

ANNEXURE “C”

EXEMPTION PROCEDURE

1. Employers to whom the terms of a Collective Agreement are applicable may apply to SARPBAC for exemption from any term(s) of the Collective Agreement, provided that exemption applications shall comply with the following requirements:
 - 1.1. The application for exemption must be forwarded, in writing, to the General Secretary within thirty (30) days of:
 - (a) the conclusion of the Collective Agreement in respect of those Employers bound by the Collective Agreement in accordance with the provisions of Section 23(1)(c) of the LRA; or
 - (b) the date specified in accordance with the provisions of Section 32(2) of the LRA in respect of all other Employers ;as the case may be.
 - 1.2. The application must specify the clause(s) from which exemption is being sought.
 - 1.3. The application must clearly indicate the nature and extent of the relief being sought.
 - 1.4. The application must be fully motivated.
 - 1.5. The application must be accompanied by relevant supporting documentation and financial information.
 - 1.6. Applications that affect employees' conditions of service shall not be considered unless the employer submits proof that it has notified the affected employees and/or their representative Trade Union(s) of the fact that an application for exemption is being made and informing such employees and/or their representative Trade Union(s) that they are entitled to make written submissions, within fourteen (14) days of receipt of the notification, to the exemption panel through the General Secretary.
 - 1.7. The application shall, if the nature of the relief sought dictates, be accompanied by a plan reflecting the strategies to be adopted to rectify the situation giving rise to the application and indicating a time frame for the plan.
 - 1.8. Indicate the period for which exemption is required.
2. Implementation of the clause(s) from which exemption is being sought will be suspended by the specific employer pending the outcome of the exemption application.
3. On receipt of an application for exemption, the General Secretary must provide written acknowledgement of the receipt of the exemption application to the applicant employer

and inform all the Parties to SARPBAC of such application as well as the nature of the relief being sought.

4. The Parties to the exemption procedure shall be the applicant Employer and the representative Trade Union(s) representing eligible employees within the applicant Employer's organisation to whom the Collective Agreement is applicable, or in the absence of a representative Trade Union, such eligible employees.
5. Any application for exemption will be heard by an independent panel or a panellist appointed for this purpose by SARPBAC
6. The above panel, (which may consist of up to three persons,) or appointed panellist shall be known as the exemption authority.
7. The exemption authority appointed to consider exemptions shall be independent and have experience deemed by SARPBAC to be relevant, which may include, but not be limited to, experience of financial matters, the Road Passenger Transport Industry, labour relations and/or labour law.
8. The application shall be considered by the exemption authority as soon as practically possible after its appointment.
9. The exemption authority shall consider the exemption application together with any submissions received from interested Parties, including third parties.
10. The exemption authority may, if it deems it expedient, request the Parties to the specific exemption application to attend the meeting at which the application is to be considered.
11. The exemption authority shall have the right to call any other party, such as an interested third party that it feels might be able to assist it in arriving at a decision.
12. The exemption authority must consider the exemption application, grant or reject the application and inform all interested Parties of its decision within a time period of no more than thirty (30) days from the date of receipt of the application by the General Secretary.
13. In considering an application, the exemption authority shall take into consideration all relevant factors which may include, but shall not be limited to, the following criteria:
 - 13.1 The applicant's past record (if applicable) of compliance with the provisions of Council's Collective Agreements and/or exemption certificates.
 - 13.2 Any special circumstances that exist or any precedent that might be set.
 - 13.3 The interests of the industry in relation to unfair competition, centralized collective bargaining as well as the economic stability of the industry.
 - 13.4 The interests of employees as regards exploitation, job preservation, sound conditions of employment, possible financial benefits, health and safety as well as the infringement of basic rights.
 - 13.5 The interests of the employer as regards its financial stability, the impact on productivity, its future relationship with employees and recognized Trade Union(s), operational requirements and the viability of the employer's business.

14. If the application is granted, the exemption authority shall, within the time period stipulated in Clause 12 above, provide each of the Parties defined in Clause 4 above and the General Secretary, with written advice of its decision, the nature and extent of relief granted and any special conditions that might be applicable to such relief.
15. If the application is refused, the exemption authority shall, within the time period stipulated in Clause 12 above, submit a written report to each of the Parties as defined in Clause 4 above and the General Secretary, setting out its reasons for not granting the application in whole or part.
16. The General Secretary shall within seven (7) days of receipt of the advice referred to in Clause 14 above, or the report mentioned in Clause 15 above, inform all Parties to SARPAC of the outcome of the specific exemption application.
17. SARPAC shall, within fifteen (15) days of receiving the advice referred to in Clause 14 above, issue an exemption certificate, signed by the Chairperson, Vice-Chairperson and General Secretary, containing the following particulars:
 - (a) The full name of the Employer
 - (b) The trade name of the Employer
 - (c) The provisions of the Collective Agreement from which exemption has been granted
 - (d) The period for which the exemption shall operate
 - (e) The condition(s) of the exemption granted
 - (f) The date of issue of the exemption certificate
18. Conditions, to which reference is made in Clause 17(e) above, may include a condition requiring the employer to provide written reports at stated intervals to the General Secretary on the progress being made with the plan, referred to in Clause 1.7 above.
19. SARPAC shall:
 - 19.1 Retain a copy of all exemption certificates issued and number each certificate consecutively.
 - 19.2 Forward a copy of the certificate to the Parties as defined in Clause 4 above.
 - 19.3 Forward a copy of the certificate to each of the Parties to SARPAC.
20. An Employer to whom an exemption certificate has been issued shall at all times have the certificate available for inspection at his establishment.
21. All arrangements to be made by the exemption authority that have cost implications for which SARPAC may be held responsible shall only be made with the prior written approval of SARPAC.
22. Pending the outcome of an exemption application, and any appeal in terms of Clause 23 below, the Employer shall be exempt from implementing the clause(s) which are the subject of the exemption application or appeal until such time as a decision has been made by the exemption authority or the exemption appeal authority, as the case may be.

23. APPEALS AGAINST DECISIONS OF THE EXEMPTION AUTHORITY

- 23.1 An appeal shall be in writing and must be lodged with the General Secretary of the Council within a period of not more than fifteen (15) days after receipt by the applicant employer of the decision of the exemption authority against which the appeal is being lodged.
- 23.2 SARPBAC shall establish an independent body as envisaged in terms of Section 32(3) (e) of the Act, to hear and decide, as soon as possible, any appeal brought against a decision to refuse an application for exemption from the provisions of a Collective Agreement or the withdrawal of such an exemption by SARPBAC.
- 23.3 The above independent body, to be appointed as and when the need arises, shall be known as the exemption appeal authority.
- 23.4 The provisions of Clauses 6 to 21 above, shall apply mutatis mutandis to the composition of the appeal authority, the conduct of the appeal and the issuing of any exemption certificate consequent upon the appeal.
- 23.5 The decision of the exemption appeal authority shall be final.
- 23.6 The General Secretary shall provide a copy of the exemption appeal authority's decision to each of the Parties to SARPBAC.

25. EXEMPTION TARIFF

The cost of exemption proceedings will be set by the council and Gazetted in the Main Collective Agreement.