

SAMOA

NATIONAL PROVIDENT FUND REGULATIONS 2010

Arrangement of Provisions

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PURSUANT to section 62 of the National Provident Fund Act 1972, **I, TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** the following Regulations:

DATED this 17th day of May 2010.

signed: (Tui Atua Tupua Tamasese Efi)
HEAD OF STATE

REGULATIONS

1. Short title and commencement-(1) These Regulations may be cited as the National Provident Fund Regulations 2010.

(2) These Regulations commence on the commencement date of the National Provident Fund Amendment Act 2010.

2. Interpretation-(1) In these Regulations, unless the context otherwise requires:

“Act” means the National Provident Fund Act 1972;

“serious medical condition” means a medical condition certified by a duly qualified medical practitioner practising in Samoa as serious and as requiring overseas investigation, diagnostic tests or treatment, but not standard or precautionary medical tests;

“serious medical condition costs” means incurred or anticipated expenses:

(a) not payable or repayable by the Government of Samoa, for the investigation, diagnostic testing or treatment of a serious medical condition; and

(b) for associated travelling and accommodation, including those expenses of one (1) companion.

“widow” means a female person who has been a spouse and who has neither remarried nor is cohabiting with a male person;

“widower” means a male person who has been a spouse and has neither remarried nor is cohabiting with a female person.

(2) Words and phrases have the same meaning in these regulations as they have in the Act.

3. Investment duties-(1) In making investments in any real or personal property in Samoa or elsewhere the Board, in fulfilling the duties of the Directors, shall give due consideration to:

(a) the economic soundness and viability of the undertaking, project, enterprise or proposal or other investment;

(b) the ability of the undertaking, project, enterprise or proposal if brought to maturity, to provide for a yield on the investment commensurate with the degree of risk associated with it and to provide if necessary for the repayment of the capital invested whenever due.

(2) The Board may, from time to time, set a minimum amount which may be invested under this regulation in any undertaking, project, enterprise or security.

(3) No advance shall be made by the Fund unless fully adequate security is given for the advance by the borrower, and in the case of any advance on the security of realty or an interest in realty the advance shall not exceed 70 percent of the Fund's valuation of such realty or of such interest in that realty.

(4) Investments may only be made outside Samoa if:

- (a) the investment is "at call"; or
- (b) the amount invested represents 10% or less of the assets of the Fund available at that time for investment; or
- (c) in any other case, the consent of the Minister is first obtained.

4. Meetings of the Board-(1) Every meeting of the Board shall be presided over by the Chairperson, or if the Chairperson is for any reason absent from a meeting, the members present shall appoint one (1) of their members to preside at that meeting.

(2) At all meetings of the Board the quorum necessary for the transaction of its business shall be five (5) members.

(3) The Chairperson or four (4) members may at any time convene a special meeting of the Board by notice in writing stating the business to be transacted and served on all those eligible to attend.

(4) A question before a meeting of the Board shall be resolved by a majority of the valid votes of the members, or their deputies, present.

(5) A resolution signed or assented to by letter, facsimile or electronic means by a majority of the members shall have the same effect as a resolution duly passed at a meeting of the Board.

(6) The Chairperson at any meeting shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(7) Subject to the Act the Board may regulate its meetings in such manner as it thinks fit.

5. Secretary and minutes of meeting-(1) The Board shall cause minutes to be kept and shall record the names of all persons present, all resolutions and proceedings of meetings of the Board, or any sub-committee of the Board.

(2) The minutes of every meeting shall, if signed by a person purporting to be the Chairperson of any meeting, be received in evidence without further proof.

(3) A copy of the minutes shall be promptly furnished to every member as soon as practicable after the completion of every meeting.

6. Regulation of alternative funds-(1) Before proposing to revoke any certificate under section 29 of the Act or impose any conditions on an alternative fund, the Board shall give to the employer one (1) month's notice of its proposed intention to do so stating the reasons for the proposed revocation or imposition of conditions.

(2) At any time before a decision is made under section 29(3), the employer may provide the Board with reasons for which the certificate should not be revoked or conditions should not be imposed.

(3) At the expiration of the notice the Board may revoke the certificate or impose conditions as it sees fit in its absolute discretion.

7. Alternative fund and insurance-(1) If permitted by the insurer and at the option of the employee when he or she ceases to be a member of an alternative fund, the employer shall transfer to the employee or the Fund within one (1) month the benefit of any policy of life insurance without any abatement of the amount transferred in accordance with section 30(1)(a) or (b) of the Act.

(2) If the policy is transferred to the employee, the insured shall maintain the policy and not assign, mortgage, pledge, transfer, or surrender or otherwise dispose of the beneficial interest therein and shall pay the premiums until at least the date of maturity of the policy or the date of retirement.

(3) The insured may surrender or otherwise deal with the policy as he or she thinks fit after the date of maturity of the policy or the date of entitlement.

(4) If the policy is transferred to the Fund, it may continue or surrender the policy and, if surrendered, credit the proceeds to the member's account with the Fund.

8. Transfer of credits to alternative fund-(1) Where an employee is on probation before being eligible to become a member of an alternative fund, contributions under section 22 of the Act shall

be paid by the employer until the expiration of the period of probation.

(2) Upon the expiration of the period of probation:

- (a) the Fund shall transfer to the alternative fund within one (1) month the amount standing to the credit of the employee's account with the Fund; and
- (b) the employer shall commence contributions to the alternative fund.

9. Winding up of alternative funds - Where an alternative fund is wound up, the Board may accept in their entirety the assets and liabilities of the alternative fund at such date as is agreed and may place to the credit of each member of such fund, in the Fund, a sum equal to the amount standing to his or her credit in the alternative fund on that date.

10. Rules and accounts of alternative funds - An employer who has established an alternative fund shall:

- (a) furnish the Board with such accounts in respect of the alternative fund, duly certified by an accountant approved by the Board, as the Board may require;
- (b) comply with the rules of the alternative fund and pay such contributions and donations into such fund within the period required by the rules;
- (c) inform the Board of any proposed amendment to the rules of the alternative fund and shall not effect any such amendment except with the written consent of the Board;
- (d) furnish such returns to the Board as the Board may specify concerning employees who are members of, or who have ceased to contribute to, such alternative fund; and
- (e) furnish the Board with such other information as the Board may require satisfying itself that the alternative fund is acting in the interests of its members and including as to the operation, investments, management, policies and profitability.

11. Pension Reserve Account-(1) The Fund shall hold in the Pension Reserve Account the following:

- (a) the monies in the Pension Reserve Account immediately before the commencement of the National Provident Fund Amendment Act 2010;
 - (b) the sum of any amounts standing to the credit of the account of each person receiving a pension consequent upon an election under section 42(2) of the Act; and
 - (c) any amount determined by the Board under subregulation (2)(b).
- (2) There shall be credited to the Pension Reserve Account:
- (a) on the date of a member or a dependent spouse of a member commencing to receive a pension consequent upon an election under section 42(2) of the Act, the amount standing to the credit of such member in respect of which the pension is to be paid;
 - (b) any amount determined by the Board, after considering the results of an actuarial investigation of the Pension Reserve Account carried out under subregulation (4), which would in its opinion enable the Pension Reserve Account to meet its liabilities and such amount shall be transferred from the General Reserve Account; and
 - (c) interest at such rate and in such manner on the balance in the Pension Reserve Account as the Board may determine.
- (3) There shall be debited to the Pension Reserve Account:
- (a) all pensions payable under the provisions of the Act;
 - (b) any amount determined by the Board, after considering the results of an actuarial investigation of the Pension Reserve Account carried out under the provisions of subregulation (4), which in its opinion are not necessary to enable the Pension Reserve Account to meet its liabilities and such amount shall be transferred to the General Reserve Account.
- (4) The Board shall appoint an actuary to carry out an investigation into the financial condition of the Pension Reserve Account within three (3) months of the commencement of these regulations and at subsequent intervals, not exceeding three (3) years, and to report to the Board on the results of such investigations.

12. Education account withdrawal - If a member has satisfied the Fund that:

- (a) he or she has incurred or will incur education costs; or
- (b) he or she no longer has any child under 18 years of age;
- or
- (c) otherwise has no need for an education account,

the member may elect to withdraw the whole or part of the amount standing to the credit of the education account.

13. Serious medical condition withdrawal of costs - The Fund shall permit a member to withdraw up to one-fifth of the amount standing to the credit of the member for serious medical condition costs of the member, the member's spouse or dependent child, or, where the member has no spouse, the member's parent.

14. Available elections on a date of entitlement and on death-(1) If the member has attained the age of 55 years the member may elect:

- (a) to take upon retirement a monthly pension for his or her lifetime with provision after death for a pension payable to his or her spouse (if any) at a rate equivalent to 50 percent of that to which the member was entitled during his or her own lifetime or an amount from time to time determined by the Board, whichever shall be the greater;
- (b) the spouse's pension will cease on marriage or remarriage, cohabitation with a person of the opposite sex or after 10 years but the Board shall have a discretion to continue the pension as it shall think fit;
- (c) to receive on retirement up to one quarter of the amount then standing to his or her credit with the Fund in cash with the further provision of a pension as provided for in paragraph (a) but the amount of any pension so payable shall be reduced by such proportion as the amount withdrawn in cash bears to the amount standing to his or her credit with the Fund at the date of entitlement; or
- (d) to withdraw the entire amount standing to his or her credit with the Fund or part of the amount.

(2) A member who has made an election in accordance with either subregulation (1)(a) or (c) is ineligible for an additional pension but may withdraw, in whole or in part, any subsequent contributions standing to his or her credit with the Fund.

(3) If the member not having attained the age of 55 years dies:

- (a) there shall be payable to the member's nominee under section 43(1) of the Act or, failing any such nomination, to the member's legal representative to be disposed of in accordance with his or her will the amount of the death benefit payable under section 37 together with the amount standing to the member's credit with the Fund;
- (b) where the member's nominee is the spouse of the deceased member, he or she may elect to take a pension instead of the amount standing to the member's credit with the Fund;
- (c) until the spouse is eligible for the Senior Citizens' Pension Scheme, the amount of the pension payable under this regulation is that amount which the deceased member would have received on the assumption the deceased member had reached the age of 55 years and had elected to take a monthly pension under subregulation (1)(a);
- (d) after the spouse is eligible for the Senior Citizens' Pension Scheme, the amount of the pension is 50 percent of the amount of the pension payable under paragraph (c);
- (e) the spouse's pension ceases on marriage or remarriage, cohabitation with a person of the opposite sex or after 10 years but the Board has a discretion to continue the pension as it thinks fit.

(4) If the member not having attained the age of 55 years is physically or mentally incapacitated from ever engaging in any further employment the member or his or her legal representatives may:

- (a) exercise any of the options in subregulation (1)(a); or
- (b) request the Board to pay to the member the amount standing to his or her credit with the Fund in full or in part and the Board shall exercise its discretion in relation thereto.

(5) In the event the member dies intestate and has made no nomination in accordance with section 43 of the Act:

(a) the death benefit, together with the amount standing to the member's credit with the Fund, shall be paid to the deceased member's spouse,

and in the further event that the member has no living spouse;

(b) the death benefit, together with the amount standing to the member's credit with the Fund, shall be paid to the deceased member's children, and in the event there are no children, to the deceased member's dependants equally, otherwise to the Public Trustee for disposal in accordance with the law for the time being in force; and

(c) any portion due to any child or dependant under the age of 18 years at the time of the member's death shall be held by the Fund for that child or dependant's benefit and paid to the child or dependant upon the child or dependant attaining 18 years.

(6) If the member has satisfied the Board that he or she has permanently ceased to reside in Samoa, the amount standing to the credit of his or her account with the Fund shall be payable to the member.

(7) If the member has satisfied the Board that he or she temporarily ceases to reside in Samoa due to his or her employment outside Samoa for not less than three (3) years:

(a) from the amount standing to the credit of his or her account with the Fund the member shall be entitled to withdraw a reasonable amount to meet verified establishment costs in the new place of residence on condition that any small loan previously made by the Fund to the member is repaid; and

(b) the member shall be entitled to withdraw the whole or part of the amount standing to the credit of his or her account on condition it is transferred to an alternative fund.

(8) If the member has satisfied the Board that the member has been accepted to undertake a course of theological study at a school of theology recognised by the Board, the amount standing to the credit of the member with the Fund shall be payable to the member, or at the member's option, the member's spouse.

(9) If the member has reached the age of 50 years and has not made a contribution to the Fund for a period of five (5) years, the member may elect to withdraw the amount standing to the credit of his or her account with the Fund.

(10) If a member is in receipt of any pension under subregulation (1)(a) and has not attained the age of 65 years, the member may elect to withdraw in a lump sum the full amount of the member's undrawn pension.

(11) Any option exercised under this regulation shall be irrevocable.

(12) Any monthly pension for life taken under this regulation shall be at such rate per calendar month as the Board shall have previously declared under section 38 and, unless the Board increases the amount of the pension as a result of the financial performance and reserves of the Fund, the monthly pension shall be fixed for the lifetime of the pensioner.

(13) On the death of any pensioner to whom this regulation applies there shall be paid one (1) of the following:

- (a) to the surviving spouse, such pension to that spouse as is provided for in subregulation (1) or, at his or her election, the amount that was standing to the member's credit with the Fund at the date of entitlement reduced by the aggregate amount of payments made to the deceased pensioner by the Fund to the date of death;
- (b) if the pensioner does not have a surviving spouse, to his nominee under section 43 of the Act or, failing such nomination, to his or her children, and in the event there are no children, to his or her dependants equally the amount that was standing to his or her credit with the Fund at his or her date of entitlement reduced by the aggregate amount of payments made to the pensioner by the Fund to the date of death;
- (c) if the person in receipt of the pension was a widow or widower in receipt of a pension by right of her late husband or wife, to the nominee of the late husband or wife under section 43 of the Act or, failing such nomination, to the dependants of the late husband or wife equally the amount that was standing to his or her credit with the Fund at the date of entitlement

reduced by the aggregate amount of payments made to both the member and his widow or her widower to the date of death of the widow or widower;

- (d) in addition to any pension or amount paid under paragraph (a), the amount of any further contributions made by the surviving spouse together with the interest shall be paid only as a lump sum.

(14) A spouse of any person for the purposes of these regulations shall be such person who is proved to the satisfaction of the Board to be that person's spouse.

(15) All applications for withdrawal by the person claiming to be entitled thereto shall be supported by all such evidence as to age, identification, marriage, death, entitlement or otherwise as the Chief Executive Officer shall reasonably require.

(16) The amount available in an account for withdrawal or for a pension shall be charged with any debt due to the Fund on that account and the Fund is authorised to deduct the amount of the debt outstanding at the date of withdrawal in satisfaction of the debt, and including the amount referred to in section 41(c) of the Act, any moneys referred to in section 41(d) of the Act or any liability referred to in section 41(e) of the Act.

Issued under the authority of the Regulations Ordinance 1953.

Date of Commencement: 1st July 2010

These Regulations are administered by the National Provident Fund.

**Copies of these Regulations can be purchased from the
Office of the Clerk of the Legislative Assembly.**

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