

Chapter 377.
National Provident Fund Act 1980.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 377.

National Provident Fund Act 1980.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

National Provident Fund Act 1980,

Being an Act to provide for the institution and management of a National Provident Fund for employees in establishments and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely–

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the freedom of assembly or association conferred by Section 47 of the *Constitution*; and
- (c) the freedom of employment conferred by Section 48 of the *Constitution*; and
- (d) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for that purpose.

(2) The purpose of this Act is a public purpose.

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

2. INTERPRETATION.

(1)¹ In this Act, unless the contrary intention appears–

¹ Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 1 (definition of “exempted employee”) repealed by *National Provident Fund (Amendment) Act* 1990 (No. 27 of 1990), s1(c); Section 1 (definition of “exempted establishment”) repealed by

²**“Board”** means the National Provident Fund Board of Trustees established under Section 5;

³**“Central Bank”** means the Bank of Papua New Guinea;

“the commencement date” means—

- (a) in relation to so much of the *National Provident Fund Act* as allowed the appointment of the National Provident Fund Board of Trustees and the making of Rules and administrative arrangements to facilitate the operation of the National Provident Fund—25 September 1980; and
- (b) in relation to the remainder of the Act—26 March 1981;

⁴**“contribution”** means a contribution payable the Superannuation Act 2000;

⁵**“court”** means the District Court;

⁶**“Director”** means the Managing Director of the National Provident Fund appointed under Section 15;

⁷**“employee”** has the same meaning as in the Superannuation Act;

⁸**“employer”** has the same meaning as in the Superannuation Act;

“establishment” means an organization which employs persons between whom and the establishment, the relationship of employer and employee exists;

“Fund” means the National Provident Fund established under Section 25;

“Inspector” means a person appointed to be an Inspector under Section 22;

“member” means a member of the Fund;

“pay” means all emoluments which are—

- (a) earned by an employee while on duty or on leave with pay in accordance with the terms of contract of employment; and
- (b) paid or payable in cash to him; and
- (c) gross wages, remuneration and commission,

National Provident Fund (Amendment) Act 1990 (No. 27 of 1990), s1(c); Section 1 (definition of “Premiers' Council”) repealed.

² Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1; Section 1 (definition of “exempted employee”) repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s1(c); Section 1 (definition of “exempted establishment”) repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s1(c); Section 1 (definition of “Premiers' Council”) repealed.

³ Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1.

⁴ Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1.

⁵ Section 1 (definition of “court”) inserted by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s1(a).

⁶ Section 1 (definition of “Director”) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s1(b).

⁷ Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1.

⁸ Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1.

but does not include overtime pay, allowances and bonuses and compensation receivable in relation to employment of service of an employee or any presents made by an employer;

⁹“**Superannuation Act**” means the Superannuation (General Provisions) Act 2000 (as amended from time to time) including the regulations and prudential standards under this Act.

¹⁰“**Rules**” means the rules made by the Board in accordance with Section 61;

“**this Act**” includes the Rules;

“**Trustee**” means a Trustee of the National Provident Fund Board of Trustees.

(2) Where an establishment consists of different departments or has branches, whether situated in the same place or in different places, all the departments and branches shall be treated as one establishment.

3 - 4¹¹. [**REPEALED.**]

⁹ Section 2 Subsection (1) amended by No. 90 of 2006, Sched. 1.

¹⁰ Section 1 (definition of “Rules”) inserted by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s1(d).

¹¹ Section 1 (definition of “Rules”) inserted by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s1(d).

PART II. – NATIONAL PROVIDENT FUND BOARD.**5. NATIONAL PROVIDENT FUND BOARD.**

(1) The National Provident Fund Board of Trustees is hereby established.

(2) The Board–

- (a) is a corporation with perpetual succession; and
- (b) shall have a seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Board affixed to a document and shall presume that it was duly affixed.

6. CONSTITUTION OF THE BOARD.

(1)^{12 13}The Board shall consist of the following Trustees:–

- (a) the Chairman, appointed by the National Executive Council, after consideration of recommendations by the Minister;
- (b) the Departmental Head of the Department responsible for finance and planning matters or his nominee;
- (c) the Departmental Head of the Department responsible for labour and employment matters or his nominee;
- (d) the Managing Director;
- (e) two persons (who are themselves employees) representing employees of affected establishments, appointed by the Minister from a list of names submitted to him from the employees in affected establishments as in the opinion of the Minister represent the employees;
- (f) two persons (who are themselves employers) representing employers of affected establishments, appointed by the Minister from a list of names submitted to him from employers in affected establishments as in the opinion of the Minister represent the employers.

(2)^{14 15}Appointments under Subsection (1)(a), (e) and (f) shall be notified in the National Gazette.

(3)^{16 17}Subject to this Act, the terms and conditions of the Trustees appointed under Subsection (1)(a), (e) and (f) are as determined by the Minister from time to time.

¹² Section 6(1)(a) repealed and replaced by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s1(a)(i); Section 6(1)(b) amended by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s1(a)(ii); Section 6(1) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(a).

¹³ Section 6(1)(a) repealed and replaced by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s1(a)(i); Section 6(1)(b) amended by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s1(a)(ii); Section 6(1) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(a).

¹⁴ Section 6(2) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(b).

¹⁵ Section 6(2) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(b).

(4)^{18 19}The Trustees appointed under Subsection (1)(a), (e) and (f) shall be appointed for a period of three years and are eligible for re-appointment.

(5)^{20 21}The Trustees shall appoint a person other than a Trustee to be Secretary to the Board.

7. ACTING CHAIRMAN.

²²(1) Where the Chairman is absent (whether from the country or from a meeting) or is unable or is otherwise unavailable to act, the Board may elect from among their own number an Acting Chairman.

(2) The Acting Chairman has and may exercise all the powers and perform all or any of the functions of the Chairman and this Act applies accordingly.

8. LEAVE OF ABSENCE OF TRUSTEES.

The Chairman may grant leave of absence to a Trustee on such terms and conditions as he determines.

9. DECLARATION OF OFFICE.

(1) Before entering on the duties of his office, a Trustee shall make the Declaration of Office provided by the *Constitution*.

(2) The Declaration of Office shall be made by a Trustee before the Minister or a person appointed by the Minister for the purpose.

10. VACATION OF OFFICE OF TRUSTEE.

(1) If a Trustee—

(a) dies; or

(b) becomes permanently incapable of performing his duties; or

(c) resigns his office by writing under his hand addressed to the Minister; or

(d) absents himself from three consecutive meetings of the Board without the written consent of the Chairman; or

(e) becomes of unsound mind as that expression is used in the *Public Health Act 1973*; or

(f) is guilty of moral turpitude; or

(g)²³ being a person appointed under Section 6(1)(e), ceases to be an employee; or

¹⁶ Section 6(3) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(c)(i) and (ii).

¹⁷ Section 6(3) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(c)(i) and (ii).

¹⁸ Section 6(4) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(d).

¹⁹ Section 6(4) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s3(d).

²⁰ Section 6(5) amended by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s1(b).

²¹ Section 6(5) amended by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s1(b).

²² Section 7 repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s4.

²³ Section 10(1)(g) inserted by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s5.

(h)²⁴ being a person appointed under Section 6(1)(f), ceases to be an employer, the Minister shall terminate his appointment.

(2) The Minister may, at any time, terminate the appointment of a Trustee for inability, inefficiency, incapacity or misbehaviour.

(3) Where the appointment of a Trustee is terminated under this section, the Minister shall, by notice in the National Gazette, declare his office vacant.

(4) Where an office is declared vacant under Subsection (3), the vacancy shall be filled in accordance with Section 6.

11. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise or performance of a power or function of the Board is not invalidated by reason only of a vacancy in the membership of the Board.

12. MEETINGS OF THE BOARD.

(1) Subject to Subsection (3), the Board shall meet as the Chairman determines, provided that the Board meets at least three times in each year.

(2) Subject to Subsection (3), the Secretary shall, if requested to do so by not less than one third of the Trustees, call a meeting of the Board as soon as practicable after receiving the request.

(3) The Secretary shall give to all Trustees at least 15 days' notice of a meeting of the Board.

(4)²⁵ ²⁶At a meeting of the Board—

(a) a quorum is the Chairman and at least four other Trustees of whom—

(i)²⁷ one shall be from those appointed under Section 6(1)(e); and

(ii)²⁸ one shall be from those appointed under Section 6(1)(f); and

(b)²⁹ the Chairman or Deputy Chairman shall preside; and

(c) matters arising shall be decided by a majority of the votes of the Trustees present and voting; and

(d) the person presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote,

provided that if all the Trustees agree in writing on each occasion this period of notice may be reduced or waived.

(5) The Board shall cause minutes of its meetings to be recorded and kept.

(6) Subject to this Act, the procedures of the Board are as determined by it.

²⁴ Section 10(1)(h) inserted by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s5.

²⁵ Section 12(4) amended by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s2.

²⁶ Section 12(4) amended by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s2.

²⁷ Section 12(4)(a)(i) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s6(a).

²⁸ Section 12(4)(a)(ii) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s6(b).

²⁹ Section 12(4)(b) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s6(c).

13. INDEMNITY OF TRUSTEES.

A Trustee is not personally liable for any act of the Board or of a Trustee acting as such, done in good faith.

14. FUNCTIONS OF THE BOARD.

The Board shall administer the Fund in such manner as is provided under this Act and shall perform such other functions as are required under this Act.

14A. DELEGATION BY THE BOARD.

³⁰The Board may delegate to the Chairman, Managing Director or any other person or body, all or any of its functions or powers (except this power of delegation) under this Act.

³⁰ Section 14A inserted by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s7.

PART III. – THE SERVICE OF THE BOARD.**15. APPOINTMENT, ETC., OF MANAGING DIRECTOR OF THE NATIONAL PROVIDENT FUND.**

³¹(1)³² ³³There shall be a Managing Director of the National Provident Fund who shall–

- (a)³⁴ be appointed by the Minister by notice in the National Gazette after prior consultation with the Board; and
- (b)³⁵ be appointed for such period as the Minister determines;
- (c) be the Chief Executive of the Board; and
- (d) be the head of the staff of the Board.

(2)³⁶ ³⁷The salary and other terms and conditions of employment of the Managing Director are as determined by the Minister from time to time, acting with the advice of the Board.

16. VACATION OF OFFICE OF DIRECTOR, ETC.

(1) If the Director–

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by writing under his hand to the Board; or
- (c) engages, without the consent of the Board, in any paid employment outside the duties of his office; or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors for remuneration for their benefit; or
- (e) is guilty of moral turpitude,

the Board shall terminate his appointment.

(2) The Board may, at any time, with the approval of the Minister, terminate the appointment of the Director for inability, inefficiency, incapacity or misbehaviour.

17. PUBLIC SERVICE RIGHTS OF DIRECTOR TO CONTINUE.

Notwithstanding anything in the *Public Services (Management) Act 1995*, where an officer or employee of the Public Service is appointed to be the Director, his service as Director shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of–

- (a) leave of absence on the ground of illness; and

³¹ Section 15 heading amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s8(a).

³² Section 15(1) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s8(b).

³³ Section 15(1) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s8(b).

³⁴ Section 15(1)(a) repealed and replaced by the *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s3. .

³⁵ Section 15(1)(b) repealed and replaced by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s3.

³⁶ Section 15(2) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s8(c).

³⁷ Section 15(2) amended by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s8(c).

- (b) furlough or pay instead of furlough (including pay to dependents on the death of the officer).

18. FUNCTIONS OF THE DIRECTOR.

(1) The Director shall manage the staff and administration of the Fund for the Board and shall act in accordance with the policy and directions of the Board.

(2) The Director shall advise the Board on any matter relating to the staff or administration referred to him by the Board.

(3) The Director has such other functions as the Board from time to time determines.

18A. DELEGATION BY THE DIRECTOR.

³⁸Except, where delegation by him is expressly prohibited—

- (a) under law; or
(b) by the Board,

the Director may delegate to any person or body, any or all his powers and functions relating to finance and administration of the Fund (except this power of delegation), under this Act or the rules.

19. APPOINTMENT OF OFFICERS.

(1) The Board may, on the recommendation of the Director, appoint to be officers of the Board such persons as it thinks fit and necessary for the purposes of the administration of its functions.

(2) The Director and officers constitute the staff of the Board.

(3) Subject to this Part and to the Rules, officers hold office on such terms and conditions as the Board determines.

(4) Notwithstanding anything in the *Public Services (Management) Act 1995*, where an officer appointed under this section was, immediately before his appointment an officer or employee of the Public Service, his service as an officer of the Board shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on the ground of illness; and
(b) furlough or pay instead of furlough (including pay to dependents on the death of the officer).

20. RULES FOR THE STAFF OF THE BOARD.

The Rules may make provision in relation to the staff of the Board and, in particular, may prescribe the terms and conditions of employment.

³⁸ Section 18A inserted by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s9.

21. OTHER EMPLOYEES.

(1) The Director may, with the approval of the Board, appoint such other employees as he thinks necessary for the purposes of this Act.

(2) Employees appointed under Subsection (1) shall be employed on such terms and conditions as the Board determines.

22. INSPECTORS.

The Minister may, by notice in the National Gazette, appoint officers of the Board to be Inspectors for the purposes of this Act.

23. POWERS OF INSPECTOR.

For the purposes of—

- (a) inquiring into the correctness of any information furnished in connection with this Act; or
- (b) ascertaining whether the provisions of this Act are being or have been complied with; or
- (c) ascertaining whether the provisions of this Act are applicable to any person or establishment,

an Inspector may—

- (d) require an employer to furnish such information as he considers necessary; and
- (e) enter on the premises of an establishment for the purposes of examining any accounts, books, registers, records or other documents relating to the employment of persons or the payment of persons in the establishment; and
- (f) examine, with respect to any matter relevant to the employment of persons and the payment of persons in the establishment, the employer, his agent or servant or any person found in charge of the establishment or the premises, or who the Inspector has reasonable cause to believe is or has been an employee in the establishment; and
- (g) make copies of, or take extracts from, any accounts, books, registers, records or other documents that he may consider relevant.

24. OBSTRUCTION OF INSPECTOR.

A person who—

- (a) hinders or obstructs an Inspector in the execution of his duty under this Act; or
- (b) fails to comply with a lawful requirement made by an Inspector under this Act; or
- (c) refuses an Inspector entry to premises which the Inspector may, under this Act, lawfully enter; or
- (d) impersonates an Inspector,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

PART IV. – NATIONAL PROVIDENT FUND.**25. NATIONAL PROVIDENT FUND.**

(1) A fund to be called the National Provident Fund is hereby established.

(2) All contributions required to be made under this Act shall be paid into the Fund and all payments authorized to be made under this Act shall be met by the Fund.

(3) Income derived from the investment of the Fund is part of the Fund.

(4) The Fund is a provident fund for the purposes of Section 28 of the *Income Tax Act 1959*.

26. BOARD TO BE TRUSTEE OF THE FUND.

³⁹The Board be the Trustee of the fund and all moneys belonging to the Fund shall be invested by the Board in accordance with the provision of the Superannuation Act.

27. EXPENSES.

⁴⁰All expenses incurred by the Board in connection with the performance of its functions under this Act shall be met from the Fund.

28. ACCOUNTS AND RECORDS TO BE KEPT.

The Board shall–

- (a) keep or cause to be kept proper accounts and records of its transactions and affairs; and
- (b) do all things necessary to ensure that–
 - (i) all payments out of its moneys are properly made and properly authorized; and
 - (ii) adequate control is maintained over its assets or assets in its custody, and over the incurring of liabilities by it.

29. AUDIT.

⁴¹(1) For the purposes of this section, “**subsidiary company**”, in relation to the Board, shall have the meaning given to a subsidiary corporation in relation to a public body under Section 49 of the *Public Finances (Management) Act 1995*.

(2) Subject to this section, the Auditor-General shall–

- (a) inspect and audit the accounts and records of financial transactions of the Board and of any subsidiary company and records relating to its assets or assets in its custody; and

³⁹ Section 26 Substituted by No. 90 of 2006, Sched. 1.

⁴⁰ Section 27 replaced by No. 27 of 1982, s1.

⁴¹ Section 29 replaced by No. 27 of 1982, s2; amended by No. 8 of 1983, s6.

(b) promptly draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his doing so.

(3) The Auditor-General may, in his discretion, dispense with the whole or any part of the detailed inspection and audit of any accounts referred to in Subsection (2).

(4) The Auditor-General shall, at least once in each year, report to the Minister the result of the inspection and audit of any accounts referred to in Subsection (2).

(5) The Auditor-General may, at his discretion, for the purpose of assisting him in an audit and inspection under Subsection (2), employ a registered company auditor who shall act under the direction of the Auditor-General and on the terms and conditions determined by the Auditor-General.

(6) The Auditor-General, or a person carrying out, or assisting in carrying out an inspection or audit under this section—

(a) is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Board and of any subsidiary company relating directly or indirectly to the receipt or payment of moneys by it, or to the acquisition, receipt, custody or disposal of assets by it; and

(b) may make copies of, or take extracts from, any such accounts, records, documents or papers; and

(c) may require any person to furnish him with such information in his possession or to which he has access as the Auditor-General or the person carrying out or assisting in carrying out the inspection or audit, thinks necessary for the purposes of the functions of the Auditor-General under the *Constitution* and this Act.

(7) A person who contravenes Subsection (6)(c) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

30. REPORTS AND FINANCIAL STATEMENTS.

(1) The Board shall, as soon as practicable after 31 December in each year prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister approves.

(2) Before furnishing financial statements to the Minister, the Board shall submit them to the auditor who shall report to the Minister—

(a) whether the statements are based on proper accounts and records; and

(b) whether the statements are in agreement with the accounts and records; and

(c) whether the receipt and expenditure and the investment of moneys, and the acquisition and disposal of assets, by the Board during the year are in accordance with this Act; and

(d) as to such other matters arising out of the statements as the auditor considers should be reported to the Minister.

(3) The Minister shall cause the report and financial statements, together with the report from the auditor, to be laid before the Parliament at its first meeting after their receipt by the Minister.

(4) When the report or financial statements of the Board are reproduced for publication or for other purposes, the report of the auditor shall be included in the reproduction.

(5) The first report and financial statements of the Board under this section shall be furnished as soon as practicable after 1 January following the commencement date.

PART V. – CONTRIBUTIONS.

31. CONTRIBUTIONS BY EMPLOYER.

⁴²All contributions by employers shall be made in accordance with the mandatory contributions provisions of the Superannuation Act.

32. CONTRIBUTIONS BY EMPLOYEE.

⁴³All contributions by employers shall be made in accordance with mandatory contributions provisions of the Superannuation Act.

33 - 34⁴⁴. [REPEALED.]

35. CONTRIBUTIONS TO BE PAID INTO FUND.

(1) All contributions paid under this Part shall be paid into the Fund in the prescribed manner.

(2) The Board shall cause to be credited to each member of the Fund the amount of every contribution paid on his behalf.

36⁴⁵. [REPEALED.]

37. POWER TO RECOVER PENAL INTEREST ON DEFAULT.

(1) Where an employer defaults in making any payment due by him to the Fund, the Director may, by written notice, require the employer to give reasons why he should not make the payment due together with penal interest at the prescribed rate from the date on which payment was due until the date of payment.

(2) On receipt of a written notice under Subsection (1), an employer may make representations to the Director as to why penal interest should not be charged and, if the Director is satisfied that the reasons for late payment were unavoidable or acceptable, he may limit the rate of penal interest to an amount not less than the actual loss incurred by the Fund.

(3) Where an employer is aggrieved by a decision of the Director under Subsection (2) he may appeal in writing to the Chairman of the Board, whose decision is final.

⁴² Section 31 Substituted by No. 90 of 2006, Sched. 1.

⁴³ Section 32 Substituted by No. 90 of 2006, Sched. 1.

⁴⁴ Section 32 Substituted by No. 90 of 2006, Sched. 1.

⁴⁵ Section 36 Repealed by No. 90 of 2006, Sched. 1.

PART VI. – PROTECTION OF CONTRIBUTIONS AND PAYMENTS.

38. PROTECTION AGAINST ATTACHMENT.

The amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund shall not–

- (a) in any way be capable of being assigned or charged; and
- (b) be liable to attachment under any decree or order of any court,

in respect of any debt or liability incurred by the member or the exempted employee.

39. NO CLAIM UNDER INSOLVENCY ACT.

The official trustee under the *Insolvency Act 1951* shall not be entitled to any claim on the amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund.

40. AMOUNT TO BE PAID FROM FUND ON DEATH OF MEMBER TO BE FREE FROM DEBT, ETC.

Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the terms of the provident fund or this Act, shall, subject to any deduction authorized by this Act, vest in the nominee free from debt or any other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee.

41. PRIORITY OF PAYMENT OF CONTRIBUTIONS OVER OTHER DEBTS.

(1) Where an employer is adjudged insolvent, or being a company, is the subject of a winding-up order, the amount due–

- (a) by an employer in relation to an affected establishment–by way of contributions, penal interest, accumulations or other charges under this Act; or
- (b) by an employer in relation to an exempted establishment–by way of contributions to the provident fund of that exempted establishment or penal interest or other charges under this Act,

which has become due prior to the date of adjudication of insolvency or of the winding-up order, shall be deemed to be included among those debts which are to be paid in priority to other debts.

(2)⁴⁶ ⁴⁷For the purposes of Subsection (1), a certificate in writing under the hand of the chairman certifying that–

- (a) the–
 - (i) person named in the certificate is, or was on a date specified in the certificate, an employer in relation to an affected establishment; and

⁴⁶ Section 41(2) inserted by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s4.

⁴⁷ Section 41(2) inserted by *National Provident Fund (Amendment) Act 1986* (No. 40 of 1986), s4.

(ii) sum specified in the certificate was, on a date specified in the certificate, due by that person by way of contributions, penal interest, accumulations or other charges under this Act; or

(b) the—

(i) person named in the certificate is, or was on a date specified in the certificate, an employer in relation to an exempted establishment; and

(ii) sum specified in the certificate was, on a date specified in the certificate, due by that person by way of penal interest or other charges under this Act,

is evidence of the matters stated in the certificate.

PART VII.⁴⁸ –

42 - 46⁴⁹. [*Repealed.*]

⁴⁸ Part VII repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s10.

⁴⁹ Part VII repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s10; Section 42 repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s10; Section 43 repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s10; Section 44 repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s10; Section 45 repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s10; Section 46 repealed by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s10.

PART VIII. – TRANSFER OF ACCOUNTS.

47. ELECTION TO TRANSFER FUNDS.

⁵⁰The amount of member entitlements standing to the credit of an employee may not only be transferred in accordance with the provisions of the Superannuation Act.

48⁵¹. [REPEALED.]

⁵⁰ Section 47 Substituted by No. 90 of 2006, Sched. 1.

⁵¹ Section 48 Repealed by No. 90 of 2006, Sched. 1.

PART IX. – WITHDRAWALS AND PAYMENTS FROM THE FUND.**49. ADVANCE FROM THE FUND FOR THE PURCHASE OF A DWELLING HOUSE, ETC.**

(1) In this section–

“**approved builder**” means a builder approved by the Director;

“**approved vendor**” means a vendor approved by the Director;

(2)^{52 53}The Director may, on the application of a member, permit the payment to or on behalf of the member from the Fund of an amount not exceeding–

(a) 24 times the member’s monthly pay; or

(b) the total amount of the contributions standing to the credit of the member’s account,

whichever is the lesser amount, for the purpose of –

(c) purchasing from an approved vendor a dwelling-house or site for a dwelling-house, either outright or on a deposit and instalment basis; or

(d) payment of the construction by an approved builder of a dwelling-house, either outright or on a deposit and instalment basis; or

(e) payment of the cost of materials for use in the construction of a dwelling house, either outright or on a deposit and instalment basis; or

(f) any combination of the purposes referred to in Paragraphs (c), (d) and (e),

for the use of the member.

(3) A payment made under Subsection (2) is made subject to any conditions which the Director thinks fit and to the rules governing payments of this nature.

50. RECOVERY OF PAYMENT.

Where a payment has been made under Section 49 and the Director is satisfied that–

(a) the payment has been utilized for a purpose other than that for which it was made; or

(b) the conditions of the payment or the rules governing the payment have been contravened; or

(c) there is a reasonable apprehension that the conditions of the payment or the rules governing the payment will be contravened,

he may immediately take steps to recover the payment made, with interest at the rate of 2% above the rate of interest as determined from time to time by the Board, from the pay of the member in such instalments as the Director thinks fit.

⁵² Section 49(2) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s11.

⁵³ Section 49(2) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s11.

51. PAYMENT UNDER SECTION 49 NON-REFUNDABLE.

(1) Subject to Subsection (2), a payment made under Section 49 is not refundable.

(2) Where a member so desires, he may refund a payment made to him under Section 49 by such number of instalments not exceeding 36 as the Director fixes.

52. CIRCUMSTANCES IN WHICH ACCUMULATIONS IN THE FUND ARE PAYABLE TO A MEMBER.

⁵⁴A member may only withdraw the full amount standing to his credit in the Fund (or such other amount) in accordance with the provisions of the Superannuation Act.

53⁵⁵. [REPEALED.]**54. NOMINATION.**

(1) For the purposes of this section—

“**children**” includes adopted children where the Director is satisfied that the adoption is in accordance with the custom of the member;

“**family**” means—

- (a) in the case of a man—his wife (except where, in accordance with any law or the custom of the community to which the spouses belong, the wife is no longer entitled to maintenance), his children (whether married or unmarried), his dependant parents and his deceased son’s widow and children; and
- (b) in the case of a woman—her husband and his dependant parents (except where the member by written notice to the Director excludes her husband from the family), her children (whether married or unmarried), her dependant parents and her deceased son’s widow and children.

(2) Each member shall, in the prescribed manner, nominate a person or persons to receive in his or their own right such portions of the amount payable on the death of the member as are specified by the member.

(3)^{56 57}Where, at the time of making a nomination, a member has a family, the nomination shall be in favour of each member of the family equally, and a nomination in favour of any other person shall be null and void.

(4)^{58 59}Where, at the time of making a nomination, a member—

- (a) has no family but subsequently acquires family; or
- (b) has a family, but subsequently acquires further family,

⁵⁴ Section 52 Substituted by No. 90 of 2006, Sched. 1.

⁵⁵ Section 53 Repealed by No. 90 of 2006, Sched. 1.

⁵⁶ Section 54(3) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s12(a).

⁵⁷ Section 54(3) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s12(a).

⁵⁸ Section 54(4) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s12(b).

⁵⁹ Section 54(4) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s12(b).

his original nomination shall be deemed null and void and he shall immediately make a fresh nomination in favour of each member of his family equally.

(5) A nomination under this section in favour of a child who is a minor may appoint a person of full age in his family to be guardian.

(6) A nomination under this section may be amended at any time by a member after giving written notice in the prescribed form.

55 - 55A⁶⁰. [REPEALED.]

⁶⁰ Section 54(4) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s12(b).

PART X. – MISCELLANEOUS.

56. OFFENCES.

A person who—

- (a) for any purpose connected with this Act—
 - (i) knowingly makes a false statement; or
 - (ii) produces or furnishes or causes to be produced or furnished any document which he knows to be false in a material particular; or
- (b) fails to pay to the Fund within such period as may be prescribed any amount which he is liable to pay under this Act in respect of or on behalf of any employee in any month; or
- (c) obstructs any officer or servant of the Board in the discharge of his functions as such; or
- (d) fails to comply with any rules made under this Act; or
- (e) fails to transfer to the Fund any sum which he is required to transfer to it by virtue of Section 45 or 48 within such time as he is required by that section to transfer it; or
- (f) fails to comply with any other requirements of this Act,

is guilty of an offence.

Penalty: For the first offence—a fine not exceeding K1,000.00 or imprisonment for a term exceeding one year.

For a second or subsequent offence—a fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years.

Default penalty: A fine not exceeding K100.00.

57. OFFENCE BY CORPORATION.

Where a corporation does any act or makes any omission that is an offence under this Act, every person who at the time of the act or omission was a director or member of the governing body of the corporation or was concerned in the management of the corporation, and who authorized or knowingly permitted the act or omission, shall, for the purposes of this Act be deemed to have committed the offence.

58. POWER OF COURT TO MAKE ORDERS.

Where a person is convicted of an offence under Section 56(b) the court may, in addition to any sentence of fine or imprisonment, order him to pay to the Fund the amount in respect of the non-payment of which he was convicted.

59. LIABILITY IN CASE OF TRANSFER OF ESTABLISHMENT.

Where an employer, in relation to an establishment, transfers that establishment, in whole or in part, by sale, gift, lease or in any other manner, the employer and the person to whom the

establishment is transferred shall jointly and severally be liable to pay any contributions and other sums due from the employer under this Act in respect of the period up to the date of the transfer.

60. PROTECTION FOR ACTS DONE IN GOOD FAITH.

A suit or other legal proceedings shall not lie against an Inspector or other person in respect of anything which is, in good faith, done or intended to be done under this Act.

61. RULES.

(1) The Board may make rules not inconsistent with this Act to provide for—

- (a) all matters that are referred to in this Act as being prescribed; and
- (b) all aspects of the administration of the Fund; and
- (c - d)⁶¹ [Repealed.]
- (e) the constitution of any committee for assisting the Board; and
- (f) the opening of offices of the Fund under the Board; and
- (g - h)⁶² [Repealed.]
- (i) the fixation by the Board of the rate of interest payable to members; and
- (j) the form in which an employee shall furnish particulars about himself and his family whenever required; and
- (k) the nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination; and
- (l) the registers and records to be maintained with respect to employees and the returns to be furnished by employers; and
- (m) the form or design of any identity card, token or disc for the purpose of identifying any employee, and for its issue, custody and replacement; and
- (n)⁶³ [Repealed.]
- (o) the further powers (if any) which may be exercised by Inspectors; and
- (p) the manner in which accumulations in any existing provident fund shall be transferred to the Fund under Part VIII, and the mode of valuation of any assets which may be transferred by the employers for that purpose.

(2) Rules made under Subsection (1) shall not have effect until they have been approved by the Head of State acting on advice, and notified in the National Gazette.

Office of Legislative Counsel, PNG

⁶¹ Section 54(4) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s12(b).

⁶² Section 54(4) repealed and replaced by *National Provident Fund (Amendment) Act 1990* (No. 27 of 1990), s12(b).

⁶³ Section 61 Subsection (1) amended by No. 90 of 2006, Sched. 1.