

CHAPTER 219

FIJI NATIONAL PROVIDENT FUND

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AN ACT TO ESTABLISH A NATIONAL PROVIDENT FUND

[1 August 1966]

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Fiji National Provident Fund Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“amount of wages for the month” means—

- (a) in respect of an employee paid monthly or at intervals of longer than a month, the amount of wages due to him in respect of the month;
- (b) in respect of any other employee, the aggregate amount of wages due to him on such pay days as fall within the month:

Provided that, in computing the amount of wages, any cents payable on each occasion of payment shall be ignored, unless on any such occasion the total amount payable is less than \$1, in which case it shall be deemed to be \$1;

“Board” means The Fiji National Provident Fund Board established under the provisions of subsection (1) of section 3;

“contribution” means any sum payable to the Fund under the provisions of section 13, 16, 23, 26, 47, 50, 51 or 56;

“date of entitlement” means, in respect of any member of the Fund, the day (whichever shall first occur) on which it is proved to the satisfaction of the Board that such member—

- (a) has attained the age of 55 years; or
- (b) has died; or
- (c) is physically or mentally incapacitated from ever engaging in any further employment; or
- (d) is about to leave or has left Fiji with no intention of returning thereto; or
- (e) being a woman, has married, after 1 August 1966;

“date of entry” means, in respect of any member of the Fund, the first day of the month in which the first contribution payable in respect of that member shall have been made to the Fund;

“employee” means any person, not being a person of any of the descriptions specified in the First Schedule nor a person exempted by an order made under the provisions of paragraph (a) of section 64, nor under the provisions of section 29, who—

- (a) is employed in Fiji under a contract of service or apprenticeship or learnership, whether written or oral or whether expressed or implied; or
- (b) being in Fiji, is under a contract for the performance of manual labour entered into by him either as an individual person or as 1 of a group of persons; or
- (c) being a citizen of Fiji, is employed in the manner specified in either of paragraphs (a) or (b) outside Fiji by an employer having a place of business in Fiji; or
- (d) being a citizen of Fiji, is employed under a contract of service entered into in Fiji as a master or member of the crew of any vessel, or as captain or member of the crew of any aircraft, the owners of which have a place of business in Fiji; or
- (e) is declared by the Minister, by notification in the Gazette, to be an employee, for the purposes of this Act, of the Government; or
- (f) a member of a co-operative society employed by the society of which he is a member;

“employer” means—

- (a) in respect of any employee as defined in paragraph (a) of the definition of “employee”, the person with whom such employee has entered into a contract of service or apprenticeship or learnership; or
- (b) in respect of any employee as defined in paragraph (b) of the definition of “employee,” the person with whom such employee has entered into a contract to perform manual labour; or
- (c) in respect of any employee as defined in paragraph (c) of the definition of “employee,” the Government or the employer having a place of business in Fiji as the case may be; or

- (d) in respect of any employee as defined in paragraph (d) of the definition of "employee," the owners of the vessel or aircraft in which the employee as so defined is employed; or
 - (e) in respect of any employee as defined in paragraph (e) of the definition of "employee," the Government; or
 - (f) in respect of an employee as defined in paragraph (f) of the definition of "employee," the co-operative society by which he is employed;
- "entitled member" means a member who has not re-entered the Fund after having withdrawn the amount standing to his credit on any of the grounds referred to in paragraph (a), (c) or (e) of the definition of "date of entitlement";
- "financial year" means the period from 1 July in any year to 30 June in the following year;
- "Fund" means the Fund established under the provisions of section 7;
- "Housing Authority" means the Housing Authority established under the provisions of section 3 of the Housing Act; *(Cap. 267.)*
- "Manager" means the Manager appointed by the Board in accordance with the provisions of subsection (1) of section 5;
- "maximum sum" means the sum declared by the Board under the provisions of section 9;
- "member of the Fund" or "member" means any person in respect of whom any contribution has been paid to the Fund;
- "nominee" means a person nominated by a member of the Fund in accordance with the provisions of section 34 to receive the whole or part of such member's credit in the event of the death of such member;
- "permitted fund" means a provident fund or other scheme declared to be a permitted fund by the Board under the provisions of subsection (1) of section 21;
- "voluntary contributor" means a person who enters the Fund under the provisions of section 16;
- "wages" means all emoluments which would be due in money to an employee under his contract if no deductions were made therefrom, whether in pursuance of any law requiring or permitting the making of any deduction or otherwise and whether such emoluments have been agreed to be paid monthly, weekly, daily or otherwise:

Provided that the following shall be deemed not to be wages:—

- (a) payments made by an employer to an employee in reimbursement of sums necessarily expended by him on behalf of his employer for the purposes of his employment;
- (b) payments made by the Government of the United Kingdom to a public officer engaged under the Overseas Service Aid Scheme.

(Amended by Ordinance 63 of 1968, s. 2; Legal Notice 112 of 1970; Act 1 of 1970, s. 2; 9 of 1973, s. 2; 9 of 1974, s. 2; 1 of 1976, s. 2.)

PART II—CONSTITUTION, POWERS AND FUNCTIONS OF THE BOARD

Establishment and constitution of the Board

3.—(1) There is hereby established a board to be called The Fiji National Provident Fund Board consisting of—

- (a) 2 persons holding an office of emolument under the Crown;
- (b) 2 representatives of employers not being persons holding an office of emolument under the Crown or under the provisions of any Act; and
- (c) 2 representatives of employees,

to be appointed by the Minister who shall appoint 1 of such persons to be Chairman of the Board. (*Amended by Legal Notice 112 of 1970.*)

(2) Members of the Board may be appointed for a term of 3 years or for such shorter period as the Minister may, in any case, determine but nothing in this subsection shall be read as preventing the Minister from re-appointing any member of the Board upon the expiry of his term of office. (*Amended by Legal Notice 112 of 1970.*)

(3) Every member of the Board and every person appointed by the Board under the provisions of subsection (1) of section 5 shall be deemed to be a person employed in the public service within the meaning of the Penal Code.

(*Cap. 17.*)

(4) A member of the Board shall not communicate or reveal to any person any matter which shall be brought under his consideration or shall become known to him as a member of the Board, except as may be required for the due discharge of his duties as such.

(5) Members of the Board shall be paid such remuneration and such travelling and subsistence allowances as may be fixed by the Board with the approval of the Minister. (*Amended by Legal Notice 112 of 1970.*)

(6) The quorum of the Board shall be 3.

(7) The Board shall have power to make rules for the conduct of its proceedings.

Board to be a body corporate

4.—(1) The Board shall be a body corporate and shall, by the name of "The Fiji National Provident Fund Board", have perpetual succession and a common seal which shall be affixed by the Manager or any other officer or servant of the Board appointed in that behalf by the Board and shall be authenticated by the signature of the Manager or such other officer or servant. The Board may sue and be sued in its corporate name and may enter into contracts and may acquire, purchase, take, hold and enjoy real and personal property of every description and may convey, assign, surrender, yield up, charge, mortgage, lease, demise, re-assign, transfer or otherwise dispose of or deal with any real or personal property or any interest therein vested in the Board upon such terms as to the Board seems fit. (*Amended by Act 11 of 1982, s. 2.*)

(2) Service of any document on the Manager shall be deemed to be service on the Board.

Powers of the Board

5.—(1) The Board shall have power to engage and appoint a staff consisting of a Manager and such other officers and servants as are, in the opinion of the Board, necessary for the purpose of carrying out the provisions of this Act:

Provided that the consent of the Minister shall be required to the appointment of the Manager. (*Amended by Legal Notice 112 of 1970.*)

(1A) The Manager shall be paid such salary as is determined from time to time by the Higher Salaries Commission. (*Inserted by Act 11 of 1983, s. 27, Sch. 2.*)

(1B) Subject to the provisions of the Higher Salaries Commission Act, the other officers and servants of the Board shall be paid such salaries as the Board from time to time determines. (*Inserted by Act 11 of 1983, s. 27, Sch. 2.*)

(*Cap. 2A.*)

(2) The Board shall have power to appoint agents to carry out such functions as may be necessary for the purpose of this Act and may, by its officers, direct such agents as to the extent and manner in which their functions shall be carried out.

(3) The Board shall have power to appoint, as Inspectors having the powers set out in section 61, any of the persons appointed under the provisions of subsection (1) and, with the consent of the Minister, any persons or classes of persons appointed under the provisions of subsection (2). (*Amended by Legal Notice 112 of 1970.*)

(4) The Board shall have such powers and shall perform such duties, including the duty of enforcement, as are given or imposed by this Act or by the Fiji National Training Act or as may be prescribed by the Minister by order and may, with the consent of the Minister, by instrument in writing under the common seal, delegate to any person all or any of such powers and duties: (*Cap. 93.*)

Provided that, if the Board shall delegate any such power or duty to any of its officers or servants, such delegation shall be by a resolution made and recorded at a properly constituted meeting of the board. (*Amended by Legal Notice 112 of 1970; Act 33 of 1973, s. 2; 11 of 1982, s. 3.*)

Power to issue stamps

6. The Board may print, sell, issue and utter adhesive or impressed stamps for the purpose of payment of contributions under the provisions of subsection (1) of section 13 and may prescribe the design of such stamps and the circumstances and manner in which they shall be used.

PART III—FINANCIAL PROVISIONS

Establishment of Provident Fund

7.—(1) For the purposes of this Act, there shall be a fund to be called the Fiji National Provident Fund, hereinafter referred to as “the Fund”, into which shall be paid all contributions required to be made under the provisions of this Act and out of which shall be met all payments required to be made by the Fund under the provisions of this Act.

(2) The Board shall be the Trustee of the Fund, and the moneys belonging to the Fund shall, subject to any general direction of the Minister—

(a) be deposited in a bank or banks duly licensed under the provisions of the Banking Act, or in the National Bank of Fiji; or (*Cap. 212.*)

(b) be invested in accordance with the provisions of the Trustee Act: (*Cap. 65.*)

Provided that it shall be lawful for the Board to make loans or advances to its servants as part of their conditions of employment or grants, payments, loans or advances for purposes relating to such conditions as aforesaid, upon such terms as the Board may consider reasonable. (*Amended by Legal Notice 112 of 1970; Act 9 of 1974, s. 3.*)

Rate of interest

8. At or before the end of each financial year, the Board shall, having considered the recommendation of the Manager, declare a rate of interest in

respect of that financial year, being not less than 2½ per cent per annum and, subject to the provisions of subsection (2) of section 18, interest shall be payable on the amounts standing to credits of members' accounts as calculated in accordance with the provisions of section 18 at such rate:

Provided that—

- (a) no rate of interest exceeding 2½ per cent per annum shall be so declared, unless, in the opinion of the Board, the ability of the Fund to meet all payments required to be paid under this Act is not endangered by the declaration of such rate; and
- (b) no rate of interest exceeding 2½ per cent per annum shall be so declared if any sums advanced by the Government under the provisions of section 10 have not been repaid.

(Amended by Act 9 of 1974, s. 4.)

Special death benefit

9. As soon as possible after the end of each financial year the Board shall, having considered the recommendation of the Manager, declare the maximum sum to be added to an entitled member's credit on his death for the purposes of section 36, provided that the amount so declared shall be not less than \$1,000.

(Inserted by Act 1 of 1970, s. 3.)

Advances by Government

10. If the Fund is, at any time, unable to pay any sum which is required to be paid under the provisions of this Act, the sum required shall be advanced to the Fund by the Government and the Fund shall, as soon as practicable, repay to the Government the sums so advanced.

Expenses

11.—(1) All expenses incurred in carrying this Act into effect and in connection with the administration of the Fund shall be paid out of the moneys of the Fund.

(2) For the purposes of this section, such expenses shall include such expenditure as the Board shall consider reasonably necessary or desirable for the benefit or credit of the Fund or the promotion of public or staff relations.

(Inserted by Act 1 of 1970, s. 4.)

Accounts and audit

12.—(1) The Board shall keep or cause to be kept proper accounts of the Fund and such accounts shall be audited annually by the Auditor-General.

(2) As soon as practicable after the end of each financial year, an account of the income and expenditure of the Fund, of contributions received and of withdrawals made and of interest credited to members of the Fund during the preceding financial year, together with a statement of the assets and liabilities of the Fund and the report of the Auditor-General thereon, and also a report by the Chairman of the Board on the activities of the Board during such financial year, shall be laid before Parliament and published in the Gazette.

(Amended by Legal Notice 112 of 1970.)

PART IV—CONTRIBUTIONS TO THE FUND

Payment of contributions

13.—(1) Every employer shall pay to the Fund in respect of each of his employees, in every month during which such employee is employed by him and in the month following the termination of such employment, a contribution calculated upon the amount of wages payable to such employee by such employer for the preceding month at the appropriate rates set out in the Second Schedule:

Provided that—

- (a) if, in any month of his employment by an employer, an employee is employed by that employer for a period of less than 12 days excluding Sundays and public holidays, that employer may, at his option, contribute in respect of that employee in the following month until such time as the Minister shall, by notice in the Gazette, declare that such contribution shall be mandatory;
- (b) in respect of an employee engaged in any prescribed employment, the Board may direct that payment of contributions in respect of him shall be made at intervals other than a month and, notwithstanding any other provisions of this Act, may direct the manner in which such contributions shall be calculated and paid, whereupon paragraph (a) shall be deemed to be of no effect, and the Board may further direct that payment shall be made by some other person on behalf of and to the exclusion of the employer as defined in section 2, whereupon such other person shall be deemed to be the employer for the purposes of subsection (2).

(Amended by Act 1 of 1970, s. 5.)

(2) Notwithstanding the provisions of any Act or any contract to the contrary, an employer who pays a contribution in respect of any employee in accordance with the provisions of subsection (1) shall be entitled to recover from the wages of such employee, and not otherwise, the portion of such contribution shown in the Second Schedule to be so recoverable:

Provided that no such portion may be recovered by the employer in any manner other than by deduction from the wages in respect of which the contribution is calculated at the time those wages are payable. (Amended by Act 1 of 1976, s. 3.)

(3) Notwithstanding the provisions of any Act and without prejudice to the provisions of subsections (1) and (2), any employer may, in any month, pay to the Fund contributions in respect of any of his employees at a rate in excess of the appropriate rate set out in the Second Schedule:

Provided that—

- (a) the total contribution paid in respect of any employee in any month shall exceed the appropriate rate set out in the Second Schedule by 14 cents or a multiple of 14 cents but shall not exceed 30 per cent of the salary payable to the employee in the preceding month;
- (b) notice of the payment of such voluntary contributions shall be given to the Board in such manner as may be prescribed.

(Amended by Ordinance 63 of 1968, s. 3; Act 9 of 1973, s. 3; 9 of 1974, s. 5; 17 of 1978, s. 2.)

(4) Notwithstanding any contract to the contrary, an employer shall not be entitled to recover in any way from an employee, in respect of contribution payable under the provisions of this Act, any sum in excess of that permitted to be recovered under the provisions of subsection (2). (*Amended by Act 9 of 1974, s. 5.*)

Surcharge on late payment

14. Where any contributions which an employer is liable to pay under the provisions of subsection (1) of section 13, or any amounts which such employer is required to pay under the provisions of subsection (1) of section 23, are not paid in the month during which they are due to be paid, the employer shall be liable to pay a surcharge on the total amount of all contributions not so paid to the Fund by him at the rate of 2 per cent in respect of each month or part of a month after the expiration of the earliest month during which any such contribution was due to be paid:

Provided that—

- (a) if the amount of surcharge so calculated is less than \$2, the surcharge payable shall be \$2; and
- (b) if the amount of surcharge exceeds \$2, the surcharge payable shall be calculated to the next highest multiple of \$2; and
- (c) the Board may, in any case in which it thinks fit, remit in whole or in part the payment of any surcharge due under the provisions of this section.

(*Amended by Ordinance 41 of 1969, s. 2; Act 9 of 1974, s. 7.*)

Unpaid contributions deemed to be paid in certain circumstances

15. If any employer fails to pay any contribution which he is required to pay under the provisions of subsection (1) of section 13, or any amounts which such employer is required to pay under the provisions of subsection (1) of section 23, the Board may, if it is satisfied—

- (a) that such failure was not due to the consent or connivance of the employee concerned; and
- (b) that there is no prospect of recovering the amount unpaid within a reasonable time,

credit to the employee the aggregate of the proportionate part of such contributions which would have been credited to his account as a member under the provisions of paragraph (b) of subsection (2) of section 18 had the employer paid such contributions and shall charge the amount so credited to the general revenues of the Fund:

Provided that—

- (i) nothing in this section shall prejudice the right of the Board to recover the amount of such contributions together with any surcharge due under the provisions of section 14 from the employer and any amount so recovered shall be credited to the general revenues of the Fund;
- (ii) unless otherwise determined by the Board in any particular case, any amount credited to an employee under the provisions of this subsection shall be deemed to have been paid in respect of him on the date on which such credit is made.

(*Amended by Ordinance 41 of 1969, s. 3; Act 9 of 1974, s. 8; 17 of 1978, s. 3.*)

Voluntary contributors

16.—(1) Any person or class of persons as may be prescribed who are not employees nor persons described in subsection (2) may become voluntary contributors to the Fund, subject to such conditions as may be prescribed, and contributions paid by such voluntary contributors shall be dealt with under section 18 as though they were employees.

(2) The following classes of persons shall not be entitled to become voluntary contributors:—

(a) members of permitted funds;

(b) persons exempted under the provisions of section 29 or paragraph (a) of section 64 or paragraph 4 of the First Schedule;

(c) persons who, having been members of the Fund, have withdrawn.

(3) A person becoming a voluntary contributor may commence payment of contributions not earlier than the half-year in which he gives notice to the Board in accordance with subsection (1):

Provided that no voluntary contributor may pay any contribution prior to the coming into force of section 9*.

(Inserted by Act 1 of 1970, s. 6; subsec. (1) substituted by Act 11 of 1982, s. 4.)

Amount standing to credit of member

17. The amount standing to the credit of a member of the Fund for the purposes of sections 31, 32 and 35 shall be a sum equal to the aggregate of all contributions made in respect of that member, less the aggregate of the sums referred to in paragraph (a) of subsection (2) of section 18 and all deductions made under subsection (3) of that section, and, subject to the proviso to subsection (3) of section 18, such interest as may have been credited thereon to such member under the provisions of the said subsection.

(Amended by Act 9 of 1974, s. 9.)

PART V—ALLOCATION OF PAYMENTS INTO THE FUND*Contributions to be paid into the Fund and credited to members*

18.—(1) All sums recovered or collected on account of contributions to the Fund under the provisions of this Act shall be paid into or carried to the Fund in such manner as the Board may direct.

(2) Sums due to the Fund on or after 1 January 1975 under the provisions of section 13, 16 or 23 shall be credited—

(a) as to one-seventh of their amount to the general revenues of the Fund for the purpose of financing the payment of annuities under orders made under the provisions of paragraph (b) of section 64; and

(b) as to six-sevenths of their amount to the account of the member in respect of whom they are paid.

(Inserted by Act 9 of 1974, s. 10; amended by Act 17 of 1978, s. 4.)

(3) The Board shall cause to be credited to the account of each member of the Fund the amounts for which provision is made under paragraph (b) of subsection (2) during each financial year in his respect and, upon the declaration by the Board under the provisions of section 8 of a rate of interest for the financial year, interest at that rate on the amount standing to his credit in the Fund at the commencement of such financial year in such manner as the Board may direct and deduct from the

* Sections 16 and 9 came into force on 1 January 1971.

account of each entitled member, in respect of each financial year, the sum of \$5, in a lump sum or by instalments, and such sum shall be carried to the general revenues of the Fund:

Provided that, where the authority of the Board is granted under the provisions of section 31, 32 or 35 for the withdrawal from the Fund of any amount standing to the credit of a member of the Fund, the amount of interest due from the first day of the financial year in which such authority is given to the last day of the month preceding that in which such authority is given shall be calculated at the rate of interest declared by the Board for the previous financial year and credited to such member before such withdrawal, notwithstanding that the rate of interest subsequently declared by the Board in respect of that financial year may be greater or less than the amount so calculated. (*Amended by Act 1 of 1970, s. 7; 9 of 1974, s. 10; 11 of 1982, s. 5.*)

(4) For the purpose of calculating any interest due under subsection (3), any fraction of \$1 in the amount standing to the credit of a member of the Fund shall be disregarded.

Revenue other than contributions

19. All surcharges collected under the provisions of section 14, together with any other sums which shall from time to time become payable to the Board otherwise than on account of contributions under the provisions of this Act, shall be credited to the general revenues of the Fund.

PART VI—ELDERLY EMPLOYEES AND MEMBERS RE-EMPLOYED AFTER WITHDRAWAL

Re-employment and continuation in employment after age 55 or withdrawal

20.—(1) Notwithstanding the provisions of subsection (1) of section 13, no contributions shall be payable in respect of an employee after the date on which he attains the age of 55 years if, on that date, he is not a member of the Fund and, subject to the provisions of paragraphs (a) and (b) of the proviso and of subsection (3), no contributions shall be payable in respect of an employee in the month following that in which his date of entitlement occurs or in any month thereafter:

Provided that—

- (a) any employee not having attained the age of 55 years who shall commence any employment (hereinafter in this section called “re-employment”) after his date of entitlement may, within 1 month of the commencement of such re-employment, give notice to the Board and to his employer that he desires again to become a member of the Fund and thereupon contributions shall become payable by virtue of such re-employment; but no person who has obtained the withdrawal of any amount standing to his credit in the Fund on the ground that he was leaving Fiji with no intention of returning shall be entitled to give such notice to the Board, unless he repays to the Fund the amount so withdrawn within the prescribed period;
- (b) any employee who has attained the age of 55 years and withdrawn any amount standing to his credit in the Fund on the ground that he has reached that age may, at any date thereafter if he is an employee, give notice to the Board and to his employer that he desires to re-enter the Fund, and thereupon contributions shall become payable to the Fund in respect of him under the provisions of subsection (1) of section 13,

and thereafter he shall be entitled to withdraw from the Fund any amount standing to his credit therein after the expiry of 1 year from the date of his re-entry into the Fund;

- (c) any employee who, being a female, has obtained the withdrawal of any amount standing to her credit in the Fund on the grounds of her marriage and who becomes re-employed thereafter in Fiji shall not be entitled to withdraw any further amount from the Fund on the grounds of the same marriage.

(Amended by Ordinance 41 of 1969, s. 4; Act 9 of 1974, s. 11; 21 of 1974, s. 2.)

[(2) * * * * * (Repealed by Act 9 of 1974, s. 11.)]

(3) When any member of the Fund attains the age of 55 years, contributions shall, subject to the provisions of this Act, continue to be payable to the Fund in respect of him, in accordance with the provisions of subsection (1) of section 13, at any time when he is an employee, until such time as he applies to the Board for the withdrawal of the amount, standing to his credit in the Fund:

Provided that, if such application is not made until more than 6 months after the date on which he attained the age of 55 years, contribution shall continue to be payable in respect of him and he shall not be entitled to withdraw until he shall have given to the Board 6 months' notice of his desire to withdraw, or such shorter period of notice as the Board may in any particular case accept.

(4) Any contract or agreement which provides that any person shall not give such a notice as is mentioned in the proviso to subsection (1) shall be void and any contract or agreement which provides that any person shall apply for withdrawal from the Fund of any amount standing to his credit therein on or after attaining the age of 55 years shall be void.

PART VII—PERMITTED FUNDS AND EXEMPTIONS

Approval of permitted funds

21.—(1) If the Board is satisfied that any employer has, before 1 July 1965, established a provident fund or other scheme which provides for any of his employees pecuniary benefits of not less value than the benefits provided under this Act (hereinafter in this Act called a "permitted fund"), the Board shall certify to that effect and thereupon such employer shall not be liable to contribute to the Fund under the provisions of subsection (1) of section 13, in respect of the employment of any such employee who is a member of such permitted fund, so long as the employer shall contribute to the permitted fund in respect of the employee in accordance with the rules of such fund:

Provided that the Board shall not so certify in respect of any fund whose rules provide that a contributor shall, in any circumstances, forfeit any of his own contributions to such fund or any interest accrued thereon or any greater part of the employer's donation than the difference between the amount of such donation and one half of the amount which would have been standing to that contributor's credit in the Fund had contributions been payable thereto in respect of him under the provisions of this Act during the period of his membership of such fund since 1 August 1966.

(2) Any employer who desires the Board to certify a fund or scheme as a permitted fund under the provisions of subsection (1) shall apply, in the prescribed form, to the Board within 1 month of 1 August 1966 and, if the Board is satisfied that the application is *bona fide*, it shall thereupon issue an interim certificate

exempting the employer from the provisions of this Act in respect of members of such fund until such time as the Board shall have determined whether or not it is satisfied that the fund should be approved and, if the Board shall not be so satisfied, it shall so inform the employer, whereupon the provisions of this Act shall apply to him in their entirety:

Provided that, notwithstanding the provisions of subsection (1) of section 13, no contribution shall be payable to the Fund in the month in which the Board so informs the employer.

Revocation of approval

22. If, at any time, the benefits provided by an employer under a permitted fund cease, in the opinion of the Board, to be as favourable as those provided under the Fund or if the Board is not satisfied with the management of any permitted fund, the Board may revoke any certificate given under the provisions of subsection (1) of section 21, and thereupon the provisions of sections 23 and 26 shall apply as they would apply if such fund were wound up.

Transfer of credits to the Fund

23.—(1) When any employee, not having attained the age of 55 years, leaves an employment in respect of which he was a member of a permitted fund or ceases to have contributions paid in respect of him to a permitted fund for any reason other than his death, the employer concerned shall pay to the Board either—

- (a) the amount which would have been paid to the Fund had contributions been payable thereto in respect of such employee under the provisions of this Act during the period of his membership of that permitted fund since 1 August 1966, plus the interest in respect thereof that would have been credited to such employee had those contributions been paid at the time they would have been payable under this Act; or
- (b) one half of this sum together with the amount standing to such employee's credit in the permitted fund which represents such employee's contribution thereto since 1 August 1966, with interest thereon,

whichever is the greater. Such payment shall be made within 1 month of the employee ceasing to be a member of such permitted fund or within such further period as the Board may in any particular case allow. (*Amended by Act 9 of 1974, s. 12.*)

(2) Nothing in subsection (1) contained shall prevent the transfer to the Fund, in the circumstances in which that subsection would require the transfer of any amount to the Fund, by agreement between the employer and employee, of any amount standing to the credit of such employee in a permitted fund larger than is otherwise required to be transferred by the provisions of this section, or of any amount contributed to such fund before 1 August 1966, and the interest thereon.

(3) Where an employee transfers from employment in Fiji with an employer by whom a permitted fund has been established to employment outside Fiji with the same employer, such employee shall not be deemed to have ceased to contribute to a permitted fund.

Permitted funds and insurance policies

24.—(1) Where the rules of any permitted fund provide for an employee leaving the service of an employer who has established such permitted fund to

receive any policy of insurance on his life purchased by his own or his employer's contributions to such permitted fund, the employee may, by giving notice to his employer and the Board of intention to do so within 14 days of leaving such service as aforesaid, receive in his own right such policy of insurance and shall, notwithstanding any provision of such policy, always be deemed to be the person whose life is insured thereunder.

(2) (a) The amount to be paid to the Board by an employer under the provisions of section 23 shall be abated by the amount of the cash surrender value of any policy transferred to an employee in accordance with the provisions of subsection (1) at the date of such transfer.

(b) For the purpose of calculating the surrender value specified in paragraph (a), the employer shall deliver annually to each member of the permitted fund, and to the Board, such particulars as the Board may require of any policy in force upon the life of such member.

(3) Notwithstanding the provisions of any other Act or the provisions of any policy, no insurance policy received by any person in accordance with the provisions of subsection (1) shall be assigned, mortgaged, pledged, transferred or surrendered prior to his date of entitlement.

(Inserted by Ordinance 13 of 1967, s. 2; subsec. (2) amended by Act 9 of 1974, s. 13.)

Transfer of credits to permitted fund

25. Where an employee, who is in an employment in respect of which a permitted fund has been established, is precluded by the rules of that permitted fund from contributing thereto during a specified period of probation not exceeding 1 year, any sum standing to such employee's credit in the Fund which represents contributions to the Fund in respect of the period of probation, together with any interest thereon, shall, if such employee becomes a member of that permitted fund on the expiry of such period of probation, be transferred to the permitted fund and placed to the credit of the employee therein, if the rules of the permitted fund so provide.

Winding up of permitted funds

26. Notwithstanding the provisions of section 23, where a permitted fund is wound up, the Board may, if it considers it desirable in the interests of employees so to do, accept in their entirety the assets and liabilities of such permitted fund at such date as is agreed and may place to the credit of each member of such fund, in the Fund, a sum equal to six-sevenths of the amount standing to his credit in the permitted fund on that date.

(Amended by Act 9 of 1974, s. 14; 17 of 1978, s. 5.)

Public Officers electing to contribute to the Fund

26A.—(1) Where pursuant to the provisions of section 46 of the Pensions Act, 1983, a public officer elects to contribute to the Fund, such officer shall from the date of his election (determined in accordance with paragraph (a) of subsection (2) of the said section 46) be deemed to be an employee as defined in paragraph (e) of the definition of employee in section 2, and the Government to be his employer and, subject to the provisions of subsection (2), the provisions of this Act shall thereupon accordingly apply to such officer and to the Government.

(2) Where pursuant to the provisions of section 46 (2) (c) (i) of the Pensions Act, 1983, a public officer who elects to contribute to the Fund selects the option to

receive a gratuity computed in accordance with regulation 25(1) of the Pensions (Civil Service) Regulations, the Permanent Secretary for Finance shall pay to the Board, and the Board shall accept, the amount of such officer's gratuity and shall place to his credit in the Fund the amount of such gratuity less one-seventh of that part thereof which bears to the whole thereof the same proportion as the period of the officer's public service from the 1st day of January 1975, to the date of his election bears to the whole of his public service from the date of his first appointment to the date of his election and the provisions of this Act shall apply to the amount so placed to the credit of such officer in the Fund, as if it were so placed to his credit pursuant to section 26.

(Inserted by Act 18 of 1983)*

Payment to the Fund under 51(ii) of Pensions Act

26B. Where a gratuity is to be paid pursuant to paragraph 51(ii) of the Pensions Act, 1983, then the gratuity shall be paid by the Permanent Secretary for Finance to the Board, and the Board shall accept that amount and place to the account of the beneficiary in the Fund that amount less one-seventh of that part thereof which bears to the whole thereof the same proportion as the period of the officer's public service from 1 January 1975, to the date of his resignation bears to the whole of his public service from the date of his first appointment to the date of his resignation, and the provisions of this Act shall apply to the amount so placed to the credit of such beneficiary in the Fund, as if it were so placed to his credit pursuant to section 26.

(Inserted by Act 11 of 1985†)

Date of receipt by Fund of sums out of permitted funds

27. Contributions paid to a permitted fund shall not be deemed, for any purpose connected with this Act, to have been paid to the Fund at any date earlier than the date on which, under the provisions of either section 23 or section 26, they are received by the Fund.

(Inserted by Ordinance 41 of 1969, s. 5; substituted by Act 9 of 1974, s. 15.)

Rules and accounts of permitted funds

28. An employer who has established a permitted fund shall—

- (a) furnish the Board with such accounts in respect of such permitted fund, duly certified by an accountant approved by the Board, as the Board may require;
- (b) comply with the rules of such permitted fund and pay such contributions and donations into such fund within such period as the rules of such fund shall require;
- (c) inform the Board of any proposed amendment to the rules of such permitted fund and shall not effect any such amendment except with the written consent of the Board; and
- (d) furnish such returns to the Board as the Board may prescribe concerning employees who are members of, or who have ceased to contribute to, such permitted fund.

* In force 28 March 1984. See Legal Notice 36 of 1984.

† In force 18 October 1985. See Legal Notice 76 of 1985.

Exemptions

29. If the Board is satisfied, on the application of an employee and his employer, that—

- (a) the employee is employed by an employer, whose principal registered office is outside Fiji, under a contract of employment entered into outside Fiji; and
 - (b) the employee will be entitled under a scheme established outside Fiji to benefits on retirement which are, in the opinion of the Board, adequate in the circumstances; and
 - (c) the employee is not a citizen of Fiji,
- it may issue to such an employee a certificate of exemption, and he shall thereupon be deemed not to be an employee for the purposes of this Act in respect of employment by that employer during such time as paragraphs (a), (b) and (c) continue to be applicable to him.

(Amended by Act 9 of 1973, s. 4.)

PART VIII—WITHDRAWAL OF CONTRIBUTIONS*Withdrawal to be approved by Board*

30.—(1) Money standing to the credit of a member in the Fund shall not be withdrawn from the Fund except with the authority of the Board.

(2) Subject to subsection (3), the Board shall not give its authority under subsection (1) before the date of entitlement of the member of the Fund.

(3) The Board may, on the application of a member, permit that member to withdraw all money in the Fund standing to his credit at that time if it is satisfied—

- (a) that the amount standing to the credit of the member is so small that it is not economically viable to maintain the account; and
- (b) that in view of the age or other circumstances of the member it is unlikely that he will again become a contributor to the Fund.

(4) Upon a withdrawal made by a member under subsection (3) the member shall cease to be a member of the Fund for all purposes.

(Amended by Act 12 of 1984)

Withdrawal otherwise than upon death

31. The Board shall, after the date of entitlement of any member of the Fund otherwise than upon his death, and upon his application or that of any committee of his person appointed under the provisions of the Mental Treatment Act, pay to the applicant the amount standing to the credit of such member in the Fund.

(Cap. 113.)

Withdrawal by nominee

32. The Board shall, after the death of any member of the Fund and upon the application of a person nominated under the provisions of section 34, pay to the applicant such part of the sum standing to the credit of such member as shall have been set out in the memorandum executed in accordance with that section.

Evidence

33. All applications for withdrawal shall be supported by such evidence as may be prescribed and by such further evidence as the Board may reasonably require.

Nomination

34. Any employee or member of the Fund may, by a memorandum executed in the prescribed manner, nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund under the provisions of section 32 on his death as such memorandum shall indicate, and any employee who does not nominate such a person may be required by the Board to declare, in writing, that he does not desire to do so:

Provided that the subsequent marriage of a nominator shall render any nomination made by him null and void.

Procedure where there is no nominee or a minor nominee

35.—(1) If, at the time of the death of any member of the Fund, there is no person nominated under the provisions of section 34, the amount standing to the member's credit in the Fund shall be paid into Court for disposal in accordance with the law for the time being in force.

(2) If any person nominated, other than a widow, shall be under the age of 18 years at the time of payment of the amount payable out of the Fund, his portion of the amount payable shall be paid to the Public Trustee for the benefit of such nominated person.

Payment of special death benefit

36.—(1) On the death of an entitled member after 1 January 1971, the amount standing to his credit in the Fund shall be increased by such proportion of the maximum sum as may be prescribed in accordance with subsection (2) and the amount of such increase shall be paid from the general revenues of the Fund.

(2) The amount to be added to the deceased member's credit for the purpose of subsection (1) shall be related to the member's period of membership of the Fund and to the number and amount of contributions paid on his behalf and standing to his credit in such manner as may be prescribed.

(3) The amount payable under subsection (1) shall not be taken into consideration in the assessment of compensation or damages payable to the dependants or beneficiaries of the deceased member under the provisions of the Compensation to Relatives Act. (Cap. 29.)

(Substituted by Act 1 of 1970, s. 8.)

PART IX—HOUSING FINANCE ASSISTANCE*

Interpretation

37. In this Part, unless the context otherwise requires—

“appropriate date”, for the purposes of section 41, means—

(a) where an application is made on or after 1 July in any year—that 1 July; or

(b) where an application is made before 1 July in any year—the 1 January in that year;

“approved lender” means—

(a) the Housing Authority;

(b) the Home Finance Company Limited;

(c) a bank in possession of a valid licence under the Banking Act, 1983; or

(d) subject to paragraph 42(2)(b), a lender approved under subsection 42(1);

* Part IX amended by Act 28 of 1985.

“approved purpose”, in respect of a loan to a member, means a loan acquired or required by that member for 1 or more of the following purposes, namely—

- (a) to purchase a dwelling house;
- (b) to purchase land on which to construct a dwelling house;
- (c) to erect a dwelling house;
- (d) to alter or improve a dwelling house;

where—

- (e) the dwelling house is, or is to be, occupied by the member; and
- (f) title to the dwelling house or land, is, or is to be, vested in the member either absolutely or jointly with other persons, and may include expenses associated with any such purpose, or in respect of the loan application;

“dwelling house” includes a part of a building occupied or to be occupied as a separate dwelling;

“loan” includes any arrangement by which credit is made available;

“native land” has the meaning assigned to it in the Native Land Trust Act;

“village” has the meaning assigned to it in the Fijian Affairs (Interpretation) Regulations.

Power of Board to give housing finance assistance

38.—(1) Subject to this section and to section 41, the Board may, following receipt from a member of an application for housing finance assistance made in accordance with section 39, at its discretion either—

- (a) transfer to an approved lender money in the Fund standing to the credit of the member;
- (b) lend to the member money in the Fund standing to the credit of the member; or
- (c) provide to the member money in the Fund standing to the credit of the member.

(2) The Board shall not make a transfer under paragraph (1)(a) unless it is satisfied that the money is to be used to reduce the amount owed by the member to an approved lender under a loan for an approved purpose.

(3) Subject to subsection (4), the Board shall not lend money under paragraph (1)(b) unless repayment of the loan is secured by a first or second charge on the relevant property and—

- (a) in the case of a first charge—the money is to be used for an approved purpose; or
- (b) in the case of a second charge—
 - (i) the first charge on the property is to secure the repayment by the member of a loan granted to him by an approved lender for an approved purpose; and
 - (ii) the money to be lent is to be used to reduce the amount owed to that approved lender by the member under that loan.

(4) Where the relevant property for the purposes of subsection (3) is native land or a dwelling house constructed or to be constructed on native land repayment of the loan shall be secured by a mortgage, charge or other security over any property, real or personal, of the member or any other person, which, in the opinion of the Board, is of sufficient value.

(5) A loan under paragraph (1)(b) may be granted subject to such conditions as the Board considers appropriate in each case to safeguard the Fund and the future financial security of the member.

(6) Without prejudice to the generality of subsection (5), a loan under paragraph (1)(b) may be granted subject to a provision that on the happening of a specified event the amount of the loan then outstanding shall become the absolute property of the member.

(7) Where the Board transfers money under paragraph (1)(a) it may require the member to repay by instalments the amount so transferred.

(8) Where a member is required to repay money transferred under paragraph (1)(a) the member shall enter into a deed, in a form approved by the Board, providing for the member to make regular monthly payments to the approved lender.

(9) Payments received by the approved lender under the deed entered into pursuant to subsection (8) shall be paid by the approved lender to the Board.

(10) The Board shall not provide money to a member under paragraph (1)(c) unless it is satisfied—

- (a) that the money is to be used to construct, alter or improve a dwelling house on land within a village; and
- (b) that the dwelling house is, or is to be, occupied by the member.

Application for housing finance assistance

39.—(1) An application for housing finance assistance under subsection 38(1) shall—

- (a) be made on a form provided for the purpose by the Board; and
- (b) be accompanied by such supporting documents as the Board may need to satisfy itself in respect of any matter under this Part.

(2) The Board may require a person who has made an application under subsection (1) to supply to it such further evidence as the Board may consider necessary to satisfy itself in respect of any matter under this Part.

Withdrawals and repayments

40.—(1) Where money in the Fund standing to the credit of a member is transferred, lent or provided in accordance with subsection 38(1) the money in the Fund standing to the credit of that member shall be reduced by an amount equivalent to the amount so transferred, lent or provided.

(2) Notwithstanding subsection (1), where money is transferred, lent or provided in accordance with subsection 38(1) it shall not be deemed to be a withdrawal for the purposes of—

- (a) the definition of “entitled member” in section 2;
- (b) paragraph 16(2)(c); or
- (c) section 20.

(3) Payments received by the Board—

- (a) pursuant to the provisions of a loan made under subsection 38(1); or
- (b) pursuant to subsection 38(9),

shall be paid into the Fund by the Board, without deduction, and shall be credited to the account of the member concerned as if they were contributions paid in respect of the half year in which they were received.

- (4) Where pursuant to the provisions of—
(a) a loan made pursuant to subsection 38(1); or
(b) a deed made under subsection 38(8),

a member is required to make regular monthly payments and, in the opinion of the Board, is failing to make those payments, the Board may at any time disallow the member from making any further payments in respect of that loan or pursuant to that deed except with the Board's approval.

(5) The provision of subsection (4) shall apply notwithstanding any provision of the relevant deed or loan agreement to the contrary.

Limitation on amount transferred

41. The Board shall not, in respect of a member, transfer, lend or provide under subsection 38(1) an amount which is more than—

- (a) two-thirds of the amount standing to the credit of that member in the Fund on the appropriate date; or
(b) the amount by which the amount standing to the credit of the member in the Fund on the appropriate date exceeds \$100,

whichever is the lesser.

Approval of lenders

42.—(1) The Minister may, by notice published in the Gazette, approve a lender to be an approved lender for the purposes of this Part.

(2) An approval under subsection (1) may be either—

- (a) general; or
(b) limited to a specified case.

PART X—PROTECTION OF SUMS CONTRIBUTED AND WITHDRAWN

Member's credit not subject to sequestration

43.—(1) Notwithstanding the provisions of any other written law but subject to the provisions of subsection (2), no contribution to the Fund, nor any amount standing to the credit of a member in the Fund nor interest on any such contribution or amount, nor withdrawals made by the authority of the Board from the Fund under the provisions of sections 31, 32 or 35, nor the rights of any member of the Fund acquired under this Act, nor the right to receive any annuity under any order made under the provisions of paragraph (b) of section 64, shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.

(2) Notwithstanding the provisions of any other written law, all moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of the person nominated under the provisions of section 34 by the deceased member or, if no such person has been nominated, the person or persons determined by the Court in accordance with the provisions of subsection (1) of section 35 to be entitled thereto and shall be deemed not to form part of the deceased member's estate nor to be subject to his debts.

(Amended by Act 9 of 1974, s. 16.)

Authority of Board to make payments abroad

44. Notwithstanding the provisions of any other written law, it shall be lawful for the Board to make payment of any sum due as a withdrawal or the payment of any annuity payable under this Act to a member of the Fund in any country in which that member is resident at the time when such payment becomes due.

(Inserted by Act 9 of 1974, s. 17.)

Payments under annuities deemed to be sums withdrawn from the Fund

45. For the purpose of any written law, any payment in respect of an annuity payable under any order made under the provisions of paragraph (b) of section 64 shall be deemed to be a sum withdrawn from the Fund and shall be exempt from any tax or levy imposed by any written law.

(Inserted by Act 9 of 1974, s. 17.)

Bankruptcy of employee

46. The bankruptcy of an employee shall not affect the payment of contributions from the wages of the employee in accordance with the provisions of this Act, but such payments shall continue to be made notwithstanding the provisions of any other Act and the portion of wages so paid shall be deemed not to form part of his after acquired property.

Bankruptcy, liquidation, etc., of employer

47.—(1) Where any trustee in bankruptcy, assignee, liquidator, receiver, personal representative or other such person is dealing with the property, business or estate of any employer who has failed to pay any contributions payable by the employer under the provisions of this Act, such person shall pay such contributions in such manner as may be determined by the Board before making any distribution of such property, business or estate.

(2) Any trustee in bankruptcy, assignee, personal representative or other such person shall, before distributing any assets under his control, obtain from the Manager of the Fund a certificate to the effect that all contributions payable under the provisions of this Act by such person out of any estate under his control have been paid.

(3) If any distribution is made by any trustee in bankruptcy, assignee, personal representative or other such person without first obtaining a certificate under the provisions of subsection (2), then such person shall be personally liable for any unpaid contributions together with any surcharge payable under the provisions of section 14.

(Substituted by Ordinance 63 of 1968, s. 4; subsecs. (1) and (2) amended by Act 21 of 1974, s. 3.)

Secrecy

48. Notwithstanding the provisions of any other Act, the Board shall not be required to divulge, save to the member, or if the member is dead, to his nominee, any matter relating to the amount standing to the credit of a member of the Fund, nor any particulars of such member or of any employer save with the consent of such member or employer:

Provided that nothing in this section shall prevent the Board or its officers from giving evidence relating to any such matter in any criminal proceedings.

PART XI—OFFENCES, PENALTIES AND PROCEEDINGS

Offences and penalties

49.—(1) If any person—

- (a) for any purpose connected with this Act—
 - (i) knowingly makes any false statement; or
 - (ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document which he knows to be false in a material particular;
- (b) fails to pay to the Fund in any month any amount which, under the provisions of subsection (1) of section 13, he is liable to pay in that month;
- (c) obstructs any officer or servant of the Board in the discharge of his functions as such;
- (d) fails to comply with any requirement of section 28;
- (e) fails to transfer to the Fund any sum which he is required to transfer to it by the provisions of subsection (1) of section 23 within such time as he is required by that section so to transfer it;
- (f) fails to pay to the Board, within such period as may be prescribed, any surcharge which he is liable to pay under the provisions of section 14;
- (g) being or ever having been a member, officer, servant or agent of the Board directly or indirectly communicates or reveals to any person any matter relating to the business of the Board which shall have become known to him in his capacity as member, officer, servant or agent, except as may be required for the due discharge of his duties as such member, officer, servant or agent or as may be permitted by the Board;
- (h) procures any member, officer, servant or agent of the Board or any person who had ever been such member, officer, servant or agent to communicate or reveal any such matter as is set out in paragraph (g);
- (i) prior to his date of entitlement, assigns, mortgages, pledges, transfers or surrenders any policy of insurance received by him under the provisions of subsection (1) of section 24;
- (j) fails to pay any contribution or surcharge which he is required to pay under the provisions of section 47;
- (k) fails to produce at the time specified, any document required to be produced by notice in writing under the provisions of paragraph (c) of section 61,

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$500 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment. (*Amended by Ordinance 13 of 1967, s. 3; 63 of 1968, s. 5; Act 1 of 1970, s. 9; 21 of 1974, s. 4.*)

(2) If any person—

- (a) makes, in respect of any contributions, any deductions in any manner other than by deduction from the wages in respect of which such contributions are calculated or at time other than the time at which such wages are payable;
- (b) deducts from the wages of any employee any sum greater than that permitted to be recovered under the provisions of this Act; or

(c) having made any deductions, fails to pay to the Fund in the months in which they are due the contributions in respect of which such deductions have been made,

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment. (*Substituted by Act 1 of 1976, s. 6.*)

(3) Notwithstanding the provisions of any other Act, proceedings may be taken for any offence under this Act within 3 years of the date of commission of such offence.

Notice of unpaid contributions

50. If notice of intention so to do is served by the prosecuting officer upon the defendant, evidence may be given, at any trial for an offence under the provisions of paragraph (b) of subsection (1) or of subsection (2) of section 49, of other contributions unpaid at the date of the service of the summons upon the defendant, in respect of other employees, in the form of a certificate under the hand of the Manager and, if the defendant is convicted of such offence, the court by which he is so convicted may, without prejudice to any right under the provisions of section 56, order the defendant to pay to the Fund the amount of such unpaid contributions, together with any contribution unpaid at the date of trial in respect of the charge upon which the defendant has been convicted, and the provisions of the Penal Code relating to fines shall apply to any such contributions or any portion thereof so ordered to be paid.

(*Cap. 17.*)

(*Amended by Ordinance 63 of 1968, s. 6; 41 of 1969, s. 7; Act 9 of 1973, s. 5; 21 of 1974, s. 5.*)

Further powers of court

51. Where any person is convicted under the provisions of paragraph (e), (f) or (j) of subsection (1) of section 49 of failure to make any transfer or to pay any surcharge, the court by which he is so convicted may, without prejudice to the provisions of section 56, order the defendant to pay to the Fund the amount required to be transferred or to be paid as a surcharge in the same way as is provided in relation to the payment of contributions under the provisions of section 50.

(*Inserted by Ordinance 41 of 1969, s. 8.*)

Liability of officers of corporations

52. Where an offence under this Act has been committed by a body corporate, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the body corporate, firm, society or other body of persons or was purporting to act in such capacity shall, as well as such body corporate, firm, society or other body of persons, be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Repayment to employee of illegal deductions

53. Where it is shown to the satisfaction of any court, on conviction for any offence under this Act, that any employer has made any deductions or recovered any money from any employee in respect of any contributions otherwise than in

accordance with the provisions of this Act, the court may order such employer to repay to any employee in respect of whom such illegal deductions or recoveries have been made the amount of such illegal deductions or recoveries.

(Inserted by Act 1 of 1976, s. 7)

Prosecutions

54. Prosecutions in respect of any offences under this Act may be instituted by the Manager, or by any officer, servant or agent of the Board authorised in writing in that behalf by the Manager, and the Manager or any such authorised officer, servant or agent may conduct any such prosecutions, whether or not he was the person who made the complaint to institute or otherwise instituted the proceedings.

(Substituted by Act 21 of 1974, s. 6.)

Evidence in proceedings

55. In any criminal or civil legal proceedings under the provisions of this Act, a copy of an entry in the records or accounts of the Fund duly certified under the hand of the Manager shall be *prima facie* evidence of such entry having been made and of the truth of the contents thereof, and a certificate under the hand of the Manager that there is no entry shall be *prima facie* evidence that no entry has been made.

Civil proceedings

56.—(1) All contributions payable under the provisions of this Act may, without prejudice to any other remedy, be recoverable by the Board as a debt due.

(2) Proceedings for the recovery as civil debts of any contribution may, notwithstanding anything in any other Act to the contrary, be brought at any time within 6 years from the date when the contribution becomes due.

(3) Proceedings for the recovery as civil debts of contributions may be instituted by the Manager, or by any officer, servant or agent of the Board authorised in writing in that behalf by the Manager, and the Manager or any such authorised officer, servant or agent may conduct any such proceedings whether or not he was the person who instituted the proceedings. *(Substituted by Act 21 of 1974, s. 7.)*

(4) In this section, the word "contribution" shall be deemed to include any surcharge under the provisions of section 14.

Loss of benefit through default of employer

57. If, as a consequence of a failure by an employer to pay any contribution at the time when such contribution is due, any benefit under the provisions of this Act which would have been payable to any person if such failure had not occurred is not payable, such employer shall, if convicted in any court of failure to pay such contribution at the time it was due, be liable to pay to the Fund the amount of benefit which would have been payable had the contribution been paid at the due time.

(Inserted by Act 1 of 1976, s. 8.)

Proceedings

58. Any sum which an employer shall be liable to pay under the provisions of section 57 shall be recoverable by the Board as a debt due and proceedings for the recovery of such a debt may be instituted by any of the persons authorised to institute proceedings under the provisions of subsection (3) of section 56.

(Inserted by Act 21 of 1976, s. 8.)

Application of sums recovered by Board

59. Any sum recovered by the Board under the provisions of sections 57 or 58 shall be paid by the Board to the person or persons who would, but for the offence of which the employer has been convicted, have been entitled to receive it under any of the provisions of this Act and, for the purposes of section 43, such payment shall be deemed to be a withdrawal from the Fund.

(Inserted by Act 21 of 1976, s. 8.)

Certificate by Manager

60. In any proceedings instituted under the provisions of section 58, a certificate under the hand of the Manager as to the amount of benefit which would have been payable had the offence in respect of which an employer has been convicted not been committed shall be *prima facie* evidence of the nature and amount of the debt due.

(Inserted by Act 21 of 1976, s. 8.)

PART XII—POWERS OF INSPECTORS AND OFFICERS OF THE FUND

Powers of inspectors

61. An inspector appointed under the provisions of subsection (3) of section 5 may, at any reasonable time—

- (a) enter any premises or place where persons are believed to be engaged as employees;
- (b) make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place;
- (c) require the production of any document which an employer is required to keep under the provisions of this Act or of the Employment Act, or any document relating to a contract or the conditions of service existing between an employer and his employee or employees and, for this purpose, may, by notice in writing served on an employer, either in accordance with the provisions of subsection (6) of section 2 of the Interpretation Act or, in any case, by sending it by registered post to an employer's address, require such production at any place reasonably accessible to such employer on a date and at a time specified in such notice, provided that the date so specified shall not be less than 21 days from the date of service of such notice and the notice shall be deemed to have been served upon the employer when the notice would arrive at the nearest post office in the ordinary course of post; (Cap. 92.) (Cap. 7.)
- (d) examine, either alone or in the presence of any other person, with respect to any matters under this Act on which he may reasonably require information, every person whom he has reason to believe can give information respecting the subject matter of the inquiry, and require such person to be examined, and for the purposes of such examination, may summon any such person to attend at the time and place specified in such summons.

(Amended by Act 1 of 1970, s. 10; 9 of 1973, s. 6; 21 of 1974, s. 8.)

Powers of officers of the Fund

62. An inspector, or any person appointed under the provisions of section 5 and so authorised in writing by the Manager, may make such examination and inquiry as may be necessary for ascertaining the truth of any statement made for the purpose of establishing the date of entitlement of any member of the Fund and may, for that purpose—

- (a) examine, either alone or in the presence of any other person, with respect to any matters under this Act on which he may reasonably require information, every person whom he has reason to believe can give information respecting the subject matter of the inquiry, and require every such person to be examined and, for the purposes of such examination, may summon any such person to attend at the time and place specified in such summons;
- (b) require any person who makes any such statement to sign a declaration as to its truth.

PART XIII—REGULATIONS

Regulations

63. The Board may make regulations for any purpose for which regulations may be made under the provisions of this Act and for prescribing anything which may be prescribed thereunder and otherwise for the purpose of carrying this Act into effect, and, in particular, but without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters:—

- (a) to provide for the registration of employers and employees in anticipation of the coming into force of any of the provisions of this Act;
- (b) to provide for the manner of payment and collection of contributions and any matters incidental thereto;
- (c) to provide for the disposal of amounts which are unclaimed, unpaid or otherwise remain in the Fund;
- (d) to provide for—
 - (i) the return of contributions under the provisions of this Act, or any part of such contributions, paid in error;
 - (ii) the payment of contributions under the provisions of this Act, or of any part of such contributions, omitted to be paid in error;
- (e) to provide for the keeping of books, accounts or records by employers;
- (f) to provide for the appointment of medical boards for the purposes of paragraph (c) of the definition of “date of entitlement” in section 2 and for such other purposes as may be prescribed;
- (g) to prescribe the procedure for the withdrawal of amounts from the Fund;
- (h) to prescribe the evidence to be produced and the person, officer or authority to whom such evidence is to be produced for the purposes of section 33;
- (i) to prescribe the procedure to be followed when contributions are paid by an employer into the Fund;
- (j) to prescribe the form and period of any notice to be given by an employee to his employer under the provisions of paragraph (a) of subsection (3) of section 13;

- (k) to prescribe the procedure to be followed when any voluntary contribution is paid to the Fund;
- (l) to prescribe the returns to be made by employers, and the forms and registers to be used, in carrying out the provisions of this Act;
- (m) to prescribe the amount, frequency of payment and duration of any annuity payable under the provisions of paragraph (b) of section 64.

PART XIV—POWERS OF THE MINISTER
(Heading amended by Legal Notice 112 of 1970.)

Exemptions and annuities

64. The Minister may, in addition to any other powers conferred by the provisions of this Act, after consulting the Board—

- (a) exempt by order any person or class of persons from all or any of the provisions of this Act;
- (b) provide, by order, that, notwithstanding the provisions of sections 31, 32, 35 and 36, any person or class of persons, entitled under the provisions of those sections to receive the whole or part of the amount standing to the credit of a member in the Fund, may receive, in place of all or part of any sum due to them, an annuity based upon that sum or part thereof.

(Amended by Legal Notice 112 of 1970.)

Reciprocal agreements

65.—(1) The Minister, after consulting the Board, may enter into a reciprocal agreement with the government of any other country or territory in which a fund similar to the Fund has been established and such agreement may provide, amongst other matters that—

- (a) any period of work for an employer in that country or territory shall be treated as a period of work in Fiji for that employer for the purpose of the definition of “employee” contained in section 2; and
- (b) subject to such conditions as may be laid down in the reciprocal agreement, any amount standing to the credit of any member of the Fund who works for any employer in that country or territory may be transferred to his credit in such fund, and any amount standing to the credit in such fund of any person who becomes a member of the Fund may be transferred to his credit in the Fund,

and, if any such reciprocal agreement containing such provisions shall be entered into, the definition of “employee” contained in section 2 shall be deemed to be modified accordingly, so, however, that no person shall be required to contribute to the Fund in respect of any period during which he did not work in Fiji and no employer shall be required to contribute in respect of any such employee during such period and the transfer by the Board of credits to and from the Fund in such manner shall be permitted. *(Amended by Legal Notice 112 of 1970.)*

(2) Any reciprocal agreement made under the provisions of subsection (1) shall be published in the Gazette and shall come into force on the date of such publication or on such later date as may be provided in the agreement.

FIRST SCHEDULE
(Section 2)

EXEMPTIONS

1. Any domestic servant or child as defined in the Employment Act.
(Cap. 92.)
2. Any outworker as defined in the Workmen's Compensation Act.
(Cap. 94.)
3. Any person detained in any prison, approved school, mental hospital or leper asylum.
4. Any person who is a member of a Provident Fund established by the provisions of any other Act.
5. Any person who has re-entered the Fund under the provisions of paragraph (b) of the proviso to subsection (1) of section 20 and subsequently withdrawn the amount standing to his credit in the Fund.

SECOND SCHEDULE
(Section 13)

(Amended by Ordinance 63 of 1968, s. 7; Act 9 of 1973, s. 7; 9 of 1974, s. 19; 17 of 1978, s. 6.)

RATES OF CONTRIBUTION

The monthly contribution by an employer under the provisions of subsection (1) of section 13 shall be 14 cents in respect of each complete dollar in the amount of wages of the employee for the preceding month, and the amount which may be recovered by the employer under the provisions of subsection (2) of such section from the employee's wages for the preceding month shall be one half of such contribution:

Provided that, where, in any month, the rate of wages payable to an employee does not exceed 30 cents per hour, no sum shall be recoverable by an employer from the employee's wages for that month.

Controlled by Ministry of Finance

CHAPTER 219

FIJI NATIONAL PROVIDENT FUND

SECTION 2—DECLARATION OF EMPLOYEES

Legal Notice No. 223 of 1974

The following persons shall be, or be deemed to be, employees for the purpose of the Act:—

The Members of the Legislative Council, the House of Representatives and the Senate, with effect from 21 October 1966, in respect of all wages arising out of any period of such Membership.

SECTION 63—FIJI NATIONAL PROVIDENT FUND REGULATIONS

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PART I—PRELIMINARY

Short title

1. These Regulations may be cited as the Fiji National Provident Fund Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—
“appropriate form” means a form approved by the Manager for use in any particular case pursuant to these Regulations;

“contribution half-year” or “half-year” means the period from 1 January to 30 June, or 1 July to 31 December in any year as the case may be;

“Manager” means the Manager or, with respect to any matter, any officer appointed under the provisions of subsection (1) of section 5 of the Act and authorized by the Manager to act on his behalf in such matter;

“test period” means, in respect of a deceased member, the period of 5 years preceding the contribution half-year in which he died or, if he shall have been a member for less than 5 years, the period of such membership preceding the contribution half-year in which he died;

“voluntary member” means a voluntary contributor who is a member of the Fund.

(Amended by Legal Notice 2 of 1971.)

Delegation

3. Anything which is required to be done or which may be done by the Board under the provisions of these Regulations, may be done by an officer of the Board to whom power has been delegated by the Board for such purpose and anything which is required to be shown to the satisfaction of the Board may be shown to the satisfaction of such officer.

PART II—REGISTRATION OF EMPLOYERS AND EMPLOYEES

Employers required to register

4.—(1) Every person being an employer as at 1 August 1966 shall forthwith register himself as an employer by obtaining, completing and forwarding the appropriate form to the Manager at the office of the Fund, unless he has already done so under the provisions of the Fiji National Provident Fund (Preliminary Registration) Regulations, 1966.

(2) Every person who is registered and who subsequently ceases to be an employer shall inform the Manager accordingly within 1 month of ceasing to be an employer.

(3) Every person becoming or again becoming an employer after 1 August 1966 shall forthwith register in the manner aforesaid.

(4) Every employer who has registered shall inform the Manager forthwith in writing of any change in his address.

Employer's reference number

5. The Manager shall register and allot an employer's reference number to every registered employer.

Manager to supply registration forms for employees

6. As soon as possible after an employer is registered, the Manager shall forward to him, in respect of each of his employees who is under the age of 55 years, the appropriate form for registration of an employee, and every employer receiving such forms shall complete them in respect of such employees and return them to the Manager within 14 days.

Employer to register employees

7. Every employer shall, as soon as any person not already a member of the Fund under the age of 55 years becomes his employee, register him on the appropriate form and forward such form to the Manager within 1 month of the date of commencement of his employment.

Employee to sign or make thumbprint

8. Every employee in respect of whom a registration form is to be completed under the provisions of regulation 7, shall furnish a clear impression of his left thumb in the space provided for such purpose on that form or, at his option, his written signature and each such impression or signature shall be witnessed and countersigned by the employer or by a representative of the employer or by an officer of the Fund:

Provided that—

- (a) if it is impossible for the employee to furnish an impression of his left thumb, he may furnish a clear impression of his right thumb and, in the said form, the word "left" shall be deleted and the word "right" substituted therefor;
- (b) if it is impossible for the employee to furnish any such thumb print, the Manager may, in writing, authorize any such other mark of identification as he thinks fit to be furnished in place thereof.

Employee to furnish information

9. Every employee shall furnish to his employer all such details as may be necessary for the completion of such returns as are required to be made by his employer under the provisions of these Regulations.

Certificate of membership

10. On the first occasion when an employee is registered by his employer, the Manager shall forward to the employer a certificate of membership of the Fund in the appropriate form together with a notice of nomination in the appropriate form and every employer to whom such forms are sent shall, as soon as reasonably possible, hand them over to the employee concerned or, if that employee is no longer in his employment, return them to the Manager.

Notices of nomination

11. Every employee receiving a notice of nomination shall complete and forward it to the Manager within 1 month of receipt.

Incomplete documents

12. If, in the opinion of the Manager, any document required to be completed by an employer under the provisions of these Regulations is incomplete or inaccurate or insufficiently legible or any impression made thereon is insufficiently clear to identify the employee, the Manager may return the document to the employer who shall, as the Manager may require, either forthwith obtain, complete and forward to the Manager within 1 week of the date of return to him of the said document a fresh document in place thereof or correct and return the original document within 1 week.

Members of permitted funds to be registered

13. Every employer who has established a fund or scheme which has been certified as a permitted fund or in respect of which application has been made for such certification shall, when required by the Manager so to do, obtain, complete and forward to the Manager at the office of the Fund an employee's registration form in respect of every employee who is a member of such fund and who has not in his possession a certificate of membership and shall obtain, complete and return to the Manager the said form in respect of every such employee who shall, in future, become a member of such fund within 1 month of his becoming a member.

Voluntary membership

14.—(1) Any person who was a voluntary contributor immediately before 7 May 1982 shall continue to be a voluntary contributor.

(2) Any person who is not an employee nor a person described in subsection (2) of section 16 of the Act and who is a person of any of the descriptions set out in the Schedule may become a voluntary contributor upon giving to the Board notice in accordance with paragraph (3).

(3) A person who desires to become a voluntary contributor shall give notice to the Board of such his desire by completing the appropriate registration form and delivering it or sending it by post to the Board; and, in the case where he desires to become a voluntary contributor as a former employee, such notice shall be so given not more than 6 months (or such longer period as the Board may in any case allow) after he ceased to be an employee.

(4) A notice under paragraph (3) shall be deemed to have been given to the Board on the date on which the appropriate registration form constituting the same was received at the Board's office.

(5) Where such notice has been given by a person of any of the descriptions set out in the Schedule, the Manager shall send him a certificate of voluntary membership in the appropriate form together with a notice of nomination in the appropriate form; and such form of notice of nomination shall be completed and returned by that person to the Board within 1 month of its receipt by that person.

(6) A person who becomes a voluntary contributor may commence payment of contributions not earlier than the half-year in which he gives notice to the Board in accordance with paragraph (3).

(Inserted by Legal Notice 2 of 1971; substituted by Legal Notice 44 of 1982.)

PART III—PAYMENT OF CONTRIBUTIONS INTO THE FUND

Manner of payment of contributions

15. All contributions to the Fund shall be paid to the Fund either—
- (a) in cash at the office of the Fund to an officer of the Fund authorized by the Manager in that behalf; or
 - (b) by money order, postal order or cheque, drawn on any bank in Fiji, delivered or sent by post to the office of the Fund; or
 - (c) in such other manner as the Manager may from time to time authorize in any particular case or class of cases.

Documents to accompany payment

16. All payments of contributions to the Fund shall be accompanied by the appropriate forms duly completed, or by such other forms as the Manager may in any particular case or class of cases permit.

Receipts

17. A receipt for each sum paid to the Fund on account of contributions to the Fund shall be given by the manager on the appropriate form.

Six-monthly schedules and remittance statements

18. The Manager shall despatch, at the appropriate time, to every employer who is registered under the provisions of regulation 5 six-monthly schedules of contributions (hereinafter called "schedules") and monthly contribution remittance statements (hereinafter called "remittance statements") in the appropriate form for the recording and payment of contributions payable to the Fund under the provisions of section 13 of the Act.

Implementation of Act No. 17 of 1978

18A. For the purpose of giving effect to the provisions of the Fiji National Provident Fund (Amendment) Act, 1978, and notwithstanding regulation 18, there shall be a 1 month schedule form (form A3/78) and the schedule form (form A1/79) for the first half year of 1979 shall become a 5 monthly schedule.

(Inserted by Legal Notice 39 of 1979.)

Procedure for schedules, remittance statements and receipts

19. On receipt of the schedule, the employer shall enter thereon, in the spaces provided, the name and membership number of every employee employed by him and thereafter, in each month, shall enter, against the name of each such employee, the amount payable to the Fund by the employer in respect of that employee under the provisions of section 13 of the Act.

Completion of remittance statements

20. In every month, every employer shall complete the remittance statement appropriate to that month by entering upon it the total of the amounts payable in respect of all of his employees for that month and shall forward it, together with a remittance for such total amount, so as to reach the Manager during the relevant month.

Remittance by voluntary member

21. To remain in full benefit, every voluntary member shall complete the remittance statement at least once in every contribution half-year and shall forward it, together with the remittance, which shall total at least \$24 in each half-year, so as to reach the Manager during the relevant half-year.

(Inserted by Legal Notice 88 of 1978.)

Duplicates to be kept

22. Every employer shall keep duplicate copies of schedules and remittance statements on the copy sheets provided.

Receipts

23. The Manager shall cause a receipt for the amount remitted to be sent to the employer who shall affix it in the appropriate place upon his duplicate copy of the remittance statement.

New employees

24. If, during the currency of any schedule, any employee shall enter the service of any employer, the employer shall forthwith enter his name in the appropriate column of the schedule together with his membership number if he is a member of the Fund. If he is not a member of the Fund, he shall enter in the schedule the name of the employee only and enter the membership number when notified by the Manager by the issue of a membership card.

Employee leaving service of employer

25. If, during the currency of any schedule, any employee shall leave the service of the employer, the employer shall strike through the spaces against that employee's name for the remaining months in the half-year for which no contribution is due and enter the total of contributions in respect of that employee in the final column of the schedule.

Schedule to be sent to Manager half-yearly

26. In the months of June or December, as the case may be, every employer shall complete the schedule by adding together the amounts payable in respect of each employee during the half-year to which the schedule refers and shall enter such total in the final column of the form. He shall then add such totals and enter the grand total in the space provided upon the form for so doing. He shall then detach the schedule from his duplicate copy form and forward it, together with the remittance statement for the month of June or December as the case may be, and the appropriate remittance, to the Manager so as to be received by the Manager during such months of June or December, as the case may be.

(Amended by Legal Notice 20 of 1968.)

Submission of Form A3/78

26A. Notwithstanding regulation 26, every employer shall complete the 1 month schedule form (form A3/78), referred to in regulation 18A, and thereafter detach it from his duplicate copy form and forward it, together with the remittance statement for the month of January 1979 and the appropriate remittance, to the Manager so as to be received by him by 31 January 1979.

(Inserted by Legal Notice 39 of 1979.)

Where employer ceases to be liable to pay contributions

27. If, during any half-year, an employer shall cease to be liable to pay contributions under the provisions of section 13 of the Act, he shall forthwith despatch to the Manager completed schedules and remittance statements together with all remittances due to the Fund.

Interim statements

28. If, during any half-year, an employee shall apply to withdraw the amount standing to his credit in the Fund or, on his death, any person shall so apply, the Manager may, by issue to that employee's employer of the appropriate form, require that employer to complete an interim statement of contributions, setting out the amount of contributions due to that employee up to such date as may be determined and such employer shall complete and return such interim statement within 14 days of the date of its issue.

(Substituted by Legal Notice 20 of 1973.)

Arrears

29. If any employer shall, for any reason, require to pay arrears in respect of any employee, he shall so inform the Manager who shall issue to him appropriate forms to accompany such payment of arrears.

No alterations to be made to schedules

30. No amendment shall be made by an employer to any entry on a schedule after the date of payment of the contribution in respect of which the entry was made, but if, after payment of any contribution for any month, the employer discovers that an error has been made, he shall inform the Manager, in writing, as soon as the error comes to his notice, of the amount and nature of the error and the Manager shall direct how it shall be adjusted.

Documents to be available for inspection

31. Every employer shall retain the duplicate copies of schedules and remittance statements, together with the relevant receipts for a period of 2 years following their date of issue and shall, during such period, make such forms available, on request, for inspection by any inspector appointed under the provisions of subsection (3) of section 5 of the Act.

Date for payment of surcharge

32. Any sum due to the Fund by way of surcharge under the provisions of section 14 of the Act shall be paid to the Fund within 14 days of a demand for such payment signed by the Manager or other authorized officer of the Fund.

Voluntary excess contributions

33. When any voluntary excess contribution is paid to the Fund by an employer under the provisions of subsection (3) of section 13 of the Act, he shall write the letters "VE" on the right hand side of the final column of the relevant schedule against the entry for the employee in respect of whom the voluntary excess contribution is paid.

Transfer of sums from permitted funds

34. Any employer making payments to the Fund of the amount required under the provisions of section 23 of the Act to be paid in respect of an employee who ceases to be member of a permitted fund shall complete and forward to the Manager the appropriate forms of transfer with his remittance.

Procedure on rejoining Fund

35. Any person who, having withdrawn from the Fund on the grounds that he was leaving Fiji with no intention of returning, desires to re-enter the Fund under the provisions of paragraph (a) of the proviso to subsection (1) of section 20 of the Act shall—

- (a) give notice to the Board and to his employer of his intention; and
- (b) pay to the Fund the amount so withdrawn, within 3 months of commencing re-employment in Fiji or within 3 months of 23 December 1969, whichever shall be the later date;

Provided that the Board may extend the period of 3 months, if it is satisfied the circumstances are of such a nature so as to justify the extension.

(Inserted by Legal Notice 2 of 1970; amended by Legal Notice 88 of 1978.)

Sums paid to be deemed contributions

36. Any sum paid to the Fund under the provisions of regulation 35 shall be deemed, for the purposes of subsection (2) of section 18 of the Act, to be a contribution paid during the financial year in which the payment is made in respect of the person for whom it is made.

(Inserted by Legal Notice 2 of 1970.)

Appropriate forms to be forwarded to the Manager

37. Any person making payment to the Fund of the amount required under the provisions of regulation 35 shall complete and forward to the Manager the appropriate forms with the remittance for the amount due.

(Inserted by Legal Notice 2 of 1970.)

**PART IV—CONTRIBUTIONS MADE OR OMITTED TO BE
MADE IN ERROR**

Refunds and offsets

38. When the Board is satisfied that any amount has been paid to the Fund by error in respect of any employee, either wholly or partly in excess of the amount that was due to be paid, the Board may, subject to the provisions of regulation 39, refund the amount so paid in excess to the person by whom it was made:

Provided that—

- (a) if the excess payment was, in the opinion of the Board, made by error occasioned by negligence on the part of the person by whom it was made, or if the refund of such excess payment is not claimed within 2 years of the date on which it was made, or if the member in respect of whom it was made has withdrawn it, such excess payment shall not be refunded but shall be deemed to have been properly made as an excess contribution under the provisions of subsection (3) of section 13 of the Act for the employee in respect of whom it was made; and
- (b) if any amount is due to the Fund from the person to whom refund of the amount paid in excess would otherwise be made, the Board may retain the whole or any part of such payment and set it off against such amount as is due.

No refund without Board's consent

39. No refund shall be made and no amount shall be set off under the provisions of regulation 38, except with the consent of the Board, who may require the person by whom the excess payment was made to make a written application for refund and to furnish such information as the Board may require to determine the amount of the excess payment and the circumstances in which it occurred.

Late payments

40. When any contribution or the full amount of the contribution due by or in respect of any person has, by error, not been paid to the Fund during the month when it should have been paid, the employer shall, as soon as such error comes to his notice, pay the amount due to the Fund accompanied by the appropriate forms.

PART V—DISPOSAL OF AMOUNTS UNCLAIMED OR
OTHERWISE REMAINING IN THE FUND*Unidentified contributions*

41. If any contribution is received and after reasonably diligent inquiry it is not possible to determine the member to whose account it should be credited, the contribution shall be transferred to an unclaimed deposits account hereinafter referred to as "the Unclaimed Deposits Account".

(Substituted by Legal Notice 6 of 1972.)

Disposal of moneys when no application made under section 32

42. If, within 1 year of the death of any member of the Fund, any nominee has not made an application under the provisions of section 32 of the Act, the amount which would have been payable to such nominee shall be transferred to the Unclaimed Deposits Account.

(Inserted by Legal Notice 83 of 1969.)

Disposal of other moneys

43. All moneys received by the Fund which cannot be identified as having been paid under the provisions of section 19 of the Act or which are not affected by the provisions of regulation 41 shall be transferred to the Unclaimed Deposits Account. (Inserted by Legal Notice 83 of 1969.)

Contributions remaining in the Fund

44. Any amount standing to the credit of any member in respect of whom no contributions have been received for the period of 10 years after he has attained the the age of 55 years and in respect of which no notice of withdrawal has been received before the end of that period shall be regarded as an unclaimed deposit and shall be transferred to the Unclaimed Deposits Account.

(Amended by Legal Notice 83 of 1969.)

Unclaimed Deposits Account

45. Where any amount has been authorized to be paid out of the Fund to any person, and such person has not obtained payment within 1 year after the date of authorization, such amount shall be regarded as an unclaimed deposit and shall be transferred to the Unclaimed Deposits Account.

(Amended by Legal Notice 83 of 1969.)

Payments out of Unclaimed Deposits Account

46. Any amount which has been transferred to the Unclaimed Deposits Account shall be paid to any person who can show legal title thereto within a period of 10 years from the time of its transfer into the Unclaimed Deposits Account, but no amount which has been so transferred shall be paid to any person, unless application for its withdrawal has been made by that person within a period of 10 years from the time of its transfer to the Unclaimed Deposits Account.

(Amended by Legal Notice 83 of 1969.)

No interest to be added

47. No interest shall be added to any amount in respect of any period during which it is in the Unclaimed Deposits Account.

(Amended by Legal Notice 83 of 1969.)

Unclaimed Deposits Account to form part of Fund

48. The moneys in the Unclaimed Deposits Account shall form part of the Fund and the interest from the investment thereof shall be placed to the general revenues of the Fund.

(Amended by Legal Notice 83 of 1969.)

General Reserve Account

49.—(1) Any income of the Fund remaining unappropriated at the end of any financial year, together with any sum which remains unclaimed after the expiration of 10 years after such sum has been transferred to the Unclaimed Deposits Account, shall be carried to a reserve account, hereinafter referred to as “the General Reserve Account”.

(2) The moneys in the General Reserve Account shall form part of the Fund and any interest arising from the investment thereof shall be placed to the general revenue of the Fund.

(3) The General Reserve Account shall be disposed of by the Board from time to time in such manner as the Board shall deem appropriate for the furtherance of social security measures.

(Inserted by Legal Notice 83 of 1969.)

PART VI—NOMINATIONS

Persons who may nominate and be nominated

50.—(1) Subject to the provisions of these Regulations, a member may nominate any person to receive any sum due to him on his death.

(2) Such nominations may be in favour of 1 person or of not more than 4 persons who shall be clearly designated in the appropriate form and, where there is more than 1 nominee, the nominator may, in such form, direct that the nominees shall take the amount the subject of the nominations in specific shares of not less than one-eighth of the amount standing to the member's credit on his death:

Provided that—

(a) in the absence of any such directions or, if such directions purport to dispose of more or less than the amount standing to the credit of the member at the date of his death, the Board shall pay the amount nominated to the nominated persons in equal shares;

(b) the Board may, on the application of a member, allow more than 4 persons to be nominated if it is satisfied with the reasons for the request.

(Amended by Legal Notice 83 of 1969; 88 of 1978.)

Invalid nominations

51. The Board may, in its discretion, refuse to accept any nomination where it has reason to believe that such nomination has been made under undue influence, or is in favour of the nominator's employer if such employer is not a relative, or if the effect of the nomination is to pledge the amount, or any part of the amount standing to the member's credit as security, and any such nomination shall be null and void.

Nomination to be in writing

Every nomination shall be made, in writing, on the appropriate form and shall be signed by the nominator in the presence of a witness and the signature of the nominator shall be attested by such witness.

Attestor not to benefit

53. Any person who attests the signature of a nominator to a nomination shall not be entitled to any benefit thereunder.

Nomination to be sent during lifetime of member

54. A nomination shall be of no effect unless the appropriate form duly completed is sent during the lifetime of the nominator to the Manager of the Fund.

Revocation of nomination

55. A nomination shall be revoked—

- (a) by the death of the nominee or, where there is more than 1 nominee, by the death of all the nominees in the lifetime of the nominator;
- (b) so far as relates to the interest thereunder of any nominee, being 1 of 2, or more nominees, by the death of that nominee in the lifetime of the nominator, unless the interest of the nominee is disposed of by the nomination:

Provided that, in the event of any such revocation, the amount which would have been payable to such deceased nominee shall be paid to the surviving nominees in equal shares;

- (c) by a subsequent nomination duly made in accordance with the provisions of these Regulations by the same nominator;
- (d) by the marriage of the nominator as provided in section 34 of the Act, but a nomination shall not be revoked by any will or by any other act, event, or means whatsoever.

(Amended by Legal Notice 83 of 1969.)

Death of nominee

56. Where a nominee dies after the death of the nominator but before any sum has been paid to him as a nominee, the provisions of these Regulations shall apply to the nominee and the sum shall be payable to him as if, at the date of his death, the deceased nominee were a member of the Fund and the sum due to him in that respect.

*Saving for nominations made under Fiji National Provident Fund
(Preliminary Registration) Regulations, 1966*

57. A nomination made by a member in the appropriate form under the provisions of the Fiji National Provident Fund (Preliminary Registration) Regulations, 1966, and sent to the Manager of the Fund under the provisions of those Regulations, shall, subject to the provisions of regulation 51, if duly signed and attested in the manner provided for by these Regulations, have effect as if it had been validly made under the provisions of these Regulations by the nominator on 1 August 1966, unless such nomination had before that date been revoked by the happening of any event of the kind specified in regulation 55.

PART VII—WITHDRAWALS

Applications

58. A member wishing to withdraw any amount standing to his credit in the Fund, or, where the member has died, the person claiming to be entitled under the Act to the amount standing to the credit of the member or any part thereof, shall give notice to the Manager in the appropriate form and shall forward such form together with the member's certificate of membership to the Manager at the office of the Fund:

Provided that the Manager may, if he is satisfied that it is reasonable in the circumstances so to do, dispense with the production of the certificate of membership.

Age given on registration form to be binding

59. Where the application is made on the ground that the member has attained the age of 55 years, the date of birth entered on the member's registration form shall be deemed to be binding upon the member, but the Board may, if it has reason to believe that such date was not correctly stated, require to be furnished with further evidence of age to its satisfaction.

Evidence of death

60.—(1) Where the application is made on the ground that the member has died, the applicant shall supply proof of the death of the member. Such proof, in the absence of a grant of probate or letters of administration, shall be the death certificate or a certified extract from the register of deaths issued by the Registrar-General or by any other officer empowered to issue such extracts:

Provided that the Board may accept as proof of death such other documents as it may, in its absolute discretion, think fit.

(2) The applicant shall, in addition, provide such proof of his own identity as the Board may require.

Member not heard of for 7 years

61.—(1) The Board may accept as conclusive proof of the death of the member a statement or declaration that such member has not been heard of for a period of 7 years or more by persons, who, if the member had been alive, would be likely to have heard of him.

(2) A receipt for any payment that may be made under the provisions of these Regulations in reliance on such statement or declaration as aforesaid shall be a valid discharge to the Board for the sum paid, notwithstanding that the member may, in fact, be alive at the time of such payment.

Evidence of incapacity

62. Where the application is made on the ground that the member is physically or mentally incapacitated from ever engaging in any further employment, the member shall forward with the notice referred to in regulation 58 a certificate in the appropriate form signed by a registered medical practitioner in support of the facts therein stated for the purposes of the Act.

Medical boards

63. If the Board is not satisfied by any medical evidence produced by the member, the Manager may appoint 1 or more registered medical practitioners as a Medical Board to examine the applicant and to make a report and may require such applicant to appear before such Medical Board and be examined at such time or place as the Medical Board may appoint.

Evidence of leaving Fiji

64. Where the application is made on the ground that the member is about to leave or has left Fiji with no intention of returning thereto, the member shall supply such evidence in support of his application as the Manager may require.

Evidence of marriage

65. Where the application is made on the ground that the member, being a woman, has married, the member shall forward with the notice referred to in regulation 58 a copy of the relevant certificate of marriage.

Death of a member during withdrawal

66. If, having applied for withdrawal, a member shall die before having received payment of any amount due to him in respect of such application, such application for withdrawal shall be deemed to be null and void.

(Inserted by Legal Notice 20 of 1973.)

PART VIII—SPECIAL DEATH BENEFIT

Conditions

67. For the purposes of section 36 of the Act, the amount to be added to a deceased entitled member's credit shall be the maximum sum declared by the Board in accordance with the provisions of section 9 of the Act, provided that, at the date of his death, the following conditions are satisfied:—

- (a) the cumulative amount deducted from the member's credit in accordance with subsection (2), of section 18 of the Act at the date of the last such deduction, together with deductions normally made by the Board at other times during the financial year from further credits due to the member, excluding credits arising from payments made since the date of death, shall have been not less than \$5; and
- (b) in the case of an employee, contributions to the Fund shall have been paid in respect of him in each of the contribution half-years in the test period; or
- (c) in the case of a voluntary member, a sum of not less than \$24 shall have been paid by or in respect of him in each of the contribution half-years in the test period.

(Substituted by Legal Notice 65 of 1971; amended by Legal Notice 88 of 1978.)

Rate of benefit

68. In the case of a deceased entitled member who did not, at the date of his death, satisfy the conditions set out in regulation 67, the amount to be added to his credit at the date of his death shall be calculated in the following manner:—

- (a) if the cumulative amount deducted from the deceased member's account in accordance with the provisions of section 9 of the Act at the date of

the last such deduction, together with deductions normally made by the Board at other times during the financial year from further credits due to the member, excluding credits arising from payments made since the date of death, shall have been less than \$5, the maximum sum for the purpose of paragraphs (b) and (c) shall be deemed to be such proportion of the maximum sum as the cumulative amount deducted as aforesaid shall bear to \$5; and

- (b) in the case of an employee, such maximum sum shall be abated by \$100 in respect of each contribution half-year in the test period in which no contributions were paid in respect of him at the date of his death; or
- (c) in the case of a voluntary member, such maximum sum shall be abated by \$100 in respect of each contribution half-year in the test period in which less than \$24 had been paid by or in respect of him at the date of his death:

Provided that, if the deceased member was, during the test period, both an employee and a voluntary member, paragraph (b) shall apply to any contribution half-year in which he was an employee at any time and paragraph (c) to any contribution half-year in which he was a voluntary member for the whole of that half-year.

(Substituted by Legal Notice 65 of 1971; amended by Legal Notice 88 of 1978.)

Posthumous payment cannot be premium

69. For the purposes of paragraph (a) of regulation 68, any deficiency in the cumulative amount from \$5 may not be made up by relying on deductions from payments made after the date of death.

(Inserted by Legal Notice 88 of 1978.)

Benefit in case of posthumous membership

70. In the case of an employee who died before becoming a member of the Fund, special death benefit is not payable, but the Board may grant an *ex gratia* payment of up to the amount of the special death benefit to his personal representative.

(Inserted by Legal Notice 88 of 1978.)

PART IX—PAYMENTS OUT OF THE FUND

Method of payment of withdrawals

71. Where a withdrawal from the Fund has been authorized in favour of any person, the Manager shall issue to that person a cheque drawn on the Fund's bankers for the amount standing to the credit of the member or deceased member of the Fund, as the case may be:

Provided that, if payment of any amount is to be made to any person outside Fiji, such amount may be paid by bank draft, or by such other method as the Manager may deem appropriate in any particular case or class of cases.

Receipts

72. Where payment is made by a cheque issued under the provisions of regulation 71, a receipt for the amount specified in the cheque shall be given on the reverse thereof by the payee named in the cheque, and such receipt shall be a proper discharge to the Fund for the sum specified therein.

Persons of unsound mind

73. In the case of a person who has been found to be of unsound mind, anything required to be done by him under the provisions of regulation 58, 59, 60 or 62 may be done on his behalf by the committee of his person appointed under the provisions of the Mental Treatment Act and any amount due to be paid to such person may be paid to such committee. (Cap. 113.)

Where no committee appointed

74. Where a person is of unsound mind and no committee of his person has been appointed under the provisions of the Mental Treatment Act, the Manager may, if satisfied that it is just and expedient so to do, pay the amount, or any part of such amount payable to such person, to the Public Trustee or any person whom the Manager shall judge proper to receive the sum in the interests of the person to whom it is due, and the receipt of the Public Trustee or such person shall be a proper discharge to the Fund for the sum so paid. (Cap. 113.)

Posting to be equivalent to delivery

75. The posting of a letter by registered post containing a cheque sent in pursuance of these Regulations addressed to any person at the address furnished on the application for withdrawal by that person shall, as regards the liability of the Fund, be equivalent to the delivery of the cheque to the person to whom the letter was addressed.

PART X—MEMBERS' STATEMENTS OF ACCOUNT*Statements of account to be sent to employer*

76. As soon as possible after the end of each financial year, the Manager shall cause to be despatched to every employer who has completed a six-monthly schedule of contributions for the last 6 months of the financial year statements of account in the appropriate form for each of the employees listed on such schedule as being in his employment in the month of May of such financial year. (Amended by Legal Notice 20 of 1968.)

Employer to deliver statements to employees

77. The employer receiving statements of account under the provisions of regulation 76 shall, within 14 days of their receipt, either deliver them to the employees to whom they are addressed or, if any of these employees are not still in his employment, return the undeliverable statements to the Manager.

Employees who do not receive accounts

78. If a member of the Fund who has not received his statement of account under the provisions of regulation 77 shall apply to the Manager for a statement of account, the Manager shall forward to him, within 1 month of such application, a statement of account up to the end of the financial year preceding that in which the application is made:

Provided that, if the application is made between the end of the financial year and the date when statements of account are despatched to employers in accordance with the provisions of regulation 76, the Manager shall send the statement of account to the applicant as soon as possible thereafter.

PART XI—OFFENCES AND PENALTIES

Offences by employers

79.—(1) Any employer who—

- (a) fails to obtain, complete or forward any registration documents as required under the provisions of these Regulations;
- (b) fails to complete or return any six-monthly schedule of contributions or monthly contribution remittance statements as required under the provisions of these Regulations;
- (c) fails or refuses to make available the duplicate copy of any six-monthly schedule of contributions or monthly contribution remittance statements in accordance with the provisions of these Regulations;
- (d) fails to deliver to any of his employees any document he is required so to deliver under the provisions of these Regulations; or
- (e) fails, by the prescribed date, to complete and return any interim statement as required by regulation 28,

shall be guilty of an offence against these Regulations and shall be liable, on conviction, to a fine not exceeding \$200 or to imprisonment for a term not exceeding 2 months, or to both such fine and imprisonment. (*Amended by Legal Notice 20 of 1973.*)

(2) Where any person has been convicted of an offence under the provisions of sub-paragraph (a) or sub-paragraph (b) of paragraph (1) of failing to forward or return any document, schedule or statement, the Court by which he is so convicted may order the production of such document, schedule or statement to the Manager within such time as it may consider reasonable in the circumstances and may further order that, in default of such production, such person shall be liable to a penalty not exceeding \$10 for every day during which such default continues. (*Inserted by Legal Notice 83 of 1969.*)

Offences by employees

80. Any employee who—

- (a) fails to make an impression or signature required by the provisions of regulation 8;
- (b) fails to provide to his employer the information required by the provisions of regulation 9; or
- (c) fails to complete and forward a notice of nomination as required by the provisions of regulation 11,

shall be guilty of an offence against these Regulations and shall be liable, on conviction, to a fine not exceeding \$20, or to imprisonment for a term not exceeding 1 month, or to both such fine and imprisonment.

Forms to remain property of the Board

81. Every appropriate form issued to an employer or employee under the provisions of these Regulations shall remain, at all times, the property of the Board and any person in possession of any such form shall deliver it up on demand to the Manager of the Fund or any inspector appointed under the provisions of subsection (3) of section 5 of the Act, and any person in possession of an appropriate form who refuses or fails so to deliver it up shall be guilty of an offence against these

Regulations and shall be liable, on conviction, to a fine not exceeding \$200 or to imprisonment for a term not exceeding 2 months, or to both such fine and imprisonment.

(Inserted by Legal Notice 20 of 1973.)

PART XII—MISCELLANEOUS

Duplicate certificates

82.—(1) If the certificate of membership of any employee is lost or destroyed, the employee concerned may apply to the Manager for the issue to him of a duplicate certificate in place thereof and the Manager may, if he sees fit, issue such duplicate, after obtaining such information as may be required and may make a charge of 30 cents therefor.

(2) Every duplicate certificate shall, before issue, have endorsed upon it the word “duplicate” and the date of issue.

(Amended by Legal Notice 88 of 1978.)

Exercise of option

83. Any employee who, under any of the provisions of section 20 of the Act, is entitled to exercise an option to join or rejoin the Fund shall give notice to the Board by obtaining, completing and forwarding to the Manager the appropriate form.

Procedure for revocation of certificate of permitted fund

84. When the Board proposes to revoke the certificate of a permitted fund under the provisions of section 22 of the Act, it shall give 1 month's notice to the employer who has established that fund of its intention so to do, and shall inform the employer of the reasons for the proposed revocation, and shall inform the employer whether, if changes are made in the operation or management of that fund, such revocation may be reconsidered.

Board may reconsider revocation

85. If, within 1 month, the employer has made such changes as the Board may require under the provisions of regulation 84, the Board may reconsider its intention to revoke the certificate, and thereupon, if it so advises the employer, he may continue to operate the fund under such conditions as may have been laid down by the Board.

Revocation of certificate

86. If, within the period of notice provided under the provisions of regulation 84, the employer has not made such changes as the Board may require, or the Board continues not to be satisfied that the benefits provided by the permitted fund are as favourable as those provided under the Fund, or is not satisfied with the management of the fund, the Board shall notify the employer, on the appropriate form, that the certificate given under the provisions of subsection (1) of section 21 of the Act is revoked, and thereupon the provisions of sections 23 and 26 of the Act shall apply as they would if such fund were wound up:

Provided that, notwithstanding the provisions of subsection (1) of section 13 of the Act, no contributions shall be payable to the Fund in the month in which the Board so notifies the employer.

SCHEDULE
(Regulation 14)

(Inserted by Legal Notice 44 of 1982.)

PERSONS ELIGIBLE TO BECOME VOLUNTARY CONTRIBUTORS

1. A person of any age who, having been an employee and having had contributions paid in respect of him under subsection (1) of section 13 in 2 successive contribution half-years, ceases to be an employee.
 2. A person who is not less than 16 years and not more than 25 years of age and who is not a person of the description set out in paragraph 1.
 3. A person who is more than 25 years of age and not more than 50 years of age (not being a person of the description set out in paragraph 1) and who has paid to the Board—
 - (a) in the case where he was more than 25 years of age on 1 January 1971, \$5 in respect of each completed year during the period commencing on that day and ending on the date on which he gave notice to the Board in accordance with paragraph (3) of regulation 14 of his desire to become a voluntary contributor;
 - (b) in any other case, \$5 in respect of the year in which he attained the age of 25 years and in respect of each successive completed year until the date on which he gave such notice to the Board.
 4. A person who is more than 25 years of age and not more than 50 years of age (not being a person of the description set out in paragraph 1) and who has—
 - (a) undergone a medical examination by a Medical Board consisting of 1 or more registered medical practitioners appointed by the Board; and
 - (b) produced to the Board a report of such Medical Board containing a recommendation that he should be accepted by the Board as a voluntary contributor.
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**SECTION 63—FIJI NATIONAL PROVIDENT FUND
(ANNUITIES) REGULATIONS**

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PART I—PRELIMINARY

Short title

1. These Regulations may be cited as the Fiji National Provident Fund (Annuities) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Order” means the Fiji National Provident Fund (Annuity) Order;

“period of membership” or words importing a period of membership shall mean, in respect of any member of the Fund, the period commencing with such member’s date of entry:

Provided that, in the case of members of the Legislative Council, the House of Representatives and the Senate who are deemed by an Order of the Minister to be employees of the Government, such period shall commence with the first day of the first month in which contributions become payable in respect of any such member under the provisions of such Order, or such member’s date of entry, whichever is the earlier.

Other words and expression defined in the Fiji National Provident Fund Regulations shall have the meanings so defined.

(Amended by Legal Notice 219 of 1974.)

Delegation

3. Anything which is required to be done or which may be done by the Board under the provisions of these Regulations may be done by an officer of the Board to whom power has been delegated by the Board for such purpose and anything which is required to be shown to the satisfaction of the Board may be shown to the satisfaction of such officer.

Calculation of annuities

4. The amount, frequency of payment and duration of any annuity payable in accordance with the Order shall be calculated in the manner set forth in the succeeding regulations.

PART II—AMOUNT OF ANNUITIES

Interpretation for calculation

5. In the calculations set out in regulations 6 and 7—

(a) “qualified member” means—

(i) in respect of a member whose date of entitlement occurs before 1 July 1976, a member who at his date of entitlement has been a member of the Fund for at least 10 complete half-years;

(ii) in respect of a member whose date of entitlement occurs between 30 June 1976 and 31 July 1981, a member whose date of entry to the Fund was not later than 30 June 1971;

(iii) in respect of a member whose date of entitlement occurs after 30 June 1981, a member who at his date of entitlement has been a member of the Fund for at least 20 complete half-years:

Provided that a deceased entitled member, or an entitled member who withdraws on the ground of incapacity, shall be

deemed to be a qualified member irrespective of his date of entry or period of membership of the Fund;

- (b) "basic annuity" means one quarter of the amount standing to a member's credit at his date of entitlement, but does not include any sum payable under the provisions of section 36 of the Act:

Provided that, in case of any entitled member who has been a voluntary contributor, there shall be excluded for the purpose of calculating his basic annuity any sum in excess of \$240 paid in any half-year by that member as a voluntary contribution and the aggregate of such excluded sums shall be paid separately as a lump sum;

- (c) "M" means, in respect of any member, the number of complete half-years of membership of that member at his date of entitlement;
- (d) "N" means, in respect of any member, the number of complete half-years elapsed between 30 June 1976 and that member's date of entitlement, if his date of entitlement is after that date.

(Amended by Legal Notice 42 of 1985.)

Annuities in respect of qualified members

6. The annuity payable in respect of a qualified member shall be the basic annuity.

Annuities in respect of members other than qualified members

7. The annuity payable in respect of an entitled member who is not a qualified member shall be—

- (a) in respect of a member whose date of entitlement occurs before 1 July 1976, the basic annuity multiplied by M and divided by 10;
- (b) in respect of a member whose date of entitlement occurs between 30 June 1976 and 31 July 1981, the basic annuity multiplied by M and divided by the sum of 10 plus N;
- (c) in respect of a member whose date of entitlement occurs after 30 June 1981, the basic annuity multiplied by M and divided by 20.

(Substituted by Legal Notice 125 of 1974.)

Additional annuities in respect of deceased entitled members

8. In the case of a deceased entitled member, if any sum shall be due to be added to the amount standing to his credit on death under the provisions of section 36 of the Act, the annuity payable in respect of such member shall be the annuity calculated in accordance with regulation 6 plus one-tenth of the amount of the added sum.

Joint annuities

9. In the case of a married member of the Fund who opts to receive a joint annuity with his or her spouse under the provisions of paragraph 3 of the Order, such joint annuity shall be two-thirds of the amount calculated in accordance with regulation 6 or regulation 7, as the case may be.

(Amended by Legal Notice 47 of 1982.)

Right to take part of amount as lump sum and part as annuity

10. Any person entitled to receive an annuity may, if he so desires and so declares at the time at which he exercises his option to receive such annuity, receive any part of the amount standing to the credit of the member in whose respect such

annuity is payable as a lump sum, whereupon the basic annuity calculated under the provisions of regulation 6 shall be calculated as though the amount standing to the credit of such member has been abated by the amount so received as a lump sum:

Provided that, if there is to be added to the sum standing to such member's credit any sum under the provisions of section 36 of the Act, any lump sum withdrawn and any remaining sum shall be deemed for the purposes of regulation 8 to be composed of the original sum and the added sum in the proportion each bears to other.

PART III—EXERCISE OF OPTION

Notification of entitlement

11. The Manager shall, as soon as is practicable after the determination of the date of entitlement in respect of a person entitled to receive an annuity, notify such person of his entitlement and of the amount thereof.

Form of option

12. The Manager shall, at the same time as he notifies any person in accordance with the provisions of regulation 11, forward to such person an appropriate form providing for such person to say whether or not he wishes to receive such an annuity.

Time for exercise of options

13. If the appropriate form provided for in regulation 12 shall be received by the Manager within 2 months of the date on which it is forwarded, the Manager shall make payment of such annuity or lump sum as has been selected by the person concerned:

Provided that, if the appropriate form is not received within the said period of 2 months, the person concerned shall be deemed to have opted to receive a lump sum and payment shall be made accordingly.

PART IV—DURATION OF PAYMENT OF ANNUITIES

Duration of annuities

14. The duration of annuities shall be—

- (a) in the case of withdrawal on attaining age 55, the life-time of the pensioner;
- (b) in the case of withdrawal on the ground of total incapacity, the life-time of the pensioner or until such time as he shall commence re-employment;
- (c) in the case of withdrawal by a sole nominee other than a person to whom the provisions of subsection (2) of section 35 of the Act applies, the life-time of such nominee;
- (d) in the case of withdrawal by a sole nominee to whom subsection (2) of section 35 of the Act applies, until such person attains the age of 18 years or ceases to receive full-time education, whichever is the later:
Provided that no annuity shall be payable to such person after he attains the age of 24 years;
- (e) in the case of a joint annuity for man and wife, the duration of the life-time of the last surviving partner:

Provided that, in all cases, if the sums paid or payable under this regulation shall be less than the basic annuity, the Board may grant a gratuity equal to the deficiency to the member's nominees.

Dates of payment

15. An annuity shall, subject to regulation 19, be payable monthly in arrears, the first monthly payment becoming due 1 month after the date of entitlement of the entitled member in respect of whom the annuity is payable.

Pension orders

16.—(1) The Manager shall, as soon as is practicable after a date of entitlement, issue to every person who is entitled to and has opted to receive an annuity (hereinafter referred to as “the pensioner”), a book containing a number of orders for the payment of the annuity (hereinafter referred to as “pension orders”).

(2) When the last pension order in the first book of pension orders, and the last pension order in each further book of pension orders issued by the Manager, has become due, the Manager may, upon proof being supplied to him that the pensioner is still living and is entitled to receive an annuity, issue the pensioner with another book of pension orders.

(3) Each pension order shall be negotiable for a period of 1 year from the date on which it falls due to be paid, and after such period of 1 year, the provisions of regulations 45, 46, 47 and 48 of the Fiji National Provident Fund Regulations shall apply in respect of any unused pension order.

(4) On the death of a pensioner or on a pensioner otherwise no longer being entitled to receive an annuity, the person holding any unused pension orders in respect of that pensioner shall immediately return them to the Manager.

Document of identity

17. The Manager may require any pensioner at any reasonable time to attend at a convenient place in order that he may be photographed and provide his thumb print or other proof of identity and may supply to such pensioner an appropriate form of document of identity.

Document of identity to be produced

18. Any pensioner in possession of an appropriate form of document of identity shall produce such form of document on each occasion on which he negotiates any pension order.

Alternative methods of payment

19. The Manager may, on the application of a pensioner, make payment of an annuity by such other method or at such other intervals as may be convenient to the pensioner and acceptable to the Manager:

Provided however that no annuity shall be payable at intervals of less than a month and no payment shall be made prior to the date when such payment would have become payable under the provisions of regulation 15 of these Regulations.

PART V—EVIDENCE*Certificate that pensioner is alive*

20. For the purpose of regulation 16, the Manager may accept as proof that the pensioner is still living a certificate to that effect signed by one of the following persons to whom the pensioner is personally known:—

- (a) a Justice of the Peace;
- (b) a Commissioner for Oaths;
- (c) a District Officer;
- (d) a Minister of Religion;
- (e) a Public Officer holding a post of or above grade ADO5 or its equivalent;
- (f) a Medical Practitioner;
- (g) a Bank Manager:

Provided that, where no such certificate can be obtained, the Manager may accept such other evidence as he shall consider satisfactory.

(Amended by Legal Notice 87 of 1978.)

Determination of nominee of deceased entitled member

21. For the purpose of determining whether any sole nominee was dependent upon a deceased entitled member in his life-time in accordance with the provisions of sub-paragraph (1) of paragraph 2 of the Order—

- (a) the following shall be deemed to be so dependent without further proof:—

the wife of the deceased or an unmarried child, brother or sister of the deceased under the age of 18 years;

- (b) the following shall be deemed to be so dependent, provided a declaration to that effect is signed by such nominee or, if the nominee is under the age of 18 years, by his parent or guardian:—

the father, mother, step-father or step-mother of the deceased or a step-child, step-brother or step-sister of the deceased under the age of 18 years;

- (c) a nominee other than those listed in paragraphs (a) and (b) shall produce as evidence of dependency such evidence as the Board shall require in each particular case:

Provided that a statement made by the deceased member in his life-time that the nominee was so dependent shall be *prima facie* evidence to that effect.

SECTION 64—FIJI NATIONAL PROVIDENT FUND
(ANNUITY) ORDER

TABLE OF PROVISIONS

PARAGRAPH

- 1. Short title
 - 2. Persons entitled to annuities
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-

Short title

1. This Order may be cited as the Fiji National Provident Fund (Annuity) Order.

Persons entitled to annuities

2.—(1) Notwithstanding the provisions of sections 31, 32, 35 and 36 of the Act, the following classes of persons entitled under the provisions of those sections to receive the whole or part of the amount standing to the credit of a member of the fund on or after 1 January 1975 may, if such persons exercise an option in the prescribed manner, receive in place of all or part of any sums which become due to them on or after 1 January 1975 annuities based upon such sums or parts thereof:—

- (a) any entitled member whose date of entitlement occurs after 1 January 1975 and who withdraws on the ground of attaining the age of 55;
- (b) any entitled member whose date of entitlement occurs after 1 January 1975 and who withdraws on the ground of physical or mental incapacity;
- (c) a person who is the sole nominee of a deceased entitled member dying on or after 1 January 1975 and who satisfies the Board that he was wholly or partially dependent on contributions from the deceased for the provision of the ordinary necessities of life suitable for persons in his class or position:

Provided that—

- (i) if such dependent nominee is a person to whom subsection (2) of section 35 of the Act applies, the option to receive an annuity may be exercised on his behalf by the Public Trustee after consultation with the Board;
- (ii) if any person is aggrieved by the decision of the Board in respect of dependency, he shall have a right of appeal to an *ad hoc* Appeals Tribunal appointed by the Minister, consisting of the following, whose decision shall be final and conclusive:—
 - (aa) a chairman, who shall be a barrister and solicitor;
 - (bb) a representative of employees; and
 - (cc) an independent person of good standing in the community:

Provided that members of the Board or of the staff of the Fund may not be appointed to any such Appeals Tribunal.

(Amended by Legal Notice 104 of 1985.)

(2) If any person entitled to do so under paragraph (1) does not exercise his option within the time limit prescribed or does not opt to receive an annuity, he shall receive such sum as would be due to him as if this Order had not been made.

Joint annuities

3. Any person entitled to receive an annuity under the provisions of sub-paragraph (1) of paragraph 2 may, if that person is married at his or her date of entitlement, opt to receive a joint annuity together with his or her spouse.

(Substituted by Legal Notice 46 of 1982.)

Amount, frequency and duration of annuities

4. The amount, frequency of payment and duration of such annuities shall be as prescribed in the Fiji National Provident Fund (Annuities) Regulations:

Provided that, if the amount of any annuity calculated under the provisions of the said Regulations amounts to less than \$48 per annum, no annuity shall be payable and the amount payable shall instead be the amount which would have been payable had this Order not been made.

SECTION 64—FIJI NATIONAL PROVIDENT FUND
(EXEMPTIONS) ORDER

TABLE OF PROVISIONS

PARAGRAPH

1. Short title
2. Interpretation
3. Employees entitled to other benefits applicable to Government employees, etc.
4. Expatriate employees
5. Hardship
6. Transitional
7. Revocation

Legal Notice No 49 of 1983

Short title

1. This Order may be cited as the Fiji National Provident Fund (Exemptions) Order.

Interpretation

- 2.—(1) In this Order, unless the contrary intention appears—
 - “basic salary”, in relation to a person and a period, means the total amount payable, by way of salary, to the person during the period, but does not include any amount payable to the person by way of overtime, an allowance or salary supplementation;
 - “Government employee” means a person who is employed by the Government of Fiji or is declared, in pursuance of paragraph (e) of the definition of “employee” in section 2 of the Act, to be an employee, for the purposes of the Act, of the Government.
- (2) For the purposes of this Order, a person shall be taken to be entitled, under the terms and conditions of his employment, to a gratuity of a specified percentage of his basic salary if, subject to his having rendered satisfactory service, he is entitled, under those terms and conditions—

(a) upon the completion of the period of his employment; or
 (b) upon the completion of each of a number of periods that, together, comprise the whole of the period of his employment,
 to the payment, in addition to his salary and any allowances payable to him, of an amount equal to that percentage of his basic salary for that period.

Employees entitled to other benefits applicable to Government employees, etc.

3. A person shall be exempt from all the provisions of the Act, if—

- (a) he is a Government employee who—
- (i) is eligible, on retirement, to payment of a pension under the provisions of any law for the time being in force relating to the payment of pensions to public officers;
 - (ii) is eligible, on retirement, to payment of a retiring allowance under the provisions of regulation 25 of the Pensions (1958) Regulations; or
 - (iii) was, on 31 October 1971, the holder of an office specified in the First Schedule to the Pensions and Gratuities (Disciplined Services) Act and has continued, without interruption, since that date, to be the holder of that office or of offices so specified;
- (b) he is an officer or soldier in the Regular Force of the Royal Fiji Military Forces; or
- (c) he is an employee of the Fijian Affairs Board who has elected to be eligible, on retirement, to payment of a pension for the whole of his service until retirement under the provisions of any law for the time being in force relating to the payment of pensions to public officers.

Expatriate employees

4.—(1) Subject to subparagraph (3), a Government employee who is not a citizen of Fiji shall be exempt from all the provisions of the Act, if—

- (a) he has been recruited under—
- (i) the United Kingdom Government aid scheme known as the Overseas Staffing Assistance Scheme;
 - (ii) the Australian Government aid scheme known as the Australian Staffing Assistance Scheme; or
 - (iii) the New Zealand Government aid scheme known as the New Zealand Supplementation Scheme;
- (b) he is employed in Fiji on terms and conditions under which he is entitled to a gratuity of not less than 25% of his basic salary; or
- (c) the Minister, acting on the recommendation of the Manager, has certified to the Board that he is satisfied that adequate provision of a kind similar in intent to that of the Act is made in the conditions of employment of the person.

(2) Subject to sub-paragraphs (3) and (4), a person who is not a citizen of Fiji shall be exempt from all the provisions of the Act, and shall be deemed to have been so exempt from the commencement of his employment, if—

- (a) he is employed in Fiji otherwise than—
- (i) as a Government employee; or
 - (ii) by an employer of the kind referred to in section 29 of the Act;
- (b) not later than 3 months after the commencement of his employment, he and his employer have, by notice in writing given to the Manager,

elected that the employee be exempted from the provisions of the Act; and

(c) the Board is satisfied that—

- (i) he is a contributing member of a scheme established outside Fiji that provides adequate benefits on retirement; or
- (ii) under the terms and conditions of his employment, he is entitled to gratuity of not less than 7% of his basic salary.

(3) Sub-paragraphs (1) and (2) do not apply to a person who—

- (a) was, on 1 December 1973, a member of the Fund; and
- (b) has continued, without interruption, since that date, to be a member of the Fund.

(4) Where, in respect of—

- (a) employment during the period that commenced on 14 May, and ended on 30 September, 1982; or
- (b) employment that, in pursuance of a written contract entered into before 1 October 1982, commenced on or after that date,

a person would, but for his failure to make an election under item (a) of sub-paragraph (2), be an employee for the purposes of the Act, he shall, in respect of that employment, be exempt from all the provisions of the Act unless his employer has, by notice in writing given to the Manager, not later than 1 July 1983, accepted the obligations of an employer under the Act in respect of that employment.

Hardship

5. A person shall be exempt from all the provisions of the Act, and shall be deemed to have been so exempt from the commencement of his employment, if—

- (a) not later than 3 months after the commencement of his employment, he or his employer has, by notice in writing given to the Manager, applied, on grounds of hardship, that the employee be exempted from the provisions of the Act; and
- (b) the Board is satisfied that—
 - (i) the employee is a contributing member of a scheme that provides benefits on retirement; and
 - (ii) the person by whom the notice was given would suffer hardship if the Act were to apply to the employee.

Transitional

6. Nothing in this Order shall be taken to require the making of contributions to the Fund by, or in respect of, a person in relation to his service before 1 July 1983 as an officer or soldier in a part of the Royal Fiji Military Forces other than the Regular Force.

Revocation

7. The Fiji National Provident Fund (Exemptions) Order* is revoked.

Controlled by Ministry of Finance

* Legal Notice No. 45 of 1982.