

ANNEXURE G

(Clauses 30.1 and 30.2 of the MAIN Collective Agreement)

THE PROCEDURE FOR EXEMPTION FROM THE COUNCIL'S COLLECTIVE AGREEMENTS

'CLAUSE 33 OF THE COUNCIL'S CONSTITUTION'

[Note: The procedure set out in clause 33 applies only to applications for exemption by parties to the council. If the application for exemption is made by a person who is a non party to whom a collective agreement has been extended by the Minister in terms of section 32 of the Act, it is governed by the terms of that collective agreement and not by clause 33.]

33. The Procedure for Exemption from the Council's Collective Agreements

- 33.1 The council must establish an exemptions committee.
- 33.2 An application for an exemption from any provision of a collective agreement should in the first instance be addressed to the general secretary, or an agent of the council.
- 33.3 The general secretary will appoint an agent of the council to investigate the application and compile any further information on the applicant which he or she thinks necessary or desirable, and will ensure that the employees who will be affected by any proposed exemption have been consulted by the applicant. The agent will also assess the level of knowledge which the applicant and his or her employees have of the council, the benefits offered as well as the collective bargaining process, and make sure that this knowledge is conveyed to the applicant and the employees concerned.
- 33.4 The application will then be referred to the exemptions committee, which may if it thinks it necessary or desirable co-opt for that purpose members with specialised knowledge. Any specific representations from the applicant must be tabled at the same time. The applicant should be encouraged to attend the exemption meeting personally to ensure that all relevant information is considered, and so that the committee has the opportunity to explain to the applicant any matter on which he or she may be misinformed.
- 33.5 In considering the application it is the duty of the exemptions committee to take into account:
- 33.5.1 the applicant's level of compliance with all contributions to the council as prescribed in the Main Collective Agreement, and with any other statutory requirements such as Workmen's Compensation, VAT, income tax, Unemployment Insurance Fund contributions, Regional Services Council contributions, and Skills Development Levies;
 - 33.5.2 the interests of the industry from the point of view of such matters as-
 - 33.5.2.1 health and safety;
 - 33.5.2.2 training;
 - 33.5.2.3 productivity;
 - 33.5.2.4 job security;
 - 33.5.2.5 fair competition;
 - 33.5.2.6 exploitation of employees;
 - 33.5.2.7 poverty and unemployment;
 - 33.5.2.8 tax burden;
 - 33.5.2.9 undermining of the collective bargaining process;
 - 33.5.2.10 those that would encourage or discourage greatest compliance with the collective agreements;
 - 33.5.3 the interests of the applicant in relation to such matters as:

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- 33.5.3.1 his or her financial position;
 - 33.5.3.2 competition;
 - 33.5.3.3 productivity;
- 33.5.4 the interests of employees in relation to such matters as-
 - 33.5.4.1 job security;
 - 33.5.4.2 exploitation/maintenance of minimum standards;
 - 33.5.4.3 portability of benefits;
 - 33.5.4.4 poverty and unemployment;
 - 33.5.4.5 cost effectiveness of benefits;
- 33.5.5 the interests of industrial relations in relation to such matters as-
 - 33.5.5.1 effect on collective bargaining;
 - 33.5.5.2 potential for labour unrest.
- 33.5.6 any conditions which should be imposed in granting or refusing the application for exemption;
- 33.5.7 as a matter of principle-
 - 33.5.7.1 that permanent exemption should not be considered, and that any exemption should be for a period only, with compliance partial or phased;
 - 33.5.7.2 that exemption should not be granted from payment of the council levy by which funds are generated for payment of the expenses of the operation of the council.
- 33.6 The exemptions committee must communicate its decision to the applicant, specifying its motivation in refusing the application, if that is the outcome of the application.
- 33.7 Any person aggrieved by the decision of the exemption committee may appeal in writing to the council within 14 days of the date on which the decision was communicated to that person. The notice of appeal must specify the decision (or part of it) appealed against, and must specify the grounds of appeal. The appellant has the right to be heard personally on the appeal, or if the appellant is a legal person, through a director or member. No appellant has the right to legal representation on appeal. On appeal the council may vary, reverse or confirm the decision of the exemption's committee, and the decision of the council is final and binding.