

CONSTITUTION

SOUTH AFRICAN UNITED
COMMERCIAL AND ALLIED
EMPLOYERS' ORGANISATION
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CONSTITUTION

THE SOUTH AFRICAN UNITED COMMERCIAL AND ALLIED EMPLOYERS' ORGANISATION (As amended in February 2018)

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CONSTITUTION

SOUTH AFRICAN UNITED COMMERCIAL AND ALLIED EMPLOYERS' ORGANISATION

1. NAME

The name of the Organisation is the SOUTH AFRICAN UNITED COMMERCIAL AND ALLIED EMPLOYERS' ORGANISATION (hereinafter referred to as the "Organisation"). The Organisation is an association established, not for financial gain, but to promote the objectives as set out in Paragraph 5.

2. DEFINITIONS

"**Act**" means the Labour Relations Act, 1995 (Act no. 66 of 1995) as amended;

"**Associated members**" means enrolled small undertakings and/or single operating employers and/or organised groups who have an interest in the aim, objectives and workings of the Organisation, but do not have a vote at the General Council.

"**Bargaining Council**" means a bargaining council referred to in section 27 and includes, in relation to the *public service*, the bargaining councils referred to in section 35 of the Act;

"**Basic Conditions of Employment Act**" means the Basic Conditions of Employment Act, 1983 (Act no. 3 of 1983) as amended;

"**Code of good practice**" means a code of practice issued by NEDLAC in terms of section 203(1) of the Act;

"**Council**" includes a bargaining council and a statutory council;

"**E-meeting**" An e-meeting is a meeting that takes place over an electronic medium rather than face-to-face. E-meetings are commonly held via web-based software. E-meetings allow individuals in disparate places to meet without traveling.

"**Electronic voting**" (also known as e-voting) refers to voting using electronic means to either aid or take care of the chores of casting and counting votes. Depending on the particular implementation, e-voting may use standalone electronic voting machines (also called EVM) or computers connected to the Internet.

"**Employee**" means –

- a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- b) any other person who in any manner assists in carrying on or conducting the business of an employer,

and "employed" and "employment" have meanings corresponding to that of "employee";

"**Executive Committee**" means the elected members as office bearers and has the executive powers between General Council Meetings within the provisions of this Constitution;

"**General Council**" means the Annual General Council Meeting of all voting members of the South African United Commercial and Allied Employers' Organisation and is the highest authority of the Organisation;

“**Legal practitioner**” means any person admitted to practise as an advocate or an attorney in the Republic;

“**Members**” means enrolled employers who have been granted membership by the Executive Committee and whose membership fees are paid up to date and has met the criteria for membership and therefore qualify as Voting Members;

“**Minister**” means the Minister of Labour;

“**NEDLAC**” means the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act no. 35 of 1994);

“**Office-bearer**” means a person who holds office in a trade union, employers’ organisation, federation of trade unions, federation of employers’ organisation or council and who is not an official;

“**Official**” in relation to a trade union, employers’ organisation, federation of trade unions or federation of employers’ organisations means a person employed as the secretary, assistant secretary or organiser of a trade union, employers’ organisation or federation, or in any other prescribed capacity, whether or not that person is employed in a full-time capacity. And, in relation to a council means a person employed by a council as secretary or in any other prescribed capacity, whether or not that person is employed in a full-time capacity;

“**Organisation**” means the South African United Commercial and Allied Employers' Organisation and consists of any employers associated together for the purpose, whether by it or with other purposes, of regulating relations between employers and employees on trade unions;

“**Provincial/regional/branch organisers**” means a duly appointed organiser in terms of clause 12.3.1 of the Constitution who shall be responsible for a specific province/region/branch whether or not that organiser is employed on a full-time capacity or part-time capacity.

“**Proxy**” means a written authority by a member to another person with the necessary authority to make decision on behalf of the member, which authorise them to represent the paid up member for voting purposes at meetings.

“**Republic**” –

- a) when used to refer to the State as a constitutional entity, means the Republic of South Africa as defined in section 1 of the Constitution;
- b) when used in the territorial sense, means the national territory of the Republic as defined in section 1 of the Constitution;

“**Trade union**” means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers’ organisations;

“**Trade union representative**” means a member of a trade union who is elected to represent employees in a workplace;

“**Workplace**” -

- a) in relation to a sector in the public service in respect of which a bargaining council has been established in terms of section 37 of the Act has the meaning that the responsible Minister determines after having consulted the bargaining council;

- b) in relation to the remainder of the public service, has the meaning that the Minister for the Public Service and Administration determines after having consulted the Public Service Coordinating Bargaining Council;
- c) in all other instances means the place or places where the employees of an employer work. 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;

3. HEAD OFFICE AND AREA OF JURISDICTION

- a) The Head Office of the Organisation is situated in Pretoria or any other place decided upon by the **Executive Committee**.
- b) The Organisation may operate, carry on its activities and/or promote its objectives in all areas of the Republic of South Africa as it shall determine from time to time and shall be entitled to establish provincial or regional division and sectors or branches whether to represent the special interests in the sector of any group or groups of members or by virtue of their specific location or specific activities or otherwise

4. STATUS OF THE EMPLOYERS' ORGANISATION

Section 95 (5)(a) of the Act

This employers' organisation shall be a body corporate with perpetual succession capable of entering into contractual and other relations, acquiring, hiring, holding and disposing of property and of suing and being sued in its own name and of performing all such acts as are necessary for or incidental to the performance of the functions and the exercise of its powers. The Organisation is an organisation not for gain.

5. OBJECTIVES

The objectives of the Organisation are as follows;

- a) To regulate relations between members and their employees and to protect and promote the interests of members in regards to the employees and their trade unions;
- b) To encourage the settlement of disputes by conciliatory methods;
- c) To promote, support or oppose, as may be deemed desirable, any proposed legislative or other measures affecting the interest of members;
- d) To use every legitimate means to induce all employers to become and remain members;
- e) To further and promote the interests of members by collaborating with any association, organisation, chamber, institute or authority and pursuant to make any financial grant to any such authority or body;
- f) To provide, if deemed necessary, legal assistance to members in connection with matters affecting employer/employee relations;
- g) To co-operate with organisations of employers and/or employees on any Bargaining Council to deal with matters that affects members;
- h) To represent members at Regional and National Government levels;
- i) To establish and administer Funds for the benefit of its members and their dependents;
- j) To borrow, invest, lend, subscribe or donate money for the furtherance of the objectives of the Organisation.

6. MEMBERSHIP

Section 95 (5)(b) of the Act

- a) i All employers / business enterprises in the Republic of South Africa shall be eligible

for membership;

- ii Executive Committee, in its discretion, may cluster groups of employer/businesses enterprises together and determine a group membership fee, to be paid by employers /businesses enterprises in the group, the fee to be not more than the regular membership fee
- b) Criteria for membership:
 - i By subscribing to the Organisation for membership the member undertakes to adhere to the Constitution of the Organisation and the criteria for membership;
 - ii The member will comply to the provision of any and all applicable labour legislation; and
 - iii The Members shall participate in all matters of the Organisation and interact with the office bearers/organisers and other members of the Organisation in a spirit of good faith to the benefit of the Organisation and its members.
- c) Application for membership shall be lodged in writing with the General Secretary together with the entrance fee as provided in **Annexure A** of this constitution;
- d) Every application for membership shall be considered by the Executive Committee within 2 (two) weeks of receipt thereof by the General Secretary;
- e) An applicant to whom admission to membership is refused shall be provided with reasons for such refusal and shall be entitled to a refund of the entrance and membership fees paid;
- f) If the Executive Committee refuses admission to membership the applicant concerned shall have a right of appeal to the next General Council of the Organisation which shall have the power to confirm or reverse the decision of the Executive Committee. Such an appeal shall be in writing and shall be submitted to the General Secretary at least three (3) weeks before the General Council Meeting of the Organisation. The General Council decision shall be final.
- g) Every member shall notify the General Secretary, in writing, of his/her postal address and any change thereof within four (4) weeks of the date on which the change occurred.
- h) An employer who has resigned or been expelled from the Organisation may be re-admitted to membership on such conditions as the Executive Committee may determine.

7. ENTRANCE FEE
Section 95 (5)(f) of the Act

An entrance fee shall accompany every application for membership, as set out in **Annexure A**. The entrance fee for organised groups of employers/undertakings, is negotiable per undertaking with the consent of the Executive Committee.

Institutions that gain membership of the Organisation during the course of a month must make payment of the total membership fee and such membership fees must accompany the entrance fee.

8. MEMBERSHIP FEES
Section 95 (5)(f) of the Act

- a) Membership fees are payable in advance on the 1st of each month and will be revised should any changes take place. Refer to **Annexure A** as per attached.

- b) The Executive Committee must, annually before the 30th of September of each year, determine membership fees for the coming financial year, subject to approval of an Annual General Council Meeting or special meeting of the General Council. All subsequent amendments to membership fees made will only be valid and in effect once it was approved by the Registrar of Labour Relations with due consideration of the organisations' current financial position.
- c) In addition to the membership fee a member shall also be liable for the payment in the same manner of such other fees as may be prescribed in terms of rules governing any fund established in terms of clause 5 (i).

9. DISCIPLINE

Section 95 (5)(c) of the Act

A member may be suspended or expelled by the Executive Committee:

- a) If he/she fails to pay any subscription or levies that are more than two (2) months in arrears, within seven (7) days of written demand by the General Secretary;
- b) If he/she infringes any of the terms of this Constitution or acts in a manner which the Executive Committee considers to be detrimental to the interests of the Organisation, provided that the member shall be entitled to appeal to the Executive Committee against such suspension or expulsion;
- c) Notice of such appeal shall be given in writing within thirty (30) days of the date of the notification of suspension or expulsion;
- d) A member shall cease to be entitled to any benefits of membership including the right to vote during any period that he/she is under suspension.

10. APPEALS

Section 95 (5)(e) & (5)(n) of the Act

- a) There shall be a general right of appeal to the Executive Committee regarding:
 - i) the loss of the benefits of membership or against the termination of membership;
 - ii) the removal from office of the office bearers and officials;
- b) The lodging of an appeal is subject to the member having paid all amounts due by it to the Organisation;
- c) The applicant shall give due notice of the appeal within 21 days from the date of the decision against whom the appeal is made accompanied by a written statement of the case with essential supporting documents;
- d) At the hearing of the appeal the applicant and/or his/her representative shall have the right to appear personally to state the case and to summon witnesses;
- e) A member who has appeared before the Executive Committee shall, if he/she is dissatisfied with the decision of the committee and has lodged an appeal in the manner herein provided, have the right to restate his/her case personally to the General Council Meeting which shall consider the matter.

11. RESIGNATION OF MEMBERS/TERMINATION OF MEMBERSHIP

Section 95 (5)(d) of the Act

- a) Membership of the Organisation may be terminated by giving two (2) calendar months written notice of such intention to the General Secretary, provided that all the subscriptions and levies owing to the Organisation have been paid up in full.
- b) A member whose membership fees are more than three (3) months in arrears shall automatically cease to be a member of the Organisation. Such person shall however, be liable for all monies due to the Organisation as at the date on which he/she ceases to be a member of the Organisation.

12. MANAGEMENT AND CONTROL

The management and control of the affairs of the Organisation is vested in the General Council and an Executive Committee as set out in this Constitution.

12.1 General Council

- a) The General Council consist of members or representatives who hold office as voting members and who have paid all monies due and payable in accordance with the approved fee structures. Each member will have only one vote per business entity.
- b) Such representatives shall be elected by the employer/member from its employer ranks and should have the necessary authority to make decisions on behalf of the employer/member. Such election shall take place each year and their names shall be submitted to the General Secretary before 15 July of that year.
- c) Fourteen (14) days' notice of a meeting shall be given in person or by sending it to the member at the contact address as recorded at the Head Office, by post or by phone, fax or any other electronic means.
- d) Decisions shall be taken by the vote of the majority of those persons present in person or by proxy and entitled to vote at that meeting. A member or representative or proxy shall have only one (1) vote for each topic or item to decide upon.

12.2 Executive Committee

12.2.1 The management of affairs affecting the Organisation between general meetings of the General Council, is vested in an Executive Committee consisting of;

- a) A chairperson;
- b) A vice-chairperson;
- c) Three (3) management members who are elected to the Executive Committee in terms of this Constitution.

12.2.2 The Executive Committee consists only of members of the General Council who are elected at the Annual General Council Meeting as follows:

- a) The General Secretary calls for nominations for the office of Chairperson, which nominations may be made in writing or verbally and must be duly seconded. In the event of there being only one nomination, the nominated candidate is declared duly elected by the General Secretary. Should there be more than one nomination, a vote is taken by close of ballot papers/showing of hands. Each designated representative of a member of the Organisation is entitled to cast one vote. The candidate enjoying the most votes is declared duly elected by the General Secretary and the elected Chairperson takes the chair.

- b) After election of the Chairperson the meeting proceeds by electing a Vice-Chairperson. The provisions of sub-clause 12.2.2(a) apply *mutatis mutandis*, taking into account the fact that the Chairperson will then lead the meeting and take nominations for appointment of a Vice-Chairperson.
- c) After election of the Vice-Chairperson, three (3) members are elected to the General Council by majority vote after duly seconded nominations have been lodged with the Chairperson.

12.2.3 Duties of Executive Committee

- a) The powers and functions of the Executive Committee are to finalise or otherwise attend to matters depending on and in accordance with instructions received from the General Council and shall hold office until the next General Council Meeting.
- b) Open and operate banking accounts in the name of the Organisation;
- c) Invest funds of the Organisation in such a manner as it deems fit;
- d) Subject to the provisions of the Labour Relations Act of 1995, to enter into Bargaining Council agreements and to appoint representatives to a Bargaining Council, or similar board or committee on which the Organisation may be represented, or to become party to or appoint representatives on any statutory or other body dealing with the said bodies or with matters affecting the interests of members in general;
- e) Enter into such agreements with other organisations of a similar nature as it may deem to be in the interests of its members;
- f) Appoint ad-hoc committees in order to investigate any matter and report thereon;
- g) Co-opt a maximum of three (3) members to Executive Committee with voting rights;
- h) Take out such insurance and insurance cover to cover the risks of its assets and personal risks of members of the Executive Committee and officials, and to take such steps as may deemed necessary for any other indemnification which may be decided on;
- i) Convene special meetings of the General Council and/or Executive Committee on a regional basis in order to resolve a specific matter or matters;
- j) Appoint employees, the Assistant General Secretary, the National Organiser, the Provincial/Regional/Branch Organisers and Organisers and/or any person/business to conduct work for the Organisation whereby the members or the Organisation may benefit;
- k) Do such other things as are prescribed in this Constitution.
- l) To make rules, regulations and/or policies to govern the duties and responsibilities of the employees, Assistant General Secretary, the National Organiser, the Provincial / Regional / Branch Organisers and Organisers and Legal Advisor.

12.2.4 Powers of Executive Committee

The Executive Committee shall, subject to the provisions of this Constitution, have power to:

- a) Engage and dismiss a General Secretary and other employees of the Organisation, to fix their remuneration and to define their duties;
- b) Institute or defend legal proceedings by or against the Organisation, or on behalf of or against individual members or officials of the Organisation with regard to matters which may effect the Organisation;
- c) Acquire, either by purchase, lease or otherwise, any moveable or immovable property on behalf of the Organisation and to sell, let, mortgage or otherwise, deal with or dispose of moveable or immovable property of the Organisation, provided that no movable property shall be acquired or sold or mortgaged or let or leased for a period longer than five (5) years unless at least 30 days written notice of intention to do so has been given to each member of the Organisation by the General Secretary. If during this period not less than thirty (30) members demand in writing that a ballot be taken on the proposed action, such ballot shall be taken;
- d) To give effect in lieu of the General Council.
- e) To exercise such powers as delegated to it by the General Council.

- f) To delegate any of its powers to any member of the Executive Committee, the General Secretary or any official appointed in terms of this Constitution.
- g) To authorise the Organisation to become a party to a Bargaining Council or similar body.

12.2.5 Notices of Meetings of Executive Committee

Meetings of the Executive Committee shall be held at least once every six (6) months and at a time and place determined by the Chairman, provided that a majority of members of the Executive Committee may request a meeting at any time. In such case the General Secretary shall convene the meeting within thirty (30) days after the receipt of the request. For all meetings at least ten (10) days written notice shall be given, which notice shall be accompanied by an agenda. Shorter notice may be given under circumstances that are considered as urgent by the Chairperson provided that the time period is not less than 24 hours.

12.2.6 Quorum of Executive Committee

The quorum for meetings of the Executive Committee shall be at least half its membership plus one and all matters and questions shall, save as may be provided elsewhere in this Constitution, be decided by the majority of the members present.

12.2.7 Vacancies on Executive Committee

The Executive Committee itself shall fill any vacancy that may occur in the ranks of the Executive Committee.

12.3 Office-bearers and officials Section 95 (5)(i) of the Act

12.3.1 a) Chairperson

The Chairperson shall preside at all meetings at which he/she is present, enforce observance of the Constitution of the Organisation, sign minutes of meetings after confirmation, endorse all monthly and annual financial statements after approval by the Executive Committee. He/she shall generally exercise supervision over the affairs of the Organisation and perform such other duties as by usage and custom pertain to the office. He/she shall not have a deliberate vote, but shall, in the event of equality of voting, have a casting vote.

b) Vice-Chairperson

The Vice-Chairperson shall exercise the powers and duties of the Chairperson in the absence of the latter.

c) Acting Chairperson

In the event of both the Chairperson and the Vice-Chairperson being unable, either temporarily or permanently, to perform their duties, the Executive Committee shall appoint a member of the Committee to act as Chairperson until the Chairperson or Vice-Chairperson is able to resume his/ her duties or until the next election, as the case may be.

d) General Secretary Section 95 (5)(j) of the Act

The Executive Committee may appoint a general secretary who shall assist the Executive Committee in the execution of their duties. Should the General Secretary temporarily be unable to perform his/her duties the assistant secretary shall act as General Secretary until such time he/she is able to resume his/her duties.

i) The General Secretary shall keep proper books of account in such form as may be prescribed by the Executive Committee, receive requisitions for meetings, issue notices of meetings, conduct all correspondence of the Organisation, keep originals of letters received and copies of those dispatched and at each meeting of the Executive Committee report on the correspondence which has taken place since the previous meeting, attend all meetings and record minutes of the proceedings, keep a register of members, record therein *inter alia* every member's address, date of enrolment, membership fees and any levies and fines paid by such members, and in the event of the resignation or expulsion of a member the date thereof, collect membership fees, fines and levies; issue official receipts for all monies received, bank all monies within four (4) days of receipt; submit reports in regard to the financial position of the Organisation to the Executive Committee not less than once every three months; prepare the balance sheet and statement of income and expenditure, represent the Organisation or its members at the Commission and perform such other duties as the Executive Committee or a General Council may direct. He/she shall attend all meetings of the Executive Committee and all General Council Meetings but shall have no voting power.

ii) The General Secretary may resign on giving three (3) months notice in writing to the Executive Committee and his/her services may be terminated by the Executive Committee after a like period of notice has been given to him/her. The contract of service of the General Secretary shall be in writing by the Executive Committee.

iii) The General Secretary shall also take the necessary steps to ensure that the requirements of sections 98, 99 and section 100 of the Labour Relations Act, 1995, are complied with.

e) **Assistant secretary**

The Executive Committee may appoint an assistant secretary who shall assist the General Secretary in the execution of his/her duties. Should the General Secretary temporarily be unable to perform his/her duties the assistant secretary shall act as General Secretary until such time he/she is able to resume his/her duties. The provisions of paragraph d) above shall *mutatis mutandis* apply to the assistant secretary.

f) **National Organiser**

The National Organiser shall work under the supervision and control of the General Secretary and shall carry out such Organisational duties as the Executive Council may require from time to time including supervision over the duties carried out by other Provincial Organisers and Organisers. He/she shall, in addition, carry out such other duties as the Executive Council may stipulate from time to time.

g) **Provincial/ regional/branch organisers**

The Executive Committee may appoint provincial/regional/branch organisers from the ranks of duly appointed Organisers whether employed on a full-time capacity or part-time capacity in a specific province/region/branch as contemplated in clause 3(ii) above. The provincial/regional/branch organisers will fall under the authority of the National Organiser. The provincial/regional/branch organisers besides their duties as organisers will supervise the duties carried out by other organisers in the province/region/branch

h) **Organisers**

The Executive Committee may appoint an organiser or organisers on a full time or part-time capacity on terms and conditions mutually agreed upon. The main duties of the organiser(s) will be to enrol members, to investigate complaints from members, to represent the Organisation or its members at the Commission for Conciliation, Mediation and Arbitration as well as different Bargaining Councils, to collect membership fees and to perform such duties as the Executive Committee may direct.

i) **Legal Representative**

The legal representative will fall under the control and supervision of the General Secretary. All legal functions of the Organisation will be conducted by the legal representative and he/she will coordinate legal services with external organisations as and when the need arises. Legal services will include legal assistance to members and/or organisers within the organisation. It will also be a function of the representative to ensure that all concern are informed of changes relating to Legislation and the impact thereof.

12.3.2 Removal of office-bearers and officials
Section 95 (5)(m)

- a) An office-bearer or official may be removed from office -
 - i) if he/she infringes any of the provisions of this Constitution; or
 - ii) if he/she acts in a manner which is detrimental to the interests of the Organisation.
- b) No office-bearer or official may be removed from office unless he/she has been afforded a chance to state his/her case personally at a meeting of the Executive Committee.
- c) An office-bearer or official who has appeared before the Executive Committee and who is dissatisfied with the decision of the Executive Committee shall have the right to appeal to the first ensuing General Council Meeting of the Organisation. Notice of appeal shall be given to the General Secretary, in writing, within five (5) days of the date on which the decision of the Executive Committee was communicated to the person concerned. The General Council may confirm or reverse the decision of the Executive Committee and the decision of the General Council shall be final.

12.4 Vacating of seats

A representative on the General Council or a member of the Executive Committee shall relinquish his/her seat and retire in the following circumstances:

- a) If his/her institution resigns from membership of the Organisation or is expelled or suspended,
- b) If he/she ceases to represent his/her institution,
- c) If he/she becomes of unsound mind or is placed under curatorship,
- d) If he/she is absent from three consecutive meetings of the Executive Committee,
- e) If he/she resigns by means of written notice.

13. ANNUAL GENERAL COUNCIL MEETING AND SPECIAL MEETINGS
Section 95 (5)(g)

- a) The General Council shall meet once in every twelve months on a date to be fixed by the Executive Committee. Such meeting shall be known as the Annual General Council Meeting of the Organisation and shall be held no earlier than 31st August and no later 31st October. Special meetings of the General Council can be called when the Executive

Committee deems it necessary or upon written request by at least 25 percent of the members of the Organisation. Such a meeting shall take place within 30 days of the date on which the request was lodged with the General Secretary.

- b) When the Executive Committee deems it advisable it may convene a Special General Meeting and/or Annual General Council Meeting on a provincial/regional/branch basis.
- c) The General Secretary of the Organisation or a person appointed by him/her shall keep minutes of all meetings of the Executive Committee and of all other meetings of the Organisation.
- d) The Executive Committee may decide to proceed with an Annual General Council Meeting and/or Special Meeting as well as the voting of relevant topics on the basis of an electronic process using E-meetings and electronic voting. Examples of electronic voting systems include but are not limited to Voxvote, Activote, Myvote.

14. NOTICE OF GENERAL COUNCIL MEETING
Section 95 (5)(g)

The General Secretary shall notify members of the General Council in writing of the time, place and purpose of the meetings at least fourteen (14) days before the date thereof.

A list of the items dealt with by the Executive Committee, audited statements of accounts, the appointment of auditors, as well as the approximate date, time and place of the next Annual General Council Meeting, must appear on the agenda and be taken up in the minutes of the Annual General Council Meeting, over and above any other matters for discussion.

The notice of such meeting(s) should be submitted via fax or other electronic means to include e-mail.

15. QUORUM FOR GENERAL COUNCIL MEETINGS
Section 95 (5)(h)

The quorum for meetings of the General Council shall be the majority of the representatives nominated by members and/or proxies received. If, within (15) fifteen minutes of the time fixed for a meeting, no quorum is present, the meeting shall be adjourned until the next day at the same time and place and at such second meeting the representatives present shall form a quorum.

16. PROXIES

- a) Unless the contrary is provided in this Constitution every member shall be entitled, subject to the provision of this clause, to exercise his/her vote either in person or by proxy, provided that every natural person attending any meeting may exercise only 1 (one) vote;
- b) A proxy for, power of attorney or other authority to vote shall be in writing in a form approved by the Executive Committee and shall be signed by the grantor;
- c) Proxy forms shall be lodged with the General Secretary at least 24 (twenty-four) hours before the fixed time for the holding of the meeting at which the person therein named to propose to vote;
- d) A proxy form shall be valid at the resumption of an adjourned meeting only if it was valid for the use at the meeting prior to the adjournment.

17. VOTING AT GENERAL COUNCIL MEETINGS

Section 95 (5)(h)

- a) All matters for consideration by the General Council shall be decided by the majority of those present on the motion duly seconded either by show of hands or by ballot, as may be decided on.
- b) If any questions arise between meetings of the Executive Committee that are of extreme urgency and can be answered by a simple “yes” or “no”, the chairperson may authorise a vote of the members of the Organisation or of the Executive Committee to be taken by post, fax /or electronic means to include e-mail and shall take action according to the decision of the members who have voted.
- c) Once it has been decided to call the Annual General Council Meeting by any electronically means the Executive Committee shall take action according to the decision of the members who voted.

18. ELECTRONIC VOTING

Section 95 (5)(o)

The Executive Committee may refer any issue or matter arising between meetings of the General Council and which may be answered by a mere “Yes” or “No” to an electronic process of all members of the General Council. The issue involved shall be submitted to the members in such a form and manner as the Executive Committee may decide, with an indication of the time available to members for signifying their decision. The decision of the majority of the members of the General Council who responded by electronic manner shall be deemed to be a resolution of the General Council and shall be given effect to as if it was a resolution of the General Council passed at a Special or Annual General Council Meeting.

19. BALLOT PAPERS

Section 95 (5)(o)

- 19.1 In addition to those cases in respect of which the taking of a ballot of members of the whole Organisation is compulsory in terms of this Constitution, a ballot on any question shall be taken if the Executive Committee so decides, and shall also be taken:
 - a) if demanded in writing by at least thirty (30) members of the Organisation who are eligible to vote; and
 - b) on any proposal to call a lockout.
- 19.2 Ballots shall be conducted in the following manner:
 - a) Notice of a ballot shall be given to each member of the Organisation, eligible to vote in writing by the General Secretary, at least 3 (three) days before the ballot is to be taken, provided that a ballot may be taken without notice at any General Council Meeting on the decision of a majority of the members present.
 - b) The Executive Committee or a General Council Meeting shall appoint 2 (two) scrutiners to supervise any ballot and to ascertain the result thereof.
 - c) Except in the case of postal ballots and ballots taken at general meetings and/or electronic ballots on the decision of a majority of the members present or whom partook in the ballot, ballots shall be conducted at such other places as may be specified in the notice referred to in paragraph a) on the date and during the hours specified in the said notice.

- d) The General Secretary shall supply ballot papers. The issue to be voted on shall be set forth clearly on the ballot papers and such papers shall not contain any information by means of which it will be possible to identify the voter.
- e) Ballot boxes shall be inspected by the scrutineers and sealed by the General Secretary in their presence prior to the issuing of the ballot papers.
- f) One ballot paper only shall be issued on demand at the place and during the hours fixed for the taking of the ballot to each member who is entitled to vote.
- g) Each voter shall, in the presence of the scrutineers, be issued with one ballot paper, which he/she shall thereupon complete, fold and deposit in a ballot box provided for the purpose.
- h) Ballot papers shall not be signed or marked in any way apart from the mark required to be made by a member in recording his/her vote. Papers bearing any other marks shall be regarded as spoilt and shall not be counted.
- i) On completion of a ballot or as soon as possible thereafter, the result thereof shall be ascertained by the scrutineers in the presence of the General Secretary and made known to the Executive Committee.
- j) Ballot papers, including spoilt papers, shall be placed in a container, which shall be sealed after they have been counted and retained by the scrutineers for not less than five years.
- k) The members are to vote must be in good standing and eligible to vote in terms of the Organisation's Constitution.

19.3 The Executive Committee may decide that a postal ballot of members shall be taken, in which event the ballot shall be conducted in the following manner:

- a) The General Secretary shall send by registered post to each member of the Organisation a ballot paper and a stamped and addressed envelope marked "Ballot". The ballot paper shall on completion be inserted in the envelope provided for the purpose, shall be sealed and posted so as to reach the General Secretary within 21 (twenty-one) days from the date of despatch from head office of such member. On receipt of such envelope, the General Secretary shall immediately place such envelope in a sealed ballot box.
- b) 2 (Two) scrutinisers shall be appointed by the Executive Committee to ascertain the result of the ballot. The ballot box shall be opened and the ballot papers counted by the scrutineers in the presence of the General Secretary, who shall immediately advise the Executive Committee of the result of the ballot.
- c) The same procedure shall *mutatis mutandis* apply to a ballot confined to members of the Executive Committee of the Organisation.

19.4 Electronic ballots

The Executive Committee may decide that an electronic ballot by members shall be taken, in which event the ballot shall be conducted in the following manner;

- a) The General Secretary shall send via electronic means to each member of the Organisation a ballot paper for voting purposes, the member will be notified of the confidentiality of the ballot;
- b) The member shall complete the electronic ballot and return it to the sender via electronic means.

- c) The Executive Committee shall appoint 2 (two) scrutinisers to ascertain the result of the electronic ballot in the presence of the General Secretary, who shall immediately advise the executive committee of the result of the ballot.
- d) Electronic ballots shall be deemed spoilt, spoiled, void, null, informal, invalid, or stray in the following instances:
 - i. Failing to mark the ballot at all (blank vote).
 - ii. Filling out the ballot in a manner that is incompatible with the voting system being used, e.g.: Marking more choices than permitted (overvoting), or fewer than necessary (undervoting).
 - iii. Filling a preference ballot out of sequence (also known as a donkey vote), e.g. 1-2-2-3-4 or 1-2-4-5-6.
 - iv. Filling the ballot in a manner that makes the voter's decision unclear.

The electronic ballot will as far as possible be setup to avoid as much of the above instances as possible.

- 19.5 In any ballot conducted in connection with any election the candidates, up to the required number, receiving the highest number of votes shall be declared elected.
- 19.6 The Executive Committee shall be bound to take action according to the decision of a majority of the members voting in a ballot.
- 19.7 The Organisation shall, before calling a lockout, compile a pre-determined list of those of its members in respect of whom it intends to call the lockout.
- 19.8 Notwithstanding anything to the contrary contained in this Constitution, members of the Organisation shall not be disciplined or have their membership terminated for failure or refusal to participate in a lockout if:
 - a) No ballot was held about the lockout, or
 - b) A ballot was held but a majority of the members who voted did not vote in favour of the lockout.
- 19.9 Ballots will be secret, private and confidential and the result will not be distributed to any third party except for purposes of the Executive Committee to tally the voting papers.
- 19.10 Ballot papers and/or feedback from voting results will be kept safe for a period of at least 5 years.

20. POWERS AND FUNCTIONS OF GENERAL COUNCIL

The powers and functions of the General Council shall be as follows:

- a) To elect an Executive Committee at the time of the Annual General Council Meeting in terms of Clause 12.2.
- b) To consider and pass resolutions on any matter related to or arising from the objectives of the Organisation.
- c) To consider and pass resolutions on recommendations by the Executive Committee.
- d) To decide on matters of procedure for which no provision has been made in this Constitution.
- e) To do all such other things as are prescribed by this Constitution to be done by the General Council.
- f) To decide on any matter necessary to give effect to the objectives of the Organisation and this Constitution.

21. FINANCES OF THE ORGANISATION

21.1 Expenditure:

Subject to the approval of the **Executive Committee**, the funds of the Organisation shall be applied to the payment of expenses, the acquisition of property and for the attainment of objectives specified in Clause 5.

21.2 Banking of Monies:

The funds received by the General Secretary on behalf of the Organisation shall be deposited to the credit of the Organisation within three days of receipt at a bank selected by the Executive Committee.

21.3 EFT Payments:

Payment shall be made by means of Electronic Banking Transfers (EFT) authorised by two of the following; the Chairperson, the Vice-Chairperson or the General Secretary, and any one of the Executive Committee Members or official/employee authorised accordingly by the Executive Committee except in the case of an amount less than five thousand rand (R5,000.00) when payment may be made from petty cash.

21.4 Petty Cash: Section 95 (5)(r)

Funds required for the Petty Cash account shall be provided by the drawing of cash not exceeding R5,000.00 per month. The petty cash account shall be kept in a manner approved by the Executive Committee.

21.5 Investing of Funds:

The Organisation may invest funds in accordance with decisions and rulings of the Executive Committee.

21.6 The General Secretary has full authority to sign documents on behalf of the Organisation and to initiate business transactions on behalf of the Organisation once the Executive Committee has approved such business activities.

22. STATEMENT OF INCOME AND EXPENDITURE AND BALANCE SHEET

The General Secretary shall prepare a Statement of Income and Expenditure, as well as a Balance sheet, in respect of each financial year ending on the 30th day of September of each year. A public accountant appointed by the Executive Committee shall audit such statement and balance sheet. Such audited statements of income and expenditure and balance sheet shall be signed by the General Secretary and the Chairperson and shall be submitted annually to the General Council.

23. ACCOUNTS OPEN TO INSPECTION

Copies of the audited Statement of Income and Expenditure and Balance sheet shall be made available for inspection by any member in good standing by his/her authorised representative, at any time during the office hours. Such member shall be entitled to make copies thereof or to take extracts therefrom.

24. LEVIES

The Executive Committee, may at any time, with a view to securing funds for any particular purpose, impose a levy on all members, provided that no single levy on a member shall exceed the amount of the annual subscription payable by that member for that financial year.

25. REPRESENTATION AT BARGAINING OR STATUTORY COUNCILS

- a) If the General Council resolves that the Organisation shall become a party to a Bargaining or Statutory Council, the Executive Committee shall elect the representatives and deputies to serve thereon.
- b) Any office bearer or official of the Organisation may represent members at the Bargaining or Statutory Councils.

26. CALLING OF A LOCKOUT

Section 95 (5)(p) & (q)

- a) Before a lockout is called the Executive Committee Council must conduct a ballot of these of it members in respect of which it intends to call a lockout;
- b) The ballot shall be subject to the provisions of the Constitution.
- c) No member shall be disciplined or it's membership terminated for failure or refusal to participate in a lockout if –
 - i) no ballot was held about the lockout
 - ii) a ballot was held but a majority of the members who voted did not vote in favour of the strike out or lockout.

27. WINDING-UP

Section 95 (5)(w)

The Organisation shall be wound up if, at a ballot conducted in the manner prescribed in the Constitution, not less than three-quarters of the total member of the Organisation in good standing vote in favour of a resolution that the Organisation be wound up, subject to the provisions of the Labour Relations Act, 1995, if for any reason the Organisation is unable to continue to function.

28. PROCEDURE AT WINDING-UP

Section 95 (5)(w)

If a resolution for the winding-up of the Organisation has been passed as provided in clause 30, or if for any reason the Organisation is unable to continue to function, the following provisions shall apply;

- a) The last appointed Chairperson of the Organisation or, if he/she is unavailable, the available members of the last appointed Executive Committee of the Organisation shall forthwith apply to the Labour Court in terms of sections 103(1)(a) of the Labour Relations Act, 1995, signed by him/her or them containing the resolution adopted or the reasons for the Organisation's inability to continue to function, as the case may be. The Labour Court shall appoint a liquidator. The liquidator shall not be a member of the Organisation and shall be paid such fees as may be determined by the Labour Court.

- b) The liquidator so appointed, shall call upon the last-appointed office-bearers of the Organisation to deliver to him/her the Organisation's register of assets and liabilities together with the register of members showing for twelve months prior to the date on which the resolution for the winding-up was passed or the date as from which the Organisation was unable to continue to function, as the case may be, hereinafter referred to as the date of dissolution, the subscription paid by each member and its address as at the said date. The liquidator shall call upon the office-bearers to hand over to him all unexpended funds of the Organisation's assets and the documents necessary in order to liquidate the assets.
- c) The liquidator shall take the necessary steps to liquidate the debts of the Organisation from the available funds and any other monies realised from any assets of the Organisation. If the said funds and monies are insufficient to pay all creditors after the liquidator's fees and the expenses of the winding-up have been met, the sequence in which creditors shall be paid, subject to the provisions of sub-clause (e), be the same as that prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate and the liquidator's fees and the expenses of the winding-up shall rank in order of preference as though he/she were a liquidator of an insolvent estate and as though the expenses were the cost of sequestration of an insolvent estate.
- d) After the payment of all debts in accordance with sub-clause (c), the remaining funds, if any, shall be distributed by the liquidator amongst the members of the Organisation who were in good standing as at the date of dissolution and each member shall be awarded a share in proportion to the subscriptions actually paid by him/her in respect of twelve months immediately proceeding the said date.
- e) The Liability of the members for this Section shall be limited to the amount of subscription due by them to the Organisation in terms of this Constitution as at the date of dissolution.

29. ERRORS AND OMISSIONS

No defect arising from bona-fide error in the appointment of any member, official, board member or office-bearer shall invalidate proceedings in which such person takes part nor shall the accidental omission to despatch a notice of any meeting to any councillor, board member, or member invalidate any proceedings, and the Organisation and all persons shall be bound by any decision not withstanding such defect.

30. TRAVELLING AND SUBSISTANCE EXPENSES

When officials or any representative of any member of the Organisation authorised thereto, travel in connection with business affecting the Organisation their travelling and subsistence costs shall be paid on the scale as determined from time to time by the Executive Committee.

31. INDEMNITY

Subject to the provisions of this Constitution, a member shall not be held liable for any liabilities of the Organisation except in respect of outstanding subscriptions, entrance fees or levies instituted or imposed in accordance with the provisions of this Constitution. Every member of the General Council and Executive Committee and every official and employee of the Organisation shall be indemnified by the Organisation against all costs, loss and expense which any such member, official or employee may incur in the extension of his/her duties or charge unless these be incurred or occasioned by any wilful act or negligence of the person concerned and no member of the General Council, Executive Committee nor any official or servant of the Organisation shall be answerable for any act of negligence of any other or be

liable to compensate for or bear any loss, misfortune or damage which may be involved in the execution of this office unless it is due to his/her own wilful act or negligence.

32. AMENDMENTS
Section 95 (5)(v)

The provisions of this Constitution shall remain in force until altered, amended or repealed by the decision of at least $\frac{2}{3}$ (two thirds) of the members present at a meeting of the General Council. At least 14 (fourteen) days written notice of any proposed alteration, amendment or repeal shall be given to the members of the General Council.

CHAIRPERSON

GENERAL SECRETARY

DATE: _____

**THE SOUTH AFRICAN UNITED COMMERCIAL AND ALLIED EMPLOYERS'
ORGANISATION**

FEE STRUCTURE

1. INCEPTION FEE

Every application for membership shall (unless otherwise agreed upon) be accompanied by an inception fee of R150.00 (excluding VAT).

2. MONTHLY MEMBERSHIP FEE

The monthly membership fee shall be R300.00 (excluding VAT) for all members.

3. ORGANISED GROUPS OF EMPLOYERS / UNDERTAKING

The inception and membership fees for organised groups of employers / undertakings is negotiable only for that specific group. The membership fee will be negotiated annually.

CHAIRPERSON

GENERAL SECRETARY

DATE: _____