

**CONSTITUTION
of
MISA**

(Registered under the Labour Relations Act, 66 of 1995)

DATED: JANUARY 2023

Table of Contents

CLAUSE 1: NAME.....	3
CLAUSE 2: DEFINITIONS AND PROCEDURE.....	3
CLAUSE 3: STATUS, HEAD OFFICE AND REGIONS	7
CLAUSE 4: OBJECTS	7
CLAUSE 5: MEMBERSHIP.....	9
CLAUSE 6: SUBSCRIPTIONS	11
CLAUSE 7: NATIONAL EXECUTIVE COUNCIL.....	11
CLAUSE 8: NATIONAL OFFICE-BEARERS AND NATIONAL OFFICIALS	16
CLAUSE 9: ANNUAL GENERAL MEETING.....	18
CLAUSE 10: REGIONAL OFFICE-BEARERS	20
CLAUSE 11: REGIONAL SUB-COMMITTEES AND TRADE UNION REPRESENTATIVES.....	24
CLAUSE 12: SECRETARY.....	25
CLAUSE 13: FINANCE.....	26
CLAUSE 14: BARGAINING COUNCILS, STATUTORY COUNCILS AND ANY OTHER BOARDS AND COMMITTEES	28
CLAUSE 15: BALLOTS.....	29
CLAUSE 16: DISCIPLINE	33
CLAUSE 17: CESSATION OF MEMBERSHIP	34
CLAUSE 18: WINDING-UP	35
CLAUSE 19: REMOVAL AND REINSTATEMENT OF OFFICE-BEARERS AND PAID-OFFICIAL.	36
CLAUSE 20: GENERAL.....	37

CLAUSE 1: NAME

The name of the Organisation is the “Motor Industry Staff Association (MISA)”, hereinafter referred to as “the Union”.

CLAUSE 2: DEFINITIONS AND PROCEDURE

- (1) **“Act”** means the Labour Relations Act, 66 of 1995, as amended and/or extended from time to time.
- (2) **“Allied Industry or Establishment”** means
 - (a) a motor vehicle assembly establishment referred to in Sub-Clause 2(6),
 - (b) 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 that Council in terms of the Act, on the date of approval of this class of membership;
 - (c) the manufacturing of motorcycles, which include quadbikes and any similar motorbike (such as scooters, off road bikes and three wheelers);
 - (d) Service Providers who place persons at specific employers within the Motor Industry where such person shall receive and attend to finance applications in respect of the purchase of motor vehicles, motorcycles, tractors, as well as agricultural and irrigational equipment (as defined in clause 2(6)(l)); and
 - (e) Motor Hire or Car Rental Establishments, including their head offices, workshops, and satellite offices (such as their offices at airports). ;
 - (f) Vehicle tracking and recovery establishments including their software platform for data analytics for optimisation of fleets by tracking *inter alia* driver behaviour, insurance risks, safety and asset recovery.
- (3) **“Chief Executive Officer”**, hereinafter referred to as the C.E.O., shall mean the person (s) appointed as the CEO or as Co-C.E.O.’s by the N.E.C. in terms of Clause 8(8) hereof. In the event that the N.E.C. appoints two persons to act as Co-C.E.O.’s then any reference to the C.E.O. in either the Constitution or the Union’s By-Laws, shall mean the Co-C.E.O.’s jointly, unless the context clearly indicates otherwise.
- (4) **“Dependant”** for the purpose of Clause 4(9) shall mean:
 - (a) A member’s legally married spouse or domestic partner which shall mean a partner in a permanent, same sex or heterosexual relationship or customary/traditional spouse and/or child (including a legally adopted or step child) if such child –
 - (i) is under 18 years of age or is a full-time student at a recognised school, college, technikon, or university, and

- (ii) is supported by the member.
 - (b) May include extended family that are dependent on the member such as parents; parents in law; siblings; children older than 21 (twenty-one), as determined by the N.E.C from time to time and stipulated in the Union's By-Laws.
- (5) **"Members":**
- (a) **"Affiliate Member"** means a member employed in an "allied industry or establishment, or any other class as defined in the By-Laws and decided by the NEC from time to time, and notwithstanding anything to the contrary contained herein, is admitted to membership, and shall in all respects be entitled to the benefits of membership, subject to the provisions of Clause 5(b).
 - (b) **"Associate Member"** means a member who is a 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 –
 - (i) to receive notices and/or attend any meetings of the Union;
 - (ii) to receive any correspondence or literature by the Union to members;
 - (iii) 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;
 - (iv) 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, subject to the provisions relevant to membership of the Union.
 - (c) **"Continuation Member"** means an ordinary 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/her 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 6(3) hereof, provided that:
 - (i) the member's written application is received within 13 (thirteen) weeks reckoned from the date of retirement from active employment;
 - (ii) all applications received after the expiry of 13 (thirteen) weeks, shall be subject to approval by the C.E.O. of the Union on such conditions as he/she may in his/her entire discretion impose upon the applicant;
 - (iii) the member has contributed to the Union for not less than 5 (five) consecutive years, immediately preceding the date of retirement.
 - (iv) 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 (thirteen) weeks in arrears, in which event he/she shall forfeit all claims to any benefits to which he/she may have been entitled to as a Continuation Member.

(v) 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 Act.

(6) **“Motor Industry” or “Industry”** means, without in any way limiting the ordinary meaning of the expression:

(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 rethreading 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 including ancillary activities forming part of a filling station linked to the convenience store environment inclusive of the preparing, serving and selling of food/beverages to customers but excluding activities of separately registered establishments whose sole activities relate to the restaurant, tea room and catering environment;

(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 manufacturing establishments wherein are fabricated motor vehicle parts and/or spares and/or accessories and/or components thereof;

(k) vehicle body building;

(l) the sale of tractors, agricultural and irrigational equipment (not connected with the manufacture thereof) in the Republic of South Africa 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.
 - (m) the business of freeing stuck vehicles and towing wrecked or disabled vehicles (Towtrucks).
- (7) **“N.E.C.”** means the Union’s National Executive Council and/or National Executive Committee, which terms are used interchangeably, 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.
- (8) **“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.
- (9) **“Remuneration”** means any payment made and/or due to an employee arising from his/her employment.
- (10) **“Technical employees”** means any employee other than an office, stores, sales or clerical employee.
- (11) 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.
- (12) 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.

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 and/or by means of electronic communication 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. In addition, any resolution signed by at least two thirds of the members of the N.E.C. shall be valid and binding, irrespective that no meeting was held and provided that each member of the N.E.C. received notice, including electronic notice, of the matter to be voted on. 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.

- (13) 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.
- (14) 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 2 (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, HEAD OFFICE AND REGIONS

- (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. from time to time.
- (3) The territory of South Africa shall be divided into the following five regions, subject to clause 7(14)(j):
 - (a) The Northern/Highveld region, which refers to the provinces of Gauteng, Limpopo, North West and Mpumalanga;
 - (b) The Free State/Northern Cape region, which refers to the provinces of Northern Cape and the Free State;
 - (c) The Eastern Cape region, which refers to the Eastern Cape Province;
 - (d) The Western Cape region, which refers to the Western Cape Province; and
 - (e) The KwaZulu-Natal region, which refers to the KwaZulu Natal province.

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 a foregoing the Union may, at the discretion of the N.E.C. 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 N.E.C. as determined by that body from time to time.

- (10) To advance to any member, his/her 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 Section 25 of the Act, 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, including an indentured apprentice or a registered learner in a South African Qualifications Authority (SAQA) approved training scheme or in another approved technical position 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 only.
- (2) Applications for admission or re-admission to membership of the Union shall be lodged in writing with the C.E.O. and Applicants 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/her ceasing to be employed in the interests outlined in sub-clause (1) hereof shall, if his/her 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/her 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 7 (seven) weeks of receipt

thereof by the C.E.O. provided that the Regional Committee concerned may for any good reason shown extend such period to a maximum of 13 (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/she shall be entitled to state his/her 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 C.E.O. 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 14 (fourteen) days of any change of his/her residential address or place of employment, advise the C.E.O., 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/she is a member and taking up employment in another Region, he/she shall automatically cease to be a member of the first-mentioned Region and, on production of his/her certificate of membership and proof that he/she is in good financial standing with the firstmentioned Region, be eligible to be enrolled as a member of the other Region.

B. AFFILIATE MEMBERSHIP

- (1) All persons placed at a specific employer within the Motor Industry, who falls within the ambit of Section 200A (1) of the Act as far as it relates to the workplace and who are engaged as an employee in an allied industry or establishment as defined in Clauses 2 (2) hereof shall 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.
- (2) An Affiliate Member shall not be entitled to be elected to any office existing in terms of this Constitution and not entitled to vote.
- (3) Affiliate membership of the Union shall cease:
 - (a) In the event of the member's resignation, provided that 14 (fourteen) calendar days prior written notice of such intention is given to the Union; or
 - (b) In the event of the withdrawal of the affiliate class of membership by resolution of the N.E.C., provided that at least 30 (thirty) 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.;

- (c) In the event of a member's subscriptions being more than 13 (thirteen) weeks in arrears, in which case such member shall forfeit all claims to any benefits he/she may have been entitled to as an affiliate member.
- (4) 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 to the Union, calculated for the period January 2020 to December 2020 at R27.00 per week. The said subscription can be increased by not more than 15% per year, provided that such increase is approved by the N.E.C. and such increase is communicated by the Union to the members.
- (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 on 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 N.E.C.
- (2) (a) The N.E.C. shall numerically be constituted as follows:

NUMBER OF REPRESENTATIVE(S) PER REGION	NUMBER OF MISA MEMBERS FOR THAT REGION
1	Between 0 – 5 000
2	Between 5 001 – 10 000
3	Between 10 001 – 15 000
4	Between 15 001 – 20 000
5	Between 20 001 – 25 000
6	Between 25 001 – 30 000
7	Between 30 001 – 35 000

8	Between 35 001 – 40 000
9	Between 40 001 – 45 000
10	Between 45 001 – 50 000
11	Between 50 001 – 55 000
12	Between 55 001 – 60 000
13	Between 60 001 – 65 000
14	Between 65 001 – 70 000
15	Between 70 001 – 75 000
16 - 25	15 plus 1 additional representative for every 10 000 members after 75 000, up to a maximum of 25 representatives.

The N.E.C. shall be constituted of a numerical combination of Office, Stores, Sales and Clerical members and Technical members, as determined by the N.E.C. from time to time and stipulated in the By-Laws of the Union.

- (b) The N.E.C. shall consist of the Chairperson and Vice-Chairperson of each Region together with such additional member(s) from the respective Regions 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 Chairperson or Vice-Chairperson vacates his/her office on the N.E.C. in terms of sub-clause (7)(c) hereof, but continues to hold the office of Regional Chairperson or Vice-Chairperson, in which event such vacancy on the N.E.C. may be filled in terms of sub-clause 6(b) hereof.
 - (c) Should the N.E.C. at any time and for any reason numerically consist of less than the constituted members to give effect to clause 2(a) and 2(b) hereof, but still consist of members that are numerically equal to or more than the number of members required for a quorum, then such N.E.C. shall be deemed to be properly constituted for all intents and purposes.
- (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 3 (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 (3) 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/her 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 Chairperson or Vice-Chairperson ceasing to hold such Regional office, shall be filled automatically by the election to fill such latter office in terms of 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 Clauses 7(3) and 7(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 7 (seven) days' notice in writing to the Committee of the Region which he/she represents and to the C.E.O.;
 - (b) On suspension or expulsion from membership of the Union;
 - (c) On absenting himself/herself from 2 (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/her principal on the N.E.C.;
 - (d) On ceasing to be a member of the Union or on ceasing to be employed in the Motor Industry;
 - (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/her duties; and/or
 - (iv) infringing any of the terms of this Constitution intentionally or recklessly.
- (8) The N.E.C. shall meet at least once in every 2 (two) years and special meetings of the N.E.C. shall be convened:

- (a) within 30 (thirty) days of receipt by the C.E.O. of a written requisition for such meeting signed by at least 5 (five) N.E.C. members representing at least 2 (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 C.E.O. shall notify members by registered post or an acknowledged delivery method, such as e-mail, of the place, date and time of a meeting of the N.E.C. and shall attach the relevant agendas to such notices which must be issued not less than 14 (fourteen) days before the date of the meeting and, in the case of a special meeting, not less than 7 (seven) days before the date of such meeting.
- (10) The quorum for a meeting of the N.E.C. shall be seventy five (75) percent of the constituted members in person and by proxy, including representation of at least one (1) member in person or by proxy from each Region. If after 60 (sixty) minutes of the time fixed for a meeting a quorum is not constituted in terms of this sub-clause, the meeting shall be adjourned 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/she is entitled to cast and he/she shall record his/her 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/her principal, shall, in addition to his/her 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 the 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) To, subject to the provisions of clauses 8(8) and 10(16) hereof, whichever is applicable, engage or dismiss any employee of the Union and to determine his/her 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 make grants to any association, organisation, institution or authority in the furtherance of the interests of the Union or its members;
- (i) To advance to any member, his/her 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 and/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 Chairperson 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 and/or its members.
 - (q) If any matter arises which in the opinion of the President is of urgency, he/she may authorise a postal vote or an electronic vote of N.E.C. members to be conducted on such matter.
 - (r) Notwithstanding the numerical constituted number of members of the N.E.C. as per clause (7)(2)(a) and (b), no Region shall carry more than forty nine (49) percent of the casted vote on matters voted on at or by the N.E.C.
- (15) Subject to what is stated in clause 2(11), all decisions of the N.E.C. shall be adopted by a vote of at least two thirds of the members of the N.E.C. who are present or represented at such meeting.

CLAUSE 8: NATIONAL OFFICE-BEARERS AND NATIONAL 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 of August in every 3rd (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 C.E.O. to be lodged with him/her 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 3 (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/her 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 1 (one) year.

- (5) The President and/or Vice-Presidents shall vacate their respective offices on resigning by giving 30 (thirty) days' notice in writing to the C.E.O. and/or ceasing to be a 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/her office in the event of his/her 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/her opinion after consultation with the Vice-Presidents and for such purpose to call upon the C.E.O., 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/her place where the Region concerned is that of which he/she is a member and provided further that no Office-Bearer shall participate in the investigation of the affairs of the Region of which he/she 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/her custody. The results of any such investigation shall be reported to the N.E.C. and the Regional Committee concerned within 14 (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 C.E.O. of all matters which in his/her 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/her, 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/she 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 the C.E.O. for the Union, on such terms and conditions of service as may be determined by it and may subject to any law governing the situation, terminate his/her service on giving him/her 3 (three) calendar months' notice of such

intention, at the expiration of which period his/her contract of service shall *ipso facto* terminate; provided that such decision to terminate his/her service shall have no force or effect unless passed at a meeting of the N.E.C.

- (9) The C.E.O. shall perform such legitimate duties as are imposed on him/her by this Constitution and as the N.E.C. may direct and such duties as imposed on him/her by Sections 98, 99 and 100 of the Act 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/her office. He/she 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 C.E.O. on any of the following grounds:
 - (a) Willful neglect of duty or misconduct; and/or
 - (b) Commission of any act which in the opinion of the N.E.C. is seriously detrimental to the interests of the Union; and/or
 - (c) Refusal or unreasonable failure to carry out any legitimate duties imposed upon him/her in terms of this Constitution; and/or
 - (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 C.E.O. on such terms and conditions of service as they may deem fit, to carry out the duties of C.E.O. 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 6 (six) months without confirmation by the N.E.C.

CLAUSE 9: ANNUAL GENERAL MEETING

- (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 relevant 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 30 (thirty) days of receipt by the C.E.O. of a written requisition for such meeting, signed by at least 5 (five) per cent 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 Annual General Meeting of members, including a special general meeting, showing the business to be transacted thereat, shall be given to all members of the relevant Region by the C.E.O. not less than 10 (ten) days before the date of such meeting; provided that shorter notice, but not less than 72 (seventy-two) hours, may be authorised by the Regional Chairperson 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 the Annual General Meeting, including a special general meeting, shall be a number of not less than 40 (forty) members. If within 60 (sixty) minutes of the time fixed for the meeting a quorum is not constituted, the meeting shall stand adjourned for at least 7 (seven) days, but not more than 14 (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 Annual General Meeting of the members of a Region, including a special general meeting:
- (a) The minutes of the preceding Annual General Meeting shall be tabled and after confirmation shall be signed by the Chairperson of the meeting. A copy of the confirmed minutes shall be forwarded to the C.E.O. within 30 (thirty) days after confirmation. The draft minutes of every Annual 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 C.E.O within 30 (thirty) days of such perusal;
 - (b) If the Chairperson of the meeting so decides, all motions shall be reduced to writing and shall be delivered to him/her 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 5 (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 Annual General Meeting, including a special 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 Chairperson or, if he/she is not available, the Regional Vice-Chairperson shall preside over Regional General Meetings. In the event of both the Regional Chairperson and Vice-Chairperson 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

- (1) For each Region established in terms of this Constitution, there shall be a Regional Committee consisting of a Chairperson, Vice-Chairperson and not less than 5 (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 7 (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. Members of the Regional Committee shall be represented by ordinary members as determined by clause 5A(1) of the Constitution.

The Chairperson and Vice-Chairperson 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/she is a member; provided that he/she is resident within a distance of 80 (eighty) kilometres from

the Regional Office concerned, unless otherwise determined by the N.E.C. from time to time.

- (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/her election until the time of the election of Office-Bearers on the date of the third annual general meeting of his/her Region succeeding the date of his/her 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 C.E.O. by the members of the Region concerned, at least 30 (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 Chairperson and Vice-Chairperson 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 Chairperson and Vice-Chairperson and National Executive Council Members shall be confined to members of the Regional Committee concerned, and shall be called for by the C.E.O. to be lodged with him/her 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 Chairperson and Vice-Chairperson shall, subject to the provisions of Clause 18 of this Constitution, hold office for 3 (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 Chairperson, be filled by assumption to this office by the Regional Vice-Chairperson.
 - (ii) In the event of the vacancies simultaneously existing in the offices of Regional Chairperson and Vice-Chairperson, 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 Chairperson 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, such vacancy shall 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 C.E.O. within 4 (four) weeks from the date on which the vacancy occurred, and the election to fill such vacancy shall be held within 6 (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 C.E.O. 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 Chairperson if deemed advisable and shall be called within 10 (ten) days of receipt by the Regional Chairperson of a written requisition for such meeting signed by at least 3 (three) Regional Committee members.
- (9) Members of the Regional Committee shall be notified in writing of the time and place of every Regional Committee meeting by the C.E.O., at least 7 (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 C.E.O when duly authorised thereto by the relevant Regional Chairperson and Vice-Chairperson, and if such notice and the matters for the relevant agenda are previously made known to and approved by every Regional Committee member concerned. 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 50 (fifty) percent plus 1 (one) of the Regional Committee members. If after 30 (thirty) minutes of the time fixed for a meeting, a quorum is not constituted in terms of this sub-clause, the meeting shall be adjourned and a new meeting shall be convened in the manner prescribed herein.
- (11) The Regional Chairperson or, if he/she is not available, the Regional Vice-Chairperson, shall preside over Regional Committee meetings. In the event of both the Regional Chairperson and Vice-Chairperson 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 kept by the C.E.O.
- (13) A Regional Committee shall, subject to the instructions and control of the Regional Annual General Meeting 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; subject to the approval of the N.E.C.;
 - (h) To do such other lawful things as are in the interests of its Region and/or its members, 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 7 (seven) days' notice in writing to the Regional Committee concerned;
 - (d) On absenting himself/herself from 2 (two) consecutive meetings of the Regional Committee concerned without such absence being approved by the Regional Committee.
- (15) A Regional Chairperson and Vice-Chairperson 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) The C.E.O. shall be accountable for the administration of each Region and shall appoint operational staff to assist him/her with the administration of the region concerned.
- (a) The C.E.O. 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 C.E.O.
- (17) The C.E.O. shall perform such legitimate duties as may be imposed upon him/her 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 a 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 Annual 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 3 (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 Regional 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) Subject to what is stated in clause 2(11), all decisions of a Regional Committee shall be adopted by a vote of at least two thirds of the members of the said committee, who are present or represented at such meeting.

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 (twelve) 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 N.E.C., 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 Act, 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 of employment to the employer, association or any responsible authority or agency; and
 - (iv) perform any other functions that the N.E.C. may direct.

CLAUSE 12: SECRETARY

- (1) The CEO shall also act as the Union's Secretary. In the event of the inability of the CEO to fulfil his / her duties, the N.E.C. shall appoint a duly qualified person as the Union's secretary on such terms as the N.E.C. may decide.
- (2) The CEO shall fulfil the following functions:
 - (a) Receive applications for membership, resignations and changes of addresses of members of the Union;
 - (b) Give notice of Annual General Meetings, special meetings, N.E.C. meetings and Regional Committee meetings as per the terms of this Constitution, including preparing the agendas for these meetings;
 - (c) Attend the aforesaid meetings;
 - (d) Preparing the minutes of Annual General Meetings, special meetings, N.E.C. meetings and Regional Committee meetings held;
 - (e) Receive any and all complaints from members of the Union, including queries pertaining to the payment and/or calculation of their subscriptions;
 - (f) Fulfill all the relevant functions pertaining to the carrying out of a ballot, as stipulated in clause 15 below; and
 - (g) All other functions as described in this Constitution that the C.E.O. must fulfil.

CLAUSE 13: FINANCE

- (1) Not less than 25 (twenty-five) per cent of nett subscriptions received from members on behalf of the Union shall be remitted monthly to the C.E.O. for deposit within 3 (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 or as may be determined by the N.E.C. Any expenditure and/or payment shall be in accordance with the By-Laws of the Union, any applicable Fund Rules, the relevant Policies adopted by the N.E.C. and any instruction of the N.E.C.
- (2) The balance of members' subscriptions together with all other monies received less all contributions allowable and approved by the N.E.C. 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 or 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/her 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) 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 C.E.O. shall allocate a float to Head Office and the Regional Offices for petty cash expenditure on behalf of the Union. This amount may be reviewed annually by the N.E.C. and the amount so determined shall be written into the By-Laws of the Union. 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 fees, 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 C.E.O., 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 payment shall:
 - (a) indicate the name of the payee; and
 - (b) be subject to any two signatories authorized and appointed by the N.E.C.
- (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 the C.E.O. and submitted to the Regional Committee concerned. A similar account shall be prepared monthly by the C.E.O. 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 Act, the C.E.O. 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 C.E.O., 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-imbursment 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 14: 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 C.E.O. or any other Senior Paid-Official 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 15: 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 members, 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) Notice of the ballot specifying the place, date and time for the issue and return of ballot papers, shall be given by the C.E.O. to each member who is entitled to participate in such ballot, at least 7 (seven) days before the date on which the ballot is to be conducted by way of:
 - (i) direct communication, including electronically;
 - (ii) display at the workplace and at Trade Union offices.

The ballot will be conducted in terms of a voters' roll of all members in good standing that the Union proposes to call on in order to strike, and to ensure that members vote only once.

- (b) 2 (two) independent 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/her;
- (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, and/or in terms of

sub section 3(2), be issued with a ballot paper which he/she 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/her 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 C.E.O. 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 3 (three) months during which period they shall, on written demand from not less than 20 (twenty) members, be recounted by 2 (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 3 (three) years from the date of the ballot and/or archived electronically.
- (3) A vote of the members of the Union shall be conducted in any one of the following manners:
- 1) Postal ballot
 - (a) The C.E.O. 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. The voters' roll shall reflect the postal address of the members concerned;
 - (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 C.E.O. within 14 (fourteen) days of dispatch of the ballot paper to the member, whereupon he/she 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.
 - 2) Electronic ballot
 - (a) The C.E.O. shall arrange for one electronic ballot per member, to cast their votes by means of electronic ballots, provided that the system used for such electronic voting is secret and their votes are accurately recorded:
 - (i) At least 7 days' electronic notice of the electronic voting shall be given by the C.E.O. to each member who is entitled to participate in the electronic voting.

- (ii) The voters' roll must reflect the email addresses or cell phone numbers of the members concerned.
 - (iii) An independent scrutineer, such as an attorney's firm or an auditor's firm, must be appointed by the Union to scrutinize the voting process, to tally the votes, to scrutinize the outcome of the electronic voting and to publish the outcome thereof.
 - (iv) The said scrutineer must keep the records of the electronic balloting for three months and thereafter submit it to the Union for recording for a period of three years.
- (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 members, unless the matter giving occasion thereto has been dealt with as provided for 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 20 (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 C.E.O. within 14 (fourteen) days of a written request to that effect.

- (6) 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 5 (five) N.E.C. members representing at least 2 (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.

(7) **STRIKE BALLOTS**

A strike may only be called in terms of this Constitution after a secret ballot was conducted of those members in respect of whom the strike is to be called.

- (a) A member shall not be disciplined or have his/her membership terminated for failure or refusal to participate in a strike if –
 - i. a secret ballot was not held about the strike;

- ii. a secret ballot was held but the majority of members who voted did not vote in favour of the strike.
- (c) A “ballot” is any system of voting by the members of a trade union that is recorded and is in secret.
- (d) The following are indicative of the procedures that should be followed when conducting a secret ballot:

Notice

- d.1 Reasonable notice must be given by the CEO to members of the holding of a ballot. Notice may be given to employees by direct communication, including emails or SMSes, or by the display of notices at the workplace and at trade union offices. While there is no fixed standard, a period of three days would generally be considered to be reasonable notice.
- d.2 The notice must specify the time and the place of the ballot.

Ballot papers

- d.3 The question that is the subject of the ballot must be clearly phrased, and must be consistent with the terms of the dispute referral.
- d.4 Ballot papers must be prepared in accordance with the provisions of this Constitution.
- d.5 Ballots must not contain any information that would make it possible to identify voters.

Voters’ roll

- d.6 A ballot must be conducted in terms of a voters’ roll of those members who are in good standing in terms of the union’s union constitution that the union proposes to call on strike. The voters’ roll may be derived from the Union’s membership records or from the employer’s records. The voters’ roll identifies which members are entitled to vote and must be marked to ensure that members vote once only.
- d.7 In the case of an electronic ballot conducted by email or SMS, the voters’ roll must reflect the email address or mobile phone number of the members concerned and must be scrutinized and conducted by the CCMA or any independent organisations. The CCMA or any independent organisation must keep the records of balloting for three months and thereafter submit to the trade union for record keeping.
- d.8 In the case of a postal ballot, the voter’s roll must reflect the postal addresses of the members and the CCMA or any independent organisation must keep the postal ballots for three months and thereafter submit to the trade union for record keeping.

d.9 A trade union may elect to ballot members outside of the bargaining unit in respect of which it proposes to call a strike or to ballot non-members within the bargaining unit. However, those ballots must be conducted and recorded separately from the ballot of members in respect of whom the trade union proposes to call on strike.

Scrutineers and observers

d.10 A union shall employ independent scrutineers to conduct or observe the ballot. In all the ballots there must be an independent scrutineer.

d.11 There is no requirement on the Union to permit an employer's observers at a ballot.

Records of ballot

d.12 Records of voting must be retained for a period of three years. These records include the voters' rolls, ballots in sealed ballot boxes or other containers and any documents used to calculate the outcome of the ballot.

d.13 In the case of electronic ballots, appropriate records must be retained.

CLAUSE 16: 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/her duties;
 - (c) Conduct aimed at the incitement of fellow members against the Union, Office-Bearers and/or Officials of the Union 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 30 (thirty) days of issue of a written demand to pay any subscriptions, fines and/or levies which are more than 90 (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/she has been afforded the opportunity of

stating his/her case personally at a meeting of the Regional Committee concerned, of which he/she shall be given at least 14 (fourteen) calendar days' written notice by ordinary post specifying the nature of the charge and that he/she may be found guilty in his/her absence if he/she fails to attend such meeting.

- (2) A member may appeal to the members of the Region of which he/she is a member, at the Annual General Meeting, against any disciplinary action to be taken against him/her in terms of sub-clause (1) hereof by a Regional Committee; provided that written notice of such appeal is lodged with the Secretary within 21 (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 Annual General Meeting the member may state his/her case personally to the meeting, and he/she may call such evidence as he/she 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/she may appeal in writing to the N.E.C. for further consideration; provided further that written notice of such appeal is lodged with the Secretary within 14 (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/her to the Union are more than 13 (thirteen) weeks in arrear, in which event he/she 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/she is under suspension in terms of this Constitution.

CLAUSE 17: CESSATION OF MEMBERSHIP

- (1) A member of the Union may resign by giving 14 (fourteen) days' written notice of such intention to the C.E.O.

- (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 the Union is in the process of disputing the dismissal of the member, in which case the employee remains a member until the Union has completed the dispute proceedings.
- (3) A member who resigns or terminates his/her membership in any manner shall nevertheless be liable for the payment of all subscriptions and any other monies due by him/her to the Union, up to the date on which his/her 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/she remains a Continuation member.

CLAUSE 18: 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 Act;
 - (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 12 (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 and 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 12 (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 Act;
- (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 19: REMOVAL AND REINSTATEMENT OF OFFICE-BEARERS AND PAID-OFFICIAL.

- (1) If at any time not less than 35 (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 Paid-Official responsible for the management activities in the Regions, named in such request, shall be removed from office, the N.E.C. shall cause such ballot to be conducted within 30 (thirty) days after the date of receipt by the N.E.C. of such request. If in such ballot not less than 65 (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 Paid-Official responsible for the management activities in the Regions concerned, he/she 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 Paid-Official responsible for the management activities in the Regions has been removed from office, other than in terms of sub-clause (1) of this clause, and at least 35 (thirty-five) per cent of the members of the Region who are in good standing submit a written request within 30 (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 Paid-Official responsible for the

management activities in the Regions so removed from office, shall be reinstated, such ballot shall be conducted within 30 (thirty) days of receipt of the request by the N.E.C.

- (3) (a) If at any time not less than 35 (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 C.E.O., named in such request, shall be removed from office, the N.E.C., shall cause such a ballot to be conducted within 30 (thirty) days after the date of receipt by the N.E.C. of such request. If in such ballot not less than 65 (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 C.E.O. concerned, he/she 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 C.E.O. 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 C.E.O. has been removed from office, other than in terms of sub-clause (3)(a) of this clause, and at least 35 (thirty-five) per cent of the members of the Union who are in good standing submit a written request, within 60 (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 C.E.O. so removed from office shall be reinstated, such ballot shall be conducted within 30 (thirty) days of receipt of the request by the N.E.C. The C.E.O. concerned shall be reinstated if in such ballot not less than 65 (sixty-five) per cent of the members of the Union who are in good standing, vote in favour thereof.

CLAUSE 20: 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 Act.
- (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, the C.E.O. or such employee when authorised thereto by the President or C.E.O.
- (5) Every Office-Bearer, Official and employee of the Union shall be indemnified by the Union against all costs, loss and expenses which he/she may incur or become liable for in any manner in the execution of his/her office of trust, unless his/her own wilful 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/her office or in relation thereto except when due to his/her own willful act or default.

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