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CHAPTER 189

VANUATU NATIONAL PROVIDENT FUND

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Act 23 of 1998
Act 15 of 2000
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VANUATU NATIONAL PROVIDENT FUND

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

PART 1 – INTERPRETATION

1. Interpretation

In this Act, unless the context otherwise requires –

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

"closely associated or affiliated with a political party" means a person who is a sponsor, an executive member or a political appointee of a political party;

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

"employee" means any person, not being a person of any of the descriptions specified in the Schedule nor a person exempted by an Order made under section 60(a) nor under section 34 or 35 who –

(a) is employed in Vanuatu under a contract of service or apprenticeship, whether written or oral or whether expressed or implied; or

(b) being a citizen of Vanuatu, is employed in the manner specified in the last preceding paragraph outside Vanuatu by an employer having a place of business in Vanuatu; or

(c) being a citizen of Vanuatu, is employed under a contract of service entered into in Vanuatu as a master or member of the crew of any vessel, or as captain or member of the crew of any aircraft, the owners of which have a place of business in Vanuatu; or

(d) is declared by the Minister, in his discretion by Order published in the Gazette to be an employee for the purposes of this Act; or

(e) is a member of a cooperative society and is employed by that society; or

(f) is a shareholder or director of a company registered in Vanuatu and is employed by that company;

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

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

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

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

"informal sector" means persons who are self-employed;

"managed funds" means moneys belonging to the Fund that are managed by the Funds Manager;

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

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

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

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

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

"remuneration" means the gross emoluments which are due in cash to an employee under the terms of his employment before any deductions whether in pursuance of any law requiring or permitting the making of any deduction or otherwise, and includes any payment by way of a bonus or an incentive to an employee whether or not that payment is made on a regular basis to the employee:

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

(a) the value of any remuneration which is paid in kind under the written approval given in accordance with section 16(2) of the Employment Act [Cap. 160] and any amendment or re-enactment thereof;

(b) any payments made to an employee for reimbursement of sums necessarily expended by him on behalf of his employer for the purposes of his employment;

(c) any payments made to an employee in the form of a housing allowance;

(d) any payments made to an employee in the form of a severance payment in accordance with the provisions of the Employment Act [Cap. 160] and any amendment or re-enactment thereof;

(e) any gratuity payments which are due to an employee under the terms of his employment;

"transfer date" means the date determined by the Minister under section 16B(1);

"voluntary contributor" means a person who enters the Fund under the provisions of section 28.

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

2. Establishment of the Board

(1) There is hereby established a body corporate to be known as the Vanuatu National Provident Fund Board.

(2) The Board shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

3. Composition of the Board

(1) The Board consists of the following members:

(a) 2 persons representing employers who are to be nominated as follows:

(i) a person nominated by the Chairperson of the Vanuatu Chamber of Commerce; and

(ii) a person nominated by the Chairperson of the Vanuatu Non-Government Organisations; and

(b) 3 persons representing employees who are to be nominated as follows:

(i) a person nominated by the Workers Union; and

(ii) a person nominated by the Director of Cooperatives and Ni- Vanuatu Business; and

(iii) a person representing the informal sector, nominated by a majority of the members of that sector who are members of the Fund; and

(c) 2 persons representing the Government, nominated by the Minister; and

(d) the General Manager.

(1A) The Minister is to appoint the persons nominated under paragraphs (1)(a), (b) and (c).

(2) Subject to subsections (2A), (3) and (4) members of the Board other than the General Manager may be appointed for a term of 3 years or for such shorter period as the Minister may in his discretion in any case determine and may be reappointed.

(2A) A person must not be appointed as a member under subsections (1)(a),(b) and (c) if he or she:

(a) is a member of Parliament;

(b) is an officer or employee of the Fund;

(c) has been convicted of an offence and sentenced to imprisonment for 3 months or longer;

(d) is an undischarged bankrupt or is insolvent;

(e) has any financial or other interest that is likely to affect prejudicially the discharge of his or her duties as a member of the Board; or

(f) if the person has a professional qualification – the body or authority responsible for that profession has suspended or disqualified the person from practicing and that suspension or disqualification is in force; or

(g) is a person who is closely associated or affiliated with a political party.

(2B) A person appointed under paragraph 3(1)(a), (b) or (c) must have 5 years or more work experience.

(3) If the Minister is satisfied that a member appointed under subsections (1)(a),(b) and (c) –

(a) has been absent from 2 consecutive meetings of the Board without the written consent of the Chairman;

(ab) was a member of the Board at the time a General Manager was appointed or reappointed without the approval of the Minister;

(b) has become insolvent;

(c) is incapacitated by physical or mental illness;

(d) has been convicted of a crime involving moral turpitude;

(e) is otherwise unable or unfit to discharge the function of a member;

(f) has become a member of Parliament;

(g) has become an officer or employee of the Fund;

(h) has become an undischarged bankrupt;

(i) has failed to make a disclosure in accordance with section 7A;

(j) if the person has a professional qualification – the person has been suspended or disqualified from practicing by the authority or body responsible for that profession; or

(k) is a person who is closely associated or affiliated with a political party,

the Minister is to, by notice published in the Gazette declare the office of the member vacant.

(4) A member appointed by the Minister in accordance with subsections (1)(a),(b) and (c) may resign by giving not less than 30 days notice in writing to the Minister.

4. Chairman and Deputy Chairman

(1) The Minister shall appoint from among the members other than the General Manager a Chairman and a Deputy Chairman of the Board.

(2) The Chairman and Deputy Chairman shall each serve as such until their term as member expires and may be re-appointed.

(3) Where the Chairman is absent or otherwise unable or unfit to discharge his functions the Deputy Chairman shall have and exercise all the powers of the Chairman under this Act.

4A. Functions of the Board

(1) The Board is responsible for the efficient and proper management and control of the monies of the Fund.

(2) Without limiting subsection (1), the Board has the following functions:

(a) to approve the following documents of the Fund which are to be prepared by the General Manager:

(i) the strategic plan; and

(ii) the annual budget; and

(iii) the annual implementation plan; and

(iv) the annual report on the operations of the Fund; and

(v) any donor report; and

(vi) the organizational structure of the Fund; and

(b) to approve the Policies and Operations Manual of the Fund, which must be consistent with this Act, and which must specify the following matters:

(i) the project or scheme selection and prioritization criteria; and

(ii) the Fund's interest rate structure in respect to loans, types of financial products, criteria for their selection and their terms and conditions; and

(iii) any other matters relating to the objectives of the Fund; and

(iv) the investments of the Fund; and

(c) to collect contributions; and

(d) to distribute contributions to members' accounts; and

(e) to invest contributions according to the investment guidelines; and

(f) to collect revenue through rental, dividends or any other business or investments; and

(g) to invest in equity, direct loans and other investments as approved by the Board; and

(h) to carry out any other functions that are necessary or required to be carried out for the purposes of this Act.

5. Powers of the Board

(1) The Board shall have the powers to do all the things which are necessary or conducive to the carrying out of the objects of this Act.

(2) Without derogating from the generality of subsection (1) the Board may –

(a) acquire, hold and dispose of real and personal property including houses and other accommodation for occupation by its officers, employees, agents and advisers;

(b) publish printed or audio visual matter for sale or otherwise;

(c) acquire copyright;

(d) charge fees for the services rendered by it;

(e) enter into agreements with any Government organisation or body or person for the better carrying out of the objects of this Act.

6. Secretary

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

(2) The Secretary or a person acting as such shall attend all meetings of the Board and prepare the minutes thereof.

(3) The Secretary shall keep in safe custody the seal and all documents of the Board; receive all process served on the Board and carry out such other duties as the Chairman of the Board or the General Manager shall direct.

7. Meetings of the Board

(1) Subject to subsections (1A) and (1B), the Board shall meet at least 4 times in any 12-month period.

(1A) The Board shall not meet more than once every month.

(1B) The Chairman of the Board shall convene a meeting if he or she receives a written request signed by at least 4 members.

(2) Subject to subsection (3) the Chairman or in his absence the Deputy Chairman shall convene the meetings at such times and places as he thinks fit.

(3) The first meeting of the Board shall be convened by the Minister.

(4) The quorum at meetings shall be the Chairman or in his absence the Deputy Chairman and four other members, of whom at least one shall be a member who is appointed under section 3(1)(a)(ii) and at least one shall be a member who is appointed under section 3(1)(a)(iii).

(5) The Chairman or in his absence the Deputy Chairman shall preside at every meeting of the Board.

(6) The proceedings at any meeting shall not be invalidated by any defect in the appointment of any member.

(7) Decisions of the Board shall be made by a majority vote of members present and voting. The Chairman of the meeting shall have a casting vote.

(8) If a member has any pecuniary interest, direct or indirect in any contract or other matter relating to the Board, he shall as soon as practicable disclose to the Chairman the fact and nature of his interest.

(9) The Board may invite any person to participate in its meetings but they shall have no vote.

(10) Subject to this Act, the Board may make internal rules regulating its procedure.

(11) Any rules made in accordance with subsection (10) shall be issued under the hand of the Chairman.

7A. Disclosure of interests

(1) A member must upon appointment to the Board fully disclose all financial and direct or indirect personal interests, including all other board memberships and directorships. The Board must maintain a register of Board members' interests in which those particulars must be recorded.

(2) Without limiting subsection (1), a member must fully disclose upon his or her appointment to the Board, in respect of himself or herself and his or her immediate family, interests in the following:

(a) land and other property (except the family home and personal effects);

(b) vehicles (except one family vehicle);

(c) shares in public or private companies;

(ca) contracts, arrangements or understandings, whether formal or informal, and whether or not enforceable;

(d) income;

(e) liabilities (except liabilities relating to the family home and personal effects);

(f) directorships in corporations;

(g) directorships or other offices held in unincorporated bodies;

(h) gifts received of a value greater than VT 20,000;

(i) any assets acquired or disposed of during the past twelve months;

(j) any liabilities acquired or discharged during the last twelve months;

(k) assets held outside Vanuatu;

(l) a trust.

(3) On the anniversary of a member's appointment to the Board, the member must make the disclosure required by subsections (1) and (2).

(4) A member of the Board who has a direct or indirect financial or personal interest in a matter being considered, or about to be considered, at a meeting of the Board must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at the meeting.

(5) A disclosure under subsection (4) is to be recorded in the minutes of the meeting of the Board and the member concerned must not:

(a) be present during any deliberation of the Board in relation to that matter; or

(b) take part in any decision of the Board in relation to that matter.

(6) If a member fails to disclose his or her direct or indirect financial or personal interest in a matter that the Board has made a decision on, and the direct or indirect financial or personal interest comes to the attention of the Board, the Chairman or Deputy Chairman must, as soon as practicable, call a meeting to revise that decision.

(7) A member of the Board who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT1,000,000 or imprisonment for a term not exceeding 12 months, or both.

(8) For the purpose of this section, "immediate family" includes:

(a) spouse, child or parent of a member of the Board; or

(b) a company and its subsidiaries of which a member of the Board is a director or executive officer; or

(c) a company for which a spouse, child or parent of a member of the Board is a director or executive officer; whether those related parties own, control, or exercise voting powers.

7B. Sitting Allowance

(1) The members of the Board including the Chairman and the Deputy Chairman are entitled to a sitting allowance for each day in which the Board sits for a meeting.

(2) The Minister is to prescribe, by Order, the amount of the sitting allowance.

8. General Manager of the Board

(1) Subject to subsections (1A), (1B) and (2), the Board shall with the prior approval of the Minister appoint upon such terms and conditions as the Board may think fit a General Manager who shall be an employee of the Board.

(1A) A person shall not be appointed as the General Manager unless the person:

(a) has a degree from a recognised tertiary institution in one or more of the following:

(i) business administration;

(ii) accounting, commerce, economics or law;

(iii) another field of study relevant to the office of General Manager; and

(b) has at least 5 years experience in a senior financial management position.

(1B) The appointment of the General Manager must follow a fair and transparent selection process and must be based on merit.

(2) The General Manager who shall be the chief executive of the Board and of all its operations, shall be appointed for a term not exceeding five years, and may with the prior approval of the Minister be eligible for reappointment.

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

9. Other Staff

(1) The General Manager may, after consultation with the Board, employ other staff of the Fund, as he or she considers necessary, for the proper and efficient performance of the functions of the Board and the Fund.

(2) The General Manager is to determine the terms and conditions of the employment of other staff.

(3) The appointment of other staff must follow a fair and transparent selection process and must be based on merit.

9A. Other Committees

(1) The Board may establish other Committees to assist the Board in carrying out its functions under this Act.

(2) The Board is to determine the functions and procedures of these other Committees.

10. Liability of members, officers and employees

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

11. Travelling and subsistence allowance for members of Board

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

12. Unauthorised disclosure of information

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

13. Evidence of sealing of document and service of document, etc.

(1) The fact that a document bears the seal of the Board shall be *prima facie* evidence in any court or legal proceedings that the document has been properly executed by and on behalf of the Board.

(2) Service of any document on the General Manager or the Secretary to the Board shall be deemed to be service on the Board.

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

14. The Vanuatu National Provident Fund

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

15. Board to be the trustee of the Fund

(1) The Board is to be the trustee of the Fund.

(2) Without limiting the duties of a trustee, the Board has the following duties:

(a) to acquaint themselves fully with the terms of the Trust; and

(b) to ensure that the trust property is vested according to the terms of the Trust; and

(c) to manage the trust property in a prudent, competent and professional manner; and

(d) to preserve the trust property; and

(e) to establish and implement appropriate and effective governance systems and processes for the Trust; and

(f) to act impartially in relation to the Trust; and

(g) to manage the affairs of the Trust in an efficient and effective manner; and

(h) to uphold their fiduciary duty towards the beneficiaries; and

(i) to administer the Trust solely in the interest of the beneficiaries and must not place its interest in conflict with beneficiaries; and

(j) to not profit personally from its role as trustees other than a fee, which it may receive for its trusteeship; and

(k) to exercise reasonable care; and

(l) to keep updated accounts; and

(m) to provide information to beneficiaries.

16. Investment of monies of the Fund

(1) Subject to section 16B, the monies of the Fund are to be invested by the Board according to the investment guidelines.

(2) The Minister may, by Order, after consultation with the Reserve Bank of Vanuatu and relevant officials from the Government, approve the investment guidelines.

(3) The investment guidelines must provide for the following:

(a) the interests of members of the Fund; and

(b) the needs for assisting the financing of balanced social and economic development; and

(c) the need for a balanced portfolio bearing in mind the need for sufficient Vatu liquidity, prudent diversification and rates of returns on the various sources of investment.

(4) The Board must ensure that an investment complies with the following:

(a) the investment guidelines; and

(b) the prudential standards in place from time to time; and

(c) the portfolio composition; and

(d) the diversification; and

(e) the expected rates of return and the associated risks; and

(f) the Fund liquidity; and

(g) such other matters as the Board considers appropriate for the prudent management of the investment.

(5) The Board is to review the investment guidelines each year.

16A. Divesting of certain assets or liabilities

(1) Where an investment entered into under section 16 is non-performing, poorly performing or of a type that the Board does not wish to maintain it may be divested to the Asset Management Unit in accordance with an agreement or agreements entered into with the Asset Management Unit.

(2) Prior to an asset or liability being divested under subsection (1) the Board and the General Manger must agree that the investment is non-performing or poorly performing to the extent that it is uneconomic to maintain the investment, having regard to the obligations imposed under Part 9 of this Act or, that it is of a type that the Board does not wish to maintain.

16AB. Appointment of Funds Managers

(1) The Board may appoint more than one Funds Manager who must meet the criteria set out in subsections (2) and (3).

(1A) The Board is to determine the terms and conditions of appointment of the Funds Manager.

(2) The criteria are that a Funds Manager:

(a) is a body corporate; and

(b) manages other investments that total at least 500 million United States dollars based on the most recent published market valuation of the investments; and

(c) has in place a system which allows market valuation of all investments under its management on a daily basis; and

(d) reports to its clients at least once every three months on the performance of investments; and

(e) has a history of at least five years of financially prudent management in the funds management business; and

(f) has in place sound risk management processes.

(3) The Board must not appoint a Funds Manager unless the Board is satisfied of that credit worthiness of the Funds Manager.

(4) The Board may, in writing, determine additional criteria for the purposes of subsection (2).

(5) The appointment of the Funds Manager must follow a fair and transparent selection process and must be based on merit.

16AC. Removal of Funds Manager

(1) The Board may remove a Funds Manager if it breaches a term or condition of its appointment.

(2) If the Funds Manager is removed under subsection (1), the Funds Manager must return monies belonging to the Fund immediately.

16B. Funds Managers to manage an amount not exceeding 15% of funds

(1) The Board shall forward an amount not exceeding 15% of the moneys belonging to the Fund to the Funds Managers on a date to be determined in writing by the Minister.

(2) The Funds Managers shall manage the moneys in accordance with the criteria set out in subsection (3).

(3) The criteria are:

(a) investment in a fund, or a combination of funds, which produces an expectation (see subsection (4)) that:

(i) the value of the managed funds (net of new funds) will not decrease below their value at the time of investment by a Funds Manager in terms of the equivalent relevant currency that the Fund is investing in; and

(ii) the accretion in value of the managed funds (net of new funds) will produce a real rate of return (see subsection (5)) of not less than 3% per annum or such higher rate as is agreed to by the Board and a Funds Manager; and

(b) such other criteria as the Board determines in writing.

(4) The expectation shall be based on the performance of the asset values of the fund or funds concerned measured on average over the preceding five years and shall have a probability of 99%.

(5) The real rate of return is to be calculated in terms of the Vanuatu VATU by reference to the Government Consumer Price Index.

(6) If the Funds Manager is of the opinion that it is not possible to comply with any of the criteria in subsection (3), the Funds Manager shall provide to the Board its reasons in writing.

(7) If the Board considers the Funds Manager's reasons are reasonable, it may agree to extend the measurement period in subsection (4) to a maximum of ten years and vary any of the other criteria, other than the 3% per annum referred to in subsection (3)(a)(ii).

16C. Board may withdraw managed funds

If a Funds Manager fails to perform to a standard that is acceptable to the Board, the Board may, by giving at least two days and not more than fourteen days written notice to that Funds Manager, withdraw all of the managed funds from that Funds Manager without penalty.

16D. Board to enter into contract with Funds Manager

(1) The Board shall enter into a written contract with a Funds Manager for the management of the managed funds.

(2) Without limiting the contract, it shall:

(a) contain the criteria referred to in section 16B(3); and

(b) set out the reporting obligations of the Funds Manager to the Board; and

(c) contain such other matters as the Board considers necessary.

(3) The Board and the Funds Manager must enter into the contract before the transfer date.

16E. Board to advance funds to Funds Managers

(1) The Board shall, in accordance with subsection (2), forward to the Funds Managers an amount determined by the Board not exceeding 15 percent of all of the moneys that are collected by the Board under this Act on or after the transfer date.

(2) The Board shall forward the moneys to the Funds Managers within 14 days after:

(a) the end of the first six month period after the transfer date; and

(b) the end of each succeeding six-month period.

(3) The Funds Managers shall manage the moneys in accordance with the criteria referred to in section 16B(3).

17. Rate of interest payable by the Fund

(1) The Board may declare any amount of rate of interest payable by the Fund annually to the members.

(2) The Board must have regard to the following in declaring a rate of interest under subsection (1):

(a) any written recommendations of the General Manager; and

(b) the actual and expected income of the Fund after payment of expenses for any financial year; and

(c) the need for the Fund to maintain investment reserves; and

(d) the costs of administering the Fund.

18. Government to make advances to the Board

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

19. Expenses

(1) All expenses incurred in carrying out the provisions of this Act into effect and in connection with the administration of the Fund shall be paid out of the moneys of the Fund.

(2) For the purposes of this section, such expenses shall include such expenditure as the Board shall consider reasonably necessary or desirable for the benefit or credit of the Fund.

20. Accounts and audit

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

(2) The Board must appoint a qualified auditor who is responsible for auditing the accounts of the Fund annually.

(3) The Board must not appoint a person under subsection (2) if that person is disqualified for appointment as auditor under section 130 of the Companies Act No. 25 of 2012.

21. Annual report

(1) Within 3 months of the end of each financial year the Board shall submit an annual report of its activities, together with the audited accounts including the report of the auditor appointed under subsection 20(2), to the Minister.

(2) The Minister shall cause a copy of the annual report, audited accounts and audit report to be laid before Parliament.

21A. Offence and penalty

If a person contravenes any provision of Part 3, the person commits an offence punishable on conviction:

(a) in the case of an individual - by a fine not exceeding VT5,000,000 or by imprisonment to a term not exceeding 2 years, or both;

(b) in the case of a body corporate - to fine not exceeding VT10,000,000.

PART 4 – REGISTRATION OF EMPLOYERS AND EMPLOYEES

22. Registration of employers

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

23. Registration of employees

Every employer must register his or her employee with the Board as a member of the Fund in the manner approved by the Board.

23A. Registration of a self-employed person

A person who is self-employed and who intends to be a member of the Fund may apply to the Board to be registered as a member of the Fund, in the manner approved by the Board.

24. Membership of the Fund

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

PART 5 – CONTRIBUTIONS TO THE FUND

25. Calculation of contribution

(1) Subject to subsections (2) and (3), on each occasion when remuneration is paid to an employee under this Act, a contribution to the Fund is to be paid at the rate of 8 percent of that remuneration of which half is to be paid by the employer and half by the employee;

(2) No contribution shall be payable in respect of an employee in any month in which the total amount of the remuneration paid to that employee by any one employer is less than VT 3,000.

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

26. Payment of contributions

(1) The employer shall pay to the Board the contributions payable in any month for and by all of his employees by the end of the following month in such manner and such form as may be prescribed.

(2) Where the employer fails to pay some or all of the contributions due within the time specified in subsection (1) he shall be liable to a surcharge on the amount of the contributions not so paid at the rate of 5 per cent in respect of each month or part of the month after the due date for which the contributions remain unpaid:

Provided that –

(a) if the amount of surcharge so calculated is less than VT 50 the surcharge payable shall be VT 100; and

(b) the Board may in any case in which it thinks fit remit in whole or in part the payment of any surcharge due under the provisions of this subsection.

27. Unpaid contributions deemed to be paid in certain circumstances

If any employer fails to pay any contribution which he is required to pay under section 26(1) the Board may, if it is satisfied –

(a) that such failure was not due to the consent or connivance of the employee concerned; and

(b) that there is no prospect of recovering the amount unpaid within a reasonable time,

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

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

28. Voluntary contributors

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

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

29. Ministers of religion

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

PART 6 – ALLOCATION OF PAYMENTS INTO THE FUND

30. Contribution to be paid into the Fund and credited to members

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

(2) The Board shall cause a retirement account, an investment account and a medi-save account to be maintained for each member of the Fund into which shall be credited –

(a) 50% of the amount of the contributions paid by and in respect of him or her to the retirement account; and

(b) 25% of the amount of contributions paid by and in respect of him or her to the investment account; and

(c) 25% of the amount of the contributions paid by and in respect of him or her to the medi-save account; and

(d) at the end of each financial year, interest at the rate declared by the Board under subsection 17(1) in respect of that financial year on the amount standing to the member's credit in the Fund, as stated in paragraphs (a), (b), and (c) at the commencement of that financial year:

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

(2A) The accounts referred to in paragraphs (2)(a), (b) and (c), will accumulate as the contributions paid by and in respect of a member are made to the Fund only on and after 01 January 2008.

(2B) Upon the commencement of this Act, the Fund is to transfer 25% of an existing member's credit standing with the Fund immediately before the commencement of this Act, to the member's investment account referred to in paragraph (2)(b).

(2C) To avoid doubt:

(a) subsection (2B) only applies to members of the Fund who have an account with the Fund immediately before the commencement of this Act and the transfer made pursuant to that subsection occurs only once for that purpose; and

(b) 75% of an existing member's credit standing with the Fund upon the transfer of the 25% referred to in subsection (2B) will remain in the member's retirement account.

(3) If in a particular year ("the withdrawal year") a member withdraws from the Fund an amount standing to his or her credit:

(a) interest is payable on the amount in the Fund standing to the credit of the member at the end of each month of the withdrawal year prior to the month in which the withdrawal is made; and

(b) the rate of interest to be used in calculating the interest that is payable under paragraph (a) is the monthly equivalent of the rate declared by the Board under section 17(1) for the withdrawal year.

(4) (*Repealed*)

(5) This section applies despite any other provision of this Act, including any provision that was in force prior to the commencement of this subsection.

31. Board to notify members of their respective balances in accounts

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

32. Revenue other than contributions

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

33. General Reserve Account

(1) There shall be established an account which shall be known as the General Reserve Account which shall be credited with –

(a) any income of the Fund remaining unappropriated at the end of any financial year; and

(b) any other moneys prescribed to be so credited by regulations made under this Act.

(2) The moneys in the General Reserve Account shall form part of the Fund and any interest arising from the investment thereof shall be credited to the general revenues of the Fund.

(3) The Board may, from time to time, authorise the expenditure of moneys held in the General Reserve Account for the furtherance of such social security measures as may be approved from time to time by the Minister.

PART 7 – APPROVED SCHEMES

34. Approved schemes

(1) Subject to the provisions of this section, the authorities responsible for the management of any existing scheme may apply to the Board in the prescribed form for registration of the scheme as an approved scheme under this Act.

(2) An application under subsection (1) shall be made to the Board within 1 month of the date on which Part 5 of this Act comes into force and shall be supported by such evidence as to the purpose of the scheme, conditions of membership, financial status, benefits provided and method of management as the Board may require.

(3) No scheme shall be approved by the Board as an approved scheme unless –

(a) it is an existing scheme; and

(b) membership of such scheme is limited to employees of a specified employer or associated group of employers; and

(c) the Board is satisfied that the rules of such scheme shall secure to its members on the occurrence of any date of entitlement mentioned in section 38 of this Act benefit in the form of a lump sum or periodic payments which is at least equal in monetary value to the benefit the member would have been entitled to receive had he been a member of the Fund for the period during which he was exempted from the provisions of this Act by reason of his membership of the approved scheme.

(4) The authorities responsible for the management of an approved scheme shall submit a copy of the audited annual accounts to the Board for each year during which it is an approved scheme.

(5) (a) The Board shall review its approval granted in respect of an approved scheme whenever the benefits provided under this Act, including the rate of interest on members' accounts, are amended or improved or additional benefits are introduced and where it appears to the Board that the approved scheme no longer satisfies the condition set out in subsection (3)(c) it shall give notice to the authorities concerned of its intention to withdraw approval of the scheme unless, within 3 months of the date of such notice the benefits of the approved scheme are adjusted so as to satisfy such condition.

(b) The Board may, by giving 1 month's notice in writing to the authorities concerned of its intention to do so for reasons which shall be stated, withdraw approval in respect of an approved scheme where it appears to the satisfaction of the Board that it would be in the interests of the members of such scheme to do so because of the state of the finances of the scheme as revealed in the annual accounts or in the absence of such accounts or for other sufficient reason.

(c) The authorities responsible for the management of an approved scheme may, upon the resolution of the managing body of such scheme, request the Board to withdraw approval of the scheme from an agreed date.

(d) Where approval in respect of an approved scheme is withdrawn in accordance with the preceding provisions the Board shall take all practicable steps to secure the interests of the members concerned.

(6) (a) An employee who is a contributor, or in respect of whom contributions are paid, to an approved scheme and his employer shall be exempt from liability to pay contributions to the Fund under this Act in respect of any employment in respect of which contributions are paid to that scheme and where the employee is required to serve a probationary period not exceeding 3 months the exemption shall also apply to remuneration derived from that period.

(b) The exemption under this Part shall apply only to employment covered by the approved scheme and not to any other concurrent employment.

(7) Where an employee who is a member of an approved scheme leaves that scheme prior to attaining any date of entitlement mentioned in section 38 (except on death) the authorities concerned shall pay to the Board a sum equal to the amount of contributions which would have been payable into the Fund by and in respect of the employee, plus any interest which would have accrued to him in the Fund, had the employment not been exempt employment:

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

(8) Where an employer –

(a) is liable to make contributions under this Act in respect of any employee; and

(b) is by himself or in association with others operating an existing scheme to provide benefits comparable to the benefits provided by this Act for such employee or employees,

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

(9) Nothing in subsection (8) shall be construed so as to –

(a) authorise the amendment of an existing scheme in such a way that the benefits, excluding annual interest, to an employee under that scheme and this Act are reduced below those to which he would have been entitled if this Act had not been enacted; or

(b) require an employer to contribute to both the existing scheme and the Fund an amount in excess of that paid by the employer to the scheme for any comparable period before he became an employer liable to contribute to the Fund.

(10) For the purpose of this section, "existing scheme" means any provident fund or pension or superannuation scheme set up before the date of commencement of this Act for the benefit of employees.

35. Non-citizens

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

36. Cessation of exempt employment

(1) Where any person who is exempt under any provision of this Act ceases to be employed in exempt employment (otherwise than by reason of death) without having become entitled to such pension, gratuity or allowance as may be payable from time to

time under the benefit scheme of his former employer, such employer shall, in such manner as the Board may approve and within a period of 1 month from the cessation of the employment, pay to the Fund a sum equal to the contributions which the employer would have been required to pay to the Fund had the employment not been exempt employment.

(2) Any person to whom subsection (1) applies shall, unless he is already registered as a member of the Fund, be registered as such member within 1 month after he ceases to be employed in such exempted employment as aforesaid, and his former employer shall cause to be supplied to the Board such information as the Board may require for the purpose of securing such registration.

(3) The provisions of section 26(2) shall apply in relation to the late payment of any sum required to be paid under subsection (1) of this section as they apply in relation to the late payment of a contribution required to be paid under section 25.

PART 8 – WITHDRAWAL OF CREDIT

37. Amount standing to the credit of member

For the purposes of any withdrawal from the Fund, the amount standing to the credit of a member shall be a sum equal to the aggregate of all contributions made in respect of that member and such interest as may be credited thereon to such member under section 30(2).

38. Entitlement to withdrawal of credit

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

(a) has attained the age of 55 years; or

(b) has died; or

(c) has become permanently physically or mentally incapable of engaging in employment of any kind; or

(d) is about to leave or has left Vanuatu with no intention of returning thereto, whichever event occurs first; or

(e) upon obtaining a loan under the microfinance scheme of the Fund with a financial institution approved by the Board, that member is unable to settle his or her outstanding debt with the financial institution.

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

(2A) A withdrawal under:

(a) paragraph (1)(a), (b), (c) or (d) is to be made from all three accounts of a member referred to in paragraphs 30(2)(a), (b) and (c);

(b) paragraph (1)(e) is to be made only from the member's investment account.

39. Withdrawal of credit after the age of 55 years

In the case of a member who withdraws any amount standing to his credit in the Fund on the ground that he has attained the age of 55 years and in respect of whom contributions are made to the Fund in respect of employment after that age, no further withdrawal of credit may be made from the Fund until 2 years have elapsed since the date of the last withdrawal unless the member certifies that he has no further intention of engaging in employment as an employee or has died.

39A. Partial withdrawal of credit

Despite section 38, a member may apply for the partial withdrawal of 50% of his or her credit from the Fund at the age of 47 years or more.

40. Authorisation of withdrawal

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

41. Withdrawal otherwise than on death

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

42. Withdrawal by nominee

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

43. Nomination for payment

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

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

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

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

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

(6) For the purposes of this section –

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

(b) “family” means –

(i) in the case of a man – his wife (except where in accordance with any law or court order the wife is no longer entitled to maintenance), his children (whether married or unmarried), in the event that the deceased has no family, his dependant parents, brothers and sisters and his deceased son's widow and children; and

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

in the event that the deceased has no family, her dependant parents, brothers and sisters and her deceased son's widow and children.

44. Procedure where there is no nominee or a minor nominee

(1) If, at the time of the death of any member of the Fund, there is no person nominated under section 43, the amount standing to the member's credit in the Fund shall be paid out in accordance with regulations prescribed by the Minister.

(2) Except where no person is appointed under section 43(4), if any person nominated, other than a widow, shall be under the age of 18 years at the time of payment of the amount payable out of the Fund, his portion of the amount payable shall be paid out in accordance with regulations prescribed by the Minister.

PART 9 – PROTECTION OF SUMS CONTRIBUTED AND WITHDRAWN

44A. Certain members' funds used to satisfy debts

(1) This section applies to a scheme established by the Board to provide educational or micro loans to members.

(2) If:

(a) the Board has made an advance of money to a member under the scheme; and

(b) the member owes a debt to the scheme; and

(c) the debt is a consequence of the member's participation in the scheme;

all or any part of the amount standing to the credit of the member in the Fund shall be liable to be attached, sequestrated or levied upon, for, or in respect of, the debt.

(3) This section applies despite any other provision of this Act.

45. Members' credit is inalienable

(1) Subject to the provisions of subsection (2), no contribution to the Fund, nor any amount standing to the credit of a member in the Fund nor interest on any such contribution or amount, nor withdrawals made from the Fund under paragraph 38(1)(a),(b),(c) or (d), nor the rights of any member of the Fund acquired thereunder, shall be assignable or transferable or liable to be attached, sequestrated or levied upon for or in respect of any debt or claim whatsoever.

(2) All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of the person nominated under section 43 by the deceased member or if no such person has been nominated the person or persons entitled thereto and shall be deemed not to form part of the deceased member's estate nor to be subject to his debts.

46. Exemption for tax, etc.

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

47. Bankruptcy of employees

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

48. Bankruptcy, liquidation, etc. of employers

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

(2) Any trustee in bankruptcy, liquidator, receiver, personal representative or other such person shall, before distributing any assets under his control, obtain from the General Manager a certificate to the effect that all contributions payable under section 26(1) by such person out of any estate under his control have been paid.

(3) If any distribution is made by any trustee in bankruptcy, liquidator, receiver, personal representative or other such person without first obtaining a certificate under subsection (2), then such person shall be personally liable for any unpaid contributions together with any surcharge payable under section 26(2).

49. Secrecy

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

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

PART 10 – OFFENCES, PENALTIES AND PROCEEDINGS

50. Offences and penalties

(1) Any person who –

(a) for any purpose connected with this Act –

(i) knowingly makes any false statement;

(ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document which he knows to be false in a material particular;

(b) in respect of whom the provisions of either section 22 or section 23 apply fails to apply for registration;

(c) fails to pay to the Board in any month any amount which, under section 26(1), he is liable to pay in that month in respect of any employee;

(d) obstructs any member, officer, employee, agent, adviser or consultant of the Board in the discharge of his duties and functions as such;

(e) fails to pay to the Board within such period as may be prescribed any surcharge which he is liable to pay under section 26(2);

(f) being or ever having been a member, officer, employee, agent, adviser or consultant, of the Board directly or indirectly communicates or reveals to any person any matter relating to the business of the Board which shall have become known to him in his capacity as member, officer, employee, agent, adviser or consultant except as may be required for the due discharge of his

duties as such member, officer, employee, agent, adviser or consultant or as may be permitted by the Board;

(g) procures any member, officer, employee, agent, adviser or consultant of the Board or any person who has ever been such member, officer, employee, agent, adviser or consultant to communicate or reveal any such matter as is set out in paragraph (f);

(h) fails to pay any contribution or surcharge which he is required to pay under section 48(3);

(i) fails to produce at the time specified, any document required to be produced by notice in writing under section 58(c),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT1,000,000 or to a term of imprisonment not exceeding 6 months or to both such fine and imprisonment.

(2) Any person who deducts from the remuneration wages of an employee any sum greater than that permitted to be recovered under this Act or, having made any deduction, fails to pay to the Fund in the time required by section 26(1) the contribution in respect of which such deduction has been made, shall be guilty of an offence and liable on conviction to a fine not exceeding VT2,000,000 or to a term of imprisonment not exceeding 1 year, or to both such fine and imprisonment.

51. Notice of unpaid contributions

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

52. Further powers of the court

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

53. Liability of officers of corporations

Where an offence against this Act or any order or regulation made thereunder has been committed by a body corporate, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the body corporate, firm, society or other body of persons or was purporting to act in such capacity shall, as well as such body corporate, firm, society or other body of persons, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

54. Report of offences and Attorney General's fiat

(1) The Chairman of the Board or the General Manager or an officer of the Board authorised in that behalf by the Board or the General Manager may report offences

against this Act or any orders or regulations made thereunder directly to the Public Prosecutor.

55. Evidence in proceedings

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

56. Civil proceedings

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

(2) Proceedings for the recovery as a civil debt of any contribution may, notwithstanding anything in any other law to the contrary, be brought at any time within 6 years from the date when the contribution became due.

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

PART 11 – APPOINTMENT AND POWERS OF INSPECTORS, OFFICERS OF THE FUND AND VOLUNTARY AGENTS

57. Appointment of inspectors

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

(2) Any inspector appointed in accordance with subsection (1) shall have and exercise all the powers, duties and functions set out in this Part.

(3) Any inspector appointed in accordance with subsection (1) shall on demand, produce such document of identification or such other evidence as may be reasonably sufficient to show that he is an inspector so appointed for the purposes of this Act.

58. Powers of inspectors

An inspector appointed in accordance with section 57 may at any reasonable time –

(a) enter any premises or place where persons are believed to be engaged as employees;

(b) make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act or orders or regulations made thereunder are being or have been complied with in any such premises or place;

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

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

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

(e) exercise such other powers as may be necessary or expedient for carrying into effect the provisions of this Act.

58A. Obstructing inspectors in execution of their powers

A person who, without lawful or reasonable excuse, hinders or obstructs any inspector in the performance of his or her powers under this Act, commits an offence punishable on conviction to a fine not exceeding VT1,000,000, or to a term of imprisonment not exceeding 1 year, or both.

59. Powers of officers of the Board

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

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

(b) require any person who makes any such statement to sign a declaration as to its truth.

59A. Voluntary agents

(1) The Board may enter into a Cooperation Agreement with an employer to become a voluntary agent of the Fund.

(2) A voluntary agent is to assist the Fund to collect contributions of members who are self-employed.

PART 12 – SPECIAL POWERS OF THE MINISTER

60. Exemptions, etc.

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

(a) exempt any person or class of persons from all or any of the provisions of this Act;

(b) declare that any person or class of persons not falling within the definition of "employee" shall be treated for all purposes of this Act as falling within that definition:

Provided that any such Order –

(i) so far as it relates to a class of person shall apply to all persons of that class; and

(ii) shall in all cases specify the person, body or authority to be treated as the employer of the person or persons affected by the Order and liable for all the duties and responsibilities of an employer under this Act including the liability to pay contributions;

(c) provide for the payment, in addition to or in place of the payments provided under Part 8 of this Act, of other benefits for members, including the payment of annuities:

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

61. (*Repealed*)

62. Reciprocal agreements

(1) The Minister may, after consulting the Board, enter into a reciprocal agreement with the government of any other country or territory in which a fund similar to the Fund has been established and such agreement may provide among other matters for the following –

(a) that any period during which a member of the fund in one country is required to contribute to the fund in the other country may, so far as it is relevant for benefit purposes, be treated as a period of contribution to the other fund; and

(b) for such transfer of credits between the funds of the 2 countries as may be appropriate in any case where a member is entitled to benefit from one fund whilst residing in the other country.

(2) Any reciprocal agreement made under subsection (1) shall be published in the Gazette and shall come into force on the date of such publication or on such later date as may be provided in the agreement

PART 12A – MEMBER PROTECTION BENEFIT

62A. Member Protection Benefit

(1) The Member Protection Benefit is established.

(2) The Member Protection Benefit provides for the following benefits for members:

(a) death benefits, and

(b) medical benefits; and

(c) housing benefits; and

(d) agricultural benefits; and

(e) natural disasters benefits; and

(f) any other benefits as may be determined by the Board.

PART 13 – REGULATIONS

63. Regulations

(1) The Minister may after consultation with the Board, by Order published in the Gazette make regulations not inconsistent with the provisions of this Act for the better carrying into effect the provisions of this Act and may prescribe in such regulations all things and matters which are necessary or required to be prescribed thereunder.

(2) Without prejudice to the generality of subsection (1) the Minister may in such Order make regulations in respect of all or any of the following matters –

(a) to provide for the registration of employers and employees in anticipation of the coming into force of any of the provisions of this Act and subsequently;

(b) to provide for the manner of payment and collection of contributions and any matters incidental thereto;

(c) to provide for the disposal of amounts which are unclaimed, unpaid or otherwise remain in the Fund;

(d) to provide for –

(i) the return of contributions under the provisions of this Act, or any part of such contributions, paid in error;

(ii) the payment of contributions under the provisions of this Act, or of any part of such contributions, omitted to be paid in error;

(e) to provide for the keeping of books, accounts or records by employers;

(f) to provide for the appointment of medical boards for the purpose of determining title to withdrawal of credits under paragraph (c) of section 38(1) and for such other purposes as may be prescribed;

(g) to prescribe the procedure for the withdrawal of amounts from the Fund;

(h) to prescribe the procedure to be followed when any voluntary contribution is paid to the Fund;

(i) to prescribe the returns to be made by employers and the forms and registers to be used in carrying out the provisions of this Act;

(j) to prescribe the amount, frequency of payment and duration of any annuity payable in accordance with any Order made under the provisions of section 60.

(3) Any Orders or regulations made under this section or made under any other provisions of this Act may provide that any failure to comply therewith or any contravention or breach thereof shall be punishable on conviction by such fine not exceeding VT 50,000 or by such term of imprisonment not exceeding 6 months as may be specified in such Orders or regulations, or by both such fine and imprisonment.

SCHEDULE

(section 1)

EXCEPTIONS

(1) Any child under the age of 14 years as defined in the Employment Act [Cap. 160].

(2) Any person who is not a citizen of Vanuatu and has privileges extended to him or her under the Diplomatic Privileges and Immunities Act [Cap. 143].

(3) Any outworker.

(4) Any person detained in prison, approved school, mental hospital or leper asylum.

(5) Any person who is temporarily employed in agriculture or forestry as an individual or as the leader of a gang working collectively and who at the time of engagement in such employment is not expected to be employed for more than 2 months.

However, if the engagement of an individual exceeds 2 months, he or she ceases to be excepted from the start of the third month of the engagement.

Table of Amendments

1	*Amended by Acts 23 of 1998; 8 of 2020*
3(1)	*Substituted by Acts 23 of 1998; 8 of 2020*
3(1)(a)(ii)	*Amended by Act 29 of 2003*
3(2)	*Amended by Acts 23 of 1998; 8 of 2020*
3(2A)	*Inserted by Act 23 of 1998*
3(2A)(3) & (4)	*Amended by Act 8 of 2020*
3(2A)(g)	*Inserted by Act 8 of 2020*
3(2B),(2C)	*Inserted by 29 of 2003*
3(2B)	*Substituted by Act 8 of 2020*
3(2C)	*Repealed by Act 8 of 2020*
3(3)	*Amended by Act 8 of 2020*
3(3)(ab)	*Inserted by Act 29 of 2003*
3(3)(d)	*Amended by Act 23 of 1998*
3(3)(f)-(j)	*Inserted by Act 23 of 1998*
3(3)(i)	*Amended by Act 8 of 2020*
3(3)(k)	*Inserted by Act 8 of 2020*
4A	*Inserted by Act 8 of 2020*
7(1)	*Substituted by Act 23 of 1998*
7(1A),(1B)	*Inserted by Act 23 of 1998*
7A	*Inserted by Act 23 of 1998*
7A(1)	*Amended by Act 8 of 2020*
7A(2)(ca)	*Inserted by Act 8 of 2020*
7A(6) – (8)	*Inserted by Act 8 of 2020*
7B	*Inserted by Act 8 of 2020*
8(1)	*Substituted by Act 17 of 1989; amended by Acts 23 of 1998, 29 of 2003*
8(1A)	*Inserted by Act 23 of 1998*
8(1B)	*Inserted by Act 29 of 2003*
8(1B)	*Substituted by Act 8 of 2020*
8(2)	*Substituted by Act 17 of 1989*
9	*Substituted by Act 8 of 2020*
9A	*Inserted by Act 8 of 2020*
11	*Amended by Acts 23 of 1998; 8 of 2007; 8 of 2020*
15	*Substituted by Act 8 of 2020*
16	*Amended by Acts 23 of 1998, 29 of 2003*
16	*Substituted by Act 8 of 2020*
16A	*Inserted by Act 22 of 1998*
16AB-16E	*Inserted by Act 23 of 1998 (16AB so renumbered by Act 15 of 2000)*
16AB (heading)	*Substituted by Act 8 of 2007*
16AB(1)	*Substituted by Act 8 of 2007*
16AB(1A)	*Inserted by Act 8 of 2020*
16AB(2) & (3)	*Amended by Act 8 of 2007*
16AB(5)	*Inserted by Act 8 of 2020*
16AC	*Inserted by Act 8 of 2020*
16B (heading)	*Amended by Act 8 of 2007*
16B(1) (heading)	*Amended by Acts 30 of 2000, 6 of 2001, 29 of 2003*
16B(1) & (2)	*Amended by Act 8 of 2007*
16B(3)(a)(i) & (ii)	*Amended by Act 8 of 2007*
16C	*Amended by Act 8 of 2007*
16D(1)	*Amended by Act 8 of 2007*
16E (heading)	*Amended by Act 8 of 2007*
16E(1)	*Amended by Acts 15 of 2000, 6 of 2001, 29 of 2003*
16E(1), (2) & (3)	*Amended by Act 8 of 2007*
17	*Substituted by Act 15 of 2000*
17(2)	*Amended by Act 8 of 2020*
17(3) – (5)	*Repealed by Act 8 of 2020*
20(2)	*Substituted by Act 8 of 2007*
20(2)	*Amended by Act 19 of 2013*
21(1)	*Amended by Acts 8 of 2007; 8 of 2020*
21A	*Inserted by Act 8 of 2020*
23	*Substituted by Act 8 of 2020*
23A	*Inserted by Act 8 of 2020*
25(1)	*Substituted by Act 23 of 1998, then by Act 29 of 2003*
26(2)	*Amended by Act 23 of 1998*
26(2)(a)	*Amended by Act 23 of 1998*
30(2)	*Amended by Act 8 of 2007*
30(2)(a)	*Substituted by Act 8 of 2007*
30(2)(b)	*Substituted by Act 15 of 2000*
30(2)(b)	*Re-lettered by Act 8 of 2007*
30(2)(d)	*Amended by Acts 8 of 2007; 8 of 2020*
30(2A) – (2C)	*Inserted by Act 8 of 2007*
30(3), (4), & (5)	*Inserted by Act 15 of 2000*
30(5)	*Amended by Act 8 of 2007*
38(1)(d)	*Amended by Act 8 of 2007*
38(1)(e)	*Inserted by Act 8 of 2007*
38(2A)	*Inserted by Act 8 of 2007*
43(6)(b)(i) & (ii)	*Amended by Act 8 of 2007*

44A (Part 9)	*Inserted by Act 23 of 1998*	*61(1)*	*Amended by Act 8 of 2007*
45(1)	*Amended by Act 8 of 2007*	*62A (Part 12A)*	*Inserted by Act 8 of 2020*
54(2)	*Repealed by Act 8 of 2007*	*63(1)*	*Amended by Act 8 of 2007*
61	*Repealed by Act 8 of 2020*	*Schedule*	*Substituted by Act 23 of 1998*