

SAMOA

Arrangement of Provisions

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| 1. Short title and commencement | 3. Substitution of Parts II to X |
| 2. Substitution of section 2 | 4. Insertion of Part XV |

2010, No. 8

AN ACT to amend the National Provident Fund Act 1972, and to re-establish the corporate body known as the Samoa National Provident Fund Board as the Samoa National Provident Fund with a Board of Directors, and to amend its governance, administration and operations for the benefit of members, and for related purposes.

[7th April 2010]

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 2010.

(2) This Act commences on a date to be nominated by the Minister, except section 4 which is deemed to commence on 1 July 2007.

(3) This Act shall be read with and form part of the National Provident Fund Act 1972 (referred to in this Act as the “Principal Act”).

2. Substitution of section 2 - For section 2 of the Principal Act substitute:

“2. Interpretation-(1) In this Act, unless the context otherwise requires:

“alternative fund” means a provident fund or other scheme declared to be an alternative fund by the Board under section 29(1);

“amount of wages for the month” means the amount paid or payable for a month;

“Board” means the Board of Directors of the Samoa National Provident Fund established under section 4(1);

“Chief Executive Officer” means the Chief Executive Officer appointed under section 12(1) and includes any person appointed by the Board to act as Acting Chief Executive Officer;

“child” means a natural child of the person and an adopted child, whether legally or de facto adopted;

“Controller and Chief Auditor” means the person appointed under section 97 of the Constitution;

“date of entitlement” means, in respect of any member of the Fund, the day (whichever shall first occur) on which it is proved to the satisfaction of the Fund that such member:

- (a) has attained the age of 55 years;
- (b) has died;
- (c) is physically or mentally incapacitated from ever engaging in any further employment;
- (d) intends to depart or has departed from Samoa to reside permanently outside Samoa; or
- (e) intends to depart or has departed from Samoa temporarily in order to be employed for not less than three (3) years;
- (f) or the member’s spouse, has been accepted to undertake a course of theological study approved by the Board for a period of not less than 12 months; or

(g) has reached the age of 50 years and no contribution under section 22 has been made in respect of the member for five (5) years.

“death benefit” means the amount declared by the Board from time to time under section 37;

“default” means failure to comply with a provision of this Act requiring compliance in any form;

“dependant” means a wholly dependent person;

“Director” means a Director appointed under section 4;

“education account” means an account opened by a member for the purpose of paying the education costs of a dependent child or children of the member, the amount in which shall be the sole property of the member;

“education costs” means the expenses of a dependent child attending full-time at a university or other post-secondary educational institution in Samoa or elsewhere;

“employee” means any person who:

(a) is employed, engaged or called in Samoa, whether under a contract of service or apprenticeship or learnership or otherwise, whether written or oral or whether expressed or implied; or

(b) being in Samoa, is under a contract for the performance of manual labour or personal service entered into by him or her either as an individual person or as one (1) of a group of persons; or

(c) being a resident of Samoa, is employed in the manner specified in either of the two (2) last preceding paragraphs outside Samoa by an employer having a place of business in Samoa; or

- (d) being a resident of Samoa, is employed under a contract of service entered into in Samoa as a master or member of the crew of any vessel, or as captain or member of the crew of any aircraft, the owners of which have a place of business in Samoa; or
- (e) is a member of a co-operative society employed by the society of which he or she is a member; or
- (f) is declared by the Minister to be an employee for the purposes of this Act, not being a person detained in a prison or other penal institute; or
- (g) is not in fulltime or part-time education, has attained 18 years of age and is working in a family or village business or the like, whether or not in receipt of wages or in return for reward, board, lodging or any other form of support, sustenance or livelihood.

“employee registration form” or “voluntary member registration form” means a form approved by the Chief Executive Officer to be used for the purpose of section 20;

“employer” means:

- (a) in respect of any employee as defined in paragraph (a) of the definition of “employee”, the person with whom such employee has entered into a contract of service, of apprenticeship or learnership;
- (b) in respect of any employee as defined in paragraph (b) of the definition of “employee”, the person with whom such employee has entered into a contract to perform manual labour;
- (c) in respect of any employee as defined in paragraph (c) of the definition of “employee”, the Government or the employer having a place of business in Samoa as the case may be;

- (d) in respect of any employee as defined in paragraph (d) of the definition of “employee”, the owners of the vessel or aircraft in which the employee as so defined is employed; or
- (e) in respect of an employee as defined in paragraph (e) of the definition of “employee”, the co-operative society by which he or she is employed;
- (f) in respect of any employee as defined in paragraph (f) of the definition of “employee”, the person by whom or on whose behalf the employee is paid whether in Samoa or elsewhere, and includes the agent of such person;
- (g) in respect of any employee as defined in paragraph (g) of the definition of “employee”, -
 - (i) the owner or owners of the family, village or like business; or
 - (ii) the person or persons by whom or on whose behalf the employee is paid, whether the person or persons are in Samoa or elsewhere, and includes the agent of such person; or
 - (iii) the person or persons who receive or share any profit from the family, village or like business or would receive or share any profit if the business was profitable.

“employer registration form” means the form approved by the Chief Executive Officer to be used for the purpose of section 19;

“employment” means permanent, part-time or casual employment by an employer of an employee;

“financial year” means a period of 12 months commencing on 1 July in any year and ending on 30 June in the following year;

- “former GSF pension” means a pension which ceased to be payable from the Government Superannuation Fund under section 19 of the Government Superannuation Act 1972;
- “Fund” means the body corporate established under section 3;
- “interest” for the purpose of section 9(1) includes a financial or business interest or the like of a Director, of a Director’s spouse or de facto partner, of a Director’s immediate family, parents and siblings, and of a business partner or of a co-director of a Director in another corporation and any other relationship which a reasonable person would believe affects the independence of a Director;
- “member of the Fund” or “member”, except for the purposes of Division 2 of Part V, means any person registered under section 20;
- “Minister” means the Minister of Finance;
- “nominee” means a person nominated by a member of the Fund under section 43 to receive the whole or part of such member’s credit in the event of the death of such member;
- “person” includes any body of persons, whether incorporated or not;
- “relative” means any blood or adopted relative, whether legally or de facto adopted;
- “resident of Samoa” means a person whose usual place of residence is Samoa or a person entitled to enter Samoa without a permit under any enactment relating to immigration into Samoa;
- “retirement” and “retired” mean respectively final cessation of or finally ceased employment;
- “schedule of contributions” means the document, in the form approved by the Chief Executive Officer to be used for the purpose of section 22;

“spouse” means:

- (a) a husband or wife legally married; or
- (b) a person cohabiting with a person of the opposite sex for a continuous period of at least three (3) years;
- (c) in the event that there is more than one (1) person fitting the definitions in (a) or (b), the last person in time, whether married or not, cohabiting with the deceased prior to the date of the member’s death.

“voluntary member” means a person registered as a voluntary member under section 20;

“wages” means all emoluments or rewards in money by way of gross wages, remuneration, salary or commissions, including overtime pay, allowances and bonuses and compensation received or receivable in relation to employment or service of any employee and includes board, lodging or any other form of support, sustenance or livelihood.

(2) For the purposes of this Act a salesperson, collector, insurance agent or other person paid wholly or partly by commission shall be deemed to be an employee of the person or persons by whom such commission is payable (whether or not the relation between them is that of employer and employee) unless the commission is received by him or her in respect of work incidental to a trade or business regularly carried on by him or her or by a firm of which he or she is a member.

(3) Section 5(4) of the Public Bodies (Performance and Accountability) Act 2001 which purports to give precedence to certain laws over others if there is inconsistency does not apply to this Act, and a specific provision made under this Act shall prevail over the Public Bodies (Performance and Accountability) Act 2001 and the Companies Act 2001.”.

3. Substitution of Parts II to X - For Parts II to X of the Principal Act substitute:

**“PART II
INCORPORATION AND FUNCTIONS**

3. The Fund to be a body corporate with certain powers-(1) This section establishes the Samoa National Provident Fund as a body corporate with a common seal and perpetual succession as the successor in law to the Samoa National Provident Fund Board.

(2) The Fund may exercise all such authorities and powers as shall be necessary or expedient for the due administration of this Act, and may sue and be sued in its corporate name, enter into contracts, acquire, purchase, take, hold and enjoy real and personal property of every description, convey, assign, surrender, yield up, lend, charge, mortgage, borrow, lease, demise, reassign, transfer or otherwise dispose of or deal with any real or personal property or any interest therein.

4. Board of Directors-(1) This section establishes the Board of Directors of the Samoa National Provident Fund consisting of:

- (a) the Chief Executive Officer of the Ministry of Finance who is to be Chairperson;
 - (b) the Attorney General,
- and also consisting of at least three (3) and no more than eight (8) from the following:
- (c) two (2) persons nominated by the Samoa Chamber of Commerce and Industry (Incorporated) and appointed by the Head of State, acting on the advice of Cabinet, to represent the employers of Samoa;
 - (d) a person nominated by the Public Service Association of Samoa (Incorporated) and appointed by the Head of State, acting on the advice of Cabinet, to represent the public servants of Samoa;

- (e) a person appointed by the Head of State, acting on the advice of Cabinet, to represent the private-sector employees of Samoa;
 - (f) a person appointed by the Head of State, acting on the advice of Cabinet, to represent the interests of all the churches in Samoa;
 - (g) a person appointed by the Head of State, acting on the advice of Cabinet, to represent the interests of planters;
 - (h) a person nominated by the Samoan Association of Manufacturers and Exporters (Incorporated) and appointed by the Head of State, acting on the advice of Cabinet, to represent the interests of manufacturers; and
 - (i) such other persons appointed by the Head of State, acting on the advice of Cabinet, as Cabinet may nominate.
- (2) From 1st July 2010:
- (a) no Member of Parliament, public servant or constitutional officer shall be a Director or be re-appointed as a Director unless Cabinet has certified that such appointment or re-appointment, as the case may be, is necessary; and -
 - (i) in the national interest; and
 - (ii) that the member of Parliament, public servant or constitutional officer, as the case may be, has particular qualifications or business experience which the Fund requires on its Board of Directors and such qualifications or business experience cannot be found elsewhere; and
 - (b) where a member of Parliament, public servant or constitutional officer is appointed or re-appointed under this section the person shall not receive remuneration or other benefits from the Fund for services as a Director.

(3) Every appointed Director, whether appointed before or after the commencement of the National Provident Fund Amendment Act 2010, shall continue to hold, or hold, office at the pleasure of the Head of State, acting on the advice of Cabinet.

5. Duties of Directors-(1) The Directors of the Board shall have fiduciary duties to the Fund, in addition to the other duties imposed by law, and be charged with its due administration, in the interests of its members, which shall be paramount.

(2) The money belonging to the Fund shall, subject to any direction of the Minister made under section 18, be prudently invested by the Board in any real or personal property in Samoa or elsewhere and in accordance with the regulations.

(3) It shall be lawful for the Board to make loans to any member for such purposes and upon such terms as the Board may consider reasonable in such amount as shall not exceed the amount of the member's contributions to the date of his or her application for the loan.

(4) It shall be lawful for the Board to make loans or advances to the Chief Executive Officer and other staff of the Fund as part of their conditions of employment or grants, payments, loans or advances, upon such terms as the Board may consider reasonable.

6. Removal and vacancies of Directors-(1) The position of a Director of the Board becomes vacant and a Director may at any time be removed from office by the Head of State, acting on the advice of Cabinet, if the Director:

- (a) fails to attend three (3) consecutive Board meetings without an apology being received and accepted by the Chairperson of the Board, and in case of the Chairperson, an apology being received and accepted by the Board of Directors;

- (b) attains the age of 70 years and is not recommended by the ad hoc Independent Selection Committee appointed in accordance with the Public Bodies (Performance and Accountability) Act 2001 for re-appointment;
- (c) becomes bankrupt;
- (d) is convicted in Samoa or elsewhere of an offence punishable by death or by imprisonment for a term of two (2) years or upwards;
- (e) is convicted of an offence related to his or her duties as a Director; or
- (f) departs permanently from Samoa; or
- (g) breaches the duties of a Director.

(2) A Director may at any time resign his or her office by written notice given to the Minister.

(3) A person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating Director was appointed.

(4) The powers of the Board shall not be affected by a vacancy in the composition of the Board.

(5) No act or proceeding of the Board shall be invalidated or affected by reason of any subsequently discovered defect or illegality in the appointment to, or membership of, the Board of any person or the acting or voting in any matter of any Director.

7. Deputies of members-(1) The Chief Executive Officer of the Ministry of Finance, and the Attorney General, may appoint as his or her deputy a senior officer of his or her Ministry or Office to attend a meeting of the Board which, on account of illness or other good reason, he or she cannot attend.

(2) Where an appointed Director is temporarily incapacitated by illness or for other good reason cannot attend the meeting, the Minister may appoint a person to attend a meeting as a deputy of that Director.

(3) No deputy shall act as Chairperson of the Board.

(4) The appointment of a deputy of a Director and any act done by the deputy or done by the Board while a deputy is acting as such shall not be questioned in any proceedings on the ground that the occasion for his or her appointment has not arisen or has ceased.

8. Confidentiality - A Director shall not communicate or reveal to any person any matter which shall be brought under his or her consideration or shall become known to him or her as a member of the Board except as may be required for the due discharge of his or her duties.

9. Disclosure of interest-(1) A Director who has a direct or indirect interest in a matter being considered or about to be considered by the Board otherwise than in his or her capacity as a Director shall, as soon as possible after the relevant facts have come to his or her notice, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting and, except as otherwise provided by a resolution of the Board, the Director shall leave the meeting after the disclosure during any deliberation or decision relating to that business, but shall be counted as present for the purpose of forming a quorum for that meeting.

10. Meetings of the Board - Meetings of the Board shall be held at such times and at such places as the Board or the Chairperson shall from time to time determine and be conducted in accordance with the regulations.

11. Remuneration and allowances of Board - The Directors of the Board, other than full-time salaried employees of the Government, shall be paid such remuneration, sitting allowance, travelling and other expenses as may from time to time be fixed by Cabinet.

12. Staff of the Fund-(1) The Fund shall have a staff consisting of:

- (a) a Chief Executive Officer, appointed by the Head of State acting on the advice of Cabinet, and who shall hold office at the pleasure of Cabinet;
- (b) at least one (1) Deputy Chief Executive Officer, who shall be appointed by the Board of Directors;
- (c) a Corporation Secretary, who shall be appointed by the Board of Directors and who is charged with the function of managing the business of the Board and such other functions as the Board may require;
- (d) managers who shall be appointed by the Board of Directors; and
- (e) such other officers and employees engaged and appointed by the Chief Executive Officer who are, in the opinion of the Chief Executive Officer, necessary for the purpose of carrying out the provisions of this Act.

(2) The Chief Executive Officer shall have power to appoint agents to carry out such functions as may be necessary for the purposes of this Act and may by the Fund's staff direct such agents as to the extent and manner in which their functions shall be carried out.

(3) The Chief Executive Officer shall have power to appoint any of the persons appointed under subsection (1)(d) or (e) as inspectors having the powers set out in section 48.

PART III FINANCIAL PROVISIONS

13. Establishment of accounts of the Fund - For the purposes of this Act, all contributions required to be made under this Act shall be paid to the accounts of the Fund and all payments required to be made by the Fund under this Act shall be met from the accounts maintained by the Fund.

14. Special funds-(1) The Fund may establish special funds in which to hold the moneys belonging to the Fund and provide thereby for such terms and conditions as may be necessary and in particular it may provide funds for employees of the Government of Samoa or of its agencies, associated bodies or its instrumentalities.

(2) To facilitate administration and to effect economies the Fund may, if the Fund contains accounts in several funds, although causing separate accounts to be kept for each member, treat all the assets being administered or invested by the Fund as belonging to a common fund and no member shall be entitled to claim them to have any interest in any particular assets of the fund and no assets shall be charged in respect of any member or group of members with the payment of income or capital including the repayment of capital on a winding up.

15. Accounts and audit-(1) The Fund shall keep or cause to be kept proper accounts of the funds of the Fund and such accounts shall be audited annually by the Controller and Chief Auditor at the cost of the Fund, provided that the Controller and Chief Auditor may from time to time commission a practising public accountant to undertake such audit as the agent of the Audit Office.

(2) As soon as practicable after the end of each financial year, an account of the income and expenditure of the Fund, of contributions received and of withdrawals made and of interest credited to members' accounts with the Fund during the preceding financial year together with a statement of the assets and liabilities of the Fund and the report of the Controller and Chief Auditor thereon, and also a report by the Chairperson of the Board on the activities of the Board during such financial year, shall be laid before the Legislative Assembly.

16. Expenses-(1) All expenses incurred in carrying this Act into effect and in connection with the administration of the Fund shall be paid out of the money in the accounts of the Fund.

(2) For the purpose of this section, such expenses shall include such expenditure as the Directors of the Board or the Chief Executive Officer shall consider reasonably necessary or desirable for the benefit or credit of the Fund or the promotion of staff or public relations.

(3) The Fund may levy fees for the performance or provision of services to its members, mortgagors, mortgagees or the public.

17. Advances by Government-(1) If the Fund is at any time unable to pay any sum which is required to be paid under this Act, the sum required shall be advanced to the Fund by the Government.

(2) The Fund shall as soon as practicable repay to the Government any sum advanced by the Government to the Fund.

18. Minister may direct Fund - For the purpose of ensuring the economic welfare of Samoa the Minister may from time to time direct the Fund or vary any such direction as to:

- (a) the proportion of the contributions receivable by the Fund which are required to be invested in securities issued by the Government of Samoa;
- (b) the proportion of any capital funds in the hands of the Fund, whether maturing investments, or income accruing on investments or otherwise, which are required to be invested in the same manner as the preceding paragraph;
- (c) the minimum amount of any loan which the Fund may make;
- (d) the maximum amount which may be invested by the Fund in any one undertaking, project or security other than undertakings, projects or securities of Government or its associated bodies or instrumentalities;

- (e) the maximum amount, which may be invested by the Fund outside Samoa and the terms upon which any such investments may be made.

PART IV REGISTRATION

19. Registration of employer - Every employer shall register with the Fund by completing and forwarding to the Fund:

- (a) a complete copy of any certificate of incorporation;
- (b) a complete copy of the current business licence;
- (c) an employer registration form;
- (d) a register of current employees and their wages; and
- (e) any other document or information relating to registration and required by the regulations or by the Fund.

20. Registration of employee and voluntary member - Every person intending to become a member, whether as an employee, permanent, part-time, casual or otherwise, or as a voluntary member, shall register with the Fund by completing and forwarding to the Fund:

- (a) an employee registration form or a voluntary member registration form;
- (b) a complete copy of the person's birth certificate; and
- (c) any other document or information relating to registration and required by the regulations or by the Fund.

21. Register - The Fund must establish and maintain in electronic or other form a register of employers who register under section 19, of employees and voluntary members who register under section 20 and of members who are deemed registered under section 108 and may issue certificates of membership of the Fund.

PART V
CONTRIBUTIONS AND ALTERNATIVE FUNDS

Division 1 – Contributions

22. Payment of contributions-(1) Every employer shall pay to the Fund for each employee a contribution of 10 sene per tala of the amount of wages paid or payable and deliver or send to the Fund a schedule of contributions setting out the contributions paid or payable and retain a duplicate copy.

(2) Notwithstanding the provisions of any Act or a contract or arrangement to the contrary, any employer who pays the contribution required by subsection (1) shall be entitled to retain or recover from each employee's wages five (5) sene per tala of the contribution.

(3) Subject to section 26, the portion retained or recovered from the wages of the employee must be retained or recovered at the time of payment of the wages and not at any other time, notwithstanding the provisions of any other Act.

(4) Employers must pay the contributions once per month no later than the 7th day of the month next accruing after the date of payment of the wages or the date on which the wages became due and payable.

(5) In lieu of payments in accordance with subsection (4), the Chief Executive Officer may direct and require any employer to pay by any particular method contributions on a nominated date or dates in every month or at periodic intervals or both as specified in a notice in writing.

(6) Where the rate of wages is less than the minimum rate pursuant to section 19 of the Labour and Employment Act 1972, no sum shall be retained or recovered from the employee and the employer must solely pay the 10 sene per tala required by subsection (1).

(7) Where an employee is a person as defined in paragraph (g) of the definition of “employee” and not in receipt of wages:

- (a) the employer or employers shall pay to the Fund for each employee a contribution of 10 sene per tala on the amount which is half the minimum rate of wages pursuant to section 19 of the Labour and Employment Act 1972;
- (b) no sum shall be retained or recovered from the employee; and
- (c) the employer or employers must solely pay the 10 sene per tala required by this subsection.

(8) In addition to contributions made under subsection (1), an employee may make voluntary contributions by regular contributions deducted from wages or by a lump sum contribution.

(9) An employee wishing to make voluntary contributions by regular contributions deducted from wages shall give written notice to his employer who shall deduct and pay the amount of the contribution to the Fund by the time required in subsection (4).

(10) An employee wishing to make voluntary contributions by a lump sum contribution shall pay the amount of the contribution into the account into which contributions under subsection (1) are paid or into an education account or other special purpose account.

(11) Any employer may, at any time when he is required to pay contributions, pay to the Fund contributions in respect of any of his employees at a rate in excess of that required under subsection (1).

(12) Notwithstanding any contract or arrangement to the contrary, an employer shall not be entitled to retain or recover from the wages of an employee any sum in excess of the sum referred to in subsection (2) unless for the purpose of paying a voluntary contribution in accordance with subsection (9).

23. Continuation of contributions – Contributions under section 22(1) or (9) continue to be payable to the Fund so long as a member remains in employment irrespective of age and irrespective of any election or withdrawal permitted under section 42.

24. Voluntary members-(1) The contributions of a voluntary member shall be dealt with under section 22 as though he or she were an employee.

(2) A person may commence payment of contributions once registered as a voluntary member of the Fund into an account in the name of the member or into an education account or other special purpose account.

25. Surcharge on late payment-(1) Where any contributions which an employer is liable to pay under section 22(1) or (9) or any amount payable under section 30(1) are not paid within 14 days of the due date, the employer shall be liable to pay:

- (a) a surcharge on the total of all such contributions not so paid to the Fund by him or her at the rate of 24 per centum per annum from the due date to the date of payment; and
- (b) any amount which was not credited to the account of his or her employee under section 35 by reason of the failure to pay the contributions or transfer any amount.

(2) The Fund may in any case in which it thinks fit remit in whole or in part the payment of any surcharge due under this section.

(3) Any sum due to the Fund by way of surcharge under this section shall be paid to the Fund within 14 days of a demand for such payment signed by the Chief Executive Officer or an officer of the Fund authorised in writing for this purpose.

26. Omission to recover employee's portion - Any employer who fails to retain or recover at the time required by section 22(3) the contribution of five (5) sene per tala from the employee's wages shall not so recover unless:

- (a) the employer has paid the contributions to the Fund by the time required in section 22(4); and
- (b) the employer has either -
 - (i) obtained the employee's consent in writing to such recovery and has forwarded the consent to the Chief Executive Officer; or
 - (ii) obtained the permission of the Chief Executive Officer of the Fund in writing to make such recovery; and
- (c) the employer has satisfied the Board that the error occasioning the failure to make the recovery at the due date was not due to negligence; and
- (d) the application for recovery is made not later than six (6) months from the date of payment of the wages.

27. Refunds and offsets-(1) When the Fund is satisfied that any amount has been paid to the accounts of the Fund by error in respect of any employee, either wholly or partly in excess of the amount that was due to be paid, the Fund may, on application, refund the amount so paid in excess to the person by whom it was made.

(2) Any excess payment made by negligence in the opinion of the Fund, any refund of excess not claimed within two (2) years of payment, or any excess withdrawn by the member shall not be required to be repaid by the member to the Fund but shall be deemed to have properly made as a voluntary contribution under section 22(8) as if made by the employee concerned.

(3) If any amount is due to the accounts of the Fund from the person to whom a refund of the amount paid in excess would otherwise be made, the Fund may retain the

whole or any part of such refund and set the whole or any part of the refund off against such amount as is due.

28. Unpaid contributions deemed paid in certain circumstances-(1) If any employer fails to pay any contribution payable under section 22(1) or (9) or any amount payable under section 30(1) the Board may, if it is satisfied:

- (a) that such failure was not due to the consent or connivance of the employee concerned; and
- (b) that there is no prospect of recovering the amount unpaid within six (6) months,

credit to the employee the amount of the contributions under section 22(1) or (9), any amount payable under section 30(1), or amount payable under section 25(1)(b) which should have been paid in respect of him or her and shall charge the amount so credited to the general revenues of the Fund.

(2) Nothing in this section shall prejudice the right of the Fund to recover the amount of the contribution payable under section 22(1) or (9), any amount payable under section 30(1), any surcharge payable under section 25(1)(a) or amount payable under section 25(1)(b).

(3) When the Board exercises the power under subsection (1), the assets of the employer are deemed to be charged to the Fund with payment of any amounts credited to the employee under subsection (1).

(4) The charge may be enforced by a sale by the Fund of the assets of the employer wholly out of Court.

Division 2 - Alternative Funds

29. Approval, revocation and rules of alternative funds-(1) The Board may declare that a fund created by an employer is an alternative fund and issue a certificate to that effect if the fund:

- (a) provides to its members benefits at least equal to those provided under this Act;

(b) will undertake to accept a transfer from the Fund of a member's account; and

(c) will undertake to transfer back to the Fund the account of a former member if the member ceases employment with the employer who created the alternative fund.

(2) If an employee or member of the Fund becomes a member of an alternative fund, section 22 of this Act does not apply and equal or greater contributions will be payable by the employer to the alternative fund.

(3) The Board shall have power to revoke any certificate issued under this section or impose any conditions on the operation and management of an alternative fund.

(4) In its decision to revoke a certificate or impose conditions, the Board is required to act in accordance with the regulations but otherwise not required to act in accordance with the rules of natural justice and its decision is not otherwise justiciable in a court.

(5) If a revocation or the imposition of conditions occurs, contributions to the alternative fund of employee contributions remain payable by the employer to the alternative fund until the date of transfer back to the Fund under section 30.

(6) An employer who has established an alternative fund shall comply with the regulations prescribing rules and accounts for alternative funds.

30. Transfer of credits to the Fund-(1) Except in the case of retirement or death, when an employee ceases to be a member of an alternative fund the employer shall transfer to the Fund within one (1) month the greater of:

(a) the amount which would have been the credit in the member's account if contributions had been made to the Fund under section 22(1); and

(b) the amount of the actual credit in the member's account with the alternative fund.

(2) At any time during employment a member of an alternative fund may require the member's employer to transfer to the Fund the greater of the amounts referred to in subsection (1).

31. Winding up of alternative funds - Where an alternative fund is wound up the Fund may accept in their entirety the assets and liabilities of the alternative fund and may place to the credit of each member of such fund, in an account with the Fund, a sum equal to the amount standing to his or her credit in the alternative fund at the date of acceptance.

PART VI ACCOUNTS OF THE FUND

32. Crediting of contributions to accounts-(1) All sums recovered or collected on account of contributions to the accounts of the Fund under this Act shall be paid into or carried to the accounts of the Fund in such manner as the Fund may direct.

(2) Where under Part VII a withdrawal from the accounts of the Fund is permitted, interest will be payable by the Fund on the amount in the member's account at the commencement of the financial year in which the withdrawal occurs.

(3) Interest on the amount referred to in subsection (2) shall be calculated to the date of withdrawal at the rate of interest declared by the Board under section 36 for the prior financial year, notwithstanding that the amount of the member's account may have increased from the amount at the commencement of the financial year and that the rate of interest subsequently declared by the Board may be greater or less.

(4) If any contribution is received and after reasonably diligent inquiry it is not possible to determine the member to whose account it should be credited, the contribution shall be transferred to an unclaimed deposits account hereinafter referred to as the Unclaimed Deposits Account.

(5) If, within one (1) year of the death of any member of the Fund, any nominee has not made an application for withdrawal of the amount standing to the credit of that member, the amount which would have been payable to such nominee may be transferred to the Unclaimed Deposits Account.

(6) Any amount standing to the credit of any member in respect of whom no contributions have been received for the period of 10 years after he or she has attained the age of 55 years and in respect of which no notice of withdrawal has been received before the end of that period may be transferred to the Unclaimed Deposits Account.

(7) Where any amount has been authorised to be paid out of the account moneys of the Fund to any person, and that person has not obtained payment within one (1) year after the date of authorisation, the amount may be transferred to the Unclaimed Deposits Account.

(8) Any amount which has been transferred to the Unclaimed Deposits Account shall be paid to any person who can show legal title to it, but no amount which has been so transferred shall be paid to any person unless application for its withdrawal has been made by that person within a period of five (5) years from the time of its transfer to the Unclaimed Deposits Account, or such other period to be determined by the Board.

(9) No interest shall be added to any amount for the period during which it is in the Unclaimed Deposits Account.

(10) The money in the Unclaimed Deposits Account shall be owned by and form part of the Fund and the interest from the investment thereof shall be placed in the general revenues of the Fund.

(11) Any sums, which shall from time to time become payable to the Fund otherwise than on account of contributions, shall be credited to such account of the Fund as the Chief Executive Officer may direct.

33. General Reserve Account-(1) Any income of the Fund remaining unappropriated at the end of any financial year, together with any other sum which is required by this

Act or any other Act or regulations to be so transferred, shall be carried to a reserve account, called the General Reserve Account.

(2) The money in the General Reserve Account, both before and after the commencement of the National Provident Fund Amendment Act 2010, shall form part of property of the Fund and income arising from its investment shall be placed to the credit of the general revenues of the Fund.

(3) The General Reserve Account shall be utilised by the Fund in the manner following:

- (a) first, in payment of the death benefit provided under section 37;
- (b) secondly, in payment of such amounts to the Pension Reserve Account as may be determined by the Fund under section 34; and
- (c) thirdly, in payment of any special bonus or payment under section 39.

34. Pension Reserve Account - The Fund shall maintain an account known as the Pension Reserve Account which shall form part of the Fund and shall include the moneys in the Pension Reserve Account immediately before the commencement of the National Provident Fund Amendment Act 2010.

PART VII

INTEREST, MEMBERS' BENEFITS AND WITHDRAWALS OF CONTRIBUTIONS

Division 1 – Interest and Members' Benefits

35. Members' accounts - The Board shall cause the account of each member of the Fund to be credited with:

- (a) the amount of the contributions paid during each financial year in his or her respect;

- (b) interest at the rate declared under section 36 on the amount standing to his or her credit in the Fund at the commencement of each financial year less an annual administration fee as fixed by the Board, and less -
 - (i) in the case of employee member, any voluntary contributions made under section 22(8) in the prior financial year;
 - (ii) in the case of a voluntary member, any sum paid in the prior financial year which exceeds the average annual contributions made in the preceding five (5) years;
- (c) any amounts credited under section 28; and
- (d) any special payments under section 39.

36. Rate of interest-(1) At or before the end of each financial year, the Board shall declare a rate of interest in respect of that financial year, being not less than four (4) per cent per annum, and interest shall be payable on contributions to the Fund at such rate.

(2) No rate of interest exceeding four (4) per cent per annum shall be so declared unless in the opinion of the Board the ability of the Fund to meet all payments required to be paid under this Act is not endangered by the declaration of such rate.

37. Death benefit-(1) In the case of any member there shall be paid on his or her death a death benefit of not less than \$5000 as may be declared by the Board provided that at the date of death of the member the following conditions are satisfied:

- (a) irrespective of the member's age, only if the member has been employed in Samoa or been a voluntary member resident in Samoa with contributions under section 22 in his or her account totalling at least one (1) month of contributions, whether continuous or not; and

(b) regardless of whether the member worked or resided outside Samoa, the member had not made any withdrawal.

(2) If the member, whether an employee or voluntary member, has made a withdrawal, the death benefit will be only payable if:

(a) prior to death, contributions under section 22 have been paid or were payable for a further period after the date of last withdrawal totalling at least two (2) years, whether continuous or not; or

(b) as a voluntary member, contributions were made of at least \$100 every quarter in the two (2) year period prior to death or of such other amount as the Board fixes.

(3) If the member resigns or retires prior to age 55 due to terminal illness, the death benefit will be then payable provided the member was employed continuously in the 12 months preceding the date of resignation or retirement.

(4) The Board may determine not to pay a death benefit in a case of a voluntary member where the Chief Executive Officer believes on reasonable grounds that the voluntary member registered for the sole purpose of payment of the death benefit.

(5) This section is deemed to commence on 1 January 2007.

38. Amount of pensions-(1) The quantum of any pension, which shall become payable under this Act unless otherwise provided by this Act or regulations, shall be assessed and determined by the Board in its sole discretion but applying actuarial principles.

(2) In making its determination in respect of pensions becoming payable to members on attainment of age 55 years, the Board shall take no account of the sex or marital status of such members.

39. Special payments-(1) The Board shall have power to declare and pay a special bonus or payment to members or categories of members in such amount and on such

conditions as it sees fit, after it is first satisfied of the financial ability of the Fund to provide fully for its obligations under section 33(3)(a) and (b) and also as to the ability of the Fund to pay the bonus or payment under this section.

(2) This section is deemed to commence on 1 January 2007.

40. Secrecy-(1) Notwithstanding the provisions of any other Act the Fund, and its staff and agents, shall not divulge and shall not be required to divulge, save to the member, or if the member is dead, to his or her nominee, any matter relating to the amount standing to the credit of a member in the accounts of the Fund, nor any particulars of the member or of any employer save with the consent of the member or employer or otherwise as required by law.

(2) Nothing in this section shall prevent the Board or the Fund's staff or agents from giving evidence relating to any matter in any criminal proceedings or investigation, or from disclosing to any other person any matter pertaining only to the identity of the member including his or her registration number.

Division 2 - Withdrawals of Contributions

41. Amount standing to credit of member - The amount standing to the credit of a member in his or her account of the Fund for the purpose of section 42 shall be a sum equal to:

- (a) the aggregate of all contributions made in respect of that member in his or her account, including any credited under section 28 and amounts transferred under section 30; and
- (b) such interest as may have been credited thereon to such member under section 35,

less:

- (c) the amount of any outstanding moneys lent by the Fund to the member;
- (d) any other moneys due and payable by the member to the Fund; and

- (e) subject to the discretion of the Board, any contingent liability of the member to the Fund.

42. Withdrawals and elections on date of entitlement-(1) As prescribed by the Act or regulations, a member may withdraw the amount standing to the credit of his or her account or in an education account or special purpose account if permitted by the Fund.

(2) As from the date of entitlement a member or, if applicable, a member's spouse or a personal representative may make an election to deal with or withdraw the amount standing to his or her credit with the Fund.

(3) The available elections and the conditions for an election, including in the event of the death of the member or a pensioner, are prescribed in the regulations.

43. Nomination-(1) Any member of the Fund may, by a memorandum duly executed by the member in the form approved by the Chief Executive Officer to be used for the purpose, nominate a person or persons to receive in his or her or their own right such portions of the amount payable under this Act out of the accounts of the Fund on death as the memorandum shall indicate.

(2) A person, other than the Public Trustee, who receives any moneys paid pursuant to section 42, shall provide the Fund with an indemnity in relation to the payment of those moneys.

(3) If any person nominated, other than a spouse, is under the age of 18 years at the time of the member's death, the person's portion of the amount payable out of the accounts of the Fund, together with any interest under section 35, shall be held by the Fund for the benefit of the nominated person and paid upon his or her attaining 18 years.

(4) The Fund may in its discretion refuse to accept any nomination where it has reason to believe that such nomination has been made under undue influence, or is in favour of the nominator's employer if such employer is not a

relative, or if the effect of the nomination is to pledge the amount or any part of the amount standing to the member's credit with the Fund as security, and any such nomination shall be null and void.

(5) A nomination shall be revoked:

- (a) by the death of the nominee, or, where there is more than one (1) nominee, by the death of all the nominees in the lifetime of the nominator;
- (b) only partially by the death of one (1) or more nominees in the lifetime of the nominator and the interest of the deceased nominee or nominees shall be paid to the surviving nominee or nominees in equal shares unless the nomination provides otherwise;
- (c) by a subsequent nomination or an instrument of revocation duly made under this section by the same nominator.

(6) Where a nominee dies after the death of the nominator but before any sum has been paid to him or her, the nomination is not revoked; in such cases the sum payable to the nominee shall form part of his or her estate for distribution in accordance with law.

44. Former GSF pensions - Each former GSF pension shall be payable under the same terms and conditions as applied under section 10 of the Government Superannuation Act 1972 as at 30 June 1993, provided that the Board in its sole discretion may increase any pension payable under this section or introduce additional benefits in respect of a pension payable under this section for a pensioner or the pensioners' dependants.

PART VIII PROTECTION OF CONTRIBUTIONS

45. Member's credit not subject to sequestration-(1) Subject to subsections (2) and (3), no contribution to the Fund, nor any amount standing to the

credit of a member in the accounts of the Fund nor interest on any such contribution or amount, nor pensions paid or payable under this Act, nor withdrawals made by the authority of the Board from the accounts of the Fund under section 42 or as a result of a nomination under section 43, nor the rights of any member of the Fund acquired thereunder, shall be assignable or transferable or liable to be attached, sequestrated or levied upon, for or in respect of any debt or claim.

(2) Where any member of the Fund has been convicted in Samoa or elsewhere on a charge of theft or misappropriation of money or property belonging to his or her employer or former employer, a Court of competent jurisdiction may direct that any money standing to the credit of the member with the Fund shall be applied in whole or in part towards the maintenance of the spouse and children of the member and, if the Court is satisfied that any such money is not required for that purpose, it may direct that it be applied in whole or in part in restitution of the amount or value of the money or property stolen or misappropriated.

(3) Where the Fund lends any money to any member:

(a) the whole of the amount standing to the credit of the member with the Fund at any and all times shall stand charged with the repayment of such loan and all interest and other charges payable pursuant to the terms and conditions of the loan; and

(b) if any default is made in respect of any payment due to the Fund pursuant to the terms or conditions of the loan the Fund may, after giving to that member two (2) weeks' written notice of its intention so to do, satisfy the default by deducting the amount of the default, or the full amount of the loan if the agreement provides that the full amount becomes payable upon default, from the amount standing to the credit of the member with the Fund; and

(c) at the date of entitlement, the amount of the loan and all interest and other charges payable pursuant to the loan, whether or not previously due and payable, shall become immediately due and payable, and may thereupon be deducted by the Fund from the amount standing to the credit of that member with the Fund.

46. Bankruptcy of employee - The bankruptcy of an employee shall not affect the payment of contributions from the wages of the employee in accordance with this Act, but such payments shall continue to be made notwithstanding the provisions of any other Act and the portion of wages so paid shall be deemed not to form part of the member's after-acquired property.

47. Bankruptcy, liquidation, etc., of employer-(1)
Where any trustee in bankruptcy, assignee, liquidator, receiver, personal representative, mortgagee or other such person is dealing with the property, business or estate of any employer who has failed to pay any contributions payable under section 22(1) or (9), amount payable under section 30(1), surcharge payable under section 25(1)(a) or amount payable under section 25(1)(b), such person shall not make any distribution, including for any tax, excise or the like or for his or own fees or disbursements, before paying all outstanding contributions, surcharges and amounts to the Fund.

(2) If any distribution is made by any trustee in bankruptcy, assignee, personal representative, mortgagee or other such person, then such person shall be personally liable for any unpaid contributions payable under section 22(1) or (9), amount payable under section 30(1), surcharge under section 25(1)(a) and amount payable under section 25(1)(b).

PART IX
ENFORCEMENT POWERS AND OFFENCES

48. Powers of inspectors-(1) An inspector appointed under section 12(3) may at any reasonable time:

- (a) enter any premises or place where persons are believed to be engaged as employees or where any records of employees or wages are believed to exist; and
- (b) make, either alone or in the presence of any other person, such examination and inquiry of the employer, his or her employees or agents or any other person as may be necessary for ascertaining whether this Act is being or has been complied with; and
- (c) require of the employer, his or her employees or agents or any other person the production of any document which an employer is required to keep under, or which relates to any of the provisions of, this Act or of any other Act pertaining to employment, including the Income Tax Administration Act 1974, and make a copy of the document; and
- (d) require any person who makes a statement or gives information respecting the subject – matter of an examination and inquiry under paragraph (b), or produces a document under paragraph (c), to sign a statement as to the truth of any statement or information or the veracity of any document (by statutory declaration or otherwise).

(2) An inspector may exercise any of the powers in subsection (1):

- (a) at any premises referred to in subsection (1)(a) without prior notice; or

- (b) at any other place, at the place, time and date nominated in a notice in writing addressed to the person concerned and served personally or by registered post at the person's place of business, employment or residence and giving not less than 21 days notice.

49. Default notice-(1) Where any employer has defaulted in the payment of any contributions payable under section 22(1) or (9), amount payable under section 30(1), surcharge payable under section 25(1)(a) or amount payable under section 25(1)(b), the Chief Executive Officer may by notice in writing require:

- (a) any person to deduct from any amount payable or to become payable by that person to the employer such sum as may be specified in a notice, and
- (b) to pay such sum so deducted to the Fund to the credit of the employer.

(2) The notice may specify the sum to be deducted as either a lump sum or a sum recurring periodically.

(3) The notice must specify a time within which the sum is to be deducted and paid to the Fund.

(4) The notice must be served personally or by registered post at the person's place of business, employment or residence and a copy thereof served on the employer personally, by leaving it with a person apparently over the age of 18 years at the last known business or residential address or by ordinary post to that address.

(5) Where any notice under this section relates to any wages or salary, the sum required to be deducted shall not exceed 20% of the gross wages or salary.

(6) The notice under this section may be revoked at any time by the Chief Executive Officer by subsequent notice for any reason.

(7) This section shall bind the Government.

50. Employer to submit returns-(1) The Chief Executive Officer may from time to time by notice in writing require any employer to submit to the Fund within a time to be specified in the notice:

- (a) a schedule of contributions made or due in respect of all his or her employees; and
- (b) such other information required by the Directors of the Board relating to the employment or contributions.

(2) The notice shall be served on the employer, or left with a responsible person, at his or her normal place of business.

(3) Any employer failing to comply with a notice issued under this section shall be liable to pay a surcharge in accordance with section 25(1)(a) and any amount payable under section 25(1)(b).

51. Offences and penalties-(1) If any person:

- (a) for any purpose connected with this Act -
 - (i) knowingly makes any false statement; or
 - (ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document which he or she knows to be false in a material particular;
- (b) fails to pay to the Fund by the due date any amount which, under section 22(1) or (9), he or she is liable to pay in respect of any employee;
- (c) fails to pay to the Board within 14 days after the date of demand any surcharge payable under section 25(1)(a) or amount payable under section 25(1)(b);
- (d) fails to comply with any requirement of section 29(6);
- (e) fails to transfer to the Fund any amount which he or she is required to transfer under section 30(1) within such time, as he or she is required by that section so to transfer;

- (f) prior to his or her date of entitlement, assigns, mortgages, pledges, transfers, surrenders, or otherwise dispose of the beneficial interest in, any policy of life insurance received by him or her as a benefit from his or her employer except in accordance with the regulations;
- (g) fails to pay any contribution, transfer, surcharge or any amount which he or she is required to pay under section 47(1);
- (h) fails to assist, to provide information or documents or to answer questions of an inspector exercising powers under section 48;
- (i) fails to attend for an examination or enquiry under section 48(1)(b) or to produce any document required to be produced under section 48(1)(c) at the place, time and date specified by notice in writing;
- (j) fails to make any deduction required by a notice under section 49 or, after making such deduction, fails to pay the sum deducted to the Fund within the time specified;
- (k) obstructs any staff of the Fund in the discharge of his or her functions;
- (l) being or ever having been a member, staff or agent of the Fund directly or indirectly communicates or reveals to any person any matter relating to the business of the Fund which shall have become known to him or her in his or her capacity as member, staff or agent, except as may be required for the due discharge of his or her duties or as may be permitted by the Board or as may be required by law;
- (m) procures any member, staff or agent of the Fund or any person who has ever been such member, staff or agent to communicate or reveal any such matter as is set out in the last preceding paragraph,

he or she shall in respect of each such default be guilty of an offence and shall on conviction be liable to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding two (2) years or both.

(2) If any person deducts from the wages of an employee any sum greater than that permitted to be recovered under this Act or, having made any deduction, fails to pay to the Fund the contribution in respect of which such deduction has been made, he or she shall in respect of each such default be guilty of an offence and shall on conviction be liable to a fine not exceeding 40 penalty units or to imprisonment for a term not exceeding five (5) years or both.

52. Offences by employers-(1) Any employer who:

- (a) fails to obtain, complete or forward any registration documents required by section 19;
- (b) fails to deliver or send to the Fund any schedule of contributions required under section 22;
- (c) fails to retain the duplicate copy of any schedule of contributions;
- (d) fails to deliver to any of his or her employees any documents he or she is required to deliver under this Act or by the regulations;
- (e) employs or continues to employ any person who is not registered with the Fund as an employee; or
- (f) fails to comply with a notice issued and served under section 49,

shall in respect of each such default be guilty of an offence and shall be liable on conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding two (2) years, or both.

(2) Where any person has been convicted of any offence under subsection (1), the Court by whom he or she is so convicted may order:

- (a) the person to do any act, sign any document or do all things necessary to effect registration with

the Fund as an employee or as an employer as the case may be;

- (b) the production of any document, schedule or statement to the Chief Executive Officer within such time as it may consider reasonable; and
- (c) that, in default of compliance with any order under paragraph (a) or (b) of this subsection, such person shall be liable to a penalty not exceeding 1 penalty unit for every day during which such default continues.

53. Offences by employees-(1) Any employee who:

- (a) fails to obtain, complete or forward any registration documents required by section 20;
- (b) fails to furnish any signature required by this Act or the regulations;
- (c) fails to provide to his or her employer any information required by this Act or by the regulations,

shall in respect of each such default be guilty of an offence and shall be liable on conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding two (2) years, or both.

(2) Where any person has been convicted of any offence under subsection (1), the Court by which he or she is so convicted may order:

- (a) the person to furnish any signature required by this Act;
- (b) the person to provide to his or her employer any information required by this Act;
- (c) the person to do any act, sign any document or do all things necessary to effect registration with the Fund as an employee.

54. Additional orders-(1) In addition to imposing any fine or imprisonment, the Court on conviction:

- (a) shall order the defendant to pay or transfer to the Fund all contributions payable under section 22(1) or (9), amounts payable under section 30(1), surcharges payable under section 25(1)(a) and amounts payable under section 25(1)(b) which are outstanding at the date of conviction in respect of the employees the subject of the charges; and
- (b) may make such order in respect of other employees not the subject of the charges and whose contributions or amounts to be transferred remain outstanding at the date of conviction.

(2) Where the defendant's failure or act constituting the offence has continued for a period of three (3) months or more, the Court shall order the defendant to lodge with the Fund, as security for future compliance with this Act, such sum as it may consider reasonable to be held until the employer has completed a continuous period of compliance with this Act for 12 months.

(3) The sum lodged as security may be appropriated from time to time and credited to the account of an employee by the Fund in satisfaction of any unpaid contributions payable in respect of the employee under section 22(1) or (9).

55. Liability of officers and others-(1) Where an offence under this Act has been committed by a body corporate, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a joint venturer with or partner of the body corporate, firm, society or other body of persons, or was purporting to act in such capacity, shall, as well as such body corporate, firm, society or other body of persons, be deemed to be guilty of that offence unless he or she proves that the offence was committed without his or her consent or connivance, tacit or

otherwise, and that he or she exercised all such diligence to prevent the commission of the offence as ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.

(2) Section 54(1) applies to a defendant convicted under this section.

56. Orders not to affect civil proceedings - Any order by the Court under section 52, 54 or 55 shall not prejudice or affect any civil proceeding by the Fund, any member or any other person.

57. Prosecutions-(1) Prosecutions in respect of any offence under this Act may be instituted by any staff or agent of the Fund authorised in writing in that behalf by the Chief Executive Officer, and any such staff or agent may conduct any such proceedings as are within the jurisdiction of the District Court.

(2) An information against any person may contain allegations of more than one (1) offence under this Act.

58. Evidence in proceedings - In any criminal or civil legal proceedings under this Act, a copy of an entry in the records or accounts of the Fund duly certified under the hand of the Chief Executive Officer shall be prima facie evidence of the entry having been made and of the truth of its contents, and a certificate under the hand of the Chief Executive Officer that there is no entry shall be prima facie evidence that no entry has been made.

59. Civil proceedings and fines-(1) All contributions payable under section 22(1) and (9), amounts payable under section 30(1), surcharges payable under section 25(1)(a) and amounts payable under section 25(1)(b) or otherwise under this Act may, without prejudice to any other remedy, be recoverable by the Fund as a debt due.

(2) Proceedings for the recovery of such civil debts may, notwithstanding anything in any other Act to the contrary, be brought at any time within six (6) years from the date

either when the same becomes due or when the Fund first becomes aware that the contribution payable under section 22(1) or (9) or the surcharge payable under section 25(1)(a) or amount payable under section 25(1)(b) or any other amount under this Act is due, whichever is the later.

(3) Proceedings for the summary recovery of a civil debt may be instituted by any staff or agent of the Fund authorised in writing in that behalf by the Chief Executive Officer and any staff or agent so authorised may conduct any such proceedings as are within the jurisdiction of the District Court.

PART X EXEMPTIONS, DEDUCTIBILITY AND MISCELLANEOUS PROVISIONS

60. Exemptions and deductibility-(1) The income of the Fund shall be wholly exempt from income tax.

(2) Where any member or nominee or successor is entitled to withdraw from the Fund, any sum withdrawn, including a pension, shall be wholly exempt from income tax.

(3) Contributions to the Fund by members shall be allowable by the Commissioner of Inland Revenue as a special exemption under section 60 of the Income Tax Act 1974 subject to the maximum imposed by that section for the time being.

(4) Where in respect of any employee an employer has made a contribution to the Fund which he or she has failed to recover from such employee so much of that contribution which is borne by the employer shall be deductible from the assessable income of the employer under section 26 of the Income Tax Act 1974.

61. Reciprocal agreements - The Minister, after consulting the Board, shall be empowered to enter into a reciprocal agreement with the Government of any other country or territory in which a fund similar to the Fund has been established.

62. Regulations - The Head of State, acting on the advice of Cabinet, may from time to time make such regulations as shall be necessary or expedient for giving full effect to Parts I to XI and Part XV of this Act and for the due administration thereof.”.

4. Insertion of Part XV - After Part XIV of the Principal Act insert:

Other Entitlements - In section 81(1)(b) of the Principal Act omit the words “and between Samoa and American Samoa”.

**“PART XV
TRANSITIONAL AND SAVINGS PROVISIONS**

106. Interpretation – In this Part, unless the context otherwise requires:

“amending Act” means the National Provident Fund Amendment Act 2009;

“New Body” means the Samoa National Provident Fund;

“Old Body” means the Samoa National Provident Fund Board.

107. Transition, savings and validation-(1) All authority and powers exercised and all acts carried out by the Old Body before the commencement of the amending Act are deemed to have been exercised or carried out by the New Body.

(2) All contracts and legal proceedings to which the Old Body is a party immediately before the commencement of the amending Act shall continue as if made or taken by the New Body on or after the commencement of the amending Act.

(3) All rights, entitlements, obligations and liabilities however described to which the Old Body is a party immediately before the commencement of the amending Act shall continue unless and until the New Body resolves otherwise according to law.

(4) All debts and monies owed to the Old Body and unpaid immediately before the commencement of the amending Act remain payable to the New Body and may be recovered by the New Body.

108. Saving of membership - A member immediately before the commencement of the amending Act of the Samoa National Provident Fund is deemed to be registered as a member on the commencement of the amending Act.

109. Transitional provisions related to staff etc.-(1) The Chief Executive Officer appointed by the Old Body and in employment with the Old Body immediately before the commencement of the amending Act shall remain as the Chief Executive Officer of the New Body on his or her existing terms and conditions.

(2) The staff appointed by the Old Body and in employment with the Old Body immediately before the commencement of the amending Act shall remain as the staff of the New Body on their existing terms and conditions, unless varied by the amending Act.

(3) A person appointed as an inspector by the Old Body and whose appointment is current immediately prior to the commencement of the amending Act shall continue as an inspector after the commencement of the amending Act unless and until the appointment is revoked according to law.

110. Validation - Despite any other law, all appointments, actions, directions, decisions, registration, record keeping, legal actions and acts of authority by or on behalf of or involving the Old Body or members of the Old Body purported to be made, done or decided on or after 6th March 2003 shall be saved and deemed for all purposes to have been lawfully made, done or decided, as the case may require.

111. Validation of refusal or failure to provide - Any refusal or failure to provide to a beneficiary under Part XII an entitlement to free travel between Samoa and American Samoa on any passenger ferry operated by the Government, between 1 July 2007 and immediately prior to the commencement of the National Provident Fund Amendment Act 2010 by a member of the Board or of the Board's staff is taken for all purposes to have been a lawful refusal or failure, despite any law to the contrary.”.

**The National Provident Fund Amendment Act 2010
is administered by the National Provident Fund.**

**Printed by the Clerk of the Legislative Assembly,
by authority of the Legislative Assembly.**