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## GOVERNMENT NOTICE

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### DEPARTMENT OF LABOUR

No. R. 455

5 June 2015

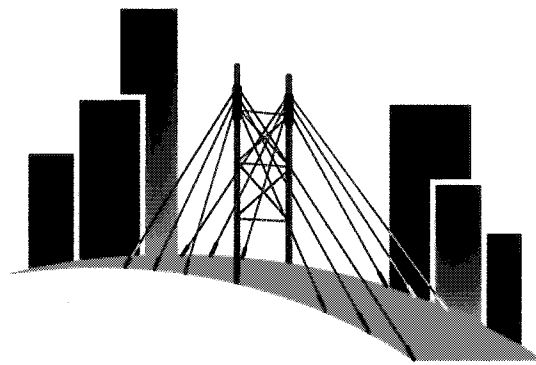
#### LABOUR RELATIONS ACT, 1995

#### **BARGAINING COUNCIL FOR CIVIL ENGINEERING INDUSTRY: EXTENSION OF DISPUTE RESOLUTION 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 Dispute Resolution Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for Civil Engineering Industry** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Dispute Resolution Collective Agreement, shall be binding on the other employers and employees in that Industry, with effect from .....<sup>2015-06-15</sup>..... and for the period ending 31 March 2020.

  
**MINISTER OF LABOUR**

15/05/2015



# BCCEI

Bargaining Council for the  
Civil Engineering Industry

**DISPUTE RESOLUTION COLLECTIVE AGREEMENT**

for the

**CIVIL ENGINEERING INDUSTRY**

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**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY  
DISPUTE RESOLUTION 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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**CHAPTER 1**

**APPLICATION AND SCOPE OF AGREEMENT**

**1. Scope of Application of Agreement**

1.1 This Agreement binds -

- (a) All employers in the civil engineering industry that are members of the employers organisations that are party to this agreement; and
- (b) All employees in the bargaining unit, employed in the civil engineering industry who are members of the trade union that are party to this Agreement.

1.2 Clause 1.1 shall lapse should this collective agreement be extended to non-parties in terms of section 32 of the Act.

1.3 This Agreement must be applied in the Bargaining Council for the Civil Engineering Industry throughout the Republic of South Africa.

1.4 Notwithstanding the provisions of sub-clause 1.1, the terms of this Agreement shall apply to –

- (a) apprentices or learners only to the extent to which they are not inconsistent with the provisions of the Skills Development Act, No.97 of 1998, or any contract entered into or any conditions fixed hereunder; and
- (b) trainees under training in terms of Section 19 of the Skills Development Act, No.97 of 1998, only in so far as they are not inconsistent with the provisions of the Act or any conditions fixed there under.

1.5 The provisions of this Agreement do not apply to those employers registered as a CIDB Grade 1-3 employer, or any employee employed by an employer who is registered as a CIDB Grade 1-3.

**2. Period of Operation of Agreement**

2.1 This Agreement shall come into operation on such date signed by the parties to this agreement, or as fixed by the Honorable Minister of Labour in terms of section 32 of the Act, and shall remain in force until 31 March 2020.

  
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**CHAPTER 2****DISPUTE RESOLUTION****1. Preamble**

- 1.1 The Council is accredited in terms of Section 127(5) of the Act to conciliate and arbitrate disputes as provided for in this agreement.
- 1.2 Subject to paragraph 1.3 below the procedures set out in Annexure A shall be utilised to deal with all disputes arising within the Council's jurisdiction.
- 1.3 Different processes shall be utilised for different types of disputes, as set out below. In the event of a dispute over which section should be applied, the dispute shall be processed in accordance with sub-clause 3.1 below. Notwithstanding this Agreement, parties may agree to meet whenever they mutually deem it necessary for the purpose of resolving a dispute. They may give consideration at their own cost to appoint a mediator, arbitrator or referring the dispute to any other process, as agreed between them.
- 1.4 Where the parties fall within the Council's jurisdiction then notwithstanding paragraph 1.1 and 1.2 above, no employer or employee may, through a collective agreement establish their own dispute procedure which does not compel them to refer their disputes to the Council.
- 1.5 If at any stage after a dispute has been referred to the Council, it becomes apparent that the dispute ought to have been resolved through private dispute resolution in terms of a collective agreement or in terms of a private agreement between the parties to the dispute and –
- (a) if the employee to the collective agreement or private agreement is earning less than the threshold prescribed by the Minister, in terms of section 6(3) of the Basic Conditions of Employment Act and is not required to pay any part of the cost of the private dispute resolution procedures; or
  - (b) the person or body appointed to resolve the dispute is independent of the employer the Council must refer the dispute back to the referring parties for processing in terms of their private dispute resolution procedure.

**2 Mutual interest issues that are subject to negotiations**

- 2.1 If the negotiations conducted in terms of clause 16 of the Council's constitution have not been resolved, any party to those negotiations may declare a dispute by notice in writing to the Council and must satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- 2.2. Industry disputes shall be processed in accordance with this agreement.



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- 2.3. When a dispute has been referred to the Council, it must appoint a commissioner after consultation with the parties within fourteen (14) days of the declaration of such dispute, for the purposes of considering the matter.
- 2.4. The commissioner shall use his/her best endeavors to settle the dispute and shall meet as often as it deems necessary for this purpose. In the course of its deliberations the commissioner may give consideration to the following -
- (a) requiring the parties to appoint a sub-committee elected from the National Negotiating Forum to meet within a specified number of days, for the purposes of attempting to resolve the dispute, or to recommend to the commissioner a process by which the dispute can be resolved; and/or
  - (b) advising the parties to refer the dispute to advisory arbitration or binding arbitration in terms of the Act and the Rules.
- 2.5 Subject to this agreement, if the dispute has not been settled within thirty (30) days from the date on which the dispute was referred to the Council, and if the parties have not within that period agreed to extend the thirty (30) day period nor agreed on any other process to resolve the dispute, any party to the dispute shall be entitled to pursue whatever means are available in the Act to resolve the dispute.

### **3. Disputes about the Interpretation or Application of the Council's Collective Agreements**

- 3.1 This section refers to any dispute arising out of the interpretation or application of the Council's collective agreements and includes an alleged breach of any of the Council's collective agreements.
- 3.2 This section excludes demarcation disputes referred to in terms of section 62 of the Act and which are to be referred to the CCMA.
- 3.3 A person may refer a dispute about the interpretation, application or enforcement of the Councils' collective agreements to the Council, which will in turn seek to resolve it in terms of the Rules in Annexure A.

### **4. Enforcement of Collective Agreements by the Council**

- 4.1. Despite any other provision in this agreement, the Council will be entitled to monitor, investigate and enforce compliance with its collective agreements in terms of this clause or a collective agreement concluded by the parties to the Council.
- 4.2. A designated agent of the Council must investigate and attempt to resolve a dispute/complaint that comes to his/her attention in the course of performing his/her duties.



- 4.3. A designated agent of the Council is authorised to issue a Compliance Order requiring any person bound by the Councils' Collective Agreements to comply with the Collective Agreements within the time frame determined by the designated agent.
- 4.4. The Council may refer any unresolved dispute concerning compliance with any provision of a collective agreement to arbitration in terms of rule 24 in Annexure A.
- 4.5. An arbitrator conducting an arbitration in terms of this clause may make an appropriate award, including –
- (a) ordering any person to pay any amount owing in terms of a collective agreement;
  - (b) imposing a fine for a failure to comply with a collective agreement in accordance with Tables One and Two as set out hereunder as Annexure C;
  - (c) charging a party an arbitration fee;
  - (d) ordering a party to pay the costs of the arbitration;
  - (e) confirming, varying or setting aside a compliance order issued by a designated agent; or
  - (f) any award contemplated in section 138(9) of the Act.
- 4.6. Interest on any amount that a person is obliged to pay in terms of a collective agreement accrues from the date on which the amount was due and payable at the rate prescribed in terms of section 1 of the prescribed Rate of Interest Act 55 of 1975, unless the arbitration award provides otherwise.
- 4.7. If an employer upon whom a fine has been imposed in terms of this section files an application to review and set aside an award made in terms of sub clause (4.5), any obligation to pay a fine is suspended pending the outcome of the review application.
- 4.8. The provisions of this agreement stand in addition to any other legal remedy through which the Council may enforce its Collective Agreements.

## 5. Other Disputes

- 5.1. All disputes in terms of this clause shall, if required by the Act, be referred to the Council for resolution in terms of the Act and the rules in Annexure A.
- 5.2. The arbitrator, in determining a dispute, shall take into account –
- (a) any code of good practice that has been issued by NEDLAC in accordance with the provisions of the LRA; and
  - (b) purpose and effect of the Council's collective agreements relevant to the matter being considered in the arbitration proceedings.



**6. General**

- 6.1. The Council shall comply with the accreditation requirements set by the CCMA.
- 6.2. The Council shall establish and maintain panels of conciliators and arbitrators to carry out the conciliation and arbitration functions in terms of this agreement. The Council may at any stage decide to remove a person from a panel for whatever reason it considers appropriate, including but not limited to incapacity or serious misconduct.
- 6.3. The Council shall establish and maintain a record of all arbitration awards given under its jurisdiction, which shall be available to all parties within the industry.
- 6.4. Without in any way detracting from the rights and obligations emanating from this agreement, it shall be interpreted and applied in a manner that promotes effective dispute resolution.

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**CHAPTER 3**

**EXEMPTIONS**

**1. General**

- 1.1 Any person bound by any collective agreement may apply for exemption.
- 1.2 The authority of the Council is to consider applications for exemptions and grant exemptions.
- 1.3 Where additional and/or outstanding information is requested in respect of an exemption application and such information is not received within a period of 30 days the applicant will be informed that the application will lapse.

**2. Fundamental principles for consideration**

- 2.1 All applications must be in writing and fully motivated and sent to the Council.
- 2.2 In scrutinising an application for exemption the Council will consider the views expressed by the employer and the workforce, together with any other representations received in relation to that application.
- 2.3 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.
- 2.4 Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application.





- 2.5 Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.
- 2.6 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.
- 2.7 An application for exemption shall not be considered if the contents of the application are covered by an arbitration award binding the applicant.
- 2.8 Exemptions shall be dealt with within 30 days of receipt thereof.
- 2.9 The Council must notify the applicant within seven (7) days from the last date of the meeting of the Council or "The Exemptions Body's" decision and reasons(s) thereof, which reason(s) may be given at a later time, but not later than 30 days after the decision.

### **3. Urgent applications**

- 3.1 In cases of urgent applications, the application must be clearly marked as urgent.
- 3.2 The applicant is required to put forward a substantive explanation as to the urgency of the application.

### **4. Process**

- 4.1 The Council shall issue to every person to whom exemption has been granted an exemption certificate, setting out the following:
- (a) the full name of the person or enterprise concerned;
  - (b) the provisions of this agreement from which the exemption has been granted;
  - (c) the conditions subject to which exemption is granted;
  - (d) the period of the exemption;
  - (e) the date from which the exemption shall operate; and
  - (f) the area in which the exemption applies.
- 4.2 The Council shall ensure that –
- (a) all exemption licenses issued are numbered consecutively;
  - (b) an original copy of each license is retained by the Council;
  - (c) a copy of the exemption license is sent to the applicant.
- 4.3 The Council may at any time withdraw the exemption at its discretion, if it is found that the applicant is not complying with the provisions as set out in the license of Exemption.



**5. Appeals**

- 5.1 The Independent Exemptions Appeal Board (the IEAB), consisting of independent individuals, shall be appointed and shall consider any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption in respect of parties and non-parties.
- 5.2 The Council Secretary will, on receipt of an appeal against a decision of the Council, submit it to the IEAB for consideration and finalisation.
- 5.3 In considering an appeal the IEAB shall consider the submissions made in the initial application, and any further submissions by the employers or employees. The IEAB shall make a decision which will be submitted to the General Secretary within a reasonable period.
- 5.4 Should the appeal be successful the General Secretary shall issue an exemption certificate as set out in clause 4(1) above.
- 5.5 Appeals shall be dealt with within 30 days of receipt thereof.
- 5.6 The Council must notify the applicant within seven (7) days from the last date of the meeting of the Council or "The Independent Exemptions Appeal Board's" decision and reason(s) thereof, which reason(s) may be given at a later time but not later than 30 days after the decision.
- 5.7 The Council may at any time withdraw the exemption at its discretion, if it is found that the applicant is not complying with the provisions as set out in the license of Exemption.
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**ANNEXURE A**

**RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE BARGAINING  
COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY ("THE BCCEI")**

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**PART ONE**  
**SERVING AND FILING DOCUMENTS (Rules 1 to 9)**

**1. How to contact the Council**

- 1) The address, email address, telephone and telefax numbers of the office of the Council are as follows:

BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY (BCCEI) HEAD OFFICE

1 Kramer Road, Bedfordview, Johannesburg, 2007

P.O. Box 2699, Bedfordview, Johannesburg, 2008

Tel No. (011) 450 4966/3

Fax No. (011) 450 0089

Email. [disputes@bccei.co.za](mailto:disputes@bccei.co.za)

- 2) Documents may only be filed with the Council at the address, telefax number or email address listed above.

**2. Office hours of the Council**

- 1) The office of the Council will be open every day from Monday to Friday, excluding public holidays, between the hours of 08h00 and 16h00, or as determined by the Council.
- 2) Documents may be filed with the Council on the days and during the hours referred to in sub-rule (1).
- 3) Notwithstanding sub-rule (2), documents may be faxed or emailed at any time to the Council but any document faxed or emailed on days or at hours other than those referred to in sub-rule (1) will be deemed to be received at 08h00 of the first day on which the Council's offices are open again.

**3. How to calculate time periods in these Rules**

- 1) For the purpose of calculating any period of time in terms of these Rules –
- a) day means calendar day; and
- b) the first day is excluded and the last day is included, subject to sub-rule (2) below.
- 2) The last day of any period must be excluded if it falls on –
- a) a Saturday, Sunday or public holiday; or



- b) on a day during the period of the industry closure over the December/January period as determined by the Council on an annual basis.

#### **4. Who must sign documents**

- 1) A document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in the proceedings.
- 2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

#### **5. How to serve documents on other parties**

- 1) A party must serve a document on the other parties –
  - a) by handing a copy of the document to -
    - i) the person concerned;
    - ii) a representative authorised in writing to accept service on behalf of the person;
    - iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment premises at the time; or
    - iv) a person identified in sub-rule (2);
  - b) by leaving a copy of the document at –
    - i) the address chosen by the person to receive service; or
    - ii) any premises in accordance with sub-rule (3);
  - c) by emailing or faxing a copy of the document to the person's email address or fax number respectively, or an email address or fax number chosen by that person to receive service;
  - d) by sending a copy of the document by registered post to the last known address of the party or an address chosen by the party to receive service;
- 2) A document may also be served on –
  - a) a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;



- b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;
  - c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the main office of the union or employers' organisation or its office in the magisterial district in which the dispute arose or at its address that it provides to the Council from time to time;
  - d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;
  - e) on a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body; or
  - f) on the State or a province, a state department or a provincial department, a minister or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.
- 3) If no person identified in sub-rule (2) is willing to accept service, service may be effected by affixing a copy of the document to –
- a) the main door of the premises concerned; or
  - b) if this is not accessible, a post-box or other place to which the public has access.
- 4) The Council or a commissioner may order service of a document in a manner other than prescribed in this Rule.
- 5) The Council will, if requested, provide assistance of an administrative nature to an employee earning less than the threshold prescribed by the Minister under section 6(3) of the Basic Conditions of Employment Act to serve any notice or document in respect of conciliation or arbitration proceedings in terms of the Act, provided the employee remains responsible in law for any such service.

#### **5A Notice of proceedings before the Council**

The Council may provide notice of a conciliation or arbitration hearing, or any other proceedings before it, by means of any of the methods prescribed in Rule 5 and may, in addition, give notice by means of short message service (sms).



**6. How to prove a document was served in terms of the Rules**

- 1) A party must prove to the Council or to a Commissioner that a document was served in terms of these Rules, by providing the Council or a Commissioner with -
  - a) with a copy of proof that the document was sent by registered post to the other party;
  - b) with a copy of the fax transmission report indicating the successful fax transmission of the whole document to the other party. The Council may request a statement from the person who sent the fax confirming that the whole document was successfully sent and that the number was true and correct;
  - c) if a document was served by email, with a copy of the sent email indicating the successful transmission of the document and any attachments concerned to the other party. The Council may request a statement from the person who sent the email confirming that the document was successfully sent and the email address was true and correct;
  - d) if a document was served by hand –
    - i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
    - ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises; or
    - iii) with a copy of the referral form with an official company stamp, with the name and designation of the recipient and the place, time and date of service.
- 2) If proof of service in accordance with sub-rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document. The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable in respect of any issue concerning service by email.
- 3) The Council may accept proof of service in a manner other than prescribed in this Rule, as sufficient.

**7. How to file documents with the Council**

- 1) A party must file documents with the Council –
  - a) by handing the document to a responsible person at the Council's offices at the address listed in Rule 1 and obtaining a signature of the responsible person confirming receipt of the document; or





- b) by sending a copy of the document by email, fax or registered post to the Council at the address and/or contact numbers listed in Rule 1. Documents filed by means of email must be transmitted in a format that is compatible with software used by the Council at the time of filing.
- 2) A document is filed with the Council when –
- a) the document is handed to a responsible person at the office of the Council;
- b) a document sent by registered post is received by the Council;
- c) the document is successfully transmitted by fax to the Council; or
- d) the document is successfully transmitted by email to the Council, as provided for in the Electronics Communications and Transactions Act 25 of 2002.
- 3) A party must only file the original of a document filed by fax, if requested to do so by the Council or by a commissioner. A party must comply with a request to file an original document within seven (7) days of the request.

#### **8. Documents and notices sent by registered post**

- 1) Any document or notice sent by registered post by a party or the Council is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven (7) days after it was posted, provided that the seventh day falls within the office hours of the Council as set out in Rule 2, or on the first office hour following the seventh day if that day falls outside the office hours of the Council.
- 2) Any document or notice sent by fax or email by a party or the Council is presumed, until the contrary is proved, to have been received by the person to whom it was sent on the day on which it was successfully transmitted, provided that the day and time falls within the office hours of the Council as set out in Rule 2, or on the first office hour following the date and time on which it was successfully transmitted if that date and time fall outside the office hours of the Council.

#### **9. How to seek condonation for documents filed late**

- 1) This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these Rules.
- 2) A party must apply for condonation, in terms of Rule 32, when filing the document with the Council.
- 3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:



- a) the degree of lateness;
  - b) the reasons for the lateness;
  - c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
  - d) any prejudice to the other party; and
  - e) any other relevant factors.
- 4) The Council may assist a referring party to comply with this Rule.

## PART TWO CONCILIATION OF DISPUTES (Rules 10 to 16)

### 10. How to refer a dispute to the Council for conciliation

- 1) A party must refer a dispute to the Council for conciliation by delivering a completed LRA Form 7.11 ("the referral document") and serving it on the other party and the Council.
- 2) The referring party must –
  - a) sign the referral document in accordance with Rule 4;
  - b) attach to the referral document written proof, in accordance with Rule 6, that the referral document was served on the other parties to the dispute; and
  - c) if the referral document is filed out of time, attach an application for condonation in accordance with Rule 9(3), read with Rule 32.
- 3) The Council must refuse to accept a referral document until sub-rule (2) has been complied with.

### 11. When must the Council notify parties of a conciliation

The Council must notify the parties in writing of a conciliation hearing at least fourteen (14) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of fourteen (14) days runs from the date the notification is sent by the Council. If a notification is sent by registered mail, an additional seven (7) days must be allowed.

### 12. The Council may seek to resolve disputes before conciliation

- 1) The Council or a commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.



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- 2) Where appropriate, the Council may require a designated agent to investigate the dispute.

**13. What happens if a party fails to attend at conciliation**

- 1) If a party on whose behalf a matter has been referred fails to attend, the commissioner may –
  - a) continue with the proceedings;
  - b) adjourn the conciliation to a later date within the 30-day period; or
  - c) conclude the proceedings by issuing a certificate that the dispute remains unresolved.
- 2) In exercising a discretion in terms of sub-rule (1), a commissioner should take into account, amongst other things –
  - a) whether the party has previously failed to attend a conciliation in respect of that dispute;
  - b) any reason given for that party's failure to attend;
  - c) whether conciliation can take place effectively in the absence of one or more of the parties;
  - d) the likely prejudice to the other party of the commissioner's ruling; and
  - e) any other relevant factors.

**14. How to determine whether a commissioner may conciliate a dispute**

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Council has the jurisdiction to conciliate the dispute, provided that all jurisdictional issues requiring evidence may be deferred to arbitration.

**15. Issuing of a certificate in terms of Section 135(5)**

A certificate of outcome issued in terms of Section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute and the parties as described in the referral document or as identified by the commissioner during the conciliation proceedings.

**16. Conciliation proceedings may not be disclosed**

- 1) Conciliation proceedings are private and confidential and are conducted on a 'without prejudice' basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing or as ordered otherwise by a court of law.
- 2) No person, including a Commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during conciliation, unless as ordered by a court of law.



**PART THREE  
CON-ARB IN TERMS OF SECTION 191(5A) (Rule 17)**

**17. Conduct of con-arb in terms of Section 191(5A)**

- 1) The Council must notify the parties in writing of a con-arb hearing at least fourteen (14) days prior the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of fourteen (14) days runs from the date the notification is sent by the Council unless sent by registered mail, in which case an additional seven (7) days must be allowed.
- 2) A party that intends to object to a dispute being dealt with in terms of Section 191(5A), must deliver a written notice to the Council and the other party, at least seven (7) days prior to the scheduled date in terms of sub-rule (1).
- 3) Sub-rule (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation.
- 4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1), the commissioner must conduct the conciliation on the date specified in the notification issued in terms of sub-rule (1).
- 5) Sub-rule (4) applies irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).
- 6) The provisions of these Rules that are applicable to conciliation and arbitration respectively, including rules on representation, apply with the changes required by the context, to the conciliation and arbitration parts of con-arb proceedings, respectively.
- 7) If the arbitration does not proceed or is not concluded on the date specified in terms of the notice in sub-rule (1), the Council must schedule the matter for arbitration either in the presence of the parties or by notifying the parties in terms of Rule 21.

**PART FOUR  
ARBITRATIONS (Rule 18 to 24)**

**18. How to request arbitration**

- 1) A party may refer a dispute to the Council for arbitration by delivering a completed LRA Form 7.13 and serving it on the other party and the Council.



- 2) When filing an LRA Form 7.13, the referring party must –
  - a) sign the referral documents in accordance with Rule 4;
  - b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with Rule 6; and
  - c) if the referral document is filed out of time, attach an application for condonation in accordance with Rule 9(3), read with Rule 32.
- 3) The Council must refuse to accept an LRA Form 7.13 until sub-rule (2) has been complied with.
- 4) If a party has requested arbitration in terms of sub-rule (1), the Council must schedule the dispute for arbitration if the dispute remains unresolved after conciliation and the Council has jurisdiction to arbitrate the dispute.
- 5) This Rule does not apply to con-arb proceedings held in terms of Section 191(5A).

**19. When must the parties file statements**

- 1) The Council or a Commissioner may direct –
  - a) the referring party in an arbitration to deliver a statement of case; and
  - b) the other parties to deliver an answering statement.
- 2) A statement in terms of sub-rule (1) must –
  - a) set out the material facts upon which the party relies and the legal issues that arise from the material facts; and
  - b) be delivered within the time period specified by the commissioner.
- 3) The commissioner has a discretion to continue with the matter despite non-compliance with a commissioner's directive. However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

**20. When the parties must hold a pre-arbitration conference**

- 1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (2), if directed to do so by the Council or a Commissioner.
- 2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:



- a) any means by which the dispute may be settled;
  - b) facts that are agreed between the parties;
  - c) facts that are in dispute;
  - d) the issues that the Council is required to decide;
  - e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
  - f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
  - g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
  - h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
  - i) which party must begin;
  - j) the necessity for any on-the-spot inspection;
  - k) securing the presence at the Council of any witness;
  - l) the resolution of any preliminary points that are intended to be taken;
  - m) the exchange of witness statements;
  - n) expert evidence;
  - o) any other means by which the proceedings may be shortened;
  - p) an estimate of the time required for the hearing;
  - q) the right of representation; and
  - r) whether an interpreter is required and, if so, for how long and for which languages.
- 3) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
  - 4) A minute in terms of sub-rule (3) may also deal with any other matter listed in sub-rule (2).
  - 5) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed commissioner within seven (7) days of the conclusion of the pre-arbitration conference.
  - 6) The appointed commissioner may, after receiving a pre-arbitration minute –
    - a) enroll the matter for arbitration;
    - b) direct the parties to hold a further pre-arbitration conference; or
    - c) issue any other directive to the parties concerning the conduct of the arbitration.
  - 7) The parties to an arbitration may agree to hold a pre-arbitration conference in terms of sub-rule (2).



**21. When must the Council notify the parties of the arbitration**

The Council must notify the parties in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. The time period of twenty-one (21) days runs from the date the notification is sent by the Council, unless sent by registered mail, in which case an additional seven (7) days must be allowed.

**22. How to determine whether a Commissioner may arbitrate a dispute**

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that the Council has jurisdiction to arbitrate the dispute.

**23. How to postpone an arbitration**

- 1) An arbitration may be postponed –
  - a) by written agreement between the parties; or
  - b) by application and on notice to the other parties in terms of sub-rule (3).
- 2) The Council must postpone an arbitration without the parties appearing if –
  - a) all the parties to the dispute agree in writing to the postponement; and
  - b) the written agreement for the postponement is received by the Council at least seven (7) days prior to the scheduled date of the arbitration.
- 3) If the conditions of sub-rule (2) are not met, any party may apply in terms of Rule 32 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.
- 4) After considering the written application, the Council or a Commissioner may–
  - a) without convening a hearing, postpone the matter; or
  - b) convene a hearing to determine whether to postpone the matter.

**24. How to refer a compliance dispute for arbitration**

- 1) A designated agent must refer a dispute to the Council for arbitration by completing the Council's referral form for compliance disputes and serving it on the other party and the Council.



- 2) The designated agent must –
  - a) sign the referral document in accordance with Rule 4;
  - b) attach to the referral an affidavit deposed to by the designated agent or duly authorised person which sets out clearly and concisely –
    - (i) the names, description and addresses of the parties to the dispute;
    - (ii) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply thereto; and
    - (iii) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply thereto.
  - c) attach to the referral document written proof, in accordance with Rule 6, that the referral document and affidavit was served on the other parties to the dispute;
- 3) The Council must refuse to accept a referral document until sub-rule (2) has been complied with.
- 4) The Council must give the parties at least fourteen days' notice in writing that the matter has been scheduled for arbitration in terms of Section 33A(4) of the Act.
- 5) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (4), the Commissioner may conduct the arbitration on the date specified in the notice or adjourn the proceedings to a later date.

#### **PART FIVE**

#### **RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS (Rule 25 - 31)**

##### **25. Where a conciliation, arbitration or con-arb will take place**

- 1) A dispute must be conciliated, arbitrated or the con-arb process held in the region in which the cause of action arose, unless the General Secretary of the Council directs otherwise.
- 2) The Council determines the venue for proceedings.

##### **26. Who can represent a party at proceedings before the Council**

- 1) (a) In conciliation proceedings a party to the dispute may appear in person or be represented only by –





- i) if the party is an employer, a *director or employee* of that party and, in addition, if it is a close corporation, a member of that close corporation;
  - ii) any *office bearer, official* or member of that party's *registered trade union* or *registered employers' organisation*;
  - iii) if the party is a registered *trade union*, any *office bearer, official* or member of that trade union authorised to represent that party; or
  - iv) if the party is a registered *employers' organisation*, any *office bearer* or *official* of that party or a *director or employee* of an employer that is a member of that employers' organisation authorised to represent that party.
- (b) Subject to paragraph (c), in any arbitration proceedings, a party to the dispute may appear in person or be represented only by -
- i) a *legal practitioner*, or
  - ii) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a).
- (c) If the dispute being arbitrated is about the *fairness of a dismissal* and a party has alleged that the reason for the dismissal relates to the *employee's* conduct or capacity, a party is not entitled to be represented by a *legal practitioner* in the proceedings unless -
- i) the commissioner and all the other parties consent;
  - ii) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering -
    - a) the nature of the questions of law raised by the dispute;
    - b) the complexity of the dispute;
    - c) the public interest; and
    - d) the comparative ability of the opposing parties or their representatives to deal with the dispute.
- (d) No person representing a party in proceedings before the Council in a capacity contemplated in paragraph (a) or (b), other than a legal practitioner contemplated in paragraph (b)(i), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party, unless permitted to do so by the Council.



- 2) If a party to the dispute objects to the representation of another party to the dispute or the Commissioner suspects that the representative of a party does not qualify in terms of this Rule, the Commissioner seized with the matter must determine the issue.
- 3) The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule.
- 4) A representative must tender any documents requested by the Commissioner for the purposes of sub-rule (2), including constitutions, pay-slips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organisation.
- 5) Despite the provisions of sub-rule (1), a Commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organisation as an employer party, or a member of an employers' organisation that is a party to proceedings, if the commissioner, after enquiring into the matter and considering relevant representations, believes that –
  - (a) the representative joined the employer's organisation for the purpose of representing parties in the Council; or
  - (b) the representative's participation in the dispute resolution process –
    - (i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
    - (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
    - (iii) may have the consequence of unfairly disadvantaging another party to the dispute.

#### **27. How to join or substitute parties to proceedings**

- 1) The Council or a Commissioner may, at any stage prior to the conclusion of an arbitration hearing, join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law or fact.
- 2) A Commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
- 3) A Commissioner may make an order in terms of sub-rule (2) –
  - a) of its own accord;
  - b) on application by a party; or
  - c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- 4) An application in terms of this Rule must be made in terms of Rule 32.



- 5) When making an order in terms of sub-rule (2), a Commissioner may –
  - a) give appropriate directions as to the further procedure in the proceedings; and
  - b) make an order of costs in accordance with these Rules.
- 6) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council for an order substituting that party for an existing party, and a Commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.
- 7) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents. The application may be made at any stage prior to the conclusion of an arbitration hearing.
- 8) Subject to any order made in terms of sub-rules (5) and (6), a joinder or substitution in terms of this Rule does not affect any steps already taken in the proceedings.

#### **28. How to correct the citation of a party**

If a party to any proceedings has been incorrectly or defectively cited, the Council may of its own accord, by consent of the parties or on application and on notice to the parties concerned, correct the error or defect.

#### **29. When the Council may consolidate disputes**

The Council or a Commissioner, of its own accord, by consent of the parties or on application, and on notice to the parties concerned, consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

#### **30. Disclosure of documents**

- 1) At any time after the request for arbitration, either party may request a Commissioner to make an order as to the disclosure of relevant documents or other evidence.
- 2) The parties may agree on the disclosure of documents or other relevant evidence.

#### **31. What happens if a party fails to attend arbitration proceedings before the Council**

- 1) If a party to a dispute fails to attend or be represented at any arbitration proceedings before the Council, and that party -



- (a) had referred the dispute to the Council, a commissioner may dismiss the matter by issuing a written ruling; or
  - (b) had not referred the matter to the Council, the commissioner may –
    - i) continue with the proceedings in the absence of that party; or
    - ii) adjourn the proceedings to a later date.
- 2) A commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1).
- 3) If a matter is dismissed, the Council must send a copy of the ruling to the parties within 14 days.

**PART SIX**  
**APPLICATIONS (Rule 32 - 34)**

**32. How to bring an application**

- 1) This Rule applies to any –
- a) application for condonation, joinder, substitution, variation, rescission or postponement;
  - b) application in a jurisdictional dispute; and
  - c) other preliminary or interlocutory application.
- 2) An application must be brought at least fourteen (14) days prior to the date of the hearing on notice to all persons who have an interest in the application.
- 3) The party bringing the application must sign the notice of application in accordance with Rule 4 and must state –
- a) the title of the matter;
  - b) the case number assigned to the matter by the Council, if available;
  - c) the relief sought;
  - d) the address at which the party delivering the documents will accept delivery of all documents and proceedings;
  - e) that any party that intends to oppose the matter must deliver a notice of opposition and an answering affidavit within five (5) days after the application has been delivered to it;
  - f) that the application may be heard in the absence of a party that does not comply with subparagraph (e); and
  - g) that a schedule is included listing the documents that are material and relevant to the application.



- 4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out –
  - a) the names, description and addresses of the parties;
  - b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
  - c) a statement of legal issues that arises from the material facts, in sufficient detail to enable any party to reply to the document;
  - d) if the application is filed outside the relevant time period, grounds for condonation in accordance with Rule 9; and
  - e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.
  
- 5)
  - a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within five (5) days from the day on which the application was served on that party.
  
  - b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.
  
- 6)
  - a) The party initiating the proceedings may deliver a replying affidavit within three (3) days from the day on which any notice of opposition and answering affidavit are served to it.
  
  - b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact of law.
  
- 7) A commissioner may permit the affidavits referred to in this Rule to be substituted by a written statement.
  
- 8) In an urgent application, the Council or a Commissioner –
  - a) may dispense with the requirements of this Rule; and
  - b) may only grant an order against a party that has had reasonable notice of the application.
  
- 9)
  - a) The Council must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.
  
  - b) The Council must notify the parties of the date, time and place of the hearing of the application.
  
  - c) Applications may be heard on a motion roll.



- 10) Despite this Rule, the Council or a commissioner may determine an application in any manner it deems fit, provided that the Council or the commissioner informs the parties of how the process will be conducted and gives the parties an opportunity to be heard.

**33. How to apply to vary or rescind arbitration awards or rulings**

- 1) An application for the variation or rescission of an arbitration award or ruling must be made within fourteen (14) days of the date on which the applicant became aware of –
  - a) the arbitration award or ruling; or
  - b) a mistake common to the parties to the proceedings.
- 2) A ruling made by a Commissioner which has the effect of a final order will be regarded as a ruling for purpose of this Rule.

**34. How to apply to refer a dismissal dispute to the Labour Court**

- 1) An application in terms of Section 191(6) of the Act to refer a matter to the Labour Court, must be delivered –
  - a) within ninety (90) days of a certificate that the dispute has not been resolved being issued; or
  - b) by a party that has not requested arbitration, within fourteen (14) of the referral for arbitration being filed.
- 2) Despite sub-rule (1), a party that requests arbitration may not thereafter make an application in terms of Section 191(6).
- 3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- 4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven (7) days of receipt of the application.
- 5) The Council must notify the parties of its decision in terms of Section 191(8) within fourteen (14) days of receiving the objection.

**PART SEVEN  
SECTION 188A INQUIRY (Rule 35 to 36)**

**35. How to request an inquiry in terms of Section 188A**

- 1) An employer requesting Council to conduct an inquiry, must do so by delivering a completed LRA Form 7.19 to the Council.



- 2) The employee must sign the LRA Form 7.19 consenting to an inquiry by an arbitrator, unless –
  - a) the employee earns above the amount determined by the Minister in terms of Section 6(3) of the Basic Conditions of Employment Act ("BCEA"), currently R205 433.30 per annum, and has consented in terms of Section 188A(4) to the inquiry in a contract of employment, in which case a copy of the contract must be attached to the form; or
  - b) the employee is covered by a collective agreement that provides for an inquiry, in which case a copy of the collective agreement must be attached to the form.
- 3) When filing the LRA Form 7.19, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by –
  - a) bank guaranteed cheque; or
  - b) electronic transfer into the bank account of the Council.
- 4) Within seven (7) days of receiving a request in terms of sub-rule (1) that is compliant with sub-rule (2), and payment of the prescribed fee in terms of sub-rule (3), the Council must notify the parties to the inquiry of when and where the inquiry will be held.
- 5) Unless the parties agree otherwise, the Council must give the parties at least seven (7) days notice of the commencement of the inquiry.
- 6) The Council is only required to refund a fee paid in terms of sub-rule (3), if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (4).

**36. When must an arbitrator hear mitigating and aggravating factors**

- 1) The arbitrator may, in determining mitigating and aggravating factors –
  - a) hear the evidence on guilt, adjourn and if found guilty, call another hearing for argument on sanction;
  - b) hear the evidence on guilt, adjourn and if found guilty, ask for written submissions, within a specific period of time, on sanction; or
  - c) hear the evidence on guilt, and at the same sitting, ask for mitigating and aggravating factors from the parties which are only considered in the event that the employee is found guilty.
- 2) Despite the provisions of this Rule, the Commissioner may determine the proceedings of an inquiry in any manner they deem fit.



**PART EIGHT  
GENERAL (Rule 37 to 43)**

**37. Condonation for failure to comply with the Rules and form**

- 1) The Council or a Commissioner may condone any failure to comply with any provision of these Rules, on good cause shown.
- 2) In exercising its powers and performing its functions, the Council may act in such a manner as it deems expedient in the circumstances in order to achieve the objectives of the Act. In doing so, it shall have regard to substance rather than form, save where the Act provides otherwise.

**38. Recordings of Council proceedings**

- 1) The Council must keep a record of –
  - a) any evidence given in an arbitration hearing;
  - b) any sworn testimony given in any proceedings, except conciliations, before the Council; and
  - c) any arbitration award or ruling made by a Commissioner.
- 2) The record must be kept by means of a digital recording and, if practically possible, also by legible notes.
- 3) A party may request a copy of the record or a portion of a record kept in terms of sub-rule (2), on payment of the costs where applicable. Such party would be required to make an electronic or audio recording at the relevant premises of the Council, utilising the party's own equipment.

**39. How to have a subpoena issued**

- 1) Any party, who requires the Council or a Commissioner to subpoena a person in terms of Section 142(1) of the Act, must file a completed LRA Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- 2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of Section 142(7)(c) must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness. The Council's decision must be made in writing and delivered when issuing the subpoena.
- 3) An application in terms of sub-rule (1) must be filed with the Council at least fourteen (14) days prior to the arbitration hearing, or as directed by the Commissioner hearing the arbitration.





- 4) The Council may refuse to issue a subpoena if –
  - a) the party does not establish why the evidence of the person is necessary;
  - b) the party subpoenaed does not have seven (7) days in which to comply with the subpoena;
  - c) not satisfied that the party requesting the subpoena has paid the prescribed witness fees and, reasonable travel costs and subsistence expenses of the person subpoenaed.
- 5) A subpoena must be served on the witness subpoenaed –
  - a) by the person who has requested the issuing of the subpoena or by the Sheriff, at least seven (7) days prior to the scheduled date of the arbitration; and
  - b) accompanied by proof of payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the *Government Gazette* in terms of Section 142(7) of the Act and the witnesses' reasonable travel costs and subsistence expenses.
- 6) Sub-rules (4)(c) and (5)(b) do not apply if the Council, in terms of Section 142(7)(c), has waived the requirement to pay witness fees.

#### **39A. Expert witnesses**

A party intending to call an expert witness shall give seven (7) days, prior to the hearing, notice thereof to the Council and the other party to the dispute together with a summary of the proposed evidence of such witness, any document on which the witness will rely on during evidence and the basis on which the witness is regarded to be an expert to enable the other party to consider the summary and obviate the need for any postponement.

#### **40. Payment of witness fees**

- 1) A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the *Government Gazette* in terms of Section 142(7) of the Act.
- 2) The witness fee must be paid by –
  - a) the party who requested the Council to issue the subpoena; or
  - b) the Council, if the issuing of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fee in terms of Section 142(7)(c).



- 3) Despite sub-rule (1), the Commissioner may, in appropriate circumstances, order that a witness receives no fee or reasonable travel costs and subsistence expenses, or only part of such fees or expenses.

**41. Order of costs in an arbitration**

- 1) In any arbitration proceedings, the Commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so, should have regard to –
- a) the measure of success that the parties achieved;
  - b) considerations of fairness that weigh in favour of or against granting a cost order;
  - c) any with prejudice offers that were made with a view to settling the dispute;
  - d) whether a party or the person who represented that party in the arbitration proceedings acted in a frivolous and vexatious manner –
    - i) by proceeding with or defending the dispute in the arbitration proceedings, or
    - ii) in its conduct during the arbitration proceedings which leads to the postponement of a matter and such postponement could reasonably have been avoided by that party;
  - e) the effect that a cost order may have on a continued employment relationship;
  - f) any agreement concluded between the parties to the arbitration concerning the basis on which costs should be awarded;
  - g) the importance of the issues raised during the arbitration to the parties as well as to the labour community at large;
  - h) any other relevant factor.
- 2) A Commissioner may make an award of costs in favour of a party who is represented in arbitration by a person contemplated by Rule 26(1)(b) in respect of reasonable disbursements actually incurred in the conduct of its case in arbitration. A Commissioner who makes an award in terms of this provision must specify clearly the items and amounts in respect of which costs are ordered.
- 3) A Commissioner may make an award of costs in respect of the legal fees of a party that is represented in an arbitration by a legal practitioner, only if the other parties to the arbitration were represented by a legal practitioner.
- 4) An award of costs for costs in terms of sub-rule (3) must be in the amount of –



- a) in respect of the first day of an arbitration (including any arbitration concluded in a single hearing) – R6 000,00 (VAT inclusive);
  - b) in respect of each additional day of an arbitration – R4 000,00 (VAT inclusive).
- 5) The General Secretary of the Council may appoint taxing officers to determine any dispute that may arise from any award of costs in terms of this Rule.
  - 6) Any dispute concerning an award of costs must be submitted on LRA Form 7.17 to which any relevant documentation must be annexed.

#### **42. Certification and enforcement of arbitration awards**

- 1) An application to have an arbitration award certified must be made on LRA Form 7.18A in respect of an award in arbitration conducted under the auspices of a bargaining council.
- 2) Any arbitration award that has been certified in terms of Section 143 of the Act that –
  - a) orders the payment of an amount of money may be enforced by execution against the property of the employer party by the Sheriff of the court in the Magisterial district where the employer party resides, or conducts business;
  - b) orders the performance of an act other than the payment of money may be enforced by way of contempt proceedings instituted in the Labour Court.
- 3) For the purposes of sub-rule (2), an arbitration award includes an award of costs in terms of Section 138(10), a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of Section 140(2).

#### **43. Project specific agreements**

- 1) Any project specific agreement that provides for a special dispute resolution dispensation that covers parties to the Council must be registered with, and approved by, the Council.
- 2) Such agreements must be read in conjunction with this Agreement.



**ANNEXURE B****DEFINITIONS IN TERMS OF THIS AGREEMENT AND THE RULES IN ANNEXURE A**

Unless the context of this agreement indicates otherwise, any expressions, words or phrases used in this Agreement shall have the same meaning as those defined in the Labour Relations Act No. 66 of 1995, and any reference to an act shall include any amendments 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 of 1995; (Act 66 of 1995) as amended, and includes any regulation made in terms of that Act.

**'Agreement enforcement disputes'** refer to those disputes emanating from the Council's Collective Agreements.

**'Associations'** means any unincorporated body or persons.

**'CDR'** shall mean the Council's 'Centre for Dispute Resolution'.

**'Collective Agreement'** includes –

- (i) any collective agreement signed under the auspices of the Council; and
- (ii) the rules of any fund or scheme established by the Council.

**'Commission'** or **'CCMA'** means the Commission for Conciliation, Mediation and Arbitration (CCMA), established in terms of Section 112 of the Act.

**'Con-arb'** means proceedings held in terms of Section 191(5A) of the Act.

**'Council'** means the Bargaining Council for the Civil Engineering Industry registered in terms of Section 29 of the Act. All authority of the Council vests with the General Secretary of the Council or the person duly delegated by the General Secretary of the Council.

**'Commissioner'** means an accredited individual appointed by the Council in terms of Section 117 of the Act to resolve disputes.

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



- 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
- 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;
- 1.3 Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and
- 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 (1.1) to (1.4)(i) and (ii) inclusive;

Excluding the following:

- a) Work in connection with any one or more of the activities specified in subclause (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 (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;



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- 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.

**'Deliver'** means serve on other parties and file with the Council.

**'Designated agent'** means any person appointed as a designated agent in terms of Section 33(1) of the Act.

**'Dispute'** includes an alleged dispute and means any situation where –

- (i) two or more parties are unable to reach agreement on a matter of mutual interest between them, and one or more of those parties advise the Council in writing that they are in dispute; or
- (ii) the Council by way of its designated agents or any other person so appointed by the Council, declares a dispute against an Employer and/or Employee for failure to comply with the provisions of one or more of the Council's Agreements. Notification of declaration of dispute shall be contained in a compliance order issued to the employer and/or employee in respect of the identified contraventions; or
- (iii) Any dispute in terms of the Labour Relations Act (Act 66 of 1995) which must be referred to the Council.

**'Employer'** means any person whomsoever, including a temporary employment service as defined in Section 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.

**'Establishment'** is any premises or site wherein or whereon the Industry, or part thereof, as herein defined, is carried on.

**'File'** means to lodge with the Council in terms of Rule 7.

**'General Secretary'** means the General Secretary of the Council appointed by the annual general meeting of the Council.

**'Labour Court'** means the Labour Court established by Section 151 of the Act and includes any judge of the Labour Court.

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**'Party'** means

- (i) the Council,
- (ii) any or all of the employers' organisation(s) and/or trade union(s) listed as members of this Council,
- (iii) any employers' organisation(s) and/or trade union(s) not listed as a member of this Council, and/or
- (iv) any employer and/or employee and/or any of the organisations referred to in (ii) or (iii) hereof acting on their behalf.

**'Rules'** means the rules for conciliating and arbitrating disputes in the Bargaining Council for the Civil Engineering Industry in Annexure A.

**'Legal practitioner'** means any person admitted to practice as an advocate or as an attorney in the Republic of South Africa.

**'Public holiday'** means a public holiday referred to in Section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

**'Rules'** means these rules and includes any footnote to a rule.

**'Serve'** means to serve in accordance with rule 5 and "service" has a corresponding meaning.

**'Taxing officer'** means any suitably qualified person appointed by the General Secretary in terms of Rule 41.

## ANNEXURE C

### GUIDELINES FOR THE LEVYING OF FINES

- 1) Until such time as the Minister promulgates a notice in terms of Section 33A (13) of the Act, an arbitrator conducting an arbitration in terms of section 33A of the Act may impose a fine in terms of section 33A (8) (b) of the Act subject to the maximum fines set out in Table one and Two of this item.
- 2) The maximum fine that may be imposed by an arbitrator in terms of section 33 A (8) (b) of the Act –
  - (a) for a failure to comply with a provision of a collective agreement not involving a failure to pay any amount of money, is the fine determined in terms of Table One; and
  - (b) involving a failure to pay an amount due in terms of a collective agreement, is the greater of the amounts determined in terms of Table One and Table Two.



**TABLE ONE : MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT**

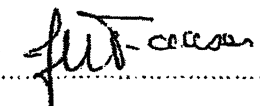
No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures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

**TABLE TWO: MAXIMUM PERMISSIBLE FINE INVOLVING AN UNDERPAYMENT**

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

Signed for and on behalf of the parties at Johannesburg on 05/03/ 2015

M Uys  
Member

S Makutu  
Member

JN Faasen  
General Secretary