

FIJI NATIONAL PROVIDENT FUND (SHARE INVESTMENT SCHEME)
(AMENDMENT) ACT 2001

ARRANGEMENT OF SECTIONS

SECTION

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ACT NO. 4 OF 2001



I assent.

[L.S.]

J. I. ULUIVUDA
President

[24 December 2001]

AN ACT

TO AMEND THE FIJI NATIONAL PROVIDENT FUND ACT TO PROVIDE FOR
A SHARE INVESTMENT SCHEME AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

Short title, etc.

1.—(1) This Act may be cited as the Fiji National Provident Fund (Share Investment Scheme) (Amendment) Act 2001.

(2) In this Act, “principal Act” means the Fiji National Provident Fund Act (Cap. 219).

Insertion of new Part IX A

2. The principal Act is amended by inserting after Part IX the following new Part—

“Part IX A — SHARE INVESTMENT SCHEME

Interpretation

42A.—(1) In this Part, unless the context otherwise requires—

“approved company or corporation” means a company or corporation which is approved by the Board under section 42C for the purposes of this Part;

“approved shares” means shares in an approved company or corporation which are specified by the Board under section 42C(2);

“company” means a company formed and registered under the Companies Act (Cap. 247) and a subsidiary of such a company;

“corporation” means a body incorporated by statute in the Fiji Islands and a subsidiary of such a body;

“investment account” means an account opened and maintained for a member by a nominee company under section 42G;

“nominee company” means a company nominated by the Board under section 42F;

“ordinary account” means the amount standing to the credit of a member of the Fund as defined in section 17;

“permitted available amount” means—

(a) in respect of every member—a proportion of the member's ordinary account declared by the Board from time to time by notice in the Gazette as the permitted available amount; plus

(b) in respect of an individual member — the amount standing to the member's credit in his or her investment account;

“sale” and “sell” in relation to shares include any form of disposal of shares;

“shares” means fully paid shares as defined in the Companies Act (Cap. 247);

“specified transaction” means a transaction which is specified in an application for withdrawal under subsection 42D(1);

“subsidiary”, in relation to a company or a corporation, has the same meaning as in section 156 of the Companies Act (Cap. 247).

(2) For the purposes of this Part—

(a) interest on money transferred to an investment account is to be calculated in the same manner as interest on an ordinary account under section 18(5);

(b) a transfer of an amount is not a withdrawal of contributions for the purposes of Part VIII.

Purchase or reimbursement of cost of shares

42B.—(1) Subject to this Part, a member who has attained the age of 18 years may use the permitted available amount—

(a) for the purchase of approved shares in an approved company or corporation; or

(b) for reimbursement of the cost of such shares.

- (2) For purposes of this Part, the shares which may be purchased, or the cost of which may be reimbursed, include shares issued on the taking up of a rights issue.

Approved companies, corporations and shares

42C.—(1) The Board may approve a company or corporation which is—

- (a) listed on the South Pacific Stock Exchange; and
- (b) approved for trustee investments under the Trustee Act (Cap. 65),

as one whose shares may be purchased, or the cost of whose shares may be reimbursed, under this Part.

- (2) In approving a company or a corporation under subsection (1) the Board must specify which share issues or types of share of the company or corporation are approved for purchase, or the cost of whose shares may be reimbursed, under this Part.
- (3) The Board may at any time vary or revoke an approval under subsection (1), without affecting any transaction entered into for a member under this Part before such variation or revocation.

Application for transfer of amount

- 42D.—(1) A member wishing to have shares purchased for him or her, or to obtain reimbursement, under this Part must apply on a form approved by the Board for authorisation to transfer the whole or part of the permitted available amount for a specified transaction.
- (2) An application under subsection (1) may be approved by the Board subject to any terms or conditions the Board imposes.
- (3) The amount which may be transferred under this section must not exceed the amount needed for the specified transaction together with the cost of brokerage fees, nominee company fees and other professional expenses in connection with the transaction.
- (4) No transfer may be made under this Part by a member jointly with any other person, whether a member or otherwise.
- (5) An application under subsection (1) for the reimbursement under this Part of the cost of shares purchased by a member, may be approved for an amount not exceeding the weighted average closing price of the shares on the South Pacific Stock Exchange over a period of 5 trading days immediately preceding the date of the application.

- (6) An application from a member to reimburse the cost of the purchase of shares which are quoted on the South Pacific Stock Exchange, but which are suspended from trading, may only be approved on the sixth trading day after the resumption of trading in those shares and the amount reimbursed must not exceed the weighted average closing price of the shares on the South Pacific Stock Exchange over a period of 5 trading days immediately after the resumption of trading in those shares.

Insufficiency of available amount

- 42E.—(1) If the permitted available amount is insufficient to pay for the purchase of shares in full or to reimburse a member fully for his or her shares already purchased as permitted by the Board, the balance of the purchase price must be paid by the member in cash to retain the balance of such shares, subject to any terms or conditions the Board imposes.
- (2) If a member has paid the balance of the purchase price in cash under subsection (1), the member may not subsequently transfer any amount to reimburse him or her for the purchase price so paid.
- (3) If a member is permitted to retain shares under subsection (1), the shares so retained must be held by the nominee company and must be dealt with under this Part.

Nominee company

- 42F.—(1) The Board must nominate in writing a company to manage members' investments under this Part.
- (2) The nominee company must hold—
- (a) money transferred by members of the Fund under section 42D;
 - (b) any shares purchased or the cost of which is reimbursed with such money;
 - (c) any retained shares the cost of which is paid by members in cash under section 42E;
 - (d) any bonus shares received in respect of shares referred to in paragraphs (b) and (c);
 - (e) any shares issued on the taking up of a rights issue in respect of shares referred to in paragraph (b) and (c);
 - (f) any dividends receivable on shares referred to in paragraphs (b), (c), (d), and (e); and
 - (g) any proceeds of sale of such shares,

in trust for the Fund, to be dealt with in accordance with this Part.

- (3) The nominee company must have as its main purpose the carrying on of the business of financial services and must not carry on any other business than the management of members' investments under this Part unless so authorised by the Board in writing.
- (4) The nominee company may charge reasonable fees, which may be—
- (a) paid in cash by the member
 - (b) paid out of the amount transferred under section 42D; or
 - (c) debited to the member's investment account.

Investment account

- 42G.—(1) If a member is authorised to transfer an amount under section 42D, the Board must transfer the approved amount to the nominee company.
- (2) The nominee company must, in respect of a member who is authorised to transfer an amount under section 42D—
- (a) open an investment account for the member;
 - (b) place in that account the money transferred to it under subsection (1).
- (3) If a member who has been authorised to transfer money for the purchase of shares is subsequently unsuccessful in the purchase of the relevant shares, the money must be credited to the member's investment account and remain in that account to be dealt with under this Part.

Transaction through specified person

- 42H.—(1) All purchases and sales of shares on behalf of a member under this Part must be conducted by the nominee company through the South Pacific Stock Exchange and must be effected by—
- (a) a licensed broker; or
 - (b) a person designated in writing by the Board

Registration of shares

- 42I.—(1) Shares to which this section applies must be—
- (a) registered by the nominee company in the name of the Fiji National Provident Fund; and
 - (b) held in trust for the Fund by the nominee company.
- (2) Shares to which this section applies must not be pledged as collateral for any purpose, and any pledge, mortgage or charge given by a member of his or interest in the shares is void and unenforceable against the member or the nominee company.

- (3) The nominee company must open a Share Register in which must be recorded the number and details of all shares to which this section applies and which are held for members.
- (4) This section applies to any shares of a kind mentioned in section 42F (2).

Bonus and retained shares entitlement

- 42J.—(1) Any bonus shares issued in respect of shares which are purchased or retained, or the cost of which is reimbursed, under this Part are deemed to be profit and withdrawal of the proceeds of sale of such shares may be permitted under section 42O after deducting any outstanding net realised loss or charges.
- (2) If an entitlement to a right issue in respect of shares which are purchased or retained or the cost of which is reimbursed under this Part is sold upon the application of a member, the proceeds of sale are deemed to be profit and subsection (1) applies.
 - (3) If any shares retained under subsection 42E or any bonus shares issued in respect of such shares or any entitlement to a rights issue in respect of such shares are or is sold, the proceeds of sale are deemed to be profit and subsection (1) applies.

Proceeds of sale and dividends to be credited to Investment Account

- 42K.—(1) If the nominee company, upon the application of a member, sells—

- (a) any shares mentioned in section 42F(2); or
- (b) the member's entitlement to any rights issue in respect of those shares,

the whole proceeds of the sale, less any expenses, must forthwith be credited to the member's Investment Account.

- (2) All dividends declared and received in respect of shares to which section 42I applies must be credited to the respective member's Investment Account.
- (3) If the proceeds of sale credited under subsection (1) are less than the purchase cost, the member does not have any claim in respect of the loss against the nominee company or the Board.

Net realised profit may be withdrawn

- 42L.—(1) A member who wishes to withdraw the net realised profit on the sale of the shares to which section 42I applies must apply to the Board on an approved form.
- (2) The withdrawal of a net realised profit under this section is subject to any terms, conditions and procedures the Board imposes.

- (3) The net realised profit (NRP) or net realised loss (NRL) for a financial year is to be calculated in accordance with the formula—

$$\text{NRP or NRL} = [A + B] - [C + D + E + F + G],$$
 where in relation to that financial year—

- A is the sale price of the shares;
- B is the aggregate of—
- (a) dividends on all shares held by the nominee company for the member; and
 - (b) any net realised profit carried forward from the previous financial year;
- C is the cost price of the shares sold (excluding the cost of shares which have not been purchased or the cost of which has not been reimbursed under this Part);
- D is the total amount of expenses, charges and fees incurred on the purchase and sale of the shares;
- E is the interest on the outstanding transferred amount under this Part as at the end of the preceding financial year that would have accrued in the member's ordinary account if the member had not transferred that amount;
- F is the cost of any new share purchased under section 42N (3); and
- G is any net realised loss carried forward from the previous financial year.

- (4) A member is not entitled to withdraw the net realised profit any earlier than in the financial year following that in which it accrues.
- (5) If a member does not apply under this section to withdraw the net realised profit for any financial year, the profit for that year must be carried forward to the next financial year as accumulated profit.
- (6) If a member has incurred a net realised loss for any financial year, the loss must be carried forward to the next financial year.

Proceeds of sale to be transferred to Fund

42M.—(1) If —

- (a) the nominee company sells shares which have not been purchased, or the cost of which have not been reimbursed under this Part; and
- (b) the proceeds of sale of such shares have been credited to a member's Investment Account under section 42K,

the nominee company may, upon the application of the member and subject to subsection (4), transfer the proceeds of the sale from the member's Investment Account to the Board, for payment to the member.

- (2) If in June of any year the amount in a member's Investment Account exceeds \$1,000.00 the nominee company must, subject to subsection (3) and (4), transfer the excess amount from the Investment Account to the Board, for crediting to the member's ordinary account.
- (3) An amount transferred from a member's Investment Account under subsection (2)—
 - (a) must not include any net realised profit;
 - (b) must not be more than the sum of the outstanding amount transferred under this Part from the member's ordinary account and the outstanding accrued interest.
- (4) No amount is to be transferred from a member's Investment Account and paid to a member, or credited to his or her ordinary account as the case may be, before recovery is made—
 - (a) for any outstanding net realised loss; and
 - (b) for any outstanding fees and charges permitted under this Part.

New shares may be purchased

- 42N.—(1) If shares which were purchased under this Part have been sold and the proceeds credited to a member's Investment Account under section 42K (1), the member may, upon application, be permitted by the Board to use the proceeds of sale to purchase new approved shares.
- (2) Shares purchased under subsection (1) are deemed to be shares purchased for the member under this Part.
- (3) A member, upon application, may be permitted by the Board to use net realised profit as defined in section 42L to purchase new approved shares.
- (4) Shares purchased under subsection (3) are deemed to be shares retained under section 42E.
- (5) A reference in this section to shares purchased includes shares the cost of which is reimbursed.

Withdrawal of contributions from the Fund

- 42O.—(1) If a member who is entitled to withdraw money from the Fund under Part VIII applies to withdraw in full his or her credit in the Fund, the nominee company must—
 - (a) pay to the Board the amount standing to credit in the member's Investment Account; and

- (b) at the election of the member either—
 - (i) sell any shares held for the member and pay the proceeds of the sale to the Board; or
 - (ii) in respect of unsold shares held for the member — transfer the registration of them to the member and send them to the Board for delivery to the member.
- (2) On receiving a payment under subsection (1)(a) or (b)(i) the Board must—
 - (a) credit the member's ordinary account with the outstanding amount transferred under this Part, together with accrued interest, for withdrawal by the member under Part VIII; and
 - (b) pay any balance to the member as net realised profit under this Part.
- (3) If, on the death of a member, an application is made under Part VIII to withdraw the sum standing to the member's credit in the Fund, the nominee company must sell any shares held for the member and pay the proceeds of the sale to the Board which must—
 - (a) credit the member's ordinary account with the outstanding amount transferred under this Part, together with accrued interest, for payment in accordance with Part VIII; and
 - (b) pay any balance, in accordance with Part VII, as net realised profit under this Part.

Termination of Investment Account

- 42P.—(1) If a member, before reaching the date of entitlement, wishes to terminate his or Investment Account, the nominee company, upon application by the member, must—
- (a) sell all the shares purchased for the member, or the cost of which has been reimbursed, under this Part;
 - (b) at the request of the member, sell any shares held by the company for the member which were not purchased, or the cost of which was not reimbursed, under this Part; and
 - (c) calculate the net realised profit or the net realised loss and pay the total proceeds of the sale to the Board.
- (2) On receiving a payment under subsection (1) (c) the Board must—
- (a) credit the member's ordinary account with the outstanding amount transferred under this Part, together with accrued interest;

- (b) pay any balance to the member as net realised profit under this Part.
- (3) If the nominee company holds for the member any unsold shares which were not purchased, or the cost of which was not reimbursed, under this Part, the company must—
- (a) transfer the registration of them to the member; and
 - (b) send them to the Board for delivery to the member.

Opening a new Investment Account

42Q.—(1) A member who has terminated his or her Investment Account with the nominee company may in a subsequent financial year open a new Investment Account by applying to purchase new shares, or to have the cost of new shares reimbursed, under this Part and thus open a new Investment Account.

- (2) If—
- (a) there is a net realised loss pending in a member's Investment Account when it is terminated; and
 - (b) the member subsequently opens a new Investment Account under this section,

the loss must be carried forward to the new Investment Account and dealt with under this Part.

Bankruptcy

42R.—(1) If a member is adjudicated bankrupt after he or she has applied to transfer an amount from the Fund under this Part the Board may, notwithstanding the bankruptcy, permit a transfer to be made for the specified transaction and the shares so purchased do not form part of the member's after acquired property.

- (2) Any bonus shares or an entitlement to a rights issue issued in respect of shares which are purchased, or the cost of which is reimbursed, under this Part after a member is adjudicated bankrupt do not form part of the member's after acquired property.
- (3) A member to whom this section applies must not make any further transfers for any purpose under this Part for so long as he or she remains bankrupt.

Recovery of unpaid fees, etc.

42S.—(1) If in the month of June of each year any amount in respect of purchase and sale of shares, professional fees, brokerage fees and charges or any similar charge remains unpaid from a member's Investment Account due to a net realised loss, the Board may transfer an amount, equal to the unpaid amount, from the member's ordinary account to his or her Investment Account to clear the debt.

- (2) An amount under section (1) is deemed to be an amount transferred under section 42D.

Statement of account

42T.—(1) As soon as possible after the end of each financial year the nominee company must issue, to every member who has an Investment Account, a statement of account giving—

- (a) the number and details of the shares held for the member; and
- (b) an account of the purchase and sale of the shares, showing the net realised profit or net realised loss.

Breach of provisions of this Part

42U.—(1) If the Board after due enquiry is satisfied that a member has contravened any provision of this Part, or made a false representation or furnished any false information in connection with this Part, the Board may—

- (a) require the nominee company to sell any shares of the member which were purchased or the cost of which was reimbursed, under this Part and refund the proceeds, less any profit, to the member's ordinary account;
 - (b) require the nominee company to pay any profit from the sale of such shares to the general revenues of the Fund; and
 - (c) prohibit the member from making any transfer under this Part for a period of one year, or such longer period as the Board determines, from the date the breach was committed by the member.
- (2) The Board must not make any finding or impose any penalty by way of a requirement or prohibition under subsection (1) unless it has first given the member adequate opportunity to make representations as to the facts and as to the appropriate penalty.

Advisory service

- 42V.—(1) Before processing a transaction for a member under this Part the nominee company must advise the member of the legal and financial implications of the transaction, but the nominee company does not thereby incur any liability to the member for the advice so given.
- (2) Neither the Board nor the nominee company is liable to any member for any transaction entered into on behalf of the member at the member's request under this Part and no liability to the member is incurred by the Board or the nominee company as a result of any such transaction.
- (3) The nominee company is required to update members who use the scheme regularly on the performance of companies authorised by the Board under section 42C.”

Consequential amendments

3.—(1) Section 17 of the principal Act (relating to the amount standing to the credit of a member) is amended—

(a) by adding after paragraph (c) the following new paragraphs—

“(d) money transferred from an Investment Account in accordance with section 42 M (2);

“(e) money credited to the account of the member in accordance with section 42 O (2) or section 42 P (2), together with accrued interest;”;

(b) by adding after paragraph (iv) the following new paragraphs—

“(v) any money transferred for the purchase or reimbursement of shares under Part IX A;

“(vi) any expenses payable by the member in respect of the purchase or reimbursement of shares under Part IX A.”.

(2) Section 18 of the principal Act is amended in subsection (7) by—

(i) inserting “, or is transferred to the Investment Account in accordance with section 42 B” after “section 38”;

(ii) deleting “lent or provided” in paragraph (a) where it twice appears and substituting “lent, provided or transferred”.

(3) Section 63 of the principal Act is amended by adding the following new paragraph—

“(n) to prescribe anything needed to give effect to Part IX A (Share Investment Scheme)”.

Passed by the House of Representatives this 3rd day of December 2001.

Passed by the Senate this 13th day of December 2001.