

### CONSOLIDATED PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION

Herewith follows the complete Agreement published under Government Notice R.231 in Government Gazette No 24382 of 28 February 2003, as Amended, Extended, Re-Enacted, Corrected and Renewed as per the Government Notices below:

Amended/Extended/Re-Enacted/ Corrected/Renewed	Government Notice	Government Gazette	Date of Publication
Extended to 30 June 2004	<a href="#">R.793</a>	25082	20 June 2003
Amended	<a href="#">R.794</a>	25082	20 June 2003
Cancellation Notice	<a href="#">R.1292</a>	25456	19 September 2003
Re-Enacted & Amended	<a href="#">R.1293</a>	25456	19 September 2003
Correction Notice	<a href="#">R.1567</a>	25625	31 October 2003
Extended to 30 June 2005	<a href="#">R.503</a>	26279	30 April 2004
Amended	<a href="#">R.504</a>	26279	30 April 2004
Correction Notice	<a href="#">R.711</a>	26423	11 June 2004
Amended	<a href="#">R.883</a>	26603	30 July 2004
Cancellation Notice	<a href="#">R.1176</a>	26878	15 October 2004
Re-Enacted & Amended	<a href="#">R.1177</a>	26878	15 October 2004
Correction Notice	<a href="#">R.1360</a>	27007	26 November 2004
Correction Notice	<a href="#">R.1366</a>	27007	26 November 2004
Renewed from 07/10/05 to 31/08/06	<a href="#">R.970</a>	28084	7 October 2005
Renewed from 08/09/06 to 31/08/07	<a href="#">R.888</a>	29174	8 September 2006
Amended	<a href="#">R.968</a>	29265	6 October 2006

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#### DISCLAIMER

Whilst every care has been taken to ensure that this Consolidated Agreement is accurate in all respects, the Council does not accept responsibility for any inaccuracy or deviation from the original text of the Agreements as published under the Government Notices listed on the front cover of this document.

The text of the agreement, amendments thereto and correction notices where applicable, as published in the abovementioned Government Notices are binding in terms of each thereof

## GOVERNMENT NOTICE

### DEPARTMENT OF LABOUR

No. [R. 231](#)

28 February 2003

[GovNR231y2003]

LABOUR RELATIONS ACT 66 OF 1995

[a66y1995]

## COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 10 March 2003 to 30 June 2005 and from 7 October 2005 to 31 August 2006.

**M. M. S. MDLADLANA**  
**Minister of Labour**

### SCHEDULE

#### **NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

#### **Cape Clothing Association**

(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the  
**Southern African Clothing and Textile Workers' Union**

(hereinafter referred to as the "employees" or the "trade union"), of the other part, being parties to the National Bargaining Council for the Clothing Manufacturing Industry.

#### **1. SCOPE OF APPLICATION OF AGREEMENT**

- (1) The terms of this Agreement shall be observed in the Clothing Industry by employers and employees who are engaged or employed in the operations referred to in the definition of "Clothing Industry" in clause 3 of Parts F, G, H and I of the National Main Collective Agreement of the Council and who-
  - (a) are members of the employers' organisations and the trade union, respectively, and who are engaged or employed in the Industry;
  - (b) are subject to the scopes of Parts F, G and H of the National Main Collective Agreement of the Council, being those in the Magisterial Districts of Bellville, George, Goodwood, Malmesbury (including that portion from which the Magisterial Division of Moorreesburg was constituted on 29 November 1985 by Government Notice No. R. 2649), Simon's Town, Somerset West, Strand, The Cape, Worcester and Wynberg, including those portions of the Magisterial Districts of Bellville, Goodwood, Simon's Town and Wynberg that were used to create the Magisterial District of Mitchells Plain on 2 March 1992;
  - (c) are subject to the scope of Part I (Non-Metro) of the National Main Collective Agreement of the Council, but only insofar as those areas of Part I that fall within the Province of the Western Cape [save for those specified in subclause (b) above] and the Northern Cape Magisterial Districts of Britstown, Calvinia, Carnarvon, Colesberg, De Aar, Fraserburg, Hanover, Namaqualand, Noupoot, Richmond, Sutherland, Victoria West and Williston are concerned.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall-
  - (a) apply only in respect of employees for whom wages are prescribed in Parts F, G, H and I of the National Main Collective Agreement of the Council;
  - (b) not apply to employees and working directors whose wages are more than the amount referred to in clause 1 (2) (b) of Parts F, G, H and I, as the case may be, of the National Main Collective Agreement of the Council.
- (3) Notwithstanding the provisions of subclauses (1) and (2), the terms of this Agreement shall apply in respect of employees and working directors who were contributors immediately prior to the coming into force of this Agreement.



B. but excludes-

- (a) belts, braces, garters, suspenders and armllets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the Council, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council.

**"contributor"** means any person who is employed in the Clothing Industry [except those excluded in terms of clause 1 (2) (b) of this Agreement] and from whose wages contributions have been made or are made in terms of clause 6 (1) of this Agreement.

**"Council"** means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of section 29 of the Labour Relations Act, 1995;

**"Country Areas Collective Agreement"** means the Agreement for the Western Cape Region of the Council which prescribes wages for employees employed in the Industry in the Magisterial Districts of George and Worcester;

**"dealer"** or **"general dealer"** means a person who holds a licence under item 3 of the First Schedule to the Registration and Licensing of Businesses Ordinance, Ordinance 15 of 1953, as amended by Ordinance 19 of 1972;

**"dependant"** means-

- (a) a person in respect of whom a contributor is legally liable for maintenance;
- (b) a person in respect of whom a contributor is not legally liable for maintenance if such person-
  - (i) was, in the opinion of the Management Committee, upon the death of the contributor in fact dependent on the contributor for maintenance; or
  - (ii) is the spouse of the contributor, including a party to a customary union according to Black law and custom or to a union recognised as a marriage under the tenets of any Asiatic religion;
- (c) a person in respect of whom a contributor would have become legally liable for maintenance, had the contributor not died;

**"employees' contributions"** means the contributions deducted from the wages of employees in accordance with the provisions of clause 6 (1) of this Agreement;

**"employees' share"** means the accumulated value, as determined by the Management Committee, of the contributions made by an employee, taking into account the expenses of the Fund, plus interest, the rates of which shall also be determined by the Management Committee from time to time;

**"employees' voluntary contributions"** means the contributions made on a voluntary basis by employees at any time prior and up to 31 March 1993;

**"employers' contributions"** means the contributions made by employers in accordance with the provisions of clause 6 (2) of this Agreement;

**"employers' share"** means the accumulated value, as determined by the Management Committee, of the contributions made by the employer in respect of an employee, taking into account the expenses of the Fund, plus interest, the rates of which shall also be determined by the Management Committee from time to time;

**"experience"** for the purposes of this Agreement means "experience" as defined in the Main Agreement, Knitting Division Agreement or Country Areas Agreement of the Regional Chamber;

**"Fund"**, means the Provident Fund established under this Agreement;

**"Fund credit"** means, for each contributor, the total of the employee's share and his employer's share and any other amount as may be authorised by the management Committee and credited to his account in the records of the Fund;

**"General Secretary"** means the General Secretary of the Council and includes any official appointed to assist the General Secretary;

**"Knitting Division Collective Agreement"** means the Agreement for the Western Cape Region of the Council which prescribes wages for employees employed in the Knitting Division of the Industry;

**"Main Collective Agreement"** means the Main Collective Agreement for the Western Cape Region of the Council which prescribes wages for employees employed in the Industry, other than in the Magisterial District of George and Worcester and those employed in the Knitting Division;

**"Management Committee"** means the Management Committee of the Fund appointed in terms of clause 5 (1) of this Agreement;

**"pay week"** means the period of seven days within which the working week of an establishment ordinarily falls and includes any period during which the establishment observes a closure period for leave purposes;

**"Regional Chamber"** for the purposes of this Agreement, means the Cape Chamber (Western Cape sub-Regional Chamber) of the Council;

**"Regional Secretary"** means the Regional Secretary of the Regional Chamber and includes any official appointed to assist the Regional Secretary;

**"retiring age"** means the age of 55 or any age thereafter, but not later than the contributor's 65th birthday;

**"service"** means employment in the Industry;

**"wage"** or **"salary"** means the amount of money payable to an employee in respect of his ordinary hours of work, excluding payments for overtime worked.

#### 4. PROVIDENT FUND

The Fund established under Government Notice No. R. 493 of 12 March 1954, and known as the Cape Clothing Industry Provident Fund, is hereby continued for the purpose of providing benefits to contributors as set out in this Agreement.

The Fund shall consist of-

- (a) any moneys standing to the credit of the Fund;
- (a) contributions paid into the Fund in accordance with the provisions of this Agreement;
- (b) interest derived from the investment of any moneys of the Fund;
- (c) any other sums to which the Fund may become entitled.

#### 5. ESTABLISHMENT AND FUNCTIONS OF MANAGEMENT COMMITTEE

- (1) The administration of the Fund shall be vested in a Management Committee consisting of four employers' representatives and four employees' representatives appointed by the Regional Chamber in terms of the Constitution of the Council at a duly constituted meeting of the Regional Chamber together with the Chairperson and Vice-chairperson of the Regional Chamber who shall be ex officio members of the Management Committee.

The Chairperson and Vice-Chairperson of the Management Committee shall be elected at the first meeting of the Management Committee following the Annual General Meeting of the Regional Chamber.

- (2) For each representative an alternate shall be appointed in the manner provided for in the Constitution of the Council.
- (3) Two employers' representatives and two employees' representatives shall constitute a quorum and all matters shall be determined by a majority of votes. The Chairperson shall have a deliberative vote only, alternates of members who are absent may be counted as full representatives for the purposes of a quorum and if no quorum is present within 30 minutes of the time fixed, the meeting shall stand adjourned to a date not later than seven days thereafter fixed by the Chairperson. At such adjourned meeting, of which members shall be given written notice, those present shall form a quorum. For the purpose of a quorum, the Chairperson and Vice-Chairperson of the Regional Chamber shall, if present, be regarded as representatives.
- (4) If any representative is absent from any meeting and is not represented by an alternate, the voting power of the side he represents shall be reduced and a similar reduction shall be made on the other side to preserve equality of voting power. No motion shall be considered unless seconded, and all matters forming the subject of motions shall be decided by majority vote

of those present.

- (5) All expenses of administration shall be a charge against the Fund.
- (6) The Management Committee shall have the power to-
  - (a) sanction all payments and expenditure on behalf of the Fund;
  - (b) engage and dismiss paid servants of the Fund, fix their remuneration, and define their duties;
  - (c) supervise the working of any local committee appointed;
  - (d) appoint subcommittees to help in the administration of the Fund;
  - (e) draft rules for the payment of benefits and fix the time and place for such payments;
  - (f) perform all such other duties as the Committee may deem necessary or desirable for the proper administration of the Fund;
  - (g) subject to clause 7 (2) (a) purchase or in any other manner acquire immovable property and sell or in any other manner alienate any immovable property so acquired.
- (7) Two copies of the Rules of the Fund and any amendments thereof shall be lodged with the Regional Secretary of the Regional Chamber and the General Secretary of the Council who shall transmit one copy to the Registrar of Labour Relations.

## 6. CONTRIBUTIONS

### (1) **Employees' contributions**

For all employees falling within the scope of clause 1 (1) (b) of this Agreement, save as provided for in clause 1 (2) (b) of this Agreement, every employer shall each week or each month, as the case may be, in respect of each of his weekly-paid or monthly-paid employees (hereinafter referred to as the "contributor") who have worked eight and a half ordinary hours or more during any pay week, deduct an amount equal to 6,03% of his wage: Provided that no deduction shall exceed 6,03% of the highest minimum wage as prescribed in clause 4 of Parts F, G and H of the National Main Collective Agreement of the Council, whichever is applicable: Provided further that no deductions shall be made from the wage of any employee who is 65 years of age or older.

### (2) **Employers' contributions**

- (a) An employer shall, in respect of all contributors falling within the scope of clause 1 (1) (b) of this Agreement, save as provided for in clause 1 (2) (b) of this Agreement, contribute to the Fund an amount equal to 6,25% of each contributor for whom contributions are deducted as provided for in subclause (1): Provided that no deduction shall exceed 6,25% of the highest minimum wage as prescribed in clause 4 of Parts F, G and H of the National Main Collective Agreement of the Council, whichever is applicable.
- (b) An employer shall, in respect of all contributors falling within the scope of clause 1 (1) (c) of this Agreement, save as provided for in clause 1 (2) (b) of this Agreement, each week contribute to the Fund an amount equal to 4,0% of the wage of each contributor who has worked nine ordinary hours or more during any pay week: Provided that no deduction shall exceed 4,0% of the limitation referred to in clause 1 (2) (b) of Part I of the National Main Collective Agreement of the Council.

Fractions of a cent shall be regarded as one cent when assessing the rate of contribution payable by the contributor and his employer in terms of this clause.

- (3) **Maternity leave contributions:** Where a contributor is on maternity leave, both the contributor's and the employer's contributions shall be paid by the employer as provided for in the Main Collective Agreement for the Western Cape Region of the Council, or the corresponding provisions of any amendments to such Agreement, and such contributions shall be assessed on the contributor's wage immediately prior to the date of her proceeding on maternity leave.
- (4) No new contributor shall be admitted to membership at 65 years of age or older.
- (5) (a) An employer shall forward to the Regional Chamber month by month, but not later than the 14th day of each month, the total sum due to the Fund made up as follows:
  - (i) Employee's contributions in terms of subclause (1);
  - (ii) employer's contributions in terms of subclauses (2) and (3).

- (b) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the 1st day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
  - (c) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to forthwith pay all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer firstly in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (6) Subject to the provisions of subclauses (1), (2) and (3) the total sum of employees' contributions and employers' contributions shall be recorded and forwarded to the Regional Chamber, in the form and manner specified and supplied by the Regional Chamber, reflecting, inter alia, the following:
- (a) The contributor's service record card number;
  - (b) the contributor's surname and full first names;
  - (c) for each month in question, the amount of each contribution deducted from the wage of a weekly paid contributor during each week and the amount of each contribution deducted from the monthly wage of a monthly paid contributor, and the total amount of each employee's contributions;
  - (d) the total of the employers' contribution in respect of the month in question.
- (7) An employer shall not deduct the whole or part of his own contribution from the remuneration of a contributor or receive any consideration from the contributor in respect of such contribution.
- (8) When a contributor is on leave on full pay or less than full pay, both his and the employer's contributions shall be continued.
- (9) If any contribution is made in error to the Fund, the Fund shall not be liable to repay the contribution after the lapse of three months from the date of such payment.
- (10) Whenever any benefit has been mistakenly paid to a contributor as a result of contributions which were not due having been made to the Fund, the Management Committee may set off the amount of benefit so paid-
- (a) against any sum claimed from the Fund as a repayment of such contributions which were not due; and
  - (b) against any future benefits that may become due by the Fund to the said contributor.
- (11) Subject to the provisions of this Agreement, only those contributions received by the Fund in respect of a contributor will be taken into account when assessing the value of the contributor's benefit in terms of clause 9 of this Agreement.
- (12) Subject to the provisions of this Agreement, a contributor's death or disability benefits shall not be prejudiced in respect of any period of employment during which he should have contributed to the Fund and in respect of which his employer failed to submit contributions for and on behalf of such contributor to the Fund.

## 7. FINANCE

- (1) All moneys received by the Fund shall be deposited in a banking account opened in the name of the Fund. An official receipt shall be issued for all moneys received into the Fund and withdrawals from the Fund shall be by cheque signed by such persons as may, from time to time, be authorised by the Management Committee.
- (2) Any moneys not required to meet current payments shall be invested by the Management Committee in-
- (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
  - (b) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);
  - (c) a registered unit trust;
  - (d) housing loans in terms of clause 8;

- (e) the name of the Fund through the agency of an insurance company or any other financial institution approved by the Registrar in terms of the Act, in such manner and with such persons as the insurance company or financial institution deems fit: Provided the limitations prescribed in the Pension Funds Act, 1956 (Act No. 24 of 1956), are not exceeded;
  - (f) any other manner approved by the Registrar.
- (3) The Management Committee may, by resolution, at a duly constituted meeting of the Committee, authorise the transfer of interest earned on investments in terms of subclause (2) hereof to a Special Cases Account for the purposes of clause 11 of this Agreement: Provided that the amount in interest so transferred shall in no period of six months ending 30 June and 31 December, respectively, exceed the amount in interest actually received by the Fund during such period, less the administration expenses of the Fund for the period in question.

(4) The Management Committee shall appoint a public accountant whose remuneration shall be paid out of the Fund.

(5) The accounts shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited annual financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber and a copy shall be provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.

## 8. HOUSING LOANS

- (1) The Management Committee may, from interest on investments of the Fund or from moneys forfeited to the Fund, retain, for the purpose of granting housing loans to contributors, an amount approved in writing by the Registrar: Provided that loans granted in terms of this clause shall be subject to such conditions as may be laid down by the Management Committee, with the approval of the Registrar.
- (2) Loans shall in no case exceed R50 000, repayable at such rates as may from time to time be determined by the management Committee.
- (3) On receipt of a stop order in respect of a housing loan duly signed by the employee concerned, an employer shall, as from the next ensuing pay week, deduct from his employee's wages the weekly amount stipulated in the stop order and shall forward, month by month, but not later than the 14th day of each month, the total sum to the Secretary of the Fund.
- (4) If a contributor owes the Fund money in respect of a housing loan granted in terms of this clause, any benefits that the contributor is entitled to in terms of clause 9 shall, after the deduction of any tax due, be applied to setting the housing loan and only thereafter shall any remaining portion of the benefit be paid to the contributor or his estate.

## 9. BENEFITS

- (1) Subject to clause 8 (4) and this clause, benefits shall be provided for contributors who-
- (a) leave the Industry by retiring between the ages of 55 and 65; or
  - (b) satisfy the Management Committee that they have left the Industry permanently before the age of 55.
- (2) **Withdrawal benefits:** A contributor whose membership ceases, other than in terms of subclauses (3), (4), (5) and (6), shall be paid his Fund credit as a withdrawal benefit, subject to clause 10 (3).
- In the event of a contributor re-entering the Industry after having been paid a benefit, his completed years of service shall then be calculated from the date on which he re-commences the payment of contributions.
- (3) **Retirement benefits:**
- (a) **Normal retirement:** Where a contributor retires from the Fund upon reaching the age of 55 years or any age thereafter, the benefit payable at retirement shall be his Fund credit.
  - (b) Subject to the provisions of this Agreement, a contributor who has contributed to the Fund until the age of 55 years, may lodge a claim at any time until he reaches the age of 65.
  - (c) If the contributor remains in employment and does not claim within three months from the date such contributor reaches the age of 65, the benefit provided for in paragraph (a) shall automatically be paid to him.
  - (d) All applicants for retirement benefits shall produce such proof of age as is acceptable to the Management Committee, and the Management Committee shall have the right to adjust any benefit payable should a contributor's correct age differ from that originally stated.

(e) In the event of a contributor returning to the Clothing Industry or remaining in employment after payment of a retirement benefit, any subsequent benefit paid, save as provided for in subclause (4), shall be in terms of subclause (2).

(4) **Death benefits:**

(a) The Management Committee, upon receiving proof of the death of a contributor, may authorise the payment of a death benefit-

(i) equal to 78 times the contributor's weekly wage or 18 times his monthly salary as at the date of his last contribution to the Fund immediately prior to his death, with the proviso that such benefit shall not exceed the limitation in the wage rate in clause 1 (2) (b) of the Main Collective Agreement for the Western Cape Region of the Council, as amended from time to time; plus

(ii) his Fund credit.

(b) The death benefit payable in terms of this clause shall continue to apply for a period of 4 weeks after the date of termination of employment of a contributor: Provided that such period of 4 weeks shall cease to apply on the date a contributor applies for and is paid a Benefit in terms of this clause: Provided further that in the case of an application for either an Ill-health Benefit or a Disability Benefit which has been referred to the Management Committee for consideration in terms of subclauses (5) and (6), the contributor's death benefit shall continue to apply during the waiting period of six months, which waiting period may be extended for a further period upon approval of the Management Committee.

(c) In the event of a contributor's employment not being terminated and where the employer has informed the Regional Chamber of the first or last dates of absence from work for four or more consecutive pay weeks of a contributor in terms of clause 16 (4) of the Main or Knitting Division or Country Areas Collective Agreements for the Western Cape Region of the Council, the contributor's death benefit shall also continue to apply during such period of absence up to a maximum period of six months from the date of the first absence whereafter the death benefit shall cease to apply.

(5) **Ill-health benefits:**

(a) The Management Committee may, in respect of a contributor who does not qualify for the payment of a Disability benefit in terms of subclause (6), and upon production of one or more medical certificates which are satisfactory to the Committee, authorise that a benefit calculated in terms of subclause (3) (a) be paid to a contributor: Provided that no contributor may claim Ill-health Benefits on more than one occasion.

(b) In the event of a contributor returning to the Clothing Industry after payment of an Ill-health Benefit, any subsequent benefit paid, save as provided for in subclause (4), shall be in terms of subclause (2).

(6) **Disability benefits:**

(a) The Management Committee may, upon receipt of satisfactory proof that a contributor has, before attaining the age of 55 years, become and remained, through sickness or accident, totally incapable of following his own occupation or a similar occupation and provided such incapacity seems likely to be of a permanent nature in the opinion of the Management Committee, authorise that a benefit calculated in terms of subclause (4) be paid to the contributor after a period of six months has elapsed from the date the contributor was last employed in the Clothing Industry or six months from the date of the event giving rise to the incapacity, whichever is the later date: Provided that no contributor shall be paid a Disability benefit on more than one occasion and neither shall a Death Benefit be paid after the contributor has previously been paid a Disability Benefit in terms of this subclause: Provided further that the Management Committee may waive the six month waiting period in circumstances which, in its opinion, warrant such action.

(b) In the event of a contributor returning to the Clothing Industry after payment of a Disability Benefit, any subsequent benefit paid shall be in terms of subclause (2).

## 10. PAYMENT OF BENEFITS

(1) **Claims:** Claims submitted by contributors shall be dealt with as expeditiously as practicable to ensure speedy payment in all cases where the Management Committee is satisfied that the rules of the Fund have been complied with.

(2) **Form and manner of application:** The form and manner in which applications for benefits are submitted shall be as determined by the Management Committee.

(3) **Waiting period:** No withdrawal benefit as provided in clause 9 (2) shall be paid in respect of any claim until a period of three months has elapsed from the date the person concerned was last employed in the industry: Provided that in case of redundancy or retrenchment of a contributor, or the closure or liquidation of his employer's establishment, payment of this benefit shall be made as soon as possible after such event.

- (4) **Cancellation of benefit payments:** In the event of a contributor returning to the Industry before such claim has been met, the claim shall automatically lapse and contributions shall forthwith be resumed.
- (5) **Cessation of interest:** The Fund credit of a contributor who has left the Industry shall continue to accumulate interest for a maximum period of one year at the same rate as the Fund.
- (6) **Continuation after retirement:** Where a contributor returns to the Industry after payment of any claim, or remains in employment after the payment of a Retirement Benefit, he shall, if under the age of 65, rejoin the Fund and be regarded as a new contributor. If, however, such contributor is already 65, he shall not be permitted to rejoin the Fund.
- (7) **Forfeiture:** As at 31 March of the third calendar year following the date of last contribution to the Fund, any benefit not yet claimed, will be forfeited to the Fund and thereafter the Management Committee may, at its absolute discretion, and provided satisfactory proof of non-payment has been submitted, consider any subsequent claim and may authorise any payment of the benefit to any person or persons entitled to such forfeited benefit.
- (8) **Procedure for death benefits:**
- (a) **Appointment of beneficiaries:** Every contributor shall be required to nominate in the specified form and manner as determined by the Management Committee, a beneficiary to whom, in the event of the death of the contributor, save as provided for in paragraphs (b), (c), (d), (e) and (f) below, any benefits due to such contributor may be paid.
- (b) If the Management Committee, within a period of twelve months of the death of the contributor, becomes aware of or traces a dependant or dependants of the contributor, the benefit shall be paid to such dependant, or to such dependants in such proportions and in such manner as may be deemed equitable by the Management Committee.
- (c) If the Management Committee does not become aware of or cannot trace any dependant of the contributor within a period of twelve months of the death of the contributor, and the contributor has designated in writing to the Fund a beneficiary who is not a dependant of the contributor to receive the benefit or such portion of the benefit as is specified by the contributor in writing to the Fund, the benefit or such portion of the benefit shall, after expiry of such period of twelve months, be paid to such beneficiary in such proportions and in such manner as the Management Committee may deem equitable: Provided that if a claim is received from the Executor of a deceased contributor's Estate within a period of twelve months of the death of the contributor, and where the aggregate amount of the debts in the estate of the contributor exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the contributor in writing to the Fund shall be paid to the beneficiary.
- (d) If a contributor has a dependant and the contributor has also designated in writing to the Fund a beneficiary to receive the benefit or such portion of the benefit as is specified by the contributor in writing to the Fund, the Management Committee shall within a period of twelve months of the death of such contributor pay the benefit or such portion thereof to such dependant or beneficiary in such proportions and in such manner as the Management Committee may deem equitable.
- (e) If the Management Committee does not become aware of or cannot trace any dependant of the contributor within a period of twelve months of the death of the contributor and if the contributor has not designated a beneficiary to receive either the full or a portion of the benefit in writing to the Fund, or where an appointed beneficiary has predeceased the contributor, or where a beneficiary was not properly appointed, the benefit shall be paid into the estate of the deceased contributor and the Fund shall thereafter be discharged of all its obligations in respect of such contributor.
- (f) For the purposes of this clause, a payment to a dependant or beneficiary shall be deemed to include any payment made by the Management Committee to a trustee contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988), for the benefit of a dependant or beneficiary contemplated in this clause.
- (9) (a) With effect from 1 July 2002, in the event of an employer's establishment ceasing operation in the industry as a direct consequence of the alteration of the industrial scope of the Council, the withdrawal benefit attributable to each contributor will be his fund credit together with a proportion of any reserves or surplus as recommended by the actuary and approved by the Management Committee of the Fund.
- (b) If an approved fund, registered in terms of the Labour Relations Act or Pension Funds Act, is or has been established to receive the withdrawal benefits of affected contributors, then such withdrawal benefits must be transferred to such fund; or
- (c) If the circumstances as set out in (b) above do not exist, such withdrawal benefit may be paid to the contributor as a lump sum benefit or transferred to an approved Retirement Annuity Fund.
- (d) The employer will then cease to be a participating employer on such date set by the Management Committee, as soon as practically possible after the date the employer's establishment fell outside the scope of the Council and the Fund or

such date as agreed to by the Management Committee, but which date shall be no later than 31 August 2004 or the gazettal of this Rule amendment, whichever is the later. The date so set or agreed is hereinafter referred to as the 'effective date'. Current contributions to the Fund shall cease from the effective date.

- (e) During the period between the employer's establishment being excluded from the scope of the Fund and the effective date, the employers and employees may continue to contribute to the Fund, with the same rights and obligations as were applicable to them prior to the exclusion of their employer from the scope of the Council.
- (f) For the purposes of Clause 9(4)(b) and 9(6)(a), the date of termination of employment of a contributor will be deemed to be no later than the effective date.

## 11. INCREASE IN BENEFITS

**Increase in benefits:** The Management Committee may from time to time increase the stated benefits provided for in this Agreement when there is an improvement in the finances of the Fund: Provided that any increased benefit shall be determined only after an investigation by an actuary into the liabilities of the Fund and this Agreement has been amended in terms of the provisions of the Act.

## 12. BENEFITS NOT TO BE CEDED OR ASSIGNED

- (1) Save as provided in subclause (2) hereof, benefits shall not be-
  - (a) capable of being ceded, assigned, transferred or made over in any way, either generally or as security for any debt or obligation due by the contributor and the Fund shall be under no obligation to recognise, acknowledge, or act on any such purported cession, assignment, transfer or making over;
  - (b) attached by order or process of any court;
  - (c) set off against any debt due by the person entitled to such benefits.
- (2) Benefits may be ceded to the Fund as security in respect of any housing loan granted by the Fund in terms of clause 8 of this Agreement, or to a bank as security in respect of any housing loan granted by such bank.

## 13. DISSOLUTION OF FUND

- (1) Upon the expiry of this Agreement or any extension thereof and in the event of a subsequent agreement providing for the continuation of the Fund not being negotiated within a period of two years from the expiry of this Agreement or any extension thereof, or the Fund not being transferred by the Regional Chamber within such period to any other fund constituted for the same purpose as that for which the Fund was created, the Fund shall be liquidated by the Management Committee as though the employees had left the Industry and as provided for in the Act.
- (2) In the event of the Council or Regional Chamber being dissolved during the currency of this Agreement or any extension thereof or before the expiry of the period of two years referred to in subclause (1) hereof, then, notwithstanding anything to the contrary contained in this Agreement, contributions to the fund shall cease as from the day following the date of publication in the Gazette of the notice of dissolution of the Council or Regional Chamber, as the case may be, in terms of the Act, and the Fund shall be liquidated mutatis mutandis in the manner laid down in the Act and the Council's Constitution: Provided that the duties in connection with such liquidation shall be performed by such body or person as the Registrar of Labour Relations may appoint.

## 14. LIQUIDATION

Upon liquidation of the Fund in terms of clause 13 and payment of moneys due to members in terms of that clause, the moneys remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Regional Chamber. If the affairs of the Regional Chamber have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in the Act and clause 19 of the Council's Constitution, as if it formed part of the general funds of the Council.

## 15. POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE WITH AND IN TERMS OF THIS AGREEMENT

- (1) One or more persons shall be appointed by the Council or Regional Chamber to be agents to assist in enforcing the terms of the Council's or Regional Chamber's Collective Agreements.

- (2) The Council may, in terms of section 33 of the Act, request the Minister of Labour to appoint any persona designated agent of the Council or Regional Chamber.
- (3) A designated agent shall have all the powers conferred on a Commissioner by section 142 of the Act, except the powers conferred by section 142 (1) (c) and (d) of the Act.
- (4) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and for purposes of routine inspections to enforce compliance with this Agreement in terms of clause 17 or the Dispute Procedure in terms of clause 18 of this Agreement may-
  - (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
  - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute to appear before the agent or to be questioned or to produce that book, document or object;
  - (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
  - (d) at any reasonable time, but only after obtaining the necessary written authorization-
    - (i) enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found there; and
    - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
    - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;
  - (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the agent.
- (5) A subpoena issued for any purpose in terms of subclause (4) shall be signed by a designated agent and shall-
  - (a) specifically require the person named in it to appear before the designated agent;
  - (b) sufficiently identify the book, document or object to be produced; and
  - (c) state the date, time and place at which the person is to appear.
- (6) The written authorisation referred to in subclause (4) (d)-
  - (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to the Constitution of the Republic of South Africa, 1996, and then only on the application of the agent and/or any appointed person setting out under oath or affirmation the following information-
    - (i) the nature of the dispute;
    - (ii) the relevance of any book, document or object to the resolution of the dispute;
    - (iii) the presence of any book, document or object on the premises; and
    - (iv) the need to enter, inspect or seize the book, document or object;
  - (b) in all other cases, may be given by the General Secretary of the Council or Regional Secretary of the Regional Chamber.
- (7) The owner or occupier of any premises that an agent and/or any other appointed person is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.
- (8) The agent and/or appointed person shall issue a receipt for any book, document or object seized in terms of subclause (4).
- (9) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production of seizure of any book, document or object in terms of this clause.

- (10) The Agent and/or appointed person shall pay the witness fee specified from time to time in terms of section 208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.
- (11) A person commits contempt of the designated agent-
- (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
  - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the agent and/or appointed person;
  - (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person so requires;
  - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to subclause (8);
  - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to an agent and/or appointed person;
  - (f) if the person wilfully hinders an agent and/or appointed person in performing any function conferred by or in terms of the Act;
  - (g) if the person insults, disparages or belittles an agent and/or appointed person, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person's recommendations;
  - (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
  - (i) by doing anything else in relation to the agent and/or appointed person which, if done in relation to a court of law, would have been contempt of court.
- (12) The designated agent may on recommendation of the Council or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

## 16. EXEMPTIONS

- A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this Agreement**
- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this Agreement may apply to the Council for exemption from any or all of the provisions of this Agreement.
  - (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
  - (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
    - (a) The period for which the exemption is sought;
    - (b) the number of employees affected and how many of such employees are members of a registered trade union;
    - (c) the clauses and subclauses of this Agreement from which the exemption is sought;
    - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
    - (e) the demonstrable commercial need of the applicant for the exemption sought.
  - (4)
    - (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
    - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgment of the application with the General Secretary, failing which the application shall be deemed to have been refused.
    - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.

- (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
- (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
- (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
- (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
- (i) The conditions, if any, of its approval of the application;
  - (ii) the period for which the exemption(s) will be valid'
  - (iii) the clauses or subclauses of this Agreement in respect of which exemption was granted or partially granted; and
  - (iv) the full name of the exempt employer or employee(s).
- (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
- (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such a fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal;
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which remain unpaid as at the last day of the month following the month in respect of which the payment is due.
  - (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the industry.

- (f) There has been compliance with subclause (3) above.
  - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee., transferability, administration, management, costs, growth and stability. "Sufficiency" for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period thereof.
  - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining and application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this Agreement.

**B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) Exemption from the provisions of this Agreement shall be granted in the following circumstances:
- (a) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
    - (i) the collective agreement does not contravene the minimum employment standards set out in this Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers Union; and
    - (ii) wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.

- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (b) (i) above:
- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional chamber for registration and any agreement concluded in terms of subclause (1)(a)(i) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio.

#### **17. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS AGREEMENT**

- (1) The Council or Regional chamber shall take all reasonable steps necessary to ensure compliance with this Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this Agreement have been breached then the following procedure shall apply to enforce compliance.
- (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional chamber shall appoint a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber's Disputes Committee.
  - (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this Agreement has been breached, the agent or disputes Committee may endeavour to secure compliance with this Agreement through conciliation.
  - (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Regional Secretary or relevant official of the Regional chamber and/or the General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this Agreement through conciliation and the outcome thereof.
  - (d) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council may-
    - (i) require the designated agent to make further investigations; or
    - (ii) refer the matter to arbitration in terms of this Agreement; or
    - (iii) take such other steps as may be deemed reasonable.
  - (e) If the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council decides to refer the matter to arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this Agreement.
  - (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
  - (g) The Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council shall serve notices of the date, time and venue of the arbitration on all the parties who may have a legal interest in the outcome of the arbitration.
  - (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to-
    - (i) give evidence;
    - (ii) call witnesses;
    - (iii) question the witnesses of any other party;
    - (iv) address concluding arguments to the arbitrator;
    - (v) be represented by-
      - (aa) a legal practitioner; or
      - (ab) an office-bearer or official of his registered trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof.

(i) The arbitrator shall have the following powers:

- (i) To determine whether there has been a breach of this Agreement;
- (ii) to make any appropriate award that gives effect to this Collective Agreement and ensures compliance therewith;
- (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
- (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its costs of providing the arbitration service: Provided that-

where the Council's or Regional Chamber's Disputes Committee or accredited conciliator has made an advisory award in terms of clause 18 (3) (c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's and/or Regional Chamber's cost of dealing with the dispute;

- (v) to make an award in the absence of a party who is alleged to have breached this Agreement if-
  - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
  - (ab) proof is presented that such party has been notified of the proceedings, which notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
  - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this agreement;
- vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown and, without limiting the generality hereof, the arbitrator shall have this power if-
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
  - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.

(j) Any award made by the arbitrator, together with any reasons, shall be served on all interested parties by the council or Regional Chamber.

(k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Labour Relations Act. This shall in no way limit the rights of any Party in terms of the Act, in the absence of a decision of the Council or Regional Chamber.

## 18. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be referred to the Council for resolution.
  - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether a dispute should be referred to the Council or to a Regional Chamber for resolution.
  - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the exercise of his or her powers under this clause.
  - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same powers as the Council in terms of this clause.

### (2) **Accreditation-**

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision of the Council seek accreditation from the CCMA.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of section 51 (3) of the Act.

### (3) **Panel of conciliators, arbitrators and senior arbitrators:**

- (a) The Council shall appoint

- (i) a panel of conciliators, for the purpose of conciliating disputes;
- (ii) a panel of arbitrators, for the purpose of determining disputes;
- (iii) a panel of senior arbitrators, for the purpose of determining disputes where-
  - (aa) the nature of the questions of law raised by the dispute;
  - (bb) the complexity of the dispute;
  - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
  - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the

(b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators

(c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels

- (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the
- (ii) The lists prepared by the parties shall be exchanged, and the union shall rank the nominees of the employer parties
- (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by ap
- (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists

(d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period the

(e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from of

- (i) for serious misconduct; or
- (ii) owing to incapacity; or
- (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the rem

(f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance

(g) Subject to subclause (3) (i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arb

(h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided

(i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.

(j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a

#### **(4) *Disputes Involving non-parties to the Council***

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the

*(a) Referral and conciliation of disputes*

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall atte
- (iv) The conciliator may, during conciliation proceedings-
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arb

- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in w
- (vii) Nothing in this Agreement shall prevent an officer or an employee of the Council from investigating the dispute or at

*(b) Adjudication of disputes referred to the Council for arbitration-*

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolve
  - (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other design
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbit
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of th
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbit
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subcla
  - (aa) give evidence;
  - (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for concilia
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitrat
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of s
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the

**(5) Disputes involving parties to the Council-**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered empl
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collectiv
- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise b
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this Ag

**(6) Compliance procedure and enforcement of collective agreements by Council-**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to pr

- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A a
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this Agreement and with the collective agre
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may de
  - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been bre
    - (aa) publicising the contents of the agreement;
    - (bb) conducting inspections;
    - (cc) investigating complaints;
    - (dd) endeavouring to secure compliance with the agreement through conciliation; or
    - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within
  - (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to
  - (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council
  - (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of th
  - (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date,
  - (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the pane
  - (viii) The provisions of subdauses (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
  - (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
    - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
    - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 ;
    - (cc) charging a party to the arbitration an arbitration fee;
    - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
    - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
    - (ff) any award contemplated in section 138 (9) of the Act;
    - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collec
  - (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this subdause shall be final ar
  - (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitrat
  - (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

## 19. INDEMNITY

The members of the Management Committee and their alternates and the members of the Executive Committee and the members of any local committee and the local representatives shall not be liable for any loss to the Fund arising by reason of any improper investment made in good faith or by reason of the negligence or fraud of any agent or employee who may be employed by the Fund although the employment of such agent or employee was not strictly necessary or by reason of any act or omission made in good faith by such members or alternates or by such local representatives or by reason of any other matter or thing save individual wilful or fraudulent wrongdoing on the part of such members or alternates or on the part of such local representatives who are sought to be made liable. Any such member or alternate and any such local representative shall be reimbursed by the Fund for any liability incurred by him in defending any proceedings, whether civil or criminal, arising out of an allegation involving bad faith in which judgement is given in favour of him or in which he is acquitted.

**20. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION**

- (1) This Agreement shall remain in force until 30 June 2004: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 July 2003.
- (2) The parties to the Council, and in the event of this Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this Agreement.
- (3) The reference to negotiations in subclause (2) above shall mean negotiations as contemplated in subclause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

**Original Collective Agreement signed by the Chairperson, Vice-Chairperson and Acting General Secretary of the Council, on behalf of the parties to this Agreement, on the 18th day of September 2002 and 26th day of November 2002.**