

CONSTITUTION OF THE MOTOR FERRY INDUSTRY BARGAINING COUNCIL OF SOUTH AFRICA

1. NAME

1.1 The name of the Council shall be " Motor Ferry Industry Bargaining Council of South Africa." (MFIBC)

2. HEAD OFFICE

2.1 The Head Office of the Council shall be 2nd Floor, West Tower, Nelson Mandela Square, Sandton, or at such other place as the Council may decide.

3. REGISTRATION AND SCOPE

3.1 The Council is registered in terms of the Labour Relations Act No 66 of 1995 (as amended) in respect of the undertakings, trades or industries in the Republic of South Africa in which employers and employees are associated primarily for the transportation of motor vehicles for reward.

3.2 For the purpose of this Constitution the phrase "the motor ferry industry" shall mean "the motor ferry industry means an industry concerned with the transportation of motor vehicles by road, whether by vehicle carrier or own wheels to and from Vehicle Manufacturers, harbours, rail, storage depots, dealers and third parties".

3.3 For the purpose of this Constitution "motor vehicle" means a self-propelled vehicle of any engine capacity, whether rigid or articulated (a combination of a vehicle and a semi-trailer or trailer), used for conveying goods, persons or passengers, or for use in agriculture, industry or commerce and includes chassis'.

4. OBJECTS

The objects of the Council shall be:

- 4.1 To negotiate, conclude, promulgate 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, and parties agree in writing.
- 4.2 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.
- 4.3 To prevent and resolve labour disputes.
- 4.4 To perform dispute resolution functions in accordance with the Labour Relations Act no 66 of 1995 amended.
- 4.5 To develop proposals on policy and legislation that may affect the council's sector and area and submit those proposals to Nedlac or any other appropriate forum..
- 4.6 To promote and establish training and education schemes.
- 4.7 To establish and administer a fund in accordance with the Labour Relations Act, to be used for resolving disputes
- 4.8 To establish and administer pension, provident, medicalaid, sick pay, holiday, unemployment, training or similar schemes or funds for the benefit of any of the parties to the Council or their members, save where alternative arrangements are in place or in the process of being established.
- 4.9 To confer on workplace forums or monthly shop steward meetings additional agreed matters for consultation at affiliate or branch level.
- 4.10 To consider and deal with any other matter that affects the interests of the parties.
- 4.11 To strive to promote good relationships and endeavour to maintain industrial peace between employers and employees.
- 4.12 To administer agreements of the Council.
- 4.13 To ensure compliance by all employers (including non-parties) and employees of any agreement negotiated by the parties.

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4.14 To consider and advise or make agreed and/or separate representations on any legislation affecting the industry.

4.15 To negotiate and/or consult with respect to industry matters of mutual concern.

4.16 To secure the complete organisation of employees and employers.

5. EXCLUSIONS

5.1 The Council shall not regulate or conclude agreements on:

5.1.1 Non-substantive conditions of work.

5.1.2 Operational procedures.

5.1.3 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 4.1 above.

6. MANAGEMENT DECISION MAKING

6.1 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:

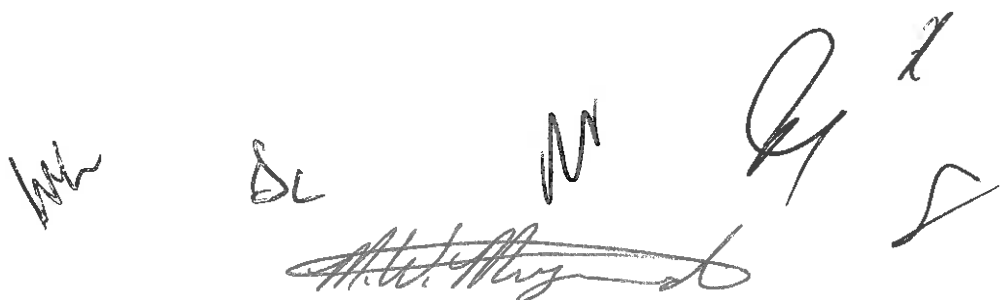
6.1.1 The establishment and liquidation of an enterprise.

6.1.2 The primary objectives, activities, resources and policy of the organisation.

6.1.3 The products of the organisation, as well as the operation method, markets and marketing strategy.

6.1.4 The budget and allocation of capital and all other resources.

6.1.5 The total organisation and job structure, the number of employees as well as the appointment, placement and transfer of employees, subject to consultation where appropriate.

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6.1.6 The nature and allocation of work and the issuing of instructions, subject to consultation and/or negotiations where appropriate.

7. PARTIES

7.1 The Parties to the Council shall be a registered employers' organisation/s and registered trade unions, whose members are engaged or employed in the industry, trade or undertaking as defined under clause 3 above in those categories specified in the Main Agreement of the Council.

7.2 The names of the Parties are listed in Schedule 1.

8. ADMISSION OF MEMBERS

8.1 The parties to the Council shall be registered employers' organisations and registered trade unions, as set out in Schedule 1 hereto and hereinafter referred to as the "employers" or "employers organisations" and/or "employees" or "trade unions" respectively as the case may be, whose members are engaged or employed in the Industry.

8.2 Any employers' organisations or trade union registered in terms of Section 96 of the Act in respect of persons engaged or employed in the Industry may be admitted to membership of the Council, on such conditions as the Council may determine, and the terms "the employers" or "the employers organisations" and "the employees" or "the trade unions" shall thereupon be deemed to include any employers' organisation or trade union, as the case may be, so admitted.

8.3 Provided that such trade unions shall have not less than 100 members in the Industry. Membership figures submitted in support of the application to be party to the Council, must be verified by the National Secretary. In the event of a dispute, a ballot will be held under the auspices of the CCMA.

8.4 The Council shall immediately advise any trade union whose membership has fallen below 100 members, that unless the situation is corrected within 1 month of the date of notification, the trade union will forfeit any seats it has on the Council, and cease to be a party to the Council

8.5 Provided that such employer's organisations shall have not less than 100 employees in the Industry. Employee figures submitted in support of the application to

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be party to the Council, must be verified by the National Secretary. In the event of a dispute, a ballot will be held under the auspices of the CCMA.

8.6 The Council shall immediately advise any employer's organisation whose employee numbers has fallen below 100 employees, that unless the situation is corrected within 1 month of the date of notification, the employer's organisation will forfeit any seats it has on the Council, and cease to be a party to the Council.

8.7 Any registered trade union, or registered employer's organisation that is engaged in the sector and area defined in the Council's Certificate of Registration may apply in writing to the Council to be admitted as a party. Their application must be accompanied by:

8.7.1 A certified copy of the applicant's registered Constitution.

8.7.2 A certified copy of the applicants Certificate of Registration.

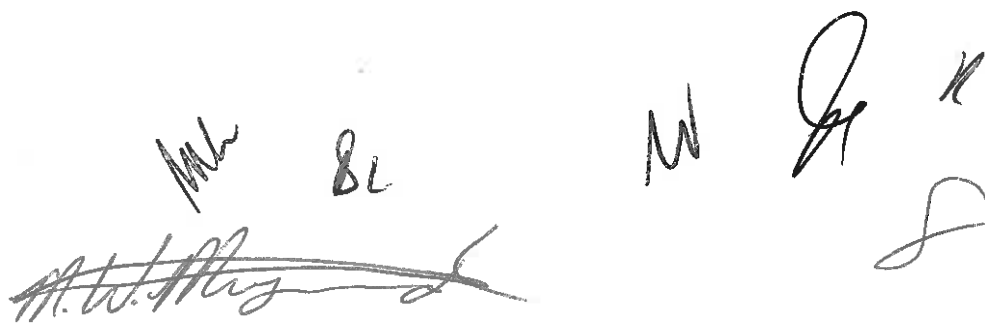
8.7.3 Details of the applicant's membership/employees who are within the registered scope of the Council, including in the case of an employer's organisation, the number of employees that its members employ within the Council's registered scope.

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

8.7.5 Any other relevant information which the applicant wishes to submit in support of its application.

8.8 Within 30 days of receiving an application for membership in the Council, the Council will decide whether to grant or refuse the application and will advise the applicant within 30 days of its decision.

8.9 Union representation shall be proportional according to the following formula: Each trade union shall have one delegate for each 100 members up to the first 1 000 members, and thereafter one delegate for each 200 members (or part thereof.) A "delegate" shall mean a shop steward at the bargaining unit where the union is representative. Shop stewards who have been elected to serve as Council office bearers (Chairperson, Deputy Chairperson or National Treasurer), shall not be counted in the calculation of the number of delegates which a union is entitled to. Each party

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union shall also be entitled to have one union official present at Council meetings. Shop stewards who are Council office bearers and union officials shall not have a vote at Council meetings.

8.10 The employer organisation(s) shall be entitled to one representative from each member company of the employer organisation(s), as well as the Secretary of the employer organisation(s).

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

8.12 The certification of Party membership figures on LRA Form 3.20 by an Official of the Department of Labour shall constitute verification for the purpose of establishing the proportional representation of each Party in terms of clauses 8.7 and 8.8 above.

9. WITHDRAWAL

9.1 Any party may withdraw from the Council if:

9.1.1 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 1 month after having been informed in writing and with meetings having failed to resolve such breach.

9.1.2 Any agreement submitted to the Minister for publication or extension is not published or extended by reason of the Minister having exercised his/her 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 this clause shall detract from the powers, functions or discretion of the Minister in terms of the Act

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

10. APPOINTMENT OF REPRESENTATIVES AND ALTERNATIVES TO COUNCIL

10.1 Subject to the provisions of 8.6, 8.7 and 8.8 above, the Council shall consist of an agreed number of representatives for each employer organisation and trade union.

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10.2 Representatives shall be appointed by the employer and the trade union parties in the manner provided for in their respective Constitutions.

10.3 Representatives shall hold office for 36 months,

10.4 Each party shall appoint one alternate for each representative.

10.5 Each party may at any time withdraw a representative or alternate on the Council by giving at least seven days' notice in writing to the Secretary. The party shall within 30 days appoint a replacement as provided in 10.2 or 10.4 above.

10.6 A representative or an alternate may resign by giving at least seven days' notice in writing to the Secretary and to the party which appointed him or her. The affected party shall within 30 days following the resignation, appoint a replacement as provided in 10.2 or 10.4

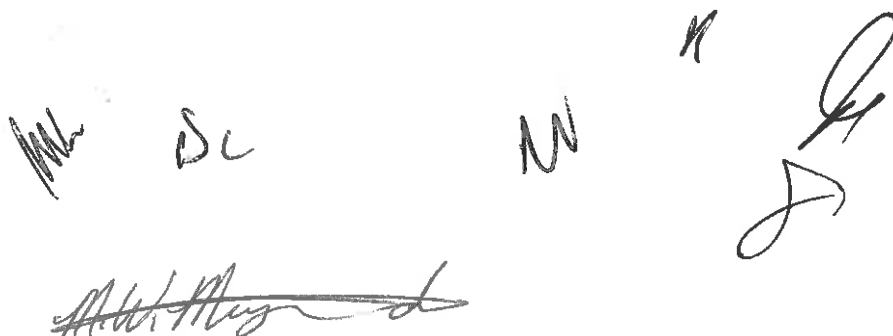
10.7 If a seat on the Council becomes vacant through the withdrawal, resignation, death or disqualification of a representative or an alternate, the vacancy shall be filled by the affected party within 30 days.

10.8 Any representative or alternate appointed to a vacancy as described in 10.7 shall hold office for the unexpired portion of his or her predecessors' period of office and subject to the same conditions as such predecessor.

11. ELECTION OF CHAIRPERSON AND DEPUTY CHAIRPERSON

11.1 The Council shall at its first meeting following the appointment of representatives elect an Acting Chairperson by show of hands. The Acting Chairperson shall call for nominations for the position of Chairperson and Deputy Chairperson and if more than one representative is proposed and seconded, a vote by ballot shall be taken, the representative receiving the highest number of votes being declared elected as Chairperson.

11.2 If an equal number of votes are cast for two or more candidates, the Acting Chairperson shall write the name of each candidate on a piece of paper and insert the pieces of paper in a container and draw one out. The candidate whose name is thus drawn shall be elected Chairperson.

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11.3 The same procedure shall be followed for the election of a Deputy Chairperson. If the elected Chairperson is a representative of the employers, the Deputy Chairperson shall be a representative of the employees, and *vice-versa*.

11.4 Subsequent elections shall be conducted *mutatis mutandis* in the same manner.

11.5 The Chairperson and the Deputy Chairperson shall hold office for three years or until the expiration of the period for which they are appointed as representatives, whichever is the shorter, and shall be eligible for re-election.

11.6 The Chairperson shall:

11.6.1 Preside and enforce order at all meetings at which he is present;

11.6.2 Sign minutes of meetings after confirmation;

11.6.3 In addition, perform all other duties normally or usually performed by a person in such position.

11.7 The Deputy Chairperson shall in the Chairperson's absence exercise the powers and perform the duties of the Chairperson.

11.8 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.

11.9 The Chairperson and Deputy Chairperson may be removed from office by a decision of Council.

12. OFFICERS

12.1 National Secretary

The Council shall appoint a National Secretary who shall:

12.1.1 Keep the books of account of the Council;

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12.1.2 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;

12.1.3 Give notice of and attend all national meetings;

12.1.4 Record minutes of the proceedings and circulate the minutes to all delegates before the next meeting;

12.1.5 Bank all monies received on behalf of the Council and make payments on behalf of the Council;

12.1.6 Submit statements of the financial position of the Council not less than once every quarter;

12.1.7 Ensure that the Council's Annual Financial Statements are prepared and audited;

12.1.8 Ensure that the Council's Audited Financial Statements are submitted to the Registrar of Labour Relations;

12.1.8 Perform all functions relating to the preparation of agreements for promulgation;

12.1.9 Monitor the activities of sub-committees and reporting on same to the National Council.

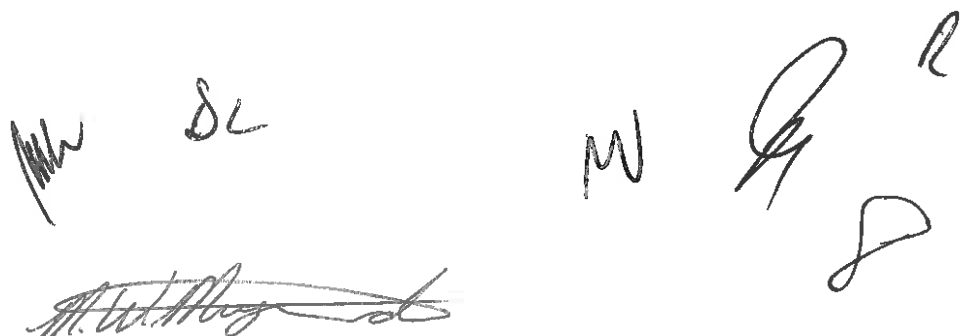
12.2 National Treasurer.

The Council shall appoint a National Treasurer who shall:

12.2.1 Be a co-signatory to the Council's banking account;

12.2.1 Approve quotations and invoices together with the National Secretary for payment;

12.2.3 On an annual basis, develop a draft budget for planning of the Council's finances;

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12.2.4 Attend all meetings of the Council and its sub-committees.

12.3 Agents

The Council may appoint agents to:

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

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

12.4 The appointment of secretaries and agents shall be by ballot, of the representatives present from both parties at the meeting at which the appointments are made. Candidates who receive the highest number of votes shall be appointed. This will be preceded by interviews where the applicants will have qualified in terms of the criteria and will have accepted the Code of Conduct. (The selection criteria and Code of Conduct will be determined by Council.)

12.5 The Council may appoint other officers as may be necessary and agreed following the procedure as set out in 12.3 above,

12.6 Conditions of Service and benefits affecting all paid officials and staff shall be fixed and reviewed by the Council from time to time.

12.7 Officials of Council may be removed from office by a decision of Council.

13. MEETINGS OF THE COUNCIL

13.1. The Council shall meet at least once per quarter at a place, date and time determined by the Chairperson.

13.2 On the written request of 25% of Council representatives, the Chairperson of the Council shall summon a meeting of the Council within seven (7) days of receipt of the request.

13.3 Notices

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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.

13.4 Quorum

The quorum for meetings of the Council shall be 50% +1 of the representatives of each of the employers and employees; for the purposes of determining whether a quorum is present, alternates (of representatives who are absent) shall be regarded as representatives. If within 60 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, unless agreed otherwise. At the adjournment meeting the representatives or alternates present shall form a quorum.

13.5 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.

13.6 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 the number of courses a vote of tie representatives on the Council may be taken by post or telefax. The procedure relating to the postal vote shall be as follows:

13.6.1 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;

13.6.2 The 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;

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13.6.3 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 and, on approval, to circulate to the rest of the Council members;

13.6.4 Should not less than two thirds of the votes received from the employers' representatives, and not less than two thirds of the votes received from employees' representatives be in favour of the resolution 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.

13.7 Votes

Except where otherwise provided in this Constitution, all matters forming the subject motions shall be decided by consensus, failing which by the votes of a two thirds majority of employer representatives and two thirds majority of employee representatives present in a quorate meeting and who are entitled to vote and voting shall be by show of hands.

13.8 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.

13.9 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.

13.10 Minutes

Minutes shall be circulated to all members of Council within 7 days of the next Council sitting. At any meeting of the Council, the minutes of the preceding meeting shall, unless they have previously been circulated, be read by the National Secretary and, after confirmation, signed by the Presiding Officer.

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13.11 Motions

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

13.12 Matters not provided for

Points of procedure on which this Constitution is silent shall be decided in terms of the voting procedure contained in 13.7 above.

13.13 Small and medium enterprises

Any employer engaged in the sector and area in respect of which the Council is registered may attend meetings after making prior arrangements with the Council and must be given an opportunity to make representations regarding matters affecting small and medium enterprises. The Council must endeavour, if at all possible, to give effect to those representations.

14. EXPENSES OF THE COUNCIL

14.1 The expenses of the Council shall be met from a fund which shall be raised by levies on the parties-

14.2 All monies received shall be deposited to the credit of the Council's banking account. Surplus funds, which are for the time being not required for the purposes referred to in 14.3, may be invested in:

14.2.1 Savings accounts, permanent shares or fixed deposits in any registered bank or financial institution.

14.2.2 A registered unit trust; or

14.2.3 Any other investment approved by the Registrar.

14.3 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 this own behalf, or that of any other scheme or fund which Council may establish in the future. The purchase

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of immovable property shall be subject to the approval of the Registrar of Labour Relations.

14.4 All payments from the funds of the Council shall require its approval and shall be made by Electronic Funds Transfer (EFT) by:

14.4.1 The National Secretary or,

14.4.2 By the National Treasurer.

14.5 Quarterly statements showing the Income and Expenditure and the financial position of the Council shall be submitted to it by the National Secretary.

14.6 The Secretary shall, not later than 31 May in each year, present an Audited Statement to Council, showing:

14.7.1 Monies received:

14.7.1.1 In terms of any agreement published under Section 32 of the Act;

14.7.1.2 From any other source;

14.7.2 Expenditure (if any) incurred under the following heads:

14.7.2.1 Salaries of officers;

14.7.2.2 Amount paid to representatives and alternates in respect of attendance at meetings and travelling and accommodation expenses;

14.7.2.3 Office accommodation

14.7.2.4 Printing and stationary requirements.

14.7.2.5 Miscellaneous expenditure which shall be explained in detail.

14.7.2.6 Administration costs.

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16.1 The Council shall as soon as possible set up its own dispute resolving mechanism as contemplated in the Labour Relations Act no, 66 of 1995 as amended. As an interim measure disputes will be dealt with as per 16.2,16.3 and 16.4

16.2 Where there are existing dispute procedures in any collective agreements between the parties at Motor Ferry Industry, affiliate or branch level, these procedures will continue to be followed (refer to : Main Procedural Agreement 1993, Provident Fund Agreement 1995, RBO Agreement 1996, MFF BusinessAgreement 1996, Ground Negotiating Rules 1996, Cellphone Agreement 1997,Full Time Shop Steward Agreement 1997, Compassionate Leave Agreement 1998 and any other collective agreements in an affiliate or branch within an affiliate).

16.3 Disputes over freedom of association. organisational rights, collective agreements (Section 24 of the LRA No 66 of 1995, as amended), workplace forums, unfair dismissals, unfair labour practices and unfair discrimination, will be dealt with as per the dispute resolving mechanisms in the Labour Relations Act No 66 of 1995, as amended.

16.4 Subject to the provisos in 19.1, 19.2 and 19.3 and depending on the nature of the disputes, they will be dealt with as follows '

16.4.1 Disputes arising from a deadlock over a matter of mutual interest at any meeting of the Council:

16.4.1.1 The aggrieved party will refer the dispute in writing to the Council.

16.4.1.2 The secretary will convene a special meeting of Council to attempt to resolve the dispute.

16.4.1.3 If the dispute is not resolved at the special meeting, the parties may agree whether further meetings of the Council should be convened to resolve the dispute, or whether the dispute be referred to voluntary mediation, voluntary arbitration, compulsory arbitration or the Labour Court if required by the Act.

16.4.1.4 If no settlement is reached as contemplated in 19.2.1.3, any party to the dispute shall be entitled to pursue his/her rights contained in the Labour Relations Act.

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16.4.2 Disputes between the parties to the Council about the interpretation or application of this Council's Constitution:

16.4.2.1 Any party may request the secretary to arrange for the appointment of a mutually acceptable arbitrator to determine the dispute through arbitration.

16.4.2.2 If agreement on such arbitration cannot be reached, then an arbitrator from the panel will be chosen.

16.4.3 Disputes to Council in terms of Section of the Act shall be dealt with in terms of the dispute resolution procedures contained in Council's collective agreements.

16.4.4 Any other dispute referred to Council in terms of Section 51 of the Act shall be dealt with through conciliation (mediation) and/or arbitration where allowed for in the Labour Relations Act, the Basic Conditions of Employment Act and the Employment Equity Act.

16.4.5 Panel of Mediators and arbitrators

The council will, as part of the process envisaged in Clause 16.1 above, agree on a panel of mediators and arbitrators who, after training where necessary, will provide such services in the various regions in the same way as provided for by the CCMA.

16.5 Arbitration

16.5.1 If any dispute is or may be referred to arbitration in terms of this Constitution, and/or the Labour Relations Act, the Basic Conditions of Employment Act or the Employment Equity Act there shall be no industrial action in connection with any such issue.

16.5.2 Any such arbitration envisaged in 19.5.1 above will be conducted in terms of the arbitration procedure (see Appendix A).

17. NEGOTIATIONS

Negotiations will take place as per the relevant Collective Agreement between the parties as well as in terms of any negotiation protocol that may have been agreed upon.

18. COMMUNICATIONS

Communication shall take place in accordance with the Collective Agreements between the parties.

19. STRIKES AND LOCKOUTS

19.1 No strike or lockout shall take place until the matter giving occasion therefore has been dealt with in accordance with the provisions of this Constitution and the Labour Relations Act, and any relevant provisions in a Collective Agreement between the parties and shall not in any case take place during the currency of an agreement arrived at by the parties which deals with the matter giving occasion for the strike or lockout. provided die issue in dispute relates to a specific current agreement.



19.2 Where industrial action occurs in breach of Clause 19.1 above, employers agree not to dismiss employees involved in such action, unless attempts to resolve such industrial action (as may be provided in Collective Agreements or as provided for in the Labour Relations Act/Code of Good Conduct on Dismissals) through negotiation and/or consultation as required have failed.

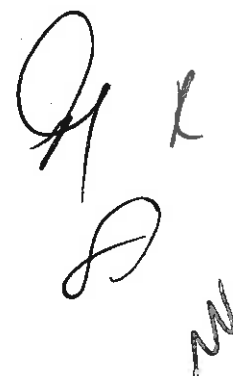
20. DISSOLUTION AND WINDING UP

20.1 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 case may be, and the following provisions shall apply to such winding up:

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

20.1.2 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

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employee party, as the case may be, the provisions of Section 59(1)(b) of the Labour Relations Act shall apply.

20.1.3 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 accounts showing the Council's assets and liabilities and also to hand over to him or her any unexpended funds of the Council.

20.1.4 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 20.1.6, 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.

20.1.5 After payment of all debts in accordance with sub-section 20.1.4, the remaining funds, if any, shall be paid by the liquidator to the Bargaining Council to which the parties will become members.

20.1.6 For the purpose 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.

21. AMENDMENTS

21.1 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 one calendar month's notice has been given to the national Secretary and circulated to representatives at least two 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.

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

DL
W
J
R

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21.3 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.

22. APPLICATIONS FOR EXEMPTION AND APPEALS AGAINST UNSUCCESSFUL APPLICATIONS FOR EXEMPTION FROM NATIONAL COLLECTIVE AGREEMENTS

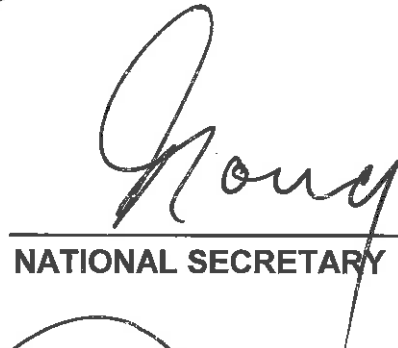
See Appendix B.


Signed on this 20th day of May 2019 at Kenya Park



CHAIRPERSON


DEPUTY CHAIRPERSON


TREASURER


NATIONAL SECRETARY


OBO AMCU


OBO SATAWU


OBO SAMFA



APPENDIX A

ARBITRATION PROCEDURE AS PER CLAUSE 16.4 OF THIS AGREEMENT

1. Until the main Council has established its own dispute resolving mechanisms, all referrals to arbitration will be as per the relevant provisions of the Labour Relations Act No 66 of 1995, as amended, or as per any existing collective agreements between the parties at MFIBC, affiliate, or branch within an affiliate levels. Alternatively, the parties to a dispute may agree to private arbitration-
2. The referring party to arbitration must attempt to agree with the other party to the dispute
 - Issues in dispute.
 - Issues not in dispute.
 - Documents which both parties agree to as common cause.
3. A covering letter attaching the bundle of agreed documents, issues in, and not in, dispute must be sent to the arbitrator no later than 3 days before the arbitration.
4. The arbitrator may conduct the arbitration in accordance with any procedure he/she considers appropriate and may also make a cost award against an applicant or respondent on the basis of a frivolous and/or vexatious case. The relevant sections of the Labour Relations Act, Basic Conditions of Employment Act or Employment Equity Act (whichever applicable to this case) regarding reinstatement or compensation will be applicable.
5. If applicable legislation requires for matter to be dealt with by the Labour Court, then the matter may not be arbitrated upon unless both parties to the dispute agree.

MW *DL* *W* *RK*
AW May *J*

SCHEDULE 1

LIST OF PARTIES TO THE MOTOR FERRY INDUSTRY BARGAINING COUNCIL

EMPLOYER PARTIES

South African Motor Ferry Association (SAMFA)

TRADE UNION PARTIES

South African Transport and Allied Workers Union (SATAWU)

Association of Mining and Construction Union (AMCU)

MW *DL*

A. Williams

OK

J

R

M

APPENDIX B

PROCEDURE FOR APPLYING FOR EXEMPTION AND DEALING WITH APPEALS AGAINST UNSUCCESSFUL APPLICATIONS FOR EXEMPTION FROM NATIONAL COLLECTIVE AGREEMENTS

Definition

1. An applicant could be an individual employer who is a member of an Employers Association which is party to any agreement, including all collective agreements, or an individual employer covered by the terms of any agreements/collective agreements by means of an extension by the Director-General of Labour to non-parties.

Procedure

2. The applicant must negotiate with the respective unions (or employees in the absence of a recognised union) in an attempt to reach consensus regarding the application. If consensus is reached, an agreement signed by the Employer and Union or affected Employee/s (in the absence of a recognised Union) must be attached in support of the application. If no agreement is reached, the Union or affected Employee's (in the absence of a recognized union) must be given the opportunity to sign the application indicating its/their lack of agreement whereafter the applicant shall be entitled to forward the application to the relevant Council.
3. The application will be considered by the Council at its regular meeting and make a decision in writing, giving written reasons therefor. The application for exemption must be decided upon within a period of 30 days of receipt thereof.
4. If any party, including the applicant, the union or an Employers Association which is party to the Council is dissatisfied with the decision, then that party may appeal to the independent Appeal Board.
5. The Applicant must notify the Council in writing of its intention to appeal within 14 days of its application for exemption having been refused. The Applicant must then lodge its appeal within 10 days of his Notice of Intention to Appeal. A party that wishes to oppose the appeal must file its opposition with the Council within 10 days of being notified of the appeal. The Council must then, within a period of 10 days, constitute the independent appeal body, which body must decide the appeal within a period of 10 days.

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