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STATUTORY COUNCIL FOR THE FAST FOOD, RESTAURANT, CATERING AND ALLIED TRADES

5th February 2014

The Honourable Minister of Labour
C/O The Director general
Department of Labour
Private Bag x117
Pretoria
0001

Fax: (012) 3094156

Dear Madam,

REF: SUBMISSION OF COLLECTIVE AGREEMENT OF THE STATUTORY COUNCIL TO THE HONOURABLE MINISTER OF LABOUR FOR PROMULGATION AS A DETERMINATION.

At the Statutory Council Meeting held on the 4th February 2014, it was unanimously resolved that the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades, in accordance with section 44(1) read with section 44(2) of the Labour Relations Act, 1995, submit its Collective Agreement as a recommendation to the Honourable Minister of Labour for promulgation as a determination for the Statutory Council's scope and sector.

Should you require any further information, please do not hesitate to contact us.

Yours sincerely

Dirk Coetzee – Secretary – Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades

LRA Form 3.17
Section 44(1) read with
section 44(2)
Labour Relations Act, 1995

SUBMISSION OF COLLECTIVE AGREEMENT OF STATUTORY COUNCIL TO MINISTER FOR PROMULGATION AS A DETERMINATION



READ THIS FIRST



WHAT IS THE PURPOSE OF THIS FORM?

A statutory council that is not sufficiently representative within its registered scope may submit a collective agreement as a recommendation to the Minister for promulgation as a determination under the Basic Conditions of Employment Act, 1997.

WHO FILLS IN THIS FORM?

The Secretary of a Statutory Council.

WHERE DOES THIS FORM GO?

To the Minister of Labour c/o the
Director General, Department of
Labour, Private Bag X117, Pretoria
0001
Fax 012-3694456

OTHER INSTRUCTIONS

- Two completed forms of this form must be sent to the Director General, Department of Labour.
- Proof of compliance with Section 54(3) of the BCEA, 1997, must be attached to this form.
- Three copies of the collective agreement must be sent with this form.

STATUTORY COUNCIL DETAILS

We, The Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades

(name of statutory council)

submit the collective agreement entered into on 4th February 2014.

to the Minister for promulgation as a determination under the Basic Conditions of Employment Act, 1997 (BCEA, 1997).

We have complied with section 54(3) of the BCEA, 1997 as follows:

The Collective Agreement has been submitted to the Employment Standards Commission.

(describe details of compliance)

Signature of Secretary:

Name:

Date:

CHECK!

Have you prepared proof of compliance with section 54(3) of the BCEA, 1997?
Have you prepared three copies of the collective agreement?

**STATUTORY COUNCIL FOR THE FAST
FOOD, RESTAURANT, CATERING AND ALLIED
TRADES**

COLLECTIVE AGREEMENT

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SCHEDULE

**STATUTORY COUNCIL FOR THE FAST FOOD, RESTAURANT, CATERING AND ALLIED TRADES
COLLECTIVE AGREEMENT**

Concluded in accordance with the provisions of the Labour Relations Act, No 66 of 1995, made and entered into by and between

CATRA

(Hereinafter referred to as the "the employer's" or the "the employers organisation's) of the one part,

and

SOUTH AFRICAN COMMERCIAL CATERING AND ALLIED WORKERS UNION (SACCAWU)

and

HOTEL, LIQUOR, CATERING, COMMERCIAL AND ALLIED WORKERS UNION (HOTELICCA)

and

INDUSTRIAL COMMERCIAL & ALLIED WORKERS UNION (ICAWU)

and

DEMOCRATICAL UNION OF SECURITY WORKERS (DUSWO)

and

FUTURE OF SOUTH AFRICAN WORKERS UNION (FOSAWU)

(Hereinafter referred to as the "trade unions" of the other part), being the parties to the Statutory Council for The Fast Food, Restaurant, Catering and Allied Trades.

1. SCOPE OF APPLICATION

- (1) The terms of this agreement shall be observed in the Fast Food, Restaurant, Catering and Allied Trades –
- (a) By all employers who are members of the employer's organisation and by all employees who are members of the trade unions
- (b) In the following areas:
- (a) The Province of Western Cape
 - (b) The Province of Eastern Cape
 - (c) The Province of Northern Cape
 - (d) The Province of Free State
 - (e) The Province of Kwazulu Natal
 - (f) The Province of North West, excluding the Magisterial Districts of Brits and Rustenburg.
 - (g) The Province of Mpumalanga, excluding the Magisterial District of Witbank.
 - (h) The Limpopo Province, excluding the Magisterial District of Warmbaths, and
 - (i) The Magisterial Districts of Heidelberg, Nigel, Vereeniging, Vanderbijlpark, Oberholzer, Meyerton and Carltonville.

2. PERIOD OF OPERATION OF AGREEMENT

- (1) This Agreement shall come into operation on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be promulgated as a determination to become binding on non-parties or the date on which the Minister of Labour declines to extend the Agreement to non-parties, and the Agreement shall remain in force for the period ending 31st January 2019.
- (2) The provisions contained in this Agreement (as further extended, renewed, amended and re-enacted from time to time), shall apply to employers and employees.

3. INDUSTRIAL ACTION

- (1) No person bound by the provisions of this Agreement entered into by the parties shall engage in or participate in a strike or lock-out or any conduct in furtherance of a strike or a lock-out in respect of any matter regulated by this Agreement for its duration.
- (2) The forum for negotiation and conclusion of substantive agreements on wages, benefits and other conditions of employment between the members of the employer's organisations party to this Agreement, on the one hand and employees and trade unions on the other hand, shall be the Council and not at shop floor level.
- (3) No trade union or employer's organisation may attempt to induce or compel or be induced or compelled by any natural or juristic person or other organisation, by any form of strike or lock-out, to negotiate the issues referred to in paragraph 1 above, at any level other than this Council.
- (4) Any inconsistent provisions of collective procedural agreements between employers and trade unions and their members shall be regarded by such parties as amended to accommodate the provisions of paragraph 2, and 3, above and shall not be binding on the parties to the extent that the provisions of such agreements conflict with those of paragraph 2 and 3 above.

4. DEFINITIONS

Any expression used in this Agreement which is defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, and any reference to an Act shall include any amendment to such Act, and unless the contrary intention appears, words imposing the masculine gender shall include females; further, unless inconsistent with the context -

"agent" means any person employed by the Council and appointed in terms of its Constitution and who collects contributions on behalf of the Council or a third party and who may be delegated to investigate a complaint or carry out any other tasks which may be allocated to such person;

"agreement" means this Agreement, and "Collective Agreement" has a corresponding meaning;

"act" means the Labour Relations Act, 1995 (Act No 66 of 1995) as amended from time to time;

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act 7 of 1997)

"catering" means the provisions of meals and/or refreshments;

"commission" means the commission for conciliation, mediation and arbitration (C.C.M.A.)

"Council" means the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades.

"Council Commissioner" means an individual appointed by the council to resolve disputes.

"designated agent" means any person appointed by the Minister at the request of the council to promote, monitor and enforce compliance with the Agreement;

"dispute" includes an alleged dispute;

"employee" means;

- a) any person excluding an independent contractor and a commission worker, who works for another person and who receives, or is entitled to receive any remuneration; and
- b) any other person who in any manner assists in carrying on or conducting the business of an employer, and further includes an employee who is employed by a labour broker or temporary employment service in the Sector, as defined and "employed and employment have meanings corresponding to that of employee";

"employer" means any person whomsoever who employs or provides work for any person or who permits such person whomsoever in any manner to assist him in the carrying on or conducting of a business in the Sector, as defined, and who remunerates or expressly or tacitly undertakes to remunerate such person; and "employ" or "employment" have corresponding meanings.

"establishment" means any place in or in connection with which one or more persons are employed in the Fast Food, Restaurant, Catering and Allied Trades Sector and Scope and includes canteens operating for gain;

"exemptions committee" means a committee established to consider applications for exemption from the provisions of this Agreement;

"independent exemptions appeal board" means an independent board established to consider the Council's refusal of a non-party's application for exemption from the provisions of this agreement and or the withdrawal of such an exemption by the Council;

"minister" means the Minister of Labour;

"party to dispute" means-

- (i) the Council; and/or
- (ii) any employers organisation and/or trade unions listed as members of the Council, and/or
- (iii) any employer organisation and/or trade union not listed as member of the 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;

"premises" includes any land, structure, vehicle or vessel;

"rules" means the rules for conciliating and arbitrating disputes in the Scope and Sector of the Fast Food, Restaurant, Catering and Allied Trades Statutory Council;

"secretary" means the General Secretary of the Council and includes any official nominated or delegated by the Council to act on behalf of or perform the duties of the Secretary;

"sector" Fast Food, Restaurant, Catering and Allied Industries means the industries concerned with the Tearoom, Restaurant, Catering, Coffee Shop, Pub, Tavern, Roadhouse, Café, Snack Bar, Fast Food Outlet, Convenience Store, Industrial or Commercial Caterer, Function Caterer, Contract Caterer, Catering and associated activities, without in any way limiting the ordinary meaning of the expression, include(s) the sector or sectors and or establishment(s) in which person(s) carry on the business or in which employers and employees are associated, for the purpose(s) of preparing, baking, providing, supplying, serving, selling, processing, producing meals. These shall include the provision of meals in bulk, edibles and beverages on any premises. Included would be all operations incidental to or in support of the employer's enterprise in relation to any of the above-mentioned activities and would further include:

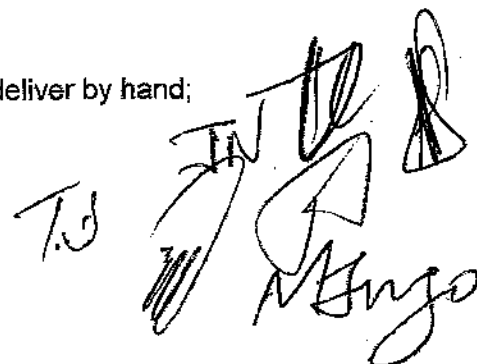
- a) all franchisor(s) where such franchisor or their employee(s) are associated for the activities prescribed above; and
- b) the baking of wheaten products which includes pies, snacks, confectionaries and pizzas for sale directly to customers for consumption whether on or off the premises where such products are baked.

Provided further that, for the purposes of this definition, the following business activities are specifically excluded from the ambit thereof:

- (1) Any casino and hotel industry and all activities that is ancillary and incidental to carrying on the primary activities of such industries. For the purpose of this exclusion, such primary activities are to be carried on, managed and operated solely and exclusively by the hotel or casino, as the case may be, at which these activities are undertaken and such activities must form an integral part of the business and operations of the hotel and casino in question.
- (2) Any catering facility of whatever nature which is owned managed or operated by sports and recreation clubs on its own premises and which, in turn, provides food and beverages to its members and patrons from the premises from which its sports and recreation facilities are undertaken.
- (3) The business conducted by filling and/or service stations, including ancillary activities forming part of a filling station linked to the convenience store environment inclusive of the preparing, serving and selling of food/beverages to customers, but excluding activities of separately registered establishments whose sole activities relates to the restaurant, tea room and catering environment.
- (4) Any outlet which prepares and sells food and beverages and is operated as part of a supermarket undertaking and which, in turn, is owned, managed and operated by the supermarket undertaking in question and conducted from the premises of such supermarket undertaking.

"serve" means to send by registered post, telegram, telex, telefax or to deliver by hand;

"workplace" means any place where employee's work;

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5. OBJECTIVES

The objectives of this Agreement are –

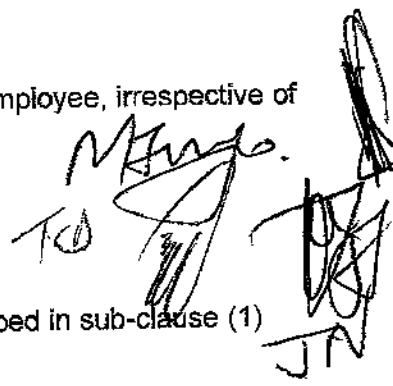
- (a) to provide for the funds of the Council, which shall be vested in and administered by the Council;
- (b) to perform the dispute resolutions referred to in section 51 of the Act;
- (c) to promote and or establish training schemes;
- (d) to establish and or administer benefit schemes and or funds for the benefit of the parties to the Council and their members; and
- (e) for the registration of all employers engaged in the Sector and Scope of the Council, irrespective of whether or not any Council's Agreement is binding on such employer.

6. REGISTRATION OF EMPLOYERS AND EMPLOYEES

- (1) Every employer, Temporary Employment Service Agency (Labour Broker), Contractor and every new employer must within thirty days of falling within the Councils registered Scope and Sector as defined in clause 1 above, must register with the Council by completing and submitting the Council's application form for registration.
- (2) An employer must notify the council within thirty days of –
 - (a) any change in the particulars of the employer;
 - (b) sequestration of the employer's estate;
 - (c) liquidation of the company;
 - (d) change of ownership; or
 - (e) cessation of business activity.
- (3) The council must, by the 7th of any month furnish –
 - (a) the employer's organisations, with details of employers registered with the council in the preceding month.
 - (b) the trade unions, with a list of employees eligible for membership or who have deregistered as members.

7. INCOME AND EXPENSES OF THE COUNCIL

- (1) Every employer shall deduct R10.00 monthly from the wages of each employee, irrespective of whether that employee was at work or not-
 - (a) to meet the expenses of the council; and
 - (b) for its dispute resolution function
- (2) Every employer shall contribute to the funds of the Council –
 - (a) an amount equal to that deducted from the employees as prescribed in sub-clause (1)

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- (b) an amount of R35,00 in respect of each establishment each month, during which deductions were made or were required to be made in terms of sub-clause (1), which shall be contributed by the employer himself.
- (3) The total amounts deducted, or required to be deducted, in terms of sub-clause (1), from the wages of employees, together with the amounts required to be contributed by the employer in terms of sub-clause (2), shall be paid into the Council's banking account (Standard Bank, Account No: 000317918 Branch code: 00-02-05 by not later than the 15th day of the month succeeding that month during which the deductions and contributions were made or were required to be made.
- (4) A proof of payment together with a completed statement showing the number of employees from whom the deductions were made or were required to be made shall be forwarded monthly by the employer to the Secretary of the Council by not later than the 15th day of each month succeeding that month during which the deductions were made.
- (5) Notwithstanding anything to the contrary contained in this Agreement, the Council shall be entitled to a 5% collection fee on all funds administered by the Council or collected on behalf of any third party or fund, which said amounts shall accrue to the general funds of the Council. The Council, in its sole discretion, may waive the right to such entitlement.

8. DEFAULT PAYMENTS

- (1) If any payment made by an employer to discharge his obligation in terms of this agreement, is not met, the council will impose an administration fee of R100.00 or 10% of the amount whichever is greater, to be payable by the employer on demand.
- (2) Should the council institute legal action for the recovery of any moneys due to it or to an employee or employer, then the debtor will be liable for all costs of the Council on an attorney and client scale on scale C of the magistrate's court tariff.
- (3) Any party who fails to claim moneys recovered by the council on his behalf in terms of this agreement within thirty-six months will forfeit the moneys to the Council.
- (4) Members and officials of the council are indemnified against all losses, charges, costs, damages and other expenses and liability they may incur or be put to concerning the bona fide execution of their duties as members and officials of the council.

9. FUNERAL BENEFITS

- (1) Membership of the Hospitality Group Funeral Insurance Scheme, as underwritten by Metropolitan Life Limited with Registration No. 1949/032491/06 as per policy Number 4151686104 is compulsory for all employees under the age of 65 (sixty five years) who are employed in the Scope and Sector of the Council.
- (2) For the purpose of providing employees with Funeral Benefits, every employer shall, in respect of each month, deduct R12-50 from the wages payable to each employee and add to such a deduction an amount of R12-50. Provided that, for the purpose of this paragraph, an employee

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shall be deemed to have worked during any period in which an employee is absent from work on leave, sick leave or maternity leave. Provided further, that the monthly contributions by the employer as well as employee's deductions must be paid during the months that the employee is absent from work.

- (3) Every employer shall ensure that the amounts referred to in sub-clause (2) are paid monthly in advance by debit order or by electronic transfer to: Standard Bank, Braamfontein Branch, Code 004805, Account Number 000462136.
- (4) A completed statement showing the number of employees from whom deductions and contributions were made, or should have been made, their names and ID Numbers, shall be forwarded monthly by all employers to: P.O. Box 2363, Florida Hills, 1716 or faxed to: (011) 672-5803 not later than the 15th day of the month succeeding that during which the deductions and contributions were made.

10. PROVIDENT FUND

- (1) Membership of a Provident Fund is compulsory for all employees.
- (2) For the purpose of providing employees with Provident Fund Benefits, every employer shall in respect of each month deduct 5% from the wages payable to each employee, and add to such deduction an equal amount of 5%.
- (3) Every employer shall ensure that the employees deductions as well as the employers contributions as referred in sub-clause 2 are paid to the Funds At Work Umbrella Provident Fund administrator electronically, by no later than the 7th day of the month succeeding that during which the deductions and contributions were made.
- (4) Every employer shall submit the participating employee's membership particulars to the administrator in prescribed electronic format and in such detail as required in terms of the Provident Fund rules and regulations and this agreement by no later than the 25th of each month.

11. PAYMENT OF CONTRIBUTIONS TO BENEFIT FUNDS

- (1) For the purposes of this section, a benefit fund is a pension, provident, retirement, medical aid or similar fund.
- (2) An employer that deducts from an employee's remuneration any amount for payment to a benefit fund must pay the amount to the fund within seven days of the deduction being made.
- (3) Any contribution that an employer is required to make to a benefit fund on behalf of an employee, that is not deducted from the employee's remuneration, must be paid to the fund within seven days of the end of the period in respect of which the payment is made.
- (4) This section does not affect any obligation as an employer in terms of the rules of a benefit fund to make any payment within a shorter period than that required by subsections (2) or (3).

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12. ADMINISTRATION OF AGREEMENT AND DESIGNATED AGENTS

- (1) The Council is responsible for the administration, promoting, monitoring and the enforcement of this agreement.
- (2) The Council may request the minister to appoint a person as a designated agent.
- (3) A designated agent will –
 - (a) promote, monitor and enforce compliance with this agreement;
 - (b) secure compliance with agreement by –
 - (i) publicising the contents of this agreement;
 - (ii) conducting inspections;
 - (iii) investigating complaints;
 - (iv) any other means the council may adopt; and
 - (c) perform any other functions that are conferred or imposed by the council.
- (4) A designated agent has all the powers set out in schedule 10 of the act.
- (5) A designated agent may issue a compliance order requiring any person to comply with this agreement within 21 days of its issuance failing which the Council may refer the dispute to arbitration.

13. DISPLAY OF AGREEMENT

- (1) The employer must display a copy of this agreement in a prominent place in the workplace and make it available to an employee on demand.

14. DISPUTE RESOLUTION FUNCTION OF THE COUNCIL

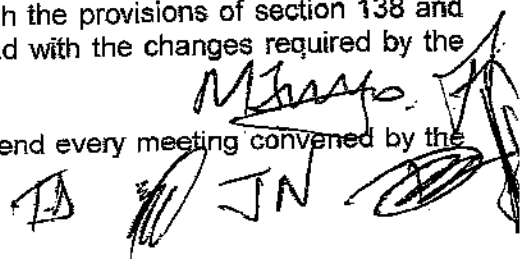
- (a) Disputes which are within the Council's jurisdictions in terms of Section 51 of the Act, shall be dealt with in terms of the Act in conjunction with the Council's Rules.
- (b) Disputes pertaining to the contraventions of any of the terms and conditions of employment shall be dealt with in terms of the collective agreement concluded by the parties to the Council.

14A. PROCEDURE FOR NEGOTIATION OF COLLECTIVE AGREEMENTS.

- (1) Any party to the council may introduce proposals for the amendment of any existing agreement or the conclusion of a new agreement in the council.

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- (2) The proposals must be submitted to the secretary in writing and must identify the other parties to the proposed agreement.
- (3) Within seven days of submission of the proposals the secretary must serve copies of the proposals on the other parties to the council.
- (4) Within 21 days of submission of the proposals, the chairperson must call a special meeting of the executive committee to consider the proposals and decide on a process for negotiating the proposals, including –
- (a) the introduction of counter-proposals;
 - (b) whether the negotiations should be conducted by the Council, the executive committee or any other committee of the Council.
 - (c) the appointment of a conciliator from the panel of conciliators to facilitate the negotiations; and
 - (d) the timetable for the negotiations.
- (5) If no negotiation process is agreed –
- (a) the secretary must appoint a conciliator from the panel or conciliator to facilitate negotiations and the conclusion of a collective agreement;
 - (b) the council must meet at least twice within 30 days of the meeting of the executive committee to negotiate on the proposals and any counter-proposals, unless a collective agreement has been concluded;
 - (c) the conciliator must facilitate the negotiations at those meetings and the conclusion of a collective agreement.
- (6) If no collective agreement is concluded in the course of a process or procedure contemplated in this clause, –
- (a) the parties to the council may –
 - (i) agree to refer the dispute to arbitration; or
 - (ii) resort to a strike or a lock-out that conforms with the provisions of Chapter IV of the Act; or
 - (b) Any party to the dispute whose members are engaged in an essential service may request that the dispute in respect of the employers and employees engaged in that service be resolved through arbitration.
- (7) In the circumstances contemplated in sub-clause (6) (a) (i) or (b), the secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.
- (8) The arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.
- (9) The arbitration proceedings must be conducted in accordance with the provisions of section 138 and 142 and, if applicable sections 139, 140 and 141, of the Act, read with the changes required by the context.
- (10) (a) During the strike or lock-out the parties to the dispute must attend every meeting convened by the conciliator to resolve the dispute.



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- (b) if any party to the dispute fails to attend, without good cause, a meeting so convened, the members of that party –
- (i) if they participate in a strike, will forfeit the protection they would have enjoyed in terms of section 67 of the Act;
 - (ii) if they are engaged in a lock-out, will forfeit the protection they would have enjoyed in terms of section 67 of the Act.

14B. DISPUTES ABOUT THIS DETERMINATION

- (1) If there is a dispute about the interpretation or application of this determination promulgated in terms of Section 44 (2), any party to the dispute may refer the dispute in writing to the Commission.
- (2) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- (3) The Commission must attempt to resolve the dispute through conciliation.
- (4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.

14C. ENFORCEMENT OF COLLECTIVE AGREEMENTS BY THE COUNCIL

- (1) Notwithstanding any other provision, the council may monitor compliance with its collective agreements in terms of this clause or a collective agreement concluded by the parties to the Council.
- (2) For the purposes of this clause the collective agreement shall be deemed to include –
 - (a) any condition of employment of any employee covered by a collective agreement; and
 - (b) the rules of any fund or scheme established by the Council.
- (3) The Council may refer any unresolved dispute concerning compliance with any provision of a collective agreement to arbitration by an arbitrator appointed by the Council.
- (4) If a party to an arbitration in terms of this clause that is not a party to the Council objects to the appointment of an arbitrator in terms of subsection (3), the Commission, on request by the Council must appoint an arbitrator.
- (5) An arbitrator conducting an arbitration in terms of this clause shall have the powers of a commissioner in terms of section 142 of the Act, read with the changes required by the context.
- (6) Part Five of the Rules, read with the changes required by the context, shall apply to any arbitration conducted in terms in this clause.
- (7) An arbitrator acting in terms of this clause may determine any dispute concerning the interpretation or application of a collective agreement.
- (8) 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

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paragraph (12) and Tables One and Two as set out hereunder;

- (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;
 - (f) any award contemplated section 138 (9) of the Act.
- (9) Interest on any amount that a person is obliged to pay in terms of a collective agreement shall accrue 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, 1975 (Act 55 of 1975), unless the arbitration award provides otherwise.
- (10) An award in an arbitration conducted in terms of this clause shall be final and binding and may be enforced in terms of section 143 of the Act.
- (11) If an employer upon whom a fine has been imposed in terms of this clause files an application to review and set aside an award made in terms of paragraph (8), any obligation to pay a fine shall be suspended pending the outcome of the application.
- (12) The maximum fines that may be imposed by an arbitrator acting in terms of this clause shall be subject to variation by notice of the Minister as published in the *Gazette*. A notice in terms of this paragraph may specify the maximum fine that may be imposed –
- (a) for a breach of a collective agreement –
 - (i) not involving a failure to pay any amount of money;
 - (ii) involving a failure to pay any amount of money;

and
 - (b) for repeated breaches of the collective agreement contemplated in subparagraph (a).

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 months	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provisions 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

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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 provisions 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 failure 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 provisions 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

14D. DISPUTES PERTAINING TO THE CONTRAVENTION OF THE AGREEMENT

- (1) A party complaining about an alleged contravention of this agreement must do so in a statement setting out full details of the complaint and lodge it with the council within 30 days of the alleged contravention.
- (2) The council must within 7 days of receipt of the complaint appoint a designated agent to investigate the complaint.
- (3) The designated agent must within 7 days of his appointment submit a written report to the council detailing his investigations, the steps he had taken to ensure compliance and the recommendations for the finalisation of the complaint.
- (4) If the complaint is not resolved, the complainant may refer a dispute in the form prescribed by the council within thirty days of being served by the council with the outcome of the investigation.
- (5) The referral must be accompanied by proof that a copy was served on the other party.
- (6) If the complainant shows good cause at any time, the council may permit the complainant to refer the complaint after the thirty days have expired.
- (7) The council will set the complaint down as a con-arb on at least fourteen days written notice on both parties.
- (8) Should a party fail to appear or be represented at the scheduled hearing, the commissioner must proceed with the conciliation on the date specified in the notice of set-down.
- (9) In con-arb proceedings a party may appear in person or be represented only by-
 - (a) a director, member or employee of that party; or
 - (b) any member, official or office bearer of that party's registered trade union or registered employers' organisation.
- (10) An arbitrator may-
 - (a) conduct the arbitration in a manner that the arbitrator considers appropriate in order to

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3. 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.

17. EXEMPTIONS

- (1) Any party may apply in writing to the council for exemption from the provisions of the agreement, excluding the provisions of clause 6 and clause 7.
- (2) The application for exemption must be fully supported and include the following particulars:
 - (a) the clauses from which the exemption is sought;
 - (b) the period for which the exemption is required; and
 - (c) proof that the application has been discussed with the other party and its representatives and the response.
- (3) The application of exemption must be placed as an item on the agenda for the next executive committee meeting following the date of the application.
- (4) The secretary will refer the application for exemptions to the exemptions committee together with the comments of the Secretary and the executive committee.
- (5) The exemptions committee must consider the application and may call for further oral or written submissions from any of the parties.
- (6) The exemptions committee will inform the applicant party within fourteen days of its decision.
- (7) In making its decision, the exemptions committee must consider-
 - (a) the submissions of the parties;
 - (b) the extent of the consultation between the parties and other role players;
 - (c) the scope of the exemption sought;
 - (d) the period for which exemption is sought;
 - (e) the effect of the exemption on basic conditions of employment;
 - (f) the impact of the exemption on collective bargaining in the sector;
 - (g) other economic and social factors.
- 3) Any party may appeal the decision of the exemption committee, to the Independent Exemptions Appeal Board, within 30 days of being informed by the council of the ruling.

18. INDEPENDENT EXEMPTIONS APPEAL BOARD

- (1) The Council in terms of section 32 of the Labour Relations Act, 66 of 1995, hereby establishes an Independent Exemptions Appeal Board to hear and decide, as soon as possible any appeal brought against -
 - (a) the Council's refusal of a non-party's application for exemption from the provisions of this agreement.
 - (b) the withdrawal of such an exemption by the council.
- (2) The Independent Exemptions Appeal Board will comprise of three persons appointed by the executive committee with two persons forming a quorum.
- (3) The appellant must set out the grounds of appeal in full traversing both the disputes of fact and questions of law.
- (4) The Council may elect to oppose the appeal in which event it must file opposing papers.
- (5) Oral arguments may be permitted by the Exemptions Appeal Board.

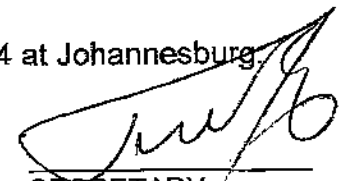
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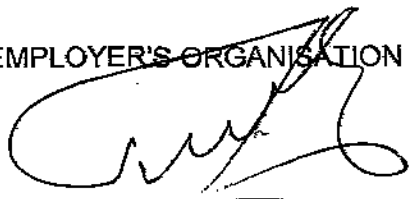
- (6) The Council may be represented by an official while the other party may be represented by its director, member or employee or an official from a registered trade union or registered employers' organisation.
- (7) **Exemption Criteria:** The Exemptions Committee and the Independent Exemptions Board shall consider all applicants for exemption with reference to the following criteria:
 - (a) The written and verbal substantiation provided by the applicant;
 - (b) 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;
 - (c) the scope of the exemption required;
 - (d) the infringement of basic conditions of employment rights;
 - (e) the fact that a competitive advantage is not created by the exemption;
 - (f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;
 - (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Fast Food Restaurant, Catering and Allied Trades.
 - (h) any existing special economic or other circumstances which warrant the granting of the exemption;
 - (i) cognisance of the recommendations contained in the *Report of the Presidential Commission to investigate Labour Market Policy*.

Thus signed on this 04 day of February 2014 at Johannesburg



CHAIRMAN



DEPUTY CHAIRMAN


SECRETARY

EMPLOYER'S ORGANISATION

CATRA

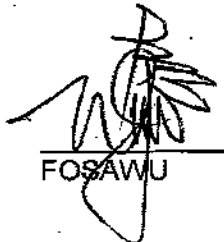


TRADE UNIONS

SACCAWU


HOTELICCA

ICAWU


DUSWS


FOSAWU

" ANNEXURE A"
CODE OF CONDUCT OF COMMISSIONERS

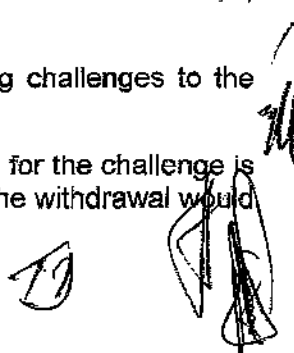
1. The purpose of this code is to:
 - 1.1 Assist in maintaining the good repute of the process regarding disputes and in particular the office of the Council.
 - 1.2 Provide guidance to all commissioner(s) on matters of professional conduct and practice generally.

GENERAL ATTRIBUTES OF COMMISSIONER(S)

2. In order for all dispute processes to be seen to be fair, just and gain confidence of the public, commissioners shall:
 - 2.1 act with honesty, impartiality, due diligence and independent of any outside pressure in the discharge of their statutory functions;
 - 2.2 conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interest;
 - 2.3 not solicit appointment for themselves. This shall not however preclude commissioners from indicating a willingness to serve in any capacity;
 - 2.4 accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment;
 - 2.5 avoid entering into any financial, business or social relationship which is likely to affect their impartiality or which might reasonably create a perception or partiality or bias;
 - 2.6 not influence Council officials or employees by improper means, including gifts or other inducements.

3. **CONFLICT OF INTEREST AND DISCLOSURE**

3. Commissioners should disclose any interest or relationship that is likely to affect their impartiality or which might create a perception of partiality. The duty to disclose rests on the commissioner.
4. Commissioners appointed to intervene in any matter should before accepting disclose:
 - 4.1 any direct or indirect financial or personal interest in the matter;
 - 4.2 any existing or part financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias;
 - 4.3 if the circumstances requiring disclosure are unknown to commissioners prior to accepting appointments, disclosure must be made when such circumstances become known to the commissioners. The disclosure in this regard could in arbitration proceedings, include witnesses who may have a relationship with the commissioner;
 - 4.4 after appropriate disclosure commissioners may serve if both parties so desire but should withdraw if they believe that a conflict of interest exists irrespective of the view expressed by the parties;
 - 4.5 in the event where there is no consensus on whether commissioners should withdraw or not, commissioners should not withdraw if the following circumstances exist;
 - 4.5.1 if the terms of reference provide for a procedure to be followed for determining challenges to the commissioners then those procedures should be followed.
 - 4.5.2 if commissioners after carefully considering the matter, determine that the reason for the challenge is not substantial and that they can nevertheless act impartially and fairly, and that the withdrawal would cause unfair delay or would be contrary to the ends of justice.

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5. **HEARING CONDUCT**

- 5.1 Commissioners should conduct proceedings fairly, diligently and in an even handed manner.
- 5.2 Commissioners should have no casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other.
- 5.3 Commissioners should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behaviour by all parties' participating in the proceedings.
- 5.4 A commissioner must be satisfied before proceeding *ex parte* that a party refusing or failing to attend the hearing has been given adequate notice of the time, place and purpose of the hearing.

6. **CONFIDENTIALITY**

- 6.1 Information disclosed to commissioners in confidence by a party during the course of conciliation, should be kept by commissioners in the strictest confidence and should not be disclosed to the other party or to third parties unless authority is obtained of such disclosure.

7. **JURISDICTION**

A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by commissioners as relieving him or her of further jurisdiction in respect of such issues.

8. **AVOIDANCE OF DELAYS**

- 8.1 Commissioners have the duty to plan their work schedules in a manner that ensures that commitments to the Council are fulfilled timeously.
- 8.2 Commissioners should co-operate with the parties and the Council to avoid delays.

9. **COMPETENCY**

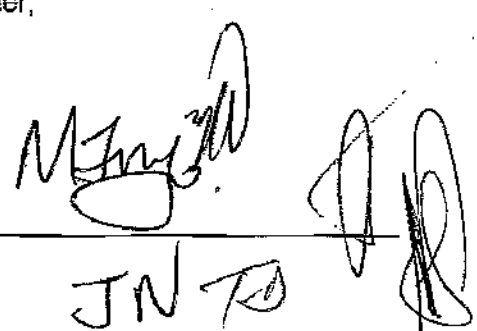
- 9.1 Commissioners should decline appointment, withdraw or request technical assistance when they decide that a matter is beyond their competence.
- 9.2 Commissioners should understand the issues which form part of the dispute before endeavouring to assist the parties with the settlement of that dispute. In this regard, commissioners should spend time at the beginning of the proceedings to make sure that they understand the positions, the needs and expectations of the parties.

10. **BASIS OF CONCILIATION PROCEEDINGS**

- 10.1 Commissioners acting as conciliators should determine at the commencement of a matter whether the proceedings will take place on a "without prejudice" basis and should secure the agreement of the parties in this regard.

11. **DISCIPLINARY PROCEDURE**

- 11.1 The Council's Executive Committee may conduct a disciplinary enquiry in the event of:-
- 11.2 A Council commissioner is alleged to have failed and/or refused to comply with Council's code of conduct;
 - 11.2.1 is found to be incapable of performing the duties of a commissioner;
 - 11.2.2 is alleged to have been guilty of serious misconduct;
- 11.2 if found guilty the Council may:
 - 11.2.1 suspend a commissioner from acting as a commissioner;
 - 11.2.2 remove him/her from the panel of commissioners.


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