

HAIRDRESSING & COSMETOLOGY BARGAINING COUNCIL (KWAZULU-NATAL)

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THE CONSTITUTION

2008

Department of Labour

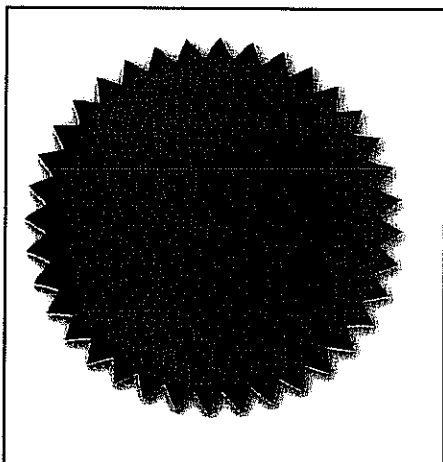


Republic of South Africa

It is hereby certified that the constitution of the

Hairdressing and Cosmetology Bargaining Council (KwaZulu-Natal)

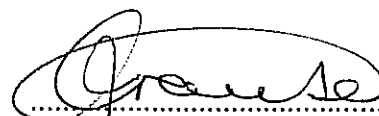
Has been replaced with a new constitution which complies with the requirements of section 57(3) read with section 30 of the Labour Relations Act, 1995.



Reference number: LR 2/6/6/37

(Official stamp of Registrar)

Date: 23 February 2009


Registrar of Labour Relations

**HAIRDRESSING and COSMETOLOGY BARGAINING COUNCIL
(KWAZULU-NATAL)**

**CONSTITUTION
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**HAIRDRESSING and COSMETOLOGY BARGAINING COUNCIL
(KWAZULU-NATAL)**

CONSTITUTION

1) NAME

The name of this Council shall be :-

**HAIRDRESSING and COSMETOLOGY BARGAINING COUNCIL
(KWAZULU-NATAL).**


2) REGISTERED SCOPE

The registered scope of this council is specified in the Certificate of Registration, a copy of which is attached to this constitution.

3) DEFINITIONS

Any words and expressions used herein which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, and any reference to an Act shall include any amendments to such Act. Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the female and vice versa, further, unless inconsistent with the context;

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- a) **'Act'** unless otherwise specified, means the Labour Relations Act No. 66 of 1995;
- b) **'Agent'** means a Designated Agent / Inspector appointed in terms of Section 33 of the Act ;
- c) **'Agreement'** means any agreement entered into between the parties in terms of the Act from time to time;
- d) **'Alternate'** means a person appointed to act on behalf of a representative in the absence of the representative ;
- e) **'Council'** means the Hairdressing and Cosmetology Bargaining Council (KwaZulu-Natal) deemed to have been registered in terms of Section 29 of the Labour Relations Act 1995 ;
- f) **'day'** means calendar day;
- g) **'Industry' or 'Hairdressing and Cosmetology Industry'** means the Hairdressing and Cosmetology Industry;
- h) **'Minister'** means the Minister of Labour;
- i) **'Secretary'** means the Secretary of the Council ;
- j) **'Small and Medium Business'** means a small business in the sector and area which employs 2 (two) employees or less, and a medium business is one that employs more than two (2) but less than ten (10) employees:
- k) **'Party' or 'Parties'**, means the employers' organisations and the trade unions who are parties to the Council from time to time ;
- l) **'Representative'**, means a person appointed by any party in terms of their

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constitution to represent such party on the Council;

4) STATUS OF THE COUNCIL

- a) The Council, upon registration, will become a body corporate, as prescribed by the Act and capable of doing any act which the Act and/or its Constitution requires or permits it to do.
- b) The Council shall exist independently of its members and shall have perpetual succession.
- c) Unless otherwise provided by the Constitution, no party, by reason only of its affiliation to the Council, shall be liable for any of the obligations of the Council.

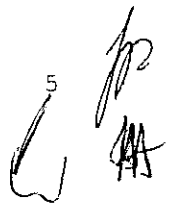
5) POWERS AND FUNCTIONS

- a. The powers and functions of the Bargaining Council in relation to its scope shall be to include the following –
 - i. to conclude collective agreements
 - ii. to enforce those collective agreements
 - iii. to prevent and resolve labour disputes
 - iv. to perform dispute resolution functions as envisioned in terms of section 51 of the Act
 - v. to establish and administer a fund to be used for resolving disputes
 - vi. to promote and establish industry training and education schemes

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- vii. to establish and administer benefit funds such as pension, provident, medical aid, sick pay, holiday pay or other such funds or schemes for the benefit of the members of the parties to the council
- viii. to promote good relationships between employers and employees ;
- ix. to secure the complete organisation of employers and employees in the Industry ;
- x. to secure regular employment for the employees in the industry and to minimise unemployment through the promotion of training and education schemes;
- xi. to consider, advise and make representations on any legislation or proposed legislation affecting employers and employees to NEDLAC or any other appropriate forum that may affect the industry;
- xii. to extend the services and functions of the bargaining council to the workers in the informal sector and home workers.
- xiii. to establish and regulate uniform conditions of employment throughout the industry;
- xiv. to receive, raise and disburse moneys by such means as the Council may, from time to time, consider advisable for the purpose of furthering the objects of the Council in the interests of employers and employees in the Industry;
- xv. to purchase, take on lease or in exchange or otherwise acquire and sell, dispose of and otherwise deal with movable and immovable property for the Council's own needs of all kinds for the purpose of furthering the objects of the Council in the interests of employers and employees in the Industry ;

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- xvi. to apply to the CCMA for accreditation as a dispute resolution agency in terms of Section 52 of the Act, and to perform any functions conferred upon it in terms of that section, and
- xvii. to do such other things as may tend to the furtherance of the above objects or anyone of them within the registered scope of the Council.

6) PARTIES

- a) The Parties to the Council shall be the registered employers' organisations and registered trade unions, hereto and hereinafter referred to as the "employers" or "employers' organisations" and/or the "employees" or "trade unions" respectively as the case may be, whose members are engaged or employed in the Industry, which details are contained in the Certificate of Registration, attached hereto.
- b) Any employers' organisation registered in terms of the Act in respect of employers engaged in the Hairdressing and Cosmetology Industry may apply in writing to be admitted as a party to Council if such employers' organisation has a registered paid up national membership of no less than 0% of the total number of employers registered within the scope of the Council's Agreements, and who employ no less than 10% of the registered employees engaged nationally within the scope of the Council's Agreements.
- c) Any trade union registered in terms of the Act in respect of employees engaged in the Hairdressing and Cosmetology Industry may apply in writing to be admitted as a party to the Council if such trade union has a registered paid up national membership of no less than 10% of the total number of employees registered within the scope of the Council's Agreements.

- d) Any employers' organisation or trade union, that was previously admitted to the Council, in terms of this clause, but whose paid-up membership subsequently falls below 10%, shall be required within a period of three (3) months to rectify such deficiency in its membership, failing which such employers' organization or trade union shall no longer be deemed to be representative and shall no longer qualify to remain as a party on the Council
- e) Any party may withdraw from the Council on giving 3 (three) months notice in writing to the Secretary, provided that no such notice shall take effect before the expiry of any Agreement which is at that stage in force, and provided further that such party and its members shall remain bound by the provisions of any such Agreement until the expiry thereof.
- f) the members of any party admitted to council in terms of this clause shall with immediate effect comply fully with the Council agreements as if they were party to those agreements.
- g) The Council must, within ninety (90)days of the receipt of an application for admission to the Council, decide whether to grant or refuse the application, and must advise the applicant within a further thirty (30) days in writing of the decision and the reasons for that decision.

7) APPOINTMENT OF REPRESENTATIVES AND ALTERNATES

- a) The Council shall consist of a minimum of eight (8) representatives, one half of whom shall be appointed by the employers' organisations and the other half by the trade unions.
- b) An alternate or alternates, not exceeding two in number, may be appointed for each representative on the Council, provided that any case where an additional alternate is appointed, not more than two of the three persons who are the representatives, alternate and additional alternate respectively shall be eligible to attend any meeting at the same time.

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- c) Representatives and alternates shall be appointed by the employers' organisations and the trade unions in the manner prescribed in their respective constitutions.
- d) Representatives shall hold office for a period of one year and thereafter until their successors are appointed, and shall be eligible for re-election. They shall be persons engaged or employed in the Industry or full-time paid officials of the parties
- e) A representative or alternate may resign from the Council by giving to the Council, and to the party which appointed him, one month's notice in writing, and a party may at any time withdraw a representative or alternate by giving fourteen days' notice to the Council in writing and appoint another in his stead.
- f) If a seat on the Council becomes vacant through the withdrawal, resignation, disqualification in terms of clause 9 or death of a representative or alternate, the vacancy shall be filled by the party which appointed such representative or alternate. Any person so appointed to be a representative or an alternate shall hold office for the un-expired period of office of his predecessor.

8. DISQUALIFICATION OF REPRESENTATIVES.

A person shall not be appointed as a representative to the Council or any committee, as the case may be, and any representative shall cease to hold office if:

- a. he is or becomes of unsound mind;
- b. he surrenders his estate as insolvent or if his estate is sequestrated ;
- c. he is convicted of an offence which involves dishonesty;

- d. he is or becomes disqualified from being appointed or acting as a director of a company in terms of the Companies Act 1973;
- e. he is absent from 3 (three) consecutive meetings of the Council or any committee, as the case may be, without having obtained leave to be so absent from the Council or said committee, as the case may be, unless an explanation to the satisfaction of the other representatives is given.
- f. In the opinion of the majority of the other representatives to council, he persists in conducting himself at meetings in a manner which unprofessional, discourteous, obstructive, insulting or in other way undermines the proper functioning of the Council

9. REPRESENTATION OF SMALL AND MEDIUM ENTERPRISES.

In order to foster and develop matters of mutual interest and the relationship between employers and employees of small and medium enterprises and to give effect to the objects of this Constitution and Section 28 of the Act, a minimum of 75% of the representatives nominated by a party to serve on the council must consist of employers who own or operate, or employees who are employed by, a small or medium business.

10. COUNCIL MEETINGS.

- a. The Council shall meet as occasion requires but the Council shall hold at least an annual general meeting and one other council meeting during a year at such time and place as the Executive Committee may decide.
- b. Special Meetings may be called at the discretion of the Chairperson or acting Chairperson, as the circumstances may require, and shall be called on the decision of the Executive Committee or on a requisition by a majority of the representatives of either side.

- c. The Executive Committee shall meet not less than once in every two months on a date fixed by the Chairperson, and special meetings may be called by the Chairperson at any time at his discretion.
- d. Notice of the meeting indicating the date, time, venue and the business to be transacted shall be given to representatives by the Secretary in writing at least two weeks prior to the date of the Annual General Meeting and at least one week in the case of other meetings of the Council, or of the Executive Committee, provided that in the case of a special meeting the Chairperson may authorise the giving of shorter notice.
- e. The quorum for a meeting of the Council shall be a simple majority of representatives each of the employers and employees.
- f. The quorum for a meeting of the Executive Committee shall be a majority of the total number of members appointed thereto.
- g. If a quorum is not present within fifteen minutes of the time and date fixed for any meeting of the Council or Executive Committee, the meeting shall stand adjourned for a further 15 (fifteen) minutes after which it may proceed with those representatives present at the time called for the meeting, regardless of whether or not the further notice was given and whether or not a quorum has been formed.
- h. If any representative is absent from any meeting and is not represented by his alternate, the voting power of the employers or employees, as the case may be, shall be reduced as may be necessary to preserve equality of voting power between the parties.
- i. Subject to the provisions of this constitution, alternates shall be entitled to attend meetings of the Council but shall not vote unless their principals are absent.

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- j. Any representative or alternate representing any party on the Council which has refused to become a party to any Agreement which has been arrived at between any or all of the parties shall not be entitled to vote at any meeting of the Council or Executive Committee on any matter in any way connected with or arising from any such Agreement, or to speak on any such matter without the permission of the Presiding Officer, provided that where by reason of this provision any representative or alternate is disenfranchised, the value of the votes recorded for or against any proposition shall be reduced to a common denominator in order to ascertain the result of the voting.
- k. No motion shall be considered unless seconded and, unless otherwise provided, all matters shall be voted upon and decided by a majority vote except in the case of elections, when the candidates up to the required number receiving the highest votes shall be declared elected.
- l. No representative shall be permitted to speak on any matter for a period exceeding ten (10) minutes unless a majority of those present agree thereto.
- m. Points of procedure on which this Constitution is silent shall be decided by a majority of the votes of those present at a meeting and entitled to vote.
- n. If between meetings of the Council any question arises which in the opinion of the Executive Committee is of extreme urgency and can be decided by a plain "yes" or "no" or by making a mark indicating a choice of one of a number of alternative courses, a vote of the representatives on the Council may be taken as above by post or by electronic means. Where Postal voting papers are used, these shall be signed by the representatives as proof of their entitlement to vote on the matter before them, and any unsigned paper shall not be regarded as a vote.

- o. Minutes of meetings of the Council and the Executive Committee shall be taken by the Secretary. At any meeting the minutes of the previous meeting of the body concerned shall be submitted for confirmation and signature by the Presiding Officer. Minutes of meetings of committees and sub-committees shall be taken by the person appointed for that purpose.
- p. The Council and the Executive Committee shall have power to appoint committees and sub-committees for the purpose of performing any function delegated to them by the Council or referred to them by the Executive Committee, as the case may be, or for the purpose of investigating and reporting on any matter referred to them.
- q. The provisions of this Constitution relating to the calling and conduct of meetings of the Executive Committee shall *mutatis mutandis* apply to the calling and conduct of meetings of committees and sub-committees, provided that the quorum for such committee or sub-committee meeting shall be a majority of the members thereof.
- r. The Annual General Meeting shall *inter alia* address the following:
 - i. The secretary's report which shall report on the principal matters which have been dealt with since the previous meeting;
 - ii. The audited Annual Financial statements and the auditors report thereon referred to in terms of this Constitution.
 - iii. Receipt of the nominations of representatives from the parties
 - iv. Receipt of the nominations in respect of representatives who represent small and medium business
 - v. The election of the chairperson and the deputy chairperson of the council – on a rotational basis between the employer and the trade union parties.
 - vi. The election of the additional members of the executive committee and their alternates.
 - vii. A budget for the financial activities of the council for the following year.
 - viii. The appointment of members of the panel of conciliators

- ix. The appointment of members of the panel of arbitrators
- x. The appointment of members of the independent exemptions committee
- xi. The appointment of an auditor.

11. CHAIRPERSON AND VICE-CHAIRPERSON.

- a. The Council shall, at each Annual General Meeting, upon a motion duly moved, seconded and voted upon by a show of hands in each case, elect a Chairperson and Vice-Chairperson, one of whom shall be a representative of the employers and one a representative of the employees.
- b. The Chairperson and Vice-Chairperson shall also be the Chairperson and Vice-Chairperson of the Executive Committee and shall hold office until the next Annual General Meeting of the Council, or until they cease to be representatives on the Council, whichever is the earlier. Should either post become vacant between Annual General Meetings, the Executive Committee shall appoint a replacement to that post from among its members for the unexpired portion of the period of the office concerned.
- c. The Chairperson shall preside and enforce order at all meetings of the Council or the Executive Committee at which he is present, and sign minutes of meetings after confirmation and perform such other duties as by usage and custom pertain to the office of a Chairperson, and the Vice-Chairperson shall exercise those powers and perform those duties in his absence.
- d. In the event of both the Chairperson and Vice-Chairperson being unable to perform their duties, the Council or Executive Committee shall elect an Acting Chairperson who shall exercise the powers and perform the duties of the Chairperson while so acting.

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12. THE EXECUTIVE COMMITTEE.

- a. At the Annual General Meeting, the Council shall appoint an Executive Committee that shall consist of the Chairperson and Deputy Chairperson of the council, who are members by virtue of their respective offices, and at least four additional members and their alternates elected in accordance with this constitution.
- b. The additional members and their alternates must be representatives in the council, and half of the additional members as well as their alternates must be appointed by the employer representatives in the council whilst the other half of the additional members as well as their alternates must be appointed by the employee representatives in the council.
- c. Members and alternates shall hold office until the next Annual General Meeting of the Council or until they cease to be representatives or alternates on the Council, whichever is the earlier date, and they shall be eligible for re-election. A member may resign by giving one month's notice in writing to the Secretary.
- d. The Executive Committee shall administer the affairs of the Council in respect of such matters as may be delegated to it by the Council in terms of Section 28 of the Act. The Executive Committee shall carry out the function and duties of the council relating to the supervision and control of the everyday management and administration of the council.
- e. If a seat becomes vacant on the Executive Committee, the remaining members shall fill the vacancy from the employer representatives and alternates on the Council or the employee representatives and alternates on the Council, as the case may be. Any person so co-opted shall hold office for the unexpired period of office of his predecessor.

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13. DELEGATION OF POWERS.

- a. In addition to and without prejudice to any powers previously delegated to the Executive Committee or conferred upon it by this Constitution, the entire functions, powers and duties of the Council shall be hereby delegated to the Executive Committee, which shall administer the affairs of the Council between General Meetings of the Council. Provided always that the performance by the Executive Committee of any function, power or duty of the Council shall at all times be subject to the direction and control of the Council, which may at any time or times withdraw the delegation to the Executive Committee of any function, power or duty; provided further that the aforesaid delegation shall in no way impair the Council's right and power to perform any function, power or duty.
- b. The Council shall delegate powers to the chairperson and vice-chairperson to make day to day decisions as and when required, and to report on such decisions at the next meeting of the Council for ratification.

14. OTHER COMMITTEES

- a. The council may establish other committees to perform any of its functions, including the investigation of and the reporting to the council on any matters other than the non-delegable functions of the council as referred to elsewhere in the constitution.
- b. Half of the members of any committee so appointed must be nominated by the employer representatives and the other half by the employee representatives.
- c. A majority of the total number of the members of any committee so appointed forms a quorum and must be present before a committee meeting can or may proceed

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- d. All clauses relating to the calling and conducting of the business of meetings read with changes required within the context of a meeting will apply to any such committee meetings.

15. FUNCTIONS AND DUTIES OF OFFICIALS AND STAFF

- a. The Council shall appoint a secretary and such other staff as may be appropriate to carry out the administrative requirements arising from the functioning of the council in terms of the Act and this constitution. Those staff and their responsibilities may include some or all of the following:
 - i. The secretary of the council shall conduct the correspondence of the Council, prepare and distribute the notice and agenda, and he shall attend all meetings of the Council and the Executive Committee, record minutes of such meetings and circulate copies thereof to representatives, alternates and to the Registrar of Labour, and he shall act upon such instructions as may be given by the council or the Executive Committee from time to time in the interests and for the betterment of the council.
 - ii. The secretary shall cause books of account to be kept as may be prescribed by the Executive Committee, and shall, in addition, perform such duties as may be assigned to him by the Council or Executive Committee.
- b. A designated agent who may perform any of the functions on behalf of the Council prescribed in section 33 of the Act, and shall have the powers conferred in schedule 10 of the Act.
- c. Such agents or other staff of the council may be called upon to attend meetings of the Council, the Executive Committee and other Committees to provide reports or information as required by the nature of that meeting.

16. FINANCES OF THE COUNCIL

- a. The expenses of the Council shall primarily be met from a fund which shall be raised by the Council from levies on the employers and the employees who fall within the jurisdiction of the council. Other funds may be raised as a consequence of the activities of the council administration of any social and related funds or from any other sources as may be agreed by the parties from time to time.
- b. All monies received shall be deposited to the credit of the Council with a Bank to be decided upon by the Council within five (five) working days of such receipt. Any surplus funds which are not for the time being required for the immediate purposes of the Council may be invested as provided for in section 53(5) of the Act.
- c. The funds of the Council shall be applied to the payment of expenses arising from the administration of the affairs of the Council, and the exercise of any of its powers and/or functions in terms of this Constitution and the Act.
- d. The secretary of the council shall present to the Annual General Meeting a budget for the following year, showing anticipated income and expenditure. The secretary shall report on the variances between the budget and the expenditure.
- e. Monthly statements showing the income and expenditure and the financial position of the Council shall be submitted to the Council by the General Secretary.
- f. The Secretary shall, in respect of each financial year, prepare statements showing :
- i. monies received during the 12 (twelve) months ending 31 December indicating whether it is in terms of any Agreement or from any other source;

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- ii. expenditure incurred during the 12 (twelve) months ending 31 December ;
and
- iii a balance sheet as at 31 December showing the assets and liabilities of the Council.
- g. Such statements shall be audited by the auditors appointed by the Council at the Annual General Meeting and be available for inspection by members of the Council and otherwise be dealt with as required in terms of the Act. The financial statements referred to above are to be prepared in accordance with Generally Accepted Accounting Practices (GAAP).
- h. A separate account shall be kept by the Council for each of the individual benefit funds.
- i. The Council shall bank at such bank or banks as the Council may from time to time determine. The Chairperson, Deputy-chairperson and/or the secretary shall be required to authorise all or any financial instruments as may be required for the business of the Council
- j. The Council may authorise the payment of any amount which the Council itself, a member of the Council, or an official or representative of the Council is in law obliged to pay in consequence of any misallocation of the Council's funds or loss arising by negligence or mal-administration, and pay from the funds of the Council any amount becoming due by any other person where such person incurred such liability or loss when acting as a nominee of the Council, or as a party to the Council in carrying out any duty in connection with the Industry.

17. EXEMPTIONS IN RESPECT OF THE COLLECTIVE AGREEMENTS

- a. The council shall appoint an independent exemptions committee at the annual general meeting which will consider and decide any appeals against the refusal of the council to grant an exemption, or the withdrawal of an exemption, by council.
- b. Any party seeking exemption or exclusion from any of the collective agreements of council may apply to the council in such a manner as may be determined by council from time to time.
- c. Should any party be aggrieved by the decision of the council not to grant an exemption or to withdraw any exemption so granted, such party may within twenty-one (21) days lodge an appeal with the secretary of the council.
- d. The secretary of the council will convene a sitting of the independent exemptions committee within thirty (30) days of the submission of the appeal.
- e. Any appeal hearing conducted by the independent exemptions committee will be conducted as if it were an arbitration hearing in terms of this constitution with the findings of the independent exemptions committee being delivered to the council within fourteen (14) days of the hearing.

18. NEGOTIATING PROCEDURES.

- a. Where any party to the Council wishes to introduce proposals for the negotiation of a new Agreement or for the amendment of any existing Agreement the party shall submit its proposals in writing to the Secretary, clearly identifying any other party to the proposed negotiations.
- b. The Secretary shall immediately arrange for the proposal to be circulated to all interested parties and shall take steps to arrange a negotiating meeting which shall take place within 45 days of receipt of the proposal.

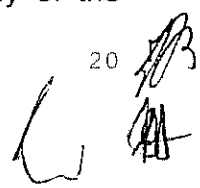
- c. Where the Secretary in consultation with the Chairperson of the Council decides that the proposal relates to the negotiation of an Industry matter, the date of the first negotiating meeting shall be decided at the next meeting of the Executive Committee and such negotiating meeting shall be held within 30 (thirty) days of the Executive Committee meeting.
- d. Further negotiating meetings may be held by agreement between the parties, who may also agree on any procedures, documentation, or any other matters for the purposes of assisting the negotiations.
- e. If the negotiations have not been concluded within the 30 (thirty) days of the first negotiating meeting held, or as otherwise agreed between the parties, any party to those negotiations may declare a dispute by notice in writing to the Council and must satisfy the Council that a copy of the referral has been served on all other parties to the dispute. This service must be effected by means of facsimile transmission, hand delivery or registered post.
- f. Industry disputes shall be processed in accordance with the procedures envisioned in this constitution.

19. DISPUTES PROCEDURE

Unless otherwise provided in this constitution or any collective agreement ratified by council, any dispute within the registered scope of the council must be resolved as set out herein:

19(i) ACCREDITATION

- i The council must apply for accreditation with the governing body of the



CCMA for the purposes of dispute resolution in terms of section 152 of the Act.

- ii In the event that the council fails to secure or maintain such accreditation, the council may then enter into an agreement with the CCMA in terms of which the CCMA is to perform all dispute resolution functions on behalf of the council in terms of section 51(3) of the Act.

19(ii) PANELS OF CONCILIATORS AND ARBITRATORS

- i The council must appoint a panel of conciliators for the purpose of conciliating disputes, and
- ii The council must appoint a panel of arbitrators for the purpose of determining disputes.
- iii A person may be appointed to either or both the panel of conciliators and the panel of arbitrators.
- iv The conciliators and arbitrators are to be appointed to the respective panels for a period of one year, but may be re-appointed at the expiry of the period of the appointment.
- v Council may remove a member of the panel of conciliators or arbitrators from office for serious misconduct, for incapacity or if at least half of the employer representatives and half of the employee representatives vote in favour of the removal of that member from the panel.
- vi Any panellist appointed to replace a panel member who leaves the panel for any reason other than due to the expiry of office, will serve on the panel for the remainder of the predecessors term of office.
- vii An employee of the council or a member of the parties to council may be

appointed to the panel conciliators and the panel of arbitrators, provided that should the council or the member have a vested interest in the dispute to be arbitrated, the employee of the council or the member of the party concerned will not be eligible to arbitrate the dispute.

19(iii) DISPUTES INVOLVING NON-PARTIES TO COUNCIL

- i Any dispute contemplated in terms of Section 51(3) of the Act, where any party to the dispute is not a party or a member of a party to the council, must be resolved as follows:
- ii Any of the parties to the dispute may refer the dispute in writing to the council using the prescribed CCMA dispute referral documentation, setting out the nature of the dispute and the outcome sought.
- iii The applicant in the dispute must satisfy the council that a copy of the referral has been served on all other parties to the dispute.
- iv The secretary of the council must appoint a member of the panel of conciliators who must attempt to resolve the dispute through conciliation within thirty (30) days from the date of receipt of the dispute at council, or any extended period as agreed to in writing by the parties to the dispute.
- v The secretary of the council must give at least fourteen days written notice to all parties of the date, the time and the venue of the conciliation of the dispute
- vi During the conciliation proceedings, the conciliator may;
 - a. mediate the dispute
 - b. conduct a fact-finding exercise; or

- c. make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- vii Representation of a party to the dispute in the conciliation proceedings must be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- viii Whether or not the matter is resolved, at the end of the thirty (30) day period or any further period agreed to in writing by the parties to the dispute, the conciliator who was appointed to attempt to resolve the dispute must issue a certificate indicating whether or not the dispute has been resolved.
- ix Nothing in this constitution prevents an officer or an employee of the council from investigating the dispute or attempting to resolve the dispute before the appointment of a conciliator.
- x If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if the Act requires that the dispute be arbitrated, or if all the parties to the dispute consent, to arbitration under the auspices of the council.
- xi Upon receipt of a written request for arbitration from a party to the dispute the secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.
- xii Any request for arbitration must be made on the appropriate CCMA documentation and must be made in accordance with the time frames prescribed in the Act, provided that the arbitrator may permit the late request for arbitration on good cause.
- xiii The secretary of the council must serve notice of the date, time and venue of the arbitration on the parties to the dispute.

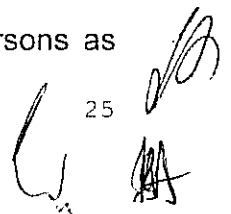
- xiv Any arbitration proceedings which are carried out in terms of this constitution must be conducted in terms of the provisions of the CCMA Practice and Procedure Manual for the handling of disputes provided that the council has not adopted any Code of Conduct for conciliators and arbitrators.
- xv Representation at arbitration proceedings will be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- xvi Any arbitrator who is appointed by council to resolve disputes has the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- xvii Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute is final and binding on the parties to the dispute. The arbitrator shall have the power to vary, rescind or amend an award made by him on good cause shown or of his own accord. Without limiting the generality thereof, the arbitrator shall have this power if –
 - a. The award was erroneously sought or erroneously made in the absence of any party affected by the award, or
 - b. The award is ambiguous or contains an obvious error or omission, or
 - c. The award was granted as a result of a mistake common to the parties to the proceedings.
- xviii The council must serve the award together with written reasons given by the arbitrator on all parties to the dispute.
- xix Upon receipt of a written request from a party to the dispute, the secretary of the council must apply to the director of the CCMA to certify that the arbitration award is an award contemplated in section 143(1) of the Act.

19(iv) DISPUTES INVOLVING PARTIES TO COUNCIL

- i For the purposes of this clause, a party to the council includes the members of any registered trade union or registered employers organisation that is party to the council.
- ii If the dispute between the parties is one which arises for negotiations entered into for the purpose of concluding a collective agreement in the council, the secretary must appoint a member of the panel of conciliators, who must attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was referred to the council, or within any extended period as agreed to in writing between the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of Section 64 of the Act.
- iii Any other dispute between the parties to the council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this constitution and / or any collective agreement between the parties to the dispute, must be resolved by the council on accordance with the procedures set out herein.
- iv Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this constitution and / or any collective agreement between the parties to the dispute, the secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.

20. COMPLIANCE PROCEDURE AND ENFORCEMENT OF COLLECTIVE AGREEMENTS BY COUNCIL

1. Council shall request the Minister to appoint certain identified persons as



the designated agents of the council to promote, monitor and enforce compliance with any collective agreement concluded in the council.

2. Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33,33A and schedule 10 of the Act. It is specifically recorded that a designated agent shall have the power to issue a compliance order in such format as may be determined by council from time to time
3. The council shall take all reasonable and necessary steps to ensure compliance with this constitution and with any collective agreements concluded in the council. If, whether through its own investigations or through any other source it appears that the provisions of such an agreement may have been breached council shall invoke the following procedures to enforce compliance;
 - a. The secretary shall appoint a designated agent to investigate the alleged breach;
 - b. The designated agent will conduct an investigation and if the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement in terms of guidelines of, or decisions by the council, where these exist, by:
 - c. Publicising the contents of the agreement
 - d. Conducting inspections
 - e. Investigating complaints
 - f. Conciliation or
 - g. The issuing of a compliance order requiring any person bound by the

collective agreement to comply with the agreement within a specified period, thereby indicating that a dispute exists.

4. The designated agent must report all disputes concerning compliance with any provision of a collective agreement to the secretary of the council.
5. Upon receipt of the report of an unresolved compliance dispute, the secretary of the council may refer the dispute to arbitration.
6. The secretary of the council must appoint an arbitrator from the panel of arbitrators to arbitrate the dispute.
7. The secretary of the council must serve notice of the date, time and venue of the arbitration on the parties to the dispute giving at least fourteen (14) days written notice of such process.
8. If any party to such an arbitration is not a party to the council and objects to the appointment of a member of the panel of arbitrators, the secretary of the council must request the CCMA to appoint an arbitrator, in which case the objecting party must pay the arbitrators fee to council, and the council shall pay the fee set by the CCMA.
9. The provisions regarding the handling of arbitration matters contained herein shall apply throughout, provided that the arbitrator may make any appropriate award including:
 - a. Ordering a person to pay an amount owing in terms of a collective agreement;
 - b. Imposing a fine for failure to comply with a collective agreement in accordance with item 29 of schedule 7 and section 33A (13) of the Act;
 - c. Charging a party to the arbitration an arbitration fee;

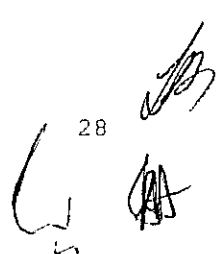
- d. Ordering a party to the arbitration to pay the costs of the arbitration;
- e. Confirming, varying or setting aside a compliance order issued by a designated agent;
- f. Any award contemplated in terms of section 138(9) of the Act which gives effect to the objectives of the Act, this constitution or any collective agreement reached in council.
- g. Any award in relation to interest or penalties payable on any amount that a person is obliged to pay in terms of a collective agreement
- 10. Subject to the provisions of the Act, an award in an arbitration conducted in terms of this procedure is final and binding on the parties to the dispute.
- 11. The secretary of the council may apply to the director of the CCMA to certify that an arbitration award issued in terms of this procedure is an award contemplated in terms of section 143(1) of the Act.
- 12. The provisions of this procedure stand in addition to any other legal remedy through which the council may enforce a collective agreement.

21. SIGNING OF AGREEMENTS

All agreements regarding wages and working conditions arrived at by the parties to the Council shall be binding only when reduced to writing and signed by representatives of both parties duly authorised to do so in terms of their respective constitutions, as required by the Act.

22. CHANGING THE CONSTITUTION.

- a. The Council may amend or replace this Constitution at any time: -

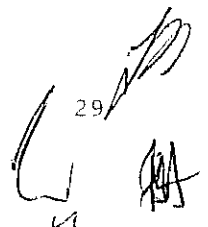


- i. by a resolution adopted by unanimous vote of all the representatives in the Council on a motion to amend tabled without prior notice; or
 - ii. by a resolution adopted by at least two thirds of all representatives in the Council after at least one month's notice of that motion to amend has been given to the Council Secretary; and
 - iii. two weeks notice of that motion had been given to all the other representatives.
- b. Any replacement to this Constitution becomes effective after the resolution effecting that amendment has been certified by the Registrar in terms of Section 57(3) of the Act.

23. WINDING UP

- a. At a special meeting called for that purpose, the Council, by resolution adopted by a majority of the total number of representatives in the Council, may decide to be wound up.
- b. Upon adoption of a resolution to wind up, the Secretary must take the necessary steps to ensure that -
 - i. application is immediately made to the Labour Court for an order giving effect to the resolution; and
 - ii. the Council's books and records of account and an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the Council at the disposal and under the control of the liquidator.

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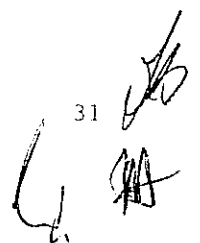
- c. Each party to the Council remains liable for any unpaid liabilities to the Council as at the adoption of a resolution to wind-up the Council.
- d. If all the liabilities of the Council have been discharged the Council must transfer any remaining assets to;
 - i. a Bargaining Council within the same or similar sector that has been agreed upon at the special meeting referred to above;
 - ii. The Commission for Conciliation, Mediation and Arbitration if there is no Bargaining Council within the same or similar sector or if the parties to the Council fail to agree on a Bargaining Council that is to receive their remaining assets.

24. GENERAL.

- a. Any previous Constitutions of the existing Council are hereby repealed.
- b. Notwithstanding the aforesaid repeal, any authority constituted or person appointed or power conferred or anything done in pursuance of any powers conferred by or by virtue of the said repealed Constitution shall be deemed to have been constituted, appointed, conferred or done in pursuance of powers conferred or by virtue of the corresponding provisions of this Constitution.
- c. Any application, objection, enquiry, appeal, dispute or other proceeding commenced prior to the adoption of this Constitution which may not have been concluded before the adoption of this Constitution or which, having been so concluded is thereafter re-opened, shall be continued in all respects as if this Constitution had not been adopted, save if the parties thereto shall agree otherwise.
- d. If a complaint is made against any representative or alternate

representative, then such complaint shall be considered by the Council, which shall deliver its finding within 5 (five) working days.

- e. If the affected party is aggrieved by the findings of the Council, it may within 5 (five) days request that the dispute be referred to arbitration, failing which the decision of the Council shall be final and binding on that party. Should the dispute be referred to arbitration, the Council shall refer the matter to an accredited agency appointed by it in terms of Section 52 of the Act, for the purpose of such arbitration. The arbitrator's decision shall be final and binding on the parties.
- f. If required by the Act, the Council shall process as an accredited agency any dispute referred in terms of this Constitution by a non-party to the Council, or appoint an accredited agency to conciliate and/or arbitrate that dispute.
- i. In the event of an accredited agency being so appointed, the conciliation and/or arbitration shall nevertheless be conducted in accordance with this Constitution.
- g. Costs incurred through conciliation and arbitration proceedings may be charged in any manner determined by the Council.
- h. Any Court application in relation to this Constitution, be it urgent or otherwise, shall be made to the Labour Court.
- i. The Council shall establish and maintain a record of all arbitration awards given under its jurisdiction, which shall be available to all parties within the Industry.



25 ATTESTATION

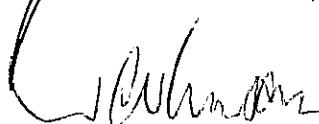
THIS CONSTITUTION WAS PLACED BEFORE THE GENERAL MEETING OF THE COUNCIL ON THE 26th NOVEMBER 2007 AND IT WAS UNANIMOUSLY ADOPTED AS THE CONSTITUTION OF THE HAIRDRESSING and COSMETOLOGY BARGAINING COUNCIL (KWAZULU-NATAL)

WE THE UNDERSIGNED BEING DULY AUTHORISED HERETO CONFIRM THAT THE TERMS OF THE CONSTITUTION WERE PROPERLY FOLLOWED IN THE ADOPTION OF THIS CONSTITUTION

THIS DONE AT DURBAN ON THE 9th December 2008

 M. G. LOMMAN

CHAIRPERSON : (NAME)

 A. T. P. PARKINSON

SECRETARY : (NAME)



WITNESS : (NAME)


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ANNEXURE A

PARTIES TO THE COUNCIL.

Subject to the provisions of Clause 17 of this Constitution, as amended from time to time, the parties to the Council at the time of the adoption of this constitution were :

EMPLOYERS' ORGANISATIONS

EMPLOYERS ORGANISATION for HAIRDRESSING COSMETOLOGY and BEAUTY

EMPLOYEES' ORGANISATIONS

UNITED ASSOCIATION OF SOUTH AFRICA