

**SAMOA**

## Arrangement of Provisions

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**2005, No.9****AN ACT to amend the National Provident Fund Act 1972.***[22<sup>nd</sup> April 2005]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**1. Short title and commencement-**(1) This Act may be cited as the National Provident Fund Amendment Act 2005 and shall be read together with and form part of the National Provident Fund Act 1972 (the Principal Act).

(2) Sections 1 to 7 inclusive of this Act shall commence on the date of assent by the Head of State.

(3) Section 8 shall commence on a date nominated by the Minister.

(4) Notice of commencement of the various provisions of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

**2. Interpretation-**(1) Section 2 of the Principal Act is amended by deleting the definitions of “Contribution half year”, “Financial year” and “General Manager” and substituting the following in correct alphabetical order:

“Contribution half year” and “half year” mean the period from 1<sup>st</sup> July to 31<sup>st</sup> December or 1<sup>st</sup> January to 30<sup>th</sup> June in any year, as the case may be;

“Financial year” means a period of twelve (12) months commencing on the 1<sup>st</sup> July in any year and ending on the 30<sup>th</sup> June in the following year;

“Chief Executive Officer” means the Chief Executive Officer appointed under section 5(1) of the Act and includes any person appointed by the Board to act as Acting Chief Executive Officer;”.

(2) The Principal Act is amended by deleting the words “General Manager” wherever they appear and substituting the words “Chief Executive Officer”.

**3. Establishment of the Board** – Section 3(1) of the Principal Act is amended:

- (a) by deleting the words “Financial Secretary” in paragraph (a) and substituting the words “Chief Executive Officer of the Ministry of Finance”;
- (b) by deleting the word “and” in paragraph (f); and
- (c) by adding the following words in paragraph (i) after the word “Cabinet”: “to represent the Medical Profession.”

**4. Re-employment and continuation of employment after age 55 or withdrawal** – Section 24(1)(iii) of the Principal Act is amended by deleting the expression “5 years” and substituting the expression “12 months”.

**5. Options on withdrawal** – Section 35(1)(e) of the Principal Act is deleted and the following substituted:

“(e) If the member has satisfied the Board that the member:

(i) has been accepted to undertake a course of theological study at a school of theology recognised by the Board; and

(ii) upon completion of the member’s course of study under subparagraph (i) the member will be entitled to join a retirement or superannuation scheme administered by a church or other religious organisation,

the amount standing to the credit of the member in the member’s Fund account shall be payable to the member or the member’s spouse.”

**6. Residential qualifications for benefits** – Section 74 of the Principal Act is deleted and the following substituted:

**“74. Residential qualifications for benefits-(1)** Unless exempted by the Board under subsection (2), no person shall be entitled to a benefit or be registered unless the person:

(i) is a resident in Samoa at the date of the person’s application for registration; and

(ii) has resided continuously in Samoa for a period of not less than ninety days immediately prior to the date of the person’s application.

(2) The Board may exempt a person from all or part of the requirements of subsection (1) if the person:

(i) is employed by the Government in an overseas mission; or

(ii) is employed by an international or regional organisation of which the Independent State of Samoa is a member; or

(iii) satisfies the Board that the person's absence from Samoa is reasonable and appropriate in the circumstances provided that the total period of the person's absence from Samoa does not exceed 90 days prior to the date of the person's application for registration."

**7. Rates of benefits and payment thereof** – Section 76 of the Principal Act is amended by deleting the expression "at the rate of \$600 a year" and substituting the words, "at rates determined by the Government from time to time".

**8. SNPF Health Care Scheme and Medinsure Scheme** - The Principal Act is amended by inserting the following after section 84:

**"PART XIII**  
**SNPF HEALTH CARE SHCEME**

**85. Interpretation**-(1) Unless the context otherwise requires in this Part:

"contract" means any contract whether written or oral and whether expressed or implied;

"contribution" means the contribution required under section 90;

"employed" means engaged under a contract of service or apprenticeship or in any employment in respect of which contributions are payable under section 16;

"Medisave Fund" means the Medisave Fund established under section 89;

"SNPF" means the Samoa National Provident Fund;

"Scheme" means the SNPF Health Care Scheme established under section 88.

**86. Applications of other provisions of the Act** – Parts I, II, III, IV, V, VI, VII, VIII, and IX of this Act shall apply to this Part and Part XIV with such modifications and adaptations as the context may required.

**87. Cost of administration** - The cost of administering the Medisave Fund shall be met from the Medisave Fund and the cost of administering the Medinsure Scheme shall be met from the Medinsure Fund.

**88. Establishment of the SNPF Health Care Scheme** – A SNPF Health Care Scheme shall be established and administered by the Board in accordance with the provisions of this Part and Part XIV.

**89. Establishment of the Medisave Fund** – Notwithstanding any other provisions of this Act, there shall be established a fund to be called the Medisave Fund into which shall be paid all contributions and out of which all payments shall be disbursed under this Part.

**90. Payment of contributions-**(1) Every employer shall pay to the Medisave Fund monthly in respect of each employee a contribution of 6 sene in respect of each complete tala of the amount of wages payable to such employee by such employer during such month.

(2) The Board may, in its discretion and on such terms and conditions as the Board may impose, authorise in writing an employer or class of employers to pay the contribution at other intervals not exceeding 6 months.

(3) Subject to subsection (7) and notwithstanding the provisions of any written law or any contract to the contrary, an employer who pays the contribution to the Medisave Fund in respect of any employee in accordance with the provisions of subsections (1) and (2) shall be entitled to recover from the wages of such employee one half of such contribution **PROVIDED THAT** where the rate of wages payable to an employee is less than the minimum rate fixed pursuant to section 19 of the Labour and Employment Act 1972 no sum shall be deducted from the employee's wages.

(4) Where any employer who has recovered any amount from the wages of an employee in accordance with subsection (3) fails to pay the contribution to the Medisave Fund within such time as may be determined by the Board by Notice, the employer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 3 years or to both.

(5) Notwithstanding subsections (1), (2) and (3):

- (a) an employee may contribute voluntarily to the Medisave Fund a sum additional to the amount payable under subsection (1) provided that the employee gives written notice to this effect to the employer and the Board.
- (b) an employer shall pay the amount of any sum additional under paragraph (a) to the Medisave Fund in addition to the monthly contributions required under subsection (1), provided that the employee is employed by that employer and has not within six months of providing notice under paragraph (a), requested the employer and the Board in writing to cease to have the sum additional under paragraph (a) deducted from the employee's wages;
- (c) an employer may at any time pay to the Medisave Fund contributions in respect of any employee at a rate in excess of that required under subsection (1) provided that such excess contribution forms part of the employer's contribution to the Medisave Fund.

(6) Notwithstanding any contract to the contrary, an employer shall not be entitled to recover in any way from an employee in respect of contributions payable under this Act any sum in excess of that permitted to be recovered under subsection (3) together with any sum additional contributed voluntarily by the employee under subsection (5) and any employer who recovers from an employee or attempts to recover any greater sum shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 3 years or to both.

(7) Subject to subsections (8) and (9), the portion of any contribution recoverable from the wages of an employee in accordance with subsections (3) and (5) shall be recovered by the employer from the wages of the employee in respect of which the contribution is payable at the time of payment of those wages and not otherwise.

(8) Subject to such conditions as may be determined by the Board by Notice, where an employer has, by error not occasioned by that employer's negligence, omitted to recover from the wages paid to an employee any amount or part of any amount that the employer would otherwise have been entitled to recover at the time of payment of the wages under subsection (1), the amount or part thereof may be recovered from the wages payable by the employer to the employee not later than 6 months from the date of the payment of the wages in respect of which the amount or part thereof was omitted to be recovered.

(9) Notwithstanding subsection (7), where an employer is required to pay to the Medisave Fund any additional contributions on additional wages and is entitled to recover such contributions from the wages of the employee in accordance with subsection (7), the employer may recover such contributions from the wages payable by the employer to the employee not later than 6 months from the end of the year in which the additional contributions are payable.

(10) Where an employer is required to pay to the Medisave Fund any additional contributions and is entitled to recover such contributions from the wages of the employee in accordance with subsection (7), the Board may, notwithstanding subsection (1) if it is satisfied that the employer is unable to recover in full or in part from the wages of the employee and the employee is no longer in the employment of the employer, waive the payment of that portion of the additional contribution that the employer is unable to recover.

**91. Payment of interest on contributions in arrears-(1)**

Subject to subsection (2), where the amount of the contributions which an employer is liable to pay under section 90 in respect of any month is not paid within one month after the last day of the month during which the wages to which the contributions relate were payable, the employer shall be liable to pay a surcharge to the Board on the total of all such outstanding contributions under this Part at the rate of 24% per annum for the period commencing after the expiration of one month after the last day of the month during which such wages were payable and expiring on the date the contributions are paid to the Medisave Fund.

(2) Notwithstanding subsection (1), the Board may if it thinks fit, waive the payment of the whole or part of, or remit in whole or in part, the payment of any surcharge due under subsection (1).

(3) Any sum due to the Medisave Fund by way of surcharge under the provisions of this section shall be paid to the Board within 14 days of a demand in writing for such payment by the Board.

**92. Contributions to be paid into Fund-(1)** All sums collected or recovered on account of contributions to the Medisave Fund under this Part shall be paid into or carried to the Medisave Fund in such manner as may be determined by the Board by Notice.

(2) The Board shall cause to be credited to each member of the Medisave Fund -

- (a) the amount of every contribution paid to the Medisave Fund for the member; and
- (b) interest at the rate declared under section 9 at such intervals as the Board may determine by Notice.



**93. Voluntary contributions-**(1) Notwithstanding anything in this Act but subject to any regulations made under section 99, a person in respect of whom no contribution is required to be paid under this Act may contribute voluntarily to the Medisave Fund in such manner and at such rate and upon such conditions as the Board may determine by Notice and such person shall be regarded as a member of the Medisave Fund under this Part and Part XIV.

(2) The Board shall credit every contribution received under subsection (1) into the Medisave Fund in the name of the person together with interest at the rate declared under section 9 at such intervals as the Board may determine by Notice.

**94. Payment of members Medinsure premiums and co-payments** – The Board shall withdraw or cause to be withdrawn from the money standing to the credit of each member of the Medisave Fund the premiums and co-payments required to be paid by section 102 and shall pay or cause to be paid such sums to the credit of the member in the Medinsure Scheme established under Part XIV.

**95. Authorisation and conditions for other withdrawals from Medisave Fund-**(1) Subject to section 94, no sum of money standing to the credit of a member of the Medisave Fund may be withdrawn except with the authority of the Board upon the application of a person entitled to withdraw the money from the Fund under subsections (2) and (3).

(2) A member of the Fund, or the member's legal representative shall be entitled to withdraw the sum standing to the credit of the member in the Medisave Fund at any time provided that the Board is satisfied that the member -

- (a) not having attained the age of 55 years, dies; or
- (b) has attained the age of 55 years; or
- (c) not being a citizen of Samoa, has left or is about to leave Samoa permanently; or
- (d) is a citizen of Samoa and has permanently ceased to reside in Samoa.

(3) After the death of a member of the Medisave Fund, a person nominated by that member in accordance with section 36 shall be entitled to withdraw such portion of the sum standing to the credit of that member in the Medisave Fund in accordance with the terms of the memorandum executed by the member under the provisions of section 36.

**96. Withdrawals-**(1) Upon an application for the withdrawal of the sum of money standing to the credit of a member of the Medisave Fund the Board may authorise the payment to the applicant of such sum as the member is entitled to withdraw from the Medisave Fund and any interest calculated in accordance with section 9 up to the date of the authorisation or, if the applicant is a nominee appointed in accordance with section 36, such portion of the sum as the person is nominated to receive.

(2) When any contributions are due to be paid for a member of the Medisave Fund in respect of any period ending not later than the last day of the month next following the date on which the withdrawal of the sum of money standing to the member's credit in the Medisave Fund is authorised and the contributions are not paid to the Medisave Fund until after the date of authorisation, those contributions may in the discretion of the Board be treated as if they had been included in the amount standing to the credit of the member at the date of authorisation of withdrawal and paid to the applicant accordingly.

**97. Protection of benefits-**(1) Except as may be provided for in any regulations made under section 99, no withdrawals made by the authority of the Board from the Medisave Fund under section 96 nor the rights of any member of the Fund acquired thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim.

(2) All moneys paid out of the Medisave Fund on the death of any member of the Medisave Fund shall be deemed to be impressed with a trust in favour of –

- (a) the person or persons nominated under section 36 by the deceased member, if any; or
- (b) the person or persons determined by the Public Trustee in accordance with section 36.

(3) Notwithstanding any other law, a member's contribution into the Medisave Fund shall be deemed not to form part of the deceased member's estate.

(4) No contribution to the Medisave Fund or interest thereon shall be subject to the debts of the member of the Medisave Fund, nor shall the contribution or interest pass to the Official Assignee on the bankruptcy of the member.

(5) If the member is adjudicated a bankrupt or is declared insolvent by judgment of the court, the member's contribution and interest to the Medisave Fund shall be deemed not to form part of the property of the member.

(6) The bankruptcy of an employee shall not affect the payment of contributions from the wages of the employee in accordance with the provisions of this Part.

**98. Moneys payable on death of member-**(1) Any member of the Medisave Fund may by a memorandum executed in the manner determined by the Board by Notice nominate a person or persons to receive such portions of the amount payable on the member's death out of the Medisave Fund in accordance with section 36.

(2) If, at the time of the death of a member of the fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force.

(3) If any person nominated (other than a widow) is below the age of 18 years at the time of payment of the amount payable out of the Fund, such person's portion of the amount payable shall similarly be paid to the Public Trustee for the benefit of the nominated person.

(4) The receipt of a person or persons nominated under subsection (1) or the Public Trustee under subsections (2) and (3) shall be satisfactory discharge to the Board for such portions of the moneys payable out of the Fund on the death of a member.

**99. Regulations** – The Head of State, acting on the advice of Cabinet, may from time to time make regulations as are necessary or expedient for the purpose of carrying out of or giving full effect to the provisions of this Part and its due administration.

#### **PART XIV** **MEDINSURE SHCEME**

**100. Interpretation of this Part** – In this Part -

“approved hospital” means any hospital approved by the Board by Notice;

“co-payment” means the portion or costs of hospitalisation payable by the insured person;

“insured member” means an insured member of the Medisave Fund;

“insured person” means a person who is insured under the Scheme;

“Medinsure Fund” means the fund established and maintained by the Board under section 104;

“Medinsure Scheme” means the medical insurance scheme established and maintained by the Board under section 101.

**101. Establishment of Medinsure Scheme** – The Board may establish and maintain a medical insurance scheme to be known as the Medinsure Scheme for the purpose of paying the full or part of the costs incurred by an insured person for the person’s treatment in an approved hospital at any time during the period in which the person is insured under the Medinsure Scheme.

**102. Premiums and co-payments-**(1) Every insured person shall pay premiums and co-payments of such amount as may be prescribed by regulations made under section 105.

(2) The Board shall deduct the amount of premiums and co-payments payable by an insured member or the insured member's dependant who is insured under the Scheme from the amount standing to the credit of that member in the Medisave Fund.

**103. General obligation of insured person to furnish information-**(1) An insured person or any other person who wishes to join the Medinsure Scheme shall when required by the Board:

- (a) furnish to the Board such information as the Board thinks fit regarding that person's, or members of the person's family, health history, health and financial circumstances; and
- (b) undergo such medical examination as the Board thinks fit.

(2) An insured person or any other person who wishes to join the Medinsure Scheme shall be under a duty to disclose to the Board all material facts which, if known to the Board, would have reasonably affected the decision of the Board to permit that person to join the Medinsure Scheme or entertain any claim made by the insured person under the Medinsure Scheme.

(3) Despite any other law, any person insured under the Medinsure Scheme or any other person who wishes to join the Medinsure Scheme or is making a claim under the Medinsure Scheme shall be deemed to have:

- (a) given consent to the Board to seek information from any doctor or other health care provider who has attended to the person or any hospital or other medical facility where the person has received treatment; and
- (b) authorised such doctor, other healthcare provider, hospital or other medical facility to give information requested by the Board.

(4) Any information, including but not limited to financial information relating to an insured person obtained by the Board under this section, may be used by the Board and such other organisations as the Board determines necessary for the purpose of administering the Medinsure Scheme.

**104. Establishment of Medinsure Fund-**(1) The Board shall establish and maintain a fund to be known as the Medinsure Fund into which shall be paid all premiums and, if the Board so determines, co-payments collected under this Part and out of which shall be met all payments to be paid by it under the Medinsure Scheme.

(2) The Medinsure Fund shall be controlled and administered by the Board.

(3) The moneys in the Medinsure Fund shall be managed in accordance with the provisions of section 6.

**105. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may make regulations as are necessary or expedient for the purpose of carrying out of or giving full effect to the provisions of this Part and its due administration.

(2) Without limiting the general power conferred in subsection (1), such regulations may be made for any or all of the following purposes:

- (a) specify the members or class of members or other persons who are entitled to join the Medinsure Scheme;
- (b) prescribe the conditions under which an insured person is entitled to claim the benefits payable under the Medinsure Scheme;
- (c) prescribe the benefits payable to an insured person under the Medinsure Scheme;
- (d) prescribe for the rates of premiums and co-payments payable by insured persons and the manner and time for payment of such premiums and co-payments;

- (e) provide for the refund of any premium or co-payment and the rate, method or circumstances under which the refund shall be made;
- (f) provide for such information, evidence and documents that the Board may require an insured person to furnish for the purposes of this Part; and
- (g) provide for all matters which are otherwise required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

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**The National Provident Fund Amendment Act 2005 is  
administered in the Samoa National Provident Fund**

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