

REPUBLIC OF VANUATU

THE VANUATU NATIONAL PROVIDENT FUND
ACT No. 1 OF 1986

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REPUBLIC OF VANUATU

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ACT NO. 1 OF 1986

Assent: 5.6.86

Commencement: See Section 64.

An Act to establish a National Provident Fund, to provide for contributions to and the payment of benefits out of the Fund, and for matters connected therewith and incidental thereto.

BE IT ENACTED by the President and Parliament as follows:-

PART I - INTERPRETATION

INTERPRETATION

1. In this Act, unless the context otherwise requires:

"Board" means the Vanuatu National Provident Fund Board established under section 2(1);

"Date of enticement" means, in respect of any member of the Fund, the day on which the first of the events specified in section 38 occurs;

"Employee" means any person, not being a person of any of the descriptions specified in the Schedule nor a person exempted by an Order made under section 50 (a) nor under section 34 or 35 who:

- (a) is employed in Vanuatu under a contract of service or apprenticeship, whether written or oral or whether expressed or implied; or
- (b) being a citizen of Vanuatu, is employed in the manner specified in the last preceding paragraph outside Vanuatu by an employer having a place of business in Vanuatu; or
- (c) being a citizen of Vanuatu, is employed under a contract of service entered into in Vanuatu 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 Vanuatu; or
- (d) is declared by the Minister, in his discretion by Order published in the Gazette to be an employee for the purposes of this Act,

'Employer' means the body or person with whom the employee entered into a contract of service or apprenticeship and includes any body or designated as the employer by an Order made by the Minister under section 60.

'Existing Scheme' means any provident fund or pension or superannuation scheme set up before the date of commencement of this Act for the benefit of employees;

'Financial year' means the financial year of the Board which shall be 12 months ending on such day as the Minister shall specify in an Order published in the Gazette;

'Fund' means the Vanuatu National Provident Fund established under section 14;

'General Manager' means the General Manager appointed by the Board in accordance with section 8(1);

'Member of the Fund' or 'member' means any person to whose credit any amount is standing in the Fund;

'Minister' means the Minister for the time being responsible for administration of the Vanuatu National Provident Fund;

'Minister of religion' means a person who is a member of a church or other religious body and who acts in the pastoral capacity administering to the spiritual needs of others under conditions which do not constitute a contract of service;

'Nominee' means a person nominated by a member in accordance with section 43 to receive the whole or part of such member's credit in the event of the death of such member;

'Outworker' means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, furnished or repaired or adapted for sale in his own home or on other premises not under the control and management of the person who gives out the articles or materials;

'Remuneration' means the gross emoluments which are due in cash to an employee under the terms of his employment before any deductions whether in pursuance of any law requiring or permitting the making of any deduction or otherwise;

Provided that the following shall be deemed not to be remuneration for the purposes of this Act-

- (a) the value of any remuneration which is paid in kind under the written approval given in accordance with section 16(2) of the Employment Act No. 1 of 1983 and any amendment or re-enactment thereof;

- (b) any payments made to an employee for reimbursement of sums necessarily expended by him on behalf of his employer for the purposes of his employment;
- (c) any payments made to an employee in the form of a housing allowance;
- (d) any payments made to an employee in the form of a severance payment in accordance with the provisions of the Employment Act No. 1 of 1983 and any amendment or re-enactment thereof;
- (e) any gratuity payments which are due to an employee under the terms of his employment;

"Voluntary contributor" means a person who enters the Fund under the provisions of section 28;

PART 2 - ESTABLISHMENT, COMPOSITION, POWERS AND FUNCTIONS OF THE BOARD

ESTABLISHMENT OF THE BOARD

2. (1) There is hereby established a body corporate to be known as the Vanuatu National Provident Fund Board.
- (2) The Board shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

COMPOSITION OF THE BOARD

3. (1) The Board shall consist of -
- (a) six Members appointed by the Minister and who shall be :-
 - (i) two persons employed by the Government one of whom shall be a representative of the Ministry responsible for Finance;
 - (ii) two representatives of employers not being persons employed by the Government or by the Board;
 - (iii) two representatives of employees not being persons employed by the Board; and
 - (b) the General Manager, ex-officio Member.
- (2) Subject to subsections (3) and (4) Members of the Board other than the General Manager may be appointed for a term of three years or for such shorter period as the Minister may in his discretion in any case determine.
- (3) If the Minister is satisfied that a member appointed under subsection (1)(a):-
- (a) has been absent from two consecutive meetings of the Board without the written consent of the Chairman

- (b) has become insolvent;
- (c) is incapacitated by physical or mental illness;
- (d) has been convicted of a crime involving moral turpitude; or
- (e) is otherwise unable or unfit to discharge the function of a member;

the Minister may by notice published in the Gazette declare the office of the Member vacant.

- (4) A Member appointed by the Minister in accordance with subsection (1)(a) may resign by giving not less than 30 days notice in writing to the Minister.

CHAIRMAN AND DEPUTY CHAIRMAN

- 4. (1) The Minister shall appoint from among the Members other than the General Manager a Chairman and a Deputy Chairman of the Board.
- (2) The Chairman and Deputy Chairman shall each serve as such until their term as a Member expires and may be reappointed.
- (3) Where the Chairman is absent or otherwise unable or unfit to discharge his functions the Deputy Chairman shall have and exercise all the powers of the Chairman under this Act.

POWERS OF THE BOARD

- 5. (1) The Board shall have the powers to do all the things which are necessary or conducive to the carrying out of the objects of this Act.
- (2) Without derogating from the generality of subsection (1) the Board may:-
 - (a) acquire hold and dispose of real and personal property including houses and other accommodation for occupation by its officers, employees, agents and advisers;
 - (b) publish printed or audio visual matter for sale or otherwise;
 - (c) acquire copyright;
 - (d) charge fees for the services rendered by it;
 - (e) enter into agreements with any Government organisation or body or person for the better carrying out of the objects of this Act.

SECRETARY

- 6. (1) There shall be a Secretary to the Board who shall be an employee thereof and shall be appointed by the Board.

- (2) The Secretary or a person acting as such shall attend all meetings of the Board and prepare the Minutes thereof.
- (3) The Secretary shall keep in safe custody the seal and all documents of the Board; receive all process served on the Board and carry out such other duties as the Chairman of the Board or the General Manager shall direct.

MEETINGS OF THE BOARD

7. (1) The Board shall meet not less than four times in every 12 months.
- (2) Subject to subsection (3) the Chairman or in his absence the Deputy Chairman shall convene the meetings at such times and places as he thinks fit.
- (3) The first meeting of the Board shall be convened by the Minister.
- (4) The quorum at meetings shall be the Chairman or in his absence the Deputy Chairman and four other Members, of whom at least one shall be a Member who is appointed under section 3(1)(a)(ii) and at least one shall be a Member who is appointed under section 3(1)(a)(iii).
- (5) The Chairman or in his absence the Deputy Chairman shall preside at every meeting of the Board.
- (6) The proceedings at any meeting shall not be invalidated by any defect in the appointment of any Member.
- (7) Decisions of the Board shall be made by a majority vote of Members present and voting. The chairman of the meeting shall have a casting vote.
- (8) If a Member has any pecuniary interest, direct or indirect in any contract or other matter relating to the Board, he shall as soon as practicable disclose to the Chairman the fact and nature of his interest.
- (9) The Board may invite any person to participate in its meetings but they shall have no vote.
- (10) Subject to this Act, the Board may make internal rules regulating its procedure.
- (11) Any rules made in accordance with subsection (10) shall be issued under the hand of the Chairman.

GENERAL MANAGER OF THE BOARD

8. (1) The Board may, after consultation with the Minister, appoint upon such terms and conditions as the Board thinks fit a General Manager who shall be an employee of the Board.
- (2) The General Manager shall be the chief executive of the Board and of all its operations.

- (3) The Board may delegate to the General Manager, with or without restrictions or conditions, such of its powers and functions as it may consider expedient for the day to day operation of the Board.

OTHER OFFICERS AND EMPLOYEES

9. The Board may appoint, at such remuneration and upon such terms and conditions as it thinks fit such other officers, employees, agents, advisers or consultants as may be required for the proper and effective discharge of the functions of the Board.

LIABILITY OF MEMBERS, OFFICERS AND EMPLOYEES

10. No personal liability shall attach to any Member, officer, employee, agent, adviser or consultant of the Board in respect of anything done or omitted to be done in good faith and without negligence in the course of the operation of the Board.

TRAVELLING AND SUBSISTENCE BOARD ALLOWANCE FOR MEMBERS

11. Members of the Board other than the General Manager shall be paid such remuneration and such travelling and subsistence allowance as may be fixed by the Board with the approval of the Minister.

UNAUTHORISED DISCLOSURE OF INFORMATION

12. No Member, officer, employee, agent, adviser or consultant of the Board shall communicate or reveal to any person any matter which shall be brought under his consideration or shall become known to him as a Member, officer, employee, agent, adviser or consultant of the Board except as may be required for the due discharge of his duties as such.

EVIDENCE OF SEALING OF DOCUMENT AND SERVICE OF DOCUMENT, ETC

13. (1) The fact that a document bears the seal of the Board shall be prima facie evidence in any court or legal proceedings that the document has been properly executed by and on behalf of the Board.
- (2) Service of any document on the General Manager or the Secretary to the Board shall be deemed to be of service on the Board.

PART 3 - THE VANUATU NATIONAL PROVIDENT FUND FINANCIAL PROVISIONS, RATE OF INTEREST, ETC

THE VANUATU NATIONAL PROVIDENT FUND

14. There shall be a Fund to be called the Vanuatu National Provident Fund into which shall be paid all contributions required to be made under the provisions of this Act together with all other revenue of the Board and out of which shall be met all payments required to be made by the Board under the provisions of this Act.

BOARD TO BE THE TRUSTEE OF THE FUND

15. The Board shall be the Trustee of the Fund.

MONEYS BELONGING TO THE FUND, HOW TO BE USED OR INVESTED

16. The moneys belonging to the Fund shall be invested by the Board in accordance with policy guidelines approved by the Minister for the time being responsible for Finance and by the Central Bank of Vanuatu after consultation with appropriate Departments of the Government which will have primary regard to the interests of members on the one hand, and the needs for assisting the financing of balanced social and economic development on the other. Such investment guidelines shall have regard to the need for a balanced portfolio bearing in mind the need for sufficient Vatu liquidity, prudent diversification and rates of returns on the various sources of investment.

RATE OF INTEREST PAYABLE BY THE FUND

17. At or before the end of each financial year, the Board shall, having considered the recommendation of the General Manager, declare a rate of interest in respect of that financial year, being not less than three per centum per annum,

Provided that:

- (a) no rate of interest exceeding three per centum 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; and
- (b) no rate of interest exceeding three per centum per annum shall be so declared if any sums advanced by the Government under section 18 have not been repaid.

GOVERNMENT TO MAKE ADVANCES TO THE BOARD

18. If the Board is at any time unable to pay any sum which is required to be paid under the provisions of this Act, the sum required shall be advanced to the Board by the Government and the Board shall as soon as practicable repay to the Government the sum so advanced if required to do so under the terms of the advance.

EXPENSES

19. (1) All expenses incurred in carrying the provisions of this Act into effect and in connection with the administration of the Fund shall be paid out of the moneys of the Fund.
- (2) For the purposes of this section, such expenses shall include such expenditure as the Board shall consider reasonably necessary or desirable for the benefit or credit of the Fund.

ACCOUNTS AND AUDIT

20. (1) The Board shall keep proper accounts and other records in respect of the Fund and shall cause to be prepared an annual statement of accounts in respect of each financial year.

- (2) The accounts of the Fund shall be audited annually by the Auditor General, who may charge fees for services rendered in connection therewith.

ANNUAL REPORT

21. (1) Within four months of the end of each financial year the Board shall submit an annual report of its activities, together with the audited accounts including the Report of the Auditor General thereon, to the Minister and to the Minister responsible for Finance.
- (2) The Minister shall cause a copy of the annual report, audited accounts and audit report to be laid before Parliament.

PART 4 - REGISTRATION OF EMPLOYERS AND EMPLOYEES

REGISTRATION OF EMPLOYERS

22. Every employer who has in his employ any person for whom contributions are payable under this Act shall apply to the Board in the prescribed manner for registration as an employer liable to contribute to the Fund and shall be so registered by the Board.

REGISTRATION OF EMPLOYEES

23. Every employer shall cause every employee of his to apply to the Board in the prescribed manner for registration as a member of the Fund and every such employee shall be registered as a member with effect from the date that contributions under this Act first become payable in respect of him.

MEMBERSHIP OF THE FUND

24. Every member of the Fund shall continue in membership of the Fund irrespective of whether he continues to be an employee and whether contributions continue to be payable in respect of him, until such date as the whole amount standing to his credit in the Fund is withdrawn and, in the case of a member who withdraws the whole of his credit upon attaining the age of 55 and who is an employee at any time thereafter, until such time as he ceases to be an employee under this Act and has withdrawn the additional credit accruing to him after age 55.

PART 5 - CONTRIBUTIONS TO THE FUND

CALCULATION OF CONTRIBUTION

25. (1) Subject to the following provisions of this section, on each occasion remuneration is paid to an employee to whom this Act applies a contribution at the rate of 6% (six per centum) of that remuneration shall be payable to the Fund of which half shall be payable by the employer and half shall be payable by the employee.
- (2) No contribution shall be payable in respect of an employee in any month in which the total amount of the remuneration paid to that employee by any one employer is less than 3,000 Vatu.

- (3) Notwithstanding the provisions of any other law or any agreement to the contrary, the employer shall deduct the employee's share of the contribution from the remuneration on which liability for the contribution arises at the time that such remuneration is paid and if he fails to make such deduction at that time the liability for the employee's share of the contribution shall pass to the employer who shall then be liable to pay the whole of the contribution due.

PAYMENT OF CONTRIBUTIONS

26. (1) The employer shall pay to the Board the contributions payable in any month for and by all of his employees by the end of the following month in such manner and such form as may be prescribed.
- (2) Where the employer fails to pay some or all of the contributions due within the time specified in subsection (1) he shall be liable to a surcharge on the amount of the contributions not so paid at the rate of two per cent in respect of each month or part of the month after the due date for which the contributions remain unpaid:

Provided that:

- (a) If the amount of surcharge so calculated is less than 50 Vatu the surcharge payable shall be 50 Vatu; and
- (b) The Board may in any case in which it thinks fit remit in whole or in part the payment of any surcharge due under the provisions of this section.

UNPAID CONTRIBUTIONS DEEMED TO BE PAID IN CERTAIN CIRCUMSTANCES

27. If any employer fails to pay any contribution which he is required to pay under section 26(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 a reasonable time,

credit to the employee the amount of the contributions which should have been paid in respect of him and shall charge the amount so credited to the general revenues of the Fund:

Provided that nothing in this section shall prejudice the right of the Board to recover the amount of such contributions together with any surcharge due under section 26(2) from the employer, and any amount so recovered shall be credited to the general revenues of the Fund.

VOLUNTARY CONTRIBUTORS

28. (1) Any person who is not liable to pay contributions under this Act as an employee and who is not less than 14 or more than 55 years of age may apply to the Board to become a voluntary contributor to the Fund and if admitted shall pay such contributions as he elects to pay, subject to any prescribed limits as to the amount, in such manner and on such conditions as may be prescribed.

- (2) Voluntary contributions shall be treated for the purposes of section 30 as if they had been paid in respect of the month prior to that in which they are received by the Board and shall be dealt with under that section as if they were contributions paid in respect of an employee.

MINISTERS OF RELIGION

29. Any religious organisation may apply to the Board, in respect of any minister of religion who is engaged in the service of that organisation under terms which do not create a liability to pay contributions under this Act, for permission to pay voluntary contributions under the terms of section 28 on behalf of that minister.

PART 6 - ALLOCATION OF PAYMENTS INTO THE FUND

CONTRIBUTION TO BE PAID INTO THE FUND AND CREDITED TO MEMBERS

30. (1) All sums recovered or collected on account of contributions to the Fund under the provisions of this Act shall be paid into or carried to the Fund in such manner as the Board may direct.
- (2) The Board shall cause an account to be maintained for each member of the Fund into which shall be credited:
- (a) the amount of the contributions paid by and in respect of him; and
 - (b) at the end of each financial year, interest at the rate declared by the Board under section 17 in respect of that financial year on the amount standing to his credit in the Fund at the commencement of that financial year.

Provided that, where it is certified in accordance with section 40 that any amount standing to the credit of a member may be withdrawn from the Fund, interest shall be included in that amount in respect of the amount standing to his credit at the beginning of the financial year in which the certificate authorising payment is given at the rate declared in respect of the previous year and, for each complete month of that financial year prior to the date of the certificate, at the monthly equivalent of that rate or, in the case of a withdrawal made in the first financial year of operation of the Fund, at the monthly equivalent of an annual rate of 3%, notwithstanding that a different rate may be declared for the year in which the withdrawal is made.

BOARD TO NOTIFY MEMBERS OF THEIR RESPECTIVE BALANCES IN ACCOUNT

31. As soon as possible after the end of each financial year the Board so far as practicable shall notify all members of the balance in their individual accounts, including interest at the end of that year.

REVENUE OTHER THAN CONTRIBUTIONS

32. All surcharges collected under section 26(2), together with any other sums which shall from time to time become payable to the Fund otherwise than on account of contributions under the provisions of this Act, shall be credited to the general revenues of the Fund.

GENERAL RESERVE ACCOUNT

33. (1) There shall be established an account which shall be known as the General Reserve Account which shall be credited with:
- (a) any income of the Fund remaining unappropriated at the end of any financial year; and
 - (b) any other moneys prescribed to be so credited by regulations made under this Act.
- (2) The moneys in the General Reserve Account shall form part of the Fund and any interest arising from the investment thereof shall be placed to the general revenues of the Fund.
- (3) The Board may, from time to time, authorise the expenditure of moneys held in the General Reserve Account for the furtherance of such social security measures as may be approved from time to time by the Minister.

PART 7 - APPROVED SCHEMES

APPROVED SCHEMES

34. (1) Subject to the provisions of this section, the authorities responsible for the management of any existing scheme may apply to the Board in the prescribed form for registration of the scheme as an approved scheme under this Act.
- (2) An application under subsection (1) shall be made to the Board within one month of the date on which Part 5 of this Act comes into force and shall be supported by such evidence as to the purpose of the scheme, conditions of membership, financial status, benefits provided and method of management as the Board may require.
- (3) No scheme shall be approved by the Board as an approved scheme unless
- (a) it is an existing scheme; and
 - (b) membership of such scheme is limited to employees of a specified employer or associated group of employers; and
 - (c) the Board is satisfied that the rules of such scheme shall secure to its members on the occurrence of any date of entitlement mentioned in section 38 of this Act benefit in the form of a lump sum or periodic payments which is at least equal in monetary value to the benefit the member would have been entitled to receive had he been a member of the Fund for the period during which he was exempted from the provisions of this Act by reason of his membership of the approved scheme.

- (4) The authorities responsible for the management of an approved scheme shall submit a copy of the audited annual accounts to the Board for each year during which it is an approved scheme.
- (5) (a) The Board shall review its approval granted in respect of an approved scheme whenever the benefits provided under this Act, including the rate of interest on members' accounts, are amended or improved or additional benefits are introduced and where it appears to the Board that the approved scheme no longer satisfies the condition set out in subsection 3(c) it shall give notice to the authorities concerned of its intention to withdraw approval of the scheme unless, within 3 months of the date of such notice the benefits of the approved scheme are adjusted so as to satisfy such condition.
- (b) The Board may, by giving one month notice in writing to the authorities concerned of its intention to do so for reasons which shall be stated, withdraw approval in respect of an approved scheme where it appears to the satisfaction of the Board that it would be in the interests of the members of such scheme to do so because of the state of the finances of the scheme as revealed in the annual accounts or in the absence of such accounts or for other sufficient reason.
- (c) The authorities responsible for the management of an approved scheme may, upon the resolution of the managing body of such scheme, request the Board to withdraw approval of the Scheme from an agreed date.
- (d) Where approval in respect of an approved scheme is withdrawn in accordance with the preceding provisions the Board shall take all practicable steps to secure the interests of the members concerned.
- (6) (a) An employee who is a contributor, or in respect of whom contributions are paid, to an approved scheme and his employer shall be exempt from liability to pay contributions to the Fund under this Act in respect of any employment in respect of which contributions are paid to that scheme and where the employee is required to serve a probationary period not exceeding three months the exemption shall also apply to remuneration derived from that period.
- (b) The exemption under this Part shall apply only to employment covered by the approved scheme and not to any other concurrent employment.
- (7) Where an employee who is a member of an approved scheme leaves that scheme prior to attaining any date of entitlement mentioned in section 33 (except on death) the authorities concerned shall pay to the Board a sum equal to the amount of contributions which would have been payable into the Fund by and in respect of the employee plus any interest which would have accrued to him in the Fund had he employment not been exempt employment.

Provided that where the employee is entitled on leaving the approved scheme to a refund of contributions which he has himself paid into the scheme the authorities concerned may recover therefrom the amount which the employee would have been liable to contribute to the Fund and where the amount of the refund includes any contributions paid into the scheme by the employer, an amount not exceeding the value of those contributions or the amount which the employer would have been liable to contribute to the Fund, whichever is the less.

(8) Where an employer:

- (a) is liable to make contributions under this Act in respect of any employee; and
- (b) is by himself or in association with others operating an existing scheme to provide benefits comparable to the benefits provided by this Act for such employee or employees,

he, or, as the case may be, the person operating that scheme may, by virtue of this subsection and whether or not the rules of the existing scheme allow, amend the existing scheme to take into account contributions made to the Fund and provide for a reduction of the contribution made to the existing scheme.

(9) Nothing in subsection (3) shall be construed so as to:

- (a) authorise the amendment of an existing scheme in such a way that the benefits, excluding annual interest, to an employee under that scheme and this Act are reduced below those to which he would have been entitled if this Act had not been enacted; or
- (b) require an employer to contribute to both the existing scheme and the Fund an amount in excess of that paid by the employer to the scheme for any comparable period before he became an employer liable to contribute to the Fund.

NON-CITIZENS

35. If the Board is satisfied on the application of an employee who is not a citizen of Vanuatu, or of his employer, that the employee is contributing to a social security scheme of some country other than Vanuatu or will be entitled under an arrangement associated with his employment to benefits which are, in the opinion of the Board, at least comparable with those provided by this Act it may issue to such employee a certificate of exemption, and he shall thereupon be deemed not to be an employee for the purposes of this Act in respect of employment by that employer during such time as the conditions under which he is exempted continue to be applicable to him.

CESSATION OF EXEMPT EMPLOYMENT

36. (1) Where any person who is exempt under any provision of this Act ceases to be employed in exempt employment (otherwise than by reason of death) without having become entitled to such pension, gratuity or allowance as may be payable from time to time under the benefit scheme of his former employer, such employer shall, in such manner as the Board may approve and within a period of one month from the cessation of the employment, pay to the Fund a sum equal to the contribution which the employer would have been required to pay to the Fund if the employment had not been exempt employment.

- (2) Any person to whom subsection (1) applies shall, unless he is already registered as a member of the Fund, be registered as such member within one month after he ceases to be employed in such exempted employment as aforesaid, and his former employer shall cause to be supplied to the Board such information as the Board may require for the purpose of securing such registration.
- (3) The provisions of section 26(2) shall apply in relation to the late payment of any sum required to be paid under subsection (1) of this section as they apply in relation to the late payment of a contribution required to be paid under section 25.

PART 8 - WITHDRAWAL OF CREDIT

AMOUNT STANDING TO THE CREDIT OF MEMBER

37. For the purposes of any withdrawal from the Fund, the amount standing to the credit of a member shall be a sum equal to the aggregate of all contributions made in respect of that member and such interest as may be credited thereon to such member under section 31(2).

ENTITLEMENT TO WITHDRAWAL OF CREDIT

38. (1) No amount standing to the credit of a member shall be withdrawn from the Fund unless it is proved to the satisfaction of the Board that the member -

- (a) has attained the age of 55 years; or
- (b) has died; or
- (c) has become permanently physically or mentally incapable of engaging in employment of any kind; or
- (d) is about to leave or has left Vanuatu with no intention of returning thereto,

whichever event occurs first.

- (2) Every application for withdrawal shall be supported by such evidence as may be prescribed and such further evidence as the Board in any particular case may reasonably require.

WITHDRAWAL OF CREDIT AFTER THE AGE OF 55 YEARS

39. In the case of a member who withdraws any amount standing to his credit in the Fund on the ground that he has attained the age of 55 years and in respect of whom contributions are made to the Fund in respect of employment after that age, no further withdrawal of credit may be made from the Fund until two years have elapsed since the date of the last withdrawal unless the member certifies that he has no further intention of engaging in employment as an employee or has died.

AUTHORISATION OF WITHDRAWAL

40. No withdrawal from the Fund of an amount standing to the credit of a member shall be made except upon the certification of an auditor employed by the Board who has been duly authorised by the Board for that purpose that the amount is due to be paid and no amount so authorised shall be paid before the date of entitlement has been reached.

WITHDRAWAL OTHERWISE THAN ON DEATH

41. Subject to section 39, the Board shall, on or as soon after the date of entitlement of a member as is practicable, and upon the application in the prescribed manner of the member or of a person having care or custody or authority to act for a member who is incapable of managing his own affairs, pay to the applicant the amount authorised for payment in accordance with section 40.

WITHDRAWAL BY NOMINEE

42. The Board shall, after the death of any member of the Fund and upon the application in the prescribed manner of a person nominated under section 43, pay to the applicant such part of the amount standing to the credit of such member as shall have been set out in the nomination and authorised for payment in accordance with section 40.

NOMINATION FOR PAYMENT

43. (1) Notwithstanding any other law for the time being in force in Vanuatu each member shall, in the prescribed manner, nominate a person or persons to receive in his or their own right such portion or portions of the amount payable on the death of the member as is or are specified by the member.

(2) Where at the time of making a nomination a member has a family the nomination shall be in favour of a member or members of his family and a nomination in favour of any other person shall be null and void.

(3) Where at the time of making a nomination a member has no family but subsequently acquires a family, his original nomination shall be deemed null and void and he shall immediately make a fresh nomination in favour of a member or members of his family.

(4) Where a nomination under this section is made in favour of a child who is a minor, the member may appoint a person of full age in his family to be guardian.

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

(6) For the purposes of this section -

(a) "children" includes adopted children where the Board is satisfied that the adoption is in accordance with the customs of the member; and

(b) "family" means -

(i) in the case of a man - his wife (except where in accordance with any law or court order the wife is no longer entitled to maintenance), his children (whether married or unmarried), his dependent parents and his deceased son's widow and children; and

(ii) in the case of a woman - her husband and his dependent parents (except where the member by written notice to the Board excludes her husband from the family), her children (whether married or unmarried), her dependent parents and her deceased son's widow and children.

PROCEDURE WHERE THERE IS NO NOMINEE OR A MINOR NOMINEE

44. (1) If, at the time of the death of any member of the Fund, there is no person nominated under section 43, the amount standing to the member's credit in the Fund shall be paid out in accordance with regulations prescribed by the Minister.
- (2) Except where no person is appointed under section 43(4), if any person nominated, other than a widow, shall be under the age of 13 years at the time of payment of the amount payable out of the Fund, his portion of the amount payable shall be paid out in accordance with regulations prescribed by the Minister.

PART 9 - PROTECTION OF SUMS CONTRIBUTED AND WITHDRAWN

MEMBERS CREDIT IS INALIENABLE

45. (1) Subject to the provisions of subsection (2), no contribution to the Fund, nor any amount standing to the credit of a member in the Fund nor interest on any such contribution or amount, nor withdrawals made from the Fund under section 38, 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 whatsoever.
- (2) All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of the person nominated under section 43 by the deceased member or if no such person has been nominated the person or persons entitled thereto and shall be deemed not to form part of the deceased member's estate nor to be subject to his debts.

EXEMPTION FOR TAX, ETC.

46. All the income of the Fund, all interest paid or credited in respect of any members under any of the provisions of this Act and all sums withdrawn from or paid out of the Fund under any of the provisions of the Act, and every instrument made or executed by or on behalf of the Fund shall be exempted from all taxes, levies or charges imposed by the law.

BANKRUPTCY OF EMPLOYEES

47. The bankruptcy of an employee shall not affect the payment of contributions from the remuneration of the employee in accordance with the provisions of this Act, - but such payments shall continue to be made notwithstanding the provisions of any other law and the portion of remuneration so paid shall be deemed not to form part of his property.

BANKRUPTCY, LIQUIDATION, ETC OF EMPLOYERS

48. (1) Where any trustee in bankruptcy, liquidator, receiver, personal representative or other such person is dealing with the property, business or estate of any employer who has failed to pay any contributions payable by the employer under section 26(1), such person shall pay such contributions in such manner as may be determined by the Board in priority to any other preferred claims and notwithstanding the provisions of any other law relating to insolvency or executorship.

- (2) Any trustee in bankruptcy, liquidator, receiver, personal representative or other such person shall, before distributing any assets under his control, obtain from the General Manager a certificate to the effect that all contributions payable under section 26(1) by such person out of any estate under his control have been paid.
- (3) If any distribution is made by any trustee in bankruptcy, liquidator, receiver, personal representative or other such person without first obtaining a certificate under subsection (1), then such person shall be personally liable for any unpaid contributions together with any surcharge payable under section 26(2).

SECRECY

49. Notwithstanding the provisions of any other law, the Board or its officers, employees, agents, advisers or consultants shall not be required to divulge, save to the member or, if the member is dead, to his nominee, any matter relating to the amount standing to the credit of a member of the Fund nor any particulars of such member or of any employer save with the consent of such member or employer.

Provided that nothing in this section shall prevent the Board or its officers, employees, agents, advisers or consultants from giving evidence relating to any such matter in any criminal proceedings.

PART 10 - OFFENCES, PENALTIES AND PROCEEDINGS

OFFENCES AND PENALTIES

50. (1) If any person:-

- (a) for any purpose connected with this Act -
 - (i) knowingly makes any false statement;
 - (ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document which he knows to be false in a material particular;
- (b) in respect of whom the provisions of either section 22 or section 23 apply fails to apply for registration;
- (c) fails to pay to the Board in any month any amount which, under section 26(1), he is liable to pay in that month in respect of any employee;
- (d) obstructs any Member, officer, employee, agent, adviser or consultant of the Board in the discharge of his duties and functions as such;

- (e) fails to pay to the Board within such period as may be prescribed any surcharge which he is liable to pay under section 26(2);
- (f) being or ever having been a Member, officer, employee, agent, adviser or consultant, of the Board directly or indirectly communicates or reveals to any person any matter relating to the business of the Board which shall have become known to him in his capacity as Member, officer, employee, agent, adviser or consultant except as may be required for the due discharge of his duties as such Member, officer, employee, agent, adviser or consultant or as may be permitted by the Board;
- (g) procures any Member, officer, employee, agent, adviser or consultant of the Board or any person who has ever been such Member, officer, employee, agent, adviser or consultant to communicate or reveal any such matter as is set out in paragraph (f);
- (h) fails to pay any contribution or surcharge which he is required to pay under section 48(3);
- (i) fails to produce at the time specified, any document required to be produced by notice in writing under section 53 (c).

he shall be guilty of an offence and liable to a fine not exceeding VT. 100,000 or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

- (2) Any person who deducts from the remuneration 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 in the time required by section 26(1) the contribution in respect of which such deduction has been made, shall be guilty of an offence and liable to a fine not exceeding VT. 200,000 or to a term of imprisonment not exceeding one year, or to both such fine and imprisonment.

NOTICE OF UNPAID CONTRIBUTIONS

- 51. If notice of intention so to do is served by the prosecuting officer upon the defendant, evidence may be given, at any trial for an offence under paragraph (c) of subsection (1) of section 50 or section 50(2) of other contributions unpaid at the date of the service of the summons upon the defendant, in respect of other employees, in the form of a certificate under the hand of the General Manager and, if the defendant is convicted of such offence, the court by which he is so convicted may, without prejudice to any other provisions of this Act, order the defendant to pay to the Fund the amount of such unpaid contributions together with any contributions unpaid at the date of trial in respect of each employee referred to in the charge upon which the defendant has been convicted.

FURTHER POWERS OF THE COURT

- 52. Where any person is convicted under the provisions of paragraphs (e) and (h) of section 50(1) of failure to pay any surcharge, the court by which he is so convicted may, without prejudice to any other provisions of this Act, order the defendant to pay to the Fund the amount required to be paid as a surcharge in the same way as is provided in relation to the payment of contributions under section 51.

LIABILITY OF OFFICERS OF CORPORATIONS

53. Where an offence under this Act or any Order or regulation made thereunder 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 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 proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

REPORT OF OFFENCES AND ATTORNEY GENERAL'S FIAT

54. (1) The Chairman of the Board or the General Manager or an officer of the Board authorised in that behalf by the Board or the General Manager may report offences against this Act or any Order or regulations made under the provisions thereof directly to the Public Prosecutor.

(2) No prosecution of any offence against any of the provisions of this Act or Order or regulations made thereunder shall be commenced without the consent of the Attorney General.

EVIDENCE IN PROCEEDINGS

55. In any criminal or civil legal proceedings under the provisions of this Act, a copy of any entry in the records or accounts of the Fund duly certified under the hand of the General Manager shall be prima facie evidence of such entry having been made and of the truth of the content thereof, and a certificate under the hand of the General Manager that there is no entry shall be prima facie evidence that no entry has been made.

CIVIL PROCEEDINGS

56. (1) All contributions payable under the provisions of this Act may, without prejudice to any other remedy, be recoverable by the Board as a debt due.

(2) Proceedings for the recovery as a civil debt of any contribution may, notwithstanding anything in any other law to the contrary, be brought at any time within six years from the date when the contribution became due.

(3) In this section the word "contribution" shall be deemed to include any surcharge under section 26(2).

**PART 11 - APPOINTMENT AND POWERS OF INSPECTORS
AND OFFICERS OF THE FUND**

APPOINTMENT OF INSPECTORS

57. (1) The Board shall appoint as inspectors such of those persons appointed under section 8 and 9 as shall be necessary or expedient for the purposes of this Act.

- (2) Any inspector appointed in accordance with subsection (1) shall have and exercise all the powers, duties and functions set out in this Part.
- (3) Any inspector appointed in accordance with subsection (1) shall on demand, produce such document of identification or such other evidence as may be reasonably sufficient to show that he is an inspector so appointed for the purposes of this Act.

POWERS OF INSPECTORS

53. An inspector appointed in accordance with section 57 may at any reasonable time:

- (a) enter any premises or place where persons are believed to be engaged as employees;
- (b) make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act or orders or regulations made thereunder are being or have been complied with in any such premises or place;
- (c) require the production of any document which an employer is required to keep under the provisions of this Act or orders or regulations made thereunder or of any law relating to employment, labour or employees or any other document which the inspector may reasonably require for the purpose of ascertaining whether the provisions of this Act or orders or regulations made thereunder are being or have been complied with and the inspector may make a copy or an extract from any such documents and, for this purpose, may by notice in writing sent by registered post to an employer's address, require such production at any place reasonably accessible to such employer on a date and at a time specified in such notice:

Provided that the date so specified shall not be less than 21 days from the date of service of such notice and the notice shall be deemed to have been served upon the employer when the notice would have been delivered or received in the ordinary course of post; and in proving such service it shall be sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted;

- (d) examine, either alone or in the presence of any other person, with respect to any matters under this Act or any order or any regulation made thereunder on which he may reasonably require information, every person whom he has reason to believe can give information respecting the subject matter of the inquiry, and require such person to be examined, and for the purposes of such examination may by notice in writing require any such person to attend at the time and place specified in such notice;
- (e) exercise such other powers as may be necessary or expedient for carrying into effect the provisions of this Act.

POWERS OF OFFICERS OF THE BOARD

59. The General Manager or an inspector or any person who is duly appointed under section 9 and who is authorised in writing by the General Manager, may make such examination and inquiry as may be necessary for ascertaining the truth of any statement made for the purpose of establishing the date of entitlement of any member of the Fund and may, for that purpose:

- (a) examine, either alone or in the presence of any other person, with respect to any matters under this Act, or orders or regulations made thereunder on which he may reasonably require information, every person whom he has reason to believe can give information respecting the subject matter of the inquiry, and require every such person to be examined, and for the purposes of such examination may by notice in writing require any such person to attend at the time and place specified in such notice;
- (b) require any person who makes any such statement to sign a declaration as to its truth.

PART 12 - SPECIAL POWERS OF THE MINISTER

SPECIAL DEATH BENEFIT, EXEMPTIONS, ETC

60. The Minister may, in addition to any other powers conferred by this Act, after consultation with the Board, by Order published in the Gazette,

- (a) exempt any person or class of persons from all or any of the provisions of this Act;
- (b) declare that any person or class of persons not falling within the definition of 'employee' shall be treated for all purposes of this Act as falling within that definition:

Provided that any such Order:

- (i) so far as it relates to a class of person shall apply to all persons of that class; and
- (ii) shall in all cases specify the person, body or authority to be treated as the employer of the person or persons affected by the Order and liable for all the duties and responsibilities of an employer under this Act including the liability to pay contributions;
- (c) provide for the payment, in addition to or in place of the payments provided under Part 3 of this Act, of other benefits for members, including the payment of annuities;

Provided that any such Order shall specify the method by which such benefits shall be financed and shall be made after an actuarial assessment of the ability of the Fund to provide such benefits without prejudice to the rights of members in general.

SPECIAL DEATH BENEFIT

61. (1) Where a member dies prior to attaining any of the dates of entitlement referred to in paragraphs (a), (c) or (d) of subsection (1) of section 38 an amount, to be known as a Special Death Benefit, shall be added to the amount standing to the credit of the member and shall be treated for the purposes of section 42 or 44 as forming part of the said credit.
- (2) There shall be established an account which shall be known as the Special Death Benefit Account, out of which the benefit shall be paid and into which shall be paid annual sums deducted in such a manner, at such a rate and from such descriptions of members' accounts as may be prescribed.
- (3) The amount of the benefit shall not exceed such sum as may be prescribed and shall be calculated according to such conditions as shall be prescribed which shall take into account the deceased member's period of membership of the Fund and the periods for which contributions have been paid to the Fund in respect of him.
- (4) The moneys in the Special Death Benefit Account shall form part of the Fund and any interest arising from the investment thereof shall be placed to the general revenues of the Fund and any shortfall in the Account shall be made good out of the general revenues of the Fund.
- (5) The Board shall, as soon as practicable after the end of each financial year, review the operation of the Special Death Benefit Account and shall recommend to the Minister, after obtaining such actuarial advice as may be deemed necessary, such variation in the maximum rate of the benefit and in the annual sum to be deducted from members' accounts as appears to be warranted by the state of the Account.

RECIPROCAL AGREEMENTS

62. (1) The Minister may, after consulting the Board, 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 and such agreement may provide among other matters that:
 - (a) any period during which a member of the fund in one country is required to contribute to the fund in the other country may, so far as it is relevant for benefit purposes, be treated as a period of contribution to the other fund; and
 - (b) for such transfer of credits between the funds of the two countries as may be appropriate in any case where a member is entitled to benefit from one fund whilst residing in the other country.
- (2) Any reciprocal agreement made under subsection (1) shall be published in the Gazette and shall come into force on the date of such publication or on such later date as may be provided in the agreement.

PART 13 - ORDERS AND REGULATIONS

ORDERS

63. (1) The Minister may by Order published in the Gazette make regulations not inconsistent with the provisions of this Act for the better carrying into effect the provisions of this Act and may prescribe in such Order all things and matters which are necessary or required to be prescribed thereunder.
- (2) Without prejudice to the generality of subsection (1) the Minister may in such Order make regulations with respect of all or any of the following matters :-
- (a) to provide for the registration of employers and employees in anticipation of the coming into force of any of the provisions of this Act and subsequently;
 - (b) to provide for the manner of payment and collection of contributions and any matters incidental thereto;
 - (c) to provide for the disposal of amounts which are unclaimed, unpaid or otherwise remain in the Fund;
 - (d) to provide for:
 - (i) the return of contributions under the provisions of this Act, or any part of such contributions, paid in error;
 - (ii) the payment of contributions under the provisions of this Act, or of any part of such contributions, omitted to be paid in error;
 - (e) to provide for the keeping of books accounts or records by employers;
 - (f) to provide for the appointment of medical boards for the purpose of determining title to withdrawal of credits under paragraph (c) of subsection (1) of section 33 and for such other purposes as may be prescribed;
 - (g) to prescribe the procedure for the withdrawal of amounts from the Fund;
 - (h) to prescribe the procedure to be followed when any voluntary contribution is paid to the Fund;
 - (i) to prescribe the returns to be made by employers and the forms and registers to be used in carrying out the provisions of this Act;
 - (j) to prescribe the amount, frequency of payment and duration of any annuity payable in accordance with any Order made under the provisions of section 60.

- (3) Any Orders or regulations made under this section or any other provisions of this Act may provide that any failure to comply therewith or any contravention or breach thereof shall be punishable by such fine not exceeding VT. 50,000 or by such term of imprisonment not exceeding six months as may be specified in such Orders or regulations, or by both such fine and imprisonment.

COMMENCEMENT

64. This Act shall come into force on such day as the Minister may appoint by Order published in the Gazette and different days may be so appointed for different provisions of this Act.

SCHEDULE

Exceptions

1. Any child under the age of 14 years.
2. Any outworker.
3. Any person detained in any prison, approved school, mental hospital or leper asylum.
4. Any non-citizen of Vanuatu serving with a diplomatic or international mission or international organisation.
5. Any person who is temporarily employed in agriculture or forestry as an individual or as the leader of a gang working collectively and who at the time of engagement in such employment is not expected to be employed for more than 2 months;

Provided that where, in the case of an individual workman, the engagement exceeds 2 months, that person shall cease to be excepted from the commencement of the third month of the engagement.