and thereafter another representative or alternate must be appointed as soon as possible as a replacement as provided for in sub-clause 6.3.
- 6.6 All representatives and their respective alternates, including the chairperson and vice-chairperson, shall be subject to the Disciplinary Code and Procedure which is (hereafter referred to as the "Code") applicable to officers, agents, designated agents and employees of the Bargaining Council and any process or inquiry shall be initiated or conducted according to the following provisions after a written objection in the form of an affidavit has been received by the General Secretary or Chairperson or Vice-Chairperson:-
- 6.6.1 an independent and objective presiding officer shall preside over any disciplinary process in terms of this sub-clause and shall be appointed by agreement between the parties within three (3) days after the chairperson, vice-chairperson or any party representative, alternate or the General Secretary or person(s) who the Bargaining Council may have dealings with, objected in writing to the conduct or behaviour of the chairperson, the vice-chairperson or any other party representative or alternate. If the parties cannot reach an agreement on the appointment of a presiding officer within three (3) working days after the written objection was received, then a presiding officer shall be appointed by the President of the Law Society of the Northern Provinces;
 - 6.6.2 subject to the provisions of this clause, an inquiry in terms of this clause shall be conducted according to the procedures prescribed in the Code unless the Bargaining Council has made some specific rules and procedures for the conduct of the inquiry;

- 6.6.3 if the presiding officer finds the person(s) concerned guilty of any act or behaviour which is classified as a dismissible conduct in terms of the said Code, the presiding officer shall declare the representative or alternate permanently disqualified from occupying or holding any office or position on the Bargaining Council which disqualification would be with immediate effect;
- 6.6.4 in the event of conduct which does not justify a dismissal in terms of the Code or if the presiding officer is of the opinion that there are just and equitable circumstances present not to order a disqualification in terms of clause 6.6.3, the presiding officer may impose any other reasonable penalty and/or sanction, including but not limited to a forfeiture of any allowance or remuneration or amount payable to such person for the attendance of the meeting during which the incident occurred that initiated the inquiry;
- 6.6.5 if any amount payable by such party representative or alternate has not been paid to the Bargaining Council's general fund thirty (30) days after the conclusion of any process in terms of sub-clause 6.6, the Bargaining Council may recover that amount from any future payment to that party representative or his/her alternate.
- 6.6.6 legal representation will NOT be permissible during an inquiry in terms of this sub-clause and a representative or alternate may only be represented by an official or co-employee of his/her employers' association or trade union;
- 6.6.7 the finding of the presiding officer in terms of this clause is final and binding and shall not be subject to any appeal, review or rescission process;
- 6.6.8 any costs and expenses relating to the investigation and conclusion of an inquiry in terms of this clause shall be paid from the general fund of the Bargaining Council provided that if the representative or alternate is found not guilty of all the allegations against him or her, the costs and expenses shall be paid by the party whose representative or alternate initiated the enquiry.
- 6.7 A representative or an alternate may resign by giving at least fourteen (14) day's notice in writing to the General Secretary and to the party which appointed him.

- 6.8 A representative or an alternate will immediately and automatically become disqualified to serve on the Bargaining Council in the following instances:-
- 6.8.1 when an employer or an employee is no longer engaged or employed in the industry;
 - 6.8.2 when an employer or an employee resigns or is expelled from the employers' organisation or trade union, as the case may be;
 - 6.8.3 who is absent without good cause from three (3) consecutive meetings of the Bargaining Council, and
 - 6.8.4 who is declared disqualified by the presiding officer in terms of sub-clause 6.6.
- 6.9 If a seat on the Bargaining Council becomes vacant through the withdrawal, resignation, incapacity, death or disqualification of a representative or an alternate, the vacancy shall be filled by the party who appointed such representative or alternate. Any representative or alternate appointed to fill such vacancy, shall hold office for the unexpired portion of the period of office of that seat, and shall be subject to the same terms and conditions as that of the predecessor.
- 6.10 The number of representatives on the Bargaining Council can only be changed by an unanimous vote of the parties.

7. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON AND THEIR DUTIES

- 7.1 The chairperson and vice-chairperson appointed in terms of the constitution of the Bargaining Council shall hold office until the expiry of their terms as provided for in this clause.
- 7.2 The chairperson and vice-chairperson of the Bargaining Council shall alternate each year between representatives of the employers and representatives of the employees in order that the incumbents for the positions of chairperson and vice-chairperson, are not both in any one(1) year, representatives of either the employers' organisations or trade unions who are parties to the Bargaining Council, at the same time. The positions of chairperson and vice-chairperson shall also alternate every year to ensure that the choice of chairperson is restricted to a representative of the employees if the outgoing Chairperson was a representative of the employers and conversely.

- 7.3 The chairperson and vice-chairperson shall stand down at the annual general meeting and the General Secretary shall thereafter call for nominations for the position of chairperson. If more than one representative is duly proposed and seconded, a vote by ballot shall be taken and the representative receiving the largest number of votes shall be declared elected as the chairperson. In the event of an equal number of votes being cast for two or more representatives, the General Secretary shall write the name of each such representative on identical pieces of paper, place it in a container and shall request a person who has not been nominated to draw one piece of paper from the container. The representative whose name is thus drawn shall be declared as the duly elected chairperson. The same procedure shall be followed in respect of the election of a vice-chairperson.
- 7.4 The chairperson and vice-chairperson shall hold their positions for twelve (12) months or until the expiration of the remaining period for which they were appointed, whichever period is the shorter, or until disqualified in terms of clause 6.6, resigns in terms of clause 6.7, becomes automatically disqualified in terms of clause 6.8 or to have the appointment withdrawn by the appointing party. In the event of a disqualification in terms of clause 6.6, the party of the person so disqualified shall nominate a person from its ranks to occupy the vacated position for the remainder of the term of office of the disqualified person.
- 7.5 The chairperson shall preside over all meetings in a dignified and unbiased manner, enforce the necessary order and discipline at all meetings over which he or she is presiding and shall sign the minutes of meetings after the acceptance and confirmation thereof. He/she shall in addition, perform such other duties as by usage and custom pertain to the position.
- 7.6 The vice-chairperson shall exercise the powers and perform the duties of the chairperson in the absence of the chairperson.
- 7.7 In the event of both the chairperson and vice-chairperson being unable to perform their duties, the Bargaining Council shall, by show of hands on a motion duly seconded, elect an acting chairperson who shall exercise the powers and perform the duties of chairperson and while the chairperson and vice-chairperson are unable to perform their duties.
- 7.8 If the chairperson or vice-chairperson is not elected in terms of clause 7 from amongst the representatives on the Bargaining Council, such independent chairperson or vice-chairperson shall not be entitled to vote at the meeting for which they were elected.

7.9 The chairperson and/or the vice-chairperson may be removed from his/her position or be penalised or sanctioned in accordance with clause 6.6 above.

8. MEETINGS OF THE BARGAINING COUNCIL

8.1 The Bargaining Council shall meet at its headquarters at least once every two (2) months on a day and time as may be decided by the Bargaining Council.

8.2 A Special Council meeting shall be convened upon written request(s) by not less than three (3) representatives, who jointly represent the majority of the parties to the Council and such a meeting may also be called at the discretion of the chairperson or the General Secretary.

A Special Council meeting shall also be convened upon the written request of an employer party or employee party, provided that such resolution was adopted at a properly convened meeting of that party. The chairperson of the Bargaining Council shall summon such a Special Council meeting within fourteen (14) days after receipt of such a written request, provided that such a meeting may be convened within any shorter period as agreed upon by all the parties to the Bargaining Council.

8.3 An Annual General meeting of the Bargaining Council shall be held in June of each year and the budget for the next year shall be approved not later than the meeting of the Bargaining Council to be held in September of each year.

8.3.1 At the Annual General meeting in June, the Bargaining Council shall:-

8.3.1.1 elect the chairperson and the vice-chairperson of the Bargaining Council in terms of clause 7;

8.3.1.2 appoint the executive committee members and council members referred to in clauses 8 and 9;

8.3.1.3 appoint the members of the panel of conciliators referred to in clause 10;

8.3.1.4 appoint the members of the panel of arbitrators referred to in clause 10;

8.3.1.5 appoint the member(s) of the independent exemptions body established in terms of the Act and referred to in clause 19 of this Constitution.

8.3.1.6 consider and approve the audited annual financial statements of the Bargaining Council and the auditors report on those statements.

8.3.2 At the Council meeting in September of every year, the Bargaining Council shall consider and approve the budget, as prepared by the Secretariat, for the following financial year.

8.4 Notices and agendas of any meeting of the Bargaining Council stipulating the matters to be considered, shall be given to representatives by the General Secretary in writing at least four (4) days prior to the date of such meeting, provided that, in the case of a special meeting, the chairperson may authorise a shorter notice.

8.5 The quorum for meetings of the Bargaining Council shall be a minimum of five (5) representatives of the employers' organisations and a minimum of five (5) representatives of the trade unions provided that all parties to the Bargaining Council are represented at these meetings. For the purpose of determining whether a quorum is present, alternates of absent representatives shall be regarded as representatives. If within fifteen (15) minutes of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same venue, time and day in the following week, or in the event of such day being a public holiday, to the next working day at the same venue and time and at such an adjourned meeting, the representatives present shall automatically constitute a quorum for that meeting and the meeting shall proceed with the same agenda.

8.6 At any meeting of the Bargaining Council, the minutes of the previous meeting shall, unless it has previously been circulated to the parties, be presented to the parties and shall, after the acceptance and confirmation thereof, be signed by the chairperson.

8.7 Alternates shall be entitled to attend meetings of the Bargaining Council and to participate in deliberations but shall not be entitled to vote, unless their principals are absent. Each representative has only one vote on any matter before the Bargaining Council for its decision. However, if at the meeting the employer representatives and the employee representatives are not equal in number, the side that has the majority of representatives must withdraw so many of its representatives from voting as may be necessary to ensure that the employers and

employees are equal in numerical strength at the time of voting whilst maintaining the prescribed quorum.

- 8.8 No motion shall be considered unless it is seconded by a representative or alternate who is present and entitled to vote.
- 8.9 The chairperson may rule that a motion shall be submitted in writing in which case it shall be signed by the person who introduced the motion as well as the seconder of the motion and it shall thereafter be read out loud by the chairperson at that meeting. Except where otherwise provided for in this constitution, all matters forming the subject of motions shall be carried by the votes of the majority of those present and entitled to vote, and voting shall be by show of hands.
- 8.10 In the event of the voting being equal, any party may request the chairperson to put the motion to a secret vote by ballot whereupon the General Secretary shall make the necessary arrangements, in accordance with established practices or as directed by the Bargaining Council, to give effect to such vote. The chairperson shall have no casting vote.
- 8.11 In the event of a dispute on a procedural point which is not provided for in this constitution, the Bargaining Council shall decide on the procedure to be followed by a majority of votes of those present and entitled to vote. In the event of an equal division of votes on the procedural matter, the chairperson shall have a casting vote in addition to his or her deliberative vote and must cast his or her deciding vote immediately.
- 8.12 If any question which the executive committee or General Secretary considers to be sufficiently and extremely urgent arises between council meetings and such question can be answered in only one of two ways, namely a “yes” or a “no” answer, the General Secretary may cause a vote of the representatives on the Bargaining Council to be taken by post.
- 8.13 A proposal submitted for a postal vote shall be in writing and signed by the person who made the proposal as well as by the seconder and may be adopted only if it is supported by at least two-thirds($\frac{2}{3}$) of the representatives who are entitled to vote.

9. COMMITTEES OF THE BARGAINING COUNCIL

- 9.1 The Bargaining Council may from time to time establish committees, including an executive committee and may, subject to such conditions as it may determine, delegate any of its functions to any such committee. Any committee established in terms of this clause will, as a

general rule, only have the power to give advice and make recommendations to the Bargaining Council. The Bargaining Council may, however, grant any committee full power and authority to act in specific matters, in which case any decision made by such a committee on such a specific matter, will be deemed to be a decision of the Bargaining Council and will be of the same force and effect as if it was a decision of the Bargaining Council. Thereafter that committee will again be restricted to its advisory function.

9.2 Subject to the provisions of sub-clause 9.4, the executive committee shall consist only of delegates of the Bargaining Council or their alternates and shall consist of a maximum of five (5) representatives of the employers organisations and a maximum of five (5) representatives of the trade unions. Any other committee of the Bargaining Council may consist:-

9.2.1 wholly of delegates of the Bargaining Council or their alternates; or

9.2.2 partly of such persons as are referred to in paragraph 9.2.1 and partly of employers and employees in the industry, who are non-parties to the Bargaining Council; or

9.2.3 wholly of employers and employees in the industry who are non-parties of the Bargaining Council.

9.3 Any committee so established shall consist of an equal number of employer and employee representatives and if the Bargaining Council's chairperson and/or vice-chairperson is not already chosen as a committee member, the Bargaining Council's chairperson and/or vice-chairperson, shall automatically form part of such committee.

9.4 For the purpose of sub-clause 9.2:-

9.4.1 any member, office bearer, or official of a trade union which is a party to the Bargaining Council shall, if appointed as a representative of the employees, be deemed to be an employee in the industry.

9.4.2 Any member, office bearer or official of an employers' organisation, which is a party to the Bargaining Council or any director of a company, member of a close corporation, trustee of a trust, partner in a partnership or any person who is an employer in the industry or any person employed as a manager or in any other supervisory capacity by an employer in the industry shall, if appointed as a representative of the employers, be deemed to be an employer in the industry.

- 9.5 The chairperson of any committee may be the chairperson or the vice-chairperson of the Bargaining Council or a person nominated by the Bargaining Council or a person elected from amongst the members of the committee or otherwise as the Bargaining Council may determine.
- 9.6 If the chairperson of any committee is not elected from amongst the representatives of the employers or employees on the committee, he or she shall not be entitled to vote.
- 9.7 Subject to a resolution by the Bargaining Council with regard to the management and control of the Bargaining Council, the executive committee may exercise and perform the powers, functions and duties of the Bargaining Council relating to the supervision and control of the everyday management and administration of the Bargaining Council. In addition, the executive committee may-
- 9.7.1 investigate and report to the Bargaining Council on any matter related to the scope for which it was established;
 - 9.7.2 do everything necessary to give effect to the resolutions of the Bargaining Council;
 - 9.7.3 monitor and enforce collective agreements concluded in the Bargaining Council;
 - 9.7.4 and exercise and perform any power, function and duty that is conferred upon or imposed on the executive committee by or in terms of this constitution or which is delegated by the Bargaining Council to the executive committee provided that the Bargaining Council may not delegate to the executive committee the powers, functions and duties contemplated in clauses 5.7, 6, 8, 21 and 22 and the power of the Bargaining Council to delegate any of its powers, functions or authority.

10. PANELS OF CONCILIATORS AND ARBITRATORS

- 10.1 The Bargaining Council shall during its annual general meeting in June each year appoint:-
- 10.1.1 a panel of conciliators to conciliate disputes; and
 - 10.1.2 a panel of arbitrators to arbitrate disputes.

- 10.2 The Bargaining Council may remove a member of the above panels:-
- 10.2.1 for misconduct;
 - 10.2.2 for incapacity; or
 - 10.2.3 if at least one half of the employer representatives together with at least one half of the employee representatives have voted in the Bargaining Council in favour of the panelist's removal.
- 10.3 If for any reason there is a vacancy on a panel, the Bargaining Council or General Secretary may appoint a new panellist to the panel for the remaining part of the year.
- 10.4 If the parties to a dispute disagree on a member of the panel to conciliate or arbitrate their dispute, the General Secretary shall appoint any other panelist to conciliate or arbitrate a dispute referred to the General Secretary in terms of this constitution.
- 10.5 A panellist may be appointed to both panels and be eligible for re-appointment unless he or she has indicated otherwise in writing to the General Secretary.

11. BARGAINING COUNCIL OFFICERS, EMPLOYEES AND PARTY OFFICIALS

- 11.1 The Bargaining Council shall appoint a General Secretary, who shall keep such books of account as are required in terms of any law as well as such books and records as the Bargaining Council may direct, conduct all correspondence of the Bargaining Council, keep originals of correspondence received and copies of those dispatched and attend all meetings and record or have recorded the minutes of all meetings of the Bargaining Council, the executive committee or any other committee. The General Secretary may appoint suitable, capable and competent person(s), who must-
- 11.1.1 keep such books of account as the Bargaining Council may direct;
 - 11.1.2 attend all such meetings as directed by the Bargaining Council or the General Secretary either for a specific occasion or purpose or generally;

- 11.1.3 bank all monies received on behalf of the Bargaining Council within three (3) working days of receipt thereof;
 - 11.1.4 submit statements of the financial affairs of the Bargaining Council whenever required to do so in terms of any law or whenever requested by the Bargaining Council, but not less than once every quarter;
 - 11.1.5 countersign cheques drawn on the Bargaining Council's banking accounts; and
 - 11.1.6 perform such other duties as the Bargaining Council or General Secretary may direct.
- 11.2 The General Secretary shall retain in safe custody in the office of the Bargaining Council, copies of all confirmed and signed minutes of all Council meetings where decisions are made, including those of any committee where decisions are made, as well as the statements and books referred to in clause 11 and all records relating thereto for a period of not less than five (5) years from the last date to which such minutes, statements, books or records relate.
- 11.3 The Bargaining Council or General Secretary may employ one (1) or more specified persons as agents to assist in giving effect to the provisions of any collective agreement concluded in the Bargaining Council and may request the minister to appoint one or more of those agents as designated in terms of section 33 of the Act to perform the functions referred to in that section and/or in any other legislation elsewhere.
- 11.4 The Bargaining Council or General Secretary may appoint such other suitable and competent officers and employees as may be deemed necessary to assist with the regular, proper and effective administrative functions of the Bargaining Council.
- 11.5 The employment of all officers, agents, employees, including the General Secretary, shall be subject to the specific provisions as reflected in their individual employment contracts and shall be subject to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) as amended, and the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended.
- 11.6 Disciplinary measures against all representatives, alternates, officials, officers, agents, designated agents and other employees of the Bargaining Council including the General Secretary, shall, subject to clause 6.6, be taken in terms of the Disciplinary Code and Procedure (hereafter referred to as the Disciplinary Code) of the Bargaining Council. When the alleged

offending person(s) is an officer, designated agent, agent or any other Bargaining Council employee, the General Secretary or the person(s) designated by the General Secretary shall apply the Disciplinary Code. When the alleged offending person(s) is a representative, alternate or official of a trade union or employers association which is party to the Bargaining Council, the Bargaining Council or a committee appointed by the Bargaining Council shall apply the Disciplinary Code.

- 11.7 Whenever the Bargaining Council directs that disciplinary action is appropriate or needed against the General Secretary, the full Bargaining Council or a specially appointed disciplinary committee established by the Bargaining Council shall conduct a disciplinary inquiry or investigation and process in terms of the existing disciplinary code. The disciplinary committees referred to in clauses 11.6 and 11.7 shall consist of an equal number of representatives each of the employer and employee parties to the Bargaining Council.
- 11.8 The General Secretary, designated agents and other officers and employees of the Bargaining Council must not be biased in favour of or prejudiced against any party in the performance of their respective functions.

12. INCOME AND EXPENSES OF THE BARGAINING COUNCIL

- 12.1 The expenses of the Bargaining Council shall be met from a General Fund which shall, in addition to such monies and administration fees as may accrue to the General Fund of the Bargaining Council, be raised by levies on the employers and the employees in the industry.
- 12.2 All monies received shall be deposited to the credit of the Bargaining Council within three (3) working days of receipt, at a financial institution as decided upon by it, provided that any funds surplus to the Bargaining Council's requirements for expenses may be invested, on such conditions as the Bargaining Council may decide on, provided that such monies are invested in terms of the Act.
- 12.3 The Bargaining Council's General Fund shall be utilised for the payment of expenses arising from the administration and other affairs of the Bargaining Council.
- 12.4 All representatives and officials of parties to the Bargaining Council who are involved in the investment of surplus funds, shall be required to sign an undertaking that they will in no way enrich themselves directly or indirectly through the placement of such investments.

- 12.5 All payments from the Council's various funds require the Bargaining Council's approval and shall be made by electronic transfer, direct deposit or cheques which must be signed by three (3) duly appointed signatories of the Bargaining Council. Two (2) such signatories shall be representatives or alternates on the council and the signatories so signing are representative of both the employers and the employees whilst the third signatory shall be an official of the Bargaining Council duly authorised to sign cheques. Any party signatory of the Bargaining Council (representatives or alternates on the Council) may mandate the General Secretary in writing to act as signatory on their behalf. The General Secretary or any other person delegated by him may allow a deviation from the latter only when an urgent payment needs to be made and three signatories as prescribed are not readily available. Payments of R3 000 and less, or such amount as determined by the Bargaining Council from time to time, may be made from petty cash.
- 12.6 Funds required for a petty cash account, which shall be kept in such form as the Bargaining Council may determine from time to time, shall be provided by the drawing of a cheque from the General Fund signed in the manner specified in sub-clause 12.5.
- 12.7 The Bargaining Council or General Secretary of the Bargaining Council shall appoint an accountant who shall submit monthly statements to the Bargaining Council indicating the income and expenditure and financial position of the Bargaining Council.
- 12.8 The financial year of the Bargaining Council will commence on the 1st of October of every year and will end on 30 September of the next year. The accountant shall within three (3) months after the 30th September of each year, prepare a full set of financial statements showing all monies received and expenditure incurred for the year concerned.
- 12.8.1 The statements contemplated in sub-clause 12.8 shall be submitted for audit to an auditor appointed by the council.
- 12.8.2 Copies of the audited statements and the auditor's reports thereon, shall be submitted for consideration to the Bargaining Council for its approval at the Annual General meeting. The representatives of the employers and employees shall be entitled to make copies thereof or to take extracts from it.

- 12.8.3 Copies of the audited financial statements and of the auditor's report thereon shall be transmitted to the registrar within six (6) months after the close of the financial year covered by it.
- 12.9 The accountant shall prepare an annual budget for the council which shall be tabled for consideration at the Council meeting in September of each year.
- 12.10 The Bargaining Council shall be permitted to grant housing loans, housing subsidies or any other type of financial assistance as loans to its employees as approved by the Bargaining Council from time to time on such terms and conditions and interest rates as the Bargaining Council may determine.
- 12.11 In the event of the Bargaining Council instituting legal or arbitration proceedings against an employer for failing to pay to the Bargaining Council any amounts payable in terms of any collective agreement, such employer shall be liable for all legal fees and disbursements incurred by the Bargaining Council including collection charges and costs of tracing such employer, his or her trustee, executor or liquidator.
- 12.12 The General Secretary may with the approval of the Bargaining Council determine the amount of costs payable in terms of sub-clause 12.11 for any proceedings referred to in section 33A of the Act.
- 12.13 Expenses incurred through conciliation and/or arbitration proceedings may be charged in any manner, but at a reasonable rate to be determined by the Council. A commissioner who presides in any conciliation or arbitration proceedings at this Council is hereby empowered to impose any fee, fine or penalty allowed or prescribed either by the Act, the CCMA rules or as such commissioner may reasonably deem fit.

13. INDEMNIFICATION

The representatives or their alternates of the Parties to the Bargaining Council, any committee of the Bargaining Council, the General Secretary and/or agent and/or officer, and/or employee shall not be held responsible for any act which may result in any loss to the Bargaining Council or any benefit scheme, or any other fund established by the Bargaining Council, where such act was done in good faith, and shall not be liable for the debts and liabilities of the Bargaining

Council or any benefit scheme or any other fund and are hereby indemnified against all losses and expenses incurred by them in/or about the bona fide discharge of their duties.

14. FIDELITY GUARANTEE

The Bargaining Council shall endeavour to adequately insure itself against all losses resulting from theft, fraud, corruption or dishonesty in any form by any of the Bargaining Council's staff, including representatives or their alternates of the Parties to the Bargaining Council and members of any committee, having the custody of, access to or whilst being in charge of monies or assets belonging to the Bargaining Council.

15. DISPUTES REGARDING THE INTERPRETATION AND APPLICATION OF THE BARGAINING COUNCIL'S CONSTITUTION

Any dispute arising between the parties to the Bargaining Council about the interpretation or application of the Bargaining Council's Constitution shall be subjected to arbitration and shall be dealt with as follows:

- 15.1 The party or parties who claim that a dispute exists must refer the dispute in writing to the General Secretary of the Bargaining Council within thirty (30) calendar days from the date the dispute arose.
- 15.2 The written referral must reflect the following information:-
 - 15.2.1 the details of the party or parties referring the dispute;
 - 15.2.2 the details of the party or parties with whom the referring Party is in dispute;
 - 15.2.3 the nature of the dispute;
 - 15.2.4 the date the dispute arose;
 - 15.2.5 the outcome the referring party requires.

- 15.3 The referral must reach the General Secretary of the Bargaining Council together with proof from the party or parties who refer the dispute , satisfying the General Secretary that a copy of the referral has been served on all other parties to the dispute.
- 15.4 The General Secretary shall appoint an independent arbitrator within fourteen (14) calendar days of receiving the written referral and proof that a copy of the referral has been served on all other parties to the dispute.
- 15.5 The arbitrator may conciliate and/or arbitrate the dispute in terms of the Act as if it was one (1) of those disputes referred to in the Act and must hand down either a settlement in the case of a conciliation or a ruling in the case of an arbitration, within seven (7) calendar days of the conciliation or arbitration been finalised.
- 15.6 The settlement or ruling as described in clause 15.5 above shall be final and binding on the parties to the dispute.
- 15.7 The total cost to the above-mentioned process shall be paid by the Council's General Fund.
- 15.8 The process as described in this clause may only be deviated from if a future collective agreement determines a different process.

16. DISPUTES BETWEEN PARTIES TO THE BARGAINING COUNCIL

Any dispute arising between the parties to the Bargaining Council other than disputes referred to in clauses 15 and 17, shall be subjected to arbitration and shall be dealt with as follows:

- 16.1 The party or parties who claim that a dispute exists must refer the dispute in writing to the General Secretary of the Bargaining Council within thirty (30) calendar days from the date the dispute arose.
- 16.2 The written referral must reflect the following information:-
- 16.2.1 the details of the party or parties referring the dispute;
- 16.2.2 the details of the party or parties with whom the referring party is in dispute;

- 16.2.3 the nature of the dispute;
 - 16.2.4 the date the dispute arose;
 - 16.2.5 the outcome the referring party requires.
- 16.3 The referral must reach the General Secretary of the Bargaining Council together with proof from the party or parties who refer the dispute, satisfying the General Secretary that a copy of the referral has been served on all other parties to the dispute.
- 16.4 The General Secretary shall appoint an independent arbitrator within fourteen (14) calendar days of receiving the written referral and proof that a copy of the referral has been served on all other parties to the dispute.
- 16.5 The arbitrator may conciliate and/or arbitrate the dispute in terms of the Act as if it was one (1) of those disputes referred to in the Act and must hand down either a settlement in the case of a conciliation or a ruling in the case of an arbitration, within seven (7) calendar days of the conciliation or arbitration been finalised.
- 16.6 The settlement or ruling as described in clause 16.5 above shall be final and binding on the parties to the dispute.
- 16.7 The total cost to the above-mentioned process shall be paid by the Council's General Fund.
- 16.8 The process as described in this clause may only be deviated from if a future collective agreement determines a different process.

17. ALL OTHER DISPUTES

- 17.1 All other disputes excluding the disputes as contemplated in clauses 15 and 16 above, must be referred to the Bargaining Council and shall be subjected to conciliation and arbitration and shall be dealt with in terms of the Act and the prevailing rules of the CCMA, on condition that such disputes fall within the scope of this Bargaining Council and shall be dealt with as follows:
- 17.1.1 The party or parties who claim that a dispute exists must refer the dispute in writing to the Bargaining Council in accordance with the provisions of the Act and the rules of the CCMA.

- 17.2.2 The party referring the dispute must complete the prescribed referral form of the Bargaining Council.
- 17.3 The referral must reach the Bargaining Council together with proof from the party or parties who refer the dispute, satisfying the Bargaining Council that a copy of the referral has been served on all other parties to the dispute.
- 17.4 The General Secretary shall refer the dispute to a member of the Council's panel of conciliators and/or arbitrators after receiving the written referral and proof that a copy of the referral has been served on all other parties to the dispute.
- 17.5 The arbitrator may conciliate and/or arbitrate the dispute in terms of the Act and the rules of the CCMA and must hand down either a settlement in the case of a conciliation or a ruling in the case of an arbitration.
- 17.6 A fund shall be established by the Bargaining Council to meet the expenses incurred during this dispute resolution process:-
- 17.7 The fund referred to above in clause 17.6 shall be funded by:-
- 17.7.1 applying for a subsidy to the governing body of the CCMA as prescribed;
 - 17.7.2 charging a fee for performing any of these functions for which it is accredited and for which functions it is allowed to perform in terms of the Act;
 - 17.7.3 instituting a dispute resolution levy which will be payable by the employers and employees in the Industry.
- 17.8 All expenses incurred through the dispute resolution process shall be paid by the fund referred to in clause 17.6.
- 17.9 The provisions of clause 12 of this Constitution regarding financial control of funds shall also apply to this fund.

18. PROCEDURE FOR THE NEGOTIATION OF COLLECTIVE AGREEMENTS

- 18.1 Any party of the Bargaining Council may introduce proposals for the conclusion or amendment of a collective agreement in the Bargaining Council.
- 18.2 The proposals must be submitted to the General Secretary in writing and must identify the other parties to the proposed agreement.
- 18.3 Within seven (7) days of submission of the proposals, the General Secretary must serve copies of the proposals on the other parties to the council;
- 18.4 Within twenty one (21) days of submission of the proposals or at any other time that all the parties agree to, the General Secretary must call a special meeting of the executive committee to consider the proposals and to decide on a process for negotiating the proposals, including:-
- 18.4.1 the introduction of counter-proposals;
 - 18.4.2 whether the negotiations should be concluded by the Bargaining Council, the executive committee or any other committee appointed by the Bargaining Council;
 - 18.4.3 the possible appointment of a mediator to facilitate the negotiations; and
 - 18.4.4 the timetable for the negotiations.
- 18.5 If no negotiation process is agreed upon:-
- 18.5.1 the General Secretary must appoint a mediator to facilitate negotiations if it was so agreed upon and to conclude a collective agreement;
 - 18.5.2 the Bargaining Council must meet at least twice within thirty (30) days of the meeting to negotiate on the proposals and any counter proposals, unless a collective agreement has been concluded;
 - 18.5.3 the mediator must facilitate the negotiations at those meetings and facilitate the negotiations for the conclusion of a collective agreement.

- 18.6 If no collective agreement is concluded in the course of this process or procedure contemplated in this clause:-
- 18.6.1 the parties to the Bargaining Council may:-
- 18.6.1.1 refer a dispute to arbitration; or
- 18.6.1.2 resort to a strike or a lock-out that conforms with the provisions of the Act; or
- 18.6.2 any party to the dispute, whose members are engaged in an essential service, may request that the dispute in respect of the employers and the employees engaged in that service be resolved through arbitration.
- 18.7 In the circumstances contemplated in sub-clause 18.6.1.1 or 18.6.1.2, the General Secretary must appoint any arbitrator to arbitrate the dispute.
- 18.8 The provision of clause 10.4 and 10.5 will apply to arbitration proceedings conducted in terms of this clause.
- 18.9 During a strike or lock-out, the parties to the dispute must attend every meeting convened by the conciliator to resolve the dispute.
- 18.10 If any party to the dispute fails to attend without good cause a meeting so convened, the members of that party:-
- 18.10.1 if they participate in a strike, will forfeit the protection they would have enjoyed in terms of the Act;
- 18.10.2 if they are engaged in a lock-out, will forfeit the protection they would have enjoyed in terms of the Act.

19. EXEMPTIONS FROM COLLECTIVE AGREEMENTS

- 19.1 The Bargaining Council shall establish an exemptions body and an independent appeal body which may consist of one (1) or more persons.
- 19.2 All applications for exemption from the provisions of the prevailing collective agreement shall be considered by the Bargaining Council who shall make a ruling on such application.
- 19.3 The independent appeal body shall hear and decide, as soon as possible and according to the criteria set out in clauses 19.4 and 19.7, any appeal against-
- 19.3.1 the Bargaining Council's refusal of a party's or non party's application for exemption from the provisions of a collective agreement.
- 19.3.2 the withdrawal of an exemption referred to in clause 19.6 by the Bargaining Council.
- 19.4 Administration
- 19.4.1 Any person bound by a collective agreement may apply for exemption from any of the provisions of such agreement.
- 19.4.2 An application for exemption shall be in writing on the Bargaining Council's prescribed application form, fully motivated, and sent to the General Secretary of the Bargaining Council.
- 19.4.3 Whenever an employer applies for an exemption he or she must consult with the affected workforce through their trade union representatives or, where there are no trade union representatives, with the affected workforce itself as to the need for the exemption and its effect on the affected employees and must include in the application written proof of such consultation and written proof of the views expressed by the affected workforce during the consultation in this regard.
- 19.4.4 The Bargaining Council must issue to every person to whom exemption has been granted either by the Bargaining Council or the independent appeal body, a notice of exemption, setting out the following:-

19.4.5.1 the full name of the person(s) or establishment concerned;

19.4.5.2 the exact provision(s) of the collective agreement from which the exemption has been granted;

19.4.5.3 the conditions subject to which the exemption was granted;

19.4.5.4 the duration of the exemption;

19.4.5.5 the date from which the exemption shall operate; and

19.5 The Bargaining Council must ensure that:-

19.5.1 all notices for exemptions are issued to the applicants

19.5.2 a copy of each notice is retained by the Bargaining Council.

19.6 The Bargaining Council may, on good cause shown, give the holder of a notice of exemption thirty (30) days notice of its intention to apply to the independent appeal body for the withdrawal of the exemption.

19.7 The following processes and criteria shall be considered in regard to an application for exemption from the provisions of a collective agreement concluded in the Bargaining Council:-

19.7.1 in considering an application for exemption or an appeal against a refusal for an exemption, the Bargaining Council or the independent appeal body must consider all recommendations submitted to it, the views expressed by the Bargaining Council, employer(s) and the affected workforce, as well as any other representations received in relation to that application and the possible effect of the exemption on competitors, employees and others;

19.7.2 the exemption may not contain terms and conditions that would have an unreasonably detrimental effect on the fair, equitable and uniform application in the industry of any collective agreement concluded in the Bargaining Council;

19.7.3 no exemption may be granted for an indefinite period.

20. STRIKES & LOCK-OUTS

- 20.1 No strike or lock-out shall take place during the existence of a collective agreement arrived at by the parties, if the subject matter of the dispute giving rise to the strike or lock-out is covered by that collective agreement;
- 20.2 No strike or lock-out shall take place if any party to the dispute which is related to the strike or lock-out, has requested that the dispute be referred for resolution in terms of this constitution and in terms of section 64 of the Act.

21. DISSOLUTION AND WINDING UP

- 21.1 Subject to the provisions of section 59 of the Act the Bargaining Council may, at a special meeting convened for this purpose and by a resolution adopted by the majority of the total number of delegates to the Bargaining Council, decide to wind up its affairs.
- 21.2 Upon adoption of a resolution to wind up, the General Secretary must take the necessary steps to ensure that-
- 21.2.1 application is immediately made to the Labour Court for an order giving effect to the resolution; and
- 21.2.2 the Bargaining 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 shall make sure to place the assets, funds and investments of the Bargaining Council at the disposal and under the control of the liquidator.
- 21.3 Each party to the Bargaining Council remains liable for any unpaid liabilities to the Bargaining Council at the adoption of a resolution to wind-up the Bargaining Council.
- 21.4 If a resolution to wind-up is adopted and all the liabilities of the Bargaining Council have been discharged, and it has not been agreed at the special meeting referred to in clause 21.1, that the remaining Bargaining Council assets must be transferred to a Bargaining Council within the same or similar sector, then the following provisions shall apply to the winding-up,

notwithstanding the fact that the Bargaining Council is unable to continue to function for any reason:-

- 21.4.1 Upon the expiry of the last agreement or any extension thereof and, in the event of no subsequent agreement being negotiated for the purpose of continuing the operations of the Bargaining Council, the liquidator or other person(s) appointed by the Labour Court shall continue to administer the funds of the Bargaining Council for a period of at least two (2) years in order to pay out moneys due to employees and employers and, subject to the approval of the registrar, any moneys standing to the credit of the funds after the said period of at least two (2) years shall accrue to the general fund of the Bargaining Council.
- 21.4.2 The chairperson of the Bargaining Council, or if the chairperson is not available then the available representatives on the Bargaining Council, shall forward to the Registrar a statement signed by such representatives setting out the resolution adopted and the reasons for the inability to continue to function as a Bargaining Council. The available representatives on the Bargaining Council shall appoint trustees to carry out the winding-up of the Bargaining Council. The trustees may be representatives or officers of the Bargaining Council, and shall be paid fees agreed upon between them and officers shall be paid their salaries. If the said representatives are not able to agree upon the trustees to be appointed or the fees to be paid, the registrar of the labour court shall fix the fees to be paid and appoint the trustees or appoint the officers.
- 21.4.3 The trustees shall call upon the Bargaining Council or the last appointed General Secretary thereof to deliver the Bargaining Council's books of account showing the Bargaining Council's assets and liabilities and also to hand over or transfer any unexpended funds of the Bargaining Council to such trustees.
- 21.4.4 The trustees shall liquidate the debts of the Bargaining Council from the unexpended funds and any other moneys realised from any asset of the Bargaining Council, and if there are insufficient funds to pay creditors after the trustee's fees and the expenses of winding-up have been met, the order in which creditors are to be paid shall to be the same as that prescribed by any applicable law relating to the distribution of the assets of an insolvent estate. The fees and expenses payable to the trustees in the winding-up of the Bargaining Council shall be the same as that prescribed in terms of any law

for a trustee of an insolvent estate and shall rank in the order of preference as that of a trustee in an insolvent estate.

21.4.5 If after the expiry of the period of at least two (2) years in terms of clause 21.4.1, the affairs of the Bargaining Council have been fully wound up as provided for in this clause, the balance of any funds shall be paid to the Department of Labour, to be held in trust in an interest bearing account pending the possible re-establishment of a bargaining council with the same scope for a period of three (3) years.

21.4.6 The liabilities of the parties of the Bargaining Council, and their members, are limited to their unpaid liabilities (if any) to the Bargaining Council as at the date on which the resolution for winding-up was passed or the date from which the Bargaining Council was unable to continue to function, whichever event occurred first.

22. AMENDMENT TO THE CONSTITUTION

22.1 The Bargaining Council may intentionally amend this constitution at any time-

22.1.1 by a resolution adopted by a unanimous vote of all the representatives in the council on a motion to amend tabled without prior notice; or

22.1.2 by a resolution adopted by at least two thirds (66,66%) of all the representatives in the council after at least-

22.1.2.1 one month's notice of that motion to amend had been given to the General Secretary; and

22.1.2.2 two weeks' notice of that motion had been given to all the other representatives.

22.2 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.

23. CERTIFICATION

I, Willem Adolf Janse van Rensburg with identity number 621005 5047 08 7, duly appointed as the General secretary of the Furniture Bargaining Council hereby certify that this Constitution was, within my knowledge, adopted in true spirit and according to the procedure as determined by Section 34 of the Act.

SIGNED AT **JOHANNESBURG** by the General Secretary on behalf of the Bargaining Council on this 19th day of March 2019.

WA JANSE VAN RENSBURG
GENERAL SECRETARY