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RECTIFICATION

Notice is hereby given that the **regulation numbers** in the preamble of *Government Gazette* Nos. 7461, 7454, 7455, 7457, 7458, 7459, 7460, 7456, 7463, 7465, 7466, 7467, 7468, 7469 and 7471 of 16, 17, 24, 27 and 31 January 2003 was incorrectly published. The numbers should read as follows:

Regulation Gazette No. 7461 should read 7559.

Regulation Gazette No. 7454 should read 7552.

Regulation Gazette No. 7455 should read 7553.

Regulation Gazette No. 7457 should read 7555.

Regulation Gazette No. 7458 should read 7556.

Regulation Gazette No. 7459 should read 7557.

Regulation Gazette No. 7460 should read 7558.

Regulation Gazette No. 7456 should read 7554.

Regulation Gazette No. 7463 should read 7561.

Regulation Gazette No. 7465 should read 7563.

Regulation Gazette No. 7466 should read 7564.

Regulation Gazette No. 7467 should read 7565.

Regulation Gazette No. 7468 should read 7570.

Regulation Gazette No. 7469 should read 7566.

Regulation Gazette No. 7471 should read 7568.

PROCLAMATION*by the****President of the Republic of South Africa*****No. R. 4, 2003****AMENDMENT OF SCHEDULE 2 TO THE PUBLIC SERVICE ACT, 1994**

In terms of section 7 (5) (a) (ii) of the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), I hereby amend, at the request of the Premier of KwaZulu-Natal, Schedule 2 to the said Act, in respect of KwaZulu-Natal—

- (a) by the deletion of the words "Department of Finance" and "Head: Finance", where they appear in columns 1 and 2 of Schedule 2, respectively; and
- (b) by the insertion in columns 1 and 2 of Schedule 2, after the words "Department of Works" and "Head: Works", of the words "Provincial Treasury" and "Head: Provincial Treasury", respectively.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria, this Thirtieth day of January, Two Thousand and Three.

M. MBEKI**President**

By Order of the President-in-Cabinet:

G. FRASER—MOLEKETI**Minister of the Cabinet****PROKLAMASIE***van die****President van die Republiek van Suid-Afrika*****No. R. 4, 2003****WYSIGING VAN BYLAE 2 BY DIE STAATSDIENSWET, 1994**

Ingevolge artikel 7 (5) (a) (ii) van die Staatsdienswet, 1994 (gepromulgeer deur Proklamasie No. 103 van 1994), wysig ek hierby, op versoek van die Premier van KwaZulu-Natal, Bylae 2 by vermeldde Wet, ten opsigte van KwaZulu-Natal—

- (a) deur die woorde "Departement van Finansies" en "Hoof: Finansies", waar dit voorkom in kolom 1 en 2 van Bylae 2, te skrap; en
- (b) deur in kolom 1 en 2, na die woorde "Departement van Werke" en "Hoof: Werke", onderskeidelik die woorde "Provinsiale Tesourie" en "Hoof: Provinsiale Tesourie" in te voeg.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria, op hede die Dertigste dag van Januarie, Tweeduisend en Drie.

M. MBEKI**President**

Op las van die President-in-Kabinet:

G. FRASER—MOLEKETI**Minister van die Kabinet**

GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF AGRICULTURE DEPARTEMENT VAN LANDBOU

No. R. 181

7 February 2003

FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT, 1947 (ACT No. 36 OF 1947)

REGULATION RELATING TO THE PROHIBITION OF THE SALE, ACQUISITION, DISPOSAL OR USE OF AGRICULTURAL REMEDIES AND STOCK REMEDIES.

I, Angela Thokozile Didiza; Minister of Agriculture, acting under section 23(1)(n) of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), has made the regulation set out in the schedule.

SCHEDULE

PROHIBITION OF THE SALE, ACQUISITION, DISPOSAL OR USE OF AGRICULTURAL REMEDIES AND STOCK REMEDIES.

The sale, acquisition, disposal or use of an agricultural remedy or a stock remedy, other than in the container and with the label as approved by the Registrar is hereby prohibited except

- (a) when being applied as indicated on the approved label,
- (b) for the purposes of conducting trials, and
- (c) if prior approval is obtained from the Registrar.

Any person who fails to comply with the conditions of this Regulation shall be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both such fine and imprisonment.

No. R. 181

7 Februarie 2003

**WET OP MISSTOWWE, VEEVOEDSEL, LANDBOUMIDDELS
EN VEEMIDDELS, 1947 (WET No. 36 VAN 1947)**

**REGULASIE BETREFFENDE DIE VERBOD OP DIE VERKOOP, VERKRYGING,
VERVREEMDING OF GEBRUIK VAN LANDBOUMIDDELS EN VEEMIDDELS**

Ek, Angela Thokozile Didiza, Minister van Landbou, handelende kragtens artikel 23(1)(n) van die Wet op Misstowwe, Veevoedsel, Landboumiddels en Veemiddels, 1947 (Wet No. 36 van 1947) het die regulasie in die bylae uiteengesit, uitgevaardig.

BYLAE

**VERBOD OP DIE VERKOOP, VERKRYGING, VERVREEMDING OF GEBRUIK
VAN LANDBOUMIDDELS EN VEEMIDDELS.**

Die verkoop, verkryging, vervreemding of gebruik van 'n landboumiddel of veemiddel word hiermee verbied indien dit nie in die houer en met die etiket soos goedgekeur deur die Registrateur is nie, behalwe

- (a) tydens toediening soos op die goedgekeurde etiket,
- (b) vir die doeleindes van die uitvoer van proewe, en
- (c) wanneer vooraf goedkeuring vanaf die Registrateur verkry is.

Enige persoon wat die bepalings van hierdie Regulasie oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met sowel daardie boete as daardie gevangenisstraf.

**DEPARTMENT OF LABOUR
DEPARTEMENT VAN ARBEID**

No. R. 184

7 February 2003

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT NO. 85 OF 1993)**DRAFT REGULATIONS**

The Minister of Labour intends, in terms of section 43 of the Occupational Health and Safety Act, 1993, after consultation with the Advisory Council for Occupational Health and Safety and with the Minister of Health, to make the regulations contained in the Schedule.

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director General of Labour, Private Bag X117, Pretoria, 0001 (for the attention of the Chief Inspector: Occupational Health and Safety) within 90 days of the date of publication of this notice.

SCHEDULE**Definition**

1. In these regulations "the Regulations" means the General Safety Regulations, published under Government Notice No. R. 1031 of 30 May 1986, as amended by Government Notice No. R. 1791 of September 1988 and Government Notice No. R. 2245 of 7 August 1992.

Insertion of subregulations (1A) and (1B) in regulations 3 of the Regulations

2. The following subregulations are hereby inserted after subregulations (1) of regulation 3 of the Regulations:

"(1A) An employer shall take all reasonable steps—

- (a) to promote the use of universal precautions for the prevention of the transmission of the human immuno-deficiency virus, hepatitis B and any other blood-borne pathogens in the workplace; and
- (b) to ensure that all his or her employees receive adequate training in the use of universal precautions for the prevention of the transmission of the human immuno-deficiency virus, hepatitis B and any other blood-borne pathogens in the workplace.

(1B) For the purpose of subregulation (1A) “ universal precautions “ shall include—

- (a) treating all blood and other body fluids as potentially infectious; and
- (b) taking all reasonable steps for the prevention of the transmission of the human immuno-deficiency virus, hepatitis B and other blood-borne pathogens.”

Amendment of the Annexure to the Regulations

3. The Annexure to the Regulations is hereby amended by the addition of the following items:

- “Item 19. An adequate supply of absorbent material for the absorption of spilt blood and other body fluids.
- Item 20. Disinfectant to sterilize spilt blood and other body fluids.
- Item 21. 2 Pairs large and 2 pairs medium disposable rubber household gloves.”

No. R. 177

7 February 2003

LABOUR RELATIONS ACT, 1995

RESTAURANT, CATERING AND ALLIED TRADES: EXTENSION OF RE-ENACTMENT AND AMENDMENT OF MAIN COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd, Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Restaurant, Catering and Allied Trades and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in those trades, with effect from 17 February 2003, and for the period ending 29 February 2004.

M.M.S. MDLADLANA

Minister of Labour

No. R. 177

7 Februarie 2003

WET OP ARBEIDSVERHOUDINGE, 1995

RESTOURANT-, SPYSENIERS- EN VERWANTE BEDRYWE: UITBREIDING VAN HERBEKRAGTING EN WYSIGING VAN HOOF KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd, Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Engelse Bylae hiervan verskyn en wat in die Bedingsraad vir die Restourant-, Spyseniërs- en Verwante Bedrywe aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Bedrywe, met ingang van 17 Februarie 2003, en vir die tydperk wat op 29 Februarie 2004 eindig.

M.M.S. MDLADLANA

Minister van Arbeid

SCHEDULE
BARGAINING COUNCIL FOR THE RESTAURANT, CATERING
AND ALLIED TRADES

Concluded in accordance with the provisions of the Labour Relations Act, no 66 of 1995 as amended, made and entered into by and between:

CATRA - The Restaurant and Food Services Associations of South Africa (hereinafter referred to as "the employer" or "the employers' organisation), of the one part, and the

SACCAWU - South African Commercial, Catering and Allied Workers Union

DICHAWU - Distributive, Catering, Hotels and Allied Workers Union

HOTELICCA - Hotel, Liquor, Catering, Commercial and Allied Workers Union.

SAWTU - South African Workers Trade Union.

(hereinafter referred to as the "trades unions" of the other part), being the parties to the

Bargaining Council for the Restaurant, Catering and Allied Trades

1. SCOPE OF APPLICATION

- (1) The terms of this agreement shall be observed in the 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 Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort, Springs and Westonaria.
- (2) The terms of this Agreement shall not apply to non-parties in respect of clauses 1, 1(a), 2 and 3 of this Agreement.

2. PERIOD OF OPERATION OF AGREEMENT

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 extended 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 29 February 2004.

3. SPECIAL PROVISIONS

The provisions contained in clauses 22(2) and 22(3) of the Collective Agreement published under Government Notice No. R. 707 of the 22 May 1998, as re-enacted and amended by Government Notice No. R 78 of the 4 February 2000 R 170 of 23 February 2001 and R 520 of 26 April 2002 (hereinafter referred to as the "Former Agreement") shall apply to employers and employees.

4. GENERAL PROVISIONS

The provisions contained in clauses 3 to 21, 22 (1), 22 (2) (b), 22 (4) and 23 up to and including 29 of the Former Agreement shall apply to employers and employees.

5. Clause 21 Income and Expenses of the council.

Insert a new clause 21B after the existing clause 21

21B 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, (other than a casual employee, a special function casual employee or a contract waiter) who are employed in the Scope and Sector of the Bargaining Council for the Restaurant, Catering and Allied Trades and who has not reached the age 65 (sixty five) years.
- 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.
- 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, Branch Code: 004805, Account Number: 000462136.

- 4) A completed statement in the form of Annexure I showing the numbers of employees from whom deductions and contributions were made, or should have been made, their names and I.D. Numbers, shall be forwarded monthly by all employers to: P.O. Box 31085, Braamfontein, 2017 or faxed to: (011) 403-0982 not later than the 15th day of the month succeeding that during which the deductions and contributions were made.

6. **Clause 23 Administration of Agreement, agents and Designated agents.**

Substitute the existing clause 23 with the following:

ADMINISTRATION OF AGREEMENT, AND DESIGNATED AGENTS

1. The Council is responsible for the administration, promoting, monitoring and enforcement of this agreement.
2. The Council may issue guidelines or instructions to employers and employees regarding the implementation of this agreement.
3. The Council may request the Minister in terms of Section 33(1) of the Act to appoint a person as a designated agent.
4. The Council shall appoint one or more specified persons as designated agents to assist in giving effect to the terms of this agreement.
 1. A designated agent of the Council shall promote, monitor and enforce compliance with this agreement.
 2. A designated agent may:
 - (a) secure compliance with the Council's collective agreement by;
 - (i) publicising the contents of the agreement;
 - (ii) conducting inspections;
 - (iii) investigating complaints; or
 - (iv) any other means the Council may adopt; and
 - (b) perform any other functions that are conferred to imposed on the

designated agent by the Council; and

- (c) a designated agent of the Council has all the powers as set out in schedule 10 to the Act;
- (d) issue a compliance order requiring any person to comply with the collective agreement within 21 days of the date of the compliance order.

5. In terms of section 33(3) read with Section 142 of the Labour Relations Act, 1995, a designated agent may enter any establishment and question any employer during the course of such inspection and inspect the record of wages paid, time worked and payments made for overtime, and it shall be the duty of every employer and employee to permit such a designated agent to institute such inquiries and to examine such books and/or documents and to interrogate such person as may be necessary for the purpose of ascertaining the terms of this agreement are being observed.

It is an offence to:-

- (a) obstruct or attempt to improperly influence a designated agent or other person who is performing a function in terms of this agreement;
- (b) present or submit a false or forged document;
- (c) pretend to be a designated agent of this Council performing a function in terms of this agreement;
- (d) refuse or fail to answer fully any lawful question put by a designated agent or other person in the performance of his duties in terms of this agreement;
- (e) refuse or fail to comply with any lawful request of, or lawful order by a designated agent or person in the performance of his duties in terms of this agreement;
- (f) hinder or obstruct a designated agent or any other person performing a function in terms of this agreement.

Upon conviction of any of the offences mentioned in 6.1 above, a penalty similar to that prescribed in section 92 and 93 of the Basic Conditions of Employment Act, No 75 of 1997, as amended, may be imposed.

7. Clause 28 Dispute Resolution functions at the Council

Substitute the existing clause 28 with the following

28A Disputes pertaining to contraventions of the Agreement:

- (1) Disputes pertaining to contraventions of the Agreement must be done in the form of a sworn statement, setting out all the material fact(s) that form the basis of the complaint.
- (2) On receipt of the complaint the Council shall within 14 days appoint a designated agent or official to investigate the dispute and/or may request further information, facts or data from either the employee or the employer.
- (3) The designated agent or official shall within 30 days of his appointment submit a written report to the Secretary on his investigation and the steps he had taken to ensure compliance with the Agreement and the recommendation for finalisation of the complaint.
- (4) Should the complaint not be settled, the complainant shall request the Council to convene a con-arb proceeding(s) within 30 days of being served with the outcome of the investigation.
- (5) The referral for a con-arb shall be served on the employer by the employee and the referral together with proof of service must be served on the Council.
- (6) If the complainant shows good cause at any time, the Council may permit the complainant to refer the complaint after the 30-day limit has expired.
- (7) The Council must give the parties at least 14 days notice in writing that the complaint has been scheduled for con-arb.
- (8) If a party fails to appear or be represented at the scheduled hearing, the commissioner

must proceed with the conciliation on the date specified in the notice.

- (9) In con-arb proceedings, a party to the complaint may appear in person or be represented only by:

- (a) a director or employee of that party, or
- (b) any member, office bearer or official of that party's registered trade union or registered employers' organisation.

- (10) An arbitrator conducting an arbitration in terms of this clause has all the powers of a commissioner as set out in the Act.

- (11) An arbitrator may, make an appropriate award including:

- (a) ordering any person to pay any amount owing in terms of this agreement provided that any claim pertaining to clause 5,6,7,9,13,14,16 and 17, shall not exceed the period of 12 months, from date the complaint has now been lodged at the council;
- (b) charging a party an arbitration fee;
- (c) ordering a party to pay the cost of the arbitration;
- (d) any award contemplated in section 138(9) of the Act.

- (12) An award in terms of this clause is final and binding and may be enforced in terms of section 143 of the Act after the Secretary and or a person appointed by the Council has certified the arbitration award, unless its an advisory arbitration award.

- (13) The council may by agreement between the parties or on application by any party may make a written settlement agreement which is duly signed by both parties in respect of any complaint referred to the council, an arbitration award.

28B Disputes pertaining to income and expenses of the council.

- (1) Should an employer in terms of this agreement fail to comply with any provisions of clause 19, 21, 21A and 21B of the agreement, the council shall serve a letter of demand on that employer.

- (2) If the employer fails to comply with the letter of demand, the council shall set the matter down for a con-arb.
- (3) The notice contemplated in 28A(2) above shall be served on the employer not less than 14 days before the scheduled con-arb.
- (4) Clauses 28(8) to 28(13) of this agreement shall apply to proceedings conducted under this clause.
- (5) In addition, the arbitrator may impose a fine for failure to comply with clause 21, 21A and 21B of this agreement.
- (6) Any person upon whom a fine has been imposed in terms of this clause, files an application to review and set aside an award in terms of 28B (5), any obligation to pay a fine is suspended pending the outcome of the application.
- (7) The maximum fines that may be imposed by an arbitrator acting in terms of this clause shall not exceed the amounts as determined by the Minister from time to time.

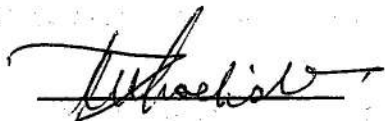
28C Rules for the conduct of proceedings before the Bargaining Council for the Restaurant, Catering and Allied Trades

Rules for the conduct of proceedings before the council pertaining to the disputes in the Labour Relations Act, no 66 of 1995 as amended is set out in Annexure "K" to this Agreement.

2. Annexure(s) to the Collective Agreement

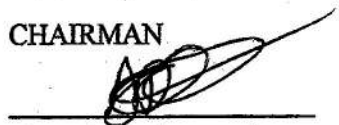
- 8.1 Substitute the existing Annexure "H" with Annexure "H" of this Agreement:
- 8.2 Insert the following Annexure(s) I (Re: clause 21B), "J" (Agreement Contract Waiter); and Annexure "K" to this agreement

Signed at 87 Juta Street, 1st Floor, Argon House, Braamfontein Johannesburg on this 10 day of
September 2002.




J. MICHAELIDES

CHAIRMAN



D. DAKILE

VICE CHAIRMAN AND O.B.O. UNION(S)



B. MAGQAZA

SECRETARY

"ANNEXURE H

CODE OF GOOD PRACTICE: DISMISSAL**1. Introduction**

- (1) This *code of good practice* deals with some of the key aspects of *dismissal* for reasons related to conduct and capacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of *employees* employed in an establishment may warrant a different approach.
- (2) The Act emphasises the primary of Collective Agreements. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of collective agreements, or the outcome of joint decision-making by an employer and a work-place forum.
- (3) The key principle in this Code is that employers and employees should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of business. While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

2. Fair reasons for dismissal

- (1) A dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. Whether or not a dismissal is for a fair reason is determined by the facts of the case, and the appropriateness of dismissal as a penalty. Whether or not the procedure is fair is determined by referring to the guidelines set out below.
- (2) The Act recognises three grounds on which a termination of employment might be legitimate. These are: the conduct of the employee, the capacity of the employee, and the operational requirements of the employer's business.
- (3) The Act provides that a dismissal is automatically unfair if the reason for the dismissal is one that amounts to an infringement of the fundamental rights of employees and trade union, or if

the reason is one of those listed in section 187. The reasons include participation in a lawful strike, intended or actual pregnancy and acts of discrimination.

- (4) In cases where the dismissal is not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.

3. Disciplinary measures short of dismissal

- (1) All employers should adopt disciplinary rules that establish the standard of conduct required of their employees. The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business. In general, a larger business will require a more formal approach to discipline. An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate them.
- (2) The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employees behaviour through a system of graduated disciplinary measures such as counselling and warnings.
- (3) Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline. Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal. Dismissal

should be reserved for cases of serious misconduct or repeated offences.

- (4) Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the proper of the employer, wilful endangering of the safety of others physical assault on the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of section 188.
- (5) When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.
- (6) The employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under the consideration.

4. Fair procedure

- (1) Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.

- (2) Discipline against a trade union representative or an employee who is an office bearer or official of a trade union should not be instituted without first informing and consulting the trade union.
- (3) If the employee is dismissed, the employee should be given the reason for dismissal and reminded of any rights to refer the matter to a council with jurisdiction or to the Commission or to any dispute resolution procedures established in terms of a Collective Agreement.
- (4) In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

5. Disciplinary records

Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.

6. Dismissals and industrial action

- (1) Participation in a strike that does not comply with the provisions of chapter IV of the Act is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including -
 - (a) the seriousness of the contravention of the Act,
 - (b) attempts made to comply with the Act, and
 - (c) whether or not the strike was in response to unjustified conduct by the employer.
- (2) Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it

or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.

7. Guidelines in cases of dismissal for misconduct. Any person who is determining whether a dismissal for misconduct is unfair should consider -

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the work-place; and
- (b) if a rule or standard was contravened, whether or not -
 - (i) the rule was a valid or reasonable rule or standard;
 - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) the rule or standard has been consistently applied by the employer; and
 - (iv) dismissal with an appropriate sanction for the contravention of the rule or standard.

8. Probation

- (a) An employer may require a newly-hired employee to serve a period of probation before the appointment of the employee is confirmed.
- (b) The purpose of probation is to give the employer an opportunity to evaluate the employee's performance before confirming the appointment.
- (c) Probation should not be used for purposes not contemplated by this Code to deprive employees of the status of permanent employment. For example, a practice of dismissing employees who complete their probation periods and replacing them with newly-hired employees, is not consistent with the purpose of probation and constitutes an unfair labour practice.

- (d) The period of probation should be determined in advance and be of reasonable duration. The length of the probationary period should be determined with reference to the nature of the job and the time it takes to determine the employee's suitability for continued employment.
- (e) During the probationary period, the employee's performance should be assessed. An employer should give an employee reasonable evaluation, instruction, training, guidance or counselling in order to allow the employee to render a satisfactory service.
- (f) If the employer determines that the employee's performance is below standard, the employer should advise the employee of any aspects in which the employer considers the employee to be failing to meet the required performance standards. If the employer believes that the employee is incompetent, the employer should advise the employee of the respects in which the employee is not competent. The employer may either extend the probationary period or dismiss the employee after complying with subitems (g) or (h), as the case may be.
- (g) The period of probation may only be extended for a reason that relates to the purpose of probation. The period of extension should not be disproportionate to the legitimate purpose that the employer seeks to achieve.
- (h) An employer may only decide to dismiss an employee or extend the probationary period after the employer has invited the employee to make representations and has considered any representations made. A trade union representative or fellow employee may make the representations on behalf of the employee.
- (i) If the employer decides to dismiss the employee or to extend the probationary period, the employer should advise the employee of his or her rights to refer the matter to the council.

- (j) Any person making a decision about the fairness of a dismissal of an employee for poor work performance during or on expiry of the probationary period ought to accept reasons for dismissal that may be less compelling than would be the case in dismissals effected after the completion of the probationary period.
- (2) After probation, an employee should not be dismissed for unsatisfactory performance unless the employer has -
 - (a) given the employee appropriate evaluation, instruction, training, guidance or counselling; and
 - (b) after a reasonable period of time for improvement, the employee continues to perform unsatisfactorily.
- (3) The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.
- (4) In the process, the employee should have the right to be heard and to be assisted by a trade union representative or a fellow employee.

9. Guidelines in cases of dismissal for poor work performance

Any person determining whether a dismissal for poor work performance is unfair should consider -

- (a) whether or not the employee failed to meet a performance standard; and
- (b) if the employee did not meet a required performance standard whether or not -
 - (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
 - (ii) the employee was given a fair opportunity to meet the required performance standard; and
 - (iii) dismissal was an appropriate sanction for not meeting the required performance standard.

10. Incapacity: Ill health and injury

- (1) Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.
- (2) In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative or fellow employee.
- (3) The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.
- (4) Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

11. Guidelines in cases of dismissal arising from ill health or injury.

Any person determining whether a dismissal arising from ill health or injury is unfair should consider -

- (a) whether or not the employee is capable of performing the work; and
- (a) if the employee is not capable -
 - the extent to which the employee is able to perform the work;
 - (i) the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted; and
 - (ii) the availability of any suitable alternative work."

**"ANNEXURE I
(CLAUSE 21B)"**

To: Hospitality Group Funeral Insurance Scheme
P.O. Box 31085
Braamfontein, 2017

Date: _____

Acc. No: _____

Policy No: 4151686104

Fax: (011) 403 - 0982

Name of Employer: _____

Trading Name: _____

Street Address: _____

Postal Address: _____ Postal Code: _____

Telephone Number: () _____ Fax No: _____

In accordance with clause 21 B (4) of the Bargaining Council's Agreement, I hereby furnish the following particulars.

No:	Name of Employees	Surname	I.D. Number	Gender
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

No. of employees: _____ Monthly contributions per employee: R25:00 Total Due: R_____

The employer shall deduct the sum of R 12,50 from the wages of each employee (clause 21B(2).)"

"ANNEXURE J**AGREEMENT
CONTRACT WAITER**

Name of Contractor/Applicant: _____ I.D. No: _____

Address: _____ Phone No: _____

Name of Restaurant/Establishment: _____

Address: _____

Phone No: _____ Fax No: _____

The applicant is an independent person who shall perform the duties of a waiter and agrees with the owner to work odd shifts on a contractual basis as/or when required by the owner and is self directing and self reliant and shall not, at any time, be entitled to the status of an employee.

The owner shall pay the contract waiter a contract price of R _____ per hour and the owner shall have no claim on any monies received in the form of tips. All monies received in the form of tips as well as the contract price of R _____ per hour shall be paid at the end of each shift/week/month and both parties shall maintain a record of such monies received. A 5% deduction will be made in respect of Credit Card tips.

The contract waiter shall be accountable and responsible for all orders processed, undercharging, breakage and "walkouts" and all monies due by the contract waiter shall be paid at the end of each shift.

The contract waiter shall perform such duties as may be required of him/her in a proper, diligent and satisfactory manner, at all times ensuring that the ethical standards and high quality criteria of the establishment are maintained.

The parties may terminate this agreement by giving 24 hours notice of this intention. The owner reserves the right to terminate this Contract for any reasons sufficient in Law and/or for non-performance.

The contract waiter indemnifies the owner against any claims of the Receiver of Revenue (PAY, VAT), Unemployment Insurance (UIF) and Bargaining Council levies and authorise the owner of the establishment to deduct the amount of R 15,00 per month from the contract waiter contract price and pay the R 15,00 to the Bargaining Council for the Restaurant, Catering and Allied Trades.

I, the undersigned certify that the contents of this document have been explained and read to me, and I understand them fully.

This done and signed on this _____ day of _____ 200_.

Owner/Manager

Contractor

Witness: 1. _____ 2. _____."

"ANNEXURE K"**RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE
BARGAINING COUNCIL FOR THE RESTAURANT, CATERING AND
ALLIED TRADES****TABLE OF CONTENTS****PART ONE****SERVING AND FILING DOCUMENTS**

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2. When are the offices of the Bargaining Council open
3. How to calculate time periods in these rules
4. Who must sign documents
5. How to serve documents on other parties
6. How to prove that a document was served in terms of the rules
7. How to file documents with the Bargaining Council
8. Documents and notices send by registered post
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11. What notice must the Council give of a conciliation
12. Council may seek to resolve dispute before conciliation
13. Representation at conciliation
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- 40. Taxation of bills of cost
- 41. Certification and enforcement of arbitration awards
- 42. What words mean in these rules

PART ONE**SERVING AND FILING DOCUMENTS****1. Bargaining Council for the Restaurant, Catering and Allied Trades**

1st Floor

Argon House

87 Juta Street

Braamfontein

2001

P.O. Box 30822

Braamfontein

2017

Tel: (011) 339 - 2834/5/7

Fax: (011) 403 - 0986

- (1) The addresses, telephone and telefax number of the offices of the Council are listed as above.
- (2) Documents may only be filed with the Council at the addresses or telefax number listed in sub rule (1) above.

2. When are the offices of the Council open

- (1) Documents may only be filed with the Council from Monday to Friday, excluding public holidays between the hours of 08h30 - 15h30

3. How to calculate time periods in these rules

- (1) For the purpose of calculating any period of time in terms of these rules -
 - (a) day means a calendar day; and
 - (b) the first day is excluded and the last day is included, subject to subrule 3

- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday, or on a day during the period between 16 December to 7 January.

4. Who must sign documents

- (1) A document that a party must sign in terms of the Act or these rules must be signed by the employee or employer or duly authorised representative in terms of the Act.
- (2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. The employees who have mandated the employee to sign on their behalf must attached to the referral documents, a list containing their name(s), identity numbers and signatures.

5. How to serve document on other parties

- (1) A party must serve a document on the other parties -
- (a) by handing a copy of the document to
- (i) the person concerned;
 - (ii) a representative authorised in writing to accept service on behalf of the person;
 - (iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment premises at the time;
 - (vi) a person identified in subrule 5 (2);
- (b) by leaving a copy of the document at -
- (i) an address chosen by the person to receive service;
 - (ii) any premises in accordance with subrule 5 (3);

- (c) by faxing or telexing a copy of the document to the person's fax or telex number respectively, or a number chosen by that person to receive service;
- (d) by sending a copy of the document by registered post or telegram to the last-known address of the party or an address chosen by the party to receive service.
- (2) A document may also be served -
- (a) on a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;
- (b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;
- (c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the main office or of the union or employers' organisation, or its office in the magisterial district in which the dispute arose.
- (d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;

- (e) on a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body;
- (3) If no person identified in subrule 5 (2) is willing to accept service, service may be effected by affixing a copy of the document to -
 - (a) the main door of the premises concerned or;
 - (b) if this is not accessible, a post-box or other place to which the public has access.
- (4) The Council or a commissioner may order service in a manner other than prescribed in this rule.

6. How to prove that a document was served in terms of the rules

- (1) A party must prove to the Council or a commissioner that a document was served in terms of these rules, by providing the Council or a commissioner. -
 - (a) with a copy of proof of mailing the document by registered post to the other party;
 - (b) with a copy of the telegram or telex communicating the document to the other party;
 - (c) with a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document; or
 - (d) if a document was served by hand -
 - (i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
 - (ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.

- (2) If proof of service in accordance with subrule 6 (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- (3) The Council may accept proof of service in a manner other than prescribed in this rule, as sufficient.

7. How to file documents with the Council

- (1) A party must file documents with the Council:
 - (a) at the address listed in rule 1(1);
 - (b) by sending a copy of the document by registered post to the office of the secretary at the address listed in rule 1(1);
 - (c) by faxing the document to the office of the secretary at a number listed in rule 1(1).
 - (2) A document is filed with the Council when -
 - (a) the document is handed to the office of the secretary;
 - (b) a document sent by registered post is received by the office of the secretary; or
 - (c) the transmission of a fax is completed.
 - (3) A party must file the original of a document served by fax within 3 days of its transmission, with the secretary.
- 8. Documents and notices sent by registered post.**
- Any document or notice sent by registered post by a party or the Council is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.
- 9. How to seek condonation for documents delivered late**
- (1) This rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these rules.

- (2) A party must apply for condonation, in terms of rule 32, when delivery the document to the Council.
- (3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:
 - (a) the degree of lateness;
 - (b) the reasons for lateness;
 - (c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
 - (d) any prejudice to the other party; and
 - (e) any other relevant factors.

PART TWO

CONCILIATION OF DISPUTES

10. How to refer a dispute to the Council for conciliation

- (1) A party must refer a dispute to the Council for conciliation by delivering a completed form prescribed by the Council or for an LRA 7.11 ("the referral document").
- (2) The referring party must -
 - (a) sign the referral document in accordance with rule 4;
 - (b) attach to the referral document written proof, in accordance with rule 6, that the referral document was served on the other parties to the dispute;
 - (c) if the referral document is filed out of time, attach an application for condonation in accordance with rule 9.
- (3) The Council must refuse to accept a referral document until subrule 10 (2) has been complied with.

11. What notice must the Council give of a conciliation

The Council must give the parties at least 14 days notice in writing of a conciliating hearing, unless the parties agree to a short period of notice.

12. Council may seek to resolve dispute before conciliation

The Council or a commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to attempt to resolve the dispute.

13. Representation at conciliation

(1) In the conciliation proceedings a party to the dispute may appear in person or be represented only by -

- a) a director or employee of that party; or
- b) any member, office bearer or official of that party's registered trade union or registered employers' organisation.

(2) The parties to a dispute must attend a conciliation at the time stipulated in the notice of set down in person, irrespective of whether they are represented.

14. What happens if a party fails to attend or is not represented at conciliation.

(1) If a party is represented at the conciliation but fails to attend in person and that party is the referring party, the commissioner may -

- (a) continue with the proceedings;
- (b) adjourn the proceedings; or
- (c) regard the matter as abandoned.

(2) In exercising a discretion in terms of subrule 14 (1), a commissioner should take into account, amongst other things -

- (a) whether the party has previously failed to attend a process in respect of that dispute;

- (b) any reason given for that party's failure to attend;
 - (c) whether conciliation can take place effectively in the absence of that party;
 - (d) the likely prejudice to the other party of the commissioner's ruling;
 - (e) any other relevant factors.
- (3) If a party to a dispute fails to attend in person or to be represented at a conciliation, the commissioner may deal with it in terms of rule 31.

15. How to determine whether a commissioner may conciliate a dispute

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the commissioner may require referring party to prove that the Council has the jurisdiction to conciliate the dispute through conciliation.

16. Issuing of a certificate in terms of section 135(5)

A certificate issued in terms of section 135(5) of the Act that the dispute has or has not been resolved, may identify the nature of the dispute as described in the referral document or as identified by the commissioner during the conciliation process.

17. Conciliation proceedings may not be disclosed

- (1) Conciliation proceedings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing.
- (2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during conciliation.

PART THREE**CON-ARB IN TERMS OF SECTION 191 (5A) OF THE ACT****18. Conduct of con-arb in terms of section 191 (5A)**

- (1) The Council must give the parties at least fourteen days notice in writing that a matter has been scheduled for a con-arb in terms of section 191 (5A).
- (2) A party that intends to object to a dispute being dealt with in terms of section 191 (5A) must deliver a written notice to the Council and the other party, not less than seven days prior to the scheduled date in terms of subrule 18 (1).
- (3) Subrule 18 (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation.
- (4) If a party fails to appear or be represented at a hearing scheduled in terms of subrule 18 (1), the commissioner must conduct the conciliation on the date specified in the notice issued in subrule 18 (1).
- (5) Subrule 18 (4) applies irrespective of whether a party has lodged a notice of objection in terms of subrule 18 (2).
- (6) In con-arb and arbitration proceedings a party to the dispute may appear in person or be represented only by -
 - (a) a director or employee of that party; or
 - (b) any member, office bearer or official of that party's registered trade union or registered employers' organisation.
- (7) If the dispute is about an unfair labour practice during probation or the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, the parties, despite rule 18(6) are not entitled to be represented by a legal practitioner in the arbitration proceedings unless -
 - (a) the commissioner and all the other parties consent; or

- (b) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering -
 - (i) the nature of the questions of law raised by the dispute;
 - (ii) the complexity of the dispute;
 - (iii) the public interest; and
 - (iv) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.
- (8) The provisions of the Act and these rules that are applicable to conciliation and arbitration proceedings respectively apply, with the changes required by the context, to con-arb proceedings.
- (9) If the arbitration does not commence on the date specified in terms of the notice in subrule 18 (1), the Council must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of rule 21.

PART FOUR

ARBITRATIONS

19. How to request arbitration.

- (1) A party may request the Council to arbitrate a dispute by delivery of a document in the form prescribed by the Council or form LRA 7.13 ("the request for arbitration").
- (2) The referring party must -
 - (a) sign the referral document in accordance with rule 4;
 - (b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with rule 6; and

- (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 9 above.
 - (3) The Council must refuse to accept a referral document until subrule 19 (2) above has been complied with.
 - (4) This rule does not apply to con-arb proceedings held in terms of rule 18 above.
20. **When must the parties file statements**
- (1) The Council or a commissioner may direct -
 - (a) the referring party in an arbitration to deliver a statement of case; and
 - (b) the other party to deliver an answering statement.
 - (2) A statement in terms of subrule 20 (1) must -
 - (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
 - (b) be delivered within the time-period prescribed by the Council or the commissioner.
21. **When the parties must hold a pre-arbitration conference**
- (1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in subrule 21 (2).
 - (2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:
 - (a) any means by which the dispute may be settled;
 - (b) facts that are agreed between the parties;
 - (c) facts that are in dispute;
 - (d) the issues that the Council is required to decide;
 - (e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;

- (f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
 - (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
 - (h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
 - (i) which party must begin;
 - (j) the necessity for any on-the-spot inspection;
 - (k) securing the presence at the Council of any witness;
 - (l) the resolution of any preliminary points that are intended to be taken;
 - (m) the exchange of witness statements;
 - (n) expert evidence;
 - (o) any other means by which the proceedings may be shortened;
 - (p) an estimate of the time required for the hearing;
 - (q) the right of representation; and
 - (r) whether an interpreter is required and, if so, for how long and for which languages.
- (3) Unless a dispute is settled, the parties must draw up and sign the minutes setting out the facts on which the parties agree or disagree.
- (4) The minutes in terms of subrule 21 (3) may also deal with any matter other than these listed in subrule 21 (2).
- (5) The referring party must ensure that a copy of the pre-arbitration conference minutes is delivered to the appointed commissioner within seven days of the conclusion of the pre-arbitration conference.

- (6) The commissioner may, after receiving a pre-arbitration minute -
 - (a) enrol the matter for arbitration;
 - (b) direct the parties to hold a further pre-arbitration conference; or
 - (c) make any other direction to the parties concerning the conduct of the arbitration.
- (7) If any other party fails to attend a pre-arbitration conference without a justifiable reason, the commissioner may make an order of costs against that party.

22. What notice must the Council give of an arbitration

The Council must give the parties at least 21 days notice, in writing, of an arbitration hearing, unless the parties and the Council agree to a shorter period.

23. How to determine whether a commissioner may arbitrate a dispute

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Council has jurisdiction to arbitrate the dispute.

24. How to postpone an arbitration

- (1) An arbitration may be postponed -
 - (a) by agreement between the parties in terms of subrule 24 (2); or
 - (b) by application and on notice to the other parties in terms of subrule 24 (3).
- (2) The Council must postpone an arbitration without the parties appearing if -
 - (a) all the parties to the dispute agree in writing to the postponement; and
 - (b) the written agreement for the postponement is received by the Council not less than seven days prior to the scheduled date of the arbitration.
- (3) If the conditions of subrule 24 (2) are not met, any party may apply in terms of

rule 32 to postpone an arbitration by delivery of an application to the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.

- (4) After considering the written application, the Council or commissioner may -
 - (a) without convening a hearing, postpone the matter; or
 - (b) convene a hearing to determine whether to postpone the matter; and
 - (c) the Council or commissioner may award costs.
- (1) Should any party request a postponement on the day of the scheduled arbitration hearing, the commissioner may:-
 - (a) continue with the arbitration proceedings; or
 - (b) postpone or adjourn the arbitration proceedings; and
 - (c) may include an order as to costs.-

24 A Failure to attend or to be represented at the arbitration;

- (1) If a party to the dispute fails to appear in person or to be represented at the arbitration proceedings, and that party -
 - (a) had referred the dispute to the Council, the commissioner may dismiss the matter; or
 - (b) had not referred the dispute to the Council, the commissioner may- (i) continue with the arbitration proceedings in the absence of that party; or (ii) adjourn the arbitration proceedings to a later date.

PART FIVE**RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS****25. Where a conciliation or arbitration will take place**

- (1) A dispute must be conciliated or arbitrated at the venue determined by the Council.

26. Objections to a representative appearing before the Council.

- (1) If a party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of the Act, the commissioner must determine this issue in terms of rules 13(1) - 18(7).
- (2) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of these rules.
- (3) A representative must tender any documents requested by the commissioner in terms of subrule 26 (2), including constitutions, payslips, contracts of employment, income tax returns, documents and forms, recognition agreements and proof of membership of a registered trade union or registered employer's organisation.

27. How to join or substitute parties to proceedings.

- (1) The Council or commissioner may join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law or fact.
- (2) A commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
- (3) A commissioner may make an order in terms of subrule 27 (2) -

- (a) of his or her own accord;
 - (b) on application by a party; or
 - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- (4) An application in terms of this rule must be made in terms of rule 32.
- (5) When making an order in terms of subrule 27 (2), a commissioner may -
 - (a) give appropriate directions as to the further procedure in the proceedings; and
 - (b) make an order of costs in accordance with these rules.
- (6) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council for an order substituting that party for an existing party, and a commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.
- (7) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.
- (8) Subject to any order made in terms of subrules 27 (5) and 27 (6), a joinder or substitution in terms of this rules does not affect any steps already taken in the proceedings.

28. How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the commissioner may, of his or her own accord, or on application by any party, correct the error or defect.

29. When the Council may consolidate disputes

The commissioner of his or her own accord or on application by any party may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

30. Disclosure of documents

1. Either party may request a commissioner to make an order as to the disclosure of relevant documents.
2. The parties may agree on the disclosure of documents.

31. What happens if a party fails to attend proceedings before the Council

- (1) If a party to the dispute fails to attend or be represented at any proceedings other than conciliating, con-arb and or arbitration before the Council, and that party -
 - (a) had referred the dispute to the Council, a commissioner may deem the matter to be abandoned;
 - (b) had not referred the matter to the Council, the commissioner may -
 - (i) continue with the proceedings in the absence of that party;
 - or
 - (ii) adjourn the proceedings to a later date.
- (2) A commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule 31 (1).

PART SIX**APPLICATIONS****32. How to bring an application**

- (1) This rule applies to any -
 - (a) application for condonation, joinder, substitution, variation or rescission;
 - (b) application in a jurisdictional dispute;
 - (c) other preliminary or interlocutory applications.
- (2) An application must be brought on notice to all persons who have an interest in the matter.
- (3) The party bringing the application must sign the notice of application in accordance with rule 4 and must state -
 - (a) the title of the matter;
 - (b) the case number assigned to the matter by the Council;
 - (c) the relief sought;
 - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
 - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within fourteen days after the application has been delivered to it;
 - (f) that the application may be heard in the absence of a party that does not comply with sub-paragraph 32 (3) (e);
 - (g) that a schedule is included listing the documents that are material and relevant to the application.
- (4) The application must be supported by an affidavit signed by the employee or employer as the case may be. The affidavit must clearly and concisely set out -

- (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
 - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
 - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9; and
 - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these rules.
- (5) (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit signed by the employee or employer, as the case may be, within fourteen days from the day on which the application was served on that party.
- (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by subrules 32 (3) and 32 (4) respectively.
- (6) (a) The party initiating the proceedings may deliver a replying affidavit signed by the employee or employer, as the case may be, within seven days from the day on which any notice of opposition and answering affidavit are served on it.
- (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of facts or law.
- (7) A commissioner may permit the affidavits referred to in this rule to be substituted by a written statement.

- (8) In an urgent application, the Council or a commissioner -
 - (a) may dispense with the requirements of this rule; and
 - (b) may only grant an order against a party that has had reasonable notice of the application.
 - (9) (a) The Council must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivery of the replying affidavit has lapsed, whichever occurs first.
 - (b) The Council must notify the parties of the date, time and place of the hearing of the application.
 - (c) Applications may be heard on a motion roll.
 - (10) Despite this rule, the Council or a commissioner may determine an application in any manner it deems fit.
33. **How to apply to vary or rescind arbitration awards or rulings**
- (1) An application for the variation or rescission of an arbitration award or ruling must be made within fourteen days of the date on which a party became aware of the arbitration award or ruling.
 - (2) A ruling made by a commissioner which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.
34. **How to apply to refer a dismissal dispute to the Labour Court.**
- (1) An application in terms of section 191 (6) of the Act to refer a matter to the Labour Court, must be delivered -
 - (a) within ninety days of a certificate that the dispute has not been resolved being issued; or
 - (b) by a party that has not requested arbitration, within fourteen days of the referral for arbitration being filed.

- (2) Despite subrule (1), a party that requests arbitration may not thereafter make an application in terms of section 191 (6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven days of receipt of the application.
- (5) The Council must notify the parties of its decision in terms of section 191(8) within fourteen days of receiving the objection.

PART SEVEN

PRE-DISMISSAL ARBITRATION IN TERMS OF SECTION 188A OF THE ACT

35. How to request a pre-dismissal arbitration in terms of section 188A.

- (1) Any party to the dispute may in terms of the Collective Agreement request the Council to conduct a pre-dismissal arbitration, by delivering a completed form prescribed by the Council to the Council.
- (2) When filing the prescribed Form, the employer must pay an amount not exceeding R 3 200-00 to a bank account of the Council. Payment of the fee may only be made by -
 - (a) bank guaranteed cheques; or by electronic transfer.
- (3) Upon payment of the fee as set out above, the Council must notify the parties of the date, time and place of the pre-dismissal/arbitration.
- (4) If the Council is unable to set this matter down within 5 days of receipt of the fee

- (4) If the Council is unable to set this matter down within 5 days of receipt of the fee the Council will be required to refund the fee paid in terms of subrule 35 (2).
- (5) An arbitrator appointed in terms of this rule has all the powers conferred on a commissioner as contemplated in the Act, read with the changes required by the context.
- (6) The provisions of sections 143 to 146 of the Act apply to any award made by an arbitrator made in terms of this rule.
- (7) An arbitrator conducting a pre-dismissal arbitration in terms of this rule must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, direct what action, if any, should be taken against the employee.
- (8) In any arbitration in terms of this rule a party to the dispute may appear in person or be represented only by -
 - (a) a co-employee
 - (b) a director or employee, if the party is a juristic person;
 - (c) any member, office bearer or official of that party's registered trade union or registered employers' organisation; or
 - (d) a legal practitioner on agreement between the parties

PART EIGHT

GENERAL

36. Condonation for failure to comply with the rules

The Council or a commissioner may condone any failure to comply with the time frames in these rules, on good cause shown.

37. Recordings of Council proceedings

- (1) The Council must keep record of -
 - (a) any evidence given in an arbitration hearing;
 - (b) any sworn testimony given in any proceedings before the Council; and
 - (c) any arbitration award or ruling made by a commissioner.
- (2) The record may be kept by legible hand-written notes or by means of electronic recording.
- (3) A party after filing papers with the Labour Court, may request a record of the proceedings kept in terms of subrule 37 (2), and the Council will thereupon deliver the audio record to the Registrar of the Labour Court.

38. How to have a subpoena issued

- (1) Any party who requires the Council or a commissioner to subpoena a person in terms of section 142(1) of the Act, must file a form prescribed by the Council or Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- (2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) of the Act must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness.
- (3) An application in terms of subrule 38 (1) must be filed with the Council not less than seven days before the arbitration hearing, or as directed by the commissioner hearing the arbitration.
- (4) The Council or a commissioner may refuse to issue a subpoena if -
 - (a) the party does not establish why the evidence of the person is necessary;
 - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;

- (c) the Council or a commissioner is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed.
- (5) A subpoena must be served on the witness subpoenaed -
 - (a) by the person who has requested the issue of the subpoena or by the Sheriff, instructed by the person requesting the subpoena not less than seven days before the scheduled date of the arbitration; and
 - (b) if so directed by the Council, accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act and the witness's reasonable travel costs.
- (6) Subrules 38 4(c) and 38 5(b) of these rules do not apply if the Council in terms of section 142(7)(c), has waived the requirement to pay witness fees.

39. Payment of witness fees

- (1) A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the Government Gazette in terms of section 142(7) of the Act.
- (2) The witness fee must be paid by -
 - (a) the party who requested the Council to issue the subpoena; or
 - (b) The Council, if the issue of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fees in terms of section 142(7)(c) of the Act.
- (3) Despite subrule 39 (1), the commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

40. Taxation of bills of cost

- (1) A commissioner may make an order as to costs in any application or arbitration

proceedings, according to the requirements of law, fairness & equity.

- (2) The Secretary may appoint taxation officers to perform the functions of a taxing officer in terms of these rules.
- (3) The taxing officer must tax any bill of costs for services rendered in connection with proceedings in the Council on Schedule A of the prescribed Magistrates' Court tariff, in terms of the Magistrates' Courts Act, No 32 of 1944, as amended unless the parties have agreed to a different tariff.
- (4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that, in the taxing officer's opinion, is necessary to properly determine any matter arising from the taxation.
- (5) Any person requesting a taxation must complete a form prescribed by the Council or LRA Form 7.17 and must satisfy the taxing officer -
 - (a) of that party's entitlement to be present at the taxation; and
 - (b) that the party liable to pay the bill has received notice of the date, time and place of the taxation.
- (6) Despite subrule 40 (4), notice need not be given to a party -
 - (a) who failed to appear or to be represented at the hearing; or
 - (b) who consented in writing to the taxation taking place in that party's absence.

41. Certification and enforcement of arbitration awards - 143(3)

- (1) An application to have an arbitration award certified by the Secretary of the Council or the person appointed by the Council must be made on, or contain the information in a form prescribed by the Council or LRA Form 7.18 in respect of an award issued by a commissioner;
- (2) Any arbitration award that has been certified in terms of section 143 of Act by the Secretary of the Council or a person appointed by the Council, that orders the

payment of an amount of money, may be executed:

- (a) by using the writ of execution in the form prescribed by the Council or LRA Form 7.18A; or
- (b) the writ of execution prescribed in the Rules for the Conduct of Proceedings in the High Court..

- (3) For the purposes of subrule 41 (2), an arbitration award includes an award of costs in terms of section 138(10) of the Act, a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of section 140(2) of the Act.

42. What words mean in these rules

Any expression in these rules that is defined in the Labour Relations Act No. 66 of 1995, as amended has the same meaning as in that Act and

“Act” means the Labour Relations Act, (Act No. 66 of 1995) as amended, and includes any regulation made in terms of that Act;

“association” means any unincorporated body of persons;

“Commissioner” means a person(s) appointed by the Council to conciliate, mediate and arbitrate on all matters referred to the Council.

“con-arb” means proceedings held in terms of section 191 (5A);

**42. The following words used in the rules are defined in section 213 of the Act: dispute, dismissal employee, employers' organisation, trade union, and workplace*

“Council” means the Bargaining Council for the Restaurant, Catering and Allied Trades;

“deliver” means serve on other parties and file with the Council;

“documents” include referral forms, applications, affidavits, and any of the forms prescribed in terms of these rules

“file” means to lodge with the Bargaining Council in terms of rule 7;

“Labour Court” means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court;

“party” means any party to proceedings before the Bargaining Council;

“public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act N. 36 of 1994);

“rules” means these rules and includes any footnote;

“Secretary” means the General Secretary of the Council appointed by the Council and includes any person delegated by the Council to perform any of the functions of the General Secretary;

“serve” means to serve in accordance with rule 5 and “service” has a corresponding meaning; and

“taxing officer” means any commissioner of the Bargaining Council appointed by the Secretary in terms of rule 40.”

No. R. 170

7 February 2003

LABOUR RELATIONS ACT, 1995

METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL: EXTENSION OF THE METAL INDUSTRIES PENSION FUND RE-ENACTING AND AMENDING AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Metal and Engineering Industries Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 14 February 2003 and for the period ending 30 April 2006.

M. M. S. MDLADLANA

Minister of Labour

No. R. 170

7 Februarie 2003

WET OP ARBEIDSVERHOUDINGE, 1995

METAAL- EN INGENIEURSNIYWERHEDE BEDINGINGSRAAD: UITBREIDING VAN METAALNIYWERHEDE PENSIOENFONDS KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn, en wat in die Metaal- en Ingenieursnywerhele Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 14 Februarie 2003, en vir die tydperk wat op 30 April 2006 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

Nota: 'n Afrikaanse vertaling van die ooreenkoms by die Engelse kennisgewing sal so gou as doenlik in die Staatskoerant gepubliseer word.

No. R. 171

7 February 2003

LABOUR RELATIONS ACT, 1995

CANCELLATION OF GOVERNMENT NOTICES

METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL: ENGINEERING INDUSTRIES PENSION FUND COLLECTIVE AGREEMENT

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (7) of the Labour Relations Act, 1995, cancel Government Notice No. R. 528 of 3 May 2002 with effect from 14 February 2003.

M. M. S. MDLADLANA

Minister of Labour

No. R. 171

7 Februarie 2003

WET OP ARBEIDSVERHOUDINGE, 1995

INTREKKING VAN GOEWERMENSKENNISGEWINGS

METAAL- EN INGENIEURSNIYWERHEDE BEDINGINGSRAAD: INGENIEURSNIYWERHEDE PENSIOEN FONDS KOLLEKTIEWE OOREENKOMS

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, trek hierby kragtens artikel 32 (7) van die Wet op Arbeidsverhoudinge, 1995, Goewermenskenisgewing No. R. 528 van 3 Mei 2002 in, met ingang van 14 Februarie 2003.

M. M. S. MDLADLANA

Minister van Arbeid

SCHEDULE**METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL ENGINEERING INDUSTRIES' PENSION FUND AGREEMENT**

in accordance with the provisions of the Labour Relations act, 1995, made and entered into by and between the

Association of Electric Cable Manufacturers of South Africa
Border Industrial Employers' Association
Cape Engineers' and Founders' Association
Consolidated Association of Employers of South Africa (CAESAR)
Constructional Engineering Association (South Africa)
Covered Conductor Manufacturers' Association
Electrical Engineering and Allied Industries' Association
Electronics and Telecommunications Industries' Association
Federated Employers' Organisation of South Africa (FEOSA)
Gate and Fence Association
Hand Tool Manufacturers' Association (HATMA)
Iron and Steel Producers' Association of South Africa
KwaZulu-Natal Engineering Industries' Association
Lift Engineering Association of South Africa
Light Engineering Industries' Association of South Africa
Materials Handling Association
Non-Ferrous Metal Industries' Association of South Africa
Plastics Convertors' Association of South Africa
Port Elizabeth Engineers' Association
Pressure Vessel Manufacturers' Association of South Africa
Radio, Appliance and Television Association of South Africa (RATA)
Refrigeration and Air-Conditioning Manufacturers' and Suppliers' Association
Sheetmetal Industries' Association of South Africa
Small Enterprise Employers of South Africa (SEESA)
S.A. Electro-Plating Industries' Association
S.A. Engineers' and Founders' Association
S.A. Fasteners Manufacturers' Association (SAFMA)
S.A. Refrigeration and Air-Conditioning Contractors' Association (SARACCA)
S.A. Pump Manufacturers' Association
S.A. Reinforced Concrete Engineers' Association (SARCEA)
S.A. Tube Makers' Association
S.A. Valve and Actuator Manufacturers' Association (SAVAMA)
S.A. Wire and Wire Rope Manufacturers' Association

(hereinafter referred to as the "employers' or the "employers' organisations"), of the one part and the

Electronic and Metal Workers' Union of South Africa
Metal and Electrical Workers' Union of South Africa
M.W.U Solidarity (Mine Workers' Union)
National Employees Trade Union
National Union of Metalworkers' of South Africa (NUMSA)
S.A. Electrical Workers' Association (SAEWA)

Steel, Engineering and Allied Workers' Union of South Africa (SEAWUSA)

(hereinafter referred to as the "employees" or the "trade unions"), of the other part, being the parties to the Metal and Engineering Industries Bargaining Council.

1. SCOPE OF APPLICATION OF AGREEMENT

(1) Any reference in this Agreement to the Republic of South Africa and/or the provinces of the Cape of Good Hope, the Transvaal, Natal and the Orange Free State shall be deemed to be a reference to the Magisterial Districts of those areas and/or provinces as they existed immediately prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and except as otherwise provided in this clause, the terms of this Agreement shall apply to and be observed—

- (a) throughout the Republic of South Africa; and
- (b) by all employers and employees in the Iron, Steel, Engineering and Metallurgical Industries who are members of the employers' organisations and the trade unions, respectively.

(2) The terms of this Agreement shall not apply to an employer and his employee who are governed by and fall within the scope of application of the Metal Industries Provident Fund Agreement (formerly the Metal Industries Group Life and Provident Fund Agreement) in force for the time being.

(3) The terms of this Agreement shall not, subject to subclause (4) below, apply to any employee who on 1 May 1991 was or thereafter became a participant in and member of any fund providing provident and/or pension benefits, which was in existence on the said date (and in which the employer of that employee was on the said date a participant) or to the employer of that employee during such period only as such fund continues to operate and both employer and employee are participants therein: Provided that a fund which provides solely for payment of benefits on death shall not be deemed to be a pension or provident fund for the purposes of this Agreement.

(4) Where employers and employees participate in domestic schemes providing provident and/or pension benefits as referred to in subclause (3) above, which at the date of coming into operation of this Agreement do not provide for percentage contributions which, in total, are at least as much as the percentages, in total, specified in clause 6 of the former Agreement, a period of six weeks shall be allowed to enable compliance with this requirement, subject to any such amendment being retroactive to the date of coming into operation of this Agreement.

(5) Clauses 1 (1) (b) 2 and 3 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 30 April 2006.

3. SPECIAL PROVISIONS

The provisions contained in clause 7 of the Agreement published under Government Notice No. R. 652 of 8 May 1998, as extended re-enacted and amended by Government Notices Nos. R. 116 of 11 February 2000, R. 362 of 26 April 2001, R. 629 of 13 July 2001 and R. 528 of 3 May 2002 (hereinafter referred to as the "former Agreement") shall apply to employers and employees.

4. GENERAL PROVISIONS

The provisions contained in clauses 3 to 6 and 8 to 12 of the Former Agreement shall apply to employers and employees.

5. CLAUSE 3: DEFINITIONS

Substitute the following for the definition of "Region F":

"**Region F**" means the Province of the Orange Free State, and includes the Magisterial Districts of Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp and Wolmaransstad, in the Province of the Transvaal, and the Magisterial Districts of Barkly West, Britstown, De Aar, Douglas, Gordonia, Griekwastad, Hartswater, Hopetown, Kenhardt, Kimberley, Kuruman, Postmasburg, Philipstown, Prieska, Vryburg and Warrenton, in the Cape Province, and for the purposes of these particular areas the address of the Regional Council shall be Metal and Engineering Industries Bargaining Council (Free State and Northern Cape Region), PO Box 95, Welkom, 9460, or 136 Constantia Road, Welkom, 9459."

6. CLAUSE 8: EXEMPTIONS

Substitute the following for this clause:

"1. General

- (a) Any person bound by this Agreement may apply for exemption.
- (b) The authority of the Council to consider and make recommendations on the granting of exemptions (excluding the hearing of appeals) is delegated to the Metal Industries Benefit Fund Administrators (MIBFA).

2. Fundamental principles for consideration

- (a) All applications must be in writing and fully motivated and sent to the Regional Office of the Council for the area in which the applicant is located.
- (b) In scrutinising an application for exemption MIBFA will consider the views expressed by the employer and the workforce, together with any other representations received in relation to that application.
- (c) The employer must consult with the workforce through a trade union representative or, where no trade union is involved, with the workforce itself, and must include the views expressed by the workforce in the application.

Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application. Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.

- (d) The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of this Agreement in the industry.
- (e) An application for exemption shall not be considered if the contents of the application are covered by an arbitration award binding the applicant.

3. Urgent applications

- (a) In cases of urgent applications, details may be faxed or delivered to the Council in the region where the applicant is located.
- (b) MIBFA will consider the application, make a recommendation and communicate that recommendation to the Council without delay.
- (c) The applicant is expected to put forward a substantive explanation as to the urgency of the application.

4. Process

- (a) The Council shall issue to every person to whom exemption has been granted an exemption licence, setting out the following:
 - (i) the full name of the person or enterprise concerned;
 - (ii) the provisions of this Agreement from which the exemption has been granted;
 - (iii) the conditions subject to which exemption is granted;
 - (iv) the period of the exemption;
 - (v) the date from which the exemption shall operate; and
 - (vi) the area in which the exemption applies.
- (b) The Council shall ensure that—
 - (i) all exemption licences issued are numbered consecutively;
 - (ii) an original copy of each licence is retained by the Council;
 - (iii) a copy of the exemption licence is sent to the applicant.
- (c) Unless otherwise specified in the licence of exemption, any exemption from this Agreement shall be valid only in the region of the Council in which the application was made.
- (d) The Council may withdraw the exemption at its discretion.

5. Appeals

- (a) An independent body, referred to as the Independent Exemptions Appeal Board (the Board), is hereby appointed and shall consider any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption.
- (b) The Council Secretary will, on receipt of an appeal against a decision to refuse the granting of an exemption, submit it to the Independent Exemptions Appeal Board for consideration and finalisation.
- (c) In considering an appeal the Board shall consider the recommendations of the Council, any further submissions by the employer and the workforce or their respective employee organisations or trade unions and shall take into account the criteria set out above and also any other representations received in relation to the application.
- (d) Should the appeal be granted, a licence of exemption shall be issued in terms of subclause (4) (a) and (b) above and shall be subject to subclauses (4) (c) and (d)."

Signed at Johannesburg for and on behalf of the parties this 5th day of August 2002.

L. TRENTINI

Member

L. MTHIYANE

Member

V. MJIYAKO

Deputy Council Secretary

No. R. 176

7 February 2003

LABOUR RELATIONS ACT, 1995

CANCELLATION OF GOVERNMENT NOTICE

RESTAURANT, CATERING AND ALLIED TRADES: MAIN COLLECTIVE AGREEMENT

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (7) of the Labour Relations Act, 1995, cancel Government Notice No. R. 520 of 26 April 2002, with effect from 17 February 2003.

M. M. S. MDLADLANA

Minister of Labour

No. R. 176**7 Februarie 2003****WET OP ARBEIDSVERHOUDINGE, 1995****INTREKKING VAN GOEWERMENTSKENNISGEWING****RESTOURANT-, SPYSENIERS- EN VERWANTE BEDRYWE: HOOF KOLLEKTIEWE OOREENKOMS**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, trek hierby, kragtens artikel 32 (7) van die Wet op Arbeidsverhoudinge, 1995, Goewermentskennisgewing No. R. 520 van 26 April 2002 in, met ingang van 17 Februarie 2003.

M. M. S. MDLADLANA**Minister van Arbeid**

SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

No. R. 183**7 February 2003**

CUSTOMS AND EXCISE ACT, 1964.- AMENDMENT OF SCHEDULE NO. 4 (No. 4/273)

Under section 75 of the Customs and Excise Act, 1964, Schedule No. 4 to the said Act is hereby amended to the extent set out in the Schedule hereto.

**M MPAHLWA
DEPUTY MINISTER OF FINANCE**

SCHEDULE

I Rebate Item	II				III Extent of Rebate	Anno- tations
	Tariff Heading	Rebate Code	C. D.	Description		
412.02				By the insertion after rebate item 412.01 of the following:		
"412.02	6304.91	01.06	67	Nets treated with insecticides for the control of mosquitos, in such quantities and at such times as the Director-General: Trade and Industry after consultation with the Director-General: Health may allow by specific permit	Full duty"	

No. R. 183**7 Februarie 2003**

DOEANE- EN AKSYNSWET, 1964.- WYSIGING VAN BYLAE NO. 4 (NO. 4/273)

Kragtens artikel 75 van die Doeane- en Aksynswet, 1964, word Bylae No. 4 by genoemde Wet hiermee gewysig in die mate in die Bylae hierby aangetoon.

**M MPAHLWA
ADJUNKMINISTER VAN FINANSIES**

BYLAE

I Korting Item	II				III Mate van Korting	Anno- tasies
	Tariefpos	Kor- ting= kode	T S.	Beskrywing		
412.02				Deur na kortingitem 412.01 die volgende in te voeg:		
"412.02	6304.91	01.06	67	Nette met insekdoders behandel vir die beheer van muskiete, in die hoeveelhede en op die tye soos die Direkteur-generaal: Handel en Nywerheid na konsultasie met die Direkteur-generaal: Gesondheid by bepaalde permit toelaat	Volle reg"	

**DEPARTMENT OF TRADE AND INDUSTRY
DEPARTEMENT VAN HANDEL EN NYWERHEID**

No. R. 166**7 February 2003****COMPANIES ACT, 1973****NOTICE IN TERMS OF SECTION 1 AND SECTION 10 OF THE COMPANIES ACT, 1973**

The Registrar of Companies hereby gives notice in terms of subsection (1B) of section 1 and subsection (1) (c) of section 10 of the Companies Act, 61 of 1973, that payment of the prescribed fee in terms of subsection 3 of section 75, which exceeds an amount of one thousand rand (R1 000,00) shall be deposited in the Companies and Intellectual Property Registration Office (CIPRO) bank account. Such notice shall be effective as at the date of publication in the *Government Gazette*.

The procedure to be adopted in respect of such payment shall be displayed on the CIPRO website (www.cipro.gov.za) prior to the date of publication of this notice.

W.L. JOHNSON**Registrar of Companies**

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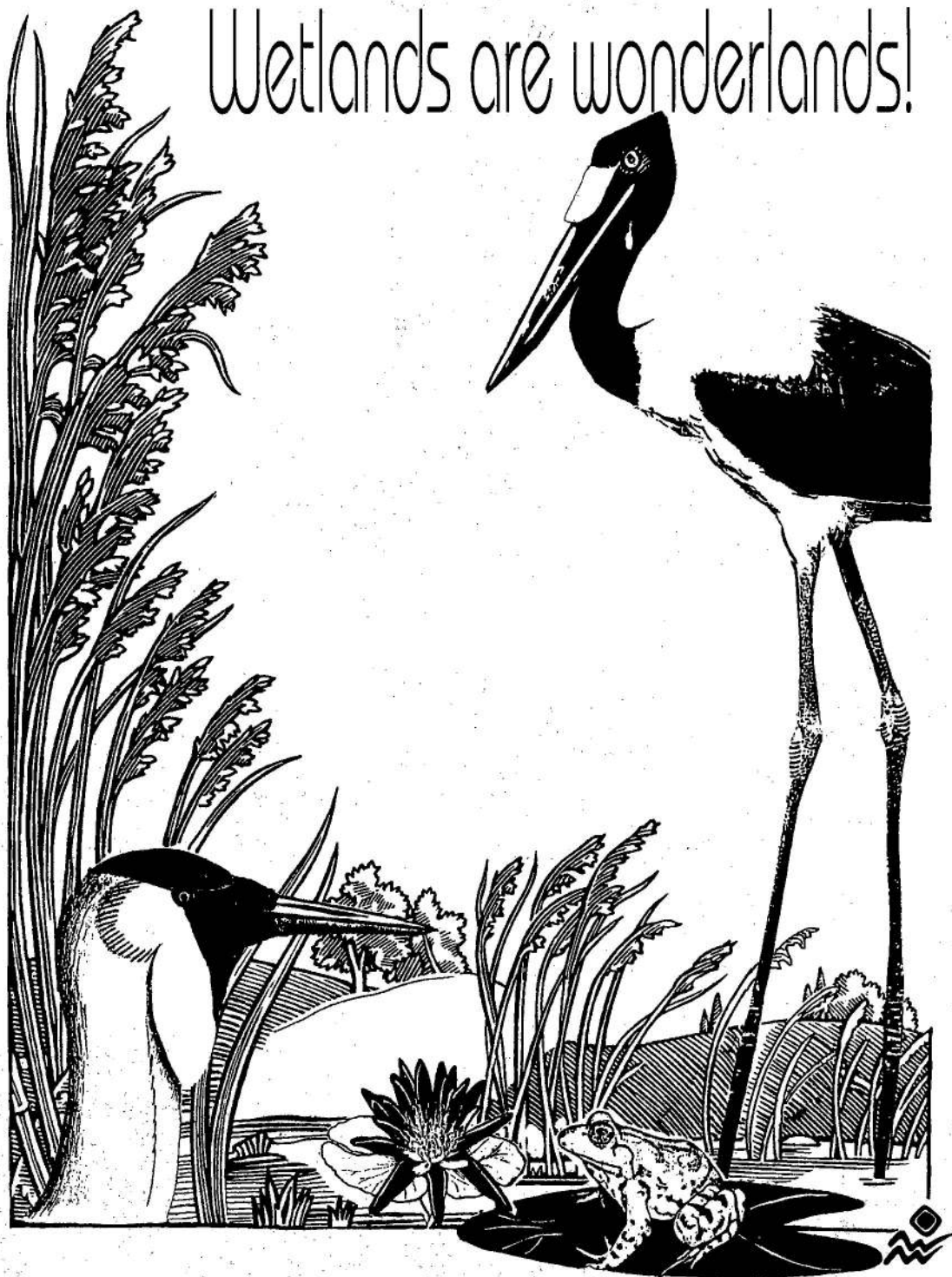
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