

GOVERNMENT NOTICE
DEPARTMENT OF LABOUR

No. R. 1196

16 November 2001

BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997:

AMENDMENT OF SECTORAL DETERMINATION 1: CONTRACT CLEANING SECTOR, SOUTH AFRICA

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of Section 6(1) of the Basic Conditions of Employment Act, No 75 of 1997, hereby amend Sectoral Determination 1: Contract Cleaning Sector, South Africa, published under Government Notice R. 622 of 14 May 1999, in accordance with the schedule hereto and fix the 1 December 2001 as the date from which the said amendment shall be binding.

M M S MDLADLANA MP
MINISTER OF LABOUR

SCHEDULE

Clause 2 –

Insert the following definitions alphabetically in the appropriate places:

"Act" means the Pension Funds Act, 1956, as amended, and the regulations made in terms of that Act.

"Actuary" means the Actuary appointed in terms of the Rules of the Fund.

"Administrators" means NBC Negotiated Benefits Consultants (Pty) Ltd and such other administrator of the Fund's investments or the disposition of its benefits as may be appointed by the Board from time to time in accordance with the Act and the Rules.

"Board" means the Fund's board of trustees appointed or elected in accordance with its Rules and the Act.

"Contribution" means the amount payable monthly to the Fund by each Employer in the Contract Cleaning Sector in respect of each of his/her employees whose conditions of employment are governed by Sectoral Determination 1: Contract Cleaning Sector.

"Eligible Employee" means any person (other than an independent contractor, Temporary Employee or an employee who is employed on a casual basis) who -

- a) is employed by the Employer and works for more than 24 hours per month in the Contract Cleaning Sector and is defined as an employee as per the Sectoral Determination applicable to the Contract Cleaning Sector; and
- b) receives or is entitled to receive any remuneration; and
- c) has not reached the Normal Retirement Age as defined in the Rules, and
- d) is not a member of a fund providing retirement benefits which was set up in terms of an agreement under the Labour Relations Act, 1956 or in terms of a collective agreement concluded in council in terms of the Labour Relations Act (Act No. 66 of 1995).

"Employer" means any person who employs or provides work for -

- a) any person in the Contract Cleaning Sector and remunerates him/her or who permits any person in any manner to assist him/her in the carrying on or conducting of his/her business; and employ and employment shall have corresponding meaning, and
- b) any person in another sector performing functions or services similar to those performed in the Contract Cleaning Sector as defined in the Sectoral Determination applicable to the Contract Cleaning Sector.

"Fund" means The Contract Cleaning National Provident Fund.

"Fund Salary" means the Member's basic annual salary or wages, adjusted on a basis agreed to from time to time between the Employer and the Member; provided that for the purposes of the Fund, Fund Salary shall be determined on the first day of each month of membership of the Fund.

"Member" means an Eligible Employee who, having been admitted to membership of the Fund in accordance with the Rules, has not ceased to be a Member in terms of the Rules.

"Previous fund" shall mean any fund in which an Employer participated prior to becoming an Employer in the Fund and from which money was transferred in terms of Section 14 (l) of the Act.

"Rules" means the Rules of the Fund and such alterations as may at any time be applicable.

"Temporary Employee" means

- a) an employee who has been contracted to fill the position of an employee on sick leave, maternity or annual leave, or
- b) an employee who has been contracted to work on a specific site where the contract with the Employer's client is for a period of not more than one month.

2. Clause 7(1)(a)

Delete the words provident or pension fund.

3. Insert the following after clause 30 -

31. Contract Cleaning National Provident Fund

1) Establishment and Objective of the Fund

A fund known as The Contract Cleaning National Provident Fund is hereby established.

The Fund shall be governed by its Rules and regulations in force from time to time.

The object of the Fund shall be, in terms of the Rules, to provide retirement and other benefits for employees and former employees of the Employers, and benefits in the event of their death and disability.

2) Appointment of the Interim Board of Management

The Director-General shall call for and facilitate the appointment of the interim board of management in consultation with the participants to the Fund in accordance with the agreed criteria.

The interim board of management shall be invested with the authority to -

- a) Register the Fund under the of the Pension Funds Act;
- b) Seek approval of the Fund by the Financial Services Board and the South African Revenue Services; and
- c) determine and settle the Rules of the Fund in accordance with the provision of the Pension Funds Act.

3) Membership

3.1 Employer Participation

- a) Subject to (b) below, any Employer in the Contract Cleaning Sector shall participate in the Fund with effect from the commencement of the Fund or the commencement of the Employer's business in the Contract Cleaning Sector, whichever is the later.

- b) An Employer who, in respect of all his/her employees at the date of publication of this amendment, already participates in a retirement fund that -

- (i) complies with the requirements of the Act;
- (ii) has been approved by the Commissioner for the South African Revenue services;
- (iii) provides benefits equal or better in all respect to those provided by the fund;

may, with the agreement of a majority of his/her employees, apply in writing to the Board for exemption from contributing to the Fund in accordance with the Rules, provided that;

- (aa) the Board may only grant such exemption if, after consultation with the Actuary and due consideration of such

documents and information in respect of that Employer's fund as it requires, it is of the opinion that the benefits provided by that Employer's fund are in all respect, equal to or better than those provided by the Fund;

- (bb) the Board may grant exemption on such terms and conditions, and for such duration, as it may determine and, upon expiry of the period of exemption or, if sooner, non-compliance with any of the terms or conditions of exemption, the Employer concerned shall forthwith commence contributing to the Fund in respect of his/her employees subject to a new application for exemption as aforesaid.
- c) Any application by an Employer for exemption shall in no way whatsoever affect the Employer's obligations, nor his/her employees' rights, with regard to the payment of all Contributions and benefits in terms of the rules of that Employer's retirement scheme and/or his/her employees' conditions of employment.

3.2 Member Eligibility and Participation

- a) Eligibility - All Eligible Employees will be able to join the Fund from the date specified in the Rules.
- b) Participation - Participation shall be compulsory for all Eligible Employees, who immediately prior to and after the commencement of the Fund, were in Service of the Employer.
- c) Commencement - Participation in the Fund in respect of all Eligible Employees shall, subject to the provisions in paragraph (a), commence on -
 - (i) the date of commencement of the Fund; or
 - (ii) the date of their becoming Eligible Employees, which ever is the later date.
- (d) Continuation of participation -
 - (i) If a Member ceases to be an Eligible Employee for reasons other than retirement, withdrawal from Service or death, the employee's participation in the Fund shall cease on the first day of the month following or coinciding with the date on which the employee ceases to be an Eligible Employee; provided that a Member whose membership of the Fund ceases in terms of this clause and who is re-employed in the Contract Cleaning Sector within three months prior to him receiving his benefits shall be deemed to have remained in Service and his membership of the Fund shall continue.
 - (ii) The Administrator shall calculate the Member's benefit in terms of the Rules as at the date on which the Member ceases to be an Eligible Employee. Such amount shall be retained in the Fund until it becomes payable in terms of the Rules, or shall be transferred to an approved pension fund, approved provident fund or approved retirement annuity fund for the benefit of the Member.
 - (iii) Given the provisions of the Rules, all Members shall be obliged to remain Members until their retirement, withdrawal from Service or death, as the case may be.

4) Contributions

- a) Commencement of contributions - Contributions payable to the Administrator shall commence once the notification of registration and approval of the Fund has been gazetted.
- b) Contributions by the Member

- (i) Each Member shall make a monthly Contribution to the Fund throughout his/her Service towards his/her retirement benefits at the rate of four (4) per cent of the Member's Fund Salary or as amended by the Board of Trustees from time to time.
 - (ii) The Contributions referred to in (i) above shall be deducted from the Member's monthly wages and reflected through the wage records monthly.
 - (iii) The Member's Contributions shall be paid to the Fund by the Employer within seven (7) days after the end of the month in respect of which the Contributions were made.
 - c) Contributions by the Employer
 - (i) The Employer shall make a monthly Contribution in respect of each Member in its Service at the rate of four (4) percent of the Member's Fund Salary, to be allocated in terms of the Rules.
 - (ii) Contributions by the Employer must be paid to the Fund within seven (7) days after the end of the month in respect of which the Contributions were made.
 - (iii) Every Employer shall forward monthly to the Administrator a schedule of the total Members' and Employer's Contributions for the relevant month, so as to reach the office of the Administrator not later than the 15th day of the month following that in respect of which deductions were made.
- 5) Administration of the Fund
 - a) The Fund shall be managed by the Board and administered by the Administrator who shall administer the Fund on the instructions of the Board.
 - b) The Board may delegate such functions as the Administrators agree to perform in respect of the Fund.
 - c) A copy of the Rules and any amendment thereto shall be available for inspection by any employer or employee at the office of the Administrator.