

## Mandatory Agreement also known as the 37(2)

### I call it the Prostitute of the Construction Industry

#### 37. Acts or omissions by employees or mandataries

- (2) The provisions of subsection (1) shall mutatis mutandis apply in the case of a [mandatary](#) of any [employer](#) or [user](#) except if the parties have agreed in writing to the arrangements and procedures between them to ensure compliance by the [mandatary](#) with the provisions of [this Act](#).
  
- (1) Whenever an [employee](#) does or omits to do any act which it would be an offence in terms of [this Act](#) for the [employer](#) of such [employee](#) or a [user](#) to do or omit to do, then, unless it is proved that -
  - (a) in doing or omitting to do that act the [employee](#) was acting without the connivance or permission of the [employer](#) or any such [user](#);
  - (b) it was not under any condition or in any circumstance within the scope of the authority of the [employee](#) to do or omit to do an act, whether lawful or unlawful, of the character of the act or omission charged; and
  - (c) all reasonable steps were taken by the [employer](#) or any such [user](#) to prevent any act or omission of the kind in question, the [employer](#) himself shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect thereof; and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.
  
- (3) Whenever any [employee](#) or [mandatary](#) of any [employer](#) or [user](#) does or omits to do an act which it would be an offence in terms of [this Act](#) for the [employer](#) or any such [user](#) to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the [employer](#) or [user](#).

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#### 41. [This Act](#) not affected by agreements

Save for the provisions of sections 10(4) and 37(2), a provision of [this Act](#) or a condition specified in any notice issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any term or condition of any agreement, whether such agreement was entered into before or after the commencement of [this Act](#) or before or after the imposition of any such condition, as the case may be.

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## Legal Definition of *Mandatory*

: a person to whom the power to transact business for another under a mandate is given

"user", in relation to plant or machinery, means the person who uses plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of, or any person employed in connection with that plant or machinery;

### **This begs the question:**

Which of these are mandataries?

- a. Clients OHS Agent
- b. Principal Agent, Architect, Engineer, Project manager, etc.
- c. Principal Contractor
- d. Sub-Contractor
- e. All of the above
- f. None of the above

## OHS-Act definition

"mandatory" includes an agent, a contractor or a subcontractor for work, but without derogating from his status in his own right as an employer or a user;

## Definition of *Mutatis Mutandis*

**1:** with the necessary changes having been made

**2:** with the respective differences having been considered

is a [Medieval Latin](#) phrase meaning "the necessary changes having been made" or "once the necessary changes have been made" it remains unnaturalized

- Mandatory or mandatory  
Tomatoes tomatoes????
- Is it mandatory for a PC to have a mandatory with a sub-contractor??
- Who is responsible for this mandatory? i.e who will be under the “hammer” if it is not there
- What goes into this mandatory?
- Regurgitation of the Act and CR’s?? as per H&S Spec and Safety plans currently??

# Give an example of when a mandatory agreement will be used in court

## 16. Chief executive officer charged with certain duties

- (1) Every **chief executive officer** shall as far as **reasonably practicable** ensure that the duties of his **employer** as contemplated in **this Act**, are properly discharged.
- (2) Without derogating from his responsibility or liability in terms of subsection (1), a **chief executive officer** may assign any duty contemplated in the said subsection, to any person under his control, which person shall act subject to the control and directions of the **chief executive officer**.
- (3) The provisions of subsection (1) shall not, subject to the provisions of section 37, relieve an **employer** of any responsibility or any liability under **this Act**.
- (4) For the purpose of subsection (1), the head of **department** of any **department** of State shall be deemed to be the **chief executive officer** of that **department**.