



AUGUST 2020
**DRC DIRECTIVE FROM THE DISPUTE
RESOLUTION MANAGEMENT BOARD OF THE DRC
(DISPUTE RESOLUTION CENTRE)**

URGENT DIRECTIVE IN RESPECT OF ACCESS TO THE DISPUTE RESOLUTION CENTRE (DRC)

This Directive serves to replace previous DRC Directives that regulated accesses to the Dispute Resolution Centre - DRC and will become effective immediately upon publication, up and until DRC operations may be normalized and the restrictions set out in the Regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2002 provide otherwise.

1. These Directives are issued in conformity with all Directives and Regulations, particularly those issued by the Minister of Employment and Labour and the Minister of Public Service and Administration, issued in terms of section 27(2) of the Disaster Management Act and in terms of the authority vested in the DRC MANAGEMENT BOARD and will become effective immediately upon publication.
2. These Directives set out how, and under what conditions, matters enrolled in the DRC will be dealt with until such Directives are repealed. These Directives must be read together with the Rules for the Conduct of Proceedings before the DRC, (hereinafter referred to as the "DRC Rules") and all applicable statutes.
3. These Directives are grounded in the need to ensure the health and safety of DRC staff, users and our Stakeholders and in the light of the rampant spread of the Covid-19 virus across South **Africa**. The President of the Republic of South Africa may announce changes to the levels of lockdown, the extent to which the need for social distancing and other health and safety regulations will remain in place require strict efforts to minimise exposure to the infection.

4. REFERRING DISPUTES TO THE DRC

- 4.1. Subject to the DRC Covid-19 measurements and protocols, parties **may** visit any of the DRC offices for purposes of making enquiries, submitting, collecting and serving of referral forms and other related documents, subject to complying with the DRC safety Covid-19 measurements and protocols. Until directed otherwise by the DRC, parties **may** submit physical copies (hard copies) referral forms and other documents to the DRC.
- 4.2. Parties may also serve completed referral forms and other documents by means of electronic mail , i.e. e-mail, facsimile etc.(Rule 7 of the DRC Rules allows, amongst other ways, for service of referrals by means of electronic mail (hereinafter referred to as “e-mail”) and facsimile. (See *E-mail /Contact details of the DRC Regions below*)
- 4.3 The use of any electronic signature (as contemplated i.t.o. s13 of the Electronics Communication and Transactions Act 25 /2002,) or electronic confirmation process, will be accepted if such proof can be stored, retrieved and printed when needed.

5. CONCILIATION HEARINGS

Unnecessary physical contact among persons must be avoided. Therefore, only hearings that are compliant with the requirements of this Directive will be set down for a physical hearing, unless agreed otherwise between the Parties and the DRC. The following applies to the resolution of disputes through Conciliation in terms of section 135 of the LRA.

- 5.1 Where possible, the resolution of disputes through Conciliation, subject to different conditions that may apply to conciliation hearings, may take place telephonically or through a digital online platform that is to the satisfaction of the DRC or the presiding Commissioner. The choice of the form of communication will also depend on that which is available to both parties and to the DRC.
- 5.2 In the event that the conciliation process could not take place within 30-days from the date of referral, and in the absence of any agreement reached by the Parties prior to the expiry of the 30-day period to extend this period, a certificate of outcome will be issued by the DRC and in terms of section 135(5) of the LRA.

- 5.3 Where Parties agree to settle the dispute the terms of the settlement agreement will, where possible, be recorded electronically and the settlement agreement will be sent to both Parties by electronic means for signature. Where one or more Parties do not have access to an electronic signature, the Parties and the Commissioner will agree on an acceptable way to record agreement on the contents of the settlement agreement and such record will be filed with the DRC.

6. APPLICATION PROCEEDINGS (E.G. CONDONATION, RESCISSION, VARIATION, LEGAL REPRESENTATION, ETC.)

- 6.1 The following Directive applies to interlocutory and other application proceedings.
- 6.2 Application proceedings, unless directed otherwise by the DRC or a Commissioner, will not be scheduled for oral hearings in an open hearing venue. Application proceedings will be dealt with in terms of written submissions i.e. in the format of application, reply (Notice of Opposition) and replying affidavit. All Applications and opposing application and reply must be supported by an affidavit.
- 6.3 In circumstances where oral evidence is required and one or more Parties are unable to access one or more form of electronic communication, the relevant DRC Managing Commissioner may direct that the matter be enrolled for oral evidence; either at the DRC's premises or a suitable external venue (e.g. employer premises), with preference to be giving to the former i.e. **DRC's premises**. The choice of venue will, however, remain in the discretion of the Managing Commissioner.
- 6.4 Where an application is made in the form of a statement without a signature, the DRC requires confirmation from the submitting party through electronic means such as SMS, WhatsApp, e-mail or any electronic method that is not in the public domain and that can be stored safely, retrieved and printed by the DRC, (SEE FURTHER RULE 32(10) OF THE DRC Rules.

- 6.5. Where a Ruling is issued by the Commissioner, this will be sent to the parties by electronic means. Where a party wishes to collect a physical copy of the Ruling, this will be permitted if Regulations and Directives issued in terms of section 27(2) of the Disaster Management Act allow for it and the DRC is satisfied that occupational health and safety requirements are in place.

7. ARBITRATION PROCEEDINGS AND INQUIRIES BY ARBITRATOR

The following Directive applies:

- 7.1 Prior to scheduling Arbitration hearings, the Parties may be directed to hold a pre-arbitration conference to reach consensus on those issues listed in DRC rule 21(2), and the following –
- 7.1.1 Whether the Parties are prepared to proceed with the arbitration hearing at the premises of the employer or the DRC, another acceptable venue, or by means of a video conferencing facility. If parties agree to a video conferencing facility, the parties must **attempt** to reach an agreement on the applicable video conferencing facility to be utilised for the arbitration proceedings, including the electronic/remote admission of evidence using the video conferencing facility. In the event that a witness does not have access to a video conferencing facility, an agreement on how the evidence will be presented.
 - 7.1.2 Should the parties not agree to the options set out in 7.1.1, the reasons for such non-agreement are to be included in the pre arbitration minute?
 - 7.1.3 Acceptance of shorter periods of notice of set-down, if required.
 - 7.1.4 The admission of evidence remotely and agreement on how such evidence will be presented.
 - 7.1.5 Admission of evidence by affidavit or by statement that may be confirmed, if so required by the Commissioner.
 - 7.1.6 Any other information the DRC or a Commissioner may require in order to exercise a discretion as to how the matter is to be dealt with and that will eliminate or limit the risk of physical proximity among the persons involved.
- 7.2 Agreements reached in terms of 7.1 must be recorded in writing and submitted to the DRC.

- 7.3 As per DRC Rule 20, the DRC may direct the requesting Party to deliver a statement of case that sets out the material facts upon which the Party relies and the legal issues that arise from the material facts; and may direct the responding Party to deliver an answering statement within a specified time period. Parties may also be requested to attempt to reach an agreement on what oral evidence may be delivered by statement, or where possible, by affidavit. Such statements or affidavits must be submitted electronically to the DRC seven (7) days prior to the scheduled date of the arbitration hearing, unless a shorter period of time is agreed to in writing by the Parties.
- 7.4 The DRC shall communicate with the Representatives via e-mail, or any other means available; or, in the absence of Representatives, with the individual Parties concerned and, having regard to the arrangements the Parties have made or are capable of making, exercise a discretion as to how the matter is to be disposed. The presiding Commissioner may give *ad hoc* Directives in this regard.
- 7.5 Where a party requires the presence of a witness, and the said party is entitled to administrative assistance from the DRC, a Commissioner may direct any party to be present and/or available on a time and date as determined by the Commissioner. This may only happen if the Commissioner is satisfied that the other requirements for a person to be served has been met.
- 7.6 Rule 37(5) allows for party who has brought the application for subpoena, to serve the subpoena on the witness and such service may be done electronically.
- 7.7 The DRC will keep a record of any instruction related to the subpoena and means by which the instruction was served on the witness.
- 7.8 Where an arbitration hearing is completed, the arbitration award will be sent to the Parties by electronic means within the timeframes stipulated by section 138 of the LRA. Where a party wishes to collect a physical copy of the award, this will be permitted if Regulations and Directives issued in terms of section 27(2) of the Disaster Management Act allow for this and the DRC is satisfied that occupational health and safety requirements are in place.

7.9 The above will also apply to an Inquiry by Arbitrator process, if applicable.

8. CASES WHERE PARTIES APPEAR IN PERSON (PHYSICAL ATTENDANCE)

In those matters where a Party appears in person, the following applies:

- 8.1 The DRC shall abide by all Regulations and Directives that are issued in terms of section 27(2) of the Disaster Management Act. Thus, it is only in terms of such Regulations and Directives (i.e. PPE's in place, venue sanitized etc.), that the DRC may convene physical hearings at one or more of its established premises and/or venues or at a venue agreed to by the Parties and the DRC in writing.
- 8.2 Representatives and Parties who are required to travel to the venues discussed in 8.1 above, must comply where applicable with any Covid-19 restrictions and regulations in place on the date of travel.
- 8.3 Anyone seeking access into the DRC buildings or the designated other venue to be utilised for a hearing, must submit to compulsory screening, must wear a face mask, must apply hand sanitizer, and must adhere to applicable social distancing rules.
- 8.4 Only the Parties and their Representative shall enter the DRC buildings or designated other venues. Where more than one person is a party to the dispute, the number of individuals allowed inside the premises or venue at a time will be determined by the Managing Commissioner or the presiding Commissioner, taking into consideration the size of the venue and the compulsory social distancing rules.
- 8.5 Should any Party object to have the matter dealt with under the conditions described above, that party must submit the notice of objection and reasons for such objection in writing and serve same on the other party and on the DRC. The presiding Commissioner or a Managing Commissioner, after consideration of the submissions and of possible reasonable alternatives, must decide whether the matter should proceed or be postponed.

9. PREFERRED COMMUNICATION

During the Covid-19 pandemic, the preferred method of all communication between the Parties and the DRC would be by means of electronic means. During a period when public access to the DRC offices or venues are restricted, all communication between the Parties and the DRC must be sent by electronic means where such communication may be printed out to be copied, or could be saved electronically. The DRC and the Parties will provide the respective e-mail addresses to be utilised for this purpose.

10. PROTOCOL TO BE FOLLOWED IN VIDEO CONFERENCE HEARINGS

Both parties need to agree to an arbitration hearing being dealt with by way of Video Conferencing. A Party requesting video conferencing shall be responsible to arrange the set-up of the video conferencing i.e. the dialed up link to the DRC /Commissioner and any other participate in the proceedings. Parties may also agree to a combination of both physical attendance and Video conferencing. Whilst section 138 of the LRA gives Commissioners a wide discretion in the manner in which arbitration hearing may be conducted, the DRC strongly recommends that the following protocol be applied for the orderly conduct of Video Conference Hearings:

- 10.1 The DRC is currently utilising the so-called Google Meets application.
- 10.2 Participants shall ensure that there is no ambient noise in the room which can interfere with the audio quality during the hearing.
- 10.3 In general, subject to any ad hoc Directives given by the presiding Commissioner and/or the DRC, the participants shall mute their microphones when not actually speaking.
- 10.4 The presiding Commissioner shall invite participants to speak and everyone shall be alerted to the Commissioner's directions in his regard.
- 10.5 Participants shall remain in the hearing and leave it only when the proceedings have concluded, or as directed by the presiding Commissioner.
- 10.6 The presiding Commissioner shall give instructions as to the recording of the proceedings.

10.7 Where the DRC, or presiding Commissioner, is not the host of the Video Conference and is thus not able to record the proceedings using its chosen online facility, the Party hosting the Video Conferencing session must record the session and submit the audio file at close of proceedings to a stipulated email address for retention by the DRC. A signed statement of confirmation that the recording has not been tampered with in any way must accompany the recording.

11. ALL NEW REFERRALS, PROCESSED DOCUMENTS, CORRESPONDENCE, E-MAILS AND OR APPLICATIONS, CAN BE SERVED ON THE DRC AT THE FOLLOWING EMAIL ADDRESSES:

- DRC.HO@mibco.org.za DRC HEAD OFFICE
- Jaco.Malan@mibco.org.za DRC DIRECTOR
- DRC.HV@mibco.org.za DRC HIGHVELD REGION
- DRC.NR@mibco.org.za DRC NORTHERN REGION
- DRC.WC@mibco.org.za DRC WESTERN AND EASTERN REGION
- DRC.KZN@mibco.org.za DRC KZN REGION



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