PRESIDENT'S OFFICE

No. 1058.
21 July 1995

NO. 26 OF 1995: BOPHUTHATSWANA NATIONAL PROVIDENT FUND AMENDMENT ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

** ** Words between two asterisks indicate omissions from existing enactments.

<< >> Words between two pointed brackets indicate insertions in existing enactments.

ACT

To amend the Bophuthatswana National Provident Fund Act, 1979, so as to delete, insert or substitute certain definitions, words and expressions; to abolish compulsory membership to the Bophuthatswana National Provident Fund and to further regulate voluntary membership to that Fund; to make further provision for the payment of a certain benefit; to regulate the payment of specified benefits to employed and unemployed members; to provide for the cessation of contributions to the Fund in certain cases; to make provision for the notification of amended withdrawal and transfer arrangements; to make provision for the calculation and disposal of specified benefits; and to make provision for the approval of alternative funds; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 10 July 1995.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 19 of 1979 (Bophuthatswana), as amended by section 1 of Act 17 of 1990 (Bophuthatswana)

1. Section 1 of the Bophuthatswana National Provident Act, 1979 (Act No. 19 of 1979), hereinafter referred to as the principal Act, is hereby amended-

(a) by the insertion in subsection (1) after the definition of "account number" of the following definition:

<<" 'alternative fund' means a retirement fund referred to in section 60C;>>";

(b) by the deletion in subsection (1) of the definition of "eligible employee";

(c) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

<<" 'Minister' means the Minister of Finance;>>";

(d) by the insertion in subsection (1) after the definition of "special contribution" of the following definition:

" <<'specified benefit' in relation to a Member, means that portion of the Fund which is, in terms of section 60B, determined to be the equitable amount to be applied for the benefit of such Member upon withdrawal or transfer of such benefit;>>";

(e) by the deletion in subsection (1) of the definition of "statutory contribution";

(f) by the insertion in subsection (1) after the definition of "term of employment" of the following definition:

<<" 'voluntary contribution', in relation to any employee, means the amount so designated by the Minister by notice in the Gazette>>;".

Substitution of section 12 of Act 19 of 1979 (Bophuthatswana)

2. The following section is hereby substituted for section 12 of the principal Act:

"Voluntary registration of employers

<<"12. (1) Subject to the provisions of this Act, any employer may register under this section in the prescribed manner. (2) An employer registered under subsection (1) shall become a contributing employer upon the first day of the month following the month in which he receives notification that he has been registered under this section.>>".

Substitution of section 13 of Act 19 of 1979 (Bophuthatswana)

3. The following section is hereby substituted for section 13 of the principal Act:

"Notification of withdrawal of registration

<<13. Any employer who is registered in terms of section 12 may notify the Board of his intention to withdraw his registration in terms of this Act whereupon any contributing employee of such employer may apply for his accumulated benefits to be dealt with in terms of section 42(1) or in terms of section 54(1)(a)>>.".

Repeal of section 14 of Act 19 of 1979 (Bophuthatswana)

4. Section 14 of the principal Act is hereby repealed.

Amendment of section 16 of Act 19 of 1979 (Bophuthatswana)

5. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Save as in subsection (1)<<or in section 13>>provided, a contributing employer shall not cease to be a contributing employer."

Repeal of section 17 of Act 19 of 1979 (Bophuthatswana)

6. Section 17 of the principal Act is hereby repealed.

Substitution of section 18 of Act 19 of 1979 (Bophuthatswana)

7. The following section is hereby substituted for section 18 of the principal Act:

"Registered employers to notify the Director of all employees

18. Any employer who registers or is registered under the provisions of section 12** or 13** shall without delay notify the Director, in relation to every person who is or who subsequently becomes an **eligible** employee in his service <<and in respect

of whom contributions are to be made to the Fund,>> of such particulars as may be prescribed.

Amendment of section 19 of Act 19 of 1979 (Bophuthatswana)

8. Section 19 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"An employer who **is required**<<wishes>> to register under section 12 of the Act shall forward to the Director, in writing, the following:".

Substitution of section 23 of Act 19 of 1979 (Bophuthatswana), as amended by section 2 of Act 17 of 1990 (Bophuthatswana)

9. The following section is hereby substituted for section 23 of the principal Act:

"Registration of employee

23. Every person who intends to engage in regular employment and who will, in such employment, become**an** eligible** employee**<< to join>> the Fund, **shall** <<may>> apply, <<duly supported by his employer>>, to the Director in such manner as the Director shall specify for registration as a member of the Fund and obtain a membership card.".

Amendment of section 36 of Act 19 of 1979 (Bophuthatswana)

10. Section 36 of the principal Act is hereby amended by the deletion of subsection (1).

Amendment of section 42 of Act 19 of 1979 (Bophuthatswana)

11. Section 42 of the principal Act is hereby amended(a) by the substitution for subsection (1) of the following subsection:

"(1) A Member who is not employed by an employer **liable to make a statutory contribution in respect of him** <<registered in terms of section 12>> may apply in writing to the Director for authority to contribute to the Fund on his own behalf."; and (b) by the substitution for subsection (3) of the following subsection:

"(3) Where a Member who is authorised to make payments under this section enters the employment of an employer who is **liable to make a statutory contribution in respect of him**<<registered in terms of section 12>>, the Member shall inform the Director forthwith and cease to be so authorised.".

Amendment of section 53 of Act 19 of 1979 (Bophuthatswana), as substituted by section 2 of Act 59 of 1980 (Bophuthatswana), and amended by section 7 of Act 17 of 1990 (Bophuthatswana)

12. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any benefits payable in terms of section 54, 55, 56, 57, 58, 59, 60, 61, 62 or 63 shall amount to the sum standing to the credit of the**Minister** <<Member>> concerned in the Fund as at the date of payment, including all interest accrued in respect of such sum, or, in the case of benefits payable in terms of section 58, any such amount as may be determined by the Minister by notice in the Gazette, but not less than the total amount of the contributions of such member and the interest accrued in respect thereof.".

Amendment of section 54 of Act 19 of 1979 (Bophuthatswana)

13. Section 54 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraph:

<<"(c) A Member, or his employer jointly with the Member, who is a contributor to an alternative retirement fund established by the employer, may apply for the withdrawal of that Member's specified benefit in cash or the transfer of that Member's specified benefit to such alternative retirement fund.>>".

Substitution of section 58 of Act 19 of 1979 (Bophuthatswana)

14. The following section is hereby substituted for section 58 of the principal Act:

"Benefilt payable on emigration

58. Benefit shall be payable to a Member who satisfies the Director that he is about to emigrate or has already emigrated from **Bophuthatswana**<<the Republic of South Africa>> and has no present intention of returning to **Bophuthatswana** <<the Republic of South Africa>>: Provided that no benefit shall be payable under this section in the case where the emigration is to a country with which there is in force a reciprocal agreement made in pursuance of section 86.".

Insertion of sections 58A and 58B in Act 19 of 1979 (Bophuthatswana)

15. The following sections are hereby inserted in the principal Act after section 58:

"Benefit payable to unemployed Members

<<58A. (1) Subject to the provisions of this section, a specified benefit in relation to a Member shall on application by a Member be payable in the event of such Member becoming unemployed and, in the discretion of the Director, no reasonable prospect exists of such Member's re-employment within a reasonable period of time.

(2) A person who has received a benefit under this section shall not be entitled to any payment of benefits in terms of any other section of this Act.

(3) A person who is eligible to be paid a benefit in terms of any other section of this Act shall not be paid a benefit in terms of this provision.>>

Benefit payable on election

<<58B. In the case of an application contemplated in section 54(1)(c), a specified benefit as may be prescribed shall be payable to a Member on whose behalf contributions to an alternative fund, established by such Member's employer, were made or were still being made at the date of commencement of the Bophuthatswana National Provident Fund Amendment Act, 1995.>>".

Amendment of section 59 of Act 19 of 1979 (Bophuthatswana)

16. Section 59 of the principal Act is hereby amended-

(a) by the substitution for subparagraph (iii) of paragraph (a) of the following subparagraph:

"(iii) any supporting documents bearing on the Member's age and retirement, disability, **or** emigration, <<unemployment or membership of an alternative retirement fund;>> and"; and

(b) by the addition in paragraph (a) of the following subparagraph:

"<<(iv) full particulars of the alternative retirement fund to which a transfer of a specified benefit is to be made; and">>.

Insertion of section 59A in Act 19 of 1979 (Bophuthatswana)

17. The following section is hereby inserted in the principal Act after section 59:

"Cessation of contributions to Fund

<<59A. With effect from the last day of the month following on receipt of written advice from the Fund that an employer's registration in terms of this Act has been cancelled or that a Member of the Fund's application for the withdrawal of a specified benefit or the transfer of a specified benefit to an alternative retirement fund, contemplated in sections 58A and 58B, has been approved, no further contributions shall be paid to the Fund by such employer or in respect of such Member.>>".

Insertion of sections 60A, 60B and 60C in Act 19 of 1979 (Bophuthatswana)

18. The following sections are hereby inserted in the principal Act after section 60:

"Notification of amended withdrawal and transfer arrangements

<<60A. (1) Not later than thirty days after the commencement of the Bophuthatswana National Provident Fund Amendment Act, 1995, the Director shall-

(a) by means of two notices, at an interval of not less than seven days, placed in the Gazette and in at least two newspapers circulating throughout the Republic;

(b) by means of a public notice displayed in such public buildings as he deems fit throughout the former Bophuthatswana for a period of fourteen days; and

(c) by notice, in writing, to every employer contributing to the Fund, take the actions mentioned in subsection (2).

(2) The actions required by the Director in terms of subsection (1) shall be to-

(a) inform interested persons that the provisions of this Act have been amended, and in particular refer to the provisions of sections 54, 58A and 58B thereof; and

(b) call upon every contributing employer who, prior to the commencement of the Bophuthatswana National Provident Fund Amendment Act, 1995, had established a retirement fund contemplated in section 60C to which such employer and the then employees thereof had made, or those who were, immediately prior to the commencement of the said Act, still making contributions in addition to their contributions to the Fund, to advise the Director accordingly and to produce evidence to that effect to the satisfaction of the Director, within ninety days after the date of publication of the

notice; and

(c) inform contributing employers that the information contemplated in paragraph (b) is necessary in order that the specified benefits due to employees may be paid by the Director to the employer in trust and that such benefits may thereafter be paid by that employer to those employees in cash, unless those employers and employees agree to the transfer of such benefits or portions thereof to an existing retirement fund for the continuing benefit of those employees; and

(d) give notice to persons who have, or may, become entitled to a benefit in terms of this Act that a claim for such benefit may be submitted in accordance with section 58A or 58B, as the case may be, either within a period of thirty days after the date of the notice or after the event in respect of which the benefit becomes payable.>>

Calculation and disposal of specified benefits

<<60B. (1) The Director shall obtain a report by an actuary who, having regard to the Rules of the Fund relating thereto, shall state what would, in his opinion, be the most equitable basis for the calculation of the amount available for distribution to be applied for the benefit of Members, having regard to the amounts due to persons entitled to benefits under section 58A or 58B of this Act standing to the credit of each Member in the Member's account.

(2) The actuary shall, in formulating such calculations, have due regard to the future benefits and interests of the remaining Members of the Fund.

(3) Benefits so calculated and determined shall be regarded as specified benefits in respect of the Member concerned.

(4) Within 30 days from receipt of a duly completed claim form furnished by the Member, or his employer jointly with the Member, the Director shall pay to the alternative fund all amounts consisting of the specified benefits of the Member and which are due to that fund.

(5) When the Director has completed the transfer to the relevant alternative fund of the specified benefits of the Member concerned-

(a) the relevant amount shall vest in the alternative fund concerned;

(b) the relevant specified benefits of the Member shall become liabilities of and binding upon the alternative fund concerned;

(c) the Member concerned shall cease to have any claim upon the Fund, whether such claim derives or is purported to derive, from this Act or otherwise; and

(d) the specified benefits of a Member paid to the employer in trust, as contemplated in section 60A(2)(c), shall, within thirty days after such payment, be paid out of such trust property by that employer to that Member in cash or, if the employee and employer concerned have so agreed, be paid to an alternative retirement fund>>.

Approval of alternative funds

60C. (1) For purposes of this Act an alternative fund is a fund-

(a) which is a pension fund organisation as defined in, and registered under, the Pension Funds Act, 1956 (Act No. 24 of 1956); and

(b) which has been approved by the Commissioner for Inland Revenue as-

(i) a pension fund; or

(ii) a provident fund; or

(iii) a retirement annuity fund;
as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), for the purposes of that Act, and which the Director, if he is satisfied that it complies with such requirements as the Minister may determine, and is otherwise suitable for the purposes of this Act, has approved in writing as an alternative fund for such purpose.

(2) When any person responsible for the management of a fund seeks to have that fund approved as an alternative fund in terms of subsection (1), such person shall apply in writing to the Director, to whom such person shall provide proof of the registration and approval contemplated in paragraphs (a) and (b) of subsection (1), and such other information as the Director may require.>>.".

Repeal of First and Fourth Schedules to Act 19 of 1979 (Bophuthatswana)

19. The First Schedule and the Fourth Schedule to the principal Act are hereby repealed.

Substitution of certain expressions

20. The principal Act is hereby amended(a) by the substitution for the expression "eligible employee", wherever it occurs, of the word "employee"; and

(b) by the substitution for the expression "statutory contribution", wherever it occurs, of the expression "voluntary contribution".

Short title

21. This Act shall be called the Bophuthatswana National Provident Fund Amendment Act, 1995.