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## GOVERNMENT NOTICE

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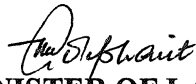
### DEPARTMENT OF LABOUR

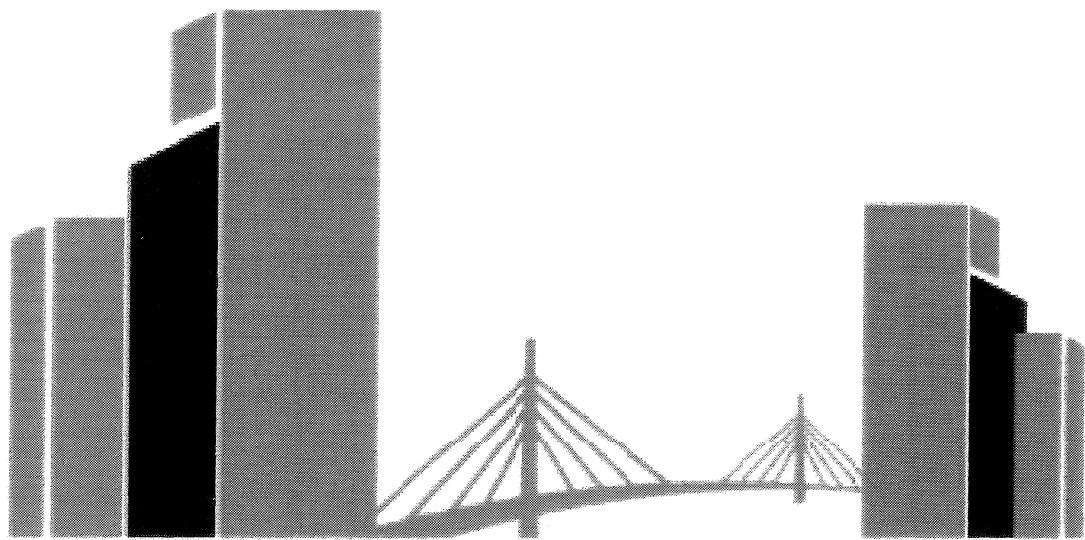
No. R. 490

20 June 2014

**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY:  
EXTENSION OF REGISTRATION AND ADMINISTRATION EXPENSES  
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 Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Civil Engineering Industry** 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 .....~~2014-06-30~~.....and for the period ending 28 February 2019.

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



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

## REGISTRATION AND ADMINISTRATION EXPENSES COLLECTIVE AGREEMENT

\_\_\_\_\_ for the \_\_\_\_\_

**CIVIL ENGINEERING INDUSTRY**

S. C. [Signature]

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

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.

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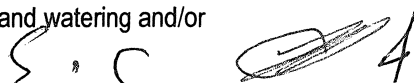
**PART I:  
SCOPE AND APPLICATION OF THE AGREEMENT****1. Application of Agreement****1.1. This Agreement binds:**

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

**1.2. This agreement applies to learners, only insofar as it is not inconsistent with the Skills Development Act, 1998.****1.3. Clauses 1(ii) and 1.2 shall not apply to non-party employers and employees in the Civil Engineering Industry.****2. Scope of the Civil Engineering Industry****2.1 The 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 any one or more of the following activities:**

2.1.1 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; housing 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;

2.1.2 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, 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



2.1.3 Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and/or

2.1.4 The asphaltting, concreting, gravelling, leveling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites; and further includes –

- (i) Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and
- (ii) 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 (2.1.1) to (2.1.4)(i) and (ii) inclusive;

Excluding the following:

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

### 3. Definitions and expressions

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

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

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

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

'Employee' means –

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

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

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

'Law' includes the common law;

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

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

'Overtime' means the time that an employee works during a day, or a week, in excess of the ordinary hours of work prescribed for such employee in Clause 2, Chapter I of the 'BCCEI Conditions of Employment Collective Agreement', but does not include work performed on a Sunday or a paid public holiday;

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

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

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

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

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

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

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

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

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in Clause 1 found in Chapter V of the BCCEI 'Conditions of Employment 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 provided for in Clause 3 in Chapter V of the 'BCCEI Conditions of Employment Collective Agreement', receives over and above the amount which the employee would have received had he or she not been employed on such a basis

### 3. Period of operation of the agreement

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

### 4. Objective

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

## PART II

### 1. Contributions

- 1.1 The provisions of this clause shall apply in respect of all employees and employers as defined in Clause 2 in Part 1 of this Agreement.
- 1.2 For Employees falling within the Bargaining Unit, BCCEI Administration levy contributions shall be made by employers in the manner specified hereunder, taking into regard that contributions are capped at the published wage rate applied to a Task Grade 9 employee from time to time:
  - (i) From the wages of every employee to whom this Agreement applies, the employer shall, each week, including weeks on which the employee is absent or on paid leave, deduct a percentage of **0.45%** of the basic wage, excluding overtime or bonus payments. This contribution is in respect of an administration and dispute resolution levy
  - (ii) To the amount deducted in terms of paragraph (i) above, the employer shall add an equal amount and forward the total sum to the Council each month.

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- 1.3 For employees that do not fall within the Bargaining Unit, a BCCEI dispute levy shall be made by employers in the manner specified hereunder, taking into regard that the levy is capped at the earning threshold as determined by the Minister of Labour in terms of section 6(3) of the Basic Conditions of Employment Act, 1997, found in Chapter II (Regulation of working time), section 6(3)
- (i) A contribution of 0.125% shall be deducted from all employees' basic salary including for periods on which the employee is absent or on paid leave but exclude overtime or bonus payments. This payment is in respect of a dispute resolution levy.
  - (ii) To the amount deducted in terms of paragraph (i) above, the employer shall add an equal amount and forward the total sum to the Council each month.
- 1.4 Every employer shall forward the amounts payable each month in terms of subclause 1.2 and 1.3 above, together with a statement in such form as may be specified from time to time, to reach the Bargaining Council for the Civil and Engineering Industry (BCCEI) office, 2nd Floor, SAFCEC Building, 12 Skeen Boulevard, Bedfordview, 2008, by no later than close of business on the 7th Day of the subsequent month.
- The employer uses the postal services, courier services or any other means of delivery or transfer at his own risk. The relevant postal address is P O Box 2699, Bedfordview, 2008. A facility for direct bank-to-bank transfer of funds is also available. Enquiries to be directed to the General Secretary
- 1.5 Regardless of whether any amount is payable to the Council in terms of this clause, every employer shall, not later than the 7th day of each month, forward to the Council in respect of the preceding month and in the manner indicated, a statement and will also record thereon the number of employees employed on Limited Duration Contracts of employment for the month to which the statement applies.
- 1.6 For the purposes of this subclause only, 'the Act' means the Usury Act, 1968.
- 1.6.1 If any amount that falls due in terms of this clause is not received in full by the Council by the 7<sup>th</sup> day of the month following the month for which the amount is payable, then the employer shall be liable to pay interest in accordance with the following provisions.
- (i) The interest payable shall accrue on the balance of the amount outstanding from time to time from the 7<sup>th</sup> day until the full amount is received by the Council.
  - (ii) The interest shall accrue at the same effective rate as the applicable maximum annual finance charge rates as if the amount outstanding were a "credit transaction" for the purposes of the Act.
  - (iii) In the event of the Council incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission.

### PART III

#### 1. Registration

##### 1.1 Every employer operating in this industry shall -

- (i) Within one month of the date on which this Agreement comes into operation, and in the event of entering this industry after the publication under Section 32 of the Act by virtue of which this Agreement is binding, within one month of the date on which he so enters the industry, furnish to the General Secretary, a written statement, in the form obtainable from the council, setting forth his full name and residential address and, if the employer is a partnership, the full names and addresses of all partners, and, if the employer is a company, the full names and addresses of the Directors and General Secretary, and if the employer is a close corporation, the full names and addresses of the Members and General Secretary, the name and the address or addresses at which business is carried out, the activities, trades or occupations carried out, and also the number of employees employed: Provided that if this Agreement is superseded by a further amended agreement, an employer who holds a current certificate of registration issued under this section or in pursuance of a previous binding agreement, shall be deemed to have complied with the provisions of this subclause;

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- (ii) In the event of any change in the name or the address/s at which business is carried out at, or among the partners or, if the employer is a company or close corporation, a change of its General Secretary, or in the event of the sequestration of the employer's estate, or if the employer is a company or close corporation, a change of the winding-up of the company or close corporation, or in the event of the transfer or abandonment of the business that is being carried out, or a change in activities or the acquisition or commencement of any other activities or business - furnish to the BCCEI General Secretary, within 14 days of the change, sequestration, winding-up, transfer, abandonment, acquisition or commencement, a written statement setting forth full particulars of the change, sequestration, winding-up, transfer, abandonment, acquisition or commencement, as the case may be.
- 1.2 The fact that any employer as contemplated in subclause 1.1 above may claim exclusion or exemption from any one or other Agreement or part of an agreement that is binding in the industry shall not exonerate him from complying with the requirements of subclause 1.1 above.
- 1.3 The requirements of subclauses 1.1 and 1.2 of this clause shall not be construed as an attempt by the Council to enforce the provisions of any particular Agreement administered by it, if such Agreement was not in the past binding on the employer and his employees or where exclusions and/or exemptions exist in favour of the employer and his employees.

#### PART IV

##### 1. Administration of Agreement

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

##### 2. Designated agents

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

##### 3. Exemptions

###### 3.1 General

- (i) Any person bound by this Agreement may apply for exemption.
- (ii) The Council may consider and grant exemptions.
- (iii) Where additional and/or outstanding information is requested in respect of an exemption application and such information is not received within a period of 7 days the application will expire.

###### 3.2 Fundamental principles for consideration

- (i) All applications must be in writing and fully motivated as per exemptions policy and sent to the Council.
- (ii) In scrutinizing 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. Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application. 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.

S. C. [Signature] 7



- (v) An application for exemption shall not be considered if the contents of the application are covered by an arbitration award binding the applicant.

### 3.3 Urgent applications

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

### 3.4 Process

3.4.1 The Council shall issue to every person to whom exemption has been granted, an exemption license, setting out the following:

- (i) the full name of the person or enterprise concerned;  
 (ii) the provisions of this agreement from which the exemption has been granted;  
 (iii) the conditions subject to which exemption is granted;  
 (iv) the period of the exemption;  
 (v) the date from which the exemption shall operate; and  
 (vi) the area in which the exemption applies.

3.4.2 The Council shall ensure that –

- (i) all exemption licenses issued are numbered consecutively;  
 (ii) an original copy of each license is retained by the Council;  
 (iii) a copy of the exemption license is sent to the applicant.

3.5 Unless otherwise specified, any exemption from this Agreement shall be valid only on the site for which the application was made.

3.6 The Council may withdraw the exemption on adequate evidence provided that shows a direct contravention of the terms and conditions set out in the exemptions license.

### 3.7 Appeals


- (i) An independent body, referred to as the 'Independent Exemptions Appeal Board' (the Board) shall be appointed and shall be responsible for the consideration of any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption.  
 (ii) The General Secretary shall, on receipt of an appeal against a decision of the Council, 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 employees, the criteria set out above and also any other representations received in relation to the application.  
 (iv) Should the outcome of the appeal be successful, an exemption shall be either issued or withdrawn respectively.

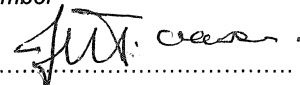
## 4. Resolution of disputes

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

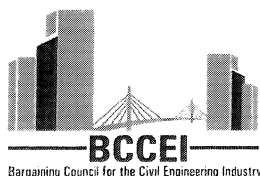
Signed at Johannesburg, for and on behalf of the parties, this 07 day of April 2014.

  
 Member

  
 Member

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

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## APPENDIX A

APPLICATION FOR REGISTRATION WITH THE  
BARGAINING COUNCIL FOR THE CIVIL ENGINEERING  
INDUSTRY

PO BOX 2699, BEDFORDVIEW, 2008

Registration No:	
City/Town:	
Province:	
Date of data entry:	

Name of Company/Trust/Close Corporation:	
--	--

Trading Name of Firm/Company	
------------------------------	--

Company Registration Number		Fax Number	
VAT Registration Number		Contact Person	
Bank Name:		Account Number	
Bank Branch:		Account Type	
Account Holder Name:		CIDB Registration number	
		CIDB Grading Number	

E-Mail Address:	
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Postal Address:		Postal Code:	
Physical Address of Firm/Company:			
Magisterial District:		Province:	
Indicate area(s) of Civil Engineering Works the company is involved in:			
Full name(s)/partner/trustees/directors/members:		Residential Address	
1.			
	I.D.No.:	Contact Number	
2.			
	I.D.No.:	Contact Number	
3.			
	I.D.No.:	Contact Number	
4.			
	I.D.No.:	Contact Number	

Particulars of own Pension/Provident Fund (If Applicable) :			
Name of Fund:			
Name of Fund Administrators:		Tel/Fax:	

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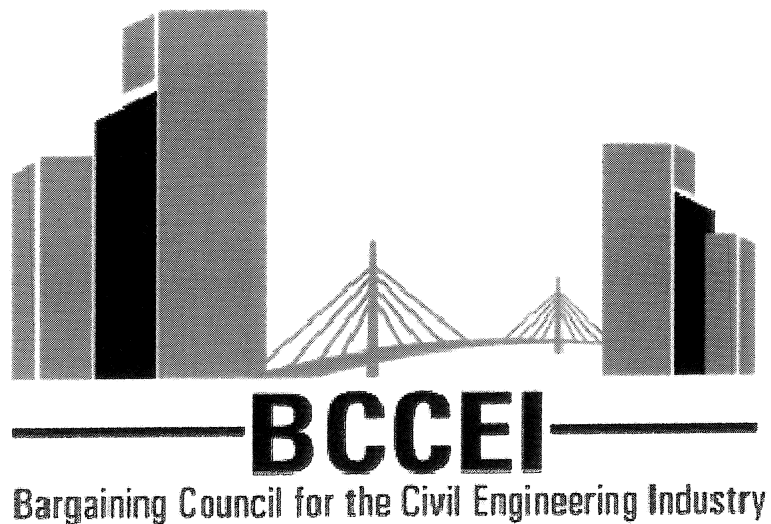
Date of Inception:		Registration No. of Fund:	
S.A.R.S. Registration No. of fund:			
Waiting Period if any before Employee may join the Fund:			
Contribution Rate Employer:		%	Contribution Rate Employees:
		%	

Total Number of Employees	
Total Number of Administrative Staff	
Total Employed on Task Grade 1	
Total Employed on Task Grade 2	
Total Employed on Task Grade 3	
Total Employed on Task Grade 4	
Total Employed on Task Grade 5	
Total Employed on Task Grade 6	
Total Employed on Task Grade 7	
Total Employed on Task Grade 8	
Total Employed on Task Grade 9	

Business commenced on:		<b>OFFICE USE ONLY</b>	
I hereby certify the above information to be correct.		1. Date of first contact:	
		2. First Return-Month:	
		3. Provident Fund:	
		4. Employer Classification:	
Signature of employer:		Date:	

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Appendix B – NATIONAL EXEMPTIONS POLICY



**NATIONAL EXEMPTIONS POLICY**  
**FOR THE**  
**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY**  
**(BCCEI)**

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**NATIONAL EXEMPTIONS POLICY FOR THE CIVIL ENGINEERING INDUSTRY****INDEX****Page**

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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 Council 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

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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.

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#### 4. **Provident Fund Exemptions**

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

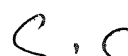
- 4.1 Total contributions to the private fund must be at least be equal to those required in terms of the industry fund.
- 4.2 Contribution holidays are to be specifically excluded from proposed rules of Defined Benefit Fund
- 4.3 Overall benefit package must be on the whole not be less favourable than 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.)
- 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.

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**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**

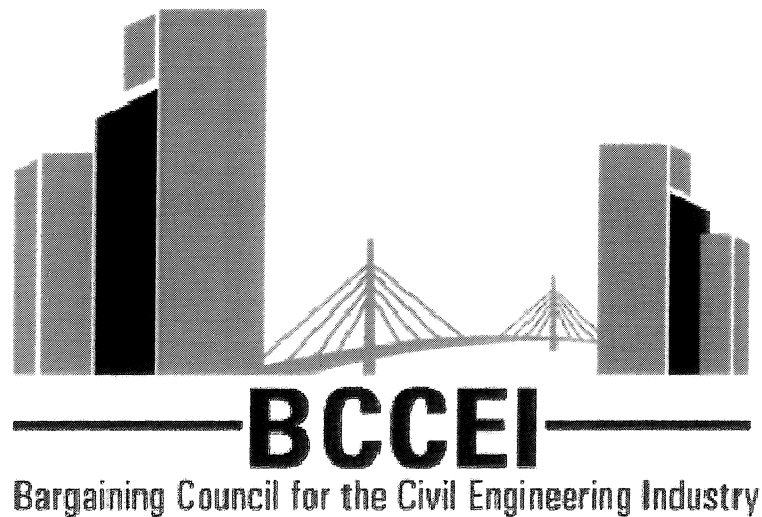
- 11.1 A decision agreed and confirmed in writing by three members of the exemptions body is as valid as a decision adopted at a duly convened meeting of the Body.
- 11.2 A decision of the exemptions body must be signed by the Chairman.
- 11.3 Proceedings of the meetings of the Exemptions Body shall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



Appendix C – INDEPENDENT EXEMPTIONS APPEAL BOARD POLICY



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

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

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

Any reference to the singular shall include the plural and 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 council 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.

**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**

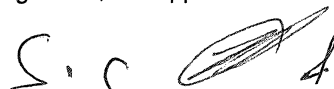
- 3.1 The Board shall elect one of the permanent Board members as chairperson of the Board.
- 3.2 If the chairperson is not present at a meeting of the Board, the other Board members present must elect a chairperson for that meeting.

#### **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.

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

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

**5 New evidence**

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

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

5.3 An application to lead new evidence must –

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

5.4 The Board may –

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

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 –

- 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.

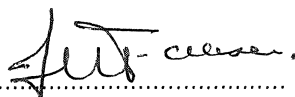


- 7.4 If an application for oral submissions is granted, the Council must notify all interested parties and all interested parties must be given an equal opportunity to make oral submissions.
- 7.5 The Board may limit the time allocated to each party for oral submissions.
- 8 Board meetings open to public**
- 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

  
.....  
Member

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