

CONSTITUTION

OF THE

**SOUTH AFRICAN LOCAL
GOVERNMENT
BARGAINING COUNCIL**

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1. NAME, SCOPE AND SEAT

- 1.1 The name of the Council shall be the South African Local Government Bargaining Council.
- 1.2 The scope of registration of the Council shall be the Local Government Undertaking in the Republic of South Africa.
- 1.3 The Council shall be a body corporate and shall be capable in law of suing and being sued, and of purchasing or otherwise acquiring, holding or alienating property movable or immovable, and of doing any other act which this Constitution requires or permits it to do.
- 1.4 Unless otherwise provided for in this Constitution, no Employers' Organisation or Trade Union shall by reason only of the fact that it is a Party to the Council, be liable for any of the obligations of the Council.
- 1.5 The seat of the Council shall be such premises and town as shall be decided by the Central Council from time to time.

2. DEFINITIONS

In this Constitution, any expression defined in the Act shall have the same meaning as that in the Act unless it should appear to be inconsistent with the context: -

- "Act" means the Labour Relations Act No. 66 of 1995 as amended;
- "Alternate" means a person appointed by a Party to represent it in the Central Council or a Division in the absence of the member's regular representative;
- "Bargaining Committee" means the committee responsible for the negotiation and conclusion of collective agreements in accordance with the provisions of clause 7.2;

"Council"	means the South African Local Government Bargaining Council inclusive of its Divisions as set out in Schedule 2;
"Central Council"	means the Council excluding the Divisions;
"Collective Agreement"	means a collective agreement as defined in the Act, and shall include any decision on a substantive matter concluded in the manner contemplated in clause 17;
"Committee"	means a committee of the Council or any Division;
"Commission"	means the Commission for Conciliation, Mediation and Arbitration;
"Day"	means a calendar day;
"Division"	means the structures of the Council as set out in Schedule 2 in accordance with the provisions of Clause 6;
"Executive Committee"	means the Committee responsible for the operation of the Council between meetings of the Central Council;
"Local Government Undertaking"	means the undertaking in which the employer and employees are associated for the institution, continuance or finalisation of any act, scheme or activity undertaken by a Municipality and by municipal entities as established in terms of the Local Government: Municipal Systems Act, 32 of 2000;
"Local Labour Forum"	means any local labour forum established by collective agreement;
"National Level"	means at the Central Council, the Executive Committee and the Bargaining Committee;
"Municipality"	means a Municipality as defined in Section 10 of the Municipal Structures Act, 117 of 1998 as amended;

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"Party"	means an Employers' Organisation or Trade Union admitted to the Council;
"Registrar"	means the registrar referred to in the Act;
"Representative"	means a person appointed by a Party to represent it in the Central Council or a Division;
"Region"	means a Division or a number of Divisions as determined by the Central Council;
"Regional Secretary"	means an employee of the Council who is required to carry out the functions determined by the Constitution and the Council; and
"Wage and Salary Exemptions Policy"	means that policy that provides for Municipalities or other employers to seek relief from an agreement on an improvement in salaries and other conditions of service incorporated as part of a Wage and Salary Agreement.

3. POWERS AND FUNCTIONS

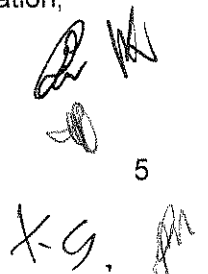
3.1 The powers and functions of the Council shall be:-

- 3.1.1 to endeavour to maintain and enhance industrial peace and to promote sound relations between the Parties;
- 3.1.2 to endeavour to prevent disputes from arising, by negotiation and conclusion of agreements on wages, conditions of employment and all matters of mutual interest to employers and employees in the Local Government Undertaking;
- 3.1.3 to administer, supervise and enforce the said agreements;

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- 3.1.4 to perform the dispute resolution functions referred to in Section 51 of the Act;
- 3.1.5 to establish and administer funds to be used for resolving disputes;
- 3.1.6 to regulate, through collective agreements the thresholds of representivity for the exercise of organisational rights by Trade Unions within the sector;
- 3.1.7 to enter into collective agreements on organisational rights and on agency shop or closed shop agreements within the sector;
- 3.1.8 to establish and administer any fund or scheme for the benefit of one or more of the parties or their members;
- 3.1.9 to promote education and training in the Local Government Undertaking;
- 3.1.10 to consider, advise, develop proposals and make representations on any policy issues, legislation or proposed legislation affecting the Parties and their members;
- 3.1.11 to seek to determine by collective agreement matters which may not be issues in dispute for the purpose of strikes and/or lockouts;
- 3.1.12 to seek by collective agreement to regulate picketing rules;
- 3.1.13 to seek to regulate essential services through collective agreements on minimum services and representations on the determination of essential services;
- 3.1.14 to seek to reach agreement on forms of consultative forums or committees, to be established in Municipalities and to confer on such forums or committees additional issues for consultation;



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3.1.15 to delegate any of its powers and functions to Divisions, Committees or employees of the Council through collective agreement;

3.1.16 to do such other things as provided for in the Act or as may be agreed to by the Central Council from time to time.

4. PARTIES TO THE COUNCIL

4.1 The founding Parties to the Council are those parties set out in Schedule 1.

4.2 After considering an application in terms of Section 56 of the Act, the Central Council may admit as additional Parties:-

4.2.1 any registered Employers' Organisation operating in the Local Government Undertaking, provided that the Employers' Organisation has a membership of not less than 15% (fifteen percent) of the total number of employers within the scope of the Council; and

4.2.2 any registered Trade Union operating in the Local Government Undertaking, provided however that such Trade Union has a membership equivalent to not less than 15% (fifteen percent) of the total number of employees within the scope of the Council.

4.3 Any Party may terminate its membership of the Council by giving 30 (thirty) Days prior written notice to the General Secretary.

5. CENTRAL COUNCIL

5.1 There shall be a total of 60 (sixty) seats on the Central Council divided equally between the Employer parties on the one hand and the Trade Union Parties on the other hand, who shall be appointed annually.

5.2 The allocation of representatives amongst the Employer Parties shall be *mutatis mutandis* determined by the formula in sub-clause 5.4.

5.3 The Employer Parties shall submit to the General Secretary by no later than 15 February of each year details for each of the member Municipalities or workplaces, as at 31 December of the previous year, of the total number of employees together with membership of the Trade Unions being Parties to the Council as reflected by stop order deductions, and dual membership of such Trade Unions.

5.4 The allocation of representatives amongst the Trade Union Parties shall be determined by the following formula:

$$\frac{A}{B} \times \frac{C}{1}$$

Where –

A equals the membership of the Trade Union in question

B equals the total joint membership of the Trade Union Parties

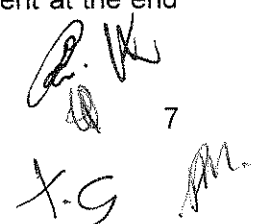
C equals the number of seats allocated to the Trade Union Parties

Any fractions shall be rounded off to the nearest whole number.

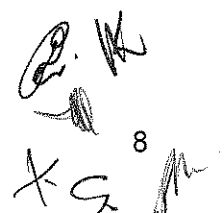
5.5 A Trade Union Party may at any time make written representations to the General Secretary for a change in its representation based on any change in membership at least equal to the factor determined in terms of sub-clause 5.4 subject to due verification of such Trade Union's contentions and the Executive Committee shall thereafter make such adjustments to the representation of the Trade Union Parties as may be appropriate.

5.6 Representatives of Parties and Alternates to such meetings shall be appointed annually. Parties shall give reasonable written notice to the General Secretary to replace any Representative or Alternate.

5.7 Representatives and Alternatives shall be eligible for reappointment at the end of their term.



- 5.8 A Representative or an Alternate whose term of office has expired and who is not reappointed, may nevertheless continue to act as a Representative until that Representative's successor assumes office.
- 5.9 A Representative who, without an acceptable written apology, is absent from 3 (three) consecutive meetings of the Council, is disqualified from continuing in that office.
- 5.10 If the office of any Representative or Alternate becomes vacant, the Party that appointed him/her may appoint a replacement for the unexpired portion of his/her predecessor's term of office.
- 5.11 The Central Council shall have an elected chairperson and vice-chairperson.
- 5.12 The General Secretary or any person acting in his or her stead shall call for nominations for chairperson. If there is more than one nomination, a secret ballot shall be conducted. The nominee with the highest votes shall be declared by the General Secretary as duly elected. In the event of an equality of votes, the General Secretary shall place the names of such nominees in an opaque container and make a draw. The nominee whose name is drawn shall be deemed to be duly elected.
- 5.13 The vice-chairperson shall be elected in a similar manner.
- 5.14 The chairperson and vice-chairperson shall hold office until the next election.
- 5.15 The office of the chairperson and vice-chairperson shall rotate between Representatives of the Employer Party and the Trade Union Parties in each election year, provided that there shall be a rotation between the Trade Union Parties.
- 5.16 The chairperson or vice-chairperson may be removed from office by a simple majority vote of the Central Council if such removal is deemed to be in the interest of the Council.

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- 5.17 In the event of a vacancy occurring during the term of office of the chairperson or vice-chairperson, a successor shall be elected at the next meeting of Council in a similar manner to that provided for above, provided however that such successor shall hold office only for the unexpired portion of the period of office of the vacating office bearer.
- 5.18 The chairperson shall preside at all meetings of the Central Council at which he or she is present and perform such other duties as may be determined from time to time by the Council.
- 5.19 In the absence of the chairperson, the vice-chairperson shall perform his or her duties or shall act in his or her stead and in the event of neither of them being able to act, the Council shall by a show of hands elect an acting chairperson from amongst its numbers.
- 5.20 The Council shall employ a General Secretary on terms and conditions as it shall determine.
- 5.21 The General Secretary shall attend all meetings of the Central Council and the Executive Committee, record the proceedings of such meetings, conduct all correspondence on behalf of the Central Council and the Executive Committee, keep copies of all correspondence and ensure that all relevant documentation is tabled at the next ordinary meeting of the Council.
- 5.22 The General Secretary shall bank all monies received by the Council within 5 (five) Days of receipt and shall further keep all books of account and generally manage the financial affairs of the Council as provided for in sub-clause 8.2.3.
- 5.23 The General Secretary shall perform any other functions or duties as determined by the Central Council or the Executive Committee, including but not limited to the functions as provided for in clause 8.2.
- 5.24 The Central Council shall meet at least once per year at such place, date and time as may be determined by the Executive Committee to:

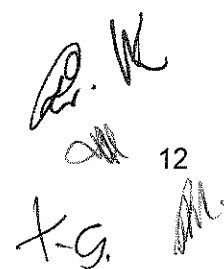
- 5.24.1 Approve audited financial statements in respect of the previous financial year;
- 5.24.2 Appoint the panel of conciliators and arbitrators as required in sub-clause 10.1.1.
- 5.24.3 Elect a chairperson and vice-chairperson as required in clause 5.11.
- 5.25 The General Secretary shall convene a special meeting of the Central Council within 21 (twenty-one) days of receipt of a written request by any Party, which request shall set out the business to be discussed.
- 5.26 Notice of all meetings containing the agenda for such meeting and outlining the business to be discussed, shall be sent to all Representatives by the General Secretary by fax at least 10 (ten) days before the date of such meeting, provided that in the case of special meetings, the Chairperson after consultation with the Vice Chairperson may authorise the giving of such shorter notice as may be reasonable in the circumstances.
- 5.27 If the Chairperson so requires, any motion shall be submitted in writing and shall be read by him or her. Voting shall be by show of hands, provided however, that any Representative of a Party, prior to the vote, may propose that a ballot be held and upon such motion being duly seconded, a ballot shall be held.
- 5.28 No business shall be considered other than that which was set out in the notice and provided that the provisions of sub-clause 5.25 and 5.26 have been complied with, unless all parties agree unanimously to incorporate such item on the agenda.

- 5.29 The quorum for meetings of the Central Council shall be at least 50% (fifty percent) of the Representatives of each of the Employer Party on the one hand and Trade Union Parties on the other hand. If, within 60 (sixty) minutes from the time fixed for any meeting, the meeting does not quorate, the meeting shall be adjourned 14 (fourteen) days after the meeting or such other date, time and place agreed to by the Parties present. The Representatives present at the adjourned meeting shall form a quorum. The Parties shall be notified of the adjournment, as well as the date, time and venue for the reconvened meeting, at least 7 (seven) days prior to such meeting taking place.
- 5.30 Every meeting of the Central Council shall be conducted in private unless the Central Council decides otherwise.
- 5.31 The General Secretary shall record and keep minutes of all proceedings of every meeting of the Council and shall submit such minutes to the next meeting for confirmation by way of resolution, and the Chairperson shall thereafter sign such minutes as confirmed.
- 5.32 The General Secretary shall retain in safe custody in the Head Office of the Council a copy of the confirmed minutes of every meeting.
- 5.33 No decision taken at a meeting of the Central Council shall be invalidated by the absence of any Representative who has been properly notified in terms of sub-clause 5.26 above.

6. DIVISIONS OF THE COUNCIL

- 6.1 The divisions of the Council shall be those set out in Schedule 2.
- 6.2 Divisions may be amalgamated or additional Divisions established in terms of the procedure provided for in clause 24.
- 6.3 The number of seats in a Division shall be determined by the Executive Committee after consideration of submissions made by the Division in question with due regard to the number of employees within the scope of the Division and their geographic distribution.

- 6.4 There shall be an equality of representation between Employer Parties on the one hand and Trade Union Parties on the other.
- 6.5 The allocation of Representatives amongst the Trade Union Parties shall be made on the basis of union membership within the Division in terms of the formula as provided for in sub-clause 5.4.
- 6.6 The allocation of Representatives amongst Employer parties shall be as provided for in sub-clause 5.4.
- 6.7 All such calculations shall be based on the data as submitted in terms of sub-clause 5.3.
- 6.8 Each Division shall, at its meeting annually:
- 6.8.1 Elect a chairperson and vice-chairperson for the Division.
 - 6.8.2 Appoint the panel of conciliators and arbitrators for the Division.
- 6.9 The provisions of sub-clauses 5.12. to 5.19 shall *mutatis mutandis* apply to the election, removal or replacement of the chairperson or the vice-chairperson of a Division.
- 6.10 The Executive Committee may, for each Division or a combination of Divisions, create a post of a Regional Secretary.
- 6.11 Any Party to a Division may, on grounds of urgency, call for a special meeting to be convened provided that such request shall be in writing detailing the grounds of urgency. The Regional Secretary shall convene such meeting within 14 (fourteen) days of receipt of a request as aforesaid.
- 6.12 Save for the foregoing, the provisions of sub-clauses 5.26 to 5.31 shall *mutatis mutandis* apply.

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7. COMMITTEES

7.1 Executive Committee

- 7.1.1 The Executive Committee shall consist of 10 (ten) seats divided equally between the Employer Parties on the one hand and the Trade Union Parties on the other. The representatives shall be appointed annually.
- 7.1.2 Each Party shall be entitled to 2 (two) technical advisors over and above their representatives to the Executive Committee.
- 7.1.3 The allocation of Representatives amongst the Employer Parties shall be determined by means of the formula in sub-clause 5.4.
- 7.1.4 The allocation of Representatives amongst the Trade Union Parties shall be in terms of the formula in sub-clause 5.4.
- 7.1.5 The Executive Committee shall meet at such place, date and time as it may determine.
- 7.1.6 The General Secretary shall convene a special meeting of the Executive Committee within 10 (ten) Days of receipt of a written request therefore by any Party detailing the business to be discussed.
- 7.1.7 The provisions of sub-clauses 5.26 to 5.34 shall *mutatis mutandis* be applicable to meetings of the Executive Committee.
- 7.1.8 The Executive Committee shall have the power to:
- 7.1.8.1 Perform any of the powers of the Central Council in between meetings of the Central Council and to further delegate such powers to Committees as it deems fit;

- 7.1.8.2 Conclude any matter referred to it by the Central Council unless required otherwise by the Central Council;
- 7.1.8.3 Establish Committees and determine their terms of reference;
- 7.1.8.4 Manage the day-to-day business of the Council;
- 7.1.8.5 Deal with matters relating to staffing;
- 7.1.8.6 Decide on the manner in which matters referred to it by the Central Council shall be dealt with and, if necessary, refer any matter to a Committee for advice or recommendation; and
- 7.1.8.7 The delegates shall annually appoint a chairperson from amongst the Party that does not enjoy the chairpersonship or vice-chairpersonship of the Central Council.

7.2 Bargaining Committee

- 7.2.1 The Bargaining Committee shall consist of 20 (twenty) seats divided equally between the Employer Parties and the Trade Union Parties.
- 7.2.2 The allocation of Representatives amongst the Employer Parties shall be determined *mutatis mutandis* by the formula in sub-clause 5.4.
- 7.2.3 The allocation of Representatives amongst the Trade Union Parties shall be determined by the formula in sub-clause 5.4.

- 7.2.4 The delegates shall, at the first meeting of the year, appoint a chairperson from amongst the delegates to the Bargaining Committee. The Bargaining Committee may appoint a chairperson from outside the delegates of the parties' representatives.
- 7.2.5 The Bargaining Committee shall meet at such place, date and time it or the Executive Committee may determine.
- 7.2.6 The Bargaining Committee shall have the power to conclude any collective agreement relating to terms and conditions of service or any other matter referred to it for bargaining by the Executive Committee.
- 7.2.7 A dispute that arises in the Bargaining Committee shall be resolved in terms of clause 11.

7.3 Divisional Committees

- 7.3.1 Divisions may from time to time delegate to Committees such powers and functions as they deem fit.
- 7.3.2 The Executive Committee, prior to the establishment of Divisional Committees, shall approve such Committees.
- 7.3.3 Such Committees shall consist of an equal number of Employer and Trade Union Representatives.
- 7.3.4 Such Committees shall make their own procedural arrangements for the conduct of the business delegated to them.

8. EMPLOYEES OF THE COUNCIL

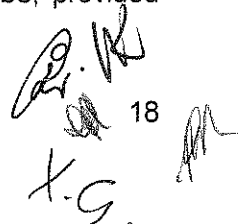
- 8.1 The Executive Committee shall be responsible for determining the staffing requirements of the Council, the procedures relating to the employment and terms and conditions of employment of all employees and shall be the employer of all such employees.
- 8.2 The General Secretary shall be responsible for the management of all staff of the Council and shall-
- 8.2.1 conduct all correspondence on behalf of the Central Council and Executive Committee and keep record of the same;
 - 8.2.2 attend the meetings of the Central Council and the Executive Committee and minute the proceedings of these meetings;
 - 8.2.3 keep books of account in accordance with generally accepted accounting practices and in accordance with the instructions of the Central Council or Executive Committee.
 - 8.2.4 bank all funds received on behalf of the Council within 5 (five) days of receipt thereof;
 - 8.2.5 submit statements of the financial position of the Council whenever required to do so by the Central Council or Executive Committee and in accordance with the provisions of the Act and this Constitution;
 - 8.2.6 submit the books of account of the Council to a public auditor once every year for auditing;
 - 8.2.7 countersign cheques signed by those members of the Executive Committee authorised to do so;

- 8.2.8 perform such other duties as the Central Council or Executive Committee may direct or which are required by the Act;
- 8.2.9 delegate such responsibilities to other employees of the Council; and
- 8.2.10 keep in safe custody the approved minutes of the Central Council and Executive Committee, duly signed by the General Secretary and the relevant chairperson and all original signed agreements concluded in the Council.
- 8.3 The Executive Committee shall be responsible for the employment of staff at Regional level. The Regional Secretary shall be accountable to the Divisions and shall be responsible for all staff at Regional level subject to the overall responsibility of the General Secretary for the management of the affairs of the Council in general.

9. FINANCES OF THE COUNCIL

- 9.1 The financial year of the Council shall be from 1 July in any year to 30 June in the following year, or such other period as the Central Council may determine.
- 9.2 The income of the Council shall be derived from levies, donations or grants, bargaining fees, interest on investment, or any other source approved by the Central Council or the Executive Committee from time to time.
- 9.3 The Central Council may, from time to time, fix a levy to be raised by the deduction of an amount from the wages/salaries of employees within the scope of the Council, on the one hand, and an equal amount to be paid by each employer for each such employee, on the other hand.
- 9.4 The Executive Committee shall have the power to open or close, on good cause, all accounts of the Council.

- 9.5 All income received for the account of the Council shall be deposited to a central account either by way of direct deposit or within 5 (five) days of receipt thereof by the General Secretary or the Regional Secretary.
- 9.6 Operating accounts shall be opened for the Central Council and for each Division to provide for the administration of the ordinary operating expenses thereof.
- 9.7 The Executive Committee may approve the opening of additional special accounts at Central or Divisional level as it may deem necessary for the effective management of the finances of the Council.
- 9.8 The funds of the Council shall be employed for the effective operation of the Council in terms of its objectives.
- 9.9 Every Division shall be entitled to an equitable share of the resources of the Council, for the purposes of expenditure on staff, equipment and the normal operating costs, subject however to the financial requirements of the Central Council.
- 9.10 The determination of an equitable share of resources by the Executive Committee shall, inter alia, take into account the number of employees within a Division, its area and such other criteria as may be determined by Executive Committee from time to time.
- 9.11 Each Division shall, by no later than a date determined by the Executive Committee in each year, submit to the General Secretary an estimate of its annual expenditure for the forthcoming year.
- 9.12 The Executive Committee shall thereafter determine the overall budget for the Council for the following year.
- 9.13 All disbursements of funds by the Council shall be by cheque signed by at least 2 (two) of the following: chairperson, vice-chairperson, General Secretary or Regional Secretary of the Council or Division, as the case may be, provided

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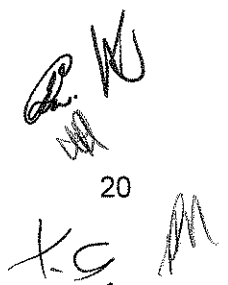
that an amount to be determined by the Executive Committee from time to time may each month be drawn as petty cash.

- 9.14 Allocations of funds to the operating accounts shall be made quarterly.
- 9.15 Regional Secretaries shall, quarterly in arrears, submit a statement of income and expenditure to the General Secretary and the Division.
- 9.16 The General Secretary shall, upon receipt of such statements, make allocations to the Divisional operating accounts based on the amount as budgeted for each such Division, less any surplus remaining from the previous quarter.
- 9.17 The General Secretary shall in turn prepare a statement of the Council's income and expenditure and make an appropriate allocation to the Council's operating account.
- 9.18 The General Secretary shall submit all such statements of account to the next ordinary meeting of the Executive Committee.
- 9.19 The Executive Committee shall each year appoint an auditor as required by Section 53 of the Act.
- 9.20 The General Secretary shall, on behalf of the Council, ensure compliance with Sections 53 and 54 of the Act.
- 9.21 Any investment of Council funds shall only be made pursuant to a decision of the Executive Committee and in terms of Section 53(5) of the Act.

10. APPOINTMENT OF CONCILIATORS AND ARBITRATORS

- 10.1 For the purposes of conciliating and arbitrating disputes that are referred to the Council, the Central Council and each Division shall appoint on such conditions as the Executive Committee considers appropriate-

- 10.1.1 a panel of conciliators and arbitrators, consisting of as many persons as the Executive Committee considers appropriate and, in the Executive Committee's discretion, obtain accreditation for members of that panel in terms of the Act; and/or
 - 10.1.2 an agency, accredited in terms of the Act to conciliate and arbitrate disputes in respect of which accreditation is required by the Act; or
 - 10.1.3 an agency to assist in the management and administration of the conciliation or arbitration of disputes that are referred to the Council.
- 10.2 The Central Council or Executive Committee, as the case may be, may remove a member of the panel of conciliators or arbitrators from office-
- 10.2.1 for serious misconduct;
 - 10.2.2 for incapacity; or
 - 10.2.3 if at least one half of the Employers' Organisation(s) representatives and at least one half of the Trade Union(s) Representatives on the Central Council or Division have voted in favour of the removal of that member from office.
- 10.3 The Central Council or Executive Committee may terminate the services of an agency referred to in sub-clauses 10.1.2 and 10.1.3 if at least one half of the Employers' Organisation(s) Representatives and at least one half of the Trade Union(s) Representatives on the Central Council or Division have voted in favour of that termination.
- 10.4 A person may be appointed to both the panel of conciliators and the panel of arbitrators.



11. REFERRAL OF DISPUTES TO THE COUNCIL FOR CONCILIATION OR ARBITRATION

- 11.1 In this clause 'dispute' means a dispute that may be referred to the Council in terms of the Act, or any other legislation that confers jurisdiction on a Bargaining Council and includes disputes about the interpretation or application of this Constitution.
- 11.2 The Central Council shall have jurisdiction to conciliate and, when required, arbitrate the following disputes:
- 11.2.1 any dispute which arises out of negotiations at National Level on matters contemplated in clause 3.1
- 11.2.2 any dispute which arises out of the interpretation or application of any Collective Agreement reached at National Level.
- 11.3 The Division within which the Employer Party to the dispute is located shall have jurisdiction to conciliate and/or arbitrate all disputes other than those referred to in sub-clause 11.2.

12. CONCILIATION

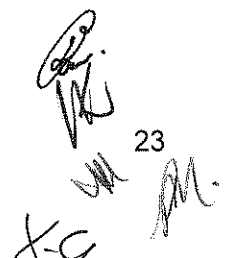
- 12.1 A referral of a dispute to the Council for conciliation must be made in writing, in a form prescribed by the Executive Committee, to the General Secretary if the dispute is one which falls within the jurisdiction of the Central Council or to the Regional Secretary of the appropriate Division if the dispute is one which falls within the jurisdiction of a Division.
- 12.2 The referral must describe the nature of the dispute, specify the relief sought and give details of the name of each Party and the postal and/or e-mail address and/or fax and telephone numbers at which they can be contacted.

- 12.3 A referral of a dispute to the Council for conciliation must be made within the time period prescribed in the Act, or any other legislation that confers jurisdiction upon the Bargaining Council provided that in the case of a dispute about the fairness of a dismissal the dismissed employee must refer the dispute within 30 (thirty) days from the date on which internal procedures are exhausted or within 90 (ninety) days from the date of dismissal if internal procedures have not been exhausted by that time.
- 12.4 A conciliator may condone the late referral of a dispute to conciliation on good cause shown.
- 12.5 The person or Party who refers a dispute to conciliation must satisfy the General Secretary or Regional Secretary of the appropriate Division, whichever is applicable, that a copy of the referral has been served on all other parties to the dispute.
- 12.6 The General Secretary or the Regional Secretary, whichever is applicable, must appoint a member or members of the relevant panel of conciliators to attempt to resolve the dispute through conciliation, provided that if the parties to the dispute have agreed on a conciliator from the panel, the General Secretary or Regional Secretary shall appoint the chosen conciliator.
- 12.7 The appointed conciliator must attempt to resolve the dispute through conciliation within 30 (thirty) days of the date the Council received the referral. The parties may agree to extend the 30 (thirty) day period.
- 12.8 The conciliator must determine a process to attempt to resolve the dispute by consensus.
- 12.9 In the conciliation proceedings a person or Party to the dispute may, unless otherwise agreed by the parties, appear in person or be represented only by-
- 12.9.1 a director or employee of that Party; or
- 12.9.2 any member, office bearer or official of that Party's registered trade union or registered employers' organisation.

- 12.10 If conciliation has failed, or at the end of the 30 (thirty) day or any further period agreed between the parties,
- 12.10.1 the conciliator must issue a certificate stating whether or not the dispute has been resolved;
 - 12.10.2 the conciliator must file the original of that certificate with the Council;
 - 12.10.3 the General Secretary or the Regional Secretary, as the case may be, shall serve a copy of that certificate on each Party to the dispute or the person who represented a Party in the conciliation proceedings; and
- 12.11 The provisions of this clause do not prevent an officer or employee of the Council investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator in terms of this Constitution.

13. ARBITRATION

- 13.1 Any Party to a dispute may refer the dispute to the Council for arbitration if:
- 13.1.1 the Act, any other Act or this constitution provides for the dispute to be referred to the Council for arbitration, or the parties to the dispute have agreed to arbitration under the auspices of the Council and either:
 - 13.1.1.1 the dispute has been referred to a conciliator in terms of clause 11 hereof and a certificate has been issued in terms of sub-clause 12.10; or
 - 13.1.1.2 the parties have agreed to refer the dispute directly to arbitration.

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- 13.2 A referral of a dispute to the Council for arbitration must be made in writing, in a form prescribed by the Executive Committee, to the General Secretary if the dispute is one which falls within the jurisdiction of the Central Council or to the Regional Secretary of the appropriate Division if the dispute is one which falls within the jurisdiction of a Division.
- 13.3 A referral of a dispute to the Council for arbitration must be made within any time period prescribed in the Act, or any other legislation that confers jurisdiction upon a Bargaining Council or a collective agreement.
- 13.4 An arbitrator may condone the late referral of a dispute to arbitration on good cause shown.
- 13.5 The Party who refers a dispute to arbitration must satisfy the General Secretary or Regional Secretary of the appropriate Division, whichever is applicable, that a copy of the referral has been served on all other parties to the dispute.
- 13.6 The General Secretary or the Regional Secretary, whichever is applicable, must appoint a member of the relevant panel of arbitrators to determine the dispute through arbitration; provided that if the parties to the dispute have agreed on an arbitrator from the panel, the General Secretary or the Regional Secretary shall appoint the chosen arbitrator.

14. ARBITRATION PROCEDURE

- 14.1 The following arbitration procedure shall apply to arbitrations conducted under the auspices of the Council.
- 14.2 The arbitrator shall have the following powers-
- 14.2.1 the arbitrator may prescribe any remedy or sanction, which she/he deems appropriate;
- 14.2.2 the arbitrator shall be confined by the limits of compensation and remedy contained in the Act;

- 14.2.3 the arbitrator shall, upon the request of a Party, have the power to make any costs award that she/he deems appropriate; and
- 14.2.4 the arbitrator shall have the power to award costs due to any conciliation or arbitration proceeding being postponed or delayed unnecessarily;
- 14.2.5 the arbitrator shall have the power on good cause shown to condone any failure to comply with any time limits prescribed.
- 14.3 The Council shall determine the time and place of a hearing unless the parties agree otherwise.
- 14.4 Unless agreed otherwise between the parties, the arbitration shall take place as prescribed herein and if not prescribed herein as specified by the arbitrator.
- 14.5 The arbitrator must 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 substantive merits of the dispute with the minimum of legal formalities.
- 14.6 Subject to the discretion of the arbitrator as to the appropriate format of the arbitration proceedings, a Party to the dispute may give evidence, call witnesses, question the witnesses of any other Party, and address arguments to the arbitrator.
- 14.7 If all the parties consent, the arbitrator may suspend the arbitration proceedings and attempt to resolve the dispute through conciliation.
- 14.8 In any arbitration proceedings, a Party to the dispute may appear in person or be represented only by-
- (a) a legal practitioner;
 - (b) a director or employee of the Party; or
 - (c) any member, office-bearer or official of that Party's organization.

- 14.9 Unless ordered otherwise by the arbitrator in terms of this clause 14, the Council shall bear the costs of the arbitrator, the venue and any interpreter.
- 14.10 Only persons having a direct interest in the arbitration shall be entitled to attend the hearing.
- 14.11 The arbitrator may adjourn the hearing upon an application made by a Party to the dispute, on good cause shown, provided that the application is not motivated by delaying tactics, is made timeously and there is no prejudice to any of the parties to the dispute.
- 14.12 An award may be made against a Party in default, provided the Party concerned has been given due notice of the arbitration, but only on proof of the facts necessary to sustain the award.
- 14.13 A mechanical record of the arbitration proceedings shall be made and shall be kept by the Council for a period of one year after completion of the arbitration. The costs of such recording shall be borne by the Council unless the arbitrator otherwise directs. A Party requesting a transcript of a recording shall bear the costs of transcription and copying. A transcription shall not be referred to in arbitration proceedings unless the arbitrator and every Party to the proceedings is given a copy of it by the Party referring to it.
- 14.14 Should a Party require an interpreter, the Bargaining Council shall arrange for the services of an interpreter.
- 14.15 An arbitrator may, on the application of a Party or of his or her own initiative, decide to make an inspection of any place or object she/he regards as relevant to the dispute. The parties shall have the right to be present at the inspection.
- 14.16 The award of the arbitrator shall be final and binding. It shall be rendered promptly by the arbitrator and in any event, unless otherwise agreed by the parties, not later than 14 (fourteen) days after the conclusion of the hearing. The award shall, unless agreed otherwise by the parties, be in writing and be supported by concise written reasons. It shall be delivered to the Council and the parties to the dispute simultaneously by the arbitrator.

- 14.17 The arbitrator must take into account any code of good practice that has been issued by NEDLAC or guidelines published by the Commission in accordance with the provisions of the Act that is relevant to the matter being considered in the arbitration proceedings.
- 14.18 Rules to regulate dispute resolution may be issued from time to time by the Council.
- 14.19 Except to the extent otherwise provided herein, the provisions of the Labour Relations Act, No. 66 of 1995 as amended shall apply.

15. JURISDICTION

- 15.1 If there is a dispute about whether the Council has jurisdiction to process a dispute, the provisions of the Act shall apply.
- 15.2 If there is a dispute of whether the Central Council or a Division has jurisdiction, or which Division has jurisdiction, the dispute shall be referred to the Executive Committee for determination.
- 15.3 If a person or Party to a dispute does not contest the jurisdiction of the Council, the person or Party shall be deemed to have consented to the jurisdiction of the forum to which the dispute was referred.

16. DECISIONS

- 16.1 All decisions of the Central Council, Division or any Committee concerning substantive matters shall require a two-thirds concurrent majority of the Employer Representatives on the one hand and a two-thirds concurrent majority of the Trade Union Representatives to the Council on the other hand.
- 16.2 No decision of the Central Council, Division or any Committee concerning substantive matters shall be binding on the Parties unless-

- 16.2.1 the subject matter of the decision has been reduced to writing before the decision is taken; or
- 16.2.2 if not reduced to writing before the decision is taken, the subject matter of the decision is reduced to writing and adopted by a subsequent decision of the Council.
- 16.3 Decisions of the Central Council, Division or any Committee concerning administrative matters shall require a simple majority of those Representatives present.
- 16.4 The Central Council shall determine from time to time which matters are substantive and which are administrative in terms of the process as is set out in clause 16.1 above.

17. PROCEDURE FOR THE NEGOTIATION OF COLLECTIVE AGREEMENTS

- 17.1 A procedure, forum and level for negotiations shall be determined by the Parties to the Central Council.
- 17.2 Any Party to the Council may introduce proposals for the conclusion of a Collective Agreement on appropriate subject matter and at the appropriate level.
- 17.3 At least two-thirds of the Employer Representatives on the one hand and two-thirds of the Trade Union Representatives on the other hand must vote in favour of a Collective Agreement for it to be binding on the Parties.
- 17.4 In the event of a dispute arising from proposals for the conclusion of a Collective Agreement the Parties shall have the rights prescribed in the Act.

18. APPLICATION OR INTERPRETATION OF COLLECTIVE AGREEMENTS

- 18.1 Any person or Party disputing the interpretation or application of a collective agreement shall:

- 18.1.1 refer the dispute to the Regional Secretary of the Council, if the disputes relates to a collective agreement concluded solely in the Division in which the employer is located;
 - 18.1.2 refer the dispute to the General Secretary of the Council, if the dispute relates to a collective agreement concluded in the Central Council, Executive Committee or Bargaining Committee;
 - 18.1.3 in the event of uncertainty on the part of the referring Party as to whether a dispute should be referred to a Division or the Central Council, or after a dispute has been referred to a Division, a Party to such Division disputes the jurisdiction of such Division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.
- 18.2 Every collective agreement shall contain a procedure for the conciliation or arbitration of disputes relating to the interpretation or application of that collective agreement, and in the absence of a specific procedure, the person or Party referring the dispute, shall follow the procedure in this Constitution.

19. ENFORCEMENT OF COLLECTIVE AGREEMENTS

- 19.1 Despite any other provision in the Act, the Council shall monitor and enforce compliance of collective agreements in terms of Section 33A of the Act.
- 19.2 The General Secretary, in the case of a collective agreement concluded in terms of clause 18.1.2, or a Regional Secretary, in the case of a collective agreement, concluded in terms of clause 18.1.1, may issue a compliance order which will stipulate the alleged breach and shall clearly indicate that such breach be rectified within ten (10) days of receipt of such compliance order.
- 19.3 The Council may refer any unresolved dispute concerning compliance with any provision of a collective agreement to arbitration by an arbitrator appointed by the Council.

- 19.4 If a Party to an arbitration in terms of Section 33A of the Act is not a Party to the Council, and objects to the appointment of an arbitrator in terms of clause 19.3, the Commission, on request by the Council, must appoint an arbitrator.
- 19.5 If an arbitrator is appointed in terms of clause 19.4 above-
- 19.5.1 the Council remains liable for the payment of the arbitrator's fee;
and
- 19.5.2 the arbitration is not conducted under the auspices of the Commission.
- 19.6 An arbitrator conducting an arbitration in terms of Section 33A of the Act has the powers of a commissioner in terms of section 142 of the Act, read with the changes required by the context.
- 19.7 Section 138 of the Act, read with the changes required by the context, applies to any arbitration conducted in terms of Section 33A of the Act.
- 19.8 An arbitrator acting in terms of Section 33A of the Act may determine any dispute concerning the interpretation or application of a collective agreement.
- 19.9 An arbitrator conducting an arbitration in terms of Section 33A of the Act may make an appropriate award, including-
- 19.9.1 ordering any person to pay any amount owing in terms of a collective agreement;
- 19.9.2 imposing a fine for a failure to comply with a collective agreement;
- 19.9.3 charging a Party an arbitration fee;
- 19.9.4 ordering a Party to pay the costs of the arbitration;
- 19.9.5 confirming, varying or setting aside a compliance order issued by the General Secretary, Regional Secretary or his appointed designated agent in accordance with clause 19.2;

19.9.6 any award contemplated in section 139 (9) of the Act.

19.10 Interest on any amount that a person is obliged to pay in terms of this collective agreement accrues from the date on which the amount was due and payable at the rate prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), unless the arbitration award provides otherwise.

19.11 An arbitration award in an arbitration conducted in terms of Section 33A of the Act is final and binding and may be enforced in terms of section 143 of the Act.

19.12 If an employer upon whom a fine has been imposed in terms of this clause files an application to review and set aside an award made in terms of clause 19.9, any obligation to pay a fine is suspended pending the outcome of the application.

20. ALTERNATIVE DISPUTE RESOLUTION PROCESS

Notwithstanding anything contained in this Constitution, the Executive Committee may authorise Parties to follow an alternative dispute resolution procedure, including but not limited to, seeking resolution of a dispute by means of a stated case.

21. ESSENTIAL SERVICES

21.1 If parties to the dispute include employees engaged in an essential service, a dispute in respect of those employees shall be referred to arbitration if—

21.1.1 there is no ratified collective agreement by the Essential Services Committee that provides for the maintenance of a minimum service in that essential service; and

21.1.2 the dispute remains unresolved; and

21.1.3 a Party to the dispute requests that the dispute be resolved through arbitration.

22. EXEMPTIONS

- 22.1 Every collective agreement concluded in the Council shall contain a procedure to deal with exemption applications for both Parties and non-parties.
- 22.2 A collective agreement shall stipulate the criteria that must be applied by the independent body when it considers applications for exemption, and those criteria shall be fair and promote the primary objects of the Act.

23. DISSOLUTION AND WINDING-UP

- 23.1 The Council shall be wound up in the event of –
- 23.1.1 a two-thirds concurrent majority of the Employer Representatives and a two-thirds concurrent majority of the Trade Union Representatives of the Central Council adopting a resolution to that effect and which resolution is confirmed by an order of the Labour Court; or
 - 23.1.2 the Labour Court, on application by any Party or the Registrar of Labour Relations making a determination that the Council is unable to continue to function for any reason that cannot be remedied.
- 23.2 Any Party who wishes to submit a motion for the dissolution of Council shall call on the General Secretary, in writing, to convene a special meeting of the Central Council for that purpose and the General Secretary shall notify each Party in writing at least thirty (30) days prior to convening such a meeting. Notice of the meeting shall be accompanied by the full content of the motion proposing the dissolution of Council.
- 23.3 In the event of the Central Council adopting a resolution to dissolve, the General Secretary shall immediately make application to the Labour Court for an order giving effect to that resolution, provided that notice of the application is given to each Party to the Council.

Council or to make representations concerning an appropriate manner in which Council's interests should be disposed of.

- 23.5 All remaining assets of the Council, after the discharge of its liabilities, shall be divided equally between the Employer Parties and the Trade Union Parties, on the one hand, and in proportion to the percentage referred to in clause 5.4 or Section 59 (5) of the Act.


24. AMENDMENTS TO THE CONSTITUTION

- 24.1 Upon receipt of any proposal for the amendment of the Constitution, the General Secretary shall table such proposals at the following meeting of the Executive Committee.
- 24.2 Such notice shall be sent to each of the Parties and to each Regional Secretary.
- 24.3 An amendment to the Constitution shall require a two-thirds concurrent majority of the Employer on the one hand and the Trade Union Representatives on the other hand in the Central Council.
- 24.4 Any failure to reach agreement on a proposed amendment in the manner envisaged in clause 24.3 shall entitle any Party to declare a dispute, in which event the matter shall be referred to advisory arbitration, whereafter the dispute may be resolved through the exercise of a strike or lock-out in the manner contemplated in Section 64 of the Act.

Thus done and signed by the authorised representatives of the parties on the date and at the place indicated below:

Signed at Johannesburg on this 15 day of May 2007 on behalf of the South African Municipal Workers Union.


PRESIDENT

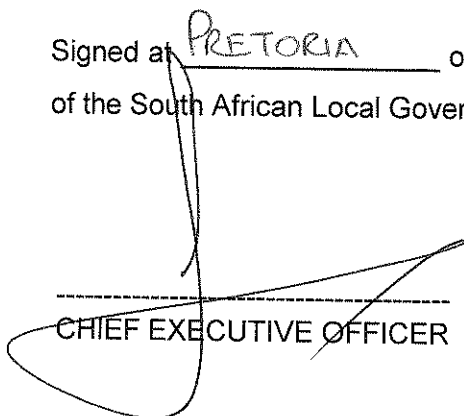

WITNESS

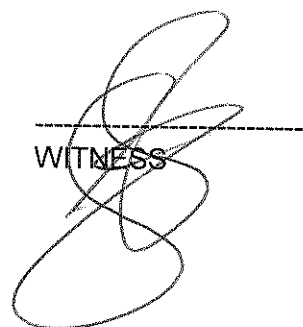
Signed at Pretoria on this 17th day of April 2007 on behalf of the Independent Municipal and Allied Trade Union.


PRESIDENT


WITNESS

Signed at PRETORIA on this 19th day of JUNE 2007 on behalf of the South African Local Government Association.


CHIEF EXECUTIVE OFFICER


WITNESS

SCHEDULE 1

FOUNDING PARTIES

IMATU	Independent Municipal and Allied Trade Union
SALGA	South African Local Government Association
SAMWU	South African Municipal Workers' Union

SCHEDULE 2

DIVISIONS OF THE COUNCIL

Cape Town Metropolitan Division
Eastern Cape Division
eThekweni Metropolitan Division
Free State Division
Gauteng Division
Johannesburg Metropolitan Division
KwaZulu-Natal Division
Limpopo Division
Mpumalanga Division
Northern Cape Division
North-West Division
Tshwane Metropolitan Division
Western Cape Division