

# MANDATARY AGREEMENT

a.k.a. thé 37(2)

I call it the Prostitute of the Construction Industry

MANDATARY OR MANDATORY

TOMATOES ....TOMATOES ?????



IS A MANDATORY AGREEMENT  
MANDATORY?

# LEGAL DEFINITION OF MANDATARY

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

# OHS-ACT DEFINITION

"mandatary" 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;

# 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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## 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.



## SECTION 16(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.

## THE REASONABLE MAN TEST – THE “JURY”

(1) Whenever an employer does or omits to do any act which it would be an offence in terms of this Act for the employer or 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.

## 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.

## 10. GENERAL DUTIES OF MANUFACTURERS AND OTHERS REGARDING ARTICLES AND SUBSTANCES FOR USE AT WORK

(4) Where a person designs, manufactures, imports, sells or supplies an article or substance for or to another person and that other person **undertakes in writing** to take **specified steps sufficient** to ensure, as far as is reasonably practicable, that the article or substance **will comply with all prescribed requirements** and will be safe and without risks to health when properly used, the **undertaking shall have the effect of relieving the first-mentioned person from the duty imposed upon him** by this section to such an extent as is reasonable having regard to the terms of the undertaking.

# 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

## Section 37 (3)

(3) Whenever any employer or mandatory 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.



"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 MUST HAVE A  
MANDATORY AGREEMENT

- a. Client to OHS Agent
- b. Client to Principal Agent, Architect, Engineer, Project manager, etc.
- c. Client to Principal Contractor
- d. PC to Sub-Contractor
- e. PC to H&S Consultancy
- f. All of the above
- g. None of the above