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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 1331

25 October 2002

BASIC CONDITIONS OF EMPLOYMENT ACT, NO.75 OF 1997**AMENDMENT OF SECTORAL DETERMINATION 6: PRIVATE SECURITY
SECTOR, SOUTH AFRICA**

I, Membathisi Mphumzi Shepherd Mdladlana. Minister of Labour, hereby in terms of section 56(1) of the Basic Conditions of Employment Act, No.75 of 1997 amend Sectoral Determination 6: Private Security Sector, South Africa, published under Government Notice R 1250 of 30 November 2001, in accordance with the schedule hereto and fix the first Friday after the date of publication of this notice as the date from which the said amendment shall be binding.

M M S MDLADLANA, MP
MINISTER OF LABOUR

SCHEDULE

The Private Security Sector Sectoral Determination: Sectoral Determination No 6 is amended by the insertion of the following clauses:

For the purposes of clauses 24 to 29 the following definitions will apply:

"**Act**" means the Basic Conditions of Employment Act, 1997
(Act No.75 of 1997);

"**administrator**" means an approved administrator in terms of section 13B of the Pension Funds Act, as amended from time to time and who has been appointed by the trustees of the Fund in terms of the Pension Funds Act and the Fund Rules to administer the Fund;

"**benefits**" shall mean the death, disability and funeral benefits provided to members of the Fund in terms of the Fund Rules;

"**board**" means the board of trustees appointed or elected in accordance with its rules and the act

"**employer**" means any person (including created entities, corporate or unincorporate) other than a person who is exempted in terms of clause 1(2) of the determination, who employs or provides work for any person in the Private Security Sector and remunerates him or permits any person in any manner whatsoever to assist him in the carrying on or conducting of his business and "employ" and "employment" shall have corresponding meanings.

"**establishment**" means the primary place from which an employer conducts business;

"**Fund**" means the Private Security Sector Provident Fund, which is governed by the Fund Rules and the Pension Funds Act;

“Fund commencement date” means, notwithstanding the date of promulgation hereof, 1 November 2002;

“Fund Rules” means the rules of the Fund, as amended by the trustees of the Fund from time to time and registered with the Registrar of Pension Funds in terms of the Pension Funds Act;

"manager" means an employee who is charged by an employer with the overall supervision over, responsibility for and direction of the activities of an establishment or part of an establishment and the employees engaged therein, but does not include any employee in the same establishment who relieves or acts for a manager during the employees absence;

“member” means an employee who, having been admitted to membership of the fund in accordance with the rules of the fund, has not ceased to be a member of the fund in terms of the rules;

“Pension Funds Act” means the Pension Funds Act No. 24 of 1956, as amended;

"premises" means any land and any building or structure above or below the surface of any land and includes any vehicle, aircraft or vessel;

“Private Security Sector”, means the sector in which employers and employees are associated for the purpose of guarding or protecting fixed property, premises, goods, persons or employees, including monitoring and responding to alarms at premises which are guarded by persons or by electronic means.

"Fund Salary" means the salary based on the employees monthly wage calculate as follows;

A X B X 4.333

where

A = employee's ordinary hourly rate of pay

B = the maximum number of hours an employee is permitted to work at the ordinary rate of pay as per Sectoral Determination 6 of 2001 or such lesser number of hours as any be agreed in writing between the employer and the employee or any reduced maximum ordinary hours an employee may work that may be legislated in terms of a Sectoral Determination or the Basic Conditions of Employment Act, whichever is applicable.

“trustee” or “trustees” means a trustee or the trustees or their alternates elected or appointed in terms of the Fund Rules;

24. PRIVATE SECURITY SECTOR NATIONAL PROVIDENT FUND

1. Membership

- (1) Each employee, subject to the exclusions in clause 1 (2) and the Fund Rules, falling within the scope of this Determination must, on or after the coming into operation of this Determination, become a member of the Private Security Sector Provident Fund.
- (2) If an employee who has become a member of the Fund ceases to fall within the scope of this Determination owing to the employee ceasing to be employed in the Security Services Sector the employee shall cease to be a member of the Fund and the payment of withdrawal benefit will be made to the member as provided for in the Fund Rules. The employee retains the right to withdraw his/her benefits from the fund in terms of the fund rules.

25. CONTRIBUTIONS

- (1) Contributions shall be made by employers and employees as from the date of coming into operation of this Determination as specified hereunder.

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- (a) The employer shall each month deduct from the earnings of each employee in respect of such month, or part thereof, an amount equal to 5 % (five per cent) of the employee's Fund Salary, being contributions to the Provident Fund.
- (b) The employer shall each month contribute in respect of such month, or part thereof, an amount equal to 5 % (five per cent) of the employees' Fund Salary being the employer's contributions to the Provident Fund.
- (c) When an employee is on approved leave with full pay, or with less than full pay, the employee shall contribute to the Fund in accordance with 2(a) above and the employer shall continue to contribute in respect of the employee in accordance with 2(b) above, and all benefits under the Fund in respect of the employee shall be maintained.
- (d) If an employee is on approved leave without pay, no contributions shall be made by the employee in terms of 2(a) above but the employer shall continue to contribute on behalf of the employee in terms 2(b) above in order that the death, disability and funeral benefits shall continue to be payable
- (i) throughout the period of leave, if the employee's leave is due to sickness; or
- (ii) for not longer than six months, if the employee's leave is due to reasons other than sickness.
- (2) The amount payable in each month in terms of this clause shall be deposited by the employer directly into the Fund's bank account no later than the 7th day of the month immediately following the month in which deductions and contributions were made.

- (3) If any amount which falls due in terms of this clause is not received in full by the administrator of the Fund by the 7th day of the month following the month for which the amount is payable, then the employer shall be liable to pay penalty interest in accordance with section 13A of the Pension Funds Act,
- (4) Any deductions in terms of this clause will not be in violation of clause 4(11)(d) of the Private Security Sector Sectoral Determination: No 6, 2001

26. ADMINISTRATION AND PROVISION OF BENEFITS

In order to realize the objects of the Fund the trustees shall

- (1) direct, control and oversee the operation of the Fund in accordance with the Fund Rules and the Pension Funds Act.
- (2) enter into an agreement with an administrator to administer the Fund; and
- (3) at their election;
 - (a) enter into an agreement with a registered insurance company; orestablish a self-insurance arrangement or cell captive arrangement to provide Death, Disability and/or Funeral benefits.

27. EMPLOYERS TO KEEP A COPY OF THIS DETERMINATION

Every employer upon whom this Determination is binding must:

- (1) keep a copy of this Sectoral Determination available in the workplace at all times;
- (2) make a copy available for inspection by an employee; and

- (3) give a copy of this Sectoral Determination
 - (a) to an employee who has paid the prescribed fee; and
 - (b) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

28. FUND RULES

- (1) The Fund Rules constitute the rules that govern the Fund in the Private Security Sector.
- (2) In the event of any discrepancy between this Sectoral Determination and the Fund Rules, the Fund Rules will apply.

29. EXEMPTION CRITERIA

- (1) The following criteria for an exemption from the Security Sector Provident Fund will apply provided that
 - a) If the employer prior to the publication of Government Notice No 306 of 30 March 2001, had an existing pension or provident fund registered with the Registrar of Pension Funds covering employees for whom minimum wages are prescribed in Sectoral Determination No 3, as amended or replaced.
 - b) If the employer prior to the publication of Government Notice No 306 of 30 March 2001, did not have an existing pension or provident fund registered with the Registrar of Pension Funds covering employees for whom minimum wages are prescribed in Sectoral Determination No 3, as amended or replaced, but before 30 March 2001, the employer and its employees have consulted in writing to commence negotiations for the establishment of a pension or provident fund for such employees.

- (2) The Management Committee will consider all applications for exemption from the provisions of the Security Sector Provident Fund.
- (3) Applications will be in writing and addressed to the Management Committee of the Security Sector Provident Fund. Applications shall comply with the following requirements:
 - a) Be fully motivated.
 - b) Be accompanied by relevant supporting data and financial information.
 - c) Applications that affect employees' conditions of service will not be considered unless the employees or their representatives have been properly consulted and their views fully recorded in an accompanying document.
 - d) Indicate the period for which exemption is required.
- (4) In considering the application the Management Committee shall take into consideration all relevant factors, which may include, but shall not be limited to the following criteria:
 - a) Any special circumstances that exist.
 - b) Any precedent that may be set.
 - c) The interest of the industry as regards
 - (i) Unfair competition
 - (ii) Collective bargaining
 - (iii) Potential for labour unrest
 - (iv) Increased employment
 - d) The interest of employees as regards
 - (i) Exploitation
 - (ii) Job preservation

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- (iii) Sound conditions of employment
 - (iv) Possible financial benefits
 - (v) Health and safety
 - (vi) Infringement of basic rights
- e) The interest of the employer as regards
- (i) Financial stability
 - (ii) Impact of productivity
 - (iii) Future relationship with employees' trade union
 - (iv) Operational requirements
- (5) If the application is granted, the Management Committee shall issue an exemption certificate, signed by the chairperson, containing the following particulars:
- a) The full name of the applicant
 - b) The trade name of the applicant
 - c) The period for which the exemption shall operate
 - d) The date of issue
 - e) The conditions of the exemption granted.
- (6) If the exemption is refused the Management Committee shall specify its reasons for not granting the application, and which will be communicated to the applicant.
- (7) The management Committee shall retain a copy of the certificate and number each certificate sequentially.

- (8) An employer to whom a certificate of exemption has been issued shall at all times have the certificate available for inspection at his establishment.
- (9) Any application by an Employer for exemption shall in no way whatsoever affect the Employer's obligations, nor his employees' rights, with regard to the payment of all contributions and benefits in terms of the rules of that employer's retirement fund and/or his employees' conditions of employment.
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