



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

Postal Address: Private Bag X117, PRETORIA, 0001
Tel: (012) 309 4132 Fax: (012) 309 4156

• Street Address: Laboria Building 215 Francis Baard Street, PRETORIA. 0002

Enquiries: Sellinah Mahlangu

Tel, Direct: (012) 309-4586

Fax No: (012) 309-4156

Sellinah.Mahlangu@labour.gov.za

Reference: LR 2/6/6/1

The Secretary
Motor Industry Bargaining Council - MIBCO
P O Box 2578
RANDBURG
2125

Fax No. (011) 369-7755

Dear Sir/Madam

LABOUR RELATIONS ACT, 1995: AMENDMENT TO CONSTITUTION

With reference to your application received on 27 November 2015 please be advised that the Council's replacement of the constitution has been approved with effect from 18/12/2015

Attached herewith a copy of the replaced constitution.

Yours faithfully

ACTING REGISTRAR OF LABOUR RELATIONS

DATE: 18/12/2015



MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO

REGISTERED UNDER THE LABOUR RELATIONS ACT 66 OF 1995

Reg. No. LR2/6/6/1

Website: www.mibco.org.za

RESOLUTION

MIBCO OFFICES

MIBCO Shared Services Centre

PO Box 2578
Randburg, 2125

☎ 0861 664 226 (08616 MIBCO)
or (011) 369-7500

Eastern Cape Region

PO Box 7270
Port Elizabeth, 6055

☎ (041) 364-0250
Fax: (041) 365-6821

Free State / Northern Cape Region

PO Box 910
Bloemfontein, 9300

☎ (051) 409-4000
Fax: (051) 430-4636

Highveld Region

PO Box 2578
Randburg, 2125

☎ (011) 369-7750
Fax: (011) 369-7755

KwaZulu-Natal Region

PO Box 17263
Congella, 4013

☎ (031) 205-5465
Fax: (031) 205-2783

Northern Region

PO Box 13970
Hatfield, 0028

☎ (012) 362-2988
Fax: (012) 362-3669

Western Province Region

PO Box 17
Bellville, 7535

☎ (021) 948-6400/05
Fax: (021) 948-6438

**CERTIFIED EXTRACT FROM THE MINUTES OF THE SIXTY
THIRD (63RD) ANNUAL GENERAL MEETING OF THE COUNCIL
HELD AT THE SOUTHERN SUN-CAPE HOTEL, CAPE TOWN ON
05 NOVEMBER 2015**

AGM.0034

AMENDMENT OF THE MIBCO CONSTITUTION

RESOLVED:

That the amended MIBCO constitution be approved by including NEASA and the allocation of new seats due to their admission as party to the Council and the amended constitution be submitted to the Registrar of Labour for certification in terms of section 57 of the Labour Relations Act of 1996. This is a replacement of MIBCO constitution.

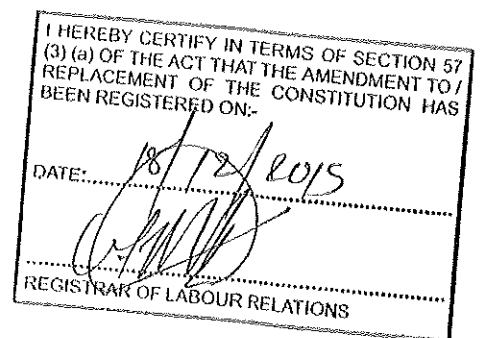
Signed at Randburg on this 25th day of November 2015.



B.C MKHWANAZI

General Secretary

MIBCO SHARED SERVICES CENTRE





MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO

REGISTERED UNDER THE LABOUR RELATIONS ACT 66 OF 1995

Reg. No. LR2/6/6/1

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KwaZulu Natal Region

PO Box 17263
Congella, 4013

☎ (031) 205-5465
Fax: (031) 205-2783

Northern Region

PO Box 26201
Arcadia, 0007

☎ (012) 341-0328/9
Fax: (012) 341-2971

Western Province Region

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Bellville, 7535

☎ (021) 948-6400/05
Fax: (021) 948-6438

MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO

AMENDMENT OF THE MIBCO CONSTITUTION

CERTIFICATE OF COMPLIANCE

In terms of section 57 of the Labour Relations Act of 1996, this is to confirm that the process followed and the resolution to amend the constitution complies with the MIBCO's constitution.

Signed at Randburg on this 25th day of November 2015.

B.C MKHWANAZI

General Secretary

MIBCO SHARED SERVICES CENTRE

**REGISTRAR OF
LABOUR RELATIONS**

2015 -11- 27

DEPARTMENT OF LABOUR



MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO

CONSTITUTION

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BCM
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KMS

CONSTITUTION

of the

MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO

1. NAME

The name of the Council shall be the MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO.

2. DEFINITIONS

Any expressions used herein which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, and any reference to an Act shall include any amendments to such Act; further, unless inconsistent with the context:

- | | | |
|-----|---------------------------------------------|-----------------------------------------------------------------------------------------------------|
| 2.1 | “Act” | means the Labour Relations Act, No. 66 of 1995 as amended from time to time; |
| 2.2 | “Agreement” | means a collective agreement concluded in terms of this Constitution or the Act; |
| 2.3 | “Alternate” | means a person appointed to act on behalf, and in the absence of any representative; |
| 2.4 | “CCMA” | means the Commission for Conciliation, Mediation and Arbitration; |
| 2.5 | “Committee of Party Officials (CPO)” | means the Committee of Party Officials established in terms of Section 20 of the Constitution; |
| 2.6 | “Council” | means the Motor Industry Bargaining Council – MIBCO; |
| 2.7 | “Employee” | means an employee as defined in the Act; |
| 2.8 | “General Secretary” | means the General Secretary of the Council; |
| 2.9 | “MIBCO-DRC” | means the MIBCO – Dispute Resolution Centre established in terms of Section 21 of the Constitution; |

- 2.10 **"MIBCO Governing Board (MGB)"** means the MIBCO Governing Board established in terms of Section 18 of the Constitution;
- 2.11 **"National Administrative Board (NAB)"** means the National Administrative Board (NAB) established in terms of Section 19 of the Constitution;
- 2.12 **"Sector and area"** means the sector and area in respect of which the Council is registered from time to time;
- 2.13 **"Small and medium enterprises"** means a small business or small business organisation as envisaged in terms of 30(1)(b) of the Labour Relations Act No. 66 of 1995 as amended;
- 2.14 **"Party"** means the employers' organisations and trade unions mentioned in Section 4 of this Constitution or any other party admitted to membership in terms of Section 5 of this Constitution;
- 2.15 **"Representative"** means a person appointed by any party in terms of its Constitution to represent such party on the Council or any Committee of the Council;
- 2.16 **"Workplace"** means a workplace as defined in the Labour Relations Act from time to time;
- 2.17 **"Postal Vote"** shall include voting by way of electronic communication.

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3. OBJECTS

3.1 The objects of the Council are –

- 3.1.1 to conclude collective agreements, and to enforce collective agreements in terms of all applicable legislation and in any appropriate forum including in a Court of law;
- 3.1.2 to determine by collective agreements any matter which may not be an issue in dispute for the purposes of a strike or a lock-out at the workplace;
- 3.1.3 to prevent and resolve labour disputes;
- 3.1.4 to perform dispute resolution functions;
- 3.1.5 to develop proposals on policy and legislation that may affect the Council's sector and area and submit those proposals to NEDLAC or any other appropriate forum;
- 3.1.6 to promote and establish training and education schemes;
- 3.1.7 to establish and administer a fund to be used for resolving disputes;
- 3.1.8 to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment, training or similar schemes or funds for the benefit of any of the parties to the Council or their members;
- 3.1.9 to confer on workplace forums additional matters for consultation;
- 3.1.10 to consider and deal with any other matter that affects the interest of the parties; and
- 3.1.11 to secure the recognition and observance by all persons in the sector of any agreements relating to matters of mutual interest negotiated by the parties.

3.2 The Council shall have the power to carry out and give effect to –

- 3.2.1 the objects of the constitution and the Act;
- 3.2.2 any collective agreement concluded by the parties to the Council; and
- 3.2.3 a collective agreement extended to non-parties in any manner whatsoever whether by way of civil proceedings, criminal proceedings, dispute resolution mechanisms or such other proceedings as the Council may deem fit.

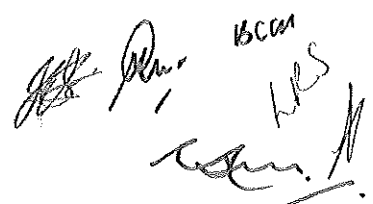
4. MEMBERSHIP

4.1 The parties to the Council shall be registered employers' organisations and registered trade unions whose members are engaged or employed in the sector and/or area.

4.2 The parties to the Council are –

4.2.1 The employer organisations:

4.2.1.1 The Retail Motor Industry Organisation - (RMI);

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4.2.1.2 The Fuel Retailers Association of Southern Africa (FRA); and

4.2.1.3 National Employers Association of South Africa (NEASA).

(Hereinafter referred to as "the employers" or "the employers' organisations");

4.2.2 The trade unions:

4.2.2.1 The National Union of Metalworkers of South Africa (NUMSA); and

4.2.2.2 Motor Industry Staff Association (MISA)

(Hereinafter referred to as "the employees" or "the trade union").

5. ADMISSION OF PARTIES TO THE COUNCIL

5.1 Any employer's organisation or trade union registered in terms of Section 96 of the Act in respect of persons engaged or employed in the sector and area may be admitted to membership of the Council, subject to and in terms of Section 56 of Chapter III of the Act and the criteria stipulated in 5.2 hereunder, with the unanimous consent of all the existing parties and the terms "employers" or "employers' organisations" or "the employees" or "the trade unions" shall thereupon be deemed to include any employers' organisation or trade union, as the case may be, so admitted.

5.2 Any employers' organisation or trade union applying for admission in terms of Clause 5.1 hereof shall at least comply with the following criteria:

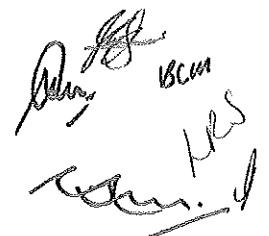
5.2.1 The applicant must represent at least 5% of all employers or employees engaged or employed in the sector and area, as defined in 2.12 hereof.

5.2.2 The applicant must be a national organisation with representation in all the provinces of the Republic of South Africa.

5.2.3 Details of the applicant's membership figures shall be in the form of a certified statement signed by an auditor, registered to practice as a public accountant and auditor.

5.2.4 Membership figures provided for in terms of sub-clause 5.2.1 hereof, shall be limited to the properly registered and fully paid-up voluntary individual members of the applicant.

5.2.5 The applicant shall provide the Council with copies of the Constitution approved and registration certificate issued by the Registrar of Labour Relations, to prove that its status is that of a registered employers' organisation or trade union.

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- 5.3 Once admitted, the Council shall determine the number of representatives on the Council and its structures, in respect of the new Party to the Council, provided that in the case of an employers' organisation, the Council shall allocate at least one seat to each business sector per employer organisation, and allocate additional seats according to the proportionate representativeness (size) of each employer association in relation to the total number of individual registered members of all employer organisation parties to the Council, and shall amend the Constitution accordingly.
- 5.4 Any party may withdraw from the Council on giving three months written notice to the General Secretary.

6. APPOINTMENT OF REPRESENTATIVES AND ALTERNATES

6.1 The Council:

6.1.1 Shall consist of the following representatives –

Name	Number of Representatives	Additional Seats	Total
RMI	16	6	22
FRA	5	1	6
NEASA	2	-	2
MISA	10	1	11
NUMSA	13	6	19
Total	46	14	60

6.1.2 Representatives shall be made up from the Regions as follows:

REGION	RMI	FRA	NEASA	MISA	NUMSA
Eastern Cape	3	1	1	2	2
KwaZulu-Natal	4	1	1	1	4
Free State /Northern Cape	3	1	1	2	2
Highveld	4	1	1	2	4
Northern Region	4	1	1	2	4
Western Province	4	1	1	2	3
Total	22	6	6	11	19

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- 6.1.3 Shall review the number of representatives on the Council as at 31 December each year based on the verified membership of the employer organisations and trade unions in the Regions respectively and as confirmed by the individual Parties to the Council via their external auditors.
- 6.1.4 Shall determine the number of representatives of employer organisations and trade unions upon the percentage of members of that employer organisation and/or trade union in relation to the total number of members of all the employer organisations and trade union parties to the Council in that region as referred to in paragraph 9.1.4.
- 6.1.5 May, by unanimous vote, increase or otherwise vary the total number of representatives on condition however, that the number of representatives of the employers and employees shall at all times be equal.
- 6.2 Subject to the provisions of sub-Sections 6.4 and 6.5 of this Section, representatives shall be appointed by the employer and the employee parties in the manner prescribed in their respective constitutions shall hold office until their successors have been appointed and shall be eligible for re-election.
- 6.3 Each party shall appoint a panel of alternates equal in number at least to the number of its representatives on the Council, in the same manner and subject *mutatis mutandis* to the same conditions as such representatives. Any alternates so appointed may act for any one representative of his/her party at any meeting of the Council.
- 6.4 A party may at any time withdraw any of its representatives or alternates on the Council by giving notice in writing to the Council and appoint others in their stead.
- 6.5 The office-bearers may be removed from office in terms of Section 30 (1) (f) of the Act due to following circumstances:
- (ii) permanent incapacity;
 - (iii) for serious misconduct or for conducts that undermines the Council or brings the Council or any of its members into disrepute;
 - (iv) failure to comply with any provision in the Code of Conduct;
 - (v) infringes any provision of this Constitution;
 - (vi) who is absent from three consecutive meetings of the Council or committee without a formal apology, unless the member shows good cause why he or she should not be removed.
- 6.6 A representative or an alternate may resign by giving seven (7) days' notice in writing to the Council.
- 6.7 If a seat on the Council becomes vacant through the withdrawal, resignation, disqualification or death of a representative or an alternate, the vacancy shall be filled by the party who appointed such representative or alternate.

- 6.8 In order to give representation to any additional organisations admitted in terms of section 5, the Council may, by resolution of a two-thirds majority each of the employer and employee representatives on the Council, increase or otherwise vary the number of representatives on condition however, that the number of representatives of the employers and the employees shall at all times be equal.
- 6.9 Notwithstanding anything to the contrary in this Constitution, a representative shall vacate his/her office in the event of his/her absents him/herself without permission of the Council or that committee from three consecutive meetings of the Council or any committee of which he/she is a member.
- 6.10 Notwithstanding anything to the contrary in this Constitution, not less than 7 (seven) of the representatives (and their alternates) appointed by the RMI, NEASA and FRA, the Council shall ensure that at all times small and medium enterprises are represented in the Council in terms of the section 30(1) (b) of the Act.

7. ELECTION OF PRESIDENT AND VICE-PRESIDENT AND THEIR DUTIES

- 7.1 The Council shall, at each third Annual General Meeting, upon a motion duly moved and seconded and voted upon in each case, elect from amongst the representatives a President and Vice-President, one of whom shall be a representative of the employers' organisations and one a representative of the trade unions.
- 7.2 The President and Vice-president shall hold office for a maximum of three years or until they cease to be representatives on the Council, whichever is the earlier. Should either office become vacant between such meetings, the Council shall appoint a temporary incumbent to serve until the next Annual General Meeting.
- 7.3 At all meetings of the Council at which he/she is present the President shall preside and maintain order, sign minutes of meetings after confirmation and perform such other duties as by usage and custom pertain to the office of a Chairperson. In the absence of the President, the Vice-President shall exercise these powers and perform these duties.
- 7.4 In the event of both the President and Vice-President being unable to perform their duties, the Council shall elect an Acting President or Acting Chairperson, as the case may be, who shall exercise the powers and perform the duties of the President or Chairman while so acting.
- 7.5 The positions of President and Vice-President shall alternate between the employer and employee organisations to the Council on a three year basis.

8. COMMITTEES

The Council may appoint and delegate any of its functions to committees in terms of the provisions of Section 55 of the Act.

9. ESTABLISHMENT AND FUNCTIONS OF REGIONAL COUNCILS

9.1 Appointment of Regional Councils:

- 9.1.1 The Council may appoint Regional Councils for such Regions as it may establish from time to time;
- 9.1.2 Regional Councils shall consist of the employer and employee representatives on the Council from the Region concerned, together with such number of representatives of employers' organisations and trade unions as the Council may from time to time determine.
- 9.1.3 The provisions of Sections 6.2, 6.3, 6.4, 6.5 and 6.6 of this Constitution shall apply *mutatis mutandis* to Regional Councils.
- 9.1.4 Regional Councils shall consist of the following representatives determined in accordance with Sections 6.1.3 and 6.1.4:

EASTERN CAPE REGION

Name	Per Region	Additional Seats	Total
RMI	2	3	5
FRA	1		1
MISA	2	1	3
NUMSA	1	3	4
NEASA	1		1
Total	7	7	14

KWAZULU-NATAL REGION

Name	Per Region	Additional Seats	Total
RMI	2	3	5
FRA	1		1
MISA	1	1	2
NUMSA	2	3	5
NEASA	1		1
Total	7	7	14

FREE STATE/NORTHERN CAPE REGION

Name	Per Region	Additional Seats	Total
RMI	2	3	5
FRA	1		1
MISA	2	3	5
NUMSA	1	1	2
NEASA	1		1
Total	7	7	14

HIGHVELD REGION

Name	Per Region	Additional Seats	Total
RMI	2	3	5
FRA	1		1
MISA	1	1	2
NUMSA	2	3	5
NEASA	1		1
Total	7	7	14

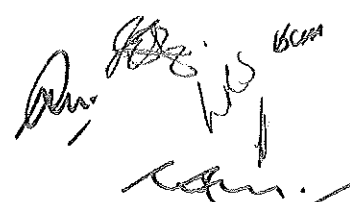
NORTHERN REGION

Name	Per Region	Additional Seats	Total
RMI	2	3	5
FRA	1		1
MISA	2	1	3
NUMSA	1	3	4
NEASA	1		1
Total	7	7	14

WESTERN PROVINCE REGION

Name	Per Region	Additional Seats	Total
RMI	2	3	5
FRA	1		1
MISA	2	2	4
NUMSA	1	2	3
NEASA	1		1
Total	7	7	14

- 9.2 Regional Councils shall perform such functions as may be delegated to them by the Council in terms of Section 55 of the Act, subject to Sections 14, 18 and 19 of this Constitution, provided that any decision of the Regional Council may at any time be set aside or varied by the Council.
- 9.3 Regional Councils shall elect their own Chairpersons and Vice-Chairpersons, and may appoint one or more persons to assist in giving effect to the terms of any Agreement which may be arrived at by the parties, the administration of which has been delegated to them by the Council and the provisions of this Constitution relating to the election of presiding officers, the appointment of paid officials and the duties of such officers and officials shall *mutatis mutandis* apply.



- 9.4 The Chairperson and Vice-Chairperson shall hold office for 12 months or until the expiration of the period, for which they were appointed as representatives, whichever is the earlier and they shall be eligible for re-election; provided that a Chairperson or Vice-Chairperson shall not serve for more than three consecutive terms of office.
- 9.5 The provisions of this Constitution relating to the calling and conduct of meetings shall *mutatis mutandis* apply to the calling and conduct of meetings of Regional Councils, provided that -
- 9.5.1 meetings may be called by the Chairperson or in his/her absence the Vice-Chairperson and shall be called on a requisition by a majority of employers' or employees' representatives on the Regional Council concerned;
- 9.5.2 the quorum at all meetings shall be the majority of the representatives each of the employers and employees on the Regional Council and for the purposes of determining whether a quorum is present, any alternate who attends a meeting in place of an absent representative, shall be regarded as a representative.
- 9.6 The secretaries of Regional Councils shall perform such duties as may be required by the Council and this Constitution and conduct the correspondence of Regional Councils and shall transmit copies of the minutes of all meetings to the General Secretary.
- 9.7 Regional Councils may appoint advisory sub-committees consisting of an equal number of employer and employee representatives and/or alternates for the purpose of investigating and reporting on any matter.

10. MEETINGS

- 10.1 A meeting of the Council shall be held not later than November of each year at such place as the President or in his/her absence the Vice-President may decide and such meeting shall be known as the Annual General Meeting of the Council. Additional meetings of the Council may be called at the discretion of the President or in his/her absence the Vice-President or Acting President, as the case may require and shall be called on requisition by a majority of the representatives of the employers or employees.
- 10.2 Committees of the Council shall meet as often as may be necessary to perform their duties, and a meeting of any committee shall be called on a requisition by a majority of the representatives of the employers or of the employees on such committee.
- 10.3 Notice of any meeting of the Council or any committee showing the business to be transacted shall be given to representatives by the General Secretary or his/her duly authorised agent in writing at least two weeks before the date of such meeting, provided that for the purposes of special meetings the Chairperson of the Council or of the committee concerned may authorise the convening of such meetings at shorter notice.

- 10.4 The quorum for a meeting of the Council for –
- 10.4.1 the purpose of negotiating an agreement, shall be a majority of representatives each of the employers and employees, who shall be representatives of each of the Regions affected; and
 - 10.4.2 any other purpose, shall not be less than one representative each of the employers and the employees from each Region;
- 10.5 The quorum for a meeting of any committee shall be the majority of the representatives each of the employers and employees.
- 10.6 If a quorum is not present within 15 minutes of the time and date fixed for any meeting of the Council or of a committee, the meeting shall stand adjourned to a date to be fixed by the Presiding Officer and no business will be transacted in order for ratification at the following meeting and at such adjourned meeting of which notice shall be given, the representatives present shall constitute a quorum.
- 10.7 If any representative is absent from any meeting and is not represented by an alternate, the voting power of the employers and/or employees, as the case may be, shall be reduced as may be necessary to preserve equality of voting power.
- 10.8 Except on matters of procedure, the Chairperson at meetings shall have a deliberate vote only.
- 10.9 Any alternate shall be entitled to attend any meeting of the Council, but shall not vote unless at such meeting he/she is acting for, and in the absence of, a representative.
- 10.10 No motion shall be considered unless seconded and unless otherwise provided, all matters shall be voted upon and decided by a majority vote except in the case of election, when the candidates up to the required number receiving the highest vote shall be declared elected and no consensus seeking shall apply.
- 10.11 Points of procedure to give effect to this Constitution and on which this Constitution is silent shall be decided by a majority of the votes of those present at a meeting and entitled to vote.
- 10.12 Decision-making Process : MIBCO Review Panel
- 10.12.1 The Review Panel shall consist of one person from an organisation accredited by the CCMA by the General Secretary as and when required and who is, in the view of the Council, his/her view, suitably qualified to review the decisions of the Council and to make appropriate recommendations to the MIBCO Governing Board on decisions of the Council.

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- 10.12.2 The member of the Review Panel appointed to deal with a referral is authorised to review a decision of the Council according to the process set out below.
- 10.12.3 Having considered a referral, the member of the Review Panel must make his/her recommendations to the MIBCO Governing Board.
- 10.12.4 The MIBCO Governing Board must, after having considered the recommendations of the member of the Review Panel re-affirm the original decision of the Council or make a fresh decision which decision shall be final.
- 10.12.5 When notice is given at a Council meeting that a party wishes to refer a decision of the Council, taken at that meeting of the Council, to the member of the Review Panel, that decision of the Council will not be implemented unless it is re-affirmed by the MIBCO Governing Board after having considered the recommendations received from the member of the Review Panel or unless the member of the Review Panel recommends implementation of the original Council decision.
- 10.12.6 When a party refers a decision of the Council to the member of the Review Panel, that party forfeits its rights in terms of this Constitution to declare a dispute on the subject matter of the decision referred to the member of the Review Panel. Other than for this limitation, the review proceedings have no effect whatsoever on the rights of a party to declare a dispute or the dispute procedures provided for in this Constitution.
- 10.12.7 The review procedure is as follows:
- 10.12.7.1 A party who wishes to refer a decision of the Council to the member of the Review Panel must give notice of its intention to do so at the meeting of the Council where the decision is taken.
- 10.12.7.2 When a party at a meeting of the Council gives notice of its intention to refer a decision of the Council to the member of the Review Panel, the General Secretary must immediately after the meeting at his/her discretion secure the services of the member of the panel. The selection of a panellist by the General Secretary shall be based primarily upon the availability of the panellist.
- 10.12.7.3 The General Secretary must furnish the party who referred the decision to the member of the Review Panel with copies of any representations received from any of the parties.

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- 10.12.8 The party who wishes to refer a decision of the Council to the member of the Review Panel must, within three working days of the meeting at which the decision was taken through the General Secretary furnish the a member of the Review Panel and all the other parties with its motivation for the referral of the decision to the member of the Review Panel.
- 10.12.9 Any party who wishes to make representation to the member of the Review Panel must submit its representations in writing to the General Secretary within three working days of receiving a copy of the referral.
- 10.12.10 The member of the Review Panel who considers the referral must, through the General Secretary, furnish his/her recommendations in writing to the Council within 5 (five) working days of receiving the last representation from a Party.
- 10.12.11 If the party who gives notice of its intention to refer a decision of the Council to the member of the Review Panel does not pursue the referral within the prescribed three working day period, the General Secretary shall notify the members of the Council accordingly and the original decision becomes final.
- 10.12.12 The MIBCO Governing Board must make its final decision as soon as is practically possible after having received the recommendation or recommendations from the member of the Review Panel.
- 10.12.13 Should the member of the Review Panel recommend implementation of the original Council decision, the General Secretary must furnish a copy of the recommendation to the parties and proceed with the necessary steps for implementation of the original decision.
- 10.13 If between meetings of the Council, any question arises which in the opinion of the President and Vice-President is of extreme urgency and can be decided by a plain "yes" or "no" or by making a mark indicating a choice of one of a number of courses, a vote of the representatives on the Council may be taken by post. The procedure relating to a postal vote shall be as follows –
- 10.13.1 the General Secretary shall prepare a statement of the issue or issues upon which the vote is desired, and each representative shall be circularised with such statement, with a request that he/she records his/her vote on the subject matter;
- 10.13.2 a representative shall submit his/her vote to the General Secretary within 7 working days calculated from date of such notice and this requirement shall be reflected in the notice to representatives;

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- 10.13.3 after the lapse of the period stated in the aforesaid notice, the General Secretary shall consider and count the number of votes of representatives in favour of and against the proposal submitted and shall notify the President and Vice-President of the particulars of the voting so received;
- 10.13.4 should not less than three-quarters of the votes received from the employers' representatives, and not less than three-quarters of the votes received from the employees' representatives be in favour of the resolution or proposal, the same shall be deemed to be carried, and unless such majority is in favour of the proposal the same shall be deemed to be negative. No postal vote shall be valid unless five or more votes are recorded from the employers and employees respectively.
- 10.14 Minutes of meetings of the Council shall be taken by the General Secretary and minutes of meetings of Regional Councils shall be taken by the Regional Secretaries. At any meeting the minutes of the last preceding meeting of the body concerned shall be submitted for confirmation and signature by the Presiding Officer. Minutes of meetings of committees and sub-committees shall be kept by the Secretary or Secretaries of such committees.
- 10.15 The General Secretary shall submit to the Council at each Annual General Meeting a report of the principal matters which have been dealt with since the previous meeting and copies of the audited statements referred to in Section 14(8) of this Constitution.

11. NEGOTIATIONS: COLLECTIVE AGREEMENTS AND DISPUTES

- 11.1 Timetable for negotiations:
- 11.1.1 The Council shall from time to time determine the timetable for negotiations in respect of the amendment of any existing agreement, the introduction of a new agreement or any matter of mutual interest.
- 11.1.2 Proposals in respect of the amendment of any existing agreement or the introduction of a new agreement or any matter of mutual interest shall be submitted to the General Secretary in writing.
- 11.1.3 Proposals shall be submitted in accordance with the timetable determined by the Council unless an extension of time had been obtained from the Council prior to the expiry of the period within which the proposals had to be submitted. An extension of time by the Council shall only be granted on good cause shown.
- 11.1.4 If a settlement is not reached after discussion at a Council meeting, any party may declare a dispute on those issues on which they have not reached agreement as from the date of the last Council meeting.

- 11.1.5 The dispute shall be considered at least one meeting of the Council ("dispute meeting") held within fourteen days from the date of the dispute provided that should there be a request for additional meetings that not more than one Council meeting is held on any one day.
- 11.1.6 The Council shall within three working days after the last dispute meeting appoint a mediator to mediate the remaining disputes if the disputes have not been settled during the dispute meeting process.
- 11.1.7 If the dispute is not settled during the mediation process, the Council shall within the next ten working days decide whether the dispute shall be referred to arbitration; provided that no dispute of interest may be referred to arbitration without the consent of the party which declared the dispute.
- 11.1.8 If the Council resolves to submit the dispute to arbitration, the arbitration shall be conducted by a single arbitrator, an even number of arbitrators and an umpire or in any other manner as determined by the Council.
- 11.1.9 If the dispute is not referred to arbitration by Council resolution, any party to the dispute shall be entitled to pursue the remedies available in terms of the Labour Relations Act.
- 11.2 Any other dispute between the parties in relation to any matter of mutual interest shall be resolved in accordance with the procedure set out in clauses 11.1.6 to 11.1.9
- 11.3 Disputes referred to the Council for Mediation, Conciliation or Arbitration:**
- 11.3.1 The Council shall mediate, conciliate and arbitrate those disputes referred to the Council, which the Council may mediate, conciliate or arbitrate in terms of the Labour Relations Act or for which the Council has been accredited.
- 11.3.2 The conciliation, mediation or arbitration shall be dealt with in accordance with the provisions of the Act and as determined by the Council from time to time.
- 11.3.3 The Council may perform the conciliation, mediation or arbitration functions or contract these functions to an accredited body.
- 11.3.4 The Council may apply to the appropriate body for accreditation to perform any of the functions set out in Section 127 of the Act.
- 11.3.5 All disputes relating to those matters referred to in section 127(2) of the Act shall be referred to the CCMA for resolution in accordance with its powers.

12. STRIKES AND LOCK-OUTS

No strikes or lock-outs shall take place until the matter giving occasion therefor has been dealt with in accordance with the provisions of Section 11 of this Constitution and Sections 64 and 65 of the Act and shall not in any event take place during the currency of an agreement arrived at by the parties.

13. APPOINTMENT OF OFFICERS AND DUTIES OF GENERAL SECRETARY AND AGENTS

- 13.1 The Council shall appoint a General Secretary whose duty it shall be to conduct the correspondence of the Council, attend all meetings of the Council, record minutes of such meetings and circularise copies thereof to representatives and alternates.

He shall keep such books of account as shall be prescribed by the Council, and shall comply with all requirements imposed upon the Council by any statute, and shall in addition perform such duties as may be assigned to him by the Council. Unless otherwise resolved by the Council, the General Secretary may delegate his/her duties and obligations to another official of the Council.

13.2 Agents and Designated Agents:

- 13.2.1 The Council may appoint one or more specific persons as agents to assist in giving effect to the terms of any agreements which may be arrived at by the parties.

An agent may enter any establishment and may question any employer or employee and inspect the record of wages paid, time worked and payment made for premium bonus work and overtime, for the purpose of ascertaining whether the terms of any such agreement are being observed.

- 13.2.2 The Council shall apply to the Department of Labour for agents to become designated agents in terms of the Act.

- 13.2.3 Such agent or agents may be required to attend meetings of the Council, Regional Councils and committees, but shall not be entitled to vote.

- 13.3 The Council and/or the General Secretary acting within the authority delegated to him/ her may appoint such other paid officials as may be necessary.

- 13.4 The employment of all paid officials, including the General Secretary and agents, unless otherwise provided in the contract of employment, shall be subject to one month's notice on either side, provided that the Council may dismiss any paid official without notice for serious neglect of duty or misconduct, such as is recognised by law as sufficient grounds for summary dismissal.

14. EXPENSES OF THE COUNCIL

- 14.1 Expenses of the Council shall be met from separate funds which shall be raised by levies on employers and employees, on such basis as may be agreed upon by the parties and vested in the Council and which may be augmented by income generated by any activities of the Council or donations from other sources.
- 14.2 All moneys received by the Council shall be deposited to the credit of the Council within three working days of receipt, at a bank approved by the Council.
- 14.3 The funds shall be applied to the payment of expenses arising from the administration of the affairs of the Council and the Dispute Resolution Centre only and shall include the establishment of a Pension Scheme and/or Provident Fund and/or Medical Aid Scheme for its staff or to the making of grants to anybody engaged in research designed to advance the interests and well-being of persons employed in the Industry.

14.4 Payments :

- 14.4.1 All payments from the funds of the Council shall require the Council's approval and confirmation and shall be made by cheque and/or Electronic Fund Transfers (EFT) provided that individual payments of less than one thousand Rand (R1000, 00) may be made from petty cash. Cheques and EFT's shall be signed by such officers or officials as the Council may from time to time determine.
- 14.4.2 Funds required for a petty cash account, shall be kept in such form as the Council may determine from time to time.

14.5 Investments :

- 14.5.1 The Council may place any accumulated funds or any fund or reserve under its control, on deposit at a financial institution approved by the Council or may transfer any amount standing to its credit at the financial institution to a current account opened in the name of the Council or the relevant fund or reserve with a registered bank approved by the Council.
- 14.5.2 The interest earned on such deposits shall be credited to the funds of the Council or the fund or reserve.
- 14.5.3 No amount so deposited shall be withdrawn without the approval of the Council.
- 14.5.4 Unless otherwise determined by the Council, the signature of the Chairperson, or in his/her absence the Vice-Chairperson of the Council and the General Secretary shall be required for any such withdrawals.

14.6 Statements showing the income and expenditure and the financial position of the Council and all other funds and reserves under the control of the Council, shall be submitted to the Council by the General Secretary at such intervals as the Council may determine, but not less than once every quarter.

14.7 Financial Reporting:

14.7.1 The General Secretary shall as soon as practicable after 30 June in each year, prepare a statement showing:

14.7.2 monies received -

14.7.2.1 in terms of any Collective Agreement; and

14.7.2.2 from any other sources.

14.7.3 detailed expenditure incurred and approved by the Council during the twelve months ended 30 June preceding, together with a statement showing the Council's assets and liabilities at that date.

14.7.4 These statements, which shall be countersigned by the Chairperson, shall be submitted for audit to a chartered accountant to be appointed by the Council. True copies of the audited statements and of the auditor's reports thereon shall be available for inspection at the office of the Council to members or representatives of the parties, who shall be entitled to make copies thereof or to take extracts therefrom.

14.7.5 Copies of both statements certified by the auditor of the Council and countersigned by the Chairperson, together with any report made by the auditor on the statements, shall be transmitted to the Registrar of Labour Relations, Department of Labour, Pretoria and to representatives on the National Council within three months after the close of the period to which the statements relate.

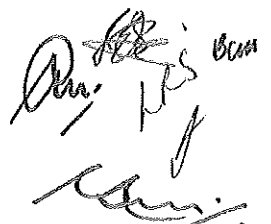
14.8 National Audit and Risk Committee:

14.8.1 The Council shall appoint a National Audit and Risk Committee for the purpose of controlling the internal and external audit functions.

14.8.2 The Audit and Risk Committee so appointed shall *inter alia* formulate and implement an internal audit charter approved by the Council from time to time.

14.8.3 The Council shall appoint an official and such additional administrative staff as may be necessary, who shall assume responsibility for the execution of an internal audit function in all offices functioning under its auspices; provided that the Council may contract this function to any firm of chartered accountants.

14.8.4 The official and administrative staff so appointed or contracted shall function independently within the Council's administration and shall report directly to the National Audit and Risk Committee.



15. AMENDMENTS TO THE CONSTITUTION

- 15.1 The constitution may only be amended as set out below.
- 15.2 By resolution of a two-thirds majority of the representatives on the Council present at a meeting of the Council;
- 15.2.1 provided that -
- 15.2.1.1 no alteration shall be considered unless one month's written notice of the intention to propose such alteration has been given by the General Secretary to the representatives and the parties; or
- 15.2.1.2 if all the representatives present at a meeting of the Council unanimously vote in favour of an alteration, such alteration may be made without prior notice; or
- 15.3 By postal vote in terms of the provisions of Section 10.13 hereof, provided that the period within which representatives shall be required to submit their votes to the General Secretary in terms of paragraph 10.13.2, shall be not less than 10 working days.
- 15.4 An amendment to this Constitution becomes effective after it has been certified by the Registrar of Labour Relations as provided for in Section 57(3) of the Act.

16. RESOLUTION OF DISPUTES REGARDING THE INTERPRETATION AND APPLICATION OF THE CONSTITUTION

- 16.1 Any dispute arising between the parties to the Council about the interpretation or application of the Council's constitution shall be referred to a mediator and, if the matter is not settled, to an arbitrator to be approved by the Council.
- 16.2 Notwithstanding any provision to the contrary, the parties to the dispute shall have the right to legal representation at any arbitration proceedings to resolve the dispute.

17. THE PROCEDURE FOR EXEMPTION FROM COLLECTIVE AGREEMENTS

- 17.1 Any member of a party and any non-party to whom an agreement has been extended may apply to the Council to be exempted from a provision or provisions of any collective agreement concluded in the Council in which event the following procedure shall apply:
- 17.1.1 Any application for an exemption shall:
- 17.1.1.1 be submitted to the relevant Regional Secretary;

- 17.1.1.2 be considered by the Council unless the Council has delegated the power to a Regional Council; and
- 17.1.1.3 be considered with due regard to the criteria contained in the collective agreement and the exemption application will be concluded within 30 days in terms of section 32(3)(dA) of the Act.
- 17.2 The Council shall appoint an independent board to hear and decide any appeal brought against which shall be dealt with within 30 days in terms of section 32(3)(e) of the Act;
 - 17.2.1 a refusal of a non-party's application for exemption from the provisions of a published collective agreement; and
 - 17.2.2 the withdrawal of such an exemption by the Council.
- 17.3 The independent board shall have due regard to the exemption criteria in the collective agreement when considering any appeal.
- 17.4 An appeal by a non-party shall be submitted to the Regional Secretary within 10 working days of the date upon which the non-party has been advised of the refusal or withdrawal and shall be submitted to the Regional Secretary to whom the application for an exemption has been submitted.

18. MIBCO GOVERNING BOARD (MGB)

18.1 Establishment

The Council will establish a MIBCO Governing Board (MGB) to implement the powers, functions and duties as set out in its Terms of Reference and shall be regulated by the Constitution and its Terms of Reference as approved by the Council from time to time.

- 18.2 The MGB will consist of the President, Vice-President plus 3 employer representatives and three employee representatives as well as 2 alternates each for employer and employee representatives appointed by the Parties annually and 4 CPO representatives with no voting rights pertaining to matters previously attended to by the CPO.
- 18.3 The President of the Council shall ex officio be the Chairperson of the MGB and the Vice-Chairperson shall be elected from amongst the Party representatives appointed.
- 18.4 Members of the MGB shall hold office for 12 months or until the expiration of the period for which they were appointed as members, whichever is the earlier, and shall be eligible for re-election

18.5 Functions of the MGB

18.5.1 Uphold the Vision and Mission Statements of MIBCO

18.5.2 Determine matters of strategic importance to the continued viability and sustainability of MIBCO in keeping with its objectives as outlined in the Labour Relations Act and the Constitution of MIBCO.

18.5.3 Determine the organisation's policies and processes including risk management and internal controls and the integrity thereof.

18.5.4 Oversee the management of the affairs of the Council on behalf of the Council between General Meetings.

18.6 Meetings of the MGB

18.6.1 The MGB shall meet quarterly, on a date to be fixed by the Chairperson or, in his/her absence, the Vice-Chairperson of the Board. A meeting shall also be called upon a requisition by a majority of employer or employee members of the Board, within 10 working days of the receipt of such requisition by the General Secretary.

18.6.2 Save as provided in this sub-Section, the provisions of this Constitution relating to the calling and conduct of meetings of the Committees of the Council shall *mutatis mutandis* apply to the calling and conduct of meetings of the MGB.

18.7 Administration:

18.7.1 The General Secretary of the Council shall conduct the correspondence of the MGB, issue notices of meetings of the Board, attend all meetings of the Board and record minutes of the proceedings and transmit copies of the minutes of all meetings to the members of the Board. The General Secretary shall have no voting powers.

19. NATIONAL ADMINISTRATIVE BOARD (NAB)

19.1 Establishment

The Council will establish a National Administrative Board (NAB) to perform the financial duties and obligations of the Council and Regional Councils as defined in Section 19.6. The NAB shall be regulated by this Constitution and its Terms of Reference approved by the Council from time to time.

19.2 The NAB consists of the principal members of the CPO plus an additional three employer representatives and three employee representatives appointed by the parties and two employer and employee alternates each to serve on behalf of the employer and employee Parties and as determined annually at the AGM.

19.3 The Vice-President shall ex officio be the Chairperson of the NAB and the Vice-Chairperson shall be elected from amongst the Party representatives appointed.

19.4 Members of the NAB shall hold office for 12 months or until the expiration of the period for which they were appointed as members, whichever is the earlier, and shall be eligible for re-election.

19.5 **Function of the NAB**

The NAB shall perform such of the financial duties and obligations which have been delegated to it by the Council, provided that such duties and obligations shall not be inconsistent with the provisions of this Constitution, the Act or any other law.

19.6 The General Secretary, COO, Heads of Department and Regional Secretaries shall ex officio attend Board meetings with no voting rights.

19.7 **Meetings of the NAB**

19.7.1 The NAB shall meet bi-monthly, on a date to be fixed by the Chairperson or, in his/her absence, the Vice-Chairperson of the Board. A meeting shall also be called upon a requisition by a majority of employer or employee members of the Board, within 10 working days of receipt of such requisition by the General Secretary.

19.7.2 Save as provided in this sub-Section, the provisions of this Constitution relating to the calling and conduct of meetings of the Committees of the Council shall *mutatis mutandis* apply to the calling and conduct of meetings of the NAB.

19.7.3 Notwithstanding any provisions to the contrary the provisions of clause 14 of the Constitution shall *mutatis mutandis* apply to the NAB.

19.8 **Administration:**

19.8.1 The General Secretary of the Council shall conduct the correspondence of the NAB, issue notices of meetings of the Board, attend all meetings of the Board and record minutes of the proceedings and transmit copies of the minutes of all meetings to the members of the Board and perform such other duties as the Board may direct. He shall have no voting power.

20. **COMMITTEE OF PARTY OFFICIALS (CPO)**

20.1 **Establishment**

The Council will establish a Committee of Party Officials (CPO) to perform such functions as the MIBCO Governing Board (MGB) may from time to time delegate to it.

20.2 Membership of the CPO

20.2.1 Each Party shall appoint a Principal member to represent it on the Committee.

20.3 Functions of the CPO

20.3.1 The CPO shall carry out such functions as the MIBCO Governing Board (MGB) may from time to time delegate to it.

20.4 Meetings of the CPO

The Committee will be convened as and when required or alternatively as instructed by the MGB.

21. MIBCO - DISPUTE RESOLUTION CENTRE

21.1 Establishment:

21.1.1 The Council may establish a MIBCO-Dispute Resolution Centre ("MIBCO-DRC"). The MIBCO-DRC shall be regulated by a Management Board in terms of this Constitution and the Terms of Reference approved by the Council from time to time.

21.1.2 The Council may make rules:

(a) regulating the practice and procedure –

- (i) for any process to resolve a dispute through conciliation;
- (ii) for any process to resolve a dispute through conciliation – arbitration (CON-ARB) proceedings;
- (iii) for any process to resolve a dispute through arbitration proceedings;

(b) issue guidelines to regulate any matter pertaining to the Labour Relations Act, No. 66 of 1995.

21.2 Management Board:

21.2.1 The MIBCO - Dispute Resolution Centre shall be managed and controlled by a Management Board appointed by the Council consisting of not less than three employer representatives and three employee representatives, appointed by the parties, or alternates subject to the proviso that any decision of the Management Board may at any time be set aside or varied by the Council.

21.2.2 The Management Board shall appoint a Chairperson and Vice-chairperson from amongst its members and shall appoint a Director and such other conciliators and/or mediators and/or arbitrators on such terms and conditions of employment as may be decided upon by the Management Board.

21.2.3 The members of the Management Board and the Chairperson and Vice-chairperson shall hold office for 12 (twelve) months or until the expiration of the period for which they were appointed as members, whichever is the earlier, and shall be eligible for re-election.

21.3 **Functions of the Dispute Resolution Centre:**

The MIBCO-DRC shall perform such of the conciliation and/or mediation and/or arbitration functions imposed upon the MIBCO-DRC by this Constitution or the Council provided that such functions shall not be inconsistent with the provisions of this Constitution, the Act or any other Law.

21.4 **Meetings of the Management Board:**

21.4.1 The Management Board shall meet quarterly. The Chairperson shall fix a date for the meetings. A meeting shall also be called upon a requisition by a majority of employer or employee representatives on the Board and shall be held within 10 working days of the receipt of such requisition by the Chairperson.

21.4.2 Save as provided in this sub-section, the provisions of this Constitution relating to the calling and conduct of meetings of the Committee of the Council shall *mutatis mutandis* apply to the calling and conduct of meetings of the Management Board of the MIBCO-DRC.

21.4.3 The Director shall be responsible for the administration, conciliation and/or mediation and/or arbitration functions of the MIBCO-DRC and he shall report to the Management Board.

21.4.4 Such other arbitrators, conciliators or mediators as may be appointed by the Council shall report directly to the Director and they shall be accountable to the Management Board.

21.5 **Funding:**

21.5.1 Expenses of the MIBCO-DRC shall be met by the Council.

21.5.2 Expenses arising from the administration of the affairs of the MIBCO-DRC shall for accounting purposes be treated as a separate cost centre administered by the Council.

22. BANKING AND INVESTMENT OF FUNDS

- 22.1 The money of the Council or of any fund administered by the Council that is surplus to its requirements or the expenses of the fund may be invested only in accordance with Section 53(5) of the Act subject to the Council's policy in terms of clause 14.6.
- 22.2 The money of the Council or of any fund established by the Council, other than the funds referred to in clause 21.1, shall be deposited only in such account with any registered bank or financial institution or otherwise in accordance with Section 53(5) of the Act as determined from time to time by the Council in terms of clause 14.6.
- 22.3 The purposes for which the Council may use its funds:
- 22.3.1 The Council may only use its funds in the exercise of its functions and powers as set out in this Constitution subject to the provisions of Section 28 of the Act.
- 22.3.2 The Council may only use the money in respect of specific funds established or administered by the Council or in terms of a collective agreement for the purposes of and subject to the Rules of such fund.

23. DISSOLUTION

- 23.1 The Council may be dissolved as determined in this clause.
- 23.2 Subject to the provisions of Section 59, 60 and 61 of the Act, the Council may be dissolved by its own resolution after any party has given six months' written notice to that effect to the General Secretary. Upon such dissolution or at any other time if for any reason the Council is unable to continue to function, it shall be wound up and the following provisions shall apply to such winding up:
- 23.2.1 The President of the Council, or if he/she is not available then the available representatives on the Council, shall forthwith transmit to the Registrar of Labour Relations a statement signed by him/her or them setting forth the resolution adopted or the reasons for the Council's inability to continue to function, as the case may be, and the available representatives on the Council shall appoint a trustee to carry out the winding-up of the Council.


The trustee shall be paid such fees as may be agreed upon between him/herself and the said representatives of the Council.

Should they fail to agree upon the fees to be paid, the Registrar of Labour Relations shall be asked to determine the basis upon which payment shall be made. The trustee's appointment shall be subject to confirmation by the Registrar of Labour Relations before he/she assumes duty.


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- 23.2.2 The trustees so appointed shall call upon the last appointed General Secretary of the Council to deliver to him/her the Council's books of account showing the Council's assets and liabilities and also to hand over to him/her any unexpended funds of the Council.
- 23.2.3 The trustee shall take the necessary steps to liquidate the debts of the Council from its unexpended funds and any other moneys realised from any assets of the Council, and if the said funds and moneys are insufficient to pay all creditors after the trustee's fees and the expenses of winding-up have been met, the order in which creditors shall be paid, shall be in accordance with statutory provisions in force relating to the distribution of the assets of an insolvent estate, and the trustee's fees and expenses of winding-up shall rank in order of preference as though he/she were a trustee of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.
- 23.2.4 After the payment of all debts in accordance with Section 23.2.3, any remaining funds shall be dealt with by the trustee in accordance with the provisions of Section 59 and Section 60 of the Act.
- 23.2.5 For the purposes of this Section the liability of the parties to the Council shall be limited to their unpaid liabilities (if any) to the Council as at the date on which the resolution for winding-up was passed or the date from which the Council was unable to continue to function.

Signed for and on behalf of the MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO at Randburg this 5th day of November 2015.


.....
BC MKHWANAZI
GENERAL SECRETARY


Signed for and on behalf of the RETAIL MOTOR INDUSTRY ORGANISATION at Randburg this 5th day of November 2015.


.....
J. SCHOEMAN
REPRESENTATIVE OF RMI

Signed for and on behalf of the NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA at Randburg this 5th day of November 2015.


.....
J.E.S. KUBEKA
REPRESENTATIVE OF NUMSA


Signed for and on behalf of MOTOR INDUSTRY STAFF ASSOCIATION at Randburg this 5th day of November 2015.


.....
H KOSTENS
REPRESENTATIVE OF MISA

Signed for and on behalf of the FUEL RETAILERS ASSOCIATION OF SOUTHERN AFRICA at Randburg this 5th day of November 2015.


.....
R. SIBIYA
REPRESENTATIVE OF FRA

Signed for and on behalf of the NATIONAL EMPLOYERS ASSOCIATION OF SOUTH AFRICA at Randburg this 5th day of November 2015.


.....
G LEITH
REPRESENTATIVE OF NEASA