



**NATIONAL BARGAINING  
COUNCIL  
FOR THE PRIVATE SECURITY SECTOR**

NBCPSS Policy number BC004

**Central Office Park, Block Q, No.400,  
16th Road, Randjespark, Midrand**

**Email: [ceo@nbcoss.org.za](mailto:ceo@nbcoss.org.za)**

## **NATIONAL BARGAINING COUNCIL FOR THE PRIVATE SECURITY SECTOR (Bargaining Council)**

### **EXEMPTION POLICY**

**September 2020**

**Registered in terms of Section 29 (15)(a) of the Labour Relations Act, 1995  
Reference LR 2/6/6/164**



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## **1. EXEMPTION AND APPEALS**

- This policy governs the process when exemption applications are received.
  - The committee shall at all time consists of 3 panelist:
    - General Secretary
    - Labour Representative and
    - Employer Representative
- (1)** All applications for exemption must be made in writing on the appropriate application form, obtained from the Bargaining Council, setting out relevant information, including –
- (a) the provisions of the agreement in respect of which exemption is sought;
  - (b) the number of persons in respect of whom the exemption is sought;
  - (c) the reasons why the exemption is sought;
  - (d) the nature and size of the business in respect of which the exemption is sought;
  - (e) the duration and timeframe for which the exemption is sought;
  - (f) the business strategy and plan of the applicant seeking the exemption;
  - (g) the applicants past record (if applicable) of compliance with the provisions of the Collective Agreement, its amendments and exemptions certificate.
  - (h) The recorded views expressed by the trade union or workforce itself during the plant level consultation process; and
  - (i) Any other relevant supporting data and financial information the Council may prescribe from time to time.
- (2)** The Bargaining Council shall decide on an application for exemption within 30 days of receipt.
- (3)** Upon receipt of an application by the Bargaining Council, it shall immediately refer the application to the exemptions committee which may, if deemed expedient, request the applicant to attend the meeting at which the application is considered, to facilitate the deliberations.
- (4)** An exemption committee appointed by the Council may request additional information from an applicant applying for exemption- written or orally.
- (5)** In scrutinizing the application, the Exemption Committee or the Independent Exemptions Body will consider the details of the application, the views expressed by the trade union or workforce, affected employers, any other representations received in relation to the application, and the factors and criteria as listed in sub clause (11) below.
- (6)** The secretary must advise the applicant in writing of the decision of the exemptions committee within 15 days from the date of the decision, failing which the Bargaining Council shall be deemed to have refused the application for exemption.
- (7)** In the event of the exemptions committee granting, partially granting or refusing to grant an application, the applicant shall be informed of the reasons for the decision to the appeal in

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writing on the appropriate appeal application form against the decision to the independent Exemptions Body, established by the Bargaining Council within 21 days from the date of being informed of the outcome.

- (8)** In the terms of section 32(3)(e) of the Labour Relations Act [as amended], the Bargaining Council must establish an independent Exemption Body to hear and decide as soon as possible any appeal brought against the exemption committee's refusal of a non-party's application for exemption for the provision of a collective agreement by the exemption committee or withdrawal of an exemption by the Bargaining Council.
- (9)** The Independent Exemption Body shall hear and decide and inform the applicant and the Bargaining Council as soon as possible and not later than 30 days after the appeal has been lodged against the decision of the exemption committee.
- (10)** No representative, office-bearer, or official of a trade union or employer's organizations party to the Bargaining Council, may be a member of, or participate in the deliberations of, the Independent Exemptions Body established by the Bargaining Council.
- (11)** When considering an application the Exemptions Committee or the Independent Exemptions Body whichever the case may be, must consider, in addition to sub clause 5, the following:
- (a)** Whether the granting of the exemption or appeal will prejudice the objectives of the Bargaining Council or contravene the provisions of any labour legislation or Collective Agreements;
  - (b)** The circumstances prevailing in the Private Security Sector as a whole likely to be affected by the application and/or the interest of the industry regarding unfair competition, collective bargaining, potential for labour unrest and increased employment;
  - (c)** the nature and size of the business in respect of which the application is made;
  - (d)** whether the duration of the exemption or appeal is for a limited or specified period;
  - (e)** any representations made by the employees likely to be affected by the application and interest of employees as regards exploitation, job preservation, sound conditions of employment, possible financial benefits, health and safety of workers and infringement of basic rights;



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- (f) whether the business strategy and plan presented by the applicant demonstrates that the granting of the exemption will make a material difference to the long-term viability of the business in respect of which the exemption or appeal is sought;
  - (g) whether a refusal to grant an exemption or appeal will result in undue financial hardship to the applicant; financial instability, impact on
  - (h) productivity, future relationship with the employees' trade union and operational requirements;
  - (i) whether the granting of the exemption or appeal will undermine collective bargaining and be likely to cause undue financial hardship to the employees affected.
  - (j) whether the granting of the exemption or appeal will impact negatively on parity agreements; and
  - (k) whether the granting of the exemption or appeal will impact negatively on local competitors who are complying with a Collective Agreement; and
  - (l) whether the employees or their representatives have been consulted and their views recorded, and/or any agreement reached between the applicant and the workforce.
  - (m) Any other relevant supporting data and financial information as prescribed by the Bargaining Council and supplied by the Applicant.
- (12)** In the event of the Independent Exemptions Body granting, partially granting or refusing to grant the appeal, the applicant shall be informed in writing of the reasons for the decision within 21 days from the date of the decision.
- (13)** The decision of the Independent Exemptions Committee is final and binding upon the applicant and the Bargaining Council.
- (14)** If an exemption or appeal is granted or partially granted, the Exemption Committee or the Independent Exemptions Body, shall issue a certificate, signed by Secretary, containing the following particulars:

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- (a) The full name of the applicant(s) or enterprise concern;
  - (b) The trade name;
  - (c) The provisions of the Agreement from which exemption or appeal has been granted;
  - (d) The period of which the exemption or appeal shall operate;
  - (e) The date of issue and from which day the exemption or appeal shall operate;
  - (f) The condition(s) of the exemption or appeal granted; and
  - (g) The area in which the exemption or appeal applies.
- (15)** An employer to whom a certificate has been issued shall at all times have the certificate available for inspection of the workplace.
- (16)** The Secretary must maintain a register of all exemption and appeal certificates granted, partially granted or refused.
- (17)** The Exemption committee will meet at least once every calendar month or as agreed.
- (18)** Committee member(s) should disclose if there is any conflict of interest when an Exemption application is received or considered. The member(s) then need to recuse themselves from that particular application;
- (19)** The panelist of the exemption committee are reminded of the to Code of Conduct, clause 21, as adopted by Council which address the recusal as a panelist should any conflict of interest exist

**APPEAL**

- (20)** In the event of a decision to grant/vary/refuse or withdraw an exemption, the affected party(ies) and/or their representative(s) shall have the right to appeal in writing against the decision of the Exemption committee.
- (21)** An Independent Appeal Body ("IAB") will be appointed by the NBCPSS.
- (22)** An appeal to the IAB must be sent in writing within 21 days of the applicant being notified of the decision. The notice of appeal must set out the grounds in which the applicant's appeal is based.
- (23)** The notice of appeal must:
  - a. Set out the name and contact details of the party lodging the appeal;
  - b. Provide a summary of the grounds for the appeal;



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- c. Identify the provisions of the Council Main Collective Agreement to which the exemption application relates.
- (24)** The following documents must be attached to the notice of appeal:
- A copy of the decision of the exemption committee and the reasons for their decision.
  - A copy of the original exemption application and annexures.
  - Copies of any notices, letter, affidavits, or any other documents handed to the applicant.
- (25)** If any of the documents referred to above are not in the possession of the party lodging the appeal, the notice of appeal must:
- Specify which documents should be attached but are not attached.
  - Set out why the documents are not in the possession of the party lodging the appeal.
- (26)** The applicant may attach to its notice of appeal written submissions on any issue raised by the exemption committee.
- (27)** An exemption appeal is a reconsideration of the merits of the original exemption application and may involve a rehearing of the merits of the original exemption application.
- (28)** The IAB must consider:
- Any representations and evidence considered by the Council;
  - The decision made and the reasons for that decisions;
  - Any additional representations submitted by the applicant or any other party;
  - Any other evidence placed before the IAB.
- (29)** In addition to above mentioned criteria, the IAB must consider:
- The financial hardship of the applicant for exemption;
  - The potential impact an exemption may have on the collective bargaining process;
  - Whether alternatives to exemption were considered or implemented;
  - The need to avoid retrenchments;
  - Any other factors relevant to the particular exemption application
- (30)** The IAB may:
- Confirm, vary or set aside the decision or application
  - Make any other decision that the Council, Office or Exemption committee could have made.





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Signed at Midrand on this the 9<sup>th</sup> day of Oct 2020

Christiaan Oelofse  
Name and Surname

[Signature]  
General Secretary- Signature

Signed at Midrand on this the 9<sup>th</sup> day of Oct 2020

[Signature]  
Chairperson- Signature

Anna D Mashigo  
Name and Surname- Chairperson