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VAT No.: 4470117989

11<sup>th</sup> July 2016

**Attention:** All MANCO Delegates

Dear Members.

**SUBJECT: FACTUAL BACKGROUND WITH REGARD TO THE PROCESSING OF THE REGISTRATION AND ADMINISTRATION EXPENSES COLLECTIVE AGREEMENT**

1. We refer to the above mentioned matter.
2. The Manco of 29 June 2016 resolved to apply to the Minister to extend the period of operation of the Renewal and Extension of the Registration and Administration Expenses Agreement to non-parties for a further period of 12 months from the date of publication.
3. The same Manco further resolved that the General Secretary conduct a postal ballot of the Council in terms of section 10 (3) of the MEIBC Constitution. The General Secretary circulated the ballot as directed on 1 July 2016.
4. Neasa in a letter dated 4 July 2016 to the council argued that –

***“The Management Committee of the MEIBC, on 29 June 2016, resolved for an AGM to be held on the 25 August 2016. Therefore the date of the next AGM is within the 3 months period as contemplated in clause 10(3). It is therefore not constitutionally permissible to have a postal vote at this stage as this particular vote must be dealt with at the AGM on 25 August 2016. In light of this, we request that the postal vote is withdrawn as a matter of urgency.”***

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Dispute

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5. Numsa in response requested the President in letter dated 5 July 2016 to schedule a Special General meeting to ***“vote by show of hand in respect of resolutions taken on 29 June 2016 at the MANCO, which resolutions authorised and empowered the Office of the General secretary to make submissions to the Department of Labour for renewal and extension of the period of operation of the Registration and Administration Expenses Collective Agreement for a further period of 12 months from the date of publication thereof.”***
  
6. Numsa presented the following motivation for their request: -
  - 6.1. The financial crisis faced by the Council;
  
  - 6.2. The parties have agreed to a date for an AGM to be held on 25th August 2016, but believe that this matter cannot wait for a further period of two months without submitting the submissions to the department;
  
  - 6.3. It further submitted that the date agreed by parties might be postponed for a further period because such agreement on the AGM date depend on the agreement between parties in respect of the allocation of seats since the arbitration award have been handed down;
  
  - 6.4. This agreement in respect of non-parties expired on 30 June 2016 and this has reduced the financial position of the Council drastically in respect of its operations and other expenses;
  
  - 6.5. Any further delay in not making submissions to the Department of Labour, might force the Council to close down its door to the members because only parties to the agreement will be compelled to comply and their contribution is insufficient to service the entire operation of the Council”.
  
7. On 6 July 2016 the President in response to the request issued a notice for a Special General Meeting to be held on Friday 15 July 2016 in terms of sections 8 (1) and 8 (5) of the Council’s constitution. The purpose of this meeting as stated in the Presidents notice dated 6 July 2016 is ***“to request all parties (“employers and trade unions”) who are party to the Council to vote in favour or against the resolutions for the extension***

***of the period of operation for Registration and Administration Expenses Collective Agreement”.***

8. On 8 July 2016 Neasa in an email to the General Secretary objected to this process and detailed the following:

***“The invitation to a special AGM to be held on 15 July 2016 refers. NEASA is not opposed to the convening of a special AGM where the need for it arises, we are however concerned that the invitation sent out by the President is not constitutionally compliant. Even though clause 8(1) of the constitution indeed does make provision for the convening of special meetings, it seems that clause 10(3) is prescriptive in respect of convening a special general meeting for purposes of a vote in terms of clause 10(3).***

***The last sentence of clause 10(3) reads as follows: “Provided further that a vote may also be taken at a Special General Meeting where the Management Committee so decides”. It is clear from the above extract that a special general meeting for purposes of a 10(3) vote can only be convened upon a resolution of the Management Committee and not on request of a party or at the discretion of the President as contemplated in clause 8(1).***

***It is common cause that the Management Committee did not resolve to convene a special general meeting for purposes of a 10(3) vote as required by the constitution. We therefore propose, in order to be constitutionally compliant, that the invitation to the special general meeting for 15 July 2016 should be recalled and that a MANCO should be convened in order to take the required resolution.”***

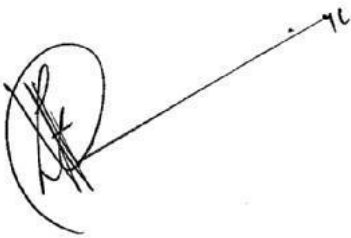
9. It is this objection that we aim to deal with. In response to this recent objection we state:
- 9.1. The legal approach presented by Neasa’s is destined to be over-technical and designed to frustrate the process. This is not necessarily a productive approach given that the substantive result of any of the approaches would serve to have the representatives of the council vote on the resolutions of Manco. We do not accept the legal position adopted by Neasa and reserve our rights to deal with these issues at an appropriate forum.

9.2. However we acknowledge that Neasa is in agreement with the proposal of having a Special General Meeting and take comfort in the positive approach adopted. The urgency for presenting the agreement to the Department of Labour for the renewal of the period of extension to non-parties remains urgent and seems to be acknowledged by Neasa. The motivations provided by Numsa in their letter of 5 July 2016 remain valid and are a realistic projection of what may happen.

10. Your attention to the matter will be appreciated.

11. For any clarity, contact the office of the General Secretary on 011 639 8000.

Yours faithfully,

A handwritten signature in black ink, consisting of a large, stylized initial 'T' followed by a surname, with a long horizontal line extending to the right.

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Thulani Mthiyane

**General Secretary**