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# Closing times for **ORDINARY WEEKLY** **REGULATION GAZETTE** **2018**

*The closing time is **15:00** sharp on the following days:*

- **28 December 2017**, Thursday for the issue of Friday **05 January 2018**
- **05 January**, Friday for the issue of Friday **12 January 2018**
- **12 January**, Friday for the issue of Friday **19 January 2018**
- **19 January**, Friday for the issue of Friday **26 January 2018**
- **26 January**, Friday for the issue of Friday **02 February 2018**
- **02 February**, Friday for the issue of Friday **09 February 2018**
- **09 February**, Friday for the issue of Friday **16 February 2018**
- **16 February**, Friday for the issue of Friday **23 February 2018**
- **23 February**, Friday for the issue of Friday **02 March 2018**
- **02 March**, Friday for the issue of Friday **09 March 2018**
- **09 March**, Friday for the issue of Friday **16 March 2018**
- **15 March**, Thursday for the issue of Friday **23 March 2018**
- **22 March**, Thursday for the issue of Thursday **29 March 2018**
- **28 March**, Wednesday for the issue of Friday **06 April 2018**
- **06 April**, Friday for the issue of Friday **13 April 2018**
- **13 April**, Friday for the issue of Friday **20 April 2018**
- **19 April**, Thursday for the issue of Thursday **26 April 2018**
- **25 April**, Wednesday for the issue of Friday **04 May 2018**
- **04 May**, Friday for the issue of Friday **11 May 2018**
- **11 May**, Friday for the issue of Friday **18 May 2018**
- **18 May**, Friday for the issue of Friday **25 May 2018**
- **25 May**, Friday for the issue of Friday **01 June 2018**
- **01 June**, Friday for the issue of Friday **08 June 2018**
- **08 June**, Friday for the issue of Friday **15 June 2018**
- **15 June**, Friday for the issue of Friday **22 June 2018**
- **22 June**, Friday for the issue of Friday **29 June 2018**
- **29 June**, Friday for the issue of Friday **06 July 2018**
- **06 July**, Friday for the issue of Friday **13 July 2018**
- **13 July**, Friday for the issue of Friday **20 July 2018**
- **20 July**, Friday for the issue of Friday **27 July 2018**
- **27 July**, Friday for the issue of Friday **03 August 2018**
- **02 August**, Thursday for the issue of Friday **10 August 2018**
- **10 August**, Friday for the issue of Friday **17 August 2018**
- **17 August**, Friday for the issue of Friday **24 August 2018**
- **24 August**, Friday for the issue of Friday **31 August 2018**
- **31 August**, Friday for the issue of Friday **07 September 2018**
- **07 September**, Friday for the issue of Friday **14 September 2018**
- **14 September**, Friday for the issue of Friday **21 September 2018**
- **20 September**, Thursday for the issue of Friday **28 September 2018**
- **28 September**, Friday for the issue of Friday **05 October 2018**
- **05 October**, Friday for the issue of Friday **12 October 2018**
- **12 October**, Friday for the issue of Friday **19 October 2018**
- **19 October**, Friday for the issue of Friday **26 October 2018**
- **26 October**, Friday for the issue of Friday **02 November 2018**
- **02 November**, Friday for the issue of Friday **09 November 2018**
- **09 November**, Friday for the issue of Friday **16 November 2018**
- **16 November**, Friday for the issue of Friday **23 November 2018**
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- **30 November**, Friday for the issue of Friday **07 December 2018**
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- **19 December**, Wednesday for the issue of Friday **28 December 2018**































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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NO. R. 933****07 SEPTEMBER 2018****MAGISTRATES ACT, 1993****REGULATIONS FOR JUDICIAL OFFICERS IN THE LOWER COURTS, 1993: AMENDMENT**

The Minister of Justice and Correctional Services has, under section 16 of the Magistrates Act, 1993 (Act No. 90 of 1993), on the recommendation of the Magistrates Commission, made the regulations in the Schedule.

**SCHEDULE****Definitions**

1. In this Schedule "the Regulations" means the regulations published by Government Notice No. R. 361 of 11 March 1994, as amended by Government Notices Nos. R. 644 of 1 April 1994, R. 1407 of 11 August 1994, R. 1808 of 17 October 1994, R. 1707 of 27 October 1994, R. 1791 of 17 November 1995, R. 72 of 26 January 1996, R. 331 of 1 March 1996, R. 957 of 7 June 1996, R. 1178 of 19 July 1996, R. 1242 of 2 August 1996, R. 1340 of 12 August 1996, R. 1567 of 27 September 1996, R. 1627 of 1 October 1996, R. 178 of 7 February 1997, R. 421 of 20 March 1997, R. 1081 of 8 August 1997, R. 274 of 20 February 1998, R. 997 of 7 August 1998, R. 56 of 15 January 1999, R. 1498 of 17 December 1999, R. 1339 of 26 September 2003, R. 1593 of 31 October 2003 and R. 50 of 26 January 2012.



**Amendment of regulation 1 of the Regulations**

1. Regulation 1 of the Regulations is hereby amended by—
- (a) the substitution for the definition of “**appropriate experience**” of the following definition:  
“**appropriate experience**” means experience gained after obtaining the appropriate qualifications referred to in section 10 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and regarded by the Commission as appropriate;”; and
  - (b) the insertion after the definition of “**candidate**” of the following definition:  
“**Council**” means the Council of the South African Judicial Education Institute established in terms of section 3 of the South African Judicial Education Institute Act, 2008 (Act No. 14 of 2008);”.

**Substitution of regulation 3 of the Regulations**

2. Regulation 3 of the Regulations is hereby substituted for the following regulation:

**“Requirements for appointment**

3. (1) A person may not be appointed as a magistrate or an additional magistrate of a district court, or as a magistrate of a regional court, unless he or she is—
- (a) appropriately qualified;
  - (b) a fit and proper person; and
  - (c) a South African citizen.
- (2) The Commission must develop a mentorship-programme in order to guide newly appointed magistrates, in which a newly appointed magistrate is required to participate.
- (3) (a) Before commencing with the functions of a judicial officer in a court of law, any newly appointed magistrate must attend a course, the content and extent of which must be decided by the Council, or a committee of that Council.
- (b) If a magistrate is appointed to a more senior office of magistrate, the Commission may require the magistrate, before or after commencing with the functions and responsibilities of such senior office, to attend a course, the content and extent of which must be decided by the Council, or a committee of that Council.
- (4) The Minister may, on the recommendation of the Commission, exempt a magistrate from the provisions of subregulation (3)(a).”.



### **Substitution of regulation 4 of the Regulations**

3. Regulation 4 of the Regulations is hereby substituted for the following regulation:

#### **“Application by candidates**

4. (1) A candidate must make an application for appointment as magistrate in writing on a form obtained from the Commission and hand it in to the Commission.

(2) The application referred to in subregulation (1) must be accompanied by the following documents:

- (a) A certified copy of the candidate’s identity document;
- (b) certified copies of all educational qualifications;
- (c) certificates of service or, if not available, an affidavit by the candidate in respect of previous periods of service;
- (d) testimonials from previous employers, if available;
- (e) an affidavit setting out the candidate’s assets and liabilities; and
- (f) names and addresses of two references.

(3) If the Commission, after due consideration of an application, is of the opinion that the candidate is suitable for the office applied for, the Commission must forward the documents referred to in this regulation, together with a recommendation on the appointment of the candidate to the office in question, to the Minister.”.

### **Amendment of regulation 54A of the Regulations**

4. Regulation 54A of the Regulations is hereby amended by—

- (a) the insertion of the word “JUDICIAL” after the word “OF” in the heading of PART XXI; and
- (b) the substitution for regulation 54A of the following regulation:

“**54A.** The Code of Conduct for Magistrates is the Code of Judicial Conduct contained in Schedule E to the Regulations.”.

### **Repeal of Form 1 in Schedule A to the Regulations**

5. Form 1 in Schedule A to the Regulations is hereby repealed.



**Repeal of Form 2 in Schedule A to the Regulations**

6. Form 2 in Schedule A to the Regulations is hereby repealed.

**Repeal of Form 3 in Schedule A to the Regulations**

7. Form 3 in Schedule A to the Regulations is hereby repealed.

**Substitution of Schedule E to the Regulations**

8. Schedule E to the Regulations is hereby substituted for the following Schedule:

**“Schedule E****CODE OF JUDICIAL CONDUCT FOR MAGISTRATES****IN TERMS OF SECTION 16(1) OF THE MAGISTRATES ACT, 1993(ACT NO. 90 OF 1993)  
AND REGULATION 54A OF THE REGULATIONS FOR JUDICIAL OFFICERS IN THE  
LOWER COURTS, 1993****PREAMBLE**

Whereas—

- (1) the supremacy of the Constitution, the rule of law, and the rights and freedoms enshrined in the Bill of Rights are the foundation of the democracy established by the Constitution;
- (2) section 165(1) of the Constitution provides that the judicial authority of the Republic vests in the courts;
- (3) section 165(2) of the Constitution provides that the courts are independent and subject only to the Constitution and the law, which they must apply without fear, favour or prejudice;
- (4) section 174(8) of the Constitution provides that before judicial officers begin to perform their functions, they must take an oath, or affirm, in accordance with paragraph 6(1) of Schedule 2, that they “will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike, without fear, favour or prejudice, in accordance with the Constitution and the law”;



- (5) section 180(b) of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including procedures for dealing with complaints about judicial officers;
- (6) the Magistrates Act, 1993 (Act No. 90 of 1993) (hereinafter referred to as the Act), seeks to maintain and promote the independence of the office of magistrate and judiciary as a whole, while at the same time acknowledging that it is necessary to create an appropriate and effective balance between protecting the independence and dignity of the judiciary when considering complaints about, and the possible removal from office of, magistrates as defined in section 1 of the Act, and the overriding principles of openness, transparency and accountability that permeate the Constitution and that are equally applicable to judicial institutions and officers;
- (7) it is necessary for public acceptance of its authority and integrity in order to fulfill its constitutional obligations that the judiciary should conform to ethical standards that are internationally generally accepted, more particularly as set out in the Bangalore Principles of Judicial Conduct (2001) as revised at the Hague (2002); and
- (8) section 16(1)(e) of the Act provides that the Minister, after the Magistrates Commission has made a recommendation, may adopt a Code of Judicial Conduct, which must be promulgated by the Minister by way of regulation;

The Code of Judicial Conduct for Magistrates provides as follows:—

### **Article 1: Definitions**

In this Code, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it and—

**“head of the court concerned”** means—

- (a) in the case of a district magistrate, the magistrate at the head of the relevant court; and
- (b) in the case of a regional magistrate, the regional court president; and

**“the Regulations”** means the Regulations for Judicial Officers in the Lower Courts, 1993.

### **Article 2: Application**

- (1) This Code applies to every magistrate falling within the definition of “magistrate” in section 1 of the Act, including an acting magistrate.
- (2) Any wilful or grossly negligent breach of this Code is a ground upon which a complaint against a magistrate may be lodged.



- (3) Complaints must be dealt with in accordance with the Regulations.

### **Article 3: Objects and Interpretation**

- (1) The object of this Code is to assist every magistrate in dealing with ethical and professional issues, and to inform the public about the judicial ethos of the Republic.
- (2) This Code must—
- (a) be applied consistently with the Constitution and the law as embodied in the common law, statute, and precedent, having due regard to the relevant circumstances;
  - (b) not be interpreted as impinging on the constitutionally guaranteed independence of the judiciary or any magistrate or on the separation of powers;
  - (c) not be interpreted as absolute, precise, or exhaustive. Conduct may therefore be unethical which, on a strict reading of this Code, may appear to be permitted and the converse also applies.
- (3) Although international standards and those applied in comparable foreign jurisdictions may not be directly applicable, they do provide a useful source of reference for interpreting, understanding and applying this Code.
- (4) Notes to Articles of this Code are for the purpose of elucidation, explanation and guidance with respect to the purpose and meaning of the Articles.

### **Article 4: Judicial Independence**

A magistrate must—

- (a) uphold the independence and integrity of the judiciary and the authority of the courts;
- (b) maintain an independence of mind in the performance of judicial duties;
- (c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; and
- (d) not ask for nor accept any special favour or dispensation from any person, the executive or any interest group.

#### **Notes:**

Note 4(i): A magistrate acts fearlessly and according to his or her conscience because a magistrate is only accountable to the law.

Note 4(ii): Magistrates do not pay any heed to political parties or pressure groups and perform all professional duties free from outside influence.



Note 4(iii): Magistrates do not appear at public hearings or otherwise consult with an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice.

Note 4(iv): Judicial independence is not a private right or a principle for the benefit of magistrates as individuals. It denotes freedom of conscience for magistrates and non-interference in the performance of their decision-making. It does not justify judicial misbehaviour and does not provide an excuse for failing to perform judicial functions with due diligence or for otherwise acting contrary to this Code.

Note 4(v): Organs of state are constitutionally mandated to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility, and effectiveness. The correlative is the right of every magistrate not to have his or her independence of mind disturbed by any person or organ of state.

#### **Article 5: To act honourably**

(1) A magistrate must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.

(2) All activities of a magistrate must be compatible with the status of judicial office.

#### **Notes:**

Note 5(i): A magistrate behaves in his or her professional and private life in a manner that enhances public trust in, or respect for, the judiciary and the judicial system.

Note 5(ii): A magistrate avoids impropriety and the appearance of impropriety in all the magistrate's activities.

Note 5(iii): A magistrate does not engage in conduct that is prejudicial to the effective and expeditious administration of the business of the court.

Note 5(iv): Judicial conduct is to be assessed objectively through the eyes of the reasonable person.



**Article 6: Compliance with the law**

A magistrate must at all times, also in relation to extra-judicial conduct, comply with the law of the land.

**Article 7: Equality**

A magistrate must at all times—

- (a) personally avoid and dissociate himself or herself from comments that are racist, sexist or otherwise manifest discrimination in violation of the right to equality guaranteed by the Constitution;
- (b) in court and in chambers act courteously and respect the dignity of others;
- (c) in conducting judicial proceedings, give special attention to the right to equality before the law and the right of equal protection and benefit of the law; and
- (d) in the performance of judicial duties refrain from being biased or prejudiced.

**Notes:**

Note 7(i): These provisions are aimed at promoting courtesy and ensuring a degree of decorum.

Note 7(ii): Magistrates strive to be aware of, and understand, the many differences between persons and to remain informed about changing social attitudes and values.

Note 7(iii): The multi-cultural nature of South African society calls for special sensitivity for the perceptions and sensibilities of all who are affected by court proceedings.

**Article 8: Transparency**

A magistrate must—

- (a) take reasonable steps to enhance the accessibility of the courts and to improve public understanding of judicial proceedings; and
- (b) unless special circumstances require otherwise—
  - (i) conduct judicial proceedings; and
  - (ii) make known his or her decisions and supporting reasons, in open court.



**Notes:**

Note 8(i): The legitimacy of the judiciary depends on the public understanding of, and confidence in, the judicial process.

Note 8(ii): The function of the judiciary fails if its proceedings are not understood.

Note 8(iii): Magistrates are conscious of the desirability of complying with the spirit of the requirement that proceedings should take place in open court.

Note 8(iv): Discussions with magistrates in chambers must be avoided. If what has happened in chambers has any effect on the proceedings, those facts are to be placed on record in open court.

**Article 9: Fair trial**

A magistrate must—

- (a) resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to—
  - (i) observe the letter and spirit of the *audi alteram partem* rule;
  - (ii) remain manifestly impartial; and
  - (iii) give adequate reasons for any decision;
- (b) in conducting judicial proceedings—
  - (i) maintain order;
  - (ii) act in accordance with commonly accepted decorum; and
  - (iii) remain patient and courteous to legal practitioners, parties and the public, and require them to act likewise;
- (c) manage legal proceedings in such a way as to—
  - (i) expedite their conclusion as cost-effectively as possible; and
  - (ii) not shift the responsibility to hear and decide a matter to another magistrate;
- (d) not exert undue influence in order to promote a settlement or obtain a concession from any party.

**Article 10: Diligence**

- 1) A magistrate must—
  - (a) perform all assigned judicial duties diligently;
  - (b) investigate the matter at hand thoroughly;



- (c) dispose of the business of the court promptly and in an efficient and businesslike manner;
  - (d) give judgment or any ruling in a case promptly and without undue delay;
  - (e) not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the business of the court;
  - (f) attend chambers during normal office hours and attend court during normal court hours, unless such attendance is not reasonably required in order to perform any official duties;
  - (g) perform all official duties properly, timeously, and in an orderly manner;
  - (h) respect and comply with, the administrative requests of the head of court in question;
  - (i) take reasonable steps to maintain the necessary level of professional competence in the law; and
  - (j) upon resignation, retirement, or the expiry of an acting appointment, complete all part-heard cases and deliver all reserved judgments as soon as possible.
- (2) In the discharge of judicial office a magistrate must comply with the norms and standards determined by the Chief Justice in terms of section 8 of the Superior Courts Act, 2013.

**Notes:**

Note 10(i): Unnecessary postponements, point-taking, undue formality and the like must be avoided.

Note 10(ii): Litigants are entitled to judgment as soon as reasonably possible.

Note 10(iii): Criminal proceedings, especially automatic reviews, applications for leave to appeal, and matters where personal liberty is involved, must be dealt with expeditiously.

Note 10(iv): A magistrate keeps a record of all outstanding judgments and reports to the head of the particular court thereon if and when requested.

Note 10(v): A pattern of intemperate or intimidating treatment of lawyers and others, or of conduct evidencing arbitrariness and abusiveness is prejudicial to the effective administration of justice and should be avoided.

**Article 11: Restraint**

- (1) A magistrate must—



- (a) save in the discharge of judicial office, not comment publicly on the merits of any case pending before, or determined by, that magistrate or any other court;
  - (b) not enter into a public debate about a case, irrespective of criticism levelled against the magistrate, the judgment, or any other aspect of the case;
  - (c) refrain from any action which may be construed as designed to stifle legitimate criticism of that or any other magistrate;
  - (d) not disclose or use non-public information acquired in a judicial capacity for any purpose unrelated to his or her judicial duties;
  - (e) avoid any personality issues with colleagues, lawyers and parties, and seek to foster collegiality; and
  - (f) unless it is germane to judicial proceedings before the magistrate concerned, or to scholarly presentation that is made for the purpose of advancing the study of law, refrain from public criticism of another magistrate or branch of the judiciary.
- (2) A magistrate may participate in public debate on matters pertaining to legal subjects, the judiciary, or the administration of justice, but does not express views in a manner which may undermine the standing and integrity of the judiciary.
- (3) Formal deliberations as well as private consultations and debates among magistrates are and must remain confidential.

**Notes:**

Note 11(i): If it is necessary to comment on a judgment, the head of court must deal with the matter in a manner that will uphold the integrity of the judiciary as a whole. If the head of court does not deal with the matter, the magistrate concerned may, under special circumstances, issue a statement in a reasoned and dignified manner, preferably in open court or through the registrar or clerk of the court, to clarify the issue. These provisions do not prohibit academic debate of the legal issues that arose in a case.

Note 11(ii): Private consultations and debates between magistrates are necessary for the judiciary to perform its functions. However, these occasions may not be used to influence a magistrate as to how a particular case should be decided.

Note 11(iii): Personal criticism must be avoided unless it is necessary during the course of judicial proceedings.

Note 11(iv): Courtesy and collegiality towards colleagues are indispensable attributes of a magistrate.



**Article 12: Association**

- (1) A magistrate must not—
  - (a) hold office in any political party or belong to any secret organisation;
  - (b) become involved in any political controversy or activity;
  - (c) take part in any activities that practise discrimination inconsistent with the Constitution; and
  - (d) use or lend the prestige of the judicial office to advance the private interests of the magistrate or others.
- (2) A magistrate previously in private practice must, upon permanent appointment, immediately sever all professional links and recover speedily all fees and other amounts outstanding and organise his or her personal business affairs to minimise the potential for conflicts of interest.
- (3) A magistrate previously in private practice must not sit in any case in which he or she, or his or her former firm, is or was involved before the magistrate's appointment, and a magistrate must not sit in any case in which the former firm is involved until all indebtedness between the magistrate and the firm has been settled.
- (4) An acting magistrate who is a practising attorney or advocate—
  - (a) does not sit in any case in which he or she or his or her firm is or was involved as attorney or advocate of record or in any other capacity;
  - (b) may not represent a client in court for the duration of his or her acting appointment; and
  - (c) may not be involved in the business of his or her practice during official hours.

**Notes:**

Note 12(i): Social associations, including association with members of the legal profession, should be such as not to create the impression of favouritism or to enable the other party to abuse the relationship.

Note 12(ii): A magistrate does not ask for or receive any special favour or dispensation from potential litigants or members of the legal profession nor does a magistrate use the office for the attainment of personal benefit.

**Article 13: Recusal**

A magistrate must recuse himself or herself from a case if there is a—



- (a) real or reasonably perceived conflict of interest; or
  - (b) reasonable suspicion of bias based upon objective facts,
- and must not recuse himself or herself on insubstantial grounds.

**Notes:**

Note 13(i): Recusal is a matter regulated by the constitutional fair trial requirement, the common law and case law.

Note 13(ii): A magistrate hears and decides cases allocated to him or her, unless disqualified therefrom. Sensitivity, distaste for the litigation or annoyance at the suggestion to recuse himself or herself are not grounds for recusal.

Note 13(iii): A magistrate's ruling on an application for recusal and the reasons for the ruling must be stated in open court. A magistrate must, unless there are exceptional circumstances, give reasons for the decision.

Note 13(iv): If a magistrate is of the view that there are no grounds for recusal but believes that there are facts which, if known to a party, might result in an application for recusal, such facts must be made known timeously to the parties and the parties are to be given adequate time to consider the matter.

Note 13(v): Whether a magistrate ought to recuse himself or herself is a matter to be decided by the magistrate concerned and a magistrate ought not to defer to the opinion of the parties or their legal representatives.

**Article 14: Extra-judicial activities of magistrates**

- (1) A magistrate's judicial duties take precedence over all other duties and activities, statutory or otherwise.
- (2) A magistrate may be involved in extra-judicial activities, including those embodied in their rights as citizens, if such activities—
  - (a) are not incompatible with the confidence in, or the impartiality or the independence of, the magistrate; or
  - (b) do not affect or are not perceived to affect the magistrate's availability to deal attentively and within a reasonable time with his or her judicial obligations.
- (3) A magistrate must not—



- (a) accept any appointment that is inconsistent with or which is likely to be seen to be inconsistent with an independent judiciary, or that could undermine the separation of powers or the status of the judiciary;
  - (b) act as an advocate, attorney, or legal adviser but may, in his or her personal capacity, give informal legal advice to family members, friends, charitable organisations and the like without compensation;
  - (c) become involved in any undertaking, business, fundraising or other activity that affects the status, independence or impartiality of the magistrate or is incompatible with the judicial office;
  - (d) engage in financial and business dealings that may reasonably be perceived to exploit the magistrate's judicial position or are incompatible with the judicial office;
  - (e) sit as a private arbitrator.
- (4) A magistrate may—
- (a) act as a trustee of a family or public benefit trust but is not entitled to receive any remuneration for such services;
  - (b) be a director of a private family company or member of a close corporation but if the company or close corporation conducts business, the magistrate may not perform an executive function; and
  - (c) be a director of a non-profit company.

**Notes:**

Note 14(i): A magistrate conducts extra-judicial activities in a manner which minimises the risk of conflict with judicial obligations. These activities may not impinge on the magistrate's availability to perform any judicial obligations.

Note 14(ii): While magistrates should be available to use their judicial skill and impartiality to further the public interest, they must respect the separation of powers and the independence of the judiciary when considering a request to perform non-judicial functions for or on behalf of the State, or when performing such function.

Note 14(iii): Business or financial dealings with members of the legal profession are to be avoided.

Note 14(iv): Serving on university councils or governing bodies or boards of trustees of charitable institutions and the like is acceptable.



Note 14(v): A magistrate must refrain from using official resources when dealing with private matters that are not related to the performance of his or her judicial or any other official functions.

#### **Article 15: Extra-judicial income**

- (1) In terms of section 15 of the Act, a magistrate may not perform any paid work outside his or her duties of office without the consent of the Minister.
- (2) A magistrate must not—
  - (a) receive any income or compensation that is incompatible with judicial office;
  - (b) directly or indirectly negotiate or accept remuneration, gifts, advantages or privileges which are incompatible with judicial office or which can reasonably be perceived as being intended to influence the magistrate in the performance of his or her judicial duties, or to serve as a reward for performing those duties; and
  - (c) accept, hold or perform any other office of profit, or receive in respect of any service, any fees, emoluments or other remuneration apart from the salary and allowances payable to the magistrate in a judicial capacity.

#### **Article 16: Reporting inappropriate conduct**

- (1) A magistrate with clear and reliable evidence of serious professional misconduct or gross incompetence on the part of a legal practitioner or public prosecutor must inform the relevant professional body or a Director of Public Prosecutions of such misconduct or professional incompetence.
- (2) Before commenting adversely on the conduct of a particular practitioner or prosecutor in a judgment, the magistrate must, where possible, give that person the opportunity to respond to the allegation.
- (3) A magistrate who reasonably believes that a colleague has been acting in a manner which is unbecoming of judicial office must raise the matter with that colleague or with the head of the court concerned.

#### **Notes:**

Note 16(i): The reference to the appropriate authority is to be made in a neutral fashion and may not be judgmental.”.



**Commencement**

9. These Regulations come into operation on the date of publication of this Notice.



## DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. R. 933

07 SEPTEMBER 2018

**WET OP LANDDROSTE, 1993****REGULASIES VIR REGTERLIKE BEAMPTES IN DIE LAER HOWE, 1993: WYSIGING**

Die Minister van Justisie en Korrektiewe Dienste het, kragtens artikel 16 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), op aanbeveling van die Landdrostekommissie, die regulasies in die Bylae uitgevaardig.

**BYLAE****Woordomskrywing**

1. In hierdie Bylae beteken "die Regulasies" die Regulasies gepubliseer by Goewermentskennisgewing No. R. 361 van 11 Maart 1994, soos gewysig by Goewermentskennisgewings No's. R. 644 van 1 April 1994, R. 1407 van 11 Augustus 1994, R. 1808 van 17 Oktober 1994, R. 1707 van 27 Oktober 1994, R. 1791 van 17 November 1995, R. 72 van 26 Januarie 1996, R. 331 van 1 Maart 1996, R. 957 van 7 Junie 1996, R. 1178 van 19 Julie 1996, R. 1242 van 2 Augustus 1996, R. 1340 van 12 Augustus 1996, R. 1567 van 27 September 1996, R. 1627 van 1 Oktober 1996, R. 178 van 7 Februarie 1997, R. 421 van 20 Maart 1997, R. 1081 van 8 Augustus 1997, R. 274 van 20 Februarie 1998, R. 997 van 7 Augustus 1998, R. 56 van 15 Januarie 1999, R. 1498 van 17 Desember 1999, R. 1339 van 26 September 2003, R. 1593 van 31 Oktober 2003 en R. 50 van 26 Januarie 2012.



**Wysiging van regulasie 1 van die Regulasies**

1. Regulasie 1 van die Regulasies word hierby gewysig—
  - (a) deur die omskrywing van “gepaste ervaring” deur die volgende omskrywing te vervang:  
“**‘gepaste ervaring’** ervaring opgedoen na die verkryging van die gepaste kwalifikasies bedoel in artikel 10 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), en deur die Kommissie as gepas beskou;” en
  - (b) deur die volgende omskrywing na die omskrywing van “persoonlike besittings” in te voeg:  
“**‘Raad’** die Raad van die Suid-Afrikaanse Regterlike Opleidingsinstituut, gestig ingevolge artikel 3 van die Wet op die Suid-Afrikaanse Regterlike Opleidingsinstituut, 2008 (Wet No. 14 van 2008);”.

**Vervanging van regulasie 3 van die Regulasies**

2. Regulasie 3 van die Regulasies word hierby deur die volgende regulasie vervang:

**“Aanstellingsvereistes**

3. (1) Niemand mag as ’n landdros of ’n bykomende landdros van ’n distrikshof, of as ’n landdros van ’n streekshof, aangestel word nie, tensy hy of sy—

- (a) gepas gekwalifiseer is;
- (b) ’n gepaste en geskikte persoon is; en
- (c) ’n Suid-Afrikaanse burger is.

(2) Die Kommissie moet ’n mentorskapprogram ontwikkel ten einde nuut aangestelde landdroste te lei, waaraan ’n nuut aangestelde landdros moet deelneem.

(3) (a) Voordat ’n nuut aangestelde landdros die werksaamhede van ’n regterlike beampste in ’n geregshof opneem, moet hy of sy ’n kursus bywoon waarvan die inhoud en omvang deur die Raad, of ’n komitee van daardie Raad, bepaal moet word.

(b) Indien ’n landdros tot ’n meer senior landdrosamp aangestel word, kan die Kommissie vereis dat die landdros, voor of nadat die landdros die werksaamhede en verantwoordelikhede van sodanige senior amp opneem, ’n kursus bywoon waarvan die inhoud en omvang deur die Raad of ’n komitee van daardie Raad, bepaal moet word.



(4) Die Minister kan, op aanbeveling van die Kommissie, 'n landdros van die bepalings van subregulasie (3)(a) vrystel.”

#### **Vervanging van regulasie 4 van die Regulasies**

3. Regulasie 4 van die Regulasies word hierby deur die volgende regulasie vervang:

##### **“Aansoek deur kandidate**

4. (1) 'n Kandidaat moet skriftelik op 'n vorm van die Kommissie verkry aansoek doen om aanstelling as landdros en dit by die Kommissie indien.

(2) Die aansoek in subregulasie (1) bedoel, moet van die volgende dokumente vergesel gaan:

- (a) 'n Gewaarmerkte afskrif van die kandidaat se identiteitsdokument;
- (b) gewaarmerkte afskrifte van alle opvoedkundige kwalifikasies;
- (c) dienssertifikate of, indien nie beskikbaar nie, 'n beëdigde verklaring deur die kandidaat in verband met vorige diens tydperke;
- (d) getuigskrifte, indien beskikbaar, van vorige werkgewers;
- (e) 'n beëdigde verklaring waarin die kandidaat se bates en laste uiteengesit word; en
- (f) die name en adresse van twee verwysings.

(3) Indien die Kommissie, na behoorlike oorweging van 'n aansoek, van oordeel is dat die kandidaat gepas is vir die amp waarom aansoek gedoen is, moet die Kommissie die dokumente in hierdie regulasie bedoel, vergesel van 'n aanbeveling oor die aanstelling van die kandidaat in die betrokke amp, na die Minister aanstuur.”

#### **Wysiging van regulasie 54A van die Regulasies**

4. Regulasie 54A van die Regulasies word hierby gewysig

- (a) deur die opskrif van Deel XXI deur die volgende opskrif te vervang:

“DEEL XXI: KODE VIR REGTERLIKE GEDRAG VAN LANDDROSTE”; en

- (b) deur regulasie 54A deur die volgende regulasie te vervang:

“**54A.** Die Gedragskode vir Landdroste is die Kode vir Regterlike Gedrag soos vervat in Bylae E tot die Regulasies.”



**Herroeping van Vorm 1 in Bylae A tot die Regulasies**

5. Vorm 1 in Bylae A tot die Regulasies word hierby herroep.

**Herroeping van Vorm 2 in Bylae A tot die Regulasies**

6. Vorm 2 in Bylae A tot die Regulasies word hierby herroep.

**Herroeping van Vorm 3 in Bylae A tot die Regulasies**

7. Vorm 3 in Bylae A tot die Regulasies word hierby herroep.

**Vervanging van Bylae E tot die Regulasies**

8. Bylae E tot die Regulasies word hierby deur die volgende Bylae vervang:

**“BYLAE E**

**KODE VIR REGTERLIKE GEDRAG VAN LANDDROSTE INGEVOLGE ARTIKEL 16(1) VAN  
DIE WET OP LANDDROSTE, 1993 (WET NO. 90 VAN 1993) EN REGULASIE 54A VAN DIE  
REGULASIES VIR REGTERLIKE BEAMPTES IN DIE LAER HOWE, 1993**

**AANHEF**

Nademaal—

- (1) die oppergesag van die Grondwet, die reg, en die regte en vryhede in die Handves van Regte verskans, die grondslag is van die demokrasie deur die Grondwet ingestel;
- (2) artikel 165(1) van die Grondwet bepaal dat die regsprekende gesag van die Republiek by die howe berus;
- (3) artikel 165(2) van die Grondwet bepaal dat die howe onafhanklik en onderworpe slegs aan die Grondwet en die reg is, wat hulle sonder vrees, begunstiging of vooroordeel moet toepas;
- (4) artikel 174(8) van die Grondwet bepaal dat voor regterlike amptenare begin om hul funksies te verrig, hulle 'n eed of plegtige verklaring moet aflê ooreenkomstig paragraaf 6(1) van Bylae 2, dat hulle “die Grondwet en die menseregte daarin verskans sal handhaaf



- en beskerm en aan alle persone op gelyke voet reg sal laat geskied, sonder vrees, bevoordeling of vooroordeel, ooreenkomstig die Grondwet en die reg”;
- (5) artikel 180(b) van die Grondwet bepaal dat nasionale wetgewing voorsiening kan maak vir enige aangeleentheid aangaande die regspleging wat nie in die Grondwet mee gehandel word nie, met inbegrip van prosedures vir die hantering van klagtes oor regterlike beamptes;
- (6) die Wet op Landdroste, 1993 (Wet No. 90 van 1993) (hierna die Wet genoem), beoog om die onafhanklikheid van die amp van landdros en die regbank as ’n geheel te handhaaf en te bevorder, terwyl terselfdertyd erken word dat dit nodig is om ’n gepaste en doeltreffende balans te skep tussen die beskerming van die onafhanklikheid en waardigheid van die regbank by die oorweging van klagtes oor, en die moontlike ontheffing uit die amp, van landdroste soos omskryf in artikel 1 van die Wet, en die oorheersende beginsels van openlikheid, deursigtigheid en aanspreeklikheid wat die Grondwet deurdring en wat ewe toepaslik is op regterlike instellings en beamptes;
- (7) dit nodig is vir openbare aanvaarding van die regbank se gesag en integriteit dat die regbank sy grondwetlike verpligtinge nakom deur te voldoen aan algemeen aanvaarde internasionale etiese standaarde, in die besonder soos in die “Bangalore Principles of Judicial Conduct” (2001) uiteengesit soos by Den Haag (2002), hersien; en
- (8) artikel 16(1)(e) van die Wet bepaal dat die Minister, nadat die Landdrostekommissie ’n aanbeveling gedoen het, ’n Kode van Regterlike Gedrag kan aanvaar, wat by regulasie deur die Minister gepromulgeer moet word;

Bepaal die Kode vir Regterlike Gedrag van Landdroste soos volg:—

### **Artikel 1: Woordomskrywing**

In hierdie Kode, tensy uit die samehang anders blyk, het enige woord of uitdrukking of woord waaraan ’n betekenis in die Wet toegeskryf is, daardie betekenis en beteken—

**“hoof van die betrokke hof”—**

- (a) in die geval van ’n distrikslanddros, die landdros aan die hoof van die tersaaklike hof; en  
(b) in die geval van ’n streeklanddros, die president van die streekshof; en

**“die Regulasies”** die Regulasies vir Geregtelike Beamptes in die Laer Howe, 1993.



## **Artikel 2: Toepassing**

- (1) Hierdie Kode is van toepassing op elke landdros wat onder die omskrywing van "landdros" in artikel 1 van die Wet val, met inbegrip van 'n waarnemende landdros.
- (2) Enige opsetlike of growwe nalatige verbreking van hierdie Kode is gronde vir 'n klagte teen 'n landdros.
- (3) Klagtes moet ooreenkomstig die Regulasies mee gehandel word.

## **Artikel 3: Oogmerke en Uitleg**

- (1) Die oogmerk van hierdie Kode is om elke landdros by te staan in die hantering van etiese en professionele kwessies, en om die publiek in te lig oor die regterlike etos van die Republiek.
- (2) Hierdie Kode moet—
  - (a) toegepas word bestaanbaar met die Grondwet en die reg soos in die gemenereg, wetgewing, en presedent, met behoorlike inagneming van die tersaaklike omstandighede, beliggaam;
  - (b) nie uitgelê word dat dit inbreuk maak op die grondwetlik gewaarborgde onafhanklikheid van die regbank of enige landdros of op die skeiding van magte nie;
  - (c) nie uitgelê word as absoluut, eksak of omvattend nie. Gedrag kan dus oneties wees wat, by 'n streng lees van hierdie Kode, skynbaar toegelaat word en die teenoorgestelde geld ook.
- (3) Alhoewel internasionale standaarde en standaarde van toepassing in vergelykbare vreemde jurisdiksies moontlik nie direk toegepas kan word nie, voorsien dit wel 'n nuttige verwysingsbron vir die uitleg, begrip en toepassing van hierdie Kode.
- (4) Notas by artikels van hierdie Kode is ter toeligting, verduideliking en leiding ten opsigte van die doel en betekenis van die Artikels.

## **Artikel 4: Regterlike onafhanklikheid**

'n Landdros moet—

- (a) die onafhanklikheid en integriteit van die regbank en die gesag van die howe handhaaf;
- (b) onafhanklike denke tydens die verrigting van regterlike pligte handhaaf;
- (c) alle redelike stappe doen om te verseker dat geen persoon of staatsorgaan met die funksionering van die howe inmeng nie; en
- (d) nie enige spesiale guns of vrystelling van enige persoon, die Uitvoerende Gesag of enige belangegroep versoek of aanvaar nie.



**Notas:**

Nota 4(i): 'n Landdros tree vreesloos en volgens sy of haar gewete op omdat 'n landdros slegs aan die reg verantwoordbaar is.

Nota 4(ii): Landdroste slaan geen ag op politieke partye of drukgroepe nie en verrig alle professionele pligte vry van invloede van buite.

Nota 4(iii): Landdroste verskyn nie by openbare verhore nie en pleeg nie andersins oorleg met 'n uitvoerende gesag of wetgewende liggaam of beamppte nie, behalwe oor aangeleenthede aangaande die reg, die regstelsel of die regspleging.

Nota 4(iv): Regterlike onafhanklikheid is nie 'n private reg of 'n beginsel tot voordeel van landdroste as individue nie. Dit beteken vryheid van gewete vir landdroste en nie-inmenging in die verrigting van hul besluitneming. Dit regverdig nie regterlike wangedrag nie en is nie 'n verskoning vir versuim om regterlike werksaamhede met behoorlike sorg te verrig of om andersins in stryd met hierdie Kode op te tree nie.

Nota 4(v): Staatsorgane het 'n grondwetlike opdrag om die howe by te staan en te beskerm om hul onafhanklikheid, onpartydigheid, waardigheid, toeganklikheid en doeltreffendheid te verseker. Die korrelaat is die reg van elke landdros om nie sy of haar onafhanklike denke deur enige persoon of staatsorgaan te laat versteur nie.

**Artikel 5: Om eerbaar op te tree**

(1) 'n Landdros moet altyd, en nie net by die verrigting van amptelike pligte nie, eerbaar en op 'n wyse wat die regterlike amp betaam, handel.

(2) Alle aktiwiteite van 'n landdros moet bestaanbaar met die status van die regterlike amp wees.

**Notas:**

Nota 5(i): 'n Landdros tree in sy of haar professionele en private lewe op 'n wyse op wat die publiek se vertroue in, of respek vir, die regbank en die regstelsel verhoog.

Nota 5(ii): 'n Landdros vermy onbehoorlikheid en skynbare onbehoorlikheid in alle aktiwiteite van die landdros.



Nota 5(iii): 'n Landdros begeef hom of haar nie in gedrag wat nadelig vir die doeltreffende en pront pleging van die sake van die hof is nie.

Nota 5(iv): Regterlike gedrag moet objektief uit die oogpunt van 'n redelike persoon geassesseer word.

#### **Artikel 6: Voldoening aan die reg**

'n Landdros moet te alle tye, ook in verband met buiteregtelike gedrag, aan die reg van die land voldoen.

#### **Artikel 7: Gelykheid**

'n Landdros moet te alle tye—

- (a) opmerkings wat rassisties, seksisties is of andersins diskriminasie toon wat 'n skending is van die reg op gelykheid in die Grondwet gewaarborg, persoonlik vermy en sigself daarvan distansieer;
- (b) in die hof en in kamers hoflik optree en andere se waardigheid respekteer;
- (c) in die voer van geregtelike verrigtinge, spesiale aandag skenk aan die reg op gelykheid voor die reg en die reg op gelyke beskerming en voordeel van die reg; en
- (d) in die verrigting van regterlike pligte sigself van bevooroordeeldheid en partydigheid weerhou.

#### **Notas:**

Nota 7(i): Hierdie bepalings is daarop gemik om hoflikheid te bevorder en 'n mate van fatsoenlikheid te verseker.

Nota 7(ii): Landdroste streef daarna om bewus te wees van die vele verskille tussen persone en om dit te verstaan en om ingelig te bly oor veranderende sosiale houdings en waardes.

Nota 7(iii): Die multikulturele aard van die Suid-Afrikaanse samelewing verg spesiale sensitiwiteit teenoor die opvattinge en gevoelens van almal wat deur hofverrigtinge geraak word.



### Artikel 8: Deursigtigheid

'n Landdros moet—

- (a) redelike stappe doen om die toeganklikheid van die howe te versterk en om openbare begrip van geregtelike verrigtinge te verbeter; en
- (b) tensy spesiale omstandighede iets anders verg, in die ope hof—
  - (i) geregtelike verrigtinge voer; en
  - (ii) sy of haar beslissings en stawende redes bekend maak.

#### Notas:

Nota 8(i): Die legitimiteit van die regbank is afhanklik van die openbare begrip van, en vertroue in, die regterlike proses.

Nota 8(ii): Die funksie van die regbank misluk indien die verrigtinge daarvan nie verstaan word nie.

Nota 8(iii): Landdroste is bewus van die wenslikheid daarvan om aan die gees van die vereiste dat verrigtinge in die ope hof moet plaasvind, te voldoen.

Nota 8(iv): Besprekings met landdroste in kamers moet vermy word. Indien wat in kamers gebeur het, enige uitwerking op die verrigtinge het, moet daardie feite in die ope hof op rekord geplaas word.

### Artikel 9: Regverdige verhoor

'n Landdros moet—

- (a) geskille besleg deur feitebevindings te maak en die toepaslike reg in 'n regverdige verhoor toe te pas, met inbegrip van die plig om—
  - (i) die letter en gees van die *audi alteram partem*-reël te handhaaf;
  - (ii) sigbaar onpartydig te bly; en
  - (iii) genoegsame redes vir enige besluit te gee;
- (b) by die voer van geregtelike verrigtinge—
  - (i) orde handhaaf;
  - (ii) ooreenkomstig algemeen aanvaarde fatsoenlikheid optree; en
  - (iii) geduldig en hoflik teenoor regspraktisyns, partye en die publiek bly, en van hulle vereis om ook so op te tree;
- (c) geregtelike verrigtinge bestuur op so 'n wyse wat—



- (i) die afhandeling daarvan so koste-doeltreffend as moontlik bespoedig; en
  - (ii) nie die verantwoordelikheid om 'n aangeleentheid aan te hoor en daaroor te beslis na 'n ander landdros verskuif nie;
- (d) nie onbehoorlike invloed uitoefen ten einde 'n skikking te bevorder of 'n toegewing van enige party te kry nie.

#### **Artikel 10: Noulettendheid**

- (1) 'n Landdros moet —
- (a) alle regterlike pligte aan hom of haar toegewys, noulettend verrig;
  - (b) die betrokke aangeleentheid deeglik ondersoek;
  - (c) die sake van die hof sonder oponthoud en op 'n doeltreffende en saaklike wyse afhandel;
  - (d) spoedig en sonder onnodige oponthoud in 'n saak uitspraak lewer;
  - (e) nie gedrag openbaar wat nadelig vir die doeltreffende en spoedige regspleging of die sake van die hof is nie;
  - (f) in kamers wees tydens normale kantoorure en in die hof wees tydens normale hofure tensy sodanige teenwoordigheid nie redelik vereis word ten einde enige amptelike pligte te verrig nie;
  - (g) amptelike pligte behoorlik, betyds, en op 'n ordelike manier verrig;
  - (h) die administratiewe versoeke van die betrokke hoof van die hof respekteer en daaraan voldoen;
  - (i) redelike stappe doen om die nodige vlak van professionele bevoegdheid in die reg te handhaaf; en
  - (j) by bedanking, aftrede, of die verstryking van 'n waarnemende aanstelling, alle gedeeltelik verhoorde sake afhandel en alle voorbehoude uitsprake so gou as moontlik lewer.
- (2) By die uitvoering van die regterlike amp, moet 'n landdros voldoen aan die norme en standaarde ingevolge artikel 8 van die Wet op Hoër Howe, 2013, deur die Hoofregter bepaal.

#### **Notas:**

Nota 10(i): Onnodige uitstelte, puntstelling, oordrewe formaliteit en diesulke moet vermy word.

Nota 10(ii): Gedingvoerders is geregtig op uitspraak so gou as redelik moontlik.



Nota 10(iii): Straftelike verrigtinge, veral outomatiese hersienings, aansoeke om verlof om te appelleer, en aangeleenthede waar persoonlike vryheid ter sprake is, moet spoedig hanteer word.

Nota 10(iv): 'n Landdros hou 'n rekord van alle uitstaande uitsprake en doen verslag aan die hoof van die betrokke hof daaroor indien en wanneer versoek.

Nota 10(v): 'n Patroon van onbeheersde of intimiderende behandeling van prokureurs en andere, of van gedrag wat wispelturigheid en belediging aan die dag lê, is nadelig vir doeltreffende regspleging en moet vermy word.

### **Artikel 11: Selfbeheersing**

- (1) 'n Landdros moet—
  - (a) behalwe in die vervulling van die regterlike amp, nie in die openbaar kommentaar lewer oor die meriete van enige saak hangende voor, of beslis deur, daardie landdros of enige ander hof nie;
  - (b) nie by 'n openbare debat betrokke raak oor 'n saak nie, ongeag die kritiek teen die landdros, die uitspraak, of enige ander aspek van die saak;
  - (c) sigself weerhou van enige handeling wat vertolk kan word as dat dit bedoel is om regmatige kritiek teenoor daardie of enige ander landdros te onderdruk;
  - (d) inligting wat in 'n regterlike hoedanigheid verkry is en wat nie openbaar is nie, bekend maak of gebruik vir enige doel wat nie met sy of haar regterlike pligte verband hou nie;
  - (e) enige persoonlikheidskwessies met kollegas, prokureurs en partye vermy en poog om kollegialiteit te bevorder; en
  - (f) tensy dit tersake is by geregtelike verrigtinge voor die betrokke landdros, of 'n vakkundige voorlegging is wat gemaak word met die doel om die regstudie te bevorder, sigself weerhou van openbare kritiek teen 'n ander landdros of tak van die regbank.
- (2) 'n Landdros kan aan openbare debat oor aangeleenthede wat verband hou met regsonderwerpe of die regspleging deelneem, maar druk nie menings uit op 'n wyse wat die stand en integriteit van die regbank kan ondergrawe nie.
- (3) Formele beraadslagings asook private raadplegings en debatte tussen landdroste is vertroulik en moet vertroulik bly.



**Notas:**

Nota 11(i): Indien dit nodig is om op 'n uitspraak kommentaar te lewer, moet die hoof van die hof die aangeleentheid hanteer op 'n wyse wat die integriteit van die regbank as 'n geheel sal handhaaf. Indien die hoof van die hof nie die aangeleentheid hanteer nie, kan die betrokke landdros, onder spesiale omstandighede, 'n beredeneerde en waardige verklaring uitreik, verkieslik in ope hof of deur die griffier of klerk van die hof, om die aangeleentheid uit te klaar. Hierdie bepalings verbied nie akademiese debat van die regskwessies wat in 'n saak na vore gekom het nie.

Nota 11(ii): Private raadplegings en debatte tussen landdroste is nodig vir die regbank om sy funksies te verrig. Hierdie geleenthede mag egter nie gebruik word om 'n landdros te beïnvloed oor hoe 'n sekere saak beslis moet word nie.

Nota 11(iii): Persoonlike kritiek moet vermy word tensy dit deur die loop van geregtelike verrigtinge nodig word.

Nota 11(iv): Hoflikheid en kollegialiteit teenoor kollegas is onontbeerlike eienskappe vir 'n landdros.

**Artikel 12: Assosiasie**

- (1) 'n Landdros moet nie —
  - (a) 'n amp in enige politieke party beklee of aan enige geheime organisasie behoort nie;
  - (b) by enige politieke polemiek of aktiwiteit betrokke raak nie;
  - (c) aan enige aktiwiteite deelneem wat diskriminasie, in stryd met die Grondwet, aan die dag lê nie; en
  - (d) die aansien van die regterlike amp gebruik om die private belange van die landdros of andere te bevorder nie.
- (2) 'n Landdros wat voorheen in die private praktyk was moet, by permanente aanstelling, onmiddellik alle professionele bande verbreek en spoedig alle gelde en ander uitstaande bedrae invorder, en sy of haar persoonlike sake organiseer om die potensiaal vir botsings van belange tot 'n minimum te beperk.
- (3) 'n Landdros wat voorheen in die private praktyk was, moet nie sit in enige saak waarin hy of sy, of sy of haar voormalige firma, betrokke is of was voor die landdros se aanstelling nie, totdat alle verpligtinge tussen die landdros en die firma afgehandel is.
- (4) 'n Waarnemende landdros wat 'n praktiserende prokureur of advokaat is—



- (a) sit nie voor in enige saak waarin hy of sy of sy of haar firma betrokke is of was as prokureur of advokaat van rekord of in enige ander hoedanigheid nie;
- (b) mag nie 'n kliënt in 'n hof verteenwoordig vir die duur van sy of haar waarnemende aanstelling nie; en
- (c) mag nie tydens amptelike ure betrokke wees in die besigheid van sy of haar praktyk nie.

**Notas:**

Nota 12(i): Sosiale assosiasies, met inbegrip van assosiasie met lede van die regsprofessie moet sodanig wees dat dit nie die indruk van partydigheid skep nie of die ander party in staat stel om van die verhouding misbruik te maak nie.

Nota 12(ii): 'n Landdros mag nie enige spesiale guns of vrystelling van potensiële gedingvoerder of lede van die regsprofessie vra of ontvang nie en 'n landdros mag ook nie die amp gebruik vir die verkryging van persoonlike voordeel nie.

**Artikel 13: Onttrekking**

'n Landdros moet sigself aan 'n saak onttrek indien daar 'n—

- (a) werklike of redelik waargenome botsing van belange is; of
- (b) redelike verdenking bestaan van bevooroordeeldheid gegrond op objektiewe feite, en moet sigself nie op geringe gronde onttrek nie.

**Notas:**

Nota 13(i): Onttrekking is 'n aangeleentheid wat deur die grondwetlike vereiste vir 'n billike verhoor, die gemenereg en presedenterereg gereël word.

Nota 13(ii): 'n Landdros hoor sake aan hom of haar toegewys aan en lewer uitspraak daaroor, tensy hy of sy daarvan gediskwalifiseer is. Sensitiwiteit, teensinnigheid oor die gedingvoering of misnoeë met die voorstel dat hy of sy sigself moet onttrek, is nie gronde vir onttrekking nie.

Nota 13(iii): 'n Landdros se uitspraak oor 'n aansoek om onttrekking en die redes vir die uitspraak moet in die ope hof gestel word. 'n Landdros moet, tensy daar buitengewone omstandighede is, redes vir die beslissing gee.



Nota 13(iv): Indien 'n landdros van oordeel is dat daar geen gronde vir onttrekking is nie, maar meen dat daar feite is wat, indien dit aan 'n party bekend is, tot 'n aansoek om onttrekking kan lei, moet daardie feite betyds aan die partye bekend gemaak word en die partye moet voldoende tyd gegee word om die aangeleentheid te oorweeg.

Nota 13(v): Hetsy 'n landdros sigself moet onttrek is 'n aangeleentheid wat deur die betrokke landdros besluit moet word en 'n landdros moet sigself nie aan die opinie van die partye of hul regsverteenwoordigers onderwerp nie.

#### **Artikel 14: Buitegeregtelike aktiwiteite van landdroste**

(1) 'n Landdros se regterlike pligte het voorkeur bo alle ander pligte en aktiwiteite, hetsy statutêr of andersins.

(2) 'n Landdros mag by buitegeregtelike aktiwiteite betrokke wees, met inbegrip van dié beliggaam in hul regte as burgers, indien sodanige aktiwiteite—

- (a) nie onbestaanbaar met die vertroue in, of onpartydigheid of die onafhanklikheid van die landdros, is nie; of
- (b) nie die landdros se beskikbaarheid raak, of gesien word sy of haar beskikbaarheid te raak, om sy of haar regterlike verpligtinge aandagtig en binne 'n redelike tyd te hanteer nie.

(3) 'n Landdros moet nie —

- (a) enige aanstelling aanvaar wat strydig is met of waarskynlik gesien kan word as strydig met 'n onafhanklike regbank nie, of wat die skeiding van magte of die status van die regbank kan ondergrawe nie;
- (b) as 'n advokaat, prokureur, of regsadviseur optree nie, maar kan, in sy of haar persoonlike hoedanigheid, sonder vergoeding, informele regsadvies aan familieleden, vriende, liefdadigheidsorganisasies en diesulke gee;
- (c) betrokke raak nie by enige onderneming, besigheid, fondsinsameling of ander aktiwiteit wat die status, onafhanklikheid of onpartydigheid van die landdros raak nie of strydig met die regterlike amp is nie;
- (d) by finansiële en sakebedrywighede betrokke raak wat redelik gesien kan word as dat dit die landdros se regterlike posisie uitbuit of strydig met die regterlike amp is;
- (e) as 'n private arbitreerder sit nie.

(4) 'n Landdros mag—

- (a) as 'n trustee van 'n familietrust of openbare weldaadstrust optree, maar is nie geregtig op enige vergoeding vir sodanige dienste nie;



- (b) 'n direkteur van 'n private familiemaatskappy of lid van 'n beslote korporasie wees, maar as die maatskappy of beslote korporasie besigheid doen, mag die landdros nie 'n uitvoerende funksie verrig nie; en
- (c) 'n direkteur van 'n maatskappy sonder winsbejag wees .

**Notas:**

Nota 14(i): 'n Landdros moet buiteregterlike aktiwiteite op 'n wyse voer wat die risiko van botsing met regterlike verpligtinge beperk. Hierdie aktiwiteite mag nie inbreuk maak op die landdros se beskikbaarheid om enige regterlike verpligtinge te verrig nie.

Nota 14(ii): Terwyl landdroste beskikbaar moet wees om hul regterlike vaardighede en onpartydigheid te gebruik om die openbare belang te bevorder, moet hulle die skeiding van magte en die onafhanklikheid van die regbank respekteer wanneer hulle 'n versoek oorweeg om nieregterlike werksaamhede vir of namens die staat te verrig, of wanneer sodanige funksie verrig word.

Nota 14(iii): Sake of finansiële besigheid met lede van die regsberoep moet vermy word.

Nota 14(iv): Diens op universiteitsrade of beheerliggame of kuratoriums van welsynsorganisasies en diesulke is aanvaarbaar.

Nota 14(v): 'n Landdros moet sigself daarvan weerhou om amptelike hulpbronne te gebruik wanneer hy of sy private aangeleenthede hanteer wat nie met die verrigting van sy of haar regterlike of enige ander amptelike funksies verband hou nie.

**Artikel 15: Buiteregterlike inkomste**

- (1) Ingevolge artikel 15 van die Wet, mag 'n landdros nie sonder die toestemming van die Minister enige betaalde werk buite sy of haar ampspligte verrig nie.
- (2) 'n Landdros moet nie—
  - (a) enige inkomste of vergoeding ontvang wat onbestaanbaar met die regterlike amp is nie;
  - (b) regstreeks of onregstreeks besoldiging, geskenke, voordele of voorregte onderhandel of aanvaar wat onbestaanbaar met die regterlike amp is of wat redelik beskou kan word as dat dit bedoel is om die landdros in die verrigting van sy of haar regterlike pligte te beïnvloed, of om as 'n beloning vir die verrigting van daardie pligte te dien nie; en



- (c) enige ander winsgewende pos aanvaar, hou of verrig, of ten opsigte van enige diens enige fooie, verdienste of ander besoldiging ontvang nie behalwe die salaris en toelaes in 'n regterlike hoedanigheid aan die landdros betaalbaar.

#### **Artikel 16: Aanmelding van onvanpaste gedrag**

- (1) 'n Landdros met duidelike en betroubare bewyse van ernstige professionele wangedrag of growwe onbevoegdheid aan die kant van 'n regspraktisyn of staatsaanklaer, moet die tersaaklike professionele liggaam of 'n Direkteur van Openbare Vervolging inlig oor sodanige wangedrag of professionele onbevoegdheid.
- (2) Voordat 'n landdros ongunstig kommentaar lewer oor die gedrag van 'n bepaalde praktisyn of aanklaer in 'n uitspraak, moet die landdros, waar moontlik, daardie persoon 'n geleentheid gun om op die bewering te reageer.
- (3) 'n Landdros wat redelik glo dat 'n kollega op 'n manier opgetree het wat onvanpas is vir die regterlike amp, moet die aangeleentheid met daardie kollega of die hoof van die betrokke hof opneem.

#### **Notas:**

Nota 16(i): Die verwysing na die gepaste owerheid moet op 'n neutrale wyse gedoen word en mag nie veroordelend wees nie."

#### **Inwerkingtreding**

9. Hierdie Regulasies tree op die datum van publikasie van hierdie Kennisgewing in werking.



## DEPARTMENT OF LABOUR

NO. R. 934

07 SEPTEMBER 2018

## LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING AND ALLIED TRADES: RENEWAL OF PERIOD OF OPERATION OF THE MAIN COLLECTIVE AGREEMENT**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby, in terms of section 32(6) (a) (ii), read with section 32(5) of the Labour Relations Act, 1995, declare the provisions of Government Notice R.632 of 7 July 2017 and R.935... of 7 September 2018, to be effective from the date of publication of this notice and for the period ending 31 July 2019.



MINISTER OF LABOUR

M N OLIPHANT, MP

DATE: 27/08/2018

**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995****UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI BEZINDAWO ZOKUTHENGISA NGOKUDLA, BEZINDAWO ZOKUDLELA, BEZOKUHLINZEKA NGOKUDLA KANYE NEMISEBENZI EHLOBENE NALOKHO: UKUVUSELELWA KWESI KHATHI SOKUSEBENZA KWESIVUMELWANO ESIYINGQIKITHI SABAQASHI NABASEBENZI**

Mina, **MILDRED NELISIWE OLIPHANT**, onguNgqongqoshe Wezabasebenzi, lapha ngokwesigaba 32(6) (a) (ii) sifundwa nesigaba 32(5) soMthetho Wobudlelwano Kwezabasebenzi ka 1995, ngimemezela ukuthi izihlinzeko zeZaziso zikaHulumeni ezingunombolo R.632 somhlaka 7 kuNtulikazi 2017, kanye nonombolo R.935... womhlaka ....07-09-2018..., zizosebenza kusukela ngosuku lokushicilelwa kwalesisaziso kuze kube isikhathi esiphela mhlaka 31 kuNtulikazi 2019.



UNGQONGQOSHE WEZABASEBENZI

M N OLIPHANT, MP

USUKU: 27/08/2018



## DEPARTMENT OF LABOUR

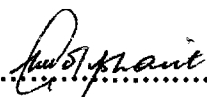
NO. R. 935

07 SEPTEMBER 2018

## LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING AND  
ALLIED TRADES: EXTENSION TO NON-PARTIES OF THE AMENDING MAIN  
COLLECTIVE AGREEMENT**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32(2) read with section 32(5) and section 32(8) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades**, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from the second Monday after the date of publication of this notice and for the period ending 31 July 2019.

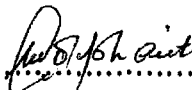
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**M N OLIPHANT, MP**  
**MINISTER OF LABOUR**  
**DATE 27/08/2018**.....



**UMNYANGO WEZABASEBENZI****UMTHETHO WOBUDLELWENO KWEZABASEBENZI KA-1995**

**UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI  
BEZINDAWO ZOKUTHENGISA NGOKUDLA, BEZINDAWO ZOKUDLELA,  
BEZOKUHLINZEKA NGOKUDLA KANYE NEMISEBENZI EHLOBENE NALOKHO:  
UKWELULELWA KWESIVUMELWANO SABAQASHI NABASEBENZI ESIYINGQIKITHI  
NESICHIBIYELAYO SELULELWA KULABO ABANGEYONA INGXENYE YASO**

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe WezabaSebenzi, ngokwesigaba 32(2) sifundwa nesigaba 32(5) kanye nesigaba 32(8) soMthetho Wobudlelwano KwezabaSebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa **uMkhandlu Wokuxoxisana Kwabaqashi Nabasebenzi Bezokuthengisa Ngokudla, Bezindawo Zokudlela, Bezokuhlinzeka Ngokudla kanye Nemisebenzi Ehlobene Nalokho**, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabaSebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, kusukela ngoMsombuluko wesibili emva kosuku lokushicilelwa kwalesiSaziso futhi kuze kube isikhathi esiphela mhlaka 31 kuNtulikazi 2019.

.....  
**M N OLIPHANT, MP**  
**UNGQONGQOSHE WEZABASEBENZI**  
**USUKU: 23/08/2018**.....



**SCHEDULE****BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT,  
CATERING AND ALLIED TRADES****AMENDMENT OF MAIN COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, No 66 of 1995, made  
and entered into by and between the

**Proactive Employers' Association of South Africa (PEASA)**

(hereinafter referred to as the "employer" or the "employers' organisation"), of the one  
part, and the

**South African Commercial, Catering and Allied Workers' Union (SACCAWU)**

(hereinafter referred to as the "employee" or the "trade union"), of the other part, being  
the parties to the Bargaining Council for the Food Retail, Restaurant, Catering and  
Allied Trades.

**1. SCOPE OF APPLICATION OF AGREEMENT**

The terms of this Agreement shall be observed in the Food Retail, Restaurant,  
Catering and Allied Trades –

- (1) (a) by all employers and employees who are members of the  
employers' organisation and the trade unions, respectively;
- (b) in the Magisterial Districts of Pretoria, Brits, Bronkhorstspuit,  
Cullinan, Rustenburg, Warmbaths, Witbank and Wonderboom.



- (2) Clause 1 (1) (a), (2) and 2A. of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade unions, respectively.

## **2. PERIOD OF OPERATION OF AGREEMENT**

This Agreement shall come into operation on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties, and the Agreement shall remain in force until 31 July 2019. This agreement to take effect on date of promulgation of this agreement provided that this agreement is extended.

## **3. CLAUSE 5 (B) : MINIMUM WAGES**

- (1) Substitute the following for subclause (1) (a), (b) (c):

- (1) (a) All Employees earning below R20 per hour, shall receive an increase of 7% on their basic salary. Should an Employee after receiving the increase earn below the minimum wage as stipulated in the Minimum Wage Act at the time of promulgation of the said Act, then their salaries would be adjusted accordingly to ensure compliance with the Minimum Wage Act.
- (b) Should the Minimum Wage Act be promulgated before this agreement comes into effect, then wage stipulated in the Minimum Wage Act shall apply to employees earning below the Minimum wage, and the 7% increase as per sub-clause 1 (a) above shall no longer apply.
- (c) All Employees earning above R20 per hour, shall receive an increase of 4.5% on their basic salary.
- (d) Small employer – may reduce the increase by 10%.



**4. CLAUSE 7 : NUMBER OF DAYS AND HOURS OF WORK, ORDINARY  
AND OVERTIME, AND PAYMENT FOR OVERTIME**

(1) Insert the following subclause (8) (a) and (b)

(a) Every employee employed after promulgation of this agreement shall, for the duration of this agreement, be entitled to all conditions of employment as stipulated in the Basic Conditions of Employment Act 75 of 1997 (as amended, "BCEA") and the Unemployment Insurance Act, 63 of 2001 (as amended, "UIF") but should not qualify for any additional benefits as per clauses 6(4)(a) and (b), 6(6), 8, 10, 11 and 15B(1)(a) of the Main Agreement.

(b) The first monthly payment to commence on the first month following promulgation of this agreement and to be made on regular intervals of the 1<sup>st</sup> of every month thereafter for the full duration of this agreement.

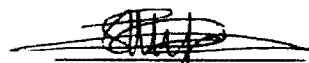


Signed at Pretoria this 23<sup>rd</sup> day of April 2018.

**EMPLOYERS' ORGANISATION**

  
A.S. RUDD  
PCA


**TRADE UNIONS**

  
J.N. MAPONYA  
SACCAWU

**BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING  
AND ALLIED TRADES**

  
J.N. MAPONYA  
CHAIRMAN

  
A.S. RUDD  
VICE-CHAIRMAN

  
M. BASILIO  
SECRETARY



## DEPARTMENT OF LABOUR

NO. R. 936

07 SEPTEMBER 2018

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## SCHEDULE

## BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY

## CONDITIONS OF EMPLOYMENT COLLECTIVE AGREEMENT

PREAMBLE

This collective agreement was concluded between the members of the employer organisations and the members of the trade unions which concluded and signed this agreement in the Bargaining Council.

The Minister of Labour has extended this collective agreement to all the employers and employees in the industry that are not signatories to this agreement. This has the effect of making the collective agreement applicable to all employers and employees in the industry.

The following employer organisations and trade unions signed the collective agreement on behalf of their members:

Building, Construction and Allied Workers Union (BCAWU)  
Consolidated Employers Organisation (CEO)  
National Union of Mine Workers (NUM)  
South African Forum of Civil Engineering Contractors (SAFCEC)

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# **1. CHAPTER 1 - APPLICATION AND INTERPRETATION OF AGREEMENT**

## **1.1. Scope of the agreement**

### **1.1.1. This Agreement binds:**

- a) All employers in the civil engineering industry that are members of the employers' organisations that are party to this agreement; and
- b) All employees in the bargaining unit, employed in the industry who are members of the trade unions that are party to this Agreement.

### **1.1.2. This Agreement must be applied in the jurisdiction of Bargaining Council for the Civil Engineering Industry throughout the Republic of South Africa**

### **1.1.3. Except as otherwise provided for in this Agreement, this Agreement establishes the terms and conditions of employment for scheduled employees.**

### **1.1.4. This agreement applies to learners, only insofar as it is not inconsistent with the Skills Development Act, 1998.**

### **1.1.5. The provisions of the Basic Conditions of Employment Act, 1997 shall apply in respect of any employer or employee in the Civil Engineering Industry in so far as a provision thereof provides for any matter that is not regulated by this Agreement.**

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1.1.6. The provisions of clauses 2.8, 2.9, 2.10, 2.11 and 2.12 of this agreement shall not apply to employees whose earnings exceed the amount determined by the Minister of Labour in terms of section 6(3) read with section 59(2)(c) of the Basic Conditions of Employment Act of 1997.

1.1.7. This agreement is binding in terms of Section 31 of the Labour Relations Act, 66 of 1995, on the parties which concluded the Conditions of Employment Collective Agreement and shall become binding on the other employers and employees in the industry upon extension by the Honourable Minister of Labour in terms of Section 32, from a date determined by the Minister.

## 1.2. Period of operation of agreement

1.2.1. This agreement becomes binding on the employers and employees referred to in sub-clause 1.1.1. (a) and (b) once it is extended to non-parties by the Honourable Minister of Labour.

1.2.2. This agreement shall remain in force until 31 August 2021

## 1.3. Definitions and expressions

Any expression used in this Agreement which is defined in the Labour Relations Act 66 of 1995, shall have the same meaning as in that Act, and any reference to an Act shall include any amendment to such Act, and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context;

'Act' means the Labour Relations Act, 1995 (Act No. 66 of 1995)

'Bargaining Unit' shall mean all the employees falling within the Task Grades reflected in the wage schedule contained in the Wage and Task Grade Collective Agreement.

'BCIMA' means the Building Construction Industry Medical Aid' as administered by Status Medical Aid Administrators (Pty) Ltd.

'CIRBF' means the Construction Industry Retirement Benefit Fund.

'Civil Engineering Industry' – see 'Industry'.

'Council' means the Bargaining Council for the Civil Engineering Industry.

'Cross border work' means work performed outside the borders of the Republic of South Africa.

'Employee' means –

Any person, excluding an independent contractor, who works for another person and who receives, or is entitled to receive, any remuneration; and

Any other person who in any manner assists in carrying on or conducting the business of an employer.

'Employer' means any person whosoever, including a temporary employment service as defined in clause 198(1) of the Act, who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person whosoever in any manner to assist him in the carrying on or conducting of his business;

'Emergency work' means any work which owing to unforeseen circumstances such as fire, storm, land subsidence, accident, epidemic, act of violence, theft, a breakdown of plant, motor vehicles or machinery or a breakdown or threatened breakdown of structures, or any critical operational requirement, must be done without delay;

L.V. T.G.M. 1



**'Family Responsibility Leave Cycle'** means the period of 36 consecutive months' employment with the same employer immediately following:

- i. An employee's commencement of employment; or
- ii. The completion of that employee's prior family responsibility leave cycle

**'Hourly-rated employee'** means an employee whose remuneration is calculated on an hourly basis notwithstanding the frequency of the payment thereof, and who is not a salaried employee;

**'Industry'** means the Civil Engineering Industry in which employers (other than local authorities) and employees are associated for the purpose of carrying out work of a civil engineering character normally associated with the civil engineering sector and includes such work in connection with any one or more of the following activities:

- i. The construction of aerodrome runways or aprons; aqueducts; bins or bunkers; bridges; cable ducts; caissons; rafts or other marine structures; canals; cooling, water or other towers; dams; docks; harbours; quays or wharves; earthworks; encasements; housing or supports for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine headgear/s; pipelines; piers; railways; reservoirs; river works; roads or streets; sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants; and/or
- ii. Excavation and bulk earthworks; bush clearing and de-stumping; topsoil stripping; drilling and blasting; preparation of bench areas, drilling pre-split holes and blasting and/or cast blasting; secondary blasting; loading, hauling and dumping of mineralized and/or waste material to waste dumps or processing plant feed (ROM Pad) stockpiles; production dozing of top soil, inter burden or waste material; pumping and dewatering of storm and/or contaminated water; construction and maintenance of access and haul roads, ramps, waste and processing plant feed (ROM Pad) areas, safety beams, high walls; benches, storm water systems, catch drains, bund walls, surge dams; trimming, scaling or chain dragging of batters, heap-leach pads, tailings dams; dust suppression of loading areas, haul roads and dumping areas; rehabilitation of earth work areas or waste dumps; topsoil spreading, hydro-seeding and watering and/or
- iii. Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and/or
- iv. The asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites

and further includes;

- v. Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or
- vi. The making, repairing, checking or overhauling of tools, vehicles, plant, machinery or equipment in workshops which are conducted by employers engaged in any of the activities referred to in definitions (i) to (v) above;

but excluding:

- vii. Work in connection with any one or more of the activities specified in definition (iii) where such work, when undertaken in connection with the erection of structures having the general character of buildings and irrespective of whether or not such work involves problems of a civil engineering character, is carried out by the employers erecting such structures;
- viii. Work in connection with any one or more of the activities specified in definition (iii) when undertaken as an incidental operation in connection with the erection of structures having the general character of buildings or when undertaken by the employers erecting such structures;

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- ix. Any work falling within the scope of any other industry, and
- x. The Mining Industry which is defined as the industry where employers and employees are associated for the purpose, directly or indirectly, for the winning, extracting, processing and refining of a mineral in, on or under the earth or water or from any residue stockpile or residue deposit.

'Law' includes the common law;

'Limited duration contracts of employment' means a contract of employment whose duration is limited to the completion of a specified activity or the expiry of a specified period.

'Local authority' means a 'Municipality' as defined in the Local Government: Municipal Systems Act; 2000;

'Night Work' means work performed by an employee between 18:00 and 06:00 the following day

'Ordinary hours of work' means hours worked other than overtime or time worked on Sundays or Public Holidays.

'Overtime' means the time that an employee works in a day or week, in excess of the hours ordinarily worked by an employee in such day or week, subject to the maximum ordinary hours prescribed in this agreement, but does not include work performed on a Sunday or a paid public holiday;

'Paid public holiday' means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act No. 36 of 1994);

'Pay' means payment of remuneration in cash, electronic transfer, by cheque or by other means;

'Permanent employee' means any employee who is not an employee employed in terms of a limited duration contract;

'Piece-work' means any system under which an employee's remuneration is based on the quantity of work done;

'Salaried employee' means an employee whose remuneration is calculated on a monthly basis notwithstanding the number of hours or days actually worked, who performs work generally understood to be that of a salaried employee.

'Self-propelled plant' means a power-driven or pedestrian-operated self-propelled vehicle, other than a motor vehicle, which is designed or adapted principally to perform with or without a towed attachment, one or more functions while moving, and may also perform such functions while standing still;

'Scheduled employee' means an employee whose minimum rate of pay is scheduled in the BCCEI Wage and Task Grade Agreement, irrespective of whether the employee is employed in terms of an exemption from this Agreement or under conditions determined by the Council.

'Short-time' means a temporary reduction in the number of ordinary hours of work owing to inclement weather, a slackness of trade, a shortage of materials, a breakdown of plant or machinery or a breakdown or threatened breakdown of structures, or any unforeseen contingencies and/or circumstances beyond the control of the employer or a temporary reduction in the number of ordinary hours of work owing to riots, unrest or acts of terrorism or disorder, which directly affect the employer's ability to provide work;

'Stationary plant' means a power-driven device, whether or not mounted on a self-propelled or non-self-propelled vehicle, which is designed or adapted principally to perform one or more functions while standing still;

'Wage' means the gross hourly, daily, weekly or monthly remuneration to which a scheduled employee is entitled in terms of this agreement, in respect of the employee's ordinary hours of work; provided that if an employer regularly pays an employee in respect of such ordinary hours of work, an amount higher than that prescribed in the Wage and Task Grade Agreement, it means such higher amount; provided further that such higher amount does not include allowances or entitlements;

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## 2. CHAPTER 2 - REGULATION OF WORKING TIME

### 2.1. Weekly hours of ordinary work

An employee's ordinary hours of work may not exceed 45 hours in any week.

### 2.2. Daily hours of ordinary work

An employee's ordinary hours of work may not exceed;

2.2.1. Nine hours in any day, if the employee works for five days or fewer in a week; or

2.2.2. Eight hours in any day if the employee works on more than five days in a week.

### 2.3. Overtime

2.3.1. An employer may not require or permit an employee to work overtime except in accordance with an agreement.

2.3.2. An employer may not require an employee to work more than three hours' overtime per day or ten hours overtime in any week except by agreement with the employee and with the prior written authorisation of the Council.

2.3.3. Application for such authorisation must include a copy of the agreement between the employer and the employee which must provide for;

- a) The estimated number of overtime hours to be worked.
- b) site where the hours will be worked.
- c) Period of the overtime.

### 2.4. Meal intervals

2.4.1. An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than half an hour during which interval such employee shall not be required or permitted to perform any work, and such interval shall not form part of the ordinary hours of work or overtime: Provided that;

- a) Periods of work interrupted by such meal intervals of less than half an hour, except when the proviso in 2.4.1(d) below applies, shall be deemed to be continuous;
- b) If such meal interval is longer than one hour, any period more than one hour shall be deemed to be time worked;
- c) Only one meal interval during the ordinary hours of work of an employee on any day shall not form part of the ordinary hours of work;
- d) When, on any day, by reason of overtime work, an employer is required to give an employee a second meal interval, such interval may, at the request of the employee, be reduced to not less than fifteen minutes.
- e) A driver or an operator of self-propelled or stationary plant who during such interval does not work other than being or remaining in charge of a vehicle or such plant shall be deemed for the purposes of this sub-clause not to have worked during such interval.

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**2.5. Rest period**

2.5.1. An employer shall allow an employee;

- a) A daily rest period of at least 12 consecutive hours between ending and recommencing work; and
- b) A weekly rest period of at least 36 consecutive hours, which, unless otherwise agreed, must include a Sunday.

2.5.2. A daily rest period in terms of clause 2.5.1 (a) above may, by written agreement, be reduced to 10 hours for an employee-

- a) who lives on the premises at which the workplace is situated; and
- b) whose meal interval lasts for at least three hours.

2.5.3. Despite sub clause 2.5.1(b) above, an agreement in writing may provide for —

- a) a rest period of at least 60 consecutive hours every two weeks, or
- b) an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently

**2.6. Compressed working week**

2.6.1. An agreement in writing between an employer and an employee may require an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 2.4.1 above, without receiving overtime pay.

2.6.2. An agreement in terms of 2.6.1 above may not require or permit an employee to work:

- a) More than 45 ordinary hours of work in any week;
- b) More than ten hours' overtime in any week; or
- c) On more than five days in any week.

**2.7. Averaging hours of work**

2.7.1. Despite clauses 2.8 and 2.9 below, the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a collective agreement.

2.7.2. An employer may not require or permit an employee who is bound by a collective agreement in terms of sub-clause 2.7.1 above to work more than:

- a) An average of 45 ordinary hours of work in a week over the agreed period;
- b) An average of five hours' overtime in a week over the agreed period.

2.7.3. A collective agreement in terms of sub-clause 2.7.1 above lapses after 12 months.

2.7.4. Sub-clause 2.7.3 above only applies to the first two collective agreements concluded in terms of sub-clause 2.7.1 above.

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**2.8. Payment for overtime**

An employer shall pay an employee who works overtime at a rate of not less than one and a half times the ordinary wage in respect of the overtime referred to in this agreement; Provided that any time worked on Sundays and paid public holidays shall be paid in accordance with the provisions of Clauses 2.9 and 2.10 below.

**2.9. Payment for work on a Sunday**

2.9.1. Whenever an employee works on a Sunday, the employer shall either-

- a) If the employee works for a period not exceeding four hours, pay the employee not less than the daily wage, provided that if the employee works for a period exceeding four hours, the employee shall be paid at a rate of not less than double the ordinary wage in respect of the total period worked on such Sunday, or not less than double the daily wage, whichever is the greater; OR
- b) Pay the employee at a rate of not less than one and a third times the employee's ordinary wage rate in respect of the total period worked on such Sunday or, not less than one and a third times the daily wage, whichever the greater, and granting the employee within seven days of such Sunday one day's leave, which shall not constitute annual leave in terms of Clause 3.1 and pay him or her in respect thereof not less than the daily wage: Provided that where such an employee is required or permitted to work for less than four hours on such Sunday the employee shall be deemed to have worked for four hours.

**2.10. Payment for public holidays**

2.10.1. Subclause 2.10.4 shall not apply to an employee earning a wage more than the remuneration stipulated by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act from time to time.

2.10.2. An employer may not require an employee to work on a public holiday except in accordance with an agreement.

2.10.3. If a public holiday falls on a day which would otherwise be an ordinary working day for an employee, including periods of short time and lay-offs an employer must pay the employee;

- a) who does not work on the public holiday, at least the wage rate that the employee would ordinarily have received for work on that day;
- b) who works on the public holiday, at least double the wage rate for the ordinary working hours of that day;

2.10.4. If an employee works on a public holiday which falls on a day which would otherwise not be an ordinary working day for the employee, an employer must pay the employee at least –

- a) The amount paid to the employee in respect of the time that the employee ordinarily works on a working day and in addition pays the employee –
- b) The amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.

2.10.5. If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

2.10.6. An employer must pay an employee for a public holiday on the employee's usual payday.

**2.11. Night work**

2.11.1. An employee performs night work if that employee works between 18:00 and 06:00 on the following day.

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2.11.2. An employer may only require or permit an employee to perform night work if so agreed and if;

- a) The employee is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and
- b) Transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.

2.11.3. An employer who requires an employee to work for a period of longer than one hour after 23:00 and before 06:00 the next day at least five times per month or 50 times per year; must;

- a) Inform the worker in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands of any health and safety hazards associated with the work that the employee is required to perform; and of the employee's right to undergo a medical examination in terms of paragraph 2.11.3(b) below;
- b) At the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards before the employee starts, or within a reasonable period of the employee starting, such work and at appropriate intervals while the employee continues to perform such work.
- c) Transfer the employee to suitable day work within a reasonable time if the employee suffers from a health condition associated with the performance of night work and it is practical for the employer to do so.

2.11.4. A night work allowance will be paid to employees who performs night work. These percentages are set out as follows:

Night work allowance as per promulgation date up to 31 August 2019	Night work allowance as from 01 September 2019	Night work allowance as from 01 September 2020
8%	8.50%	9%

2.11.5. The calculation of the night work allowance will be based on the employees' basic rate.

2.11.6. Current company arrangements with regard to night work allowance, that are more favourable, will not be affected.

## 2.12. Short time

Whenever the ordinary hours of work prescribed in Clause 2.2 are reduced on account of short-time, excluding short-time owing to inclement weather, a deduction may be made from the employee's wage not exceeding the amount of the employee's hourly wage in respect of each hour of such reduction provided that;

- 2.12.1. Such deduction shall not exceed one third of the employee's weekly wage, irrespective of the number of hours by which the ordinary hours of work were reduced;
- 2.12.2. No deduction shall be made in the case of short-time arising from slackness of trade or shortage of raw materials, unless the employer has given the employee notice on the previous working day of the employer's intention to reduce the ordinary hours of work;
- 2.12.3. No deduction shall be made in the case of short-time owing to a breakdown of plant or machinery or a breakdown or threatened breakdown of buildings or structures, in respect of the first two hours not worked, unless the

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employer has given the employee notice on the previous working day that no work would be available due to such breakdown.

### 2.13. Inclement weather

Whenever the ordinary hours of work prescribed in this agreement are reduced due to inclement weather then the employee will be paid the ordinary hours for the day. However, depending on circumstances, the employer may instruct the employees to remain on site until the employee is released by the employer.

## 3. CHAPTER 3 - REGULATION OF LEAVE

### 3.1. Annual leave

3.1.1. For the purpose of this clause the expression "employment" shall be deemed to include;

- a) Any period in respect of which an employer pays an employee in lieu of notice in terms of sub-clause 4.1.2
- b) Any period during which an employee is absent on sick leave in terms of clause 3.2.4 or owing to incapacity as defined in clause 3.2.9.
- c) Any period during which an employee is absent at the instruction of the employer;
- d) Any time during which an employee is required by the employer not to work because of the vagaries of the weather, slackness of trade or a breakdown of machinery or plant.

3.1.2. An employer shall grant to an employee who has completed less than five continuous years' service and who has been in employment for longer than four months, fifteen working days leave on full pay in respect of each completed period of twelve months of employment accumulated at 1.25 days per month;

3.1.3. An employer shall grant an employee who has completed five or more continuous years of service with that employer eighteen working days leave on full pay in respect of each completed period of twelve months of employment, accumulated at 1.5 days per month.

3.1.4. Subject to sub-clauses 3.1.2 and 3.1.3 above, a minimum of 10 days shall be taken consecutively by an employee normally during the Civil Engineering Industry shutdown period and the remaining days shall be granted, subject to sub-clause 3.1.7 below, at a time agreed by the employee and the employer.

3.1.5. An employer shall grant an employee an additional day of paid leave for any public holiday that falls on a day during an employee's annual leave on which the employee would ordinarily have worked.

3.1.6. If the leave prescribed in sub-clauses 3.1.2 and 3.1.3 above has not been granted and taken earlier, it shall, save as provided in sub-clause 3.1.8, be granted and be taken so as to commence within four months after the completion of the 12 months of employment to which it relates or, if the employer and employee have agreed thereto in writing before the expiration of the said period of four months, the employer shall grant such leave to the employee and the employee shall take the leave from a date not later than two months after the expiration of the said period of four months, provided that the period of leave shall not be concurrent with;

- a) Sick leave granted in terms of Clause 3.2 or with absence from work owing to incapacity in circumstances where the employee is entitled to his/her full wages in terms of any other law or in terms of any fund of which the employee is a member, amounting in the aggregate to not more than 12 days in any one period of 12 months;
- b) Any period during which the employee is under notice of termination of employment in terms of Clause 4.1

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- 3.1.7. At the written request of the employee, an employer may permit the leave to accumulate over a period of not more than 24 months of employment: Provided that the request is made by such employee not later than four months after the expiration of the first period of 12 months of employment to which the leave relates; and the date of receipt of the request is endorsed over the employee's signature by the employer, who shall retain the request at least until after the expiration of the period of leave.
- 3.1.8. The leave referred to in sub-clause 3.1.7 shall be granted and be taken at a time to be fixed by the employer, and the provisos to sub-clause 3.1.6 shall apply to such leave.
- 3.1.9. The remuneration in respect of leave granted in terms of this clause shall be paid not later than the last work day before the date of commencement of such leave and shall be calculated at the employee's wage rate on the days that the leave is taken.
- 3.1.10. Upon termination of employment the employer shall pay the employee in lieu of any accrued leave owing to the employee, at the wage rate applicable on the last day of employment.
- 3.1.11. Notwithstanding anything to the contrary contained in this clause, an employer may for the purposes of annual leave, at any time, but not more than once in any period of 12 months, close the establishment, or a portion of the establishment, for 14 consecutive days, plus an additional day for each paid public holiday which falls on a day during such period on which the employee would ordinarily have worked.
- 3.1.12. An employee who as at the date of the closing of an establishment or the portion thereof in which he or she is employed, is not entitled to the full period of annual leave prescribed in terms of sub-clauses 3.1.2 and 3.1.3 above shall be paid the leave accrued as at the date of such closure, and for the purposes of annual leave thereafter the employee's employment anniversary shall be the date of such closing of the establishment or portion of the establishment, as the case may be.

### 3.2. Sick leave

The following definitions apply to this clause:

- 3.2.1. "Employment" shall be deemed to include any period during which an employee is absent on leave in terms of Clause 3.1 or on the instructions or at the request of his employer or on sick leave in terms of this clause amounting in the aggregate in any period of 12 months to not more than 10 weeks, or due to the employee not being required to work because of the vagaries of the weather, slackness of trade or a breakdown of machinery or plant;
- 3.2.2. "Incapacity" means inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct - Provided that any such inability to work, caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993, shall only be regarded as incapacity during any period in respect of which no disablement payment is payable in terms of that Act.
- 3.2.3. "Sick leave cycle" means the period of 36 consecutive months' employment with the same employer immediately following;
- a) An employee's commencement of employment; or
  - b) The completion of that employee's prior sick leave cycle.
- 3.2.4. During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- 3.2.5. Despite sub-clause 3.2.4, during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

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3.2.6. During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of sub-clause 3.2.4 by the number of days sick leave taken in terms of sub-clause 3.2.5.

3.2.7. Subject to sub-clause 3.2.14 below, an employer must pay an employee for each day's sick leave the wage the employee would ordinarily have received for work on such days, payable on the employee's usual payday.

3.2.8. An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this clause if-

- a) The number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
- b) The employee's entitlement to pay for any day's sick leave is at least 75 percent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and;
- c) for sick leave over the sick leave cycle, the employee's entitlement for sick leave is at least equivalent to the employee's entitlement in terms of sub-clause 3.2.4.

3.2.9. If, in the first 36 months of employment, an employee is absent owing to incapacity for a period more than the sick leave accrued in terms of sub-clause 3.2.4 the employer shall not, at that stage, be required to affect any payment in respect of the excess sick leave taken.

3.2.10. However, if the employer has not previously done so, he or she shall at the end of the first cycle of 36 months of employment pay the employee an amount equal to not less than the difference between the sick leave payment made earlier and the employee's wages for the full period of incapacity, up to the maximum of 36 work days. Such compensation shall be affected at the employee's wage rate as at the commencement of the unpaid period of incapacity

3.2.11. Provided further that where the contract of employment terminates before the end of the said first cycle the employee shall be entitled to claim payment from the employer of an amount equal to the difference between the sick leave pay already received and the wage for the full period of incapacity, but not exceeding payment at a rate of more than one work-day's wage for each completed 26 days worked, and for the purposes of this proviso the expression "wage" shall mean the wage the employee was receiving as at the commencement of incapacity;

3.2.12. Where an employer is by any law required to pay fees for hospital or medical treatment in respect of an employee, and pays such fees, the amount so paid may be set off against the payment due in respect of absence owing to incapacity in terms of this clause.

3.2.13. No unused sick leave may be accrued from one cycle to another.

3.2.14. An employer may, as a condition precedent to the payment of any amount claimed in terms of this clause by an employee in respect of any absence from work for more than three consecutive work-days or on the work-day immediately preceding or the work-day immediately succeeding a Sunday or a paid holiday, require the employee to produce a certificate signed by a registered medical practitioner stating the nature and duration of the employee's incapacity: Provided that, if an employee has, during any period of up to eight weeks, received payment in terms of this clause on two or more occasions without producing such a certificate, the employer may, during the period of eight weeks immediately succeeding the last such occasion, require the production of such certificate in respect of any absence. Furthermore, an employer may require an employee to obtain a certificate issued by a medical practitioner nominated by the employer but at the employer's expense in order to satisfy the requirements of this clause.

### 3.3. Maternity leave

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3.3.1. An employee is entitled to at least four consecutive months' maternity leave during which an employee must receive the percentage, as indicated in the table below, of her normal weekly wage, provided she has been continuously in



service for two years before the expected date of birth and must remain in service for 1 year after birth. The employer shall assist an employee on early application of UIF.

Maternity Leave payment, as from the date determined by the minister up to 31 August 2019	Cross Border allowance as from 01 September 2019	Cross Border allowance as from 01 September 2020
35%	40%	43%

3.3.2. An employee may commence maternity leave;

- a) At any time from four weeks before the expected date of birth, unless otherwise agreed; or
- b) On a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

3.3.3. No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

3.3.4. An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.

3.3.5. An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to;

- a) Commence maternity leave, and
- b) Return to work after maternity leave.

3.3.6. Notification in terms of sub-clause 3.3.5 must be given-

- a) At least four weeks before the employee intends to commence maternity leave;
- b) If it is not reasonably practicable to do so, as soon as is reasonably practicable.

3.3.7. Protection of employees before and after birth of a child;

- a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if it is practical for the employer to do so.

#### 3.4. Family responsibility leave

3.4.1. This clause applies to an employee;

- a) who has been in employment with an employer for longer than four months; and
- b) who works for at least four days a week for that employer.

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3.4.2. Subject to sub-clause 3.4.1 an employee is entitled to 12 (twelve) days paid family responsibility leave in the employee's Family Responsibility Leave Cycle. However, an employee may not take more than 4 (four) days family responsibility leave in the first 12 (twelve) months of employment. An employee is entitled to take family responsibility leave at the request of the employee-

- a) When the employee's child is born;
- b) When the employee's child is sick; or
- c) In the event of the death of –
  - i) the employee's spouse or life partner; or
  - ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

3.4.3 Subject to sub-clause 3.4.5, an employer must pay an employee for a day's family responsibility leave;

- a) the wage the employee would ordinarily have received for work on that day; and
- b) on the employee's usual payday.

3.4.4 An employee may take family responsibility leave in respect of the whole or part of a day.

3.4.5 Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in sub-clause 3.4.2 for which the leave was required.

3.4.6 An employee's unused entitlement to leave in terms of this clause lapses at the end of the employee's Family Responsibility Leave cycle in which it accrues.

#### 4 CHAPTER 4 - REGULATIONS FOR CONTRACT OF EMPLOYMENT

##### 4.1 Termination of contract of employment

4.1.1 An employer or an employee, who wishes to terminate the contract of employment, shall give notice of termination of not less than:

- a) One week, if the employee has been employed for six months or less;
- b) Two weeks, if the employee has been employed for more than six months but not more than one year;
- c) Four weeks, if the employee has been employed for more than one year.

4.1.1 An employer may terminate a contract without notice by paying the employee, in lieu of such notice, not less than the remuneration the employee would have received, in terms of sub-clause 4.1.1 above, if the employee had worked during the notice period,

4.1.2 The provisions of sub-clause 4.1.2 above shall not affect the operation of any forfeitures or penalties that by law may be applicable in respect of an employee who is absent without leave or has absconded or deserted.

4.1.3 Where the wage of an employee at the date of termination has been reduced by deductions in respect of short-time, the employer is obliged to pay the employee in lieu of notice as if no reduction has been made in respect of short-time.

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4.1.5 The notice prescribed in sub-clause 4.1.1 may be given on any work-day: Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence-

- a) on leave in terms of Clause 3.1
- b) on sick leave in terms of Clause 3.2
- c) owing to incapacity as defined in 3.2 above amounting in the aggregate to not more than 10 weeks in any period of 12 months.

#### 4.2 Certificate of service

4.2.1 On termination of employment, an employee is entitled to a certificate of service substantially in the form of APPENDIX "A" stating;

- a) The employee's full name;
- b) The name and address of the employer;
- c) The date of commencement and date of termination of employment;
- d) The title of the job or a brief description of the work for which the employee was employed at date of termination;
- e) The remuneration at date of termination; and
- f) If the employee so requests, the reason for termination of employment

#### 4.3 Piece work

4.3.1 An employer may, after giving at least one week's notice to an employee, introduce a piece work system and, save as provided for in Clause 6.4.1 of this agreement, such employer shall pay such employee at the rate applicable under such system: Provided that, irrespective of the quantity of work done, the employer shall pay such employee not less than, in respect of each week in which such piece-work is performed, the amount which the employer would have been required to pay such employee for that week had the employee been remunerated on the basis of time worked.

4.3.2 An employer shall keep a schedule of the rates referred to in sub-clause 4.3.1 above in a conspicuous place in the establishment.

4.3.3 An employer who intends to cancel or amend the piece-work system in operation, or the rates applicable there under, shall give the employee employed on such system not less than one week's notice of such intention: Provided that an employer and the employee may agree on a longer period of notice, in which case the employer shall give notice for a period not shorter than that agreed upon.

#### 4.4 Prohibition of employment

4.4.1 An employer shall not employ any person under the age of 15 years or a person aged 15 years or older who is under the minimum school leaving age in terms of any law.

4.4.2 An employer shall not employ a such person in employment that is inappropriate for a person of that age or that places at risk the child's such person well-being, education, physical or mental health or spiritual, moral or social development.

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4.4.3 All forced labour is prohibited.

#### 4.5 Severance pay

4.5.1 For the purpose of this clause, 'operational requirements' means requirements based on the economic, technological, structural or similar needs of any employer.

4.5.2 An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer for the first eight years of service, and, two weeks remuneration for every completed year of continuous service from year nine onwards by that employee, calculated in accordance with Clause 6.1 of this agreement. Current company arrangements in regard to severance pay, that are more favourable, will not be affected by this sub-clause.

4.5.3 An employee who unreasonably refuses to accept the employer's offer of alternate employment with that employer or any other employer is not entitled to severance pay in terms of sub-clause 4.5.2 above.

4.5.4 The payment of severance pay in compliance with this clause does not affect an employee's right to any other amount payable according to law.

4.5.5 Notification to the Bargaining Council;

- a) An employer must notify the bargaining council when contemplating termination of employment of one or more employees for reasons related to its operational requirements.
- b) Once the affected employee/s services have been terminated, the employer must, within 30 days of such termination, inform the bargaining council, in writing, of the number and occupational categories of the employee/s that have been retrenched

4.5.6 On completion of a limited duration contract the Employer shall pay the Employee a completion gratuity of one weeks' basic wages per completed year of service.

#### 4.6 Funeral cover for limited duration contract employees

4.6.1 All employers must, whether independently or with other employers, provide funeral benefit cover through an approved and registered policy or scheme in favour of their limited duration employees and implement such benefit at the date of coming into operation of this agreement

4.6.2 The rules for the funeral benefit policy or scheme shall compel both employers and employees to contribute equally in respect of the monthly premiums of the policy or scheme.

4.6.3 In the event of the death of a limited duration employee, his or her spouse, or, his or her children, a benefit in the form of a lump sum cash payment must be provided, the value of which must be not less than in accordance with the table below or as determined by the council from time to time:

- a) Member and spouse R 15 000.00;
- b) Children 14 years to 21 years: R 15 000.00;
- c) Children 6 years and older but younger than 14 years: R 11 250.00;
- d) Children 1 year and older but younger than 6 years: R 7 500.00; and
- e) Children younger than 1 year or stillborn: R 1 500.00

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4.6.4 In the event of the limited duration contract of employment of an individual employee coming to an end, the funeral benefit cover will automatically lapse, and the employee will have no claim against the policy or scheme in the event of a subsequent death as is provided herein above.

4.6.5 Paternity Leave

- a) Any labour law amendment which might affect paternity leave shall be complied with by employers

4.7 Limited duration contract of employment ("LDC")

4.7.1 If an LDC employee is employed for eighteen months or longer continuously on one project by the same employer, he will become entitled to employment conditions in respect of Provident Fund and Medical Aid but will remain an LDC employee for the duration of that project.

4.7.2 An LDC employee who has worked for a minimum period of eighteen (18) months continuously and on more than one project with the same employer will be offered permanent employment by that employer. This provision will be applicable to any LDC employee who has completed eighteen (18) continuous months of service with one employer and upon being transferred thereafter.

4.7.3 Any person who is offered employment on the basis of a LDC by any employer in the industry will be entitled to employment Conditions in respect of Retirement Fund if such person can prove at the time of being offered employment that he was:

- a) Employed in the industry by his previous employer; and  
b) A member of a retirement fund in the industry which at the time of being offered employment will not be entitled to withdrawn from his membership while remains in the service of the employer.

4.7.4 If an employee has withdrawn from the retirement fund upon leaving the services of his previous employer, the LDC employee will be subject to the waiting periods stated above before becoming entitled to employer contributions.

4.7.5 Upon termination of the LDC, the employee may be entitled to a completion gratuity in terms of sub-clause 4.5.6

4.7.6 Funeral cover shall be provided as set out in sub-clause 4.6 above.

4.8 Medical aid

4.8.1 Every employer shall ensure that adequate measures are in operation to facilitate voluntary membership of BCIMA ("Building and Construction Industry Medical Aid") to all their permanent employees, provided;

4.8.2 Where an employee elects to become a member the employer contribution will be compulsory.

4.8.3 The employer and employees shall contribute equally, and the contributions shall be as per the "Contribution Schedule for all Hourly Paid Employee Members" issued annually by BCIMA,

4.8.4 Employees who decide not to join the BCIMA will not be entitled to the cash value of the company contribution,

4.8.5 Employees who want to join the BCIMA may do so only from 1 January of any particular year and must remain a member of BCIMA at least until 31 December of that particular year,

4.8.6 Employees who leave the employ of his/her employer, or whose employment is terminated for whatsoever reason (including dismissal for misconduct), or whose contract comes to completion (for instance at retirement), may decide to continue his/her membership with BCIMA at his/her own cost,

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- 4.8.7 The dependents of a deceased member may decide to continue their membership with BCIMA at their own cost and subject to the rules of the fund,
- 4.8.8 The submission of an account, statement or claim to the fund is the sole responsibility of the member employee,
- 4.8.9 The lodging of complaints with -, disputes against or any correspondence with BCIMA is the sole responsibility of the member employee,
- 4.8.10 Where the contribution for an individual is higher than the set contribution as per the "Contribution Schedule for all Hourly Paid Employee Members" issued annually by BCIMA, irrespective of the reason for the increased contribution, then the employer will only contribute 50% of the set contribution,
- 4.8.11 Any increase in contributions will not result in an increase in remuneration,
- 4.8.12 The provisions of this clause shall not apply to employees employed in companies where a medical aid scheme is in place for them.

## **5 CHAPTER 5 - REGULATION REGARDING REGISTERS AND THE CONDITIONS OF EMPLOYMENT AGREEMENT**

### **5.1 Attendance register**

- 5.1.1 Every employer must keep a record containing at least the following information:
  - a) The employees name and occupation
  - b) The time worked by each employee
  - c) The wage rate paid to each employee
  - d) The date of birth of any employee under the age of 18 years of age; and
  - e) Any other prescribed information
- 5.1.2 A record in terms of sub-clause 5.1.1 above must be kept by the employer for a period of three years from the date of the last entry in the record.
- 5.1.3 An employer who keeps a record in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

### **5.2 Written particulars of employment**

- 5.2.1 An employer must supply an employee with a contract of employment when the employee commences employment, in which with the following particulars are included;
  - a) The full name and address of the employer;
  - b) The name and occupation of the employee, or a brief description of the work for which the employee is employed;
  - c) The place of work, and, where the employee is required or permitted to work at various places, an indication of this;
  - d) The date of employment;

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- e) The employee's ordinary hours of work and days of work;
- f) The employee's wage rate and method of calculating wages;
- g) The rate of pay for overtime work;
- h) Any other remuneration that the employee is entitled to and the value of the payment in kind;
- i) Any payment in kind that the employee is entitled to and the value of the payment in kind;
- j) How frequently remuneration will be paid;
- k) Any deductions to be made from the employee's remuneration;
- l) The leave to which the employee is entitled;
- m) The period of notice required to terminate employment, or if employment is on an LDC, the date on which employment will be terminated or the specific event that will result in the termination of employment.
- n) Any period of employment with a previous employer that is to be included in the employee's period of employment;
- o) A list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

5.2.1 When any matter listed in sub-clause 5.2.1 above changes-

- a) the contract of employment must be revised to reflect the change; and
- b) the employee must be supplied with a copy of the document reflecting the change.

5.2.2 If an employee is not able to understand the contract of employment, the employer must ensure that it is explained to the employee in a language and in a manner that the employee understands.

5.2.3 The employer must keep the contract of employment in terms of this clause for a period of 3 years after termination of employment.

### 5.3 Displaying this agreement in the workplace

5.3.1 Every employer must –

- a) Display a notice in a prominent position in the work place informing employees of the availability of this Agreement for their perusal.
- b) Make a copy of this Agreement available to any employee for inspection,
- c) On request, a copy of this Agreement is to be made available to the trade union representative.

## 6 CHAPTER 6 - REMUNERATION AND RECORD KEEPING

### 6.1 Calculation of wages

6.1.1 The hourly wage of an employee shall be the weekly wage divided by the number of ordinary hours of work for such employee in any week;

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6.1.2 The daily wage of an employee shall be the hourly wage multiplied by –

- a) Nine, in the case of an employee who works a five-day week;
- b) Seven and half, in the case of any other employee;

6.1.3 The weekly wage of an employee shall be the hourly wage multiplied by the number of ordinary hours of work for such employee in any week;

6.1.4 The monthly wage of an employee shall be four and one third times the weekly wage.

6.1.5 Remuneration shall be paid;

- a) in South African currency;
- b) daily, weekly, fortnightly or monthly;
- c) in cash, by cheque or by direct deposit into an account designated by the employee.

6.1.6 Any remuneration paid in cash or by cheque must be given to each employee-

- a) at the workplace or at a place agreed to by the employee;
- b) during the employees working hours or within 15 minutes of the commencement or the conclusion of those hours; and
- c) in a sealed envelope which then becomes property of the employee.

6.1.7 An employer must pay remuneration not later than seven days after –

- a) the completion of the period for which the remuneration is payable; or
- b) the termination of the contract of employment.

6.1.8 Sub-clause 6.1.7(b) above does not apply to any amount due to an employee by the CIRBF.

## 6.2 Information about remuneration

6.2.1 An employer must give an employee the following information in writing on each day the employee is paid:

- a) The employer's name and address;
- b) the employee's name and occupation;
- c) the period for which the payment is made;
- d) the employee's remuneration in money;
- e) the amount and purpose of any deduction made from the remuneration;
- f) the actual amount paid to the employee; and
- g) if relevant to the calculation of that employee's remuneration—
  - i) the employee's rate of remuneration and overtime rate;
  - (ii) the number of ordinary and overtime hours worked by the

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employee during the period for which the payment is made;

- (iii) the number of hours worked by the employee on a Sunday or public holiday during that period; and
- (iv) if an agreement to average working time has been concluded in terms of section 12, the total number of ordinary and overtime hours worked by the employee in the period of averaging.

6.2.2 The written information required in terms of subsection (1) must be given to each employee—

- a) at the workplace or at a place agreed to by the employee; and
- b) during the employee's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.

### 6.3 Payment of remuneration upon termination of employment

6.3.1 If the employment of an employee terminates on a date before the ordinary pay day, all remuneration owing in terms of this Agreement must be paid to the employee –

- a) within seven days of the date that employment terminates; or
- b) if the employer and an employee have agreed to a notice period longer than the period contemplated in this Agreement, within seven days of the last day of the notice period.

### 6.4 Deductions from wages - general;

6.4.1 An employer may not make any deduction from an employee's remuneration, unless-

- a) Subject to sub-clause 6.4.2 below, the employee, by written agreement, consents to the deduction in respect of a debt which must be specified in the agreement; or
- b) The deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

6.4.2 A deduction in terms of sub-clause 6.4.1(a) above may be made to reimburse an employer for loss or damage only if:

- a) The loss or damage only occurred in the course of employment and was due to the fault of the employee
- b) The employer has followed fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made
- c) The total amount of debt does not exceed the actual amount of the loss or damage, and;
- d) The total deductions from the employee's remuneration in terms of this subsection do not exceed one quarter of the employees' remuneration in money.

6.4.3 An agreement in terms of sub-clause 6.4.1(a) in respect of any goods purchased by the employee must specify the nature and quantities of the goods

6.4.4 An employer who deducts an amount from an employee's remuneration in terms of sub-clause 6.4.1 for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.

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6.4.5 An employer may not require or permit an employee to –

- a) Repay any remuneration except for any amount paid in error for overpayments previously made by the employer resulting from an error in calculating the employees' remuneration; or –
- b) Acknowledge receipt of an amount greater than the remuneration actually received.

#### 6.5 Deductions from wages - trade union subscriptions

6.4.6 An employer must deduct subscriptions for membership of a trade union party to the Council from the wages of an employee that consents in writing to the deduction.

6.4.7 The subscriptions deducted must be paid to the trade union concerned by the 15<sup>th</sup> of the month following the month to which the subscriptions relate. The payment to the relevant trade union must include the following details in respect of each employee that is a member of that trade union:

- a) Name of employer and division or site at which the employee is employed
- b) Full name;
- c) Identity number, if available;
- d) Amount deducted; and
- e) The period to which the subscriptions relate.

#### 6.6 Deductions from wages - training

An employer may not accept or charge a premium for the training of employees.

#### 6.7 Year-End bonus

Subject to the provisions of this sub-clause, an employer must pay an employee an annual bonus as follows:

6.7.1 20 working days' pay

6.7.2 Where existing agreements provide for bonuses in excess of that provided for in sub-clause 6.1.1 above, such existing agreements shall prevail.

6.7.3 An employee shall not be entitled to the bonus amounts referred to in sub-clause 6.7.1 above unless he or she is employed by the employer in December of the year in which the bonus amount is to be paid and he or she has been continuously so employed for at least one full year.

6.7.4 An employee who is employed by the employer in December of the year in which a bonus amount is to be paid and who has been continuously so employed for at least 3 months, but for less than one full year, shall be entitled to a pro rata bonus payment.

6.7.5 An employee whose employment is terminated through no fault of his or her own, through retrenchment, retirement, disability or death, shall be entitled to a pro rata bonus payment.

6.7.6 No bonus payment shall be made to employees whose employment was terminated by reason of misconduct.

6.7.7 Where an employee is absent for more than 10 working days in any one year, the bonus payment to which he or she is entitled shall be reduced by the proportion of total working days lost to total possible working days in a year.

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## 6.8 Cross border work allowance

- 6.8.1 An employer may only require or permit an employee to perform cross border work if so agreed in writing, provided that;
- a) The employer pays the employee an allowance as provided for in clause 6.9.2 below.
  - b) The employer must ensure that the terms of the agreement are not less favourable than the conditions of employment as regulated by the provisions of this Agreement or any law that is applicable in the Republic of South Africa; and
  - c) The employer must ensure that the terms of the agreement and conditions of work are not less favourable than the same employee would enjoy if working in South Africa.
  - d) In the event where an employee is employed for a period of more than 12 months in another country, the employer must have an agreement with the Compensation Commissioner in terms of section 23(l)(c) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.
- 6.8.2 An employer who requires an employee to perform work outside the borders of the Republic of South Africa must inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee reasonably understands-
- a) of any health and safety hazards associated with that country that the employee is expected to be deployed to; and
  - b) of the employee's right to undergo a medical examination in terms of sub-clause 6.8.3;
- 6.8.3 At the request of the employee, enable the employee to undergo a medical examination, at the expense of the employer, concerning those hazards-
- a) Before the employee departs, or within a reasonable period;
  - b) At appropriate intervals while the employee continues to perform such work.
- 6.8.4 Transfer the employee to a suitable country within a reasonable time if-
- a) The employee suffers from a health condition associated with the country in which the employee is working; and
  - b) It is practicable for the employer to do so.

## 6.9 Allowances

### 6.9.1 Living out allowance

- a) A living out allowance whilst on the assignment, will be paid as set out below to employees who are required to work and live away from their usual place of residence and where no accommodation is provided by the employer. These amounts are set out as follows:

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Living out allowance as per promulgation date up to 31 August 2019	Living out allowance from 1 September 2016 to 31 August 2017 – 8% or CPI plus 2% whichever is the greater on 1 September 2019	Living out allowance from 1 September 2017 to 31 August 2018 – 9% or CPI plus 2% % whichever is the greater on 1 September 2020
R720-00	R800-00	R900-00

- b) A living out allowance is not payable to Employees recruited at the site or who present themselves for employment at that specific site.
- c) Any other allowance paid for the same purpose is deemed to be a Living Out allowance as defined.

#### 6.9.2 Cross border allowance

- a) A cross border allowance will be paid to employees assigned to cross border projects calculated on the basic rate of pay for ordinary hours worked. These percentages are set out as follows:

Cross Border allowance as per promulgation date up to 31 August 2019	Cross Border allowance as from 01 September 2019	Cross Border allowance as from 01 September 2020
6%	6.50%	7%

#### 6.9.3 Sleep out allowance

- a) A sleep out allowance will be paid to employees who spend at least a night away from their usual site on authorised company business and only in the event that the Company is not providing accommodation during this period away from their usual site. These amounts are set out as follows:

Sleep Out Allowance as per promulgation date up to 31 August 2019.	Sleep Out Allowance as from 01 September 2019	Sleep Out Allowance from 01 September 2020
R100.00	R110.00	R120.00

- 6.9.4 Transport is to be provided by the employer to employees between the office of the employer where the employee was employed and the project during pay and/or long weekends where applicable.

#### 6.9.5 General

- a) None of the above-mentioned issues, or allowances of a similar nature, may be the subject of company level negotiations.
- b) Current company arrangements that are more favourable will not be affected.

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## 7 CHAPTER 7 - GENERAL

### 7.1 Exemptions

- 7.1.1 Any person bound by this Agreement may apply to the BCCEI for an exemption from any provision of this agreement in the manner provided for in the BCCEI Exemptions Policy.
- 7.1.1 Any person affected by the BCCEI decision on the application may lodge an appeal against the decision to the Independent Appeal Board in the manner provided for in the BCCEI Exemptions Policy, attached as Appendix B

### 7.2 Protective clothing

- 7.2.1 An employer shall supply and maintain in serviceable condition, free of charge, any protective clothing that the employer requires the employee to wear, or that by any law the employer is compelled to provide to the employee, and any such protective clothing shall remain the property of the employer.

### 7.3 Designated agents

- 7.3.1 The Council must appoint one or more persons as designated agents to enforce and monitor compliance with this Agreement, in any manner that is reasonably required for compliance with this Agreement, by-
- a) Entering and inspecting premises;
  - b) Examining records; and
  - c) Interviewing an employer or employees of the employer in an appropriate manner.
- 7.3.2 After each inspection of an employer's records and operations, an agent must prepare a report for the attention of the employer, worker representatives or in the case of an individual complainant, the complainant, stating-
- a) The date and time of the inspection;
  - b) If any contraventions of the Agreement were identified, a summary of the contraventions; and
  - c) The action that management is required to take to rectify the contraventions.
- 7.3.3 A designated agent may not make any disclosure of information in circumstances which are not permitted in terms of section 201 of the Labour Relations Act, 1995.
- 7.3.4 The Minister, on request of the council, shall appoint one or more persons to be designated agents to assist in giving effect to the terms of this agreement, including the issuing of compliance orders requiring any person bound by this Collective Agreement to comply within 14 days.
- 7.3.5 A designated agent shall have all the powers provided for in section 33, 33A and Schedule 10 of the Act.

### 7.4 Levels of bargaining in the Industry and peace obligation

Subject to sub-clause 7.4.4 below —

- 7.4.1 The Bargaining Council shall be the sole forum for negotiating matters contained in the BCCEI Conditions of Employment Collective Agreement;

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- 7.4.2 During the currency of the BCCEI Conditions of Employment Collective Agreement, no matter contained within this Collective Agreement may be an issue in dispute for the purposes of a strike or lock-out or any conduct in contemplation of a strike or lock-out;
- 7.4.3 Any provision in a collective agreement binding an employer and employees covered by the Council, other than a collective agreement concluded by the Council, that requires an employer or a trade union to bargain collectively in respect of any matter contained in the BCCEI Conditions of Employment Collective Agreement, is of no force and effect.
- 7.4.4 Where bargaining arrangements at plant and company level, excluding agreements entered into under the auspices of the Bargaining Council, are in existence, the parties to such arrangements may, by mutual agreement, modify or suspend or terminate such bargaining arrangements in order to comply with sub-clauses 7.4.1 to 7.4.3 above. The provisions of these clauses shall apply equally to any trade unions not party to this Agreement.

#### 7.5 Administration of agreement

- 7.5.1 The Council is the body responsible for the administration of the Agreement.

#### 7.6 Attendance of worker representatives on bargaining council committee meetings

- 7.6.1 The employer and trade union parties agree that it is important that worker representatives be appointed by the unions, to attend Council meetings and should participate at that level.
- 7.6.2 To this end the trade unions will by **31 January of each year** notify the companies involved, in writing, of the names and contact details of the trade union worker representatives appointed to serve on Council Committees.
- 7.6.3 Where the company is unable, for operational or other valid reasons to accept the absence of the employee on the dates concerned it shall immediately communicate with the union in order that the problem is addressed.
- 7.6.4 Absence from the workplace to attend each scheduled meeting must be based on reasonable prior notice of the meeting to the employer supported by the presentation of the Agenda of the Meeting by the worker representative.

#### 7.7 Resolution of disputes

- 7.7.1 Disputes about the interpretation or application of Councils' Collective Agreements will be dealt with in terms of the councils' Dispute Resolution Collective Agreement.

#### 7.8 Exemptions

- 7.8.1 Any person bound by this Agreement may apply for exemption.
- 7.8.2 Exemption application form and guidelines are attached as Appendix B.

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## Certificate of Service - APPENDIX A

Certificate of Service in the Civil Engineering Industry	
<p><b>CIVIL ENGINEERING INDUSTRY, SOUTH AFRICA READ THIS FIRST</b></p> <p><b>WHAT IS THE PURPOSE OF THIS FORM?</b> This form is proof of employment with an employer.</p> <p><b>WHO FILLS IN THIS FORM?</b> Authorised staff member</p> <p><b>WHERE DOES THIS FORM GO?</b> To the employee.</p> <p><b>INSTRUCTIONS</b> This form must be issued upon termination of employment.</p> <p><b>NOTE</b> The reason for termination of employment must only be given if requested by the employee.</p> <p>This is only a model and not a prescribed form. Completing a document in another format containing the same information is sufficient compliance with Clause 2 in Chapter III of this agreement.</p>	<p>I, ..... (Full name and position of authorised staff member)</p> <p>of ..... (Full name of employer)</p> <p>Employer's Address: .....</p> <p>.....</p> <p>.....</p> <p>declare that</p> <p>..... (Full name of employee)</p> <p>..... (I.D no.)</p> <p>Was in employment from .....</p> <p>Until.....</p> <p>as ..... (Type of work/occupation)</p> <p>Any other information.....</p> <p>On termination of service this employee was earning: R..... ..... (Amount in words)</p> <p>[per hour] [per day] [per week] [per fortnight] [per month] [per year]</p> <p>.....</p> <p>Staff member' signature Date</p>

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APPENDIX B



**BCCEI EXEMPTION AND APPEAL POLICY**

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# 1. Exemption Guidelines

- a) A fully detailed motivation explaining the difficulties that the company is experiencing and hence the need for the application. **This motivation is not the same as the business plan (see point b below).**
- b) A business plan - which must give a breakdown of percentages the company is paying employees at present and, where necessary, a proposed time frame outlining how long it will take to reach the applicable minimum rates of the BCCEI Wage and Task Grade Agreement.
- c) Audited Financial Statement for the past financial year. In the case of a closed corporation - a full set of Financial Statements which are to be signed by an Accounting Officer and the latest Management Accounts for the last three months. If the Financial Statements are older than six months, then the Management Accounts for the recent three months are required.
- d) The savings in cost to company should the application for exemption be granted and the workings in arriving at this cost.
- e) Formal confirmation that employees were informed of the company's decision to make an application for exemption.
- f) Where employees reject the company's approach, they are to be informed of their right to submit written reasons for objecting to the exemption application and such reasons should be attached as an annexure to the company's application.
- g) The signature of at least two employees who accept being the representatives for the workforce and who will be affected by the application. Representatives of the workforce are to sign the form, contained in the exemption application questionnaire, consenting to this.
- h) The signatures of employees accepting that they have been informed of the implications of what the company is proposing to the Council
- i) Where the employees are members of a recognized trade union, the company should inform the local trade union office of the intention to apply for an exemption and request, in writing, a meeting with the local official to discuss the impact of the exemption on the company and the members of the union.
- j) Where employees have elected a trade union representative or representatives (shop stewards) these persons should be requested to sign that they were consulted and that they understand the need for applying for the exemption. Where the local trade union official and/or shop stewards have been consulted and where they reject the application, such refusal must be recorded in the application and countersigned by at least two witnesses.
- k) Where the local trade union official and/or shop stewards and affected employees support the exemption application, this signed agreement should be included with the application.
- l) It is recommended that all meetings in this regard between management, employees, shop stewards and union officials be minuted and that the minutes of such meetings be submitted with the exemption application.
- m) The application itself is to be signed by either a director of the firm, member, owner or a senior accountant - neither a bookkeeper nor the human resources manager's signatures will be acceptable.

## Please Note:

- aa) The exemptions board will decide on the exemption applications as submitted.
- bb) **It is not a condition of the exemption that employees accept a proposed wage increase exemption.** All that is required is that employees and their representatives are fully informed of the company's intention to apply for exemption and that this consultation process and their response thereto is formally recorded and submitted with the application.

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## EXEMPTION PROCEDURE

### Important note for management:

Any person bound by this agreement may apply for an exemption. It is important to note that exemption applications must be lodged with the bargaining council within 30 days after the BCCEI Agreement has been gazetted / published.

The industry's current wage exemption procedure continues to apply. Any company that is unable to implement the full wage increase may make application to the council to implement wage increases of a lesser amount than those agreed.

If the application is rejected, then an appeal may be immediately lodged with the bargaining council's Independent Exemption Appeals Board which is an independent body established in terms of the Labour Relations Act.

The exemption procedure is detailed hereunder:

- Individual companies seeking exemption must complete the exemption application form detailed in in this document. It is vital that companies utilize the standard application form to expedite the exemption process.
- Companies seeking exemption must consult their employees on the intention to apply for exemption and the application should contain details and proof of this consultation process. It is important to note that the employees' view on the application is not decisive but merely one of the factors that the Council and Board will take into account when considering the application.
- The exemption application must be fully motivated as required. In this regard the guidelines hold relevance.
- The application must be lodged with the council as soon as possible (but by no later than 30 days after the extension to non-parties.)
- The proposed exempted wage increase should be implemented by the company until the exemption process has been concluded, after which any adjustments must be applied retrospectively from date of application of the agreement (i.e. if the exemption is refused, then the full agreed wage increase will apply from the date of publication of the BCCEI Wage and Task Grade Agreement.
- The council will decide on the exemption application. Where the exemption is rejected, an appeal may be lodged with the Independent Exemption Appeals Board.

## EXEMPTION APPLICATION FORM

### Important note for management:

*If the Bargaining Council does not receive your completed form with supporting documentation within 30 days after the extension to non-parties the council will accept that you no longer require this exemption and the file will be closed.*

## APPLICATION FOR EXEMPTION QUESTIONNAIRE

DATE OF THIS APPLICATION: .....

### PART 1

#### REGISTRATION DETAILS:

- 1.1 Council Registration Number: .....
- 1.2 Date of Registration with the Council: .....
- 1.3 Name of Company/Firm: .....
- 1.4 Street address: .....
- 1.5 Telephone Number: ..... Fax Number: .....

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- 1.6 E-mail Address: .....  
 1.7 Contact person: .....  
 1.8 Name of Employer Organisation: .....  
 1.9 Activities of company: .....

**PART 2****LABOUR DETAILS:**

- 2.1 Total Number of Employees: .....  
 2.2 Total Number of Scheduled Employees: .....  
 2.3 Name/s of Trade Union/s involved: .....  
 2.4 Are the 'Wage and Task Grade Agreement' Rates for 2012 and 2013 being paid? [YES] [NO]  
 2.5 If No, please specify the % of the Rates presently being paid: .....

**PART 3****EXEMPTION DETAILS:**

- 3.1 Specify exemption applied for: .....  
 3.2 Are any Director/s - Member/s - partner/s - owners/s of the firm a Shareholder in any other Business?  
 If yes, please specify: .....  
 3.3 Specify by ticking, whether the Exemption will affect: [Workshop] [Site] [All Employees]  
 3.4 Have Trade Union/s been consulted? [NA] [YES] [NO]  
 3.5 Date of consultation/s: .....  
 3.6 Did Trade Union/s support the Application? [NA] [YES] [NO]  
 If not, why? .....  
 3.7 Have affected employees been consulted? [YES] [NO]  
 3.8 Did affected Employees support the Application? [Yes] [No]  
 If not, why? .....  
 3.9 Has the following been attached to this Application:  
 3.9.1 Minutes of Meetings with Employees and Trade Union? [YES] [NO]  
 3.9.2 Signatures of Trade Union Official/s who attended the meeting? [YES] [NO]  
 3.9.3 Signatures of employees who attended the Meeting? [YES] [NO]  
 If not, please state reason: .....  
 3.10 Has the company/firm during the past 12 months worked: (please tick)  
 [short time] [embarked on layoffs] [retrenched employee/s]  
 Please supply details (e.g.: specify date/s - period/s and number of employees affected): .....  
 3.11 Is the company's' contributions paid up to date? If not, please state reason: .....  
 If yes, please attach proof of payment confirmation/deposit slip  
 3.12 Audited Financial Statements for the current financial year and an Auditor's Report together with Balance Sheets and Income Statements  
 for the last three months  
 3.13 MOTIVATION: An explanation of the difficulties being faced by the firm. Please attach to the Exemption Application Questionnaire. If no  
 Motivation is attached to the Application, we will not consider your request.  
 3.14 BUSINESS PLAN: give dates - amounts - percentages and how long it will take for the firm to come in line with the latest BCCEI Wage  
 and Task Grade Agreement Minimum Rates of Pay, keeping in mind the yearly increases which come into effect the end of June of each

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year which is to be included in your calculations made in the Business plan. Please attach to the Exemption Application Questionnaire. If no Business Plan is attached to the Application, we will not consider your request.

PLEASE NOTE:

1. All relevant documentation pertaining to the Application MUST be attached in order to ensure an expeditious reply. If any Section of this document is NOT completed or any document/s is not attached, the Council will not consider the Application and the firm would have to submit a new Application.
2. The details reflected in this document have been provided by the employer or person so designated as being true and correct at the date of this Application. It is understood that all information contained in this document is subject to verification if required. Any information found to have been incorrect would result in immediate disqualification of the Application.

SIGNED: .....

PRINT NAME: .....

DESIGNATION: .....

DATE: .....

T.G.M. / L.V.<sup>s</sup>



*Proof of consultation***APPLICATION FOR EXEMPTION FROM THE BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY**

We:

1. ....
2. ....

Being the duly appointed Employees Representatives, do hereby confirm that the Management of:

.....

Discussed and consulted with all employees of the Company, all aspects and reasons for the Application for Exemption.

The employees unanimously accepted and agreed to Management's reasons for the Application and as a result, requested that we sign all documentation to give affect thereto:

SIGNED: .....

SIGNED: .....

DESIGNATION: .....

DESIGNATION: .....

DATE: .....

DATE: .....

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**Employee / Trade Union Acknowledgment of this Application**

We the undersigned do hereby confirm, as required, that we have been consulted about the employers need to submit this application. We are aware of the right to submit in writing reasons for objecting to this exemption application (attached as APPENDIX B to this application).

**SIGNED ON BEHALF OF THE EMPLOYEES:**

.....

.....

*(Print names clearly)*

Signed at: ..... on ..... day of ..... 20.....

**SIGNED ON BEHALF OF THE EMPLOYEE REPRESENTATIVES:**

.....

.....

*(Print names clearly)*

Signed at: ..... on ..... day of ..... 20.....

**SIGNED ON BEHALF OF THE TRADE UNION:**

.....

.....

*(Print names clearly)*

Signed at: ..... on ..... day of ..... 20.....

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# APPLICATION FOR EXEMPTION FROM THE BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY

We, the employees of:

.....

Hereby confirm that the Company's Management called a meeting on:

.....

To discuss and consult with us the company's need to make an application for exemption to the Bargaining Council for the Civil Engineering Industry.

We fully understand the reasons for and the effect the application will have on us as well as the company.

We unanimously accept the need and terms of the exemption application and agree to the company making such an application.

Signed at: ..... on ..... day of ..... 20.....

## SIGNATURES OF EMPLOYEES:

.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

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## NATIONAL EXEMPTIONS POLICY FOR THE CIVIL ENGINEERING INDUSTRY

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1. Introduction

- 1.1 The purpose of this document is to set out the policies which will apply to the consideration of applications for exemptions.
- 1.2 The Council should determine the appropriate level at which exemption decisions will be made and may choose to implement one of the following approaches in this regard:
  - 1.2.1 Determine the specific types of exemption applications which 'The Exemptions Body' may deal with and those which could be referred to the Office for decision; or
  - 1.2.2 Determine that all exemption applications must be dealt with by the 'The Exemptions Body'.
- 1.3 Exemptions shall be dealt with within 30 days of receipt thereof.
- 1.4 Where the Office or 'The Exemptions Body' is given the authority to deal with an exemption application and an appeal is lodged against the Office or 'The Exemptions Body' decision then this appeal must be referred to the Independent Exemptions Appeal Board for final decision.
- 1.5 Exemption applications must be considered on the basis of criteria established by the Management Committee (MANCO) in order to ensure consistency in the granting or refusing of exemption applications and in accordance with the provisions of Chapter 6, Clause 1 of the Main Agreement.

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1.2.1



or in part, or amend the conditions under which the exemption was issued, or amend the conditions of employment and other matters regulated under the exemption.

## 2. Definitions

Unless the contrary intention appears, any expression used in this policy which are defined in the Labour Relations Act 66/95, shall have the same meaning as in the Act and any reference to an Act shall include any amendment to such Act.

Any reference to the singular shall include the plural and vice versa and any reference to any gender shall include the other gender and further unless inconsistent with the context:

'Act' means the Labour Relations Act 66 of 1995

'Council' means the Bargaining Council for the Civil Engineering Industry and any functions to be performed by the Council in terms of this policy may be performed by the Council's General Secretary or any other employee of the Council to which the Council or General secretary has delegated such function in writing.

'Law' includes the common law.

## 3. Fundamental Principles

The following are fundamental principles which are legal obligations imposed on the Office or 'Exemptions Body' by the Council's agreements

The Council hereby establishes an 'Exemptions Body', constituted of persons independent of the Council, to consider all applications for exemption from the provisions of the Council's Agreements. In terms of section 32 (3)(e) of the Act, the council establishes an Independent Exemptions the Appeal Board (IEAB) to hear and decide any appeal brought against the Exemptions Body or Office refusal of an application for exemption from the provisions of an agreement or the withdrawal of an exemption by MANCO.

- 3.1 All applications must be in writing on the appropriate application form(s) obtainable from the BCCEI office or website and fully motivated and sent to the Council for consideration. Supporting documentation such as audited financial statements, details of consultations and any other documentation required by the Office or 'The Exemptions Body' from time to time, must be submitted.
- 3.2 In scrutinising an application for exemption, the Office or 'The Exemptions Body' will consider the views expressed by the employer and the workforce together with any other representations received in relation to that application. Applications that affect employees' conditions of service shall not be considered unless the employees or their representatives have been properly consulted and their views fully recorded in an accompanying document
- 3.3 The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of the Councils' Agreements.
- 3.4 Wage and wage related exemptions should not generally be granted beyond the expiration of the agreement provided that the 'The Exemptions Body' may at its discretion and on good cause shown agree to a longer period (but not an indefinite period).
  - 3.4.1 Application for exemption of the implementation of the minimum wages or bonus payments specified in the Conditions of Employment Agreement will be dealt with after giving consideration to the following:
  - 3.4.2 Clear evidence of financial difficulties including:

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- i) The most recent set of annual financial statements and auditor's report signed by the auditor (or accounting officer in the case of CC's);
  - ii) Management accounts covering the period from the date of the above financial statements to two months prior to the date of application;
  - iii) An explanation of the difficulties being faced by the company;
  - iv) A business plan consisting of a time table of how and when the company shall "catch-up" with the minimum wage rate of the industry.
- 3.4.3 The company must notify the council each year of how they are progressing with their business plan;
- 3.4.4 If the company does not comply with the business plan, the exemption will automatically terminate and the company shall have to re-apply.
- 3.5 The employer must consult with the work force, through a trade union representative or, where no trade union is involved, with the work force itself, and must include the views expressed by the work force in the application.
  - 3.5.1 Where the views of the work force differ from that of the employer, the reasons for the views expressed must be submitted with the application.
  - 3.5.2 Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.
- 3.6 The authority of the Council or 'The Exemptions Body' is to consider applications for exemption. In the event of an appeal against the decision of the Council, the General Secretary will on receipt of the appeal submit it to the IEAB for consideration and finalisation.
- 3.7 Retrospectively  
Applications for exemption may not be granted retrospectively. The Office or the 'The Exemptions Body' may, on a request which are substantively explained and motivated, condone a past period.
- 3.8 Urgent applications
  - 3.8.1 In cases of urgent applications, details may be faxed, e-mailed or hand delivered to the Council.
  - 3.8.2 The Chairperson together with the Vice Chairperson and General Secretary may consider the application, make a decision and communicate that decision to the applicant without delay. The decision will be ratified and minuted at the next meeting of the 'The Exemptions Body'
  - 3.8.3 The applicant is expected to put forward a substantive explanation as to the urgency of the application.

#### 4. Provident Fund Exemptions

The criteria for determining exemptions from the industry provident fund are as follows:

- 4.1 Total contributions to the private fund must be at least be equal to those required in terms of the industry fund.
- 4.2 Contribution holidays are to be specifically excluded from proposed rules of Defined Benefit Fund
- 4.3 Overall benefit package must be on the whole not be less favourable than the benefits provided by the industry fund with particular emphasis on the following:
  - i) Proportion of employer net contributions paid out on withdrawal;
  - ii) The right to transfer actuarial reserve to the industry fund on withdrawal;
  - iii) Cover for death and disability;
  - iv) In the case of Defined Benefit Funds, the basis on which the pension is calculated;
  - v) In the case of the Provident and Defined Contribution funds, the net percentage of the employers' and employees' salary actually credited to the fund after allowing for deduction of administration fees and the cost of insured benefits.
  - vi) There must be no waiting period for membership of the fund.

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- 4.4 Funds' representatives are to be given the opportunity to address management and the workforce prior to exemption being considered.
- 4.5 The majority (for this instance majority will be 51%) of the employees must support the application for exemption and the remainder will be required to follow the majority decision. Exemption will only be given in respect of all employees in order to avoid selective membership to the disadvantage of the Industry funds.
- 4.6 Where the employees are members of a party trade union, the trade union must support the application.
- 4.7 The exemption must stipulate that it may be withdrawn should circumstances warrant it.
- 4.8 Employees are to be represented on the Board of Trustees of the domestic fund by representatives elected by them.
- 4.9 Benefits may not be reduced.
- 4.10 Full details will be submitted to the Fund Administrators (Alexander Forbes) and a recommendation obtained.

#### 5. Exemptions from payment of interest

- 5.1 Applications for exemption from payment of interest levied on payment of fund contributions which are in arrears must be submitted to the council for consideration.
- 5.2 Applications will be considered by the Exemptions Body.
- 5.3 Applications must be accompanied by the reasons as to why the payments of funds are in arrears.

#### 6. General

- 6.1 In the event of the Office or 'The Exemptions Body' refusing to grant an application, the applicant shall have the right to appeal in writing against the decision to the Exemptions Appeal Board (IEAB).
- 6.2 An appeal to the IEAB must be send in writing within 30 calendar days of the applicant been notified of the office or 'The Exemptions Body' decision. The notice of appeal must set out the grounds on which the applicant's appeal is based
- 6.3 In the event of the Office or 'The Exemptions Body' granting an application, the employees' or trade union shall have the right to appeal in writing against the decision to the IEAB and have to follow the criteria set out in clause 6.2
- 6.4 The Office or 'The Exemptions Body' may acquire the assistance of an expert(s) to assist them when considering problematic applications or invite oral motivations. (When oral motivation is allowed, the union or workers committee members must also be present.)
- 6.5 In considering the application, the Office or 'The Exemptions Body' shall take into consideration all relevant factors, which may include, but shall not be limited to the following criteria:
  - i) The applicants past record (if applicable) of compliance with the provisions of the BCCEI Agreements and previous exemptions granted;
  - ii) Any special circumstances that exist;
  - iii) The interest of the industry as regards to: -
    - a) Unfair competition;
    - b) Collective bargaining;
    - c) Potential for labour unrest;
    - d) Increased employment.
  - iv) The interest of employee's as regards to: -
    - a) Exploitation
    - b) Job preservation;
    - c) Sound conditions of employment;
    - d) Possible financial benefits;
    - e) Health and safety;
    - f) Infringement of basic rights.
  - v) The interest of the employer as regards to: -
    - a) Financial stability;
    - b) Impact on productivity;
    - c) Future relationship with employees and trade unions
    - d) Operational requirements

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- 6.6 The council must notify the applicant within seven (7) days from the last day date of the meeting of the Office or 'The Exemptions Body' decision and reason(s) thereof, which reason(s) may be given at a later time but not later than 30 days after the decision.
- 6.7 If the application is granted, the council shall issue an exemptions certificate signed by the General Secretary of the BCCEI, containing the following: -
- i) The full name of the applicant(s);
  - ii) The trade name;
  - iii) The provisions of the agreement from which exemption is granted;
  - iv) The period for which the exemption shall operate;
  - v) The date issued;
  - vi) The condition(s) of the exemption granted.
- 6.8 The council shall; -
- i) Retain a copy of the certificate and number each certificate consecutively;
  - ii) Forward a copy of the certificate to the applicant.
- 6.9 The applicant to whom a certificate has been issued shall at all times have the certificate available for inspection at his establishment or site.

## **7. Composition of The Exemptions Body**

- 7.1 The Council must appoint members to the 'The Exemptions Body' on such terms and conditions they deem fit. The Exemptions Body will comprise:
- i) Three permanent members;
  - ii) Three alternate members.
- 7.2 The Exemptions Body members hold office until: -
- i) They resign on three months' written notice to the Council;
  - ii) Or the Council resolves to terminate their membership;
  - iii) Election which will take place after 3 years after appointment.

## **8. Chairperson of The Exemptions Body**

- 8.1 The Exemptions Body shall elect one of the permanent members as chairperson;
- 8.2 If the chairperson is not present at a meeting of The Exemptions Body, the other members present must elect a chairperson for that meeting.

## **9. Conduct of members of The Exemptions Body**

Members of the Exemptions Body –

- 9.1 Must be independent and impartial and perform the functions of office in good faith;
- 9.2 Must recuse themselves from any appeal hearing, should they have a direct financial interest or any other conflict of interest in the subject matter of the appeal.

## **10. Quorum**

- 10.1 Two members of The Exemptions Body form a quorum for any meeting of the Board.
- 10.2 If only two members are present at a meeting and they cannot reach consensus on any issue to be determined, the application must be postponed to a further meeting of The Exemptions Body, any further discussion regarding this application can only take place once the meeting is attended by three Board members.
- 10.3 If an application to lead oral evidence or to present oral submissions is granted, the application must be heard by a meeting attended by three members of 'The Exemptions Body'

## **11. Decisions of The Exemptions Body**

- 11.1 A decision agreed and confirmed in writing by three members of the exemptions body is as valid as a decision adopted at a duly convened meeting of the Body.
- 11.2 A decision of the exemptions body must be signed by the Chairman.

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- 11.3 Proceedings of the meetings of the Exemptions Body shall be minuted. Such minutes shall be confirmed at the next meeting of the Board and signed by the Chairman.

**12 Meetings of The Exemptions Body**

- 12.1 Unless otherwise provided for in this policy, the chairperson of 'The Exemptions Body' must determine the date and time for meetings, in consultation with the Council.
- 12.2 The Exemptions Body must meet –
- 12.2.1 At least once a month, unless there are no applications to be considered; or
- 12.2.2 When requested to do so by the General Secretary.
- 12.3 If a meeting of 'The Exemptions Body' does not finalise an application, the application may be postponed to a date and time agreed by the Body.

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**THE INDEPENDENT EXEMPTIONS APPEAL BOARD POLICY  
FOR THE**

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**CHAPTER I****INTRODUCTORY PROVISIONS****1. Definitions**

Unless the contrary intention appears, any expression used in this policy which are defined in the Labour Relations Act 66/95, shall have the same meaning as in the Act and any reference to an Act shall include any amendment to such Act.

Any reference to the singular shall include the plural and vice versa and any reference to any gender shall include the other gender and further unless inconsistent with the context:

'Act' means the Labour Relations Act 66 of 1995

'Appellant' means the body lodging an exemption appeal;

'Council' means the Bargaining Council for the Civil Engineering Industry and any functions to be performed by the Council in terms of this policy may be performed by the Council's General Secretary or any other employee of the Council to which the Council or General Secretary has delegated such function in writing.

'Exemption Appeal' means an appeal from a decision of the office or the exemption body concerning an application for exemption from a collective agreement of the Council, and includes an appeal from a decision -

- (i) granting an exemption;
- (ii) refusing an exemption; and
- (iii) withdrawing an exemption;

'Exemption Committee' means any committee of the Council authorize with hearing and deciding exemption applications;

'Interested Party' means any party that made or opposed an exemption application, and, depending on the context, may include the appellant;

'Members of the Board' shall mean permanent and alternate members of the Board.

'Law' includes the common law.

**2. Purpose of the Policy**

The purpose of this Policy is to govern the procedures of the Independent Exemptions Appeal Board ("the Board"), established by the Bargaining Council for the Civil Engineering Industry ("the Council"), in terms of Section 32(3)(e) of the Labour Relations Act and Chapter vi clause 1.8 of the Conditions of Employment Agreement and to ensure that the Board operates in an orderly and transparent manner.

**3. Application of the Policy**

This Policy applies to all exemption appeals except to the extent that a collective agreement sets out a different procedure for the hearing of exemption appeals in respect of an application to be exempt from any provision of that particular collective agreement.

**4. Nature of appeal**

- 4.1 An exemption appeal may be lodged by any affected party in respect of the whole or part of a decision of Office or 'The Exemptions Body'.
- 4.2 Except in exceptional circumstances, an appeal lodged with the Board is considered on the papers filed by all *interested parties*.
- 4.3 An *exemption appeal* is a re-consideration of the merits of the original exemption application.

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## 5. Criteria on appeal

5.1 In considering an appeal the Board must take into account –

5.1.1 The criteria set out in Chapter vi clause 1 of the Conditions of Employment Agreement of the Council;

5.1.2 Any criteria established or approved by the management committee of the Council in terms of the exemptions policy of Council.

5.2 In addition, the Board must consider –

5.2.1 the financial hardship of the applicant for exemption;

5.2.2 the potential impact an exemption may have on the collective bargaining process;

5.2.3 whether alternatives to exemption were considered or implemented;

5.2.4 the need to avoid retrenchments;

5.2.5 any other factors relevant to the particular exemption application.

## CHAPTER II

### THE BOARD

#### 1 Purpose of the Board

1.1 The purpose of the Board is to hear and decide all appeals against exemptions –

1.1.1 Brought by parties to the Council;

1.1.2 Brought by non-parties to the Council.

1.1.3 This will include a refusal by the Office or 'The Exemptions Body' to grant an exemption or a withdrawal of an exemption.

#### 2 Composition of Board

2.1 The Council must appoint to the Board, on such terms and conditions they deem fit. The Board will comprise:

2.1.1 Three permanent members;

2.1.2 Three alternate members.

2.2 Board members hold office until –

2.2.1 They resign on three months' written notice to the Council; or

2.2.2 The Council resolves to terminate their membership of the Board.

2.2.3 Upon election which will take place after 3 years of appointment.

#### 3. Chairperson of the Board

3.1 The Board shall elect one of the permanent Board members as chairperson of the Board.

3.2 If the chairperson is not present at a meeting of the Board, the other Board members present must elect a chairperson for that meeting.

#### 4. Conduct of members of Board

4.1 Members of the Board –

4.1.1 Must be independent and impartial and perform fiduciary duties in good faith;

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4.1.2 Must recuse themselves from any appeal hearing, should they have a direct financial interest or any other conflict of interest in the subject matter of the appeal.

## **5 Quorum**

- 5.1 Subject to sub-clauses 3.1 and 3.2, two members of the Board form a quorum for any meeting of the Board.
- 5.2 If only two members are present at a meeting and they cannot reach consensus on any issue to be determined, the appeal must be postponed to a further meeting of the Board and that further meeting must be attended by three Board members.
- 5.3 If an application to lead oral evidence or to present oral submissions is granted, the appeal must be heard by a meeting attended by three members of the Board.

## **6 Decisions of Board**

- 6.1 A decision of a quorate meeting of the Board is a decision of the Board.
- 6.2 A decision agreed and confirmed in writing by three members of the Board is as valid as a decision adopted at a duly convened meeting of the Board.
- 6.3 A decision of the Board must be signed by the Chairman.
- 6.4 Proceedings of the meetings of the Board shall be minuted by the Board and such minutes shall be confirmed at the next meeting of the Board and signed by the Chairman.

## **7 Meetings of Board**

- 7.1 Unless otherwise provided for in this clause, the chairperson of the Board must determine the date and time for Board meetings, in consultation with the Council.
- 7.2 The Board must meet –
- 7.2.1 At least once a month, unless there are no appeals to be considered; or
- 7.2.2 When requested to do so by the Council or by the chairperson and vice-chairperson of the Council, on the basis of the urgency of an appeal.
- 7.3 If a meeting of the Board does not finalise an appeal, the meeting may be postponed to a date and time agreed by the Board.

## **CHAPTER III**

### **APPEAL PROCEDURES**

#### **1 Lodging an appeal**

- 1.1 An appeal against a decision or part of a decision of the Council or Exemption committee must be lodged with the Council no later than fourteen days after the party appealing the decision has received a copy of the decision in writing.
- 1.2 The notice of an appeal must –
- (ii) set out the name and contact details of the party lodging the appeal;
  - (iii) provide a summary of the grounds for the appeal;
  - (iv) identify the collective agreement to which the exemption application relates;

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- 1.3 The following documents must be attached to a notice of appeal –
- (ii) a copy of the decision of the Council or Exemption Body and the reasons for that decision;
  - (iii) a copy of the original exemption application and annexures;
  - (iv) copies of any notices, letters, affidavits or any other documents handed to the applicant;
- 1.4 If any of the documents referred to in clause 13.3 are not in the possession of the party lodging the appeal, the notice of appeal must –
- (i) specify which documents should be attached but are not attached;
  - (ii) set out why the documents are not in the possession of the party lodging the appeal.
- 1.5 The appellant may attach to its notice of appeal written submissions on any issue raised by the Council or Exemptions Body.

## **2 Duty of Council on receipt of appeal**

- 2.1 On receipt of a notice of appeal the Council must –
- (i) confirm that the appeal is an appeal to be determined by the Board;
  - (ii) ensure that service on interested parties if required has been effected;
  - (iii) ensure that all relevant documentation is attached;
- 2.2 If the Council is of the view that the appeal is not one to be determined by the Board, the Council must return the appeal to the relevant Regional Council together with an explanation as to how the matter should be dealt with.

## **3 Incomplete applications**

If an appeal application is incomplete in any respect, the Council must notify the party that lodged the appeal and give that party a further seven days from date of notification to file the additional information.

## **4 Answering submissions by other *interested parties***

Other *interested parties* may file written submissions on the appeal with the Council, within seven days of receiving a copy of the notice of appeal.

## **5 New evidence**

- 5.1 An interested party may apply to the Board to lead new evidence on appeal.
- 5.2 New evidence may relate to facts or events that took place before or after the date of the initial exemption application.
- 5.3 An application to lead new evidence must –
- (i) be on affidavit;
  - (ii) show that the evidence sought to be lead is material and relevant to the issue on appeal;
- 5.4 The Board may –
- (i) Refuse the application for the leading of new evidence;
  - (ii) Grant the application for the leading of new evidence in whole or part and –
    - (a) consider the evidence itself;
    - (b) remit the appeal to the Council or Exemption Body with an instruction to consider the new evidence and reconsider its decision in the light of that evidence.

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- 5.5 If the Board decides to consider the evidence itself, and the evidence is not documentary evidence, it must direct whether the evidence should be presented orally or on affidavit.
- 5.6 If oral evidence is lead, all interested parties must be given an opportunity to –
- (i) Cross-examine any person giving evidence;
  - (ii) Lead their own witnesses to refute any evidence lead.
- 5.7 If the Board directs that evidence must be on affidavit –
- (i) the relevant affidavits must be filed with the Council within seven days of the Board's decision to allow the evidence to be lead;
  - (ii) other interested parties may file answering affidavits within seven days of receiving an affidavit containing new evidence;
  - (iii) the party that filed the affidavit containing new evidence may, within seven days of receiving any answering affidavit, file-
    - (a) a replying affidavit;
    - (b) supplementary submissions;
  - (iv) other interested parties may file supplementary submissions –
    - (a) within seven days of receiving any supplementary submissions or replying affidavits;
    - (b) if no supplementary submissions or replying affidavits are filed, within seven days of the filing of any answering affidavit; or
    - (c) if no answering affidavits are filed, within seven days of receiving the affidavit containing new evidence.

## **6 Condonation**

- 6.1 The Board may, on good cause shown, condone the late filing of an Application or any documents.
- 6.2 An application for condonation must be on affidavit.

## **7 Oral submissions**

- 7.1 Subject to sub-clause 18.2, the Board decides appeals based on the papers filed.
- 7.2 Any interested party may apply to the Board for an opportunity to present oral submissions.
- 7.3 In deciding whether to allow oral submissions, the Board must take into account –
- 7.3.1 the complexity of the matter;
  - 7.3.2 the comparative abilities of the parties to present their submissions in writing;
  - 7.3.3 the interests of justice.
- 7.4 If an application for oral submissions is granted, the Council must notify all interested parties and all interested parties must be given an equal opportunity to make oral submissions.
- 7.5 The Board may limit the time allocated to each party for oral submissions.

## **8 Board meetings open to public**

- 8.1 Board meetings that hear oral evidence or oral submissions may be open to the public at the discretion of the Board.
- 8.2 The Board may meet behind closed doors if the Board is meeting to deliberate on any matter.

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**9 Finding and reasons for decision**

- 9.1 Within two weeks of a meeting of the Board where an appeal has been considered, the Board must provide the Council with a written decision on the appeal and with brief reasons for that decision.
- 9.2 The Council must circulate the Board's decision and reasons to all interested parties.

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