

No. 52 of 2000.

National Provident Fund (Financial Reconstruction) Act 2000.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

National Provident Fund (Financial Reconstruction) Act 2000,

Being an Act to provide for the financial reconstruction of the National Provident Fund and related purposes,

MADE by the National Parliament to come into operation on 1 January 2001.

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 right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

(2) 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.

(3) For the purposes of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*, it is hereby declared that the financial reconstruction of the National Provident Fund and the consequent writing down of members' accounts are public purposes.

2. INTERPRETATION.

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

“**NPF Act**” means the *National Provident Fund Act* (Chapter 377);

“**Board**” has the same meaning as under the NPF Act;

“**employee**” means an employee to whom the NPF Act applies pursuant to the provisions of the NPF Act as at 31 December 1999;

“**employer**” means an employer to whom the NPF Act applies pursuant to the provisions of the NPF Act as at 31 December 1999;

“**Fund**” means the National Provident Fund constituted pursuant to Section 25 of the NPF Act;

“**Income Tax Act**” means the *Income Tax Act 1959*;

“**indirect controller**” has the same meaning as in the *Banks and Financial Institutions Act 2000*;

“**Inscribed Stock**” means the inscribed stock referred to in Section 11(2) to be issued under the *Loan Securities Act* (Chapter 134);

“**member**” has the same meaning as under the NPF Act;

“**new employer**” means an employer who contributes to the National Provident Fund or to any superannuation fund licensed under any law governing the licensing of superannuation funds but who was not an employer to whom the NPF Act applied at 31 December 1999;

“**Operative Period**” means 1 January 2001 to 31 December 2003 or as extended in accordance with Section 9;

“**PNGBC**” means Papua New Guinea Banking Corporation Limited, its predecessors (including Papua New Guinea Banking Corporation), successors and assigns;

“**Rules**” means the *National Provident Fund Rules* (Chapter 377) or any other Rules made pursuant to Section 61 of the NPF Act;

“**shareholder controller**” has the same meaning as in the *Banks and Financial Institutions Act 2000*;

“**special employer contribution**” means the additional 2% contribution set out in Section 7(2);

“**Trustee**” has the same meaning as under the NPF Act.

(2) Unless the context requires a contrary interpretation, terms defined in the NPF Act and Rules shall have the same meaning under this Act as in the NPF Act and Rules.

PART II. – ACCOUNTS OF THE FUND.

Division 1.

Statutory Accounts for the Year ending 1999.

3. ACCOUNTS FOR THE PERIOD ENDING 31 DECEMBER 2000.

(1) The Fund and statutory accounts of the Fund as at 31 December 2000 shall be written down so as to mark the value of the assets of the Fund to market on 31 December 2000.

(2) For the avoidance of doubt, the statutory accounts of the Fund provided in accordance with this section shall include the reconstructed assets provided pursuant to Sections 4 and 5.

4. STATE GRANT.

(1) The State shall make to the Fund on each of:

(a) 28 February (for the quarter ending 31 December preceding); and

(b) 31 May (for the quarter ending 31 March preceding); and

(c) 31 August (for the quarter 30 June preceding); and

(d) 30 November (for the quarter ending 30 September preceding),

in each year commencing on 31 May 2001 until 28 February 2016 a real payment of K1,000,000.00 in accordance with this section.

(2) Each payment under Subsection (1) shall be calculated as follows:–

**K1m x All groups CPI with reference to the quarter in respect of which
payment is made**

All groups CPI with reference to the year 2000.

Where CPI = consumer price index

(3) The total amounts of grants to be made in accordance with Subsection (1) shall be included as an asset in the Fund as at 31 December 2000.

5. EMPLOYER CONTRIBUTION.

(1) The Trustees of the Fund shall, prior to or on the commencement of this Act, estimate the aggregate amount of special employer contribution to be collected during the Operative Period.

(2) The aggregate amount of the special employer contribution estimated pursuant to Subsection (1) shall be included as an asset in the Fund as at 31 December 2000.

6. ADJUSTMENT TO MEMBERS' ACCOUNTS.

Each member's account in the Fund as at 31 December 1999 kept under Rule 39 of the Rules shall be written down by 15% as at that date.

7. IMPOSITION OF SPECIAL EMPLOYER CONTRIBUTION.

(1) This section does not apply to a new employer.

(2) An employer, to whom Section 31 of the Act applied as at 31 December 1999, shall, during the Operative Period, pay to the Fund, in respect of each of his employees to whom this Act applies, a further special employer contribution of 2% of the pay actually drawn during the whole month, whether paid on a daily, weekly, fortnightly or monthly basis.

(3) The special employer contribution payable to the NPF under Subsection (2) is in addition to any contributions payable by an employer to the NPF pursuant to Section 31 of the NPF Act or payable by an employer to a licensed superannuation fund under any other legislation establishing a licensing for superannuation funds.

(4) An employer or any shareholder controller or indirect controller of that employer who restructures its operations for the purpose of its employees becoming employed by a new employer, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

(5) An employer who reduces or makes any deduction from the remuneration or entitlements of an employee by any amount on account of the special employer contribution, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

8. AMOUNTS NOT TO BE ACCUMULATIONS.

For the purpose of the NPF Act and the Rules, or the application of any common law, equitable or accounting principles, the amounts received by the Fund in payment of the special employer contribution and State grants from time to time shall not be accounted for as accumulations to the Fund or credited to members' accounts as they are paid but shall be treated and taken for all purposes as being assets of the Fund as at 31 December 2000 in accordance with Sections 4 and 5.

9. EXTENSIONS TO THE OPERATIVE PERIOD.

(1) The Board of Trustees and the Auditor of the Fund shall during the period 1 December 2003 to 31 December 2003, meet to determine whether the amount of special employer contributions actually collected by the Fund pursuant to Section 7 will equal the estimated aggregate amount referred to in Section 5(1) or are likely to equal the estimated aggregate amount by 31 December 2003.

(2) In the circumstances that the Board of Trustees and the Auditor of the Fund determine that the special employer contributions actually collected by the Fund pursuant to Section 7 during the Operative Period will not equal or exceed the

estimated amount referred to in Section 5(1) by 31 December 2003, the Operative Period may be extended for a period of time not to exceed the lesser of:

- (a) 12 months after 31 December 2003; or
- (b) the time necessary for the amount of special employer contributions actually collected by the Fund pursuant to Section 7 to equal the estimated amount referred to in Section 5(1).

(3) Any extension of the Operative Period pursuant to Subsection (2) shall be made by resolution of the Board of Trustees and shall be published in the National Gazette.

(4) Once extended in accordance with the section, the Operative Period shall not be extended for a further period.

Division 3.

Financial Obligations of the State.

10. CONFIRMATION OF EXISTING BORROWINGS.

(1) For the avoidance of doubt, the State confirms, agrees and acknowledges that:

- (a) pursuant to a Fixed Rate Loan Agreement dated 7 September 1995 it borrowed the sum of K9,000,000.00 from the Fund; and
- (b) pursuant to a Fixed Rate Loan Agreement dated 27 June 1996 it borrowed the sum of K10,000,000.00 from the Fund through its nominee borrower Curtain Burns Peak Ltd and the State remains indebted to the Fund in respect to that borrowing as a primary obligation on the State; and
- (c) pursuant to a Fixed Rate Loan Agreement dated 14 November 1996 it borrowed the sum of K15,000,000.00 from the Fund through its nominee borrower Curtain Burns Peak Ltd and the State remains indebted to the Fund in respect to that borrowing as a primary obligation on the State; and
- (d) pursuant to a Fixed Rate Loan Agreement dated 13 March 1997 it borrowed the sum of K15,000,000.00 from the Fund through its nominee borrower Curtain Burns Peak Ltd and the State remains indebted to the Fund in respect to that borrowing as a primary obligation on the State; and
- (e) pursuant to a Fixed Rate Loan Agreement dated 10 October 1997 it borrowed the sum of K8,000,000.00 from the Fund through its nominee borrower Curtain Burns Peak Ltd and the State remains indebted to the Fund in respect to that borrowing as a primary obligation on the State; and
- (f) on 28 May 1998, 11 June 1998 and 12 June 1998 it borrowed further amounts in the total sum of K4,500,000.00 from the Fund; and

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- (g) each of the borrowings mentioned and referred to in Paragraphs (a) to (f) inclusive were authorized according to law and according to their terms.

(2) For the avoidance of doubt, to the extent that any borrowing mentioned and referred to in Subsection (1) was not authorized according to law, authority to borrow required under any law is conferred by this section retrospectively to the date of the borrowing.

Division 4.

Liquefaction of State of Obligations.

11. LIQUEFICATION AND CONVERSION TO GOVERNMENT SECURITIES.

(1) Each of the loans and borrowings referred to in Section 10 is a “loan” for the purposes of:

- (a) Part VII (including Sections 47 and 48); and
- (b) Section 5(1)(a)(ii),

of the *Loans Securities Act* (Chapter 134).

(2) On or before 31 December 2000, the:

- (a) National Executive Council shall advise the Head of State to order creation of Inscribed Stock for the purpose of redeeming and repaying the loans mentioned and referred to in Section 10; and
- (b) Minister having delegation under the *Loans Securities Act* (Chapter 134) shall authorize and issue the Inscribed Stock to the Fund.

(3) To the extent that a power to issue the Inscribed Stock in accordance with this section does not arise from Part VII and Section 5(1)(a)(ii) of the *Loan Securities Act* (Chapter 134) authority to borrow for the purposes of Section 5(1)(a)(ii), Section 5(2) and Section 35 of the *Loans Securities Act* (Chapter 134) is provided by this section.

12. FORM AND SUBSTANCE OF INSCRIBED STOCK.

(1) The Inscribed Stock shall be issued on the Register of Inscribed Stock established at the Bank of Papua New Guinea.

(2) Inscribed Stock issued pursuant to this Act is deemed, without further approval by any person, to be Long Term Bonds for the purposes of the *Income Tax Act*, the *Stamp Duties Act* (Chapter 117) and any other law providing with respect to Long Term Bonds.

(3) Notwithstanding any other Act, Subsection (2) shall have effect in respect to the loan mentioned and referred to in Section 10(1)(a) notwithstanding that the term of that loan has less than five years until maturity.

PART III. – INDEMNITY AND RELEASE.

13. LIMITATION OF ACTION.

(1) No action shall lie against the State, PNGBC, or any corporation or instrumentality of the State (including the Fund) arising from the result of the write down of members accounts as provided in Section 6.

(2) The provisions of Subsection (1):

- (a) are in addition to any other right, remedy, immunity or protection of the State whether arising pursuant to law or by virtue of a contractual or similar right; and
- (b) shall not give rise to any immunity or protection for any person who acted as a Trustee of the Fund in respect to acts as a Trustee; and
- (c) shall not operate to release any person from liability to the Fund (whether civil or criminal) for any act, omission, breach of contractual duty, common law duty, fiduciary duty or other duty for loss and damage caused to the Fund or its assets or any failure to account to the Fund for assets or benefits obtained on account of the Fund.

(3) The provisions of Subsections (1) and (2) shall not reduce the protection available to a Trustee under Section 13 of the NPF Act or an employee of the Fund arising under the NPF Act, the Rules or otherwise existing at law.

(4) No action shall lie against the Fund or any Trustee of the fund in respect to any overpayment to a member of that member's entitlement (including arising out of or as a result of erosion of the capital of the Fund caused by any such overpayment) during the period 1 January 1998 until the commencement of this Act by virtue of the fact that the members' accounts kept pursuant to Rule 39 had not been written down in line with the underlying asset value of the fund during that period.

14. DEEMED AUTHORITY FOR BORROWING FROM PNGBC.

Notwithstanding any other law:

- (a) all sums of money borrowed by the Fund or The Tower Ltd from PNGBC prior to the date of commencement of this Act shall be deemed to be lawful borrowing; and
- (b) guarantees and securities given by the Fund and the Tower Ltd in support of borrowings referred to in Subsection (1) shall be deemed to be lawful.

Office of Legislative Counsel, PNG