



31 The Dale Silverglade, Fish Hoek, Cape Town 7975. info@tumsa.org 083-960-6071 www.tumsa.org Reg [2018 / 301871 / 08]

CONSTITUTION OF TRADE UNION OF MUSICIANS OF SOUTH AFRICA

1. NAME

The name of the trade union is **TRADE UNION FOR MUSICIANS OF SOUTH AFRICA**

2. DEFINITIONS

Any expression used in this Constitution and which is defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), shall have the same meaning as in the Act.

3. OBJECTS

The objects of the trade union shall be -

(3.1) To provide a secure National structure for all who are (a) Self-employed (b) regularly (c) directly (d) dependent on (e) Music for their (f) Primary Income.

(3.1) To demand full recognition as a legitimate Trade Union and ensuring that South African Labour Law accommodates the rights of Musicians and other Music Industry Professionals as Workers, similarly to the way in which all other Trade Unions are recognised.

(3.3) Recognizing South African Musicians as specialist Workers with skills vital to the SA Cultural Economy, making their Careers within this Creative Economic Sector of South Africa and to work diligently to ensure that the Control and Majority Ownership of the South African Music Industry and Music Economy is first transferred to- and thereafter remains in the hands of Independent Music Professionals who are South African Citizens or with permanent residence / work permit status and practicing their Music craft in South Africa.

(3.4) Recognize and acknowledge our South African Culture – and specifically our Music – as a unique and valuable contributor to the Economy (GDP – Gross Domestic Product), a diverse collective of sub- cultures, united by the lessons from our History, present circumstances and legitimate future aspirations.

(3.5) To accept our responsibility as Co-Guardians of our Collective South African Culture, in ensuring that our People’s Music is preserved in its History, developed in its Present and guided in its Future to ensure that future generations will still continue to maintain their love and patronage of those unique elements that define us as South Africans, including all forms of Art, Entertainment and Languages.

(3.6) To embrace Technologies and all contemporary methods that can advance the cause and well- being of our Members.

(3.7) Assisting our Members in every possible way through Education and Training Structures, Collective bargaining, Advocacy, Communications, Negotiations, Mass Actions or whatever other methods or interventions, to facilitate secure access to State-, Economic-, Providence-, Legal-, Medical-, as well as within the scope of their Careers as Musicians.

(3.8) Assisting or intervening on behalf of our Members in dispute resolutions between our Members and other Members, Institutions, Industry Bodies, State Structures, Corporates or Individuals.

(3.9) Actively and vigilantly working to secure a Regulated Live Performance-, Recording Session- and Broadcast environment, as well as a Minimum Fee Structure appropriate to services rendered so as to ensure that our Members’ Rights are protected and that they can earn appropriate Royalties, Session fees and Needle-time for Compositions, Performances and other relevant activities.

(3.10) Seeking good working relationships with Collecting Societies but also to bring pressure to bear on them in instances if and where they may stray outside the specific mandate of their Members or their Constitution.

(3.11) To operate as an Independent Organisation, under principles of good governance and administration, free of discrimination, corruption, nepotism, personal agendas or other practices that may jeopardise the overall interests of all our Members.

(3.12) Identifying and pursuing opportunities for co-operation and forming alliances with other like- minded and culture-relevant Organisations, groupings or individuals, both Regionally, Nationally and Internationally to further the cause of Musicians and Cultural Workers in our Country and around the World.

(3.13) To resist and guard against Economic or Cultural domination by any other Country, or force of whatever kind or direction.

(3.14) To be governed and guided by the democratic and legitimate will of our collective Membership in order to Trade, Accumulate Assets, operate a Bank Account or function in whatever reasonable way to carry out the mandate and objectives of the Organisation.

(3.15) We are also aware that Commercial- and Retail Advertising speaks to the Cultural hearts and souls of Media Consumers. For that reason we will bring pressure to bear on- and work with the Advertising Sector to become more South Afrocentric in their style and delivery, as well as to be more inclusive of South African Music and other Culturally-driven Creative content.

(3.16) To identify with the circumstances of other Workers and Workers Unions, Nationally and Globally, to show our solidarity with their struggles and to support them in such, where and how appropriate.

4. STATUS OF THE TRADE UNION

(Section 95(5)(a))

(4.1) 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. It shall hold property apart from its members. The liability of members shall be limited to the amount of their subscriptions outstanding or other monies due to the Union at any time. The Union is an association not for gain.

(4.2) Any matter not provided for in this Constitution shall be dealt with by the National Executive Committee and in the event of any doubt or dispute as to the meaning or interpretation of any phrase, clause, term or expression used in this Constitution, the interpretation thereof shall be made by the National Executive Committee and its decision shall be final.

5. MEMBERSHIP

Section 95(5)(b)

(5.1) Any Individual independent person who derives his/her primary income (70%) from the direct activity of Music creation, production, performance, distribution or management.

(5.2) Applicant's for membership in terms hereof shall apply for membership by completing the online form on the TUMSA Website www.tumsa.org, and provide a copy of their ID or other relevant details of/when requested by an authorised Official of TUMSA to do so.

(5.3) Every application for membership shall be forwarded to the Branch Executive Committee appropriate to the geographical location in which the applicant resides, within 2 weeks of receipt thereof by the General Secretary or his/her designated Official responsible for receiving and allocating membership applications.

(5.4) An applicant to whom admission to membership is refused shall be provided with reasons for such refusal and shall be entitled to a refund of the membership fee paid by him/her on application.

(5.5) If admission to membership is refused by the Executive committee the applicant concerned shall have a right of appeal to the next general meeting, which shall have the power to confirm or reverse the decision of the executive committee. Such an appeal shall be in writing and shall be submitted to the secretary at least 4 weeks before the general meeting. The general meeting's decision shall be final.

(5.6) Every member shall notify the General Secretary or his/her designated Official, in writing, of his/her postal address and any change thereof within 4 weeks of the date on which the change occurred.

(5.7) A member who has resigned or been expelled from the trade union may be readmitted to membership on such conditions as the National executive committee may determine.

6. DISCIPLINE

Section 95(5)(c)

(6.1) A member may be suspended, fined or expelled as may be determined by the National executive committee -

(6.1.1) if he/she fails within 14 days of demand, in writing, by the general secretary to pay membership fees, fines or levies which are more than 3 months in arrear;

(6.1.2) if he/she infringes any of the terms of this Constitution or acts in a manner which is detrimental to the interests of the trade union:

(6.2) Provided that there shall be a right of appeal against suspension, the imposition of a fine or expulsion to the first ensuing general meeting. Notice of any such appeal shall be given to the secretary in writing within 7 days of the date on which the decision of the executive committee was communicated to the person concerned.

(6.3) No member may be suspended, fined or expelled unless he/she has been afforded an opportunity to state his/her case personally at a meeting of the executive committee, of which he/she has received not less than 14 days' notice in writing from the General Secretary. The matter with which the member is charged shall be set out in such notice.

Section 95(5)(e)

(6.4) A member who has appeared before the executive committee in accordance with sub-clause (6.3) shall, if he/she is dissatisfied with the decision of the committee and has lodged an appeal in the manner herein provided, have the right to restate his/her case personally to the general meeting which shall consider the matter.

(6.5) A member shall be entitled to call witnesses in support of his/her case when attending a meeting of the executive committee or a general meeting in terms of sub-clause (6.3) or (6.4), as the case may be.

(6.6) Any decision taken by the executive committee in terms of this clause shall, when an appeal has been lodged, be subject to ratification or otherwise by a general meeting.

(6.7) Upon expulsion of a member, all moneys due to the trade union by such member shall become payable. If payment thereof is not made within 60 days the executive committee may take such steps as it deems necessary to secure a settlement.

(6.8) A member shall cease to be entitled to any of the benefits of membership, including the right to vote-

(6.8.1) if the membership fees or other charges due by him/her to the trade union are more than 3 months in arrear;

(6.8.2) during any period while he/she is under suspension in terms of this Constitution; and

(6.8.3) if he/she ceases to be employed in the sector(s) mentioned in Clause (5.1).

7. TERMINATION OF MEMBERSHIP

Section 95(5)(d)

(7.1) A member may resign by giving 1 months' notice in writing to the branch secretary: Provided that no resignation shall take effect until all moneys due to the trade union by the member concerned have been paid.

(7.2) A member whose membership fees are more than 6 months in arrear shall automatically cease to be a member of the trade union. Such person shall, however, be liable for all moneys due to the trade union as at the date on which he/she ceases to be a member of the trade union.

8. MEMBERSHIP FEES

Section 95(5)(f)

(8.1) A membership fee of R55 per month shall be payable by each member of the trade union. The fee shall be paid monthly in advance to the secretary or to such other person as may be authorised by the executive committee to receive it.

(8.2) In addition to the membership fee a member shall also be liable for the payment in the same manner of such other fees as may be prescribed in terms of the rules governing any Provident-, Social Security-, Retirement Annuity-, or fund established by the Trade Union, either as compulsory under this Constitution, or for which a member may have volunteered in writing to be subscribed to.

(8.3) A member shall be exempt from the payment of the aforesaid membership fee in respect of any particular week/month during which he/she is

(8.3.1) unemployed for 30 or more days; or

(8.3.2) unable to work for 30 or more days on account of illness.

(8.3.4) exempted in terms of any related decision taken by the Executive Committee on whatever grounds such decision may be deemed reasonable.

9. MEETINGS

Section 95(5)(g)

(9.1) National Congress

(9.1.1) The supreme governing body of the trade union shall be the national congress, which shall consist of the executive committee and at least 10 % of the Union members entitled to vote.

(9.1.2) The national congress shall be convened once every calendar year: Provided that the executive committee may decide to convene the national congress for a particular year within a six-month period after that year. Notice of its convocation shall be communicated by the general secretary to the members at least two months before it is held.

(9.1.3) Resolutions from members shall be sent to the general secretary and shall reach his/her office not later than 8 weeks prior to the national congress. Copies of the resolutions and of the national congress agenda shall be distributed to all members by the general secretary not less than 45 days prior to the national congress.

(9.1.4) The business of the national congress shall primarily be -

(a) the nomination and election by ballot of members of the executive council;

(b) the consideration of reports from the president, general secretary, treasurer and other special reports;

(c) the formulation of policy;

(d) The discussion of matters as per the agenda; and

(e) the consideration of appeals.

Section 95(5)(h)

(9.1.5) The president or, in his/her absence, the vice-president or, in the latter's absence, a person appointed by the executive committee, shall preside over the proceedings at the national congress. Resolutions of the national congress shall be adopted by majority vote of voting delegates. Voting on a resolution shall be by show of hands unless the national congress decides otherwise. The president or other presiding person shall have a casting vote only.

(9.1.6) Candidates for the positions of office-bearers and officials on the executive committee shall be nominated and seconded by members with voting rights at the national congress. Should there be only one candidate for a position, that candidate shall be regarded as having been duly elected to that position. Should there be two candidates, a ballot of delegates shall be held and the candidate who receives the most votes shall be duly elected. Should there be three or more candidates, two or more ballots shall be held so that the candidates who receive the least votes in each ballot shall be eliminated from the next ballot.

(9.1.7) A special national congress shall be convened by the president whenever the executive committee requisitions one, or whenever a collective of at least 10% of paid-up union members request so in writing.

(9.1.8) The requisition by members for a special national congress shall be sent to the general secretary at head office and shall be accompanied by a statement

setting out the reasons for such requisition. The general secretary shall convey the requisition to the president as soon as possible.

(9.1.9) Should reasons of urgency be given in the notice, the president may authorise the calling of a special congress at short notice, being not less than seven days. Members shall be notified by the general secretary of the convocation and agenda of a special national congress as soon as possible and by the best practical means.

(9.1.10) The quorum at the national congress shall be at least be 5% of the members entitled to vote.

(9.2) Executive Committee

(9.2.1) The executive committee shall ordinarily meet at least once every 2 months on a date to be fixed by the president. Special meetings of the executive committee shall be called by the president whenever he/she deems it advisable or upon a requisition signed by not less than 30% of members of the committee, in which event the meeting shall be called within 24 hours of receipt of the requisition by the president.

Section 95(5)(h)

(9.2.2) Members of the executive committee shall be notified in writing of the time and place of meetings by the general secretary at least 7 days before the dates of such meetings: Provided that shorter notice, being not less than 24 hours, may in the discretion of the president be given in respect of special meetings. To every notice of meeting an agenda shall be attached. Unless otherwise provided herein all matters for consideration by the executive committee shall be decided on motion duly seconded and voted upon by show of hands.

Section 95(5)(g)

(9.2.3) The quorum for meetings of the executive committee shall be 50% +1 members. If within 30 minutes of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following (and if that day is a public holiday then to the next succeeding working day) at the same time and place, and at such adjourned meeting the members present shall form a quorum. Written notice of such adjourned meeting shall be given to members who were absent from the first meeting.

(9.2.4) If between meetings of the executive committee any question arises which is of extreme urgency and can be answered by a plain “yes” or “no”, the president may authorise a vote of the members of the committee to be taken by post.

Section 95(5)(h)

(9.2.5) No motion shall be considered unless seconded. All matters forming the subject of motions shall be voted upon by show of hands (unless otherwise provided) and shall be decided by the votes of the majority of those present.

(9.3) Minutes

Section 95(5)(g)

The general secretary of the trade union or a person appointed by him/her shall keep minutes of all meetings of the executive committee and of the national congress.

10. EXECUTIVE COMMITTEE

(10.1) The management of the affairs of the trade union between national congresses shall be vested in an executive committee consisting of the president, the vice-president, the general secretary, the treasurer general and 2 other members of the union who shall be elected by ballot of members of the trade union at the national congress and who shall hold office for two years and thereafter until the next election, and they shall be eligible for re-election on termination of their period of office.

ballot

(10.2) Vacancies occurring on the executive committee shall be filled by a ballot of the members of the trade union. A member appointed to fill a vacancy shall hold office for the un-expired portion of the period of office of his/her predecessor.

(10.3) Nominations for membership of the executive committee shall be lodged in writing by members with the general secretary at least 2 months prior to the national congress. Where a vacancy occurs on the executive committee the members shall be notified in writing of such vacancy by the general secretary within two weeks of the date on which the vacancy occurred. The nomination of members to fill such a vacancy shall be lodged in writing with the general secretary within one month of that date and a ballot shall be taken within two months of that date. A member elected to fill a vacancy shall hold office for the unexpired portion of the period of office of his/her predecessor.

(10.4) A member of the executive council shall vacate his/her seat in any one of the following circumstances:

(a) On resignation, suspension or expulsion from membership of the trade union;

(b) on absents himself/herself, without the permission of the executive council, from three consecutive meetings of the council;

(c) on resigning as a member of the executive committee by giving 1 months' written notice to the general secretary;

(d) if his/her subscriptions are more than 3 months in arrear; or

(e) if he/she ceases to be employed in the sector(s) mentioned in clause 5(1).

(10.5) The executive council shall, subject to the provisions of this Constitution, have power -

(a) to recommend the trade union's participation in the establishment of a bargaining or statutory council and, subject to the constitution of any bargaining or statutory council, to determine the trade union's representation thereon;

Section 95(5)(l)

(b) to engage and dismiss, except where otherwise provided in this Constitution, any employees of the trade union, including a general secretary, to fix their remuneration and to define their duties;

(c) to appoint, from time to time, such committees as it may deem fit for the purpose of investigating and reporting on any matter referred to them by the national congress;

(d) to review decisions of sub-committees, and to confirm, alter or reverse such decisions;

(e) to institute legal proceedings on behalf of or to defend proceedings against the trade union;

Section 95(5)(t)

(f) to acquire, either by purchase, lease or otherwise, any movable or immovable property on behalf of the trade union, and to sell, let, mortgage, or otherwise deal with or dispose of any movable or immovable property belonging to the trade union: Provided that no immovable property shall be acquired or sold, nor shall it be mortgaged, let or leased for a period longer than ten years, unless at least 12

weeks' written notice of the intention to do so has been given to each member of the trade union by the general secretary; if during this period not less than 50% of the members demands that a ballot of the whole trade union be taken on the proposed action, such ballot shall be taken;

(g) to institute legal proceedings on behalf of or to provide legal assistance to members on matters affecting their employment and to institute legal proceedings against individual members;

(h) to open and operate on a banking account in the name of the trade union;

(i) to make and enforce by-laws relating to procedural, administrative and disciplinary matters which are not inconsistent with the provisions of this Constitution, the Labour Relations Act, 1995, or any other law;

(j) to decide all matters of procedure on which this Constitution is silent;

(k) to do such other lawful things as, in the opinion of the executive committee, appear to be in the interests of the trade union or its members and which are not in-consistent with the objects set out in clause 3 or any matter specifically provided for in this Constitution; and

(l) to consider appeals.

11. OFFICE-BEARERS, OFFICIALS AND TRADE UNION REPRESENTATIVES

Section 95(5)(j)

The duties of the office-bearers, officials and trade union representatives shall be -

(11.1) Office-Bearers

(a) President: The president shall preside at all meetings at which he/she is present, enforce observance of the constitution of the trade union, sign minutes of meetings after confirmation, endorse all accounts for payment after approval by the executive committee, authorise all expenses on the banking account of the trade union, generally exercise supervision over the affairs of the trade union and perform such other duties as by usage and custom pertain to the office He/she shall not have a deliberative vote, but shall, in the event of an equality of votes, have a casting vote.

(b) Vice-President: The vice-president shall exercise the powers and perform the duties of the president in the absence of the latter.

(c) Acting President: In the event of both the president and the vice-president being unable, either temporarily or permanently, to perform their duties, the executive council shall appoint a member of the trade union to act as president, who shall hold office until the president or vice-president is able to assume his/her duties or in the event of the president and vice-president being permanently unable to perform their duties, until a new president or vice-president has been elected at the national congress.

(11.2) **Officials**

(11.2.1) General Secretary

Section 95(5)(j)

(a) The general secretary shall receive requisitions for meetings of the national congress and the executive committee, issue notices of meetings, conduct all head office correspondence of the trade union, keep originals of letters received and copies of those dispatched, and at each meeting of the national congress or executive committee lay on the table correspondence which has taken place since the previous meeting, attend all national congress and executive committee meetings and record minutes of the proceedings, issue official receipts for all moneys received; submit reports in regard to the financial position of the trade union to the national congress and to the executive committee not less than once every 2 trade union at the Commission and perform such other duties as are imposed by this Constitution or as the national congress and executive committee may direct. He/she shall attend all meetings of the executive committee but shall have no voting power at such meetings.

(b) In addition to the duties laid down in paragraph (a) above the general secretary shall perform the duties imposed on him/her by sections 98, 99 and 100 of the Labour Relations Act, 1995, relating to the keeping of records and the furnishing of information to the Registrar.

(c) The general secretary may resign on giving 2 months' notice in writing to the executive committee and his/her services may be

terminated on a similar period of notice being given to him/her by the committee. The contract of service of the general secretary shall be in writing.

(11.2.2) Assistant Secretary:

The executive committee may appoint an assistant secretary who shall assist the general secretary in the execution of his/her duties. Should the general secretary temporarily be unable to perform his/her duties the assistant secretary shall act as general secretary until such time he/she is able to assume his/her duties. The provisions of paragraph (a) above shall mutatis mutandis apply to the assistant secretary.

(11.2.3) Organisers:

The executive committee may appoint an organiser or organisers. The main duties of the organiser(s) will be to enroll members, to investigate complaints from members regarding their employment as such, to represent the trade union and its members at the Commission, to collect membership fees and to perform such other duties as the executive committee may direct. The provisions of paragraph (iii) above shall mutatis mutandis apply to organisers.

(11.2.4) Trade Union Representatives:

(a) The trade union representatives shall implement and give effect to decisions of the national congress and the executive committee, recruit members and generally promote their interests, represent members in matters before the Commission and collect membership fees.

(b) In terms of section 14(4) of the Labour Relations Act, 1995, the trade union representatives shall -

[b (i) at the request of an employee in the workplace, assist and represent the employee in grievance and disciplinary proceedings;

[b (ii) monitor the employer's compliance with any law regulating terms and conditions of employment;

[b (iii) report any alleged contravention of any law regulating terms and conditions of employment to the employer, trade union or any responsible authority or agency; and

[b (iv) perform any other functions as the executive committee may direct.

12. ESTABLISHMENT AND CONTROL OF TRADE UNION REPRESENTATIVE COUNCILS

Section 95(5)(j) (12.1) Trade Union Representatives Councils

(a) A trade union representatives council may be established in any workplace where any amount of TUMSA Members collectively have no less than 2 days / nights per week work-related engagements.

(b) Application for the establishment of a trade union representative's council shall be made, in writing, to the executive committee by not less than 4 members in the workplace concerned.

Section 95(5)(k)

(c) If the executive committee approves of the establishment of a trade union representatives council the secretary shall notify the members from which the application has been received and arrange for the inaugural meeting. At this meeting nominations for membership of the executive committee of the trade union representative's council shall be called and the election shall take place by ballot. The executive committee shall consist of a chairperson, vice-chairperson, secretary and additional members as may be decided by the meeting.

(d) Generally the trade union representatives council shall meet once a month and may be convened by the executive committee whenever necessary.

Section 95(5)(l)

(e) The main duties of the trade union representative councils shall be to implement and give effect to decisions of the national congress, executive council or the branch executive committee, recruit members and promote their interests, investigate complaints from members in their workplace, represent members on the Commission and collect membership fees.

13. REMOVAL OF OFFICE-BEARERS, OFFICIALS AND TRADE UNION REPRESENTATIVES

Section 95(5)(m)

(13.1) An office-bearer, official or trade union representative may be removed from office:

(a) if he/she infringes any of the provisions of this Constitution; and

(b) if he/she acts in a manner which is detrimental to the interests of the trade union.

(13.2) No office-bearer, official or trade union representative may be removed from office unless he/she has been afforded an opportunity to state his/her case personally at a meeting of the executive committee

(13.3) An office-bearer, official or trade union representative who has appeared before the executive committee and who is dissatisfied with the decision of the body concerned shall have the right to appeal to the next Congress of the Union.

(13.4) The appeal shall be noted in the agenda of the national congress and the national congress may reverse the decision of the executive committee and the decision of the national congress shall be final.

14. **BALLOTS**

Section 95(5)(o)

(14.1) Decisions in the union may be made in the following manner:

(a) By show of hands

(b) By ballot paper

(c) By postal / email ballot

(d) By Whatsapp / SMS ballot when meetings are online

(14.2) Voting by show of hands

In the normal course of events all decisions in the union will be made by way of show of hands of the members entitled to vote on such matter. The relevant structure shall be bound to take action according to the decision of a majority of members voting by show of hands.

(14.2.1) In addition to those cases in respect of which the taking of a ballot of members of the whole trade union is compulsory in terms of this Constitution, a ballot on any question shall be taken if the executive

committee so decides, and shall also be taken -

(a) if demanded in writing by not less than 10% of the members of the union or any recognised structure of the union ; or

(b) on any proposal to declare or take part in any strike in which event a strike ballot shall be held.

(14.2.2) Ballots shall be conducted in the following manner:

(a) Notice of a ballot shall be given to each member in writing by the secretary, at least three days before the ballot is to be taken: Provided that a ballot may be taken without notice at any general meeting on the decision of a majority of the members present.

(b) Two independent scrutineers shall be appointed by the executive committee or the Congress to supervise any ballot and to ascertain the result thereof.

(c) Ballots shall be taken at any general meetings on the decision of a majority of the members present, ballots shall be conducted at any office of the trade union or at such other venue as may be specified in the notice referred to in paragraph (a) of this sub clause on the date and during the hours specified in the said notice.

(d) Ballot papers shall be prepared and supplied by officials of the union appointed for such purposes by the General Secretary. The issue to be voted upon shall be set forth clearly on the ballot papers and such papers shall not contain any information by means of which it will be possible to identify the voter.

(e) Ballot boxes shall be inspected by the scrutineers and sealed by the General Secretary in their presence prior to the issuing of ballot papers.

(f) One ballot paper only may be issued to a member who is entitled to vote. The ballot paper shall be issued on demand at the place and during the hours fixed for the taking of the ballot.

(g) Each voter shall, in the presence of the scrutineers, be issued with one ballot paper which he/she shall thereupon, in secret, complete, fold and deposit the ballot paper in a ballot box provided for the purpose.

14.2.3) The executive council may decide that a postal ballot of members shall be taken, in which event the ballot shall be conducted in the following manner:

(a) The general secretary shall send by registered post to each member of the trade union a ballot paper and a stamped and addressed envelope marked "Ballot". The ballot paper shall on completion be inserted in the envelope provided for the purpose which shall be sealed and posted so as to reach the general secretary within 14 days/weeks from the date of dispatch from head office to such member. On receipt of such envelopes, the general secretary shall immediately place such envelopes in a sealed ballot box.

(b) Two scrutineers shall be appointed by the executive committee to ascertain the result of the ballot. The ballot box shall be opened and the ballot papers counted by the scrutineers in the presence of the general secretary, who shall immediately advise the executive committee of the result of the ballot.

(c) The same procedure shall mutatis mutandis apply to a postal ballot confined to members of the executive committee.

(14.2.4) In any ballot conducted in connection with any election the candidates, up to the required number, receiving the highest number of votes shall be declared elected.

(14.2.5) The national congress or the executive committee shall be bound to take action according to the decision of a majority of members voting in a ballot.

Section 95(5)(p)

(14.2.6) The trade union shall, before calling a strike, conduct a ballot of those of its members in respect of whom it intends to call the strike.

Section 95(5)(q)

(14.2.7) Notwithstanding anything to the contrary contained in this Constitution, members of the trade union shall not be disciplined or have their membership terminated for failure or refusal to participate in a strike if

(a) no ballot was held about the strike; or

(b) a ballot was held but a majority of the members who voted did not vote in favour of the strike.

15. **FINANCE**

Section 95(5)(s)

(15.1) Head Office

(a) The funds of the trade union shall be applied to the payment of expenses, to the acquisition of property, towards the attainment of the objects specified in clause 3 and for such other lawful purposes as may be decided upon by the national congress or the executive committee or by members voting by ballot for the attainment of the said objects.

Section 95(5)(r)

(b) The funds received by the general secretary on behalf of the trade union shall be deposited to its credit within 2 days of receipt, at a bank decided upon by the executive committee.

(c) Payments shall require the prior approval of the executive committee and shall be made by cash when payment may be made from petty cash when the amount in question is less than R1000, or by Electronic transfer with notification copied to the president and the general secretary, except in the absence of the president or general secretary payments shall be effected by a member of the executive committee, preferably the treasurer general, or whosoever is appointed by it for that purpose.

(15.2) General

(a) Statements of income and expenditure reflecting the financial position of the union shall be prepared quarterly by secretary and submitted to executive committee. The general secretary shall also be responsible for furnishing the national congress with the trade union's latest financial statements.

Section 95(5)(u)

(b) In accordance with the provisions of section 98(1)(b) of the Labour Relations Act, 1995, the general secretary shall prepare a statement of income and expenditure and a balance sheet in respect of each financial year ending on the 30th June. Such statements and balance sheets shall be audited and dealt with as required by section 98(2) of the Act.

(c) Legal and other professional expenses shall be borne by the trade union.

(d) A member who resigns or is expelled from membership shall have no claim on the funds of the trade union.

Section 95(5)(r)

(e) The executive committee shall, subject to confirmation by the national congress, have the power to invest surplus trade union moneys in such a manner that the trade union stands to benefit from the investments.

16. **REPRESENTATION ON BARGAINING AND STATUTORY COUNCILS**

(16.1) The executive committee may at any time recommend that the trade union shall become a party to a bargaining or statutory council established in terms of the Labour Relations Act, 1995.

(16.2) Representatives and their alternates shall be appointed by the executive committee.

(16.3) Representatives or their alternates on a bargaining or statutory council may be removed by the national congress, and may resign on giving 2 months' notice to the executive committee or such notice as may be prescribed in the constitution of the committee concerned.

(14.4) In the event of the resignation or death of a representative or an alternate or his/her removal by the national congress the vacancy shall be filled by the executive committee.

(16.5) Representatives or their alternates shall have full power to enter into agreements on behalf of the trade union, and such agreements shall not be subject to ratification by the executive committee or national congress.

17. **CHANGING OF CONSTITUTION**

Section 95(5)(v)

(17.1) Any of the provisions of this Constitution may be repealed, changed or added to in any manner by resolution of the executive committee of the trade union: Provided that at least 14 days' notice of any proposed change(s) shall first have been given to members. If within that period 30% of the membership demands that a ballot of the whole trade union be taken on the matter, such a ballot shall be taken.

(17.2) No changes or additions shall have any force or effect until certified in terms of section 101(3) of the Labour Relations Act, 1995.

18. **WINDING-UP**

Section 95(5)(w)

(18.1) The trade union shall be wound up if at a ballot conducted in the manner prescribed in the constitution not less than three-fourths of the total number of members of the trade union vote in favour of a resolution that the organisation be wound up.

(18.2) If a resolution for the winding-up of the trade union has been passed or if for any reason the trade union is unable to continue to function the following provisions shall apply:

(a) The last-appointed president of the trade union, or if he/she is not available, the available members of the last-appointed executive committee of the trade union, shall forthwith transmit to the Labour Court a statement signed by him/her or them setting forth the resolution adopted or the reasons for the trade union's inability to continue to function, as the case may be, and request the Labour Court to grant an order in terms of section 103 of the Labour Relations Act, 1995.

(b)

(i) The liquidator appointed by the Labour Court shall call upon the last-appointed office-bearers of the trade union to deliver to him/her the trade union's books of accounts showing the assets and liabilities together with the register of members showing, for the 12 months prior to the date on which the resolution for winding-up was passed or to the date as from which the trade union was unable to continue to function, as the case may be, (hereinafter referred to as the date of dissolution), the membership fees paid by each member and his/her address as at the said date.

(ii) The liquidator shall also call upon the said office-bearers to hand over to him/her all unexpended funds of the trade union and to deliver to him/her the trade union's assets and the documents necessary to liquidate the assets.

(c) The liquidator shall take the necessary steps to liquidate the debts of the trade union from its unexpended funds and any other moneys realised from any assets of the trade union, and if the said funds and moneys are insufficient to pay all creditors after the liquidator's fees and the expenses of winding-up have been met, the order in which creditors shall be paid shall be the same as that prescribed in any law for the time being in force relating to the distribution of the assets of an insolvent estate, and the liquidator's fees and the expenses of winding-up shall rank in order as that of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.

(d) After the payment of all debts in accordance with paragraph (c), the remaining funds, if any, shall be distributed among the remaining members of the trade union on the basis of membership fees actually paid during the 12 months prior to the date of dissolution.

(e) After the payment of all the liabilities, any assets that cannot be disposed of in accordance with the provisions of this clause shall be realised by the liquidator and the proceeds paid to the Commission for Conciliation, Mediation and Arbitration (in accordance with section 103(5) of the Labour Relations Act, 1995).

(f) The liability of members shall for the purpose of this clause be limited to the amount of membership fees due by them to the trade union in terms of this Constitution as at the date of dissolution.

PRESIDENT – Victoria (Vicky) Sampson

GENERAL SECRETARY – Gabriel (Gabi) Le Roux

DATE : 23 November 2020