

**PETROLEUM SECTOR**

**SUBSTANTIVE AGREEMENT 2025/2028**

**Between**

**CHEMICAL, ENERGY, PAPER, PRINTING, WOOD AND ALLIED WORKERS UNION  
(CEPPWAWU)**

**SOLIDARITY**

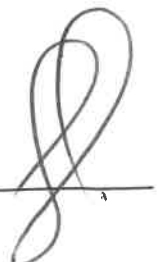
**SOUTH AFRICAN CHEMICAL WORKERS UNION  
(SACWU)**

**(hereinafter referred to as “Unions” or “Organised Labour”)**

**and**

**NATIONAL PETROLEUM EMPLOYERS ASSOCIATION  
(NPEA)**

**(hereinafter referred to as “employers”)**

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# PETROLEUM SECTOR SUBSTANTIVE AGREEMENT 2025

## CHAPTER 1

### 1. SCOPE OF AGREEMENT

This agreement applies to all employers whose industry/operations includes:

- a) The acquisition, importation, manufacture, supply, distribution, storage, or blending of any finished or partly finished petroleum product;
- b) The acquisition, importation, storage, or use of any feedstock;
- c) All operations concerned with the exploration for testing of natural gas deposits;
- d) Oil well and gas well operations and the drilling, and completing of equipping such wells;
- e) The storage and marketing of a petroleum product including liquid petroleum gas, to resellers, agents, distributors and end users;

And all operations incidental to these activities

The following activities are, however, excluded from the definition of the category "Petroleum"

- i. The storage or marketing of any petroleum product by service station, co-operative in terms of the co-operative Act, 1981, and sellers of illuminating paraffin;

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- ii. The mere transportation of any petroleum product, i.e. where the person affecting the transport does not-
  - 1) Acquire, supply or market such product;
  - 2) Manufacture, blend or import such product;
  - 3) Store or intend to store such product;
- iii. The acquisition, importation, storage, or consumption of a petroleum product by the end consumer thereof;
- iv. The manufacture and supply of any chemical additive to be used to manufacture petroleum products;
- v. The activities in which either the National Bargaining Council for the Motor Industry or the Transnet Bargaining Council have Jurisdiction.

## 2. PERIOD OF AGREEMENT

This agreement shall apply for the period 01 July 2025 to 30 June 2028 for the parties to the Collective Agreement and on the date as determined by the Minister of Employment and Labour for the non-parties to the Collective Agreement and shall remain in force until 30 June 2028.

## 3. DEFINITIONS

Any reference in this Agreement to the Republic of South Africa shall be deemed to be those areas and/or Provinces as they existed immediately after the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

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Any expression used in this Agreement that is defined in the Labour Relations Act, as amended, shall have the same meaning in that Act, and any reference to an Act shall include any amendments to such Act; further unless inconsistent with the context – ‘Act’ means the Labour Relations Act (as Amended). The definitions as listed in Section 213 of the Act must read as incorporated herein.

**“Bargaining unit”** shall mean those employees defined as falling within the bargaining unit and which has been determined at plant level.

**‘Council’** means the National Bargaining Council for the Chemical Industry;

**‘employee’** means an employee whose minimum wage of pay or activity is scheduled in this Agreement or an employee under exemption from this Agreement or conditions determined by the Council;

**‘employer’** means any person who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person in any manner to assist him in the carrying on or conducting of his business;

**‘law’** includes Common law;

**‘Petroleum Sector** as defined in the certificate of registration of the NBCCI

**‘substantive agreement’** means this agreement

**‘Basic Conditions of Employment Act’** means the Basic Conditions of Employment Act 75 of 1997

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

**‘Minister’** means the Minister of Employment and Labour

**‘ATB’** means “Across The Board” increase

## CHAPTER 2

### 4. SALARIES

Subject to periodic wage negotiations, the monthly salary, for the duration of this wage agreement as set out above and for all bargaining unit employees will increase as follows

The monthly salary will increase as follows

- Year 1

A 5,5% ATB increase as from 1 July 2025

- Year 2

A 5,5% ATB increase as from 1 July 2026.

A further 0,5% ATB increase on the already awarded increase as from 1 January 2027.

- Year 3

An ATB increase for the period 1 July 2027 until 30 June 2028 on a sliding scale as follows



- Should CPI be 5% and below for the period May 2026 until April 2027 then the increase will be that average CPI plus an improvement factor of 1,5%
- Should CPI be between 5,1% and 5,9% for the period May 2026 until April 2027 then the increase will be that average CPI plus an improvement factor of 1,25%.
- Should CPI be between 6% and 6,9% for the period May 2026 until April 2027 then the increase will be that average CPI plus an improvement factor of 1%
- Should CPI be 7% and above for the period May 2026 until April 2027 then the increase will be that average CPI plus an improvement factor of 0,5%.

## 5. MINIMUM SALARY

The minimum salary will increased by the ATB on the 1<sup>st</sup> July of each year and will increase by the agreed upon ATB percentage as set out in clause 4 for the parties to the Collective Agreement and on the date as determined by the Minister of Employment and Labour for the non-parties to the Collective Agreement.

## 6. ANNUAL BONUS

A guaranteed thirteenth cheque, payable as per current plant level arrangements, such paid on the basic salary only.

*SSM, M*  
*J.M. LT*

A pro-rata payment shall be made in the case of employees who were employed at the time of the payment of the annual bonus, but who have not been in continuous service with the employer for the preceding twelve months.

A pro-rata payment will also be made to employees who resign during the year in which the bonus accrues.

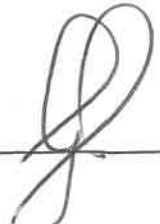
## **7. HOURS OF WORK**

Hours of work in the Petroleum sector are 40 hours per week, except for continuous operations where the hours of work are 42 hours per week.

The issue of compensation for the two (2) additional hours worked in continuous operations.

This plant level issue of the 2 additional hours, as applicable to individual employers, will be moved to the plant level and the following conditions will apply to such:

1. The parties agree to meet, at plant level, at least once within a period of sixty days after the signing of this wage agreement to discuss the issue of the working hours.
2. Should no agreement be reached, the parties agree that a task team facilitator will be immediately appointed and that the appointed task team facilitator shall be Commissioner Mduduzi Khumalo who will be appointed by the NBCCI as the task team facilitation and act as a mediator to mediate the matter.
3. Once the mediator has been appointed, the provisions as per the NBCCI negotiations procedure relating to the establishment of task teams will apply.

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4. Should there be no agreement, the parties may agree to either have further mediation sessions or alternatively either party may exercise their rights to refer this matter to the bargaining council in terms of the LRA.

## **CHAPTER 3**

### **8. ANNUAL LEAVE**

A minimum entitlement of 20 working days paid leave per annum or the equivalent for shift workers.

### **9. FAMILY RESPONSIBILITY LEAVE**

Definition: Family responsibility leave to include compassionate / special, paternity and childcare leave.

Minimum: 8 days per annum as per company/ plant arrangements, of which six (6) of the days will be fully paid and the remaining two (2) will be unpaid.

Entitlement:

To be granted to an employee during each annual leave cycle, to a maximum of 3 days leave:

- When the employee's child is born, and or
- When the employee's child is sick. and/ or
- When the employee's spouse or life partner is sick.

Grant an employee compassionate leave:

Five (5) days in the event of death of the employee's spouse or life partner, or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

The employee may also utilise the abovementioned three (3) days identified for paternity and child sickness leave, as compassionate leave.

The total of the eight (8) days may, however, not be exceeded.

Reasonable proof to be provided for any of the above contemplated events.


## 10. PATERNITY LEAVE

10.1 A minimum standard of 10 (ten) days paternity leave per occasion shall apply.

10.2 Specific plant level arrangements covering paternity leave shall prevail over this standard, provided that the overall effect is not less favourable than the minimum standard.

10.3 Paternity leave will be off set against any existing plant level arrangements and/or provisions contained in the Basic Conditions of Employment Act 75 of 1997, which provide Family Responsibility Leave.

10.4 It is a requirement that proof of registration of birth reflecting paternity be produced within 10 (ten) days of the employee returning to work, failing which paid leave granted will be forfeited.

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## **11. MATERNITY LEAVE**

The participating employers will provide a maternity leave entitlement of 6 months, of which two months will be unpaid and of which four months will be remunerated at 40% of the employee's remuneration.

Upon return to work, employees will be placed in the same position or a similar position, at a similar rate of remuneration and benefits which applied previously.

## **12. ANTE-NATAL LEAVE**

Pregnant female employees will be entitled to two (2) days leave per period of pregnancy on full pay for ante-natal checkups during the period of pregnancy.

The leave may be taken for visits to the doctor or clinic before the birth of the child.

## **13. SHOP STEWARDS LEAVE**

Shop stewards will receive five (5) days paid leave per annum.

Union office bearers who require additional leave shall make the necessary requests to management and such requests shall not be unreasonably withheld.

## **14. STUDY LEAVE**

Employees will be entitled to 2 days' leave per examination, i.e. 1 day for study purposes and 1 day to write the exam, subject to company-level arrangements/ agreements.

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## **15. TRADITIONAL HEALERS**

The NPEA will grant recognition of sick leave certificates issued by traditional healers once there is a statutory registered body of traditional healers - alternatively, they become members of MASA (Medical Association of South Africa).

## **CHAPTER 4**

## **16. CONTRACTORS AND NON-PERMANENT STAFF**

The employment of contractors and non-permanent staff is a company/plant-level issue.

## **17. JOB SECURITY**

Job security issues shall be discussed at the plant level.

## **18. PARTIES TO PLEDGE THEIR COMMITMENT TOWARDS THE PROCESS OF EXTENDING THE SECTOR SUBSTANTIVE AGREEMENT TO NON-PARTIES**

The parties commit to extend the Substantive Agreement to non-parties in the sector, ensuring consistent and fair labour standards across the sector.

By collaborating on this extension, parties can promote sector-wide stability, reduce disparities, and prevent potential disputes. this unified approach will benefit both workers and employers by fostering a more cohesive and productive workforce.

## **19. JUST TRANSITION (JT) AND THE 4<sup>th</sup> INDUSTRIAL REVOLUTION (4IR) AND THE TRANSITION TO LOW CARBON ECONOMY**



The parties agree to discuss this matter and agree to the appointment of a task team.

The parties in the Petroleum Sector including participating Employers, (CEPPWAWU, Solidarity and SACWU), agree to the establishment of a task team on Path to Zero Harm and Just Transition.

## **1 Purpose**

The purpose of the Task Team is to gain full understanding of Organised Labour's concerns, explore meaningful and practical solutions to address these concerns; and make recommendations on the way forward.

## **2 Powers**

The Task Team is mandated to address and attempt to reach consensus on the guiding principles and framework to address the issues.

All recommendations will be tabled in the form of recommendations to the Parties for possible ratification and adoption.

In conducting its work, the Task Team may commission research, take cognizance of existing research and resource material, legislation and existing processes in the Petroleum Sector member Companies; co-opt additional members from the Parties, establish ad-hoc technical task teams to conduct specific work and obtain professional technical services from any of the Parties. Where any of the work may require funding, the Task Team will make a recommendation to the Parties as to the source of such funding.

The Task Team has no mandate to enter into any agreement that binds any of the Parties to the recommendations of the Task Team. Where the Task Team cannot reach consensus on the proposed solutions to address any of the identified issues,

the Task Team will table a report to the Parties reflecting the differing views in respect of the identified issue(s).

The Task Team may table recommendations to the Parties as they arise, however, the Task Team must table final recommendations on dealing with the identified issues before the end of their tenure.

Once the Task Team has tabled its final recommendation to the parties, the Task Team will be dissolved and the plenary will be convened within one month after the final recommendation.

**3 Tenure**

The tenure of the Task Team shall be for a period of three (3) months commencing from the 1<sup>st</sup> August, September and October 2025. Should the Task Team require more time to complete their work, such extension of tenure must be agreed to by the Parties.

**4. Composition (*Only for illustrative purposes*)**

The Task Team will be comprised of ten (10) representatives from Organised Labour and ten (10) representatives from the employers

**Number of Representatives**

CEPPWAWU	2 (1 alternate)
Solidarity	2 (1 alternate)
SACWU	2 (1 alternate)
Petroleum Employers	10 (5 alternates)

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## CHAPTER 5

### 20. SHIFT ALLOWANCE

20.1 Continuous Processes: The minimum shift allowance will be 18%, non-pensionable.

20.2 Non-Continuous Processes: The minimum shift allowance for non-continuous shifts will be 8% of basic pay (non-pensionable) as of 1 July 2020.

19.3 Shift allowances shall be discussed at plant level in the event of shift changes and those engagements currently going on at plant level shall continue.

### 21. STANDBY AND CALL OUT ALLOWANCE

Parties agreed that the nature of a standby and/ or call-out allowance is a company/plant-level issue.

### 22. TRANSPORT ALLOWANCE

Transport allowance shall be discussed at plant level.

### 23. HOUSING ALLOWANCE

Housing allowance shall be discussed at plant level.

## CHAPTER 6

### 24. RETRENCHMENT

The parties agreed that severance pay was legislated for, and in terms of the Labour Relations Act, the circumstances giving rise to the retrenchment should be taken into account when considering the amount of severance to be paid.

It therefore agreed that the Sector would not negotiate a common severance package for the Petroleum Sector, but rather both parties commit to consult and engage effectively at the company/ plant level as and when the need arises.

## CHAPTER 7

### 25. EXEMPTION

Companies seeking exemption from the conditions of this agreement and/or any conditions agreed to previously through centralized bargaining between the parties should do so according to the Council's exemptions procedure.

### 26. DISPUTE RESOLUTION

If there is a dispute about the interpretation or application of this agreement any party may refer the matter to the Council for resolution in terms of the Dispute Resolution procedure of the Council.

## CHAPTER 8

### 27. OTHER TERMS AND CONDITIONS

All other terms and conditions not affected by this agreement will remain status quo.

Those benefits already more favorable than provided for in terms of this agreement shall not be affected by this agreement.

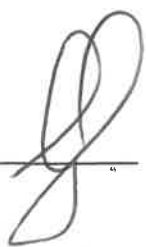
## CHAPTER 9

### 28. AGENTS

28.1 The Council shall appoint one or more specified persons as Agents to assist in giving effect to the terms of this Agreement.

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

28.2 After each inspection of an employer's records and operations the agent shall prepare a report for the attention of the employer, worker representatives, and, in the case of an individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions.

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Any disclosure of information shall comply with the provisions of the Act.

## **29. INCOME AND EXPENSES OF THE COUNCIL**

29.1 For the purposes of meeting the expenses of the Council, every employer shall deduct from the wages of each employee.

29.2 Employees who fall within the Bargaining unit shall contribute an amount prescribed by the Council and the employees falling outside the Bargaining unit shall contribute an amount prescribed by the Council, respectively.

Such levies shall be increased, subject to the approval of the Council's Annual General Meeting.

29.3 Every employer shall contribute the funds of the Council-

An amount prescribed by the Council for each employee who falls within the Bargaining unit, and an amount prescribed by the Council for employees who fall outside the Bargaining unit.

29.4 The total amount deducted in terms of subclauses above from the wages of employees together with the amounts to be contributed by the employer in terms of subclause above shall be payable monthly by the employer to the Council's Finance Department at no later than the 7<sup>th</sup> day of the month succeeding the month during which the deductions and contributions were made or were required to be made, together with the proof of payment and schedules incorporating the total number of employees and total levies remitted.

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### 30. DEFAULT PAYMENTS

30.1 In an event that an employer pays levies that are due to the Council in terms of this Substantive Agreement, in any manner other than cash, and such levy contributions are dishonoured for any reason whatsoever, then in such an event, a penalty fee shall be imposed on the employer, the penalty fee shall be equal to 3.5%.

Any penalty fee plus the full amount originally due, shall be payable to the Council.

30.2 If it becomes necessary for the Council to institute legal action in a court of law for the recovery of any levies due but not paid after having been requested in any way whatsoever, then the debtor shall be liable for all legal expenses incurred by the Council in the means of recovering the levies due.

This includes attorney fees, an arbitrator, or a collections agency having been instructed by the Council to collect the levies.

Signed at Johannesburg this 25<sup>th</sup> day of July 2025



For CEPPWAWU

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Witness



For SACWU

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Witness

## **EXEMPTIONS POLICY AND PROCEDURE**

### **INTRODUCTION:**

1. The issue of exemptions is dealt with in Clause 16 of the Council's Constitution. It requires the establishment of a National Exemptions Committee and an Independent Appeals Committee.

The Constitution requires that the National Exemptions Committee and Independent Appeals Committee must determine its composition and powers and establish its own procedures and criteria to be considered in dealing with applications for exemption and for conducting its business.

Applications for exemption by both parties and non-parties must be made to the Council. Employers seeking exemption from the conditions of any collective agreement and/or any conditions agreed to previously through centralised bargaining between the parties should do so according to this procedure.

2. The procedures and criteria set out hereinafter shall apply to any party to a collective agreement as well as non-parties to whom any collective agreement concluded in the Council has been extended in terms of Section 32 of the LRA.

It is the stated view of the Council that all applications for exemption must be completed within 30 days from the date of the application for exemption and all appeals to the Independent Appeals Committee within 30 days from the date of the appeal.


The Exemptions Committee or the Independent Appeals Committee may, in its sole discretion, extend the completion date of an application for an exemption or an appeal for an additional 30 days where circumstances require such extension.


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For SOLIDARITY

  
For NPEA Employers

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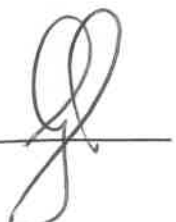
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## **PRE & POST COUNCIL PROCEDURE**

### **CONSULTATION**

- 1 Any application for exemption from any provision/s of a collective agreement concluded under the auspices of the Council must be preceded by consultations between the relevant employers and employees potentially affected by the exemption at which:
  - 1.1 The merits of the application and any impact that it will have on affected employees have been discussed and considered, and
  - 1.2 There has been full disclosure to each other of all information relevant to the consideration of the exemption application.
- 2 The following provisions will apply to consultations:
  - 2.1 Each employer must hold such consultations with the trade union representative(s) of the affected employees.
  - 2.2 If an employer reasonably believes that the affected employees are not trade union members, or where the relevant trade union representatives do not avail themselves for such consultations after a reasonable number of proven and recorded attempts by the employer, the employer must consult the affected employees themselves.
  - 2.3 The affected employees, or groups of such employees, may act through a nominated representative that they have elected, amongst themselves, to represent them.

Once they have informed the employer of such a representative, the employer must, regarding such employees, consult such representative in preference to the trade union to which they belong.

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2.4 The above consultations may be facilitated by a member of the National Exemptions Committee with the proviso that all the parties involved in the consultation process consent to such facilitation. The member of the National Exemptions Committee who conducted the facilitation may not chair or be part of any panel appointed to arbitrate an application for exemption or an appeal that follows from his/her facilitation.

2.5 A request for facilitation must be made in writing on the Application for Exemption Form in the relevant section provided. ( See Annexure A )

- 3 The party seeking an exemption from the Council must, commencing at least immediately before the application is made to the Council, display a copy of the application in a conspicuous place in the workplace(s) where the affected employees normally report for service and ensure that it remains displayed until the exemption license has either been granted in terms of these procedures, the application has been withdrawn, or the application has been dismissed by the National Exemptions Committee.
- 4 Any application for exemption must be in writing and on the appropriate application form, which can be obtained from the Council.

### **TIMELINES AND CONDONATION**

- 5 Any party who wishes to apply for an exemption in terms of this policy must do so within a reasonable time, not exceeding 60 days from the date that the original agreement was signed.
- 6 Where addendums to any collective agreements were signed, the application for an exemption must also be made within a reasonable time not exceeding 60 days from the date of signature of any addendum.

- 7 In the case of a non-party, the party who seeks to apply for an exemption must apply no later than 10 days from the date of the Government Gazette wherein the collective agreement was made applicable to non-parties.
10. Any party who does not comply with the above timelines must submit an application for condonation with its exemption application.

### **INFORMATION TO BE DISCLOSED**

11. The evidence required will include:

11.1 All information as required in the attached questionnaire (Annexure A)

11.2 The relevant steps taken by the employer to comply with the agreement(s) that it now seeks to be exempted from before making a decision to apply for an exemption.

12. In considering an application for exemption, the National Exemptions Committee shall take into account all relevant factors, including those detailed herein.

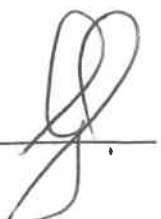
13. Other criteria that the National Exemptions Committee will consider may include:

13.1 The past records (if applicable) of compliance by the applying party with the provisions of the Council's Collective Agreements and Exemptions Certificates;

13.2 Any special circumstances which might exist;

13.3 Any precedent that might be set by granting/not granting the application;

13.4 The interest of the industry as regards:

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- (i) Unfair competition;
- (ii) Collective Bargaining;
- (iii) Potential labour unrest;
- (iii) Increased employment/unemployment;
- (v) Any other aspect that the National Exemptions Committee deems relevant and after having invited the parties' representations thereon.

13.5 The interest of employees as regards;

- (i) Exploitation;
- (ii) Job Preservation;
- (iii) Conditions of employment;
- (iv) Possible financial benefits;
- (v) Health and safety;
- (vi) Infringements of basic rights;
- (vii) Any other aspect that the National Exemptions Committee deems relevant after having invited the parties' representations.

13.6 The interest of the employer as regards;

- (i) Financial stability;

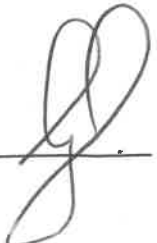
- (ii) Impact on productivity;
- (iii) Future relationship with employees' trade unions;
- (iv) Operational Requirements;
- (v) The SMME Status will be considered in line with Annexure C
- (vi) Any other aspect that the National Exemptions Committee deems relevant after inviting the comments of all interested parties.

14. All applications considered by the National Exemptions Committee will only be based on the written submissions, accompanying supporting documents and arguments presented by the party seeking the exemption and the written submissions, supporting documents and arguments of the parties opposing the exemption application.

The application will be considered and determined in a manner that is fair and transparent. The following times will apply in respect of an application for an exemption:

- 14.1 Any party seeking to oppose the application for exemption must, within 10 days from the date of the exemption application, file their respective responses to the General Secretary of the Council;
- 14.2 The party that has applied for the exemption may reply to the opposing representations within 5 days from receipt of the opposing statements;
- 14.3 The parties may thereafter submit their written arguments to the General Secretary, who will determine a date for the arbitration.

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15. Any exemption granted to a party by the National Exemptions Committee (with the exception of the application made by the Company for the SMME status) shall only be in force for a period of one year or for a shorter period as determined by the National Exemptions Committee.

Upon the expiry of the exemption certificate, the employer must implement and uphold the collective agreement from which it received an exemption on the terms and conditions in force at the time of the expiry of the exemption certificate.

16. The National Exemptions Committee may, in its sole discretion and in exceptional circumstances, call for the hearing of oral and additional evidence where such evidence is deemed essential to assist it in determining the application.
17. The National Exemptions Committee shall submit its written findings, with brief reasons, to the General Secretary for transmission to the parties involved.
18. Once the General Secretary has received the decision of the National Exemptions Committee in terms of this procedure, s/he shall:

18.1 Issue an exemption certificate or vary a certificate already issued or

18.2 Transmit any other decision of the National Exemptions Committee to the parties to the exemptions dispute as directed by the National Exemptions Committee.

18.3 The National Exemptions Committee must make its decision within 14 days of having concluded the matter unless permission is granted by the General Secretary for a longer period. In such a case, the affected parties must be notified.

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## **HOW TO FILE AN APPLICATION FOR EXEMPTION WITH THE COUNCIL**

19. All applications must be submitted in writing to the General Secretary.
20. Any employer seeking an exemption must apply to the Council. Copies of the application must be served on all trade unions in the industry whose members may potentially be affected by the application. All applications must be signed by an authorized company representative.
21. The application must specify the provisions of the collective agreement in respect of which the exemption is sought and the reasons why it is sought. Details of the employees in respect of whom the exemption is sought, either by name or by way of a clear description of the category of employees and an introduction of how many employees fall within that category.

## **INDEPENDENT APPEALS COMMITTEE**

22. In terms of Section 32(3)(e) of the LRA, the Council hereby establishes an independent body, to be known as the Independent Appeals Committee, to consider appeals from parties and non-parties against a decision by the National Exemptions Committee of a party's or non-party's application for exemption from the provisions of a published collective agreement.
23. The Independent Appeals Committee shall consist of such members as the Council determines, with the understanding that the Council may, at its discretion, appoint a single member to chair specific appeals. The Independent Appeals Committee may also co-opt an auditor, who shall only serve in an advisory capacity, where necessary, to assist with financial matters.
24. The following provisions shall apply to the Independent Appeals Committee:

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24.1 Any party or non-party may lodge an appeal with the Independent Appeals Committee against the decision of the Exemptions Committee to refuse to grant an application for an exemption from the provisions of a published collective agreement in which event the following procedure shall apply:

24.2 An appeal shall be in writing and shall be addressed to the General Secretary of the Council for consideration by the Independent Appeals Committee. All appeals will be considered on the written application, the written submissions and arguments of those who seek the exemption as well as those who oppose it. The independent Appeals Committee may deal with an appeal in any manner that it deems prudent, provided that it acts in a manner that is fair and transparent.

24.3 All appeals lodged by parties or non-parties shall be considered by the Independent Appeals Committee with due regard to the Appeal criteria set out in Clause 16 of the Council's constitution as well as the factors detailed below.

24.4 All appeals to the Independent Committee shall be fully substantiated or motivated in writing by the applicant and shall include the following details:

- (i) The period for which the exemption is required;
- (ii) The Agreement and clauses or sub-clauses of the Agreement from which exemption is required;
- (iii) Proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives, and the responses resulting from such consultation, either in support of or against the application, are to be included with the appeal.

25. The Independent Appeals Committee may, having regard to the individual merits of each appeal, grant or refuse the appeal if -

25.1 It does not undermine the Agreement;

25.2 It is fair to the employer or his employees and other employers and employees in the Industry.

26. The Independent Appeals Committee shall deal with all appeals within 30 days of the date on which the appeal was submitted. The Independent Appeals Committee may, however, defer a decision to a following meeting if additional motivation, substantiation or information is considered necessary to make a decision on the appeal.

27. Once the Independent Appeals Committee has granted an exemption, the Council must issue a certificate and advise the applicant(s) accordingly within 14 days of the date of its decision.

28. When the Independent Appeals Committee dismisses an appeal or a part of an appeal for exemption, it shall advise the applicant(s) within 14 days of the date of such decision.

### **EXEMPTION CRITERIA**

29. The Independent Appeals Committee must consider, apart from the factors referred to in Clause 16 of the Council's Constitution, all appeals with reference, amongst others, to the following criteria:

29.1 The written substantiation and motivation submitted by the applicant;

29.2 The extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;

29.3 The scope of exemption required;

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- 29.4 The infringement of basic conditions of employment rights;
- 29.5 Consider whether a competitive advantage is not created by the exemption;
- 29.6 the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative compatible bona fide benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;
- 29.7 The extent to which the proposed exemption undermines collective bargaining and labour peace in the Industry;
- 29.8 Any existing special economic or other circumstances which warrant the granting of the exemption;
- 29.9 The recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy;
- 29.10 Any recommendation from the Council; and
- 29.11 Any other matter that the Independent Appeals Committee deems prudent after having invited the comments of the parties involved in the dispute.

## **QUESTIONNAIRE: ANNEXURE A**

### **PART 1 – COMPANY DETAILS**

1. The following is required:

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- (i) The name of the company applying for exemption;
- (ii) The Industry Sector;
- (iii) The address of the Company. Provide all details if more than one establishment/workplace is affected by the exemption application;
- (iv) Contact Person (Provide Contact Details);
- (v) Name of Employer Organisation (Provide Contact Details).

## **PART 2 – LABOUR DETAILS**

- (i) The company's total headcount;
- (ii) The total number of employees affected by the exemption application. Provide details of employment categories, union affiliation and numbers;
- (iii) Names of Trade Unions with affected employees as members. Provide contact names and contact details specifying designation, i.e. trade union official or trade union representative;
- (iv) Nominated representatives in respect of non-unionised affected employees. Provide contact names and contact details and the job categories the nominated representatives are representing.

## **PART 3 – EXEMPTION DETAILS**

- (i) What is the exemption being applied for? Provide details of all clauses of the collective agreement in question from which exemption is sought.

- (ii) Has the Company, in the past 12 months, applied for exemption? If yes, provide details and the outcome.
- (iii) Has the Company, in the past 12 months, instituted short time, lay off and/or retrenchment? If yes, provide details, including dates and numbers of employees affected.
- (iv) What are the estimated savings to the Company if this application for exemption was granted? Quantify the savings anticipated by the Company.
- (v) What is the proposed duration of the exemption if granted? Specify whether the application is for a permanent exemption from a particular requirement of the collective agreement in question or is an application to defer implementation to a later date and, if so, specify the date.

#### **PART 4 – FINANCIAL INFORMATION**

2. A party seeking an exemption must attach the most recent audited financial statements for the financial year prior to the date of the application, together with management accounts (income statements) for at least six months immediately prior to the date of the application.

In respect of exemption applications in respect of parts of a Group where audited financial statements do not reflect the financial circumstances of the establishment/workplace in question and/or where inter-company trading takes place at a substantial level, additional relevant information should be included.

3. The Council may, at its discretion, call on the party seeking the exemption to provide such other information to the Council where the Council deems such information relevant for purposes of determining the merits of the application.

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## **PART 5 – MOTIVATION**

4. The party seeking an exemption must attach a detailed explanation of the difficulties being faced, including additional financial information where necessary to provide proof of the circumstances that motivated the exemption. Included therein must be an explanation of all alternatives the employer has pursued in making savings prior to this application and documentary evidence, where necessary, of the employer's policy in respect of dividends to shareholders and remuneration in respect of employees not subject to the collective agreement in question.

## **PART 6 – CONSULTATION**

5. Attach documentary evidence that will prove that all interested parties have been served with a copy of the exemption application together with relevant attachments and that all interested parties have been invited to consult in accordance with the Council's Exemption Procedure.

A record of such consultation plus its outcomes must be annexed to the application for exemption and must be countersigned by the parties to the consultation for purposes of authenticity.

The refusal of any party to a consultation to countersign such record will not render any application flowing from such consultation improper, nor will it prevent the Council's structures to determine the matter.

6. Specify whether or not the company requests the Council to appoint a Facilitator to assist the parties with the required consultative process.

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## **ANNEXURE B**

### **COMPOSITION AND ACTIVITIES: NATIONAL EXEMPTIONS COMMITTEE/INDEPENDENT APPEALS COMMITTEE**

#### **PURPOSE**

1. The purpose of this document is to detail the procedures governing the National Exemptions Committee/Independent Appeals Committee, as established and governed by Clause 16 of the Council's Constitution, and to ensure that they operate in an orderly and transparent manner.

#### **COMPOSITION OF THE EXEMPTIONS COMMITTEE/APPEALS COMMITTEE**

2. The Council must appoint the members of the National Exemptions Committee/Independent Appeals Committee on such terms and conditions as it deems fit. It will be within the sole discretion of the Council to appoint any number of members to chair applications for each exemption application/appeal. The appointment of a single member is sufficient to constitute a National Exemptions Committee/Independent Appeals Committee.
3. The National Exemptions Committee/Independent Appeals Committee must co-opt any suitably qualified auditor/accountant to advise it on financial matters. The person so co-opted will not have any decision-making power.
4. The National Exemptions Committee/Independent Appeal Committee members hold office until either:
  - 4.1 They resign on three months' notice to the Council, or

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4.2 The Council resolves to terminate their membership of the entity that they serve on.

5. Members appointed to the Exemptions Committee/Appeals Committee must:

5.1 Be independent, impartial and perform the functions of the office in good faith, and

5.2 Recuse themselves from any matter if they have any conflict of interest in either the subject matter of the exemption application or in respect of the parties involved in the dispute.

6. Should any member of a National Exemptions Committee/Independent Appeals Committee become unable to continue with any process, for whatever reason, any proceedings held up to that stage shall be suspended until it is determined whether or not that member is able to continue with the proceedings or not. If that member is unable to continue, whatever the reason, the proceedings will be adjourned, and a new panel will be constituted. In such a case, the matter will commence afresh in front of the newly constituted panel. With the consent of the newly constituted panel, the parties may agree on how to present the evidence that was presented in the suspended proceedings.

#### **DECISIONS OF THE EXEMPTIONS COMMITTEE/APPEALS COMMITTEE**

7. A decision agreed upon and confirmed in writing by the majority of the National Exemptions Committee/Independent Appeals Committee, where applicable, is a decision of the Committee.

8. Proceedings of the meetings of the National Exemptions Committee/Independent Appeals Committee shall be recorded and, where necessary, minuted by the Council secretariat. Parties may keep their own recordings.

9. The Independent Appeals Committee shall have the powers to:

9.1 Grant a full or partial exemption or reject an application for exemption; and

9.2 Approve interim orders in circumstances where this will not affect the final outcome.

## **MEETINGS OF THE NATIONAL EXEMPTIONS COMMITTEE/INDEPENDENT APPEALS COMMITTEE**

10. The Independent Exemptions Committee/Independent Appeals Committee must meet when requested to do so by the Council.
11. If a meeting of the National Exemptions Committee/Independent Appeals Committee does not finalise an application for exemption or an appeal, as the case may be, the meeting may be rescheduled for continuance at a date and time to be agreed upon by the National Exemptions Committee/Independent Appeals Committee.

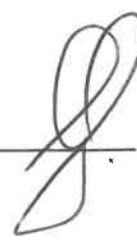
## **FINDING AND REASONS FOR DECISION**

12. Within two weeks of a meeting of the National Exemptions Committee/Independent Appeals Committee where an exemption application/appeal has been considered, the National Exemptions Committee/Independent Appeals Committee must provide the Council with a written decision and brief reasons for the decision.
13. The Council must circulate the National Exemptions Committee's/Independent Appeals Committee's decision and reasons to all interested parties

## **ANNEXURE C**

### **CRITERIA FOR SMALL BUSINESS EXEMPTIONS POLICY**

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14. Exemptions in this category will be granted for a period not exceeding 3 years.

Exemptions shall be in respect of the wage increase or in respect of specified clauses of the agreement.

15. The Council will consider applications on merit, guided by current South African legal guidelines on the definition of SMME'S's and the application of these definitions amongst different sectors, taking into account one or more of the following factors:-

15.1 That the business is not the subsidiary of another company;

15.2 Its employment numbers keep it within the definition of an SMME'S, within the bargaining unit, in terms of the legal framework of the definition of an SMME'S;

15.3 It is able to show that such an exemption will enable it to retain existing jobs or create additional jobs in the firm. This particular factor must be covered in the motivation;

15.4 The financial situation of the company.

#### **PROCEDURE TO BE FOLLOWED TO CONSIDER THE APPLICATION**

16. Application for Exemptions by SMME'S will be filed by the Company within 10 days of the Company having been declared an SMME.
17. The application will be considered by the SMME Advisory Panel within 10 days from the date on which the application was filed with the Council.

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18. The SMME Advisory Panel shall issue the outcome within 7 days from the date of the sitting.

#### **FACTS TO BE CONSIDERED IN DETERMINING THE APPLICATION**

19. The Company making the Application must comply with Annexure A.

#### **COMPOSITION OF THE EXEMPTIONS COMMITTEE FOR SMALL BUSINESS APPLICATIONS**

20. Application for Exemptions by SMME shall be considered by the SMME Advisory Panel comprising an equal number of representatives (two per side) from the Employers and Trade Unions and an Accountant/External Auditor.
21. The General Secretary shall chair the Advisory Panel. In the event the chairperson is not available, then the Committee will elect someone amongst themselves to chair that specific sitting.

#### **PHASE IN EXEMPTIONS**

22. The Council shall, in recognizing the financial constraints faced by SMMEs, grant the SMME a phased-in period of up to 3 years for compliance with the minimum Bargaining Council regulations.
23. SMME'Ss shall use this time to adjust their operations and finances gradually, minimizing disruptions and mitigating financial risks.


24. Application for phase-in exemptions must be accompanied by completion of the standard application for exemption questionnaire and shall be dealt with after giving consideration to the following:-

clear evidence of financial difficulties, including

- 24.1.1 The latest Audited Financial statements and/or management accounts;
  - 24.1.2 Explanation of the difficulties faced;
  - 24.1.3 Company motivation, business plan and phase-in plan indicating how parity will be achieved.
25. No Company that has agreed to adopt the phase-in program on a voluntary basis may retrench any worker as a direct result of a phasing-in period of the new wage structure unless such retrenchment is on a voluntary basis or unless there are exceptional circumstances beyond the Employer's control.

#### **AMENDMENT OF THIS POLICY**

26. The amendment of this policy shall be made as and when the need arises, taking into consideration the developments in the law. The amendments will not be binding until such time that they are approved by the Executive Committee and ratified by the Full Council, having gone through the relevant institutional structures.

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