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REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Regulation Gazette

No. 10879

Regulasiekoerant

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No FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.

Contents

<i>No.</i>	<i>Gazette No.</i>	<i>Page No.</i>
------------	------------------------	---------------------

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**Labour, Department of/ Arbeid, Departement van**

R. 1106	Labour Relations Act, 1995: Cancellation of Government Notice: Bargaining Council for the Civil Engineering Industry (BCCEI): Extension of Registration and Administration Expenses Collective Agreement to Non-parties ..	41981	11
R. 1107	Labour Relations Act (66/1995): Extension of Retirement Benefit Fund for the Civil Engineering Council	41981	55
R. 1108	Labour Relations Act, 1995: Correction Notice: Bargaining Council for the Civil Engineering Industry: Extension of Conditions of Employment Collective Agreement to Non-parties.....	41981	77

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**
- **23 November**, Friday for the issue of Friday **30 November 2018**
- **30 November**, Friday for the issue of Friday **07 December 2018**
- **07 December**, Friday for the issue of Friday **14 December 2018**
- **13 December**, Thursday for the issue of Friday **21 December 2018**
- **19 December**, Wednesday for the issue of Friday **28 December 2018**

LIST OF TARIFF RATES FOR PUBLICATION OF NOTICES

COMMENCEMENT: 1 APRIL 2018

NATIONAL AND PROVINCIAL

Notice sizes for National, Provincial & Tender gazettes 1/4, 2/4, 3/4, 4/4 per page. Notices submitted will be charged at R1008.80 per full page, pro-rated based on the above categories.

Pricing for National, Provincial - Variable Priced Notices		
Notice Type	Page Space	New Price (R)
Ordinary National, Provincial	1/4 - Quarter Page	252.20
Ordinary National, Provincial	2/4 - Half Page	504.40
Ordinary National, Provincial	3/4 - Three Quarter Page	756.60
Ordinary National, Provincial	4/4 - Full Page	1008.80

EXTRA-ORDINARY

All Extra-ordinary National and Provincial gazette notices are non-standard notices and attract a variable price based on the number of pages submitted.

The pricing structure for National and Provincial notices which are submitted as **Extra ordinary submissions** will be charged at **R3026.32** per page.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

The **Government Printing Works (GPW)** has established rules for submitting notices in line with its electronic notice processing system, which requires the use of electronic *Adobe Forms*. Please ensure that you adhere to these guidelines when completing and submitting your notice submission.

CLOSING TIMES FOR ACCEPTANCE OF NOTICES

1. The *Government Gazette* and *Government Tender Bulletin* are weekly publications that are published on Fridays and the closing time for the acceptance of notices is strictly applied according to the scheduled time for each gazette.
2. Please refer to the Submission Notice Deadline schedule in the table below. This schedule is also published online on the Government Printing works website www.gpwonline.co.za

All re-submissions will be subject to the standard cut-off times.

All notices received after the closing time will be rejected.

Government Gazette Type	Publication Frequency	Publication Date	Submission Deadline	Cancellations Deadline
National Gazette	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Regulation Gazette	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Petrol Price Gazette	Monthly	Tuesday before 1st Wednesday of the month	One day before publication	1 working day prior to publication
Road Carrier Permits	Weekly	Friday	Thursday 15h00 for next Friday	3 working days prior to publication
Unclaimed Monies (Justice, Labour or Lawyers)	January / September 2 per year	Last Friday	One week before publication	3 working days prior to publication
Parliament (Acts, White Paper, Green Paper)	As required	Any day of the week	None	3 working days prior to publication
Manuals	Bi- Monthly	2nd and last Thursday of the month	One week before publication	3 working days prior to publication
State of Budget (National Treasury)	Monthly	30th or last Friday of the month	One week before publication	3 working days prior to publication
<i>Extraordinary Gazettes</i>	As required	Any day of the week	<i>Before 10h00 on publication date</i>	<i>Before 10h00 on publication date</i>
Legal Gazettes A, B and C	Weekly	Friday	One week before publication	Tuesday, 15h00 - 3 working days prior to publication
Tender Bulletin	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Gauteng	Weekly	Wednesday	Two weeks before publication	3 days after submission deadline
Eastern Cape	Weekly	Monday	One week before publication	3 working days prior to publication
Northern Cape	Weekly	Monday	One week before publication	3 working days prior to publication
North West	Weekly	Tuesday	One week before publication	3 working days prior to publication
KwaZulu-Natal	Weekly	Thursday	One week before publication	3 working days prior to publication
Limpopo	Weekly	Friday	One week before publication	3 working days prior to publication
Mpumalanga	Weekly	Friday	One week before publication	3 working days prior to publication

GOVERNMENT PRINTING WORKS - BUSINESS RULES

Government Gazette Type	Publication Frequency	Publication Date	Submission Deadline	Cancellations Deadline
Gauteng Liquor License Gazette	Monthly	Wednesday before the First Friday of the month	Two weeks before publication	3 working days after submission deadline
Northern Cape Liquor License Gazette	Monthly	First Friday of the month	Two weeks before publication	3 working days after submission deadline
National Liquor License Gazette	Monthly	First Friday of the month	Two weeks before publication	3 working days after submission deadline
Mpumalanga Liquor License Gazette	Bi-Monthly	Second & Fourth Friday	One week before publication	3 working days prior to publication

EXTRAORDINARY GAZETTES

3. *Extraordinary Gazettes* can have only one publication date. If multiple publications of an *Extraordinary Gazette* are required, a separate Z95/Z95Prov *Adobe* Forms for each publication date must be submitted.

NOTICE SUBMISSION PROCESS

4. Download the latest *Adobe* form, for the relevant notice to be placed, from the **Government Printing Works** website www.gpwonline.co.za.
5. The *Adobe* form needs to be completed electronically using *Adobe Acrobat / Acrobat Reader*. Only electronically completed *Adobe* forms will be accepted. No printed, handwritten and/or scanned *Adobe* forms will be accepted.
6. The completed electronic *Adobe* form has to be submitted via email to submit.egazette@gpw.gov.za. The form needs to be submitted in its original electronic *Adobe* format to enable the system to extract the completed information from the form for placement in the publication.
7. Every notice submitted **must** be accompanied by an official **GPW** quotation. This must be obtained from the *eGazette* Contact Centre.
8. Each notice submission should be sent as a single email. The email **must** contain **all documentation relating to a particular notice submission**.
 - 8.1. Each of the following documents must be attached to the email as a separate attachment:
 - 8.1.1. An electronically completed *Adobe* form, specific to the type of notice that is to be placed.
 - 8.1.1.1. For *National Government Gazette* or *Provincial Gazette* notices, the notices must be accompanied by an electronic Z95 or Z95Prov *Adobe* form
 - 8.1.1.2. The notice content (body copy) **MUST** be a separate attachment.
 - 8.1.2. A copy of the official **Government Printing Works** quotation you received for your notice. (*Please see Quotation section below for further details*)
 - 8.1.3. A valid and legible Proof of Payment / Purchase Order: **Government Printing Works** account customer must include a copy of their Purchase Order. **Non-Government Printing Works** account customer needs to submit the proof of payment for the notice
 - 8.1.4. Where separate notice content is applicable (Z95, Z95 Prov and TForm 3, it should **also** be attached as a separate attachment. (*Please see the Copy Section below, for the specifications*).
 - 8.1.5. Any additional notice information if applicable.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

9. The electronic *Adobe* form will be taken as the primary source for the notice information to be published. Instructions that are on the email body or covering letter that contradicts the notice form content will not be considered. The information submitted on the electronic *Adobe* form will be published as-is.
10. To avoid duplicated publication of the same notice and double billing, Please submit your notice **ONLY ONCE**.
11. Notices brought to **GPW** by "walk-in" customers on electronic media can only be submitted in *Adobe* electronic form format. All "walk-in" customers with notices that are not on electronic *Adobe* forms will be routed to the Contact Centre where they will be assisted to complete the forms in the required format.
12. Should a customer submit a bulk submission of hard copy notices delivered by a messenger on behalf of any organisation e.g. newspaper publisher, the messenger will be referred back to the sender as the submission does not adhere to the submission rules.

QUOTATIONS

13. Quotations are valid until the next tariff change.
 - 13.1. **Take note:** **GPW's** annual tariff increase takes place on **1 April** therefore any quotations issued, accepted and submitted for publication up to **31 March** will keep the old tariff. For notices to be published from 1 April, a quotation must be obtained from **GPW** with the new tariffs. Where a tariff increase is implemented during the year, **GPW** endeavours to provide customers with 30 days' notice of such changes.
14. Each quotation has a unique number.
15. Form Content notices must be emailed to the *eGazette* Contact Centre for a quotation.
 - 15.1. The *Adobe* form supplied is uploaded by the Contact Centre Agent and the system automatically calculates the cost of your notice based on the layout/format of the content supplied.
 - 15.2. It is critical that these *Adobe* Forms are completed correctly and adhere to the guidelines as stipulated by **GPW**.
16. **APPLICABLE ONLY TO GPW ACCOUNT HOLDERS:**
 - 16.1. **GPW** Account Customers must provide a valid **GPW** account number to obtain a quotation.
 - 16.2. Accounts for **GPW** account customers **must** be active with sufficient credit to transact with **GPW** to submit notices.
 - 16.2.1. If you are unsure about or need to resolve the status of your account, please contact the **GPW** Finance Department prior to submitting your notices. (If the account status is not resolved prior to submission of your notice, the notice will be failed during the process).
17. **APPLICABLE ONLY TO CASH CUSTOMERS:**
 - 17.1. Cash customers doing **bulk payments** must use a **single email address** in order to use the **same proof of payment** for submitting multiple notices.
18. The responsibility lies with you, the customer, to ensure that the payment made for your notice(s) to be published is sufficient to cover the cost of the notice(s).
19. Each quotation will be associated with one proof of payment / purchase order / cash receipt.
 - 19.1. This means that **the quotation number can only be used once to make a payment.**

GOVERNMENT PRINTING WORKS - BUSINESS RULES**COPY (SEPARATE NOTICE CONTENT DOCUMENT)**

20. Where the copy is part of a separate attachment document for Z95, Z95Prov and TForm03
- 20.1. Copy of notices must be supplied in a separate document and may not constitute part of any covering letter, purchase order, proof of payment or other attached documents.
- The content document should contain only one notice. (You may include the different translations of the same notice in the same document).
- 20.2. The notice should be set on an A4 page, with margins and fonts set as follows:
- Page size = A4 Portrait with page margins: Top = 40mm, LH/RH = 16mm, Bottom = 40mm;
Use font size: Arial or Helvetica 10pt with 11pt line spacing;
- Page size = A4 Landscape with page margins: Top = 16mm, LH/RH = 40mm, Bottom = 16mm;
Use font size: Arial or Helvetica 10pt with 11pt line spacing;

CANCELLATIONS

21. Cancellation of notice submissions are accepted by **GPW** according to the deadlines stated in the table above in point 2. Non-compliance to these deadlines will result in your request being failed. Please pay special attention to the different deadlines for each gazette. Please note that any notices cancelled after the cancellation deadline will be published and charged at full cost.
22. Requests for cancellation must be sent by the original sender of the notice and must be accompanied by the relevant notice reference number (N-) in the email body.

AMENDMENTS TO NOTICES

23. With effect from 01 October 2015, **GPW** will not longer accept amendments to notices. The cancellation process will need to be followed according to the deadline and a new notice submitted thereafter for the next available publication date.

REJECTIONS

24. All notices not meeting the submission rules will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email info.egazette@gpw.gov.za). Reasons for rejections include the following:
- 24.1. Incorrectly completed forms and notices submitted in the wrong format, will be rejected.
- 24.2. Any notice submissions not on the correct *Adobe* electronic form, will be rejected.
- 24.3. Any notice submissions not accompanied by the proof of payment / purchase order will be rejected and the notice will not be processed.
- 24.4. Any submissions or re-submissions that miss the submission cut-off times will be rejected to the customer. The Notice needs to be re-submitted with a new publication date.

GOVERNMENT PRINTING WORKS - BUSINESS RULES**APPROVAL OF NOTICES**

25. Any notices other than legal notices are subject to the approval of the Government Printer, who may refuse acceptance or further publication of any notice.
26. No amendments will be accepted in respect to separate notice content that was sent with a Z95 or Z95Prov notice submissions. The copy of notice in layout format (previously known as proof-out) is only provided where requested, for Advertiser to see the notice in final Gazette layout. Should they find that the information submitted was incorrect, they should request for a notice cancellation and resubmit the corrected notice, subject to standard submission deadlines. The cancellation is also subject to the stages in the publishing process, i.e. If cancellation is received when production (printing process) has commenced, then the notice cannot be cancelled.

GOVERNMENT PRINTER INDEMNIFIED AGAINST LIABILITY

27. The Government Printer will assume no liability in respect of—
 - 27.1. any delay in the publication of a notice or publication of such notice on any date other than that stipulated by the advertiser;
 - 27.2. erroneous classification of a notice, or the placement of such notice in any section or under any heading other than the section or heading stipulated by the advertiser;
 - 27.3. any editing, revision, omission, typographical errors or errors resulting from faint or indistinct copy.

LIABILITY OF ADVERTISER

28. Advertisers will be held liable for any compensation and costs arising from any action which may be instituted against the Government Printer in consequence of the publication of any notice.

CUSTOMER INQUIRIES

Many of our customers request immediate feedback/confirmation of notice placement in the gazette from our Contact Centre once they have submitted their notice – While **GPW** deems it one of their highest priorities and responsibilities to provide customers with this requested feedback and the best service at all times, we are only able to do so once we have started processing your notice submission.

GPW has a 2-working day turnaround time for processing notices received according to the business rules and deadline submissions.

Please keep this in mind when making inquiries about your notice submission at the Contact Centre.

29. Requests for information, quotations and inquiries must be sent to the Contact Centre ONLY.
30. Requests for Quotations (RFQs) should be received by the Contact Centre at least **2 working days** before the submission deadline for that specific publication.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

PAYMENT OF COST

31. The Request for Quotation for placement of the notice should be sent to the Gazette Contact Centre as indicated above, prior to submission of notice for advertising.
32. Payment should then be made, or Purchase Order prepared based on the received quotation, prior to the submission of the notice for advertising as these documents i.e. proof of payment or Purchase order will be required as part of the notice submission, as indicated earlier.
33. Every proof of payment must have a valid **GPW** quotation number as a reference on the proof of payment document.
34. Where there is any doubt about the cost of publication of a notice, and in the case of copy, an enquiry, accompanied by the relevant copy, should be addressed to the Gazette Contact Centre, **Government Printing Works**, Private Bag X85, Pretoria, 0001 email: info.egazette@gpw.gov.za before publication.
35. Overpayment resulting from miscalculation on the part of the advertiser of the cost of publication of a notice will not be refunded, unless the advertiser furnishes adequate reasons why such miscalculation occurred. In the event of underpayments, the difference will be recovered from the advertiser, and future notice(s) will not be published until such time as the full cost of such publication has been duly paid in cash or electronic funds transfer into the **Government Printing Works** banking account.
36. In the event of a notice being cancelled, a refund will be made only if no cost regarding the placing of the notice has been incurred by the **Government Printing Works**.
37. The **Government Printing Works** reserves the right to levy an additional charge in cases where notices, the cost of which has been calculated in accordance with the List of Fixed Tariff Rates, are subsequently found to be excessively lengthy or to contain overmuch or complicated tabulation.

PROOF OF PUBLICATION

38. Copies of any of the *Government Gazette* or *Provincial Gazette* can be downloaded from the **Government Printing Works** website www.gpwonline.co.za free of charge, should a proof of publication be required.
39. Printed copies may be ordered from the Publications department at the ruling price. The **Government Printing Works** will assume no liability for any failure to post or for any delay in despatching of such *Government Gazette(s)*

GOVERNMENT PRINTING WORKS CONTACT INFORMATION

Physical Address:

Government Printing Works
149 Bosman Street
Pretoria

Postal Address:

Private Bag X85
Pretoria
0001

GPW Banking Details:

Bank: ABSA Bosman Street
Account No.: 405 7114 016
Branch Code: 632-005

For Gazette and Notice submissions: Gazette Submissions:

For queries and quotations, contact: Gazette Contact Centre:

E-mail: submit.egazette@gpw.gov.za

E-mail: info.egazette@gpw.gov.za

Tel: 012-748 6200

Contact person for subscribers: Mrs M. Toka:

E-mail: subscriptions@gpw.gov.za

Tel: 012-748-6066 / 6060 / 6058

Fax: 012-323-9574

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

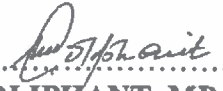
DEPARTMENT OF LABOUR

NO. R. 1106

19 OCTOBER 2018

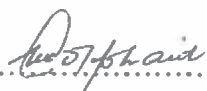
LABOUR RELATIONS ACT, 1995**CANCELLATION OF GOVERNMENT NOTICE****BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY (BCCED):
EXTENSION OF REGISTRATION AND ADMINISTRATION EXPENSES COLLECTIVE
AGREEMENT TO NON-PARTIES**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby, in terms of section 32(7) of the Labour Relations Act, 1995, cancel notice R.490 published in Government Gazette 37750 of 20 June 2014, with effect from the date as determined by the Minister.


.....
M N OLIPHANT, MP
MINISTER OF LABOUR
DATE: 28/09/2018.....

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995**UKUHOXISWA KWESIVUMELWANO SIKAHULUMENI****UMKHANDLU KAZWELONKE WOKUXOXISANA PHAKATHI KWABAQASHI
NABASEBENZI EMBONINI YONJINIYELA BEZOKWAKHA KWEMIGWAQO
NAMABHULOHO: UKWELULWA KWESIVUMELWANO SEZIMO ZEMISEBENZI,
SELULELWA KULABO ABANGEYONA INGXEYENYE YESIVUMELWANO**

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe WezabaSebenzi ngokwesigaba 32(7) soMthetho Wobudlelwano KwezabaSebenzi ka-1995 ngihoxisa iSaziso esingunombolo R.490 esashicilelwa kwiphepha eliphethe iSaziso sikaHulumeni esingunombolo: 37750 somhlaka 20 kuNhlanguvana 2014, kusukela ngosuku oluzonqunywa nguNgqongqoshe.


.....
M N OLIPHANT, MP
UNGQONGQOSHE WEZABASEBENZI
USUKU: 28/09/2018.....

LABOUR RELATIONS ACT, 1995**BARGAINING COUNCIL FOR CIVIL ENGINEERING INDUSTRY:
EXTENSION OF REGISTRATION AND ADMINISTRATION EXPENSES
COLLECTIVE AGREEMENT TO NON-PARTIES**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Registration and Administration Expenses Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for Civil Engineering Industry** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Collective Agreement, shall be binding on the other employers and employees in that Industry, with effect from the second Monday after date of publication of this notice and for the period ending 31 August 2023.


MINISTER OF LABOUR
28/09/2018

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI EPHATHELENE NEZOKWAKHA IMIGWAQO NAMABHULOHO: UKWELULWA KWESIVUMELWANO SOKUBHALISA NEZINDLEKO ZOKUPHATHA UMSEBENZI, SELULELWA KULABO ABANGEYONA INGXEYENYE YESIVUMELWANO

Mina, **MILDRED NELISIWE OLIPHANT**, onguNgqongqoshe Wezabasebenzi, ngokwesigaba-32(2) soMthetho Wobudlelwano Kwezabasebenzi, ka-1995, ngazisa ukuthi isivumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini Yonjiniyela Bezokwakhiwa Kwemigwaqo Namabhuloho, futhi ngokwesigaba 31 soMthetho Wobudlelwano Kwezabasebenzi, ka-1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi keleyomboni, kusukela ngomSombuluko wesibili emva kokushicilelwa kwalesisaziso kuze kube mhlaka 31 kuNcwaba 2023.


UNGQONGQOSHE WEZABASEBENZI
28/09/2018



REGISTRATION AND ADMINISTRATION EXPENSES AGREEMENT

T.G.M. F.L.V.

TABLE OF CONTENTS

SCHEDULE	3
----------	---

PART 1**SCOPE AND APPLICATION**

1. Application of agreement	3
2. Scope of the Civil Engineering Industry	3
3. Definitions and expressions	4
4. Period of Operation	5
3. Objective	5

PART II

1. Contributions	5
------------------	---

PART III

1. Registration	6
-----------------	---

PART IV

1. Administration of Agreement	7
2. Agents	7
3. Exemptions	7
4. Resolution of Disputes	7

Annexures**Appendix A - Exemptions policy**

T.G.M. 21 Page f-1v

SCHEDULE

BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY ADMINISTRATION EXPENSES AND REGISTRATION COLLECTIVE AGREEMENT

In accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the
Consolidated Employers Organisation (CEO)

South African Federation of Civil Engineering Contractors (SAFCEC)

(Hereinafter referred to as the "employers" or the "employers organisations"), of the one part, and the

Building Construction and Allied Workers Union (BCAWU)

National Union of Mine Workers (NUM)

(Hereinafter referred to as the "employees" or the "trade unions"), of the other part, being the parties to the Bargaining Council for the Civil Engineering Industry.

PART I:

SCOPE AND APPLICATION OF THE AGREEMENT

1. Application of Agreement

1.1. This Agreement binds:

- (i) All employers in the civil engineering sector that are members of the employers' organisations that are party to this agreement; and
- (ii) All employees in the bargaining unit, employed in the civil engineering sector who are members of the trade unions that are party to this Agreement

1.2. This Agreement must be applied in the Bargaining Council for the Civil Engineering Industry throughout the Republic of South Africa.

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

1.4. 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.

2. Scope of the Civil Engineering Industry

2.1 '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:

- a. 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; 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
- b. 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

T.G.M 3 | Page 14

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

- c. Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and/or
- d. The asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites

and further includes: -

- e. Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or
- f. 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 sub - clauses (a) to (f) inclusive;

but excluding: -

- i) 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;
- ii) 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;
- iii) Any work falling within the scope of any other industry, and
- iv) 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.

3. Definitions and expressions

- 3.1 Any expression used in this Agreement which is defined in the Basic Conditions of Employment Act, 1997, 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 1 to 9 as per Appendix D-Part 1 to the Wage and Task Schedule Agreement.

'BCCET' 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 -

- (i) Any person, excluding an independent contractor, who works for another person and who receives, or is entitled to receive, any remuneration; and
- (ii) Any other person who in any manner assists in carrying on or conducting the business of an employer.

ment service as defined in clause 196(1) of expressly or tacitly undertakes to remunerate e carrying on or conducting of his business;

T. G. M 4 | Page 11

'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;

'Law' includes the common law;

'Limited duration contracts of employment' means an employer may employ an employee for a specified, limited contract period in terms of an activity or duration.

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

'Overtime' means the time that an employee works during a day, or a week, in excess of the ordinary hours of work prescribed for such employee in Clause (2), Chapter I of the 'BCCEI Conditions of Employment 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;

'Public holiday' means New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill, as specified in Schedule 1 of the Public Holidays Act, 1994 (Act 36 of 1994): Provided that whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday;

'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, and who is not a "hourly-rated employee";

'Short-time' means a temporary reduction in the number of ordinary hours of work owing to vagaries of the 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;

'Wage' means the amount of money payable to an employee in respect of the ordinary hours of work. Provided that -

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in Clause (1) found in Chapter V of the BCCEI 'Conditions of Employment Agreement', it means such higher amount;
- (ii) the first proviso shall not be so construed as to refer to or include any remuneration which an employee who is employed on any basis provided for in Clause (3) in Chapter V of the BCCEI 'Conditions of Employment', receives over and above the amount which the employee would have received had he or she not been employed on such a basis

3. Period of operation of the agreement

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 31 August 2023.

4. Objective

The objective of this Agreement is to provide for the expenses of the Council which shall be vested in and administered by the Council, and for the registration of all employers engaged in the industry.

PART II

1. Contributions

T. G. M. 5 | Page P. L. V.

- 1.1 The provisions of this clause shall apply in respect of all employees and employers as defined in Clause (2) in Part 1 of this Agreement.
- 1.2 For Employees falling within the Bargaining Unit, BCCEI Administration levy contributions shall be made by employers in the manner specified hereunder, taking into regard that contributions are capped at the published wage rate applied to a Task Grade 9 employee from time to time;
- (i) From the wages of every employee to whom this Agreement applies, the employer shall, each week, including weeks on which the employee is absent or on paid leave, deduct a percentage of 0.425%. This contribution is in respect of an administration and dispute resolution levy
 - (ii) To the amount deducted in terms of paragraph (i) above, the employer shall add an equal amount and forward the total sum to the Council each month.
- 1.3 For employees that do not fall within the Bargaining Unit, a BCCEI dispute levy shall be made by employers in the manner specified hereunder, taking into regard that the levy is capped at the Earning Threshold as determined by the Minister of Labour in terms of section 6(3) of the Basic Conditions of Employment Act, 1997, found in Chapter 2 (Regulation of working time), Clause 6(3)
- (i) A contribution of 0.125% shall be deducted from all employees' salaries including for periods on which the employee is absent or on paid leave, in respect of a dispute resolution levy.
 - (ii) To the amount deducted in terms of paragraph (i) above, the employer shall add an equal amount and forward the total sum to the Council each month.
- 1.4 Every employer must submit one levy return with two file attachments for scheduled and non-scheduled employees every month with all the required information using the on-line portal system only. No Manual returns will be accepted. The employer shall submit the amounts payable each month in terms of sub clause (1.2) and (1.3) above for each employee.
- 1.5 Payments in terms of 1.4 must be made by no later than close of business on the 7th Day of the subsequent month.
- 1.6 For the purposes of this sub clause only, 'the Act' means the Usury Act, 1968.
- 1.6.1 If any amount that falls due in terms of this clause is not received in full by the Council by the 7th day of the month following the month for which the amount is payable, then the employer shall be liable to pay interest in accordance with the following provisions.
- (i) The interest payable shall accrue on the balance of the amount outstanding from time to time from the 7th day until the full amount is received by the Council.
 - (ii) The interest shall accrue at the same effective rate as the applicable maximum annual finance charge rates as if the amount outstanding were a "credit transaction" for the purposes of the Act.
 - (iii) In the event of the BCCEI incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission.

PART III

1. Registration

1.1 Every employer operating in this industry shall -

- (i) Within one month of the date on which this Agreement comes into operation, and in the event of entering this industry after the publication under Section 32 of the Act by virtue of which this Agreement is binding, within one month of the date on which he so enters the industry, furnish to the General Secretary, a written statement, in the form obtainable from the council, setting forth his full name and residential address and, if the employer is a partnership, the full names and addresses of all partners, and, if the employer is a company, the full names and addresses of the Directors and General Secretary, and if the employer is a close corporation, the full names and addresses of the Members and General Secretary, the name and the address or addresses at which business is carried out, the activities, trades or occupations carried out, and also the number of employees

employed: Provided that if this Agreement is superseded by a further amended agreement, an employer who holds a current certificate of registration issued under this section or in pursuance of a previous binding agreement, shall be deemed to have complied with the provisions of this sub clause;

- (ii) In the event of any change in the name or the address/s at which business is carried out at, or among the partners or, if the employer is a company or close corporation, a change of its General Secretary, or in the event of the sequestration of the employer's estate, or if the employer is a company or close corporation, a change of the winding-up of the company or close corporation, or in the event of the transfer or abandonment of the business that is being carried out, or a change in activities or the acquisition or commencement of any other activities or business - furnish to the BCCEI General Secretary, within 14 days of the change, sequestration, winding-up, transfer, abandonment, acquisition or commencement, a written statement setting forth full particulars of the change, sequestration, winding-up, transfer, abandonment, acquisition or commencement, as the case may be.

- 1.2 The fact that any employer as contemplated in sub clause (1.1) above may claim exclusion or exemption from any one or other Agreement or part of an agreement that is binding in the industry shall not exonerate him from complying with the requirements of sub clause (1.1) above.
- 1.3 The requirements of sub clauses (1.1) and (1.2) of this clause shall not be construed as an attempt by the Council to enforce the provisions of any particular Agreement administered by it, if such Agreement was not in the past binding on the employer and his employees or where exclusions and/or exemptions exist in favour of the employer and his employees.

PART IV

1. Administration of Agreement

The Council shall be the body responsible for the administration of this Agreement.

2. Agents

- 2.1 The Council shall appoint one or more persons as agents to assist in giving effect to the terms of this Agreement. For the purpose of enforcing or monitoring compliance in line with this agreement, as the case may be, an agent of the Council shall have the right to enter and inspect premises, examine records and interview the employer and/or his employees in any manner that he deems appropriate: Provided that such rights shall be exercised only as is reasonably required for the purpose of enforcement of, or monitoring compliance with the Agreement.
- 2.2 After each inspection of an employer's records and operations the agent shall prepare a report for the attention of the employer, worker representatives and, in the case of an individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions. Any disclosure of information shall comply with the provisions of the Labour Relations Act, 1995.
- 2.3 A designated agent shall have the powers set out in sections 33, 33A and Schedule 10 of the Act.

3. Exemptions

- 3.1 Any person bound by this Agreement may apply to the BCCEI Independent Exemption Committee for an exemption from any provision of this agreement in the manner provided for in the BCCEI Exemptions Policy attached as Appendix A.
- 3.2 Any person may lodge an appeal against the decision of the Independent Exemption Committee to the Independent Appeal Board in the manner provided for in the BCCEI Exemptions Policy, attached as Appendix A.

4. Resolution of disputes

Any dispute about the interpretation, application, or enforcement of this Agreement shall be referred to the Council and be dealt with in accordance with the provisions contained in the Bargaining Council for the Civil Engineering Industry

T. G. M. ²¹Page 4.4

APPENDIX A



BCCEI EXEMPTION AND APPEAL POLICY

T.G.M 9-1-14

NATIONAL EXEMPTIONS AND APPEAL POLICY FOR THE CIVIL ENGINEERING INDUSTRY**INDEX**

Table of Contents	Page
1. Introduction	3
2. Definitions	3
3. Fundamental Principles	4
4. Criteria	6
5. Appeal	7
6. Composition of the Exemption Committee and Independent Appeal Body	8
7. Chairperson of the Exemption Committee and Independent Appeal Body	8
8. Conduct of members of the Exemption Committee and Independent Appeal Body	9
9. Quorum	9
10. Decisions of the Exemption Committee and Independent Appeal Body	9
11. Meetings of the Exemption Committee and Independent Appeal Body	9

TGM 4 2

1. Introduction

- 1.1 The purpose of this document is to set out the principles and procedures which will apply to the consideration of applications for exemptions.
- 1.2 Any person bound by a Council Collective Agreement may apply for an exemption.
- 1.3 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:
 - 1.3.1 Determine the specific types of exemption applications which the Exemptions Committee ("EC") may deal with and those which could be referred to the Office for decision; or
 - 1.3.2 Determine that all exemption applications must be dealt with by the EC.
- 1.4 Where the Office or the EC is given the authority to deal with an exemption application and an appeal is lodged against a decision of the Office or the EC then this appeal must be referred to the Independent Appeal Body ("IAB") for final decision.
- 1.5 Exemption applications and appeals must be considered on the basis of criteria established in this policy.
- 1.6 Where the Office, EC or IAB wishes to apply other criteria to address a specific situation they must make recommendations in this regard to the BCCEI Council Committee to obtain approval prior to implementing the desired criteria.
- 1.7 Reasons for granting or refusing an application for exemption or appeal shall be recorded and retained by the Council. The applicant must on request be provided with reasons for the decision.
- 1.8 The Council Committee may at any time after prior notification and only upon request of the Office and after due consideration of a compliance report, withdraw an exemption either wholly 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 is defined in the Labour Relations Act 66 of 1995 ("Act"), 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, duly registered in terms of section 30(1) of the Act under reference number LR 2/6/6/160. Any functions to be performed by the Council in terms of this policy shall 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.

'Council Committee' refers to the committee established in terms of the Council's constitution

'Appeal' means an appeal against a decision of the Council, Office or the EC concerning an application for exemption from the provision/s of a Collective Agreement of the Council, and includes an appeal from a decision to grant, vary, refuse or withdraw an exemption. -

'EC' means the Exemption Committee of the Council authorised with hearing and deciding exemption applications;

'Day' means calendar day

'IAB' means the Independent Appeal Body constituted to deal with appeals in terms of section 32 (3) (e) of the Act

'Interested Party' means any party that made, opposed or supported an exemption application, or, has an interest in the outcome of the application.

'Members' shall mean members of the EC or IAB

'Office' means the BCCEI administration

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3. Fundamental Principles

The following are fundamental principles which are legal obligations imposed on the Council, EC or IAB by the Council's Collective Agreements.

The Council hereby establishes an EC and IAB, constituted of persons independent of the Council, to consider applications for exemption from the provisions of the Council's Collective Agreements. In terms of section 32 (3)(e) of the Act, the Council establishes an IAB to hear and decide any appeal brought against the EC, Office or Council Committee's decision in an application for exemption from the provisions of a Collective Agreement or the withdrawal or variation of an exemption.

- 3.1 All applications must be in writing on the appropriate application form(s) obtainable from the BCCEI office or website and signed as an affidavit in the presence of a Commissioner of Oaths. Submissions must be accompanied by a fully detailed motivation that explains the need for the exemption and submitted to the Council for consideration. The detailed motivation is not the same as the business plan (see clause 3.7.1 below). Supporting documentation such as audited financial statements, details of consultations and any other documentation required by the Office, EC or IAB from time to time, must be submitted. (Please note that there is no application form for appeals. The application must however set out the name and contact details of the party lodging the appeal and comply with the requirements as set out for an appeal application)
- 3.2
- 3.3 In terms of section 32(3)(dA) of the Act, all applications for exemption will be dealt with within 30 days of receipt of a complete application.
- 3.4 In considering an application for exemption, the Council, Office, EC and IAB must consider the representations and evidence submitted by the employer and the employees and/or their representative 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.
- 3.5 The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of the Councils' Collective Agreements. An exemption may not be granted in respect of any matter which is covered by an arbitration award binding on the applicant.
- 3.6 Wage and wage related exemptions should not generally be granted beyond the expiration of the agreement provided that the EC or IAB may at its discretion and on good cause shown agree to a longer period (but not an indefinite period).
- 3.7 Applications for exemption of the implementation of the minimum wages, bonus payments or any other monetary exemption specified in the Conditions of Employment Collective Agreement or Wage and Task Grade Collective Agreement will be dealt with after giving consideration to the following:
 - 3.7.1 Clear evidence of financial difficulties including:
 - i) The most recent set of Audited Financial Statements and auditor's report signed by the auditor (or accounting officer in the case of CC's);
 - ii) Latest Management Accounts covering the period from the date of the above financial statements to the date of application;
 - iii) An explanation of the difficulties being faced by the employer;
 - iv) A business plan which must give a breakdown of what the employer is paying the employees at present and, where necessary, provide a proposed time frame and indication of how and when the employer will "catch-up" with the minimum conditions of employment standards as set out in the BCCEI Collective Agreements.
 - v) The savings in cost to the employer should the exemption be granted and workings in arriving at this cost.
 - 3.7.2 The employer must notify the Council each year of how they are progressing with their business plan;
 - 3.7.3 If the employer does not comply with the business plan, the exemption will automatically terminate, and the employer shall have to re-apply.

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- 3.8 The employer must consult with the employees, through a trade union representative or, where no trade union is involved, with the employee representatives or employees themselves, and must include the views expressed by the employees in the application.
- 3.8.1 Where the views of the employees differ from that of the employer, the reasons for the views expressed must be submitted with the application.
- 3.8.2 Where the employees are members of a recognised trade union, the employer should inform the local trade union office of the intention to apply for exemption and request, in writing, a meeting with the local trade union official to discuss the impact of the exemption on the employer and the members of the trade union.
- 3.8.3 Where the employees have elected a trade union representative or representatives (shop stewards) these persons should be requested to sign the application to confirm that they were consulted and that they understand the need for the application. Where the local trade union official and/or shop stewards have been consulted where they reject the application, such rejection must be recorded in the application and countersigned by at least two witnesses.
- 3.8.4 Where the local trade union official and/or shop stewards and/or employees support the application, this signed agreement should be included in the application.
- 3.8.5 All meetings in this regard between the employer, employees, shop stewards and trade union officials should be minuted and the minutes together with the attendance registers should be submitted with the application.
- 3.8.6 The employer needs to ensure that the required proof of consultation and/or notification of its intention to apply for exemption as provided for by the exemption application form is duly included and submitted with the exemption application form.
- 3.9 The application itself must be signed by either a director of the firm, member, owner or a senior accountant (not bookkeeper). The human resources manager may sign applications for overtime exemptions.
- 3.10 The Council, Office, EC and IAB will make a decision(s) on the application as submitted.
- 3.11 It is not a condition of the exemption that employees accept the proposed exemption. All that is required is that employees and their representatives are fully informed of the employer's intention to apply for exemption and that this consultation process and their responses thereto are formally recorded and submitted with the application.
- 3.12 Retrospectively
Applications for exemption may not be granted retrospectively. The Office, EC or IAB may, on a request which is substantively explained and motivated, condone a past period.
- 3.13 Urgent applications
- 3.13.1 In cases of urgent applications, details may be faxed, e-mailed or hand delivered to the Council.
- 3.13.2 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 EC.
- 3.13.3 The applicant is expected to put forward a substantive explanation as to the urgency of the application.
- 3.14 Condonation
- 3.14.1 The EC and IAB may, on good cause shown, condone the late filing of an application or any documents.
- 3.14.2 An application for condonation must be on affidavit.
- 3.15 Oral submissions
- 3.15.1 The Office, EC and IAB decide applications based on the papers filed.
- 3.15.2 Any interested party may apply for an opportunity to present oral submissions.
- 3.15.3 In deciding whether to allow oral submissions, the following must be taken into account –
- i) the complexity of the matter;

TGM 1/1/15

- ii) the comparative abilities of the parties to present their submissions in writing;
 - iii) the interests of justice.
- 3.15.4 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.
- 3.15.5 The EC and IAB may limit the time allocated to each party for oral submissions.
- 3.15.6 Meetings that hear oral evidence or oral submissions may be open to the public at the discretion of the EC and IAB.
- 3.16 The Council, Office, EC or IAB 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 trade union or employee representatives must also be invited to be present.)
- 3.17 The Office must notify the applicant and/or affected parties of the decision within 7 (seven) days from the last day of the meeting when the application was considered. Reason(s) for the decision will be given not later than 30 (thirty) days upon receipt of a written request from the applicant or affected employees and/or their representative/s.
- 3.18 If the application is granted, the Council shall issue an exemptions licence signed by the General Secretary of the BCCEI or his/her designate, containing the following:
 - 3.18.1 The full name of the applicant(s);
 - 3.18.2 The trade name (if applicable);
 - 3.18.3 The provisions of the Council Collective Agreement from which exemption is granted;
 - 3.18.4 The period for which the exemption shall operate;
 - 3.18.5 The date issued;
 - 3.18.6 The area in which the exemption applies;
 - 3.18.7 The condition(s) of the exemption granted.
- 3.19 The Council shall:-
 - 3.19.1 Retain a copy of the licence;
 - 3.19.2 Forward a copy of the licence to the applicant.
- 3.20 The applicant to whom a licence has been issued shall at all times have the licence available for inspection at its establishment and site/s affected by the licence.

4. Criteria

- 4.1 In considering applications for exemption or appeals, the Council, Office, EC or IAB shall take into consideration all relevant factors, which may include, but shall not be limited to the following criteria:
 - 4.1.1 The applicant's past record (if applicable) of compliance with the provisions of the Council Collective Agreements and previous exemptions granted;
 - 4.1.2 Any special circumstances that exist;
 - 4.1.3 The interest of the industry as regards to:
 - i) Unfair competition;
 - ii) Collective bargaining;
 - iii) Potential for labour unrest;
 - iv) Increased employment.
 - 4.1.4 The interest of the employees as regards to:
 - i) Exploitation;
 - ii) Job preservation;

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- iii) Sound conditions of employment;
 - iv) Possible financial benefits;
 - v) Health and safety;
 - vi) Infringement of basic rights.
- 4.1.5 The interest of the employer as regards to:
 - i) Financial stability;
 - ii) Impact on productivity;
 - iii) Future relationship with employees and trade unions;
 - iv) Operational requirements.
- 4.1.6 Any criteria established or approved by the Council Committee of the Council.

5. Appeal

- 5.1 In the event of, a decision to grant/vary/refuse or withdraw an exemption, the affected party(ies) and/or their representative(s) shall have the right to appeal in writing against the decision to the IAB.
- 5.2 An appeal to the IAB must be sent in writing within 14 (fourteen) days of the applicant being notified of the decision. The notice of appeal must set out the grounds on which the applicant's appeal is based.
- 5.3 The notice of appeal must:
 - 5.3.1 Set out the name and contact details of the party lodging the appeal;
 - 5.3.2 Provide a summary of the grounds for the appeal;
 - 5.3.3 Identify the provisions of the Council Collective Agreement to which the exemption application relates.
- 5.4 The following documents must be attached to the notice of appeal:
 - 5.4.1 A copy of the decision of the Council, Office or EC and the reasons for the decision;
 - 5.4.2 A copy of the original exemption application and annexures;
 - 5.4.3 Copies of any notices, letters, affidavits or any other documents handed to the applicant.
- 5.5 If any of the documents referred to above are not in the possession of the party lodging the appeal, the notice of appeal must:
 - 5.5.1 Specify which documents should be attached but are not attached;
 - 5.5.2 Set out why the documents are not in the possession of the party lodging the appeal.
- 5.6 The applicant may attach to its notice of appeal written submissions on any issue raised by the Council, Office or EC.
- 5.7 An exemption appeal may be lodged by any interested party in respect of the whole or part of a decision.
- 5.8 An exemption appeal is a reconsideration of the merits of the original exemption application and may involve a rehearing of the merits of the original exemption application.
- 5.9 The IAB must consider:
 - 5.9.1 Any representations and evidence considered by the Council, Office or EC;
 - 5.9.2 The decision made and the reasons for that decision;
 - 5.9.3 Any additional representations submitted by the applicant or any other party;
 - 5.9.4 Any other evidence placed before the IAB.
- 5.10 In addition to the criteria set out in clause 4 the IAB must consider:
 - 5.10.1 The financial hardship of the applicant for exemption;
 - 5.10.2 The potential impact an exemption may have on the collective bargaining process;
 - 5.10.3 Whether alternatives to exemption were considered or implemented;

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- 5.10.4 The need to avoid retrenchments;
- 5.10.5 Any other factors relevant to the particular exemption application.
- 5.11 The IAB may:
 - 5.11.1 Confirm, vary or set aside the decision;
 - 5.11.2 Make any other decision that the Council, Office or EC could have made.
- 5.12 New evidence
 - 5.12.1 An interested party may apply to the IAB to lead new evidence on appeal.
 - 5.12.2 New evidence may relate to facts or events that took place before or after the date of the initial exemption application.
 - 5.12.3 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;
- 5.13 The IAB may –
 - 5.13.1 Refuse the application for the leading of new evidence;
 - 5.13.2 Grant the application for the leading of new evidence in whole or part and –
 - i) consider the evidence itself;
 - ii) remit the appeal to the Council, Office or EB with an instruction to consider the new evidence and reconsider its decision in the light of that evidence.
- 5.14 If the IAB 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.
- 5.15 If the IAB directs that evidence must be on affidavit –
 - 5.15.1 The relevant affidavits must be filed with the Council within 7 (seven) days of the IAB's decision to allow the evidence to be lead;
 - 5.15.2 Other interested parties may file answering affidavits within 7 (seven) days of receiving an affidavit containing new evidence;
 - 5.15.3 The party that filed the affidavit containing new evidence may, within 7 (seven) days of receiving any answering affidavit, file-
 - i) a replying affidavit;
 - ii) Supplementary submissions;
- 5.16 Other interested parties may file supplementary submissions –
 - 5.16.1 Within 7 (seven) days of receiving any supplementary submissions or replying affidavits;
 - 5.16.2 If no supplementary submissions or replying affidavits are filed, within 7 (seven) days of the filing of any answering affidavit; or
 - i) if no answering affidavits are filed, within 7 (seven) days of receiving the affidavit containing new evidence.
- 6. **Composition of the Exemptions Committee and Independent Appeal Body**
 - 6.1 The Council must appoint members to the EC and IAB on such terms and conditions they deem fit. The EC and IAB will comprise of at least 3 (three) members per committee.
 - 6.2 The EC and IAB members hold office until: -
 - 6.2.1 They resign on 3 (three) months' written notice to the Council;
 - 6.2.2 Or the Council resolves to terminate their membership.
- 7. **Chairperson of the Exemptions Committee and Independent Appeal Body**

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- 7.1 The EC and IAB shall elect one of the members as chairperson.
8. **Conduct of members of the Exemptions Committee and Independent Appeal Body**
- 8.1 Members of the EC and IAB –
- 8.1.1 Must be independent and impartial and perform the functions of office in good faith;
- 8.1.2 Must recuse themselves from any hearing, should they have a direct interest or any other conflict of interest in the subject matter of the application.
9. **Quorum**
- 9.1 2 (Two) members of the EC or IAB form a quorum for any meeting.
- 9.2 If only 2 (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. Any further discussion regarding this application can only take place once the meeting is attended by at least 3 (three) members.
- 9.3 If an application to lead oral evidence or to present oral submissions is granted, the application must be heard by a meeting attended by at least 3 (three) members.
10. **Decisions of the Exemptions Committee and Independent Appeal Body**
- 10.1 A decision agreed and confirmed in writing by three members is as valid as a decision adopted at a duly convened meeting of the EC or IAB.
- 10.2 A decision must be signed by the chairperson.
11. **Meetings of the Exemptions Committee and Independent Appeal Body**
- 11.1 Unless otherwise provided for in this policy, the chairperson of the EC and IAB must determine the date and time for meetings, in consultation with the Council.
- 11.2 The EC and IAB must meet –
- 11.2.1 At least once a month, unless there are no applications to be considered; or
- 11.2.2 When requested to do so by the General Secretary.
- 11.3 If a meeting of the EC or IAB does not finalise an application, the application may be postponed to a date and time agreed by the members.

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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 BCEI 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 employees]
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 BCEE 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

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:

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*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 effect 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

INDEX

	Page
1. Introduction	9
2. Definitions	10
3. Fundamental Principles	10
4. Provident Fund Exemptions	11
5. Exemptions from payment of interest	12
6. General	12
7. Composition of The Exemptions Body	13
8. Chairperson of The Exemptions Body	13
9. Conduct of members of The Exemptions Body	13
10. Quorum	13
11. Decisions of The Exemptions Body	13
12. Meetings of The Exemptions Body	14

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.

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 sent 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 BCEI 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

T.G.M. 12
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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.

T.G.M. 14
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**THE INDEPENDENT EXEMPTIONS APPEAL BOARD POLICY
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TABLE OF CONTENTS

CHAPTER I	Page
INTRODUCTORY PROVISIONS	
1. Definitions	17
2. Purpose of Policy	17
3. Application of Policy	17
4. Nature of appeal	17
5. Criteria on appeal	18
 CHAPTER II	
THE BOARD	
1. Purpose of Board	18
2. Composition of Board	18
3. Chairperson of Board	18
4. Conduct of members of Board	18
5. Quorum	19
6. Decisions of Board	19
7. Meetings of Board	19
 CHAPTER III	
APPEAL PROCEDURES	
1. Lodging an appeal	19
2. Duty of council on receipt of an appeal	20
3. Incomplete applications	20
4. Answering submissions by other interested parties	20
5. New evidence	20
6. Condonation	21
7. Oral submissions	21
8. Board meetings open to public	21
9. Finding and reasons for decision	22

T.G.M. 16
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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;

T.G.M. / 18
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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;

T.G.M. 19
2.11

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.

T.G.M

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2.2

- 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.

T.G.M. 21 1.2

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.

T.G.M. P²²
L.V.

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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 –

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T.G.M. / 20
2.1

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 - (a) a replying affidavit;
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T.G.M. 21 12

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T.G.M. P²² L.V

DEPARTMENT OF LABOUR

NO. R. 1107

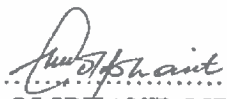
19 OCTOBER 2018

LABOUR RELATIONS ACT, 1995

CANCELLATION OF GOVERNMENT NOTICE

**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY (BCCCI):
EXTENSION OF CONSTRUCTION INDUSTRY RETIREMENT BENEFIT FUND
COLLECTIVE AGREEMENT TO NON-PARTIES**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby, in terms of section 32(7) of the Labour Relations Act, 1995, cancel notice R.488 published in Government Gazette 37748 of 20 June 2014, with effect from the date as determined by the Minister.


.....
M N OLIPHANT, MP
MINISTER OF LABOUR
DATE: 28/09/2018.....


UMNYANGO WEZABASEBENZI

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

UKUHOXISWA KWESIVUMELWANO SIKAHULUMENI


**UMKHANDLU KAZWELONKE WOKUXOXISANA PHAKATHI KWABAQASHI
NABASEBENZI EMBONINI YONJINIYELA BEZOKWAKHA KWEMIGWAQO
NAMABHULOHO: UKWELULWA KWESIVUMELWANO SOKUBHALISA NEZINDLEKO
ZOKUPHATHA UMSEBENZI, SELULELWA KULABO ABANGEYONA INGXYENYE
YESIVUMELWANO**

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe WezabaSebenzi ngokwesigaba 32(7) soMthetho Wobudlelwano KwezabaSebenzi ka-1995 ngihoxisa iSaziso esingunombolo R.488 esashicilelwa kwiphepha eliphethe iSaziso sikaHulumeni esingunombolo: 37748 somhlaka 20 kuNhlangulana 2014, kusukela ngosuku oluzonqunywa nguNgqongqoshe.


.....
MN OLIPHANT, MP
UNGQONGOOSHE WEZABASEBENZI
USUKU: 28/09/2018.....

LABOUR RELATIONS ACT, 1995**BARGAINING COUNCIL FOR CIVIL ENGINEERING INDUSTRY:
EXTENSION OF CONSTRUCTION INDUSTRY RETIREMENT BENEFIT
FUND COLLECTIVE AGREEMENT TO NON-PARTIES**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Construction Industry Retirement Benefit Fund Collective Amending Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for Civil Engineering Industry** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Collective Agreement, shall be binding on the other employers and employees in that Industry, with effect from the second Monday after date of publication of this notice and for the period ending 31 August 2023.


MINISTER OF LABOUR
25/09/2018

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI YONIJNIYELA BEZOKWAKHIWA KWEMIGWAQO NAMABHULUHO: UKWELULWA KWESIVUMELWANO ESIHLANGANISAYO SESIKHWAMA SOMHLALAPHANSI EMBONINI YEZOKWAKHA SELULELWA KULABO ABANGEYONA INGXENYE YESIVUMELWANO

Mina, **MILDRED NELISIWE OLIPHANT**, onguNgqongqoshe Wezabasebenzi, ngokwesigaba-32(2) soMthetho Wobudlelwano Kwezabasebenzi, ka-1995, ngazisa ukuthi isivumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini Yonjiniyela Bezokwakhiwa Kwemigwaqo Namabhuloho, futhi ngokwesigaba 31 soMthetho Wobudlelwano Kwezabasebenzi, ka-1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi keleyomboni, kusukela ngomSombuluko wesibili emva kokushicilelwa kwalesisaziso kuze kube mhlaka 31 KuNcwaba 2023.


UNGQONGQOSHE WEZABASEBENZI
28/09/2018



CIRBF COLLECTIVE AGREEMENT
(Construction Industry Retirement Benefit Fund)

TABLE OF CONTENTS

Schedule	3
Scope	3
Period of operation of agreement	3
Definitions	3
Continuation of the fund	7
Membership	8
Contributions	8
Administration	9
Designated agents	9
Exemptions	10
Resolution of disputes	10
Exhibition of agreement	10
Members' benefits	10
Appendix A	

T. G. M. 9. 12. 2

SCHEDULE

CONSTRUCTION INDUSTRY RETIREMENT BENEFIT FUND COLLECTIVE AGREEMENT FOR THE CIVIL ENGINEERING INDUSTRY

In accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the
Consolidated Employers Organisation (CEO)
South African Forum of Civil Engineering Contractors (SAFCEC)
(Hereinafter referred to as the 'employer' or the 'employers' organisation'), of the one part,

and the

Building Construction and Allied Workers Union (BCAWU)
National Union of Mine Workers (NUM)
(Hereinafter referred to as the 'employees' or the 'trade unions'), of the other part, being the parties to the Bargaining Council for the Civil Engineering Industry.

1. SCOPE OF APPLICATION OF AGREEMENT

- 1.1 The terms of this Agreement shall apply to and be observed-
 - (a) throughout the Republic of South Africa; and
 - (b) by all employers and employees in the Civil Engineering Industry who are members of the employers' organisations and the trade unions, respectively.
- 1.2 All the employers who do not have a retirement benefit fund in favour of their employees in place, shall by publication of this agreement join the Construction Industry Retirement Benefit Fund.
- 1.3 The rules of the retirement benefit fund referred to in this Agreement shall require that employers and employees contribute equally in respect of each employee's membership of the retirement benefit fund. Provided that a fund which provides solely for payment of benefits on death and disability shall not be deemed to be a pension or provident fund for the purposes of this Agreement
- 1.4 Notwithstanding the above, clause 1.2 will not apply to employers contributing to an existing Retirement Benefit Fund, registered in terms of the Pension Fund Act of 1956, which was fully operational before the publication of this agreement.
- 1.5 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 Honorable Minister of Labour in terms of Section 32, from a date determined by the Minister.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 31 August 2023.

3. DEFINITIONS

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-

T. G. M.  3

'Act' means the Labour Relations Act, 1995 (Act No.66 of 1995) and the Pension Funds Act, 1956, as amended, and the regulations made in terms of that act.

'Actuary' shall mean the actuary appointed in terms of the rules of the fund.

'Administrators' shall mean ALEXANDER FORBES FINANCIAL SERVICES, a division of Alexander Forbes Group (Pty) Ltd., appointed in terms of the rules.

'Approved Pension Fund' shall mean a pension fund, other than a Preservation Pension Fund, approved as such by the Revenue Authorities for the purposes of rules of the fund.

'Approved Provident Fund' shall mean a provident fund, other than a Preservation Provident Fund, approved as such by the Revenue Authorities for the purposes of these rules.

'Approved Retirement Annuity Fund' shall mean a provident fund, other than a retirement Annuity Fund, approved as such by the Revenue Authorities for the purposes of these rules.

'Auditor' shall mean the Auditor appointed in terms of the rules of the fund.

'Bargaining Unit' shall mean all the employees falling within the Task Grades 1 to 9 as per Appendix D of the BCEI Wage and Task Grade Collective Agreement.

'Calculation Date' shall mean the date on which the Administrators, acting in terms of the agreed practice of the Fund, calculate the Member's benefit on the Member's retirement, death or his leaving Service in terms of Rule 7 of the fund, or in order to transfer the Member's benefit from the Fund in any of the circumstances contemplated in the rules.

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

'Eligible Employee' shall mean an employee who: --

- (i) is employed on the permanent staff of the Employer;
- (ii) is under the age of 60 years, and
- (iii) is not a member of a fund providing retirement benefits which was set up in terms of an agreement under the Labour Relations Act, 66/1995 or in terms of a collective agreement concluded in the civil engineering bargaining council in terms of the Labour relations Act (Act 66/1995)

'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;

If the business of an employer is wound up for the purpose of reconstruction in a similar or amended form, the reconstructed organisation shall take the place of that Employer and the term 'Employer' in such case shall then mean the Employer as reconstructed.

'Financial Year' shall mean the twelve-month period ending on 31 October.

'Fund' shall mean the CONSTRUCTION INDUSTRY RETIREMENT BENEFIT FUND.

'Fund Credit' shall mean for each Member at any particular date the accumulated value of: -

- (i) that part of the contributions made by the Employer in terms of Rule 4.2.1 that is applied towards retirement funding in terms of Rule 4.2.2(b)
- (ii) the Member's contributions received by the Fund in terms of Rule 4.1.1
- (iii) such additional contributions (if any) as the Member may make and/or the Employer may make in respect of the Member in terms of Rule 4.3
- (iv) any amount transferred to the Fund in terms of Rule 9.1 increased or decreased by the Investment Return until the Calculation Date.

T.G.M. / LV 4

'Fund Salary' shall mean the Member's basic hourly paid remuneration/weekly/monthly salary, excluding any overtime, bonuses or allowances; provided that:

- (i) for the purpose of the Fund, Fund salary shall be determined on the first day of each month of membership of the fund; and
- (ii) If the amount on which a Member's Fund Salary is based is reduced at any time then. Subject to the agreement of the Member, his Employer may direct that, for the purposes of the Fund, the reduction shall not be applied in the calculation of the Member's Fund Salary or shall be applied only partially.

'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:

- a. 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
- b. 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
- c. Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and/or
- d. The asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites

and further includes: -

- e Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or
- f 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 sub - clauses (a) to (f) inclusive;

but excluding: -

- i) 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;

T. G. M. / L.V.

- ii) 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;
- iii) Any work falling within the scope of any other industry, and
- iv) 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.

'Investment Return' shall mean any income (received or accrued) including, if applicable, interest payable by the Employer in terms of Rule 4.1.3 and Rule 4.2.4, and capital gains and losses (realised and unrealised) of the Fund, less an allowance for any tax and such expenses (paid or accrued) as may be determined by the Trustees; provided that

- (i) such Investment Return may be positive or negative;
- (ii) the Investment Return shall be allocated to each Member's Fund Credit on such equitable basis as the Trustees in their absolute discretion, in consultation with the Actuary and in accordance with the agreed practice of the Fund, may determine from time to time; and
- (iii) where a Member's Fund Credit is, and/or contributions paid by or in respect of a Member are, invested in a selected portfolio or portfolios, the Investment Return relating to such Member's investment within each portfolio shall be allocated to such Member's benefit within the portfolio.

'Law' includes the common law;

'Limited duration contracts of employment' means an employer may employ an employee for a specified, limited contract period in terms of an activity or duration.

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

'Member' shall mean an Eligible Employee who, having been admitted to membership of the Fund accordance with these Rules, has not ceased to be a Member in terms of these Rules.

'National Negotiating Form' shall mean the form at which negotiations occur between SAFCEC and the recognised Trade Unions

'Normal Retirement Date' shall mean the last day of the month in which a Member reaches age 60 years.

'Official' shall mean an official of a Recognised Trade Union or SAFCEC.

'Operative Date' shall mean the date on which the Employer's participation in the Fund commences.

'Overtime' means the time that an employee works during a day, or a week, in excess of the ordinary hours of work prescribed for such employee, 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;

'Previous Fund' shall mean an Approved Provident Fund or Approved Pension Fund in which any of the Employers participate or in which a previous Employer participated and from which a Member or a group of Members transferred in accordance with the provisions of Section 14 of the Act.

'Preservation Pension Fund' shall mean an Approved Pension Fund recognised as a preservation fund, subject to the conditions set out by the Revenue Authorities from time to time.

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'Preservation Provident Fund' shall mean an Approved Provident Fund recognised as a preservation fund, subject to the conditions set out by the Revenue Authorities from time to time.

'Principal Officer' shall mean the Principal Officer of the Fund appointed in accordance with the rules of the Fund;

'Public Holiday' means New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill, as specified in Schedule 1 of the Public Holidays Act, 1994 (Act 36 of 1994): These shall include every day proclaimed as a public holiday in terms of Section 2A of the aforesaid Act. Provided that whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday;

'Recognised Trade Unions' shall mean the Building Construction and Allied Workers Union (BCAWU) and the National union of Mineworkers (NUM)

'Registered Insurer' shall mean an insurer registered in terms of the Long-term Insurance Act, 1998.

'Registrar' shall mean the Registrar of Pension Funds referred to in the Act, 1956.

'Revenue Authorities' shall mean the South African Revenue Services.

'Rules' shall mean these Rules and such alterations as may at any time be applicable

'SAFCEC' shall mean the South African Forum of Civil Engineering Contractors.

'Salaried Employee' means an employee whose remuneration is calculated monthly notwithstanding the number of hours or days actually worked, who performs work generally understood to be that of a salaried employee, and who is not a "hourly-rated employee".

'Service' shall mean employment with any of the Employers and shall include any period during which the Member is deemed to remain in Service in terms of Rule 8. Service shall include any past period of employment before joining the Service in respect of which benefits have been transferred to the Fund in terms of Rule 9.1 or in respect of which additional contributions have been made to the Fund in terms of Rule 4.3, the period of past service to be reckoned as Service for the purposes of the Fund shall in respect of an amount transferred to the fund be the relevant pensionable Service earned in respect of such amount, and in respect of additional contributions made to the Fund by either the Member or Employer in each twelve month period ending on the last day of February, bears to the total contributions made to the Fund for the same period by the Member or Employer, as the case may be.

'Short-time' means a temporary reduction in the number of ordinary hours of work owing to vagaries of the 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;

'Wage' means the amount of money payable to an employee in respect of the ordinary hours of work. Provided that -

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed for Task Grades 1 to 9 as per Appendix D of the BCCEI Wage and Task Grade Collective Agreement, it means such higher amount;
- (ii) the first proviso shall not be so construed as to refer to or include any remuneration which an employee who is employed on any basis and receives over and above the amount which the employee would have received had he or she not been employed on such a basis.

'Trustee' shall mean the Trustees or their alternates appointed or elected in terms of the rules of the Fund

4. CONTINUATION OF THE FUND

4.1 The Construction Industry Retirement Benefit Fund (hereinafter referred to as the 'Fund'), established in terms of the Pension Funds Act 1956, is hereby continued.

4.2 The Fund shall consist of-

T. G. M. 12.17

- (i) all monies and assets standing to the credit of the fund as at the date of coming into operation of the Agreement;
- (ii) all contributions paid by employers and members in accordance with Clause 6 of this Agreement;
- (iii) all investment income derived from the investment of any monies of the fund; and
- (iv) any other monies to which the fund may become entitled.

5. MEMBERSHIP

- 5.1 Each Eligible Employee who is in Service on the Operative Date and who was in Service on the day prior to that date may choose to become a Member of the Fund. A choice to become a Member must be made no earlier than the Operative Date and not later than twelve months thereafter and the Eligible Employee's participation in the Fund shall commence on the Operative Date or (if later) on the first day of the month which coincides with or next follows the date on which his choice is made.
- 5.2 If any employee who is eligible in terms of Rule 3.1 has not chosen to become a Member of the Fund within the period set out in Rule 3.1 he shall cease to be an Eligible Employee.
- 5.3 Each employee who becomes an Eligible Employee on or after the Operative Date must become a Member of the Fund or of another retirement fund operated by the Employer for the benefit of its employees on the first day of the month on which he is an Eligible Employee. If an employee who is eligible in terms of this Rule has not chosen to become a Member of this Fund by the first day of the month on which he is an Eligible Employee, he shall cease to be an Eligible Employee.
- 5.4 Each Member must produce evidence of age acceptable to the Trustees and must also give such other information as the Trustees may reasonably require for the purposes of the Fund. In the case of a Member who was a member of a Previous Fund, the Trustees may accept the Members age as stated in the records of that fund.
- 5.5 If a Member transfers to another Approved Provident Fund or Approved pension Fund in any of the circumstances envisaged in these Rules and such transfer is subject to the provisions of Section 14 of the Act, then it is specifically provided that with effect from the date on which he becomes a member of such fund, contributions in terms of Rule 4 shall cease and in the event of his death or Disablement, prior to transfer of his benefit in terms of these Rules from the Fund to such other fund, that part of the death or disability benefit in Rule 6 which is insured with a Registered Insurer shall not be payable.
- 5.6 Unless otherwise provided for in the Rules, a Member shall not be permitted to withdraw from membership while he remains in Service.
- 5.7 A Member who has left Service for any reason and has received all the benefits which may be due to him in terms of these Rules shall cease to be a Member.

6. CONTRIBUTIONS

6.1 Contributions by the Member

Each Member shall contribute to the Fund at the rate of 9.0 per cent of his Fund Salary. Any variation to amounts contributed by Members employed by an Employer shall be set out in an Appendix to these Rules.

6.1.1 Each Member's contributions shall be deducted by his Employer from his salary or wages and paid to the Fund.

6.1.2 Contributions shall be paid to the Fund within seven days after the end of the month in respect of which the contributions were made. If contributions are not paid to the Fund as required in terms of the Act. The Employer shall be required to pay late payment interest at the rate prescribed by legislation. Any such interest shall be included in the Investment Return.

6.2 Contributions by the Employer

6.2.1 The Employer shall make contributions in respect of each Member in its Service at the rate of 9.0 per cent of the Member's Fund Salary, less the cost for the month concerned of the separate funeral

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benefit scheme. Any variation to amounts contributed by the Employer in respect of Members employed by an Employer shall be set out in an Appendix to these Rules.

6.2.2 Out of the amount paid in terms of Rule 6.2.1:

- (i) not more than 5.5 per cent of the Member's Fund Salary, less the cost for the month concerned of the separate funeral benefit scheme, shall be applied to meet the cost for the month concerned of the death benefit referred to in Rule 6.1.1(a), the disability benefit referred to in Rule 6.2.2 and the Fund's expenses; and
- (ii) the balance shall be applied towards the Member's retirement benefit.

6.2.3 Should the amount referred to in Rule 4.2.2(a) be at any time insufficient to meet the cost of the death benefit referred to in Rule 6.1.1(a) and the disability benefit referred to in Rule 6.2.2, such benefits shall be reduced to the proportion for which the cost has been paid.

6.2.4 Contributions by the Employer must be paid to the Fund within seven days after the end of the month to which they relate. If contributions are not paid to the Fund as required in terms of the Act, the Employer shall be required to pay late payment interest at the rate prescribed by legislation. Any such interest shall be included in the Investment Return.

6.3 Additional Voluntary Contributions by Members and Employers

6.3.1 A Member may make additional contributions to the Fund, in order to secure greater benefits or in respect of a period of past Service, in accordance with such conditions and procedures as the Trustees may prescribe from time to time. The payment of additional contributions to the Fund shall be subject to the limitations and requirements of the Income Tax Act, 1962. Such additional contributions shall be allocated to the Member's Fund Credit.

6.3.2 An Employer may make additional contributions to the Fund in respect of a Member's period of past Service in accordance with such conditions and procedures as the Trustees may require from time to time. The payment of additional contributions to the Fund shall be subject to the limitations and requirements of the Income Tax Act, 1962. Such additional contributions shall be allocated to the Member's Fund Credit.

7. ADMINISTRATION OF THE FUND

7.1 The Fund shall be administered by Administrators appointed by, and acting on the instructions of, the Trustees.

7.2 The Employers shall from time to time furnish to the Trustees in respect of those employees who are Members all necessary particulars affecting their benefits or their entitlement to benefits under the Fund and the Trustees shall ensure that such particulars are furnished to the Administrators. The Trustees and the Administrators shall be entitled to act upon such particulars without further enquiry and shall not be responsible to any Member or to the Employer or to any other person or body whatsoever for any misstatements or errors or omissions which may be contained in such particulars.

7.3 The Administrators shall keep a complete record of all necessary particulars of the Members of the Fund and of all persons entitled to benefits and of all other matters essential to the operation of the Fund.

7.4 The Administrators shall keep full and true accounts of the Fund as required in terms of Rule 13.4.

7.5 All cheques, contracts and other documents pertaining to the Fund shall be signed by such persons as the Trustees by resolution may appoint; provided that documents to be deposited with the Registrar must be signed in the manner set out in the Act.

7.6 The Administrators shall maintain fidelity cover to indemnify the Fund against any loss resulting from the dishonesty or fraud of any person employed by them.

8. DESIGNATED AGENTS

8.1 The Council shall appoint one or more specified persons as designated agents to assist in giving effect to the terms

T. G. M. *flv*

of this Agreement. For the purpose of enforcing or monitoring compliance with this Agreement, as the case may be, an agent of the Council shall have the right to enter and inspect premises, examine records and interview the employer and/or his employees in any manner that he deems appropriate: Provided that such rights be exercised only as is reasonably required for the purpose of enforcement of, or monitoring compliance with, the Agreement.

- 8.2 After each inspection of an employer's records and operations the agent shall prepare a report for the attention of the employer, worker representatives and, in the case of an individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions. Any disclosure of information shall comply with the provisions of the Labour Relations Act, 1995.

- 8.3 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 the Collective Agreement to comply with within 14 days.

- 8.4 A Designated Agent shall have the powers set out in sections 33 and 33A of the Act and in Schedule 10 of the Act.

9. EXEMPTIONS

- 9.1 Any person bound by this Agreement may apply to the BCCEI Independent Exemptions Committee for an exemption from any provision of this agreement in the manner provided for in the BCCEI Exemptions Policy, attached as Appendix A

- 9.2 Any person may lodge an appeal against the decision of the Independent Exemptions Committee to the Independent Appeal Board in the manner provided for in the BCCEI Exemptions Policy, attached as Appendix A

10. RESOLUTION OF DISPUTES

Any dispute about the interpretation, application, or enforcement of this Agreement shall be referred to the Council and shall be dealt with in accordance with the provisions contained in the Bargaining Council for the Civil Engineering Industry Dispute Resolution Collective Agreement.

11. EXHIBITION OF AGREEMENT

Every employer shall affix and keep in an assigned conspicuous place upon his premises, a copy of this Agreement, in legible characters.

12. MEMBERS' BENEFITS

Members will be entitled to retirement, death and disability benefits in terms of the Rules of the Fund.

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Appendix A



CIRBF EXEMPTIONS POLICY
(Construction Industry Retirement Benefit Fund)

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NATIONAL EXEMPTIONS AND APPEAL POLICY FOR THE CIVIL ENGINEERING INDUSTRY**INDEX**

Table of Contents	Page
1. Introduction	3
2. Definitions	3
3. Fundamental Principles	4
4. Criteria	6
5. Appeal	7
6. Composition of the Exemption Committee and Independent Appeal Body	8
7. Chairperson of the Exemption Committee and Independent Appeal Body	8
8. Conduct of members of the Exemption Committee and Independent Appeal Body	9
9. Quorum	9
10. Decisions of the Exemption Committee and Independent Appeal Body	9
11. Meetings of the Exemption Committee and Independent Appeal Body	9

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T. G. M. f²

1. Introduction

- 1.1 The purpose of this document is to set out the principles and procedures which will apply to the consideration of applications for exemptions.
- 1.2 Any person bound by a Council Collective Agreement may apply for an exemption.
- 1.3 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:
 - 1.3.1 Determine the specific types of exemption applications which the Exemptions Committee ("EC") may deal with and those which could be referred to the Office for decision; or
 - 1.3.2 Determine that all exemption applications must be dealt with by the EC.
- 1.4 Where the Office or the EC is given the authority to deal with an exemption application and an appeal is lodged against a decision of the Office or the EC then this appeal must be referred to the Independent Appeal Body ("IAB") for final decision.
- 1.5 Exemption applications and appeals must be considered on the basis of criteria established in this policy.
- 1.6 Where the Office, EC or IAB wishes to apply other criteria to address a specific situation they must make recommendations in this regard to the BCCEI Council Committee to obtain approval prior to implementing the desired criteria.
- 1.7 Reasons for granting or refusing an application for exemption or appeal shall be recorded and retained by the Council. The applicant must on request be provided with reasons for the decision.
- 1.8 The Council Committee may at any time after prior notification and only upon request of the Office and after due consideration of a compliance report, withdraw an exemption either wholly 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 is defined in the Labour Relations Act 66 of 1995 ("Act"), 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, duly registered in terms of section 30(1) of the Act under reference number LR 2/6/160. Any functions to be performed by the Council in terms of this policy shall 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.

'Council Committee' refers to the committee established in terms of the Council's constitution

'Appeal' means an appeal against a decision of the Council, Office or the EC concerning an application for exemption from the provisions of a Collective Agreement of the Council, and includes an appeal from a decision to grant, vary, refuse or withdraw an exemption. -

'EC' means the Exemption Committee of the Council authorised with hearing and deciding exemption applications;

'Day' means calendar day

'IAB' means the Independent Appeal Body constituted to deal with appeals in terms of section 32 (3) (e) of the Act

'Interested Party' means any party that made, opposed or supported an exemption application, or, has an interest in the outcome of the application.

'Members' shall mean members of the EC or IAB

'Office' means the BCCEI administration.

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3. Fundamental Principles

The following are fundamental principles which are legal obligations imposed on the Council, EC or IAB by the Council's Collective Agreements.

The Council hereby establishes an EC and IAB, constituted of persons independent of the Council, to consider applications for exemption from the provisions of the Council's Collective Agreements. In terms of section 32 (3)(e) of the Act, the Council establishes an IAB to hear and decide any appeal brought against the EC, Office or Council Committee's decision in an application for exemption from the provisions of a Collective Agreement or the withdrawal or variation of an exemption.

3.1 All applications must be in writing on the appropriate application form(s) obtainable from the BCCEI office or website and signed as an affidavit in the presence of a Commissioner of Oaths. Submissions must be accompanied by a fully detailed motivation that explains the need for the exemption and submitted to the Council for consideration. The detailed motivation is not the same as the business plan (see clause 3.7.1 below). Supporting documentation such as audited financial statements, details of consultations and any other documentation required by the Office, EC or IAB from time to time, must be submitted. (Please note that there is no application form for appeals. The application must however set out the name and contact details of the party lodging the appeal and comply with the requirements as set out for an appeal application)

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3.3 In terms of section 32(3)(dA) of the Act, all applications for exemption will be dealt with within 30 days of receipt of a complete application.

3.4 In considering an application for exemption, the Council, Office, EC and IAB must consider the representations and evidence submitted by the employer and the employees and/or their representative 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.

3.5 The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of the Councils' Collective Agreements. An exemption may not be granted in respect of any matter which is covered by an arbitration award binding on the applicant.

3.6 Wage and wage related exemptions should not generally be granted beyond the expiration of the agreement provided that the EC or IAB may at its discretion and on good cause shown agree to a longer period (but not an indefinite period).

3.7 Applications for exemption of the implementation of the minimum wages, bonus payments or any other monetary exemption specified in the Conditions of Employment Collective Agreement or Wage and Task Grade Collective Agreement will be dealt with after giving consideration to the following:

3.7.1 Clear evidence of financial difficulties including:

- i) The most recent set of Audited Financial Statements and auditor's report signed by the auditor (or accounting officer in the case of CC's);
- ii) Latest Management Accounts covering the period from the date of the above financial statements to the date of application;
- iii) An explanation of the difficulties being faced by the employer;
- iv) A business plan which must give a breakdown of what the employer is paying the employees at present and, where necessary, provide a proposed time frame and indication of how and when the employer will "catch-up" with the minimum conditions of employment standards as set out in the BCCEI Collective Agreements.
- v) The savings in cost to the employer should the exemption be granted and workings in arriving at the this cost.

3.7.2 The employer must notify the Council each year of how they are progressing with their business plan;

3.7.3 If the employer does not comply with the business plan, the exemption will automatically terminate and the employer shall have to re-apply.

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- 3.8 The employer must consult with the employees, through a trade union representative or, where no trade union is involved, with the employee representatives or employees themselves, and must include the views expressed by the employees in the application.
- 3.8.1 Where the views of the employees differ from that of the employer, the reasons for the views expressed must be submitted with the application.
- 3.8.2 Where the employees are members of a recognised trade union, the employer should inform the local trade union office of the intention to apply for exemption and request, in writing, a meeting with the local trade union official to discuss the impact of the exemption on the employer and the members of the trade union.
- 3.8.3 Where the employees have elected a trade union representative or representatives (shop stewards) these persons should be requested to sign the application to confirm that they were consulted and that they understand the need for the application. Where the local trade union official and/or shop stewards have been consulted where they reject the application, such rejection must be recorded in the application and countersigned by at least two witnesses.
- 3.8.4 Where the local trade union official and/or shop stewards and/or employees support the application, this signed agreement should be included in the application.
- 3.8.5 All meetings in this regard between the employer, employees, shop stewards and trade union officials should be minuted and the minutes together with the attendance registers should be submitted with the application.
- 3.8.6 The employer needs to ensure that the required proof of consultation and/or notification of its intention to apply for exemption as provided for by the exemption application form is duly included and submitted with the exemption application form.
- 3.9 The application itself must be signed by either a director of the firm, member, owner or a senior accountant (not bookkeeper). The human resources manager may sign applications for overtime exemptions.
- 3.10 The Council, Office, EC and IAB will make a decision(s) on the application as submitted.
- 3.11 It is not a condition of the exemption that employees accept the proposed exemption. All that is required is that employees and their representatives are fully informed of the employer's intention to apply for exemption and that this consultation process and their responses thereto are formally recorded and submitted with the application.
- 3.12 Retrospectively
Applications for exemption may not be granted retrospectively. The Office, EC or IAB may, on a request which is substantively explained and motivated, condone a past period.
- 3.13 Urgent applications
- 3.13.1 In cases of urgent applications, details may be faxed, e-mailed or hand delivered to the Council.
- 3.13.2 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 EC.
- 3.13.3 The applicant is expected to put forward a substantive explanation as to the urgency of the application.
- 3.14 Condonation
- 3.14.1 The EC and IAB may, on good cause shown, condone the late filing of an application or any documents.
- 3.14.2 An application for condonation must be on affidavit.
- 3.15 Oral submissions
- 3.15.1 The Office, EC and IAB decide applications based on the papers filed.
- 3.15.2 Any interested party may apply for an opportunity to present oral submissions.
- 3.15.3 In deciding whether to allow oral submissions, the following must be taken into account –
- i) the complexity of the matter,

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- ii) the comparative abilities of the parties to present their submissions in writing;
 - iii) the interests of justice.
- 3.15.4 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.
- 3.15.5 The EC and IAB may limit the time allocated to each party for oral submissions.
- 3.15.6 Meetings that hear oral evidence or oral submissions may be open to the public at the discretion of the EC and IAB.
- 3.16 The Council, Office, EC or IAB 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 trade union or employee representatives must also be invited to be present.)
- 3.17 The Office must notify the applicant and/or affected parties of the decision within 7 (seven) days from the last day of the meeting when the application was considered. Reason(s) for the decision will be given not later than 30 (thirty) days upon receipt of a written request from the applicant or affected employees and/or their representatives.
- 3.18 If the application is granted, the Council shall issue an exemptions licence signed by the General Secretary of the BCEI or his/her designate, containing the following:-
 - 3.18.1 The full name of the applicant(s);
 - 3.18.2 The trade name (if applicable);
 - 3.18.3 The provisions of the Council Collective Agreement from which exemption is granted;
 - 3.18.4 The period for which the exemption shall operate;
 - 3.18.5 The date issued;
 - 3.18.6 The area in which the exemption applies;
 - 3.18.7 The condition(s) of the exemption granted.
- 3.19 The Council shall:-
 - 3.19.1 Retain a copy of the licence;
 - 3.19.2 Forward a copy of the licence to the applicant.
- 3.20 The applicant to whom a licence has been issued shall at all times have the licence available for inspection at its establishment and site/s affected by the licence.

4. Criteria

- 4.1 In considering applications for exemption or appeals, the Council, Office, EC or IAB shall take into consideration all relevant factors, which may include, but shall not be limited to the following criteria:
 - 4.1.1 The applicant's past record (if applicable) of compliance with the provisions of the Council Collective Agreements and previous exemptions granted;
 - 4.1.2 Any special circumstances that exist;
 - 4.1.3 The interest of the industry as regards to:
 - i) Unfair competition;
 - ii) Collective bargaining;
 - iii) Potential for labour unrest;
 - iv) Increased employment.
 - 4.1.4 The interest of the employees as regards to:
 - i) Exploitation;
 - ii) Job preservation;

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- iii) Sound conditions of employment;
- iv) Possible financial benefits;
- v) Health and safety;
- vi) Infringement of basic rights.
- 4.1.5 The interest of the employer as regards to:
 - i) Financial stability;
 - ii) Impact on productivity;
 - iii) Future relationship with employees and trade unions;
 - iv) Operational requirements.
- 4.1.6 Any criteria established or approved by the Council Committee of the Council.

5. Appeal

- 5.1 In the event of, a decision to grant/vary/refuse or withdraw an exemption, the affected party(ies) and/or their representative(s) shall have the right to appeal in writing against the decision to the IAB.
- 5.2 An appeal to the IAB must be sent in writing within 14 (fourteen) days of the applicant being notified of the decision. The notice of appeal must set out the grounds on which the applicant's appeal is based.
- 5.3 The notice of appeal must:
 - 5.3.1 Set out the name and contact details of the party lodging the appeal;
 - 5.3.2 Provide a summary of the grounds for the appeal;
 - 5.3.3 Identify the provisions of the Council Collective Agreement to which the exemption application relates.
- 5.4 The following documents must be attached to the notice of appeal:
 - 5.4.1 A copy of the decision of the Council, Office or EC and the reasons for the decision;
 - 5.4.2 A copy of the original exemption application and annexures;
 - 5.4.3 Copies of any notices, letters, affidavits or any other documents handed to the applicant.
- 5.5 If any of the documents referred to above are not in the possession of the party lodging the appeal, the notice of appeal must:
 - 5.5.1 Specify which documents should be attached but are not attached;
 - 5.5.2 Set out why the documents are not in the possession of the party lodging the appeal.
- 5.6 The applicant may attach to its notice of appeal written submissions on any issue raised by the Council, Office or EC.
- 5.7 An exemption appeal may be lodged by any interested party in respect of the whole or part of a decision.
- 5.8 An exemption appeal is a reconsideration of the merits of the original exemption application and may involve a rehearing of the merits of the original exemption application.
- 5.9 The IAB must consider:
 - 5.9.1 Any representations and evidence considered by the Council, Office or EC;
 - 5.9.2 The decision made and the reasons for that decision;
 - 5.9.3 Any additional representations submitted by the applicant or any other party;
 - 5.9.4 Any other evidence placed before the IAB.
- 5.10 In addition to the criteria set out in clause 4 the IAB must consider:
 - 5.10.1 The financial hardship of the applicant for exemption;
 - 5.10.2 The potential impact an exemption may have on the collective bargaining process;
 - 5.10.3 Whether alternatives to exemption were considered or implemented;

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- 5.10.4 The need to avoid retrenchments;
- 5.10.5 Any other factors relevant to the particular exemption application.
- 5.11 The IAB may:
 - 5.11.1 Confirm, vary or set aside the decision;
 - 5.11.2 Make any other decision that the Council, Office or EC could have made.
- 5.12 New evidence
 - 5.12.1 An interested party may apply to the IAB to lead new evidence on appeal.
 - 5.12.2 New evidence may relate to facts or events that took place before or after the date of the initial exemption application.
 - 5.12.3 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;
- 5.13 The IAB may –
 - 5.13.1 Refuse the application for the leading of new evidence;
 - 5.13.2 Grant the application for the leading of new evidence in whole or part and –
 - i) consider the evidence itself;
 - ii) remit the appeal to the Council, Office or EB with an instruction to consider the new evidence and reconsider its decision in the light of that evidence.
- 5.14 If the IAB 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.
- 5.15 If the IAB directs that evidence must be on affidavit –
 - 5.15.1 The relevant affidavits must be filed with the Council within 7 (seven) days of the IAB's decision to allow the evidence to be lead;
 - 5.15.2 Other interested parties may file answering affidavits within 7 (seven) days of receiving an affidavit containing new evidence;
 - 5.15.3 The party that filed the affidavit containing new evidence may, within 7 (seven) days of receiving any answering affidavit, file-
 - i) a replying affidavit;
 - ii) Supplementary submissions;
- 5.16 Other interested parties may file supplementary submissions –
 - 5.16.1 Within 7 (seven) days of receiving any supplementary submissions or replying affidavits;
 - 5.16.2 If no supplementary submissions or replying affidavits are filed, within 7 (seven) days of the filing of any answering affidavit; or
 - i) if no answering affidavits are filed, within 7 (seven) days of receiving the affidavit containing new evidence.
- 6. Composition of the Exemptions Committee and Independent Appeal Body
 - 6.1 The Council must appoint members to the EC and IAB on such terms and conditions they deem fit. The EC and IAB will comprise of at least 3 (three) members per committee.
 - 6.2 The EC and IAB members hold office until-
 - 6.2.1 They resign on 3 (three) months' written notice to the Council;
 - 6.2.2 Or the Council resolves to terminate their membership.
- 7. Chairperson of the Exemptions Committee and Independent Appeal Body

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7.1 The EC and IAB shall elect one of the members as chairperson.

8. Conduct of members of the Exemptions Committee and Independent Appeal Body

8.1 Members of the EC and IAB –

8.1.1 Must be independent and impartial and perform the functions of office in good faith;

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

9. Quorum

9.1 2 (Two) members of the EC or IAB form a quorum for any meeting.

9.2 If only 2 (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. Any further discussion regarding this application can only take place once the meeting is attended by at least 3 (three) members.

9.3 If an application to lead oral evidence or to present oral submissions is granted, the application must be heard by a meeting attended by at least 3 (three) members.

10. Decisions of the Exemptions Committee and Independent Appeal Body

10.1 A decision agreed and confirmed in writing by three members is as valid as a decision adopted at a duly convened meeting of the EC or IAB.

10.2 A decision must be signed by the chairperson.

11. Meetings of the Exemptions Committee and Independent Appeal Body

11.1 Unless otherwise provided for in this policy, the chairperson of the EC and IAB must determine the date and time for meetings, in consultation with the Council.

11.2 The EC and IAB must meet –

11.2.1 At least once a month, unless there are no applications to be considered; or

11.2.2 When requested to do so by the General Secretary.

11.3 If a meeting of the EC or IAB does not finalise an application, the application may be postponed to a date and time agreed by the members.

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DEPARTMENT OF LABOUR

NO. R. 1108

19 OCTOBER 2018

LABOUR RELATIONS ACT, 1995

CORRECTION NOTICE

**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY:
EXTENSION OF CONDITIONS OF EMPLOYMENT COLLECTIVE
AGREEMENT TO NON-PARTIES**

In the *Government Gazette* No. 41888 of 7 September 2018 as it appeared in Government Notice No. R. 936, the following is hereby published for general information:

In the English Schedule, under the Sub-heading "1.3 Definitions and expressions", replace the definition of short-time with the following:

'Short-time' means a temporary reduction in the number of ordinary hours of work owing to vagaries of the 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.

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