

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF EMPLOYMENT AND LABOUR


NO. R. 1764

18 February 2022

LABOUR RELATIONS ACT, 1995

**NATIONAL BARGAINING COUNCIL OF THE LEATHER INDUSTRY OF SOUTH AFRICA:
EXTENSION TO NON-PARTIES OF THE ADMINISTRATION EXPENSES AMENDING
COLLECTIVE AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and 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 **National Bargaining Council of the Leather Industry of South Africa**, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from the second Monday after the date of publication of this notice and for the period ending 10 May 2028.



MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 02/02/2022

UMNYANGO WEZEMISEBENZI NEZABASEBENZI**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA 1995****UMKHANDLU KAZWELONKE WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI
BEMBONI YEZIKHUMBA: UKWELULWA KWESIVUMELWANO SABAQASHI NABASEBENZI
SEZINDLEKO ZOKUPHATHWA KOMKHANDLU ESICHIBIYELAYO, SELULELWA KULABO
ABANGEYONA INGXE NYE YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi NezabaSebenzi, ngokwesigaba-32(2) soMthetho Wobudlelwano KwezabaSebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa kuMkhandlu KaZwelonke Wokuxoxisana phakathi kwabaQashi Nabasebenzi Embonini Yezikhumba, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabaSebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyoMboni, kusukela ngoMsombuluko wesibili emva kosuku lokushicilelwa kwalesiSaziso kuze kube isikhathi esiphela mhlaka 10 kuNhlaba 2028.



MNUMZANE TW NXESI, MP
UNGQONGQOSHE WEZEMISEBENZI EZABASEBENZI
USUKU: 02/02/2022

SCHEDULE

NATIONAL BARGAINING COUNCIL OF THE LEATHER INDUSTRY OF
SOUTH AFRICA

ADMINISTRATION EXPENSES COLLECTIVE AGREEMENT

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

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

(hereinafter referred to as the "employers" or the "employer organisations"), of the one part, and the

- (d) **National Union of Leather and Allied Workers (N.U.L.A.W)**
- (e) **Southern African Clothing and Textile Workers' Union**

(hereinafter referred to as the "employees" or the "trade unions") of
the other part, being the parties to the National Bargaining Council of
the Leather Industry of South Africa, to amend the agreement
published under Government Notices R.430 of 12 May 2006, R.508
of 09 May 2008, R.324 of 3 May 2013 and 191 of 20 April 2018.



Replace "INDEX" with the following:

INDEX

1. Scope of application
2. Date and period of operation
3. Definitions
4. Objects
5. Council funds
6. Agents
7. Exemptions
8. Dispute resolution

ANNEXURES

A - Exemptions and Exemptions Appeal Policy and Procedure

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1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Leather Industry -
 - (a) by all employers who are members of the employer organisation and by all employees who are members of the trade unions, who are engaged and employed in the Leather Industry, respectively;
 - (b) in the Republic of South Africa.
 - (c) Notwithstanding the provisions of subclause (1)(a), the terms of this Agreement shall not apply to non-parties in respect of Clauses 1(1)(a) and 2(1).

2. DATE AND PERIOD OF OPERATION

- (1) This Agreement will come into operation for the parties on 25 August 2021 and remain in force for the period ending 10 May 2028,
- (2) This Agreement will come into operation for non-parties on such date as the Minister of Labour extends the agreement to them, and will thereafter remain in force for the period ending 10 May 2028.

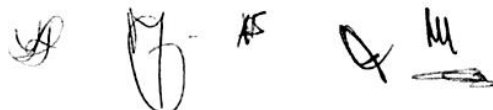
3. CLAUSE 8: DISPUTE RESOLUTION

Substitute the following for Clause 8

- (1) The Secretary of the Council may at any time require a Designated Agent to monitor compliance with the provisions of this Agreement.
- (2) Any person may lodge a complaint or refer a dispute about the interpretation, application or enforcement of this Agreement to the Secretary of the Council for resolution in terms of this Agreement.
- (3) The Secretary of the Council may require a designated agent to investigate the complaint or dispute.
- (4) The designated agent shall investigate the facts surrounding the dispute and if the agent has reason to believe that a collective agreement has been breached, the agent may endeavour to secure compliance with the agreement through conciliation.



- (5) The designated agent must submit a written report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.
- (6) If in the course of performing a designated agent's duties, an agent discovers what appears to be a breach of the Agreement, the agent:
 - (a) may investigate the alleged breach;
 - (b) may endeavour to secure compliance with the Agreement; and
 - (c) must submit a report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.
- (7) On receipt of the report, the Secretary may:
 - (a) require the designated agent to make further investigations;
 - (b) if further conciliation is indicated, appoint a conciliator from the Council's panel of conciliators;
 - (c) refer the dispute for conciliation to the Disputes Committee of the Council;
 - (d) issue a compliance order; or
 - (e) refer the dispute to arbitration in terms of this Agreement.
- (8) If a conciliator is appointed or the dispute is referred to the Disputes Committee, the Secretary must decide the date, time and venue of the conciliation meeting and must serve notices of these particulars on the parties to the dispute.
- (9) Where a dispute is referred to conciliation, the conciliator or disputes committee must attempt to resolve the dispute within a period of 30 days or within an extended period as agreed by the parties to the dispute.
- (10) Where a dispute is not resolved after a conciliation meeting, or after 30 days, or after any extended period as agreed between the parties, the Council must issue a certificate stating that the dispute was not resolved.

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- (11) Where the Act requires a dispute to be resolved through arbitration and a certificate has been issued in terms of (10), any party may request the Council to appoint an arbitrator to resolve the dispute. Such request must be made within 30 days of the date of the certificate issued in terms of (10). The parties to the dispute may agree to extend this period or the arbitrator may condone a late referral on good cause shown.
- (12) If a compliance order is issued, that order must be served on the party allegedly in breach of the Agreement.
- (13) The party on whom the order is served may object in writing. The objection must be served on the Council within 14 days service of the order.
- (14) If a party objects, the Secretary may take any of the steps referred to in sub-clause (7) except the issue of another compliance order.
- (15) If a party fails to object, the Secretary may, at any time, apply to have the order made an arbitration award.
- (16) If the dispute is referred to arbitration, the Secretary must appoint an arbitrator from the Council's panel of arbitrators. Arbitrators serving on the panel shall be appointed to arbitrate matters on a rotational basis, unless the parties to the dispute agree on an Arbitrator from the panel, with the next available Arbitrator being appointed should any panel member(s) not be available in terms of such rotation.
- (17) The Secretary, in consultation with the arbitrator, must decide the date, time and venue of the arbitration hearing.
- (18) The Secretary must serve notices of the date, time and venue of the arbitration on:
 - (a) the parties to the dispute;
 - (b) any person who may have a legal interest in the outcome of the arbitration.
- (19) Unless this agreement provides otherwise, the Arbitrator must resolve the dispute through arbitration.
- (20) The arbitrator must conduct the arbitration in a manner that

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the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

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

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- (d) the parties to the dispute agree.
- (27) Notwithstanding the provisions of sub-clause (23), the arbitrator may determine the dispute and make the compliance order an award without hearing oral evidence if the arbitrator is satisfied that-
 - (a) the parties have been properly served; and
 - (b) it is appropriate in the circumstances to do so.
- (28) Within 14 days of the conclusion of the arbitration proceedings-
 - (a) the arbitrator must issue an arbitration award with reasons, signed by the arbitrator; and
 - (b) the Council must serve a copy of that award on each party to the dispute.
- (29) On good cause shown, the Secretary of the Council may extend the period in which the arbitration award and the reasons are to be served and filed.
- (30) The arbitrator may make any appropriate award, including an order for costs, that gives effect to the collective agreement.
- (31) An arbitrator may at his or her own initiative or as a result of an application by an affected party, vary or rescind an award-
 - (a) erroneously sought or made in the absence of any party affected by the award;
 - (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - (c) granted as a result of a mistake common to the parties to the proceedings.
- (32) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court under section 158(1) of the Labour Relations Act.
- (33) The provisions of this dispute procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement or recover any money due.

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- (34) (a) If the Arbitrator finds that any party has failed to comply with any provision of the collective agreement which is binding on that party, the Arbitrator may, in addition to any other appropriate order, impose a penalty.
- (b) The maximum penalty that the Arbitrator may be impose-
- (i) for a failure to comply with a provision of the collective agreement not involving a failure to pay any amount due to an employee/party is the penalty determined in terms of Table One;
- (ii) for a failure to comply with a provision of the collective agreement involving a failure to pay any amount due to an employee/party is the penalty determined in terms of Table Two.

TABLE ONE:
MAXIMUM PERMISSIBLE PENALTY NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R300 per employee or incident in respect of whom/which the failure to comply occurs i.e. daily, weekly, fortnightly, monthly or otherwise as the case may be.
A previous failure to comply in respect of the same provision	R600 per employee or incident in respect of whom/which the failure to comply occurs. i.e. daily, weekly, fortnightly, monthly or otherwise as the case may be.
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R900 per employee or incident in respect of whom/which the failure to comply occurs. i.e. daily, weekly, fortnightly, monthly or otherwise as the case may be.
Three previous failures to comply in respect of the same provision within three years	R1200 per employee or incident in respect of whom/which the failure to comply occurs. i.e. daily, weekly, fortnightly, monthly or otherwise as the case may be.
Four previous failures to comply in respect of the same provision within three years	R1500 per employee or incident in respect of whom/which the failure to comply occurs. i.e. daily, weekly, fortnightly, monthly or otherwise as the case may be.

TABLE TWO
MAXIMUM PERMISSIBLE PENALTY INVOLVING AN UNDERPAYMENT

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

4. CLAUSE 7: EXEMPTIONS

4.1 Replace Clause 7 **"EXEMPTIONS"** with the following:

"Exemptions and exemption appeals shall be observed in terms of

"EXEMPTION AND EXEMPTION APPEAL POLICY AND PROCEDURE"

in Annexure A"

4.2 Insert new Annexure A as follows:

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

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

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

2. DEFINITIONS

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

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

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

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

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

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

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

"Exemption Criteria" means the exemption criteria contained in the collective agreements of the National Bargaining Council of the Leather



Industry of South Africa

“General Secretary” means the General Secretary of the Council

3. EXEMPTIONS AND EXEMPTION APPEALS

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

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

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

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

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

4. EXEMPTIONS COMMITTEE

4.1 Establishment & Composition of the Exemptions Committee:

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

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4.2 Exemption Committee Meetings

- 4.2.1 A quorum for the meetings shall be the attendance of at least two party employer members and at least two party trade union members.
- 4.2.2 Exemption Committee meetings shall be held on an ad-hoc basis in the province in which the applicant conducts business subject to the decision of the Exemptions Committee.

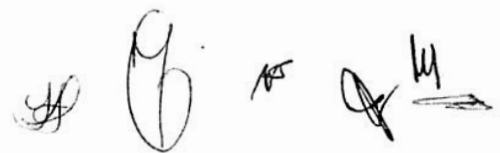
5. THE EXEMPTIONS MANDATE

- 5.1 The Exemptions Committee is mandated by the Council to consider all party and non-party applications for exemption from the collective agreements concluded in the Bargaining Council.
- 5.2 The Exemptions Committee may delegate any of its functions or duties to a District Committee or any other committee of the Council as the case may be.
- 5.3 The Exemptions Committee will consider and determine applications for exemption in a manner it considers appropriate to determine the application fairly and quickly, which may be limited to a consideration of written motivations or the hearing of oral submissions as the case may be.
- 5.4 The Exemptions Committee, when considering an application for exemption must take into account the exemption criteria.
- 5.5 The Exemptions Committee shall have the power to approve, refuse, partly approve or withdraw an application for exemption
- 5.6 The Exemptions Committee, on not approving an application or part thereof or withdrawing an exemption must provide the Applicant with written reasons for its decision.

6. EXEMPTIONS

6.1 APPLICATION PROCESS

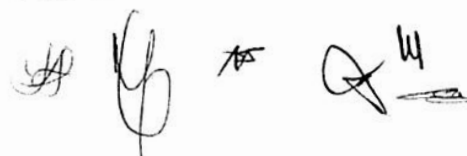
- 6.1.1 Applications for exemption from the provisions of a collective agreement must be made in writing on the prescribed application form, and lodged with the local office of the Council.

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- 6.1.2 Applications must be motivated and supported by relevant documents, data and audited financial statements (where applicable) and other relevant financial information.
- 6.1.3 Applications that impact employees terms and conditions of employment must be accompanied by written proof that employees and/or their representatives/trade unions have been consulted and further accompanied by a record of their support or not of the application.
- 6.1.4 Applications must indicate the period for which the exemption is sought.

6.2 EXEMPTION PROCEDURE

- 6.2.1 The Council must open and maintain a register for each application which records the following:
 - 6.2.1.1 date of receipt of application
 - 6.2.1.2 reference number
 - 6.2.1.3 name of applicant
 - 6.2.1.4 brief description of exemption application
 - 6.2.1.5 name of the Agreement and the clause/s from which exemption is sought
 - 6.2.1.6 date of validation of exemption application
 - 6.2.1.7 date of exemption hearing
- 6.2.2 Upon receipt of an application, the date received must be recorded in the register
- 6.2.3 The agent of the relevant District Office shall on receipt of an application scrutinise the application to ensure that the application is complete and valid.
- 6.2.4 Should the agent find the application to be incomplete, the Agent shall send written communication to the applicant advising of this and what is required to complete the application
- 6.2.5 After the agent is satisfied that the application is complete, the application shall be considered valid and the agent shall

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- record the date of validation accordingly.
- 6.2.6 Within five days from date of validation the agent shall verify the employer's consultation with the employees/trade union and report in writing whether the employees / trade union support or oppose the application.
- 6.2.7 Within seven days of receipt of the agent's report on the consultation process, the General Secretary shall arrange a date, time and venue for the hearing of the application.
- 6.2.8 The set down date for the hearing must not be later than 30 days of the validation of the application by the Agent.
- 6.2.9 The General Secretary shall notify the applicant in writing of the date, time and venue of the hearing.
- 6.2.10 In the event that the applicant does not attend the hearing, the Exemptions Committee will consider the application on the written application and supporting documents.
- 6.2.11 The General Secretary must within fourteen days of the exemption being granted advise the applicant of such decision in writing and issue a Licence of Exemption setting out the following:
- 6.2.11.1 The full names of the Applicant.
- 6.2.11.2 The provisions of the collective agreement from which the exemption has been granted.
- 6.2.11.3 The conditions subject to which the exemption is granted.
- 6.2.11.4 The period which the exemption will operate clearly stating the commencement and expiring dates.
- 6.2.12 Where the Committee does not approve an Application or part thereof or when deciding to withdraw an Exemption, the General Secretary must advise the applicant in writing within fourteen days of the date of such decision and provide the Applicant with reasons therefor.

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7. EXEMPTION APPEALS

7.1 Establishment of an Independent Appeal Body

- 7.1.1 In terms of section 32(3)(e) of the Act, the Council creates and maintains an Independent Exemptions Appeal Body to hear and decide appeals against an Exemptions Committee's refusal or partial refusal to grant an exemption or its withdrawal or partial withdrawal of an exemption.
- 7.1.2 An Independent Appeal Body must be appointed by the Council and may consist of one or more persons, as determined by the Council
- 7.1.3 No representative, office-bearer or official of a trade union or employers' organisation party to the Council may be a member of the Independent Exemptions Appeal Body.

7.2 APPLICATION PROCESS & PROCEDURE

- 7.2.1 An Applicant aggrieved by an Exemptions Committee's decision shall within **30 days** of being notified of the Exemptions Committee's decision have the right to appeal to the Independent Exemptions Appeal Body.
- 7.2.2 Should the appellant show good cause, the Independent Appeal Body may condone a late appeal.
- 7.2.3 A valid notice of appeal must be in writing clearly setting out the grounds on which the appeal is based and be accompanied by relevant supporting documentation.
- 7.2.4 Upon receipt of an appeal application, the General Secretary shall forward the appeal application together with the original application for exemption and supporting documents to the Independent Appeal Body for a decision

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- 7.2.5 The General Secretary in consultation with the Independent Appeal Body will arrange a date, time and venue for the appeal hearing. The date of the hearing shall not be later than 30 days from which a valid appeal was filed with the Council.
- 7.2.6 The Independent Appeal Body shall hear and determine appeals in any manner it considers appropriate to determine the application fairly and quickly.
- 7.2.7 The Independent Appeal Body shall render a decision within fourteen days from the last date of the appeal hearing
- 7.2.8 Should the Independent Appeal Body reverse a decision of the Exemptions Committee, the Council must issue the applicant with a licence of exemption accordingly
- 7.2.9 The Independent Appeal Body has discretion to order against the appellant payment of all costs incurred by the Council in arranging and conducting the appeal in the event of it upholding the decision of the Exemptions Committee

8. EXEMPTION CRITERIA

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

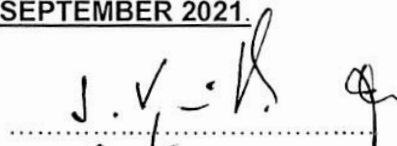
- (a) any written and/or verbal substantiation provided by the applicant
- (b) fairness to the employer, its employees and other employers and the employees in the industry;
- (c) whether an exemption, if granted, would undermine this Agreement or the collective bargaining process;
- (d) whether it will make a material difference to the viability of a new business, or a business previously outside the



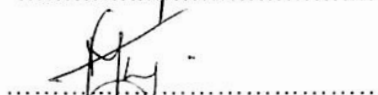
- jurisdiction of the Council;
- (e) unexpected economic hardship occurring during the currency of the Agreement, and job creation and/or loss thereof.
 - (f) the infringement of basic conditions of employment rights;
 - (g) the fact that a competitive advantage might be created by the exemption;
 - (h) comparable benefits or provisions where applicable;
 - (i) the applicant's compliance with other statutory requirements such as the Occupational Injuries and Diseases Act or Unemployment Insurance; or
 - (j) any other factor which is considered appropriate.

SIGNED AT DURBAN ON THIS 29TH DAY OF SEPTEMBER 2021.

J J V VYMETAL, Member of the Council



M OOSTHUIZEN, Member of the Council



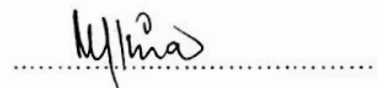
H STRAUSS, Member of the Council



A O BENJAMIN, Member of the Council



V MEMBINKOSI, Member of the Council



S NAIDOO, General Secretary of
the Council

