

**CONSTITUTION
OF THE
BARGAINING
COUNCIL FOR
THE FISHING
INDUSTRY**

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1. NAME AND LEGAL STATUS OF THE BARGAINING COUNCIL

- (1) The name of this Bargaining Council is the Bargaining Council for the Fishing Industry.
- (2) The identity and legal status of the Bargaining Council are distinct from the parties to the Bargaining Council.
- (3) Unless otherwise stated in this constitution, the Bargaining Council alone bears responsibility and liability for its actions and obligations.

2. REGISTERED SCOPE

- (1) The scope in terms of which this Bargaining Council is registered covers employees employed in the fishing industry as more fully set out in clause 2(2) below.
- (2) **The following fishing sectors (as defined on the permit conditions issued in terms of the Marine Living Resources Act No 18 of 1988, as amended from time to time) shall be registered scope of the Bargaining Council and shall each constitute a separate Chamber within the Bargaining Council:**
 - (a) **Hake Deep-sea Bottom Trawl;**
 - (b) **Hake Inshore Bottom Trawl; and**
 - (c) **Horse Mackerel Mid-water Trawl.**

3. OBJECTIVES OF THE BARGAINING COUNCIL

- (1) To maintain and promote economic development, social justice, labour peace and democratisation of the workplace;
- (2) To maintain and promote the viability of the fishing industry;
- (3) To provide for the representation of small and medium enterprises and should the need arise the Bargaining Council shall establish a separate Chamber to cater for this particular interest group;
- (4) To embark on programs to promote and strengthen the Bargaining Council including but not limited to encouraging the admission of parties;
- (5) To negotiate, to bargain collectively and to consult on matters of mutual interest and issues which affect or may affect the relationship between parties to the Bargaining Council or their members and to provide for and to regulate collective agreements;
- (6) To establish procedures to exempt parties or non-parties from collective agreements;
- (7) Where affordable, to provide mechanisms for the dispute resolution functions referred to in the Act in order to prevent and resolve labour disputes within the Bargaining Council's registered scope;

- (8) To work with the applicable SETA's to establish, promote and co-ordinate training, education and development schemes;
- (9) To consider and deal with any other matter that may be of interest to the parties including but not limited to consider matters of mutual interest between the parties or their members in accordance with the provisions of the Act and this constitution; and
- (10) To comply with its duties and functions in terms of the Act and its constitution.

4. POWERS OF THE COUNCIL

In addition to the powers conferred in terms of the Act, the Council shall have the powers:-

- (1) To establish procedures regarding the issuing of press statements by the Council;
- (2) To establish and administer funds to be used *inter alia* for resolving disputes;
- (3) To impose administration levies on employees and employers who fall within the registered scope of the Bargaining Council;
- (4) To establish and cause the administration of pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the Bargaining Council or their members, where they are not already in existence.
- (5) To develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect any of the Chambers within the registered scope of the Bargaining Council.
- (6) To conclude contracts and perform other juristic acts including:
 - (a) the acquisition, disposal, mortgaging, pledging, or otherwise encumbering of any of its movable and immovable property;
 - (b) the letting and rental of property;
 - (c) the borrowing, lending and investing of money; and
 - (d) the right to consult with legal advisors and to institute and defend legal proceedings of any type in any forum.
- (7) To perform any act reasonably necessary for, or incidental to the effective performance by the Council of its powers and functions and ensuring compliance with and giving effect to the terms of this constitution;
- (8) To appoint a secretary and/or chairperson or any one or more representatives to act on behalf of the Council and to do anything and/or sign any affidavit, power of attorney, agreement and/or any document of any nature whatsoever to give effect to anything done or to be done by the Council.
- (9) The Council can only exercise these powers above and perform these functions within its registered scope.

5. PARTIES TO THE BARGAINING COUNCIL

- (1) The founding parties to the Bargaining Council shall comprise of those employer's organisations and employee organisations as defined in the Act that:-
 - (a) Attended the founding meeting; and
 - (b) Are signatories to this constitution ; and
 - (c) Are registered in terms of section 96 of the Act.

- (2) Any registered trade union or registered employers' organisation that has members that fall within the **Fishing Industry as defined** may apply in writing to the secretary of the Bargaining Council for admission as a party.

- (3) The application must be accompanied by :-
 - (a) A certified copy of the applicant's registered constitution;
 - (b) A certified copy of the applicant's certificate of registration;
 - (c) Proof of sufficient representivity. In deciding whether an applicant is sufficiently representative, the following factors must be taken into account: -
 - (i) That the applicant part represents at least 10% (TEN PERCENT) of those employees within a specific sector of the Fishing Industry in terms of clause 2(1) above.
 - (ii) The particular interest group the applicant represents;
 - (iii) The fundamental rights entrenched in Chapter II of the Act; or
 - (iv) The probable influence of the presence or absence of such applicant on effective legitimate and representative negotiations;
 - (v) A statement of the reasons why the applicant ought to be admitted as a party to the Bargaining Council; and
 - (vi) Any other information which the applicant wants to furnish in support of its application.
 - (d) Written consent from a registered employer's organisation or registered trade union within the specific fishing sector to participate in an existing Chamber or new Chamber to the Bargaining Council.

- (4) Within 90 (NINETY) days of receiving an application for admission, the Executive Committee must decide whether to grant or refuse the application and must advise the applicant of its decision in writing.

- (5) If the Executive Committee admits an applicant, the secretary must make the appropriate amendment to the list of parties to the Bargaining Council in terms of Schedule 1 and should this admission create an additional Chamber an appropriate amendment must be made to clause 2(2) above.

- (6) If the Executive Committee refuses to admit an applicant, the Executive Committee must advise the applicant of its reasons for that decision, within 30 days of the date of refusal.

- (7) Membership of a party to the Bargaining Council shall be terminated by the Executive Committee:-
 - (a) Should the representativity of a party to the Bargaining Council fall below the number

prescribed in **clause 5(3)(c)(i)** above the secretary must send a written notice to the party advising it of this fact and inform the Executive Committee accordingly.

- (b) If within 90 (NINETY) days of receiving this notice in terms of clause 5(7)(a) above, the party concerned cannot satisfy the Executive Committee that it is substantively representative in terms of clause 5(3)(c)(i) above then the party automatically ceases to be a party to the Bargaining Council;
 - (c) Any party to the Bargaining Council may withdraw from the Bargaining Council by notifying the Executive Committee in writing of its decision. This notice must also specify the date of the withdrawal, which must be at least 90 (NINETY) days after the date of the notice;
 - (d) Should any member be dissolved in terms of its own constitution or otherwise or is liquidated;
- (8) Should a dispute arise concerning whether a party's membership should be terminated or not, the dispute shall be referred to arbitration in terms of clause 20 and the arbitrator's decision shall substitute the decision of the Executive Committee and shall be final and binding. The provisions of clause 5(7) shall be the only issue which the arbitrator can be asked to decide.
- (9) Ceasing to be a party to the Bargaining Council in terms of clause 5(7) does not mean that the affected party no longer falls within the registered scope of the Bargaining Council, as the jurisdiction of the Bargaining Council in relation to the affected party will depend on the scope of the Bargaining Council.

6. COUNCIL REPRESENTATIVES

- (1) The Council consists of representatives of employers' organisation(s) and trade union(s), as stipulated in clause 6(2) below.
- (2) The number of persons representing the employers' organisation(s) and trade union(s) in the Council:-
 - (a) must be equal.
 - (b) subject to 6(2)(a) each Chamber in terms of clause 2(2) above shall be entitled to at least one representative; and
 - (c) an additional representatives per Chamber may be elected based on one representative for every 400 (FOUR HUNDRED) or any part thereof, employees employed within the specific Chamber.
- (3) Each party to the Bargaining Council may appoint in accordance with the procedures of its own constitution its representative(s) to the Council from time to time as the need arises.
- (4) A representative or an alternate will hold office for the period between Annual General Meetings and will be eligible for re-appointment at the end of that term, subject to the following:-
 - (a) A representative or an alternate whose term of office has expired and who is not re-appointed, may with the written consent of the party who he is representing continue to act as a representative until that representative's successor assumes office;
 - (b) A party may withdraw any of its representatives or alternates after having given at least 30 days notice in writing to the secretary,
 - (c) Should a party's participation in the Council be terminated in terms of clause 5(7), that party's representative and/or alternate shall vacate their seats.

- (d) A representative who, without good cause, is absent from three consecutive meetings of the Council, shall be disqualified from continuing in that office for that term.
 - (e) A representative or alternate may resign by giving written notice to the secretary and the party who appointed him, in which case a new representative or alternate shall be appointed as soon as possible, but not later than the next meeting of the Council. The resignation shall take effect on receipt of the written notice.
- (5) Should the office of any representative or alternate become vacant for whatever reason, the party that appointed the representative or alternate may appoint another representative or alternate for the remaining portion of the predecessors term of office, as soon as possible, but not later than the next meeting of the Council.
- (6) In the event of a dispute regarding the determination or allocation of representatives as contemplated in clauses 6(2) and (3), the dispute must be resolved in accordance with the procedures contemplated in clause 20, with specific reference to clauses 6(8) and (9) respectively.
- (7) In the event of a dispute concerning the determination as contemplated in clause 6(6) being determined by arbitration, the arbitrator's decision must be made with due regard to any relevant factor including minimising:-
- (a) The proliferation of representation; and
 - (b) The administrative and financial burden on the Council.
- (8) In the event of a dispute concerning the allocation of representatives as contemplated in clause 6(6) being determined by arbitration, the arbitrators decision must be made with due regard to any relevant factor including:-
- (a) the number of members that a party has who fall within the jurisdiction of the Bargaining Council and the various Chambers;
 - (b) the profile of a party in relation to the Bargaining Council and its various Chambers;
 - (c) minimising the proliferation of representation;
 - (d) upholding the principle of majoritarianism and proportionality; and giving expression to specialised interests, e.g. small, micro and medium enterprises.
- (9) Unless it agrees otherwise, the Bargaining Council must compensate all representatives and in their absence, their alternates, for travelling, accommodation and reasonable expenses on such terms as the Executive Committee considers appropriate arising from their performance of Council related functions and duties.
- (10) Employers must compensate all representatives and in their absence their alternates, for wages lost as contained in their substantive agreements, as a result of performing Council related functions and duties in terms of collective agreements reached as specified in Schedules 2 and 3.
- (11) Parties shall be entitled to have a number of observers equal to the number of representatives, attend all meetings of the Council at such member's expense.
- (12) One of the representatives of the employers' organisation will represent small and medium enterprises at the Council level.

7. COUNCIL MEETINGS

- (1) The Council shall hold its first Annual General Meeting within 15 months of the registration of the Council and thereafter every twelve months.
- (2) The Council shall meet at such venue, date and time as may be determined necessary by the chairperson provided that there shall be the annual general meeting each year.
- (3) A special meeting of the Council:-
 - (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
 - (b) must be called by the secretary with the concurrence of the chairperson and vice-chairperson within 7 (SEVEN) days of: -
 - (i) receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than 25% (TWENTY-FIVE PERCENT) of parties to the Council; or
 - (ii) the adoption of a resolution by the Executive Committee calling for a special meeting.
 - (c) Upon giving notice to the parties in writing.
- (4) At the Annual General Meeting, the Council shall deal with the following matters:-
 - (a) The appointment of the chairperson and the vice-chairperson of the Council whereby these seats shall alternate year on year between nominations from employer representatives and employee representatives;
 - (b) The appointment of another 4 (FOUR) persons to the Executive Committee plus alternates for each of them;
 - (c) The appointment of a secretary should it be necessary;
 - (d) The appointment of auditors;
 - (e) The determination of the levies to be imposed on employees and employers who fall within the registered scope of the Bargaining Council except that the amount to be paid by employees must be equal to the amount paid by employers;
 - (f) The appointment of members to serve on the Independent Appeal Board in terms of clause 15(3) below;
 - (g) The consideration and approval, with or without any amendments of -
 - (i) the annual financial statements of the Bargaining Council of the previous year;
 - (ii) the auditors report on those statements; and
 - (iii) the budget of the Bargaining Council for the next financial year as prepared in terms of clause 16(15);
 - (h) The annual report read by the outgoing Chairperson of the Council;
- (5) The secretary must prepare a written notice of every Council meeting stating the date, time and venue of the meeting and the business to be transacted, and must in writing give notice to each party of the Bargaining Council at least 14 (FOURTEEN) days before the date of the meeting.
- (6) No decision taken at any meeting of the Council shall be invalidated by the absence of any representatives of party even if proper notice was given to such party in the prescribed manner.
- (7) A resolution of any committee or Chamber may at any time be set aside or varied by a decision of more than 67% (SIXTY SEVEN PERCENT) of the total number of representatives of the

Council present.

- (8) More than 67% (SIXTY SEVEN PERCENT) the total number of the representatives collectively form a quorum and must be present before a meeting may begin and be concluded.
- (9) Should at the time fixed for a meeting to begin and be concluded, and for 30 (THIRTY) minutes after that time, there is no quorum present, the meeting must be adjourned to a new date and the secretary must give written notice of the adjournment.
- (10) A meeting that is adjourned in terms of clause 7(9) may proceed on the date to which it has been adjourned with the representatives present at the time called for the meeting. This is regardless of whether or not notice has been given in terms of clause 7(9) and whether or not a quorum is present after 30 (THIRTY) minutes of the scheduled time of the meeting.
- (11) At every meeting of the Council:-
 - (a) The secretary must cause minutes to be kept of the proceedings.
 - (b) The minutes of the meetings shall be forwarded by the secretary to all parties within a period of 20 (TWENTY) days after the meeting;
 - (c) The secretary must read the minutes of the previous meeting unless they were previously circulated;
 - (d) After the minutes have been confirmed, with or without any amendments, the chairperson must sign the minutes, and such signature will serve as proof of the confirmation of the minutes.
- (12) A motion proposed at a meeting may not be considered unless it has been seconded. The chairperson may require a motion to be submitted in writing, in which case the chairperson must read the motion to the meeting.
- (13) Unless this constitution provides otherwise, all motions and resolutions must be decided by a simple majority of votes of those present and entitled to vote and voting shall be by show of hands. Should voting require to be effected by way of a secret ballot, the secretary shall act as an electoral officer.
- (14) Each representative has 1 (ONE) vote on any matter before the Council for its decision. However, if at the meeting the employer representatives and employee representatives are not equal in number, the side that is in the majority must withdraw so many of its representatives from voting at that meeting as may be necessary to ensure that the sides are of equal numerical strength at the time of voting.
- (15) The parties having the right to vote at the meeting shall decide any procedural matters that are not regulated in the constitution, provided that:
 - (a) All meetings of the Council shall be in private unless the Council otherwise decides;
 - (b) Proceedings of the Council shall be conducted in English.
- (16) Any resolution of the Council that is taken by way of voting must be recorded in the minutes and shall constitute an agreement between the parties to the Bargaining Council notwithstanding the fact that a party or parties may have voted against such resolution.

8. EXECUTIVE COMMITTEE OF THE COUNCIL

- (1) The Council shall have an executive committee that consists of the chairperson, the vice-chairperson and the person appointed thereto at the Annual General Meeting and the elected chairperson of the Council shall also be the chairperson of the executive committee.
- (2) Subject to the directions and control of the Council, the executive committee may exercise and perform the powers, functions and duties of the Council relating to the supervision and control of the everyday management and administration of the Council. In addition, the executive committee may:-
 - (a) investigate and report to the Council on any matter relating to the Fishing Industry or the activities of the Council;
 - (b) do anything necessary to give effect to decisions of the Council;
 - (c) monitor and enforce collective agreements concluded in the Council;
 - (d) exercise and perform any power, function and duty that is conferred or imposed on the executive committee by or in terms of this constitution or that is delegated by the Council to the executive committee;
 - (e) recommend to the Council for ratification the appointment of employees to assist the Council in the exercise and performance of its powers, functions and duties together with proposed terms and conditions of service and the circumstances and procedures for the termination of their services;
 - (f) consider reports from the secretary concerning the membership figures of a party to the Bargaining Council;
 - (g) oversee the collection of income, including levies, to the Bargaining Council; and
 - (h) regulate the Bargaining Council's expenditure.
- (3) If any question which the Executive Committee considers to be extremely urgent and it is possible to answer that question by a simple "yes" or "no", the Chairperson may direct the secretary to cause a vote to be taken by telefax or electronic mail. A proposal subjected to a telefax or electronic mail vote may be adopted only if it is supported by at least 67% (SIXTY SEVEN PERCENT) of the total number of Executive Committee.
- (4) The Executive Committee must hold an ordinary meeting at least once every two months.
- (5) A special meeting of the Executive Committee:-
 - (a) may be called at any time by the chairperson with a view to disposing of urgent business; and
 - (b) must be called by the chairperson within 14 (FOURTEEN) days of receiving a request for that purpose, stating the purpose of the special meeting; and
 - (c) must be called by giving notice to the parties in writing in the prescribed manner.
- (6) The secretary must prepare a written notice of every Executive Committee meeting showing the date, time and venue of the meeting and the business to be transacted, and must send the notice to each member of the committee at least 7 (SEVEN) days before the date of the meeting. However, the chairperson may authorise shorter notice for a special meeting.
- (7) Any 3 (THREE) members of the Executive Committee constitute a quorum and must be present before a meeting may begin or continue.

- (8) The Executive Committee may determine its own procedures for conducting its affairs.
- (9) An Executive Committee member or his alternate will hold office for the period between Annual General Meetings and will be eligible for re-appointment at the end of that term, subject to the following:-
- (a) A party may withdraw any of its Executive Committee member or alternates after having given at least 30 days notice in writing to the secretary,
 - (b) Should a party's participation in the Council be terminated in terms of clause 5(7), that party's Executive Committee member and/or alternate shall vacate their seats.
 - (c) An Executive Committee member who, without good cause, is absent from three consecutive meetings of the Executive Committee member, shall be disqualified from continuing in that office for that term.
 - (d) An Executive Committee member or alternate may resign by giving written notice to the secretary and the party who appointed him, in which case a new Executive Committee member or alternate shall be appointed as soon as possible, but not later than the next meeting of the Council. The resignation shall take effect on receipt of the written notice.
- (10) Should the office of any Executive Committee member become vacant for whatever reason, the alternate to that Executive Committee member shall resume the vacated Executive Committee member's seat for the remaining portion of the predecessors term of office, with effect from the vacation of the seat.

9. OTHER COMMITTEES OF THE COUNCIL

The Executive Committee may from time to time establish other committees to perform as it sees fit any of its functions, including investigating and reporting to the Executive Committee on any matter, subject to such conditions as it may deem appropriate in the circumstances.

10. CHAMBERS WITHIN THE BARGAINING COUNCIL

- (1) The Bargaining Council may consist of Chambers in respect of the trades or industries set out in clause 2(2) above with the proviso that:-
- (a) the Council may add Chambers; and/or
 - (b) the Council may remove existing Chambers; and/or
 - (c) the Council may combine existing Chambers.
- (2) Any registered trade union or employer's organisation may be admitted as a party to a Chamber upon written application for admission, provided that the applying body is sufficiently representative within the Chamber. The application for admission shall comply *mutatis mutandis* with clause 5(3) and the admission or refusal deciding process shall *mutatis mutandis* be applied in terms of clauses 5(4) to 5(6) inclusive.
- (3) Each Chamber within the Council in terms of clause 2(2) above, shall consist of representatives of employer's organisation(s) and trade union(s) admitted as a party to a specific Chamber in terms of clause 10(2) above and appointed in terms of clause 10(4) below.

- (4) The number of persons representing the employer's organisation(s) and trade union(s) members:-
 - (a) must be equal; and
 - (b) each employer member of an employer organisation shall be entitled to at least one representative; and
 - (c) additional representatives per employer may be elected based on one representative for every 200 (TWO HUNDRED) employees employed in the Chamber.
- (5) The secretary of the Bargaining Council or person delegated by the secretary shall serve as the Secretary of the individual Chambers.
- (6) Any party may request the secretary in writing to schedule a meeting to address any of the issues listed in Schedule 3: provided such request is signed by not less than 25% (TWENTY-FIVE PERCENT) of all the representatives in the Chamber.
- (7) The secretary shall schedule a meeting on a date, within 7 (SEVEN) days of receipt of a request in terms of clause 10(6) above, at a suitable venue.
- (8) Any agreement reached within a Chamber shall apply to the parties in that Chamber and to those bodies to whom it is extended.
- (9) Any decision of the parties to a Chamber must be ratified by the Council and shall be valid until set aside or varied in terms of clause 7(7) or by the parties relevant to the Chamber and shall be regarded as a decision by the Council.
- (10) Reports on the Activities of each Chamber of the Bargaining Council shall be submitted to the Executive Committee not later than 30 (THIRTY) days before the annual general meeting for inclusion in the chairperson's annual report.

11. CHAIRPERSON AND VICE-CHAIRPERSON

- (1) At every annual general meeting, the Council must elect and appoint a chairperson and a vice-chairperson from amongst representatives of the Council.
- (2) If the appointed chairperson is an employer representative, only an employee representative may be appointed as vice chairperson and vice versa. Outgoing office bearers shall be eligible for re-election.
- (3) The chairperson shall be elected in the following manner:
 - (a) The outgoing chairperson shall preside over the annual general meeting of the Council.
 - (b) This clause shall be applicable *mutatis mutandis* to the election of a vice-chairperson.
 - (c) If the chairperson or vice-chairperson to be appointed has to be an employer representative, only the employer representatives may participate in the election of their appointee and conversely if the chairperson or vice-chairperson has to be an employee representative the same shall apply.
- (4) The term of office of the chairperson and vice-chairperson:-
 - (a) commences at the end of the annual general meeting during which they were appointed;

- and
- (b) expires at the end of the next annual general meeting.
- (5) The chairperson if present must preside over all meetings of the Council, and must:-
- (a) Enforce order at all meetings in accordance with normal meeting procedures;
 - (b) sign the minutes of Council meetings after those minutes have been confirmed;
 - (c) sign payments made on the Bargaining Council's bank account subject to the provisions of 15(3); and
 - (d) perform any other functions and duties entrusted to the chairperson by this constitution as well as those that are generally associated with the office of chairperson.
- (6) The vice-chairperson must preside over meetings of the Council and perform the duties and functions of the chairperson whenever the chairperson is absent or for any reason unable to act or to perform those functions and duties.
- (7) If both the chairperson and the vice-chairperson are absent or unable to act or to perform the functions and duties of the chairperson, the Council, by show of hands, must elect from the representatives a person to act as chairperson and to perform those functions and duties.
- (8) If the office of the chairperson or vice-chairperson becomes vacant before the next annual general meeting, the employer or employee representatives of the Executive Committee as the case may be must by election fill in the vacancy for the remaining period of office.
- (9) The Executive Committee shall from time to time determine an honorarium payable to the chairperson of the Executive Committee provided that, should it become necessary or desirable to retain the services of the chairperson on a more permanent basis, the Executive Committee shall determine the salary and other conditions of employment of the chairperson by agreement.
- (10) The term of office of a chairperson or vice-chairperson may be terminated by written notice of either such chairperson, vice-chairperson or the Council consequent to a resolution to that effect: Provided where the chairperson has been employed in terms of clause 11(9) above the Executive Committee shall adhere to all obligations in terms of the applicable labour legislation in this regard.

12. BARGAINING COUNCIL OFFICIALS AND EMPLOYEES

- (1) Subject to clause 12(7), the Council must appoint a secretary on the terms and conditions it deems appropriate.
- (2) The secretary will be responsible for the administrative and secretarial work arising from the functioning of the Bargaining Council and for performing the functions and duties imposed on the secretary by or in terms of the Act and this constitution. Such work, duties and functions include:-
- (a) keeping and maintaining a record of the membership of the parties to the Bargaining Council and providing access to this record;
 - (b) ensure the keeping and maintaining of the books and records of account that the Bargaining Council may direct in order to fully reflect the financial transactions and state of affairs of the Bargaining Council;
 - (c) attending all meetings of the Council and the Executive Committee and recording the

- minutes of the proceedings at those meetings;
 - (d) conducting the correspondence of the Bargaining Council, keeping originals of letters received and copies of letters sent;
 - (e) at each meeting of the Council, reading significant correspondence that has taken place since the previous meeting;
 - (f) banking all moneys received on behalf of the Bargaining Council within 3 (THREE) business days of receipt;
 - (g) whenever required by the Executive Committee, but at least at each Executive Committee meeting, submitting the Bargaining Council's statements of its financial affairs and position;
 - (h) preparing, for submission to the Executive Committee before the annual general meeting of the Council, the budget for the next financial year and an annual report summarising the key activities of the Bargaining Council;
 - (i) where requested to do so, to countersign payments made from the Bargaining Council's bank account; and
 - (j) performing such other duties and functions as the Executive Committee may from time to time direct.
- (3) The secretary must retain in safe custody in the office of the Bargaining Council of:-
- (a) a copy of the confirmed and signed minutes of every meeting of the Council, the Executive Committee, any other committee of the Council and relevant Chambers;
 - (b) every financial statement referred to in clause 12(2)(b), and all vouchers and records relating to statements of that nature;
 - (c) retain the current and all past constitutions of the Bargaining Council;
 - (d) the signed certificates of appointment issued to the persons appointed by the Minister as designated agents of the Bargaining Council.
- (4) The Executive Committee may appoint any additional officials and any number of employees that may be necessary to assist the secretary in performing the functions and duties of that office on the terms and conditions it deems appropriate.
- (5) The Executive Committee may request the Minister to appoint any number of persons as designated agents to help it enforce any collective agreement concluded in the Bargaining Council or relevant Chamber.
- (6) The secretary, designated agents and other officials and employees of the Bargaining Council must not be biased, in favour of or prejudiced against any party in the performance of their respective functions.
- (7) The Executive Committee may issue a Code of Conduct to directives and/or guidelines to the secretary, designated agents and other officials in the performance of their respective functions.
- (8) Any official and/or employee, contracted or employed by the Bargaining Council shall only have the right to terminate an employment contract for reasons deemed sufficient by law in such manner as regulated by the applicable rule of law applicable.

13. NEGOTIATION OF COLLECTIVE AGREEMENTS

- (1) The subject matter of collective agreements that may be negotiated in the Council or relevant Chambers are stipulated in Schedules 2 and 3 respectively.
- (2) Any party to the Council may introduce proposals submitted in writing for the conclusion of a collective agreement by submitted such proposals to the secretary in writing.
- (3) The proposals must indicate whether the proposing party consider to deals with the subject matters in terms of Schedules 2 or 3, as these proposals must be negotiated in accordance with the procedure outlined in this clause.
- (4) Within 7 (SEVEN) days of submission of these proposals, the secretary must serve copies of the proposals on the other parties to the Council or relevant Chamber as the case may be.
- (5) Within 14 (FOURTEEN) days of submission of these proposals, the secretary must liaise with the Executive Committee to consider the proposals and to decide on a process for negotiating on the proposals, including:-
 - (a) whether the negotiations or consequent collective agreements are required to be conducted and entered into by the Council or a relevant Chamber within the Bargaining Council;
 - (b) whether the Executive Committee should establish subcommittees to assist the Council in the negotiation of collective agreements;
 - (c) and limiting negotiating representatives;
 - (d) the timetable for commencing and conducting of negotiations, except that in relation to negotiations in relevant Chambers, this must be done after consultation with the parties in those Chambers.
- (6) The dispute resolution procedures contemplated in clause 19 may only be commenced at least 14 (FOURTEEN) days after the date of the notice of dead-lock.
- (7) The provisions of clause 13(6) do not preclude the Executive Committee or parties to a Chamber from taking any appropriate action to resolve the dispute prior to the dispute resolution process contemplated in clause 19.
- (8) In the event that a collective agreement is concluded in a Chamber, the parties to the Chamber must refer the collective agreement to the Executive Committee for the Council for ratification at its next meeting, and:-
 - (a) if the subject matter of the collective agreement falls within the scope of Schedule 3, the Council must ratify the agreement; or
 - (b) if the subject matter of the collective agreement does not fall within the scope of Schedule 3, the Council may:-
 - (i) ratify the agreement;
 - (ii) refer the agreement back to the relevant Chamber with a directive to make the necessary amendments and thereafter submit the amended agreement for ratification as contemplated in this clause, or
 - (iii) refuse to ratify the agreement.

14. EXEMPTION FROM COLLECTIVE AGREEMENTS

- (1) Any party or non-party to the Bargaining Council shall apply in writing in the applicable format provided, to the Executive Committee for exemption from collective agreements concerning subject matters listed in Schedules 2 and 3 respectively
- (2) The Executive Committee whom shall consider such application and make a decision to: -
 - (a) Grant the exemption unconditionally;
 - (b) Grant the exemption on any such conditions as they deem appropriate, where necessary;
 - (c) Refuse the exemption;
 - (d) Request further information and/or representations from the applicant or any other interested person or party in the matter: Provided that the applicant shall be granted an opportunity to deal with any information or representations made, before a decision is made in terms of clauses 14(2)(a) to (c) above.
- (3) The Executive Committee may determine its own procedures for conducting its affairs in relation to clause 8(8) above.

15. INDEPENDENT APPEALS BOARD FOR EXEMPTIONS

- (1) Bargaining Council hereby establishes an Independent **Appeals Board** to consider all applications for exemption from collective agreements concerning subject matters listed in Schedules 2 and 3 respectively **that were dealt with by the Executive Committee** in terms of clause 14 above.
- (2) The **Independent Appeals Board** shall consist of **no less than 3 (THREE)** persons as which the Council has appointed to the Independent Appeals Board panel at the preceding Annual General Meeting of the Council.
- (3) Members of the **Independent Appeals Board** may not be employers or employees within the registered scope of the Bargaining Council; or office bearers or officials of the parties to the Bargaining Council.
- (4) The Executive Committee shall -
 - (a) designate persons from amongst the members of the **Independent Appeals Board** who will serve as the chairperson at each sitting;
 - (b) provide the **Independent Appeals Board** with the administrative support necessary to enable it to perform its functions; and
 - (c) determine the terms and conditions of appointment of members of the **Independent Appeals Board**.
- (5) The **Independent Appeals Board** must determine its own procedures for -
 - (a) conducting its business except that its functions may not be delegated; and
 - (b) considering applications for exemptions, which must include a procedure for:-
 - (i) enabling it to obtain representations from interested parties;
 - (ii) ensuring that all applications for exemptions are preceded by consultations between employers and employees at which the merits and terms of the exemptions have been considered; and there has been full disclosure to each other on all information relevant to the consideration of

- the exemption;
 - (iii) informing the applicants and the Executive Committee of its decisions; and
 - (iv) in the event of a refusal to grant any exemptions providing the reasons therefore.
- (6) When considering an application for exemption, the application to the Independent Appeals Board must have regard to the following:-
 - (a) whether a refusal to grant the requested exemption will result in undue financial hardship to the party making the application;
 - (b) the nature and size of the business in respect of which the application is made;
 - (c) any representations made by the employees likely to be affected by the application;
 - (d) the circumstances prevailing in the fishing industry as a whole or Chamber likely to be affected by the application; and
 - (e) whether the granting of the exemption will prejudice the objectives of the Bargaining Council.
- (7) The decision of the Independent Appeals Board reached will be final and binding.
- (8) The decision is nonetheless still subject to review by the Labour Court in terms of The Act.

16. FINANCES

- (1) The Executive Committee must open and maintain an account in its name at a bank of its choice that is registered in the Republic, and:-
 - (a) deposit all moneys it receives in that account within three business days of receipt; and
 - (b) pay the expenses of and make all payments on behalf of the Bargaining Council on that account.
- (2) The Executive Committee may not distribute any surplus generated within the Council to any person and shall not utilise such surplus profit or gain other than for the purpose and objective of the Council and may therefore only invest any surplus funds not immediately required for current expenses or contingencies, in:-
 - (a) internal registered stock as contemplated in section 21 of the Exchequer Act No. 66 of 1975;
 - (b) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - (c) a registered unit trust;
 - (d) any other investment approved by the registrar of the Financial Services Board;
 Provided that on dissolution of the Council, the remaining invested assets must be transferred to an entity as stipulated in clause 17(4).
- (3) All payments from the Bargaining Council's funds must be approved and made from the Council's bank account and authorised by any 2 (TWO) of the chairperson, vice-chairperson or the secretary. However, the Executive Committee may authorise any representative in the Executive Committee, official or employee of the Bargaining Council to sign or authorise payments on the Council's bank account in the event of the chairperson, the vice-chairperson or the secretary not being readily available for that purpose.

- (4) Every representative or other official or employee of the Bargaining Council shall be indemnified by the Bargaining Council against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties unless such costs, losses, expenses and claims costs, losses, expenses or claims are caused by the wilful default or fraudulent act or gross negligence of such person.
- (5) The Bargaining Council undertake to reimburse to the representative or other official or employee of the Bargaining Council all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- (6) No representative shall be disqualified from voting in respect of any contract or proposed contract or any litigation with the Council by virtue of any interest he might have therein, provided that he declares the nature and extent of the interest which must thereupon be noted in the records of the meeting.
- (7) Subject to clause 16(4), the Council may authorise the payment of any member which the Council itself, a member of the Council, or an official or representative of the Council is in law obliged to pay in consequence of any misapplication of the Bargaining Council's funds or loss arising by negligence or mal-administration and may pay from the funds of the Council any number becoming due by any other person where such person incurred such liability or loss when acting as a nominee of the Council or as a party to the Bargaining Council in carrying out any duty in connection with the industry.
- (8) Despite clause 16(3) , the Bargaining Council may maintain a petty cash account:-
 - (a) Funds required for the petty cash account may be transferred to that account only by authorised payment in the manner required by clause 16(3);
 - (b) Except with the approval of the Executive Committee, an amount drawn to transfer funds to petty cash per month in aggregate may not exceed a number as may be determined by the Executive Committee; and
 - (c) The Executive Committee may determine the form of records to be kept for the petty cash account.
- (9) The secretary must prepare a monthly statement showing the income and expenditure of the Bargaining Council for that month, and another reflecting the assets, liabilities and financial position as at the end of that period. This statement must be submitted at the first meeting of the Executive Committee after the preparation of the statement.
- (10) The financial year of the Bargaining Council begins each year on 1 March and ends on the last calendar day of February of the following year.
- (11) No later than a month after the end of the financial year, the secretary must ensure preparation of a balance sheet and income statement of the Bargaining Council's financial activity in respect of that financial year showing:-
 - (a) all moneys received by the Bargaining Council in terms of any collective agreement published in terms of the Act, and from any other sources;
 - (b) expenditures incurred on behalf of the Bargaining Council under the following heads:-
 - (c) remuneration and allowances of their officials and employees;
 - (d) amounts paid to representatives and alternates as compensation for travelling, accommodation and subsistence expenses incurred by them in respect of attendance at

Council, Chamber or Executive Committee meetings or in the course of performing work on their behalf;

- (e) remuneration and allowances of members of the panel of conciliators and arbitrators;
 - (l) office accommodation;
 - (ii) printing and stationery requirements;
 - (iii) miscellaneous operating expenditure;
 - (f) the Bargaining Council's assets, liabilities and financial position as at the end of that financial year.
- (12) The annual financial statements must be audited and a report prepared for the Council. Thereafter it must be signed by the chairperson and counter-signed by the vice-chairperson.
- (13) True copies of the audited statements and the auditor's reports must be made available for inspection at the office of the Bargaining Council to members and representatives of the parties, who are entitled to make copies of those statements and the auditor's report.
- (14) The secretary must send certified copies of the audited financial statements and the auditor's report to the registrar within 14 (FOURTEEN) days of receipt thereof.

17. WINDING UP

- (1) At a special meeting called for that purpose, the Council, by resolution adopted by a 75% (SEVENTY FIVE PERCENT) majority of the total number of representatives in the Council, may decide to be wound up, provided that dissolution shall not take place nor shall any of the parties be released from the provisions of an agreement during its currency.
- (2) Upon adoption of a resolution to wind up, the secretary must take the necessary steps to ensure that:-
- (a) application is made to the Labour Court in terms of section 59 of the Act for an order giving effect to the resolution as soon as it is reasonably practicable after the expiration of all agreements in place at the time of resolution; and
 - (b) the Bargaining Council's books and records of account and an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the Bargaining Council at the disposal and under the control of the liquidator.
- (3) Each party to the Bargaining Council remains liable for any unpaid liabilities to the Bargaining Council as at the adoption of a resolution to wind-up the Bargaining Council.
- (4) If all the liabilities of the Bargaining Council have been discharged, the Executive Committee must transfer any remaining assets to:
- (a) a Bargaining Council that has been agreed upon at the special meeting referred to in clause 17(1) that operates within the same or similar Industry as the Council and which in itself is exempt from income tax;
 - (b) the CCMA, if there is no Bargaining Council within the same or similar Industry; or the Council fails to agree on a Bargaining Council that is to receive the remaining assets.

18. AMENDING THE CONSTITUTION

- (1) The Council may change this constitution at any time -
 - (a) by a resolution adopted by unanimous vote of all the representatives in the Council on a motion to amend, tabled without prior notice; or
 - (b) by a resolution adopted by at least 67% (SIXTY SEVEN PERCENT) of all the representatives in the Council after at least 30 (THIRTY) days notice of that motion to amend had been given to the secretary, and 14 (FOURTEEN) days notice of that motion had been given to all the parties to the Bargaining Council.
- (2) Any amendment to this constitution becomes effective after the resolution effecting that amendment has been certified by the registrar in terms of section 57(4) of the Act.

19. DISPUTE RESOLUTION PROCESS

- (1) The Executive Committee may decide to apply to the CCMA for accreditation to handle dispute resolution.
- (2) On granting of such accreditation by CCMA to the Bargaining Council, the Bargaining Council shall apply those rules and regulations prescribed by CCMA for their procedures, *mutatis mutandis*.

20. CONSTITUTIONAL DISPUTES

- (1) Any dispute, question or difference arising at any time between the parties out of or in regard to:
 - (a) any matter arising out of this constitution; or
 - (b) the rights and duties to this constitution; or
 - (c) the interpretation of this constitution; or
 - (d) the termination of this constitution; or
 - (e) any matter arising out of the termination of; or
 - (f) the rectification of this constitution
 shall be submitted to and decided by arbitration in terms of this clause.
- (2) The dispute, question or difference shall be referred within 14 (FOURTEEN) days to arbitration on written notice given by either party in terms of this clause, save that nothing herein contained or implied shall prevent or prohibit any party obtaining urgent relief from a court of competent jurisdiction in appropriate circumstances.
- (3) Arbitration shall be held at Cape Town, informally and otherwise subject to the provisions of the Arbitration Act no. 42 of 1965 (as amended or re-enacted from time to time), it being the intention that if possible, it shall be held and concluded within 21 (TWENTY ONE) days after it has been demanded.
- (4) Save as otherwise specifically in this constitution, the arbitrator shall be, if the question in dispute is:
 - (a) Primarily an accounting matter – an independent practising chartered accountant of not less than 10 (TEN) years standing;