

DEPARTMENT OF LABOUR

NO. R. 1107

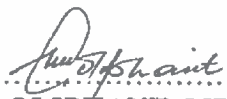
19 OCTOBER 2018

LABOUR RELATIONS ACT, 1995

CANCELLATION OF GOVERNMENT NOTICE

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

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


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


UMNYANGO WEZABASEBENZI

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

UKUHOXISWA KWESIVUMELWANO SIKAHULUMENI


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

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


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

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

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


MINISTER OF LABOUR
25/09/2018

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

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

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


UNGQONGQOSHE WEZABASEBENZI
28/09/2018



CIRBF COLLECTIVE AGREEMENT
(Construction Industry Retirement Benefit Fund)

TABLE OF CONTENTS

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

T. G M 9. 12. 2

SCHEDULE

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

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

and the

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

1. SCOPE OF APPLICATION OF AGREEMENT

- 1.1 The terms of this Agreement shall apply to and be observed-
 - (a) throughout the Republic of South Africa; and
 - (b) by all employers and employees in the Civil Engineering Industry who are members of the employers' organisations and the trade unions, respectively.
- 1.2 All the employers who do not have a retirement benefit fund in favour of their employees in place, shall by publication of this agreement join the Construction Industry Retirement Benefit Fund.
- 1.3 The rules of the retirement benefit fund referred to in this Agreement shall require that employers and employees contribute equally in respect of each employee's membership of the retirement benefit fund. Provided that a fund which provides solely for payment of benefits on death and disability shall not be deemed to be a pension or provident fund for the purposes of this Agreement
- 1.4 Notwithstanding the above, clause 1.2 will not apply to employers contributing to an existing Retirement Benefit Fund, registered in terms of the Pension Fund Act of 1956, which was fully operational before the publication of this agreement.
- 1.5 This agreement is binding in terms of Section 31 of the Labour Relations Act, 66 of 1995, on the parties which concluded the Conditions of Employment Collective Agreement and shall become binding on the other employers and employees in the industry upon extension by the Honorable Minister of Labour in terms of Section 32, from a date determined by the Minister.

2. PERIOD OF OPERATION OF AGREEMENT

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

3. DEFINITIONS

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

T. G. M. 1.2.2 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

T.G.M. / LV 4

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

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

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

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

- a. The construction of aerodrome runways or aprons; aqueducts; bins or bunkers; bridges; cable ducts; caissons; rafts or other marine structures; canals; cooling, water or other towers; dams; docks; harbours; quays or wharves; earthworks; encasements; housing or supports for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine headgear/s; pipelines; piers; railways; reservoirs; river works; roads or streets; sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants; and/or
- b. Excavation and bulk earthworks; bush clearing and de-stumping; topsoil stripping; drilling and blasting; preparation of bench areas, drilling pre-split holes and blasting and/or cast blasting; secondary blasting; loading, hauling and dumping of mineralized and/or waste material to waste dumps or processing plant feed (ROM Pad) stockpiles; production dozing of top soil, inter burden or waste material; pumping and dewatering of storm and/or contaminated water; construction and maintenance of access and haul roads, ramps, waste and processing plant feed (ROM Pad) areas, safety beams, high walls; benches, storm water systems, catch drains, bund walls, surge dams; trimming, scaling or chain dragging of batters, heap-leach pads, tailings dams; dust suppression of loading areas, haul roads and dumping areas; rehabilitation of earth work areas or waste dumps; topsoil spreading, hydro-seeding and watering and/or
- c. Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and/or
- d. The asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites

and further includes: -

- e Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or
- f The making, repairing, checking or overhauling of tools, vehicles, plant, machinery or equipment in workshops which are conducted by employers engaged in any of the activities referred to in sub - clauses (a) to (f) inclusive;

but excluding: -

- i) Work in connection with any one or more of the activities specified in definition (iii) where such work, when undertaken in connection with the erection of structures having the general character of buildings and irrespective of whether or not such work involves problems of a civil engineering character, is carried out by the employers erecting such structures;

T. G. M. / L.V.

- ii) Work in connection with any one or more of the activities specified in definition (iii) when undertaken as an incidental operation in connection with the erection of structures having the general character of buildings or when undertaken by the employers erecting such structures;
- iii) Any work falling within the scope of any other industry, and
- iv) The Mining Industry which is defined as the industry where employers and employees are associated for the purpose, directly or indirectly, for the winning, extracting, processing and refining of a mineral in, on or under the earth or water or from any residue stockpile or residue deposit.

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

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

'Law' includes the common law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

T.G.M. { 2.11.18 6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. CONTINUATION OF THE FUND

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

4.2 The Fund shall consist of-

T. G. M. 12.17

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

5. MEMBERSHIP

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

6. CONTRIBUTIONS

6.1 Contributions by the Member

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

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

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

6.2 Contributions by the Employer

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

T. G. M.

8

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

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

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

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

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

6.3 Additional Voluntary Contributions by Members and Employers

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

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

7. ADMINISTRATION OF THE FUND

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

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

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

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

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

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

8. DESIGNATED AGENTS

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

T. G. M. *flv*

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

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

- 8.3 The Minister, on request of the council, shall appoint one or more persons to be designated agents to assist in giving effect to the terms of this agreement, including the issuing of compliance orders requiring any person bound by the Collective Agreement to comply with within 14 days.

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

9. EXEMPTIONS

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

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

10. RESOLUTION OF DISPUTES

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

11. EXHIBITION OF AGREEMENT

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

12. MEMBERS' BENEFITS

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

T. G-m

10

Appendix A



CIRBF EXEMPTIONS POLICY
(Construction Industry Retirement Benefit Fund)

T.G.M

h.v
1

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

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

L.V
T.G. M. f. 2

1. Introduction

- 1.1 The purpose of this document is to set out the principles and procedures which will apply to the consideration of applications for exemptions.
- 1.2 Any person bound by a Council Collective Agreement may apply for an exemption.
- 1.3 The Council should determine the appropriate level at which exemption decisions will be made and may choose to implement one of the following approaches in this regard:
 - 1.3.1 Determine the specific types of exemption applications which the Exemptions Committee ("EC") may deal with and those which could be referred to the Office for decision; or
 - 1.3.2 Determine that all exemption applications must be dealt with by the EC.
- 1.4 Where the Office or the EC is given the authority to deal with an exemption application and an appeal is lodged against a decision of the Office or the EC then this appeal must be referred to the Independent Appeal Body ("IAB") for final decision.
- 1.5 Exemption applications and appeals must be considered on the basis of criteria established in this policy.
- 1.6 Where the Office, EC or IAB wishes to apply other criteria to address a specific situation they must make recommendations in this regard to the BCCEI Council Committee to obtain approval prior to implementing the desired criteria.
- 1.7 Reasons for granting or refusing an application for exemption or appeal shall be recorded and retained by the Council. The applicant must on request be provided with reasons for the decision.
- 1.8 The Council Committee may at any time after prior notification and only upon request of the Office and after due consideration of a compliance report, withdraw an exemption either wholly or in part, or amend the conditions under which the exemption was issued, or amend the conditions of employment and other matters regulated under the exemption.

2. Definitions

Unless the contrary intention appears, any expression used in this policy which is defined in the Labour Relations Act 66 of 1995 ("Act"), shall have the same meaning as in the Act and any reference to an Act shall include any amendment to such Act.

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

'Act' means the Labour Relations Act 66 of 1995

'Council' means the Bargaining Council for the Civil Engineering Industry, duly registered in terms of section 30(1) of the Act under reference number LR 2/6/160. Any functions to be performed by the Council in terms of this policy shall be performed by the Council's General Secretary or any other employee of the Council to which the Council or General Secretary has delegated such function.

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

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

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

'Day' means calendar day

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

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

'Members' shall mean members of the EC or IAB

'Office' means the BCCEI administration.

L.V
T. G. M. 3

3. Fundamental Principles

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

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

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

2. V T G H A f 4

- 3.8 The employer must consult with the employees, through a trade union representative or, where no trade union is involved, with the employee representatives or employees themselves, and must include the views expressed by the employees in the application.
- 3.8.1 Where the views of the employees differ from that of the employer, the reasons for the views expressed must be submitted with the application.
- 3.8.2 Where the employees are members of a recognised trade union, the employer should inform the local trade union office of the intention to apply for exemption and request, in writing, a meeting with the local trade union official to discuss the impact of the exemption on the employer and the members of the trade union.
- 3.8.3 Where the employees have elected a trade union representative or representatives (shop stewards) these persons should be requested to sign the application to confirm that they were consulted and that they understand the need for the application. Where the local trade union official and/or shop stewards have been consulted where they reject the application, such rejection must be recorded in the application and countersigned by at least two witnesses.
- 3.8.4 Where the local trade union official and/or shop stewards and/or employees support the application, this signed agreement should be included in the application.
- 3.8.5 All meetings in this regard between the employer, employees, shop stewards and trade union officials should be minuted and the minutes together with the attendance registers should be submitted with the application.
- 3.8.6 The employer needs to ensure that the required proof of consultation and/or notification of its intention to apply for exemption as provided for by the exemption application form is duly included and submitted with the exemption application form.
- 3.9 The application itself must be signed by either a director of the firm, member, owner or a senior accountant (not bookkeeper). The human resources manager may sign applications for overtime exemptions.
- 3.10 The Council, Office, EC and IAB will make a decision(s) on the application as submitted.
- 3.11 It is not a condition of the exemption that employees accept the proposed exemption. All that is required is that employees and their representatives are fully informed of the employer's intention to apply for exemption and that this consultation process and their responses thereto are formally recorded and submitted with the application.
- 3.12 Retrospectively
Applications for exemption may not be granted retrospectively. The Office, EC or IAB may, on a request which is substantively explained and motivated, condone a past period.
- 3.13 Urgent applications
- 3.13.1 In cases of urgent applications, details may be faxed, e-mailed or hand delivered to the Council.
- 3.13.2 The Chairperson together with the Vice Chairperson and General Secretary may consider the application, make a decision and communicate that decision to the applicant without delay. The decision will be ratified and minuted at the next meeting of the EC.
- 3.13.3 The applicant is expected to put forward a substantive explanation as to the urgency of the application.
- 3.14 Condonation
- 3.14.1 The EC and IAB may, on good cause shown, condone the late filing of an application or any documents.
- 3.14.2 An application for condonation must be on affidavit.
- 3.15 Oral submissions
- 3.15.1 The Office, EC and IAB decide applications based on the papers filed.
- 3.15.2 Any interested party may apply for an opportunity to present oral submissions.
- 3.15.3 In deciding whether to allow oral submissions, the following must be taken into account –
- i) the complexity of the matter,

L.V T.G.M 5

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

4. Criteria

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

1.2
T. G. M. P⁶

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

5. Appeal

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

L.V. T.G.M. f⁷

- 5.10.4 The need to avoid retrenchments;
- 5.10.5 Any other factors relevant to the particular exemption application.
- 5.11 The IAB may:
 - 5.11.1 Confirm, vary or set aside the decision;
 - 5.11.2 Make any other decision that the Council, Office or EC could have made.
- 5.12 New evidence
 - 5.12.1 An interested party may apply to the IAB to lead new evidence on appeal.
 - 5.12.2 New evidence may relate to facts or events that took place before or after the date of the initial exemption application.
 - 5.12.3 An application to lead new evidence must –
 - i) be on affidavit;
 - ii) show that the evidence sought to be lead is material and relevant to the issue on appeal;
- 5.13 The IAB may –
 - 5.13.1 Refuse the application for the leading of new evidence;
 - 5.13.2 Grant the application for the leading of new evidence in whole or part and –
 - i) consider the evidence itself;
 - ii) remit the appeal to the Council, Office or EB with an instruction to consider the new evidence and reconsider its decision in the light of that evidence.
- 5.14 If the IAB decides to consider the evidence itself, and the evidence is not documentary evidence, it must direct whether the evidence should be presented orally or on affidavit.
- 5.15 If the IAB directs that evidence must be on affidavit –
 - 5.15.1 The relevant affidavits must be filed with the Council within 7 (seven) days of the IAB's decision to allow the evidence to be lead;
 - 5.15.2 Other interested parties may file answering affidavits within 7 (seven) days of receiving an affidavit containing new evidence;
 - 5.15.3 The party that filed the affidavit containing new evidence may, within 7 (seven) days of receiving any answering affidavit, file-
 - i) a replying affidavit;
 - ii) Supplementary submissions;
- 5.16 Other interested parties may file supplementary submissions –
 - 5.16.1 Within 7 (seven) days of receiving any supplementary submissions or replying affidavits;
 - 5.16.2 If no supplementary submissions or replying affidavits are filed, within 7 (seven) days of the filing of any answering affidavit; or
 - i) if no answering affidavits are filed, within 7 (seven) days of receiving the affidavit containing new evidence.
- 6. Composition of the Exemptions Committee and Independent Appeal Body
 - 6.1 The Council must appoint members to the EC and IAB on such terms and conditions they deem fit. The EC and IAB will comprise of at least 3 (three) members per committee.
 - 6.2 The EC and IAB members hold office until-
 - 6.2.1 They resign on 3 (three) months' written notice to the Council;
 - 6.2.2 Or the Council resolves to terminate their membership.
- 7. Chairperson of the Exemptions Committee and Independent Appeal Body

L.V. T. G. naal 8

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

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

8.1 Members of the EC and IAB –

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

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

9. Quorum

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

9.2 If only 2 (two) members are present at a meeting and they cannot reach consensus on any issue to be determined, the application must be postponed to a further meeting. Any further discussion regarding this application can only take place once the meeting is attended by at least 3 (three) members.

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

10. Decisions of the Exemptions Committee and Independent Appeal Body

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

10.2 A decision must be signed by the chairperson.

11. Meetings of the Exemptions Committee and Independent Appeal Body

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

11.2 The EC and IAB must meet –

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

11.2.2 When requested to do so by the General Secretary.

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

L.V
T G h 1 P 9