

No. R. 585

30 May 2008

LABOUR RELATIONS ACT, 1995**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING
MANUFACTURING INDUSTRY: EXTENSION TO NON-PARTIES OF
COLLECTIVE FUND RE-ENACTING AND AMENDING AGREEMENT FOR
THE NORTHERN REGION**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from 2 June 2008 and for the period ending 31 August 2012.

**M M S MDLADLANA
MINISTER OF LABOUR**

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY COLLECTIVE FUND AMENDING AGREEMENT FOR THE NORTHERN REGION

in accordance with the provisions of the Labour Relations Act, 1995, made
and entered into by and between the

Cape Clothing Association
Consolidated Association of Employers of Southern Africa Region
Eastern Province Clothing Manufacturers' Association
Free State and Northern Cape Clothing Manufacturers' Association
Natal Clothing Manufacturers' Association
Northern Decentralised Clothing Manufacturers' Association
Transvaal Clothing Manufacturers' Association
Lower South Coast Clothing Manufacturers' Association
Northern KwaZulu-Natal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisations")
of the one part, and the

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"), of the other
part, being the parties to the National Bargaining Council for the Clothing
Manufacturing Industry,

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed in the Clothing Industry by all employers and employees who are engaged or employed in the operations referred to in the definition of "Clothing Industry" in clause 3 of this Agreement and who -
 - (a) are members of the employers' organisation and the trade union, respectively and who are engaged or employed in the Industry;
 - (b) are subject to the scope of Part D of the National Main Collective Agreement of the National Council, being in the Province of the Transvaal, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

- (c) are subject to the scope of Part I (Non-Metro) of the National Main Collective Agreement of the National Council, but only insofar as those areas of Part I that fall within the Provinces of the Free State, Gauteng, Limpopo, Mpumalanga and North West and in the Northern Cape Magisterial Districts of Barkly West, Gordonia, Hartswater, Hay, Herbert, Hopetown, Kenhardt, Kuruman, Phillipstown, Postmasburg, Prieska and Warrenton, are concerned but excluding those areas excluded by virtue of clauses 1(1)(b)(iii), (iv) and (v) of Part I of the National Main Collective Agreement of the National Council.
- (2) Notwithstanding the provisions of subclause (1)—
- (a) the terms of this Agreement shall apply only in respect of employees for whom wages are prescribed in Parts D and I of the Council's National Main Collective Agreement; and
 - (b) the provision of clauses 5, 6, 7 and 9 of this Agreement shall apply in respect of any employee in the Industry for whom no wages are prescribed in Part D of the National Main Collective Agreement if such employee and his employer have mutually, and with the Council, agreed thereto in writing. This provision shall, however, not apply in respect of members who are subject to the scope of clause 1(1)(c) of this Agreement.

For the purposes of subclause (2) (b), any reference to employees for whom wages are prescribed in Part D of the National Main Collective Agreement shall be deemed to include employees referred to in that Agreement and any reference to the wage prescribed for an employee shall be deemed to be a reference to such employee's actual wage.

- (3) Notwithstanding the provisions of subclauses (1) and (2), the terms of this Agreement shall apply in respect of employees who were contributors immediately prior to the coming into force of this Agreement.
- (4) Clauses 1(1)(a), 2(1) and 3 of this Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 31 August 2012. This Agreement shall bind the Parties and their members and shall remain effective beyond the expiry date determined by the Minister or until the Parties agree otherwise.

- (2) Upon the expiry of this Agreement or any extension thereof and in the event of a subsequent agreement not being negotiated within a period of two years from the expiry of this Agreement or any extension thereof, the Provident Fund established and continued in terms of clause 9 shall be liquidated as though the employees had left the Industry.

3. SPECIAL PROVISIONS

The provisions contained in clauses 8, 13(5) and 14B of the Agreement published under Government Notice R. 1175 of 15 October 2004, as amended, extended, renewed and re-enacted by Government Notices Nos. R. 971 of 7 October 2005, R. 886 of 8 September 2006, R. 1077 of 3 November 2006 and R. 973 of 19 October 2007 (hereinafter referred to as the "Former Agreement"), as further amended, extended, renewed and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

4. GENERAL PROVISIONS

The provisions contained in clauses 3 to 7, 9 to 15A and 16 to 18 of the Former Agreement (as further as amended, extended, renewed and re-enacted from time to time), shall apply to employers and employees.

5. CLAUSE 9 OF THE FORMER AGREEMENT: PROVIDENT FUND

5.1 Amend the Agreement with effect from 1 December 2007 as follows:

5.1.1 In sub-clause 9 A (3)(e), substitute the expression "accounts" for the expression "accountants" where it appears in the second sentence.

5.1.2 In sub-clause 9 A (3), insert the following new sub-clause (h):

"(h) Fund Accounts: The Benefit Funds' Committee may, having received advice from their advisors, establish such reserve accounts in the Fund as may be deemed appropriate to ensure the sound ongoing functioning of the Fund, and may credit such amounts to those accounts at establishment as their advisors agree would be appropriate, subject to the establishment of the accounts with these recommended amounts not placing the Fund in a financially unsound position. The Rules of the Fund shall reflect the existence of these reserve accounts, and specify the provisions for the operation of these accounts. These reserve accounts shall at all times be operated in compliance with any applicable legislation."

- 5.1.3 In sub-clause 9 A (4)(b), substitute the expression “;” for the expression “.”
- 5.1.4 In sub-clause 9 A (4), insert the following new sub-clauses (c), (d) and (e):
- “(c) Active members, for whom contributions are made on a regular basis;
 - (d) Inactive members, who are currently dormant in the Fund, because they are not currently employed in the industry as defined in Clause 3, but who are expected to return to the industry;
 - (e) Unclaimed benefits, in respect of members who last paid a contribution to the Fund more than six months ago, are no longer employed in the industry, and have not come forward to claim their benefit in the Fund.”
- 5.1.5 In sub-clause 9 A (6)(b), delete the following wording:
- “(b) Payments shall not be made to a contributor until such contributor has been out of the Industry for six months (except at the discretion of the Benefits Funds’ Committee).”
- 5.1.6 In sub-clause 9 A (7) (a), substitute the existing sub-clause (a) with the following new sub-clause:
- “(a) The benefit that shall be paid to a contributor on withdrawal shall be the total amount contributed plus 100% of the amount contributed on his behalf by his employer, less any allocation for expenses that may have been made from the employer’s contribution; or, in the case of the death of the contributor, the benefits shall be paid to his beneficiary.”
- 5.1.7 In sub-clause 9 A (7), delete sub-clause (b) and renumber 9 A (7)(c) and (d) to read 9 A (7)(b) and (c) respectively.
- 5.1.8 In sub-clause 9 A (9) (b) (ii), insert the following new expression “of R10 000,00” after the wording “death benefit” and before the wording “to the estate”.
- 5.2 Amend the following Agreement with effect from 1 April 2008:
- 5.2.1 Substitute the expression “Provident Fund for the Clothing Industry (Northern Chamber) for the expression “Clothing Industry Provident Fund (Northern Areas)”.
- 5.2.2 In sub-clause 9 A (1), insert the following new expression “(“the Fund”)” after the wording “(Northern Areas)”.

5.2.3 In sub-clause 9 A (1), insert the following new sub-clauses (a), (b) and (c)(i), (ii), (iii), (iv) and (v):

- “(a) With effect from 1 April 2008 the Fund will be renamed, the Provident Fund for the Clothing Industry (Northern Chamber).
- (b) The administration and management of, and contributions and benefits paid by, the Fund will be governed by a set of Rules, consistent with all collective agreements dealing with provisions for the Fund, and ultimately registered with Registrar of Pension Funds in terms of the PENSION FUNDS ACT.
- (c) With effect from 1 April 2008 the membership and a portion of the assets and liabilities of the Knitting Industry Provident Fund (Northern Areas), originally established on the 4th June 1971 in terms of Government Notice No R. 911 and the Provident Fund for the Clothing Industry (Free State and Northern Cape), originally established on the 1st pay day in September 1971 in terms of Government Notice No R. 321 (“the Former Funds”) are hereby transferred to the Fund. The assets and liabilities of each of these Funds shall be split between the Fund and the Fashion Industry Protection Fund as recommended by an Actuary appointed for this purpose, and agreed to by the Benefit Funds Committee, in consultation with their advisors, except that the Benefit Funds Committee must be satisfied that the assets to be transferred are adequate to meet the liabilities being transferred:
 - (i) If the actual transfer takes place on a date later than 1 April 2008, the liabilities to be transferred shall be increased by interest as recommended by the actuary and advised by the Administrative Committee, and the value of the portion of the assets as at 1 April 2008, with further investment returns to the date of transfer, less any expenses, shall be transferred;
 - (ii) The transfer of assets and liabilities to the Fashion Industry Protection Fund is a once-off transfer;
 - (iii) Notice of the transfer of the Fund shall be provided in terms of a Section 14 transfer to the Registrar: Labour, who shall gazette such notice;
 - (iv) Any further regulatory action as is required shall be complied with;
 - (v) Any requirements of a fiscal nature shall be fulfilled.”

- 5.2.4 In sub-clause 9 A (2), insert the following new sub-clauses (e), (f) and (g):
- “(e) Any values transferred as a result of an amalgamation, merger, or a bulk transfer of assets and liabilities;
 - (f) Any values transferred from any other retirement provision, with the approval of the Benefit Funds’ Committee (or its successor) subject to meeting the fiscal requirements by an individual member;
 - (g) The assets transferred into the Fund resultant upon the transfer of the members and liabilities of the Former Funds.”
- 5.2.5 In sub-clause 9 A (4)(e), substitute the expression “,” for the expression “.”.
- 5.2.6 In sub-clause 9 A (4)(e), insert the following new wording at the end of the sub-clause (e):
- “except that, where the Unclaimed Benefits of the Former Funds are transferred to the Northern Chamber Fund on 1 April 2008, and become Unclaimed Benefits of the fund on that date, any tax obligations which lay with a Former Fund in relation to these Unclaimed Benefits are transferred to the Fund;”
- 5.2.7 In sub-clause 9 A (4), insert the following new sub-clause (f):
- “(f) The members of Former Funds who transferred into the Fund on 1 April 2008.”
- 5.2.8 In sub-clause 9 A (9), insert the following new sub-clause (c)(i)(aa) and (bb):
- “(i) On 1 April 2008 the benefit provided for in sub-clause 9 A (9)(b)(i) will be discontinued.
 - (aa) A value is to be calculated for each member of the Fund (immediately prior to the transfers in from the Former Funds) by an Actuary appointed for that purpose, and recommended to the Benefit Funds’ Committee as the amount which represents the expected present value of the enhanced benefit each member may have enjoyed had he reached retirement, and the benefit not been discontinued. Upon acceptance by the Benefit Funds’ Committee of the recommendation by the Actuary, this amount will be added to the members’ share of each active member of the Fund. For any dormant member who has reached retirement age, that dormant member shall be assumed to retire on that date, and have their benefit enhanced appropriately.

- (bb) A value is to be calculated for each member of the Fund (immediately prior to the transfers in from the Former Funds) by an Actuary appointed for that purpose, and recommended to the Benefit Funds' Committee as the amount which represents the expected present value of the severance benefit offset that would have represented the offset that the employer would have enjoyed in terms of sub-clause 14. (4) of Part D of the National Main Collective Agreement, had the benefit not been discontinued. Upon acceptance of the recommendation by the Actuary, this amount will be transferred to the account established in the Fashion Industry Protection Fund for the employer of that member, to be dealt with in accordance with the provisions of this Agreement that relates to the Fashion Industry Protection Fund."

6. CLAUSE 6 OF THE FORMER AGREEMENT: INDUSTRY PROTECTION FUND

- 6.1 With effect from 1 April 2008, the clauses referred to above are amended as follows:
- 6.1.1 In sub-clause 6(1), substitute the existing sub-clause (1) with the following new sub-clause:
- "(1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, and specifically to provide a benefit to employers in recognition of benefits elsewhere forgone, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established and amended."
- 6.1.2 In sub-clause 6 (2), renumber sub-clause (2) to read "2(a)" and insert the following new sub-clause (2)(b):
- "(2)(b) Furthermore, the object of sub clause 21 is specifically noted to be compensation to employers in respect of severance pay benefits forgone as a result of the requirements of registering the Provident Fund in terms of the Pension Funds Act in terms of the requirements of that Act."
- 6.1.3 In clause 6, insert the following new sub-clause (21):
- "(21) With effect from 1 April 2008, a ring fenced account is established in the Fund for the purpose discussed in sub clause (2) (b). It is specifically noted that none of the provisions of sub clauses (10), (13), (14), (15), and (18)

shall apply or shall be deemed to apply to this sub clause. Within this account shall be established a sub account for each employer who participated in the Provident Fund on 1 April 2008.

- (a) the account and the sub-accounts will be administered by the Regional Chamber of the Council;
- (b) into the account will be transferred from the Provident Fund for the region an amount, effective on 1 April 2008, calculated by the Actuary, appointed by the Provident Fund for that purpose, and recommended to the Administrative Committee;
- (c) the actuary shall advise the breakdown of the total transfer amount per employer participating in the Provident Fund on that date, and further broken down per employee of each employer who is a members of said fund on that date;
- (d) the amount in the account will be invested in terms of the general guidelines for the investment of Funds established by bargaining council funds, and the investment returns earned will be allocated monthly on an equitable and practical basis, relative to the balance in each employer's sub-account;
- (e) In the event that an employer who participated in the Provident Fund retrenches an employee who is a member of the fund, the employer will be entitled to make application to the Council for relief from his sub-account in the Fund in respect of the severance pay, to the extent of the retrenchment enhancement that the member would have received in terms of the enhancement rule, if the enhancement benefit had not been removed from the fund at the merger date;
- (f) The Council may pay such relief to Compliant (compliant between the date of the retrenchment and the future date of payment) Employers from the Fashion Industry Protection Fund to the extent of the value in the employer's sub-account at the date of the retrenchment;
- (g) Once exhausted, the employer will have no further right to make such claims in respect of the retrenchment of employees who are members of the fund; and
- (h) Once an employer no longer employs any of the employees who were members of the Provident Fund at 1 April 2008 in his employ, the sub-account will be cancelled, and all assets in the sub-account will fall to

the generality of the Fund, and be subject to the provisions of the Fund, excluding sub clause 21.”

Signed at CAPE TOWN on behalf of the Parties this 7th day of APRIL 2008.

F OOSTHUYSEN
Chairperson

P J BRAND
Vice-Chairperson

S D NDUNA
General Secretary