

**CONSTITUTION
of
MISA**

(Registered under the Labour Relations Act, 1995)

CLAUSE 1: NAME

The name of the Organisation is “Motor Industry Staff Association (MISA)”.

CLAUSE 2: DEFINITIONS AND PROCEDURE

- (1) **“Act”** means the Labour Relations Act, 1995, as amended from time to time.

- (2) (a) **“Affiliate Member”** means a member employed in an “allied industry or establishment”, or as an indentured, apprentice or as a registered learner in a S.A.Q.A. approved training scheme or in another approved technical position in the Motor Industry, and notwithstanding anything to the contrary contained herein, is admitted to membership, and shall in all respects be entitled to the benefits of membership; provided that he shall, subject to the provisions of CLAUSE 5(B) not be entitled –
 - (i) to transfer from affiliate to any other class of membership provided for in this Constitution, unless he has acquired journeyman status, or has been admitted as a Continuation Member of the Union;

 - (ii) to be elected to any office existing in terms of this Constitution.

Affiliate membership of the Union shall cease:

- (i) In the event of the member's resignation, provided that 14 calendar days written notice of such intention is given to the Union; or
 - (ii) In the event of the withdrawal of the affiliate class of membership by resolution of the N.E.C., provided that at least 30 days written notice of such intention is given to the member, or group of members as the case may be, in accordance with procedures approved by the N.E.C.;
 - (iii) In the event of a member's subscriptions being more than 13 weeks in arrears, in which case such member shall forfeit all claims to any benefits he may have been entitled to as an affiliate member.
- (b) **“Allied Industry or Establishment”** means a motor vehicle assembly establishment referred to in Sub-Clause 2(4)(a) and (i), or an establishment mainly or exclusively engaged in refining and/or distributing oil, petroleum and related products, which does not fall within the jurisdiction of the Motor Industry Bargaining Council as defined in the certificate of registration issued to the Council in terms of the Act, on the date of approval of this class of membership.
- (c) **“Associate Member”** means a member who is director of a company or a member of a Close Corporation in the Motor Industry and is by virtue thereof and, subject to the right of appeal in terms of Clauses 5 and 15 of this constitution, notwithstanding anything to the contrary contained herein, not entitled -
- (a) to receive notices and/or attend any meetings of the Union;
 - (b) to receive any correspondence or literature by the Union to members;
 - (c) to vote on any matters affecting the Union's policy, functions, objects and/or the terms of conditions of employment in the Industry and/or matters falling within the ambit of the Act;

- (d) to be elected to any office existing in terms of this constitution; but who is in all other respects entitled to the benefits of membership and subject to the provisions relevant to membership of the Union.
- (3) **“Continuation Member”** means an active member, an associate member or an affiliate member who retires on attainment of the pension age, or who retires earlier due to ill health, and elects to continue his membership of the Union for the purpose of participating in any funds of the Union established in pursuance of Clause 4(9), and pays the subscriptions and fees prescribed in Clause 6(1) and (3) hereof, provided:
- (a) the member’s written application is received within 13 weeks, reckoned from the date of retirement from active employment;
 - (b) all applications received after the expiry of 13 weeks, shall be subject to approval by the Chief Executive Officer of the Union on such conditions as he may in his entire discretion impose upon the applicant;
 - (c) the member has contributed to the Union for not less than 15 consecutive years or 20 years in the aggregate, of which the last five years shall be consecutive years immediately preceding the date of retirement.
 - (d) Notwithstanding anything to the contrary contained in this Constitution, Continuation Membership shall cease if the subscriptions and fees due to the Union are more than 13 weeks in arrears, in which event he shall forfeit all claims to any benefits to which he may have been entitled as a Continuation Member.
 - (e) A Continuation Member shall not be eligible to remain in any Office, or to be elected to any Office in the Union, shall have no voting power, or be regarded as a member for the purposes of the Labour Relations Act, 1995.
- (4) **“Motor Industry” or “Industry”** means, without in any way limiting the ordinary meaning of the expression and subject to the provisions of any demarcation determination made in terms of Section 62 of the Labour Relations Act, 1995 includes:

- (a) assembling, erecting, testing, remanufacturing, repairing, adjusting, overhauling, wiring, re-wiring, upholstering, spraying, painting and/or reconditioning carried on in connection with :
 - (i) chassis and/or bodies of motor vehicles;
 - (ii) internal combustion engines and transmission components of motor vehicles;
 - (iii) the electrical equipment connected with motor vehicles, including radios;
 - (b) automotive engineering;
 - (c) auto valet establishments;
 - (d) repairing, vulcanising and/or retreading tyres;
 - (e) repairing, servicing and/or reconditioning batteries for motor vehicles;
 - (f) the business of parking and/or storing motor vehicles;
 - (g) the business conducted by filling and/or service stations;
 - (h) the business carried on mainly or exclusively for the sale of motor vehicles and/or motor vehicle parts and/or spares and/or accessories (whether new or used) pertaining thereto, whether or not such a sale is conducted from premises which are attached to a portion of an establishment wherein is conducted the assembly of and/or repairs to motor vehicles;
 - (i) the business of motor graveyards;
 - (j) the business of assembly establishments;
 - (k) the business of manufacturing establishments wherein are fabricated motor vehicle parts and/or spares and/or accessories and/or components thereof;
 - (l) vehicle body building;
 - (m) the sale of tractors, agricultural and irrigational equipment (not connected with the manufacture thereof) in the Republic of South Africa, but excluding, the Magisterial District of Kimberley, in respect of the sale of -
 - (i) agricultural and irrigation equipment; and
 - (ii) tractors, except when undertaken by establishments substantially engaged in the sale and/or repair of other motor vehicles.
- (5) “**N.E.C.**” means National Executive Council and, unless inconsistent with the context, any reference to a member of the N.E.C. shall

include any alternate acting for and on behalf of a member of the N.E.C. in terms of this constitution.

- (6) **“Office, stores, sales and clerical employees”**, without in any way limiting the ordinary meaning of the expression means all employees other than apprentices, journeymen and similar workshop employees.
- (7) **“Remuneration”** means any payment made and/or due to an employee arising from his employment.
- (8) **“Technical Employees”** means any employee other than an office, stores, sales or clerical employee.
- (9) In this constitution, unless inconsistent with the context, words used in the singular number shall include the plural, and vice versa, and words implying the masculine gender shall include the feminine.
- (10) Any duty to be carried out by any specific official and/or employee of the Union in terms of this constitution may be carried out by any other person authorised thereto by the N.E.C. should such official and/or employee for any reason be unable to attend to such duty, provided that such delegation of duty is not in conflict with any of the terms of the Act.
- (11) It shall be incumbent upon the Presiding Officer to seek consensus in regard to any decision and/or action taken or decided upon by the N.E.C. at a meeting of the N.E.C. failing which resolutions adopted shall be valid and binding only if adopted and/or approved by at least two thirds of the votes of the members of the N.E.C. who are present or represented at such meeting, and any decision and/or action taken or decided upon by the N.E.C. in a postal vote and/or postal ballot shall be valid and binding only if adopted and/or approved by at least two thirds of all the members of the N.E.C.. The terms and conditions of this sub-clause shall apply *mutatis mutandis* in respect of any decision and/or action taken, or decided upon, by a Regional Committee.
- (12) Whenever the N.E.C. deems it necessary to exercise any power in the affairs, control and/or administration of any particular Region, such action shall be taken only after the matter has been referred to the Committee of the Region concerned for such comment and representations thereon as it may wish to lodge with the N.E.C.

- (13) Notwithstanding anything to the contrary contained herein, in any election of office-bearers in terms of this constitution the nominees up to the required number securing the highest number of votes shall be duly elected. In the event of such highest number of votes having been cast equally in favour of two or more nominees, a re-election shall be conducted in respect of the nominees concerned. No ballots shall be necessary if only sufficient candidates have been nominated to fill the relevant offices in any election, and such nominees shall then be deemed to have been duly elected.

CLAUSE 3: STATUS AND HEAD OFFICE

- (1) The Union shall be a body corporate with perpetual succession capable of entering into contractual and other relations and of suing and being sued in its own name, and shall be an organisation not for gain.
- (2) The Union's Head Office shall be at such place as may be decided by the N.E.C.

CLAUSE 4: OBJECTS

The objects of the Union are:

- (1) To regulate relations between members and their employers including any Employers' Organisation and to protect and further the interests of members in relation to their employers;
- (2) To promote the interest of members and to plan and organise its administration and lawful activities;
- (3) To encourage the settlement of disputes of members and employers or Employers' Organisations by conciliation, mediation, arbitration or other legal means;
- (4) To promote, support or oppose, as may be deemed expedient, any proposed legislative or other measure affecting the interests of members;
- (5) To use every legitimate means to induce all persons who are eligible for membership to become members;

- (6) To assist members in obtaining employment;
- (7) To provide when deemed necessary, legal assistance to members in respect of their employment and/or Union matters, and to represent members in any conciliation, mediation, arbitration, or court hearing.
- (8) To endeavour to obtain direct representation on public bodies, Bargaining Councils, boards and/or other bodies which are or may be established, if deemed necessary;
- (9) To establish and/or administer and/or finance any funds for the benefit of its members or section of its members and/or their dependants; provided that no fund which is not subject to control under any law shall be established until the rules governing such fund have been incorporated in this constitution or any by-laws framed thereunder.

Notwithstanding the foregoing the Union may, at the discretion of the National Executive Council, set aside a portion of its funds and from time to time augment the amount so set aside, for the purpose of making ex gratia retrenchment and/or funeral/benefit payments to members and/or their dependants. The conditions subject to which the ex gratia retrenchment and/or funeral/benefit payments may be made, the amount to be paid in each instance, the circumstances under which payments shall cease and again be resumed shall be at the sole discretion of the National Executive Committee as determined by that body from time to time.

- (10) To advance to any member, its dependants, heirs, legatees and/or nominees, from the Union's or a Region's funds, any amount due from any Fund established by the Union for the benefit of members, subject to direct reimbursement from such Fund to the Union or Region of the amount advanced.
- (11) To further the interests of members and of the Union by collaborating with any association, organisation, institution, authority or body and, pursuant thereto, to make any financial grant or loan to any such authority or body;
- (12) To take any necessary or proper steps in Parliament or with the authorities, national, local, municipal or otherwise, or any place in which the Union may have interests;

- (13) To carry on any negotiation or operation for the purpose of directly or indirectly carrying out the objects of the Union or furthering the interests of its members, and to oppose any steps taken by any other association, trade union, body or person which may be considered likely, directly or indirectly, to prejudice the interests of the Union or its members;
- (14) To affiliate with and participate in the affairs of any International Workers' Organisation or the International Labour Organisation or a Registered Trade Union Federation;
- (15) To borrow, invest, lend, subscribe or donate money for the furtherance of the objects of the Union.
- (16) To conclude a collective Agency Shop agreement, in accordance with the provisions of Sections 25, 98 and 100(b) and (c) of the Labour Relations Act, 1995 for the sole purpose of advancing and protecting the socio-economic interests of employees in the Motor Industry, or to conclude a collective Bargaining Fund agreement for the same purpose.
- (17) To do such other lawful things as may appear to be in the interests of the Union or its members.

CLAUSE 5: MEMBERSHIP

A. ORDINARY AND ASSOCIATE MEMBERSHIP

- (1) All persons engaged as an employee in the Motor Industry who satisfy the qualification requirements stipulated in the By-Laws to this Constitution shall be eligible to apply for ordinary membership of the Union, provided that any such employee who is a director of a company or a member of a Close Corporation in the Industry may be admitted as an associate member.
- (2) Application for admission or re-admission to membership shall be lodged in writing with the Manager of the Region within which the applicant is employed, and shall furnish such particulars or proof of qualifications as may be determined by the N.E.C.; provided that a person who had been a member in good standing but whose membership terminated as a result of him ceasing to be employed in

the interests outlined in sub-clause (1) shall, if his original application for membership is in the possession of the Region concerned, not be required to re-apply for admission to membership on recommencing employment in the relevant interests. Such a person shall be regarded as having been re-instated as a member as from the date on which his first subscription is received after recommencing employment in the relevant interests; provided that such automatic re-instatement shall not apply to any person against whom disciplinary measures were imposed in terms of Clause 15 of this constitution.

- (3) Applications for admission or re-admission to membership, shall be granted with effect from the date of application unless otherwise determined by the Regional Committee concerned.
- (4) Subject to the provisions of sub-clause (2), every application for membership shall be considered by the Regional Committee concerned within seven weeks of receipt thereof by the Manager of the Region; provided that the Regional Committee concerned may for any good reason extend such period to a maximum of thirteen weeks.
- (5) In the event of membership being refused by a Regional Committee, the applicant concerned shall be provided with reasons for such refusal and shall be entitled to appeal in person to the Regional Committee at its next meeting when he shall be entitled to state his case. If the decision of the Regional Committee again is unfavourable at such meeting, the applicant may appeal, through the Regional Committee concerned, to the N.E.C., the decision of which shall be final.
- (6) The Manager of the Region shall provide each member of the Region concerned with a certificate of membership or membership card reflecting the member's name and membership number, the name of the Region and such other particulars as may be deemed necessary by the N.E.C.
- (7) Every member shall, within fourteen days of any change of his residential address or place of employment, advise the Manager of the Region of which he is a member, in writing, of the particulars of such change. In the event of a member failing to comply with the terms of this sub-clause the Regional Committee concerned shall be entitled to take such disciplinary action in terms of this constitution as it may determine.

- (8) In the event of a member ceasing to be employed in the Region of which he is a member and taking up employment in another Region, he shall automatically cease to be a member of the first-mentioned Region and, on production of his certificate of membership and proof that he is in good financial standing with the firstmentioned Region, be eligible to be enrolled as a member of the other Region.

B. AFFILIATE MEMBERSHIP

- (i) All persons engaged as an employee in an allied industry or establishment as defined in Clause 2(a) hereof, and all persons employed as apprentices/learners or in other approved technical positions in the Motor Industry shall only be eligible for affiliate membership of the Union on such terms and conditions as determined by the N.E.C. from time to time, which terms and conditions shall be stipulated in the By-Laws to this Constitution.
- (ii) Notwithstanding anything to the contrary contained herein the N.E.C. shall incorporate rules in the By-Laws to this Constitution governing the appointment and functioning of committees in allied industries or establishments if deemed necessary, to regulate relations between affiliate members and their employers.

CLAUSE 6: SUBSCRIPTIONS

- (1) Every member shall pay a basic subscription each week, the actual amount to be determined by the N.E.C. from time to time, and stipulated in the By-Laws to the Constitution. Payment shall be made to the Union and/or such person, company or body as may be determined by the N.E.C.
- (2) Subject to the terms of any law and/or agreement which may be or become binding upon members and/or their employers and which may be in conflict with the terms of this sub-clause, a member shall be exempt from the payment of subscriptions in respect of every week of unemployment or inability to work on account of illness, whichever may apply; provided that the N.E.C. may place a limitation to such period of exemption, if deemed necessary.
- (3) Notwithstanding the provisions of sub-clause (1) of this clause, members shall also be required to pay such additional fees as may be

prescribed by the rules governing any fund established in terms of this constitution.

CLAUSE 7: NATIONAL EXECUTIVE COUNCIL

- (1) The management of the affairs of the Union shall be vested in the National Executive Council (“N.E.C”).
- (2) (a) The N.E.C. shall numerically be constituted as follows; provided that technical members shall only be represented by qualified journeymen :

| | Office Stores Sales and Clerical Members | Technical Members |
|----------------------------|---|----------------------|
| ➤ Eastern Cape Region | 2 | 1 |
| ➤ Natal Region | 2 | 1 |
| ➤ Freestate/N.C. Region | 2 | 1 |
| ➤ Northern/Highveld Region | 5 | 2 |
| ➤ Western Province Region | 3 | 1 |
| | 14 | 6 |

TOTAL

20

- (b) The N.E.C. shall consist of the Chairman and Vice-Chairman of each Region together with such additional member(s) from the respective groups as may be required to give effect to Clause 2(a) hereof; provided that the terms of this paragraph shall cease to apply where the Chairman or Vice-Chairman vacates his office on the N.E.C. in terms of sub-clause (7) hereof, but continues to hold the office of Regional Chairman or Vice-Chairman, in which event such vacancy on the N.E.C. may be filled in terms of sub-clause 6(b) hereof.

- (3) Members of the N.E.C. shall be elected by ballot of the members of the respective Regional Committees at the Regional committee meeting following each annual general meeting, and shall hold office for a period of three years and thereafter, until successors have been elected to replace them or until they cease to hold office for any other reason, whichever is the earlier.
- (4) Nominations of candidates for election as members of the N.E.C. in terms of sub-clause (2)(b) hereof shall be confined to members of the respective Regional Committees, and shall be lodged by members of the respective Regional Committees before or at the Regional Committee Meeting following each Annual General Meeting.
- (5) The Regional Committee members of each Region who are not members of the N.E.C. in terms of sub-clause (2) of this clause shall *ipso facto* constitute a panel of N.E.C. alternates to each of the N.E.C. members from their Region, and may be called upon to act for and on behalf of any such N.E.C. member in his absence.
- (6)
 - (a) A vacancy occurring on the N.E.C. in respect of the members referred to in sub-clause (2) (a) of this clause by virtue of a Regional Chairman or Vice-Chairman ceasing to hold such Regional office, shall be filled automatically by the election to fill such latter office in terms of sub-clause (10)(5) (a) hereof;
 - (b) In the event of a vacancy occurring on the N.E.C. the Regional Committee shall elect a member by ballot from among their number to fill the unexpired portion of the relevant term of office. Upon completion of the relevant term of office such vacancy shall be dealt with in accordance with the provisions of Clause 7(3) and (4) hereof.
- (7) A member of the N.E.C. shall vacate such office in any one of the following circumstances:
 - (a) On resigning by giving seven days' notice in writing to the Committee of the Region which he represents and to the Chief Executive Officer;
 - (b) On suspension or expulsion from membership of the Union;
 - (c) On absenting himself from two consecutive meetings of the N.E.C. without such absence being approved by the N.E.C.;

provided that the conditions hereof shall apply *mutatis mutandis* in the case of an alternate who is required to attend such meetings in place of his principal on the N.E.C.;

- (d) On ceasing to be a member of the Union or on ceasing to be employed in the sector;
- (e) On ceasing to be a Regional Committee member.
- (f) On suspension or expulsion by the N.E.C. where such member is found guilty by the N.E.C. of -
 - (i) conduct damaging to and/or calculated to damage the status of the Union, the Industry or trade unions generally; and/or
 - (ii) conduct damaging to and/or calculated to damage the status of any member, office-bearer or official of the Union; and/or
 - (iii) insulting or interfering with any office-bearer or official of the Union in the execution of his duties; and/or
 - (iv) infringing any of the terms of this constitution willfully.
- (8) The N.E.C. shall meet at least once in every two years and special meetings of the N.E.C. shall be convened:
 - (a) within thirty days of receipt by the Chief Executive Officer of a written requisition for such meeting, signed by at least five N.E.C. members representing at least two Regions;
 - (b) if deemed necessary by the President and Vice-Presidents.

The President shall determine the place and date and time of every N.E.C. meeting.

- (9) The Chief Executive Officer shall notify members by registered post or acknowledged delivery of the place, date and time of a meeting of the N.E.C. and shall attach agenda to such notices which must be issued not less than fourteen days before the date of the meeting and, in the case of a special meeting, not less than seven days before the date of such meeting.

- (10) The quorum for a meeting of the N.E.C. shall be fifteen members in person and by proxy, including representation of at least one member in person or by proxy from each Region. If, after sixty minutes of the time fixed for a meeting, a quorum is not constituted in terms of this sub-clause, the meeting shall be cancelled and a new meeting shall be convened in the manner prescribed herein.
- (11) Every proposal to the N.E.C. shall be seconded before being put to the vote at a meeting and such vote shall be decided by a show of hands, unless a secret vote or postal vote is demanded by any member before the vote is conducted. If the voting is to be in secret each member who is entitled to vote at the meeting shall be given one blank voting paper in respect of each vote he is entitled to cast and he shall record his vote thereon by means of such mark as may be determined by the presiding office-bearer. Every member of the N.E.C., including the presiding office-bearer at a N.E.C. meeting, shall have one deliberative vote.
- (12) Any N.E.C. member, or alternate attending a meeting of the N.E.C. in place of his principal, shall, in addition to his own voting power be entitled to vote by proxy for any other member who is unable for any reason to attend and who is not represented at such meeting by an alternate. The instrument appointing such member shall be in writing, signed by a member making such appointment, and shall be tabled immediately the meeting has been declared open for business.
- (13) Minutes of the proceedings of a meeting of the N.E.C. shall be issued to N.E.C. members when they have been compiled, laid before the next meeting of the N.E.C. and, if accepted as correct, be confirmed by the signature of the office-bearer presiding at such meeting.
- (14) The N.E.C. shall, without derogation from any other powers conferred upon it by this constitution, have power:
 - (a) Subject to the provisions of clauses 8(8) and 10(16) hereof, whichever is applicable, to engage or dismiss any employee of the Union and to determine his remuneration and duties;
 - (b) To appoint any committee it may deem fit for the purpose of investigating and reporting on any matter referred to it by the N.E.C. and to obtain such legal and/or other advice as may be necessary;

- (c) To vary, set aside or repeal any decision of any committee created in terms of this constitution where, in its opinion, such committee had deviated from a stated national policy of the N.E.C.
- (d) To vary, set aside or repeal any decision of a Regional general meeting where, in its opinion, such meeting had deviated from a stated national policy of the N.E.C.; provided that such action shall be of no force or effect if a majority of the total number of members present vote against the action at general meetings of all the Regions;
- (e) To institute or defend legal proceedings on behalf of the Union, any member, office-bearer or official of the Union;
- (f) To acquire, either by purchase, lease or otherwise, any movable or immovable property on behalf of the Union and to sell, let, mortgage or otherwise deal with or dispose of any movable or immovable property belonging to Union.
- (g) To open and operate accounts with registered banks and financial institutions, and to invest funds of the Union as deemed fit;
- (h) To advance loans or make grants to any association, organisation, institution or authority in the furtherance of the interests of the Union or its members, provided that any such loan or grant in excess of ten thousand rand shall be authorised by the members of the Union at Regional meetings;
- (i) To advance to any member, his dependants, heirs, legatees and/or nominees from the Union's funds, any amount due from any Fund established by the Union for the benefit of members, subject to direct reimbursement from such Fund to the Union of the amount advanced;
- (j) To establish or to disestablish Regions and to define or amend any definition of the area of jurisdiction of any Region;
- (k) To deal with and decide upon any matter of procedure arising in the affairs of the Union which is not specifically provided for in this constitution or, if provided for, and ambiguous in any

manner, to determine the interpretation that shall be applied thereto;

- (l) To enter into such agreements with similar Unions or associations and organisations as may be deemed by the N.E.C. to be in the interests of the Union or its members;
 - (m) To do all such lawful things as may be necessary to carry out the objects of the Union, including the issuing of By-Laws and/or rules for the purpose of facilitating the proper functioning and administration of the affairs of the Union;
 - (n) To elect a Chairman to preside over meetings of the N.E.C. in the absence of the President and Vice-Presidents;
 - (o) To arrange and/or finance and/or contribute to such social and/or other function as may be deemed by the N.E.C. to be in the interests of the Union and/or its members;
 - (p) To do such other lawful things as in the opinion of the N.E.C. shall be in the interests of the Union or its members.
- (15) If any matter arises which in the opinion of the President is of urgency, he may authorise a postal vote of N.E.C. members to be conducted on such matter.

CLAUSE 8 : NATIONAL OFFICE-BEARERS AND OFFICIALS

- (1) The N.E.C. members shall elect a President, a Senior Vice-President and a Second Vice-President for the Union, by ballot, from among their number as soon as is practicable after the 31st August in every third year.
- (2) Nominations of candidates for election to the offices of President and Vice-Presidents shall be confined to members of the N.E.C. and shall be called for by the Chief Executive Officer to be lodged with him in writing by N.E.C. members before or as soon as practicable after the termination of the terms of office of the relevant office-bearers.
- (3) The President and Vice-Presidents shall, subject to the provisions of clauses 8(5) and 18 of this constitution, hold office for three years and

thereafter only until the date and time of the elections of their successors and shall be eligible for re-election.

- (4) In the event of a vacancy for any reason occurring in the office of President or Vice-Presidents, a ballot of members of the N.E.C. shall be conducted for the election of a N.E.C. member to fill such vacancy for the period of the unexpired portion of the term of office of the member causing such vacancy, subject *mutatis mutandis* to the terms of sub-clause (2) hereof, provided that the Senior Vice-President, or if his office is vacant, the Second Vice-President, shall assume the vacant office of President if the period of the unexpired portion of the term of such latter office is less than one year.
- (5) The President and/or Vice-Presidents shall vacate their respective offices on resigning by giving thirty days' notice in writing to the Chief Executive Officer and/or ceasing to be members of the N.E.C. and not thereupon being re-elected to the N.E.C. In addition, the Senior Vice-President or Second Vice-President as the case may be, shall vacate his office in the event of his assumption of the Presidential office.
- (6) The duties of the President are :
 - (a) To preside over N.E.C. meetings when available;
 - (b) When presiding over any N.E.C. meeting, to sign all minutes confirmed by the N.E.C. at such meeting;
 - (c) To use every legitimate means to enforce observance of this constitution;
 - (d) To investigate the affairs of any Region if deemed necessary in his opinion after consultation with the Vice-Presidents and for such purpose to call upon the Chief Executive Officer, any N.E.C. member, counsel, attorney and/or auditor for assistance; provided that the President shall appoint a N.E.C. member to conduct such investigation in his place where the Region concerned is that of which he is a member and further that no office-bearer shall participate in the investigation of the affairs of the Region of which he is a member. The person conducting such investigation shall be given access to all the records of the Region concerned and may take them into his custody. The results of any such investigation shall be reported to the N.E.C.

and the Regional Committee concerned within fourteen days of completion of the investigation, shall be for the confidential information of the members of such Committees, and shall not in any manner whatsoever incriminate the person issuing such report;

- (e) To advise the Chief Executive Officer of all matters which in his opinion are urgent and cannot be postponed until a meeting of the N.E.C. and to authorise such constitutional action thereon as may be deemed necessary;
 - (f) To generally exercise supervision over the affairs of the Union and perform such other duties as by usage and custom pertain to the Office.
- (7) The duties of the Senior Vice-President or Second Vice-President as the case may be, are to assist the President when called upon by him, and to exercise the powers and perform the functions of the President in the event of the latter not being available. In the event of both the President and the Vice-Presidents not being available, the N.E.C. may authorise a N.E.C. member to act on behalf of the President until he or one of the Vice-Presidents is able to resume office, or until the time and date of the next election of President or Vice-Presidents whichever is the earlier.
- (8) The N.E.C. shall appoint a Chief Executive Officer for the Union on such terms and conditions of employment as may be determined by it and may subject to any law governing the situation, terminate his employment on giving him three calendar months' notice of such intention, at the expiration of which period his contract of employment shall *ipso facto* terminate, provided that such decision to terminate his employment shall have no force or effect unless passed at a meeting of the N.E.C.
- (9) The Chief Executive Officer shall perform such legitimate duties as are imposed on him by this constitution, as the N.E.C. may direct, and such duties as imposed on him by Section 98, 99 and 100 of the Labour Relations Act, 1995, relating to the keeping of records and the furnishing of information to the Registrar of Labour Relations, and in accordance with general practice of the nature of his office. He shall attend and record the proceedings of meetings of the N.E.C. unless such action is not practical for any reason.

- (10) The N.E.C. may, by a decision passed at a meeting of the N.E.C. and subject to the provisions of any law governing the situation, summarily dismiss the Chief Executive Officer on any of the following grounds :
 - (a) Willful neglect of duty or misconduct;
 - (b) Commission of any act which in the opinion of the N.E.C. is seriously detrimental to the interests of the Union;
 - (c) Refusal or unreasonable failure to carry out any legitimate duties imposed upon him in terms of this constitution.
 - (d) On any grounds which at law would entitle an employer summarily to dismiss an employee.
- (11) The President and Vice-Presidents may appoint an acting Chief Executive Officer, on such terms and conditions of employment as they may deem fit, to carry out the duties of Chief Executive Officer if for any reason the latter is not available, or if a vacancy occurs in the office; provided that the acting appointment shall not continue for a period in excess of six months without confirmation by the N.E.C.
- (12) The President and Vice-Presidents may appoint a Deputy to the Chief Executive Officer and/or a General Manager to assist the Chief Executive Officer with the performance of his duties.

CLAUSE 9: REGIONAL GENERAL MEETINGS

- (1) An annual general meeting of the members of each Region shall be held once every calendar year not later than the end of the month of August at such place and time and on such date as may be determined by the Regional Committee concerned.
- (2) A special general meeting of the members of a Region shall be held:
 - (a) Whenever deemed necessary by the Regional Committee concerned and/or by the N.E.C.;
 - (b) Within thirty days of receipt by the Chief Executive Officer of a written requisition for such meeting, signed by at least five

percent of the members of the Region who are in good standing in terms of the Act;

- (c) In the event of the Regional Committee concerned ceasing to function either through resignation, dissolution or otherwise in any manner, for the purpose of electing a new Committee;
 - (d) For any other reason which may be necessary in carrying out any of the terms of this constitution.
- (3) Written notice of every general meeting of members, showing the business to be transacted thereat, shall be given to the members and the Chief Executive Officer by the Manager of the Region concerned not less than ten days before the date of such meeting; provided that shorter notice, but not less than seventy-two hours, may be authorised by the Regional Chairman concerned.

The proceedings of any meeting shall not be invalidated by reason of the non-receipt by any member of a notice of such meeting.

- (4) The quorum for general meetings shall be a number of members equal to five per cent of the members in good standing in terms of the Act, residing in the municipal area in which the meeting is held; provided that, where the membership in such area is less than fifty members, the quorum shall be a number of members equal to fifty per cent of such members. If, within sixty minutes of the time fixed for the meeting, a quorum is not constituted, the meeting shall stand adjourned for at least seven days and not more than fourteen days and at such adjourned meeting the members present shall constitute a quorum. Notice of such adjourned meeting shall be given *mutatis mutandis* in terms of sub-clause (3) hereof; provided that such notice may instead be given to members by publication in the Press if the original notice of the meeting, provided for in terms of sub-clause (3) of this clause, had specified that such procedure would be adopted in the event of an adjournment of the meeting being necessary due to the lack of a quorum, and had specified the section of the Press to be utilised for such purpose as well as the time, date and place of such adjourned meeting if it became necessary.
- (5) At every general meeting of the members of a Region :
- (a) The minutes of the preceding general meeting shall be tabled and after confirmation shall be signed by the Chairman of the

meeting. A copy of the confirmed minutes shall be forwarded to the Chief Executive Officer within thirty days after confirmation. The draft minutes of every general meeting shall be perused at the first ensuing meeting of the Regional Committee concerned, and a copy of such unconfirmed minutes shall be sent to the Chief Executive Officer within 30 days of such perusal;

- (b) If the Chairman of the meeting so decides, all motions shall be reduced to writing and shall be delivered to him to read to the meeting, and no motion shall be put to a vote unless seconded. Unless otherwise provided herein, all matters forming the subject of motions shall be decided upon by the votes of the majority of members present by a show of hands, provided that no member shall be entitled to vote on any matter which in the opinion of the presiding office-bearer is one which affects the wages, hours of work, status or conditions of employment of a class of membership to which such member does not belong;
 - (c) No member shall be entitled to speak for more than five minutes on any matter without the permission of a majority of the members present;
 - (d) No matter not on the Agenda shall be considered or referred to the relevant Regional Committee unless such action is unanimously approved by the members present at the meeting.
- (6) Any matter of procedure which may arise at any general meeting and which is not specially provided for in this constitution or, if provided for, is ambiguous in any manner, shall be dealt with as the majority of members present may decide.
- (7) The Regional Chairman or, if he is not available, the Regional Vice-Chairman shall preside over Regional General meetings. In the event of both the Regional Chairman and Vice-Chairman being absent from a Regional General meeting, the members present shall appoint one of the Regional Committee members present or, if no Regional Committee member is present, one of their number to preside over such meeting.

CLAUSE 10: REGIONAL OFFICE-BEARERS AND MANAGERS

- (1) For each Region established in terms of this constitution, there shall be a Regional Committee consisting of a Chairman, Vice-Chairman and not less than five additional members. However, the N.E.C. may as a temporary measure direct that a Regional Committee may consist of less than a total of seven members until the next ensuing Annual General meeting of the members; provided that the Regional Committee concerned may, notwithstanding any provision to the contrary herein, fill any such vacancy by its own volition, until the next ensuing Annual General Meeting of members, by the co-option of a member, subject to sub-clause (2) hereof. Five members of the Regional Committee shall be representative of Office, Stores, Sales and Clerical employees in the industry and two members shall be Technical employees.

The Chairman and Vice-Chairman of a Regional Committee shall, *ipso facto*, be two of the relevant Region's N.E.C. members in terms of clause 7(2)a hereof and the Regional Committee members of each Region who are not N.E.C. members shall *ipso facto* be N.E.C. alternates in terms of sub-clause 7 (5) hereof.

- (2) Every ordinary member of the Union who is in good standing in terms of the Act, and who satisfies the qualification requirements stipulated in the By-Laws to this Constitution shall be eligible for election to the Regional Committee of the Region of which he is a member; provided that he is resident within a distance of 80 kilometers from the Regional Office concerned, unless otherwise determined by the N.E.C.
- (3) The election of Regional office-bearers shall be by ballot of the members of the Region concerned and every candidate must be duly nominated and seconded for such election by members of the Region. Every Regional office-bearer shall hold office for the period from the date of his election until the time of the election of office-bearers on the date of the third annual general meeting of his Region succeeding the date of his election, and shall be eligible for re-election.
- (4) Nominations of candidates for election as members of a Regional Committee shall be lodged in writing with the Manager of the Region by the members of the Region concerned, at least thirty days before the time of the annual general meeting of the Region at which the members of the Regional Committee are to be elected by ballot by the members in good standing, present in person, at the meeting. Every member present at an annual general meeting shall be entitled to a

single ballot paper, and voting by proxy shall be prohibited at such meetings.

- (5) (a) Each Regional Committee shall elect a Chairman and Vice-Chairman and National Executive Council members by ballot, from among their number as soon as practicable after the annual general meeting of members every third year.
- (b) Nominations of candidates for election to the offices of Chairman and Vice-Chairman and National Executive Council Members shall be confined to members of the Regional Council concerned, and shall be called for by the Manager of the Region, to be lodged with him in writing by Regional Committee members before, or as soon as practicable after the termination of the terms of office of the relevant office-bearers.
- (c) The Chairman and Vice-Chairman shall, subject to the provisions of Clause 18 of this Constitution, hold office for three years and thereafter only until the date and time of the election of their successors, and shall be eligible for re-election.
- (d) A vacancy occurring on a Regional Committee before the termination of the term of office of the member causing such vacancy shall:
 - (i) In the event of the vacancy occurring in the office of Regional Chairman, be filled by assumption to this office by the Regional Vice-Chairman.
 - (ii) In the event of the vacancies simultaneously existing in the offices of Regional Chairman and Vice-Chairman, nominations shall be called and a ballot of the members of the Regional Committee shall be conducted for the election of a member of the Regional Committee to fill the office of Regional Chairman for the period of the unexpired portion of the term of office of the member causing such vacancy.
- (e) In the event of any other vacancy, if necessary in terms of this constitution or if deemed necessary by the Regional Committee concerned, be filled by a ballot of members of the Region concerned, subject to sub-clause (2) hereof. A member elected to fill a vacancy in terms of this sub-clause shall hold such

office for the period of the unexpired portion of the term of office of the member causing the vacancy.

- (6) Nominations of candidates for election to fill any vacancy referred to in sub-clause 5(e) hereof, shall be lodged in writing by the members of the Region with the Manager of the Region concerned within four weeks from the date on which the vacancy occurred, and the election to fill such vacancy shall be held within six weeks from that date.
- (7) Should a Regional Committee for any reason cease to function in terms of this constitution, a special general meeting of the members of the Region shall be convened for the purpose of electing a new Regional Committee. Nominations of members for election shall be lodged in writing before or at the meeting convened for the purpose of electing a new Regional Committee. Such special general meeting shall be presided over by the Chief Executive Officer or such other person as may be determined by the N.E.C.
- (8) Each Regional Committee shall ordinarily meet at least once in every calendar month. Special meetings of a Regional Committee may be called by the Regional Chairman if deemed advisable and shall be called within ten days of receipt by the Regional Chairman of a written requisition for such meeting signed by at least three Regional Committee members.
- (9) Members of the Regional Committee and the Chief Executive Officer shall be notified in writing of the time and place of every Regional Committee meeting by the Manager of the Region concerned, at least seven days before the date of such meeting, and an agenda shall be attached to all notices of Regional meetings, provided that shorter notice may be given either in writing or verbally by the Manager concerned, when duly authorised thereto by the relevant Regional Chairman and Vice-Chairman, and if such notice and the matters for the relevant agenda are previously made known to and approved by every Regional Committee member concerned and the Chief Executive Officer. The proceedings of any meeting shall not be invalidated by reason of the non-receipt by any member of a notice of the meeting.
- (10) The quorum for a Regional Meeting shall be at least five of the Regional Committee members. If after thirty minutes of the time fixed for a meeting, a quorum is not constituted in terms of this sub-

clause, the meeting shall be cancelled and a new meeting shall be convened in the manner prescribed herein.

- (11) The Regional Chairman or, if he is not available, the Regional Vice-Chairman, shall preside over Regional Committee meetings. In the event of both the Regional Chairman and Vice-Chairman being absent from a Regional Committee meeting, the members present shall appoint one of the Regional Committee members present to preside over such meeting.
- (12) At every meeting of a Regional Committee, the minutes of the preceding Regional Committee meeting shall be tabled and after confirmation be signed by the office-bearer presiding over the meeting. A copy of such signed minutes shall be lodged with the Chief Executive Officer.
- (13) A Regional Committee shall, subject to the instructions and control of Regional general meetings and to the provisions of this constitution, have power :
 - (a) To admit or refuse to admit persons to membership of the Union;
 - (b) Subject to the provisions of clause 15 hereof, to suspend, fine, or expel any member;
 - (c) To deal with disputes and to endeavour to settle disputes within the area of jurisdiction of the Region concerned;
 - (d) To appoint from time to time such sub-committees as it may deem fit for the purpose of investigating and reporting on any Regional matter;
 - (e) To open and operate accounts with registered banks, and financial institutions approved by the N.E.C. in the name of its Region;
 - (f) To arrange and/or finance and/or contribute to such social and/or other functions as may be deemed by the Regional Committee concerned to be in the interests of the relevant Region and/or its members;

- (g) To acquire by purchase any immovable property on behalf of the Union from funds at the disposal of the Region concerned, and to sell, let, mortgage or otherwise deal or dispose of any immovable property belonging to the Union;
 - (h) To do such other lawful things as are in the interests of its Region, including the provision of legal assistance to any member of the Region.
- (14) A member of a Regional Committee shall vacate such office in any of the following circumstances:
- (a) On ceasing to be a member of the Union;
 - (b) On suspension or expulsion from membership of the Union;
 - (c) On resigning by giving seven days' notice in writing to the Regional Committee concerned;
 - (d) On absenting himself from two consecutive meetings of the Regional Committee concerned without such absence being approved by the Regional Committee.
- (15) A Regional Chairman and Vice-Chairman shall perform the same duties *mutatis mutandis* in respect of the Region concerned as are imposed upon the President and Vice-Presidents of the Union, respectively.
- (16) A Manager accountable for the administration of each Region and such other managerial staff as deemed necessary, shall be appointed to each Region, subject to the following procedure :
- (a) The Chief Executive Officer shall select, appoint and if deemed necessary subject suitably qualified persons to a period of induction and training before transferring the person concerned to the relevant position.
 - (b) Each appointment shall be made in accordance with the general conditions of employment approved by the N.E.C., and the commencing scale of remuneration shall be determined by the Chief Executive Officer after consultation with the Chairman of the Regional Committee concerned.

- (c) The termination of such appointments shall be subject to one calendar month's written notice by either Party.
 - (d) Operational staff shall be appointed by the Manager concerned in consultation with the Chief Executive Officer, and subject to the approval of the Regional Committee.
- (17) Regional Managers and other Managerial Staff shall perform such legitimate duties as may be imposed upon them by this constitution and as the N.E.C. and/or the Regional Committee concerned may direct and, in particular, but without derogation from the foregoing shall:
- (a) Attend to the Regional office as directed by the Regional Committee concerned;
 - (b) Keep such books, accounts and records and lodge such reports, returns and documents with the Union's Head Office as may be directed by the N.E.C. or required in terms of the provisions of the By-Laws to the Constitution.
 - (c) Issue notices of, and attend all Regional Committee and general meetings and keep proper records of the proceedings of such meetings;
 - (d) Conduct the correspondence of the Region and, table correspondence relating to the preceding Regional Committee meeting;
 - (e) Subject to clause 6(1) of this constitution, collect all subscriptions, fines, dues and any other monies due to the Region, issue official receipts in respect thereof, and deposit such monies within three business days of their receipt into such accounts as may be directed by the Regional Committee concerned;
 - (f) Table financial reports at each monthly Committee meeting, and submit a balance sheet and income and expenditure account, audited by a public accountant appointed by the N.E.C., to each annual general meeting of the Region concerned;
 - (g) Administer the financial, advisory and legal services offered to members by the Union, and participate in the promotion of any

formal training scheme from which members of the Union could derive direct benefits.

- (18) A Regional Committee shall, subject to any law governing the situation, be entitled:
- (a) To terminate the services of any member of the Regional Managerial staff concerned, by giving one calendar month's notice of such intention, at the expiration of which period the contract shall, *ipso facto*, terminate;
 - (b) To summarily dismiss any member of the Regional Managerial staff in consultation with the Chief Executive Officer, on any of the following grounds:
 - (i) Willful neglect of duty or misconduct;
 - (ii) Commission of any act which in the opinion of the Regional Committee is seriously detrimental to the interests of the Union or of the Region concerned;
 - (iii) Refusal or unreasonable failure to carry out any legitimate duties imposed upon him in terms of this constitution;
 - (iv) On any grounds which at law would entitle an employer summarily to dismiss an employee;
 - (c) To appoint acting Managerial staff if a vacancy occurs, provided that any acting appointment shall not continue for a period in excess of three months without confirmation by the N.E.C.

CLAUSE 11: REGIONAL SUB-COMMITTEES AND TRADE UNION REPRESENTATIVES

- (1) A Regional Committee may authorise the appointment or termination of a Regional sub-committee in any area within its jurisdiction.
- (2) Members of a Regional sub-committee shall be co-opted by the Regional Committee concerned, for a term of office of 12 months, and may be re-appointed thereafter for a similar term or terms in the discretion of the Regional Committee concerned.

- (3) The appointment of a Regional sub-committee shall be for the purpose of maintaining contact between members and the Regional Committee concerned, and such sub-committee shall have no official status or executive power but shall refer all matters of whatever nature to the Regional Committee which authorised its appointment. The rules governing Regional Sub-committees shall be determined by the Regional Committee concerned.
- (4) Any information to be submitted to a Regional sub-committee shall be submitted subject to the approval of the Regional Committee concerned and the N.E.C. or such person as the N.E.C. may appoint for such purpose.
- (5) Vacancies occurring on a Regional sub-committee may be filled by the Regional Committee concerned, provided that where a Regional sub-committee ceases to function for any reason, the authority for its appointment shall, *ipso facto*, be rescinded, and it shall be of no force or effect, terminating automatically. The N.E.C. may direct a Regional Committee to terminate the appointment of a Regional Sub-committee.
- (6) A Regional Committee may authorise the appointment or removal of Trade Union representatives -
 - (a) The Trade Union Representative shall implement and give effect to decisions of the National Executive Council, Regional Committees and Regional Sub-Committees, recruit members and generally promote their interests, and represent members in matters before any dispute resolution Tribunal.
 - (b) In terms of Section 14(4) of the Labour Relations Act, 1995, the Trade Union Representative shall -
 - (i) at the request of an employee in the workplace, assist and represent the employee in grievance and disciplinary proceedings.
 - (ii) monitor the Employer's compliance with any law regulating terms and conditions of employment;

- (iii) report any alleged contravention of any Law, Regulating Terms and Conditions to the Employer, Association or any responsible Authority or Agency; and
- (iv) perform any other functions that the National Executive Council may direct.

CLAUSE 12: FINANCE

- (1) Twenty-five per cent of nett subscriptions received from members on behalf of the Union shall be remitted monthly to the Chief Executive Officer for deposit, within three business days of receipt, to the credit of the Union into such accounts as may be determined by the N.E.C. Such funds shall be known as the General Fund and shall be applied to the payment of the expenses of the Union, the acquisition of property and for the objects specified in clause 4 of this constitution as may be determined by the N.E.C., provided that any single item of expenditure in excess of forty-five thousand rand, other than in respect of meeting and travelling expenses, the remuneration of employees, and/or in respect of the purchase of motor vehicles and office equipment for use by the Union, and/or maintenance or improvement of immovable property, shall be subject to the prior approval of the members of the Union voting at Regional general meetings.
- (2) The balance of members' subscriptions together with all other monies received less contributions to the Benefit and Funeral Fund and Contingency Account shall constitute the funds of the Region on whose behalf they have been received, and shall be applied to the payment of the expenses of that Region, the acquisition of property and for the objects specified in clause 4 of this Constitution, as may be determined by the Regional Committee concerned, provided that:
 - (a) A member of a Regional Committee shall not be entitled to vote in any manner affecting a payment to him from Regional funds, other than in respect of meeting, travelling and/or subsistence expenses up to such maximum amounts as may be determined from time to time by the N.E.C.; and
 - (b) Any single item of expenditure in excess of twenty-five thousand rand up to and including forty-five thousand rand shall

be subject to the prior approval of the N.E.C. and above forty-five thousand rand, to the prior approval of the N.E.C. and the members of the Region concerned voting at a Regional general meeting: provided that the aforementioned maximum amounts shall not apply in the case of expenditure in respect of meeting and travelling expenses, remuneration of employees and/or the purchase of motor vehicles and office equipment for use by the relevant Region and/or the acquisition of immovable property and/or the maintenance or improvement of immovable property.

- (c) If any expenditure is incurred in contravention of the terms of this constitution, the members present at the meeting at which such expenditure was authorised shall be jointly and severally liable for the refund of the amount in question, but no liability shall attach to any member who, at the time, registered protest against the incurring of such expenditure and requested that such protest be recorded in the minutes of the meeting.
- (3) The N.E.C. and/or a Regional Committee shall be entitled to pay a honorarium from the General Fund or the Regional Funds, whichever is applicable, to any member or person who has rendered specific services to the Union or to the Region concerned, respectively, and loans or grants may be made from Regional Funds to General Fund and vice versa, at the discretion of the N.E.C., and the Regional Committee concerned.
- (4) Subject to any specific provision to the contrary herein, no funds may be expended on loans to any person.
- (5) The Chief Executive Officer and Regional Managers shall each be entitled to a float of not more than one thousand Rand at one time for petty cash expenditure on behalf of the Union. This amount may be reviewed annually by the National Executive Council, by the percentage increase in the Consumer Price Index, and the amount so determined shall be written into the By-Laws. The amounts expended shall be recorded in a manner to be determined by the N.E.C., provided that any cash withdrawal in respect of salaries, wages, meeting, travelling, subsistence or similar payments shall not be subject to the terms of this sub-clause.
- (6) Every payment from any of the funds of the Union shall be subject to approval :

- (a) By the N.E.C. in the case of a payment from the General Fund; provided that the N.E.C. may authorise the Chief Executive Officer, subject to sub-clause 9 hereof, to approve the monthly running expenses of the Union's Head Office administration, excluding capital expenditure, which expenditure shall be subject to the approval of the Union's Presidents, or the N.E.C.
 - (b) By the Regional Committee concerned in the case of a payment from Regional Funds.
- (7) Every Union cheque shall :
- (a) Indicate the name of the payee;
 - (b) If drawn for the purpose of withdrawal of cash, be drawn payable to the Manager concerned, indicating the nature of such payment, and requiring such Manager's endorsement to qualify for withdrawal;
 - (c) If drawn against General Fund, be signed by two signatories appointed by the N.E.C. for such purpose;
 - (d) If drawn against Regional Funds, be signed by two signatories appointed by the Regional Committee concerned for such purpose.
- (8) If any Region ceases to exist as such, its assets and liabilities shall devolve upon the Union to be administered by the N.E.C.
- (9) A Regional receipts and payments account shall be prepared each month by each Manager and submitted to the Regional Committee concerned and to the Chief Executive Officer. A similar account shall be prepared monthly by the Chief Executive Officer in respect of Union funds and submitted to the N.E.C. members.
- (10) In accordance with the provisions of Section 98(1)(b) of the Labour Relations Act, 1995, the Chief Executive Officer and each Manager shall ensure that a statement of income and expenditure and a balance sheet be prepared in respect of each financial year ending 31st March. Such statements and balance sheets shall be audited and dealt with as required by Section 98(2) of the Act. The statements and balance sheets shall be in respect of the income and expenditure and the

combined Union funds, and shall be audited together with the relevant books of account by registered public accountants to be appointed by the N.E.C., and true copies thereof and the auditor's report thereon shall be lodged with the Chief Executive Officer and each Regional Manager, and shall be available at every office of the Union for inspection by members during normal office hours of the Union.

- (11) Any person duly authorised thereto shall be paid travelling and subsistence allowances on a scale to be determined by the N.E.C. when travelling on the Union's business, and by the Regional Committee concerned when travelling on the Region's business, and the N.E.C. or Regional Committee may authorise the payment of meeting attendance fees, not exceeding such amounts as may be determined by the N.E.C. from time to time, to any person attending a meeting in connection with the affairs of the Union or the Region concerned, respectively. The N.E.C. or Regional Committee concerned may approve the re-imbusement of any loss of wages suffered by any Office-Bearer in respect of authorised Union business, subject to such documentary evidence as may be prescribed from time to time by the N.E.C.

CLAUSE 13: BARGAINING COUNCILS, STATUTORY COUNCILS AND ANY OTHER BOARDS AND COMMITTEES

- (1) The N.E.C. may:
- (a) take any necessary steps to establish a Bargaining Council or a Statutory Council in respect of any sector and/or area of the Industry;
 - (b) arrange for the Union to become a party to any Bargaining Council or Statutory Council in respect of any sector or area of the Industry;
 - (c) arrange for the Union to be represented on any board, committee or other body.
- (2) A Regional Committee may, subject to approval by the N.E.C. arrange for the Region concerned to be represented on any board, committee or other body for the area of jurisdiction of the Region.

- (3) The Union's representatives to any of the bodies referred to in this clause shall be appointed by the N.E.C., provided that if the jurisdiction of any such body is confined to the area of any Region established in terms of this constitution and/or the representatives to such body are to be elected in respect of any Region of the Union, the N.E.C. may authorise the Regional Committee concerned to nominate and/or elect representatives to such body or to lodge nominations in respect of such representatives for appointment by the N.E.C. and provided further that any such representatives may be removed by the N.E.C., and may resign by giving written notice of such intention to the N.E.C.
- (4) Any N.E.C. member, Regional Committee member, the Chief Executive Officer, General Manager and/or any Regional Manager may be appointed and/or elected to represent the Union on any of the bodies referred to in this clause, and the Union's representatives on any such bodies shall have full authority and power to act on behalf of the Union and/or the Region concerned, in the conduct of their duties on any such bodies.

CLAUSE 14: BALLOTS

- (1) A ballot of members of the Union shall be conducted:
 - (a) if specifically provided for in this constitution;
 - (b) if deemed necessary by the N.E.C.;
 - (c) if demanded by a Regional general meeting;
 - (d) on any resolution to declare and/or support any strike by employees, subject to the relevant terms of the Act.
- (2) A ballot of the members of the Union shall be conducted in the following manner:
 - (a) Written notice of the ballot, specifying the place, date and time for the issue and return of ballot papers, shall be given by the Chief Executive Officer to each member who is entitled to participate in such ballot, at least seven days before the date on which the ballot is to be conducted;

- (b) Two scrutineers shall be appointed by the N.E.C. to supervise and to ascertain the results of the ballot, provided that the N.E.C. may delegate such authority to appoint scrutineers to any Regional Committee or Regional general meeting;
 - (c) Ballot papers shall specify clearly the issue to be voted upon and shall not require the voter to record any information thereon by means of which it will be possible to identify him;
 - (d) Each member who is entitled to participate in the ballot shall, at the place and during the period fixed for the conducting of the ballot, and in the presence of the scrutineers appointed in terms of paragraph (b) of this sub-clause, be issued with a ballot paper which he shall thereupon complete, fold and return to the abovementioned scrutineers;
 - (e) Ballot papers shall not be signed or marked in any manner other than the mark required to be made by the member in recording his vote, and such marks as may be required to be made in their preparation and supply to members. Ballot papers bearing any other marks shall be regarded as spoilt and shall not be considered in ascertaining the result of the ballot;
 - (f) On completion of a ballot, or as soon as possible thereafter, the result shall be ascertained by the scrutineers appointed in terms of paragraph (b) hereof and shall be made known to the Chief Executive Officer and the members of the N.E.C.;
 - (g) After the result of the ballot has been ascertained, the ballot papers, including spoilt papers, shall be retained for not less than three months during which period they shall, on written demand from not less than twenty members, be recounted by two scrutineers appointed for such purpose, in the presence of a third scrutineer to be appointed *mutatis mutandis*, in terms of paragraph (b) hereof;
 - (h) Thereafter, the ballot papers shall be placed in a sealed container and retained for a period of not less than three years from the date of the ballot.
- (3) A postal vote of the members of the Union shall be conducted in the following manner:

- (a) The Chief Executive Officer shall arrange for the issue by post of one ballot paper and a stamped, addressed envelope marked "Ballot" to each member who is entitled to participate in the ballot;
 - (b) Upon completion, the ballot paper shall be returned in the envelope issued in terms of paragraph (a) of this sub-clause, to reach the Chief Executive Officer within fourteen days of despatch of the ballot paper to the member, whereupon he shall place such envelope in a sealed container;
 - (c) The provisions of paragraphs (b), (c), (e), (f), (g) and (h) of sub-clause (2) of this clause shall apply *mutatis mutandis* in the case of postal ballots.
- (4) The N.E.C. shall take action according to the decision of a majority of the members voting in a ballot, provided that no action shall be taken in the case of a ballot to declare and/or support any strike by employees, unless the matter giving occasion thereto has been dealt with as provided in terms of the Act.
- (5) The N.E.C. may confine a ballot to the members of any Region in respect of a matter affecting only the members of such Region and may, on written application, from not less than twenty per cent of the members of any Region, authorise that a ballot of the members of such Region be conducted.
- (6) A ballot and/or postal ballot of members of the N.E.C. shall be conducted:
- (a) if requested by a Regional Committee and approved by the President and Vice-Presidents; or
 - (b) if deemed necessary by the President and Vice-Presidents.

Such ballot and/or postal ballot shall be arranged by the Chief Executive Officer within fourteen days of a written request to that effect.

- (7) A ballot or postal ballot of members of the N.E.C., shall be conducted in the same manner *mutatis mutandis* as that prescribed for members of the Union in terms of sub-clauses (2) and (3) of this clause; provided that, in the case of a ballot or postal ballot of members of the

N.E.C., any recount provided for in sub-clause (2)(g) of this clause shall be conducted upon written demand of not less than five N.E.C. members representing at least two Regions; and provided further that the format of the ballot paper may be changed, if deemed necessary, by the President and/or Vice-Presidents.

CLAUSE 15: DISCIPLINE

- (1) The N.E.C. and/or any Regional Committee may expel from membership of the Union, suspend from such benefits as it may determine, and/or fine a member who is found guilty by such Committee of :
 - (a) Conduct damaging to and/or calculated to damage the status of the Union, the Industry, trade unions generally and/or any member, office-bearer or official of the Union;
 - (b) Insulting, or using derogatory language, or interfering with any office-bearer or official of the Union in the course of business, or in the execution of his duties;
 - (c) Conduct aimed at the incitement of fellow members against the Union, office-bearers and/or officials and/or any policies adopted by the N.E.C. or any Regional Committee;
 - (d) Writing, posting and/or circulating communications of any nature whatsoever which are considered to be derogatory in relation to the Union, any member, any office-bearer any official, or the management and administration of any Fund to which members of the Union belong.
 - (e) Willfully infringing any of the terms of this Constitution;
 - (f) Failure, within thirty days of issue by registered post of a written demand to pay any subscriptions, fines and/or levies which are more than ninety days in arrears at the date of issue of such demand; provided that no member may be expelled suspended or fined by a Regional Committee unless he has been afforded the opportunity of stating his case personally at a meeting of the Regional Committee concerned, of which he shall be given at least fourteen calendar days' written notice by ordinary post specifying the nature of the charge, and that he

may be found guilty in his absence if he fails to attend such meeting.

- (2) A member may appeal to a general meeting of the members of the Region of which he is a member against any disciplinary action to be taken against him in terms of sub-clause (1) hereof by a Regional Committee, provided that written notice of such appeal is lodged with the Manager of the Region concerned within twenty-one calendar days of the date on which the member was advised in writing by ordinary post that such disciplinary action would be taken.

At such general meeting the appellant may state his case personally to the meeting, and he may call such evidence as he deems fit, whereupon the general meeting may vary or set aside the disciplinary measures imposed by a Regional Committee in any manner it may determine, provided that, if the member's appeal to the general meeting fails, he may appeal in writing to the N.E.C. for further consideration; provided further that written notice of such appeal is lodged with the Manager of the Region concerned within fourteen calendar days of the date of such General Meeting.

- (3) Any decision of the N.E.C. taken in terms of sub-clauses (1) and (2) hereof shall be final and binding.
- (4) Wherever provision is made in this constitution for the imposition of a fine, the amount of such fine shall be determined by the N.E.C. or the Regional Committee concerned, with due regard to it being a first or a subsequent offence.
- (5) Upon expulsion from membership of the Union, all monies due to the Union by the expelled member shall become payable, and the Regional Committee concerned shall take such action as it may determine to recover the amount due. The expelled member shall have no claim on any of the Union's funds.
- (6) A member shall cease to be entitled to any of the benefits of membership, including voting powers, and shall cease to be in good standing:
 - (a) if subscriptions and/or any other monies due from him to the Union are more than thirteen weeks in arrear, in which event he shall continue to be subject to such disabilities until all arrears subscriptions and other monies have been paid in full;

- (b) during any period while he is under suspension in terms of this constitution.
- (7) Notwithstanding anything to the contrary contained in this constitution, members of the Union shall not be disciplined or have their membership terminated for failure or refusal to participate in a strike if-
- (i) no ballot was held about the strike;
 - (ii) a ballot was held but the majority of the members who voted did not vote in favour of the strike.

CLAUSE 16: CESSATION OF MEMBERSHIP

- (1) A member of the Union may resign by giving fourteen days' written notice of such intention to the Manager of the Region of which he is a member.
- (2) Membership shall cease in the case of a member:
 - (a) ceasing to be employed as an office, stores, sales or clerical or Technical employee in the Industry;
 - (b) ceasing to be employed in the Industry;

provided that membership may continue in such event at the discretion of the N.E.C. and/or Regional Committee concerned if the committee is of the opinion that such cessation of employment is not permanent or in the event that MISA is in the process of disputing the dismissal of the member in which case the employee remains a member until MISA has completed the dispute proceedings.

- (3) A member who resigns or terminates his membership in any manner shall nevertheless be liable for the payment of all subscriptions and any other monies due by him to the Union up to the date on which his membership ceases.
- (4) No person who has ceased to be a member of the Union shall have any claim on any of the funds of the Union; provided that this shall not affect the benefits which a continuation member may be entitled to in

terms of the Rules of any Funds administered by the Union while he remains a continuation member.

CLAUSE 17: WINDING-UP

- (1) The Union shall be wound-up if not less than three-fourths of the total number of its members who are in good standing in terms of the Act vote by ballot in favour of a resolution that the Union be wound-up or, subject to any relevant provisions of the Act, if for any reason the Union is unable to continue to function.
- (2) If a resolution for the winding-up of the Union has been adopted in terms of sub-clause (1) hereof, or for any reason the Union is unable to continue to function:
 - (a) The last appointed members of the N.E.C. shall forthwith transmit to the relevant Court a statement by them setting forth the resolution adopted or the reasons for the Union's inability to continue to function, as the case may be, and request the Court to grant an order in terms of Section 103 of the Labour Relations Act, 1995.
 - (b) the last-appointed office-bearers of the Union shall deliver to the liquidator all the Union's books of account, records, vouchers, unexpended funds, assets and any documents necessary for the liquidation of the Union's assets, together with a record of the names of the members showing the subscriptions received from each member for the twelve months prior to the date on which the resolution for the winding-up of the Union was adopted, or the date from which the Union was unable to continue to function, as the case may be, hereinafter referred to as the date of dissolution;
 - (c) the liquidator shall take any necessary steps to liquidate the debts of the Union from its unexpended funds and any other monies realised from the sale of any assets of the Union, and if such funds and monies are insufficient for such purpose the order in which such debts shall be liquidated shall be as prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, provided that the liquidator's fees and the winding-up expenses shall be paid in full before any other payment of claims against the Union;

- (d)(i) after payment of the debts in terms of sub-clause (c) hereof, the remaining funds, if any, shall be distributed by the liquidator amongst the members of the Union who were in good standing in terms of the Act on the date of dissolution in proportion to the subscriptions received from them in respect of the twelve months immediately preceding such date;
- (ii) after payment of all the liabilities, any assets that cannot be disposed of in accordance with the provisions of this clause shall be realised by the liquidator and the proceeds paid to the Commission for Conciliation, Mediation and Arbitration in accordance with Section 103(5) of the Labour Relations Act, 1995.
- (e) the liability of members for the purpose of this clause shall be limited to the amount of subscriptions due by them to the Union in terms of this constitution as at the date of dissolution.

CLAUSE 18: REMOVAL AND REINSTATEMENT OF OFFICE BEARERS, OFFICIALS AND MANAGERS

- (1) If at any time not less than thirty-five per cent of the members of a Region who are in good standing submit a written request to the N.E.C. for the conducting of a ballot of the members of the Region in order to determine whether an Office-Bearer or the Manager of such Region, named in such request, shall be removed from office the N.E.C. shall cause such ballot to be conducted within thirty days after the date of receipt by the N.E.C. of such request. If in such ballot not less than sixty-five per cent of the members of the Region who are in good standing vote in favour of the removal of the Office-Bearer or Manager concerned, he shall vacate such office forthwith notwithstanding anything to the contrary contained in this constitution. Any vacancy resulting from such removal shall be filled in accordance with the provisions of this constitution relating to the filling of vacancies in such offices.
- (2) If at any time a Regional Office-Bearer or Manager has been removed from office, otherwise than in terms of sub-clause (1) of this clause and at least thirty-five per cent of the members of the Region who are in good standing submit a written request, within thirty days after the date of such removal, to the N.E.C. for the conducting of a ballot of

- the members of the Region in order to determine whether the Office-Bearer or Manager so removed from office shall be reinstated, such ballot shall be conducted within thirty days of receipt of the request by the N.E.C.
- (3) (a) If at any time not less than thirty-five per cent of the members of the Union who are in good standing submit a written request to the N.E.C. for the conducting of a ballot of the members of the Union in order to determine whether a national Office-Bearer or the Chief Executive Officer, named in such request, shall be removed from office, the N.E.C., shall cause such a ballot to be conducted within thirty days after the date of receipt by the N.E.C. of such request. If in such ballot not less than sixty-five per cent of the members of the Union who are in good standing vote in favour of the removal of the Office-Bearer or Official concerned, he shall vacate such office forthwith notwithstanding anything to the contrary in this constitution.
- (b) Any vacancy in the office of a national Office-Bearer resulting from such removal shall, subject to the terms of clause 7(6) and notwithstanding the terms of clause 8(4) hereof, be filled by a ballot of the members of the Union who are in good standing, either at Regional general meetings or by post.
- (c) Any vacancy in the office of the Chief Executive Officer resulting from such removal shall be filled by the N.E.C., with due regard to the provisions of sub-clause 4 of this clause.
- (4) If at any time a national Office-Bearer or Official has been removed from office, otherwise than in terms of sub-clause (3)(a) of this clause, and at least thirty-five per cent of the members of the Union who are in good standing submit a written request, within sixty days after the date of such removal, to the N.E.C. for the conducting of a ballot of the members of the Union in order to determine whether the Office-Bearer or Official so removed from office shall be reinstated, such ballot shall be conducted within thirty days of receipt of the request by the N.E.C. The Office-Bearer or Official concerned shall be reinstated if in such ballot not less than sixty-five per cent of the members of the Union who are in good standing vote in favour thereof.

CLAUSE 19: GENERAL

- (1) (a) Any of the provisions of this constitution may be repealed, amended or added to in any manner by resolution of the N.E.C., subject to the provisions of Clause 2(11) hereof.
 - (b) No changes or additions shall have any force or effect until certified in terms of section 101(3) of the Labour Relations Act, 1995.
- (2) No defect arising from a *bona fide* error in the appointment of any Member, Office-Bearer or Official shall invalidate any proceedings in which such person participates, nor shall the accidental omission to despatch a notice of any meeting to any person invalidate any proceedings.
- (3) No technical breach of the terms of this constitution shall invalidate any act unless substantial prejudice is suffered by the affected person, and no member shall have any claim against the Union, any Office-bearer or official thereof in respect of any *bona fide* act performed.
- (4) Press statements may only be issued by the President, or the Chief Executive Officer if authorised thereto by the President or the N.E.C.
- (5) Every Office-Bearer, Official and Employee of the Union shall be indemnified by the Union against all costs, loss and expenses which he may incur or become liable for in any manner in the execution of his office of trust, unless his own willful act or default is the cause thereof, and no Office-Bearer, Official or Employee shall be answerable for any act and/or default of any other Office-Bearer, Official or Employee or for any loss, misfortune or damage which may occur in the execution of his office or in relation thereto except when due to his own willful act or default.
- (6) All elections, actions, decisions and any other matter effected in terms of the previous constitutions of the Motor Industry Staff Association and the S.A. Motor Union, and the terms of office of all office-bearers elected in terms of the previous constitutions shall continue to have effect in terms thereof. Notwithstanding the foregoing the terms of office of all Regional Office-Bearers shall, in any event terminate on the date of each Regional Annual General Meeting to be held during August 2004, when the first elections shall take place in terms of this Constitution, to re-constitute the various Regional Committees.

The terms of office of the National Office-Bearers shall continue in accordance with the amalgamation agreement signed by the parties on 24 November 2003.

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