

**BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING AND ALLIED TRADES
OF RE-ENACTMENT AND AMENDMENT OF MAIN COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Nelisiwe Mildred Oliphant, 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 Food Retail, 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 that Trade, with effect from 9 December 2013, and for the period ending 31 December 2016.

N.M. OLIPHANT
Minister of Labour

**BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING
AND ALLIED TRADES**

MAIN COLLECTIVE AGREEMENT

(Consolidating Regulation Gazettes 6430 of 12/02/1999, 7025 of 16/03/2001, 7197 of 9/11/2001, 7725 of 25/07/2003, 8289 of 12/08/2005, 8734 of 24/08/2007, 8950 of 29/08/2008, 35536 of 27/07/2012, 35588 of 17/08/2012 & 37063 of 29/11/13)

The Consolidated Collective Agreement does not replace the respective Government Gazettes. The reader must ensure correctness by referring to the relevant Government Gazettes. The consolidation is intended for ease of reference only.

in accordance with the provisions of the Labour Relations Act (Act No. 66 of 1995), made and entered into by and between the:

**Professional Caterers Association
and
Catra**

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

**South African Commercial, Catering and Allied Workers' Union (SACCAWU),
Club, Caterers, Retail and Allied Workers' Union (CCRAWUSA)
and the**

**Hospitality, Industrial, Catering, Retails and Allied Workers Union (HICRAWU)
(hereinafter referred to as the "employees" or the "trade unions"), of the other part,**

being the parties to the Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades

1. SCOPE OF APPLICATION OF AGREEMENT

The terms of this Agreement shall be observed in the Food Retail, Restaurant, Catering and Allied Trades—

- (1) (a) by all employers and employees who are members of the employers' organisation and the trade union, respectively;
- (b) in the Magisterial District of Pretoria, Brits, Bronkhorstspuit, Cullinan, Rustenburg, Warmbaths, Witbank and Wonderboom.
- (2) Clauses 1 (1) (a) (2) and 2A. of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade unions, respectively.

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 until 31 December 2016.

2A. SPECIAL PROVISIONS

The provisions of clauses 3(5), 24 and 35 of the Agreement published under Government Notice No. R177 of 12 February 1999, as amended and enacted by Government Notices R. 244 of 16 March 2001, R. 1105 of 9 November 2001, R. 1048 of 25 July 2003, R. 813 of 12 August 2005, R.768 of 24 August 2007, R.908 of 29 August 2008, R576 of 27 July 2012 and R628 of 17 August 2012

(hereinafter referred to as the "Former Agreement"), as further extended, amended renewed and re-enacted from time to time, shall apply to employers and employees.

2B. GENERAL PROVISIONS

The provisions contained in clause 3 (1) to (4), 4 to 23 and 25 to 34 of the Former Agreement (as further extended, renewed, amended and re-enacted from time to time), shall apply to employers and employees.

3. INDUSTRIAL ACTION

- (1) No person bound by the provisions of this Agreement entered into by the parties shall engage in or participate in a strike or lock-out or any conduct in furtherance of a strike or a lock-out in respect of any matter regulated by this Agreement for its duration.
- (2) The forum for negotiation and conclusion of substantive agreements on wages, benefits and other conditions of employment between employers and employers' organisations on the one hand and trade unions on the other hand, shall be the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria, and not at shopfloor level.
- (3) No trade union or employers' organisation may attempt to induce or compel or be induced or compelled by any natural or juristic person or other organisation, by any form of strike or lock-out, to negotiate the issues referred to in subclause (1) above at any level other than at the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria.
- (4) Any inconsistent provisions of collective procedural agreements between employers and trade unions and their members shall be regarded by such parties as amended to accommodate the provisions of subclauses (2) and (3) above and shall not be binding on the parties to the extent that the provisions of such agreements conflict with those of subclauses (2) and (3) above.
- (5) All existing Wage Agreements and/or Recognition Agreements signed and entered into between employers, employers' organisations and employees, or trade unions, prior to 12 February 1999, shall be binding on the parties until the expiry of said Wage/Recognition Agreements.

4. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), shall have the same meanings as in that Act, any reference to the Act shall include any amendment of such Act, and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context—

"Act" Means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"assistant manager" means an employee who is specifically charged by his employer to assist the manager in his duties in an establishment and who may act for such manager in the employ of the firm in his absence;

"baker/confectionery caterer/cook" means an employee engaged in the performance of any one or more of the following duties;

- (a) Preparing, making and baking wheaten products, cakes, tarts, doughnuts, pies;
- (b) Preparing, cooking and presenting food in an establishment;
- (c) Being responsible for kitchen organisation and control of stock;

"barman" means an employee who is engaged in supplying liquor to customers or to a waiter or wine steward for customers over a counter and who receives payment therefore and who is responsible for the balancing of the stock and cash receipts;

"blockman" means an employee in a butchery who cuts and serves meat to customers, and such butchery must be within a supermarket or similar establishment;

"cashier/clerk/packer/storeman" means an employee who is engaged in the performance of any one or more of the following duties;

- (a) Clerical work, i.e. writing, typing and filing;
- (b) Operating office equipment;
- (c) Operating a cash register, and being responsible for balancing receipts and disbursements;
- (d) Being in charge of stores and responsible for receiving, storing, assembling, packing and/or unpacking goods in a store or warehouse, and for the delivery of such goods;
- (e) Operating a telephone switchboard;

but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work as herein defined may form part of such employee's work;

"casual/special function employee" means an employee employed by the same employer for not longer than three days in any week and/or 24 hours in any week, and/or a maximum of 9 hours per day;

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

"catering assistant" means an employee who-

- (a) prepares any one or more of the following: Plain or toasted sandwiches, fresh fruit, fruit salads, salads from fresh or prepared vegetables, hamburgers, hot dogs, waffles, pancakes, pizzas, pies, curry and rice, common pan foods, grills, popcorn, fish and chips, vetkoek and grilled chicken, and/or assists with the preparation of the menu of the establishment;
- (b) transmits orders and places such items of food mentioned in paragraph (a), and cold prepared foods, prepared salad dressings, stews, boiled meats and/or vegetables, either on plates or in containers ready for conveyance to the customer;
- (c) operates an ice-cream dispenser and/or soda fountain and/or semi-automatic machine;
- (d) receives verbal or written orders from a waiter/wine steward for the supply/handing over to him of bottles of alcoholic or non-alcoholic drinks;

"chef" means an employee in a managerial position who is in possession of a chef's certificate recognized by the Council and who is in charge of the preparation of the food in an establishment/or an employee who is employed by the same employer and is trained within the establishment for a period of 4 years from the date of employment. During the period of training such employee will be deemed to be unqualified.

"Council" or "Bargaining Council" means the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria;

"day" means a period of 24 consecutive hours calculated from the time and employee commences work;

"driver" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition the expression driving a motor vehicle includes all periods of driving, any time spent on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

"emergency work" means-

- (a) any work which, owing to unforeseen circumstances such as fire, storm, accident, epidemic, act of violence, civil unrest, theft or a breakdown of plant, motor vehicles or machinery, must be done without delay;
- (b) any work in connection with the provisioning of aircraft;
- (c) any work in connection with the guarding of premises of property for security reasons during building operations or structural alterations;

"establishment" means any place in or in connection with which one or more persons are employed in the Tearoom, Restaurant and Catering Trade, and includes clubs and/or canteens operated for personal gain;

"general assistant" means an employee who is engaged in the performance of any one or more of the following duties;

- (a) Making porridge and preparing meals for the exclusive consumption of the employee of the establishment;
- (b) Packing or wrapping edibles for sale or delivery;
- (c) Assisting with the checking of stores under supervision;
- (d) Checking crockery, glassware, napery and other pantry requirements and checking dining equipment;
- (e) Cleaning premises, the work place or any article;
- (f) Cleaning, plucking or cutting raw poultry, raw fish or raw meat as part of the cleaning process, cleaning or peeling fruit and vegetables, cutting fruit and vegetables other than for salads and cutting bread;
- (g) Carrying, stacking or moving goods;
- (h) Making or maintaining a fire and removing ashes and refuse;
- (i) Vending, collecting and/or delivering orders out or in the premises and accepting payment thereof;
- (j) Making tea, coffee, cocoa similar beverages;
- (k) Loading and off-loading;
- (l) Repetitive mass-measuring to a set mass-meter;

- (m) Opening or closing packets, containers or parcels;
- (n) Heat closing of polythene or similar pre-filled containers;
- (o) Gardening;
- (p) Sharpening knives;
- (q) Decanting into other containers, except for table use;
- (r) Guarding premises or other movable or immovable property by day, but excluding a watchman;

"independent contract waiter" means a person who performs the duties of a waiter in an establishment and who agrees in writing with the owner to work odd shifts according to a previously drawn-up timetable, but who may not be employed in this capacity to inhibit permanent employment and who is self-reliant, self-sufficient and not entitled to the status of an employee;

"liquor" means intoxicating liquor as defined in the Liquor Act, 2003 (Act No. 59 of 2003);

"manager" means an employee who is charged by his employer with the overall supervision over, responsibility for and direction of the activities carried on, in or in connection with that section of the establishment that has been placed under his authority, and who is directly responsible to the employer, and includes the provision of attendance registers to all employees and the daily completion thereof as well as of the wage register when so instructed by his employer;

"monthly employee" means an employee who gets paid monthly;

"motor vehicle" means any self-propelled vehicle used for conveying goods and includes a motor-cycle or a bicycle;

"practitioner" to include Registered traditional healer;

"probation period" means a period of three months within which an employee must prove himself capable of performing the duties of a specific job to the satisfaction of the employer;

"remuneration/wage" is the hourly wage multiplied by the number of ordinary hours prescribed in clause 7(2) which is the amount of money payable to an employee in terms of clause 5 in respect of his ordinary hours of work as prescribed in clause 7: Provided that if any employer regularly pays an employee in respect of such hours of work an amount higher than that prescribed in clause 7 it means such higher amount;

"Secretary" means the Chief Administrative Officer of the Council;

"sector/trade" means the Tearoom, Restaurant and Catering Trade in which employers and their employees are associated wholly or mainly for the purpose of preparing, serving or providing meals or refreshments (whether liquid or otherwise) or both such meals and refreshments in or from any establishment or part thereof, whether permanent, temporary, indoors or in the open air, and includes such activities when carried on in or from one or more classes of premises or parts thereof—

- (a) used as public restaurants, fish-and-chip shops, cafes, tearooms, roadhouses, and take-away food outlets, except where the preparation and/or supply of ready-to-consume food and/or refreshments takes place on or from the premises of an accommodation establishment;
- (b) where meals or non-alcoholic drinks are served for consumption on the premises or are provided for consumption away from the premises;
- (c) where aerated or mineral waters are supplied in glasses or other containers for consumption on the premises;
- (d) wherein or wherefrom the activities referred to herein are carried on in respect of or in connection with any entertainment and/or function.

but does not include the sale and/or provision of edibles and/or liquid refreshments to persons attending cinema performances or theatre productions on the premises of and by the establishment providing such performances or productions, and includes the supply of liquor in any such establishment or on any such premises in terms a liquor license held or deemed to be held by such employers or issued under the Liquor Act, 2003, but does not include hotelkeepers, boarding house-keepers or lodging house-keepers, and further includes all operations incidental to or consequent on any of the aforesaid activities;

"small employer" means an employer who does not employ more than seven employees at any time;

"spreadover" means the period in any day from the time an employee first commences work until he finishes work for that day;

"supervisor" means an employee who under the direction of the employer, manager or assistant manager supervises the work of the employees in an establishment;

"waiter" means an employee other than an independent contract waiter, barman or cashier/clerk performs any one or more of the following duties:

- (a) serving meals and/or refreshments (whether alcoholic or non-alcoholic) to customers at tables or counters;
- (b) receiving payment for any order taken or executed and being responsible for payment;
- (c) setting and/or clearing tables;
- (d) checking and/or controlling dining-room and/or other pantry equipment;
- (e) filling butter and/or jam dishes and/or cruets, and making salads;

"watchman" means an employee who is engaged in the performance of any one or more of the following duties:

- (a) guarding, protecting or patrolling premises, buildings, structures or fixed or movable property;
- (b) handling dogs in the performance of any or all of the duties referred to in (a); and
- (c) handling access control of parking and/or the establishment;

"weekly employee" means an employee who is paid by the week;

In classifying an employee for the purpose of determining his main occupation in terms of this Agreement he shall be deemed to be in that class in which he is wholly or mainly engaged.

5. REMUNERATION: WAGES

(A) EXEMPTIONS:

Where a small employer or his employee can satisfy the Council that any provisions of the Agreement are restricting entrepreneurial initiative and/or employment opportunities, such an employer or employee may apply to the Council for exemption from the specific provisions and the Council may grant such an exemption.

Prescribed wages for an employee on probation may be reduced by not more than 10% for a period not exceeding three months. The wages prescribed pertain to the payment for ordinary hours of work as specified in clause 7. Should statutory legislation reduce these ordinary hours of work the wages will automatically be reduced proportionately.

(B) MINIMUM WAGES:

- (1) (a) Employees that are paid below R37 500, calculated on monthly basic salary, per annum shall be entitled to a minimum increase of-
 - (i) 9% with effect from the date of coming into operation of this agreement to 31 December 2014.
 - (ii) 6% for the period 1 January 2015 to 31 December 2015
 - (iii) CPI + 2% for the period 1 January 2016 to 31 December 2016 and thereafter.
CPI to be utilised is the CPI (excluding Owners' Equivalent Rent) as made available by Statistics South Africa determined on an average over the three months immediately prior to the implementation date.
 - (b) Employees that are paid above R37 500, calculated on basic monthly salary, per annum shall be entitled to a minimum increase of-
 - (i) 6% with effect from the date of coming into operation of this agreement to 31 December 2014.
 - (ii) 6% for the period 1 January 2015 to 31 December 2015
 - (iii) CPI or 5% whichever is the greater for the period 1 January 2016 to 31 December 2016 and thereafter.
CPI to be utilised is the CPI (excluding Owners' Equivalent Rent) as made available by Statistics South Africa determined on an average over the three months immediately prior to the implementation date.
 - (c) small employer – may reduce the increase as specified in subclause (a) and (b) by 10%.
 - (d) a once off ex-gratia amount of R375.00 will be paid to all employees who have not received an increase as from 1 August 2013 to the date of coming into operation of this agreement. The ex-gratia amount will be paid during the first month of coming into operation of this agreement."
- (2) The minimum wage which shall be paid by an employer to each member of the undermentioned classes of employees shall be as follows:

| Job Description | With effect from the date of coming into operation of this agreement until 31 December 2014 | | | 1 January 2015 until 31 December 2015 | | | 1 January 2016 until 31 December 2016 and thereafter | | |
|---|---|----------|--------|---------------------------------------|----------|--------|---|--------|--------|
| | Monthly | Weekly | Hourly | Monthly | Weekly | Hourly | Monthly | Weekly | Hourly |
| Assistant Manager | | | | | | | | | |
| Area A | 4 562.79 | 1 053.76 | 23.42 | 4 836.56 | 1 116.99 | 24.82 | Previous minimum wage + 5% or CPI* whichever is the greater | | |
| Area B | 4 396.12 | 1 015.27 | 22.56 | 4 659.89 | 1 076.19 | 23.92 | | | |
| Baker/Confectionery caterer/Cook | | | | | | | | | |
| Area A | 2 591.41 | 598.48 | 13.30 | 2 746.89 | 634.39 | 14.10 | Previous minimum wage + CPI* + 2% | | |
| Area B | 2 496.78 | 576.62 | 12.81 | 2 646.59 | 611.22 | 13.58 | | | |
| Barman | | | | | | | | | |
| Area A | 3 226.93 | 745.25 | 16.56 | 3 420.55 | 789.97 | 17.55 | Previous minimum wage +5% or CPI* whichever is the greater | | |
| Area B | 3 109.05 | 718.03 | 15.96 | 3 295.59 | 761.11 | 16.91 | | | |
| Blockman | | | | | | | | | |
| Area A | 3 354.95 | 774.82 | 17.22 | 3 556.25 | 821.30 | 18.25 | Previous minimum wage +5% or CPI* whichever is the greater | | |
| Area B | 3 323.89 | 767.64 | 17.06 | 3 523.32 | 813.70 | 18.08 | | | |
| Cashier/Clerk/Storeman/Packer | | | | | | | | | |
| Area A | 2 927.00 | 675.98 | 15.02 | 3 102.62 | 716.54 | 15.92 | Previous minimum wage + CPI* + 2% | | |
| Area B | 2 820.09 | 651.29 | 14.47 | 2 989.30 | 690.37 | 15.34 | | | |
| Catering Assistant | | | | | | | | | |
| Area A | 2 735.19 | 631.68 | 14.04 | 2 899.30 | 669.58 | 14.88 | Previous minimum wage + CPI* + 2% | | |
| Area B | 2 635.29 | 608.61 | 13.52 | 2 793.41 | 645.13 | 14.34 | | | |
| Chef | | | | | | | | | |
| Area A | 4 361.42 | 1 007.26 | 22.38 | 4 623.11 | 1 067.69 | 23.73 | Previous minimum wage +5% or CPI* whichever is the greater | | |
| Area B | 4 202.11 | 970.46 | 21.57 | 4 454.24 | 1 028.69 | 22.86 | | | |
| Chef "unqualified" | | | | | | | | | |
| Area A | 3 925.29 | 906.53 | 20.15 | 4 160.81 | 960.93 | 21.35 | Previous minimum wage +5% or CPI* whichever is the greater | | |
| Area B | 3 781.90 | 873.42 | 19.41 | 4 008.81 | 925.82 | 20.57 | | | |
| Driver | | | | | | | | | |
| Area A | 2 605.47 | 601.73 | 13.37 | 2 761.80 | 637.83 | 14.17 | Previous minimum wage + CPI* + 2% | | |
| Area B | 2 510.29 | 579.74 | 12.88 | 2 660.91 | 614.53 | 13.66 | | | |
| General Assistant | | | | | | | | | |
| Area A | 2 489.73 | 575.00 | 12.78 | 2 639.11 | 609.49 | 13.54 | Previous minimum wage + CPI* + 2% | | |
| Area B | 2 395.06 | 553.13 | 12.29 | 2 538.76 | 586.32 | 13.03 | | | |
| Manager | | | | | | | | | |
| Area A | 5 115.23 | 1 181.35 | 26.25 | 5 422.14 | 1 252.23 | 27.83 | Previous minimum wage +5% or CPI* whichever is the greater | | |
| Area B | 4 928.40 | 1 138.20 | 25.29 | 5 224.10 | 1 206.49 | 26.81 | | | |
| Supervisor | | | | | | | | | |
| Area A | 3 751.17 | 866.32 | 19.25 | 3 976.24 | 918.30 | 20.41 | Previous minimum wage +5% or CPI* whichever is the greater | | |
| Area B | 3 613.73 | 834.58 | 18.55 | 3 830.55 | 884.65 | 19.66 | | | |
| Waiter | | | | | | | | | |
| Area A | 2 454.67 | 566.90 | 12.60 | 2 601.95 | 600.91 | 13.35 | Previous minimum wage + CPI* + 2% | | |
| Area B | 2 365.02 | 546.19 | 12.14 | 2 506.92 | 578.97 | 12.87 | | | |
| Watchman | | | | | | | | | |
| Area A | 2 454.67 | 566.90 | 12.60 | 2 601.95 | 600.91 | 13.35 | Previous minimum wage + CPI* + 2% | | |
| Area B | 2 365.02 | 546.19 | 12.14 | 2 506.92 | 578.97 | 12.87 | | | |

* CPI to be utilised is the CPI (excluding Owners' Equivalent Rent) as made available by Statistics South Africa determined on an average over the three months immediately prior to the implementation date.

- (2) *Basis of contract:* For the purposes of this clause, an employee shall be deemed to be a weekly employee unless he falls within the definition of "casual employee" or "special function employee," and save as provided in subclause (4) of this clause and in clause 6 (5) shall be paid in respect of any week not less than the full weekly wage prescribed in subclause (1) and (2) for an employee of his class, whether he works in that week for the maximum number of ordinary hours specified for a week in clause 7 (2) or less.
- (3) *Differential wages:* An employer who requires or permits a member of one class of his employees to perform for longer than one hour, either in addition to his work or in substitution thereof, work of another class for which a higher wage is prescribed in subclause (1) and (2) shall pay such employee at the higher wage in respect of the whole day on which he performs such work: Provided that where the difference between classes is, in terms of subclause (1) and (2), based on experience or age, the provisions of this subclause shall not apply.
- (4) *Calculation of daily wage:* For the purposes of subclause (3), the wage payable in respect of any day shall be not less than one twenty-sixth of the monthly wage as prescribed in subclause (1) and (2) for the higher work performed.
- (5) Nothing in this Agreement shall operate to reduce the wage which is being paid to an employee at the date on which this Agreement comes into operation.
- (6) The areas for the minimum wages are as follows:
Area A: Magisterial districts of Pretoria, Rustenburg, Wonderboom.
Area B: Magisterial districts of Brits, Bronkhorstspuit, Cullinan, Warmbaths and Witbank.
- (7) No employer shall reduce the ordinary hours of work in order to reduce salary/wage payment.
- (8) Subject to the provisions of the subclause (2) and clause 6 (5), the minimum wage which shall be paid in respect of the ordinary hours of work prescribed in clause 7 by an employer to each member of the classes of employees as set out in the minimum wage table, and no employer shall pay, and no employee shall accept wages lower than the prescribed wage.

6. PAYMENT OF REMUNERATION

- (1) Save as provided in clause 16, remuneration shall become due and paid either weekly or monthly during the hours of work on the last working day of the month/week or on termination of employment if this takes place before the last working day of the month/week.
- (2) *Premiums:* No payments shall be made or accepted by an employer, either directly or indirectly, in respect of the employment or training of an employee: Provided that this subclause shall not apply in respect of a training scheme to which the employer is legally required to contribute.
- (3) *Purchase of goods:* An employer shall not require his employee to purchase any goods from him or from any shop or person nominated by him.
- (4) (a) *Meals:* Every employee, other than a nightwatchman, shall be entitled to receive free of charge those meals that fall within his working hours in addition to the wages prescribed for such employee. Where such meals are not provided, an employer shall pay him not less than the amounts specified as follows:
 Full time employees:
 R95.00 per week with effect from the date of coming into operation of this agreement to 31 July 2013 and thereafter.
 Casual, special function and part-time employees in lieu of meals not provided:
 R13.00 per meal with effect from the date of coming into operation of this agreement to 31 July 2013 and thereafter.
- (b) The employer shall vary the meals provided.
- (5) *Fines and deductions:* An employer shall not levy any fines against his employee nor shall he make any deductions from his remuneration other than the following:
- (a) With the written consent of his employee, a deduction for holiday, sick leave, insurance, provident or pension funds;
- (b) save as provided in clause 11 (1), when his employee absents himself from work other than on the instruction or at the request of his employer or is absent owing to accident or ill health, a deduction proportionate to the period of such absence;
- (c) contributions towards the Council fund in terms of clause 19;

- (d) a deduction of any amount that an employer by any statutory law or any order of any competent court is required or permitted to make;
 - (e) subject to the provisions of subclause (3), with the written consent of the employee, a deduction of any amount due to an employer for goods purchased from him by his employee: Provided that such a deduction shall not exceed one-third of the total remuneration due to such employee;
 - (f) a deduction for any money lent to an employee by his employer: Provided that such deduction shall not exceed one-third of the total remuneration due to such employee;
 - (g) subscriptions to the trade union in terms of clause 35.
 - (h) deduction for provident fund in terms of clause 33.
- (6) *Transport:* An employer shall provide transport for his employees working later than 20:00 on any day of the week or pay employees an amount of;
- (i) R175.00 per month with effect from the date of coming into operation of this agreement to 31 December 2014
 - (ii) R190.00 per month with effect from 1 January 2015 to 31 December 2015
 - (iii) R210.00 per month with effect from 1 January 2016 to 31 December 2016 and thereafter in lieu of transport.

An employer who has provided transport prior to this Agreement shall not change to the option of the payment of transport in order to avoid providing transport.

7. NUMBER OF DAYS AND HOURS OF WORK, ORDINARY AND OVERTIME, AND PAYMENT FOR OVERTIME

- (1) *Number of working days:* An employee shall not work more than six days in a week, which shall include a Sunday.
- (2) *Ordinary hours of work:* Ordinary hours of work shall not exceed-
 - (a) in the case of an employee other than a casual part-time employee-
 - (i) 45 hours in any week;
 - (ii) 9 hours in any day if the employee works for five days or fewer in a week
 - (iii) six days in any week;
 - (b) in the case of a casual employee-
 - 24 hours in any week or 3 days in any week or a maximum of 9 hours per day
- (3) *Meal breaks:* For each mealtime which occurs during the hours of work of an employee, the employer shall allow his employee a break of not less than one hour after five hours' continuous work, during which no work shall be performed, and such break shall not be deemed to be part of the ordinary hours of work or overtime.
- (4) *Overtime:* All time worked in excess of the maximum number of ordinary hours specified in subclause (2), shall be deemed to be overtime. Three days' notice of overtime shall be given to employees where reasonably possible.
- (5) *Limitation of overtime:* An employer shall not require or permit his employee to work overtime for more than—
 - (a) ten hours in any week;
 - (b) three hours in any day:

Provided that, where an employer caters for a special function, he may, on notification to the Secretary of the Council, require or permit his employees to work, in excess of the ordinary overtime allowed under (a) or (b) above, not more than six additional hours in any day and not more than nine additional hours in any week.

- (6) *Payment of overtime:* An employer shall pay an employee who works overtime at a rate not less than one and half times of his ordinary wage in respect of the total period so worked on any day during any week: Provided that where the daily limitation of overtime is exceeded, or the weekly overtime exceeds 10 hours, all such overtime shall be paid for at not less than double the rate of the employer's ordinary wage.

- (7) *Spreadover*: No employer shall require or permit an employee to work for a spreadover of more than 12 hours: Provided that if overtime is worked and the said spreadover may be exceeded to the extent by which the ordinary working hours plus the overtime and any meal interval specified by paragraph exceed 12 hours on any day.
- (8) *Regulation of working time*: The provisions of subclauses (1), (3), (4), (5), (6), (7) and clauses 6(6), 7(9)) and 11B(1)(a) shall not apply to an employee engaged in emergency work or to casual employees, or manager or assistant manager earning more than R37 500 per annum.
- (9) *Nightshift allowance*: In the event that an employee, other than a special function casual employee, a casual employee or a contract waiter, that works after 20:00 and has been authorised so to work, the employer shall pay such employee;
- (a) R8,00 per shift for hours worked less than four hours.
- (b) R16.00 per shift for hours worked in excess of four hours.
- (10) *Pay for work on Sunday**:

With effect from 1 January 2016;

- (1) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half times the employee's wage for each hour worked.
- (2) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of subclause (1) is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.
- (3) Despite sub-clauses (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of subclauses (1) and (2).
- (4) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work in terms of clause 7(2), but is taken into account in calculating the overtime worked by the employee in terms of clause 7(5).
- (5) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
- (6) (a) An employer must grant paid time off in terms of sub-clause (3) within one month of the employee becoming entitled to it.
- (b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.

*all employees earning in excess of the threshold as stipulated in the BCEA 75 of 1997 and amended from time to time shall be excluded from this clause.

8. TIME AND WAGE REGISTERS AND ATTENDANCE REGISTERS

- (1) It shall be the duty of every employer to keep a time and wage register and therein shall be inscribed—
- the full name of the employee;
 - whether male or female;
 - occupation;
 - daily hours worked;
 - overtime worked;
 - gross wage;
 - authorized deductions;
 - net total paid;
 - signature of employee as receipt.

- (2) It shall be the duty of every employer to provide in his establishment one or more attendance registers as specified in Annexure B to this Agreement in which provisions is made for the entries which employees, other than managers and unskilled employees, are required to make: Provided that in lieu of such attendance registers an employer may provide a semi-automatic time recorder with the necessary cards, giving the following information:
- (i) name of employee;
 - (ii) time of commencing work;
 - (iii) time of finishing work;
 - (iv) time of commencing and termination of each meal interval off work;
 - (v) time of starting and finishing overtime worked;
 - (vi) total number of hours worked each day;
 - (vii) total number of hours worked each week.
- (3) Every employer shall keep a daily record in the time and wage register of the hours worked by all unskilled employees.
- (4) Every employer shall retain the completed time and wage registers and attendance registers or semi-automatic time record cards for a period of three years subsequent to the date of completion thereof.

9. ANNUAL LEAVE

- (1) Subject to the provisions of subclause (2) of this clause, an employer shall grant to each of his employees, other than a casual employee, contract waiter or a special function casual employee, in respect of each completed period of 12 months of employment with him—
- (a) during the first four years of employment, 21 consecutive days' leave; and thereafter 28 consecutive days' leave of absence for each subsequent year of employment with the same employer on full pay, and the remuneration in respect of such leave shall be paid not later than the last working day before the commencement of the said leave or, at the written request of an employee, not later than the first pay day for such employee after expiration of this period of leave.
- (2) The leave referred to in subclause (1) shall be granted at a time fixed by the employer: Provided that—
- (i) if such leave has not been granted earlier it shall be granted so as to commence within three months of the completion of the year of employment to which it relates;
 - (ii) the period of such leave shall not be concurrent with any period during which the employee is absent on sick leave in terms of clause 11A or is serving a period of notice of termination of employment;
 - (iii) if any public holiday falls within the period of such leave, such day shall be added to the said period as a further period of leave on full pay;
 - (iv) an employer may set off against such period of leave any days of occasional leave granted on full pay to his employee at the employee's written request during the year of employment to which the period of annual leave relates.
- (3) An employee whose contract of employment terminates with an employer before the period of leave referred to in subclause (1) has accrued shall, save as provided in the fourth proviso to subclause (2), upon such termination be paid in respect of each completed month of employment remuneration of not less than-
- (a) 1.75 days per month for the first four years of employment.
 - (b) 2.33 days per month for thereafter.
- of the monthly wage that the employee was receiving immediately before his employment was terminated.
- (4) An employee who has become entitled to a period of leave in terms of subclause (1) and whose employment terminates before such leave has been granted shall upon such termination be paid amounts referred to in subclause (1) and (3).
- (5) For the purposes of this clause, the expression "employment" shall be deemed to include any period or periods during which an employee is—
- (a) absent on leave in terms of subclause (1);
 - (b) absent from work on the instructions or at the request of the employer;
 - (c) absent on sick leave in terms of clause 11A;

amounting in the aggregate to not more than 10 weeks in any year in respect of (a), (b) and (c) above.

- (6) For the purpose of this clause, employment shall be deemed to commence from—
- (a) the date on which the employee entered the employer's service; or
 - (b) the date on which the employee last became entitled to leave on full pay, whichever is the later.

10. PUBLIC HOLIDAYS

- (1) An employee other than a casual employee, theatre part-time vendor, special function employee and night-watchman, shall be entitled to and shall be granted leave on all public holidays and shall be paid by his employer an amount of not less than his daily wage in respect of each such holiday as if he had on such day worked his ordinary hours for the day of the week, but such employee may, subject to the provisions of subclause (2), be required or permitted by his employer to work on any such holiday.
- (2) When an employee works on a paid holiday, which is a normal working day, his employer shall pay him double his daily wage irrespective of the hours worked;
- (3) If a paid holiday falls within an employee's period of annual leave, the period of such leave shall be extended by one working day for each holiday falling within his period of leave in terms of the provisions of clause 9 (1).

11. SICK AND MATERNITY LEAVE

11 A. SICK LEAVE

- (1) Subject to the provisions of subclause (2), an employer shall grant to each employee, other than a casual employee and a special-function casual employee or a contract waiter who is absent from work through incapacity—
 - (a) in the case of an employee who works a four-day week, not less than 24 working days;
 - (b) in the case of an employee who works a five-day week, not less than 30 working days' and
 - (c) in the case of every other employee, not less than 36 working days'

sick leave in the aggregate during any period of 36 consecutive months of employment with him, and shall pay such employee in respect of the period of absence in terms of this subclause an amount of not less than the wage he would have received had he worked during such period: Provided that—

- (i) in the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee referred to in paragraph (a) above, one working-day in respect of each completed period of six weeks of employment, in the case of an employee referred to in paragraph (b) above, one working day in respect of each completed period of five weeks of employment, and in the case of an employee referred to in paragraph (c) above, one working day in respect of each completed month of employment;
 - (ii) this clause shall not apply to an employee at whose written request an employer agrees to make contributions at least equal to those made by the employee, to any fund or organisation nominated by the employee, which fund or organisation guarantees to the employee in the event of his incapacity in the circumstances set out in this clause the payment to him of not less than, in the aggregate, the equivalent of this wages for 24,30 or 36 working days, as the case may be, in each cycle of 36 months of employment;
 - (iii) where an employer is by any law required to pay fees for hospital or medical treatment in respect of an employee, and pays such fees in respect of any incapacity, the amount so paid may be set off against the payment due in respect of absence owing to incapacity in terms of this clause;
 - (iv) if in respect of any period of incapacity covered by this clause an employer is required by any other law to pay an employee his full wages, the provisions of this clause shall not apply.
- (2) An employer may, as a condition precedent to the payment by him of any amount claimed in terms of this clause by an employee in respect of any absence from work for a period covering more than two consecutive working days, require the employee to produce a certificate signed by a registered practitioner stating the nature and duration of the employee's incapacity: Provided that-
 - (i) when an employee has during any period of up to eight weeks received payment in terms of this clause on two or more occasions without producing such certificate, his employer may during the period of eight weeks immediately succeeding the last such occasion require him to produce such certificate in respect of any absence from work;
 - (ii) where an employee in an establishment that normally closes on a public holiday absents himself on the working day before and the working day after a public holiday, the employer may require him to produce a certificate in respect of such absence from work;

- (iii) where an employee in an establishment that is normally open on a public holiday absents himself from work on the day preceding such public holiday and on that public holiday, or on such public holiday and the day succeeding such holiday, the employer may require the employee to produce a certificate in respect of such absence from work.

(3) For the purpose of this clause, the expression-

(a) "employment" shall be deemed to include-

- (i) any period during which an employee is absent-
 - (aa) on leave in terms of clause 9;
 - (ab) on the instructions or at the request of his employer;
 - (ac) on sick leave in terms of subclause (1) A;
 - (ad) with the consent or condonation of his employer;
 - (ae) for any reason not being in breach of the contract of employment; amounting in the aggregate, in any year, to not more than 10 weeks; and
- (ii) any period during which an employee is absent doing military service;

Provided that an employee shall not be entitled to claim as employment more than four months of any one period of such service or absence or unpaid leave: Provided further that any period of employment an employee has had with the same employer immediately before the date of coming into operation of this Agreement shall, for the purpose of this clause, be deemed to be employment under this Agreement, and any sick leave on full pay granted to such an employee during such period shall be deemed to have been granted under this Agreement;

- (b) "incapacity" means inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct: Provided that any such inability to work caused by an accident for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993, shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act.

(4) (a) For the purpose of this clause, "employer" includes-

- (i) in the case of the death of an employer, the executor of his estate, or his heir or legatee; and
- (ii) in the case of the insolvency of an employer or the liquidation of his estate or sale or transfer of his business, the trustee or liquidator or the new owner of the business, if such executor, heir, legatee, trustee, liquidator or new owner continues to employ that employee:

Provided that where the previous employer gave his employee appropriate notice of termination of employment in writing, the new employer shall not be liable to pay any arrear remuneration.

- (b) Notwithstanding anything to the contrary in this subclause, when an employer sell his business and he and the purchaser make provision in written contract that the purchaser "takes over" the business with all assets and liabilities, or words to that effect, then the purchaser shall be liable to pay all arrear remuneration in terms of this clause.

11 B. MATERNITY LEAVE

(1) An employee shall be entitled to at least four consecutive month's unpaid maternity leave.

- (a) This employee shall further be entitled to one month's maternity pay after she has returned to work, which she is to be paid after she has worked one full month.

(2) An employee may commence maternity leave-

- (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
- (b) on a date from which a practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee may work for six weeks after the birth of her child, unless a practitioner or midwife certifies that she is fit to do so.

(4) An employee who has a miscarriage during the third trimester of pregnancy or bears a still-born child is entitled to maternity leave for six weeks after the miscarriage or still birth whether or not the employee had commenced maternity

leave at the time of the miscarriage or still birth.

- (5) An employee shall notify an employer in writing, unless the employee is unable to do so verbally, of the date on which the employee intends to-
- (a) commence maternity leave; and
 - (b) return to work after maternity leave.
- (6) Notification in terms of subclause (5) shall be given-
- (a) at least four weeks before the employee intends to commence maternity leave; or
 - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable, but not less than two weeks before the commencement of maternity leave.
- (7) While an employee is on maternity leave the employer shall be entitled to employ in her stead a temporary employee, which temporary employee shall not be entitled to the status of a permanent employee (unless expressly agreed to in writing by both parties), nor will such employment be construed so as to create the expectation of employment beyond such period.
- (8) Protection of employees before and after birth of a child:
- (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her unborn child.
 - (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
 - (i) the employee is required to perform night work that poses a danger to her health or safety or that of her child; and
 - (ii) it is practicable for the employer to do so.

12. PROPORTION OR RATIO AND PROMOTIONS

- (1) *Promotions*: All employees shall receive a rate for job performance with no discrimination on grounds of race, colour, sex or religion.
- (2) All employees shall be entitled to be promoted from within (subject to the inherent requirements of a position) with no discrimination on grounds of race, gender, colour or disablement.
- (3) *Independent contract waiters*: Employer not to abuse independent contract waiter claims to inhibit permanent employment.

13. UNIFORMS

An employer who requires his employees to wear a uniform, overall, washing coat, cap or apron, shall supply it and it shall remain the property of the employer. The employee shall be responsible for the laundering and mending of such uniform, overall, washing coat, cap or apron: Provided that such uniform cost shall be deducted from the first month's salary and shall be refunded after one year of employment or on termination of employment.

14. CERTIFICATE OF SERVICE

An employer shall upon termination of the contract of employment of any of his employees, other than a casual employee, furnish such employee with a certificate of service showing the full name of the employer of the employee, the nature of the employment, the date of commencement of the contract of employment, the date of termination thereof and the rate of remuneration at the date of such termination. (See Annexure E).

15. PROHIBITION ON EMPLOYMENT

An employer shall not employ-

- (a) any person under the age of 15 years;
- (b) any female during the period commencing four weeks prior to the expected date of her confinement and ending eight after the date of her confinement. (The employer may require the employee to provide a doctor's certificate); and
- (c) a non South African Citizen without a work permit; should the council be notified that an employer is found to be in contravention of this sub-clause, the council must refer the matter to the relevant authorities. and

- (d) a child in employment-
 - (i) that is inappropriate for a person of that age;
 - (ii) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

16. TERMINATION OF CONTRACT OF EMPLOYMENT

- (1) For the purposes of this clause an employee shall be deemed to be—
 - (a) a weekly employee, if his wages are paid weekly; and
 - (b) a monthly employee, if his wages are paid otherwise than weekly.
- (2) Subject to the provisions of this clause, an employer or his employee, other than a casual employee, theatre part-time vendor or special function employee, who desires to terminate the contract shall—
 - (a) during the first four weeks of employment give not less than one working day's notice; and
 - (b) after the first four weeks of employment, in the case of a weekly employee, give one week's notice, and in the case of a monthly employee, two weeks' notice, and after the first completed year of service, four weeks' notice of termination of the contract, and upon such termination of the contract the employer shall pay to the employee not less than—
 - (i) in the case of one working day's notice, the daily wage that the employee is receiving at the time of such termination;
 - (ii) in the case of a week's notice, the weekly wage that the employee is receiving at the time of such termination;
 - (iii) in the case of two weeks' notice, double the weekly wage that the employee is receiving at the time of such termination:

Provided that an employer or employee may at any time terminate the contract of employment without notice by paying to the employee or paying or forfeiting to the employer, as the case may be, in lieu of such notice an amount of not less than the appropriate wage referred to in subparagraph (i), (ii) or (iii).

- (3) The provisions of subclause (2) shall not affect—
 - (a) the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient;
 - (b) any written agreement between an employer and his employee that provides for a period of notice of equal duration on both sides and for longer than that specified in subclause (2); or
 - (c) the operation of any forfeitures or penalties that by law may be applicable in respect of an employee who deserts.
- (4) Where an agreement referred to in subclause (3) (b) exists, the payment or forfeiture referred to in subclause (2) shall be commensurate with the period of notice agreed upon between the employer and employee.
- (5) The notice specified in subclause (2) shall—
 - (a) in the case of a weekly employee, be given on or before the usual pay day of the establishment concerned and shall run from the day after such pay day; and
 - (b) in the case of monthly employee, be given on or before the first or the 15th day of a month and shall run from such first or 15th day.

Provided that—

- (i) a period of notice shall not run concurrently with, and notice shall not be given during, an employee's absence on leave granted in terms of clause 9;
- (ii) notice shall not be given during an employee's absence on sick leave in terms of clause 11 A; and
- (iii) where only one working day's notice is required to be given, such notice may be given on any working day.

- (6) An employer or his employee, except an illiterate employee, shall give the notice referred to in this clause in writing.
- (7) *Dismissals*: No dismissal shall take place without a fair hearing or the proper procedures having been followed.
- (8) *Severance pay*: An employee shall be entitled to one week's severance pay for each completed year of continuous service (12 months) with the same employer in instances where that employee was dismissed for reasons based on the employer's operational requirements, subject to section 189 of the Act.
- (9) An employee who is absent without permission for longer than five consecutive days without informing his employer thereof shall be liable to termination of his employment contract at the discretion of the employer, subject to the correct termination of employment contract procedure having been followed.

17. DISPUTE RESOLUTION FUNCTIONS OF THE COUNCIL

The Council shall attempt to resolve a dispute referred to it through conciliation and in accordance with its constitution and the Act. In circumstances where the dispute remains unresolved after conciliation, the Council shall arbitrate the dispute: Provided that the Council shall conciliate and arbitrate disputes that concern or relate to the following:

- (i) The interpretation, application or enforcement of the provisions of Chapter II of the Act.
- (ii) Issues that form the subject matter of a proposed strike or a lockout.
- (iii) Unfair dismissals.
- (iv) Severance pay.
- (v) Unfair labour practices.
- (vi) The interpretation, application or enforcement of any part of this Collective Agreement.

18. EXEMPTIONS

- (1) In terms of section 32 of the Act, the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria, hereby establishes an independent exemptions board to consider applications for exemption from non-parties in relation to any of the provisions of this Agreement for any good and sufficient reason.
- (2) All applications for exemption shall be in writing in the form of Annexure H and shall be addressed to the Secretary of the Council for consideration by the exemption board appointed by the Council.
- (3) All applications for exemption shall be substantiated, and such substantiation shall include the following details:
 - (a) The period for which the exemption is required;
 - (b) the agreement or clause or subclause(s) of the Agreement from which exemption is required;
 - (c) proof that the exemption applied for has been discussed with the employer, his employee(s) and their respective representatives. The responses resulting from such consultation, either in support of or against the application, shall be included with the application.
- (4) The Secretary of the Council shall in the first instance place the applications for exemption on the agenda of the Ad Hoc Committee meeting for comment.
- (5) The Secretary of the Council shall provide the Exemptions Board with details of all the applications for exemption.
- (6) The Exemptions Board shall consider and decide on all written applications and, when requested by the applicant(s) or objector(s) to do so, may interview applicant(s) or objector(s) at its following meeting: Provided that the Exemptions Board may defer a decision to a following meeting if additional substantiation, information or verbal representations are considered necessary to decide on the application for exemption.
- (7) Once the Exemptions Board has decided to grant an exemption, it shall issue a certificate and advise the applicant(s) within 14 days of the date of its decision.
- (8) When the Exemptions Board has decided against granting an exemption of part of an exemption requested, it shall advise the applicant(s) within 14 days of the date of such decision and shall provide the reason(s) for not granting an exemption.
- (9) *Exemptions criteria*: The Exemptions Board shall consider all applications for exemption with reference to the following criteria:
 - (a) The written and verbal substantiation provided by the applicant;

- (b) the extent of consultation with and the petition for or against granting the exemption as provided by the employer who is to be affected by the exemption if granted;
- (c) the scope of the exemption required;
- (d) the infringement of basic conditions of employment rights;
- (e) the fact that a competitive advantage is not created by the exemption;
- (f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost growth and stability;
- (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Tearoom, Restaurant and Catering Trade;
- (h) any existing special economic or other circumstances that warrant the granting of the exemption;
- (i) the recommendation contained in *the Report of the Presidential Commission to investigate Labour Market Policy*.

19. EXPENSES OF THE COUNCIL

- (1) For the purposes of meeting the expenses of the Council, every employer
 - (a) shall deduct from the earnings of each of his employees the sum of R4,00 per month. To the amounts so deducted the employer shall, in respect of each employee, add the sum of R4,00 per month.
 - (b) A dispute resolution levy of R4.00 per employee per month shall be paid by each employee in respect of each employee the employer shall add the sum of R4.00 per month.
- (2) The employer shall pay an establishment fee of-
 - R25,00 per month with effect from the date of coming into operation of this agreement to 29 February 2008
 - R28.00 per month for the period 1 March 2008 to 28 February 2009
 - R30.00 per month for the period 1 March 2009 to 28 February 2010
 - R32.00 per month for the period 1 March 2010 to 28 February 2011
 - R34.00 per month for the period 1 March 2011 to 29 February 2012 and thereafter.
- (3) The employer shall then forward the whole amount, to which the Vat amount will be calculated month by month, and not later than the 7th day of each month, or annually in advance, to the Secretary of the Council, P.O. Box 1256, Pretoria, 0001, in the form specified in Annexure C.
- (4) For the purposes of this clause, an employee who has worked on six days in any one calendar month shall be held to be liable for the specified deductions.
- (5) The Council may claim payment in respect of levies for the whole period that any employer was liable for payments of levies of any employee. This shall be done with due regard to section 31(2) of the Basic Conditions of Employment Act, 1997, in terms of which an employer is only liable to keep record for a period of three years from the date of the last entry in the record. The Council may, at its own discretion, waive any period of liability for payment of levies.
- (6) Provided that an employer who started operations before the date of coming into operation of this Agreement, but who has not paid the contribution shall be liable to pay all employee/employer contributions
 - (i) subject to subclause (iii), for a period not exceeding 12 months should there be no records of payment of contributions;
 - (ii) for the period of time that the employer has forfeited to pay the council levies since the employer last payment of contributions;
 - (iii) should it be determined by the Council that the employer has deducted from the employee's earning the amount payable by the employee in respect of this clause, the employer will pay the amount payable by the employee and the same amount from the employer for the full period of time that the deductions were made.
- (7) Provided that, for the purposes of this clause- an employee shall be deemed to have worked during any period in which he is absent from work on paid leave or sick leave as provided for in this Agreement.

19A. DEFAULT PAYMENTS

- (1) **Dishonoured cheques:** Whenever an employer pays any sum of money that is due to the Council in terms of this Agreement, in any manner other than in cash, and such payment is dishonoured for any reason whatsoever, then and in such event, a penalty shall be imposed on the employer, which penalty shall be equal to 10% or R100, whichever is the greater of the amount due. Any penalty plus the full amount originally due shall be payable in cash on demand.
- (2) **Legal costs;** Whenever it becomes necessary or expedient for the Council to institute legal action in a court of law for the recovery of any amounts of money due to either the Council, an employee or an employer in terms of subclause (1) but not paid over to the Council after having been requested then and in such event the debtor shall be liable for all legal costs incurred by the Council in the recovery of the amount due, including costs on an attorney and client scale in the event of a legal practitioner, an arbitrator or a collections agency having been instructed by the Council to collect the amount.
- (3) **Forfeiture of claimed amounts to Council:**
 - (a) Whenever the Council has claimed an amount owing to an employee or an ex-employee in terms of this Agreement and the amount was paid over to the Council but the employee or ex-employee failed to collect such amount from the Council within a period of three years (36 months), such amount will accrue to the general funds of the Council. It will then be accepted that the employee or ex-employee has waived all right to such amount.
 - (b) The employee or ex-employee will have no further or alternative claim for the same amounts in terms of the Agreement against the employer.
- (4) **Indemnity clause:** The members of the Council, their alternates, the Executive Committee or their alternates or the Council officials shall not be liable for any debts and/or liabilities of the Council or any of its banking accounts or funds and they are hereby indemnified against all losses and/or expenses incurred or which may be incurred by them in the bona fide lawful execution or discharge of their duties.

20. ADMINISTRATION OF AGREEMENT

The Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria, shall be the body responsible for the administration of this Agreement and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

21. EFFECT OF OTHER LAWS

Nothing in this Agreement shall be deemed to authorise the employment of any person whose employment is prohibited by any law, or the employment of any person at any time or times prohibited by any law.

22. 13TH CHEQUE

- (a) An employer shall pay the employee the following amounts for completed years of service:
 - (i) one weeks wage for one to two years completed service;
 - (ii) two weeks wages for three to four years completed service
 - (iii) one month salary for five years and thereafter's completed service
- (b) For the purpose of subclause (a), payment shall become due on the anniversary of employment and employees earning above R50 000.00 per annum shall not qualify for this payment.
- (c) For the purpose of this clause, employment shall be deemed to commence from the date on which the employee entered the employer's service.

23. TRAINING

- (1) Means a person who receives on the job training at a newly established establishment, on a limited duration contract (not to exceed 6 weeks). Such person to receive an allowance of R200.00 per week and one meal per day.
- (2) A person who undergoes training as per subclause 1 is not automatically guaranteed employment.

24. EMPLOYERS' ORGANISATION SUBSCRIPTIONS

Every employer who is a member of the Employer's Organisation shall at the beginning of each new year or when an official of the association calls on them, pay the current subscription fees due by him to the said organisation, together with any arrears and/or post/bank such subscriptions to the employers' organisation and notify the organisation with proof of payment and submit a renewal form.

25. DESIGNATED AGENTS AND AGENTS

- (1) The Bargaining Council may request the Minister in terms of section 33 (1) of the Act to appoint a person as a designated agent.
- (2)
 - (a) The Council shall appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement. A designated agent may enter any establishment and question any employer or employee 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 agents to institute such enquiries and to examine such books and/or documents and to interrogate such persons as may be necessary for the purpose of ascertaining whether the terms of this Agreement are being observed.
 - (b) An Agent or designated Agent may issue a compliance order requiring any person to comply with this Agreement within a specific period.
- (3) An agent or designated agent shall carry out all instructions given him by the Council.
- (4) Designated Agents are authorised to collect council contributions both current and arrears.
- (5) The Council shall request all reasonable steps necessary to ensure compliance with this Agreement, if, whether through its own investigations or through any other sources, it appears that the provisions of this Agreement have been breached, then the following procedure shall apply to enforce compliance:
 - (i) The Council shall request a designated Agent to investigate the alleged breach.
 - (ii) Should there be a breach of this Agreement the designated Agent may endeavour to secure compliance with the Agreement through conciliation.
 - (iii) At the end of the conciliation process, the designated agent shall submit to the Secretary of the Council a report as to the outcome of the conciliation.
 - (iv) Upon receipt of the report, the Secretary of the Council may-
 - (i) refer the matter to arbitration; or
 - (ii) take such other steps as may be deemed reasonable.
 - (v) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court.

26. CODE OF CONDUCT

Schedule 8 of the Act shall be adhered to. (See Annexure F).

27. HOURS OF BUSINESS

Subject to the provisions of clause 7 of the Agreement, the employer shall have the right to allocate staff whatever business hours may be necessary to accommodate the business, as long as the total number of normal hours worked do not exceed 45 hours in any week, excluding lunch breaks of a minimum of one hour per day.

29. FAMILY RESPONSIBILITY LEAVE

- (1) Full time employees are entitled to six days paid family responsibility leave per year, on request, when the employees' child is born or sick, or in the event of the death of the employees' spouse or life partner. Or the employees' parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (2) This leave may not be accumulated and an employer may require reasonable proof.

30. REGISTRATION OF EMPLOYERS

- (1) Every employer shall—
 - (a) within 30 days of the date upon which this Agreement comes into operation, or in the event of an employer commencing operations after that date, within one month of such commencement, register with the Council by completing and submitting to the Council a statement in the form of Annexure D to this Agreement;
 - (b) whenever a change in the particulars furnished in terms of subclause (1) occurs, or in the event of the—

- (i) sequestration of the employer's estate;
- (ii) winding up the affairs of the company;
- (iii) transfer or abandonment of the business carried on; or
- (iv) acquisition or commencement of any other business upon which this Agreement is binding,

Within 30 days furnish the Secretary of the Bargaining Council with a completed statement in the form of Annexure D to this Agreement; and receipt thereof shall be acknowledged by the Secretary of the Council, P.O. Box 1256, Pretoria, 0001.

- (2) The Secretary of the Council shall monthly furnish the secretary of the employers' organisation with particulars of establishments registered with the Council during the preceding month.
- (3) The Secretary of the Council shall monthly forward to the trade union a list of all registrations and change of those employees who are eligible for membership of the trade union.

31. LONG SERVICE AWARD

- (a) An employer shall pay the employee the following amounts for completed years of service:
 - (i) 5 years completed service the amount of R500,00;
 - (ii) 10 years completed service the amount of R1 500,00;
 - (iii) 15 years completed service the amount of R2 000,00;
 - (iv) 20 years completed service the amount of R2 500,00;
- (b) For the purpose of this clause, completed years of service shall be calculated from 1 August 2003.

33. PROVIDENT FUND

- (a) The employer shall deduct from the earnings of his or her employees 5,5% of the employee's monthly wage with effect from the date of coming into operation of this Agreement to 31 July 2013. To the amounts so deducted the employer shall, in respect of each employee, add the same amount.
- (b) The employer shall then forward the total amount not later than the 7th day of the following month to the Chief Administrative Officer of the Council, P.O. Box 1256, Pretoria, 0001, or pay the total amount directly into the account of the Bargaining Council Provident Fund, Standard Bank, account number 010331484, and submit proof to the Council with details in respect of each employee for whom the total amount was paid.
- (c) The Council shall then forward the amount so received to the Administrators of the Fund.
- (d) This clause is subject to the rules of the Provident Fund.

34. EXHIBITION OF AGREEMENT

- (1) The parties agree that the English version of this Agreement shall determine the meaning and intention of the parties and be made available by the Council for inspection by any person at the Council's office between 08:15 and 15:00 on any working day.
- (2) A legible copy of this Agreement shall at all times be exhibited in a prominent place in every establishment and made available to any employee for perusal and discussion with the employer.

35. RIGHTS AND OBLIGATIONS OF THE TRADE UNION

Subject to any arrangement which the individual trade unions and members of employer's organisations may agree to at plant level, the following provisions shall be applicable:

(1) Access

- (a) Union officials may hold meetings with employer representatives for the purposes of discussing this Agreement, issues that arise herefrom or any other matter of mutual interest: Provided that such meetings shall be held at a time and place that is mutually convenient to the employer representative and the trade union officials.
- (b) The employer and the trade union shall inform the other party in writing of the names and status of their respective representatives. No other persons shall act on behalf of the employer or the trade union. The

employer and the trade union shall agree to inform the other party of any changes to their representatives in writing.

- (c) In addition to the access specifically granted to the trade union officials in terms of the Agreement, a maximum of two union officials shall be entitled to have access to trade union representatives and union members during their lunch break, not more than once per calendar month. The date of such access shall be agreed upon between a union official and a representative of the employer.
- (d) Trade union officials shall not have access to trade union representatives and union members during their working hours unless they have obtained the written consent of a representative of the employer beforehand.
- (e) The employer shall specify the area at the premises which shall be used by trade union officials for the purposes of any meeting with trade union representatives and union members.
- (f) No meeting consisting of more than four trade union members shall be arranged either by trade union officials or trade union representatives at the premises during normal working hours, excluding lunch breaks, without the permission of a representative of the employer.

(2) Restriction on access

- (a) The activities of the trade unions and in particular those of trade union representatives referred to in this clause shall not interfere with the employer's operation and productivity and shall not exceed the limits and purposes of this Agreement.
- (b) Should such interference persist, the employer may, by written notice to the union, immediately vary or withdraw the access granted.
- (c) The trade unions shall comply with the security and safety regulations of the employer.

(3) Stop order facilities

- (a) The employer shall deduct union subscriptions from the wages of union members and shall account for and pay to the trade union on or before the 15th of each following month the aggregate amount deducted.
- (b) No subscription shall be deducted from the wages of a trade union member unless he signed a stop order authorising a specific deduction from his wages, and the stop order shall be lodged with the employer by the trade union until the employee has furnished proof of being a member of that union and employed in the sector.
- (c) A trade union member may authorise deductions to cease, subject to one month's notice, by addressing a written request to the employer and the trade union.
- (d) The employer shall not be responsible for the collection of any subscription which for any reason may be in arrears.
- (e) The employer shall submit a monthly remittance to the trade union reflecting the names of members in respect of whom deductions have been made, a copy of requests to revoke membership and the amounts/period for which deductions were made.
- (f) Where there has been a change in trade union subscriptions in accordance with the constitution of the trade union, one calendar month's written notice of such change shall be given by the trade union to the employer. Such notice shall be accompanied by a stop order signed by each trade union member authorising such increased deduction. The employer shall raise the deduction accordingly.

(4) Recognition and duties of trade union representatives

- (a) A trade union representative shall represent the trade union at the premises of the employer in accordance with the rights and obligations applicable to them as set out in this Agreement and any other agreements entered into between the employer and the trade union.
- (b) Any trade union representative shall be entitled to assist and represent union members in recording any grievance that the union members may have or at disciplinary hearings.
- (c) A trade union representative shall consult with the employer for the purpose of promoting cooperation and understanding and preventing the occurrence of grievances and disputes.
- (d) A trade union representative shall consult with the trade union members only during work breaks such as lunch intervals and without delaying the working process.

- (e) The trade union representatives shall at all times observe their terms and conditions of employment and shall be subject to the same disciplinary and performance standards as other employees.
- (f) If an employer has the facilities of a photocopier and fax machines, the employer may permit union representatives the reasonable use of such facilities under the supervision of management provided that permission has been obtained from management prior to the use of such facilities.

(5) Election of trade union representatives

- (a) Trade union representatives and their alternates shall be elected during normal working hours by union members in terms of this Agreement by secret ballot for a period of two years to represent them in terms of this Agreement, subject to the following:
 - (i) The election of trade union representatives and their alternates during working hours shall not disrupt the normal working processes and smooth running of the employer's business.
 - (ii) The election date and procedural detail for the election shall be agreed with the employer at least seven working days prior to the election date.
 - (iii) The number of trade union representatives in respect of each place where the employer conducts its operations shall be as follows:

| Number of trade union members | Number of shop stewards |
|-------------------------------|--|
| 10 | One |
| 10-50 | Two |
| 50-299..... | Two for the first 50, plus one for each additional 50 up to a maximum of seven |
| 300-600..... | Seven for the first 300, plus one for every 100 additional members up to a maximum of 10 |

- (iv) Only trade union members in good standing may nominate trade union representatives and only union members in good standing in the interest group may be nominated and elected as trade union representatives or alternates. Candidates shall, nevertheless, have at least one year's continuous service with the employer.
- (b) A recognised trade union representative or alternate shall resign from office-
 - (i) on being promoted or appointed to a managerial position : Provided that he shall resign not later than the effective date of his appointment or promotion: Provided further that he shall be free to decline or accept the promotion and shall not be victimised as a result of declining the promotion;
 - (ii) on ceasing to be employed by the employer;
 - (iii) on ceasing to be a member of the trade union;
 - (iv) on resigning as a trade union representative or alternate; and/or
 - (v) on receiving a written request for his resignation supported by the majority of trade union members in his constituency.

(6) Leave for trade union activities

- (a) Trade union representatives shall be granted ten day's (including weekends) paid training leave per annum by the employer to undergo training or attend a conference on any subject relevant to the performance of the functions of a trade union representative;
- (b) request for such leave shall be accompanied by written application from the trade union, giving fourteen days' notice and setting out the nature of such training or conference and name of the institution which will conduct such training.

- (7) Peace obligations:** Neither an employer or a trade union or its members shall cause, sanction or participate in any strike or lock-out against the other party-
- (i) concerning any issue which is the subject matter of a substantive agreement during the period of such agreement and, in particular, where the issue has been negotiated at the Council and the collective agreement has been concluded in this regard; or
 - (ii) concerning issues which are not the subject matter of a substantive agreement unless such industrial action forms part of the dispute resolving procedures; or
 - (iii) during an arbitration or arising out of an arbitration award whether such arbitration is conducted by a private agency, the Commission for Conciliation, Mediation and Arbitration, the Labour Court or the Council.
- (8) Internal Dispute Resolution Procedures**
- (a) Where a dispute has been declared, the party declaring the dispute shall furnish written particulars of the dispute to the other party, this notice setting out the nature of the dispute and the proposed terms of settlement.
 - (b) The party receiving the notice of dispute shall, within five working days or receipt thereof, notify the aggrieved party in writing of its response and shall further set out its proposed terms of settlement.
 - (c) A meeting of the parties shall be convened within five working days of receipt by the aggrieved party of the other party's statement.
 - (d) If agreement is not reached regarding the dispute or part thereof at the meeting held in terms of (c) above, then the parties may consider alternative methods of resolving the dispute, such as referral to conciliation or arbitration.
 - (e) If the dispute remains unresolved after the exhaustion of these procedures either party may refer the dispute to the Bargaining Council for resolution in terms of the relevant method provided for in terms of the Act or, where the Act provides solely for the nature of the dispute to be resolved by the Commission for Conciliation, Mediation and Arbitration, to such Commission.
- (9) Industrial action**
- (a) Industrial action means strikes and lock-outs as defined in the Act and includes go-slows, pickets, overtime bans, work to rule and product boycotts.
 - (b) No industrial action shall be taken by either party pending the exhaustion of relevant procedures of this Agreement and the Act.
 - (c) If industrial action occurs contrary to the provisions hereof, then the guilty party shall immediately take reasonable steps to end the industrial action and the parties may agree to vary any of the stipulated time limits in this Agreement.
- (10) Industrial action rules**
- (a) Any industrial action engaged in by the union members shall be conducted in a peaceful and orderly manner.
 - (b) Strikers shall not interfere with the conduct of the employer's business or with the employer's suppliers or customers and shall remain only on that part of the employer's premises where they cannot interfere with the normal activities of the firm and not within less than 20 m of any entrance or exit of the premises during the normal hours of work, observing, at all times, the employer's normal rules and regulations.
- (11) Picketing**
- (a) A trade union may authorise a picket by its members and supporters for the purpose of peacefully demonstrating in support of any protected strike or in opposition to any lock-out.
 - (b) Such a picket may be held in any place to which the public has access outside the premises of an employer or, with the permission of the employer, inside its premises. The employer shall undertake not to unreasonably withhold consent to its employees peacefully picketing within its premises.
- (12) Replacement labour:** The employer has the right to utilise replacement labour, save and except in circumstances where such employer has implemented a lock-out or except in circumstances where the lock-out is in response to a strike.

- (13) **Severance pay:** The employee shall be entitled to one week's severance pay for each completed year of continuous service with that employer in instances where that employee was dismissed for reasons based on the employer's operational requirements, subject to section 196 (3) of the Act.

ANNEXURE A

(See clause 11 A – Sick leave)

**CERTIFICATE REQUIRED IN TERMS OF THE BARGAINING COUNCIL AGREEMENT FOR THE FOOD RETAIL,
RESTAURANT, CATERING & ALLIED TRADES**

*I
 residing at
 hereby certify that †.....
 has been under my treatment from ‡ to
 and that he is suffering from §.....
 I further certify that he is in consequence unable to perform his official duties, and I consider it essential for the recovery of his
 health that he should have leave
 from to
 for the purpose of.....

Date

.....
Signed: Medical practitioner

* Name and qualification of practitioner
 †Name and occupation of patient
 ‡Period
 §The nature of the illness, disease or injury to be stated as far as possible in non-technical terms with concise particulars as to history , symptoms and severity, and ascertainable cause.

“ANNEXURE D

(See clause 30 Registration of Employers)

REGISTRATION OF ALL EMPLOYERS AND SUBSEQUENT NOTIFICATION OF CHANGES

(This form must be remitted within one month of commencement of business)

The Secretary
 Bargaining Council for the Food Retail, Restaurant, Catering & Allied Trades
 P.O. Box 1256
 Pretoria
 0001
 TEL: (012) 341 1504
 (012) 341 1928

FAX: (012) 341 0722

Dear Sir

In accordance with clause 30 of the Bargaining Council Agreement, I hereby furnish the following particulars in connection with the business or the changes of particulars:

1. Name of business in full.....

2. Street address

3. P.O. Box Tel No:.....
 Fax No: E-Mail:

4. Name of owner/s

Home address.....

Name of partner/s..... Tel No.....

Home address/es.....

State whether: Sole owner..... Partnership..... Company.....

If a Company:

(a) Registered Name.....

(b) Address of head office.....

Type of business: (Please mark with an X where applicable)

| | | |
|---------------------------------|-----------------------|--------------------------------------|
| Restaurant | } | With or without liquor licence |
| Steakhouse | | |
| Roadhouse..... | Café..... | Fish and chips..... |
| Snack bar/Take-away foods | Function caterer..... | Other..... |

No. of employees.....

Date of commencement of business.....

Name of Employers organisation:

Name of Union/s:

Date.....

.....
Signature of employer or authorised person**PARTICULARS OF FORMER OWNER**

Previous name of business..... Tel No.....

Home address.....

Bookkeeper..... Tel No.....

ANNEXURE E

(See clause 14 – Certificate of Service)

CERTIFICATE OF SERVICE

I/We.....

carrying on business as.....

at.....

hereby certify that Mr/Mrs/Miss/Ms.....

was employed by me/us from the day of 20.....

to the day of 20.....

in the occupation of.....

On termination of employment his ordinary rate of pay was R..... per week/month.

Date.....

.....
Signature of employer or authorised person

ANNEXURE F

SCHEDULE 8 CODE OF GOOD PRACTICE: DISMISSAL

1. Introduction:

- (1) This code of good practice deals with some of the key aspects of dismissals for reasons related to conduct or 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 primacy 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 workplace 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 affected 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 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 unions, 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 affected in accordance with a fair procedure, the dismissal is unfair.

3. Disciplinary measures short of dismissal:

Disciplinary procedures prior to 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 employee's 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 or 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.

Dismissals for misconduct:

- (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 property 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 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 or 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 Commissioner 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 record 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 is misconduct. However, like any other type 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 this 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 case 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 workplace; 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 is an appropriate sanction for the contravention of the rule or standard.

8. Probation

- (1) (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 representation 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 a council having jurisdiction, or to the Commission.
- (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 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 subclause (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.

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
- (b) if the employee is not capable-
 - (i) the extent to which the employee is able to perform the work;
 - (ii) 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
- (iii) the availability of any suitable alternative work.

ANNEXURE G
RULES FOR CONCILIATION AND ARBITRATING DISPUTES IN THE BARGAINING COUNCIL FOR
THE FOOD RETAIL, RESTAURANT, CATERING AND ALLIED TRADES

ARRANGEMENT OF RULES

PART A: SERVING AND FILING DOCUMENTS

1. Council addresses at which documents must be filed.
2. How to calculate time periods.
3. Who must sign documents.
4. How to serve documents on other parties.
5. How to prove that a document was served in terms of these rules.
6. How to file documents with the Council.
7. Documents and notices sent by registered post.
8. How to seek condonation for documents served late.

PART B: CONCILIATION OF DISPUTES

9. How to refer a dispute to the Council for conciliation.
10. What notice must the Council give of a conciliation hearing.
11. Council may seek to resolve dispute before a conciliation hearing.
12. What happens if a party fails to attend or is not represented at a conciliation hearing.
13. How to determine whether the Council may conciliate a dispute.
14. Issuing of a certificate in terms of section 135(5).
15. Conciliation proceedings may not be disclosed.

PART C: CON-ARB

16. Conduct of con-arb in terms of section 191 (5A) of the Act.

PART D: ARBITRATIONS

17. How to request arbitration.
18. When parties may be directed to file statements.
19. When parties may be directed to hold a pre-arbitration conference.
20. What notice must the Council give of an arbitration hearing.
21. How to determine whether a commissioner may arbitrate a dispute.
22. How to postpone an arbitration.

PART E: RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS

23. Who may represent a party at the Council.
24. How to join or substitute parties to proceedings.
25. How to correct the citation of a party.
26. When the Council may consolidate disputes.
27. Disclosure of documents.
28. What happens if a party fails to attend proceedings in rights disputes.
29. What happens if a party fails to attend proceedings in interest disputes.

PART F: APPLICATIONS

30. How to bring an application.
31. How to apply to vary or rescind arbitration awards or rulings.
32. How to refer a dismissal dispute to the Labour Court.

PART G: PRE-DISMISSAL ARBITRATIONS

33. How to request a pre-dismissal arbitration in terms of section 188A of the Act.

PART H: GENERAL

34. Unrepresented applicants without postal addresses and fax numbers.
35. Condonation for failure to comply with these Rules.
36. Recording of Council proceedings.
37. How to have a subpoena issued.
38. Payment of witness fees.
39. Taxation of bills of cost.
40. What words mean in these Rules.

PART A

SERVING AND FILING DOCUMENTS

1. Council addresses at which documents must be filed

- (1) The addresses, telephone and telefax numbers of the offices of the Council are listed in Schedule One.
- (2) Documents may be filed with the Council only at those addresses or telefax numbers.

2. How to calculate time periods

- (1) For the purpose of calculating any period of time in terms of these Rules -
 - (a) "day" means any day of the week including Saturdays, Sundays and public holidays, but excludes the days from the 16th of December to the 7th of January, both days inclusive.

Example 1

Rule 7 refers to 7 days of the date the document was posted. If the document was posted on a Friday then the seven days would include the next Saturday and Sunday.

Example 2

Rule 7 refers to 7 days of the date the document was posted. If the date of postage was on a Friday the 12th of December, the first four days would be counted (the days before the 16th) and the final three days would be counted from 7th of January - in other words the period would run from the 12th of December to the 10th of January.

- (b) the first day is excluded and the last day is included, subject to subrule (2).

Example 3

Rule 10 refers to a 14 days' notice period for conciliation. If notice was faxed on Thursday 10 October, the conciliation must be scheduled on Friday 25 October or any day thereafter.

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

3. Who must sign documents

- (1) A document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in the proceedings.
- (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. A list in writing, of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

4. How to serve documents on other parties

- (1) A party must serve a document on the other parties to a dispute-
 - (a) by handing a copy of the document to -
 - (i) the person if that person is a party to the dispute;
 - (ii) a person authorised in writing to accept service on behalf of a party to the dispute;
 - (iii) a person who appears to be at least 16 years old and in charge of a party's place of residence, business or employment;
 - (b) by faxing or telexing a copy of the document to that party;
 - (c) by sending a copy of the document by registered post or telegram to the last-known address of the party or to an address chosen by the party to receive service.

5. How to prove that a document was served in terms of these rules

- (1) A party must prove to the Council 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 (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 these Rules, as sufficient.

6. How to file documents with the Council

- (1) A party must file documents with the Council -
 - (a) by handing the document in at an office of the Council;
 - (b) by sending a copy of the document by registered post to the Council; or
 - (c) by faxing the document to the Council.
- (2) A document is filed with the Council when -
 - (a) the document is handed to the office of the Council;
 - (b) a document sent by registered post is received by the Council; or
 - (c) the transmission of a fax is completed.

7. Documents and notices sent by registered post

Any document sent by registered post is presumed, unless the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

8. How to seek condonation for documents served late

- (1) This rule applies to any document, including a referral or an application, served outside a time period prescribed by the Act or in these Rules.
- (2) A party must apply for condonation, in terms of rule 35, when serving the document on 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 the lateness and degree of fault;
 - (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 parties; and
 - (e) any other relevant factors.

PART B

CONCILIATION OF DISPUTES

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

- (1) A party must refer a dispute to the Council for conciliation by completing the LRA Form 7.11 referral form and serving it on the Council.
- (2) The referring party must -
 - (a) sign the referral form;
 - (b) attach written proof that the referral form was served on the other parties to the dispute;
 - (c) if the referral form is filed late, attach an application for condonation in accordance with rule 8.
- (3) The Council shall refuse to accept a referral until subrule (2) has been complied with.

10. What notice must the Council give of a conciliation hearing

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

11. Council may seek to resolve dispute before a conciliation hearing

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

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

If a party to a dispute fails to attend in person or be represented at a conciliation hearing, the Council commissioner may deal with it in terms of rule 28 and rule 29.

13. 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 must require the referring party to prove that the Council has the jurisdiction to conciliate the dispute through conciliation.

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

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

15. 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 C
CON-ARB

16. Conduct of con-arb in terms of section 191 (5A) of the Act

- (1) The Council must give the parties at least 14 days' notice in writing that a matter has been scheduled for con-arb in terms of section 191 (5A) of the Act.
- (2) A party that intends to object to a dispute being dealt with in terms of section 191 (5A) must serve a written notice on the Council and the other party, at least seven days prior to the scheduled date in terms of subrule (1).
- (3) Subrule (2) does not apply to a dispute concerning -
 - (a) the dismissal of an employee for any reason related to probation; or
 - (b) an unfair labour practice relating to probation.
- (4) If the respondent party fails to appear or be represented at a hearing scheduled in terms of subrule (1), the Council commissioner must conduct the con-arb on the date specified in the notice issued in terms of subrule (1) or adjourn the proceedings till a later date.
- (5) Subrule (4) applies irrespective of whether a party has lodged a notice of objection in terms of subrule (2).
- (6) The provisions of the Act and these Rules that are applicable to conciliation and arbitration, respectively, apply, with the changes required by the context, to con-arb proceedings.
- (7) If the arbitration does not commence on the dates specified in terms of the notice referred to in subrule (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 20.

PART D ARBITRATIONS

[Part D does not apply to arbitrations in respect of failure to comply with the provisions of a collective agreement in terms of section 33A (4) of the Act]

17. How to request arbitration

- (1) A party may request the Council to arbitrate a dispute by delivering a document in the form of Annexure LRA 7.13 ('the referral document').
- (2) The referring party must –
 - (a) sign the referral document in accordance with rule 3;
 - (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 5; and
 - (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 8.
- (3) The Council must refuse to accept a referral document until subrule (2) has been complied with.
- (4) This rule does not apply to con-arb proceedings held in terms of section 191(5A).

18. When parties may be directed to file statements

- (1) The Council or a Council commissioner may direct -
 - (a) the referring party in an arbitration to file a statement of case within a specified time period; and
 - (b) the other parties to file an answering statement within a specified time period.
- (2) A statement in terms of subrule (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 filed within the time period specified by the Council or the Council commissioner.

19. When parties may be directed to hold a pre-arbitration conference

The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in rule 18(2) above if directed to do so by the Secretary of the Council.

20. What notice must the Council give of an arbitration hearing

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

21. 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 the Council has jurisdiction to arbitrate the dispute.

22. How to postpone an arbitration

This rule also applies to Con/Arb and Conciliation

- (1) 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 more than seven days prior to the scheduled date of the arbitration; and
 - (c) there are compelling reasons to postpone.
- (2) Any party may apply in terms of rule 22 to postpone an arbitration, by serving an application on the other parties to the dispute and filing a copy with the Council 7 days before the scheduled date of the arbitration.
- (3) A formal application may be made for a postponement on the day of Arbitration but only in exceptional circumstances. The Commissioner has the discretion to award costs for such a postponement, as well as an Arbitration fee.

PART E

RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS

23. Who may represent a party at the Council

- (1) A party may appear in person at any proceedings before the Council or be represented by -
 - (a) a legal practitioner;
 - (b) a member, official or office bearer of a registered trade union;
 - (c) an official or office bearer of a registered employers' organisation, or registered employer federation of which the party was a member at the time the dispute arose;
 - (d) a director, employee, trustee or partner in a partnership of that party;
 - (e) if proceedings are brought or opposed by more than one party, another party to the dispute.
- (2) Notwithstanding subrule (1) (a), if the dispute is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or incapacity, the parties are not entitled to be represented by practising lawyers in the proceedings unless -
 - (a) the Council commissioner and the other parties consent;
 - (b) the Council commissioner concludes that it is unreasonable to expect the 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 dispute.

24. How to join or substitute parties to proceedings

- (1) The Council or a Council commissioner may join any number of persons as parties in proceedings, if the right to relief depends on substantially the same question of law or fact.
- (2) A Council 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 Council commissioner may make an order in terms of subrule (2) -
 - (a) of the Council commissioner's 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 30.
- (5) 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 person for an existing party, and a Council commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.
- (6) 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.
- (7) Subject to any order made in terms of subrules (2) and (5), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

25. How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the Council may, on application and on notice to the parties concerned, correct the error or defect.

26. When the Council may consolidate disputes

The Council or a Council commissioner, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

27. Disclosure of documents

Any party may request a Council commissioner to make an order requiring any other party to the dispute to disclose all relevant documents.

28. What happens if a party fails to attend proceedings in rights disputes

- (1) In a rights dispute, if a party to a dispute fails to attend or be represented at any proceedings before the Council, and that party -
 - (a) has referred the dispute to the Council, a Council commissioner may dismiss the matter by making an order; or
 - (b) has not referred the matter to the Council, the Council commissioner may -
 - (i) continue with the proceedings in the absence of that party; or
 - (ii) adjourn the proceedings to a later date.
- (2) A Council commissioner must be satisfied that the party has been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).
- (3) If a matter is dismissed, the Council must send a copy of the ruling to the parties.

29. What happens if a party fails to attend proceedings in interest disputes

- (1) In an interest dispute, if a party to the dispute fails to attend the conciliation hearing or be represented at the hearing, and that party -
 - (a) has referred the dispute to the Council, a Council commissioner may extend the conciliation period for another thirty days and notify the parties of the extension in writing; or
 - (b) has not referred the dispute to the Council, the Council commissioner may immediately issue a certificate stating that the dispute remains unresolved.
- (2) A Council commissioner must be satisfied that the party has been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).

PART F APPLICATIONS

30. How to bring an application

- (1) An application must be brought on notice to all persons who have an interest in the application.
- (2) The party bringing the application must sign the notice of application 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 14 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 subparagraph (e);
 - (g) a schedule listing the documents that are material and relevant to the application.
- (3) The application must be supported by an affidavit that 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 8; 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.

- (4) (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within 14 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 (2) and (3), respectively.
- (5) (a) The party initiating the proceedings may deliver a replying affidavit 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 fact or law.
- (6) A Council commissioner may permit the affidavits referred to in this rule to be substituted by a written statement.
- (7) In an urgent application, the Council or a Council commissioner may -
 - (a) dispense with the requirements of this rule; and
 - (b) grant an order only against a party that has had reasonable notice of the application.
- (8) (a) The Council may allocate a date for a hearing of the application once a replying affidavit has been delivered, or once the time limit for delivering a 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 on a day determined by the Council.
- (9) Notwithstanding this rule, the Council or a Council commissioner may determine an application in any manner it deems fit.

31. 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 14 days of the date on which the applicant became aware of -
 - (a) the arbitration award or ruling; or
 - (b) a mistake common to the parties to the proceedings.
- (2) A ruling made by a Council commissioner, which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

32. How 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 made within 14 days of the dispute being certified unresolved in conciliation.
- (2) Notwithstanding 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 14 days of receiving the objection.

PART G

PRE-DISMISSAL ARBITRATIONS

33. How to request a pre-dismissal arbitration in terms of section 188A of the Act

- (1) An employer requesting the Council to conduct a pre-dismissal arbitration, must do so by delivering a completed referral form to the Council.
- (2) The employee must sign the referral form consenting to pre-dismissal arbitration. If an employee has consented in terms of section 188A(4)(b), the referral form does not have to be signed by the employee, but the copy of the contract containing the consent must be attached to the form.

- (3) When filing the referral form, the employer must pay the prescribed fee to the Council. Payment of the fee may be made only by -
 - (a) bank guaranteed cheque; or
 - (b) electronic transfer into the bank account of the Council.
- (4) Within 14 days of receiving a request in terms of subrule (1) and payment of the prescribed fee, the Council must notify the parties to the pre-dismissal arbitration of when and where the pre-dismissal arbitration will be held.
- (5) Unless the parties agree otherwise, the Council must give the parties at least 14 days' notice of the commencement of the pre-dismissal arbitration.
- (6) The Council will be required to refund a fee paid in terms of subrule (3), only if the Council is notified of the resolution of the matter prior to issuing a notice in terms of subrule (4).

PART H

GENERAL

34. Unrepresented applicants without postal addresses and fax numbers

- (1) An unrepresented applicant who intends to refer a dispute to the Council and who does not have a postal address or fax number must hand-deliver the referral form to the Council.
- (2) If a referral form is received by hand delivery by an unrepresented applicant, the Council must provide the applicant with a case number and written instructions to contact the Council by telephone or in person, within seven days of the date of referral, in order for the Council to notify the applicant of the details of the hearing.
- (3) The administrator who notifies the applicant of the hearing in terms of subrule (2) must record on the case file and on the case management system that the applicant has been notified of the details of the hearing.
- (4) The record made in terms of subrule (3) will constitute proof that the applicant was notified of the hearing.

35. Condonation for failure to comply with these Rules

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

36. Recording of Council proceedings

- (1) The Council must keep a 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 Council commissioner.
- (2) The record may be kept by legible handwritten notes or by means of an electronic recording.
- (3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of subrule (2), on payment of the costs of the transcription.
- (4) After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the Council.
- (5) The transcript of a record certified correct in terms of subrule (4) is presumed to be correct, unless the Labour Court decides otherwise.

37. How to have a subpoena issued

- (1) Any party who requires the Council or a Council commissioner to subpoena a person in terms of section 142 (1) of the Act, must file a completed subpoena form, requesting a subpoena, together with a written substantiation 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) 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) A request in terms of subrule (1) must be filed with the Council at least ten days before the arbitration hearing, or as directed by the Council commissioner hearing the arbitration.
- (4) The Council or a Council 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 Council 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 subpoena or by the Sheriff, at least seven days before the scheduled date of the arbitration;
 - (b) and 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 *Gazette* in terms of section 142 (7) of the Act and the witnesses' reasonable travel costs.
- (6) Subrules 4 (c) and 5 (b) do not apply if the Council, in terms of section 142 (7)(c), has waived the requirement for the party to pay witness fees.

38. 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 *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).
- (3) Notwithstanding subrule (1), the Council commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

39. Taxation of bills of cost

- (1) The basis on which a Council commissioner may make an order as to costs in any arbitration is regulated by section 138 (10) of the Act.
- (2) The Secretary of the Council may appoint taxing 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' Courts tariff, in terms of the Magistrates' Courts Act, No.32 of 1944, 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 referral form requesting taxation 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) Notwithstanding subrule (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.
- (7) Any decision by a taxing officer is subject to review by the Labour Court.

40. What words mean in these Rules

Any expression in these Rules that is defined in the Labour Relations Act, 1995 (Act No.66 of 1995), has the same meaning as in that Act and-

"**Act**" means the Labour Relations Act, 1995 (Act No.66 of 1995), and includes any regulation made in terms of that Act;

"**con-arb**" means proceedings held in terms of section 191 (5A) of the Act, where an arbitration commences immediately after certifying that the dispute remains unresolved in conciliation;

"**Council**" means the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pta registered in terms of section 29 of the Act;

"**Council commissioner**" means an individual appointed by the Council to resolve disputes;

"**deliver**" means serve on other parties and file with the Council;

"**dispute of interest**" means any dispute concerning a matter of mutual interest; excluding any dispute that a party has the right to refer to arbitration or to the Labour Court under the Act, a collective agreement or an arbitration agreement;

"**dispute of right**" means a legal claim to which a party in the employment relationship is entitled by virtue of the employment contract, a collective agreement, a statute or the common law;

"**Director**" means the Director of the Commission appointed in terms of section 118 of the Act, and includes any person delegated by the Director to perform any of the functions of the Director;

"**file**" means to lodge with the Council in terms of rule 6;

"**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 Council;

"**legal practitioner**" means a practising advocate, a practising attorney;

"**public holiday**" means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No.36 of 1994) as amended from time to time.

"**Rules**" means these rules;

"**Secretary**" means Chief Administrative Officer of the Council;

"**serve**" means to serve in accordance with rule 5 and "service" has a corresponding meaning; and

"**taxing officer**" means any competent person appointed by the Secretary in terms of rule 39.

ANNEXURE H
APPLICATION FOR EXEMPTION

Name of Business:.....

Address of Business:.....

.....

.....

Name of Responsible Person:.....

Tel No: Fax No:

Date of application:

Please complete as fully as possible:

- 1) Which clauses or sub-clauses do you need exemption from?

.....

- 2) The period for which the exemption is required?

.....

- 3) Was the exemption application discussed with your employees?

.....

- 4) If the answer to 3 is "yes":-

- (a) Do the employees understand the implication if the exemption should be granted?

.....

- (b) Proof that the exemption applied for has been discussed with the employer, his employee(s) and their respective representatives. The responses resulting from such consultation, either in support of or against the application, to be attached to the application

.....

- (c) Can a Council representative meet with you and your employees to discuss the exemption application?

.....

- 5) Attach a list of all your employees indicating names, identity numbers and rate of pay where available.

- 6) Fully motivate the reason for the exemption application and include affidavits if possible

- 7) Attach any other relevant documents to substantiate the application

.....
Signature of Responsible person

.....
Date

SCHEDULE 1

The Secretary
403 MBA Building
527 Stanza Bopape Str (Church Str)
Arcadia
Pretoria
0083

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TRADE UNIONS:

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CCRAWUSA

N.M.MODISE
HICRAWU

BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING AND ALLIED TRADES

R.S.MATJILA
Chairman

A.RUDD
Vice-Chairman

M. BASILIO
Secretary