

CONSTITUTION
OF
THE NATIONAL TEXTILE BARGAINING COUNCIL
(NTBC)

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1 **Name and Legal Status**

- 1.1 The name of this bargaining council is the National Textile Bargaining Council (NTBC) and is referred to in the constitution as “the bargaining council.” It is established by amalgamation of existing bargaining councils in the *industry* and for the registered scope set out in this *constitution*.
- 1.2 The identity and legal status of the bargaining council is distinct from the parties that constitute the bargaining council.
- 1.3 Unless otherwise stated in this *constitution*, the bargaining council alone bears responsibility and liability for its actions and obligations.

2 **Registered Scope**

The registered scope of the bargaining council comprises the activities in the whole of the Republic of South Africa for the *industry* as defined and described in Schedule 1. Each of the *sub-sectors* defined and described in Schedule 2 falls within the registered scope of the bargaining council.

3 **Objectives**

The founding parties have agreed to the establishment of the bargaining council for amongst others the following objectives:

- 3.1 to encourage party co-operation to advance the interests of the *industry*;
- 3.2 to perform the functions of a bargaining council as set out in the *Act*;
- 3.3 to regulate collective bargaining and industrial action in the *industry*, in the *sub-sectors* and in any *sections*;
- 3.4 to regulate the relationship between the parties at all levels;
- 3.5 to promote cohesion of representation among employees and avoid fragmentation of centralized bargaining;
- 3.6 to conclude agreements, which promote economic sustainability, social, equity, viability, fair labour standards and skills development; and
- 3.7 to give effect to the purposes of the *Act*.

4 **Powers and Functions**

Subject to the provisions contained within this *constitution*, the powers and functions of this bargaining council in relation to its registered scope include the following:

- 4.1 to conclude collective agreements;
- 4.2 to apply to extend collective agreements to non-parties identified in such application;
- 4.3 to enforce those collective agreements;
- 4.4 to prevent and resolve labour disputes;
- 4.5 to perform the dispute resolution functions referred to in *section 51* of the *Act*;

- 4.6 to establish and administer a fund to be used for resolving disputes;
- 4.7 to promote and establish training and education schemes;
- 4.8 to establish and administer pension, provident, health care, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members;
- 4.9 to develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the *industry* or area;
- 4.10 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 the workplace;
- 4.11 to confer on workplace forums additional matters for consultation;
- 4.12 to provide industrial support services within the *industry* and sub-sectors;
- 4.13 to extend the services and functions of the bargaining council to the informal sector and home workers;
- 4.14 to establish procedures and requirements to exempt parties or non-parties from collective agreements and permissible legislative provisions;
- 4.15 to impose levies on employees and employers who fall within the registered scope of the bargaining council and administer these on behalf of the bargaining council;
- 4.16 to conclude contracts and perform other juristic acts including:
 - 4.16.1 the acquisition and disposal of movable and immovable property;
 - 4.16.2 the letting and rental of property;
 - 4.16.3 the borrowing, lending and investing of money; and
 - 4.16.4 the instituting and defending of legal and dispute resolving proceedings;
- 4.17 to consider and deal with any other matter that affects the interests of the parties.
- 4.18 to perform any act reasonably necessary for, or incidental to:
 - 4.18.1 the effective performance by the bargaining council of its powers and functions;
 - 4.18.2 ensuring and enabling compliance by the bargaining council with the terms of this *constitution*; and
 - 4.18.3 ensuring the financial viability of the bargaining council.
- 4.19 to protect and adhere to the principles in the bargaining council *constitution*;
- 4.20 to set the terms of admission to, and admit additional parties to the bargaining council provided the additional parties meet the admission criteria set out in this *constitution* and any further guidelines set by the *Council*; and
- 4.21 to strengthen the bargaining council.

5 Parties

- 5.1 The founding parties to the bargaining council, provided they remain registered are:
 - 5.1.1 the following registered employer's organizations:

- 5.1.1.1 Carpet Manufacturing Employers' Association or its successor
- 5.1.1.2 National Worsted Manufacturers' Employers' Association
- 5.1.1.3 Woven Crochet and Knitted Narrow Fabric Manufacturers' Employers Association
- 5.1.1.4 South African Wool and Mohair Processors Employers Organisations
- 5.1.1.5 South African Cotton Textile Processing Employers Association
- 5.1.1.6 National Manufactured Fibres Employers Association
- 5.1.1.7 National Textile Manufacturers Association

5.1.2 the following registered trade union:

- 5.1.2.1 Southern African Clothing and Textile Workers Union (SACTWU).

5.2 One registered employer organization from each of the following operations, determined in accordance with the procedures established by the bargaining council:

5.2.1 Home Textiles and;

5.2.2 Blanket Manufacturing

will be granted founder member status, provided that the employer organization is registered as an employers' organization within four (4) months of registration of this *constitution* by the Registrar or such further period as determined by the *Council*.

5.3 Any registered trade union or registered employers' organization that has members that fall within the registered scope of the

bargaining council may apply in writing to the *Secretary* for admission as a party to the bargaining council. The *Secretary* must process admission applications in terms of the provisions of this *constitution* and must notify the parties in any affected *sub-sector* or *section*, in writing within ten (10) days.

5.4 The application must be accompanied by:

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

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

5.4.3 details of the applicant's membership within the registered scope of the bargaining council including:

5.4.3.1 in the case of an employers' organization(s), proof that its paid up members employ at least thirty-three (33) % of the total number of employees employed within the scope of the *sub-sector* in which the applicant believes that it falls;

5.4.3.2 in the case of a trade union(s), proof that the number of employees who are its paid up members are more than thirty (30) % of employees that fall within the registered scope of the bargaining council and more than 50 % of employees in the *sub-sector* in which the applicant believes it falls.

- 5.4.4 a statement motivating the applicant's admission as a party to the bargaining council;
 - 5.4.5 a statement indicating the *sub-sector* within the registered scope of the bargaining council into which the applicant believes it falls or in the case of a trade union, within which its members are employed; and
 - 5.4.6 any other information on which the applicant relies in support of its application.
- 5.5 Within ninety (90) days of receiving an application for admission, or such further period as determined by the *Executive Committee*, the *Executive Committee* must decide, subject to clause 5.6, whether to grant or refuse the application. The *Executive Committee* may only admit an applicant as a party to the bargaining council if it meets the admission requirements set out in sub-clauses 5.4.3.1 or 5.4.3.2 as the case may be. The *Executive Committee* must advise the applicant of its decision in writing, failing which the *Council* is deemed to have refused the application.
- 5.6 In the event of an objection to an application for admission by any party to the bargaining council, the *Executive Committee* shall refer such issue for decision of the *Council* at its next meeting.
- 5.7 If the *Council* admits an applicant:
- 5.7.1 the *Secretary* must make the appropriate amendment to the list of parties kept by the bargaining council within fourteen (14) days of the decision; and
 - 5.7.2 the applicant immediately enjoys the benefits and privileges of being a party to the *Council* and incurs the obligations arising out of being a party to the bargaining council in terms of this *constitution*.
- 5.8 If the *Council* refuses to admit an applicant, it must advise the applicant of the reasons for the decision.
- 5.9 If, at the end of March in any year the number of:
- 5.9.1 members of a trade union which is a party to the bargaining council is not above:
 - 5.9.1.1 thirty (30) % of employees within the registered scope of the bargaining council; and
 - 5.9.1.2 fifty (50) % of employees within at least one *sub-sector*, the *Secretary* must, in writing, inform the trade union and the *Executive Committee*.
 - 5.9.2 employees employed by the members of an employers organisation(s), which is a party to the bargaining council falls below thirty-three (33) % of the total number of employees employed within a *sub-sector* or a *section*, the *Secretary* must, in writing, inform the employer organization and the *Executive Committee*.
- 5.10 If after ninety (90) *days* of receiving the notice referred to in sub-clause 5.9.1 the trade union membership is still not above (30) % of the

employees in the registered scope of the bargaining council and fifty (50) % of employees in at least one *sub-sector*, the trade union concerned automatically ceases to be a party to the bargaining council.

- 5.11 any party to the bargaining council may withdraw from the bargaining council by notifying the *Secretary* in writing of its decision and the reasons for the decision. This notice must also specify the date of the withdrawal, which must be at least six months after delivery of the notice.
- 5.12 The *Council* may expel a party to the bargaining council for reasons, and in accordance with a procedure, determined by the *Council*.

6 The Structures of the Bargaining Council

- 6.1 The bargaining council structures include the following:
 - 6.1.1 the *Council*;
 - 6.1.2 an *Executive Committee*;
 - 6.1.3 *Sub-sector* chambers and *sections*;
 - 6.1.4 an exemptions committee; and
 - 6.1.5 other committees as decided from time to time by the *Council* and as required by this *constitution*.
- 6.2 The powers and functions of these structures are set out in this *constitution* provided that the *Council* may delegate specific powers and functions that it may have, to any structure provided for in this *constitution*.
- 6.3 Any representative to any of the structures of the bargaining council may vote by proxy.

7 The Council

The *Council* has the powers of the bargaining council as provided for in this *constitution* save for those powers and functions specifically granted to other structures in this *constitution*.

8 Appointment of Representatives to the Council

- 8.1 The *Council* consists of *employer representatives* and *employee representatives* as nominated or elected by each.
- 8.2 The total number of persons representing either the employers' organization(s) or trade union(s) must be:
 - 8.2.1 equal to the number of persons representing the other; and
 - 8.2.2 determined by the *Council*.
- 8.3 The number and allocation of *employee representatives* and *employer representatives* that constitute the *Council* are, subject to clause 5.1 and 5.2;
 - 8.3.1 in the case of the *employer representatives*:
 - 8.3.1.1 one representative is allocated from each of the following *sub-sectors* or *sections* from the most representative employer organization based on the number of levy paying employees in

the *sub-sector* or *section*, unless otherwise agreed, provided an employer organization is registered and participating therein:

8.3.1.1.1 Woven, Crochet & Knitted Narrow Fabrics;

8.3.1.1.2 Manufactured Fibres;

8.3.1.1.3 Carpets;

8.3.1.1.4 Worsted;

8.3.1.1.5 Wool & Mohair;

8.3.1.1.6 Cotton;

8.3.1.1.7 Non-woven;

8.3.1.1.8 **Blankets; and**

8.3.1.1.9 **Home Textiles.**

8.3.1.2 thereafter one seat is allocated to a *sub-sector* or *Section* for every twenty (20) %, of the total number of levy-paying employees in the *industry* employed within such *sub-sector* or *section* as at the last financial year-end of the bargaining council;

8.3.2 in the case of the *employee representatives*, a number equal to that of the employers.

8.4 Subject to sub-clause 8.5 employer organizations and the trade union(s) must decide on their respective *representatives* to the bargaining council in accordance with the provisions of their respective constitutions.

8.5 One *employer representative* and one *employee representative* from the determined number of seats on the *Council* must be identified to represent *small* and *medium enterprises* and the employees of *small* and *medium enterprises* respectively.

8.6 Each party to the bargaining council *entitled to representatives(s)* to the *Council* may appoint, in accordance with the provisions of its own constitution:

8.6.1 its *representative(s)* to the *Council*; and

8.6.2 an alternate for each of its *representative(s)*.

8.7 Period of office:

8.7.1 a *representative* or an alternate holds office for twenty-four (24) months and is eligible for re-appointment at the end of that term.

8.7.2 a *representative* or an alternate whose term of office has expired and who is not re-appointed, may with the written consent of the party whom he or she *represents*, continue to act as a *representative* until that *representative's* successor assumes office.

8.8 Despite sub-clause 8.7:

8.8.1 a party may replace any of its *representatives* or alternates after giving at least twenty-four (24) hours notice in writing to the *Secretary*;

- 8.8.2 A *representative*, who, without good cause, is absent from three consecutive meetings of the *Council*, is disqualified from continuing in that office for that term and the relevant party must replace that *representative*;
- 8.9 If the office or any *representative* or alternate becomes vacant, the party that appointed the *representative* or alternate may appoint another *representative* or alternate for the unexpired portion of the predecessor's term of office.
- 8.10 In the event of a dispute regarding the determination or allocation of *representatives*.
 - 8.10.1 the dispute must be resolved by arbitration; and
 - 8.10.2 the arbitrator's decision must be made with due regard to any relevant factors including:
 - 8.10.2.1 the number of members that a registered trade union has, or the number of employees employed by the members of a registered employer organization who fall within the registered scope of the bargaining council and the various *sub-sectors* and, in the case of registered employer organizations the provisions of sub-clause 8.3.1;
 - 8.10.2.2 the profile of the trade union or the employer organization in relation to the bargaining council and its various *sub-sector* chambers;
 - 8.10.2.3 the administrative and financial burden on the bargaining council;
 - 8.10.2.4 minimizing the proliferation of representation;
 - 8.10.2.5 upholding the principle of majoritarianism; and
 - 8.10.2.6 relevant provisions of the constitution and any decisions of the *Council*.
- 8.11 The *Council* or a *sub-sector* chamber may, at the request of a party to the bargaining council, agree to admit observers to its meetings provided that:
 - 8.11.1 the *Secretary* of the *Council* or any relevant *sub-sector* chamber has been notified; and
 - 8.11.2 the party inviting the observers pays any costs relating to the attendance of the observers.

9 Council Meeting

- 9.1 The *Council* may hold as many ordinary meetings as it considers appropriate and must hold an annual general meeting in the month of March or on a date determined by the *Council*.
- 9.2 A special meeting of the *Council*:
 - 9.2.1 may be called at any time by the *Chairperson* with a view to disposing of urgent business; and
 - 9.2.2 must be called by the *Secretary*; after consultation with the

Chairperson and Deputy-Chairperson, within seven (7) days of:

9.2.2.1 receiving a written request for a special meeting, stating the purpose of the special meeting and signed by not less than twenty-five (25)% of all *representatives*; or

9.2.2.2 the adoption of a resolution by the *Council* calling for a special meeting.

9.3 At the annual general meeting, the *Council* must:

9.3.1 appoint the *Chairperson* and the *Deputy-Chairperson* of the *Council*, **provided that the two year term of office specified in Sub-clause 10.5 has expired, or a vacancy has arisen;**

9.3.2 determine the number of members of the *Executive Committee* and the *representatives* to the *Council*;

9.3.3 ratify the appointment of the members of the *Executive Committee* and *representatives* to the *Council*;

9.3.4 as and when necessary, appoint conciliators and arbitrators to the panel of dispute resolvers or an accredited agency;

9.3.5 determine the minimum levies to be imposed on employees and employers who fall within the registered scope of the bargaining council provided that the amount to be paid by employees must be equal to the amount paid by employers, unless otherwise agreed;

9.3.6 appoint the members of the exemptions committee to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the bargaining council;

9.3.7 consider the annual financial statements of the bargaining council and the auditor's report on those statements;

9.3.8 consider the *Secretary's* annual report;

9.3.9 consider and approve, with or without any amendments, the budget of the bargaining council for the next financial year as prepared in terms of clause 20.9;

9.3.10 for its ordinary meetings for the next financial year; and

9.3.11 Attend to such other business as may be necessary or appropriate.

9.4 The *Secretary* with the concurrence of the *Chairperson* and *Deputy-Chairperson* must prepare a written notice of every *Council* meeting stating the date, time and venue of the meeting and the business to be transacted, and must send the notice to each party of the *Council* at least fourteen (14) days before the date of the meeting. However, the *Chairperson* may authorize a shorter notice period.

9.5 More than half of the total number of *employer representatives* and more than half of the total number of *employee representatives* form a quorum and must be represented in person or by written proxy before a meeting may begin or continue.

- 9.6 If, at the time fixed for a meeting to begin or continue, and for sixty (60) minutes after that time, there is no quorum present, the meeting must be adjourned to the same place twenty-one (21) *days* hence unless that *day* is a public *holiday*, in which case the meeting must be adjourned to the *day* immediately after that public *holiday*.
- 9.7 A meeting that was adjourned in terms of sub-clause 9.6 may proceed on the date to which it has been adjourned with the *representatives* present at the time called for the meeting, whether or not a quorum is present and is regarded as a duly quorate meeting.
- 9.8 The *Secretary* must keep written minutes of the proceedings at *Council* meetings and distribute these minutes within fourteen (14) *days* of the meeting.
- 9.9 At every meeting of the *Council*:
- 9.9.1 the *Secretary* must read the minutes of the previous meeting unless they were previously circulated; and
- 9.9.2 after the minutes have been confirmed, with or without any amendments, the *Chairperson* must sign the minutes
- 9.10 A motion proposed at a meeting may not be considered unless it has been seconded. The *Chairperson* may require a motion to be submitted in writing in which case the *Chairperson* must read the motion to the meeting.
- 9.11 Except in respect of changes to this *constitution* as provided for in clause 23. Voting on decisions by *employer representatives* in the *Council* shall be by voting strength determined proportionally based upon the total number of levy paying employees in each of the *sub-sectors* or *sections* to the total number of levy paying employees in the *industry*.
- 9.12 Unless this constitution provides otherwise all decisions must be decided by a majority decision of both the employer and employee representatives, provided that for the employer representatives:
- 9.12.1 where no single *sub-sector* or *section* has more than 40% of the employer voting strength, a simple majority will apply;
- 9.12.2 where a single *sub-sector* or *section* has more than 40% of the employer voting strength, a majority will be that percentage plus 10% provided that such majority will not exceed 66.6 % of such voting strength.
- 9.13 In the event of a deadlock on any decision of the *Council* this will be resolved in terms of the provisions of this *constitution* and the Act.
- 9.14 The *Executive Committee* may adopt general rules for the conduct of *Council* meetings. However, in the event of any conflict between those rules and the provisions of this *constitution*, the provisions of this *constitution* will prevail.
10. **Chairperson and Deputy-Chairperson**
- 10.1 At every annual general meeting, the *representatives* to the *Council* must appoint a *Chairperson* and a *Deputy-Chairperson* from amongst *representatives* of the *Council*.

- 10.2 If the appointed *Chairperson* is an *employer representative*, only a *representative* of the employees may be appointed as *Deputy-Chairperson* and vice versa.
- 10.3 If at any time the current *Chairperson* is an *employer representative* the next *Chairperson* to be appointed must be an *employee representative*, and vice versa.
- 10.4 If the *Chairperson* or *Deputy-Chairperson* to be appointed has to be an *employer representative* only the *employer representatives* may participate in the election of their appointee and conversely if the *Chairperson* or *Deputy-Chairperson* has to be an *employee representative* only the *employee representatives* may participate in the election.
- 10.5 The term of office of the *Chairperson* or *Deputy-Chairperson*:
- 10.5.1 commences at the end of the annual general meeting during which they were appointed; and
- 10.5.2 expires two years later at the end of the annual general meeting;
- 10.5.3 the first term of office will commence at the first bargaining *Council* meeting following registration of the bargaining *Council* and continues until two years later at the end of annual general meeting following the end of the second financial year.
- 10.6 Subject to sub-clauses 10.7 and 10.8 the *Chairperson* must preside over all meetings of the *Council* and must:
- 10.6.1 sign the minutes of *Council* meetings after those minutes have been confirmed; and
- 10.6.2 perform any other functions and duties entrusted to the *Chairperson* by this *constitution* as well as those that are generally associated with the office of *Chairperson*.
- 10.7 The *Deputy-Chairperson* must preside over meetings of the *Council* and perform the duties and functions of the *Chairperson* whenever the *Chairperson* is absent or for any reason unable to act or to perform those functions and duties at that particular meeting.
- 10.8 If the *Chairperson* and the *Deputy-Chairperson* are absent or unable to act or to perform the functions and duties of the *Chairperson*, the *Council* by show of hands must elect from their *representatives* a person to act as *Chairperson* and to perform those functions and duties in such absence.
- 10.9 A *Chairperson* or *Deputy-Chairperson* may be removed from office for neglect of duty, misconduct, incapacity or any other fair reasons, on recommendation of the *Executive Committee* to the *Council*, or on a decision of the *Council*.
- 10.10 If the office of the *Chairperson* or *Deputy-Chairperson* becomes vacant before the next annual general meeting, the *representatives* of the employers' organization(s) and trade union(s) on the *Executive Committee*, must elect replacements for the remaining period of office.

11. **Executive Committee**

- 11.1 The bargaining council will have an *Executive Committee* that consists of the *Chairperson* and the *Deputy-Chairperson* of the *Council*, who are members by virtue of their respective offices and, unless otherwise determined by the *Council*, six (6) ordinary members. An alternate may be appointed in respect of each ordinary member. An ordinary member and alternate is appointed in accordance with sub-clause 11.2.
- 11.2 The ordinary members and their alternates must be *representatives* in the *Council*. The *employer representatives* in *Council* must elect three (3) ordinary members and their alternates and the *employee representatives* in *Council* must elect the other three (3) ordinary members and their alternates.
- 11.3 Subject to the direction and control of the *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*:
- 11.3.1 investigate and report to the *Council* on any matter relating to the textile *industry* or the activities of the bargaining council.
- 11.3.2 do anything necessary to give effect to decisions of the *Council*;
- 11.3.3 subject to the *Act*, monitor and enforce collective agreements concluded in the *Council* and the *sub-sector* chambers;
- 11.3.4 exercise and perform any power, function and duty conferred, delegated or imposed on the *Executive Committee* by this *constitution*;
- 11.3.5 appoint staff to assist the bargaining council in the exercise and performance of its powers, functions and duties and determine their conditions of service including the circumstances and procedures for the termination of their services;
- 11.3.6 ensure that the bargaining council *Secretary* develops and submits to the relevant authorities all reports required by the *Act*; and
- 11.3.7 oversee the collection of income, including levies, to the bargaining council and regulates the bargaining council's expenditure.
- 11.4 An ordinary and an alternate member of the *Executive Committee* holds office for twenty-four (24) months and is eligible for re-election at the end of that term.
- 11.5 An ordinary and an alternate member of the *Executive Committee* whose term of office has expired and who is not re-elected, may with the written consent of the party that nominated the successor, continue to act as a member of the *Executive Committee* until that member's successor assumes office.
- 11.6 An ordinary and an alternate member of the *Executive Committee*:
- 11.6.1 may resign from the *Executive Committee* at any time after having given at least twenty-one (21) days' notice in writing to the *Secretary*;
- 11.6.2 must vacate office immediately:
- 11.6.2.1 in the case of resignation, when the resignation takes effect; or
- 11.6.2.2 upon ceasing to be a representative of the *Council*.

- 11.6.2.3 if withdrawn as a representative by the party from which the *representative* comes.
- 11.7 If the seat of an ordinary or an alternate member of the *Executive Committee* becomes vacant, the Council must fill the vacancy from the number of candidates nominated for that purpose by:
- 11.7.1 the employers *representatives* in the *Council*, if that seat was held by an ordinary or alternate member representing the employers; or
- 11.7.2 the *employee representatives* in the *Council*, if that seat was held by an ordinary or alternate member representing trade union(s).
- 11.8 A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.
- 11.9 The *Executive Committee* must hold an ordinary meeting at least once every three (3) months and, if required, more frequently;
- 11.10 A special meeting of the *Executive Committee*:
- 11.10.1 may be called at any time jointly by the *Chairperson* and *Deputy Chairperson* after consultation with the *Secretary* with a view to disposing of urgent business:
- 11.10.2 must be called by the *Chairperson*, after consulting with the *Secretary* within fourteen (14) *days* of receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than one third of the members of the *Executive Committee*.
- 11.11 It is the responsibility of the *Secretary* to prepare a written notice of every *Executive Committee* meeting showing the date, time and venue of the meeting and the business to be transacted. The *Secretary* must send the notice to each member of the committee at least seven (7) days before the date of the meeting. However, the *Chairperson* may authorize shorter notice for a special meeting.
- 11.12 More than half of the members of the *Executive Committee* representing employers and half of the members representing employees constitutes a quorum and must be present in person or by written proxy before a meeting may begin or continue.
- 11.13 If, at the time fixed for a meeting to begin or continue, and for thirty (30) minutes after that time, there is no quorum present, the meeting must be adjourned to the same place fourteen (14) *days* hence unless that *day* is a *public holiday*, in which case the meeting must be adjourned to the *day* immediately after that *public holiday*.
- 11.14 A meeting that was adjourned in terms of sub-clause 11.13 may proceed on the date to which it has been adjourned with the *representatives* present at the time called for the meeting, whether or not a *quorum* is present, and is regarded as a duly quorate meeting.
- 11.15 Subject to sub-clauses 11.16 to 11.17 the *Executive Committee* may determine its own procedures for conducting its affairs, unless the *Council* directs otherwise.
- 11.16 The *Secretary* must ensure minutes of the proceedings at the *Executive Committee* meetings are kept and distribute these minutes within fourteen (14) days of the meeting. The *Secretary* must retain proof of distribution of these minutes.

- 11.17 Each member of the *Executive Committee* has one vote on any matter before the committee makes its decision. However, if at the meeting the members representing employers' organization(s) and those representing trade union(s) are not equal in number, the side that is in the majority must withdraw so many of its members from voting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.
- 11.18 Decisions of the *Executive Committee* are made if a majority of employee members and a majority of employer members vote in its favour. In the event of a deadlock on any decision of the *Executive Committee* this will be resolved in terms of the provisions of this *constitution* and the *Act*.
- 11.19 The *Secretary* of the bargaining council is not entitled to vote on any matter for decision before the *Executive Committee*.

12. **Other Committees**

- 12.1 The *Council* or *Executive Committee* may by consensus establish and set the powers, timeframes and reporting requirements of other committees to perform any of its functions, including investigating and reporting to the *Council* or the *Executive Committee* on any matter.
- 12.2 The *Executive Committee* will establish Demarcation and Allocation committee(s) to make recommendations to the *Executive Committee* on the *sub-sector* into which an employer(s) trade union(s), employer's organization(s), manufacturing operation(s) or product(s) should be allocated and to determine any other allocation or demarcation issues. The Demarcation and Allocation committee established by the *Executive Committee* will:
- 12.2.1 comprise two (2) members from the *employer representatives* and two (2) members from the *employee representatives* drawn from the affected sub-sector(s) or section(s) unless otherwise agreed by the *Executive Committee*;
- 12.2.2 recommend that the entity is placed into a *sub-sector(s)* or *section(s)* based on:
- 12.2.2.1 the industrial demarcation set out in Schedule 2; and
- 12.2.2.2 criteria determined by the *Council*.
- 12.2.3 call for representations from trade union(s) or employer's organization(s) who are a party to the bargaining council and with an interest in the matter. These representations must be submitted within fourteen (14) days of the Demarcation and Allocation committee calling for the representations, unless the committee agrees to a longer period.
- 12.3 The *Executive Committee* must adopt the recommendations of the Demarcation and Allocation committee as to which *sub-sector* a particular employer(s), trade union(s), employer's organisation(s), manufacturing operation(s) or product(s) must be allocated, unless the *Executive Committee* otherwise decides by a unanimous decision, in which case the matter must be referred back to the Demarcation and Allocation committee for re-consideration.

- 12.4 If a Demarcation and Allocation committee does not agree or does not make a recommendation the *Executive Committee* must decide into which sub-sector(s) or sections(s) a particular employer(s), trade union(s), employer's organization(s), manufacturing operation(s) or product(s) must be allocated.
- 12.5 If the *Executive Committee* cannot decide into which *sub-sector(s)* or *section(s)* an entity should be placed or if any party affected by the decision of the *Executive Committee* declares a dispute regarding the decision of the *Executive Committee* referred to in sub-clause 12.3, the matter must be referred directly to arbitration.
- 12.6 The arbitrator appointed to hear this dispute must decide into which *sub-sector(s)* or *section(s)* the employer(s), trade union(s), employer organization(s), manufacturing operation(s) or product(s) should be allocated. The arbitrator must take into account the *sub-sector(s)* or *section(s)* scopes set out in Schedule 2 and must allocate the entity into the most appropriate *sub-sector(s)* or *section(s)*.

13. **Sub-Sector Chambers**

- 13.1 The Council will have one sub-sector chamber in respect of each of the sub-sectors described in Schedule 2, subject to clauses 13.2 and 13.3.
- 13.2 The *Council*:
 - 13.2.1 may create additional *sub-sector* chambers;
 - 13.2.2 must amalgamate change or disband sub-sector chambers if the sub-sector chamber(s) concerned so agrees provided that any decision to create additional *sub-sector* chambers or to amalgamate, change or disband a *sub-sector* or *section* must be taken by two thirds of the *employer representatives* to Council and by two thirds of the *employee representatives* to Council or subject to the provisions of clause 13.3.
- 13.3 If a party to the bargaining council seeks to amalgamate change or disband a *sub-sector* or section and there is no agreement as envisaged in sub-clause 13.2.2 the following procedure will apply:
 - 13.3.1 The party seeking the change must give three months written notice to the *Council* of its intention to amalgamate change or disband a *sub-sector* or *section*;
 - 13.3.2 The representatives to *Council* may meet at any time during the three-month notice period referred to in sub-clause 13.3.1 to attempt to reach agreement on the issues set out in the notice. Any agreement reached must be ratified by two thirds of the employer representatives to *Council* and by two thirds of the employee representatives to *Council*.
 - 13.3.3 If there is no agreement on the issues set out in the notice referred to in sub-clause 13.3.1 and at the expiry of the three month period, calculated from the date of receipt of the notice by the *Council*, the parties must engage in a process to attempt to reach agreement on the issues set out in the notice:

- 13.3.3.1 within seven (7) *days* after the expiry of the three month notice period the representatives to *Council* must attempt to agree on a facilitator and if they fail to do so the Secretary must, within seven (7) *days*, appoint a facilitator to hold the facilitation within fifteen (15) *days* of the appointment of the facilitator.
- 13.3.3.2 the facilitation will last for twenty-one (21) *days* unless the representatives to *Council* agree otherwise; and
- 13.3.3.3 the facilitator has the power to convene meetings of the representatives to *Council* and decide the procedure for the facilitation process;
- 13.3.4 If there is no agreement at the end of the facilitation, the facilitator must, within fifteen (15) *days* of the expiry of the facilitation issue an advisory award;
- 13.3.5 Within twenty-one (21) *days* after the issue of the advisory award, senior representatives of the parties to the bargaining council must meet and endeavour to resolve the issues in dispute.
- 13.3.6 If there is still no agreement after the process referred to in sub-clause 13.3.5 any party to *Council* may refer a dispute setting out the issues in dispute to *Council* and the *Council* shall issue a certificate, in terms of *section 64(1)(a)(i)* of the Act, certifying that the dispute remains unresolved. No further conciliation will be required. The parties to *Council* may resort to industrial action in terms of the remaining provisions of Chapter IV of the Act.
- 13.4 On an annual basis the *Council* will establish guidelines and determine the allocation of finances for sub-sector chamber activities.
- 13.5 A *sub-sector* chamber must exercise and perform any power, function and duty that is conferred on it in terms of this *constitution* or that is delegated to it by the *Council* in terms of the provisions of this *constitution*.
- 13.6 Each *sub-sector* chamber must, within the general administrative guidelines provided by the Council, determine its own procedures for convening and chairing its meetings and attending to its administrative guidelines provided by the Council, determine its own procedures for convening and chairing its meetings and attending to its administrative liaison and secretarial functions.
- 13.7 The rights, powers and functions of *sub-sector* chambers are to conclude collective agreements within each *sub-sector* and *section(s)* on:
 - 13.7.1 wages and conditions of employment;
 - 13.7.2 all cost issues related to job grading systems;
 - 13.7.3 requesting the *Council* to extend its agreements to non-parties identified in the request.
- 13.8 The issues set out in sub-clauses 13.7.1 to 13.7.3 will only be negotiated:
 - 13.8.1 at the *sub-sector* or section level; and

- 13.8.2 within any *sub sector* or *section* to which they apply, subject to the provisions of the National Textile Bargaining Council Transitional Agreement, signed on 25 JUNE 2003.
- 13.9 Other matter of mutual interest, not set out in clause 13.7 will be negotiated and managed at *Council* or plant level, including framework agreements which will be negotiated at *Council* level and are intended to apply to the *industry*.
- 13.10 In the event of a dispute arising as to the level at which such matters of mutual interest are negotiated the provisions of clause 18.8 apply.

14. **Officials and Employees of the Council**

- 14.1.1 The *Council* must appoint a *Secretary* and other officials on the terms and conditions it deems appropriate to work with and assist the bargaining council and its structures.**
- 14.1.2 The *Secretary* and other officials of the bargaining council may be removed from office for neglect of duty, misconduct, incapacity, or any other reason sufficient in law, on recommendation of the Executive Committee to the Council or on a decision of the Council, or on decision of any Committee appointed by the Council or appointed by the Executive Committee.**
- 14.2 The *Secretary* is responsible for the administrative and secretarial work arising from the functioning of the bargaining council and for performing the functions and duties imposed on the *Secretary* by or in terms of the *Act*, this *constitution* or as set by the *Council* or the *Executive Committee*. The *Secretary's* functions include:
- 14.2.1 keeping and maintaining a record of the membership of the parties to the bargaining council;
- 14.2.2 keeping and maintaining the books and records of account as the *Council* may direct in order to fully reflect the financial transactions and state of affairs of the bargaining council;
- 14.2.3 attending all meetings of the *Council*, and the *Executive Committee* and recording the minutes of the proceedings at those meetings;
- 14.2.4 conducting the correspondence of the bargaining council and keeping originals of such correspondence;
- 14.2.5 at each meeting of the *Council*, reading significant correspondence that has taken place since the previous meeting;
- 14.2.6 banking all moneys received on behalf of the bargaining council on the first banking *day* following receipt of such money;
- 14.2.7 submitting to the Council statements of its financial affairs and position, whenever required by the bargaining council, but at least once a month;

- 14.2.8 preparing, for submission at the annual general meeting of the Council, the budget for the next financial year and an annual report summarizing the key activities of the bargaining council;
- 14.2.9 countersigning cheques drawn on the bargaining council's bank account;
- 14.2.10 retaining a copy of the confirmed and signed minutes of every meeting of the Council, the Executive Committee, any other committee of the bargaining council and relevant sub-sector chambers, in safe custody for a period of at least ten (10) years from the date that those minutes were confirmed;
- 14.2.11 retaining every financial statement referred to in sub-clause 14.2.7 and all vouchers and records relating to statements of that nature for at least ten (10) years from the date of the statement; and
- 14.2.12 signing the certificates of appointment to be issued to the persons appointed by the Minister of Labour as designated agents of the *bargaining council*.
- 14.3 The *Executive Committee* may appoint any additional officials and any number of staff to assist the *Secretary* in performing the functions and duties of that office on the terms and conditions it deems appropriate.
- 14.4 The *Executive Committee* must manage the conduct and performance of officials and staff of the bargaining council.
- 14.5 The *Council* may request the Minister of Labour to appoint any number of persons as designated agents to help it enforce collective agreements concluded in the *Council*, *sub-sector* chamber or in a *section*.

15. **Appointment of Conciliators and Arbitrators**

- 15.1 For purposes of conciliating and arbitrating disputes that are referred to it, the *Council* must appoint:
 - 15.1 a panel of conciliators and arbitrators, consisting of as many persons as it may consider appropriate; or
 - 15.2 an agency accredited in terms of the *Act*;
- 15.2 The *Executive Committee* or the *Council* may remove a member of the panel of conciliators or arbitrators from office:
 - 15.2.1 for misconduct
 - 15.2.2 due to incapacity; or
 - 15.2.3 if at least one half of the *employers' representatives* in the *Executive Committee* or the *Council* and at least one half of the *employee representatives* in the *Council* have voted in favour of the removal of that member from the panel.
- 15.3 A person may be appointed to both the panel of conciliators and the panel of arbitrators.

- 15.4 The parties to any dispute which must be dealt with by the bargaining council must agree on the appointment of a person from the panel of conciliators, the panel of arbitrators or the panel of the accredited agency. If the parties to a dispute cannot agree, the Secretary must appoint a member of the relevant panel to conciliate or arbitrate the dispute within fourteen (14) *days* of the dispute being referred to the *Council*.

16. **Resolution of Disputes by Council**

- 16.1 In this clause, dispute means a dispute that may be referred to the bargaining council in terms of the *Act* or this *constitution* and includes disputes about the interpretation or application of this *constitution*.
- 16.2 All parties to the bargaining council must refer their disputes to the *Council* in terms of the provisions of the *Act* read with the relevant Rules of the *CCMA*.
- 16.3 Despite sub-section 16.2, the *Executive Committee* may upon the joint request of the parties to the dispute, authorize the parties to follow such dispute resolution procedure agreed between them, to be conducted outside the auspices of the bargaining council, on terms determined by the *Executive Committee*.
- 16.4 If the parties to a dispute have been authorized to follow a dispute procedure outside the auspices of the bargaining council as contemplated in sub-clause 16.3, the parties must notify the Secretary in writing of the outcome of the dispute.
- 16.5 Unresolved disputes involving matters of mutual interest, unless otherwise provided for in this *constitution*, must be dealt with in terms of the *Act*.

17. **Resolution of Disputes by Conciliation or Arbitration**

- 17.1 The *Council* must adopt a dispute resolution procedure for the bargaining council within twelve (12) months of the registration of the bargaining council, or such further period determined to by the *Executive Committee*. This dispute resolution procedure will be incorporated into this *constitution*.
- Until the bargaining council has adopted a dispute resolution procedure any dispute that may be referred to the bargaining council in terms of the *Act* or this *constitution* must be referred in terms of the provisions of the *Act* read with the relevant Rules of the *CCMA*.
- 17.2 The bargaining council must schedule and conduct its conciliations and *arbitrations* in accordance with the *Act* and the Rules of the *CCMA*.
- 17.3 The bargaining council may arbitrate a dispute if:
- 17.3.1 the *Act* requires the dispute to be arbitrated and a party to the dispute has requested that the dispute be resolved through arbitration, or
- 17.3.2 this *constitution* requires the dispute to be arbitrated and a party to the dispute has requested that the dispute be resolved through arbitration; or
- 17.3.3 all the parties to the dispute consent to arbitration.
- 17.4 The referral of a dispute for arbitration in terms of sub-clause 17.3 must be made:
- 17.4.1 within the time frames and in the form set out in the *Act* and the Rules of the *CCMA*;

- 17.4.2 in writing to the *Secretary* within 30 days of the parties to the dispute having consented that the dispute be determined by arbitration.
- 17.5 The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.
- 17.6 The arbitration proceedings must be conducted in accordance with the provisions of *section* 138 and 142 and, if applicable, *sections* 139, 140 and 141 of the *Act* read with the changes required by the context.

18. **Collective Agreements**

- 18.1 Any party to the bargaining council may introduce proposals for the conclusion of a collective agreement in terms of the provisions and procedures outlined in this *constitution*.
- 18.2 A collective agreement may be concluded in a *sub-sector* chamber or *section* to apply to a *sub-sector* or *section(s)* in a *sub-sector*.
- 18.3 In the event of there being:
 - 18.3.1 no registered employer organization, or
 - 18.3.2 a registered employer organization which is not functioning; or
 - 18.3.3 a registered employer organization which is not a participating employer organization in the bargaining council; or
 - 18.3.4 a registered employer organization that does not meet the representivity criteria set out in clause 5.9.2;
 in any *sub-sector* or *section* the *Executive Committee* will appoint, within fourteen (14) days of receipt of proposals referred to in sub-clauses 18.4 and 18.5, an appropriate negotiation committee to conclude a collective agreement for that *sub-sector* or *section*, on behalf of the bargaining council, on terms determined by the *Executive Committee*.
- 18.4 Before the last scheduled *Council* meeting of the calendar year, each *sub-sector* chamber must determine their timetable for the next round of substantive wage negotiations, including the timeframes for submission of proposals in writing to the *Secretary*, failing which the next *Executive Committee* meeting must determine these dates.
- 18.5 Proposals over proposed collective agreement or on matters other than those dealt with in sub-clause 18.4 may be submitted at any time.
- 18.6 Within seven (7) days of submission of the proposals contemplated in sub-clauses 18.4 and 18.5, the *Secretary* must serve copies of the proposals on the other parties within the *Council* or relevant *sub-sector* chamber or *sections* as the case may be.
- 18.7 Within fourteen (14) days of submission of these proposals, the *Secretary* must liaise with the *Executive Committee* and;
 - 18.7.1 refer the proposals to the relevant *sub-sector* chambers, *section* or to *Council* or;
 - 18.7.2 determine whether the *Executive Committee* should establish committee(s) to assist or the *Council* in any of its negotiation of collective agreements.
- 18.8 In the event of a dispute arising as to the level at which a matter of mutual

interest is negotiated, which is not expressly referred to in clause 13.7, the dispute over that issue must be referred to the *Executive Committee* to determine where the issue should be negotiated. In the absence of a decision in the *Executive Committee*, any party to the bargaining council may take such further steps as may be available to it under this constitution or in terms of any law.

18.9 The parties to negotiation must hold at least three (3) meetings within forty-five (45) days of submission of the proposals contemplated in sub-clauses 18.4 and 18.5 to negotiate on the proposals presented to it for consideration unless a collective agreement has already been concluded.

18.10 If either a collective agreement is not concluded at the second or third meeting contemplated in sub-clause 18.9, or any subsequent agreed meeting, or alternatively a period of forty-five (45) days has elapsed:

18.10.1 any party may declare a dispute by submitting a written notice

to this effect to the *Secretary* and the other affected parties to the bargaining *Council* engaged in the dispute; and

18.10.1.1 the parties to the dispute may agree to refer the dispute to arbitration; or

18.10.1.2 any party to the dispute may;

18.10.1.2.1 resort to strike or a lock out in accordance with section 64 of the *Act* across the *industry*, if the proposals for the conclusion of a collective agreement were made in the *Council*; or

18.10.1.2.2 resort to strike or lock out in accordance with *section* 64 of the *Act* in the sub-sector in which the proposals for the conclusion of a collective agreement were made; or

18.10.1.2.3 resort to a strike or a lock out in accordance with *section* 64 of the *Act* in that *section* of the sub-sector in which the proposals for the conclusion of a collective agreement were made; and

18.10.1.2.4 the provisions of 18.10.1.1 to 18.10.1.2.3 do not preclude strike action in terms of section 66 of the *Act* or the remaining provisions of Chapter IV of the *Act* and shall be interpreted in accordance with Schedule 3.

18.10.1.3 refer the dispute to arbitration if the *Act* requires that the dispute be referred to arbitration.

- 18.11 If a party declares a dispute, the parties to the dispute may agree to the *Executive Committee* or the Council appointing a conciliator, to facilitate further negotiations.
- 18.12 When a collective agreement is concluded in a *sub-sector* chamber or a *section*, the chamber must refer the collective agreement via the *secretary* to the *Council*, the *Executive Committee* or a committee established for that purpose for ratification at its next meeting. If the *Council* or the *Executive Committee* determines that the subject matter of the collective agreement falls:
- 18.12.1 within that for which a *sub-sector* chamber is empowered under this constitution to conclude a collective agreement, the *Council* or the *Executive Committee* must ratify the agreement; or
- 18.12.2 outside of that for which a sub-sector chamber is empowered under this constitution to conclude a collective agreement the *Council* or the *Executive Committee* may:
- 18.12.2.1 refer the agreement back to that *sub-sector* chamber to make the necessary amendments and thereafter submit the amended agreement for ratification as contemplated in this clause, or
- 18.12.2.2 make the necessary amendments with consent of the *sub-sector* chamber and then ratify the agreement, or
- 18.12.2.3 refuse to ratify the agreement.
- 18.12.3 The bargaining council will give full force and effect to all collective agreements concluded in any of the structures of the bargaining council, apply to the Minister for extension of these agreements to non-parties and enforce the agreements.

19. Exemptions from Collective Agreements

- 19.1 The bargaining council must determine its exemptions *policy* and process, all exemptions applications in terms of this *policy*.
- 19.2 All applications for exemption must be made in writing to the *Secretary* of the bargaining council, setting out relevant information, including:
- 19.2.1 the provisions of the agreement in respect of which exemption is sought;
- 19.2.2 the persons in respect of whom the exemption is sought;
- 19.2.3 the reasons why the exemption is sought;
- 19.2.4 the nature and size of the business in respect of which the exemption is sought;
- 19.2.5 the duration of the exemption sought;
- 19.2.6 the business plan of the applicant seeking the exemption; and
- 19.2.7 any other information the *Council* may prescribe from time to time.
- 19.3 An exemption application in respect of a term or provision in a collective agreement:
- 19.3.1 concluded in the *Council* that applies throughout the textile industry must be considered by an exemptions committee appointed by the *Council*;

- 19.3.2 concluded in a *sub-sector* chamber must be considered by an exemptions committee whose members are appointed from the *employer organization(s)* and *trade union(s)* who participate in the *sub-sector* chamber or *section*.
- 19.4 An exemption committee appointed by the *Council* may request additional information from an applicant applying for exemption.
- 19.5 The *Secretary* must advise the applicant in writing of the decision of the exemptions committee within *45 days* of receipt of the application, failing which the bargaining council is deemed to have refused the application for exemption.
- 19.6 Within thirty (*30 days*) of the date of refusal of the exemption application, an affected party may refer the application, in writing to the Independent Exemptions Committee established by the Council or Executive Committee to consider and decide the application.
- 19.7 The Independent Exemptions Committee established by the bargaining council consists of one *independent person*, selected from a panel of *independent persons* decided on by the Council.**
- 19.8 When considering an application for exemption, the Independent Exemptions Committee must consider:
- 19.8.1 whether the granting of the exemption will prejudice the objectives of the bargaining council or contravene the provisions of any labour legislation or collective agreements;
- 19.8.2 the circumstances prevailing in the textile industry as a whole or the *sub-sectors* likely to be affected by the application;
- 19.8.3 the nature and size of the business in respect of which the application is made;
- 19.8.4 whether the duration of the exemption is for a limited or specified period;
- 19.8.5 any representations made by the employees likely to be affected by the application;
- 19.8.6 whether the business plan presented by the applicant demonstrates that the granting of the exemption will make a material difference to the long-term viability of the business in respect of which the exemption is sought;
- 19.8.7 whether a refusal to grant an exemption will result in undue financial hardship to the applicant;
- 19.8.8 whether the granting of the exemption will undermine collective bargaining and is likely to cause undue financial hardship to the employees affected;
- 19.8.9 whether the granting of the exemption will impact negatively on parity agreements; and
- 19.8.10 whether the granting of the exemption will impact negatively on local competitors who are complying with collective agreements.
- 19.9 The decision of the Independent Exemptions Committee is final and binding upon the applicant and the bargaining council.

20. Finances

- 20.1 The bargaining council must open and maintain an account in its name at a

- bank of its choice that is registered in South Africa, and:
- 20.1.1 deposit all moneys it receives in that account on the first banking *day* following receipt of the moneys; and
 - 20.1.2 pay the expenses of and make all payments on behalf of the bargaining council by cheques drawn on that account.
- 20.2 The bargaining council may invest any surplus funds not immediately required for current expenses or contingencies, in:
- 20.2.1 internal registered stock as contemplated in *section 21* of the Exchequer Act, 1975 (*Act No. 66 of 1975*);
 - 20.2.2 savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - 20.2.3 a registered unit trust;
 - 20.2.4 any other investment approved by the Registrar;
- 20.3 All payments from the bargaining council funds must be:
- 20.3.1 approved by the *Council*;
 - 20.3.2 paid only in respect of expenses reasonably incurred or provided for;
 - 20.3.3 paid only in respect of claims supported by appropriate voucher(s); and
 - 20.3.4 made by cheque drawn on the bargaining council's bank account and counter-signed by one *employee representative* and one *employer representative* as nominated by the *Council*.
- 20.4 Despite sub-clause 20.3, the bargaining council may maintain a petty cash account, out of which the *Secretary* may make cash payments and each payment from this account may not exceed an amount as may be determined by the *Executive Committee*.
- 20.4.1 funds required for the petty cash account may be transferred to that account only by drawing a cheque issued and signed in the manner required by sub-clause 20.3.4.
 - 20.4.2 except with the approval of the *Council*, amounts drawn to transfer funds to petty cash per month in aggregate may not exceed an amount determined by the *Executive Committee*.
 - 20.4.3 The *Council* may determine the form of records to be kept for the petty cash account.
- 20.5 The *Secretary* must prepare a monthly statement showing the income and expenditure of the bargaining council for that month, and another reflecting the assets, liabilities and financial position as at the end of that period. This statement must be submitted at the first meeting of the *Executive Committee* after the preparation of the statement.
- 20.6 The *Council* will determine its financial year.
- 20.7 No later than one month after the end of the financial year, the *Secretary* must prepare a statement of the bargaining council's financial activity in respect of that financial year showing:
- 20.7.1 all monies received by the bargaining council;

- 20.7.1.1 in terms of any collective agreement published in terms of the *Act*, and
- 20.7.1.2 from any other sources;
- 20.7.2 expenditures incurred on behalf of the bargaining council, including but not limited to the following:
 - 20.7.2.1 remuneration and allowances of its officials and employees;
 - 20.7.2.2 amounts paid to *representatives*, alternates or their organizations as compensation for expenses incurred by them in respect of travelling, accommodation and meals arising from their attendance at *Council*, sub-sector chamber or *Executive Committee* meetings or in the course of performing work on their behalf;
 - 20.7.2.3 remuneration and allowances of members of the panel of conciliators and arbitrators and members of the Exemptions Committee and the Independent Exemptions Committee;
 - 20.7.2.4 office accommodation and venues for meetings of the bargaining council, *sub-sector* chamber, *Executive Committee*, the Exemption Committee, the Independent Exemptions Committee and other structures or committees of the bargaining council;
 - 20.7.2.5 printing and stationery requirements; and
 - 20.7.2.6 miscellaneous operating expenditure.
- 20.7.3 The bargaining council's assets, liabilities and financial position as at the end of the financial year.
- 20.8 The annual financial statements must be signed by the *Secretary* and counter-signed by the *Chairperson*, and submitted to an auditor appointed by the *Council*, for auditing and preparing a report to the *Council*.
 - 20.8.1 copies of the audited financial statements and the auditor's reports must be made available for inspection at the office of the bargaining council to members and *representatives* of the parties, who are entitled to make copies of these documents at their own expense;
 - 20.8.2 the *Secretary* must send certified copies of the audited financial statements and the auditor's report to the Registrar within 30 days of receipt thereof.
- 20.9 Every year the *Secretary* must prepare, for submission at the annual general meeting of the *Council*, a budget for the bargaining council for the next financial year.
- 20.10 At the annual general meeting the *Council* must appoint an auditor to perform the audit of the bargaining council for the next year.

21. **Winding Up**

- 21.1 At a special meeting called for that purpose, the *Council* may pass a resolution, adopted by the majority of the *representatives* in the bargaining council, to wind up.
- 21.2 Upon adoption of a resolution to wind up, the *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 that whatever may be necessary is done 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 as at the adoption of a resolution to wind up the bargaining council.
- 21.4 If all the liabilities of the bargaining council have been discharged, the bargaining council must transfer any remaining assets to:
 - 21.4.1 a bargaining council within the same or similar sector; that has been agreed upon at the special meeting referred to in sub-clause 21.1;
 - 21.4.2 the CCMA, if:
 - 21.4.2.1 there is no bargaining council within the same or similar sector; or
 - 21.4.2.2 the parties to the bargaining council fail to agree on a bargaining council that is to receive the remaining assets.

22. Schedules

The schedules to this *constitution* form part of the *constitution* for purposes of interpreting and applying this *constitution*.

23. Changing the Constitution

- 23.1 The *Council* may, subject to sub-clauses 13.2 and 13.3 change this *constitution* or its name at any time:
 - 23.1.1 by a resolution adopted by unanimous vote of all the *representatives* in the *Council* on a motion to change tabled without prior notice; or
 - 23.1.2 by a resolution adopted by at least two thirds of all *employee representatives* and two thirds of all *employer representatives* in the *Council* after at least:
 - 23.1.2.1 one month's notice of that motion to change had been given to the *Secretary*; and
 - 23.1.2.2 two week's notice of that motion had been given to all the other *representatives*.
- 23.2 Any change to this *constitution* or the name of the *Council* becomes effective after the resolution effecting that change has been certified by the *Registrar* in terms of the *Act*.

24. Definitions

In this constitution, any expression that is defined in the Act has that meaning and unless the context otherwise indicates, the word:

- 24.1 the "**Act**" means the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended;

- 24.2 the “**CCMA**” means the *Commission for Conciliation Mediation and Arbitration*, established in terms of section 112 of the Labour Relations Act.
- 24.3 the “**Chairperson**” means the *Chairperson* of the *Council* who, by virtue of that office, is also the *Chairperson* of the *Executive Committee*;
- 24.4 “this **constitution**” includes the *section* numbers and the schedules but does not include the clause headers.
- 24.5 the “**Council**” means the *Council* of the bargaining council established in terms of clause 7 of the *constitution*.
- 24.6 “**day**” means a calendar *day*;
- 24.7 “**Deputy-Chairperson**” means the *Deputy-Chairperson* of the *Council* who, by virtue of that office, is also the *Deputy-Chairperson* of the *Executive Committee*;
- 24.8 “**employer representative**” means any *representative* appointed in that capacity by an employer’s organization which is a party to the *Council*;
- 24.9 “**employee representative**” means any *representative* appointed in that capacity by a trade union which is a party to the *Council*;
- 24.10 “**Executive Committee**” means the *Executive Committee* established in terms of clause 11;
- 24.11 “**Industry**” means the entire textile manufacturing industry as set out in Schedule 1;
- 24.12 “a **representative**” means an *employer representative* and/or an *employee representative*
- 24.13 “**Secretary**” means the *Secretary* of the *Council*;
- 24.14 “**section**” means the sections as set out in Schedule 2 of this constitution.
- 24.15 “**small and medium enterprises**” means an enterprise employing less than 15 employees and/or whose turnover is less than R1 million per annum.
- 24.16 “**sub-sector**” means the sub-sectors as set out in Schedule 2 of this constitution.

Schedule 1

NATIONAL TEXTILE BARGAINING COUNCIL

REGISTERED SCOPE

“Textile Industry or Sector or Industry” – means, without in any way limiting the ordinary meaning of the expression, the enterprise in which the employer(s) and the employees are associated, either in whole and or in part, for any activity relating to the processing or manufacture of fibres, filaments or yarns, natural or man-made and the processing or manufacture of products obtained there from, including all activities incidental thereto or consequent thereon, defined as follows:

1. **Scope as defined by process and activity**

1.1 **Fibre Manufacture**

The handling, processing and manufacture of all classes of fibres, yarns, threads, blends and manufactured raw materials from which these are derived, which shall include, but not be limited to, the fibres manufactured or processed from the following types of raw material:

1.1.1 **Natural Fibres:**

- Vegetable fibres: cotton, kapok, coir, flax, hemp, jute, kenaf, ramie manila, henequen, sisal, sugar cane or other plant seeds, bast or leaf material.
- Animal fibres: wool, mohair, cashmere, silk, angora, alpaca, feathers and any other type of animal hair.
- Mineral fibres: asbestos or other inorganic material.

1.1.2 **Manufactured Fibres:**

- Synthetic polymers: including polymethylene, polyolefin, polyvinyl, polyurethane, polyamide, aramid, polyester and synthetic polyisoprene.
- Natural polymers: including made from or comprising aliginate, rubber, regenerated proteins, regenerated cellulose and cellulose ester.
- Minerals: including rock wool, carbon fibre and glass fibre or any other fibre manufactured from minerals, and,
- all other manufactured fibres and tapes not specified above.

1.2 **Preparation of Natural Fibres**

The receiving, sorting, grading, weighing, cataloguing, washing, scouring, ginning, fibre-working, blending, carding, combing, cutting, dyeing, bleaching, and cleaning as well as the activities performed by wool and mohair brokers, buyers and dealers; and any other activities carried on in an *enterprise*.

1.3 **Manufacture of Textiles**

The manufacture, processing, dyeing, finishing and further processing of all classes of woven, non-woven, crocheted and braided textiles from any of (or combinations of) the inputs specified in 1.1, utilizing the activities and processes of carding, combing, spinning, winding, twisting, drawing-in, warping, weaving, crocheting, braiding, embroiding, tufting, plaiting, feting, blending, raising, needling, stitch-bonding, spun laid, wet laid or other bonding processes, printing, dyeing, lamination, making-up and finishing as well as any other products made from the raw materials produced by the processes and activities referred to in 1.1 and 1.2 above.

2. **Scope as defined by Product:**

The products and activities referred to “1”, (above) shall include, but not be limited to, the following products (used here simply as an indicative list):

- a. synthetic textile fibres and yarns;
- b. vegetable fibres and yarns (including the activities conducted in cotton gins);
- c. woven fabrics and products;
- d. non-woven fabrics and products;
- e. woven, crocheted, braided, plaited, knitted tapes, narrow fabric products (whether rigid or elasticized) webbing, interlinings, tapes or bias binding / clothing accessories;

- f. embroidery (where done in an establishment not covered by the National Clothing Bargaining Council)
- g. frills, tassels, bows and similar finishing's;
- h. shoe laces;
- i. lace and netting: (general);
- j. worsted tops or noils, or yarns or fabrics;
- k. toweling or towels;
- l. all types of made-up textiles, including curtains and blinds, sheets, bedspreads, quilts, duvets and other bed linen, pillows and cushions, textile materials found in bathrooms and restrooms;
- m. carpets, rugs, mats and matting, carpet tiles and rugs (including as used in applications for floors and walls in domestic, commercial and residential premises, as well as that found in all types of automobiles, aeroplanes, trains, ships and any other form of transport);
- n. flock, foam, wadding, or padding, including shoulder padding and all items with feather fillings;
- o. under-felt and felt;
- p. cleaning cloths, cleaning rags, dusters;
- q. blanketing, blankets, travelling-rugs, shawls;
- r. technical and/or industrial textiles, including woven, non-woven and specialized fibres and yarns such as used in the following applications:
 - tyre-cord, belting, hose, tank fabrics, conveyor belts;
 - textiles used to reinforce plastics; mining and civil engineering;
 - textiles like separation, drainage and reinforcement materials, mine props, backfill fabrics, ventilation curtains, blast barricades;
 - textiles used in agriculture/horticulture, like those for weed control, hail and frost protection, early crop ripening, bags for fertilizers/produce;
 - textiles for tarpaulins, awnings, furnishings, umbrellas, footwear, automotive trim, luggage, sail cloth, airbags, spinnakers, hot air balloons, print screens, paper felts arrestor fabrics;
 - medical textiles like blood filters, membranes, bandages, cotton wool, lint's, gauze, swabs, surgical dressing, and sanitary towels;
 - fabrics used to filter air, gas or liquids;
 - fabrics used for protective garments such as breathable fabrics, flame-proof fabrics, acid-proof fabrics, bullet-proof fabrics, brake and clutch linings, gland packing, seals, cord, ropes, twine, nets and netting.

Schedule 2: NATIONAL TEXTILE BARGAINING COUNCIL SUB-SECTORS & SECTIONS

For the purpose of Schedule 2 “industry” shall refer to operations, activities or products in each of the defined *sub-sectors* set out below. The Council may allocate any operation, activity or product not covered in the description of a *sub-sector* or *section* set out below, to a *sub-sector* or a *section*, in accordance with clause 12 of the *constitution*.

1 Sub-sector: Woven Crochet & Knitted Narrow Fabric Sub-sector

This constitutes a *sub-sector* covering the following:

The “Woven, Crochet & Knitted Narrow Fabric *sub-sector*”, without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the manufacture of : woven or crochet or knitted tape, in the strip or the piece, being rigid or elasticised, having a warp and a weft, with selvedge on either side, and being not more than 250mm in width and the dyeing, printing and the finishing thereof. This will include labels and trims manufactured and subsequently slit. It is specifically recorded that all bias binding/ clothing accessory and braided products will be covered. It shall include all operations, products and activities incidental thereto and consequent thereon.

2 Sub-sector: Manufactured Fibres

This *sub-sector* covering the following:

The “Manufactured Fibres *sub-sector*”, without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the making of: manufactured fibres, including the manufacture and distribution of polymers or other materials from which

manufactured fibres are derived, the dyeing and / or finishing and / or processing in any manner whatsoever of such fibres, polymers or materials.

It shall include all operations, products and activities incidental thereto and consequent thereon.

3 Sub-sector: Carpets

This constitutes a *sub-sector* covering the following:

The "Carpet *sub-sector*", without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the manufacture and / or converting of: all types of carpets, rugs, carpet tiles and broadloom carpets. It shall include all operations, products and activities incidental thereto and consequent thereon.

4 Sub-sector: Wool & Mohair and Worsted Products

This constitutes a *sub-sector* consisting of two *sections*, covering the following:

a) The "Wool and Mohair *section*", without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the purpose of handling and/or receiving and/or grading and/or sorting and/or weighing and/or cataloguing and/or washing and/or carbonising and/or combing and/or bleaching and/or shrink proofing of wool, mohair, and/or similar fibres. It shall include all operations, products and activities incidental thereto and consequent thereon.

b) The "Worsted *section*", without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the purpose of manufacturing worsted tops and / or noils; worsted yarns and / or worsted fabrics; and woollen and / or mixed yarns and / or woollen or mixed cloths and / or by-products from wastes or other products. It shall include all operations, products and activities incidental thereto and consequent thereon.

5 Sub-sector: Cotton

This constitutes a *sub-sector* covering the following:

The "Woven Cotton-Textile Products *sub-sector*", without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the :

- A. manufacture of yarn from any combination of the following raw materials : cotton; spun silk; rayon, including viscose; acetate; cup ammonium; nylon; and / or any other synthetic or man-made fibre and also including all waste and / or by-products from any or all such fibres (but excluding the manufacture of any worsted processed yarn for use in the worsted industry);
- B. manufacture of any woven cloth or fabric, from any or all of the raw materials and / or wastes and / or yarns mentioned in “A” (above), including manufactured filament yarns;
- C. printing and/or dyeing and / or finishing and / or processing of any raw materials, and / or wastes, and / or yarns and woven fabrics mentioned in “A” and “B”.
It shall include all operations, products and activities incidental thereto and consequent thereon.

6 Sub-sector: Non-Woven Textiles

This constitutes a *sub-sector* covering the following:

The “Non-Woven *sub-sector*”, without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the manufacture of : all types of non-woven textile products including but not limited to flock, wadding, padding, felt, under-felt, medical wadding, cotton wool, and needle-punched, stitch-bonded, spun-bonded; chemically-bonded, thermo-bonded or laminated textile fibre materials.

It shall include all operations, products and activities incidental thereto and consequent thereon.

7 Sub-sector: Home Textiles and Blankets

This constitutes of a *sub-sector* consisting of two *sections* covering the following:

- a) The “Home Textiles *section*”, without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the manufacture of household textiles; textile furnishings; towels and towelling; and any other made-up textiles. It shall include all operations and activities incidental thereto and consequent thereon; but it shall exclude the manufacture of any garments and other products that are covered by the jurisdiction of the national clothing bargaining council;
- b) The “Blanket *Section*” without in any way limiting the ordinary meaning of the expression, shall mean the industry in which employers and employees are associated, either in whole or in part, for any activity whatsoever, for the manufacture of:

- (i) all types of blankets and blanketing (not limited to blanketing, throws, travelling rugs and shawls, whether un-raised, raised, plain, dyed, printed, blanketing in roll-form or otherwise treated) made by woven, knitted (circular or warp), needle-punch, tufted, malipol, malimo processes;
- (ii) yarns for sale or on commission, if such yarns in the final weight of woollen, worsted, acrylic, cotton, mohair or mixed composition yarns, measure 5 000 metres or more (50d-tex or more) to the kilogram, for use in the manufacture of the articles referred to in paragraph (i).

It shall include all operations, products and activities incidental thereto and consequent thereon.

Schedule 3: INDUSTRIAL ACTION INTERPRETATION

- 1 Except insofar as it is specifically provided the Council's constitution does not intend to limit or expand the parties' existing rights relating to employees' right to strike and employers' recourse to lock out. However, certain aspects of the parties' intentions with regard to clause 18.10, especially 18.10.1.2.2 and 18.10.1.2.3 are explained below.
- 2 For the purposes of this schedule –
 - 2.1 "employee" refers to an employee employed within the scope of the Council but outside the scope of the *sub-sector* or *section* in which the proposals for the conclusion of a collective agreement were made; and
 - 2.2 "employer" refers to an employer of such an employee.
- 3 An employee does not have the right to embark upon protected strike action on the sole basis that the employee is employed within the scope of the Council. Insofar as the employee's right to strike relies on this basis only the Council's constitution precludes such a strike.
- 4 However, employees may be able to embark upon protected strike action if the employees' strike is based upon another lawful ground. For example, employees may acquire this right under *section* 64(3)(c) of the Labour Relations Act. Moreover, it is evident from current Labour Court and Labour Appeal Court decisions¹ that circumstances may exist in which employees employed outside the scope of the bargaining forum in which the proposals for the conclusion of a collective agreement were made and who are employed by an employer that has an operation that falls within that bargaining forum may be able to embark upon protected strike action in support of the proposals introduced in that bargaining forum. Insofar as this

¹ *Afrox Ltd v SACWU & Others* (1) (1997) 18 ILJ 399 (LC), *CWIU v Plascon Decorative Inland (Pty) Ltd* (1999) 20 ILJ 321 (LAC) and *SACTWU v Free State & Northern Cape Clothing Manufacturers' Association* [2002] 1 BLLR 27 (LAC).

principle continues to be recognised by the Labour Courts, this may be another example of a lawful ground upon which employees outside a *sub-sector* or *section* in which the proposals for the conclusion of a collective agreement were made may be able to embark upon protected strike action. The provisions of the Council's constitution are not intended to limit employees' right to strike that are based upon lawful grounds other than the one specified in paragraph above.

- 5 Similarly with regard to a lock out. An employer does not have the recourse to embark upon a protected lockout on the sole basis that its employees are employed within the scope of the Council. Insofar as the employer's lockout relies on this basis only the Council's constitution precludes such a lockout.
- 6 However, the employer may be able to embark upon a protected lockout if the employer's lockout is based upon another lawful ground. For example, the employer may acquire this recourse under *section* 64(3)(d) of the Labour Relations Act. The provisions of the Council's constitution are not intended to limit the employer's recourse to lockout based upon lawful grounds other than the one specified in paragraph above.

Signature by Chairman and Secretary

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Andre Kriel
NTBC Chairman

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Date

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Jayakarum Daniel
Secretary

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Date