


DEPARTMENT OF LABOUR
NOTICE 909 OF 2017
LABOUR RELATIONS ACT, 1995

**NATIONAL BARGAINING COUNCIL FOR THE LEATHER INDUSTRY OF
SOUTH AFRICA: EXTENSION TO NON-PARTIES OF THE AGENCY SHOP
COLLECTIVE AGREEMENT FOR EMPLOYEES**

I, **MILDRED NELISIWE 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 provisions of the collective agreement which appears in the Schedule hereto, which was concluded in the **National Bargaining Council for the Leather Industry of South Africa** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from the second Monday after the date of publication of the agreement for the period ending 30 June 2027.


.....
MN OLIPHANT, MP
MINISTER OF LABOUR
DATE: 03/11/2017.....

UMNYANGO WEZABASEBENZI**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995****UMKHANDLU KAZWELONKE WOKUXOXISANA PHAKATHI
KWABAQASHI NABASEBENZI BEMBONINI YEZIKHUMBA:****UKWELULELWA KWESIVUMELWANO SENTELA SABAQASHI
NABASEBENZI SELULELWA KULABO ABANGEYONA INGXYENYE
YESIVUMELWANO**

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe WezabaSebenzi, ngokwesigaba 32(2) sifundwa kanye nesigaba 32(8) soMthetho Wobudlelwano KwezabaSebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Kazwelonke Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini yeZikhumba, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabaSebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, siyokuqala ukusebenza kusukela ngomSombuluko wesibili emuva kokushicilelwa kwalesiSivumelwano kufikela ngomhlaka 30 kuNhlangulana 2027.

.....
MN OLIPHANT, MP
UNGQONGQOSHE WEZABASEBENZI
USUKU: 03/11/2017

SCHEDULE**NATIONAL BARGAINING COUNCIL OF THE LEATHER INDUSTRY OF
SOUTH AFRICA
AGENCY SHOP COLLECTIVE AGREEMENT FOR EMPLOYEES**

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

- a) Southern African Footwear and Leather Industries Association (SAFLIA)**
- b) South African Tanning Employers Organisation (SATEO);**
- c) Association of South African Manufacturers of Luggage, Handbags and
General Goods;**

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

- d) National Union of Leather & Allied Workers (N.U.L.A.W)**

and

- e) Southern African Clothing and Textile Workers Union**

(Hereinafter referred to as the "employees" or the "trade unions" of the other part.

being parties to the National Bargaining Council of the Leather Industry of South
Africa, to conclude an agency shop agreement.



INDEX

1. Scope of application of Agreement
2. Date and Period of Operation
3. Definitions
4. The Agency Shop Agreement
5. Interest on Late Payments
6. Agents
7. Exemptions
8. Dispute resolution

Annexures

- "A" Exemptions and Exemptions Appeal Policy and Procedure

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Leather Industry -
 - (a) by all employers who are members of the employers' organisations and by the party trade unions in the Leather Industry, respectively;
 - (b) in the Republic of South Africa.
- (2) The terms of this Agreement will apply only to employees for whom wages are prescribed in any of the Main Collective Agreements of the Council.
- (3) The terms of this Agreement shall not apply to non-parties in respect of Clauses 1(1)(a), 2(1) and 6.

2. DATE AND PERIOD OF OPERATION

- (1) This Agreement will come into operation for the parties on 25 July 2017 and remain in force for the period ending 30 June 2027,
- (2) This Agreement will come into operation for non-parties on such date as the Minister of Labour extends the agreement to them, and will thereafter remain in force for the period ending 30 June 2027.

3. DEFINITIONS

Words used in this agreement and which are defined in the Labour Relations Act, 1995 shall have the same meaning as in that Act; and unless the contrary intention appears, words importing the masculine gender shall include the feminine.

"Act" means the Labour Relations Act, No.66 of 1995, as amended.

"Agreement" means the Agency Shop Agreement

"Council" means the National Bargaining Council of the Leather Industry of South



Africa.

“Leather Industry” or “Industry” means the industry in which employers and employees are associated —

- (1) for the manufacture, mainly from leather, of -
 - (a) footwear, including all types, but not including bespoke made footwear;
 - (b) attache cases, bags and all other containers designed to hold personal effects, sporting kit, tools and documents;
 - (c) harnesses, bridles, saddlery, saddle bags, leggings, girths, stirrup straps, military equipment other than clothing, ladies' bags, shopping bags, knitting bags, wallets, purses, watch straps, wrist straps, dog collars, dog leads, rugstraps, braces, belts, suspenders, garters, armlets, and all other like articles irrespective of their description but which are designed as substitutes for any of the aforementioned;
 - (d) ladies' and/or children's handbags;
- (2) for the tanning, dressing and fellmongering of hides and skins;
- (3) in establishments in which leather goods are also manufactured, for the manufacture, from materials other than leather, of the articles mentioned in paragraph (1): Provided that this paragraph does not include the manufacture of shopping bags made mainly of paper;
- (4) for the manufacture of all types of footwear from material other than leather;
- (5) for the manufacture of travelling requisites, including trunks, mainly from leather, fibre, wood, cloth, canvas or fabric or any combination thereof;
- (6) for the manufacture of handbags from materials other than leather, in establishments in which leather goods referred to in paragraph (1) are not

manufactured, but excluding the manufacture of handbags

- (a) wholly or mainly from metal;
- (b) from cardboard (corrugated or otherwise) and/or paper or any compound of paper and/or any like material a constituent part of which is cardboard and/or paper and/or any constituent of paper;
- (c) wholly or mainly from plastics other than plastic sheeting material;

(7) for the manufacture-

- (a) wholly or mainly from leather, of footballs, punchballs, netball balls, and boxing gloves;
- (b) of leather-covered hockey and/or cricket balls;

(8) in establishments in which leather goods are not manufactured for the manufacture from materials other than leather, of -

- (a) attache cases, bags and all other containers designed to hold personal effects, sporting kit and documents;
- (b) harnesses, bridles, saddlery, leggings stirrup straps, shopping bags, wallets, purses, watch straps, wrist straps, rug straps, braces and all other like articles, irrespective of their description, but which are designed as substitutes for any of the aforementioned;
- (c) travelling requisites, including trunks, from materials other than leather, fibre, wood, cloth, canvas or fabric or any combination thereof;

Provided that paragraphs (a), (b) and (c) shall not be construed to include -

- (i) the manufacture of metal components and/or attachments;
- (ii) the manufacture of canvas bank bags, canvas kit bags, canvas rucksacks, canvas haversacks, canvas sampling bags and

- canvas explosive bags;
- (iii) the manufacture of any article from rubber;
 - (iv) the manufacture of any article or the practice of any trade or occupation covered by the Printing Industry which, without in any way limiting the generally accepted meaning thereof, means that industry which, or undertaking in which employers and employees are associated in the production of printed matter of any nature whatsoever;
 - (v) the manufacture of any articles from metal and of any kind of container (with or without metal parts) from fibre and/or cardboard (corrugated or otherwise) and/or paper or any compound of paper and/or any like material a constituent of which is fibre and/or cardboard and/or paper and/or any constituent of paper and/or plastics, but excluding the manufacture, wholly or mainly from fibre or plastic sheeting material, of trunks, attache cases, bags and all similar containers designed to hold personal effects, musical instruments and sporting kit;

Provided further that the word "plastic" as contained in paragraph (v) means any of the group of materials which consists of or contains as an essential ingredient an organic substance of a large molecular mass and which while solid in the finished state, at some stage in its manufacture has been or can be forced i.e. cast, calendered, extruded or moulded, into various shapes by flow, usually through the application, singly or together, of heat and pressure.

(9) for the -

- (a) preparation of cured or uncured hides and/or skins for tanning, and for this purpose "preparation of hides and/or skins for tanning" without detracting from its ordinary or technical meaning, includes any of the following:

Washing, soaking, fleshing, deburring, liming, unhairing, dewooling, the removal of scales, deliming, bating and pickling;

- (b) tanning of the cured or uncured hides and/or skins;
- (c) retanning and/or dyeing and/or drying and/or softening and/or buffing and/or dressing and/or finishing and/or laminating of leather and/or the combing and/or shearing and/or ironing of hides and/or skins with the wool or hair on;
- (d) cutting of upholstery panels from leather:

Provided that, for the purposes of subparagraphs (a) to (c), "hides and skins" includes the following:

Pelts with or without the fur on; sheepskins with or without the wool on; game and goat skins with or without the hair on; all types of reptile skins, and bird skins with or without the feathers on.

"Party trade unions" means (a) National Union of Leather & Allied Workers (NULAW) and (b) Southern African Clothing and Textile Workers Union (SACTWU)

"Prescribed Employees" means employees engaged on operations for which wage rates are prescribed in any of the sector collective agreements in the Council

"Wage" means the wage prescribed for an Employee in Column A of the wage provisions of the relevant agreement of the Council and, in the case of the tanning industry, the wage rate prescribed in the agreement for that industry:

Provided that if an Employer regularly pays the Employee an amount higher than this prescribed rate (excluding incentives, overtime and bonus payments), it shall mean such higher amount.

4. THE AGENCY SHOP AGREEMENT

- (1) This agency shop agreement is introduced in terms of the provisions of section 25 of the Act. The object of this agreement is to ensure that all employees whose terms and conditions of employment are from time to time determined and/or amended as the case maybe by collective bargaining under the auspices of the Council, contribute towards its costs.
- (2) Subject to the provisions of this clause, a levy to be known as an "Agency Fee" will be deducted from the wages of all prescribed employees who are not members of the trade unions party to the Council.
- (3) Despite the provisions of this agreement, all prescribed employees who are not members of the trade unions shall at all times be eligible for membership of the trade unions.
- (4) In the event of any non union member electing to join either of the trade unions, such employee will be exempted from the agency fee, and will be transferred to the applicable trade union membership. Trade union membership fee deductions will then commence against the wages of such employee.
- (5) No employee will be compelled to become a member of either of the party trade unions.

- (6) The agency fee shall be equal to 1% (one percent) but not exceeding R15.64 of the employee's basic weekly wage.
- (7) (a) The agency fee so calculated and deducted from the employee's basic wage by the employer will be paid monthly to the General Secretary of the National Bargaining Council of the Leather Industry of South Africa, P O Box 3959, North End, 6056, Port Elizabeth, or at any other such address the Council may decide from time to time, by no later than the fifteenth (15th) day of the following month.
- (b) The General Secretary (or any other duly designated Council employee) will deposit monies received in terms of sub clause 7(a) into a banking account administered by the Council.
- (c) The General Secretary will, at the end of each month, pay to the party trade unions the agency fee received for the preceding month in proportion to their representivity within the scope of the Council. A conscientious objector may request an employer to pay the agency fee deducted from his wages into a fund administered by the Department of Labour.
- (d) The trade unions will, on receipt of the agency fees from the Council, deposit such amounts into a dedicated separate account and administer same in accordance with the terms of this agreement.
- (8) When transmitting payments in terms of sub clause 7(a), the employer will submit a list of the employees from whose wages the agency fee has been deducted.
- (9) The list submitted in terms of sub clause (8) must reflect the following:
- (i) Name, surname and work number of the contributor;

- (ii) Weekly wage of contributor;
 - (iii) Agency fee deducted.
- (10) No agency fee deducted may be –
- (a) paid to a political party as an affiliation fee;
 - (b) paid as a contribution in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio economic interests of employees.
- (11) This agreement will terminate in the event that the trade unions are no longer representative within the scope of the Council. In the event of this occurring, the employer organisations must give the trade unions written notice of their lack of representation, and allow them 90 days from the date of notification to establish that they are representative. Should the trade unions fail to establish their representation within the 90 day period, the employer organisations must give the trade unions 30 days' notice of termination, after which period the agreement will terminate.

In the event of this agency shop agreement being terminated, the provisions of section 98, 100(b) and (c) of the Act apply.

5. INTEREST

- 1) Should any amount due in terms of Clause 4(7)(a) not be received by the fifteenth day of the month following the month in respect of which it is payable, the Employer shall pay interest on such outstanding amount at a rate determined by the Council from time to time, subject to the provisions of the

Limitation and Disclosure of Finance Charges Act, 1968.

- 2) The interest in terms of subclause (1) shall be calculated from the first day of the month in which payment became due until the day upon which payment is actually received by the General Secretary.
- 3) The Council shall be entitled in its absolute discretion to waive payment of interest or part thereof.

6. AGENTS

- (1) The Council shall appoint one or more of its agents to assist in giving effect to the terms of this Agreement.
- (2) It shall be the duty of every party employer to permit such persons to enter its establishment and permit them to institute such enquiries and to examine such documents, books, wage-sheets, pay envelopes and pay tickets and to question such individuals in order to ascertain whether the provisions of this Agreement are being complied with.

7. EXEMPTIONS

Exemptions and exemption appeals shall be followed in terms of provisions made in Annexure "A"

8. DISPUTE RESOLUTION

- (1) The Secretary of the Council may at any time require a designated agent to monitor compliance with the provisions of this Agreement.
- (2) Any person may lodge a complaint or refer a dispute about the interpretation, application or enforcement of this Agreement to the Secretary of the Council for resolution in terms of this Agreement.
- (3) The Secretary of the Council may require a designated agent to investigate the complaint or dispute.
- (4) The designated agent shall investigate the facts surrounding the dispute and if the agent has reason to believe that a collective agreement has been breached, the agent may endeavour to secure compliance with the agreement through conciliation.
- (5) The designated agent must submit a written report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.
- (6) If in the course of performing duties of a designated agent, an agent discovers what appears to be a breach of the Agreement, the agent:
 - (a) may investigate the alleged breach;
 - (b) may endeavour to secure compliance with the Agreement; and
 - (c) must submit a report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.
- (7) On receipt of the report, the Secretary may:
 - (a) require the designated agent to make further investigations;
 - (b) if further conciliation is indicated, appoint a conciliator from the Council's panel of conciliators;

- (c) refer the dispute for conciliation to the Disputes Committee of the Council;
 - (d) issue a compliance order; or
 - (e) refer the dispute to arbitration in terms of this Agreement.
- (8) If a conciliator is appointed or the dispute is referred to the Disputes Committee, the Secretary must decide the date, time and venue of the conciliation meeting and must serve notices of these particulars on the parties to the dispute.
- (9) Where a dispute is referred to conciliation, the conciliator or disputes committee must attempt to resolve the dispute within a period of 30 days or within an extended period as agreed by the parties to the dispute.
- (10) Where a dispute is not resolved after a conciliation meeting, or after 30 days, or after any extended period as agreed between the parties, the Council must issue a certificate stating that the dispute was not resolved.
- (11) Where the Act requires a dispute to be resolved through arbitration and a certificate has been issued in terms of (10), any party may request the Council to appoint an arbitrator to resolve the dispute. Such request must be made within 30 days of the date of the certificate issued in terms of (10). The parties to the dispute may agree to extend this period or the arbitrator may condone a late referral on good cause shown.
- (12) If a compliance order is issued, that order must be served on the party allegedly in breach of the Agreement.
- (13) The party on whom the order is served may object in writing. The objection must be served on the Council within 14 days service of the order.
- (14) If a party objects, the Secretary may take any of the steps referred to in sub-

clause (7) except the issue of another compliance order.

- (15) If a party fails to object, the Secretary may, at any time, apply to have the order made an arbitration award.
- (16) If the dispute is referred to arbitration, the Secretary must appoint an arbitrator from the Council's panel of arbitrators. Arbitrators serving on the panel shall be appointed to arbitrate matters on a rotational basis, unless the parties to the dispute agree on an Arbitrator from the panel, with the next available Arbitrator being appointed should any panel member(s) not be available in terms of such rotation.
- (17) The Secretary, in consultation with the arbitrator, must decide the date, time and venue of the arbitration hearing.
- (18) The Secretary must serve notices of the date, time and venue of the arbitration on:
 - (a) the parties to the dispute;
 - (b) any person who may have a legal interest in the outcome of the arbitration.
- (19) Unless this agreement provides otherwise, the Arbitrator must resolve the dispute through arbitration.
- (20) The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.
- (21) Subject to the arbitrator's discretion as to the appropriate form of the proceedings, a party to the dispute, including the Council, may give evidence, call witnesses, question witnesses of any other party, and address concluding

arguments to the arbitrator.

- (22) The arbitrator may suspend the arbitration proceedings and attempt to resolve the dispute through conciliation if the Council and the parties to the dispute consent to this.
- (23) In any arbitration proceedings, a party to the dispute may appear in person or be represented by a legal practitioner, a co-employee or by a member, office-bearer or official of that party's trade union or employer organisation and, if the party is a juristic person, by a director or employee.
- (24) If the party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings, the arbitrator may dismiss the matter.
- (25) If a party, other than the party who referred the dispute to the Council, fails to appear in person or be represented at the arbitration proceedings, the arbitrator may-
- (a) continue with the arbitration proceedings in the absence of that party;
 - or
 - (b) adjourn the arbitration proceedings to a later date.
- (26) The Secretary may refer disputes to expedited arbitration if the Secretary is satisfied that-
- (a) a compliance order has been issued and the party on whom the order has been issued has not objected to the order;
 - (b) the dispute is capable of being determined by written evidence only;
 - (c) the dispute is only about the interpretation of the Agreement; or
 - (d) the parties to the dispute agree.
- (27) Notwithstanding the provisions of sub-clause (23), the arbitrator may

- determine the dispute and make the compliance order an award without hearing oral evidence if the arbitrator is satisfied that-
- (a) the parties have been properly served; and
 - (b) it is appropriate in the circumstances to do so.
- (28) Within 14 days of the conclusion of the arbitration proceedings-
- (a) the arbitrator must issue an arbitration award with reasons, signed by the arbitrator; and
 - (b) the Council must serve a copy of that award on each party to the dispute.
- (29) On good cause shown, the Secretary of the Council may extend the period in which the arbitration award and the reasons are to be served and filed.
- (30) The arbitrator may make any appropriate award, including an order for costs, that gives effect to the collective agreement.
- (31) An arbitrator may at his or her own initiative or as a result of an application by an affected party, vary or rescind an award-
- (a) erroneously sought or made in the absence of any party affected by the award;
 - (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - (c) granted as a result of a mistake common to the parties to the proceedings.
- (32) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court under section 158(1) of the Labour Relations Act.
- (33) (a) If the Arbitrator finds that any party has failed to comply with any provision of the collective agreement which is binding on that party, the

party, the Arbitrator may, in addition to any other appropriate order, impose a penalty.

- (b) The maximum penalty that the arbitrator may impose for a failure to comply with any provision of the collective agreement -
- (i) not involving a failure to pay an amount due to an employee/party in terms of any provision is the penalty determined in terms of Table One or Table Two;
 - (ii) involving a failure to pay an amount due to an employee/party, is the greater of the amount determined in terms of Table One or Table Two.

TABLE ONE

MAXIMUM PERMISSIBLE PENALTY NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

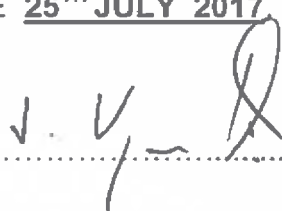
TABLE TWO

MAXIMUM PERMISSIBLE PENALTY INVOLVING AN UNDERPAYMENT


No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order

SIGNED BY THE PARTIES AT DURBAN ON THE 25TH JULY 2017

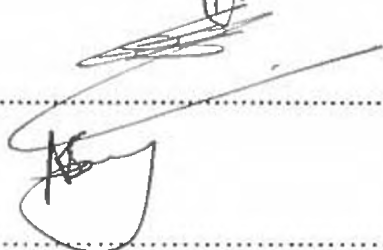
J J V VYMETAL, Member of the Council



M OOSTHUIZEN, Member of the Council



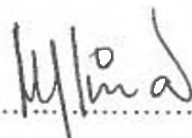
S ESSON, Member of the Council :



A O BENJAMIN, Member of the Council



V MEMBINKOSI, Member of the Council



S NAIDOO, General Secretary of
the Council



ANNEXURE A**EXEMPTION AND EXEMPTION APPEAL POLICY AND PROCEDURE****1. BACKGROUND**

Section 32(3)(dA) of the Labour Relations Act (the "Act") requires that a Bargaining Council have an effective procedure to deal with applications by non-parties for exemptions from the provisions of its collective agreements.

Accordingly an exemption and exemption appeal policy & procedure in respect of the National Bargaining Council of the Leather Industry of S.A (hereafter referred to as the "Council") for both party and non-party is established and maintained in terms hereof.

2. DEFINITIONS

'Act' means the Labour Relations Act, 1995 (Act 66 Of 1995) as amended

"Agent" means a designated agent of the National Bargaining Council of the Leather Industry of South Africa

"Agreements" means collective agreements concluded in the National Bargaining Council of the Leather Industry of South Africa

Handwritten signatures and initials in the bottom right corner of the page.

“Applicant” means a party or non-party employer conducting a business under the jurisdiction of the Council, a registered trade union or any person employed in the Industry and who applies for an exemption or appeals against a decision of the Exemptions Committee in terms of this procedure.

“Bargaining Council or Council” means the National Bargaining Council of the Leather Industry of South Africa

“Day” means any day other than a Saturday, Sunday or public holiday, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day;

“Exemptions Committee” means the National Exemptions Committee or any other sub-committee delegated by the National Exemptions Committee to perform all or part of its functions

“Exemption Criteria” means the exemption criteria contained in the collective agreements of the National Bargaining Council of the Leather Industry of South Africa

“General Secretary” means the General Secretary of the Council

3. EXEMPTIONS AND EXEMPTION APPEALS

3.1 EXEMPTIONS: An Applicant may apply to the Bargaining Council for exemption from the provisions of collective agreements concluded in the Bargaining Council.

3.1.1 The Council must consider applications for exemptions within 30 days of receipt of a valid application.

3.2 EXEMPTION APPEALS: An Applicant who is aggrieved by the Exemption Committee's decision has the right to appeal to the Independent Exemptions Appeal Body appointed by the Council.

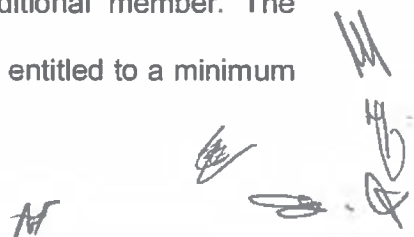
3.2.1 The Independent Appeal Body will hear and decide appeals as soon as possible and not later than 30 days after a valid appeal is lodged

3.2.2 A decision of the Independent Exemption Appeal Body shall be final.

4. EXEMPTIONS COMMITTEE

4.1 Establishment & Composition of the Exemptions Committee:

The Council shall establish a National Exemptions Committee consisting of eight (8) members four (4) of whom are appointed by the employer organisations party to the Council and four (4) appointed by the trade unions party to the Council. The employer organizations are for the time being each entitled to one member, with the most representative being entitled to appoint an additional member. The trade unions to the Council are for the time being entitled to a minimum

Handwritten signatures and initials in the bottom right corner of the page.

of one member each with the remaining two positions being filled by the unions' based on their representativeness in the COUNCIL.

4.2 Exemption Committee Meetings

4.2.1 A quorum for the meetings shall be the attendance of at least two party employer members and at least two party trade union members.

4.2.2 Exemption Committee meetings shall be held on an ad-hoc basis in the province in which the applicant conducts business subject to the decision of the Exemptions Committee.

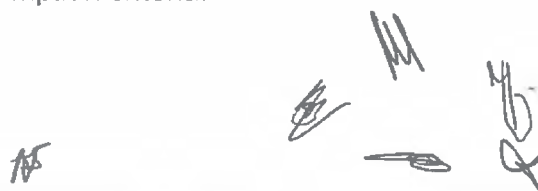
5. THE EXEMPTIONS MANDATE

5.1 The Exemptions Committee is mandated by the Council to consider all party and non-party applications for exemption from the collective agreements concluded in the Bargaining Council.

5.2 The Exemptions Committee may delegate any of its functions or duties to a District Committee or any other committee of the Council as the case may be.

5.3 The Exemptions Committee will consider and determine applications for exemption in a manner it considers appropriate to determine the application fairly and quickly, which may be limited to a consideration of written motivations or the hearing of oral submissions as the case may be.

5.4 The Exemptions Committee, when considering an application for exemption must take into account the exemption criteria.

Handwritten signatures and initials in black ink, located at the bottom right of the page. There are four distinct marks: a stylized 'M' or 'W' at the top, a signature below it, a horizontal line with a small hook, and another signature to the right.

5.5 The Exemptions Committee shall have the power to approve, refuse, partly approve or withdraw an application for exemption

5.6 The Exemptions Committee, on not approving an application or part thereof or withdrawing an exemption must provide the Applicant with written reasons for its decision.

6. EXEMPTIONS

6.1 APPLICATION PROCESS

6.1.1 Applications for exemption from the provisions of a collective agreement must be made in writing on the prescribed application form, and lodged with the local office of the Council.

6.1.2 Applications must be motivated and supported by relevant documents, data and audited financial statements (where applicable) and other relevant financial information.

6.1.3 Applications that impact employees terms and conditions of employment must be accompanied by written proof that employees and/or their representatives/trade unions have been consulted and further accompanied by a record of their support or not of the application.

6.1.4 Applications must indicate the period for which the exemption is sought.

6.2 EXEMPTION PROCEDURE

6.2.1 The Council must open and maintain a register for each application which records the following:

6.2.1.1 date of receipt of application

6.2.1.2 reference number



- 6.2.1.3 name of applicant
 - 6.2.1.4 brief description of exemption application
 - 6.2.1.5 name of the Agreement and the clause/s from which exemption is sought
 - 6.2.1.6 date of validation of exemption application
 - 6.2.1.7 date of exemption hearing
- 6.2.2 Upon receipt of an application, the date received must be recorded in the register
- 6.2.3 The agent of the relevant District Office shall on receipt of an application scrutinise the application to ensure that the application is complete and valid.
- 6.2.4 Should the agent find the application to be incomplete, the agent shall send written communication to the applicant advising of this and what is required to complete the application
- 6.2.5 After the agent is satisfied that the application is complete, the application shall be considered valid and the agent shall record the date of validation accordingly.
- 6.2.6 Within five days from date of validation the agent shall verify the employer's consultation with the employees/trade union and report in writing whether the employees / trade union support or oppose the application.
- 6.2.7 Within seven days of receipt of the agent's report on the consultation process, the General Secretary shall arrange a date, time and venue for the hearing of the application.

Handwritten signatures and initials in the bottom right corner of the page.

6.2.8 The set down date for the hearing must not be later than 30 days of the validation of the application by the Agent.

6.2.9 The General Secretary shall notify the applicant in writing of the date, time and venue of the hearing.

6.2.10 In the event that the applicant does not attend the hearing, the Exemptions Committee will consider the application on the written application and supporting documents.

6.2.11 The General Secretary must within fourteen days of the exemption being granted advise the applicant of such decision in writing and issue a Licence of Exemption setting out the following:

6.2.11.1 The full names of the Applicant.

6.2.11.2 The provisions of the collective agreement from which the exemption has been granted.

6.2.11.3 The conditions subject to which the exemption is granted.

6.2.11.4 The period which the exemption will operate clearly stating the commencement and expiring dates.

6.2.12 Where the Committee does not approve an Application or part thereof or when deciding to withdraw an Exemption, the General Secretary must advise the applicant in writing within fourteen days of the date of such decision and provide the Applicant with reasons therefor.

7. EXEMPTION APPEALS



7.1 Establishment of an Independent Appeal Body

7.1.1 In terms of section 32(3)(e) of the Act, the Council creates and maintains an Independent Exemptions Appeal Body to hear and decide appeals against an Exemptions Committee's refusal or partial refusal to grant an exemption or its withdrawal or partial withdrawal of an exemption.

7.1.2 An Independent Appeal Body must be appointed by the Council and may consist of one or more persons, as determined by the Council

7.1.3 No representative, office-bearer or official of a trade union or employers' organisation party to the Council may be a member of the Independent Exemptions Appeal Body.

7.2 APPLICATION PROCESS & PROCEDURE

7.2.1 An Applicant aggrieved by an Exemptions Committee's decision shall within 30 days of being notified of the Exemptions Committee's decision have the right to appeal to the Independent Exemptions Appeal Body.

7.2.2 Should the appellant show good cause, the Independent Appeal Body may condone a late appeal.



- 7.2.3 A valid notice of appeal must be in writing clearly setting out the grounds on which the appeal is based and be accompanied by relevant supporting documentation.
- 7.2.4 Upon receipt of an appeal application, the General Secretary shall forward the appeal application together with the original application for exemption and supporting documents to the Independent Appeal Body for a decision
- 7.2.5 The General Secretary in consultation with the Independent Appeal Body will arrange a date, time and venue for the appeal hearing. The date of the hearing shall not be later than 30 days from which a valid appeal was filed with the Council.
- 7.2.6 The Independent Appeal Body shall hear and determine appeals in any manner it considers appropriate to determine the application fairly and quickly.
- 7.2.7 The Independent Appeal Body shall render a decision within fourteen days from the last date of the appeal hearing
- 7.2.8 Should the Independent Appeal Body reverse a decision of the Exemptions Committee, the Council must issue the applicant with a licence of exemption accordingly
- 7.2.9 The Independent Appeal Body has discretion to order against the appellant payment of all costs incurred by the Council in arranging and conducting the appeal in the



event of it upholding the decision of the Exemptions Committee

8. EXEMPTION CRITERIA

The Exemptions Committee and Independent Appeal Body must when considering an exemption application/appeal, take into account the following criteria:

- (a) any written and/or verbal substantiation provided by the applicant
- (b) fairness to the employer, its employees and other employers and the employees in the industry;
- (c) whether an exemption, if granted, would undermine this Agreement or the collective bargaining process;
- (d) whether it will make a material difference to the viability of a new business, or a business previously outside the jurisdiction of the Council;
- (e) unexpected economic hardship occurring during the currency of The Agreement, and job creation and/or loss thereof.
- (f) the infringement of basic conditions of employment rights;
- (g) the fact that a competitive advantage might be created by the exemption;
- (h) comparable benefits or provisions where applicable;
- (i) the applicant's compliance with other statutory requirements such as the Occupational Injuries and Diseases Act or Unemployment Insurance; or
- (j) any other factor which is considered appropriate.

Handwritten signatures and initials in black ink, including 'AS', 'B', 'M', and 'Q'.