

## **37. EXEMPTION AND APPEAL CRITERIA**

- 37.1.** Any employer falling within the scope of the Council may apply in writing to the Secretary of the Council in the applicable format provided, for the Executive Committee to consider exemption from collective agreements concerning subject matters herein.
- 37.2.** The Executive Committee whom shall consider such application and make a decision to: -
- 37.2.1. Grant the exemption unconditionally;
  - 37.2.2. Grant the exemption on any such conditions as they deem appropriate, where necessary;
  - 37.2.3. Refuse the exemption;
  - 37.2.4. Request further information and/or representations from the applicant or any other interested person or party in the matter: Provided that the applicant shall be granted an opportunity to deal with any information or representations made, before a decision is made in terms of clauses 37.2.1 to 37.2.3 above.
- 37.3.** The Executive Committee may determine its own procedures for conducting its affairs in terms of this Council's Constitution.
- 37.4.** The Council furthermore established an Independent Appeals Board to consider all appeal applications regarding exemption applications from collective agreements concerning subject matters herein that were dealt with by the Executive Committee in terms of clause 37.2.2.above.
- 37.5.** The Independent Appeals Board must determine its own procedures for –
- 37.5.1. conducting its business except that its functions may not be delegated; and
  - 37.5.2. considering applications for exemptions, which must include a procedure for:-
    - 37.5.2.1. enabling it to obtain representations from interested parties;
    - 37.5.2.2. ensuring that all applications for exemptions are preceded by consultations between employers and employees at which the merits and terms of the exemptions have been considered; and there has been full disclosure to each other on all information relevant to the consideration of the exemption;
    - 37.5.2.3. informing the applicants and the Executive Committee of its decisions;
    - and
    - 37.5.2.4. in the event of a refusal to grant any exemptions providing the reasons therefore.
- 37.6.** When considering an appeal application to an exemption, the application to the Independent Appeals Board shall have regard to the following:-
- 37.6.1. whether the executive committee refused to grant the requested exemption will result in undue financial hardship to the party making the application;
  - 37.6.2. the nature and size of the business in respect of which the exemption is made;
  - 37.6.3. any representations made by the employees likely to be affected by the exemption;
  - 37.6.4. the circumstances prevailing in the fishing industry as a whole or Chamber likely to be affected by the application; and
  - 37.6.5. whether the granting of the exemption will prejudice the objectives of the Council.
- 37.7.** Although the decision of the Independent Appeals Board reached will be final and binding, the decision is nonetheless still subject to review by the Labour Court in terms of The Act.