

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

HEAD OFFICE

Private Bag X16
MUSGRAVE
4062

Tel: (031) 201-8210
Fax: (031) 201-9788

461 King Dinuzulu Road
DURBAN
4001

E-mail: info@salgbc.org.za
Web-site: www.salgbc.org.za

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To: **All Conciliators and Arbitrators**

All Regional Secretaries and Case Administrators:

Gauteng/Johannesburg/Tshwane Division	Mrs. C Manda	(011) 394-6517
Eastern Cape Division	Mr. M Bodlani	(041) 581-3648
KwaZulu-Natal/eThekweni Division	Mr. V Nzuza	(031) 201-9752
Western Cape/Cape Metro Division	Mrs. W Brink	(021) 917-1145
Northern Cape/Free State Division	Mr. T Mqobongo	(053) 831-3608
North West/Mpumalanga/Limpopo Division	Mr. E Shelembe	(012) 342-7015
SALGA	Mr. R Nolutshungu	(012) 369-8001
SAMWU	Mr. W Theledi	(011) 492-2831
IMATU	Mr. J Koen	(012) 460-8427

Dear Sir/Madam

Practice Note 1/2013

SALGBC COMPLIANCE WITH ACCREDITATION REQUIREMENTS OF THE CCMA

The accreditation criteria of the SALGBC, to perform dispute resolution functions are set out in Sections 127(4) (a) to (g) of the LRA.

The CCMA in re-accrediting this Council for the period 1 June 2013 to 30 November 2014 has placed the council on terms to improve the following efficiencies or statutory requirements:

1. Conciliation must be Scheduled and/ or held within 30 days.

Section 135(2) stipulates that the CCMA must attempt to resolve the dispute within 30 days. Similarly clause 12.7 of the SALGBC constitution states: *"The appointed conciliator must attempt to resolve the dispute through conciliation within 30 (thirty days) of the date the council received the referral. The parties may extend the 30 days."*

In order to comply with this strict mandatory prescription the conciliators are urged to:

- To lean against frivolous postponements.
- To consider whether IMATU, SAMWU, SALGA (including the municipality) could have found a replacement representative to avoid a delay in the conciliation of the dispute.
- To consider whether the request for postponement is a delaying tactic.
- To consider whether poor preparation, including a lack of a proper mandate by IMATU, SAMWU or SALGA, is a good reason for postponement.

In order to comply with the Constitution of the SALGBC, the office of the General Secretary urges IMATU and SAMWU, the trade union parties who refer approximately 70 percent of the disputes to the council, to ensure the referral is **complete and accurate**, without any defect/s. Incomplete (defective) referrals can lead to unnecessary delays in scheduling the conciliation or jurisdictional issues being raised by a respondent municipality at conciliation. This invariably will result in the 30 day period being exceeded or compromised. **Only once it is considered a proper referral, does the 30 day period commences.**

The Council staff must comply and ensure that a conciliation hearing is scheduled within 30 days of the date of receipt of a complete referral except if the referral is considered defective, either in terms of Section D of the Main Collective Agreement, the relevant provisions of the Councils Constitution or the LRA.

2. Settlement Rates

The settlement rates at conciliation in the SALGBC are very poor. In the last financial year less than 6% of disputes were resolved at conciliation.

The Council Secretariat urges the *Parties* to the council to explore, exhaust or act in good faith to seek a settlement at the conciliation. Representatives of the *Parties* at divisional level must ensure that they are properly prepared and having a proper mandate to seek settlement at conciliation.

The CCMA benchmarks for settlement rate are:

- 70% for all disputes of right for which a council is accredited should be settled.
- 50% for enforcement disputes referred to the council in terms of section 33A of the LRA.

3. Postponements and Turnaround Times at the Arbitration stage

The CCMA benchmark is that the arbitration should be set down and completed within 60 days of the council having received the arbitration referral.

The CCMA has set a benchmark that there must not be more than six percent (6%) of hearings which are postponed or adjourned. The SALGBC falls short of this benchmark.

The previous circular 7/2012 and 8/2012, issued by the SALGBC must be complied with.

4. Awards and Rulings must be issued within 14 days

At least 20 % of the awards in the SALGBC are rendered late which the CCMA finds unacceptable.

The SALGBC introduced a higher daily rate and an award fee of R600 in 2008, in an endeavour to incentivize and ensure the prompt rendering of an award. The increased tariffs were also introduced as a result of complaints from panelists regarding a low fee.

The parties (SALGA, SAMWU and IMATU) at the Executive Committee meeting ,held on the 17 September 2013, of the Central Council adopted a revised **financial penalty for late awards** that comes into effect with all new appointments and re-appointments which is as follows:

“The imposition of a 10% penalty deduction per day against the Arbitrator’s daily total fee (excluding travel and accommodation) be introduced when the next panel of Commissioners is appointed for the 2014 period, where an Arbitrator delivers an award outside the prescribed 14 day period. The fee policy must be accordingly amended and new contracts must be issued to all panellist in the various Panel of Conciliators and Arbitrators.

Further, the Arbitrator shall have the recourse to apply for an extension of period to the SALGBC to deliver the said award where they foresee they will be out of time.”

The revised **financial penalty** is intended to ensure that the awards are rendered on time as per the LRA and also protect and prevent the SALGBC from loosing its accreditation as a dispute resolution body with the CCMA.

The CCMA has placed a SALGBC panelist, who is also a part time CCMA commissioner, on strict terms to render the awards within 14 days, failing which the panelist may have to be removed from the SALGBC panel, so that the Council complies with its accreditation requirements.

5. Quality of Awards:

To ensure good quality awards and the award is capable of being enforced the following guideline should be observed:

5.1 The amounts must be clearly specified, to which party the amount must be paid to and by which date. The following examples are cited as a guide.

Example 1: The SALGBC must be paid an amount of R10,000 being the wasted costs of the arbitration by 30 August 2013.

Example 2: The ABC municipality is ordered to reinstate Mrs. X to 1 March 2013 and is ordered to compensate or back pay Mrs. X the amount of R 130,131, payable by not later than 30 April 2013.

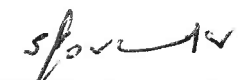
- 5.2 The SALGBC appointed arbitrator had the necessary jurisdiction to arbitrate the dispute in terms of the LRA and/or jurisprudence. The CCMA during certification or enforcement proceedings may reject awards where an arbitrator incorrectly assumed jurisdiction. For instance, in automatically unfair dismissals where there was no consent from both parties in writing.

The SALGBC has complied with the CCMA request and has appointed CCMA part-time commissioners (over 90%) on its various Panel of Conciliators and Arbitrators. The part-time CCMA commissioners achieve better results in the CCMA in comparison to the SALGBC.

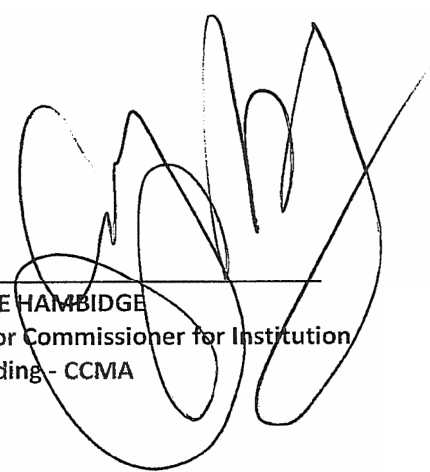
The office of the General Secretary appeals to:

- All panelists to strive and achieve the above efficiencies.
- Parties in the Division must avoid postponements or delays at conciliation and arbitration.

The representatives of SALGA, SAMWU and IMATU at Divisional level are advised to comply with this circular, which was endorsed by **your** parties at National Level.



SS GOVENDER
General Secretary of the SALGBC



MS. E HAMBIDGE
Senior Commissioner for Institution
Building - CCMA