



**Tuvalu**

# **PROVIDENT FUND ACT**

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Tuvalu

## PROVIDENT FUND ACT

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Tuvalu

## PROVIDENT FUND ACT

### AN ORDINANCE TO ESTABLISH A NATIONAL PROVIDENT FUND AND FOR PURPOSES ANCILLARY THERETO<sup>1</sup>

#### PART I - PRELIMINARY

##### 1 Short title

This Act may be cited as the Provident Fund Act.

##### 2 Purpose of this Act

- (1) The Tuvalu Provident Fund Ordinance 1981 was based on legislation originally written for the scheme operating in Kiribati and, although the scheme to operate in Tuvalu is similar in concept, that legislation is now considered to be out of date and not readily understandable in the context of Tuvalu.
- (2) In addition the later, 1983, Ordinance contains certain inaccuracies, anomalies and omissions which would make the administration of it impossible without taking some action *ultra vires*.
- (3) The purpose of this Act is —
  - (a) to replace the Tuvalu Provident Fund Ordinance 1983 to enable the Fund to operate as intended with the minimum of administrative difficulty; and
  - (b) to set the framework for a national provident fund which will cover potentially every person of working age, without discrimination on any grounds of nationality, race or colour, for the contingencies in respect of which benefit is payable in return for compulsory, earnings related contributions or voluntary contributions.

### 3 Interpretation<sup>2</sup>

In this Act unless the context otherwise requires —

“**actuary**” means a fellow of a recognised professional body of actuaries in Great Britain, Australia or New Zealand, or in such other country as the Minister may in an individual case approve;<sup>3</sup>

“**appointed day**” means such a day as the Minister may appoint for the coming into force of the provisions of this Act, and the Minister may appoint different days for different purposes of this Act;

“**benefit**” means any benefit provided under this Act;

“**Board**” means the Tuvalu National Provident Fund Board appointed under section 6;<sup>4</sup>

“**contribution**” means a contribution to the Fund liable to be paid, or which there is eligibility to pay voluntarily, under section 12;

“**employed person**” means a person who is gainfully employed whether - under contract of service, as a director of a limited company, a holder of an office, the Governor General, Members of Parliament, ministers of religion, and includes any person who, though not bound by a formal contract of service, is subject to the control of another person, group of persons or body corporate as to the manner in which he carries out his duties, and the words “**employed**” and “**employment**” shall be construed accordingly;

“**employer**” means any person, group of persons or body corporate having another person or persons in their employ;

“**financial year**” means the period from the 1st day of January to the 31st day of December each year;

“**Fund**” means the Tuvalu National Provident Fund established under section 4;<sup>5</sup>

“**investment adviser**” means the investment adviser appointed under section 9(2);

“**Manager**” means the manager of the Fund appointed under section 9(3);

“**maximum amount**” means the maximum amount of special death benefit payable under section 23;

“**Medical Board**” means the medical board appointed under section 27;

“**member**” means any person, registered under section 14, who has paid contributions or in respect of whom contributions have been payable at any time;

“**nominated person**” means a person nominated under section 25 to receive death benefit payable under section 20(1)(f);

“**permanently retired**” means retired from regular employment and presumes that occupational activity has ceased or largely ceased;

“**proper time**” means the time prescribed in regulations for the payment of contributions;

“**this Act**” includes regulations made thereunder; and

“**voluntary member**” means any person eligible to pay contributions voluntarily under section 12 and who becomes registered under section 14.

## PART II - ADMINISTRATION AND FINANCE

### 4 Establishment of the Fund<sup>6</sup>

- (1) There is hereby established a fund, to be called the Tuvalu National Provident Fund, into which shall be paid —
  - (a) all contributions;
  - (b) all rents, interest on investments, or other income derived from the assets of the Fund;
  - (c) all sums accruing to the Fund under this Act including any repayment of benefit;<sup>7</sup>
  - (d) all sums received under this Act as fees, surcharges, penalties or costs; and
  - (e) any other sums provided by the Government for the purposes of this Act or received and accepted by the Manager on behalf of the Fund.
- (2) There shall be paid out of the Fund —
  - (a) all benefits;
  - (b) all refunds of contributions;
  - (c) all expenses properly incurred in the administration of this Act; and
  - (d) all expenses properly incurred under section 5.

### 5 Investment Scheme Fund<sup>8</sup>

- (1) There shall be established a special fund, to be called the Investment Scheme Fund, into which shall be paid all expenses incurred in the financing of investment schemes made under section 5(2).
- (2) The Board may, at any time, formulate investment schemes, which aim to generate revenue for the Fund:

Provided that any investment scheme shall not become effective unless approved by the Minister.

- (3) The Minister may make regulations to give effect to any investment scheme approved under section 5(2).

## **6 Provident Fund Board**

- (1) There is hereby established a board of management to be called the Tuvalu National Provident Fund Board, which shall consist of six members appointed by the Minister under subsection (2).
- (2) The Minister shall appoint —
  - (a) from nominations by the groups and interests concerned two members each from —
    - (i) the public service;
    - (ii) representatives of employers; and
    - (iii) representatives of employed persons; and
  - (b) a chairman from among the members appointed under paragraph (a).

## **7 Terms of appointment of Board members**

- (1) Each member of the Board shall hold office for no longer than two years.
- (2) Members of the Board shall be eligible for appointment for further periods provided that no member shall hold office for a consecutive period in excess of six years.
- (3) The Minister may, on the recommendation of the Board, dismiss from office any member who —
  - (a) fails to attend without legitimate excuse three or more consecutive ordinary meetings of the Board;
  - (b) loses his status as a public servant, employer or employed person, as the case may be, by virtue of which he was appointed to the Board;
  - (c) is convicted of a felony; or
  - (d) is declared bankrupt.
- (4) For the purposes only of the Penal Code every member of the Board and every person appointed to hold office for the purposes of this Act shall be deemed to be a person employed in the public service.

## **8 Meetings of the Board**

- (1) The Chairman of the Board shall call meetings once every 3 months or more frequently if the efficient administration of the Fund so requires.<sup>9</sup>

- (2) A Quorum shall consist of two-thirds of the members of the Board provided that if the Chairman is not present, an acting Chairman may be elected at that meeting from among the members present.
- (3) Resolutions shall be adopted on a simple majority of members present.

## 9 Functions of the Board

- (1) The Board shall, subject to this Act and any direction by the Minister, be responsible for —
  - (a) the collection of contributions;
  - (b) the payment of benefit and of the expenditure necessary for the administration of the Fund;
  - (c) subject to subsection (2), investments; and
  - (d) accounting for all money collected, paid or invested under this Act.
- (2) The Board shall, with the approval of the Minister, appoint an investment adviser to the Fund on terms from time to time to be agreed between the Board and the investment adviser, and shall have the authority to seek investment advice from and give investment instructions to the investment adviser as the Board thinks fit.
- (3) The Board shall, with the approval of the Minister, appoint a Manager who shall, subject to any directions of the Board, have day-to-day control over the Fund and all its officers and staff.
- (4) The Board shall, subject to this Act, be responsible for advising the Minister on all matters concerning the operation of the Fund and in particular for —
  - (a) reviewing this Act and recommending amendment where necessary;
  - (b) ensuring that the levels of contributions and benefits and the values of future pension benefits are reviewed and reported on by an actuary at intervals of not more than five years and that recommendations are made to the Minister for any consequent changes; and<sup>10</sup>
  - (c) advising the Minister of the financial position of the Fund as it affects the level of any transfer of funds under section II.
- (5) *repealed by Act 9 of 2002*
- (6) *repealed by Act 9 of 2002*
- (6A) The report prepared under section 9A shall include details of the financial performance and effectiveness of the Fund as judged by performance measures that are relevant to superannuation funds and are prescribed by the Minister by notice.<sup>11</sup>
- (6B) The initial performance measures referred to in subsection (6A) shall be prescribed by the Minister by notice no later than 31 August, 1996.<sup>12</sup>

(7) *repealed by Act 9 of 2002*

### **9A Auditor General's report<sup>13</sup>**

- (1) The Auditor General shall inspect and audit and report at least once in every financial year to Parliament on the accounts, transactions, finances and property of the Fund in accordance with section 176 of the Constitution of Tuvalu and subsection 35(1) of the Public Finance Act and must be satisfied that —
  - (a) the accounts of the Fund have been properly prepared in accordance with generally accepted accounting principles, taking into consideration the requirement for good stewardship and developing practices with respect to the reporting of corporate finances; and
  - (b) expenditure has been incurred with due regard to economy and the avoidance of waste.
- (2) The Auditor General in the report required by subsection (1) of this section, shall state —
  - (a) whether the accounts and statements have been properly prepared in accordance with the books and records of the Fund and give a true and fair view of the financial operations and the current financial position of the Fund;
  - (b) whether the books and records of the Fund have been properly kept and contain information adequate for the purposes of the audit;
  - (c) whether the financial affairs of the Fund have been properly conducted; and
  - (d) all other matters arising out of the accounts and statements which he considers should be made known to the Minister and Parliament.

### **9B Corporate Plans<sup>14</sup>**

- (1) The Board shall prepare corporate plans.
- (2) The first corporate plan —
  - (a) shall be for a period of not less than 3 years and not more than 5 years; and
  - (b) shall be prepared and submitted to the Minister no later than 30 September, 1996.
- (3) Each subsequent corporate plan shall be for a period of not less than 3 years and not more than 5 years, beginning immediately after the period of the previous corporate plan.
- (4) The Board may review and revise a corporate plan at any time.

**9C Contents of Corporate Plans<sup>15</sup>**

Each corporate plan prepared under Corporate Plans section 9B shall —

- (a) set out the objectives of the Fund;
- (b) outline the overall strategies and policies that the Fund will follow to achieve its objectives and discharge its functions;
- (c) include a forecast of the revenue and expenditure of the Fund, including capital expenditure;
- (d) include such performance indicators and targets as the Board considers appropriate;
- (e) summarise aid-funded assistance received and planned; and
- (f) include such other matters as may be prescribed by the Minister.

**9D Presentation of Corporate Plans to Minister<sup>16</sup>**

- (1) As soon as practicable after the Board prepares or revises a corporate plan it shall submit a copy of the corporate plan to the Minister.
- (2) Not later than 90 days after receipt of a corporate plan the Minister may direct the Board to review and revise the corporate plan in accordance with government policies and priorities as communicated by the Minister to the Board.

**9E Notification of certain matters<sup>17</sup>**

If the Board forms the opinion that matters have arisen which may —

- (a) prevent, or significantly affect, the achievement of the objectives in a corporate plan;
- (b) significantly affect the strategies and policies that are to be followed under the corporate plan; or prevent or significantly affect the forecasts of revenue and expenditure under corporate plan; or
- (c) prevent or significantly affect forecasts of revenue and expenditure under a corporate plan,

the Board must immediately notify the Minister of its opinion and of the reasons for that opinion.

**10 Rate of interest on accounts**

- (1) At the end of each financial year the Board shall, having considered the recommendation of the Manager, declare a rate of interest for the purpose of section 18 for that financial year.

- (2) No rate of interest exceeding 4 per cent per annum shall be declared under subsection (1) if any sum advanced by the Government under section 11 has not been repaid.

## **11 Advances by the Government**

- (1) Where at any time the Fund is unable to pay any sum which is required to be paid under this Act, the Government shall advance to the Fund an amount sufficient to allow the payment of the said sum.<sup>18</sup>
- (2) The amount advanced under subsection (1) shall be —
  - (a) advanced on such terms as the Government shall determine;
  - (b) a charge on the Consolidated Fund; and
  - (c) repaid from the Fund as soon as practicable.

## **11A Member's credit not subject to sequestration <sup>19</sup>**

- (1) Subject to subsection (2) and without prejudice to any arrangement made between any member and the National Bank of Tuvalu or Development Bank of Tuvalu in accordance with section 20(1)(i), 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 under section 20(1)(g) and (h), nor the rights of any member acquired thereunder, shall be assignable or transferable or liable to be attached, sequestrated or levied upon for or in respect of any debt or claim whatsoever.
- (2) With the exception of benefits payable under section 20(1)(g) and (h), the protection above in subsection (1) does not extend the protection to any member's funds once they are withdrawn or payable as benefits under section 20(1)(a)-(f).

# **PART III - CONTRIBUTIONS AND PERSONS COVERED**

## **12 Persons covered<sup>20</sup>**

- (1) Subject to this Act every person who is employed under a contract of service in Tuvalu shall be covered by this Act and shall be liable to pay contributions.
- (2) For the purposes of establishing liability for the payment of contributions there shall be the following groups of contributor —
  - Group 1 - employed persons,
  - Group 2 - employers, and, subject to subsection (3),
  - Group 3 - voluntary members.

- (3) Subject to this Act and in pursuance of the International Labour Organization and the International Social Securities Association's standards and Regulations 4.5, Standard A 4.5, and Guideline B 4.5 of the Maritime Labour Convention 2006, every Tuvalu seafarer employed on merchant ships under a contract of service through Agents of offshore ship-owners shall be covered and shall be liable to pay contributions.
- (4) For the purpose of establishing liability for the payment of Tuvalu seafarer's contributions, there shall be the following groups of contributor — Group 1 – employed seafarer; and Group 2 – Agent's of foreign ship-owners having a place of business within Tuvalu.
- (5) Regulations may provide for the terms and conditions under which a person may be eligible to become a voluntary member and pay contributions on his own behalf.
- (6) Contributions to the Fund shall be payable at the rate prescribed by the Minister in regulations.

### **13 Exceptions from liability**

- (1) Regulations may provide for exceptions from liability to pay contributions under section 12 in respect of persons or categories of persons including those who are —
  - (a) below a certain age when the liability arises;
  - (b) over a certain age when liability arises;
  - (c) employed as domestic servants;
  - (d) recruited from any overseas territory under any aid, volunteer or other similar scheme agreed with the government of the overseas territory, whether or not any part of the person's emoluments is paid by, or on behalf of the Government of Tuvalu; or
  - (e) employed persons whose normal monthly earnings amount to less than \$20.00.
- (2) Regulations may provide for exceptions from, or variations in, the liability to pay contributions in respect of persons or categories of persons who are covered by an international convention or a reciprocal agreement made between the Governments of Tuvalu and any other country.

### **14 Registration of employers and members and other contribution matters**

Regulations may provide for —

- (a) the registration of employed persons, employers and voluntary members covered under section 12;

- (b) the payment and collection of contributions, including surcharges on contributions not paid by the proper time;
- (c) the maintenance by employers of records of payment of wages, payment of contributions and any other matter as may be considered necessary to ensure the compliance with and discharge of liabilities under this Act;
- (d) the refund of contributions paid in error; and
- (e) any other matter incidental to the payment and collection of contributions.

## **15 Appointment of inspectors and powers of inspectors**

- (1) The Minister may appoint any officer of the Fund to be an inspector.
- (2) Every inspector shall be furnished with a certificate of his appointment signed under the authority of the Minister, and, if so required on applying for admission to any premises or exercising any power vested in him by this Act, shall produce the certificate for inspection.
- (3) An inspector appointed under this section shall for the purposes of this Act have the power to —
  - (a) enter at all reasonable times any premises or place where he has reason to believe that any person is employed;
  - (b) ascertain by examination and enquiry whether the provisions of this Act are being complied with;
  - (c) question any employer, employed person or any other person on any matter concerning the application of or compliance with any of the provisions of this Act;
  - (d) require on written application the production, at any reasonable time and place, of any document or records as he may require to examine under paragraph (b);
  - (e) seize and detain any document or thing which may be of evidential value in a prosecution for an offence against this Act; and
  - (f) exercise other powers which may be provided for in regulations.

## **16 Waiver of liability**

The Minister or, a person authorized by him may, where he is satisfied that the payment of a contribution or any surcharge would cause hardship, waive the liability or part thereof as he may consider appropriate.

**17 Treating unpaid contributions as paid**

- (1) Notwithstanding that any contribution or part of a contribution has not been paid in respect of any employed person, the Board may, if it is satisfied that —
  - (a) the contribution was liable to be paid;
  - (b) the failure to pay was not due to the consent or connivance of the employed person concerned; and
  - (c) that there is no prospect of recovering the amount unpaid —
    - (i) by the time the amount of interest to be credited to the member's account is due for calculation; or
    - (ii) by the time entitlement to benefit is due to be determined,credit the employed person's account with the amount of the contributions which should have been paid in respect of him and shall charge the amount so credited to the Fund.
- (2) Nothing in this section shall prejudice the right of the Board to recover the amount of any unpaid contribution, together with any penalty due under section 14, from the employer.
- (3) The Minister may by regulations provide for the crediting of contributions in respect of any member.<sup>21</sup>

**18 Contributions and interest to be credited to member's accounts**

- (1) The account of each member shall be credited with the amount of the contributions paid during each financial year by or in respect of that member.
- (2) Upon the declaration by the Board of a rate of interest for that year under section 10, interest at that rate shall be added to the amount standing to his credit at the end of that year in such a manner as may be prescribed in regulations.

**19 Repealed<sup>22</sup>****PART IV - BENEFITS****DIVISION I - BENEFIT COVERAGE****20 Description of benefits**

- (1) Subject to subsections (2) and (5) the benefits payable under this Act shall be of the following descriptions, namely —
  - (a) Retirement benefit, that is to say, a lump sum payment to a member who, being not less than the age of 55 years, has retired from employment and

- has not elected to take a Term annuity benefit in lieu of all the retirement benefit;<sup>23</sup>
- (b) Term annuity benefit, that is to say, a monthly annuity payment is payable to a member for a term not less than 5 years who, being not less than the age of 55 years, has retired from employment and has elected to take a term annuity benefit in lieu of part or all of the retirement benefit;<sup>24</sup>
  - (c) incapacity benefit, that is to say a lump sum payment in respect of a member who is physically or mentally incapable of engaging in any further employment;
  - (d) emigration benefit, that is to say a lump sum payable to a member who is about to leave or has already left Tuvalu with no intention of returning thereto;
  - (e) Member's home benefit, that is to say a lump sum payable to a member who has attained the age of 35 years and has left employment for the purpose of caring for dependants;<sup>25</sup>
  - (f) death benefit, that is to say a lump sum payable in respect of a member who has died;
  - (g) Medical and Educational benefit, that is to say a lump sum payable to assist a member or member's dependant paying for medical or educational services;<sup>26</sup>
  - (h) housing benefit;<sup>27</sup>
  - (i) benefit as security for National Bank of Tuvalu or Development Bank of Tuvalu; and<sup>28</sup>
  - (j) emergency relief benefit, that is to say a specific sum payable to a member during a period of declared state of emergency, taking into account the likely impacts on the retirement benefits available to each member at retirement.<sup>29</sup>
- (2) Subject to subsection (2A), entitlements to benefits may cease on reaching the age of 65 years and any amount then standing to the credit of a member may be paid out as a retirement benefit as defined in subsection (1) (a) or as a term annuity as defined in subsection (1) (b).<sup>30</sup>
- (2A) The foregoing subsection (2) shall not be applied strictly against any active contributing member above the age of 65 who is still earning a steady income from any paid employment.<sup>31</sup>
- (3) *Repealed* <sup>32</sup>
- (4) Subject to subsection (2), a member who has received a benefit under subsections (1)(a) or (1)(d) or is in receipt of a pension benefit under subsection (1)(b) and who returns to work becomes liable to pay contributions in accordance with sections 12 and 13 and so becomes entitled to further benefits.<sup>33</sup>
- (5)

- (1) Notwithstanding the provisions of this Act, all benefits payable under subsections (1) (a) and (b) that were processed and paid out prior to 1 November 2021 shall be deemed to have been made for the purposes of this Act and shall continue in force. <sup>34</sup>
- (2) The age requirement for the retirement benefit and the term annuity benefit, which is 55 years, shall be rolled out in a progressive manner, starting from 45 years, over an eight years period after 1 November 2021. Within that eight years period, the age requirement as basis for a member's entitlement to the retirement benefit and the term annuity benefit shall be:
  - (a) not less than the age of 46 years after 1 November 2021;
  - (b) not less than the age of 47 years after one year from 1 November 2021;
  - (c) not less than the age of 48 years after two years from 1 November 2021;
  - (d) not less than the age of 49 years after three years from 1 November 2021;
  - (e) not less than the age of 50 years after four years from 1 November 2021;
  - (f) not less than the age of 51 years after five years from 1 November 2021;
  - (g) not less than the age of 52 years after six years from 1 November 2021;
  - (h) not less than the age of 53 years after seven years from 1 November 2021;
  - (i) not less than the age of 54 years after eight years from 1 November 2021. <sup>35</sup>

## 21 Appointed days

Regulations may provide for the appointed day appropriate to any or all of the benefits described in section 20 to be different from the appointed day appropriate for the general entry into force of this Act.

## DIVISION 2 - ENTITLEMENT TO BENEFITS

## 22 Manner of claiming benefit and evidence to be produced

- (1) Regulations may provide that entitlement to benefit shall be conditional upon —
  - (a) a claim for benefit being made within a prescribed time - (provided that any such regulation shall provide also for extending the time limit within

- which the claim is to be made where good cause is shown for the delay); and
- (b) a certificate by the claimant concerning his intention to retire or cease employment; or
  - (c) a certificate by the claimant concerning his intention to leave Tuvalu; or
  - (d) production, where appropriate, of medical evidence of the condition of the incapacity of a member; and
  - (e) production by the claimant of a certificate of birth, marriage, or death, as the case may require;
  - (f) production of proof of membership of the person concerned; and
  - (g) production of proof of survival of a person in receipt of a pension.<sup>36</sup>
- (2) Regulations may provide that —
- (a) the claim for the benefit in Question;
  - (b) the certificate of intention to retire, leave employment or emigrate;
  - (c) the medical evidence of incapacity;
  - (d) certificate of birth, marriage or death;
  - (e) proof of membership; or
  - (f) proof of survival,<sup>37</sup>
- shall be accepted by the Board in connection with a claim only when in the form or obtained in the manner prescribed.
- (3) Regulations may provide, for the purpose of controlling claims for benefit, that the Board may —
- (a) require a person claimed to be physically or mentally incapable of further employment to attend a medical examination by, or appear before, a medical board; or
  - (b) make or cause to be made enquiries necessary to prevent abuse or fraud or to safeguard the Fund.

## 23 Manner of payment of benefit

- (1) Entitlement to benefit under section 20(1)(d) shall be discharged by the issue to the claimant of a non-negotiable cheque or order for the amount standing to the credit of the member concerned.<sup>38</sup>
- (1A) Entitlement to benefit under section 20(1)(b) shall be discharged in the manner prescribed in regulations.<sup>39</sup>
- (2) Entitlement to benefit under section 20(1)(c) and (f) shall be discharged by the issue to the claimant or claimants of a non-negotiable cheque or order for the amount standing to the credit of the member concerned to which title has been proved.<sup>40</sup>

- (3) Subject to the Regulations made under subsection (4) of this section, entitlement to benefit under section 20(1)(g) shall be discharged by the issue of a non-negotiable cheque or order in the amount required by the entity providing or facilitating the required medical or educational service.<sup>41</sup>
- (4) Regulations may provide, for the purpose of this section, for the manner in which —
  - (a) the final amount standing to the credit of the person concerned is calculated;
  - (b) title to any proportion is proved;
  - (c) the amount of any proportion payable is calculated; and
  - (d) entitlement to benefit under section 20(1)(b) shall be discharged.<sup>42</sup>
- (5) *repealed.*<sup>43</sup>
- (6) Notwithstanding anything in any other law a person resident in another country who would be entitled to receive benefit payable under this Act if he were living in Tuvalu shall be entitled to receive that benefit in the other country.
- (7) Entitlement to benefit under this Act shall be inalienable.

## **24 Circumstances in which lump-sum payments can be spread over a period**

- (1) Where a large number of claims for benefit is made the Board may, notwithstanding section 23, with the approval of the Minister pay benefit by instalments.
- (2) On application by a claimant entitled to a lump sum benefit under section 20(1)(f), the Board may pay the benefit as a pension in the manner prescribed in regulations.<sup>44</sup>

## **25 Provision for nominating beneficiaries**

- (1) A member may by a memorandum executed in the form prescribed in regulations, nominate a person or persons to receive the amount, or portion of the amount, payable under section 20(1)(f) in the event of his death as the memorandum shall indicate.
- (2) Regulations may provide that the Board may require a member who does not nominate a person or persons under this section to declare in writing that he does not desire so to do.
- (3) The subsequent marriage of a nominator shall render any nomination null and void.
- (4) Where a nominated person is under the age of 18 years at the time entitlement arises, the board may direct that benefit shall be paid to an adult who shall use

it to maintain, or to the advantage of, the nominated person until he reaches the age of 18 years.

## **PART V - ADJUDICATION AND LEGAL PROCEEDINGS**

### **DIVISION I - DETERMINATION OF CLAIMS AND QUESTIONS**

#### **26 Decisions and appeals**

- (1) Regulations may provide for determination by the Manager, by the Board, by the Medical Board or by the Minister of any question arising under or in connection with this Act including any claim for benefit, and that the decision in accordance therewith shall be final.
- (2) Regulations in terms of subsection (1) may include provision for —
  - (a) the procedure, the form of any document, the evidence required and the circumstances in which any official record or certificate is sufficient or conclusive evidence;
  - (b) the time allowed for making a claim or appeal, questioning any decision, or for producing any evidence;
  - (c) summoning persons to attend and give evidence or produce documents and authorizing the administration of oaths to witnesses; and
  - (d) the representation of one person by another person.
- (3) Regulations in terms of subsection (1) may provide for —
  - (a) the reference to the senior magistrate of any question of law arising in connection with the determination of any question under the regulations; and
  - (b) appeal to the High Court from the decision of the senior magistrate under paragraph (a).

#### **27 The appointment of a medical board**

- (1) There shall be established a Medical Board appointed by the Minister responsible for health matters, consisting of two or more medical practitioners, of whom one shall be appointed chairman.
- (2) The Medical Board shall consider or decide on all medical matters connected with the entitlement to or payment of benefit and in particular the incapacity of a member under section 20(1)(c) and any regulations made under section 22.

#### **28 Payments to Board members and expenses of witnesses**

The Minister may approve to be paid out of the Fund —

- (a) to a person appointed to the Board or the Medical Board, a fee or other remuneration; and
- (b) to a person to whom paragraph (a) applies or a person required to appear before the Board or Medical Board, any expenses in connection with his work, loss of earnings or travel incurred because of his appearance as is shown to be reasonable.

## DIVISION 2 - LEGAL PROCEEDINGS

### 29 Offences and penalties

- (1) Any person who —
  - (a) for any purpose connected with this Act —
    - (i) knowingly makes any false statement or false representation,
    - (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,
    - (iii) knowingly misrepresents or fails to disclose any material fact;
  - (b) without lawful excuse fails to register when required to do so by regulations made under section 14;
  - (c) fails to pay by the proper time any contribution, surcharge or payment which he is liable under this Act to pay;
  - (d) fails to furnish within the prescribed time any particulars, returns or other information required by this Act;
  - (e) obstructs any inspector or officer of the Fund in the discharge of his functions under this Act;
  - (f) knowingly and with dishonest intent makes any deduction from any wages, or having made such deduction, fails to pay to the Fund any amount so deducted, otherwise than is provided under regulations in terms of section 14; or
  - (g) contravenes any provision of this Act in such a manner or to such an extent that as a result of such contravention there is a loss to the Fund,

shall be guilty of an offence and liable to a fine of \$1,000.00 and to imprisonment for 2 years and in the case of a continuing offence, to a fine of \$100.00 for each day for which the offence continues.

- (2) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (3) Where, on conviction for an offence of failure to pay a contribution —
- (a) evidence in the form of a certificate signed by the Manager is given of the failure by the defendant to pay other contributions; and
  - (b) notice of intention to give such evidence has been served on the defendant,
- the court shall order him to pay to the Fund a sum equal to the total of all the contributions which he has failed to pay, together with any surcharge for which he may be liable and any sum so ordered to be paid to the Fund shall be recoverable in the same way as a fine.
- (4) Where an employer is convicted of an offence of failure to pay a contribution in respect of an employed person the provisions of subsection (3) shall also apply to any contribution he has failed to pay in respect of any other employed person.
- (5) Where an employer being a body corporate has been ordered to pay contributions to the Fund under this section, any sum or part thereof which remains unpaid shall be recoverable as a debt to the Fund jointly and severally from any directors of the body corporate who knew or could reasonably be expected to have known of the failure to pay the contributions in Question.
- (6) Where a member being an employer or a director of a body corporate employer, owing debts to the Fund for unpaid contributions or surcharges, such member's funds held by the Fund in his contribution account shall be automatically charged as security to such debts.<sup>45</sup>
- (7) Where such member, as described in the foregoing subsection, withdraws his funds in accordance with section 20(1)(a)-(f) but has not been discharged of his debts to the Fund, his funds shall be automatically paid to discharge such debts owed to the Fund and the member shall only be entitled to the remaining funds should there be any.<sup>46</sup>

### 30 Civil proceedings

- (1) All sums due to the Fund shall be recoverable as a civil debt without prejudice to any other remedy.
- (2) Proceedings for the recovery of all sums due may, notwithstanding anything in any other law, be brought at any time within 6 years from the date when they became due.

### 31 Authority for and conduct of proceedings

- (1) Subject to the powers of the Attorney-General under the Constitution, criminal and civil proceedings under this Act may be instituted by the Board or any officer authorized in writing on their behalf.

- (2) The Manager or any officer authorized by him may conduct any proceedings in a magistrate's court.
- (3) In any criminal or civil proceedings under this Act a copy of any entry in the records or accounts of the Fund or any extract therefrom duly certified by the Manager shall be prima facie evidence of the entry having been made and of the truth of the contents thereof and a certificate by the Manager that there is no entry shall be prima facie evidence that no entry has been made.

## **PART VI - MISCELLANEOUS PROVISIONS AND REPEALS**

### **32 Amendment to Income Tax Law**

Notwithstanding the provisions of the Income Tax Act, all the income of the Tuvalu National Provident Fund, all interest accredited to the members of that Fund, all sums withdrawn from, or paid out of that Fund except for fees, salaries and allowances paid to the members of boards established under the Provident Fund Act, officers and staff employed by that Fund, and witnesses or other persons required to attend any place for the purposes of the Provident Fund Act shall be exempted from tax.<sup>47</sup>

### **33 Transitional provision**

Notwithstanding the provisions of this Act, arrangement under the law in force immediately prior to the commencement of this Act, including —

- (a) the registration of employers and employed persons;
- (b) the payment and collection of contributions;
- (c) the appointment of the Board, the Manager or any other officers or staff; and
- (d) any regulations made thereto,

shall be deemed to have been made for the purposes of this Act and shall continue in force as if made as a consequence of this Act.

### **34** *spent and omitted*

### **35** *spent and omitted*

### **36 Termination, preservation or transfer of existing pension, gratuity or provident fund rights**

- (1) Where immediately before the commencement of this Act a person was in a pensionable post within the meaning of —

- (a) the Pensions Act; or
- (b) Circular Memorandum No. 57 of 1958;

then an amount, calculated as in Schedule I, in respect of his service to the 31st day of March 1984 shall be paid into the Fund and credited to his account as if it were a contribution.

- (2) Where immediately before the commencement of this Act a person was in receipt of a pension from the Government —

- (a) under the Pensions Act; or
- (b) under Circular Memorandum No.57 of 1958;

and would but for this Act have continued to receive that pension then he shall, subject to subsection (3), be paid such sums out of the Fund as he would have received from the Government had this Act not been enacted.

- (3) A person who is entitled to receive payment from the Fund under subsection (2) may elect to receive from the Fund a lump sum in lieu of that payment.
- (4) For the purposes of subsections (2) and (3), the Government shall pay into the Fund the sums specified in Schedule I.
- (5) From the date of commencement of this Act any other provident fund operating in Tuvalu shall be terminated and the amount standing to the credit of any member of that fund shall be transferred to the Fund and credited to his account as if it were a contribution.
- (6) From the date of commencement of this Act any gratuity arrangement operating in Tuvalu shall cease and any accrued right to a gratuity shall be discharged by
  - (a) an adjustment of wages;
  - (b) payment to the person concerned of the amount of his accrued right; or
  - (c) transfer of his accrued right to the Fund to be credited to his account as if it were a contribution;

whichever shall be agreed between the employer and the employed person or group of employed person concerned.

**SCHEDULE I**

**PAYMENTS INTO THE FUND OF ACQUIRED RIGHTS**

1. The Government shall pay into the Fund in respect of a person —
  - (a) to whom section 36(1)(a) applies, a sum calculated as in paragraph 2(a) of this Schedule;
  - (b) to whom section 36(1)(b) applies, a sum calculated as in paragraph 2(b) of this Schedule; and
  - (c) to whom section 36(2) or (3) applies a sum calculated as in paragraph 2(c) of this Schedule.
  
2. The sums that shall be paid into the Fund under paragraph 1 shall be calculated using the following formulae —
  - (a) 
$$\frac{S \times N \times A1}{600}$$
  - (b) 
$$\frac{S \times N \times A2}{840}$$
; or
  - (c) 
$$P \times A3$$
;

as the case may require where —

  - (i) S is the gross yearly salary of the person concerned,
  - (ii) N is the number of complete months of pensionable service or continuous service, as the case may be,
  - (iii) AI, A2 and A3 are the actuarial factors appropriate to the person concerned according to the tables in paragraph 3 of this Schedule, and
  - (iv) P is the annual amount of the pension in payment immediately prior to the commencement of this Act.

<b>Age</b>	<b>Table A1</b>	<b>Table A2</b>	<b>Table A3</b>
Under 20	6.0	5.4	-
20	6.1	5.5	-
21	6.2	5.6	-
22	6.3	5.7	-
23	6.4	5.8	-
24	6.5	5.9	-
25	6.6	6.0	-
26	6.7	6.1	-
27	6.8	6.2	-
28	6.9	6.3	-
29	7.0	6.4	-
30	7.1	6.5	-
31	7.2	6.6	-
32	7.3	6.7	-
33	7.4	6.8	-
34	7.5	6.9	-
35	7.7	7.1	-
36	7.9	7.3	-
37	8.1	7.5	-
38	8.3	7.7	-
39	8.5	7.9	-
40	8.7	8.1	8.76
41	8.9	8.3	8.70
42	9.1	8.5	8.64
43	9.3	8.7	8.57
44	9.5	8.9	8.50

<b>Age</b>	<b>Table A1</b>	<b>Table A2</b>	<b>Table A3</b>
45	9.7	8.9	8.43
46	9.7	8.9	8.35
47	9.7	8.9	8.26
48	9.7	8.9	8.17
49	9.7	8.9	8.08
50	9.7	8.9	7.98
51	9.7	8.9	7.88
52	9.7	8.9	7.77
53	9.7	8.9	7.65
54	9.7	8.9	7.53
55	9.7	8.9	7.40
56	9.7	8.9	7.27
57	9.7	8.9	7.14
58	9.7	8.9	6.99
59	9.7	8.9	6.85
60	9.7	8.9	6.69
61	9.7	8.9	6.54
62	9.7	8.9	6.37
63	9.7	8.9	6.21
64	9.7	8.9	6.04

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**ENDNOTES**

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<sup>1</sup> Act 5 of 1984

Amended by Act 3/1992, commencement 1 January 1992 by LN 10/1892

Amended by Act 2/1996, commencement 15 April 1996, (by Act 4 of 2009)

Amended by Act 5/1999, commencement 1 January 2000 (by Act 4 of 2009)

Amended by Act 3/2003, commencement 1 January 2004 (by Act 4 of 2009)

Amended by Act 9/2002, commencement 1 January 2003 ( LN 3/2003)

Amended by Act 5 of 2009, commencement 1 August 2009 (LN 10/2009)

Amended by Act 9 of 2009, commencement 1 January 2011 (LN 12/2010)

Amended by Act 8 of 2020, commencement 24 December 2020

Amended by Act 3 of 2021, commencement 1 November 2021 (GN 24/2021)

<sup>2</sup> Amended by Act 3 of 1992<sup>3</sup> Inserted by Act 5 of 1999<sup>4</sup> Amended by Act 5 of 1999<sup>5</sup> Amended by Act 5 of 1999<sup>6</sup> Amended by Acts 5 of 1999 and 3 of 2003<sup>7</sup> Amended by Act 5 of 1999<sup>8</sup> Inserted by Act 3 of 2003

The original section 5 was repealed by Act 9 of 1999, with the following savings provision –

“(1) Without prejudice to any obligations incurred or rights accrued under section 5 of the Provident Fund Act 1984, that section is hereby repealed.

(2) The Special Death Benefit Fund established by section 5 of the Provident Fund Act 1984 shall be discontinued and its assets distributed in the manner and at the time set out in regulations made by the Minister.”

<sup>9</sup> Amended by Act 5 of 1999<sup>10</sup> Amended by Act 5 of 1999<sup>11</sup> Inserted by Act 2 of 1996 and impliedly amended by operation of Act 9 of 2002 (repeal of subsection (6))<sup>12</sup> Inserted by Act 2 of 1996<sup>13</sup> Inserted by Act 9 of 2002<sup>14</sup> Inserted by Act 2 of 1996<sup>15</sup> Inserted by Act 2 of 1996<sup>16</sup> Inserted by Act 2 of 1996<sup>17</sup> Inserted by Act 2 of 1996<sup>18</sup> Amended by Act 5 of 1999

- [19](#) Inserted by Act 5 of 2009
- [20](#) Amended by Act 5 of 2009
- [21](#) Repealed by Act 9 of 2009, Inserted by Act 5 of 1999
- [22](#) Repealed by Act 3 of 1992
- [23](#) Substituted by Act 3 of 2021
- [24](#) Substituted by Act 3 of 2021
- [25](#) Substituted by Act 9 of 2009
- [26](#) Substituted by Act 5 of 2009
- [27](#) Inserted by Act 5 of 1999
- [28](#) Inserted by Act 5 of 1999
- [29](#) Inserted by Act 8 of 2020
- [30](#) Substituted by Act 3 of 2021
- [31](#) Inserted by Act 9 of 2009
- [32](#) Inserted by Act 5 of 1999 and Repealed by Act 5 of 2009
- [33](#) Inserted by Act 5 of 1999 and Amended by Act 9 of 2009
- [34](#) Inserted by Act 3 of 2021
- [35](#) Sub-subsection (2) Inserted by Act 3 of 2021
- [36](#) Inserted by Act 5 of 1999
- [37](#) Inserted by Act 5 of 1999
- [38](#) Amended by Act 5 of 1999 and 9 of 2009
- [39](#) Inserted by Act 5 of 1999
- [40](#) Amended by Act 5 of 1999
- [41](#) Substituted by Act 5 of 2009
- [42](#) Inserted by Act 5 of 1999
- [43](#) Repealed by Act 5 of 2009
- [44](#) Amended by Act 5 of 1999
- [45](#) Inserted by Act 5 of 2009
- [46](#) Inserted by Act 5 of 2009
- [47](#) Substituted by Act 5 of 1999