



GOVERNMENT EMPLOYEES PENSION FUND

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TO: HEADS OF NATIONAL AND PROVINCIAL DEPARTMENTS
HUMAN RESOURCE MANAGERS
HEADS OF COMMUNICATION UNITS

DEDUCTION OF DEPARTMENTAL DEBT

The purpose of this letter is to clarify the policy and procedure of the Government Employees Pension Fund in relation to claims by employers, State Departments, from employees' pension benefits for the deduction of departmental debt owing to employer State departments.

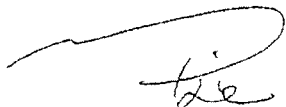
This letter sets out the following:

- In **annexure A**, the most frequently asked questions and answers thereto.
- In **annexure B**, the step-by-step procedure for requesting the deduction of departmental debt;
- In **annexure C**, the new GEPF Departmental Debt Claim Form to be completed in all instances where an employer requests the deduction of departmental debt; and
- In **annexure D**, section 21 of the Government Employees Pension Law, Proclamation 21 of 1996.

We wish to request that your office bring the content of this letter to the attention of all officials dealing with pension matters and specifically the claiming of departmental debt from pension benefits in your department.

The procedure set out in this letter take effect from 1 May 2009.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P Tjie', with a large, sweeping flourish above the name.

MR P TJIE

CHIEF EXECUTIVE OFFICER: GOVERNMENT EMPLOYEES PENSION FUND

DATE: 06/04/2009

FREQUENTLY ASKED QUESTIONS AND ANSWERS – DEPARTMENTAL DEBT

1. *What is the basis of the GEPF's right to deduct departmental debt?*

1.1 Section 21(3)(a) and (c) of the Government Employees Pension Law, Proclamation 21 of 1996 (GEP Law) provides for the deduction of departmental debt from an employee's pension benefit by the GEPF in certain circumstances. Section 21 is attached to this letter as **annexure "D"**.

2. *Does the GEPF have a discretion to deduct departmental debt, or is it obliged to do deduct the debt if the employer so requests?*

2.1 Sect 21(3) of the GEP Law provides the GEPF with a **discretion** to deduct the departmental debt. The GEPF is accordingly **not obligated** to deduct any departmental debt from an employee's pension benefit at the behest of the employer.

2.2 Before the GEPF can exercise the discretion to deduct the departmental debt, the GEPF must comply with the rules of fair administrative action (please see the discussion below at paragraph 3.). Specifically it must allow both parties (the employer and the employee) an opportunity to give reasons why the debt should, or should not, be deducted.

3. *What are the requirements for procedurally fair administrative action that the GEPF must comply with before it can deduct departmental debt?*

3.1 As stated, the GEPF is required to comply with the requirements of fair administrative action in the exercising of its discretion. This imperative is embodied in *among others* section 33 of the Constitution and section 3 of Promotion of Administrative Justice Act, 2000.

3.2 The following are the **main requirements for fair administrative action** in relation to the deduction of departmental debt:

- The **employee** must be informed **by the employer**, of the proposed deduction and the amount thereof;

- The **employee** must be afforded a reasonable opportunity to make representations to the employer and/or the GEPF regarding the deduction;
- The **employee** must be informed of his or her right to make representations directly to the GEPF;
- The **employer** must supply the GEPF with all relevant documents motivating its request for the deduction of the departmental debt;
- The **employer** must submit to the GEPF its representations and the employee's representations, if any; and
- The GEPF must apply its mind independently and decide whether or not to deduct the debt.

4. *May departmental debt be deducted from an employee who resigns?*

4.1 Yes.

4.2 Departmental debt may be deducted where an employee resigns, retires or is discharged, for whatever reason.

5. *What types of debt may be deducted under section 21(3)(a) of the GEP Law?*

5.1 Section 21(3)(a) deals with debts owing to an employer by an employee other than debts owed in terms of sections 21(3)(c) or (d) of the GEP Law. This would therefore include, but not be limited to, the following debts:

- Contractual debt – for example study loans, housing loans and personal loans.
- Amounts inadvertently or erroneously paid to an employee – for example overpaid salary where the employee resigns without working his or her full notice period.
- Any other debt **which is not** loss suffered by the employer due to the misconduct, intentional criminal conduct or negligent actions (delict) of the employee. (These forms of debt are covered by section 21(3)(c) - please see the discussion at paragraph 6 below.)

6. *What types of debt may be deducted under section 21(3)(c) of the GEP law?*

6.1 Any amount of loss suffered by the employer through theft, fraud, negligence or any misconduct on the part of the employee may be deducted as departmental debt under section 21(3)(c). However, before such debt can be deducted, this section requires that

the employee must have admitted/acknowledged the loss in writing, or alternatively, the loss must have been proved in a court of law.

- 6.2 This section is therefore limited to loss suffered by the intentional criminal conduct of the employee or by his or her negligent actions (delict). It also includes any loss suffered due to misconduct committed by the employee. Misconduct may relate to either criminal conduct or conduct which has an element of dishonesty (for example, theft) or negligence (for example, unintentional damage to employer property).
- 6.3 In practical terms this means the following:
- The debt must be in the nature of **loss** suffered by the employer;
 - The **cause** of the loss must have been either theft, fraud, negligence or any misconduct on the part of the employee;
 - The employee must have admitted/acknowledged the loss in writing or it must have been proved in a court of law.
- 6.4 It is extremely important to note that this section does not cover debt based on contract or amounts inadvertently or erroneously paid to an employee. The latter is covered by section 21(3)(a) - please see the discussion above in paragraph 5.

7. May an employer withhold the submission of the employees' exit documentation to force the employee to provide an acknowledgement of debt for purposes of section 21(3)(c)?

- 7.1 No.
- 7.2 Such actions are unlawful and in no way condoned by the GEPF. Exit documentation must be submitted without delay and as soon as reasonably practicable by the employer.

8. Will the GEPF suspend the payment of pension benefits pending a court case to prove the loss suffered by the employer for purposes of section 21(3)(c)?

- 8.1 No.
- 8.2 The GEPF is obliged to pay pension benefits on the exit of the employee. The employer will have to obtain a court order interdicting the GEPF from making payment pending conclusion of the main action to prove the loss and the liability of the employee.

9. When will the GEPF not deduct departmental debt?

9.1 When exercising its discretion in terms of section 21(3)(a) and (c) of the GEP law, the GEPF must apply its mind to all the facts before it and carefully consider the interests of both the employer and the employee.

9.2 The GEPF cannot provide an exhaustive list of instances when it will not deduct departmental debt. However, in the following instances it is recorded that the **GEPF will not deduct the departmental debt:**

- In the event of section 21(3)(a) debt (see paragraph 5 above), the employer has not provided sufficient documentary and/or other evidence to prove a clear and unambiguous contractual right to the payment of the debt;
- In the event of a section 21(3)(c) debt (see paragraph 6 above), the employer has not provided an acknowledgement of debt by the employee **or** a court order;
- Where the debt claimed is subject to any form of continuing litigation; and
- Where there are any factual disputes relating to the debt which require arbitration and/or adjudication.

9.3 In the following instances the GEPF **would in all probability also not** deduct the departmental debt:

- Where the employer has not provided a duly completed GEPF Departmental Debt Claim Form;
- Where the GEPF will possibly suffer prejudice by deducting the debt; and
- Where the debt amount claimed is excessive and there has been laxity on the part of the employer to recover the amount while the employee was still in service. The GEPF will not act as a debt collection agent for employer State departments.

10. What must the employer do if the employee refuses to make representations or to assist in the process?

10.1 The relevant official of the employer department must provide a detailed sworn affidavit to the GEPF, setting out the circumstances of the case.

10.2 Should the employee **refuse** to complete section B of the GEPF Departmental Debt Claim Form or to assist the employer otherwise, the employer must provide an **affidavit** by the relevant official explaining the process taken by the employer to request the employee to complete section B of the GEPF Departmental Debt Deduction Form or to assist otherwise and detailing the refusal of the employee.

11. What must the employer do if the employee cannot be contacted?

- 11.1 The relevant official of the employer must provide a **detailed sworn affidavit** setting out the circumstances of the case.
- 11.2 Should the employer be **unable to contact** the employee in order to complete section B of the GEPF Departmental Debt Claim Form, **the employer must provide an affidavit** by the relevant official explaining the process taken by the employer to contact the employee, inclusive of detailed reference to all the contact detail of the employee which the employer used to attempt to contact the employee.

PROCEDURAL STEPS FOR A REQUEST FOR THE DEDUCTION OF DEPARTMENTAL DEBT

1. The employer completes the departmental debt amount on the Z102 form.
2. The employer completes section A of the GEPF Departmental Debt Claim Form (attached hereto as annexure C). This section must be completed with sufficient detail and set out, as a minimum, the following:
 - The name of the employee;
 - The pension number of the employee;
 - The nature of each and every alleged debt;
 - The precise amount of each debt owing as at date of termination of service. (Debt accruing after date of termination of employment may not be included or deducted.);
 - A detailed explanation as to how the debt arose. (If there is more than one debt the basis for each debt amount must be explained separately); and
 - The nature of the debt i.e. is it a debt falling under section 21(3)(a) or section 21 (3)(c) of the GEP Law.
3. Certified copies of all relevant documents must be attached to the claim form. This includes, but is not limited to, the following:
 - Any relevant contract;
 - Any relevant court order;
 - An acknowledgement of debt by the employee;
 - Leave forms;
 - Proof of overpayment of salary;
 - Any incapacity report; and
 - Any outcome of a disciplinary hearing.
4. Once section A of the GEPF Departmental Debt Claim Form has been completed, and all relevant documents have been attached, the GEPF Departmental Debt Claim Form must be given to the employee to complete section B of the said form. (Please note that the form, together with all relevant certified copies of documents, must be given to the employee.)
5. Should the employer be **unable to contact** the employee in order to complete section B of the GEPF Departmental Debt Claim Form, the employer must provide an **affidavit** by the relevant official explaining the process taken by the employer to contact the employee, inclusive of detailed reference to all the contact detail of the employee which the employer used to attempt to contact the employee.
6. Should the employee **refuse** to complete section B of the GEPF Departmental Debt Claim Form, the employer must provide an **affidavit** by the relevant official explaining the process taken by the employer to request the employee to complete section B of the GEPF Departmental Debt Deduction Form and detailing the refusal of the employee.
7. The employer must submit the GEPF Departmental Debt Claim Form, together with the Z102 Withdrawal from Fund form, to the GEPF.

SECTION 21 OF GEP LAW – PROCLAMATION 21
PROHIBITION ON CESSION AND ATTACHMENT OF BENEFITS
- DEPARTMENTAL DEBT

(1) No benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or, save as is provided in section 26 or 40 of the Maintenance Act, 1998, and section 7 (8) of the Divorce Act, 1979 (Act 70 of 1979), be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.

[Sub-s. (1) substituted by s. 45 (1) of Act 99 of 1998.]

(2) If any member, pensioner or beneficiary attempts to assign or transfer or otherwise cede or to pledge or hypothecate any benefit to which he or she is entitled under this Law or any right in respect of such benefit, payment of such benefit to such member, pensioner or beneficiary may be withheld, suspended or discontinued if the Board so directs: Provided that the Board may direct that such benefit or part thereof shall be paid to one or more of the dependants of such member or pensioner or to a trustee for such member or pensioner or his or her dependants during such period as the Board may determine.

(3) Notwithstanding the provisions of subsection (1) or of any other law-

(a) **any amount which is payable to the employer or the Fund by any member in the employment of such employer on the date of his or her retirement or discharge, or which the employer is liable to pay in respect of such member;**

(b) any amount which has been paid to any member, pensioner or beneficiary in accordance with the provisions of this Law and to which such member, pensioner or beneficiary was not entitled;

- (c) **the amount of any loss which has been sustained by the employer through theft, fraud, negligence or any misconduct on the part of any member, pensioner or beneficiary which has been admitted by such member or pensioner in writing or has been proved in a court of law;**
- (d) any amount, plus interest at the rate determined by the Board after consultation with the actuary, due to the Fund in respect of an amount for which the Fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to that member in terms of the rules,

[Para. (d) added by s. 2 of Act 21 of 2004.]

may be deducted from the benefit payable to such member, pensioner or beneficiary under this Law in a lump sum or in such instalments as the Board may determine.

(4) Where a member dies before the last day of a period in respect of which any salary or allowance was paid to him or her prior to his or her death, a *pro rata* part of the amount so paid may be recovered in respect of the unexpired portion of that period by deducting it in a lump sum, or in such instalments as the Board may determine, from the benefit payable to the estate or to a beneficiary of the deceased member, as provided in the rules.

**PROCEDURAL STEPS FOR A REQUEST FOR THE DEDUCTION OF DEPARTMENTAL DEBT –
CHECKLIST**

Steps		√	X
1.	The employer completes the departmental debt amount on the Z102 form.		
2.	The employer completes <u>section A</u> of the GEPF Departmental Debt Claim Form. This section must be completed with sufficient detail and set out , as a minimum, the following:		
	<ul style="list-style-type: none"> • The name of the employee; 		
	<ul style="list-style-type: none"> • The pension number of the employee; 		
	<ul style="list-style-type: none"> • The nature of each and every alleged debt; 		
	<ul style="list-style-type: none"> • The precise amount of each debt owing as at date of termination of service. (Debt accruing after date of termination of employment may not be included or deducted.); 		
	<ul style="list-style-type: none"> • A detailed explanation as to how the debt arose. (If there is more than one debt the basis for each debt amount must be explained separately); and 		
	<ul style="list-style-type: none"> • The nature of the debt i.e. is it a debt falling under section 21(3)(a) or section 21 (3)(c) of the GEP Law. 		
3.	Certified copies of all relevant documents must be attached to the claim form. This includes, but is not limited to, the following:		
	<ul style="list-style-type: none"> • Any relevant contract; 		
	<ul style="list-style-type: none"> • Any relevant court order; 		
	<ul style="list-style-type: none"> • An acknowledgement of debt by the employee; 		
	<ul style="list-style-type: none"> • Leave forms; 		
	<ul style="list-style-type: none"> • Proof of overpayment of salary; 		
	<ul style="list-style-type: none"> • Any incapacity report; and 		
	<ul style="list-style-type: none"> • Any outcome of a disciplinary hearing. 		
4.	Once <u>section A</u> of the GEPF Departmental Debt Claim Form has been completed, and all relevant documents have been attached, the GEPF Departmental Debt Claim Form must be given to the employee to complete <u>section B</u> of the form. (Please note that the form, <u>together with all relevant certified copies of documents</u> , must be given to the employee.)		
5.	Should the employer be unable to contact the employee in order to complete <u>section B</u> of the GEPF Departmental Debt Claim Form, the employer must provide an affidavit by the relevant official explaining the process taken by the employer to contact the employee, inclusive of detailed reference to all the contact detail of the employee which the employer used to attempt to contact the employee.		
6.	Should the employee refuse to complete <u>section B</u> of the GEPF Departmental Debt Claim Form, the employer must provide an affidavit by the relevant official explaining the process taken by the employer to request the employee to complete section B of the GEPF Departmental Debt Deduction Form and detailing the refusal of the employee.		
7.	The employer must submit the GEPF Departmental Debt Claim Form, together with the Z102 Withdrawal from Fund form, to the GEPF.		



A) PERSONAL PARTICULARS OF MEMBER (Compulsory)

1. Member No.	<input type="text"/>	3. Persal No.	<input type="text"/>
2. Pensioner No.	<input type="text"/>		
4. Title	5. Surname <input type="text"/>		
6. First name	<input type="text"/>		
7. Middle name	<input type="text"/>		
8. Gender	Male <input type="checkbox"/>	Female <input type="checkbox"/>	9. ID No. <input type="text"/>
10. Date of Birth	<input type="text"/>	or Passport No.	<input type="text"/>

B) EMPLOYMENT PARTICULARS

1. Name of Employer	<input type="text"/>
2. Employer Code	<input type="text"/>

C) DEBT PARTICULARS (Please refer to the explanatory notes on the reverse side before completing this section)

1) Debt Amount?	2) Section of GEP Law?	3) Nature of Debt
Debt #1 <input type="text"/>	<input type="text"/>	<input type="text"/>
Debt #2 <input type="text"/>	<input type="text"/>	<input type="text"/>
Debt #3 <input type="text"/>	<input type="text"/>	<input type="text"/>
Debt #4 <input type="text"/>	<input type="text"/>	<input type="text"/>
4) Total <input type="text"/>		

4) How, When and Where did the debt arise? (Please attach full explanation if space below is insufficient)

Debt #1	<input type="text"/>
Debt #2	<input type="text"/>
Debt #3	<input type="text"/>
Debt #4	<input type="text"/>

D) DEBT LIABILITY (Please read explanatory notes on reverse side before completing this section)

1) Did the employee acknowledge liability of the debt amount 2) If **Yes**, was the debt proved in court

Debt #1	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Debt #2	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Debt #3	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Debt #4	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Debt #1	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Debt #2	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Debt #3	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Debt #4	Yes <input type="checkbox"/>	No <input type="checkbox"/>

