

DEPARTMENT OF LABOUR


NO. R. 951

14 SEPTEMBER 2018

LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY
(BCCEI): EXTENSION OF WAGE AND TASK GRADE COLLECTIVE
AGREEMENT TO NON-PARTIES**


I, **NELISIWE MILDRED OLIPHANT**, Minister of Labour hereby in terms of section 32(2) read with section 32(8) of the Labour Relations Act, 1995, declare that the Wage Task Grade Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Civil Engineering Industry (BCCEI)** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Wage Task Grade 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 2021.

..........
MN OLIPHANT, MP
MINISTER OF LABOUR
DATE: 23/08/2018

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

**UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI
EPHATHELENE NEZOKWAKHA IMIGWAQO NAMABHULOHO: UKWELULWA
KWESIVUMELWANO SEMIHOLO KANYE NESIGABA SEMISEBENZI YEZABASEBENZI,
SELULELWA KULABO ABANGEYONA INGXEYI YESIVUMELWANO**

Mina, **MILDRED NELISIWE OLIPHANT**, onguNgqongqoshe Wezabasebenzi, ngokwesigaba-32(2) sifundwa nesigaba 32(8) soMthetho Wobudlelwano Kwezabasebenzi, ka-1995, ngazisa ukuthi isivumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini ephathelene nezokwakha Imigwaqo 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 2021.

..........
MN OLIPHANT, MP
UNGQONGQOSHE WEZABASEBENZI
USUKU: 27/08/2018.....



WAGE AND TASK GRADE COLLECTIVE AGREEMENT

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TABLE OF CONTENTS

SCHEDULE	3
Application and Interpretation of Agreement	3
1. Application of agreement	3
2. Scope of Application of Agreement	4
3. Definitions and expressions	5
 CHAPTER I	
GENERAL	
1. Administration of the Agreement	6
2. Designated Agents	6
3. Levels of Bargaining in the Industry and Peace Obligation	6
4. Attendance of Worker Representatives on Bargaining Council Committee meetings	7
 CHAPTER II	
EXEMPTIONS	
1. Wages, Wage Tables And Task Grade Interpretation	7
 CHAPTER III	
WAGES, WAGE TABLES AND TASK GRADE INTERPRETATION ⁸	
1. Wages and/or Earnings	7
 CHAPTER IV	
APPENDICES TO THE AGREEMENT	8
1. BCCEI Exemptions and Appeal Policy - APPENDIX A	
2. Civil Engineering Industry Task Grade Wage Rates - APPENDIX B	

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SCHEDULE**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY WAGE AND TASK GRADE AGREEMENT**

In accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the –

Employers' Organisation

South African Forum of Civil Engineering Contractors (SAFCEC)

Consolidated Employers Organisation (CEO)

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

Trade Unions

National Union of Mine Workers (NUM)

Building, Construction and Allied Workers' Union (BCAWU)

(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)

APPLICATION AND INTERPRETATION OF AGREEMENT**1. Application of Agreement****1.1 This Agreement binds:**

- i. All employers in the Civil Engineering Industry that are members of the employers' organisation that is party to this agreement; and
- ii. All employees in the bargaining unit, employed in the Civil Engineering Industry 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 Except as otherwise provided for in this Agreement, this Agreement establishes the minimum rate of pay for all scheduled employees as defined in the BCEI Conditions of Employment Collective Agreement, irrespective of whether the employee is employed in terms of an exemption from this Agreement or under conditions determined by the Council.****1.4 This agreement applies to learners, only insofar as it is not inconsistent with the Skills Development Act, 1998.****1.5 Period of operation of agreement**

- i. This agreement becomes binding on the employers and employees - refer to sub-clause (1.1), once it

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is extended by the Honorable Minister of Labour, in terms of Section 32 of the act 66 of 1995, from a date determined by the Honorable Minister of Labour.

- ii) This agreement shall remain in force until: **31 August 2021**

1.6 This agreement becomes binding on the employers and employees referred to in sub-clause 1.1 to 1.5 once it is extended to non-parties by the Honorable Minister of Labour.

2. 'Scope of application of Agreement' means:-

2.1 The Civil Engineering Industry in which employers (other than local authorities) and employees are associated for the purposes of carrying out work of 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, 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, retainings, 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) two (f) inclusive; but excluding -
 - i) Work in connection with any one or more of the activities specified in definition (c) 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 or more of the activities specified in subclause (c) 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.

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3. Definitions and expressions

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

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

'Bargaining Unit' shall mean all the employees falling within the Task Grades as per the wage schedule APPENDIX D.

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

'CPI' means the average Consumer Price Index as published by Stats SA for the 3 (three) month period of May, June and July of that particular year.

'Employee' means –

- i) Any person, excluding an independent contractor, who works for another person or for the state 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.

'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;

'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.

'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;

'Promulgation date' means the date of official implementation of an aforesaid agreement/legislation

'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";

'Wage' means the amount of money payable to an employee in terms of Clause (1) found in Chapter V of the 'BCCEI Conditions of Employment Agreement' in respect of the ordinary hours of work as prescribed in Clause (2) in Chapter I of the 'BCCEI Conditions of Employment Agreement'. 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 'Conditions of Employment Agreement' receives over and above the amount which the employee would have received had he or she not been employed on such a basis

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

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CHAPTER I
GENERAL

1 Administration of the Agreement

- 1.1 The Council is the Body responsible for the administration of this Agreement

2 Designated Agents

- 2.1 The Minister, at the request of the Council, shall appoint one or more persons to be Designated Agents to assist in giving effect to the terms of this agreement, including the issuing of compliance orders requiring any person bound by this agreement to comply within 14 days.
- 2.2 A Designated Agent shall have all the powers indicated in section 33,33A and Schedule 10 of the Act
- 2.3 The Council must appoint one or more persons as Designated Agents to enforce and monitor compliance with this Agreement, in any manner that is reasonably required for compliance with this Agreement, by-
- 2.3.1 Entering and inspecting premises;
- 2.3.2 Examining records; and
- 2.3.3 Questioning an employer or employees of the employer in any appropriate manner.
- 2.4 After each inspection of an employer's records and operations, an agent must prepare a report for the attention of the employer, worker representatives and, in the case of an individual complainant, the complainant and, stating-
- 2.4.1 The date and time of the inspection;
- 2.4.2 If any contraventions of the Agreement were identified, a summary of the contraventions; and
- 2.4.3 The action that management is required to take to rectify the contraventions.
- 2.5 A Designated Agent may not make any disclosure of information in circumstances which are not permitted in terms of section 201 of the Labour Relations Act, 1995.

3. Levels of bargaining in the Industry and Peace Obligation

- 3.1 Subject to sub-clause 3.2 —

- 3.1.1 The Bargaining Council shall be the sole forum for negotiating matters contained in the Conditions of Employment Agreement;
- 3.1.2 During the currency of the Conditions of Employment Agreement, no matter contained in the Conditions of Employment Agreement may be an issue in dispute for the purposes of a strike or lock-out or any conduct in contemplation of a strike or lock-out;
- 3.1.3 Any provision in a collective agreement binding an employer and employees covered by the Council, other than a collective agreement concluded by the Council, that requires an employer or a trade union to bargain collectively in respect of any matter contained in the Conditions of Employment Agreement, is of no force and effect.

- 3.2 Where bargaining arrangements at plant and company level, excluding agreements entered into under the auspices of the Bargaining Council, are in existence, the parties to such arrangements may, by mutual agreement, modify or suspend or terminate such bargaining arrangements in order to comply with sub-clause 3.1. In the event of the parties to such arrangements failing to agree to modify or suspend or terminate such arrangements by the date of implementation of the Conditions of Employment Agreement, the wage increases on scheduled rates and not on the actual rates shall be applicable to such employers and employees until the parties to such arrangement agree otherwise.

- 3.3 The provisions of these clauses shall apply equally to any trade unions not party to this Agreement.

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4. Attendance of worker representatives on bargaining council committee meetings

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

CHAPTER II**EXEMPTIONS**

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

CHAPTER III**WAGES, WAGE TABLES AND TASK GRADE INTERPRETATION**

1. Wages and/or Earnings
- 1.1 Any employee who at the date of coming into operation of this Agreement was in receipt of a higher rate than that prescribed in this Agreement for the task grade which he/she is employed on shall continue to receive not less than such higher rate while he is employed by the same employer on the same Task Grade
- 1.2 Every employee who on the date of coming into operation of this Agreement is employed by an employer on a Task Grade classified in the Agreement shall, whilst in the employ of the same employer and whether or not his actual rate of pay immediately prior to the said date was in excess of the rate specified for his Task Grade in this Agreement, be paid not less than the actual rate he was receiving immediately prior to the said date plus, an additional amount for his Task Grade, as set out in the Wage Tables hereunder: Provided that:
- 1.2.1 The additional amount payable in terms of this sub-clause to an employee for his Task Grade may be reduced by the amount of any increase or increases granted to such employee/s prior to the promulgated wage increases.
- 1.2.2 Any employee who was engaged after the date of such promulgated increases at a rate of pay not less than the rate of pay prescribed for his Task Grade as at the date of coming into operation of this Agreement, shall not be entitled to be paid the additional amount specified in this sub-clause for the employee's Task Grade
- 1.3 Subject to the provisions of sub-clauses 1.1 to 1.3 inclusive, no employer shall pay to the employees engaged on any of the Task Grades hereinafter specified in the following Wage Schedules wages and/or earnings lower than those stated against such Task Grades and no employee shall accept wages and/or earnings lower than those stated against such Task Grades.
- 1.4 The payment of wages and/or earnings shall be calculated as set out in Chapter V, Clause 1 in the BCCEI Conditions of Employment Collective Agreement.

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CHAPTER IV
APPENDICES TO THE AGREEMENT

1. Wage Exemption Application Guidelines

1.1 Exemptions Policy, attached as Appendix A

2. Civil Engineering Industry Task Grade Wage Rates

2.1 Civil Engineering Industry Task Grade Wage Rates attached as Appendix B

2.2.1 IMPORTANT NOTICE:

Wage increases in Appendix B will apply only from the date of coming into operation of the BCCEI Wage and Task Grade Collective Agreement. The dates on the Wage Rates Table within this Appendix indicate the minimum wage rate an employee has to be paid for their specific task grade. All employees must, at the date of coming into operation of this agreement, receive either the new wage rate applicable to his/her Task Grade.

2.2.2 Across the board wage increase (ATB):-

- i) In Year 1, from the date as determined by the Minister of Labour, up to 31 August 2019, employees who earn above the published rate will receive an ATB of 7.5% on their current rate.
- ii) In Year 2, from 01 September 2019 to 31 August 2020, employees who earn above the published rate will receive an ATB of 7.5% on their current rate.
- ii) In Year 3, from 01 September 2020 to 31 August 2021, employees who earn above the published rate will receive an ATB of 7.5% or CPI whichever is the greater on their current rate. CPI as defined in the Wage and Task Grade Collective Agreement.

2.2.3 No employer shall at the date of coming into operation of this agreement reduce the rate of pay of any employee who earns more than the minimum prescribed for his class of work;

2.2.4 No employer shall at the date of coming into operation of this agreement pay any employee engaged on any of the classes of work specified in this agreement wages and/or earning lower than those specified for his class of work;

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APPENDIX B

Task Grade Wage Rates					
Task Grade	Occupational Group	Job Title	Hourly Rate as per promulgation date up to 31 August 2019 adjusted by 7.5%	Hourly Rate from 01 September 2019 to 31 August 2020 adjusted by 7.5%	Hourly Rate from 1 September 2020 to 31 August 2021 adjusted by 7.5% or CPI whichever is the greater
1	General Worker	General Worker	34.45	37.04	39.82
		Watchman			
2	Site Support	Artisan Aid	35.26	37.90	40.75
	Construction Hand Grade IV	Safety Watcher			
		Hoist/Lift Operator Structures			
		Construction Hand Premix Paving			
		Checker/Tallyman			
	Operator Grade V	Steel Bending Machine Operator			
		Crusher Assistant			
		Civil Construction Bricklayer Gr II			
		Boom Scraper Operator			
		Hoist/Lift Operator Pedestrian Roller Operator			
3	Construction Hand Grade III	Material Tester Assistant	36.24	38.96	41.88
		Checker			
		Chainman			
		Chainman/Survey Assistant			
	Site Support	Shutterhand Gr III			
		Concrete hand Gr II			
		Track Rig Operator (general)			
		Bore Pile Operator			
	Site Support	Winch Operator			
		Drilling Supervisor			
		Winch Operator			
		Junior Site Clerk			
4	Construction Hand Grade II	Welder Semi-Skilled	37.24	39.96	42.88
		Rakeman			
		Pipelayer Gr 2			
		Storeman			
	Site Support	Frontman			
		Banksman/Rigger			
		Assistant			
	Construction Hand Grade I				

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Task Grade Wage Rates					
Task Grade	Occupational Group	Job Title	Hourly Rate as per promulgation date up to 31 August 2019 adjusted by 7.5%	Hourly Rate from 01 September 2019 to 31 August 2020 adjusted by 7.5%	Hourly Rate from 1 September 2020 to 31 August 2021 adjusted by 7.5% or CPI whichever is the greater
4	Construction Hand Grade II	Shutterhand Gr II Reinforcing Hand Gr II Concrete Hand Gr I Fence Erector Scaffold Erector Guard Rail Erector	37.59	40.41	43.44
	Operator Grade III	Concrete Mixer Operator Continuous Flight Auger Operator Batch Plant Operator Concrete Dumper Operator Concrete Pump Operator (Mobile) Tower Crane Operator General Premix Roller Operator Milling Machine Operator Paver Operator Excavator Operator (Measured) Front End Loader Operator TLB Operator Mechanical Broom Operator Dozer Operator Grader Operator (general) Sprayer Operator (Bituminous) Road Recycler Operator Gunite Nozzleman Crusher Operator			
	Driver Grade II	Motorcycle Driver Tractor Driver Light Motor Vehicle Driver Driver Operator Forklift Operator Articulated Dumper Truck Operator Heavy Duty Driver (rigid) Hauler Driver (Bituminous) Extra Heavy Duty Driver (rigid)			
	Site Support	Blasting Assistant Formwork Controler Material Tester Tools and small plant repairer			

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Task Grade Wage Rates					
Task Grade	Occupational Group	Job Title	Hourly Rate as per promulgation date up to 31 August 2019 adjusted by 7.5%	Hourly Rate from 01 September 2019 to 31 August 2020 adjusted by 7.5%	Hourly Rate from 1 September 2020 to 31 August 2021 adjusted by 7.5% or CPI whichever is the greater
6	Construction Hand Grade I	Shutterhand Gr I	42.54	45.73	49.16
		Piling Auger Machine Operator			
		Reinforcing Hand Gr I			
		Pipelayer Gr I			
		Kerblayer Gr I			
		Scaffold Inspector			
		Civil Construction Bricklayer Gr I			
	Operator Grade II	Mobile Crane Operator			
		Screed Operator			
		Scraper Operator			
	Driver Grade I	Batch Plant Operator			
		Heavy Duty Driver (articulated)			
		Extra Heavy Duty Driver (articulated)			
6		Material Tester			
	Site Support	Assistant surveyor			
	Driver	Sprayer Driver (Bituminous)	48.29	51.91	55.8
		Site Clerk			
7	Operator Grade I	Grader Operator (final level)			
	Site Support	Supervisor Gr II	55.31	59.46	63.92
		Senior Materials Tester (Lab./Field)			
		Plant Serviceman			
8		Supervisor Gr I	62.01	66.66	71.66
9	Artisan	Diesel Mechanic, Fitter & Turner, Auto Electrician, Boilermaker, Spray Painter, Welder.	70.09	75.35	81.00

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APPENDIX A

**BCCEI EXEMPTION AND APPEAL POLICY**

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1. Exemption Guidelines

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

Please Note:

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

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EXEMPTION PROCEDURE

Important note for management:

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

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

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

The exemption procedure is detailed hereunder:

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

EXEMPTION APPLICATION FORM

Important note for management:

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

APPLICATION FOR EXEMPTION QUESTIONNAIRE

DATE OF THIS APPLICATION:

PART 1

REGISTRATION DETAILS:

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

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

PART 2.**LABOUR DETAILS:**

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

PART 3.**EXEMPTION DETAILS:**

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

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:

TC. f L.V.⁵

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

We:

1.

2.

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

.....

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

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

SIGNED:

SIGNED:

DESIGNATION:

DESIGNATION:

DATE:

DATE:

T. C. M. 1
6
L.V.

**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.....

T. C. 7
L.V



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:

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

..... 8
 L.V

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.

9
1.2.1

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

2. Definitions

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

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

'Act' means the Labour Relations Act 66 of 1995

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

'Law' includes the common law.

3. Fundamental Principles

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

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

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

- 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.

11
T.G.M. 22

- 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.

3. General

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

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.

T G. h. 11

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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
FOR THE**

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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.

T.G.M. 17

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
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1.3 The following documents must be attached to a notice of appeal –

- (ii) a copy of the decision of the Council or Exemption Body and the reasons for that decision;
- (iii) a copy of the original exemption application and annexures;
- (iv) copies of any notices, letters, affidavits or any other documents handed to the applicant;

1.4 If any of the documents referred to in clause 13.3 are not in the possession of the party lodging the appeal, the notice of appeal must –

- (i) specify which documents should be attached but are not attached;
- (ii) set out why the documents are not in the possession of the party lodging the appeal.

1.5 The appellant may attach to its notice of appeal written submissions on any issue raised by the Council or Exemptions Body.

2 Duty of Council on receipt of appeal

2.1 On receipt of a notice of appeal the Council must –

- (i) confirm that the appeal is an appeal to be determined by the Board;
- (ii) ensure that service on interested parties if required has been effected;
- (iii) ensure that all relevant documentation is attached;

2.2 If the Council is of the view that the appeal is not one to be determined by the Board, the Council must return the appeal to the relevant Regional Council together with an explanation as to how the matter should be dealt with.

3 Incomplete applications

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

4 Answering submissions by other *interested parties*

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

5 New evidence

5.1 An interested party may apply to the Board to lead new evidence on appeal.

5.2 New evidence may relate to facts or events that took place before or after the date of the initial exemption application.

5.3 An application to lead new evidence must –

- (i) be on affidavit;
- (ii) show that the evidence sought to be lead is material and relevant to the issue on appeal;

5.4 The Board may –

- (i) Refuse the application for the leading of new evidence;
- (ii) Grant the application for the leading of new evidence in whole or part and –
 - (a) consider the evidence itself;
 - (b) remit the appeal to the Council or Exemption Body with an instruction to consider the new evidence and reconsider its decision in the light of that evidence.

T.G.M. 20
/ 22

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

6 Condonation

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

7 Oral submissions

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

8 Board meetings open to public

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

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9 Finding and reasons for decision

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

T. G. M. P²²
L. V.