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NEDLAC *news update*

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Executive Council ratifies four key agreements

The Nedlac Executive Council held its second regular meeting of 1996 on Friday, 28 June, chaired by the Minister of Labour, Mr Tito Mboweni, on behalf of the government constituency.

Among several other issues on its agenda, the meeting ratified four agreements concluded in the Nedlac chambers recently. They are:

Amendments to the Labour Relations Act

Some difficulty was encountered with certain technical aspects of the new Labour Relations Act (LRA). In response an amendment bill to the LRA was drafted by government.

At its April meeting, the Executive Council authorised the Labour Market Chamber and the committee of principals to reach consensus on the amendment bill, which was tabled in Nedlac on 9 May.

Several of the concerns raised were technical in nature, and were accommodated by proposing alternative wording, to which all parties agreed. However, business did not agree to the amendments to sections 75 and 213 of the LRA (concern-

ing maintenance services and the definition of sectors respectively), while labour did not agree to the effect which an amendment to section 52 of the LRA, concerning the accreditation of councils, could have on the subsidies to councils. In respect of these disagreements it was decided that business and labour's positions would be stated in full in the Nedlac report on the amendment bill, and that both parties would be free to pursue these outstanding issues during the parliamentary portfolio committee on labour's process.

The social clause

When the Executive Council met in April, the constituencies were on the brink of reaching agreement on the issue of a social clause linked to South Africa's trade relations with other countries. The meeting mandated a small negotiating committee to finalise agreement on the issue, and this agreement has now been ratified by the Executive Council.

The deliberations on the issue have focused mainly on a proposal by labour, supported by business, that a social clause linking market access to respect

In this issue...

To keep all stakeholders in Nedlac—its four constituencies, the public and the media—informed of its activities, Nedlac publishes *Nedlac News Update*, a monthly information sheet which is mostly faxed to recipients.

This issue of *Nedlac News Update* covers the Executive Council meeting of 28 June 1996, the first senior-level planning meeting held on 25 June, and the annual Nedlac summit on 1 June.

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for labour standards be included in all South Africa's bilateral and multilateral trade agreements, including with countries in southern Africa and in the World Trade Organisation (WTO).

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Executive Council agreements

In the course of negotiations, all constituencies reaffirmed the principle that economic growth and development must be underpinned by a commitment to social justice, including respect for universally recognised labour standards. To this end, all parties have committed themselves to working together within the Nedlac framework of multipartite cooperation to ensure the ratification and observance in South Africa of the core International Labour Organisation (ILO) conventions which embody such labour standards.

With regard to the international context, the social partners agreed that responses to the impact of liberalisation and globalisation on labour standards and jobs must be on a multilateral basis involving shared responsibility between developing and developed countries, and among governments, labour and business. They noted that proposals by certain countries to introduce social clauses in the WTO have been strongly opposed by developing countries, and that there is polarisation on the issue in the WTO.

The South African government's proposals for a social clause in bilateral trade agreements with Malaysia, Thailand, the Philippines and Cuba have been opposed by each of these countries, resulting in a stalemate in concluding agreements with these and other countries. The Nedlac parties in the Trade and Industry Chamber, therefore, agreed that the call for a social clause will require a creative and multifaceted strategy.

Among others, such a strategy will involve:

- Active support by South Af-

rica for the ILO campaign for universal ratification and observance of the core ILO conventions. In this regard, South Africa will encourage its trading partners at bilateral, regional and multilateral level to ratify these conventions.

- At bilateral level, government agreed to propose to its partners a side-letter to trade agreements, or a memorandum of understanding jointly committing the contracting parties to ratify and observe the core ILO conventions, and to collaborate at multilateral level to achieve the same.

- The parties agreed that government will pursue, on a tripartite basis, ratification and observance of the ILO conventions in the southern African region.

- Government will also promote the issue in the United Nations Conference on Trade and Development during its presidency of this body.

The Nedlac agreement also stipulates that, in addition to the above processes, a tripartite strategy for extending the campaign at bilateral and multilateral level will be developed. The Nedlac secretariat, in liaison with government, will coordinate and facilitate the process.

National small business enabling bill

The April Executive Council agreed a process for finalising consideration of the national small business enabling bill in Nedlac, and mandated the Trade and Industry Chamber to reach final agreement on the bill at its meeting of 2 May. This meeting endorsed the general policy direction taken by the bill, and agreed that parties would relate specific concerns or res-

ervations on points of detail directly to the Centre for Small Business Promotion. Agreement on the bill was reached on 13 June, marking the conclusion of Nedlac's consideration of this draft legislation.

Ahead of the tabling of the final draft bill in Nedlac on 11 April this year, a rigorous process of consultation was undertaken by government. Besides a first draft of the bill being tabled in Nedlac, the Centre for Small Business Promotion of the Department of Trade and Industry received written comments on the first draft, and embarked on extensive consultation. Organisations represented at Nedlac were independently invited to participate in these processes, and submitted their comments directly to the department. The Centre for Small Business Promotion conducted a national workshop for relevant stakeholders in March 1996 to consolidate inputs on the draft bill, after which the final draft was prepared.

Following further discussion in the Trade and Industry Chamber, a detailed drafting exercise was undertaken which involved representatives of business, labour, the Nedlac secretariat and government.

The bill provides for:

- The setting of standards to define small, micro and medium-sized enterprises (SMMEs).
- The establishment of the National Small Business Council (NSBC), which will represent and promote the interests of SMMEs.
- The establishment of the Ntsika Enterprise Promotion Agency (Nepa), which will provide non-financial support to

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SMMEs, for example, information, advice and training.

- The creation of a regulatory framework to assess the impact of laws and policy on SMMEs.
- The parameters for the relationships between small-business promotion functions at provincial and national levels.

Amendment to the Insolvency Act

The Labour Market Chamber reached agreement on an amendment to the Insolvency Act, 1936, in terms of which employees' financial claims against an insolvent employer will in future receive considerably more preference than is currently the case. The 28 June meeting of the Executive Council ratified the agreement.

The agreement will bring South African law in line with International Labour Organisation convention 173, called "Protection of Workers' Claims (Employer Insolvency)". The ILO adopted this convention in 1992 after recognising that legal systems across the world fail to adequately address the position of employees of insolvent companies.

The agreement is a positive development which will go a long way to redressing a long-overdue deficiency in the Insolvency Act. Workers often have no choice but to provide their labour on a credit basis in that they only get paid *after* providing labour to an employer. The agreement Nedlac has reached redresses this existing imbalance between powerful and powerless creditors.

In terms of the agreement, the free residue in an insolvent employer's estate—that is, the money left after secured credi-

tors have been paid—will, after the costs of sequestrating the estate have also been met, in future be applied to paying employees:

- Any salary or wages due to the employee for a period not exceeding three months.
- Any payment in respect of holidays.
- Any payment due in respect of any other form of paid absence for a period not exceeding three months prior to the date of the sequestration of the estate.
- Any severance or retrench-

ment pay due to the employee in terms of any law, agreement, contract or wage-regulating measure.

- Any other contribution payable by the insolvent which, immediately prior to the sequestration of the estate, was due to any pension or medical scheme, medical, unemployment, holiday, provident or any other similar insurance fund.

The agreed amendment will be included in the general laws amendment bill, which is being prepared for submission to Parliament later this year by the Department of Justice. □

The first annual Nedlac summit

The first annual Nedlac summit was held on 1 June at Gallagher Estate and was chaired by deputy President Thabo Mbeki. All constituency leaders addressed the summit, which brought together delegations from all four Nedlac constituencies, invited guests, the media, et cetera. The speakers were Nedlac Executive Director Jayendra Naidoo, Business South Africa president Leslie Boyd, community constituency leader Thandi Sigodi, Cosatu general secretary Sam Shilowa, and Labour Minister Tito Mboweni.

The summit culminated in the following resolution:

"Today, the South African government, organised business, organised labour and the community constituency reaffirm the commitment made at the launch of Nedlac 15 months ago, to work together to address the economic and social challenges facing our country." At Nedlac's

inception three defining challenges were identified: sustainable economic growth, greater social equity and increased participation in decision-making. Central to addressing these challenges is the critical need for rapid and sustained employment creation, of better jobs for those already in employment and the accelerated alleviation of poverty. These remain the key priorities for the Nedlac constituencies.

"In the past 15 months, we have learnt many lessons about agreement-making and consensus-seeking through the Nedlac

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Nedlac summit

process. Much time, energy and resources have been devoted to producing effective results. We must now learn from the lessons of the past year.

"In seeking to address our defining challenges and also the challenges posed during our first year of activity, community, business, labour and government today resolve to:

"1. Evaluate, improve and strengthen the process of social dialogue and agreement-making in the period ahead, and to build confidence and trust in the Nedlac process at all levels.

"2. Enhance the agreement-making function of Nedlac by improving its coordination and capacity to deal with matters and set negotiations at the appropriate level of detail.

"3. Work toward developing a strategic framework which captures the overarching requirements and challenges of economic development.

"4. Focus and prioritise issues on the agendas of the Nedlac chambers.

"5. Structure the policy formulation process to ensure that all parties substantively participate and are afforded adequate time to consult on policy issues, while also setting deadlines for the consideration of issues.

"6. Develop a structured relationship with the parliamentary process.

"7. Strengthen the capacity of the constituencies, by improving access to, and the utilisation of, information and resources, including existing public resources.

"8. Ensure consistent and effective representation of delegations in the various Nedlac

structures to allow for substantive dialogue to take place.

"We resolve to address these areas as a matter of urgency,

commencing with consideration thereof in a series of planning meetings, the first of which will be held soon." □

The first Nedlac planning meeting

Following the first annual Nedlac summit, the first senior-level planning meeting was held on 25 June to address the question of developing a strategic agenda for negotiation at Nedlac, and ways and means of improving Nedlac's efficiency.

All four constituencies gave detailed accounts of the areas which, in their view, should receive priority in Nedlac. These were summarised in a report to the Executive Council, where a resolution was taken on the proposed way forward for the process.

A second report will now be developed by the Nedlac secretariat in which the proposals made by the parties at the planning meeting will be further developed.

This will involve matters of both content and process. The report will then serve as a working document for, firstly, consideration by a leadership meeting and, secondly, by a second planning meeting.

The leadership meeting will also prepare for the second planning meeting. □