



EXEMPTIONS COLLECTIVE AGREEMENT

PREAMBLE

This agreement was entered into by and between the representatives of the employer organisations and the members of the trade unions who are party to the Bargaining Council for the Civil Engineering Industry.

The Minister of Employment and Labour has extended this agreement to all the employers and employees in the industry that are not signatories of this agreement. This has the effect of making the agreement applicable to all employers and employees in the industry.

The following employer organisations and trade unions signed the agreement on behalf of their members:

Building, Construction and Allied Workers Union (BCAWU)

Consolidated Employers Organisation (CEO)

National Union of Mineworkers (NUM)

South African Forum of Civil Engineering Contractors (SAFCEC)

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1. Application and interpretation of the Agreement

1.1. Application of the agreement

1.1.1 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 industry who are members of the trade unions that are party to this agreement.

1.1.2 This agreement must be applied in the jurisdiction of the Bargaining Council for the Civil Engineering Industry throughout the Republic of South Africa.

1.1.3 Except as otherwise provided for in this agreement, the BCCEI established an Independent Exemptions Committee and an Independent Appeal Board to deal with applications for exemptions from the provisions of the BCCEI's Collective Agreements and any appeals against a decision of the Independent Exemptions Committee.

1.2 Period of operation of agreement

1.2.1 This agreement becomes binding on the employers and employees referred to in sub-clause 1.1.1. (a) and (b) once it is extended to non-parties by the Honourable Minister of Employment and Labour, in terms of Section 32 of the Labour Relations Act, 66 of 1995, from a date determined by the Honourable Minister of Employment and Labour.

1.2.2 This agreement shall remain in force until 31 August 2026.

2. Definitions

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

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

‘**Affected parties**’ means the Applicant, Company involved, the employees and their trade union representatives and any party opposing the application.

‘**Act**’ means the Labour Relations Act 66 of 1995.

‘**BCCEI**’ means the Bargaining Council for the Civil Engineering Industry.

‘**CIRBF**’ means the Construction Industry Retirement Benefit Fund.

‘**Committee**’ means the Independent Exemptions Committee.

‘**Consultation**’ means a joint consensus seeking process.

‘**IAB**’ means the Independent Appeal Board.

‘**Office**’ means the BCCEI administration.

‘**Scheduled employee**’ means an employee whose task grade is reflected in the Wage and Task Grade Collective Agreement.

3. Introduction

- a) In terms of the Labour Relations Act, the BCCEI established a Committee to deal with applications for exemption from the provisions of the BCCEI’s Collective Agreements.
- b) Applications shall be dealt with within 30 (thirty) calendar days of receipt of the completed application and all supporting documentation.
- c) Appeals in respect of decisions made with regards to exemption applications must be referred to the IAB for a final decision.
- d) Applications must be considered on the basis of this agreement in order to ensure consistency in the granting or refusing of exemption applications.

- e) Reasons for granting or refusing an application shall be recorded and retained by the Office. These reasons must be supplied to affected parties on request. The Office will give consideration to motivated requests for such reasons from any other interested parties.
- f) The Committee and the IAB may at any time, after prior notification and after allowing the affected parties an opportunity to make representations, withdraw an exemption either wholly or in part, or amend the conditions under which the exemption was issued, or amend the conditions of employment and other matters regulated under the exemption. Nothing precludes the Committee and the IAB from considering any other submissions in its discretion.
- g) Time limits:
 - i. An application for exemption from an existing provision of a Collective Agreement must be lodged with the BCCEI not less 3 (three) months prior to the date of intended implementation of the requested exemption.
 - ii. An exemption application relating to the payment of the Year-End Bonus, must reach the BCCEI by no later than 15 September of the year in question.
 - iii. An application for exemption from any newly published clause of a collective agreement must be lodged with the BCCEI within 30 (thirty) calendar days of the date of publication of the new clause.
 - iv. The Committee and IAB may however, on detailed and good cause shown by the applicant, condone a late application for exemption. An applicant for condonation of its late application for exemption, must provide proof to the Committee and/or IAB that the application has been served on the employees' representative trade union, and in the absence of a representative trade union, on the employees' elected representatives and if the employees do not have elected representatives, on the employees themselves.

4. Exemptions - Fundamental Principles

These fundamental principles are supplemented by the requirements set out below for specific types of applications.

The BCCEI hereby establishes a Committee, constituted of persons independent of the BCCEI, to consider all applications for exemption from the provisions of the BCCEI Collective Agreements.

The BCCEI further establishes an IAB in terms of section 32 (3)(e) of the Act to consider and decide any appeal from a decision of the Committee.

The following fundamental principles are to be observed in considering and deciding upon, an application for exemption:

- a) Retrospective applications - Applications for exemption must, in principle, not be granted retrospectively prior to the date of the application.
- b) An urgent application may be faxed, e-mailed or hand delivered to the Office. Such an application must contain an explanation as to why the application is made as a matter of urgency. If the Committee or IAB is satisfied that the application is urgent, the Committee or IAB must (i) consider the application; (ii) make a decision; (iii) communicate the decision to the affected parties.
- c) Prescribed forms: All applications must be on affidavit, and on the prescribed application forms (obtainable from the Office or the BCCEI website) which, together with supporting documentation, must be sent to the BCCEI for consideration.
- d) The Committee and IAB shall take into consideration all relevant factors, which may include, but shall not be limited to the following criteria:
 - i. The applicant's past record (if applicable) of compliance with the provisions of the BCCEI Collective Agreements;
 - ii. Previous exemptions granted;
 - iii. Any special circumstances that exist;
 - iv. The interest of the industry as regards:
 - a) Unfair competition;
 - b) Collective bargaining;
 - c) Potential for labour unrest;
 - d) Increased employment,

- v. The interest of employees as regards:
 - a) Exploitation;
 - b) Job preservation;
 - c) Sound conditions of employment;
 - d) Possible financial benefits;
 - e) Health and safety;
 - f) Infringement of basic rights.
 - vi. The interest of the employer as regards to:
 - a) Financial stability;
 - b) Impact on productivity;
 - c) Future relationship with employees and trade unions;
 - d) Operational requirements.
- e) The employer must consult with the workforce - In respect of unionised employees, their trade union representative/s must be consulted and in the case of non-unionised employees, their elected representative/s must be consulted. In the event that employees do not have an elected representative, the employees themselves must be consulted.
- i. Any objections to the application raised by any of the employees or their representative/s must be accurately and fully recorded in a document which must accompany the application.
 - ii. The employer's position in response to the above objections (if any) must also accompany the application.
 - iii. The applicant must provide proof of service of the application on the employees' trade union representative, and in the absence of a recognised trade union, on the employees' elected representative, and in the absence of an elected representative, on the employees themselves. (Where an application contains copies of financials, the applicant would be required to provide proof that the employees or their representatives as stipulated in this sub-clause, were provided with an opportunity to view the financials as part of the consultation process).

- f) The Committee and IAB, in considering the application, must take into consideration the views expressed by the parties and other representations received in relation to that application by any other interested parties. The exemption must not contain terms that have an unreasonably detrimental effect on the fair, equitable and uniform application of the BCCEI Collective Agreements. An exemption may not be granted in respect of any issue which is covered by an arbitration award.
- g) An affected party or parties shall have the right to appeal, in writing, against a decision of the Committee, within 30 (thirty) calendar days of having been notified or becoming aware of the Committee's decision and reasons therefore. The notice of appeal must set out the grounds on which the appeal is based.

5. Exemptions – Remuneration and Benefits

- a) Further to the provision of clause 4 above the following provisions will also be applicable to remuneration and benefits related exemptions.
- b) Remuneration and benefits exemptions may not be granted beyond the expiration of the Collective Agreement.
- c) Application for exemption from the clauses in the Collective Agreement relating to the payment of the minimum wages, year-end bonus or any other remuneration and/or benefit/s will be dealt with after giving consideration to the following and providing clear evidence of financial difficulties as follows:
 - i. The last 3 (three) years' Audited Financial Statements (Income Statements, Balance Sheets, Cashflow Statements, Statements of Changes in Equity and Notes). The Audited Financial Statements must be accompanied by a signed Auditor's Report, Accounting Officer in the case of CC's;
 - ii. Management Accounts (Income Statements, Balance Sheets, Cashflow Statements, Statements of Changes in Equity and Notes) covering the period from the date of the above Financial Statements to a date not longer than 1 (one) month prior to the date of the application;

- iii. A detailed explanation of the difficulties being faced by the company and why they should be addressed by means of an exemption as opposed to any other alternative;
 - iv. In the case of an application for exemption from payment of minimum wages, a business plan which includes a timetable setting out how and when the applicant expects to “catch-up” with the minimum wage rate of the industry;
 - v. A detailed explanation (breakdown) of the cost / financial value of the intended exemption.
- d) The proposed exemption should be implemented by the applicant until the exemption process has been concluded after which any adjustments must be applied retrospectively from the date of the application of the agreement.

6. Exemptions - Construction Industry Retirement Benefit Fund (“CIRBF”)

- a) Further to the provision of clause 4 above the following provisions will also be applicable to the CIRBF related exemptions.
- b) The criteria for determining exemptions from the CIRBF are as follows:
 - i. Total contributions to the private fund must be at least equal to those required in terms of the CIRBF;
 - ii. Contribution holidays are to be specifically excluded from proposed rules of a Defined Benefit Fund;
 - iii. Overall benefit package must, on the whole, not be less favourable than the benefits provided by the CIRBF;
 - iv. The comparative percentage of employer net contributions paid out on withdrawal;
 - v. In the case of Defined Contribution Funds, the percentage of the employers’ and employees’ salary actually credited to the fund, after deduction of administration fees and the cost of insured benefits;
 - vi. There must be no waiting period for membership of the fund;
 - vii. The right to transfer actuarial reserve to the CIRBF on withdrawal;
 - viii. Provision must be made for death and disability insurance;

- ix. In the case of defined benefit funds, the basis on which the pension is calculated.
- c) CIRBF representatives must be invited by the applicant and given the opportunity to address management and the workforce prior to exemption being considered.
- d) The majority of the affected employees must support the application for exemption and the remainder will be required to follow the majority decision. Exemption will only be given in respect of all employees in order to avoid selective membership to the possible disadvantage of the CIRBF.
- e) Where the majority of affected employees are members of a trade union which is a signatory to the CIRBF Collective Agreement, the trade union must support the application.
- f) The exemption can be withdrawn by the Committee or IAB should circumstances warrant it.
- g) Benefits may not be reduced without a fresh exemption application to this effect being made and granted.
- h) The application is to be submitted by the Office to the CIRBF Fund Administrators for comparison. The Committee or IAB may approach an independent actuary to evaluate a complex application if and when required.

7. Exemptions from payment of interest

- a) Applications for exemption from payment of interest levied on payment of fund contributions which are in arrears must be submitted to the BCCEI for consideration by the Committee or IAB.
- b) Applications must be accompanied by the reasons as to why the payments of funds are in arrears.

8. General

- a) The Committee or IAB may consult an expert(s) when considering applications, or invite oral motivations.
- b) The Office must notify the applicant of the decision of the Committee or IAB within 14 (fourteen) calendar days of the last date of the meeting of the Committee or IAB. Reasons for the decision must be provided, within 14 (fourteen) calendar days from date of receipt of a written request from an affected party or the Office.
- c) If the application is granted, the Office shall issue an exemptions licence signed by the General Secretary or a person designated by him/her, containing the following:
 - i. The name of the applicant(s);
 - ii. The clause/s of the agreement from which exemption is granted;
 - iii. The period for which the exemption shall operate;
 - iv. The date issued;
 - v. The condition(s) of the exemption granted.
- d) The Office shall:
 - i. Retain a copy of the licence;
 - ii. Forward the licence to the applicant.
- e) The applicant to whom a licence has been issued shall at all times have the licence available for inspection at their establishment/s or site/s.

9. Composition of the Committee and IAB

- a) The BCCEI must appoint members to the Committee and IAB on such terms and conditions they deem fit.
- b) The Committee and IAB will comprise of at least 3 (three) permanent members and one alternative. A minimum of 2 (two) persons will constitute a quorum.
- c) The Committee and IAB members hold office until:
 - i. They resign on 3 (three) months' written notice to the BCCEI;
 - ii. Or the BCCEI resolves to terminate their appointment.

10. Chairperson of the Committee and IAB

- a) The Committee and IAB shall elect one of the permanent members as chairperson at each meeting.

11. Conduct of members of the Committee and IAB

- a) Members of the Committee and IAB must be independent and impartial and perform the functions of office in good faith, and
- b) Members of the Committee and IAB must recuse themselves from any hearing, should they have a direct financial interest or any other conflict of interest in the subject matter of the application.

12. Quorum

- a) 2 (Two) members of the Committee or IAB form a quorum for any meeting.
- b) If 2 (two) members are present at a meeting and they cannot reach consensus on any issue to be determined, the application must be postponed to a further meeting of the Committee or IAB, any further discussion regarding this application can only take place once the meeting is attended by 3 (three) Committee or IAB members.
- c) If an application to lead oral evidence or to present oral submissions is granted, the application must be heard by a meeting attended by 2 (two) or more members of the Committee or IAB.

13. Decisions of the Committee and IAB

- a) A decision agreed and confirmed in writing by 2 (two) members is as valid as a decision adopted at a duly convened meeting of the Committee or IAB.
- b) The Office shall keep a record of the decisions.

14. Meetings of the Committee and IAB

- a) Unless otherwise provided for in this agreement, the Committee or IAB must determine the date and time for meetings.
- a) The Committee and IAB must meet at least once a month, unless there are no applications to be considered, or when requested to do so by the General Secretary or his/her designate. The meeting of the Committee or IAB must be determined in consultation with the Office.
- b) If a meeting does not finalise an application, the application may be postponed to a date and time determined by the Committee or IAB where applicable.

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