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## GOVERNMENT NOTICE

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### DEPARTMENT OF LABOUR


No. R. 488

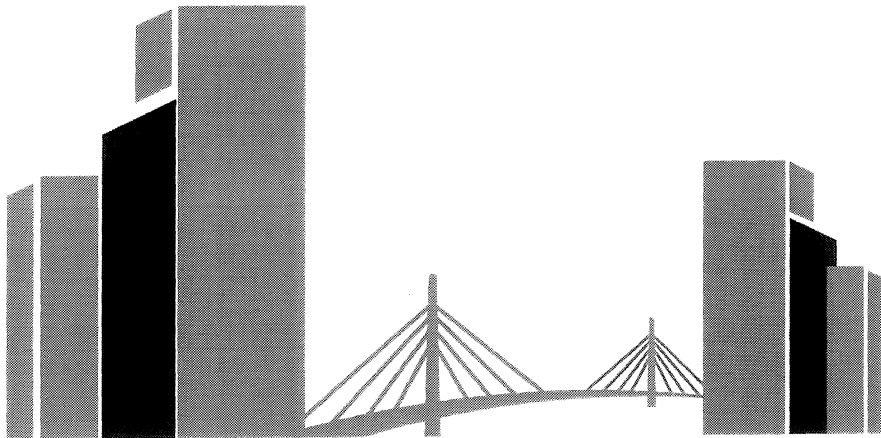
20 June 2014

#### LABOUR RELATIONS ACT, 1995

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

I, **NELISIWE MILDRED OLIPHANT**, Minister of Labour hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Construction Industry Retirement Benefit Fund Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for Civil Engineering Industry** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Collective Agreement, shall be binding on the other employers and employees in that Industry, with effect from ..... and for the period ending 28 February 2019.

  
**MINISTER OF LABOUR**  
04/06/2014



**BCCEI**  
Bargaining Council for the Civil Engineering Industry

**CIRBF COLLECTIVE AGREEMENT**  
(Construction Industry Retirement Benefit Fund)

\_\_\_\_\_ for the \_\_\_\_\_  
**CIVIL ENGINEERING INDUSTRY**

S.e. 4. 

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

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

**South African Forum of Civil Engineering Contractors (SAFCEC)**

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

and the

**Building Construction and Allied Workers Union (BCAWU)****National Union of Mine Workers (NUM)**

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

**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1 The terms of this Agreement shall apply to and be observed-

- (a) throughout the Republic of South Africa; and
- (b) by all employers and employees in the Civil Engineering Industry who are members of the employers' organisations and the trade unions, respectively.

1.2 All the employers who do not have a retirement benefit fund in favour of their employees in place, shall by publication of this agreement join the Construction Industry Retirement Benefit Fund.

1.3 The rules of the retirement benefit fund referred to in this Agreement shall require that employers and employees contribute equally in respect of each employee's membership of the retirement benefit fund. Provided that a fund which provides solely for payment of benefits on death and disability shall not be deemed to be a pension or provident fund for the purposes of this Agreement

1.4 Notwithstanding the above, clause 1.2 will not apply to employers contributing to an existing Retirement Benefit Fund, registered in terms of the Pension Fund Act of 1956, which was fully operational before the publication of this agreement.

1.5 The provisions of clause 1.1(a) and 1.2 to 1.4 of this agreement will not apply to employers and employees who are not members of the employers' organization and trade unions respectively.

**2. PERIOD OF OPERATION OF AGREEMENT**

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 28 February 2019.

**3. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

**'Eligible Employee'** shall mean an employee who: –

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

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

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

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

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

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

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

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

- (i) for the purpose of the Fund, Fund salary shall be determined on the first day of each month of membership of the fund; and

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- (ii) if the amount on which a Member's Fund Salary is based is reduced at any time then. Subject to the agreement of the Member, his Employer may direct that, for the purposes of the Fund, the reduction shall not be applied in the calculation of the Member's Fund Salary or shall be applied only partially.

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

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

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

**'Law'** includes the common law;

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

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

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

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

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

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

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

**'Overtime'** means the time that an employee works during a day, or a week, in excess of the ordinary hours of work prescribed for such employee, but does not include work performed on a Sunday or a paid public holiday;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**'Salaried Employee'** means an employee whose remuneration is calculated 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".

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

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

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

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

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

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

- (i) The construction of aerodrome runways or aprons; aqueducts; bins or bunkers; bridges; cable ducts; caissons; rafts or other marine structures; canals; cooling, water or other towers; dams; docks; harbors; quays or wharves; earthworks; encasements; housings or supports for plant, machinery or equipment;

factory or works chimneys; filter beds; land or sea defense works; mine headgear; pipelines; piers; railways; reservoirs; river works; roads or streets; sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants; excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures;

- (ii) Excavation and bulk earthworks; bush clearing and de-stumping; topsoil stripping; drilling and blasting; preparation of bench areas, drilling pre-split holes and blast holes, grade control drilling and sampling; re-drilling of 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
- (iii) Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and/or
- (iv) The asphaltting, concreting, gravelling, leveling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites; and further includes –
  - a) Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or;
  - b) 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 (i) to (iv) inclusive

Excluding the following:

- aa) Work in connection with any one or more of the activities specified in subclause (2.1.3) 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;
- bb) Work in connection with any one or more of the activities specified in subclause (2.1.3) 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;
- cc) Any work falling within the scope of any other industry, and
- dd) 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.

#### 4. CONTINUATION OF THE FUND

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

4.2 The Fund shall consist of-

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

## 5. MEMBERSHIP

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

## 6. CONTRIBUTIONS

### 6.1 Contributions by the Member

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

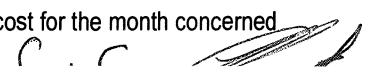
6.1.1 Each Member's contributions shall be deducted by his Employer from his salary or wages and paid to the Fund.

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

### 6.2 Contributions by the Employer

6.2.1 The Employer shall make contributions in respect of each Member in its Service at the rate of 9.0 per cent of the Member's Fund Salary, less the cost for the month concerned of the separate funeral benefit scheme. Any variation to amounts contributed by the Employer in respect of Members employed by an Employer shall be set out in an Appendix to these Rules.

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

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

(ii) the balance shall be applied towards the Member's retirement benefit.

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

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

### 6.3 Additional Voluntary Contributions by Members and Employers

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

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

## 7. ADMINISTRATION OF THE FUND

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

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

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

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

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

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

## 8. DESIGNATED AGENTS

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

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- 8.2 After each inspection of an employer's records and operations the agent shall prepare a report for the attention of the employer, worker representatives and, in the case of an individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions. Any disclosure of information shall comply with the provisions of the Labour Relations Act, 1995.
- 8.3 The Minister, on request of the council, shall appoint one or more persons to be designated agents to assist in giving effect to the terms of this agreement, including the issuing of compliance orders requiring any person bound by the Collective Agreement to comply with within 14 days.
- 8.4 A Designated Agent shall have the powers set out in sections 33 and 33A of the Act and in Schedule 10 of the Act.

## 9. EXEMPTIONS

### 9.1 General

- (i) Any person bound by this Agreement may apply for exemption.
- (ii) The authority of the Council to consider and make recommendations on the granting of exemptions (excluding the hearing of appeals) is delegated to the Bargaining Council for the Civil Engineering Industry (herein after called the 'Council')
- (iii) An employer who has obtained an exemption from the Council shall be required to apply in writing, should he wish to rejoin the Fund at a later stage.

### 9.2 Fundamental principles for consideration

- (i) All applications must be in writing, on an application form obtainable from the Council and fully motivated and sent to the Council.
- (ii) In scrutinising an application for exemption, the Council will consider the views expressed by the employer and the workforce, together with any other representations received in relation to that application.
- (iii) The employer must consult with the workforce, through a trade union representative or, where no trade union is involved, with the workforce itself, and must include the views expressed by the workforce in the application.
  - (a) Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application.
  - (b) Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.
- (iv) The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of this Agreement in the Industry.
- (v) An application for exemption shall not be considered if the contents of the application are covered by an arbitration award binding the applicant.

### 9.3 Urgent applications

- (i) In cases of urgent applications, details may be e-mailed, faxed or delivered to the Council.
- (ii) The Council will consider the application, make a recommendation and communicate that recommendation to the Council without delay.
- (iii) The applicant is expected to put forward a substantive explanation in writing as to the reason/s of urgency pertaining to the application.

### 9.4 Process

- (i) The Council shall issue to every person to whom exemption has been granted an exemption license, setting out the following:
  - (a) the full name of the person or company concerned;

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- (b) the provisions of this Agreement from which the exemption has been granted;
  - (c) the conditions subject to which exemption is granted;
  - (d) the period of the exemption;
  - (e) the date from which the exemption shall operate; and
  - (f) the area in which the exemption applies.
- (ii) The Council shall ensure that –
- (a) all exemption licenses issued are numbered consecutively;
  - (b) an original copy of each license is retained by the Council;
  - (c) a copy of the exemption license is sent to the applicant.
- (iii) The Council may withdraw the exemption at its discretion.

#### 9.5 Appeals

- (i) An independent body, referred to as the Independent Exemptions Appeal Board (the 'Board'), is hereby appointed and shall consider any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption.
- (ii) The Council Secretary will on receipt of an appeal against a decision to refuse the granting of an exemption, submit it to the Independent Exemptions Appeal Board for consideration and finalisation.
- (iii) In considering an appeal the Board shall consider the recommendations of the Council, any further submissions by the employer and the workforce or their respective employee organisations or trade unions and shall take into account the criteria set out above and also any other representations received in relation to the application.
- (iv) Should the appeal be granted a license of exemption shall be issued in terms of subclause 9.4(i) and (ii) above.

#### 10. RESOLUTION OF DISPUTES

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

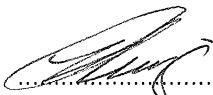
#### 11. EXHIBITION OF AGREEMENT


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

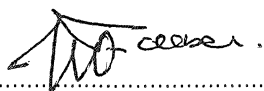
#### 12. MEMBERS' BENEFITS

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

Thus signed at Johannesburg, for and on behalf of the parties, this 07 day of April 2014.

  
Member

  
Member

  
JN. FAASEN  
General Secretary of the BCCEI

## 13. APPENDICES TO THE AGREEMENT

## APPENDIX A

## Exemption Application 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 conditions of employment standards as set out in the BCCEI Conditions of Employment Collective 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:**

- (i) The exemptions board will make a decision on the exemption applications as submitted.
- (ii) **It is not a condition of the exemption that employees accept the 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.



## APPENDIX B

## Exemption Procedure

**Important note for Management:**

It is important to note that an exemption application must be lodged with the bargaining council within 30 days after the BCCEI Conditions of Employment Collective Agreement has come into operation

The industry's current exemption procedure continues to apply.

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:

- Wage Related Exemptions - Individual companies seeking exemption to pay a lesser wage increase must complete the wage exemption application form detailed **within the BCCEI Conditions of Employment Collective Agreement as Appendix C**. 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 coming into operation.) of this Agreement.
- The proposed exemption 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 working conditions will apply from the date of coming into operation of the BCCEI Conditions of Employment Collective Agreement.
- The council will make a decision on the exemption application. Where the exemption is rejected, an appeal may be lodged with the Independent Exemption Appeals Board.

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## APPENDIX C

## 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.....  
 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 Total number of memberships per union .....

**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]

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- 3.8 Did affected Employees support the Application? [YES] [NO]  
If not, why? .....
- 3.9 Has the following been attached to this Application:
- 3.9.1 Minutes of Meetings with Employees and Trade Union? [YES] [NO]
- 3.9.2 Signatures of Trade Union Official/s who attended the meeting? [YES] [NO]
- 3.9.3 Signatures of employees who attended the Meeting? [YES] [NO]  
If not, please state reason:  
.....
- 3.10 Is the company's' contributions paid up to date? If not, please state reason:  
.....  
*(If yes, please attach proof of payment confirmation/deposit slip)*
- 3.11 **MOTIVATION:** An explanation of the reason/s for the exemption. Please attach to the Exemption Application Questionnaire. If no Motivation is attached to the Application, your request will not be considered.
- 3.12 **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 Collective 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.

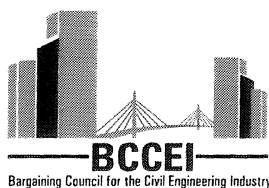
SIGNED: .....

PRINT NAME: .....

DESIGNATION: .....

DATE: .....

S. C. 

**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: .....

S. C. 1.0



**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/S:**

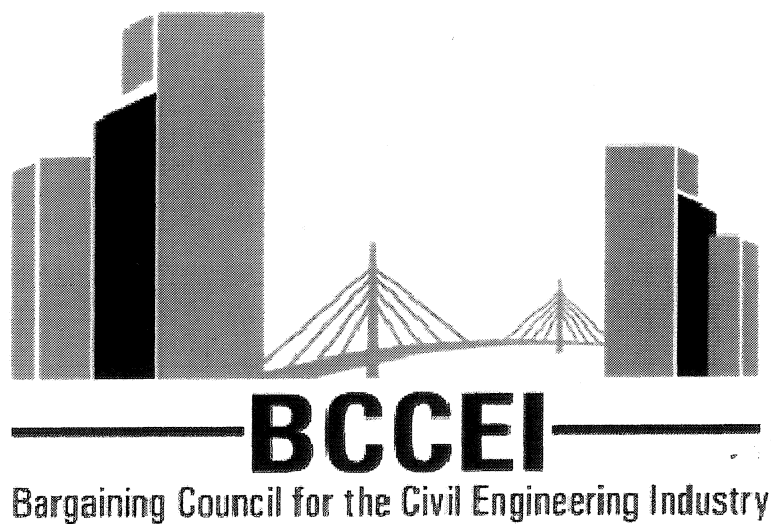
.....

.....

*(Print names clearly)*

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

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## NATIONAL EXEMPTIONS POLICY

For the

## CIVIL ENGINEERING INDUSTRY

S. C

*[Handwritten signature]*



### 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:

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

S. C.

## NATIONAL EXEMPTIONS POLICY FOR THE CIVIL ENGINEERING INDUSTRY

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## 1. Introduction

- 1.1 The purpose of this document is to set out the policies which will apply to the consideration of applications for exemptions.
- 1.2 The Council should determine the appropriate level at which exemption decisions will be made and may choose to implement one of the following approaches in this regard:
  - 1.2.1 Determine the specific types of exemption applications which 'The Exemptions Body' may deal with and those which could be referred to the Office for decision; or
  - 1.2.2 Determine that all exemption applications must be dealt with by the 'The Exemptions Body'.
- 1.3 Exemptions shall be dealt with within 30 days of receipt thereof.
- 1.4 Where the Council or 'The Exemptions Body' is given the authority to deal with an exemption application and an appeal is lodged against the Council 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 BCCEI 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 BCCEI Conditions of Employment Collective Agreement.
- 1.6 The Council or 'The Exemptions Body' wishing to apply other criteria to address a specific situation must make specific recommendations in this regard to the BCCEI Management Committee (MANCO) to obtain approval prior to implementing the desired criteria.
- 1.7 Reasons for granting or refusing an application shall be recorded and retained by the Council. The applicant must on request be supplied with reasons for refusal of an application for exemption.
- 1.8 The BCCEI Management Committee (MANCO) may at any time after prior notification, withdraw an exemption either wholly or in part, or amend the conditions under which the exemption was issued, or amend the conditions of employment and other matters regulated under the exemption.

## 2. Definitions

Unless the contrary intention appears, any expression used in this policy which 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.

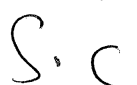
'Law' includes the common law.

## 3. Fundamental Principles

The following are fundamental principles which are legal obligations imposed on the Council or 'Exemptions Body' by the Council's collective 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 Collective 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 Council refusal of an application for exemption from the provisions of an agreement or the withdrawal of an exemption by the 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 Council or 'The Exemptions Body' from time to time, must be submitted.



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

**5. Exemptions from payment of interest**

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

**6. General**

- 6.1 In the event of the Council or 'The Exemptions Body' refusing to grant an application, the applicant shall have the right to appeal in writing against the decision to the Independent Exemptions Appeal Board (IEAB).
- 6.2 An appeal to the IEAB must be sent in writing within 30 calendar days of the applicant been notified of the Council 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 Council 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 Council 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.)

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- 6.5 In considering the application, the Council 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 Collective 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
- 6.6 The council must notify the applicant within seven (7) days from the last day date of the meeting of the Council 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.

S. C. [Signature]



**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'

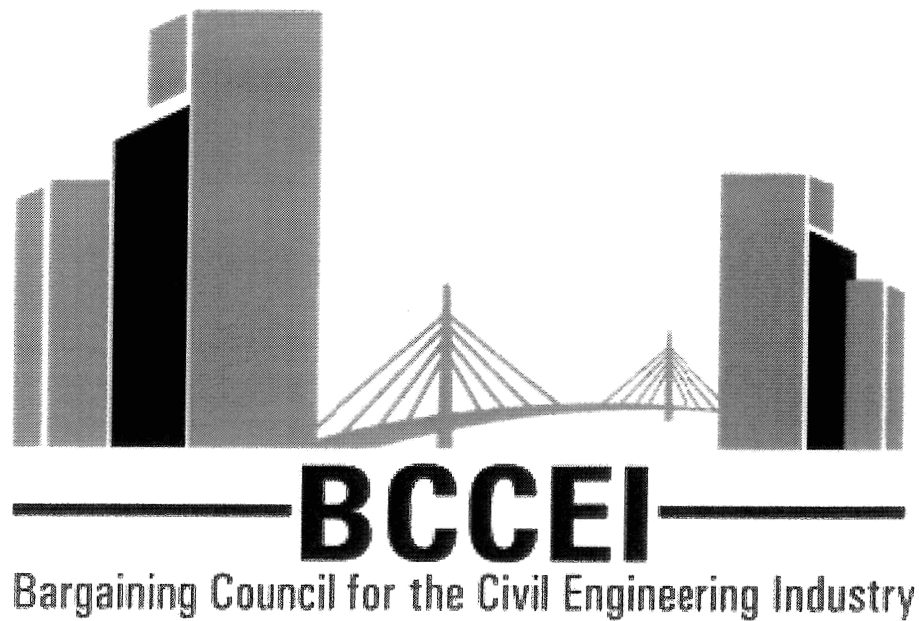
**11. Decisions of The Exemptions Body**

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

**12. Meetings of The Exemptions Body**

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

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**THE INDEPENDENT EXEMPTIONS APPEAL BOARD POLICY  
FOR THE  
BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY  
(BCCEI)**

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S. C. K. 

## **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 visa 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 authorized 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 BCCEI Conditions of Employment Collective 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 exempted from any provision of that particular collective agreement.

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#### 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 Council 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.

#### 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 BCCEI Conditions of Employment Collective Agreement of the Council;
  - 5.1.2 Any criteria established or approved by the management committee of the Council in terms of the BCCEI exemptions policy.
- 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

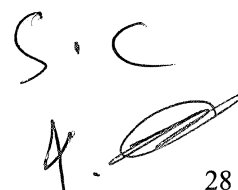
#### THE BOARD

##### 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 Council 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;
- 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 Body 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 -
- (i) set out the name and contact details of the party lodging the appeal;
  - (ii) provide a summary of the grounds for the appeal;
  - (iii) identify the collective agreement to which the exemption application relates;
- 1.3 The following documents must be attached to a notice of appeal -
- (i) a copy of the decision of the Council or Exemption Body and the reasons for that decision;
  - (ii) a copy of the original exemption application and annexures;
  - (iii) 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;

#### 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 -

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- (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.
- 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 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 –

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- 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.

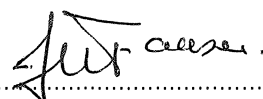
## **9 Finding and reasons for decision**

- 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.

Signed at Johannesburg, for and on behalf of the parties, this 07 day of April 2014.

  
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Member

  
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Member

  
.....  
**JN. FAASEN**  
General Secretary of the BCCEI