

NABC

CONSTITUTION

NATIONAL ASSOCIATION OF BARGAINING COUNCILS



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OF BARGAINING COUNCILS

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1. NAME

The name of the organization shall be the "NATIONAL ASSOCIATION OF BARGAINING COUNCILS" ('the NABC').

2. DEFINITIONS

2.1. Unless the context indicates otherwise:

"**Act**" means the Labour Relations Act (No.66 of 1995) as amended.

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

"**Committee Members**" means representatives elected to serve on the Associations Structures.

"**Day**" means any day including a Saturday, Sunday and Public Holiday.

"**Executive Council**" means the Council established in terms of clause 9.

"**Management Committee**" means the committee established in terms of clause 13.

"**Member**" means a Bargaining Council that is in good standing within the Association.

"**Representative**" means the representative elected in terms of clause 9.1.

"**Secretary**" means a natural person or juristic person appointed by the **Executive Council** to perform the functions and duties stipulated in clause 20.

2.2. Unless the context indicates otherwise:

- a. Words in the singular shall include the plural and vice versa.
- b. Reference to the male gender shall include the female gender and vice versa.

3. CORPORATE STATUS

3.1. The Association shall:

3.1.1. Be an organization that operates as a nonprofit organization

3.1.2. Have perpetual succession, notwithstanding any change in the number or identity of its Members from time to time.

4. OBJECTIVES

The objective of the Association is to promote, protect and further the interest of Bargaining Councils and its operations in this also ensuring collaboration between its members and relationships with entities and organizations that will enhance the objective of the Association.

5. THE POWERS AND FUNCTIONS

5.1. The powers and functions of the Association shall be to:

5.1.1. Provide training, legal advice, secretarial and administrative services.

5.1.2. Establish panels to provide for conciliation, arbitration and exemption services for the voluntary use by member Councils.

5.1.3. If needed, act as professional body for dispute resolvers within the industry and/or exclusively for member Councils.

5.1.4. Nominate an Executive Council, appoint a Management Committee and such other committees and sub-committees as it deems necessary.

5.1.5. Delegate any of its functions or powers to the Management Committee.

5.1.6. Consider matters of common interest between Members.

5.1.7. Make representations to the relevant Ministers, NEDLAC or any other appropriate forums concerning legislation or proposed legislation that may affect Bargaining Councils and/or the Bargaining Council System.

5.1.8. Exercise any other power that may be necessary or desirable to achieve the objective and facilitate the administration of the Association.

5.1.9. Sue and be sued in it's own name.

5.1.10. Own, hold and dispose of property (immovable and incorporeal) in its own name, independently of its Members.

5.2. No part of income or assets shall be paid, directly or indirectly, by way of dividend, donation or otherwise, to the Members of the Association and shall be applied solely towards the objectives stipulated in clause 4.

6. MEMBERSHIP

6.1. Membership of the Association shall be voluntary and open to all Bargaining Councils that are registered in terms of the Act.

6.2. Any other institution or forum with common goals wanting to join the Association may make formal application; acceptance will be at the discretion of the Executive Council.

6.3. An applicant to whom membership or re-admission as a Member is refused shall be provided with reasons for such refusal and shall be entitled to a refund if the applicant has already paid a membership fee.

6.4. Membership fees is not prorated and therefore if a member resigns or is suspended from the Association as per clause 8 of the Constitution, no levy will be refundable.

7. MEMBERSHIP FEES

7.1. At the Annual General Meeting of the Organization, the levy to be imposed will be considered and determine the fees payable.

7.2. Membership fees will be levied annually on a date to be determined by the Management Committee.

7.3. Levies will be payable within 30 days from date of being raised.

8. TERMINATION OR SUSPENSION OF MEMBERSHIP

8.1. A **Member** may be suspended or expelled from the Association by the Executive Council if it:

- a. fails to pay membership fees which are in arrears for a period of 30 (thirty) days from the date of demand by the Management Committee in writing, or
- b. infringes any of the terms of this Constitution; or
- c. acts in such a manner which is detrimental to the interests of the Association.

8.2. No Member may be suspended or expelled unless such Member has been afforded an opportunity to state his case at a meeting of the Executive Council. In this regard the Member must receive not less than 7 (seven) days' written notice from the Chairperson to appear before the Executive Council and of which such notice must also set out the nature of the complaints. A Member shall be entitled to present evidence in support of his case.

8.3. The decision of the Executive Council on the suspension or expulsion of a member shall be final and binding.

8.4. A Member shall cease to be entitled to any benefits, including but not limited to the right to vote, during meetings in the period in which:

8.4.1. Membership fees due to the Association are in arrears for a period of more than 2 (two) months; or

8.5.2. it is under suspension in terms of this Constitution.

8.5. A Member may resign from the Association by not renewing its membership or at any time during the year by giving written notice to the Secretary.

8.7. Membership may be terminated:

8.7.1. By a resolution to that effect adopted by the Executive Council after following due process on one or more of the following grounds:

- (a) Bringing the Association into disrepute;
- (b) Disrupting or undermining the functioning of the Association;
- (c) Preventing or trying to prevent the Association from furthering its aims and objectives.

8.7.2. A member who is dissatisfied with the resolution of the Association may lodge an appeal within 14 days from the day on which the resolution was communicated to the member. The Association shall, within 14 days of receiving the appeal, appoint a panel consisting of at least 3 people, to consider the appeal. The decision of the panel shall be final.

9. EXECUTIVE COUNCIL

9.1. The Members of the Association shall at the Annual General Meeting (AGM) nominate an Executive Council consisting of one representative per paid up member , who shall hold office until the next AGM.

9.2. The AGM shall elect its Chairperson and Deputy Chairperson from the representatives nominated to serve on the Executive Council. The Chairperson and Deputy Chairperson shall hold office for three years and may only be elected for a maximum of two terms.

10. POWERS AND FUNCTIONS OF THE EXECUTIVE COUNCIL

The function of the Executive Council is to ensure the Association reaches or upholds its objectives as contained in clause 4. and to carry out any functions and exercise any powers in terms of clause 5 of this Constitution.

The Executive Council shall act only on a decision reached by a simple majority of Representatives present at the meeting, with the Chairperson having a casting vote.

10.6. TREASURER

At the AGM the Association shall elect a treasurer. The Treasurer is responsible to ensure:

10.6.1. The effective and efficient management and administration of the financial affairs of the Association;

10.6.3. The efficient collection of revenues;

10.6.4. The prudent expenditure and investment of Association funds; and

10.6.5. The financial viability of the Association.

The Treasurer shall submit a full financial report every quarter to the Executive Council. The report shall include the income and expenditure as well as all the bank balances of the Association.

11. MEETINGS OF THE EXECUTIVE COUNCIL

The Executive Council shall meet at least quarterly or more frequently, if necessary.

At least 1/3 of the appointed representatives must be present at any meeting of the Executive Council in order to constitute a quorum.

If within thirty minutes of the time fixed for any meeting, a quorum is not present, the meeting shall, subject to written notice to representatives by the **Secretary**, stand adjourned to a date to be determined and at such adjourned meeting the representatives present shall constitute a quorum.

12. SPECIAL EXECUTIVE COUNCIL MEETING

12.1. The Association may call a special Executive Council meeting from time to time, if and when required.

12.2. The Secretary must prepare a written notice of this Special Executive Council Meeting, showing the date, time and venue and the business to be transacted, and must send the notice to each representative email at least 7 days prior to the meeting. However, the Chairperson may authorise shorter notice for a special meeting.

12.3. A 1/3 of representatives of the Executive Council form a quorum

12.4. Any decision by a majority of the representatives of the Executive Council, will be the binding decision of the Executive Council.

12.5. If within thirty minutes of the time fixed for any meeting, a quorum is not present, the meeting shall, subject to written notice to representatives by the Chairperson, stand adjourned to a date to be determined and at such adjourned meeting the representatives present shall constitute a quorum.

13. MANAGEMENT COMMITTEE

13.1. The Association will have a Management Committee that consists of the Chairperson, Deputy Chairperson, Treasurer and 2 representatives elected by the Executive Council. Representatives appointed by the Executive Council will hold office for three years from the date of election. The Management Committee shall have the right to co-opt additional representatives that may be needed from time to time to assist the Committee in fulfilling the objectives of the Association. Co-opted persons shall have no voting rights.

13.2. A member of the Management Committee, whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the Management Committee until that representative's successor assumes office.

13.3. A member of the Management Committee -

- a. may resign from the committee at any time in writing to the **Chairperson**;
- b. must vacate office immediately -

- (i) in the case of resignation, when the resignation takes effect; or
- (ii) upon ceasing to be a representative on the Management Committee.

13.4. If the seat of a member of the Management Committee becomes vacant, the Executive Council must fill the vacancy for the balance of the term of office.

14. **POWERS AND FUNCTIONS OF MANAGEMENT COMMITTEE**

Carry out any functions and exercise any powers delegated to it by the Executive Council or in terms of clause 5 of this constitution.

The Management Committee may exercise and perform the powers, functions and duties of the Executive Council relating to the supervision and control of the everyday management and administration of the Association. In addition, the Management Committee may -

- a. investigate and report to the **Executive Council** on any matter;
- b. do anything necessary to give effect to decisions of the **Executive Council**;
- c. exercise and perform any power, function and duty that is conferred or imposed on the **Management Committee** by or in terms of this constitution or that is delegated by the **Executive Council**;

15. **MEETINGS OF THE MANAGEMENT COMMITTEE**

15.1. The Management Committee must hold an ordinary meeting at least once every two months.

15.2. A special meeting of the Management Committee -

- a. may be called at any time by the Chairperson with a view to disposing of urgent business; and

- b. must be called by the Chairperson within 7 days of receiving a request for that purpose, stating the purpose of the special meeting and signed by not less than two representatives of the Management Committee.

15.3. The **Secretary** must prepare a written notice of every Management Committee

15.3.1. A notice containing the meeting details; indicating the date, time and venue and the matters to be discussed must be sent to each representative by email at least 7 days prior to the meeting. However, the Chairperson may authorize shorter notice for a special meeting.

15.3.2. A 1/3 of representatives of the Management Committee form a quorum at any meeting

15.3.3. Any decision by a majority of representatives of the Management Committee, will be the decision of the Management Committee

16. **OTHER COMMITTEES**

16.1. The Executive Council may appoint other committees to perform any of its functions, including investigating and reporting to the Executive Council on any matter.

16.2. A 1/3 of the total number of the members of a committee forms a quorum.

16.3. The provisions of clause 12 relating to the calling and conduct of meetings, read with the changes required by the context in the constitution, apply to meetings of any committee contemplated in this clause.

17. **ATTENDANCE AT MEETINGS**

In the event of a representative failing to attend two consecutive meetings of the Executive Council, without notifying the Secretary beforehand the Management Committee or any sub-committee to which he/she has been appointed, shall, on request by the Secretary, submit written reasons for the non-attendance.

The Executive Council or if delegated to the Management Committee may after giving due consideration to the reasons submitted, terminate the appointment of such representative to –

- a. the sub-committee if the non-attendance relates to a sub-committee, or
- b. the Executive Council if the non-attendance relates to meetings of the Executive Council.

18. MEETINGS

18.1. The Association shall hold an AGM within six months of the close of the financial year, provided that the Management Committee may extend such period of six months by a period not exceeding a further three months. Meetings shall be held on such dates, times and places as may be determined by the Management Committee.

18.2. Every Member of the Association shall be entitled to nominate three (3) Office Bearers/Officials of that Bargaining Council to attend the AGM.

18.3. At the AGM the Association must -

- a. consider the Audited Annual Financial Statements of the Association and the auditor's/ management report on those statements;
- b. consider and approve, with or without any amendments, the budget of the Association for the next financial year as prepared in terms of clause 18;
- c. receive a detailed report from the Chairperson on the operations of the Association; and
- d. Elect a Chairperson, Deputy Chairperson or members of the Management Committee if applicable

18.4. General provisions for meetings of the Association –

18.4.1. The Secretary must capture accurate minutes of all of the Associations proceedings.

18.4.2. At every meeting of the Association –

- a. the Secretary must present the minutes of the previous meeting, unless they were previously circulated; and
- b. after the minutes have been confirmed, with or without any amendments, the Chairperson must sign the minutes.

18.5. A motion proposed at a meeting may not be considered unless it has been seconded. The Chairperson may require a motion to be submitted, in writing, in which case the Chairperson must read the motion to the meeting.

18.6., all motions must be decided by a majority of votes of those present and entitled to vote and voting must be by show of hands or secret ballot as directed by the Chairperson.

18.7. If any question which the Management Committee considers to be extremely urgent arises between meetings of the Association, and it is possible to answer that question by a simple 'yes' or 'no', the Executive Council may direct the Secretary to cause a vote of the representatives on the Association which may be adopted only if it is supported by at least two-thirds of the total number of representatives who are entitled to vote. This may be conducted on a “round robin” basis.

18.8. The Executive Council may adopt general rules of procedure for its meetings and for the meetings of the Association and its other committees. However, in the event of any conflict between those rules and the provisions of this Constitution, the provisions of this Constitution will prevail.

19. FINANCES

19.1. The NABC must open and maintain an account in its name with a bank of its choice that is registered in the Republic, and –

- a. deposit should be transferred electronically. If cash is received, such must be deposited into the NABC bank account within three days of receipt; and
- b. pay all operating expenses of and make all payments on behalf of the NABC by electronic payment.

19.2. The NABC may invest any surplus funds not immediately required for current expenditure or contingencies, in –

- a. savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
- b. internal registered stock as contemplated in section 21 of the Exchequer Act, 175 (Act 66 of 1975).
- c. a registered unit trust;

19.3. All payments from the NABC funds relating to normal operating expenses must:

- a. be approved by the Management Committee;
- b. be made by electronic payment on the NABC's bank account and approved by the duly two designated signatories of the bank account; and
- c. have a payment requisition form that is authorized by two signatories before the payment is made

19.4. The authorized signatories are:

- a. Chairperson
- b. EXCO Member

19.5. At the end of each quarter of the financial year, the Treasurer must prepare a statement showing the income and expenditure of the NABC for that quarter, and another reflecting its assets, liabilities and financial position as at the end of that period.

19.6. The financial year of the NABC begins on 1 January in each year and ends on 31 December of the same year.

19.7. Not later than 3 months after the end of the financial year, the **Treasurer** must prepare a statement of the NABC's financial activity in respect of that financial year, showing -

- a. all moneys received for the NABC -
- b. in terms of any collective agreement published in terms of the **Act**; and
- c. from any other sources;
- d. expenditure incurred on behalf of the NABC, under the following heads -
- e. remuneration and allowances of officials and employees;
- f. office accommodation;
- g. printing and stationery requirements; and
- h. miscellaneous operating expenditure; and
- i. the NABC's assets, liabilities and financial position as at the end of the financial year.

19.8. The annual financial statements must be signed by the **Treasurer** and counter-

- a. signed by the Chairperson, and submitted to an auditor for auditing and preparing a report for the NABC.
- b. Certified copies of the audited statements and the auditor's report must be made available for inspection at the office of the NABC to **members**, who are entitled to make copies of those statements and the auditor's report.

19.9. Every year the **Treasurer** must prepare, for submission to the AGM, a budget for the for the next financial year.

19.10. At the AGM, the NABC must appoint an auditor / financial accountant to perform the audit of the NABC for the next financial year.

20. OFFICIALS AND EMPLOYEES

20.1. The Executive Council may appoint a Secretary who will be responsible for the administrative and secretarial work arising from the functioning of the Association and for performing the functions and duties imposed on the Secretary, in terms of this Constitution. The functions will also include -

- a. to keep and maintain the books and records of account that the Association may direct in order fully to reflect the financial transactions and state of affairs of the Association;
- b. to attend all meetings of the Association and its **Executive Council** record the minutes of the proceedings at those meetings;
- c. to conduct the correspondence of the Association, keeping originals of letters received and copies of letters sent;
- d. at each meeting of the Association, to read significant correspondence that has taken place since the previous meeting;
- e. to bank all moneys received on behalf of the Association within three days of receipt;
- f. whenever required by the Association, but at least once in every quarter of the financial year, to submit to the Association statements of its financial affairs and position;
- g. to prepare, for submission at the AGM of the Association, a budget for the next financial year and an annual report summarizing the key activities of the Association and
- h. .

20.2. The Secretary must -

retain a copy of the confirmed and signed minutes of every meeting of the Association, the Executive Council and any other committee of the Association in safe custody at the office of the Association for a period of at least three years from the date those minutes were confirmed;

retain every financial statement referred to in sub-clause 19.7. and all vouchers and records relating to statements of that nature, for at least three years from the date of the statement.

20.3. The Executive Council may appoint any additional officials and any number of employees that may be necessary to assist the Secretary in performing the functions and duties of that office.

21. LIABILITY OF MEMBERS, REPRESENTATIVES AND EMPLOYEES

21.1. The Secretary, any representative, or employee of the Association, shall not be liable for any act or omission of any committee member, employee of the Association, or any loss or expense suffered by the Association in consequence of any absence of, or any defect in, any title to any property acquired by order of the Executive Council for or on behalf of the Association; or for any absence of or defect in, any security upon which any of the monies of the Association shall be invested; or for any loss or damage arising from the insolvency or default act of any person with whom monies, securities or assets shall be deposited; or for any loss or damage occasioned by any error of judgement or oversight on the part of such a committee member or employee; or for any loss or damage occasioned by any advice given or recommendation made by such committee member, or employee; or for any other loss, damage or misfortune of whatsoever nature, which shall happen in or in relation to the execution of his office or employment unless the same be attributable to his own dishonesty, fraud, breach of trust, willful default or willful breach of duty.

21.2. No Bargaining Council, or any Employer or Employers' Organisation, or Trade Union that is party to such Council, shall be liable for any of the obligations of the Association by reason only that it is a member of the Association (in the case of a Bargaining Council) or a party to such Bargaining Council.

22. AMENDMENTS TO CONSTITUTION

22.1. The Constitution may not be altered, amended or substituted except at a general meeting of the members of the Association specifically convened for the purpose of which not less than 30 days' notice has been given.

22.3. Two-thirds of the total membership shall form a quorum in the event that an amendment of this Constitution is sought by a proxy or resolution and an amendment shall in such case be effected by way of a simple majority vote. Proxy may only be given to the Chairperson, this proxy must also contain the member's position/ voting preference on the matter.

23. INTERPRETATION AND APPLICATION OF CONSTITUTION

Disputes regarding the interpretation and/or application of this Constitution must be referred to a three-person Disputes' Committee appointed by the Executive Council.

23. WINDING UP/DISSOLUTION

23.1. The Association may be wound-up or liquidated by a resolution passed by not less than two-thirds of the members of the Association present at a special meeting called for the purpose by notice specifying the resolution proposed to be taken at such meeting.

23.2. Twenty one (21) days written notice shall be given of such special meeting.

23.3. On the dissolution of the Association, the assets of the Association shall not be distributed among the Members, but shall be handed over to any non-profit making body nominated by the Association in writing, which authority may be delegated to the Management Committee.