

No. 66 of 2000.

Superannuation (General Provision) Act 2000.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



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Superannuation (General Provision) Act 2000.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Superannuation (General Provision) Act 2000,

Being an Act to make provision for the licensing, regulation and supervision of superannuation funds, trustees, investment managers and fund administrators, the imposition of mandatory contributions to superannuation funds and to amend various Acts and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART 1. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

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

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

(2) For the purposes of –

- (a) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*; and

- (b) Section 29 of the *Organic Law on Provincial Governments and Local-level Governments*,

is it declared that this law relates to a matter of national interest.

(3) For the purposes of Section 53 (Protection from unjust deprivation of property) of the *Constitution*, the licencing, regulation and supervision of superannuation funds, trustees, investment managers and fund managers and the imposition of mandatory contributions to superannuation funds are hereby declared to be public purposes.

2. PURPOSE OF THE ACT.

The purpose of this Act is to –

- (a) make provision for and promote compulsory savings for retirement through mandatory or voluntary contributions to superannuation funds by employers and employees; and
- (b) make provision for the licensing and regulation of the superannuation industry in Papua New Guinea in a manner consistent with the continued development of a viable and competitive industry; and
- (c) make provision of the prudent management of superannuation funds and licence holders; and
- (d) provide for the protection of the interest of members of superannuation funds; and
- (e) for related purposes.

3. INTERPRETATION.

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

“accumulated fund” means a superannuation fund where the members entitlements are calculated by reference to the amounts standing to the members individual account and not by reference to a defined or guaranteed benefit;

“approved auditor” means an auditor approved by the Central Bank from time to time;

“associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a body corporate means –

- (a) a relative of the person; or
- (b) any body corporate of which that person is a director; and
- (c) any person who is an employee or partner of that person; or

¹ Section 3 Subsection (1) amended by No. 4 of 2002, s. 1.

- (d) where that person is a company –
 - (i) any director of that company; or
 - (ii) any subsidiary of that company; or
 - (iii) any director or employee of any such subsidiary; or
- (e) where that person has with any other person an agreement or of shares or other interests in that body corporate or under power in relation to it, that other person;

“authorized officer” means an officer of the Central Bank authorized under Section 106;

“authorized superannuation fund or ASF” means a superannuation fund authorized by the Central Bank pursuant to Section 8;

“Board” means the Board of the Central Bank;

“books” includes –

- (a) any record; or
- (b) any accounts or accounting records, however compiled, recorded or stored; or
- (c) a document;

“contravene” includes fail to comply with;

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

“defined or guaranteed benefit” means a benefit which is to be paid to a member based on –

- (a) the amount of the member’s salary at a particular date; or
- (b) the average of the member’s salary at a particular date; or
- (c) the average of the member’s salary over a period; or
- (d) an amount identified as the defined or guaranteed benefit in a constituent document of the superannuation fund;

“defined or guaranteed benefit fund” means an ASF which has been authorized under Section 8(2) to provide defined or guaranteed benefits;

“Deputy Governor” means a Deputy Governor of the Central Bank;

“DFRBF” means the *Defence Force Retirement Benefits Act 1974*;

“director” means –

- (a) with respect to companies registered in Papua New Guinea, the same meaning as in Section 107(1)(a) of the *Companies Act 1997*; and
- (b) with respect to a body corporate incorporated outside Papua New Guinea, means any person, including a member of a board, who

occupies a position that in the opinion of the Central Bank is analogous to that of a director of a company under Section 107(1)(a) of the *Companies Act 1997*;

- (c) with respect to any body corporate, means a person who occupies a position that in the opinion of the Central Bank is analogous to that of a director of a company under Section 107(1)(a) of the *Companies Act 1997*;

“disclose”, in relation to information, means give, reveal or communicate in any way;

“eligibility age”, in relation to a member, is as prescribed by regulation;

²³**“employee”** means a resident of Papua New Guinea who is –

- (a) employed or engaged for pay to provide labour or services; and
- (b) on whose behalf contributions are made to an ASF; and
- (c) who receives his pay directly or indirectly from an employer;
- (d) unless employed within a given class or employees as prescribed is directly engaged in primary production by an employer in the business of growing or processing of –
- (i) cocoa; or
- (ii) copra; or
- (iii) oil palm; or
- (iv) rubber; or
- (v) tea; or
- (vi) coffee,

and includes a person employed by or through a contractor or agent;

“employer” means an entity that employs a person under a contract of service;

“entity” means an individual, a statutory authority, unincorporated partnership or body or a corporation, as the context permits;

“excepted employer” means an employer that engages less than 20 employees and has not elected to make voluntary contributions under Section 4(1)(c).

“external administrator” means any of the following –

- (a) a liquidator;
- (b) a receiver; or

² Section 3 Subsection (1) amended by No. 4 of 2002, s. 1.

³ Section 3 Subsection (1) amended by No. 4 of 2002, s. 1.

- (c) any other form of administrator or person having an analogous role under the laws of any place,

and expressions used in this definition have the same meanings as they have in the *Companies Act 1997*;

“financial accommodation” means –

- (a) indebtedness, present or future, actual or contingent, under or in respect of moneys borrowed or raised; or
- (b) any other financial indebtedness whatsoever; and includes –
- (c) indebtedness under or in respect of a negotiable or other financial instrument; and
- (d) a guarantee of financial indebtedness; and
- (e) interest; and
- (f) gold and currency exchange; and
- (g) a hedge or currency exchange; and
- (h) a redeemable share; and
- (i) a share the subject of a guarantee; and
- (j) a discounting arrangement; and
- (k) a financing lease or capital lease;

“foreign country” means a country other than Papua New Guinea;

“fund administrator” means an entity providing administration services or purporting to provide administration services to a superannuation fund;

“governing rules” in relation to a superannuation fund, means any trust instrument, rules or other document or combination of them, governing the establishment and operation of the fund;

“Governor” means the Governor of the Central Bank;

“group” in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

“guarantee” means –

- (a) any guarantee, indemnity, legally binding undertaking, letter of credit, acceptance or endorsement of a bill of exchange or promissory note or other legally binding obligation in favour of any person to secure or to enable the payment by any third party of any moneys or the performance or observance of any other obligation owed by the third party; and
- (b) any legally binding obligation to provide funds to a third party by the advance of moneys, the purchase of or subscription for securities (as defined in the *Securities Act 1997*); and

- (c) any legally binding obligation to ensure the solvency or financial condition of any third party; and
- (d) any put or call option or both whereby its grantor is legally obliged upon the exercise of the option to buy or sell or both;

“indirect controller” means either –

- (a) a person or persons in accordance with whose direction or instructions the directors of the licence holder or any holding company, or any shareholder controller of a licence holder are accustomed to act or are under an obligation, whether formal or informal, to act; or
- (b) a person or persons declared by the Central Bank to be an indirect controller for the purposes of this Act by written notice under Section 24;

“invest” includes –

- (a) apply property in any way; or
- (b) make a contract,

for the purpose of gaining interest, income, profit or gain;

“investment manager” means an entity providing or purporting to provide investment management services to a superannuation fund;

“licence holder” means a licensed trustee, licensed investment manager and licensed funds administrator or any one of them, as the context permits;

“licensed fund administrator” means a corporate fund administrator licensed under this Act;

“licensed investment manager” means a corporate investment manager licensed under this Act;

“licensed trustee” means a corporate trustee licensed under this Act;

“Life Insurance Act 2000” means the *Life Insurance Act 2000* and includes the regulations and prudential standards made under that Act;

“member” means a person who has or on whose behalf contributions have been made to an ASF, or the member’s nominee under this Act;

“nominee” means a person nominated by a member to receive the member’s benefits in the event of the member’s death;

“non-citizen” means a person who is not a citizen, or obtained citizenship, of Papua New Guinea;

“NPF” means the National Provident Fund established under the *National Provident Fund Act 1980*;

“officer” includes –

- (a) a chief executive officer, director or manager of a licence holder;
or
- (b) a person referred to in Subsection (3);

“officer of the Central Bank” means the Governor, a Deputy Governor, or an employee of the Central Bank;

“pay” means remuneration of any kind (including gross salary, wages and commission) that is –

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

but does not include overtime pay, allowance and bonuses and compensation or any gifts made by an employer;

“POSF” means the Public Officers Superannuation Fund established under the *Public Officers Superannuation Fund Act 1990*;

“property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

“prudential matters”, in relation to an ASF or licence holder, means matters relating to the conduct by that entity and any group of which it is a member of any of their affairs –

- (a) in such a way as –
 - (i) to keep itself in a sound financial position; and
 - (ii) not to cause or promote instability in the Papua New Guinea superannuation industry; and
- (b) such that they are conducted with integrity, prudence and professional skill; and
- (c) which ensure compliance with the relevant obligations placed on the entity by or under this Act;

“prudential standard” has the meaning given to it under Part 7;

“related corporation” means a corporation that, in accordance with the *Companies Act 1997*, is taken to be related to another corporation;

“relative” in relation to a person, means –

- (a) the person’s spouse, including the legal or customary spouse; or
- (b) another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or a wife of the person; or
- (c) a parent or remoter lineal ancestor of the person; or
- (d) a son, daughter or remote lineal descendant of the person; or

(e) a brother or sister of the person;

“**security interest**” include any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset;

“**shareholder controller**” means a person who, either alone or with any associate or associates has a stake in –

(a) a licence holder under this Act; or

(b) a holding company of a licence holder,
of more than 15%;

“**stake**” means the aggregate of the voting power that a person controls in a body corporate at a general meeting;

“**statutory manager**” means either the Central Bank or a person appointed by the Central Bank;

“**superannuation fund**” means an indefinitely continuing fund created for retirement or other related purposes by statute or trust deed or other instrument;

“**this Act**” includes the regulations and prudential standards made under this Act;

“**trustee**” means the entity acting or purporting to act as trustee of a superannuation fund;

“**unclaimed money**” has the meaning given by Subsection (4).

(2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Companies Act 1997*.

(3) For the purposes of this Act, a reference to a person who held the office or position of chief executive officer, director, or manager of a licence holder at a particular time includes a person who held that office or position within two years before that time.

(4) For the purposes of this Act, money payable to a member of an ASF is taken to be unclaimed money where –

(a) the member has reached the eligibility age; and

(b) the licensed trustee determines that, under the governing rules of the ASF, a benefit (other than a pension) is immediately payable in respect of the member; and

(c) neither the member nor his nominee has applied to the licensed trustee to have the amount of his benefits in the ASF paid to him; and

- (d) the licensed trustee is unable to pay those benefits to the member or its nominee because the licensed trustee, after making reasonable efforts to find the member or its nominee, is unable to do so.

4. APPLICATION OF THIS ACT.

(1) The provisions of this Act apply to –

- (a) every employer employing or engaging 20 or more employees, or such other number as prescribed by regulation; and
- (b) every employee engaged in employment by an employer under Paragraph (a) and receiving pay,

whether they make mandatory or voluntary contribution to an ASF; and

- (c) every employer employing or engaging less than 20 employees or such other number as prescribed by regulation, where the employer elects on a voluntary basis to make employer contribution to an ASF on behalf of employees; and
- (d) every employee engaged in employment by an employer under Paragraph (c) and receiving pay, who elects on a voluntary basis to make employee contributions to an ASF.

(2) The provisions of this Act apply to the NFP, DFRBF and the POSF and to any superannuation fund in existence at the coming into operation of this Act, to the extent set out in this Act.

(3)⁴ ⁵One or more related corporations shall be deemed to be a single employer where –

- (a) the total employees of the related corporations are greater than 20 in number; and
- (b) the operations of the related companies have been conducted through separate legal entities for the dominant purpose of reducing the number of each of the separate entities' employees below 20 for the purposes of this Act.

5. APPLICATION TO COMPANIES ACT 1997 AND SECURITIES ACT 1997.

The requirements of this Act are in addition to and not in derogation of or substitution for the requirements of *Companies Act 1997* and the *Securities Act 1997*, but in the case of a conflict between a provision of this Act and provision of the *Companies Act 1997* or the *Securities Act 1997*, the provision of this Act prevail.

⁴ Section 4 Subsection (3) inserted by No. 4 of 2002, s. 2.

⁵ Section 4 Subsection (3) inserted by No. 4 of 2002, s. 2.

6. APPLICATION TO NATIONAL PROVIDENT FUND ACT 1980, PUBLIC OFFICERS SUPERANNUATION FUND ACT 1990 AND DEFENCE FORCE RETIREMENT BENEFITS ACT 1974.

The requirements of this Act in addition to and not in derogation of or substitution for the requirements of the *National Provident Fund Act 1980*, the *Public Officers Superannuation Fund Act 1990* and the *Defence Force Retirement Benefits Act 1974* or any regulations or rules made under or pursuant to those Acts but in case of a conflict between a provision of this Act and provision of those Acts, the provision of this Act prevail.

PART 2. – FUNCTIONS AND POWERS OF THE CENTRAL BANK.

7. FUNCTIONS AND POWERS .

(1) The principal function of the Central Bank under this Act is to promote the general stability, regulation and supervision of the superannuation industry for the protection of the rights and interests of members.

(2) The functions of the Central Bank under this Act include –

- (a) licensing of trustees, investment managers and fund administrators; and
- (b) authorising ASFs to accept employer and employee contributions made under this Act; and
- (c) supervising compliance with the provisions of this Act and any prudential standards; and
- (d) collecting and analysing information in respect of prudential matters relating to superannuation funds and licence holders; and
- (e) promoting, encouraging and enforcing proper standards of conduct and sound and prudent business practices in the superannuation industry including the issue of prudential standards; and
- (f) evaluating the effectiveness of carrying out those practices; and
- (g) suppressing or aiding in the suppression of illegal or improper practices within the superannuation industry.

**PART 3. – LICENSING OF TRUSTEES INVESTMENT MANAGERS AND
FUND ADMINISTRATORS.**

8. AUTHORIZED SUPERANNUATION FUND.

(1) Subject to Subsection (2), the Central Bank main writing, authorize the operation of a fund as a superannuation fund where the Central Bank is satisfied that in all the circumstances it is proper to do so, and, in particular, is satisfied that the fund –

- (a) has a licensed trustee; and
- (b) has a licensed investment manager; and
- (c) has a licensed fund administrator; and
- (d) will operate as an accumulation fund.

(2) The Central Bank may, in writing, authorized a superannuation fund, in existence at the commencement of this Act and operating as a defined or guaranteed benefit fund, to continue to operate as a defined or guaranteed benefit fund.

(3) A superannuation fund which receives authorization under Subsection (2) shall in addition to the requirements of this Act, comply with provisions of *Life Insurance Act 2000*, unless otherwise granted an exemption under Subsection (4).

(4) The Central Bank may impose such conditions or grant such exemptions to a superannuation fund authorized under Subsection (2) as it considers appropriate.

(5) A fund seeking authorization under Subsection (2) shall comply with the requirements of Subsection (1)(a), (b) and (c).

9. UNAUTHORIZED OPERATIONS.

(1) An entity which promotes, is involved in any way with, or carries on a superannuation fund which operates without first having obtained written authorization under Section 8, or an exemption under Section 10, is guilty of an offence.

(2) An entity which –

- (a) acts as a trustee, investment manager, or fund administrator of a superannuation fund; or
- (b) accepts fund from another person for the purpose of operating a superannuation fund or business of an investment manager or fund administrator of a superannuation fund,

and has not first obtained a licence under this Part or an exemption under Section 10, is guilty of an offence.

(3) A licensed trustee who carries on any aspect of a superannuation fund without having appointed a licensed investment manager and a licensed fund administrator is guilty of an offence.

10. EXEMPTION.

(1) The Central Bank may, by order published in the National Gazette, grant an exemption, with or without conditions, from any or all of the provisions of this Act, to the NPF, POSF, or the DFRBF and any other superannuation fund in existence at the coming into operation of this Act, such exemptions to remain in force only during the transition period provided in Part 18.

(2)⁶ ⁷In the case of employees who are not citizens, and, where, contributions are made to a superannuation fund in a foreign country by –

- (a) the employee; or
- (b) the employer; or
- (c) both the employee and the employer,

the employer may make an application to the Central Bank for an exemption from making mandatory contributions to an ASF under Sections 76 and 77.

(3) The Central Bank shall grant an exemption under Subsection (2) if the Central Bank is satisfied that the employer and employees are making contributions at a rate equivalent or greater than the rate as prescribed under this Act.

(4) The NPF, POSF and DFRBF and any other existing superannuation fund and their respective trustees are not relieved from any of their obligations under this Act until an exemption is granted under this section.

(5) The Central Bank may, by order published in the National Gazette, vary or revoke an exemption granted under this section.

11. APPLICATION FOR LICENCE.

(1) An applicant for a licence under this Act shall be a corporation incorporated under the *Companies Act 1997*.

(2) Only one licence may be held by an entity at any time.

(3) Subsection (2) does not prevent corporations within a group from being licence.

(4) An application under this section shall –

- (a) include the matters specified in Schedule 1; and
- (b) contain any other information required by the Central Bank; and
- (c) be accompanied by an application fee as prescribed.

(5) The Central Bank may request the applicant, in writing, to provide the Central Bank with such further information for the determination of the licence application as specified in the request.

(6) An entity which –

⁶ Section 10 Subsection (2) substituted by No. 4 of 2002, s. 3.

⁷ Section 10 Subsection (2) substituted by No. 4 of 2002, s. 3.

(a) makes an application under this section that is false or misleading in a material respect; and

(b) holds a licence in contravention of this Act,

is guilty of an offence.

(7) A licence is personal to the licence holder and is incapable of being transferred.

12. MINIMUM REQUIREMENTS.

A licence shall only be granted to an applicant if the Central Bank is satisfied

(a) the applicant meets the fit and proper criteria set out in Schedule 2; and

(b) the applicant's officers meet the fit and proper criteria set out in Schedule 2; and

(c) the applicant can be relied on to perform, in a fit and proper manner, the duties relevant to the licence for which an application has been made; and

(d) the applicant satisfies –

(i) the financial requirements set out in Schedule 3; or

(ii)⁸ if required by the Central Bank, that it is entitled to the benefit of an approved guarantee of an amount not less than the amount in Schedule 3, being a guarantee in respect of the applicant's duties; or

(iii)⁹ at the request of the Central bank, a combination of both.

13. MATTERS TO BE CONSIDERED BY CENTRAL BANK.

The Central Bank may have regard to such matters as are relevant to the purposes of this Act when considering an application under Section 11.

14. APPROVAL OF APPLICATION.

On the granting of a licence under this Part, the Central Bank shall cause a notice of the issue of a licence to be published in the National Gazette and the licence takes effect from the date of publication of the notice in the National Gazette.

15. REFUSAL OF APPLICATION.

Where the Central Bank proposes to refuse an application for a licence, it shall give the applicant written notice in accordance with Section 24.

⁸ Section 12 Amended by No. 4 of 2002, s. 4.

⁹ Section 12 Amended by No. 4 of 2002, s. 4.

16. OFFICERS TO BE FIT AND PROPER.

(1) A licence holder shall ensure that, at all times, its officers satisfy –

- (a) the criteria specified in Schedule 2; and
- (b) any relevant prudential standards.

(2) The Central Bank may, by written notice under Section 24, require the removal of an officer or auditor of a licence holder who does not, in the opinion of the Central Bank, satisfy the provisions of Subsection (1).

17. CONDITIONS OF LICENCE.

(1) The Central Bank may impose such conditions on a licence when granting the licence under this Act, or at any time, by written notice under Section 24, as it considers appropriate for the implementation of, or compliance with, the provisions of this Act.

(2) A condition may be expressed to have effect notwithstanding anything in the prudential standards or the regulations.

18. DURATION OF LICENCE.

Unless sooner surrendered, suspended or revoked, a licence remains in force until the expiration of 31 December of the year in which the licence took effect or was last renewed.

19. RENEWAL OF LICENCE.

A licence in force immediately before 1 January in any year may be renewed on payment of the prescribed fee.

20. REVOCATION OR SUSPENSION OF LICENCE.

(1) The Central Bank may, by written notice under Section 24, revoke or suspend a licence granted under this Act where it appears to the Central Bank that –

- (a) any criteria specified in Schedule 2 is not being fulfilled or may not be fulfilled by a licence holder or its officers; or
- (b) the licence holder or its officers have failed to comply with any obligation imposed on it by or under this Act; or
- (c) the licence holder or its officers have failed to comply with any condition imposed on the licence; or
- (d) an entity has become a shareholder controller or an indirect controller of the licence holder in contravention of this Act or has become or remains a shareholder controller or indirect controller after being given a notice of objection by the Central Bank under this Act; or
- (e) the Central Bank has been provided with false, misleading or materially inaccurate information –

- (i) by or on behalf of the licence holder; or
- (ii) in connection with an application for a licence; or
- (iii) by or on behalf of a person who is an officer of the licence holder;
or
- (f) the interests of members or potential members of an ASF are in any other way threatened, whether by the manner in which the licence holder is conducting or proposes to conduct its affairs or for any other reason; or
- (g) any of the following has occurred with respect to the licence holder –
 - (i) a composition or arrangement with creditors has been made; or
 - (ii) an external administrator or statutory manager has been appointed; or
 - (iii) it has ceased to operate, gone into liquidation or has been wound up or dissolved or if anything having an analogous effect has occurred in the place of incorporation of the licence holder; or
 - (iv) in the case of a licence holder whose principle place of business changes to outside Papua New Guinea, anything having an analogous effect as referred to in Subparagraph (iii).

(2) Where a licence is suspended under Subsection (1), the Central Bank shall appoint an appropriate licence holder to act for the period of suspension or until a new appointment of a licence holder is made.

(3) Notwithstanding the suspension of a licence, the licence holder concerned may, with the approval of the Central Bank, assist in the orderly transfer of the property of the licence holder to another licence holder.

21. SURRENDER OF LICENCE.

(1) A licence holder may, by notice in writing to the Central Bank, request approval to surrender its licence.

(2) The Central Bank may accept a request under Subsection (1) where it is satisfied that the surrender would not be contrary to the interests of members of the ASF.

(3) The Central Bank shall publish notice of the surrender in the National Gazette and may cause notice of the surrender of the licence to be published in any other way it considers appropriate.

22. FAILURE TO COMMENCE OPERATIONS.

The Central Bank may, by written notice under Section 24, revoke a licence granted under this Act where it is of the opinion that the licence holder, having been licensed under this Act for 12 months, has not commenced operating in Papua New Guinea.

23. PUBLICATION OF NAMES OF LICENCE HOLDERS.

(1) The Central Bank may, from time to time, publish a list of –

(a) licence holders; or

(b) exemptions and any conditions attached to such exemption.

(2) The Central Bank shall include a list of licence holders and any exemptions including any conditions attached to such exemptions when delivering annual reports to the Minister as required by the *Central Banking Act 2000*.

(3) Where a licence holder proposes to change its name, it shall give written notice to the Central Bank of the proposed change of name.

(4) Where the Central Bank objects to a change of name it shall issue a notice under Section 24.

(5) Where the Central Bank does not object to the proposed change of name under Subsection (3), it shall publish that fact, together with the licence holder's new name, in the National Gazette.

PART 4. – POWER TO ISSUE NOTICE OR DIRECTION.**24. ISSUE OF NOTICE OR DIRECTION.**

(1) For the purposes of this section, recipient means an entity receiving a notice or direction issued by the Central Bank, including, but not limited to, a licence holder or an officer of a licence holder, a shareholder controller or indirect controller, an auditor, accountant or legal representative engaged by an ASF, and any service provider engaged by an ASF.

(2) The Central Bank may issue a notice or direction to a recipient for the purposes of implementing, or ensuring compliance with, the provisions of this Act, which notice shall state –

- (a) the proposed action;
- (b) the reasons for the proposed action; and
- (c) the rights of the recipient under Subsection (4).

(3) Prior to issuing a notice or direction under Subsection (1), the Central Bank shall issue a preliminary notice, attaching the proposed notice or direction, to the intended recipient.

(4) A recipient may, within a period of 28 days beginning on the day on which the preliminary notice or direction was given (preliminary notice period), make written representations to the Central Bank, and the Central Bank shall take into account those representations before making a final determination.

(5) The Central Bank may, by written request to the recipient, require further information to be provided by the recipient prior to making a final determination.

(6) After expiration of the preliminary notice period, the Central Bank that decide whether –

- (a) to proceed with the action proposed in the notice or direction; or
- (b) cancel the notice or direction,

and shall notify the recipient, writing, of its final determination and, except where the final determination is to cancel the notice or direction, the Central Bank shall state the reasons for its decision.

(7) A final determination under Subsection (6) shall have the effect of issuing the notice or direction on the recipient and such notice or direction shall take effect on and from the date of the final determination.

(8) A notice or direction given under Subsection (7) shall be given –

- (a) within the period of 42 days beginning on the day on which the representations under Subsection (3) were made to the Central Bank; or
- (b) where no representations were made to the Central Bank under Subsection (3), within a period of 35 days beginning on the day on which the notice under Subsection (2) was given.

(9) Where the Central Bank issues a notice or direction under this section, the Central Bank may cause the notice or direction to be published in the any other way it considers appropriate.

(10) An entity which fails to comply with the requirements of a notice issued under this section is guilty of an offence.

25. DIRECTION NOT GROUNDS FOR DENIAL OF OBLIGATIONS.

(1) Subject to Subsection (2), the fact that a licence holder is subject to a direction by the Central Bank under this Act is not a ground for any other party to a contract to which the licence holder is a party –

- (a) to deny any obligations under that contract; or
- (b) to accelerate any debt under that contract; or
- (c) to close out any transaction relating to that contract.

(2) Regulations may prescribe circumstances under which Subsection (1) does not apply.

26. NO NOTICE IN CASES OF URGENCY.

(1) A preliminary notice need not be given under Section 24 prior to issuing a notice or direction where it appears to the Central Bank there is significant risk to the interests of members of an ASF.

(2) A notice under Subsection (1) shall state the reasons for which the Central Bank has acted and particulars of the rights conferred by Subsection (3).

(3) A licence holder to which notice is given under this section may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Central Bank.

(4) After giving a notice under Subsection (1) and taking into account any representations made in accordance with Subsection (3), the Central Bank shall decide whether –

- (a) to confirm or rescind its original decision; or
- (b) to impose a different condition or direction.

(5) The Central Bank shall, within the period of 28 days beginning on the day on which the notice was given under Subsection (1), give the licence holder concerned written notice of its decision under Subsection (4), and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(6) Where a notice under Subsection (5) is a decision to take action specified in Subsection (4)(b), the notice under Subsection (5) shall have the effect of imposing the condition or making the variation specified in the notice and with effect from the date on which it is given.

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(7) Where a preliminary notice under Section 24 is followed by a notice under this section, the latter notice shall have the effect of terminating any right to make representations under Section 24.

PART 5. – INFORMATION AND INVESTIGATION.

27. CENTRAL BANK TO BE SUPPLIED WITH CERTAIN DOCUMENTS.

(1) Any proposed alteration to the charter, deed of settlement, constitution, memorandum and articles of association or other constituent document of the licence holder of an ASF shall be submitted to the Central Bank for approval.

(2) If the Central Bank does not approve the document submitted under Subsection (1), it shall issue a notice under Section 24.

(3) A licence holder, which fails to supply the information or document required by this section, is guilty of an offence.

28. POWER TO OBTAIN INFORMATION AND REQUIRE PRODUCTION OF DOCUMENTS.

(1) The Central Bank may, by notice in writing served on a licence holder or officer of a licence holder –

- (a) require the licence holder to provide the Central Bank, at such time as may be specified in the notice, with such information or documents as the Central Bank may reasonably require for the performance of its functions under this Act; and
- (b) require the licence holder to provide the Central Bank with a report by an approved auditor on any matter which the Central Bank requires the licence holder to provide information under Paragraph (a);
- (c) authorize an officer or agent of the Central Bank, on producing evidence of his authority, to require a licence holder to produce to him forthwith, such information or documents as specified in a notice under Paragraph (a) or (b),

being information or documents the Central Bank may reasonably require for the performance of its functions under this Act.

(2) The Central Bank may, by notice in writing served on an entity or an officer of an entity which appears to be in possession of them, require the production of documents referred to in Subsection (1) but where any entity from which such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require production of any documents includes

- (a) where the documents are produced, to take copies of them or extracts from them and to require that licence holder, entity, or an officer or any person who was at any time employed by or acting as an employee of, the licence holder or entity in question to provide an explanation of any of them; and

- (b) where the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) Where it appears to the Central Bank to be necessary or desirable in the interest of members, it may also exercise the powers conferred by this section in relation to –

- (a) any body corporate which is or has at any relevant time been –
- (i) a holding company, subsidiary or related corporation of the licence holder; or
 - (ii) a subsidiary or a related corporation of a holding company of the licence holder; or
 - (iii) a holding company of a subsidiary of the licence holder; or
 - (iv) a body corporate which is a shareholder controller or indirect controller of the licence holder; and
- (b) any other business including a partnership or joint venture of which that licence holder is or has been at any relevant time a participant.

(5) The Central Bank may, by notice in writing served on an officer of a licence holder, require him to provide to the Central Bank, within such time as may be specified in the notice, such information or documents as the Central Bank may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) The Central Bank may exercise the powers conferred by this section in relation to any person who is a shareholder controller or indirect controller of a licence holder where it appears to the Central Bank to be necessary or desirable in the interests of members or potential members.

(7) The Central Bank may exercise the powers conferred by the section in relation to any person where the Central Bank considers there is a contravention or a reasonable likelihood of a contravention of this Act.

(8) A person who, without reasonable excuse, fails to comply with a notice under this section is guilty of an offence.

(9) Nothing in this section may compel the production of a document which is subject to legal professional privilege.

(10)¹⁰ ¹¹The Central Bank may exercise the power conferred by this section in relation to any employer.

29. RIGHT OF ENTRY TO OBTAIN INFORMATION.

An officer or agent of the Central Bank may, on producing evidence of his authority, enter any premises occupied by a person on whom a notice has been served

¹⁰ Section 28 Subsection (10) inserted by No. 4 of 2002, s. 5.

¹¹ Section 28 Subsection (10) inserted by No. 4 of 2002, s. 5.

under Section 28 for the purpose obtaining the information or documents required by that notice and of exercising the powers conferred by this Part.

30. NO NOTICE IN CASE OF URGENCY.

Where the Central Bank has reasonable cause to believe that a notice served under Section 28 –

- (a) would not be complied with; or
- (b) that any documents to which the notice would relate, would be removed, tampered with or destroyed,

an officer or agent of the Central Bank may, on producing evidence of his authority, entity, during daylight hours, any business premises occupied by an entity on which such notice could be served, for the purpose of obtaining information or documents that could be required by such notice.

31. INVESTIGATIONS ON BEHALF OF THE CENTRAL BANK.

(1)¹² ¹³Where it appears to the Central Bank desirable to do so in the interests of members or potential members of an ASF, the Central Bank may appoint one or more competent persons, by an instrument in writing, to investigate and report to the Central Bank on –

- (a) the nature, conduct or state of a licence holder's business or any particular aspect of it; or
- (b) the ownership or control of the licence holder,

the Central Bank shall give written notice of any such appointment to the licence holder concerned.

(2) Where a person appointed under Subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate –

- (a) the business of any body corporate which is or has at any relevant time been –
 - (i) a holding company, subsidiary or related corporation of the licence holder; or
 - (ii) a subsidiary or relevant corporation of a holding company of licence holder; or
 - (iii) a holding company of a subsidiary of the licence holder; or
 - (iv) a body corporate which is a shareholder controller or indirect controller of the licence holder, either alone or with any associates, is entitled to exercise or control the exercise of more than 15% of the voting power at a general meeting; or

¹² Section 31 Subsection (1) amended by No. 4 of 2002, s. 6.

¹³ Section 31 Subsection (1) amended by No. 4 of 2002, s. 6.

(b) or any other business including a partnership or joint venture in which that licence holder is or has been at any relevant time a participant.

(3) Where a person appointed under Subsection (1) decides to investigate the business of any entity by virtue of Subsection (2), he shall give written notice to the Central Bank and the entity to that effect.

(4) It shall be the duty of every person who is an officer, agent, banker, auditor or lawyer of an entity which is under investigation (whether by virtue of Subsection (1) or (2)), any person appointed to make a report in respect of that entity under Subsection (1) and anyone who is a shareholder controller or indirect controller in relation to the entity –

- (a) to produce to the person appointed under Subsection (1) within such time and at such place as he may require, all documents relating to the licence holder concerned which are in its custody or power; and
- (b) to attend before the person so appointed, to answer questions in relation to the entity, at such time and place as he may require; and
- (c) otherwise to give the person so appointed all assistance in connection with the investigation which it is reasonably able to give,

and the person may take copies of or extracts from any documents produced to him under Paragraph (a).

(5) The provisions of this section shall apply to a former licence holder as they apply to a current licence holder.

(6) For the purpose of exercising his powers under this section, a person appointed under Subsection (1) may enter any premises occupied by an entity which is being investigated by him under this section, but he shall not do so without giving prior notice in writing to that entity unless he has reasonable cause to believe that where such a notice were given, any documents whose production could be required under this section would be removed, tampered with or destroyed.

(7) A person exercising powers by virtue of an appointment under this section shall, where so required, produce a copy of the instrument of his appointment as evidence of his authority.

(8) An entity who –

- (a) without reasonable excuse, fails to produce any documents which it is his duty to produce under this section; or
- (b) without reasonable excuse, fails to attend before the person appointed under Subsection (1) when required to do so; or
- (c) without reasonable excuse, fails to answer any question which is put to him by a person so appointed with respect to a licence holder which is under investigation or a body which is being investigated by virtue of this section; or
- (d) intentionally obstructs a person in the exercise of the powers conferred by Subsection (6),

is guilty of an offence.

(9) Nothing in this section shall comply the production of a document which is subject to legal professional privilege.

32. OBSTRUCTION OF INVESTIGATION.

(1) An entity which knows or suspects that an investigation is being or is likely to be carried out under Section 31 is guilty of an offence where it –

- (a) falsifies, conceals, destroys or otherwise disposes of; or
- (b) causes or permits that falsification, concealment, destruction or disposal of,

documents which it knows or suspects are or would be relevant to such an investigation, unless it proves that it had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person or an officer of an entity which –

- (a) assaults, resists or obstructs or allows the assault, resistance or obstruction of an authorized officer or agent of the Central Bank in the exercise of his powers or the discharge of his duties under this Part; or
- (b) fails or refuses to answer any question put to it by an authorized officer or agent of the Central Bank, or gives a false or misleading answer to any such question; or
- (c) fails or refuses to comply with a request of an authorized officer or agent; or
- (d) when required to furnish information under this Act by an authorized officer or agent –
 - (i) fails or refuses to give the information; or
 - (ii) gives false or misleading information; or
- (e) fails or refuses, with reasonable excuse (proof of which is on the entity) –
 - (i) to produce any books, account or record that it is required to produce under this Act by an authorized officer or agent; or
 - (ii) to allow an authorized or agent to make copies of or take extracts from any such book, account or record; or
- (f) directly or indirectly prevent any person from appearing before or being questioned by an authorized officer or agent; or
- (g) uses any threatening, abusive or insulting language to an authorized officer or agent while he is carrying out an authorized inspection under this Act; or
- (h) in any other way obstructs the Central Bank's investigative powers under this section,

is guilty of an offence.

33. FALSE AND MISLEADING INFORMATION.

An entity, which knowingly or recklessly provides the Central Bank, an authorized officer or agent of the Central Bank or any other person with information which is false or misleading in a material particular, is guilty of an offence where the information is provided –

- (a) in purported compliance with requirement imposed by or under this Act; or
- (b) otherwise than as mentioned in Paragraph (a) but in circumstances in which the entity providing the information intends or could reasonably be expected to know, that the information would be used by the Central Bank for the purpose of exercising its functions under this Act.

34. DUTY TO GIVE INFORMATION.

(1) A licence holder is under a duty promptly to provide the Central Bank with any information in its possession where the licence holder knows or has reasonable cause to believe –

- (a) that the information is relevant to the exercise by the Central Bank of its functions under this Act in relation to the licence holder; or
- (b) that the withholding of the information is likely to result in the Central Bank being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the licence holder.

(2) A person who is or has been –

- (a) an officer of a licence holder; or
- (b) an auditor of a licence holder; or
- (c) an auditor of a body corporate in the licence holder's group; or
- (d) a person appointed to make a report under this Act,

is under a duty promptly to inform the Central Bank of any matter where he has reasonable cause for believing that –

- (e) the licence holder is insolvent, or there is a significant risk that the licence holder will become insolvent; or
- (f) an existing or proposed state of affairs may materially prejudice the interests of members of an ASF.

(3) In relation to an auditor under Subsection (2), this subsection applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the licence holder and any group to which the licence holder belongs.

(4) No duty to which a person specified in this section may be subject shall be regarded as contravened by reason of his capacity as auditor and which relates to the business or affairs of the licence holder and any group to which the licence holder belongs.

(5) A person who contravenes this section is guilty of an offence.

35. ACTION AS RESULT OF INVESTIGATION .

Following the conduct of an investigation and the issue of written summary and conclusions under this Part, the Central Bank is entitled to issue directions as it determines necessary to overcome breaches of this Act or to protect the interests of members.

36. DUTY TO NOTIFY THE CENTAL BANK OF SIGNIFICANT ADVERSE EVENTS.

(1) If a licence holder, officer of a licence holder, or auditor of an ASF becomes aware of the occurrence of an event having a significant adverse effect on the financial position of an ASF licence holder or any adverse effect on the interests of members of an ASF, the licence holder, officer or auditor shall give written notice to the Central Bank setting out particulars of the event no later than third business day after becoming aware of the event.

(2) An event has a significant adverse effect if, as a result, members benefits will be materially written down in either the current or future accounting periods of the ASF.

(3) A person who contravenes this section is guilty of an offence.

PART 6. – OWNERSHIP AND CONTROL OF LICENCE HOLDERS.**37. OBJECTIONS TO SHAREHOLDERS CONTROLLERS OR INDIRECT CONTROLLERS OR INCREASES IN STAKE BY THE CENTRAL BANK.**

(1) An entity shall not become a shareholder controller or an indirect controller of a licence holder or increase its stakes in a licence holder incorporated in Papua New Guinea beyond the maximum specified by the Central Bank pursuant to Subsection (2) unless –

- (a) notification has been provided to the Central Bank of the intention of the entity; and
- (b) the Central Bank has not issued a notice under Section 24 with 14 days of receiving notification under Paragraph (a) objecting to the entity becoming such a controller or increasing its stake.

(2) The Central Bank may issue a notice of objection in accordance with Subsection (1)(b) where it considers –

- (a) that the entity does not meet the fit and proper person criteria set out Schedule 2; or
- (b) that an officer of the entity does not meet the fit and proper person criteria set out in Schedule 2; or
- (c) the interests of members of an ASF would be threaten by the entity becoming a shareholder controller or indirect controller or increasing its stake.

(3) Any notification under Subsection (1)(a) shall is notification of intention to become a shareholder controller or indirect controller of a licence holder; or

38. OBJECTIONS BY THE MINISTER IN THE NATIONAL INTEREST.

(1) Where –

- (a) a notification specified in Section 37(1)(a) is notification of intention to become a shareholder controller of a licence holder; or
- (b) a notification specified in Section 37(1)(a) is notification of intention to increase a stake in a licence holder beyond that permitted under this Part; or
- (c) the Central Bank becomes aware that an entity has become a shareholder controller or an indirect controller of a licence holder or has increase its stake in a licence holder beyond that permitted under this Part, in either case without the required notice under Section 37(1)(a),

the Central Bank shall promptly notify the Minister.

(2) After receiving a notification from the Central Bank under Subsection (1), the Minister may direct the Central Bank to issue a notice of objection, with or

without reasons, to the entity in respect of the stake referred to in the notification where it appears to the Minister that to do so would be in the national interest.

(3) The Minister may give reason for a direction under Subsection (2).

(4) The Minister may direct the Central Bank to require such further information and documents as he may reasonably require in connection with the matter from the entity which is the subject of the notification.

(5) Any direction under Subsection (2) shall be given before the end of the period of three (3) months beginning on the day on which the notification from the Central Bank was received by the Minister and, where the Minister has directed the Central Bank under Subsection (4), before the end of whichever of the following first expires –

- (a) the period of three (3) months beginning with the day on which the additional information or documents are provided to the Minister; or
- (b) the period of six (6) months beginning with the day on which the notification was received by the Minister.

(6) The Central Bank shall promptly serve a written notice of objection on that entity where directed by the Minister.

(7) A notice of objection served under this section shall have the effect of terminating any right to make representation under Section 24.

39. OBJECTIONS TO EXISTING SHAREHOLDERS CONTROLLERS AND INDIRECT CONTROLLERS.

Where it appears to the Central Bank that an entity who is a shareholder controller or an indirect controller of a licence holder does not or no longer meets the requirements set out in this Act to be such a controller, the Central Bank may, by a written notice under Section 24, object to it being such a controller.

40. CONTRAVENTIONS BY SHAREHOLDER CONTROLLERS AND INDIRECT CONTROLLERS.

(1) Subject to Subsection (2), an entity, which contravenes this Act by failing to give the notice required by Section 37, is guilty of an offence.

(2) An entity is not guilty of an offence under Subsection (1) where it shows that it did not know of the acts or circumstances by virtue of which it became a shareholder controller or indirect controller, or increased its stake in the licence holder beyond the maximum permitted by the Central Bank, but where any entity becomes a shareholder controller or indirect controller or increases its stake without such knowledge and subsequently becomes aware of the fact, it is guilty of an offence unless it gives the Central Bank written notice of the fact within 14 days of becoming aware of that fact.

41. REMEDIAL ORDERS.

(1) The powers conferred by this section are exercisable where an entity has contravened this Part by becoming or continuing to be a shareholder controller or indirect controller or increasing its stake beyond the maximum specified by the Central Bank after being served with a notice of objection to its becoming or remaining a shareholder controller or indirect controller or increasing its stake beyond the maximum specified by the Central Bank.

(2) Where an entity contravenes this Part by becoming or continuing to be a shareholder controller or increasing its stake beyond the maximum specified by the Central Bank, the Central Bank may, by notice in writing served on the entity concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to restrictions as notified by the Central Bank including all or any of the following –

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer or agreement to transfer the right to be issued with them shall be void; and
- (b) no voting right shall be exercisable in respect of the shares; and
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; and
- (d) except in a liquidation, no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.

(3) Where an entity contravenes this Part by becoming or continuing to be an indirect controller, the Central Bank may, by written notice to that entity, require that entity to take such steps as are necessary to ensure that the entity ceases to be an indirect controller.

(4) A copy of the notice served on the entity concerned under Subsections (2) and (3) shall be served on the licence holder to whose shares it relates and, where it relates to shares held by an associate of that entity, or that associate.

(5) Without prejudice to Subsections (2) and (3), where an entity contravenes this Part, the National Court may, on application by the Central Bank, make such orders as it considers appropriate for the purpose of ensuring that that situation ceases to exist.

(6) Orders of the National Court under Subsection (5) may include –

- (a) in the case of a shareholder controller –
 - (i) an order directing the disposal of shares; or
 - (ii) an order restraining the exercise of any rights attached to shares; or
 - (iii) an order prohibiting or deferring the payments of any sums due an entity in respect of shares held by the entity; or

- (iv) an order that any exercise of rights attached to shares be disregarded; or
- (b) in the case of an indirect controller, an order to ensure the entity ceases to be an indirect controller.
- (7) Subsection (6) does not, by implication, limit Subsection (5).
- (8) In addition the powers of the National Court under Subsections (5) and (6), the Court –
 - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any entity to do or refrain from doing a specified act; and
 - (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.
- (9) The National Court may, before making an order under this section, direct that notice of the application be given to such entities as it thinks fit or to be published in such manner as it thinks fit, or both.
- (10) The National Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.
- (11) This section applies –
 - (a) to all the shares in the licence holder of which the entity in question is a shareholder controller which are held by it or any associate of it and were not so held immediately before becoming a shareholder controller of the licence holder; and
 - (b) where the entity in question became a shareholder controller of a licence holder as a result of the acquisition by it or any associate of it, of shares in another body corporate, to all the shares in that body corporate which are held by it or any associate of it and were not so held before it became a shareholder controller of the licence holder.

42. RESTRUCTURING OF LICENCE HOLDERS.

- (1) It is an offence under this Act where –
 - (a) a licence holder –
 - (i) enters into an arrangement or agreement for –
 - (A) any sale or disposal of its business or a material part of it by amalgamation or otherwise; or
 - (B) the carrying on of business in partnership with another person; or
 - (C) the reconstruction or amalgamation of an ASF or merger of an ASF with another ASF, superannuation fund or entity; or

- (ii) effects a reconstruction of the licence holder; and
- (b) the Central Bank did not give prior consent in writing.

(2) Any arrangement, agreement or reconstruction referred to in Subsection (1), and any such sale or disposal or acquisition in pursuance of any such arrangement or agreement, entered into –

- (a) without the prior written consent of the Central Bank; or
- (b) that is not in accordance with any condition attached to such consent, is void and of no effect.

(3) The Central Bank may withhold its consent unless the licence holder satisfied the Central Bank that the arrangement, agreement or reconstruction would not be contrary to the interests of members of an ASF.

PART 7. – PRUDENTIAL SUPERVISION.

43. THE CENTRAL BANK MAY MAKE PRUDENTIAL STANDARDS.

(1) The Central Bank may, in writing, determine prudential standards in relation to prudential matters to be complied with by –

- (a) ASFs or licence holders; or
- (b) a specified class of ASFs or licence holders; or
- (c) one or more specified ASFs or licence holder; or
- (d) shareholder controllers; or
- (e) indirect controllers; or
- (f) the group of which the licence holder is a part.

(2) A prudential standard may impose different requirements to be complied with in different situations or in respect of different activities.

(3) The Central Bank may, at any time determine, vary or revoke a prudential standard.

(4) A prudential standard –

- (a) comes into force –
 - (i) unless Subparagraph (ii) applies –on the day on which the determination of the prudential standard is made; or
 - (ii) if that determination specifies a later day as the day on which the prudential standard comes into force –on the day so specified; and
- (b) continues in force until it is revoked.

(5) The Central Bank shall circulate to all licence holders and shall publish in such manner as it thinks fit, each prudential standard, and any variation or revocation of such standard.

(6) Where the Central Bank considers that a prudential standard or any variation or revocation of a prudential standard contains commercially sensitive or confidential information –

- (a) the Central Bank is not required to circulate or publish that information under Subsection (5); and
- (b) the Central Bank may include some or all of that information in the circulation or publication under Subsection (4) where the Central Bank considers it appropriate to do so.

(7) A failure to comply with this section does not affect the validity of any action taken by the Central Bank.

44. SCOPE OF PRUDENTIAL STANDARDS.

The Central Bank may issue prudential standards applicable to the operation of ASFs, licence holders and the officers of licence holders, and any other entity for the purposes of this Act, which it considers necessary to implement, and ensure compliance with, the provisions of this Act.

45. PUBLIC INTEREST PROVISIONS.

The regulations may prescribe matters in relation to trade practices, disclosure of information to members, pricing or consumer protection matters to be complied with by –

- (a) ASFs or licence holders; or
- (b) a specified class of ASFs or licence holders; or
- (c) one or more specified ASFs or licence holders;
- (d) share holder controller; and
- (e) indirect controllers.

46. PART NOT TO LIMIT OPERATION OF OTHER PROVISIONS.

Nothing in this Part is intended to limit the operation of any other provisions of this Act or of the *Central Banking Act 2000*.

47. INVESTMENT GUIDELINES.

The Central Bank may issue and publish in the National Gazette investment guidelines in relation to the investments by licence holders on behalf of ASFs and such investment guidelines the binding on all licence holders in the management of investment portfolios of ASFs.

PART 8. – DUTIES OF TRUSTEES.

48. RESPONSIBILITIES FOR APPOINTEES.

(1) A licence trustee that appoints an entity as a –

- (a) licensed investment manager; or
- (b) licensed fund administrator,

to provide services to an ASF is vicariously liable for the actions of the entity in relation to the ASF (whether or not those actions constitute an offence).

(2) No provision, contained in the governing rules of an ASF or in any service contract entered into by the licensed trustee on behalf of the ASF, may derogate or diminish the responsibilities of a licensed trustee under this Act, including the delegation by a licensed trustee or to another licence holder.

49. REGISTER OR MEMBERS.

(1) The licensed trustee shall ensure that the licensed fund administrator appointed to the ASF establishes and maintains a register of members on behalf of the licensed trustee.

(2) The register of members shall be kept at the registered officer of the licensed fund administrator and made available to the licensed trustee on demand.

(3) The register of members shall include the following –

- (a) details of every employer contributing to the ASF; and
- (b) the name and address, gender, date of birth, marital status and wage or salary per annum of each member; and
- (c) rates of contribution payable by the employer and the employee as a member of the ASF; and
- (d) the total contributions paid as at the last preceding quarter; and
- (e) any other information the Central Bank may require as set out in the prudential standards.

(4) The register of members of an existing ASF shall be established as at the beginning of the initial accounting period and, for the purposes of this Act, this shall be the date of the establishment of the register.

(5) On termination of the appointment of the licensed fund administrator, for any reason, the register of members shall be immediately provided to the licensed trustee.

49A. RETIREMENT COUNSELLING.

¹⁴All ASFs shall provide for counselling of members prior to retirement in a form satisfactory to the Central Bank and in accordance with any regulations made in relation thereto.

49B. INDUSTRY COMPLAINTS BODY.

¹⁵All ASFs shall subscribe to an industry funded complaints resolution mechanism to the satisfaction of the Central Bank.

¹⁴ Section 49A Inserted by No. 4 of 2002, s. 7.

¹⁵ Section 49B Inserted by No. 4 of 2002, s. 7.

PART 9. – DUTIES AND LIABILITIES OF DIRECTORS OF LICENCE HOLDERS.

50. DUTY OF DIRECTORS.

(1) A director of a licence holder has duty to the members of an ASF to take reasonable care, and use due diligence, to see that the investment, administration and management of the property of an ASF –

- (a) complies with the provisions of this Act; and
- (b) complies with all relevant prudential standards issued by the Central Bank; and
- (c) gives priority to the interests of members and prospective members of an ASF.

(2) For the avoidance of doubt, it is declared that, in the event of conflict between the interests of members and prospective members of an ASF and the interests of shareholders of a licence holder, a director's duty is to take reasonable care, and use due diligence, to ensure that the licence holder gives priority to the interests of members and prospective members of an ASF over the interests of shareholders.

(3) A director of a licence holder does not commit a breach of duty because of the doing of an act by the licence holder which permitted under this Act.

(4) If –

- (a) in respect of any act or omission of a licence holder, a director of the licence holder is guilty of a breach of the duty imposed by Subsection (1); and
- (b) the act or omission of the licence holder results in a loss to an ASF,

the director is liable to pay the licence holder an amount equal to the amount of the loss, as determined by a court of competent jurisdiction.

(5) If two or more persons are liable under Subsection (4) in relation to the same act or omission, the liability of those persons are joint and several.

(6) An action for recovery under Subsection (4) against a director may be brought –

- (a) by the licence holder; or
- (b) by the members of the ASF.

(7)¹⁶ ¹⁷A licence holder shall obtain and maintain professionally indemnity insurance to the satisfaction of the Central Bank.

¹⁶ Section 50 Subsection (7) inserted by No. 4 of 2002, s. 8.

¹⁷ Section 50 Subsection (7) inserted by No. 4 of 2002, s. 8.

51. LIABILITY OF DIRECTORS.

If –

- (a) the Central Bank has given a notice to a licence holder in respect of a contravention of this Act; and
- (b) the contravention has resulted in a loss to the members of an ASF; and
- (c) the licence holder has failed to comply with the notice within the period specified in it,

the persons who were the directors of the licence holder when the contravention occurred are jointly and severally liable to pay the licence holder an amount equal to the amount of the loss, as calculated by a court of competent jurisdiction.

52. THE CENTRAL BANK'S POWER TO SUE IN THE NAME OF THE COMPANY.

If the Central Bank considers that it is in the interest of the members of an ASF to do so, the Central Bank may bring an action against a director in the name, and for the benefit of an ASF, for the recovery of an amount that the licence holder is entitled to recover.

PART 10. – LODGEMENT OF RETURNS AND REPORTS AND DUTY TO MAINTAIN INFORMATION.

53. LICENSED TRUSTEE TO LODGE ANNUAL RETURNS.

(1) In this section “accounting period” in relation to a licensed trustee, means the period that it is the accounting period for the trustee under the *Companies Act 1997*.

(2) A licensed trustee shall, within five (5) months after the end of its accounting period, give that the Central Bank in respect of that period –

- (a) returns, in a form in accordance with the relevant prudential standards; and
- (b) a certificate by the directors of the licensed trustee, in the prescribed form –
 - (i) certifying the methods used to value the property of the ASF; and
 - (ii) identifying the property vested in the licensed trustee at the end of that period; and
 - (iii) certifying compliance or non-compliance as the case may be, by the ASF, the licensed trustee, the licensed investment manager and licensed fund administrator, with the applicable prudential standards and with the licensed trustee’s investment strategy.

(3)¹⁸ ¹⁹The Central Bank may, by notice in writing, require a trustee to lodge with a return a report by an approved auditor or such a person of a specified class on specified matters.

54. RETURNS BY LICENSED INVESTMENT MANAGERS AND LICENSED FUND ADMINISTRATORS.

(1) The Central Bank may, by written notice under Section 24, require a licensed investment manager or licensed fund administrator to lodge such returns, detailed in the notice, as the Central Bank requires in relation to on ASF.

(2) A notice issued under Subsection (1) may require a report by an approved auditor or such other person of a specified class, on specified matters to be lodged with the return.

55. LODGEMENT OF STATISTICAL RETURNS.

(1) A licensed trustee shall prepare and lodge statistical returns with the Central Bank in respect of an ASF.

(2) Subject to Subsection (3), a statistical return, is to be lodged in the form approved and for the period specified by prudential standard (“the reporting period”).

¹⁸ Section 53 Subsection (3) substituted by No. 4 of 2002, s. 9.

¹⁹ Section 53 Subsection (3) substituted by No. 4 of 2002, s. 9.

(3) Subject to Subsection (4), the licensed trustee shall lodge statistical returns within one (1) month of the end of the reporting period.

(4) The Central Bank may extend the period of time for lodging the returns under this section by not more than two (2) months.

56. DISCLOSURE OF INFORMATION TO MEMBERS.

(1) A licensed trustee shall provide to each member of an ASF, within five (5) months of the end of the accounting period, a written statement of the financial and management performance of the ASF in respect of the relevant year of income.

(2) Member's statements issued under Subsection (1) shall be in the form and contain the information prescribed by regulation or prudential standards.

(3) A licensed trustee shall, on request from a member, provide access to –

- (a) any audit reports or statement; or
- (b) any actuary's reports or statements; or
- (c) the governing rules of the ASF; or
- (d) written information on approved ASF policies and procedures for the handling of member inquiries, complaints and for the resolution of disputes; or
- (e) details of insurance or other indemnity arrangements in relation to loss, theft and fraud; or
- (f) annual audited financial statements, balance sheet and trading result; or
- (g) a copy of the licensed trustee statement, auditor statement, certification and any qualification made by the auditor.

(4) A person who fails to comply with this section is guilty of an offence.

57. PROTECTION OF INFORMATION.

(1) A licensed trustee shall ensure that any service contract it enters into with another licence holder shall require that licence holder, where relevant –

- (a) to provide appropriate information as to the making of, and return on, the investments of an ASF; and
- (b) to provide such information as is necessary to enable the licensed trustee to assess the capability of the licensed investment manager to manage the investments of the ASF; and
- (c) to provide such information as is necessary to enable the licensed trustee to assess the capability of the licensed fund administrator to perform the administration services of the ASF; and
- (d) to provide any other information to enable the licensed trustee to fulfil its obligations under this Act.

(2) A service contract under Subsection (1) shall also provide that the licensed investment manager or licensed fund administrator, on termination of the contract, to immediately hand to the licensed trustee all information and documentation in respect of members and member's contributions and entitlements in an ASF.

(3) If a licensed trustee terminates a service contract referred to in Subsection (1), it shall provide written notice of that action to the Central Bank.

(4) Despite anything in the governing rules to the contrary, provision of a service contract between a licensed trustee and another licence holder that purports to exempt the licence holder from liability for negligence, or to limit that liability, is void.

(5) The provisions of this section apply to any service contract entered into between a licensed investment manager and a licensed fund administrator.

(6) An entity, who intentionally or recklessly contravenes this section, is guilty of an offence.

58. ADMINISTRATION AND ACCOUNTING STANDARDS OF LICENCE HOLDERS.

(1)²⁰ ²¹Financial statements of a licence holder, including statements as to the licence holder's compliance with this Act, shall be prepared by an approved auditor in accordance with the *Companies Act 1997* or in accordance with such higher standards as the Central Bank may require, and the approved auditor shall provide a copy of their report to the Central Bank together with a copy of any other comments made to the licence holder by the approved auditor.

(2) An ASF in receipt of public sector contributions is not subject to audit by the Auditor-General except in the exercise of the Auditor-General's power under Section 3(3) of the *Audit Act 1989*.

(3) The licence holder shall maintain proper accounting and administrative systems an arrangement for the benefit of members until entitlements are paid out to members.

(4) In addition to any obligation to maintain records under any other law, licence holder shall keep and maintain full and proper records relating to an ASF including –

- (a) minutes of meetings; and
- (b) changes to licensed trustee and changes of names of licensed trustees; and
- (c) changes to licensed investment managers and licensed fund administrators and changes of names of licences investment managers and licensed fund administrators; and
- (d) copies of all reports and disclosures to members; and

²⁰ Section 58 Subsection (1) substituted by No. 4 of 2002, s. 10.

²¹ Section 58 Subsection (1) substituted by No. 4 of 2002, s. 10.

s. 58.

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- (e) copies of annual financial reports, which shall be produced in audited form within three (3) months of the end of year of income.

**PART 11. – POWER TO REMOVE OR SUSPEND A LICENCE HOLDER AND
POWER TO APPOINT STATUTORY MANAGER.**

59. APPOINTMENT OF STATUTORY MANAGER.

(1) Where –

- (a) a licence holder informs the Central Bank that it considers that it is likely to become unable to meet its obligations or that it is about to suspend payment of entitlements to members of the ASF; or
- (b) the Central Bank considers that the licence holder is likely to become unable to meet its obligations or is about to suspend payment of entitlements to members of the ASF; or
- (c) a licence holder becomes unable to meet its obligations or suspends payment of entitlements to members of the ASF; and
- (d) a licence holder fails to implement or observe or breaches a prudential standard or a condition imposed on its licence such that, in the opinion of the Central Bank, the interests of the members of the ASF are materially threatened,

the Central Bank may, by written notice, either –

- (e) remove or suspend the licence holder; or
- (f) appoint a statutory manager to the licence holder.

(2) Where a licence holder is removed or suspended under Subsection (1), the Central Bank shall, by written instrument, immediately appoint another licence holder as acting licence holder in place of the removed or suspended licence holder, for such period as is specified in the instrument.

(3) The Central Bank shall cause the notice of remove or suspension of a licence holder and the appointment of the acting licence holder to be published in the National Gazette and may also cause the notice to be published in any other form it considers appropriate.

(4) The Central Bank may determine the terms and conditions of the appointment of the acting licence holder, including any fees paid to it, such determination has effect despite anything in –

- (a) any other provision of this Act; and
- (b) the regulations; and
- (c) any other law; and
- (d) the ASF's governing rules.

(5) The Central Bank may terminate the appointment of the acting licence holder at any time.

(6) The Central Bank may give written directions to the acting licence holder to do, or not to do, one or more specified acts or things.

(7) Where an acting licence holder has been appointed under this section, the Central Bank may formulate a scheme for the winding up or dissolution, or both, of the licence holder or the ASF.

60. RESPONSIBILITIES OF STATUTORY MANAGER.

(1) Where the Central Bank appoints a statutory manager, the Central Bank shall ensure that the statutory manager has control of the operations of the licence holder until –

- (a) the Central Bank considers that it is no longer necessary for the statutory manager to remain in control of the licence holder; or
- (b) the Central Bank determines, in consultation with the statutory manager, if applicable, that the licence holder is insolvent and is unlikely to be returned to solvency within a reasonable time.

(2) On making a determination under Subsection (1), the Central Bank shall, where applicable, request the statutory manager to do one or more of the following –

- (a) arrange for the orderly transfer of member entitlements to another ASF; or
- (b) appoint a new licence holder; or
- (c) apply to the court for the licence holder to be wound up under the *Companies Act 1997*.

(3) Where the requirements under Subsections (1) and (2) are satisfied, the Central Bank may, by instrument in writing, terminate the control of the licence holder by a statutory manager.

61. POWERS AND FUNCTIONS OF STATUTORY MANAGER.

(1) A statutory manager has the powers and functions of the licence holder to which is has been appointed.

(2) A statutory manager may, for the purposes of this, Part require the licence holder or a person who has at any time been an officer of the licence holder to give the statutory manager information relating to the ASF that the statutory manager requires.

(3) A licence holder or any other person, who fails to comply with any requirement to provide information under Subsection (2), is guilty of an offence.

(4) A statutory manager may, on any terms and conditions that he considers appropriate, sell or otherwise dispose of the whole or any part of the property of the ASF or the licence holder to protect the entitlements of the members of the ASF.

62. LIABILITIES AND DUTIES OF STATUTORY MANAGERS.

(1) Where an ASF incurs any loss because of any fraud, dishonesty, gross negligence or wilful failure to comply with this Act by the statutory manager, the statutory manager is liable for the loss.

(2) A statutory manager is not liable for a loss that is not a loss incurred because of fraud, dishonesty, gross negligence or wilful failure to comply with this Act.

(3) The statutory manager shall provide details of the loss in a written report to the Central Bank, but failure to do so does not make the statutory manager liable for the loss.

(4) A statutory manager is not to be taken to be a director for the purpose of the *Companies Act 1997* or this Act.

63. EXTERNAL ADMINISTRATOR IN CONTROL – ADDITIONAL DUTIES.

(1) A person who is an external administrator of an ASF shall give to the Central Bank a written report showing how the control of the ASF is being carried out where the Central Bank requests that such a report be provided to it.

(2) A person who is an external administrator of an ASF shall, on termination of his appointment, give to the Central Bank a written report showing how the control of the ASF was carried out over the period of the external administrator's appointment.

(3) The Central Bank may give an external administrator of an ASF a direction relating to the control of the ASF and may alter such direction and, where a direction (including an altered direction) is given to an external administrator, the external administrator shall –

- (a) act in accordance with the direction; or
- (b) immediately provide to the Central Bank information relating to control of the ASF and request the Central Bank to alter the direction.

(4) Where an external administrator of an ASF requests the Central Bank to alter a direction and the Central Bank, after considering the request, confirms the direction, the external administrator shall act in accordance with the direction.

64. TERMINATION OF APPOINTMENT OF EXTERNAL ADMINISTRATOR.

(1) Where an external administrator contravenes a requirement under this Act, the Central Bank may terminate the appointment of the external administrator.

(2) The terms and conditions of the appointment of the external administrator may provide for termination in circumstances in addition to those mentioned in Subsection (1).

65. EFFECT ON EXTERNAL ADMINISTRATION OF APPOINTMENT OF STATUTORY MANAGER.

(1) The appointment of an external administrator of an ASF is terminated when a statutory manager takes control of an ASF.

(2) An external administrator shall not be appointed while a statutory manager is in control of an ASF unless the Central Bank approves the appointment.

(3) Where a person purports to act as an external administrator of an ASF after the appointment of a statutory manager to that ASF, the acts of the external administrator are invalid and of no effect.

(4) The Central Bank shall inform the external administrator of an ASF that a statutory manager shall take control of the ASF as soon as possible after the decision that a statutory manager shall take control of an ASF is made, but failure to inform the external administrator does not affect the operation of this section.

66. EFFECT OF LEGAL PROCEEDINGS ON STATUTORY MANAGER.

(1) A person cannot begin or continue a proceeding in a court against a licensed trustee in its capacity as trustee of an ASF or a licence holder while a statutory manager is in control unless –

- (a) the court grants leave on the ground that the person would be caused hardship if leave were not granted; or
- (b) the Central Bank consents to the proceedings beginning or continuing.

(2) A person intending to apply for leave of the court under Subsection (1) shall give the Central Bank at least 10 days notice of the intention to apply, and the Central Bank may apply to the court to be joined as a party to the proceedings for leave.

(3) In this section, a reference to a proceeding against an ASF includes a reference to a cross claim or third party claim against an ASF.

67. STATUTORY MANAGER IN CONTROL NOT GROUNDS FOR DENIAL OF OBLIGATIONS.

(1) Subject to Subsection (2), the fact that a statutory manager has been appointed to a licence holder is not a ground for any other party to a contract to which the licence holder is a party –

- (a) to deny any obligations under that contract; or
- (b) to accelerate any debt under the contract; or
- (c) to close out any transaction relating to that contract.

(2) Regulations may prescribe circumstances under which Subsection (1) does not apply.

68. COSTS OF STATUTORY MANAGER.

The costs incurred by the Central Bank (including costs in the nature of remuneration and expenses) of appointing a statutory manager to control a licence holder are payable by the licence holder and are a debt due to the Central Bank.

69. CENTRAL BANK TO GIVE NOTICE OF STATUTORY MANAGEMENT.

Where the Central Bank appoints a statutory manager or terminates his appointment, the Central Bank shall cause notice of the appointment or termination to be published in the National Gazette.

PART 12. – PROVISIONS RELATING TO GOVERNING RULES OR AN ASF.**70. GOVERNING RULES TAKEN TO CONTAIN PROVISIONS.**

(1) If the governing rules of an ASF do not contain provisions to the effect of the covenants set out in Section 71, those governing rules are taken to contain covenants to that effect.

(2) To the extent of any inconsistency between this Act and the governing rules of an ASF, this Act shall apply.

71. THE COVENANTS.

²²(1) For the purposes of this section and Section 72, a reference to a licensed trustee includes a reference to a director of a licensed trustee.

(2) The covenants referred to in Section 70(1) are to covenants of the licensed trustee –

- (a) to act honestly in all matters concerning the ASF; and
- (b) to exercise, in relation to all matters affecting the ASF, the same degree of care, skill and diligence having regard to the level of knowledge and circumstances, as could be reasonably expected of a licensed trustee; and
- (c) to ensure that its powers are performed and exercised in the best interests of the members; and
- (d) to keep the money and other property of the ASF separate from any money and assets respectively that are held by the licensed trustee personally; and
- (e) not to enter into any contract, or do anything, that would prevent it from, or hinder it in, properly performing or exercising its functions and powers; and
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the ASF including, but not limited to, the following –
 - (i) the risk involved in making, holding and realising, and the likely return from, the ASF's investments having regard to its objectives and its expected cash flow requirements; and
 - (ii) composition of the ASF's investments as a whole including the extent to which the investment are diverse or involve the entity being exposed to risks from inadequate diversification; and
 - (iii) the liquidity of the ASF's investments having regard to its expected cash flow requirements; and

²² Section 71 Substituted by No. 4 of 2002, s. 11.

- (iv) the ability of the entity to discharge its existing and prospective liabilities; and
- (g) to provide for the full allocation of income of the ASF to members; and
- (h) to allow a member access to any information or any documents prescribed by regulation.
- (i) to use its best endeavours to ensure that employers contributing to the ASF comply with the requirements under the Act; and
- (j) to pay the legal costs of a Director of the trustee in relation to the performance of the trustee or Director's obligation in relation to the ASF.

(3) A provision referred to in Subsection (2)(e) does not prevent the licensed trustee from engaging or authorizing persons to do acts or things on behalf of the licensed trustee.

(4) The regulations may prescribe other provisions to be included in the governing rules of an ASF and, if the governing rules of such ASF do not contain a provision to the effect of the prescribed provisions, those rules are taken to contain a provision to that effect.

(5) A covenant by a licensed trustee that is to the effect of a covenant referred to in Subsection (1), or to the effect of a covenant prescribed by regulation, operates as a covenant by each of the directors of the licensed trustee to exercise a reasonable degree of care and diligence for the purposes of ensuring that the licensed trustee carries out the first-mentioned covenant, and operates as if the directors were parties to the governing rules.

(6) The reference in Subsection (5) to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a reasonable person in the position of a director of a licensed trustee would exercise in the circumstances.

72. PROHIBITED PROVISIONS.

(1) Unless otherwise permitted by this Act, a provision in the governing rules of an ASF is void if –

- (a) it purports to preclude the licensed trustee from being indemnified out of the property of the ASF in respect of any liability incurred while acting as licensed trustee of the ASF; or
- (b) it purports to allow the licensed trustee to obtain or secure financial accommodation on behalf of the ASF or the use the property of the ASF as security for the provision of financial accommodation either on its own account or on behalf of the ASF; or
- (c) it purports to allow the licensed trustee to lead to the members or any other person, moneys or property from the ASF, or to permit loans in existence at commencement of this Act to continue, unless otherwise permitted by this Act; or

(d) subject to Subsection (3), it limits the amount of an indemnity of the licensed trustee.

(2) A provision in the governing rules of an ASF is void in so far as it would have the effect of exempting the licensed trustee, or a director of the licensed trustee from, or indemnifying it against –

(a) liability for breach of trust if the licensed trustee or a director of a licensed trustee –

(i) fails to act honestly in a matter concerning the ASF; or

(ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the ASF, the degree of care and diligence that the licensed trustee was required to exercise; or

(b) liability for a monetary penalty under a court order.

(3) A director of the licensed trustee may be indemnified out of the assets of the ASF in accordance with provisions of the ASF's governing rules that comply with this section.

(4) This section has effect despite any provisions to the contrary continued in any law.

73. CHANGE OF LICENSED TRUSTEE.

(1) For the purposes of this section –

“previous trustee” means licensed trustee that is removed from its appointment as licensed trustee of the ASF;

“new trustee” means a licensed trustee subsequently appointed to the ASF, including an acting trustee, after the removal of the previous trustee.

(2) On and from the appointment of the new trustee –

(a) all property and rights of the previous trustee, wherever located, vest in the new trustee; and

(b) the new trustee becomes the successor in law to a previous trustee, unless otherwise prescribed by regulation.

(3) Notwithstanding Subsection (1), the following rights and liabilities remain rights and liabilities of the previous trustee –

(a) any right of a previous trustee to be paid fees for the performance of its functions before it ceased to be the trustee; and

(b) any right of a previous trustee to be indemnified for expenses it incurred before it ceased to be the trustee; and

(c) any liability for which a previous trustee could not have been indemnified out of the ASF's property if it had remained the ASF's trustee.

(4) On the from the appointment of the new trustee, a document –

(a) to which a previous trustee is a party, in which a reference is made to a previous trustee or under which a previous trustee has acquired or incurred a right, obligation of liability, or might have acquired or incurred a right, obligation of liability if it had remained the ASF's trustee; and

(b) that is capable of having effect after the appointment of a new trustee,

has effect as if the new trustee (and not the previous trustee) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.

(5) A previous trustee instrument continues to have effect according to its tenor on and from the appointment of the new trustee as if a reference in the instrument to a previous trustee were a reference to the new trustee.

(6) Where immediately before the appointment of the new trustee, proceedings (including arbitration proceedings) to which a previous trustee was a party were pending or existing in any court or tribunal, then the new trustee is substituted for a previous trustee as a party to the proceedings and has the same rights in the proceedings as the previous trustee.

(7) Where –

(a) land that is situated in any geographical area of Papua New Guinea, or an interest in such land, becomes land, or an interest in land, of the new trustee; and

(b) there is lodged with the Registrar of Titles a copy of the instrument appointing a new trustee or, if the appointment of the new trustee is by the Central Bank exercising its powers under this Act, a copy of the notice published in the National Gazette,

the officer with whom the instrument in Paragraph (a) is lodged may register the change of ownership of the land in the manner in which dealing in land or interests in land of that kind are registered.

PART 13. – INVESTMENT BY ASFS.**74. INVESTMENT RESTRICTIONS.**

(1) All ASF investments shall be conducted at arm's length.

(2) All ASF property shall remain unencumbered.

(3)^{23 24}The Investment Manager shall be responsible for the decisions as to the purchase or disposal of an investment of the fund, which must be made in conformity with this Act and any requirements of the Central Bank.

(4)^{25 26}The Trustee –

(a) may propose any purchase or disposal of an investment of the fund; and

(b) may refuse to implement any decision of the Investment Manager as to the purchase or disposal of an investment of the fund.

(5)^{27 28}The Investment Manager is not obliged to adopt or accept any proposal of the Trustee and shall exercise his own independent judgment in relation thereto.

(6)^{29 30}In the event that the Trustee refuses to implement any decision of the Investment Manager as to the purchase or disposal of an investment of the fund, or in the event of any other major disagreement between the Investment Manager and the Trustee, the Investment Manager and the Trustee shall each inform the Central Bank in writing within five working days of the fact and the reasons for the refusal or disagreement.

(7)^{31 32}Within ten working days of receiving the report under Subsection (6), the Central Bank shall inform the Investment Manager and the Trustee of what action, if any, it will take.

75. PROHIBITED ACTIVITIES OF AN ASF.

(1) Except as permitted by this Act, a licensed trustee, in its capacity as trustee of an ASF, shall not –

(a) lend money of the ASF to a member of the ASF or a relative of a member of the ASF; or

(b) intentionally acquire an asset from a member of the ASF or a relative of a member of the ASF; or

(c) obtain financial accommodation; or

²³ Section 74 Subsection (3) inserted by No. 4 of 2002, s. 12.

²⁴ Section 74 Subsection (3) inserted by No. 4 of 2002, s. 12.

²⁵ Section 74 Subsection (4) inserted by No. 4 of 2002, s. 12.

²⁶ Section 74 Subsection (4) inserted by No. 4 of 2002, s. 12.

²⁷ Section 74 Subsection (5) inserted by No. 4 of 2002, s. 12.

²⁸ Section 74 Subsection (5) inserted by No. 4 of 2002, s. 12.

²⁹ Section 74 Subsection (6) inserted by No. 4 of 2002, s. 12.

³⁰ Section 74 Subsection (6) inserted by No. 4 of 2002, s. 12.

³¹ Section 74 Subsection (7) inserted by No. 4 of 2002, s. 12.

³² Section 74 Subsection (7) inserted by No. 4 of 2002, s. 12.

- (d) maintain any existing financial accommodation; or
- (e) grant or permit to exist any security interest over any property of the ASF.

(2) Subsection (1)(c), (d) and (e) do not prohibit a licensed trustee in its capacity as trustee of an ASF from obtaining financial accommodation if –

- (a) the purpose of the financial accommodation is to enable the licensed trustee to make a payment of entitlements to a member which the licensed trustee is required to make by law or the governing rules of the ASF and which, apart from the financial accommodation, the licensed trustee would not be able to make; and
- (b) the period of the financial accommodation does not exceed 14 days in total including any extension, roll over or other concession allowed by the provider of the financial accommodation; and
- (c) if the financial accommodation were to take place, the total financial accommodation would not exceed 100% of the value of the assets of the ASF.

(3) An entity, which fails to comply with this section, is guilty of an offence.

PART 14. – MANDATORY CONTRIBUTIONS.**76. MINIMUM CONTRIBUTIONS BY EMPLOYER.**

(1)³³ ³⁴An employer referred to in Section 4(1)(a) shall, in respect of each of its employees continuously employed for a period of three months or more, make a contribution to an ASF at the rate, and computed from the date, prescribed by regulation.

(2) The contribution under Subsection (1) by an employer to an ASF in respect of an employee shall be made out of the property of the employer.

(3) The employer's liability to make a contribution under Subsection (1) is not affected by the basis on which the employee is paid (including daily, weekly, fortnightly or monthly).

(4) A provision in a contract of employment that allows an employer to make a contribution of less than the prescribed rate is void.

(5) An employer may make contributions in addition to the minimum rate prescribed.

(6) Regulations may prescribe a delay in the introduction of minimum contributions for non-citizens.

(7) An employer who fails to comply with this section is guilty of an offence.

77. CONTRIBUTIONS BY EMPLOYEE.

(1)³⁵ ³⁶Every employee continuously employed for a period of three months or more referred to in Section 4(1)(b) shall make a minimum contribution to an ASF at the rate prescribed by regulation.

(2) An employee may make contributions in addition to the rate prescribed.

(3)³⁷ ³⁸An employee may make voluntary contributions to an ASF.

(3)³⁹ [*Repealed.*]

(4)⁴⁰ ⁴¹The contributions of an employee under Subsections (1) and (3) shall be deducted directly from the employee's pay by the employer at the time of payment and paid by the employer to the ASF in accordance with Section 78.

(5)⁴² ⁴³An entity, who fails to comply with the section, is guilty of an offence.

³³ Section 76 Subsection (1) amended by No. 4 of 2002, s. 13.

³⁴ Section 76 Subsection (1) amended by No. 4 of 2002, s. 13.

³⁵ Section 77 Subsection (1) amended by No. 4 of 2002, s. 14.

³⁶ Section 77 Subsection (1) amended by No. 4 of 2002, s. 14.

³⁷ Section 77 Subsection (3) inserted by No. 4 of 2002, s. 14.

³⁸ Section 77 Subsection (3) inserted by No. 4 of 2002, s. 14.

³⁹ Section 77 Subsection (3) omitted by No. 4 of 2002, s. 14.

⁴⁰ Section 77 Subsection (4) inserted by No. 4 of 2002, s. 14.

⁴¹ Section 77 Subsection (4) inserted by No. 4 of 2002, s. 14.

⁴² Section 77 Subsection (5) inserted by No. 4 of 2002, s. 14.

(6)⁴⁴ ⁴⁵Regulations may prescribe a delay in the introduction of minimum contributions by non-citizens.

78. TIME WHEN CONTRIBUTIONS TO BE REMITTED TO ASF.

⁴⁶(1) Subject to Subsection (3), an employer shall remit its employer contributions to the ASF within 14 days of the end of each calendar month.

(2) Subject to Subsection (3), where an employer deducts employee contributions from pay, the employer shall remit those contributions to the ASF within 14 days of the date of deduction.

(3) Where the State is the employer –

(a) the fund to which the contributions are to be paid is DFRBF, the provisions of Subsections (1) and (2) do not apply; and

(b) the fund to which the contributions are to be paid is POSF, the provisions of Subsections (1) and (2) do not apply, and the State shall make contributions to POSF in accordance with Schedule 9.

(4) An entity, who fails to comply with Subsection (1) or (2), is guilty of an offence.

79. POWER TO RECOVER INTEREST ON DEFAULT.

Where an employer defaults in making any contributions required under this Part, the licensed trustee of the relevant ASF may, by written notice, require the employer to make payment of the outstanding contributions together with penal interest at the prescribed rate set out in the regulations from the date on which payment was due until the date of actual payment.

80. CALCULATION OF CONTRIBUTIONS.

Each contribution payable under this Part shall be calculated to the nearest toea, a half toea or more being counted at the next highest toea.

81. PAYMENT INTO ASF.

All contributions required to be made under this Act shall be paid to an ASF.

82. EMPLOYER NOT TO REDUCE WAGES ETC.

All employer shall not, by reason of its liability to pay mandatory contributions under this Act or its election to make voluntary contributions, reduce, directly or indirectly, the wages salary or other remuneration or benefits to which an employee is entitled under a contract of employment or any other law.

⁴³ Section 77 Subsection (5) inserted by No. 4 of 2002, s. 14.

⁴⁴ Section 77 Subsection (6) inserted by No. 4 of 2002, s. 14.

⁴⁵ Section 77 Subsection (6) inserted by No. 4 of 2002, s. 14.

⁴⁶ Section 78 Subsection (1) amended by No. 4 of 2002, s. 15; Substituted by No. 27 of 2001, s. 1.

83. DIFFERENT DEPARTMENTS COMBINED.

Where an employer consists of different departments or has branches, whether situated in the same place or in different places, all the departments and branches shall be treated as a single employer for the purposes of this Act.

84. CONTRIBUTIONS BETWEEN COMMENCEMENT OF THIS ACT AND THE CHANGE DATE.

(1) Notwithstanding the provisions of this Part, an employee or employer required to make mandatory contributions under this Part, who, at the commencement of his Act, is making contributions to an Existing Fund, may continue to make contributions to that Existing Fund until the Change Date.

(2) For the purposes of this section, the terms “Change Date” and “Existing Fund” shall have the meaning defined in Part 18.

PART 15. – ELECTION TO TRANSFER.

85. TRANSFER OF ENTITLEMENTS.

(1) An employer may elect to transfer member entitlements from on ASF to another ASF, by giving six month's notice in writing of the election to the licensed trustee of both ASFs.

(2) An employer shall inform the employees of the transfer and provide details of he new ASF to the employees when giving a notice under Subsection (1).

(3) A notice of election under Subsection (1) shall contain the following details –

- (a) the name and address of the employer; and
- (b) the names, address an other employment information, including pay details of each employee; and
- (c) the name and address of the licensed trustee of the current ASF; and
- (d) the name and address of the licensed trustee of the new ASF.

(4) On an election under Subsection (1) coming into effect –

- (a) the employer obliged to commence to make contributions to the new ASF and shall cease to make contributions to the previous ASF; and
- (b) the licensed trustee of the previous ASF shall procure the transfer of funds, representing the employee's accrued entitlements, to the new ASF.

(5)⁴⁷ ⁴⁸An election under Subsection (1) does not come into effect unless all contributions are padi up to date on the date of the transfer.

(6)⁴⁹ ⁵⁰A licence holder may not directly or indirectly offer or pay offer or pay any money or other inducement to an employer or employee for the purpose of influencing the employer to either exercise or decline to exercise the employer's rights under Subsection (1).

(7)⁵¹ ⁵²An employer shall give a notice under Subsection (1), if 90% of its employees who are members of an ASF, by election supervised b ythe Electoral Commission, vote to transfer to another ASF.

(8)⁵³ ⁵⁴An employer shall rescind any notice under Subsection (1) if, within 2 months of such notice, 90% of its employees who are members of the ASF, by election supervised by the Electoral Commission, vote to remain with the existing ASF.

⁴⁷ Section 85 Subsection (5) inserted by No. 4 of 2002, s. 16.

⁴⁸ Section 85 Subsection (5) inserted by No. 4 of 2002, s. 16.

⁴⁹ Section 85 Subsection (6) inserted by No. 4 of 2002, s. 16.

⁵⁰ Section 85 Subsection (6) inserted by No. 4 of 2002, s. 16.

⁵¹ Section 85 Subsection (7) inserted by No. 4 of 2002, s. 16.

⁵² Section 85 Subsection (7) inserted by No. 4 of 2002, s. 16.

⁵³ Section 85 Subsection (8) inserted by No. 4 of 2002, s. 16.

⁵⁴ Section 85 Subsection (8) inserted by No. 4 of 2002, s. 16.

86. CENTRAL BANK TO BE NOTIFIED OF TRANSFER.

The licensed trustee shall provide a copy of the notice of election issued under Section 85 to the Central Bank within 14 days of receipt of such notice.

87. MORATORIUM ON ELECTION.

⁵⁵An employer shall not, without first obtaining the written approval of the Central Bank, give a notice of election under Section 85 prior to the later of –

- (a) two years from the date when the employer commenced to make contributions to the ASF which the employer is leaving; and
- (b) one year from the commencement of this Act.

88. PROHIBITED TRANSFERS BY EMPLOYEES.

Subject to Section 90(1)(g) and (h), no employee shall have the right to elect to transfer its entitlements between ASFs.

89. PHASED TRANSFER ON ENTITLEMENTS.

(1) A licensed trustee of an ASF in receipt of a notice under Section 85 may apply to the Central Bank for a phase transfer of member entitlements.

(2) Where, on the application of a licensed trustee under Subsection (1), the Central Bank considers that a transfer may significantly affect remaining members of an ASF, the Central Bank may, by notice in writing, permit the licensed trustee to make phased transfers of member entitlements over such period as stated in the notice.

⁵⁵ Section 87 Substituted by No. 4 of 2002, s. 17.

PART 16. – RIGHTS OF MEMBERS.***Division 1.******Entitlements.*****90. PAYMENT OF ENTITLEMENTS.**

(1) A member, or in the case of a deceased member, his nominee, may withdraw the full amount standing to his credit in the ASF (or such other amount as is prescribed) –

- (a) on ceasing to be employed after attaining eligibility age; or
- (b) on attaining eligibility age having previously retired from employment; or
- (c) death; or
- (d) if permanently or totally incapacitated due to physical or mental infirmity in accordance with certification procedure prescribed in the regulations; or
- (e) subject to Subsection (2), if he has permanently emigrated from Papua New Guinea and evidence of which is provided to the satisfaction of the relevant licensed trustee; or
- (f) Subject to Subsection (2), if he is not a citizen, on his permanently leaving Papua New Guinea and evidence of which is provided to the satisfaction of the relevant licensed trustee; or
- (g) on termination of employment, if the member has not secured new employment and demonstrates to the satisfaction of the relevant licensed trustee a period of twelve months continuous unemployment; or
- (ga)⁵⁶ for two years from the commencement of this Act, on termination of employment if the Secretary to the Department of Personnel Management is satisfied that the member is retrenched pursuant to a *bona fide* public sector retrenchment program commencing before 1 January 2004; or
- (h) on termination of employment if the member secures new employment provided that the member's entitlement will either –
 - (i) be paid to another ASF to which his new employer contributes; or
 - (ii) remain with the ASF, where his new employer is an excepted employer, until the member is otherwise eligible to receive his entitlements in accordance with the provisions of this Act.

(2)⁵⁷ ⁵⁸An application for withdrawal of a member's entitlements –

⁵⁶ Section 90 Subsection (1) amended by No. 4 of 2002, s. 19.

⁵⁷ Section 90 Subsection (2) substituted by No. 4 of 2002, s. 19.

⁵⁸ Section 90 Subsection (2) substituted by No. 4 of 2002, s. 19.

- (a) under Subsection (1)(e) can be made only after one year has elapsed since the member has departed from Papua New Guinea; or
- (b) under Subsection (1)(f), can be made –
 - (i) in respect of contributions prior to the coming into force of this Act – immediately upon departure from Papua New Guinea; or
 - (ii) in respect of all contributions after coming into force of this Act – after one year has lapsed since the member departed from Papua New Guinea.

(3) Mandatory entitlements paid to a member, or his legal personal representative, under Subsection (1) shall not be subject to any set off, counterclaim, fee, cost, charge or other deduction.

(4)⁵⁹ ⁶⁰A member may, after not less than five years membership of one or more ASF's, withdraw a sum for use in a housing scheme as prescribed, where –

- (a) the sum is to be used for the purchase or construction of the principal place of residence for the member; and
- (b) the withdrawal does not exceed 60% of the member's entitlements,

subject to the following conditions

- (c) the member shall increase the rate of contribution to his ASF by a further 2% until further contributions reach an amount such that the accumulated funds are restored to the level that would have applied in the absence of the withdrawal; and
- (d) the member shall repay the same amount to the ASF or another ASF if he has transferred to that other ASF, if the residence is sold (except where the member ceases to be a member of any ASF); and
- (e) notwithstanding Subsection (3), the ASF shall charge the administrative costs of the withdrawal which shall be borne by the member's individual account; and
- (f) where –
 - (i) the residence financed by the withdrawal is sold; and
 - (ii) the amount withdrawn is fully repaid to the ASF,
 - the member may make a further withdrawal of the same nominal amount as previously withdrawn; and
- (g) proof of title over the land shall be provided to the ASF by the member; and
- (h) where the land is customary land, proof of the right to build on the land (including signatures from village elders) in the form as prescribed; and

⁵⁹ Section 90 Subsection (4) inserted by No. 4 of 2002, s. 19.

⁶⁰ Section 90 Subsection (4) inserted by No. 4 of 2002, s. 19.

- (i) the funds are to be paid –
 - (i) where an additional loan is required –to a bank or other registered financial institution to constitute a loan from that bank or financial institution and shall be drawn only for the specific purpose of purchasing or building a residence; or
 - (ii) where no additional loan is required –to the vendor or a reputable builder or a building material supplier, as the case may be, for the specific purpose of purchasing or building a residence, as the case may be,

and the funds shall not under any circumstances be paid directly to the member.

(5)⁶¹ ⁶²where a member of an ASF is not re-employed within three months of the termination of his employment and where the rules of the ASF so provide, he may withdraw such amount standing to his credit in the ASF –

- (a) where the member's account has less than K1000.00 or such other amount as is prescribed standing to his credit –the full amount; and
- (b) where the member's account has more than the amount referred to in Paragraph (a) standing to this credit –the larger of –
 - (i) K200.00 or such other amount as is prescribed; or
 - (ii) up to 50% of the member's last monthly salary or wage,

Monthly until such time as the member is re-employed, the member's account is exhausted or the member withdraws the balance of his account under Section 90(1).

(6)⁶³ ⁶⁴An ASF may withdraw the amount of any voluntary contributions for the payment of premiums for life insurance for the member where those contributions were made by the member for this purpose.

91. WITHDRAWAL BY NOMINEE.

(1) On the death of a member and application by a nominee of the member, the licensed trustee shall pay to the nominee such part of the amount standing to the credit of the member as is stipulated in the nomination.

(2) An application under Subsection (1) shall be in the prescribed form and shall be accompanied by such evidence in support as is prescribed.

(3) Mandatory entitlements paid to a nominee under Subsection (1) shall not be subject to any set off, counterclaim, fee, cost, charge or other deduction.

⁶¹ Section 90 Subsection (5) inserted by No. 4 of 2002, s. 19.

⁶² Section 90 Subsection (5) inserted by No. 4 of 2002, s. 19.

⁶³ Section 90 Subsection (6) inserted by No. 4 of 2002, s. 19.

⁶⁴ Section 90 Subsection (6) inserted by No. 4 of 2002, s. 19.

Division 2.***Nomination by Members.*****92. DEFINITIONS.**

In this Division, unless the contrary intention appears –

“child” –

- (a) in relation to a member, includes a child adopted as a child of the member by law or custom; or
- (b) in relation to a deceased son of a member, includes a child adopted as a child of the son by law or custom;

“custom” in relation to a member, includes a child adopted as a child of the member by law or custom;

“dependent family” in relation to a member, means, the custom of the community to which the person belongs (whether by birth or choice);

“dependent parents” in relation to a member, means the legal or customary parents of the member;

“family” in relation to a member, means the spouse, children, dependent parents or dependent family of the member;

“qualified person” in relation, to a member, means any one or more of the following: –

- (a) a member or members of his family; and
- (b) any other person or persons;

“spouse” in relation to a member, includes the legal or customary husband, of the member but does not include a person who, in accordance with any law or custom, is no longer entitled to maintenance;

“widow” in relation to a deceased son of a member, means the legal or customary wife or wives of the son.

93. DECISIONS AS TO STATUS UNDER CUSTOM.

For the purposes of applying this Division in relation to a member of an ASF, a reference to a person who has a status by custom (including the status of a child, dependent parents, spouse or widow) shall be read as a reference to the person (if any) that the licensed trustee of the ASF is satisfied as that status in accordance with the custom of the member.

94. NOMINATION.

(1)⁶⁵ ⁶⁶A member of an ASF shall nominate, in the prescribed manner, a qualified person to receive such proportion of the entitlements payable to the member on his death as is specified in the nomination.

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

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

(4)⁶⁷ ⁶⁸The Trustee of an ASF shall ensure that at least annually the member is informed and shall advise the member –

- (a) of the Fund's record of the member's nominee; and
- (b) that the member may change the nominee at any time.

95. PROCEDURE WHERE NO NOMINEE.

Where, at the time of the death of the member, no valid nomination has been made or no nominee is still alive, the amount standing to the credit of the member in the fund shall be paid in accordance with customary law or a decision by a court of competent jurisdiction in Papua New Guinea.

Division 3.

Protection of Contributions.

96. PROTECTION AGAINST ATTACHMENT.

⁶⁹The amount standing to the credit of any member of an ASF shall not –

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

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

97. NO CLAIM UNDER INSOLVENCY ACT.

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

98. PRIORITY OF PAYMENT OF CONTRIBUTIONS.

(1) On the liquidation or bankruptcy of an employer, any amounts due by the employer to an ASF on behalf of employees by way of contributions, penal

⁶⁵ Section 94 Subsection (1) amended by No. 4 of 2002, s. 20.

⁶⁶ Section 94 Subsection (1) amended by No. 4 of 2002, s. 20.

⁶⁷ Section 94 Subsection (4) inserted by No. 4 of 2002, s. 20.

⁶⁸ Section 94 Subsection (4) inserted by No. 4 of 2002, s. 20.

⁶⁹ Section 96 Amended by No. 4 of 2002, s. 21.

interest, accumulations or other charges under this Act, which have due prior to the date of the determination of insolvency, shall be afforded the same priority as provided under the *Companies Act 1997* from available funds.

(2) For the purposes of this section, a certificate by an approved auditor certifying

- (a) the person named in the certificate is, or was, on a date specified in the certificate, an insolvent employer; and
- (b) the sum specified in the certificate was, on a date specified in the certificate, payable by that person by way of contributions, penal interest, accumulations or other charges under this Act,

shall be evidence of the amounts due by the employer to an ASF in respect of its employees.

PART 17. – MISCELLANEOUS.

99. CENTRAL BANK NOT TO ACT AS BANKER.

- (1) The Central Bank shall not act as banker for any licence holder or ASF.
- (2) The Central Bank shall not, under any circumstances –
 - (a) provide financial accommodation to a licence holder, whether solvent or not; or
 - (b) provide financial accommodation to ASFs, whether solvent or not.

100. PROTECTION FROM LIABILITY AND INDEMNITY.

(1) The Central Bank, every member of its Board and every officer of the Central Bank nominated by the Central Bank for the purposes of this Act, is not subject to any liability to any entity in respect of anything done or omitted to be done, in the exercise of performance or the purported exercise or performance of powers, functions or duties conferred or imposed on the Central Bank, its Board or its officers by or under this Act.

(2) The Central Bank shall not be liable for the operations or viability of a licence holder, or for any loss suffered by members as a result of the operations or viability of a licence holder or ASF.

(3) The Central Bank shall not be liable for any impact on the operations or viability of a licence holder or ASF as a consequence of any investment guidelines or prudential standards issued from time to time.

(4) Subsections (1), (2) and (3) do not apply to an act or omission in bad faith.

(5) An officer, delegate of, and every member, of the Board shall be indemnified by the Central Bank in respect of any liability rising from the exercise or purported exercise, or omission to exercise, of any power conferred by his Act unless it is shown that the exercise or purported exercise, or omission to exercise, of the power was in bad faith.

(6) The indemnity conferred by Subsection (5) extends to legal costs incurred in defending a proceeding.

101. POWER TO PAY MONEY INTO COURT.

(1)⁷⁰ ⁷¹A licence holder may pay into the Court any money payable by the licence holder for which, in the licence holder's opinion, no sufficient discharge can otherwise be obtained.

(2) Each licensed trustee shall, within six months after 31 December in each year, deliver to the Governor a statement of all unclaimed money in its hands as at that 31 December.

⁷⁰ Section 101 Subsection (1) amended by No. 4 of 2002, s. 22.

⁷¹ Section 101 Subsection (1) amended by No. 4 of 2002, s. 22.

(3) A statement under Subsection (2) shall specify –

- (a) the name, and the last known address, of each member to whom an amount of unclaimed money is payable; and
- (b) where the person concerned is known to the licensed trustee to be dead, the names and addresses, so far as they are known to the licensed trustee, of the member's nominee or legal representative.

(4) The total amount shown in a statement under Subsection (2) shall –

- (a) be paid by the licensed trustee to the State at the time of the delivery of the statement; and
- (b) be credited to the Unclaimed Money Fund under the *Unclaimed Moneys Act 1963*; and
- (c) subject to Subsection (6), be paid into Consolidated Revenue Fund after payment to the State.

(5) Subject to Subsection (6), on payment to the State of an amount of unclaimed money under this section, a licensed trustee is discharged from further liability in respect of that amount.

(6) Where an amount of unclaimed money has been paid to the State under this section and the Governor or an authorized officer is satisfied that, but for Subsection (5), a person would be paid the amount that was paid to the State, the amount shall be paid to the licensed trustee and the licensed trustee must then pay the amount to that person, and the Public Account is, to the necessary extent, appropriate for the purposes of any payment under this subsection.

(7) A licensed trustee, who contravenes this section or fails to comply with this section, is guilty of an offence.

(8) The Central Bank or a licensed trustee may apply to the National Court for a declaration that any moneys are not unclaimed moneys within the meaning of this section.

102. TREATMENT OF UNCLAIMED MONIES.

(1) A licence trustee shall maintain a register of all missing members, which shall be available for inspection or use by the Central Bank at all times, including, to be used to formulate and maintain a central registry of missing member accounts.

(2) Each licence trustee shall, within three months after 31 December in each year, deliver to the Governor a statement of all unclaimed money in its hands as at that 31 December.

(3) A statement under Subsection (2) shall specify –

- (a) the name, and the last-known address, of each member to whom an amount of unclaimed money is payable, or the owner of each account, as the case may be; and

(b) where the person concerned is known to the licenced trustee to be dead, the names and addresses, so far as they are known to the licenced trustee, of the member's nominee or legal representative.

(4) The total amount shown in a statement under Subsection (2) shall –

(a) be paid by the licenced trustee to the State at the time of the delivery of the statement; and

(b) be credited to the Unclaimed Money Fund kept under the *Unclaimed Moneys Act 1963*; and

(c) subject to Subsection (6), be paid into the Consolidated Revenue Fund after payment to the State.

(5) Subject to Subsection (6), on payment to the State of an amount of unclaimed money under this section, a licenced trustee is discharged from further liability in respect of that amount.

(6) Where an amount of unclaimed money has been paid to the State under this section and the Governor or an authorized officer is satisfied that, but for Subsection (5), a person would be paid the amount that was paid to the State, the amount shall be paid to the licenced trustee and the licenced trustee shall then pay the amount to that person, and the Public Account is, to the necessary extent, appropriated for the purposes of any payment under this subsection.

(7) A licenced trustee that contravenes this section or fails to comply with this section is guilty of an offence.

(8) The Central Bank or a licensed trustee may apply to the National Court for a declaration that any moneys are not unclaimed moneys within the meaning of this section.

103. CODE OF CONDUCT.

(1) In this section –

“**industry code**” means a code regulating the conduct of participants in the superannuation industry towards other participants in the superannuation industry;

“**mandatory industry code**” means an industry code that is prescribed by regulation to be mandatory;

“**voluntary industry code**” means an industry code that is prescribed by regulation to be voluntary.

(2) For the purposes of this section, a voluntary industry code binds an entity which has agreed as prescribed, to be bound by the industry code and who has not subsequently ceased, as prescribed to be bound by it.

(3) The Central Bank may direct licence holders to develop, in co-operation with each other, an industry code for the approval of the Central Bank.

(4) The industry code shall address, but is not limited to, the following –

- (a) best practice procedures; and
- (b) full disclosure to employers; and
- (c) full disclosure to members; and
- (d) internal dispute resolution procedures; and
- (e) external dispute resolution procedures.

(5) An entity shall not, while operating in the superannuation industry, contravene the industry code.

(6) Regulations to this Act may –

- (a) prescribe an industry code, or specified provisions of an industry code, for purposes of this Act; and
- (b) declared the industry code to be a mandatory industry code or a voluntary industry code; and
- (c) in relation to voluntary industry code, specify the method by which an entity agrees to be bound by the code and the method by which it ceases to be so bound.

(7) Every entity that contravenes a provision of this section or a mandatory industry code, is guilty of an offence.

104. **SECRECY.**

(1) In this section –

“officer” means –

- (a) the Governor, the Deputy Governor or any other member of the Board; or
- (b) an employee of the Central Bank; or
- (c) any other person engaged by the Central Bank to perform services for the Central Bank; or
- (d) any other person who, because of his employment, or in the course of that employment –
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents;

“produce” includes permit access to;

“protected document” means a document given or produced (whether before or after the commencement of this Act) under or for the purposes of this Act and containing information relating to the affairs of any person other than a document that has already been lawfully available to the public;

“protected information” means information data or forecasts disclosed or obtained (whether before or after the commencement of this Act) under, other than information that has already been lawfully made available to the public.

(2) Subject to this section, an officer shall not, except for the purposes of this Act, directly or disclosed to any person any protected information or protected document.

(3) Subsection (2) does not prohibit a person from disclosing protected information or producing a protected document where the person to whose affairs the information or document relates and where different person from whom the information or document, will assist the Central Bank to perform its functions or exercise its powers.

(4) It is not an offence under this section where the disclosure of protected information or the production of a protected document by a person occurs when the person is Central Bank to perform its functions or exercise its powers.

(5) It is not an offence where the disclosure of protected information of the production of information of a protected document by the Central Bank occurs when the Central Bank is satisfied that the disclosure of the information –

- (a) will assist the Cental Bank to perform its functions or exercise its powers; or
- (b) is to the Minister or the relevant Department; or
- (c) will assist another supervisory agent, whether in Papua New Guinea or elsewhere, to perform its functions or exercise its powers, provided that the Central Bank is satisfied that the information or document is subject to a secrecy provision no less stringent that set out in this Act.

(6) It is not an offence where the disclosure of protected information or the production of a protected document is under compulsion or obligation of law.

(7) Subsection (2) does not prohibit a person from disclosing protected information or producing a protected document to the Central Bank.

(8) Subsection (2) does not prohibit a person from disclosing information, or producing a document, where the information, or the information contained in the documents, as the case may be, is in the form of a statistical summary or collection of information that is prepared so that information relating to any particular person cannot be found from it.

(9) A person, who contravenes this section, is guilty of an offence.

105. PAYMENT OF LEVY AND LICENCE FEES.

(1) A licence holder shall pay an application fee to the Central Bank in the amount, at the time and in the manner prescribed by the regulations.

(2) A licence holder shall pay to the Central Bank on or before 1 January in each year the prescribed annual licence fee.

(3) Fees payable under this section are a debt due to the Central Bank and if not paid within 14 days of the due date, the Central Bank may take whatever recovery steps are considered appropriate to ensure the fees are paid.

(4) A licensed trustee, which fails to comply with the section, is guilty of an offence.

106. AUTHORISATIONS AND APPROVALS.

(1) The Central Bank, by writing, may authorize an officer of the Central Bank to exercise a power of the Central Bank under this Act.

(2) The Central Bank, by writing, may approve an auditor for the purposes of this

(3) An authorization or approval under this section may be made by name or office.

107. SERVICE OF NOTICE.

Where this Act requires or permits a document to be given to an entity, the document may be given –

(a) by service in person; or

(b) by post, facsimile or email at the last-known address of the person.

108. EXERCISE OF POWERS OF CENTRAL BANK AND DELEGATION.

(1) The Governor may exercise the powers of the Central Bank under this Act to facilitate the performance of its functions under this Act.

(2) The Governor, by writing, may delegate all or any of the powers of the Central Bank under this Act (other than this power of delegation).

(3) A power exercised by a delegate under Subsection (2) shall, for all purposes, be taken to have been exercised by the Central Bank.

109. FAILURE TO PUBLISH CERTAIN NOTICES.

(1) Subject to Subsection (2), where a provision of this Act requires the Central Bank to publish a notice of an act or thing in the National Gazette, failure to publish the notice does not affect the validity of the act or thing.

(2) Subsection (1) does not apply to a provision which provides for the thing to take effect on a date specified in the notice.

110. POWER TO MAKE REGULATIONS.

The Head of State, acting on advice, may make, amend or vary regulation which –

(a) are not inconsistent with this Act; and

- (b) prescribed all matters that by this Act are –
 - (i) required or permitted to be prescribed; or
 - (ii) necessary or convenient to be prescribed,
for carrying out or giving effect to this Act; and
- (c) provide that an offence may be prosecuted either summarily or on indictment; and
- (d) provide penalties for offences against the regulations, not exceeding –
 - (i) K100, 000. 00; or
 - (ii) imprisonment for a term not exceeding two years; or
 - (iii) both such fine and imprisonment.

111. SCOPE OF REGULATION AND INSTRUMENT MAKING POWER.

(1) A power given under this Act to do something by regulation or in writing (whether or not described as an instrument) under or for the purposes of a provision of this Act includes power –

- (a) to make a regulation or instrument dealing with only some of the matters referred to in that provision; and
- (b) to make different provision with respect to different matters or different classes of matters; and
- (c) to make a regulation or instrument that applies differently by reference to stated exceptions or factors.

(2) Without limiting Subsection (1), a power under this Act to make a regulation or instrument about particular matters (however described) includes power to make a regulation or instrument about one or more of those matters or a particular class of those matters.

(3) For the purposes of this section, a class may consist of a single matter.

(4) In this section, “matter” includes circumstances, place and person.

112. OFFENCES AND PENALTIES.

(1) An entity convicted of an offence against any of the sections listed in Part 1 of Schedule is liable to a fine or imprisonment or both as listed in that Schedule.

(2) An entity convicted of an offence against any of the sections listed in Part 2 of Schedule 4 is liable to a fine or imprisonment or both as listed in Part 2 of the Schedule.

(3) An entity who contravenes any other provision of this Act is liable to a fine or imprisonment or both as listed in Part 3 of Schedule 4.

113. POWER TO AMEND SCHEDULE ETC.

The Head of State, acting on advice, may, by regulation, amend the monetary amounts specified in the Schedules.

114. PROSECUTIONS AND OTHER ACTIONS.

(1) The Central Bank may –

- (a) prosecute any offence by a person under this Act, by summary prosecution or by prosecution as an indictable offence as the case may be; and
- (b) commence a civil action against a person for any form of civil relief which is available in respect to the matters constituting the offence.

(2) Any prosecution or action commenced by the Central Bank in relation to an offence committed under this Act shall be heard by the National Court.

(3) Notwithstanding Section 524 of the *Criminal Code Act 1974* following a committal for an offence under this Act, the Central Bank is authorized to present an indictment against the accused, and a copy of such indictment shall be served on the Public Prosecutor and the Public Prosecutor may withdraw the indictment within 14 days of service of the indictment on him.

(4) In any prosecution or action brought under this Act by the Central Bank, the Court may award costs against any party or claimant other than the Central Bank which costs may be recovered as a debt to the Central Bank.

(5) In any action brought under this Act, the Court may, on application, whether as interlocutory or final relief, order a person to cease any activity until further order.

(6) Any order made by the Court under Subsection (5) shall be made on condition that the Central Bank is not responsible for any loss of income or profit which may be incurred by the enterprise as a consequence of that order.

(7) Any fine to be paid by a person as a result of an action or prosecution by the Central Bank shall be paid to the Central Bank and, in addition to any remedy, may be recovered by the Central Bank as a debt to the Central Bank.

115. INJUNCTIONS AND OTHER ORDERS.

(1) Where, on the application of the Central Bank or the Public Prosecutor, the National Court is satisfied –

- (a) that there is a reasonable likelihood that a person will contravene this Act; and
- (b) that any person has been guilty of any such contravention and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining prohibiting, or both, the contravention as the Court deems appropriate.

(2) Where, on the application of the Central Bank or the Public Prosecutor, it appears to the National Court that a person may have been guilty of a similar contravention, the Court may grant an injunction restraining the person from disposing of, or otherwise dealing with, any of his assets while the suspected contravention is investigated.

116. RESTRICTION ON USE OF CERTAIN WORDS AND EXPRESSIONS.

(1) Subject to this section, an entity shall not, without the consent of the Central Bank –

- (a) use the words “superannuation fund” or “provident fund” or “pension fund” or “retirement fund” or any derivatives thereof, or any other word indicating the transaction of a superannuation fund (whether in the English language or in any other language), in the name, description or title under which that entity carries on business in Papua New Guinea; or
- (b) make any representation that it is, or hold itself out to be, a superannuation fund.

(2) Subsection (1) does not apply to the NPF, POSF and the DFRBF.

(3) Except with the consent in writing of the Central Bank no ASF, licence holder or core service provider may use the expression “National”, “Papua”, “New Guinea”, “Papua and New Guinea”, “Papua New Guinea” or “State”, or an expression of a similar meaning (whether in the English language or in any other language) in the name, description or title under which it carries on business in Papua New Guinea.

(4) Subsection (3) does not affect the operation of the *Central Banking Act 2000*.

(5) Where the Central Bank for any reason considers that the use of a name or description by an ASF, licence holder or core service provider carrying on business in Papua New Guinea, is undesirable or misleading, the Central Bank may prohibit the use of that name or description by notice in the National Gazette.

(6) Where an entity applies for a licence or authorization under this Act it shall give notice to the Central Bank of any name it is using or proposes to use for the purposes of or in connection with any business carried on by it for the Central Bank’s consent.

(7) Any entity, that uses an expression name or description in contravention of this section is guilty of an offence.

117. RESTRICTION ON ESTABLISHMENT OR MAINTENANCE OF BRANCH OFFICES.

(1) An entity is guilty of an offence where –

- (a) the entity carries on a superannuation fund in a foreign country; or
- (b) the entity establishes or maintains an office in Papua New Guinea wholly or partly in connection with the carrying on of that business outside Papua New Guinea without first incorporating a subsidiary under the *Companies Act 1997*.

(2) A licence holder is guilty of an offence where it undertakes any of the following

- (a) it opens or establishes, whether on its own account or in conjunction with others, a branch or representative office; or
- (b) it incorporates or establishes an interest in any business, whether on its own account or in conjunction with others.

117B. RESTRICTIONS ON APPOINTMENT.

⁷²No trustee or chief executive officer of an Existing Fund or an officer of an ASF may be employed or engaged directly by an Investment Manager or Fund Administrator engaged by the fund of which he was a trustee or officer while the relationship of investment management or fund administration remains between those entities.

⁷² Section 117B Inserted by No. 4 of 2002, s. 23.

PART 18. – REPEAL AMENDMENT SAVING AND TRANSITIONAL PROVISIONS.

Division 1.

Repeal, Savings and Transitional Provisions.

118. DEFINITIONS.

In this Part –

“Change Date” means each date on which a New Trustee is appointed to replace an Existing Trustee of an Existing Fund;

“Cut-off Date” means the day one year from the commencement of this Act;

“End Date” means 18 months from the Commencement of this Act;

“Existing Act” means each of following –

- (a) the *National Provident Fund Act 1980* (as amended) and any regulations made under it; or
- (b) the *Public Officers Superannuation Fund Act 1990* (as amended) and any regulations made under it; or
- (c) the *Defence Force Retirement Benefits Act 1974* (as amended) and any regulations made under it;

“Existing Fund” means each of the following –

- (a) the NPF; or
- (b) the POSF; or
- (c) the DFRBF; or
- (d) any other superannuation fund operating at the commencement of this Act;

⁷³**“Existing Small Superannuation Fund or ESSF”** means a superannuation fund –

- (a) in existence; and
- (b) approved by the Commissioner General of Internal Revenue pursuant to Section 88(1)(a) of the Income tax Act 1959; and
- (c) having at least one but not more than ten beneficiaries, at the coming into operation of this Act.

“Existing Trustee” means the trustee of an Existing Fund at the commencement of this Act;

⁷³ Section 118 Amended by No. 4 of 2002, s. 24.

“Existing Trustee instrument” means an instrument (including a legislative instrument under an Act other than this Act) subsisting immediately before the appointment of a New Trustee –

- (a) to which an Existing Trustee was a party; or
- (b) that was given to or in favour of an Existing Trustee; or
- (c) that refers to an Existing Trustee; or
- (d) under which –
 - (i) money is, or may become, payable to or by an Existing Trustee; or
 - (ii) other property is to be, or may become liable to be, transferred to or by an Existing Trustee;

“instrument” includes a document;

“liabilities” means all liabilities, duties and obligations, whether actual, contingent or prospective;

“New Trustee” means –

- (a) an Existing Trustee which has obtained a licence under this Act; or
- (b) a licensed trustee appointed either by –
 - (i) the Existing Trustee prior to the Cut-off Date; or
 - (ii) the Central Bank by notice in the Gazette, on or after the Cut-off Date and before the End Date;

“Regulations” means the regulations prescribed by the Head of State in accordance with this Act;

“rights” means all rights, powers privileges and immunities, whether actual, contingent or prospective;

“Task force” means the committee appointed by the Minister for Finance and Treasury operating within its terms of reference;

“transferred employee” has the meaning set out in Section 138;

“Transition Period” means the period beginning on the commencement of this Act and ending on the earlier of the final Change Date or the End Date.

119. AMENDMENTS TO AND REPEALS OR EXISTING ACTS.

⁷⁴(1) On and from the commencement of this Act –

- (a) the *National Provident Fund Act 1980* is amended in accordance with Schedule 5; and

⁷⁴ Section 119 Substituted by No. 4 of 2002, s. 25.

- (b) the *Public Officers Superannuation Fund Act 1990* is amended in accordance with Schedule 6; and
- (c) the *Defence Force Retirement Benefits Act 1974* is amended in accordance with Schedule 7; and
- (d) the *Companies Act 1997* is amended in accordance with Schedule 8.

(2) On the day on which the National Provident Fund becomes an ASF under Section 8, the National Provident Fund Act (Chapter 377) is repealed.

120. ACTS IN SCHEDULE.

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule to this Act has effect according to its terms.

121. SAVING OF REGULATIONS.

Regulations made under an Existing Act, to the extent that they –

- (a) were in operation immediately before the coming into operation of this Act; and
- (b) are not in consistent with this Act,

are, on that coming into operation, saved and continue in operation and may be amended or repealed.

122. SAVING OF LICENCES ETC.

All licences, instruments, authorities, approvals, permits and directions made under an Existing Act, to the extent that they –

- (a) were in operation immediately before the coming into operation of this Act; and
- (b) are not inconsistent with this Act,

are, on that coming into operation, saved and continue in operation until they expire or are otherwise terminated according to law.

123. ACTIONS NOT TO ABATE.

Where immediately before the commencement of this Act, any action, arbitration or proceeding was pending or existing by or against an entity under an Existing Act, it –

- (a) does not, on the commencement of this Act, abate or discontinue or in any way be affected by a provision of this Act; and
- (b) may be prosecuted, continued and enforced by it against or in favour of the entity as if this Act had not been made.

124. NOMINEES .

An appointment of a person as the nominee of a member of an Existing Fund under an Existing Act, and in force immediately before the commencement of this Act, continues to have effect after that time as if it had been made under this Act.

125. NPF TO ADVISE OF EXEMPTIONS GRANTED.

Within one (1) month of the commencement of this Act, the NPF shall advise the Central Bank, in writing, of any exemptions granted by the NPF under the *National Provident Fund Act 1980*, to an entity to operate a superannuation fund, and the term and conditions of those exemptions.

126. EXEMPTION FOR EXISTING FUNDS.

⁷⁵(1) An Existing Fund and Existing Trustee shall not contravene the requirements of this Act by accepting contributions during the period from the commencement of this Act until the Change Date.

(2) For a period of six months after the commencement of this Act, an existing Trustee shall not contravene the requirements of this Act by paying benefits as prescribed in the regulations where such benefits were payable prior to the commencements of this Act.

126A. EXISTING SMALL SUPERANNUATION FUNDS.

⁷⁶(1) This Act, other than –

- (a) the definition of “ Existing Small Superannuation Fund ”in Section 118; and
- (b) this section,

shall not apply to an “ Existing Small Superannuation Fund ”for a period of five years from the coming into operation of this Act.

(2) An Existing Small Superannuation Fund may not accept any new contributions or members from the coming into operation of this Act.

126B. PROBITY OFFICER.

⁷⁷(1) Where the Trustee is contemplating the appointment, re-appointment or change of an Investment Manager or Fund Administrator, the Trustee shall immediately inform the Central Bank.

(2) The Central Bank may appoint a probity officer, at the cost of the fund, who –

- (a) must be independent of –

⁷⁵ Section 126 Substituted by No. 4 of 2002, s. 26.

⁷⁶ Section 126A Inserted by No. 4 of 2002, s. 26.

⁷⁷ Section 126B Inserted by No. 4 of 2002, s. 26.

- (i) the Trustee, and
 - (ii) any entity in the business of providing investment management or fund administration services; and
- (b) shall have unfettered access to all documents, information, and meetings of the Trustee pertaining to the appointment of the Investment Manager or Fund Administrator until such time as the appointment is complete; and
- (c) shall advise the Trustee on matters of transparency and probity; and
- (d) shall report to the Central Bank in relation to the process of the appointment of the Investment Manager or Funds Administrator.

Division 2.

Transitional Period.

127. COMMISSIONING OF THE SUPERANNUATION TASK FORCE.

- (1) On the commencement of this Act, a Task Force shall be commissioned to –
- (a) assist where necessary with the transition of the Existing Funds into ASFs under this Act during the Transitional Period; and
 - (b) recommend to the Central Bank the process to be implemented to appoint a New Trustee to an Existing Fund; and
 - (c) recommend to the Central Bank the process to be implemented to disband an Existing Fund; and
 - (d) offer advice or recommendations to the Minister on the content of the regulations; and
 - (e) advise the Minister of the taxation implications of the Act; and
 - (f) advise on any other matters requested or recommended by the Minister.

(2) The Minister, in consultation with the Central Bank, shall determine the terms and conditions of the commissioning of the Task Force, including –

- (a) the method of operation; and
- (b) the term of appointment; and
- (c) the appointees; and
- (d) the remuneration of appointees.

128. DIFFICULTIES WITH SAVING OR TRANSITIONAL PROVISIONS.

(1) Where a difficulty arises in respect of the saving or transitional provisions in this Part, the Head of State, acting on advice, may, by regulation make such modifications to those provisions or incidental, consequential and supplementary provisions during the Transition Period as may be necessary or expedient for the purpose of giving full effect to the transitional provisions of this Act.

(2) Any such modifications or provisions referred to in Subsection (1) made by the Head of State, have and are deemed always to have had the same force and effect as if they had Gazette, this division is amended accordingly.

Division 3.

Cut-off Date for an Existing Trustee.

129. DEADLINE FOR TRANSITION OF EXISTING FUNDS.

By no later than the Cut-off Date, each Existing Trustee –

- (a) shall have –
 - (i) made an application to the Central Bank for a licence under Section 11; and
 - (ii) appointed all necessary licence holders and obtained the relevant authorization under Section 8; or
- (b) shall have appointed a New Trustee.

130. APPOINTMENT BY THE CENTRAL BANK DURING TRANSITION.

If, on the Cut-off Date, an Existing Trustee –

- (a) has not made an application for a licence under this Act, or, if such an application has been made, that application has been refused; or
- (b) has not appointed a New Trustee in accordance with this Act,

the Central Bank shall implement, in consultation with the Task Force, the process of appointing a New Trustee or apply to the Court to have the Existing Fund wound up.

131. OBLIGATIONS OF THE CENTRAL BANK DURING TRANSITION.

The Central Bank shall meet its obligations under Section 130 on or before the End Date.

Division 4.

Transition issues on and from the Change Date.

132. VESTING OF RIGHTS AND LIABILITIES IN THE NEW TRUSTEE.

⁷⁸(1) On and from the Change Date –

- (a) all property and rights of an Existing Trustee, wherever located, vest in the New Trustee; and
- (b) all assets and liabilities of an Existing Trustee, wherever located, become assets and liabilities of the New Trustee; and

⁷⁸ Section 132 Substituted by No. 4 of 2002, s. 27.

(c) the New Trustee becomes the successor in law to an Existing Trustee, unless otherwise prescribed by Regulation made under this Part.

(2) For the purposes of calculating the time required to comply with Section 87(a), contributions to an existing Fund which becomes an ASF shall be deemed to be contributions to the ASF from the time contributions to the existing fund commenced.

133. CERTAIN RIGHTS AND LIABILITIES REMAIN.

Notwithstanding Section 132, the following rights and liabilities remain rights and liabilities of an Existing Trustee –

- (a) any right of an Existing Trustee to be paid fees for the performance of its functions before it ceased to be an Existing Trustee; and
- (b) any right of an Existing Trustee to be indemnified for expenses it incurred before it ceased to be an Existing Trustee; and
- (c) any liability of an Existing Trustee to pay levies on behalf of the fund; and
- (d) any liability for which an Existing Trustee could not have been indemnified out of the fund's property if it had remained the fund's trustee.

134. EFFECT OF CHANGE OF TRUSTEE ON DOCUMENT ETC.

(1) On and from the Change Date, a document –

- (a) to which an Existing Trustee is a party, in which a reference is made to an Existing trustee, or under which an Existing Trustee has acquired or incurred a right, obligation or liability, or might have acquired a right, obligation or liability if it had remained the fund's trustee; and
- (b) that is capable of having effect after the appointment of a New Trustee,

has effect as if the New Trustee (and not an Existing Trustee) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.

(2) Subsection (1) does not apply to any right, obligation or liability that remains a right, obligation or liability of an Existing Trustee in accordance with Section 133.

135. NO STAMP DUTY ON TRANSFER OF ASSETS AND LIABILITIES OF THE EXISTING FUNDS.

No stamp duty is payable under a law of PNG in respect of any transfer of assets or liabilities pursuant to any section in this Part.

136. EXISTING TRUSTEE INSTRUMENTS .

An Existing Trustee instrument continues to have effect according to its tenor on and after the Change Date as if a reference in the instrument to an Existing Trustee were a reference to the New Trustee.

137. PENDING PROCEEDINGS.

Where immediately before the Change Date, proceeding (including arbitration proceedings) to which an Existing Trustee was a party were pending or existing in any court or tribunal, then, on and after Change Date, the New Trustee is substituted for an Existing Trustee as a party to the proceedings and has the same rights in the proceedings as the Existing Trustee had.

138. REGISTRATION OF INTERESTS IN LAND.

Where –

- (a) land that is situated in any geographical area of PNG, or an interest in such land, becomes land, or an interest in land of the New Trustee; and
- (b) there is lodged with the Registrar of Titles a copy of the instrument appointing a New Trustee or if the appointment of the New Trustee is by the Central Bank exercising its powers under this Act, a copy of the notice published in the National Gazette,

the officer with whom the instrument in Paragraph (a) is lodged may register the change of ownership of the land in the manner in which dealings in land or interests in land of the kind are registered.

139. TRANSFER OF EXISTING FUND STAFF TO NEW TRUSTEE.

(1)⁷⁹ ⁸⁰Provided that a person, who was an officer of an Existing Trustee immediately before the Change Date, if applicable, satisfies the "fit and proper" criteria in Schedule 2, then the New Trustee may engage that officer or any employee with, effect from the Change Date –

- (a) on the same terms and conditions as those that applied to the person immediately before the Change Date, as an officer of an Existing Trustee; and
- (b) taking into account the officer's entitlement to benefits, in connection with the engagement by the New Trustee, that is equivalent to the entitlement that the person had accrued as an officer of an Existing Trustee immediately before the Change Date.

(2) The service of a transferred employee under Subsection (1) is to be regarded for all purposes as having been continuous employment as if the transferred employee has remained employed by the Existing Trustee.

⁷⁹ Section 139 Subsection (1) amended by No. 4 of 2002, s. 28.

⁸⁰ Section 139 Subsection (1) amended by No. 4 of 2002, s. 28.

(3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer of an Existing Trustee because of this Act.

(4) A director, secretary or auditor of an Existing Trustee does not, because of the operation of this Act, become a director, secretary or auditor of the New Trustee.

140. TRANSFERRED EMPLOYEE REGULATIONS.

(1) The Head of State acting on advice may make regulations, not inconsistent with this Act, in relation to the preservation of rights of transferred employees.

(2) Regulations made under this section have effect despite any inconsistency with Acts other than this Act.

SCHEDULE 1 – .
Documents to be produced for Application

Trustee Applicant
1. Investment strategy to be implemented by the applicant for the proposed ASF detailing the proposed asset allocation, hedging and investment diversification.
2. The applicant's plan of operations including all computer software programs and equipment utilized by the applicant, its staffing and its means of implementing it.
3. The names and curriculum vitae of the applicant's shareholder controller, indirect controllers and officers.
4. Particulars of the applicant's arrangements for the management of the business.
5. A copy of the Act, charter, deed of settlement, constitution of the body corporate, governing rules of the fund which must be in compliance with this Act, or other document by which the body corporate is or is to be constituted.
6. Any other documentation required under standard or requested by the Central Bank.
Investment Manager Applicant
1. Investment strategy to be implemented by the applicant for the proposed ASF detailing the proposed method and type of investment and manner of implementation of the proposals.
2. The applicant's plan of operations including all computer software programs and equipment utilized by the applicant, its staffing and its means of implementing it.
3. The names and curriculum vitae of the applicant's shareholder controllers, indirect controllers and officers.
4. Particulars of the applicant's arrangements for the management of the business.
5. A copy of the Act, charter, deed of settlement, constitution of the body corporate, governing rules of the fund which must be in compliance with this Act, or other document by which the body corporate is or is to be constituted
6. Any other documentation required under standard or requested by the Central Bank.
Fund Administrator Applicant
1. The applicant's plan of operations including all computer software programs and equipment utilized by the applicant, its staffing and its means implementing it.
2. The names and curriculum vitae of the applicant's shareholder controllers, indirect controllers and officers.
3. Particulars of the applicant's arrangements for the management of the business.
4. A copy of the Act, charter, deed of settlement, constitute of the body corporate, governing rules of the fund which must be in compliance with this Act, or other document by which the body corporate is or is to be constituted.

5. Any other documentation required under standard or requested by the Central Bank.

SCHEDULE 2 – .
Fit and Proper Criteria.

1. Every person who is, or is to be, an officer of a licence holder must be a fit and proper person to hold the particular position which he holds or is to hold.
2. In determining whether a person is a fit an proper person to hold any particular position, regard will be had to –
(a) his probity; and
(b) his competence and soundness of judgement for fulfilling the responsibilities of that position; and
(c) the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
(d) whether the interests of members are, or are likely to be, in any way threatened by his holding that position.
3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has –
(a) committed an offence involving fraud or other dishonesty or violence; or
(b) been engaged in or been associated with any financial loss due to dishonesty, incompetence or malpractice in the provision of superannuation products, insurance, investment or other financial services of the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts; or
(c) been engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not or which otherwise reflect discredit on his method of conducting superannuation funds companies, investments and other financial services; or
(d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.
4. Every licence holder shall conduct its business in a prudent manner.
5. A licence holder shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain capital resources of such nature and amount as are considered appropriate by the Central Bank, and which are sufficient to safeguard the interests of members of an ASF, and commensurate with the nature, scale and risks of the ASF's operations as determined by the Central Bank.
6. A licence holder shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain adequate liquidity, having regard to the relationship between its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, and to any other factors appearing to the Central Bank to be relevant.
7. For the purposes of Section 6 above, the Central Bank may, to such extent as it thinks appropriate, take into account as assets of the licence holder and any facilities available to it which are capable of providing liquidity within a reasonable period.

<p>8. A licence holder shall not be regarded as conducting its business in a prudent manner unless it makes or will make adequate provisions for depreciation or diminution in the value of its assets (including provisions for bad or doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.</p>
<p>9. A licence holder shall not be regarded as conducting its business in a prudent manner unless it limits or, as the case may be, proposes to limit, its exposure, direct and indirect, to the risk of loss, as may be defined by the Central Bank, to any person and such limit will be no more than will be prescribed by the Central Bank.</p>
<p>10. A licence holder shall not be regarded as conducting its business in a prudent manner unless it limits or proposes to limit, its exposure, direct and indirect, to risk of loss to persons who are related to the licence holder in such a manner that they may be in a position to influence the licence holder and such risk and such relationship may be defined by the Central Bank, and such limit will be no more than shall be prescribed by the Central Bank.</p>
<p>11. For the purposes of determining the amount of the risk of loss to the person referred to in Sections 1 and 2, account shall also be taken of any exposure to the risk of loss to any other person, where the financial soundness of the first person may be linked to that of the other, as may be further prescribed by the Central Bank.</p>
<p>12. A licence holder shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.</p>
<p>13. Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the licence holder to be prudently managed and the licence holder to comply with the duties imposed on it by or under this Act and in determining whether those systems are adequate the Central Bank will have regard to the functions in responsibilities in respect of them of any of the directors of the licence holders.</p>
<p>Integrity and Skill</p>
<p>14. The business of the licence holders shall be carried on with integrity and the professional skills appropriate to the nature, scale and risks inherent in its activities.</p>

SCHEDULE 3 – .
Financial Requirements.

Part 1.
Trustee Applicant.
Amount as prescribed by regulation.
Part 2.
Investment Manager Applicant.
Amount as prescribed by regulation.
Part 3.
Fund Administrator Applicant
Amount as prescribed by regulation.

SCHEDULE 4 – .
Penalties for Offences against this Act.

Part 1.	
Sections which carry a fine not exceeding K100, 000. 00 or imprisonment for a term not exceeding two year or both.	
Section 24	Failure to comply with a notice or direction
Section 25	Failure to comply with a direction by officer
Section 27	Central Bank to be supplied with certain documents
Section 28	Power to obtain information
Section 29	Right of entry
Section 34	Duty to give information
Section 35	Actions as result of investigation
Section 36	Duty to notify of adverse events
Section 40	Contraventions by shareholder controllers and indirect controllers
Section 42	Restructuring of licence holders
Section 53	Licensed trustee to lodge annual returns
Section 54	Returns by licensed investment managers and core service providers
Section 56	Disclosure of information to members
Section 61	Powers and functions of Statutory Manager
Section 76	Minimum contribution employer
Section 77	Minimum contribution employee
Section 103	Code of Conduct
Section 104	Secrecy
Section 105	Payment of levies and fees
Section 116	Restriction on use of certain words and expressions
Section 117	Restriction on establishing branch officers.
Part 2.	
Sections which carry a fine not exceeding K500, 000. 00 or imprisonment for a term not exceeding 10 years or both.	
Section 9	Unauthorized operations

Section 11	False or misleading application
Section 31	Investigations on behalf of the Central Bank
Section 32	Obstruction of investigation
Section 33	False and misleading information
Section 75	Prohibited activities
Section 78	Duty to remit contributions.
Part 3. – General penalty.	
A person who commits an offence against this Act for which there is no specific penalty provided, is liable to a penalty of –	
(a) a fine not exceeding K500, 000. 00; or	
(b) a fine not exceeding K500, 000. 00; or	
(c) both a fine not exceed the amount specified in <i>Paragraph (a)</i> and a term of imprisonment not exceeding the term specified in <i>Paragraph (b)</i> .	
Where an offence against this Act is of a continuing nature, a person who is found guilty of that continuing offence is liable to a further default penalty of a fine, in addition to that prescribed in this Part, not exceeding K5, 000. 00 per day for each day after conviction that the person continues to commit the offence.	

SCHEDULE 5 – .

Amendments to the National Provident Fund Act (Chapter 377).

1. Section 2 of the Act is amended –	
(a)	by repealing the definition of “affected establishment”; and
(b)	by inserting after the definition of “Board” the following: –
	“Central Bank” means the Bank of Papua New Guinea;”;
(c)	by repealing the definition of “contribution” and replacing it with the following: –
	“contribution” means a contribution payable under the <i>Superannuation Act 2000</i> ;”; and
(d)	by repealing the definition of “employee” and replacing it with the following: –
	“employee” has the same meaning as in the <i>Superannuation Act</i> ;”; and
(e)	by repealing the definition of “employer” and replacing it with the following: –
	“employer” has the same meaning as in the <i>Superannuation Act</i> ;”; and
(f)	by inserting after the definition of “Premier’s Council” the following: –
	“ <i>Superannuation Act</i> ” means the <i>Superannuation (General Provisions) Act 2000</i> (as amended from time to time) including the regulations and prudential standards under the Act;”.
2. Section 3 of the Act is repealed.	
3. Section 4 of the Act is repealed.	
4. Section 26 of the Act is repealed and is replaced with the following: –	
“26. BOARD TO BE TRUSTEE OF THE FUND.	
The Board shall be the Trustee of the fund and all money’s belonging to the Fund shall be invested by the Board in accordance with the provision of the <i>Superannuation Act</i> ;”.	
5. Section 31 of the Act is repealed and is replaced with the following: –	
“31. CONTRIBUTIONS BY EMPLOYER.	
All contributions by employers shall be made in accordance with the mandatory contributions provisions of the <i>Superannuation Act</i> .”.	
6. Section 32 of the Act is repealed and is replaced with the following: –	
“32. CONTRIBUTIONS BY EMPLOYEE.	
All contributions by employees must be made in accordance with the mandatory contributions provisions of the <i>Superannuation Act</i> .”.	

7. Section 33 of the Act is repealed.
8. Section 34 of the Act is repealed.
9. Section 36 of the Act is repealed.
10. Section 37 of the Act is repealed.
11. Section 47 of the Act is repealed and is replaced with the following: –
“47. ELECTION TO TRANSFER FUNDS.
The amount of member entitlements standing to the credit of an employee may only be transferred in accordance with the provisions of the <i>Superannuation Act</i> .”.
12. Section 48 of the Act is repealed.
13. Section 52 of the Act is repealed and is replaced with the following: –
“52. CIRCUMSTANCES IN WHICH ACCUMULATIONS IN THE FUND ARE PAYABLE TO A MEMBER.
A member may only withdraw the full amount standing to his credit in the Fund (or such other amount) in accordance with the provisions of the <i>Superannuation Act</i> .”.
14. Section 53 of the Act is repealed.
15. Section 54 of the Act is repealed.
16. Section 55A of the Act is repealed.
17. Section 61 of the Act is amended by repealing Paragraphs (c),(d),(g),(h) and (n).

SCHEDULE 6 – .

⁸¹Amendments to the Public Officers Superannuation Fund Act 1990.

1. Section (1) of the Act is amended –	
(a)	by inserting after the definition of “Board” the following: –
	“Central Bank” means the Central Bank of Papua New Guinea;”;
(b)	by inserting after the definition of “juvenile dependent” the following: –
	“ <i>Life Insurance Act</i> ” means the <i>Life Insurance Act 2000</i> (as amended from time to time) including the regulations and prudential standards made under this Act;”;
(c)	by inserting after the definition of “spouse” the following: –
	“Superannuation Act” means the <i>Superannuation (General Provisions) Act 2000</i> (as amended from time to time) including the regulations and prudential standards made under this Act.
2. Section 2 of the Act is amended –	
(a)	by repealing Subsection (1) and replacing it with the following: –
	“(1) Subject to Subsection (4), the Head of State, acting advice, may, by notice in the National Gazette, declare any public authority or any body (whether established by statute or otherwise) to be an approved authority for the purposes of this Act.”; and
(b)	by inserting after Subsection (3) the following: –
	“(4) On and from the commencement of the <i>Superannuation Act</i> , the Head of State shall no longer exercise the power conferred under Subsection (1).”.
3. Section 3 of the Act is amended by repealing Subsection (1) and is replacing it with the following: –	
	“(1) The State Services an Statutory Authorities Superannuation Fund Board is hereby established and shall act as the Trustee of the Fund.”.
4. Section 13 of the Act is repealed and replaced with the following: –	
“13. FUNCTIONS OF THE BOARD.	
The functions of the Board are to control and administer the Fund in accordance with the provisions of the <i>Superannuation Act</i> , the <i>Life Insurance Act</i> , where applicable, and this Act.”.	

⁸¹ Schedule 6 Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29; Amended by No. 4 of 2002, s. 29.

<p>5. Section 18 of the Act is repealed and is replaced with the following: –</p>	
<p>“18. INVESTMENT OF THE FUND.</p>	
<p>The Board shall invest all moneys belonging to the Fund in accordance with the provisions of the <i>Superannuation Act</i> and <i>Life Insurance Act</i>, where applicable.”.</p>	
<p>6. (1) The <i>Public Officers Superannuation Fund Act 1990</i> is further amended by amending the provisions set in Column 1 of the following Table in the manner set out in Column 2 of the Table.</p>	
<p>(2) Where the Table states that a provision will be repealed on a particular date, the Minister may, by notice in the National Gazette, specify an earlier date, the provision is repealed.</p>	
<p>Column 1 Provision of Act</p>	<p>C o l u m n 2 M a n n e r o f a m e n d m e n t</p>

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SCHEDULE 7 – .

⁸²Amendments to the Defence Force Retirement Benefits Fund Act (Chapter 76).

1. Section 1 of the Act is amended –
(a) by inserting after the definition of “the Board” the following: –
“Central Bank” means the Central Bank of Papua New Guinea;” and
(b) by inserting after the definition of “invalidity benefit” the following: –
“ <i>Life Insurance Act</i> ” means the <i>Life Insurance Act 2000</i> (as amended from time to time) including the regulations and prudential standards made under this Act.”; and
(c) by inserting after the definition of “service for pension” the following: –
“ <i>Superannuation Act</i> ” means the <i>Superannuation Act 2000</i> (as amended from time to time) including the regulations and prudential standards made under this Act.”.
2. Section 13 of the Act is repealed and is replaced with the following: –
“13. FUNCTIONS OF THE BOARD.
The functions of the Board are to control and administer the Fund in accordance with the provisions of the <i>Superannuation Act</i> , the <i>Life Insurance Act</i> and this Act.”.
3. Section 20 of the Act is repealed and is replaced with the following: –
“20. INVESTMENT OF THE FUND.
The Board shall invest all moneys belonging to the Fund in accordance with the provisions of the <i>Superannuation Act</i> .”.
4. Section 21 of the Act is repealed.
5. (1) The <i>Defence Force Retirement Benefits Fund Act</i> (Chapter 76) is further amended by amending the provisions set in Column 1 of the following Table in the manner set out in Column 2 of the Table.
(2) Where the Table states that a provision will be repealed on a particular date, the Minister may, by notice in the National Gazette, specify an earlier date, and on that earlier date, the provision is repealed.

⁸² Schedule 7 Amended by No. 4 of 2002, s. 30; Amended by No. 4 of 2002, s. 30; Amended by No. 4 of 2002, s. 30.

<p>Column 1 Provision of Act</p>	<p>Column 2 Manner of Amendment</p>

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SCHEDULE 8 – .

Amendments to the Companies Act 1997.

The Act is amended in Schedule 9 by inserting Section 2(e) the following: –

“(f) Subject to Section 5 of this Schedule, all mandatory and voluntary employee and employer contributions made, or which should have been made, in accordance with the provisions of the *Superannuation (General Provisions) Act 2000*.”.

SCHEDULE 9 – 83.

Section 78

Payment by the State of employer’s contributions to POSF.
1. The State shall make all contributions in accordance with the Regulations.
2. The following table shows the percentage of the State contributions that shall be paid by the State to POSF within 14 days of the end of each calendar month.
3. The remainder of the State contributions shall be made on retirement of the employee.
4. State contributions accruing before the coming into operation of this Act shall be paid on retirement.
5. The POSF shall keep an account of the amounts contributed in accordance with Paragraph 2.
6. POSF shall keep an account of the amounts outstanding for payment on retirement, which shall include interest accrued at the rate interest as accrued to contributions paid in accordance with Paragraph 2.
Payment by the State of employer’s contributions to POSF.
1. The State shall make all contributions in accordance with the Regulations.
2. The following table shows the percentage of the State contributions that shall be paid by the State to POSF within 14 days of the end of each calendar month.
3. The remainder of the State contributions shall be made on retirement of the employee.
4. State contributions accruing before the coming into operation of this Act shall be paid on retirement.
5. The POSF shall keep an account of the amounts contributed in accordance with Paragraph 2.

⁸³ Schedule 9 Inserted by No. 27 of 2001, s. 2.

6. POSF shall keep an account of the amounts outstanding for payment on retirement, which shall include interest accrued at the rate interest as accrued to contributions paid in accordance with Paragraph 2.