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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 106

7 February 2003

LABOUR RELATIONS ACT, 1995

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF MAIN COLLECTIVE AGREEMENT FOR THE NORTHERN REGION (KNITTING) 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 17 February 2003, and for the period ending 30 June 2003.

M.M.S. MDLADLANA

Minister of Labour

No. R. 106

7 Februarie 2003

WET OP ARBEIDSVIRHOUDINGE, 1995

NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE VERVAARDIGINGSNYWERHEID: UITBREIDING VAN HOOF KOLLEKTIEWE OOREENKOMS VIR DIE NOORDELIKE STREEK (BREI-AFDELING) NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 17 Februarie 2003, en vir die tydperk wat op 30 Junie 2003 eindig.

M.M.S. MDLADLANA

Minister van Arbeid

Nota: 'n Vertaling van die Afrikaanse Ooreenkoms is op aanvraag beskikbaar by die Bedingsraad.

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY MAIN COLLECTIVE AGREEMENT FOR THE NORTHERN REGION (KNITTING)

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

Transvaal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), 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 the 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—

- (a) by all employers who are members of the employers' organisation and who are engaged in the Knitting Industry, and by all employees who are members of the trade union and who are employed in the Industry;
- (b) in the municipal area of Pretoria and the Magisterial Districts of Johannesburg, Germiston, Roodepoort, Albertyn and Benoni.

(2) Clauses 1 (1) (a), 2, 13A and 13C, 16B, 28 (3) and 28 (4) of this Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Collective Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in force until 30 June 2003.

3. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, any reference to an Act shall include any amendment of such Act, and unless the contrary appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa; further, unless inconsistent with the context—

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995).

"agency shop" means the compulsory payment of a monthly levy by non-party employers, calculated in terms of clause 26 (3);

"boiler attendant" means an employee who, under general supervision, maintains the water level and steam pressure of a boiler and who may make, maintain or draw the fire in such boiler, and who removes ashes;

"casual employee" means an employee who is employed by the same employer on not more than three days in any week and for not more than eight weeks in any year;

"colouring mass-measurer" means an employee who, under the supervision of a dyer, is responsible for the mass-measuring of dyestuffs and chemical byproducts;

"continuous service" means, without restricting the ordinary meaning of the phrase, all periods of employment with the same employer and includes any kind of leave due in law or agreed to between an employee and his employer: Provided that any periods of employment with the same employer interrupted by a period of unemployment resulting from retrenchment of less than one year shall be deemed continuous;

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

"cutter or shaper" means an employee who is engaged in cutting fronts, backs and/or sleeves of a fully-fashioned garment and/or trimmings, and marking and/or cutting attachments, points of necks and/or armholes and/or trimmings and who may use a template for this purpose;

"despatch clerk" means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

"despatch packer" means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

"driver of a motor vehicle" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

"dyer" means an employee who is responsible for and engaged in dyeing and/or other finishing processes and who decides on the nature, mass blending and application of the dyes or other chemicals to be used;

"dyer's assistant" means an employee who, under the supervision of a dyer, is responsible for the mixing of colours and/or formulae and who may attend or operate the machines used in the dyeing and finishing processes;

"employee" includes all those employees who fall within the jurisdiction of the Council;

"employee not elsewhere specified" means any person who is employed in the Knitting Industry for whom wages are not specified in clause 4 (1) (a) (i)—(xvii), but excludes any person who works in an office;

"employer" means any person who employs or provides work for any person who is employed within the Knitting Industry;

"experience" means the total period or periods of employment which an employee has had in his class of work in the Knitting Industry or similar work in the Clothing and Textile Industries and allied industries;

"factory clerk" means an employee who is engaged in any one or more of the following duties:

- (a) Checking attendance records or recording particulars of employees at work or absent from work, collating time cards and/or envelopes;
- (b) checking or recording production control; and
- (c) recording particulars of waste;

"fixed-term contract employee" means an employee who is employed on a full-time basis for a predetermined fixed period or until the completion of a specific short-term task;

"floorwalker/runner" means an employee who is engaged in carrying garments or parts of garments from one place to another within the workplace;

"foreman or forewoman" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his care in the workplace or a department of the workplace;

"fully-fashioned garments" means garments whose form or body, or body and sleeves, or sleeves and back and front are fully shaped on a knitting machine;

"general worker" means an employee who is engaged in one or more of the following activities:

- (a) Carrying, moving, stacking or unpacking goods or other articles;
- (b) cleaning or washing premises;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) gardening work;
- (e) lime-washing or colour-washing buildings or other structures;
- (f) loading or unloading;
- (g) making or maintaining fires, or removing refuse or ashes; and
- (h) opening or closing or unpacking or strapping cartons, boxes, bags and other containers;

"half-year" means the six-monthly periods commencing on the first day of January and/or July;

"handyman" means an employee, other than a knitting machine operator, mechanic or mechanic's assistant, who is engaged in making minor repairs and adjustments to machinery, plant, building and other equipment;

"head warper" means an employee who exercises control and supervision over two or more warpers;

"hourly wage" means, in the case of an employee, the weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class;

"Knitting Industry" or **"Industry"** means, without in any way limiting the ordinary meaning of the term, the Industry in which employers and their employees are associated for the purpose of manufacturing hosiery (other than ladies stockings) and fully-fashioned garments and/or any part thereof by means of a knitting process and includes the marking-in or cutting of such garments and/or all succeeding processes or operations performed in connection therewith but excludes—

- (i) the marking-in or cutting of, and all succeeding processes or operations performed in connection with, all classes of garments other than fully-fashioned garments;
- (ii) the manufacture of any article of wearing apparel by any employer from knitted fabrics not manufactured by himself; and
- (iii) the manufacture by any employer of trimmings for use by such employer in the making of any wearing apparel from fabrics not produced by himself;

Provided that in respect of the municipal area of Pretoria and the Magisterial Districts of Johannesburg, Roodepoort and Benoni, Knitting Industry also includes the industry in which employers and their employees are associated for the purpose of manufacturing fabrics by means of a knitting process;

"knitting machine operator" means an employee who is engaged in changing needles, sliders and sinkers, straightening tricks, including chain and card control, and running on after press-offs, but excludes the resetting of the machine and pattern changing;

"linker" means an employee who is engaged in operating a linking machine used for the purpose of toe-closing in osiery and/or joining parts of a fully-fashioned garment and/or attaching trimmings to a fully-fashioned garment or parts of a garment;

"mechanic" means an employee who is engaged in the operation, maintenance, rebuilding and refitting of knitting machines and other machines used in the Knitting Industry and who is also proficient in pattern designing and making;

"mechanic's assistant" means an employee who, in addition to performing the duties of a knitting machine operator, is engaged in the resetting of machines, including pattern drum, pattern wheel and jacquard set-outs, and, under the supervision of a mechanic, carrying out minor repairs and generally stripping and assembling machines;

"medical practitioner" means a person entitled to practise as a medical practitioner in terms of the Medical Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"mender" means an employee who is engaged in repairing knitting faults in fabric, garments, blanks and/or hosiery;

"night work" means work performed after 18:00 and before 06:00 the next day;

"old age" means 60 years of age;

"operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer;

"ordinary hours of work" means 42½ hours per week of five days and in respect of a watchman, 45 hours in any one week;

"overtime" means the time that a employee works during a day or a week in excess of the ordinary hours of work;

"parcel maker" means an employee who is engaged in closing and/or sealing parcels and cartons prior to despatch and delivery;

"part-time driver of a motor vehicle" means an employee who is ordinarily engaged on duties other than driving a motor vehicle but who, on more than two days in any week, is engaged in driving a motor vehicle for not more than three hours in the aggregate of any such day, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver while in charge of the vehicle, on work in connection with the vehicle or the load;

"plain sewer" means an employee who performs one or more of the following operations by hand:

Fastening edge-stays and odds and ends of sewing; sewing on buttons; hand knitting and/or hand crocheting; and all hand sewing not elsewhere specified;

"pre- or post-boarder or former" means an employee who is engaged in placing hosiery and/or garments on forms and subsequently removing them;

"qualified employee" means, in the case of an employee referred to in clause 4 (1) (a) (ii), (iv) and (v), an employee who has had not less than five years' experience; in the case of an employee referred to in clause 4 (1) (a) (ix), an employee who has had not less than three years' experience; in the case of an employee referred to in clause 4 (1) (a) (iii), (viii), (x) and (xiv), an employee who has had not less than two years' experience; and in the case of an employee referred to in clause 4 (1) (a) (xvii), an employee who has had not less than one and a half years' experience;

"Regional Chamber" for the purposes of this Agreement, means the Northern Chamber [formerly the Knitting Industry Bargaining Council (Northern Areas)] of the Council;

"seamer" means an employee who is engaged in joining seams in hosiery by means of a seaming machine;

"security officer" means an employee who is in charge of staff engaged in guarding the safety of premises and/or the property of the workplace, and who may be in charge of searching staff and who carries out such security work as may be assigned to him by the management;

"set leader" or **"team leader"** means an employee who is in a set or team and who is generally responsible for the work executed by the employees comprising such set or team;

"sewing machinist" means an employee who is engaged in operating a sewing machine using a needle and thread;

"short time" means a temporary reduction in the number of ordinary hours of work owing to slackness of trade or shortage of raw materials;

"sorter and/or grader" means an employee who is engaged in sorting and/or grading hosiery into pairs according to length and size and/or sorting trimmings, materials and/or parts of fully-fashioned garments;

"storeman" means an employee who is in general charge of stocks of incoming goods or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse or delivering goods from a store or warehouse to the consuming departments in the workplace or for despatch;

"store clerk" means an employee who is employed in the store or warehouse of the workplace under the general supervision of a storeman and who is engaged in the general handling of goods in the workplace, but does not include a general worker;

"supervisor" means an employee who, under the supervision of a foreman and/or manager, is in charge of a group of employees;

"trade union representative" means a member of a trade union who is elected to represent employees in a workplace;

"trainee" means, in the case of an employee referred to in clause 4 (1) (a) (ii), (iv) and (v), an employee who has had less than five years' experience; in the case of an employee referred to in clause 4 (1) (a) (ix), an employee who has had less than three years' experience; in the case of an employee referred to in clause 4 (1) (a) (iii), (viii), (x) and (xiv), an employee who has had less than two years' experience; and in the case of an employee referred to in clause 4 (1) (a) (xvii), an employee who has had less than one and a half years' experience;

"traveller's assistant" means an employee who, under the supervision of a traveller, is engaged in such tasks as may facilitate the execution of the work of the traveller, but does not include the driving of a motor vehicle;

"union with the majority membership in the workplace" means any trade union of which more than 50 per cent of the employees in the workplace are members;

"unladen mass" means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or autocycle or cycle fitted with an auxiliary engine, the unladen mass shall be deemed not to exceed 453,5 kg;

"wage" means the amount of money payable to an employee in terms of clause 4 (1) in respect of his ordinary hours of work as specified in clause 6: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that specified in clause 4 (1), it means such higher amount;

"warp knitting machine operator" means an employee who operates one or a set of warp knitting machines, and who is capable of correcting faults, changing and/or straightening needles, filling bars, and making minor adjustments, and includes a threader and needle fixer;

"warper" means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and who prepares the beam;

"watchman" means an employee who is engaged in guarding premises or other property;

"winder" means an employee who is engaged in operating a yarn-winding machine;

"working day" means any day on which work is usually performed in the Knitting Industry;

"workplace" means the place or places where the employees of an employer work; and if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation;

"yarn changer/pig tailor" means an employee who is responsible for loading and unloading the yarn on knitting machines, or an employee who brings yarn to and from the machines, removes fabric and cleans the machines, and who may stop the machine to change the yarn and restart the machine only if it was stopped for the purpose of changing the yarn and who shall not carry out any other functions of the knitting machine operator.

4. REMUNERATION

(1) (a) An employer shall, subject to the provisions of subclauses (1) (b), (c) and (d), (2), (4), (5) and (6) of this clause, pay to each of his employees, from the date of coming into operation of this Agreement, not less than the weekly wage prescribed for an employee of his class as set out hereunder:

[illegible]

	Description of occupation	Qual.	Tenth 1/2 year	Ninth 1/2 year	Eighth 1/2 year	Seventh 1/2 year	Sixth 1/2 year	Fifth 1/2 year	Fourth 1/2 year	Third 1/2 year	Second 1/2 year	First 1/2 year
		R	R	R	R	R	R	R	R	R	R	R
(xvi)	parcel maker, general worker, floor walker/runner											
	General worker, traveller's assistant, cloakroom supervisor and/or attendant, teamaker employed after 30-06-1987	392,90	Q	Q	Q	Q	Q	Q	Q	362,80	332,50	302,40
(xvii)	All employees classified in (xv) and who were employed after 30-06-1987, other than general worker, traveller's assistant, cloakroom supervisor and/or attendant, teamaker	392,90										

Provided that—

- (i) any learner who, immediately prior to the date of coming into operation of this Agreement, was in receipt of a wage higher than that then payable to an employee of his class shall, on the first pay day following the date of coming into operation of this Agreement and on each subsequent pay day, be paid as a weekly wage the next higher wage prescribed for an employee of his class; and any such increase granted to a learner on such dates shall not affect the actual experience of such learner for the purpose of granting further increases;
- (ii) the wage of an employee other than a learner who, immediately prior to the date of coming into operation of this Agreement, was in receipt of a wage higher than that then payable to an employee of his class shall be increased with effect from the first pay day following the date of coming into operation of this Agreement by an amount equal to the increase which an employee of his class would receive if he earned the prescribed wage, as from the said date;
- (iii) an employee, other than a learner, in receipt of a wage higher than that prescribed for an employee of his class, who was employed for a period of 13 weeks or more prior to the incremental date, shall be entitled to the prescribed increase, notwithstanding the provisions of clause 4 (1) (b).

(b) **Incremental dates:** An employer shall pay the increase due to each of his learner employees on the basis of the experience of each of his learner employees on the first pay day in the month of January and again on the first pay day in July of each year. For the purpose of computing a learner employee's experience, employment for 16 weeks in any half-year shall be deemed to have been in employment for the whole half-year: Provided that a learner employee in his first half-year of employment who has less than 16 weeks' experience but more than 13 weeks' experience on the last day of the half-year shall be deemed to have been in employment for the whole half-year.

(c) **Set or team leader or head warper:** Any employee who is called upon to perform the duties of a set or team leader or head warper shall be paid, in addition to the wage prescribed in paragraph (a) for a qualified employee of his class, an additional 10 per cent of such wage for an employee of his class.

(d) **Traveller's assistant:** A traveller's assistant shall, in addition to his ordinary wage, be paid a subsistence allowance of R3,00 for each day away from the workplace, plus a further allowance of R6,00 for each night he is away from his home town; and, in addition, the employer shall be responsible for the payment of accommodation expenses for each night he is away from home.

(2) **Differential rates of pay:**

- (a) **Temporary work:** An employer who requires or permits an employee of one class to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefor, work of another class for which a higher wage for a qualified employee than that of his own class is prescribed in subclause (1), shall pay such an employee in respect of that day not less than the daily wage calculated at the higher rate as if such employee had the period of experience in the class for which the higher rate is prescribed.
- (b) **Transfer:** An employer shall inform the Regional Chamber within 14 days of transferring an employee from one class of work to another by completing a transfer form in the form and manner specified by the Council or Regional Chamber.
- (c) **Night shift remuneration:** In addition to the remuneration prescribed for an employee of his class in subclause (1) (a), an employee shall in respect of each night shift worked in any week, be paid an additional 12,5 per cent of such employee's daily wage in respect of any time worked, other than overtime, falling outside of the ordinary hours worked in the workplace in which he is employed.

(3) **Calculation of wage:** The daily wage of an employee, other than a casual employee, shall be his weekly wage, divided by five, and his hourly wage shall be his weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class.

(4) **Reduction of wages:** Nothing in the Agreement shall operate to reduce the wage paid to an employee prior to the date of coming into operation of this Agreement if that wage was higher than the wage prescribed in the Agreement for that class of employee.

(5) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one-fifth of the weekly wage prescribed for an employee who performs the same class of work as the casual employee is required to do: Provided that, where the employer requires a casual employee to perform the work of a class of employee for whom wages on a rising scale are prescribed, the expression "weekly wage" shall mean the weekly wage prescribed for a qualified employee of that class: Provided further that where the employer requires a casual employee to work for a period of not more than four consecutive hours on any day, his wage may be reduced by not more than 50 per cent of his daily wage.

(6) (a) **Attendance bonuses:** In any workplace where attendance bonuses are regularly paid, no deduction or nullification of such bonuses shall be effected for absenteeism of two days' or less duration owing to the death of an employee's child, spouse or parent: Provided that the employer may require the employee concerned to produce the death certificate of the deceased.

(b) **Bonus schemes:** Any employer who introduces an incentive and/or attendance bonus scheme or who already has such a scheme in operation shall within 30 days after introducing such scheme or within 30 days after the coming into operation of this Agreement, submit to the Regional Secretary of the Regional Chamber full details of such scheme and shall similarly within 30 days after effecting any alterations to such scheme submit full details of such alterations to the Regional Secretary of the Regional Chamber. An employee employed on incentive bonus work shall be paid in any week not less than the wages to which he would have been entitled had he been employed on the basis of time worked, and the rate and/or amount or incentive bonus paid to such employee before the dates on which wage increases are due in terms of this Agreement shall not be decreased so as to reduce or nullify the amount of the wage increase to which an employee of his class is entitled in terms of subclause (1). No bonus scheme may be changed without the consent of the employees.

5. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

(1) Wages and other amounts due to employees shall be paid weekly in cash, during working hours, on the nominated pay day of a workplace, or may be deposited into the employee's account with a financial institution: Provided that where an employee's services terminate on a day other than a nominated pay day, any amounts due to him shall be paid immediately on such termination: Provided further that when an employee is working short time or the nominated pay day is a holiday, payment in terms of this subclause shall be made before the employee finishes work for the week.

(2) No deductions of any description shall be made from amounts due or paid to an employee except as provided below.

- (a) Where an employee is absent from work or arrives late at work, a pro rata amount of the actual time lost may be deducted from his total remuneration: Provided that where the doors of the workplace are locked, thus preventing an employee, other than an employee working a night shift, from entering the premises on arrival at work, the employee shall be paid in full for the whole day.
- (b) Subject to the provisions of clause 21, whenever the ordinary hours of work prescribed in clause 6 are reduced on account of short time, a pro rata deduction from the employee's wage may be made: Provided that no deduction shall be made in the case of short time arising out of slackness of trade or shortage of supplies, unless the employer has made an agreement with the employees as to short time working and has given notice to such employees and to the Regional Chamber of his intention to reduce ordinary hours of work.
- (c) If, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wages of such employee only for time lost in excess of two hours.
- (d) An employee shall, at the written request of any of his employees, make deductions weekly from the employee's remuneration of any amount or amounts of subscription, specified in the said written request, to the funds of the trade union party to the Agreement, and shall forward the amount or amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month immediately succeeding the month during which such deductions were made.

This paragraph shall apply in respect of clerical employees, notwithstanding that no wages are prescribed in this Agreement for such employees.

- (e) With the consent of the employee, deductions may be made for insurance, death benefits, pension and/or provident funds: Provided that such funds shall be approved by the Council or Regional Chamber and that no deduction shall be made unless this subclause which has the effect of circumventing paragraph (d) above.
- (f) Deductions shall be made for contributions to the Council's or Regional Chamber's Funds, Medical Benefit Society, Sick Pay Fund and Provident Fund as provided for in this Agreement, or to any other fund established by this Agreement or any other agreement reached by the Council or Regional Chamber.
- (g) Any amount which an employer is legally required to deduct from his employee's wage may be deducted.
- (h) With the written consent of the employee, deductions may be made in respect of amounts owing to the employer in respect of money borrowed or goods purchased by the employees from the employer: Provided that the amount so deducted shall not exceed one-third of the employee's wage.
- (i) An employer shall deduct trade union subscriptions and levies from trade union members on written authorisation other than where an exemption has been granted by the Council or Regional Chamber: Provided such monies have been determined in terms of the union's Constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, for transmission to the union.

(3) (a) All cash payments to employees shall be made in sealed envelopes which shall be retained by the employee.

(b) Payments in terms of subclause (1) may be made by bank transfer, bank deposit or by cheque.

(c) Payments shall be accompanied by a payslip with the following information:

Name of the workplace, name, occupation and number of the employee, the weekly wage, number of hours worked on ordinary time, number of hours worked on overtime and/or Sunday time, amount earned for the time worked, amount of any bonuses earned, amount of holiday pay (if any), details of all deductions made from such amount, the amount contained in the envelope and the week in respect of which wages are paid.

- (4) Particulars of all deductions made shall be entered in the wage register.
- (5) (a) Each employee shall be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to 1,5% of his total annual basic wage calculated from 1 January to 31 December: Provided that a *pro rata* share of the bonus shall be paid to an employee who leaves employment before the annual closure.
- (b) The bonus shall be inclusive of and not additional to any annual bonus paid by an employer.
- (c) For the purpose of calculating this bonus, absence of any nature may not be taken into consideration.
- (6) An employee, on commencement of maternity leave, shall be entitled to a payment in terms of clause 20 (6) of this Agreement.

6. HOURS OF WORK

- (1) **Ordinary hours of work:** Provided that the status quo prior to the coming into operation of this Agreement remains at a workplace where the normal working hours were less than in the Agreement, an employer shall not require or permit an employee other than an employee referred to in subclause (5) to work for more than—
 - (i) 42 $\frac{1}{2}$ hours, excluding meal intervals but including rest intervals, in any week from Monday to Friday, inclusive;
 - (ii) nine hours per day in any one week; and
 - (iii) five hours without a meal interval.
- (2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive.
- (3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than 10 minutes as near as practicable to—
 - (a) the middle of each morning work period; and
 - (b) the middle of each afternoon work period;during which such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work.
- (4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour, during which interval such employee shall not be required or permitted to perform any work: Provided that—
 - (i) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous; and
 - (ii) where shifts are worked in any workplace, a shift worker shall be granted one interval of not less than 30 minutes per shift, during which interval such employee shall not be required or permitted to perform any work.
- (5) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work—
 - (i) for more than 45 hours per week; or
 - (ii) for more than six days in any one week; or
 - (iii) for more than 12 hours in any one day/shift:

Provided further that the employer may require his watchman to work on the seventh day of the week and pay the watchman in addition to his weekly wage, an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

7. OVERTIME AND SUNDAY WORK

- (1) Payment of overtime worked shall be made at the rate of one and a half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (2) An employer shall pay an employee who works on a Sunday double the employee's rate of pay for the number of hours worked.
- (3) No employer shall require or permit an employee to work overtime for more than 12 $\frac{1}{2}$ hours per week.
- (4) No employee shall be required to work overtime without his consent.
- (5) No employee shall be dismissed from or prejudiced in his employment by reason of his refusal to work overtime.
- (6) Every employee who is required to work overtime of one and a half hours or more shall be paid an allowance of R5,00 to enable the employee to obtain a meal before the overtime is due to commence, unless the employer has notified the employee thereof not less than 24 hours before the overtime commences.
- (7) **Exclusions:** The provisions of subclauses (2) (b), (3) and (4) shall not apply to a watchman.

8. ANNUAL LEAVE AND PAID HOLIDAYS

(1) Every employer shall, subject to the provisions of subclause (2), in the month of December of each year, and not later than the 24th day of the month, grant to each of his employees who have been in his employ from any date prior to the first day of February of the same year, and whose services have not been terminated before 1 December, 15 working days' holiday on full pay: Provided that an employee who, during any year, has been absent from work for a continuous period of more than six months on confinement, or for 12 weeks or more, shall be paid holiday pay in terms of subclause (2). The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before commencement of the period of holiday leave.

(2) Any employee—

- (a) who commenced work with an employer on or after 1 February in any year; or
- (b) whose employment terminated before 1 December of that year shall, if his contract of employment with the same employer endured for a period of not less than four weeks in that year, in the case of an employee referred to in paragraph (a), be paid as holiday pay for that period of employment an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment and, in the case of an employee referred to in paragraph (b), be paid in lieu of holiday leave for that period of employment, an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment. The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of that year and if the employee's employment terminates before that day, on the day he leaves the employer's service.

(3) In computing the amount upon which the five per cent holiday pay is to be calculated in terms of subclause (2), the amount which would have been payable to an employee had he not been absent from work shall be deemed to be amounts actually received by him if such absence is—

- (a) on the instructions or at the request of the employer;
- (b) because of sick leave, provided a medical certificate for the period or periods of absence has been produced; or
- (c) because of maternity leave, provided a medical certificate to this effect has been produced.

(4) Every employer shall grant to each of his employees as paid holidays: New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill and no employer shall employ an employee and no employee shall work on these 12 days and, in addition, each employer shall grant to all his employees who have worked the morning period of the Thursday, preceding Good Friday, time off from the commencement of the normal meal time until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday.

(5) In the event of an employer closing his workplace in terms of subclause (1) for a period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day, such employer shall pay a full day's pay in respect of each such day to each of his employees in his employ on the day before the date he so closes his workplace. Payment for such days shall also be made to an employee whose contract of service is terminated by the employer on or after the 15th day of November but before the date he closes his workplace: Provided that the employee concerned has been in the continuous employ of his employer for a period of not less than six months immediately prior to the 15th day of November: Provided further that the contract is not terminated by the employee concerned or that he is not summarily dismissed for any cause recognised by law as sufficient.

The provisions of this subclause shall not apply to cases where the reason for the employer's closing his factory is his intention forthwith to discontinue business in the industry. For the purposes of this subclause, the expression "employment" shall have the same meaning as in subclause (1).

(6) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill falling on a Saturday or a Sunday, the employer shall, subject to subclause (5) of this clause, pay to each of his employees an extra day's pay on the first pay day after such day or when payment for these days is payable in terms of this clause, or alternatively shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.

(7) For the purposes of this clause, "day's pay" means the weekly wage divided by five, and "full pay" means the wage paid immediately prior to the commencement of the holiday leave prescribed in subclause (1).

(8) Notwithstanding the provisions of subclause (4), an employer may close his workplace on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days; Provided that he afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay, should the majority of his employees agree: Provided further that the employer notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Regional Chamber be notified thereof in writing.

- (9) (a) An employee shall be entitled to six consecutive months' unpaid maternity leave.
- (b) An employee may commence maternity leave—
- (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (ii) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (e) An employee shall notify an employer, in writing, unless the employee is unable to do so, of the date on which the employee intends to—
- (i) commence maternity leave; and
 - (ii) return to work after maternity leave.
- (f) Notification in terms of subclause (9) (e) shall be given—
- (i) at least four weeks before the employee intends to commence maternity leave; or
 - (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10) (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if—
- (i) the employee is required to perform night work or work that poses a danger to her health or safety or that of her child; and
 - (ii) it is practicable for the employer to do so.
- (11) (a) An employer shall grant an employee who has been in his employment for longer than four months, three days' unpaid family responsibility leave which the employee shall be entitled to take—
- (i) when the employee's child is born;
 - (ii) when the employee's child is sick; and
 - (iii) in the event of the death of—
 - (aa) the employee's spouse or life partner; or
 - (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (b) An employee may take family responsibility leave in respect of the whole of or a part of a day.
- (c) Before granting an employee family responsibility leave in terms of this subclause, an employer may require reasonable proof of an event contemplated in subclause (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause shall lapse at the end of the annual leave cycle in which it accrues.
- (12) Exclusions: The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months' employment: Provided further that should such watchman's employment be terminated before such leave is granted, he shall be paid in lieu of such leave two and a fifth times his daily wage in respect of each completed month of employment, calculated from the date of commencement of his employment or from the first day after the last 12-month period in respect of which he was granted four weeks' holiday leave, as specified in this subclause.

For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.

9. TERMINATION OF EMPLOYMENT

(1) Written notice, in the form and manner specified by the Council or Regional Chamber, of not less than five working days which for the purpose of this clause shall include paid holidays, to take effect from the working day following that on which it is given, shall be given by an employer or an employee to terminate contract of service:

(a) Provided that this shall not affect—

- (i) the right of an employer or employee to terminate the contract of service without notice for any cause recognised by law as sufficient;
- (ii) any agreement between the employer and the employee providing for a longer period of notice than one week;

(b) Provided further that—

- (i) an employer may pay an employee wages for and in lieu of the period of notice specified in this clause or agreed upon in terms of subclause (1) (a) (ii);
- (ii) an employee who is working short time may terminate his employment without giving notice;
- (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 days, in respect of monthly paid employees, of the period of employment of an employee by an employer shall (unless otherwise stated in a written agreement) be deemed to be a trial period and such employment may be terminated by either the employer or by the employee at any time within such trial period by giving 24 hours' notice;
- (iv) monthly paid employees shall give or be given not less than one calendar month's notice, in writing, to take effect from the first day of the month following that in which notice is given.

(2) (a) In the event of an employer failing to give notice or permitting the employee to work the required notice period, or an employee failing to give notice and to work the required notice period, the employer shall pay or the employee shall forfeit, subject to the provisions of paragraph (b), an amount equal to the full weekly remuneration which the employee was receiving immediately prior to the date of such termination.

(b) If an employee leaves without notice or is unaccountably absent, the employer shall send his service card to the Regional Chamber not earlier than the sixth nor later than the 11th day of such absence, together with any wages due, holiday pay and any other moneys due in terms of this Agreement, together with a statement by the employer detailing circumstances surrounding the employee's absence from work and requesting a refund of the amount to be forfeited in terms of paragraph (a).

(3) Subject to the provisions of subclause (2) (a) and (b), an employee who is discharged or leaves without giving notice during the currency of any period of notice given in terms of subclause (1) shall receive full pay if discharged, or shall forfeit such wages for the unexpired period of such notice if the employee left without giving notice.

(4) No employer shall terminate the services of any employee by reason of such employee's—

- (a) approaching confinement: Provided that the employee shall return not later than six months after having gone off on confinement;
- (b) absence from work through illness: Provided that a medical certificate for any period of absence of more than two consecutive days, or on more than two occasions during an eight-week period be provided on the employee's return to work;
- (c) absence on leave, the written permission of the employer having been obtained;
- (d) partial disablement through injury on duty.

(5) Subject to the provisions of subclause (3), the employment of an employee who absents himself from work or is absent from work through illness for a period of five consecutive working days without notifying his employer, in writing, may be terminated by the employer without notice as required in subclause (1): Provided that—

- (i) the employer shall attempt to contact the employee in writing at the last-known address supplied by the employee;
- (ii) the employee be allowed to lodge with his employer a written appeal against his dismissal.

(6) Whenever an employer terminates the services of an employee in terms of subclause (4), notice of such termination shall be given by notifying the Regional Secretary of the Regional Chamber in writing. Any such notification to the Regional Chamber shall be accompanied by the employee's service card and wages or other amounts due to the employee on such termination, for transmission to the employee on application. The provisions of this subclause shall *mutatis mutandis* apply to any termination of employment in terms of subclause (1) (i).

(7) Notwithstanding the provisions of subclauses (4), (5) and (6), no employer shall, in terms of the Act, unfairly terminate the services of an employee. Furthermore, for the purposes of determining the length of an employee's employment with an employer, previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

10. ENGAGEMENT IN EMPLOYMENT

(1) An employer shall, before engaging an applicant for work, require such applicant to produce a service card issued by the Regional Chamber: Provided that, in the case of persons who have not previously been employed in the Industry in the Northern Areas, a period of seven days may elapse before production of the service card shall be required. The service card shall be in the form and manner specified by the Council or Regional Chamber.

(2) If, during or on completion of the trial period in terms of clause 9 (1) (b) (iii), the contract of service is confirmed, the employer shall, immediately on such confirmation, enter in the service card the name of his workplace, the occupation of the employee, the date of commencement of employment and the prescribed wage of such employee; and within three days forward the service card to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000.

(3) Such information as is required by the Regional Chamber shall be taken from the service card as soon as reasonably possible after which the card shall be returned to the employer who shall retain it until the employee leaves his employment, whereupon the employer shall enter on the card the date of termination of employment and the prescribed wage on termination and return the card to the employee. The employee shall thereupon surrender his medical benefit card in exchange for his service card: Provided that if the employee is unable to surrender his medical benefit card the employer shall immediately forward the service card to the Regional Chamber's office, where the employee may make application for the service card.

11. COUNCIL FUNDS

(1) (a) Every employer shall, on the pay day of each week and from the first pay day after this Agreement comes into operation, deduct an amount of 60 cents from the wages of each of his employees for whom minimum wages are prescribed in this Agreement: Provided that no deductions shall be made from the wage of an employee who has worked for less than 20 hours in the week in which the deductions fall due.

(b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount of 70 cents per week.

(2) The employer shall pay the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the end of the month in which the deductions fall due.

(3) Where an employer has failed to deduct contributions from his employees he shall not be permitted to deduct arrear contributions, but shall make good these contributions himself.

(4) Should any amount due in terms of subclause (1) not be received by the Regional Chamber by the 10th day after the date on which it is payable, the employer shall pay weekly interest on such amount or such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two % per annum: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Regional Chamber, the interest may accrue to the general Funds of the Regional Chamber.

12. EXTRACTS FROM WAGE REGISTERS

Every employer shall, in respect of each calendar month, forward a return in the form and manner specified by the Council or Regional Chamber to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, showing in respect of each employee, the Regional Chamber number, clock number (if any), the weekly amounts deducted in terms of clauses 11, 19, 20, 21 and 22 of this Agreement and the date of engagement (if the employee was engaged during the calendar month to which the return relates), the occupation, and the date of termination (if the employee's services were terminated during the calendar month to which the return relates). This return shall be submitted to the Regional Chamber not later than the 10th day of the month following the calendar month to which the return relates.

13. TRADE UNION LABOUR

A. EMPLOYMENT OF TRADE UNION LABOUR

- (1) No employer who is a member of the employers' organisation shall continue to employ an employee—
 - (a) who, while being eligible for membership of the trade union, is not a member of the trade union as at the date of coming into operation of this Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.
- (2) No member of the trade union, from the date of entering into employment takes place after the date of coming into operation of this Agreement, may continue his employment with an employer—
 - (a) who is neither a member of the employers' organisation; or
 - (b) who does not within a period of 90 days after such date, or after the date of employment of the employee concerned, where such employment takes place after the date of coming into operation of this Agreement, become a member of the employers' organisation.
- (3) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the trade union or employers' organisation, or who have been refused membership of or expelled from the trade union or employers' organisation.
- (4) Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward the amounts to the secretary of the trade union, together with such analyses of the amounts as are received from employers.

(5) No union membership subscriptions may be—

- (a) paid to a political party as an affiliation fee;
- (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
- (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

B. RIGHTS AND ACCESS TO PREMISES

- (1) Any office-bearer or official of a representative trade union shall be entitled to enter the employer's premises in order to recruit members or communicate with members or otherwise serve members' interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.
- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workplace.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
 - (a) Such facilities shall be available during the normal working hours of the business and while normal output is maintained, including lunch and tea breaks.
 - (b) The granting of facilities shall be available subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry-related matters. Such industry-related matters shall be defined by the Council or Regional Chamber from time to time.
 - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.

C. TRADE UNION REPRESENTATIVES—TIME OFF

- (1) Representatives from the representative trade union shall be granted paid time off on the following basis:
 - (a) Nine (9) days per annum per trade union representative, pooled for each workplace and divided between various trade union representatives at the discretion of the union: Provided that—
 - (i) all such leave shall be subject to the operational requirements of the workplace;
 - (ii) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause;
 - (iii) in the case of employers not referred to in paragraph (ii), the union shall give the employer one day's notice of the activity for which it seeks time off in terms of this clause; and
 - (iv) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

D. MEMBERSHIP FEES

Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the end of the month in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward to the General Secretary of the Trade Union the amounts, together with such analysis of the amounts as are received from the employers.

E. SACTWU EDUCATION BURSARY SCHEME

- (1) For the purposes of establishing a SACTWU Educational Trust, every employer to whom this Agreement applies, shall each week contribute 20 cents for each employee in his workplace. The moneys so paid shall be utilised by the SACTWU Education Bursary Scheme to award bursaries to all employees and their children in the Industry to further their education.

- (2) The total amount per month shall be submitted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the month in which the contributions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward such contribution to the General Secretary of the Trade Union, together with an analysis of the amounts as received from employers.

F. SACTWU HIV/AIDS PROJECT

- (1) There is hereby a HIV/AIDS Project established, known as the SACTWU HIV/AIDS PROJECT.
- (2) Every employer to whom this Agreement applies shall each week contribute an amount of 10 cents for each employee in his employ to the SACTWU HIV/AIDS Project. The amount shall be submitted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the contributions fall due.
- (3) The total amount so collected by the Regional Chamber shall be transferred to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, on a quarterly basis.

14. PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR

- (1) No person may employ a child—
 - (a) who is under 15 years of age; or
 - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 years or older.
- (2) No person may employ a child in employment—
 - (a) that is inappropriate for a person of that age;
 - (b) that places at risk a child's well-being, education, physical and mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour shall be prohibited.
- (4) No person may for his own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who contravenes subclauses (1) to (4) shall be guilty of an offence.

15. REGISTRATION OF AN EMPLOYER

(1) Every employer on whom this Agreement is binding and who has not already done so in terms of the previous Agreement shall within seven days of the date on which this Agreement becomes binding on him, furnish to the Regional Secretary of the Regional Chamber the particulars set out in the form and manner specified by the Council or Regional Chamber.

(2) Where an employer carries on business as a partnership, company or close corporation, the particulars set out in the form and manner specified by the Council or Regional Chamber, shall be provided in respect of each partner, director or member of the business, as the case may be.

(3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Regional Secretary of the Regional Chamber notice of the change, in writing, setting out full particulars of such change within seven days of its taking place:

- (a) Change of name;
- (b) change of address;
- (c) change in the composition of its members or partners or directors;
- (d) sequestration or liquidation of the business;
- (e) transfer or abandonment of the business;
- (f) acquisition of another business which is covered by this Agreement;
- (g) commencement of any other business covered by this Agreement.

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 registered with and falling within the Council's registered scope inasmuch as it relates to the scope 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 an application form provided by the Council. The applicant shall annex a copy of its Council Registration Certificate to the application and shall address the application to the Regional Secretary of the Regional Chamber for consideration by the Council of Regional Chamber.

- (3) All applications for exemption shall be fully motivated and supported by any 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;
 - (c) the clauses and subclauses of this Agreement from which the exemption is requested;
 - (d) satisfactory proof that the exemption applied for has been discussed between the employer, the employees affected and/or their respective representatives, including the response resulting from such discussions either in support of or in opposition to the application.
- (4) If the exemption application is expressed by the applicant to be urgent, the Regional Secretary of the Regional Chamber and/or General Secretary of the Council shall examine the application to determine whether it is urgent. If the Regional Secretary of the Regional Chamber and/or General Secretary of the Council decides that the application is urgent, then he shall refer the application to the Chairperson of the Council or Regional Chamber, as the case may be, who shall convene a meeting of the Council or Regional Chamber within seven days of receipt of the application from the Regional Secretary of the Regional Chamber and/or General Secretary of the Council to consider the application. If the Regional Secretary of the Regional Chamber and/or General Secretary of the Council decides that the application is not urgent, then he shall deal with it in the ordinary course as set out below.
- (5) The Regional Secretary of the Regional Chamber or the General Secretary of the Council shall place the full exemption application before the appropriate meeting of the Council or Regional Chamber, as the case may be, for its consideration, including any background information which may be required and which the Regional Secretary of the Regional Chamber or the General Secretary of the Council can provide.
- (6) The Council or Regional Chamber may, after considering the application, including any urgent application, in terms of the provisions and criteria outlined in the Agreement grant, partially grant or reject such application for exemption and may impose any conditions on the granting or partial granting of any application as it deems fit under the circumstances.
- (7) The appropriate Council or Regional Chamber meeting shall consider all applications for exemption having regard to all relevant information, and in particular to—
- (a) the written and verbal (if any) motivation provided by the applicant, and supporting documentation;
 - (b) the extent of discussion between employer and employees affected and their respective representatives, where applicable, including the responses of these persons to the application;
 - (c) the terms of exemption sought, including the period thereof;
 - (d) any possible infringement of basic conditions of employment rights which may result if the exemption is granted;
 - (e) whether or not a competitive advantage will be afforded to the applicant should the exemption be granted; including its broader impact on the Industry as a whole and on other stakeholders within the Industry who may be disadvantaged by the granting of an exemption;
 - (f) if the exemption sought is from any employee benefit fund or training provision, the sufficiency of the alternative benefit or provisions proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability;
 - (g) the extent to which the proposed exemption may undermine collective bargaining and labour peace in the Industry or sector concerned;
 - (h) any existing special financial, economic or other circumstances which are put forward by the applicant as reasons warranting the granting of the exemption: Provided that the Council or Regional Chamber may require the disclosure of such relevant, verifiable information as it may deem fit in this regard;
 - (i) the history and the current status of the business entity and/or its shareholders, directors and owners within the Industry, including its period of operation, and in particular whether or not the entity is a new emerging enterprise;
 - (j) the history and the current status of the business entity *vis-à-vis* the Council or Regional Chamber, including whether any levies or contributions to benefit funds are outstanding, and any previous exemptions which may have been granted by the Council or Regional Chamber;
 - (k) any representations made by the employees and/or their representatives, the Council or Regional Chamber and/or parties to the Council or Regional Chamber as contemplated in subclause (3) (d) and (5) above;

- (l) any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances;
 - (m) the cost, efficiency and administration of any conditions which the Council or Regional Chamber may feel necessary to impose, and the re-evaluation thereof.
 - (8) The Council or Regional Chamber shall notify an applicant of its decision within 14 days of such decision having been reached.
 - (a) If the application has been granted, the Council or Regional Chamber 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 is to be valid;
 - (iii) the clauses or subclauses of the Agreement from which the exemption is granted.
 - (b) Upon receipt of a written request, the Council or Regional Chamber shall provide reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (c) If the application for exemption is rejected, the Council or Regional Chamber shall provide concise reasons for such rejection to the applicant within 14 days of the date of its decision.
 - (9) Any decision of the Council or Regional Chamber to reject, partially grant or withdraw an application may be referred by the the applicant to the Independent Exemptions Board (styled the Exemptions Board), hereby established in terms of the Act and the Constitution of the Council, and the provisions of subclauses (1) to (8) above shall *mutatis mutandis* apply when appeals are heard and decided upon by the Exemptions Board.
- 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) (a) Exemption from the provisions of Collective Agreements shall be granted in the following circumstances:
 - (i) Where an 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—
 - (aa) the Collective Agreement shall not contravene the minimum employment standards in the Council's Main Collective Agreement for the Northern Region (Knitting); 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 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;
 - (ab) wage rates and contributions to social funds including the Council's fund shall not be amended without the Council's approval.
 - (ii) Where the Exemptions Board established by the Council requires the Council or Regional Chamber to do so after granting an application for exemption.
 - (iii) Upon application by an employer employing five or fewer employees.
 - (b) An application for exemption shall be made to the Council or Regional Chamber in accordance with the Council's or Regional Chamber's exemption procedure as provided for in subclauses (2) and (3) of A above.
- (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) (a) (i) above:
 - (a) The employer shall place on the notice board of the workplace a notice to employees specifying the proposed variation to the Council's Main Collective Agreement for the Northern Region (Knitting). At the same time a copy of the notice shall be sent to the union.
 - (b) A meeting shall take place at the workplace in order to reach agreement on the proposed variation, which agreement shall 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 (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. POWERS OF DESIGNATED AGENTS

(1) 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 27 of the Agreement or the Dispute Procedure in terms of clause 28 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 designated agent or be questioned or 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 authorisation—
 - (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;
 - (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 designated agent.

(2) A subpoena issued for any purpose in terms of subclause (1) shall be signed by the General Secretary of the Council or Regional Secretary of the Regional Chamber or the 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.

(3) The written authorisation referred to in subclause (1) (d)—

- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on application by the designated agent 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; and
- (b) in all other cases, may be given by the General Secretary of the Council or Regional Secretary of the Regional Chamber.

(4) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier shall provide any facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.

(5) The designated agent shall issue a receipt for any book, document or object seized in terms of subclause (4).

(6) 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, shall apply equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.

(7) The designated agent shall pay the prescribed witness fee to each person who appears before him in response to a subpoena issued in terms of section 208 of the Act, where such fee has been specified by the Minister of Labour or, in the absence of such fee, as may be determined by the Council from time to time.

(8) A person shall be guilty of 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 designated agent;
- (c) by refusing to take the oath or make an affirmation as a witness when a designated agent so requires;
- (d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to subclause (6);
- (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;

- (f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of the Act;
- (g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent'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 designated agent which, if done in relation to a court of law, would have been contempt of court.

(9) The designated agent may, on recommendation of the Council or Regional Chamber, refer any contempt to the Labour Court for an appropriate order.

18. FIXED-TERM CONTRACTS

(1) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task.

(2) Any employee engaged on a fixed-term contract shall be employed subject to the same terms and conditions as prescribed in this Agreement for other employees of the same class/job category.

(3) Fixed-term contracts shall be reduced to writing and shall stipulate the commencement and termination dates and/or completion date of the contract task.

(4) Copies of all fixed-term contracts (as well as accompanying exemption applications where applicable) concluded in the Industry shall be forwarded to Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, for registration and processing by no later than seven days after commencement of duty of such employee.

19. MEDICAL BENEFIT SOCIETY

(1) There is hereby continued a society known as the Knitting Industry Medical Benefit Society (Northern Areas), (hereinafter referred to as the "Society"), originally established on 4 June 1971 in terms of Government Notice No. R. 911.

(2) The purpose of the Society shall be assist members and their spouses with medical, dental and specialists' attention, medicines, medical appliances, hospitalisation, and such other benefits as may be determined by the Management Committee.

(3) Every employer shall on the pay day of each week deduct R5,80 from the wages of each of his employees for whom minimum wages are prescribed in this Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.

(4) In addition to the amount prescribed in paragraph (3), for a member whose spouse is included in this scheme, an additional deduction of R5,80 shall be made from the wages of each of those employees for whom minimum wages are prescribed in this Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.

(5) The employer shall pay the amounts so deducted, together with an amount added by the employer equal to R6,20, within seven days from the end of the month in which the deductions fall due in respect of employees and their spouses to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a statement in the form and manner specified by the Council or Regional Chamber.

(6) Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the date of which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

20. SICK PAY FUND

(1) The Knitting Industry Sick Pay Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911, is hereby continued.

(2) (a) Every employer shall on the day of each week and from the first pay day after this Agreement comes into operation, deduct R1,25 from the wages of each of his employees for whom minimum wages as prescribed in this Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.

(b) The employer shall pay the amounts so deducted from the wages of his employees, together with an amount of R1,45 in respect of each employee from whose wage deductions were made in terms of paragraph (a) above.

(c) The total sum representing the employer's contributions and the member's contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a return in the form and manner specified by the Council or Regional Chamber within 10 days of the end of the month in which the deductions fall due.

(d) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof, and at the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

(3) The moneys of the Fund shall, subject to the provisions of this clause, be applied to provide members of the Fund with sick pay in case of absence from work owing to illness and shall be administrated by a Management Committee appointed by the Council or Regional Chamber and consisting of four representatives of the employers' organisation and four representatives of the trade union in accordance with the rules of the Fund, as set out hereunder.

(4) Should a dispute arise at any time as to the provisions of this clause, the rules, the administration of the Fund or any other matter in regard to which the members of the Management Committee are equally divided, the matter in dispute shall be referred to the Council or Regional Chamber for a decision.

(5) Sick Pay benefits shall be paid to employees for whom minimum wages are specified in this Agreement, subject to the following provisions:

- (a) No sick pay shall be paid to any employee in respect of any day of illness falling on a public holiday as specified in clause 8 (4).
- (b) No sick pay shall be paid to any employee in respect of any day of illness in respect of which the employee has been paid holiday pay as specified in clause 8 (1) or in the case of employees referred to in clause 8 (2) (a) in respect of a period of 12 working days calculated from the first working day after the date on which the factory closed for annual leave.
- (c) No sick pay shall be paid in respect of periods of illness resulting from obesity, sterility and cosmetic surgery or for injuries covered by the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or injuries in respect of which a claim may be made in terms of the provisions of the Road Accident Fund Act, 1996 (Act No. 56 of 1996).
- (d) Only members in good standing with the Fund shall be entitled to the benefits set out hereunder.
- (e) Any member whose payment of contributions to the Fund is more than 13 weeks in arrears shall not be entitled to any benefits provided by the Fund.
- (f) (i) Notwithstanding the provisions of subclause (5)(a), during the first 6 months of employment, an employee shall be entitled to one day's sick leave on full pay in respect of each completed period of 26 days of employment.
(ii) After completion of 6 months of employment, an employee shall be entitled to 10 working days' sick leave on full pay in any calendar year reckoned from 1 January to 31 December.

(6) Sick pay benefits shall be paid to all employees entitled thereto in terms of the provisions of subclause (5). A member who has been in the employ of the same employer for at least 10 months shall, on production of a medical certificate, be paid a maternity benefit equal to 20 days, wages.

(7) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all moneys received into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts shall be kept in the Regional Chamber's books for the Fund.

(8) The Council or Regional Chamber shall appoint a public accountant as auditor whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the period ending 31 December. The audited statement and balance sheet shall thereafter lie for inspection at the offices of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and to the General Secretary of the Council who shall transmit a copy thereof to the Registrar Labour, Relations.

(9) In the event of the expiration of this Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Council or Regional Chamber until it be either liquidated or transferred by the Council or Regional Chamber to any other fund or funds whose objects shall be solely to benefit the employees of the Knitting Industry (Northern Area). Provided that, if no new agreement providing for the continuation of the Fund is entered into within one year after the date of expiration of this Agreement or the Fund is not transferred as aforesaid within such period, the Fund shall be liquidated.

(10) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this Agreement is binding in terms of section 32 (2) of the Act, the Fund shall be administered by a Committee consisting of three representatives of the employers' organisation and three representatives of the trade union. In the event of such committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar Labour, he may appoint a trustee or trustees to carry out the duties of the committee. If there is no Council in existence, the Fund shall on the expiration of this Agreement be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause (11). Provided that if on such expiration the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

(11) On liquidation of the Fund in terms of subclauses (9) and (10), the monies remaining to the credit of the Fund after payment of all claims against the Fund, including the administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber.

- (12) All administration and liquidation expenses shall be a charge against the Fund.
- (13) The disbursements from this Fund shall cease whenever the amount to the credit of the Fund falls below R10 000,00.
- (14) The Sick Pay Fund hereby assumes responsibility for the maternity benefits previously paid by the Maternity Benefit Fund.

21. SHORT-TIME

(1) Where short-time has been or is introduced in any workplace and the Regional Chamber has been notified in the form and manner specified by the Council or Regional Chamber, an employee who is not required to work on any day shall be given notice of that fact not later than closing time on the working day prior to the day on which his services are not required, except that, if shorttime is to be worked on a Monday or starting from a Monday, an employee who is not required to work on such Monday shall be given notice of the fact not later than closing time on the preceding Thursday.

(2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) that his services will not be required on such day, be employed or be paid a full day's wages.

(3) Where full time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.

22. KNITTING INDUSTRY PROVIDENT FUND (NORTHERN AREAS)

(1) The Knitting Industry Provident Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911 for the purpose of providing benefits to members on leaving the Industry as provided for in this clause, is hereby continued.

(2) The Fund shall consist of—

- (a) contributions paid into the Fund in terms of the provisions of subclause (5);
- (b) interest derived from the investment of any moneys of the Fund;
- (c) any other sums to which the Fund may become entitled or which may be donated to the Fund.

(3) Administration of the Fund:

- (a) The administration of the Fund shall be vested in an administrative committee consisting of three employers' representatives and three employees' representatives appointed by the Council or Regional Chamber. For each representative an alternate shall be appointed.
- (b) Two employers' representatives and two employees' representatives shall constitute a quorum and all matters shall be determined by a majority vote.
- (c) All expenses of administration shall be a charge against the Fund.
- (d) The Council or Regional Chamber shall appoint a public accountant or accountants whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the annual period ending 31 December. The audited statements and balance sheet shall thereafter lie for inspection at the office of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
- (e) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all monies received into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts for the Fund shall be kept in the Regional Chamber's books.

(4) Membership: Membership of the Fund shall be compulsory for all employees for whom minimum wages are prescribed in this Agreement.

(5) Contributions:

- (a) (i) Every employer shall on the pay day of each week and from the first pay day after the coming into operation of this Agreement, deduct from the wage of each contributor in his employ, 5,75 per cent of the prescribed wage payable to such contributor, calculated to the nearest cent: Provided that no deduction shall be made from the wage of a contributor who has worked for less than 20 hours in the week in which the deductions fall due.
- (ii) To the aggregate amount deducted under subparagraph (i), every employer shall contribute an amount equal to 6,5% in respect of each employee. The employer shall forward the total amounts deducted under subparagraph (i), together with his own contributions in terms of this subparagraph to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a statement in the form and manner specified by the Council or Regional Chamber, within seven days from the date on which the deductions were made.

- (b) Should an employer fail to make the required deduction from the wages of his employees, he shall not be entitled to recover the arrear amounts from said employees.
- (c) Notwithstanding anything to the contrary which may be contained in this clause, deductions shall not be made from the wage of a worker who has been in the Industry for less than 20 days.
- (d) Notwithstanding the provisions of paragraph (a) of this subclause, other employees in the employ of the employer who are members of the trade union and who elect to become contributors may at the discretion of the Administrative Committee contribute to the Fund; and the provisions of this clause shall *mutatis mutandis* apply in respect of such employee and the employer of such employees.
- (e) Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

(6) Benefits:

- (a) Benefits as are specified in subclause (7) shall be provided to members.
- (b) Members who have left the Industry may apply for a withdrawal of accumulated benefits. Payment shall not be made to a member before the expiration of three months, reckoned from the date of which he left the Industry (except at the discretion of the Administrative Committee). Application for benefits shall be made in writing in the form of and manner specified by the Council or Regional Chamber.
- (c) Every employee shall be required to nominate a beneficiary to whom, in the event of the death of the member, any benefits due to such member shall be paid. In the event of the Fund not being advised of such beneficiary, any benefits due at the time of a member's death shall be paid into the estate of such deceased member. The nomination of a beneficiary shall be made in the form specified in the rules of the Fund.
- (d) When a member returns to the Industry before payment has been made on an application for withdrawal of benefits, the application shall automatically lapse and contributions be resumed forthwith.

(7) Amount of benefits: The minimum benefits that shall be paid to a member shall be the total amount contributed by such member plus—

- (a) if the total period of his contributions is 46 weeks or more but less than 92 weeks, 10 per cent of the amount contributed on his behalf by his employer.
- (b) if the total period of his contribution is 92 weeks or more but less than 138 weeks, 25 per cent of the amount contributed on his behalf by his employer;
- (c) if the total period of his contributions is 138 weeks or more but less than 184 weeks, 50 per cent of the amount contributed on his behalf by his employer;
- (d) if the total period of his contributions is 184 weeks or more but less than 230 weeks, 75 per cent of the amount contributed on his behalf by his employer;
- (e) where the total period of contributions is 230 weeks or more, 100 per cent of the amount contributed on his behalf by his employer;
- (f) in the case of the death, retrenchment or retirement as the stipulated retirement age of a member, 100 per cent of the amount contributed on his behalf by his employer, plus any amounts that the member may be entitled to.

(8) Payment of interest: In addition to the refund of a member's own contributions and the payment of such benefits as may have accrued to him, a member shall be entitled to interest, the rate of which shall be determined by the Administrative Committee but which shall be not less than the rate paid by the Post Office Savings Accounts: Provided that—

- (i) interest shall be payable on completed rands only;
- (ii) members shall be paid interest only on their own contributions;
- (iii) the interest accruing to members shall be credited to the members' accounts and paid to them, together with the refund of contributions and any other benefits which may be due.

(9) Additional benefits:

- (a) The Council or Regional Chamber may, from time to time, increase the benefits stated herein by declaration of a bonus in the light of improvement in the finances of the Fund through—

- (i) accrual of interest;
- (ii) contributors leaving the Industry before qualifying for the full 100 per cent of the employer's contributions: Provided that any such bonus shall be determined only after an investigation by a public accountant into the assets and liabilities of the Fund: Provided further that such bonus shall not be in excess of any amount recommended by such accountant. Any such bonus shall be credited to the member's account and shall be payable to such member at the same time as and in addition to the benefits specified in subclause (7) and (8).

- (b) The Council or Regional Chamber may use moneys arising out of subclause (9) (a) (i) and (ii) to augment the following benefits:

- (i) Retirement/Enhanced Benefit paid to contributors who leave the Industry from the age of 50 years, owing to retirement or retrenchment on the following basis:

Age	% of total benefit
50 years	5%
51 years	10%
52 years	15%
53 years	20%
54 years	25%
55 years	30%
56 years	35%
57 years	40%
58 years	45%
59 years	50%
60 years	55%

- (ii) payment of a death benefit of R5 000,00 to the estate, the beneficiary or beneficiaries, or any person defraying the funeral expenses of deceased contributor.

- (c) Housing loans:

- (i) The Administrative Committee may grant housing loans to contributors: Provided that loans granted in terms of this subclause shall be subject to such conditions as may be laid down by the Administrative Committee from time to time with the approval of the Registrar: Labour.
- (ii) Housing loans shall be repayable at such rates as the Administrative Committee may from time to time determine.
- (iii) On receipt of a stop order in respect of a housing loan duly signed by the employee concerned, an employer shall deduct from his employee's wages the weekly amount stipulated in the stop order, and shall forward the amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month.

(10) Benefits not to be ceded or assigned: No benefit or right to a benefit shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall any contribution made by a member or on his behalf be liable to be attached or be subject to any form of execution under a judgment or order of a court of law, and if a member attempts to assign, transfer or otherwise cede or pledge or hypothecate any benefit or right to a benefit, payment of benefits may be withheld, suspended or entirely discontinued if the Administrative Committee so determines.

(11) Transfer of Fund: Notwithstanding anything to the contrary herein contained, the Council or Regional Chamber may formally dissolve the Fund as constituted and transfer all funds, assets and liabilities of this Fund to another fund or society duly constituted for substantially the same purposes for which this Fund was created. In the event of such decision, all amounts standing to the personal credit of members of the Fund shall be transferred to their credit under the new fund or society and the benefits due to members, as at the date of such transfer, shall in no way be diminished by virtue of such transfer.

- (12) Dissolution of Fund:

- (a) In the event of the Council being dissolved during the currency of this Agreement or any extension thereof, then, notwithstanding anything to the contrary contained in this Agreement, contributions to the Fund shall cease as from the day following the date of coming into operation in the *Gazette* of the dissolution of the Council in terms of section 59 of the Act. The Fund shall be administered by a committee consisting of three representatives of the employers' organisation and three representatives of the trade union. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar: Labour, he may appoint a trustee or trustees to carry out the duties of the Committee for such purpose until expiration of this Agreement by effluxion of time or cessation for any other cause, upon which the Fund shall be liquidated *mutatis mutandis* as though the employees had left the Industry: Provided that the duties in connection with such liquidation shall be performed by such other body or persons as the Registrar: Labour may appoint.

- (b) In the event of the expiration of this Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Administrative Committee until it be either liquidated or transferred by the Council or Regional Chamber to another Fund in terms of subclause (11): Provided that if no new agreement providing for the continuation of the Fund is entered into within one year after the expiration of this Agreement or the Fund not being transferred as aforesaid within such period, the Fund shall be liquidated by the Council or Regional Chamber in the manner set forth in paragraph (a) and in subclause (13).

(13) Liquidation: On liquidation of the Fund in terms of subclause (12) and payment of money due to members in terms of that subclause, the monies 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 general funds of the Council or Regional Chamber. If the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

(14) Payment of benefits in the event of death:

- (a) Every contributor shall, on joining the Fund, appoint a beneficiary and shall advise the Provident Fund of the address of such beneficiary. In the event of the contributor wishing to change his beneficiary at a later date, he shall advise the said Fund, in writing, of such change of name and address. Every contributor shall further furnish the said Fund with the name and address of dependants and any change of address of dependants.
- (b) In the event of a contributor failing to appoint a beneficiary in terms of paragraph (a) hereof, or of the beneficiary predeceasing the contributor, the Administrative Committee shall pay the benefits to such dependants of the contributor as it may in its discretion deem fit.
- (c) Every employer shall notify the Regional Secretary of the Regional Chamber of the death of any contributor in his employ and the Regional Secretary shall, as soon as possible, on receiving information from any source of the death of a contributor, notify the dependants or beneficiary, as the case may be, by letter or circular stating the name and last-known place of work of the deceased contributor and the fact that benefits may be claimed at an address specified by the Administrative Committee.
- (d) In the event of the Regional Secretary not having been notified of the latest address of a dependant or appointed beneficiary, the Administrative Committee shall take such measures as it may deem expedient to trace such dependant or appointed beneficiary.
- (e) If within 12 months after the death of a contributor no claim is made by a dependant or beneficiary, or the Administrative Committee has, in terms of this subclause, been unable to trace any dependants or beneficiaries, it shall be assumed that there are no dependants or beneficiaries, and the benefits shall revert to the Fund for the benefit of the remaining contributors and there shall thereafter be no further claim against the Fund in respect of that contributor: Provided that the Administrative Committee shall, in the event of a claim being received within a period of three years after the death of a contributor, be entitled, in its entire and absolute discretion, to make payments to the dependants or beneficiaries concerned out of the moneys which have reverted to the Fund.

23. SAFEGUARD OF WORKERS' EARNINGS

(1) Every employer shall within two months of the date of coming into operation of this Agreement or within two months of the establishment of a new factory, give a banker's guarantee or other guarantee acceptable to the Regional Chamber, to be completed in the form and manner specified by the Council or Regional Chamber, payable on demand on the employer's insolvency or otherwise. Such guarantee shall be used to cover the payment of holiday pay and wages due to the employers' employees: Provided that the money so guaranteed shall be equal to five week's wages for every employee.

(2) Should any employer fail to provide an acceptable guarantee to the Regional Chamber in terms of the above paragraph, he shall within two months of the date of coming into operation of this Agreement or within two months of the establishment of a new factory deposit a sum of money with the Regional Chamber equal to five weeks' basic wages.

24. SEVERANCE PAY

(1) An employer shall pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer: Provided that previous employment with the same employer shall be taken into account if the break between the period of employment is less than one year.

(2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).

(3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this Agreement.

(4) Where an employee who is 50 years of age or older, subject to subclause (5) below, is retrenched, such employee shall receive the stipulated enhanced benefits due in terms of clause 22 (9) (b) (i) of this Agreement. The employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in subclause (1) above where the enhanced Provident Fund benefit is less than the severance benefit.

(5) Where an employee has reached the stipulated retirement age of 60 years of age or older, the employer shall have no liability for severance pay.

25. OVERALLS

The employer shall within three months of the commencement of employment of an employee, or within three months of the date of coming into operation of this Agreement, issue every employee with one new overall/protective garment of the required size and as approved by the Council or Regional Chamber. Thereafter, one overall shall be issued to every employee every 1 July.

26. AGENCY SHOP: EMPLOYERS' ORGANISATION

(1) Every employer that belongs to the employers' organisation shall pay a monthly membership fee in an amount calculated in terms of subclause (3).

(2) Every employer that does not belong to the employers' organisation shall pay a monthly levy in an amount calculated in terms of subclause (3).

(3) The amount of the monthly membership fee or monthly levy shall be calculated in accordance with the following formula:

- (i) An employer employing 60 or fewer employees, a total of R175,00 per month (excluding VAT);
- (ii) an employer employing 61 or more employees, R3,00 (excluding VAT) per employee in his employ for whom wages are prescribed in this Agreement.

(4) Every employer shall pay the monthly amount to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, before the 15th day of each month, together with an analysis of the amounts received.

(5) The Regional Secretary of the Regional Chamber shall deposit all moneys received in terms of this clause into the Regional Chamber's account and at the end of each month—

- (a) pay all membership fees received to the employers' organisation; and
- (b) deposit all levies received into a separate account administered by the employers' organisation.

(6) The moneys held in the separate account may, be used only for expenditure by the employers' organisation on matters that relate to collective bargaining or dispute resolution in the Industry and may not be—

- (a) paid to a political party as an affiliation fee; or
- (b) contributed in cash or kind to a political party or a person standing for election to any political office.

(7) The employers' organisation party to this Agreement shall arrange for an annual audit of the separate account within six months of the end of its financial year by an auditor who shall—

- (a) conduct the audit in accordance with generally accepted auditing standards;
- (b) report in writing to the employers' organisation and, in the report, express an opinion as to whether or not the employers' organisation has complied with its constitution relating to financial matters and the provisions of subclause (6).

(8) The employers' organisation shall submit to the Regional Chamber, within 30 days of the receipt of the auditors' report referred to in subclause (7), a certified copy of that report.

(9) Any person may inspect the auditors' report submitted to the Regional Chamber in terms of subclause (8) at the Regional Chamber's offices, 148 Kerk Street, Johannesburg.

(10) The Regional Chamber shall provide a certified copy of, or extract from the auditors' report to any person requesting such copy or extract.

(11) The Independent Exemptions Board may, on application from an employer who conscientiously objects to association with persons other than those who share his religious beliefs, grant an exemption from the provisions of this clause.

(12) Any dispute about the application, including enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator: Provided that the parties mutually agree on such conciliator and arbitrator. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator, who must be senior counsel, shall be appointed from the ranks of an accredited agency.

27. 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 owing to its own investigations or owing to any other source, it appears that the provisions of this Agreement have been breached, then the following procedure shall apply to enforce compliance:

- (a) The General Secretary of the Council or Regional Secretary of the Regional Chamber shall request a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber.
- (b) If, on completion of the investigation, the designated agent has reason to believe that this Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
- (c) At the end of the conciliation process, the designated agent shall submit a report to the Regional Secretary of the Regional Chamber and/or 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) On receipt of the report, the Regional Secretary of the Regional Chamber and/or General Secretary of the Council may—
- (i) require the designated agent to make further investigation; 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 of the Regional Chamber and/or 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 of the Regional Chamber and/or General Secretary of the Council shall serve notices of the date, time and venue of the arbitration hearing 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 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 registered employer's 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 the Agreement;
 - (ii) to make any appropriate award that gives effect to the 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 cost of providing the arbitration service: Provided that where the Council's or Regional Chamber's accredited conciliator has made an advisory award in terms of clause 28(3)(c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make costs order, as set down by the Council or National Association of Bargaining Councils, against the party concerned which shall, as a minimum, cover the Council's and/or Regional Chamber's costs of dealing with the dispute;
 - (v) to make an award in the absence of a party who is alleged to have breached the 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 and 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 Act.
- (l) The provisions of the procedure, shall stand in addition to any other legal remedy which the Council or Regional Chamber or a party to the Council may have to enforce an agreement or a unilateral change to an employee's conditions of service and which is in contravention of the agreements of the Council and which is binding on a party or non-party to such an agreement.

28. DISPUTES' PROCEDURE**(1) Accreditation:**

- (a) The Council shall apply for accreditation for the purposes of dispute resolution as provided for in the Act.
- (b) In the event of the Council not being accredited for whatever reasons, the Council or Regional Chamber shall employ the services of an accredited agency to perform the conciliation and arbitration services provided for herein.

(2) Scope of application:

- (a) In this clause "dispute" means any dispute which arises within the registered scope of the Council about a matter of mutual interest between—
 - (i) on the one side—
 - (aa) one or more trade unions;
 - (ab) one or more employees; or
 - (ac) one or more trade unions and one or more employees; and
 - (ii) on the other side—
 - (aa) one or more employers' organisations;
 - (ab) one or more employers or
 - (ac) one or more employers' organisations and one or more employers.
- (b) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.

(3) Referral and conciliation of disputes between parties to the Council

Parties to the Council shall resolve any dispute between themselves as follows:

- (a) Any of the parties to the dispute may refer the dispute to the Council. Except for disputes which arise from negotiations for the purpose of reaching a collective agreement in the Council, all dispute referrals shall be in writing setting out the nature of the dispute and the outcome sought. The party who refers the dispute to the Council or Regional Chamber shall satisfy it that a copy of the referral has been served on all the other parties to the dispute. The Council or Regional Chamber shall attempt to resolve the dispute through conciliation within 30 days from the date of the Council or Regional Chamber receiving a written referral of the dispute: Provided that if the dispute arose from negotiations for the purpose of reaching a collective agreement in the Council, the Council shall attempt to resolve the dispute through conciliation within 30 days from the date of the nature of the dispute first being minuted in the Council or Regional Chamber in terms of any Agreement reached in any other forum. The parties to the dispute may agree in writing to extend the 30-day period.
- (b) Disputes about the interpretation or application of this Agreement concluded in the Council shall be dealt with by the Council or Regional Chamber: Provided that any unfair dismissal disputes shall be dealt with by the Regional Chamber.
- (c) The Council or Regional Chamber, or accredited conciliator appointed by it shall, during the conciliation proceedings, attempt to resolve the dispute, which may include—
 - (i) mediating the dispute, and/or appointing a conciliator from the conciliation panel to conciliate the dispute;
 - (ii) conducting a fact-finding exercise, and
 - (iii) making a recommendation to the parties, which may be in the form of an advisory arbitration award.
- (d) In the conciliation proceedings, a party to the dispute may appear in person or be represented only by a member, an office-bearer or official of that party's registered trade union or registered employers' organisation and, if the party is a juristic person, by a director or an employee.
- (e) When the conciliation has failed, or at the end of the 30-day period, or any further period agreed between the parties in writing, the Regional Secretary of the Regional Chamber or General Secretary of the Council shall issue a certificate stating whether or not the dispute has been resolved.

(4) Adjudication of certain disputes between the parties to the Council

- (a) If the dispute remains unresolved after conciliation, the Council or Regional Chamber shall—
 - (i) arbitrate the dispute if any party to the dispute has requested the Council or Regional Chamber in writing that it be resolved through arbitration, and—
 - (aa) the Act requires arbitration; or

(ab) the dispute relates to an unfair dismissal for which the Act permits the dispute to be referred to the Labour Court, save in respect of a dismissal which the employer alleges is—

(A) based on the employer's operational requirements; or

(B) for participating in or supporting or indicating an intention to participate in or support a strike or protest action; which shall be dealt with in terms of subclause 28 (4) (a) (ii) below; or

(ac) the dispute relates to the interpretation, application or enforcement of this Collective Agreement or any collective agreement concluded in the Council; or

(ad) all the parties to the dispute consent, in writing, to arbitration being conducted under the auspices of the Council or Regional Chamber in terms of sub-clause (6) below;

(i) subject to clause 28 (4) (a) (i) (ab) above, refer the dispute to the Labour Court if the Act requires the dispute to be referred to the Labour Court and any party to the dispute has requested the Council or Regional Chamber in writing to refer the dispute on its behalf to the Labour Court.

(b) Parties shall not be entitled to refer the dispute identified in clause 28 (4) (a) (i) (ab) and (ac) to the Labour Court or Labour Appeal Court.

(5) Appointment of conciliation and arbitration Panel

(a) The conciliator or arbitrator appointed shall be selected from the Panel appointed by the Council or Regional Chamber. An employee of the Council or Regional Chamber shall be eligible for appointment to the panel, provided that, should the Council or Regional Chamber have an interest in the dispute to be conciliated and/or arbitrated, employees of the Council or Regional Chamber shall not be eligible to arbitrate the dispute.

(b) The panel shall consist of six conciliators and/or arbitrators, and all parties to the Council shall attempt to reach agreement on the persons to be appointed to the Panel. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and/or arbitrators, the following process shall be followed:

(i) The trade union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on the Panel, and the employer parties to the Council must do likewise;

(ii) the list prepared by the parties shall be exchanged, and each party shall rank the nominees of the other party in order of their preference;

(iii) in the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list;

(iv) in the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and

(v) the final vacancy shall be filled by inserting the names of the next-most preferred nominees from each list into a hat from which the General Secretary of the Council shall draw the names of the remaining appointee.

(c) Conciliators and/or arbitrators are to be appointed to the panel for a period of two years, after which period they may be reappointed by agreement between all the parties to the Council. Should any or all of the persons not be reappointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the Panel, failing which the remaining vacancies shall be filled according to the method described in subclause (5) (b) above.

(d) Despite subclause (5) (a) above, the parties to the Council shall have the power, by unanimous agreement, to replace any conciliator(s) and/or arbitrator(s) on the panel with another person, or other persons.

(e) Conciliations and arbitrations shall be allocated to persons on the panel on a rotational basis by the Regional Secretary of the Regional Chamber or General Secretary of the Council, unless the parties to the dispute agree upon a conciliator and/or arbitrator from the relevant panel.

(6) Arbitrations

(a) The arbitrator, in consultation with the parties to the dispute, shall decide the date, time and venue of the arbitration: Provided that, unless the parties agree to an extension or the circumstances warrant it, the date of the arbitration shall be within 14 days of the referral to arbitration by the Council or Regional Chamber.

(b) The Regional Secretary of the Regional Chamber or General Secretary of the Council shall serve notices of the date, time and venue of the arbitration on the parties to the dispute.

- (c) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by him to be frivolous or vexatious.
- (d) Subject to subclause 6) (f) below, any party who has a legal interest in the outcome of the arbitration and whose application in terms of subclause (6) (c) above has been granted by the arbitrator, 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 trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof:

Provided that if the dispute being arbitrated is about the fairness of a dismissal and the aggrieved employee has alleged that the reasons for the dismissal relates only to the employee's conduct or capacity, the parties shall not be entitled to be represented by a legal practitioner in the Arbitration proceedings unless—

- (A) the arbitrator and all other parties consent; or
- (B) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering—
 - (AA) the nature of the questions of law raised by the dispute;
 - (AB) the complexity of the dispute;
 - (AC) the public interest; and
 - (AD) the competence of the opposing parties or their representatives to deal with the arbitration of the dispute.
- (e) The arbitrator shall have the following powers:
 - (i) To arbitrate the dispute;
 - (ii) to make any appropriate award;
 - (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 if a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner—
 - (aa) by proceeding with or defending the dispute in the arbitration proceedings;
 - (ab) in its conduct during the arbitration proceedings;
 which costs order shall be limited to the amount of 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 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, and 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—
 - (A) by registered mail to such party's last-known address and 14 days have elapsed since such notification has been mailed;
 - (B) by telefax transmission to such party's last known telefax number; or
 - (C) by hand delivery to such party's last-known business or residential address; or
 - (ac) prima facie evidence has been presented to justify such an award;
 - (vi) to vary, rescind or amend any arbitration award made by him, on good cause shown or of his own accord, 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;
 - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.

- (f) The arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but shall deal with the substantial merits of the dispute with the minimum of legal formalities.
- (g) In making the awards referred to in this clause, the arbitrator shall be bound by—
 - (i) Labour Appeal Court; precedents; and if there are none, by
 - (ii) Labour Court precedents.
- (h) Any award made by the arbitrator shall be final and binding on the parties to the dispute.
- (i) The Council or Regional Chamber shall serve the award, together with any reasons, on all interested parties.
- (j) Any party or the Regional Secretary of the Regional Chamber or the General Secretary of the Council may apply to make the arbitration award an order of the Labour in terms of section 158 (1) of the Act.
- (k) Except for subclause (6) (c), the parties to a dispute may agree in writing to amend or vary any of the provisions of subclause (6).
- (l) In addition to the rights of review provided for in the Arbitration Act, 1965 (Act No. 42 of 1965), any party to any arbitration in terms of this Agreement shall be entitled to the right of review to the Labour Court provided for in the Act.

(7) Disputes involving non-parties to the Council

- (a) If the Minister of Labour extends this Agreement concluded in the Council to non-parties to the Council in terms of section 32 of the Act, then disputes involving non-parties to the Council or Regional Chamber shall be dealt with in terms of the above disputes procedure, subject to the Council's accreditation.
- (b) If the Collective Agreement concluded in the Council is not extended to non-parties then the following procedure shall apply:
 - (i) If a dispute is referred to the Council or Regional Chamber in terms of the Act and any party to that dispute is not a party to the Council, the Council or Regional Chamber shall attempt to resolve the dispute through conciliation; and
 - (ii) If the dispute remains unresolved after conciliation, the Council or Regional Chamber shall arbitrate the dispute if—
 - (A) the Act requires arbitration and any party to the dispute has requested that it be resolved through arbitration; or
 - (B) all the parties to the dispute consent to arbitration under the auspices of the Council or Regional Chamber.

29. EXHIBITION OF AGREEMENT

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this Agreement in one of the official languages.

30. INDUSTRY PROTECTION FUND

(1) In terms of section 29(1)(g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.

(2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the Parties to the Regional Chamber, which programmes are aimed at protecting the industry in the Northern Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.

(3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the Parties thereto may decide.

(4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this Agreement, an amount of 10 cents: Provided that no deduction shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.

(5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an equal amount per week.

(6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deductions fall due. Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

(7) The monies collected by the Regional Chamber shall be paid monthly into the Regional Chamber's bank account and, for the purposes of receiving these funds and for disbursing them for the purpose for which they are intended, shall be accounted for separately.

(8) The monies collected shall be used by the Regional Chamber to finance the following *bona fide* strategies in pursuit of the objects of the Fund as set out in subclause (2)—

- (a) "Buy Local" campaigns;
- (b) combating customs fraud and illegal imports.

or for such other strategies that meet the objectives of the Fund.

(9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Transvaal Clothing Manufacturers' Association (TCMA) become or wish to become engaged in additional strategies or *bona fide* activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar: Labour.

(10) The Fund's monies shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.

(11) If SACTWU or the TCMA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the TCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.

(12) No monies of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this Agreement and SACTWU, the TCMA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.

(13) Any interest that is earned on Fund monies at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.

(14) SACTWU and the TCMA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan will be submitted to the Regional Chamber for approval.

(15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber; provided he is satisfied that the expenditure—

- (a) is in terms of the approved plan;
- (b) is clearly classified by strategy, activity and the nature of the expense; and
- (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the TCMA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure will be presented to the Regional Chamber for approval prior to payment.

(16) Any expenses that have been incurred by SACTWU or the TCMA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the TCMA, may be recovered by the Regional Chamber from SACTWU or the TCMA, as the case may be.

(17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every three months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.

(18) SACTWU and the TCMA shall be obliged to report back to the Regional Chamber every three months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.

(19) In the event that there is a disagreement between the Parties as to whether any activity or expenditure or proposed activity expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

(20) Each party to this agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

Signed at Cape Town on behalf of the parties, this 17th day of October 2002.

C. JEFTHA

Chairperson of the Council

M. SIDDONS

Vice-Chairperson of the Council

W. A. ROBERTS

Acting General Secretary of the Council

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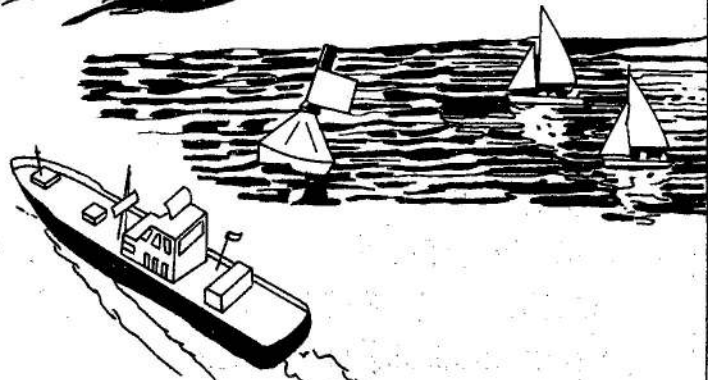
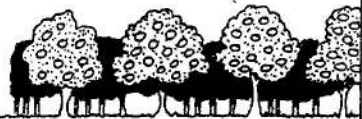
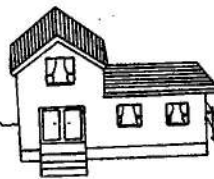
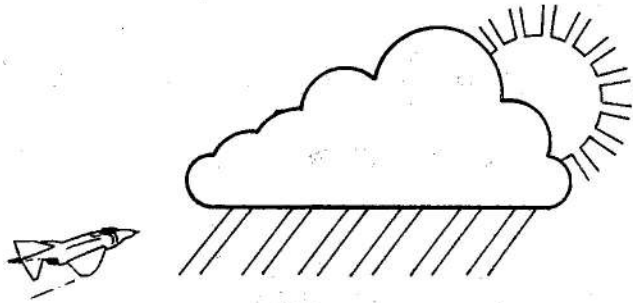
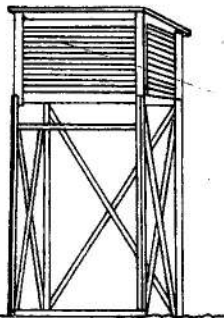
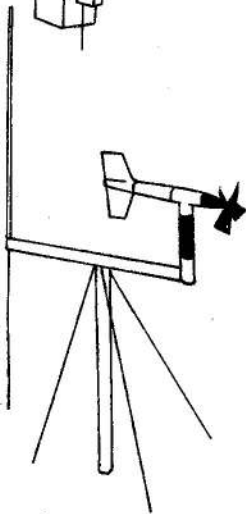
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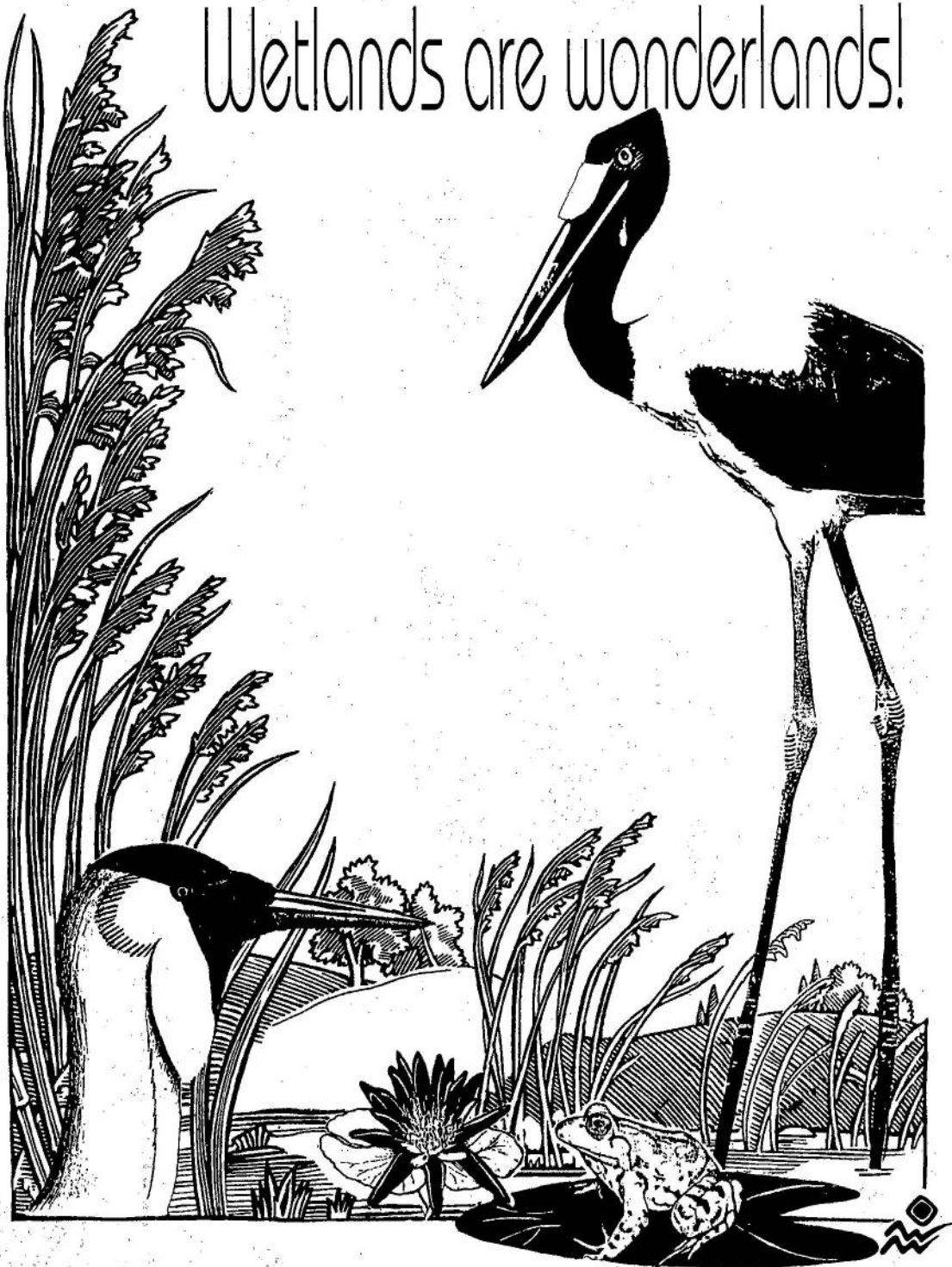
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