

## **1. NAME, LEGAL STATUS, HEAD OFFICE AND SCOPE**

- 1.1 The name of this Bargaining Council is the National Bargaining Council for the Road Freight and Logistics Industry.
- 1.2 The Council shall be a body corporate and shall be in law capable 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.
- 1.3 Unless otherwise provided for in this Constitution, no employer's 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 actions and obligations of the Council.
- 1.4 The Head Office of the Bargaining Council shall be at 31 De Korte Street, Braamfontein, Johannesburg or at such other place as the Council may decide.
- 1.5 The registered scope of the Council will be as set out in its certificate of registration.

## **2. OBJECTS**

The objects of the Council shall be:

- 2.1 To negotiate, conclude and enforce collective substantive agreements on wages, benefits and other conditions of employment. By decision of Council, regional and sectoral differences shall be accommodated where conditions dictate;

- 2.2 To determine by collective agreement any matter which may not be an issue in dispute for the purposes of a strike or a lockout in the workplace;
- 2.3 To prevent and resolve labour disputes;
- 2.4 To perform dispute resolution functions in accordance with the Act;
- 2.5 To develop proposals on policy and legislation that may affect the Council's industry and area and submit those proposals to Nedlac or any other appropriate forum;
- 2.6 To promote and support training and education schemes;
- 2.7 To establish and administer a fund in accordance with the Labour Relations Act, to be used for resolving disputes;
- 2.8 To establish and administer medical aid, sick pay, holiday, unemployment, training or similar schemes or funds for the benefit of any of the parties to the Council or their members in terms of Section 28(1)(g) of the LRA;
- 2.9 To determine the rates of contribution and enforcement of the provisions of the Pension and Provident Funds where it relates to the Industry in terms of Council's Main Agreement;
- 2.10 To confer on workplace forums additional matters for consultations;
- 2.11 To consider and deal with any other matter that affects the interests of the parties;

- 2.12 To strive to promote good relationships and endeavor to maintain industrial peace between employers and employees;
- 2.13 To administer agreements of the Council;
- 2.14 To ensure compliance by all employers (including non-parties) and employees of any agreement negotiated by the parties;
- 2.15 To consider and advise or make agreed and/or separate representations on any legislation affecting the industry;
- 2.16 To ensure the promotion of literacy and training programs and development for Industry employees through the Transport Education and Training Authority (TETA);
- 2.17 To negotiate and / or consult with respect to industry matters of mutual concern;
- 2.18 To establish regional structures of the Council;
- 2.19 To secure the complete organisation of employees and employers;
- 2.20 To establish policies and guidelines that may be deemed necessary for the performance of the Council's discretionary functions.

### **3. EXCLUSIONS**

- 3.1 The Bargaining Council shall not regulate or conclude agreements on:
  - 3.1.1 Non substantive conditions of work;

3.1.2 Operational procedures;

3.1.3 Bonus or incentive schemes that are directly linked to profit or productivity or both provided that these schemes are negotiated with employee representatives or representative trade unions and that these schemes will not detract from agreements reached in terms of Clause 2.1 above.

#### **4. MANAGEMENT DECISION-MAKING**

4.1 The functioning of the Council shall not detract from the right of management of companies bound by the agreements of the Council to decide on:

4.1.1 the establishment and liquidation of enterprises;

4.1.2 the primary objectives, activities, resources and policy of the organisation;

4.1.3 the products of the organisation as well as the operation method, markets and marketing strategy;

4.1.4 the budget and allocation of capital and all other resources;

4.1.5 the total organisation and job structure, the number of employees, as well as the appointment, placement and transfer of employees;

4.1.6 the nature and allocation of work and the issuing of instructions; subject to consultation and / or negotiations where appropriate.

## **5. PARTIES**

- 5.1 The parties to the Council shall be the registered employers' organisations and the registered trade unions who comply with the admission requirements of Clause 6 and whose members are engaged or employed within the Council's registered scope.
- 5.2 The names of the parties to the Council are listed in Schedule 2 as amended from time to time.

## **6. ADMISSION OF MEMBERS**

- 6.1 Any registered trade union or registered employer organisation whose members are engaged or employed within the Council's registered scope may apply in writing to the National Secretary of the Council for admission as a party.
- 6.2 An application for admission as a party to the Council must be accompanied by:
- 6.2.1 a certified copy of the applicant's registered Constitution;
  - 6.2.2 a certified copy of the applicant's certificate of registration;
  - 6.2.3 details of the applicant's membership within the registered scope of the Council, including:
    - 6.2.3.1 in the case of a trade union:

6.2.3.1.1 proof of membership in good standing of at least 5000 members employed in categories defined in the Council's Collective Agreements;  
or

6.2.3.1.2 with at least 2500 members in good standing the said union will become a provisional party of Council without full party voting rights and without representation on Council or Exco – committees. Representatives of such parties may be appointed as members of the Council's sub-committees, task teams or working groups. The union will be granted 12 months to reach the 5000 member requirement where after it will become a party to the Council with all the rights and obligations provided for in this Constitution. Should the union fail to reach the 5000 member requirement within the 12 month period, its status as provisional party will cease and the union may not apply to become a party in terms of the sub clause (6.2.3.1.2) for a period of 12 months from the date of termination (Refer to clause 6.13). During the 12 months period of provisional membership the union members will be exempted from the agency shop fees in terms of the provisions of the Agency Shop Collective Agreement.

The 12 month period stipulated in the paragraph above will commence from a date of the Annual General Meeting irrespective of the date in which provisional party was admitted to Council.

6.2.3.2 in the case of an employers' organisation:

6.2.3.2.1 the number of employees that its members employ within the Council's registered scope and

6.2.3.2.2 proof of membership in good standing by employers engaged in the industry who employ at least 5000 employees in categories defined in the Council's Collective Agreements.

6.2.4 a statement of reasons as to why the applicant ought to be admitted as a party to the Council;

6.2.5 any other relevant information which the applicant wishes to submit in support of its application; and

6.2.6 confirmation from the Registrar of Labour Relations that the applicant has complied with Sections 98, 99, 100 of the Labour Relations Act, 1995.

6.3 Within ninety (90) days of receiving an application for admission, the Council must decide whether to grant or refuse the application and must advise the applicant within thirty (30) days of its decision in writing.

6.4 Union representation shall be proportional according to the following formula:

$$S = \frac{M}{T} \times \frac{12}{1}$$

where

S = Number of representatives (Quotient only)

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M = Number of members of the union in the Industry

T = Total number of members of all party union in the Industry

6.4.1 Each trade union will have representatives equal to S in the formula.

6.5 The representation of employer organisations shall be proportional according to the following formula:

$$S = \frac{M}{T} \times \text{Total number of trade union representatives.}$$

where

S = Number of representatives (decimals of 0.5 and less to be disregarded in respect of the less representative employers' organisation).

M = Number of employees employed by members of the specific employers' organisation.

T = Total number of employees employed by members of all party employers' organisations.

6.5.1 Each employers' organisation will have representatives equal to S in the formula above.

6.6 The number of seats allocated to each of the employer and employee sides shall always be equal.

6.7 For the purpose of establishing the proportional representation of each party in terms of clauses 6.4 and 6.5 above, the parties to the Council shall, at least by the 25<sup>th</sup> of May each year provide Council with a schedule with the following information in respect of members in good standing as at the last day of April each year.



6.7.1 Trade Unions

- (i) The surnames, initials, ID numbers and job categories, computer numbers, weekly wages and branch address of each union member as well as particulars of their respective employers which should include the employers levy number with the Council.

6.7.2 Organisations

- (i) The names and levy numbers of members falling within the registered scope of Council's Main Collective Agreement.

6.7.3 The National Secretary of the Council shall, from the information received by the parties in 6.7.1 and 6.7.2 above, for record purposes prepare a schedule of members for each party as at the last day of April each year.

6.8 Dual membership, if applicable will be dealt with as follows:

6.8.1 In instances where employees enjoy membership of two (2) or more party trade unions, the following shall apply in establishing proportional representativeness:

6.8.1.1 When an employee serves notice in terms of a party trade unions' constitution and has joined another party trade union, the membership to the newly joined party trade union will be taken into account when establishing proportional representativeness.

6.8.1.2 When an employee serves notice in terms of a party trade unions' constitution and has not joined another party trade union, the

membership to the party trade union he resigned from will not be taken into account when establishing proportional representativeness.

6.8.1.3 When an employee belongs to two (2) or more party trade unions simultaneously, the membership to all party trade unions he belongs to will be taken into account when establishing proportional representativeness.

6.8.2 In instances where employers enjoy membership of two (2) or more party employers' organizations, the following shall apply in establishing proportional representativity:

6.8.2.1 When an employer serves notice in terms of a party employers' organizations constitution and has joined another party employers' organization, the membership to the newly joined party employers' organization will be taken into account when establishing proportional representativeness.

6.8.2.2 When an employer serves notice in terms of a party employers' organization constitution and has not joined another party employer's organization, the membership to the party employers' organization he resigned from will not be taken into account when establishing proportional representativeness.

6.8.2.3 When an employer belongs to two (2) or more party employers' organizations simultaneously, the membership to all party employers' organizations he belongs to will be taken into account when establishing proportional representativeness.

6.8.3 The provisions of sub-clauses of 6.8.1 and 6.8.2 above are subject to the following definition of membership in good standing:

“Membership in good standing” shall not only include members who have paid subscriptions to their respective party trade union/employers’ organization, but also include employee/employers whom have been accepted for membership to a party trade union/employers’ organization and in respect of who the party trade union/employers’ organization concerned has confirmed to Council that the stop-order for subscriptions has been implemented for that employee/employer.

- 6.9 The National Secretary will within 14 days of compiling the membership statistics of parties in terms of sub-clause 6.7.3, advise the parties in writing of the membership.
- 6.10 The objection will be investigated by the National Secretary or a delegated official, who shall submit a written report to the Executive Committee for consideration and decision at a meeting of the committee of which the objecting union will be invited to attend and make any further submissions.
- 6.11 The decision of the Council will be final and binding.
- 6.12 In the event of the withdrawal of any party, the seat/s allocated to that Party will be re-allocated amongst the remaining unions or employer parties by utilising the formula contained in clause 6.4 or 6.5 and the membership statistics specified in Clause 6.7.
- 6.13 In the event of a party’s representivity falling below the required membership stipulated in Clause 6.2 above, such party shall be regarded as Provisional Party with the rights and obligations set out in Clause 6.2.3.1.2. In such instance such party will be given 12 months to achieve the required membership failing which, it will cease to be a party to Council.

6.14 Where two or more registered trade unions or two or more registered employer organisations acting jointly comply with the provisions of Clauses 6.1 and 6.2 above, Council may admit such unions and employer organisations as Associate Parties to Council provided that:

16.4.1 The Associate Union Parties acting jointly, shall be entitled to not more than one seat in Council.

16.14.2 The Associate Employer Organisation Parties acting jointly, shall be entitled to not more than one seat in Council.

6.15 Any registered Trade Union or registered employer organization may act jointly with a Trade Union or Employer Organisation who are already party to the Council provided that:

6.15.1 Such Provisional Trade Union has at least 2500 members in good standing and fall within the registered scope of Council and such Provisional employer's organization has membership in good standing by employers engaged in the industry who employ at least 2500 employees who fall within the registered scope of Council.

6.15.2 Such Provisional Trade Union or Provisional Employer organization will become a provisional party of the Council without full voting rights and without representation on Council or Exco's Committees. Representatives of such parties may be appointed as members of the Council's sub-committees, task team or working groups.

6.15.3 For the purpose of adoption, extension and negotiation of the collective agreement, all Parties to Council will be invited to attend and to vote in a special Council meeting in accordance to section 32(1) of the LRA.

6.16 Associate and Provisional Parties shall at all times comply with the provisions of this Constitution as well as directives, policies, procedures and agreements of Council.

## **7. WITHDRAWAL**

7.1 Any party may withdraw from the Council if:

7.1.1 Any other party to the Council breaches any provision of this Constitution, having continuously failed to rectify such breach for a period of at least three (3) months after having been informed of such breach in writing;

7.1.2 Any agreement submitted to the Minister for publication or extension is not published or extended by reason of the Minister having exercised his statutory powers, functions or discretion in terms of the Act. Provided that no party shall withdraw before representations have been made to the Minister in order to reconsider his/her decision. No provision or natural or necessary consequence of the provisions of this clause shall detract from the powers, functions or discretion of the Minister in terms of the Act;

7.1.3 On good cause shown to the Council and the Council fails to resolve an issue that gave rise to such intention to withdraw.

## **8. APPOINTMENT OF REPRESENTATIVES AND ALTERNATES TO COUNCIL, SECTORAL CHAMBERS AND COMMITTEES**

8.1 Subject to the provisions of Clauses 6.4 and 6.5 above, the Council shall consist of an agreed number of representatives for each of the employer organisations and trade unions.

- 8.2 Representatives shall be appointed by the employer and the trade union parties in a manner provided for in their respective constitutions, however, no person or persons who are service providers to the Industry may be appointed as representatives by the respective parties to sit on Council and or Exco committees. Such person or persons may be appointed as members of the Council's subcommittees, task teams or working groups. Appointments must be advised in writing to the National Secretary within 7 days before the Annual General Meeting.
- 8.3 Representatives shall hold office until the Annual General Meeting following their appointments or until they cease to be representatives of the parties they represent, whichever occurs first.
- 8.4 Each party shall appoint an equal number of party specific alternates, one (1) alternative for each representative. Any of the alternatives may attend in the absence of the party specific representative.
- 8.5 Each party may at any time withdraw a representative or alternate on the Council by giving at least seven (7) days notice in writing to the National Secretary. The party shall within thirty (30) days following the withdrawal appoint a replacement as provided in 8.2 or 8.4.
- 8.6 A representative or an alternate may resign by giving at least seven (7) days notice in writing to the National Secretary and to the party which appointed him or her. The affected party shall, within thirty (30) days following the resignation appoint a replacement as provided in 8.2 or 8.4.
- 8.7 If a seat on the Council becomes vacant through the withdrawal, resignation, death or disqualification of a representative or an alternate, the vacancy shall be filled by the affected party within thirty (30) days.

- 8.8 Any representative or alternate appointed to fill a vacancy as described in 8.7 shall hold office for the unexpired portion of his or her predecessor's period of office and subject to the same conditions as such predecessor.
- 8.9 A representative may be removed from office by Council for contravening the code of good conduct or incapacity.
- 8.10 The provisions of 8.1 to 8.9 will apply *mutatis mutandis* to the appointment of representatives and alternates to committees.

## **9. ELECTION OF CHAIRPERSON AND DEPUTY CHAIRPERSON**

- 9.1 The serving Chairperson of the Council at the time of the Annual General Meeting will be the Chairperson of the meeting and preside over the election of the next Chairperson.
- 9.2 The serving Chairperson shall call for nominations for the office of the Chairperson.
- 9.3 A person shall be deemed to be nominated if proposed by one and seconded by another representative in the Council.
- 9.4 The election of the Chairperson shall alternate between the employer and trade union parties on an annual basis.
- 9.4.1 If only one candidate is nominated and seconded, such a candidate will be deemed to have been elected the new Chairperson unopposed, and must be declared by the serving Chairperson at the meeting to have been so elected.

- 9.4.2 If two or more candidates are nominated and seconded, the serving Chairperson must conduct a vote by ballot in terms of Clause 11.8, and must declare the candidate in whose favour the majority of the votes have been cast, to have been elected the new Chairperson.
- 9.4.3 Upon having been declared elected, the new Chairperson shall preside over the meeting and shall call for nominations for the office of Deputy Chairperson.
- 9.4.4 If the new Chairperson is from an employer party, only a person from union party may be nominated for Deputy Chairperson and vice-versa.
- 9.4.5 The provisions of Clauses 9.2, 9.3 and 9.5, read with the changes required by the context, apply to the election of the Deputy Chairperson.
- 9.5 The Chairperson and the Deputy Chairperson shall hold office until the Annual General Meeting following their election or until the expiration of the period for which they are appointed as representatives, whichever is the shorter.
- 9.6 The Chairperson shall -
- 9.6.1 preside and enforce order at all meetings at which he is present;
- 9.6.2 sign minutes of meeting after confirmation;
- 9.6.3 in addition, perform all other duties normally or usually performed by a person in such position.
- 9.7 The Deputy-Chairperson shall in the Chairperson's absence exercise the powers and perform the duties of the Chairperson.



- 9.8 If both the Chairperson and the Deputy-Chairperson are unable to perform their duties, the Council shall, by show of hands following a seconded motion, elect an acting Chairperson from amongst those present. The acting Chairperson shall exercise the powers and perform the duties of the Chairperson.
- 9.9 The Chairperson and Deputy-Chairperson of the Council may be removed from office by the Council for neglect of duty, serious misconduct in relation to the affairs of the Council, incapacity, or operational reasons.

## **10. OFFICERS**

### **NATIONAL SECRETARY**

- 10.1 The Council shall appoint a natural person as National Secretary of the Council, who shall:
- 10.1.1 keep books of accounts as the Council shall direct;
  - 10.1.2 conduct correspondence of the Council, keeping originals of letters received and copies of those dispatched and at each meeting of the Council give account of correspondence which has taken place since the last meeting;
  - 10.1.3 attend all national meetings;

- 10.1.4 record minutes of the proceedings;
  - 10.1.5 bank all monies received on behalf of the Council during banking hours on the day of receipt;
  - 10.1.6 submit statements of the financial position of the Council not less than once every quarter;
  - 10.1.7 countersign cheques and/or authorize electronic fund transfer (EFT) payments on the Council's banking account and perform such additional duties as the Council may direct;
  - 10.1.8 perform all functions relating to the preparation of agreements for promulgation;
  - 10.1.9 monitor the activities in regions and reporting on same to the National Council;
  - 10.1.10 All appointments shall be subject to the delegation and limits of authority as agreed to by Council from time to time.
- 10.2 The appointment of a National Secretary shall be by consensus or by decision of the majority of representatives from both parties at a Council meeting at which the appointment is made.
- 10.3 The National Secretary, or any other official delegated by the Council, may appoint agents and other officers as may be necessary subject to the delegation and limits of authority.

- 10.4 The National Secretary of the Council may be removed from office by the Council for neglect of duty, misconduct in relation to the affairs of the Council, incapacity, or operational reasons, in accordance with a fair procedure as stipulated in the Labour Relations Act.

## **AGENTS**

- 10.5 The National Secretary or any other official delegated by Council may appoint agents to:

10.5.1 assist in giving effect to the terms of any agreement which may be arrived at by the parties;

10.5.2 inspect records of wages paid, time worked and payment made for overtime and any other records as may be specified in any agreement arrived at by the parties, to ascertain whether the terms of the Agreement are being observed.

- 10.6 Conditions of Service and benefits affecting all paid officials and staff shall be fixed and reviewed in terms of the delegation and limits of authority.

## **11. MEETINGS OF THE COUNCIL**

- 11.1 The Council shall meet at least three (3) times per annum at a place, date and time determined by the Chairperson; and

- 11.2 hold an Annual General Meeting within six (6) months of the close of the financial year of Council.

11.3 A special meeting of Council, to dispose of urgent business, may be called in accordance with the following procedures:

11.3.1 Resolution of Council:

11.3.2 Written request of any party to Council;

11.3.2.1 Stating the purpose of this special meeting;

11.3.2.2 Supported by not less than 25% of all representatives to Council.

11.3.3. At the request of the Chairperson, if the Chairperson considers a special meeting to be:

11.3.3.1. necessary in the best interests of the Council;

11.3.3.2 the business is considered too urgent to await for the next ordinary meeting of Council or the appropriate committee.

11.3.3.3 must be convened by the National Secretary within seven (7) days of receiving a written instruction from the Chairperson for such meeting, stating the purpose of the special meeting.

#### 11.4 **NOTICES**

11.4.1 Notice of meetings of the Council, which must show the business to be transacted, shall be given to representatives by the National Secretary in writing at least seven (7) days before the date of the meeting. When special meetings are called, the Chairperson may authorise the giving of

shorter notice of not less than twenty four (24) hours. Notice shall be deemed as properly served if provided by:

- 11.4.1.1 effecting personal service of the notice on a representative or handing a representative the notice or a true copy thereof;
- 11.4.1.2 the mailing of a registered letter containing the notice to a representative; or
- 11.4.1.3 telefaxing the notice to the representative, provided that a telefacsimile report printout reflecting the date, time and receiving telefax number of the addressee or other similar verifiable evidence of transmission, shows that the notice has been transmitted to the addressee; or
- 11.4.1.4 by means of e-mail.

## 11.5 **QUORUM**

The quorum for meetings of the Council and committees shall be 50% + 1 of the representatives of the employer parties and 50% + 1 of the representatives of the employee parties; for the purposes of determining whether a quorum is present, alternates of representatives who are absent shall be regarded as representatives. If within thirty (30) minutes of the time fixed for a meeting a quorum is not present, the meeting shall adjourn to the same day in the week following, or if that day is not a business day, to the next business day, at the same time and place. At the adjourned meeting the representatives or alternates present shall form a quorum.

## 11.6 **ALTERNATES**

Alternates shall be entitled to attend meetings of the Council but shall not take part in debate, nor vote, unless their principals are absent.

## 11.7 **POSTAL VOTES**

If between meetings of the Council, any question arises which in the opinion of the Chairperson and Deputy Chairperson is of extreme urgency and can be decided by a plain “yes” or “no” or by making a mark indicating a choice of one of a number of courses a vote of the representative on the Council may be taken by post or telefax or email. The procedure relating to a postal vote shall be as follows:

11.7.1 The National Secretary shall prepare a statement of the issue or issues upon which the vote is desired, and each representative shall be circularised with such statement, with a request that he or she shall record his or her vote on the subject matter;

11.7.2 A representative shall submit his or her vote to the National Secretary within such period as may be deemed sufficient and reasonable by the Chairperson and Deputy Chairperson and that period shall be specified in the notice to the representative.

11.7.3 After the lapse of the period stated in the aforesaid notice, the National Secretary shall consider and count the number of votes of representatives in favour of and against the proposal submitted and shall notify the Chairperson and Deputy Chairperson of the particulars of the voting so received.

11.7.4 Should not less than the majority of the votes received from the employers’ representatives, and not less than the majority of the votes received from employees’ representatives be in favour of the resolutions or proposal, the same shall be deemed to be carried, and unless such majority is in favour of the proposal the same shall be deemed to be negative. No postal vote

shall be valid unless 50% + 1 or more votes are recorded from the employers and employees respectively.

## 11.8 VOTES

11.8.1 A resolution shall only be passed at a meeting by consensus or, in the absence of consensus, if both a majority of the employer representatives and a majority of the employee representatives, which two majorities shall be tallied separately are in favour of the resolution.

11.8.2 If either the employer or the employee representatives do not pass a resolution by a majority, the resolution will fail. A simple majority of the representatives present at a meeting is not sufficient to carry the vote.

11.8.3 Voting shall be by show of hands unless a secret ballot is requested by any of the parties.

## 11.9 VOTING

If any representative is absent from any meeting and an alternate is not present, such representative may give proxy rights in writing to another representative from the same party or side. Proxies should be submitted in writing and should clearly indicate the will of the party concerned.

## 11.10 VOTING RIGHTS

No party on the Council which has refused to become a party to any agreement of the Council shall be entitled to vote or to speak on any matter in any way connected with or arising from such agreement.

#### **11.11 MINUTES**

At any meeting of the Council the minutes of the preceeding meeting shall, unless they have previously been circulated, be read by the National Secretary and, after confirmation, signed by the presiding Chairperson.

#### **11.12 MOTIONS**

If any party requests any motion it shall be submitted in writing and shall be read by the presiding Chairperson. No motion shall be considered unless seconded.

#### **11.13 MATTERS NOT PROVIDED FOR**

Points of procedure on which this Constitution is silent shall be decided in terms of the voting procedure contained in 11.8 above.

#### **11.14 SMALL AND MEDIUM ENTERPRISES**

At least 20% of the representatives referred to in sub-clause 6.5 must consist of small and medium enterprises representatives. For the purposes hereof small and medium enterprises shall mean employers who employ less than 20 bargaining unit employees.

#### **11.15 ANNUAL GENERAL MEETING**

At the Annual General Meeting the Council must –



- 11.15.1 elect the Chairperson and the Deputy Chairperson of the Council.
- 11.15.2 elect the additional members and their alternates of the executive committee;
- 11.15.3 appoint the members of the panel of conciliators and arbitrators for the purpose of conciliating and arbitrating disputes, subject to the provisions of Section 127(4)(c) of the Act;
- 11.15.4 appoint the members of the Exemptions Body to consider applications for exemption from the provisions of any collective agreement that may be concluded in the Council;
- 11.15.5 appoint the members of the Independent Exemptions Appeal Body to consider and dispose of appeals against decisions of the Exemption Body.
- 11.15.6 consider the annual financial statements of the Council and the auditor's report on those statements;
- 11.15.7 appoint an auditor to perform the audit of Council and its Funds, for the next year; and
- 11.15.8 appoint members of Council's sub-committees.

## **12. EXPENSES OF THE COUNCIL**

- 12.1 The expenses of the Council shall be met from a fund which shall be raised by levies on the parties, and any other income derived from administrative costs and/or grants received;

12.2 All monies received shall be deposited to the credit of the Council at its bank. Surplus funds which are for the time being not required for the purposes referred to in 12.3 may be invested in:

12.2.1 internal registered stock within the meaning of The Public Finance Management Act 1 of 1999;

12.2.2 savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;

12.2.3 a registered unit trust; or

12.2.4 any other investment approved by the Registrar.

12.3 The funds shall be applied to the payment of expenses arising from the administration of the affairs of the Council who shall have the power to purchase or otherwise acquire, hold, sell or alienate immovable property on its own behalf or that of any other scheme or fund which Council may establish in the future.

12.4 All payments from the funds of the Council shall be approved by the National Secretary or a person delegated by the National Secretary, provided that:

12.4.1 all cheques and/or electronic fund transfers (EFT's) are countersigned by any two officials of Council who are approved by Council to perform such function; or

12.4.2 the EXCO may, subject to the provisions of this Constitution, as well as Council's policies and the delegation and limits of authority, approve any transaction required to give effect to Council's business.

- 12.5 Funds required for a petty cash account, shall be provided by the drawing of a cheque signed in the manner specified in 12.4.1 of this section or any other means as provided for in the relevant policy.
- 12.6 Quarterly statements showing the income and expenditure and the financial position of the Council and its Funds shall be submitted to the Committee tasked with controlling the financial affairs of Council, by the National Secretary.
- 12.7 The National Secretary shall, within six (6) months after the end of each financial year at the Annual General Meeting, present audited financial statements to the Council, showing monies received and expended in the course of Council's business;
- 12.8 These statements shall be countersigned by the Chairperson and National Secretary after acceptance by the Committee.
- 12.9 Following the Annual General Meeting of Council, copies of audited statements and of the auditors report thereon shall be available for inspection at the office of the Council to members or representatives of the parties who shall be entitled to make copies thereof or to take extracts therefrom.
- 12.10 Certified copies of both statements and of the auditor's report shall be transmitted to the Registrar of Labour Relations within four (4) months after the close of the period covered by the statements.

### **13. ESTABLISHMENT OF SECTORAL CHAMBERS**

#### **13.1 SECTORAL CHAMBERS**

13.1.1 The Council shall have one sectoral chamber in respect of each of the sectors described in Schedule 2:

13.1.1.1 Furniture Removal Chamber in respect of matters concerning road freight employees and employers in the furniture transportation sector;

13.1.1.2 General Freight & Logistics Chamber in respect of matters concerning road freight employees and employers in the logistics sector;

13.1.1.3 Cash-in-Transit Chamber in respect of matters concerning road freight employees and employers in the cash-in-transit sector known as CIT;

13.1.1.4 Courier Sector Chamber in respect of matters concerning road freight and logistics employees and employers in the courier sector; and

13.1.2 The Council may create additional or reduce the number of sectoral chambers.

13.1.3 A sectoral chamber may exercise and perform any power, function and duty that is conferred on it in terms of clause 13.2.1 below of this constitution or that is delegated to it by the Council.

13.1.4 Sectoral Chambers shall deal inter-alia with any matters delegated to them by Council regarding conditions of employment that apply to the employers and employees within the jurisdiction of the relevant Chamber.

## 13.2 FUNCTIONS OF THE SECTORAL CHAMBERS

13.2.1 Chambers will have autonomy with regard to the functioning of the Chambers.

13.2.2 Subject to Clause 20.2 below a collective agreement, decision or settlement of a Chamber shall be regarded as a collective agreement, decision or settlement of the Council in relation to the scope of that Chamber.

13.2.3 The provisions of Clauses 11.4 to 11.13 above, read with the necessary changes will apply to the procedures, meetings and voting rights of a Chamber.

## 13.3 COMPOSITION OF SECTORAL CHAMBERS

13.3.1 A Sectoral Chamber shall consist of an equal number of representatives from the employer and trade union parties and shall be elected in the manner provided for in Clause 6 having regard to representivity within scope of the Chamber.

13.3.2 All the parties to the Council shall be represented in Sectoral Chambers, provided that the majority trade union or employer organization in that Chamber has an additional representative, subject to the provisions of 13.3.1 above.

#### 13.4 **DISPUTE RESOLUTION**

Whenever the parties to a Sectoral Chamber fail to agree on any matter, the matter shall be referred back to Council which may invoke the Dispute Resolution provisions, as per the constitution, in order to resolve the dispute.

#### 13.5 **MEETINGS**

Sectoral Chambers shall meet in between the scheduled negotiations sessions and report back to the plenary sessions.

### 14. **ESTABLISHMENT OF REGIONAL STAKEHOLDER FORUMS**

14.1 The Council's area of jurisdiction may be divided into regions.

14.2 The Council may decide on regional demarcations in line with the practical needs of the industry based on the number of employees, the number of employers and geographical locations.

14.3 The Council may establish regional stakeholder forums in some regions to perform special duties or functions delegated to them by the Council. These duties shall exclude the contents of 14.1 above.

14.4 A regional stakeholder forum shall consist of an equal number of representatives from the employer and employee parties, made up on the basis of:

14.4.1 at least two (2) representatives from each trade union and the employers organisation;

14.4.2 each trade union which is a party to Council and has members in a region, shall be entitled to appoint one representative to the Stakeholder Forum.

14.5 Each Stakeholder Forum shall be chaired by the Regional Manager of the Council.

## **15. MEETINGS OF STAKEHOLDER FORUMS**

15.1 Stakeholder Forum meetings shall be held at intervals stipulated by Council and on a date, time and place as may, in the opinion of its Chairperson, be convenient or necessary but at least once every quarter.

15.2 Meetings shall be called in terms of Clause 11 *mutatis mutandis*.

15.3 In cases of emergency the Chairperson of a Stakeholder Forum may, in his or her discretion, authorise shorter notice of not less than twenty four (24) hours for the holding of a meeting.

## **16. REGIONAL OFFICERS**

16.1 The National Secretary may appoint a Regional Secretary/Manager.

16.2 The Regional Manager will be responsible for all matters delegated to the regions by the National Secretary or in terms of the delegation and limits of authority.

## **17. SPECIAL COMMITTEES**

17.1 The Council may appoint committees consisting of an equal number of representatives of employers and employees to perform any function, including investigating and reporting on any matter referred to them by Council. Insofar as

investigations relate to issues affecting the interests of employers and employees, such committees shall carry out its duties in full consultation with the affected parties. Employers and union parties shall each be entitled to jointly appoint six (6) representatives on every committee, unless otherwise determined by Council and provided that:

17.1.1 the respective individual employer and union parties will be entitled to appoint at least one representative per party and the remainder of the required delegates shall be appointed in proportion to the number of seats that the respective parties are entitled to on Council.

17.2 Where a trade union or employers organisation is represented on a committee by one or more representatives, such representative/s shall collectively only be entitled to votes equal to the number of seats held by the trade union or employer's organisation on Council. Committee members may be –

17.2.1 employers and employees in the Industry; or

17.2.2 office bearers or officials of the parties to the Council; and

17.2.3 persons with expert or special knowledge, who may participate in the business of the committee but have no vote.

17.3 The Provisions of the Constitution relating to the calling and conduct of meetings of the Council shall *mutatis mutandis* apply to the calling and conduct of meetings of committees.

17.4 The decision of all regional committees and special committees shall be subject to ratification by the national Council. The Council will have the right to delegate such ratification powers to particular national committees and/or to the Chairperson and Deputy Chairperson of Council where appropriate.



## **18. EXECUTIVE COMMITTEE (EXCO)**

18.1 The Council will appoint an Executive Committee that consist of the Chairperson and the Deputy Chairperson of the Council, who are members by virtue of their respective offices; five (5) additional members of employer parties and five (5) additional members of employee parties elected in accordance with clause 6 in its entirety and the National Secretary of the Council or his/her nominee.

18.2 Subject to the directions and control of the Council, the Executive Committee may exercise and perform the powers, functions and duties of the Council relating to the supervision and control of the everyday management and administration of the Council. In addition, the Executive Committee may –

18.2.1 investigate and report to the Council on any matter connected with the industry in respect of which the Council is registered;

18.2.2 do anything necessary to give effect to decisions of the Council;

18.2.3 monitor and enforce collective agreements concluded in the Council;

18.2.4 exercise and perform any power, function and duty that is conferred or imposed on the Executive Committee by or in terms of this constitution or that is delegated by the Council to the Executive Committee. However, the Council may not delegate to the Executive Committee the powers, functions and duties contemplated in clauses 23 and 24 and the power of the Council to delegate; and

18.2.5 appoint an ad-hoc committee to perform functions delegated by the Executive Committee.

- 18.3 The additional members and their alternates elected at the Annual General Meeting must be representatives on the Council, and half of the additional members, as well as their alternates, must be appointed by the employer representatives in the Council, whilst the other half of the additional members, as well as their alternates, must be appointed by the employee representatives in the Council.
- 18.4 An additional member of the Executive Committee will hold office until the next Annual General Meeting following their appointment and will be eligible for re-election at the end of that term.
- 18.5 An additional member of the Executive Committee whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the executive committee until that member's successor assumes office.
- 18.6 An additional member of the Executive Committee –
- 18.6.1 may resign from the committee at any time after having given at least twenty one (21) days' notice in writing to the National Secretary;
- 18.6.2 must vacate office immediately –
- 18.6.2.1 in the case of resignation, when the resignation takes effect; or
- 18.6.2.2 upon ceasing to be a representative of the Council.
- 18.7 If the seat of an additional member of the Executive Committee becomes vacant, the Council must fill the vacancy from the number of candidates nominated for that purpose by –

- 18.7.1 the employer representatives in the Council, if that seat had been held by an additional member representing the employers; or
- 18.7.2 the employee representatives in the Council, if that seat had been held by an additional member representing the employees.
- 18.8 A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.
- 18.9 The Executive Committee must hold an ordinary meeting at least four (4) times per annum.
- 18.10 A special meeting of the Executive Committee –
  - 18.10.1 may be called at any time by the Chairperson with a view to disposing of urgent business; and
  - 18.10.2 must be called by the Chairperson within fourteen (14) days of receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than two (2) members of the Executive Committee.
- 18.11 The National Secretary must prepare a written notice of every Executive Committee meeting showing the date, time and venue of the meeting and the business to be transacted, and must send the notice to each member of the committee in the manner specified in sub-clause 13.4, at least seven (7) days before the date of the meeting. However, the Chairperson may authorise shorter notice for a special meeting.

18.12 At least half of the members of the Executive Committee representing employers' and half of the members of that committee representing employees form a quorum and must be present before a meeting may begin or continue.

18.13 Each member of the Executive Committee has one vote on any matter before the committee for its decision.

18.14 In any committee, all matters forming the subject of motions shall be decided by consensus, failing which by the votes of a majority of employer representatives and majority of employee representatives present in a quorate meeting and who are entitled to vote and voting shall be by show of hands.

## **19. DISPUTES**

19.1 All disputes shall be referred to the Council.

19.2 Depending on the nature of the disputes, they will be dealt with as follows:

19.2.1 Disputes arising from a deadlock between the Parties to the Council:

19.2.1.1 The aggrieved party will refer the dispute in writing to the Council within thirty (30) days of the dispute arising.

19.2.1.2 The National Secretary will convene at least two (2) special meetings of Council (as decided by the parties) to attempt to resolve the dispute.

19.2.1.3 If the dispute is not resolved at the special meetings, the parties may agree whether further meeting/s of the Council

should be convened to resolve the dispute, or whether the dispute should be referred to voluntary mediation or arbitration.

19.2.1.3 If no settlement is reached as contemplated in 19.2.1.3, any party to the dispute shall be entitled to invoke the procedures contained in the Labour Relations Act.

19.2.2 Disputes between the parties to the Council about the interpretation or application of this Constitution:

19.2.2.1 Any party may request the National Secretary to arrange for the appointment of a mutually acceptable arbitrator to determine the dispute through arbitration.

19.2.3 Any other dispute referred to Council in terms of Section 30(1) (j) of the Act shall be dealt with in terms of the procedures and provisions contained in the Council's Exemptions and Dispute Resolution Collective Agreement.

### 19.3 **MEDIATION**

#### 19.3.1 Selection of Mediator

19.3.1.1 The parties shall nominate and mutually agree on a Mediator from the C.C.M.A. or other agreed panel.

19.3.1.2 Should the parties fail to agree on a mediator within ten (10) days from date of referral, the Director of the CCMA will be asked to appoint one on behalf of and in consultation with the parties.

## 19.4 **ARBITRATION**

### 19.4.1 Selection of Arbitrator

19.4.1.1 The parties shall nominate and mutually agree on an arbitrator from Council's accredited agencies.

19.4.1.2 Should the parties fail to agree on an arbitrator within ten (10) days from date of referral, the Director of the CCMA will be asked to appoint one on behalf of and in consultation with the parties.

19.4.2 Any arbitration will be conducted in terms of the arbitration provisions contained in Council's Exemptions and Dispute Resolution Collective Agreement.

## 19.5 **STRIKES AND LOCK-OUTS**

This matter to be dealt with in terms of the provisions of the Labour Relations Act, 66 of 1995.

## 20. **NEGOTIATIONS**

20.1 For the purpose of negotiations, Sectoral Chambers are provided for in clause 13.1. above.

20.2 Agreements reached by Sectoral Chambers which require or desire extension to non-parties are subject to adoption by Council for purposes of extension of the agreement.

20.3 Extension and Implementation of Council Agreements

20.3.1 At the conclusion of the negotiations process the whole collective agreement, including all Chamber agreements will be submitted to the Minister of Labour for promulgation and extension to all employers and employees (including non-parties) in the Industry in terms of section 32 of the Labour Relations Act.

20.3.2 In the event that the Minister of Labour does not extend the collective agreement to non-parties, because the parties had failed to meet the representivity requirements, parties will endeavor as matter of urgency to meet the representivity requirements within 60 days from the date of such refusal.

20.3.3 In circumstances where the parties fail to meet the representivity requirements, the Employer Parties undertake to lobby their members with regard to implementing the non-extended signed Collective Agreement or parts thereof as a party-party agreement. Where the Employer Parties have elected to be bound by the signed agreement or parts thereof as a party-party collective agreement, the Party Unions agree to subscribe and comply with the signed collective agreement or part thereof as a party-party agreement in respect of all of the Employer Parties' members. Any such party-party agreement will automatically lapse upon promulgation and extension of the Council Agreement to non-parties in terms of section 32 of the LRA.

20.3.4 A party(s) to the Council that achieved a required majority in the defined bargaining unit shall be entitled to submit a request to the

Minister of Labour for an extension of the Collective Bargaining Levy Agreement to non-parties. The other party(s) to the Council that have not achieved the majority undertake not to object to such request provided a party submitting the request for an extension of the Collective Bargaining Levy Agreement to non-parties has achieved a required majority.

## **21. COMMUNICATIONS**

21.1 After each negotiation or negotiation dispute meeting of the Council the Chairperson may, at the request of the Council, issue a statement to the industry setting out:

21.1.1 the latest positions adopted by the parties;

21.1.2 the date of the next negotiation session;

21.1.3 an attendance register.

21.2 Within seven (7) days after each negotiation meeting or dispute meeting relating to a deadlock at the Bargaining Council substantive negotiations, employers will grant time off for report back purposes if provided for and in accordance with the provisions of any collective agreement. Where no collective agreement exists employees will be afforded paid time at a time and venue as mutually agreed between the employer and employees.

21.3 The parties agree to honour and apply the letter and spirit of this Constitution and re-affirm their belief in and commitment to dialogue, discussion and negotiation in conducting industrial relationships.



## **22. STRIKES AND LOCKOUTS**

22.1 No strike or lock-out shall take place until the matter giving occasion therefore has been dealt with in accordance with the provisions of this Constitution and the Act, and shall not in any case take place during the currency of an agreement arrived by the parties which deals with the matter giving occasion for the strike or lock-out.

22.2 Where industrial action occurs in breach of Clause 19.5 above, employers agree not to dismiss employees involved in such action unless attempts to resolve such industrial action through negotiation have failed.

## **23. DISSOLUTION AND WINDING UP**

23.1 The Council may be dissolved at any time by resolution in terms of this Constitution to that effect or as a result of resignations (as provided for in Clause 9 of this constitution) from Council by any party having the effect of there being either no remaining employer or employee party as the case may be and the following provisions shall apply to such winding up:

23.1.1 In the event of dissolution by resolution, the National Secretary of the Council must apply immediately to the Labour Court for an order giving effect to the resolution.

23.1.2 In the event of the Council being unable to function as a result of withdrawal of a party having the effect of there being no remaining

employer or employee Party as the case may be, the provisions of section 59(1) (b) of the Labour Relations Act shall apply.

23.1.3 The liquidator so appointed by the Labour Court shall immediately call upon the last appointed National Secretary of the Council to deliver to him or her the Council's books of account showing the Council's assets and liabilities and also to hand over to him or her any unexpended funds of the Council.

23.1.4 The liquidator shall take the necessary steps to liquidate the debts of the Council from its unexpended funds and any other monies realised from any assets of the Council and if the said funds and monies are insufficient to pay all creditors after the liquidator's fees and expenses of winding up have been met, the order in which creditors shall be paid shall, subject to the provisions of sub section 23.1.5, be the same as that prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, and the liquidator's fees and expenses of winding up shall rank in order of preference as though he were the liquidator of an insolvent estate and as though expenses were the costs of sequestration of an insolvent estate.

23.1.5 Once all the liabilities of the Council have been discharged, the Council must transfer any remaining assets to:

23.1.5.1 a statutory bargaining Council with a registered scope covering the Road Freight and Logistics Industry;

23.1.5.2 the Commission for Conciliation, Mediation and Arbitration if there is no statutory Bargaining Council as detailed in 23.1.5.1 above.

23.1.6 For the purposes of this section the liabilities of the Parties to the Council shall be limited to their unpaid liabilities, (if any) to the Council as at the date on which the resolution for winding up was passed or the date as from which the Council was unable to continue to function.

## **24. AMENDMENTS**

24.1 This Constitution may be amended or added to by resolution of a majority of two thirds of the representatives of the parties on each side, but no amendment shall be considered unless at least a calendar months' notice has been given to the National Secretary and circulated to representatives at least two (2) weeks before the date of the meeting at which it is to be considered, provided that the Council may, by unanimous vote amend the Constitution without notice.

24.2 All amendments to legislation specifically referred to in this Constitution shall automatically be regarded as amendments to the constitution, if they specifically override provisions of this constitution.

24.3 An amendment to this Constitution becomes effective after it has been certified by the registrar of Labour Relations, as provided in Section 57(3) of the Act.

## **25. EXEMPTIONS**

25.1 Applications for exemption from any or all provisions of Council's Collective Agreements must be dealt with by an appointed Exemptions Body and Independent Exemptions Appeal Body respectively in accordance with Council's Exemptions and Dispute Resolution Collective Agreement.

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**NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT AND LOGISTICS INDUSTRY:  
SECTORAL CHAMBERS**

1. Sectoral Chamber : Furniture Removal

*“furniture removal sector”* means all transport employers within the scope of the Council that exclusively transport/store furniture that is new and/or used furniture and/or appliances for household or business;

2. Sectoral Chamber : Cash in Transit

*“cash in transit sector or assets-in-transit sector”* means the provision of transport by a registered security service provider who protects and/or safeguards in connection with the collection, transportation or delivery of cash and/or valuables; related to the supply of vehicles and security guards and/or security officers; or full spectrum of automated teller or dispensing machine services; or all aspects of cash or valuables handling or storage or processing; or pay or pension packing or payout services for, and/or on behalf of, and/or between any business, financial institution or parastatall.

*“registered security provider”* means a Security Company registered with the Private Security Industry Regulatory Authority in terms of the Private Security Industry Regulation Act of 2001.

3. Sectoral Chamber : Courier Sector

*“courier sector”* means the sector where employers and their employees are associated to transport commercial packages and documents. Couriers are distinguished from ordinary transportation of goods and mail services by features such as speed, security, tracking, signature, specialisation and individualisation of express service and swift delivery times;

4. Sectoral Chamber : General Freight and Logistics

*“general freight and logistics sector”* means all transport employers within the scope of the Council concerned with the transport of goods and/or warehousing not included in any of the above sectors; and

## SCHEDULE 2

### LIST OF PARTIES OF THE NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT AND LOGISTICS INDUSTRY

#### 1. EMPLOYER PARTIES

- Road Freight Association (RFA)
- National Employers' Association of South Africa (NEASA)

#### 2. TRADE UNION PARTIES

- Motor Transport Workers' Union of S.A. (MTWU)
- Professional Transport and Allied Workers' Union of S.A. (PTAWU)
- South African Transport and Allied Workers' Union (SATAWU)
- Transport and Allied Workers' Union of S.A. (TAWU)

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**THE CONSTITUTION AND SCHEDULES ARE CONFIRMED AS CORRECT BY THE SIGNATURES OF THE UNDERMENTIONED PARTIES SIGNED ON THIS ..... DAY OF ..... 20....**

ROAD FREIGHT ASSOCIATION (RFA)

.....

NATIONAL EMPLOYERS' ASSOCIATION OF S.A. (NEASA)

.....

SOUTH AFRICAN TRANSPORT AND ALLIED WORKERS' UNION (SATAWU)

.....

MOTOR TRANSPORT WORKERS UNION OF S.A. (MTWU)

.....

TRANSPORT AND ALLIED WORKERS UNION OF S.A. (TAWU)

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PROFESSIONAL TRANSPORT AND ALLIED WORKERS UNION OF S.A. (PTAWU)

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