NATIONAL RETIREMENT BENEFITS FUND ACT

Chapter 8.08

2020 Revised Edition

NATIONAL RETIREMENT BENEFITS FUND ACT

Arrangement of Sections

Section

PART I - PRELIMINARY **7**

1 Short title 7
2 Interpretation 7

PART II – ADMINISTRATION OF THE NATIONAL RETIREMENT BENEFITS FUND **11**

3 National Retirement Benefits Fund 11
4 Supervision of the Fund 11
5 Board of Directors 11
6 Resignation, disqualification and termination of office 12
7 Rights and duties of the Board 12
8 Procedures of the Board 14

PART III - FINANCIAL PROVISIONS **14**

9 Fund's Monies 14
10 Purpose of the Fund 15
11 Bank accounts of the Fund 15
12 Investment for the Fund 16
13 Exemption from tax 16
14 Administrative expenses 16
15 Declaration of the rate of interest 16
16 Advances by the Government 17
17 Auditing of accounts 17
18 Actuarial review 17

PART IV - CONTRIBUTIONS TO THE FUND 18

19 Liability to contribute....18
20 Payment of contributions....18
21 Payment of contributions....19
22 Recovery of contributions from an intermediate employer....19
23 Late paid contributions....19
24 Method of payment of contributions....20
25 Employers to furnish returns....20
26 Appointment and powers of inspectors....20
27 Determination of contribution liability in certain cases....21
28 Recovery of contributions....21
29 Surcharge on late paid contributions....22
30 *Repealed by Act 25 of 2014*....22
31 Voluntary contributors....22
32 Statement of account....22

PART V - EXEMPTION OF COMPLYING SCHEMES 22

33 Entitlement to exemption....22
34 Conditions for complying schemes....23
35 Employee's credit on leaving a complying scheme....23
36 Transfer within same group of complying scheme....24
37 Obligation of exempted employer....25
38 Revocation of a certificate of exemption....25
39 Probation....25

PART VI – LEAVING SERVICE BENEFITS 26

40 Benefit entitlement....26
41 Applications for benefits....26
42 Life Insurance entitlement....26
43 Nominated beneficiary....26
44 Permanent and total disablement....27
45 Death benefit....27

PART VII - DETERMINATION OF CLAIMS AND QUESTION 27

46 Determination of claims....27
47 Right of appeal....27
48 Establishment of Appeal Board....27
49 Membership of Appeal Board....28
50 Powers of the Appeal Board....28

PART VIII - OFFENCES AND PENALTIES 28

51 Offences and Penalties....28
52 Offences relating to officers....28
53 Offences relating to contributions....29
54 Liability of officers of Corporation....29

55 Civil Proceedings 29
56 *Repealed by Act 25 of 2014* 30

PART IX - MISCELLANEOUS **30**

57 Power of Minister on exemptions 30
58 Power to Minister to make Regulations 30
59 Exemption from tax 30
60 Overpayment of benefits 31
61 Limitations on contributions and benefits 31
62 Insured person working abroad 31
63 Beneficiary abroad 31
64 Confirmation of Entitlement 31

FIRST SCHEDULE **32**

EXEMPTIONS 32

SECOND SCHEDULE **33**

RATES OF CONTRIBUTION 33

ENDNOTES **34**

NATIONAL RETIREMENT BENEFITS FUND ACT

AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE NATIONAL RETIREMENT BENEFITS FUND AND RELATED MATTERS[1]

Commencement [1st July 2011] [2]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the National Retirement Benefits Fund Act.[3]

2 Interpretation[4]

In this Act, unless the contrary intention appears —

"**Act**" means the National Retirement Benefits Fund Act;

"**active member**" means a member in respect of whom a contribution in respect of employment is payable under the Act;[5]

"**amount of wages for the month**" means the amount of wages earned by an employee during a month of his employment;

"**account**" means the member's account in respect of insurable employment or voluntary contribution under this Act maintained by the National Retirement Benefits Fund;

"**Appeal Board**" means an ad hoc National Retirement Benefits Fund Appeal Board established under section 48 of this Act;

"**balance**" means the amount standing to the credit of the member of the Fund;

"**beneficiary**" means a person entitled to benefits under this Act;

"**Board**" means the National Retirement Benefits Fund Board of Directors established under this Act;

"**casual worker**" means an employee who has no on-going expectation of permanent employment, and who —

(a) has no fixed hours of work;

(b) has an irregular pattern of working days; and

(c) is paid at the end of each work period; [6]

"**Chief Executive Officer**" or "**CEO**" means the Chief Executive Officer of the Fund appointed by the Board in accordance with section 7(1)(c);

"**certificate of exemption**" means the certificate issued by the Board to a complying scheme under Part V of this Act;

"**child**" means a legitimate biological child, stepchild, and a legally adopted child and shall include a posthumous child of a member;

"**complying scheme**" means a retirement benefits scheme in existence on the date of coming into fore of this Act that is certified by the Board as complying with the conditions in sections 34 and 35;

"**contribution**" means the sum payable to the Fund by way of contributions specified in section 20;

"**contribution schedule**" means the schedule provided by the Fund for the purpose of the collection of contributions;

"**date of entitlement**" means the date on which a member of the Fund qualifies for a benefit in accordance with the provisions of this Act;

"**date of entry**" means in respect to any member of the Fund the date in which the first contribution is payable to the Fund on his behalf; [7]

"**Director**" means any Board member;

"**domestic worker**" means a person employed in connection with the work of a private dwelling-house and not in connection with the trade, business or profession carried out by the employer in the dwelling-house such as cook, house-worker, child's nurse, gardener, laundry worker, security officer, or a driver of a vehicle licensed for private use;

"**earnings**" means all emoluments due to an employee in respect of services performed under a contract of service whether paid daily, weekly, fortnightly, monthly or at any other intervals, and shall include any bonus, commission or allowance payable by the employer to the employee whether such bonus,

commission or allowance is payable under his contract or service or otherwise, but does not include —

(a) overtime payment;

(b) gratuity;

(c) retrenchment, redundancy or termination payment;

(d) retirement benefits;

(e) any sums payable by an employer, whether or not prescribed by legislation, in respect of sickness, maternity or work-related injury;

(f) any travelling allowance or the value of any travel concession or benefit; and

(g) any payments made by an employer to an employee for reimbursement or expenses incurred for the purposes of his employment;

"**employee**" means any person aged 15 years or more and under the retirement age, not being a person of any of the description specified in the First Schedule, who works for an employer in Tonga under a contract of service or apprenticeship whether written or oral, expressed or implied, for remuneration, and includes a Tongan subject employed under a contract of service entered into in Tonga 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 Tonga;[8]

"**employer**" means any person, partnership, enterprise, undertaking, organisation or body corporate employing an employee under a contract of service or apprenticeship, whether written or oral, expressed or implied for remuneration; and includes the owners of the vessel or aircraft referred to in the definition "**employee**";

"**financial year**" means the period from 1 July in any year to 30 June in the following year;

"**Fund**" means the Fund established under section 9;

"**inactive member**" means a member who ceases employment and advised by the employer; [9]

"**insurable earnings**" means the earnings on which liability arises for the payment of contributions under this Act;

"**insurable employment**" means employment in respect of which contributions are payable under this Act;

"**intermediate employer**" means a person who employs employees to work for another employer;

"**liquidator**" means a person appointed or assuming the position of liquidator, receiver, trustee-in-bankruptcy, mortgagee-in-possession, or executor of a deceased's estate;

"**member**" means a person registered as a contributor to the Fund;

"**member's account**" means the account established for a member to receive all compulsory contributions and interests;

"**minimum sum**" means the sum declared by the Board under section 42;

"**Minister**" means the Minister responsible for finance;[10]

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

"**permanent and total disablement**" means a condition as a result of which a member is medically certified to the satisfaction of the Board as permanently incapacitated to such an extent as to be unable to earn from his usual or any other suitable occupation more than one-third of the normal rate of earning in this occupation;

"**prescribed beneficiary**" means the person, at the date of death, is nominated by the member, or if no such person, then to —

(a) his spouse, if none;

(b) his child or children, or if none;

(c) his father or mother;

"**rate of interest**" means the rate declared by the Board as the interest rate to be credited to the accounts of each member;

"**retirement age**" means 60 years or any older age up to 70 years which an employer notifies the Fund to be the retirement age for any of its employees;[11]

"**statement of account**" means the statement of account issued by the Board to each member;

"**transfer contribution**" means any amount of money transferred to the Fund from another retirement scheme to the credit of a member; [12]

"**total balance**" means the accumulated total of —

(a) all contributions paid by a member and on his behalf in respect of insurable employment and any interest added from time to time;

(b) all contributions and interest in his voluntary account, if any;

(c) any amounts transferred to his account in respect of periods of exempted employment in a complying scheme; and

(d) less any deductions due and outstanding under section 10(5);

"**undischarged bankrupt**" includes a person adjudged by a Court to owe any amount of money, which remains outstanding;[13]

"**voluntary contribution**" means the contribution paid by voluntary contributors;

"**voluntary contributor**" means a person who registers with the Fund as a voluntary contributor; and

"**wages**" has the same meaning as "earnings".

PART II – ADMINISTRATION OF THE NATIONAL RETIREMENT BENEFITS FUND[14]

3 National Retirement Benefits Fund[15]

(1) There shall be a National Retirement Benefits Fund operating in accordance with this Act.

(2) The Fund shall be an autonomous body with the responsibility of implementing this Act.

(3) The Fund shall be a body corporate with perpetual succession and a common seal and shall have all the rights and duties of a body corporate.

(4) The Fund may sue and be sued in its corporate name and may enter into contract and may acquire, purchase or lease property, and may convey, assign, transfer, mortgage or otherwise dispose of any real or personal property or any interest vested in the Fund upon such terms as the Board determines to be appropriate in the circumstances of each transaction

4 Supervision of the Fund[16]

(1) The general direction and supervision of the Fund shall vest in the Board of Directors.

(2) The Directors shall act in good faith, in the best interest of the Fund and in accordance with this Act.

5 Board of Directors[17]

(1) The Board of Directors shall consist of 7 members appointed by the Minister in accordance with regulations made under this Act.

(2) The Minister shall appoint one of the Directors to be Chairman of the Board, and another to be Deputy Chairman.

(3) A director shall hold office for a term of 3 years, and may be reappointed after the expiry of his term of office.

(4) No person may be appointed as a Director if he is over the age of 70 years.

Provided that a Director who attains the age of 70 years during his term of office shall continue to be a Director until the expiry of that term of office.

(5) Directors shall be paid such remuneration, travelling and subsistence allowances as the Board may determine in consultation with the Remuneration Authority.

(6) The Chief Executive Officer shall perform the function of secretary of the Board.

(7) Upon cessation of office of a Director, other than an expiry of his full term of office, the Minister shall appoint a replacement Director, in accordance with the regulations, for the remaining part of the term of the former Director.

6 Resignation, disqualification and termination of office

(1) A Director shall hold office until the date —

(a) of his resignation by notice in writing to the Chairman or, in the case of the resignation of the Chairman, by notice in writing to the Minister;

(b) of his death;

(c) on which he is disqualified under subsection (2); [18]

(d) on which he is certified as mentally or physically incapable of fulfilling the office of Director;

(e) of his removal in accordance with any procedures adopted by the Board for the appointment or removal of Directors for persistent non-attendance at duly called meetings of the Board:

Provided that a Director shall be deemed to have vacated his office upon his failure to attend three consecutive duly called meetings of the Board without the prior permission of the Chairman; and

(f) of expiry of his term of office.

(2) No person shall be appointed or remain a Director —

(a) who is an undischarged bankrupt;[19]

(b) who has been disabled under clause 23 of the Constitution; [20]

(c) who is or becomes a member of the Legislative Assembly;

(d) who has, in the case of a person having professional qualifications, been disqualified or suspended from practicing his profession by the order of any competent authority; or

(e) who is a member or representative of a complying scheme. [21]

7 Rights and duties of the Board

(1) The Board shall perform the following duties to —

(a) advise the Minister on appropriate plans for the implementation and development of the Fund both on its own initiative and in response to specific requests from the Minister;

(b) manage the finances of the Fund as Trustee and approve the income and expenditure accounts; [22]

Provided that the Board members shall not —

(i) make profit for themselves from the Fund;

(ii) put themselves in a position where there is a conflict between their duty to the members and their own personal interests; or

(iii) take advantage of information gained as a Trustee;

(c) appoint staff for the administration of the Fund consisting of —

(i) a Chief Executive Officer with such duties as the Board may delegate; and

(ii) such other staff as are, in opinion of the Board, necessary for the efficient and effective administration of the Fund, including inspectors having the powers set out in section 26.

(d) adopt personnel and remuneration structures for the organisation that are not less favourable in their entirety than those applying to public servants:

Provided further that the Fund shall be an employer within the meaning of this Act; [23]

(e) determine applications for exemption by retirement benefit schemes in existence at the date of introduction of this Act and to review the reports submitted by approved complying schemes;

(f) determine benchmarks for the Fund's operation;

(g) maintain communications with registered employers and employees;

(h) consider and make recommendations to the Minister relating to changes in contributions or benefits under the Act;

(i) co-opt suitably qualified persons to advise the Board and sub-committees established by the Board and to incur expenditures for this purpose;

(j) determine the Fund's administrative expenses on submissions by the CEO;

(k) consider and recommend draft Regulations and rules for approval;

(l) arrange for actuarial review of the Fund as required and at intervals of not more than five years; [24]

(m) submit to the Minister annual reports on the operation of the Fund; and

(n) do any other act authorized under this Act.

(2) In any instance of submitting proposals to the Minister for changes in contributions or benefits, or commenting on any such proposals referred to it, the Board shall attach an actuarial report, or its equivalent, on the financial implications of the proposals.

8 Procedures of the Board

(1) Subject to this Act and any Regulations made under it, the Board may regulate its own procedures and shall have the power to make rules for the conduct of its proceedings.

(2) Board meetings shall be convened at least once every two months to consider the Fund's performance and other matters within the responsibility of the Board.[25]

(3) The Chairman has the right to convene meetings at any time as required to carry out the Board's duties expeditiously.

(4) Any four Directors present at a meeting shall constitute a quorum.

(5) Resolutions of the Board shall be carried by majority voting and in the case of an equal number of votes; the Chairman shall have a deciding vote.

(6) At the absence of the Chairman at a meeting of the Board, the Deputy Chairman shall be Acting Chairman for that meeting, but if the Chairman and Deputy Chairman are both absent the Directors present shall appoint an Acting Chairman for that meeting. [26]

(7) A Director shall not communicate or reveal to any person or any organisation any facts or information of any kind acquired by him as a member of the Board except as may be required for the due discharge of his duties as Director.

(8) A Director having directly or indirectly by himself, his spouse or children, or any other person, any interest in agenda items or subjects to be discussed by the Board or in Committees of the Board of which he is member shall disclose to the Board or the Committee, as the case may be, the fact of his interest and the nature thereof as soon as practicable after the relevant fact has come to his knowledge and shall absent himself with the permission of the Chairman when such agenda items come under consideration.

(9) Notwithstanding any other provision of this Act, a Director may undertake any professional work for the Fund and receive remuneration there from.[27]

PART III - FINANCIAL PROVISIONS

9 Fund's Monies[28]

(1) For the purpose of the Act, the Fund's monies shall consist of —

(a) all contributions required to be made under this Act;

(b) moneys earned or arising from any investment, property or other transactions, mortgages, charges or rents vested in the Fund;

(c) any fines, surcharges, or other payments due to the Fund under this Act;

(d) any sums paid by the Government, or other body or bodies, to finance the initial implementation of the Act or to enable it to meet all financial obligations specified in subsection (2); and

(e) any other income or payments due to the Fund.

(2) The Fund's monies shall be expended for the purpose of —

(a) meeting all payments required to be made under this Act;[29]

(b) investments under this Act, including the expenses incurred in undertaking the investments;

(c) payment of life insurance benefit;

(d) meeting all expenses, costs and expenditures properly incurred or accepted by the Board in the execution of its powers and duties; and

(e) repayment of advances or loans obtained by the Board for the implementation of this Act.

10 Purpose of the Fund[30]

(1) Subject to this Act, the Fund shall provide benefits in respect of the retirement, permanent total disablement or the death of a member of the Fund, as specified in this Act and Regulations.

(2) The Fund shall maintain individual accounts for each member and shall credit all contributions paid by and on behalf of the member and any interest as specified in section 15 for the purpose of subsection (1).

(3) The Fund shall pay benefits, other than life insurance, from individual accounts of a member in the form of instalments or a lump-sum or a combination of both.

(4) Life insurance benefits shall be payable in lump-sums from the operating account of the Fund.

(5) The Fund shall deduct from the account of each active member, other than a voluntary contributor, in respect of each financial year the premium for life insurance as may be prescribed by the Board and these premiums shall be credited to the operating of the Fund.

11 Bank accounts of the Fund

(1) The Fund shall establish and maintain such bank account or accounts, as determined by the Board, for the purpose of the financial management of the Fund and its general revenue.

(2) The bank account of the Fund shall be maintained at the National Reserve Bank of Tonga, or other bank licensed by the National Reserve Bank of Tonga or other bank licensed to operate in the Kingdom, or in the case of

overseas accounts, those banks approved by the National Reserve Bank of Tonga.

(3) The Fund's account or accounts signatories shall be such persons as may be authorised by the Board for that purpose.

12 Investment for the Fund

(1) The Board shall invest all monies available for investment as prescribed by Regulations.

(2) The Board shall devise investment strategies for investments of the Fund, including investments in other countries that meet criteria for trustee management of retirement benefit funds.

Provided that the Board shall request approval for undertaking overseas investments from the National Reserve Bank of Tonga and that any such approval shall be given for periods of not less than one year.

13 Exemption from tax

No tax, duty, levy, or any other Government impost shall be payable by the Fund on Fund monies, including investment earnings.[31]

14 Administrative expenses

(1) All expenses properly incurred in the implementation of this Act and the administration of the Fund shall be paid out of the Fund's monies. [32]

(2) The cost incurred in implementing the Act and administering the Fund shall be deducted from the income of investments or as prescribed by Regulations.[33]

15 Declaration of the rate of interest

(1) Subject to this Act, at or before the end of each financial year, the Board shall declare a rate of interest in respect of that year that shall be credited at such rates to the total amounts recorded as in each member's account, including voluntary accounts, at the commencement of the financial year, as prescribed by Regulations.[34]

(2) Notwithstanding the provisions of subsection (1) where benefit entitlement arises under the provisions of this Act and is to be calculated, interest shall be first credited to the accounts in respect of the period from the beginning of the financial year to the end of the month preceding the date of entitlement in accordance with the rate of interest declared by the Board for the preceding financial year, regardless of the fact that the rate of interest subsequently

declared by the Board in respect of that financial year may be greater or less than this rate.

16 Advances by the Government

(1) If the Fund is unable at any time to pay any sum that it is liable to pay under the provisions of this Act, the Board shall submit a request for assistance to the Minister with full information on the financial shortfall and proposals for the repayment of any future bridging loans from Government.[35]

(2) The Board shall enter into an agreement with the Government on a repayment schedule in respect of any sums so advanced by Government.[36]

17 Auditing of accounts

(1) The Board shall have accounts prepared, within two months of the end of the financial year, or within such further time of not more than one month as the Minister may approve, in such form and including additional information, statements and reports as required by the Minister in respect of that year:

Provided that the Minister may request the preparation of interim accounts for any period as he may determine.

(2) The account shall be submitted to the Auditor-General or another approved auditor for an audit to be completed within six months of the end of the financial year or of the period covered by the accounts, if shorter.

(3) The Minister shall within ten working days of completion of the audit cause the accounts to be submitted for tabling in the Legislative Assembly during its session on the first available sitting day.

(4) The reports under subsection (1) shall include a report by the Board on the investments of the Fund.

18 Actuarial review[37]

(1) At intervals of five years, or such shorter periods as the Board may determine, an actuarial review shall be conducted into the operation of the Fund.

(2) The actuarial report shall be considered by the Board and forwarded to the Minister with the recommendations of the Board.

(3) The Fund shall provide members with information on the findings and recommendations of the actuarial review.

PART IV - CONTRIBUTIONS TO THE FUND[38]

19 Liability to contribute[39]

(1) Subject to this Act, every employer having one or more employees, other than those in respect of whom the Board has issued a certificate of exemption, and his employees shall be liable to contribute to the Fund.

(2) Every employer and employee to whom this Act applies shall register with the Fund within such time and in such manner as prescribed by the Regulations.[40]

(3) Any person registered as an employer who intends to cease being an employer shall notify the Fund as soon as practicable.

(4) Where employees are employed through a sub-contractor, the following shall apply —

(a) the contract between the principal employer and the sub-contractor shall included the name and address of the employer who is responsible under the Act for the registration of employees who are assigned for work under the contract and the payment of contributions;

(b) the responsibility of the principal employer may be transferred to the sub contractor or another person through specific provisions of the relevant contract, but, in the event of a default on the part of the sub-contractor or other person, as determined by the Fund, the principal employer shall be liable in all respects in respect of the employees concerned; and

(c) the relevant contract shall be made available for inspection whenever requested by an inspector appointed under section 26 of this Act or other competent official and a copy shall be lodged with the Fund if requested in writing by the CEO.

20 Payment of contributions

(1) A contribution consisting of both the employer's contribution and the employee's contribution shall be payable by the employer for each month in respect of the whole or part of which wages are payable to the employee and not otherwise.

(2) The contribution shall be calculated on the amount of wages payable to such employee by such employer at the rates specified in the Second Schedule.

(3) Subjects to this Act, all contributions shall be payable monthly unless otherwise prescribed by Regulations.

(4) All monthly contributions shall be payable in the end of every month, but where the employment is for a period of less than a month, on the last day of the employment.

(5) Where two or more contributions are paid in respect of the employment of one insured person for the same month they shall be counted as single monthly contribution.

21 Payment of contributions

(1) Subject to this Act, the employer shall be entitled to deduct the employee's contribution from the employee's wages for payment to the Fund and notice of such deduction shall be furnished to the employee in writing:

Provided that —

(a) no such deduction shall be made from any wages other than that which related to the period or part or the period in respect of which the contribution is payable; and

(b) where the employer has failed to deduct and pay the employee's contribution under this section, the employer shall be responsible for paying the employee's outstanding contribution with no right of recovery from the employee.

(2) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(3) Any sum deducted by the employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

22 Recovery of contributions from an intermediate employer

(1) An employer, who has paid a contribution in respect of an employee employed by or through an intermediate employer or sub-contractor, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any) from the intermediate employer or sub-contractor, as the case may be, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the intermediate employer or sub-contractor.

(2) The intermediate employer or sub-contractor shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise.

23 Late paid contributions

Contributions shall be payable in respect of an employee from the date the employee enters into insurable employment and such contributions are payable as arrears even

though the employment to which this Act applies or the employees have not been registered with the Fund;

Provided that —

(a) An employer who has paid arrears of contributions in respect of an employee will only be entitled to recover from the wages payable, notwithstanding the proviso to section 21(1), the employee's share of the contributions due within a maximum of the last proceeding six months prior to the date of payment; and

(b) The Fund shall arrange for the deduction of such arrears of the employee's share by the employer over a period for the purpose of avoiding financial hardship to the employee. [41]

24 Method of payment of contributions

The Minister may prescribe method of payment of contributions by Regulations.

25 Employers to furnish returns

(1) Every employer shall submit to the Fund, such schedules and returns relating to persons employed by him as required by Regulations.

(2) The Fund may require an employer or any other person where it has reason to believe that a return should have been submitted, to furnish such particulars as it may consider necessary to determine the extent, if any, of liability to contribute to the Fund on behalf of the employees.

(3) Every employer shall maintain such registers and records in respect of employment as may be prescribed by Regulations.[42]

26 Appointment and powers of inspectors[43]

(1) The Board shall appoint inspectors and issue them with identification.

(2) Inspectors shall have the power to —

(a) enter at reasonable times, all premises where a person or persons are believed to be engaged as employees, and any other place only with a court order;

(b) examine all documents relevant to participation in the Fund and if necessary to remove such documents as are essential to the investigations;

(c) question and take statements in writing from persons, including employers and their staff and employees;

(d) give official warnings to persons who are in breach of this Act and regulations made under this Act; and

(e) compile official reports and statements of their investigations.

(3) An employer, within normal working hours shall produce for inspection the records and copies of contribution schedules or any other documents relating to liability to contribute, for inspection if requested by an inspector.

27 Determination of contribution liability in certain cases

(1) The Fund may determine on the basis of information available to it, the amount of contributions payable in respect of the employees of an employer where —

(a) the employer has defaulted under this Act; and

(b) the Fund has been obstructed in the exercise of its functions.

(2) The determination made by the Fund under subsection (1) shall be sufficient proof of a debt for recovery under section 28.[44]

28 Recovery of contributions

(1) Any contribution or other amount payable under this Act may be recovered as a debt due to the Fund.

(2) A liquidator shall be required to inform the Fund in writing within fourteen days of his appointment or assumption of this responsibility and shall not, without leave of the CEO, make any distribution of such property, business or estate until receipt of a claim by the Fund.

(3) The CEO shall notify the liquidator in writing of the amount of any unpaid contributions and payable from the assets in the possession or control of the liquidator and such notice shall be served by the Fund within two months of being served with a notice under subsection (2).[45]

(4) Subject to subsection (5) a liquidator shall set aside out of the assets and the proceeds of sale of any assets of the employer the amount notified by the CEO under subsection (3) to the extent that such assets are available for this purpose, and shall be liable to the extent of the amount set aside for the contribution due by the disposal of the employer's asset(s).

(5) Nothing in subsection (4) shall prevent the liquidator from paying any debt that has a legal priority over the contributions referred to in that subsection.

(6) The liquidator shall before distributing any assets under his control, obtain from the CEO a certificate to the effect that the contributions payable under the provisions of this Act by such person out of any estate under his control have been paid to the satisfaction of the Board.

(7) If any distribution is made by the liquidator without first obtaining a certificate under the provisions of subsection (3), then such person shall be personally liable for any unpaid contributions together with any surcharge payable under the provisions of section 29.

(8) Where two or more persons are liquidators in respect of a defaulting employer or deceased the obligations and liabilities under this section shall apply to all the liquidators but may be discharged by any of them.[46]

29 Surcharge on late paid contributions

An employer shall be liable to pay a surcharge on the total amount of all contributions not so paid by him at the rate of 2 per cent in respect of each month or part of each month after expiration of the period of 28 days following the month concerned:

Provided that —

(a) in any case where the surcharge is calculated at less than $5, the surcharge payable shall be $5; and

(b) the Fund may remit in whole or part the amount of the surcharge where the employer shows good cause for the delay in remitting contributions to the Fund. [47]

30 *Repealed by Act 25 of 2014*

31 Voluntary contributors

(1) Subject to this Act, any person, or any category of persons as may be prescribed, including citizens of Tonga living overseas, may apply to the Fund to contribute to the Fund on their own behalf or on behalf on another person.

(2) Voluntary contributors shall comply with the prescribed levels and methods of payment of contributions to the Fund.

(3) Persons exempted under paragraph 5 of the First Schedule shall not be entitled to become voluntary contributors. [48]

32 Statement of account

The Fund shall issue statements of account to members and voluntary contributors at annual intervals and when requested to do so in writing by members and voluntary contributors.

PART V - EXEMPTION OF COMPLYING SCHEMES

33 Entitlement to exemption

(1) The Retirement Fund established under the Retirement Fund Act 1998 and the Legislative Assembly Retirement Fund established by the Legislative

Assembly Retirement Benefits Scheme Act 2004 shall be exempted from the provisions of this Act. [49]

(2) The Board may issue a certificate of exemption from liability to contribute to the Fund to an employer and employee if satisfied that —

(a) the employer has before the effective date of this Act established a retirement benefits scheme which, provides benefits equivalent to or better than those provided under this Act; and

(b) the employer and trustees of that retirement fund concerned undertake to make the necessary changes in the rules of that scheme within a timescale set by the Board, in the order to conform with this Act on the exemption of retirement benefits schemes.[50]

(3) The Board shall give the employer of a retirement benefit scheme which is not exempted under this section, notice that it is not so exempted whereupon[51] —

(a) the provisions of this Act shall apply to him and his employees from a date specified by the Board;

(b) no contribution shall be payable to the Fund in the month in which the Board so informs the employer; and

(c) there shall be no liability for contributions to the Fund whilst an appeal of the decision of the Board is under consideration.

(4) An exempted retirement benefit scheme shall have legal entitlements that are equal to or better than those specified in this Act, excluding life insurance, and without rights to withdraw any part or the whole prior to the date of entitlement to benefit.

34 Conditions for complying schemes

(1) An employer who provides a retirement benefit scheme for his employees may submit an application for exemption from contributing to the Fund in the prescribed form within one month of the effective date of this Act, or such longer period as the Board may determine.

(2) The Board may on an application for exemption —

(a) issue an employer with an interim certificate of exemption with required modifications; and

(b) issue a final decision on the application for exemption as soon as practicable. [52]

35 Employee's credit on leaving a complying scheme

Where an employer who is a member of a complying scheme ceases to participate in such a scheme or an employee leaves an employment or ceases to contribute to a complying scheme without being entitled to a retirement benefit, the amount of the employee's credit in such scheme that represents contributions to such retirement

benefit scheme both by the employer and the employee, together with any interest thereon, shall be transferred to the Fund, within one month or such further period as the Board may specify.[53]

36 Transfer within same group of complying scheme

(1) Where an employee —

(a) transfers from employment, that is certified as a complying scheme, to employment under another employer of the same group and where such transfer is permitted by the rules of such a scheme, continues to contribute thereto on the same terms and conditions, such employee, shall not be deemed to have left an employment; and

(b) in accordance with the rules of such a scheme, the amount standing to the credit of any employee consists in whole or in part of a policy of life insurance such policy shall not be transferred to the Fund, but shall be dealt with in accordance with such rules.

(2) Subject to the rules of a complying scheme, an employee who takes up employment with an employer with a complying scheme may choose to continue with or join the Fund instead of the complying scheme, within one month of commencing employment.

(3) If an employee chooses to leave the Fund and join a complying scheme, contributions in respect of the employee shall not become payable to the Fund but any amount standing to the credit of such employee shall remain in the Fund.

(4) Where a complying scheme is wound up the amount standing to an employee's credit in such a scheme that represents contributions to such retirement benefit scheme both by the employer and the employee since the date of coming into force of this Act, together with any interest thereon shall, be transferred to the Fund, and which amount the Board shall cause to be credited to the employee.

(5) Where the assets of such a scheme are not sufficient to meet its liabilities, the amount to be credited to the employee under subsection (4) shall be reduced in such proportion as the Board may determine.

Provided that where the amount standing to the credit of any employee consists of a policy of life insurance, such policy shall not be transferred to the Fund.

(6) Where under sub-section (4) any amount of contributions paid after this Act came into force is transferred to the Fund, the employer and employee concerned may, by mutual agreement, elect to transfer to the Fund additional amounts or all such amounts standing to the credit of the employee in the scheme, and if the Board approves such transfer, the employee shall be credited with amount so transferred to the Fund.[54]

37 Obligation of exempted employer

(1) An employer who has received a certificate of exemption in respect of this Fund, —

(a) shall furnish the Fund with such audited accounts as the Board may require in respect of the complying scheme;

(b) may amend the rules of the complying scheme with the written approval of the Board;

(c) furnish the Fund with such particulars of those employees contribution to this complying scheme as may be prescribed by the Board; and

(d) provide such information specified by the Fund in respect of persons entitled to benefits under the rules of the complying scheme.

(2) An employer of any complying scheme shall be subject to the same offences and penalties in respect of deductions or contributions made under this Act.

(3) Any expenses incurred by the Fund in enforcing the obligations of complying schemes under this Act shall be reimbursed to the Fund from the funds of such complying schemes on the basis of such membership. [55]

38 Revocation of a certificate of exemption

(1) The Board shall revoke an employer's certificate of exemption where the conditions for the certificate of exemption are not or are no longer met by the employer unless the employer provides the Board with satisfactory explanations or information in writing.

(2) Where the Board makes a revocation decision under subsection (1) it shall —

(a) inform the employer of its decision in writing;

(b) make the decision effective from the date on which it considers entitlement to the complying scheme status has ceased; and

(c) apply the provisions of sections 36(4) and (5) as if such funds were wound up from that date.

(3) The employer and employees concerned shall be liable to contribute to the Fund from the date on which the certificate of exemption was revoked.[56]

39 Probation

Where an employee is precluded by the rules of this employment's complying scheme from contribution thereto during a specified period of probation or other periods of non-qualifying service under the rules of the scheme, any sum standing to such employee's credit in the Fund which represents contributions to the Fund both by the employer and employee since the date on which such employment commenced, together with any interest thereon, shall remain in the members account in the Fund.

PART VI – LEAVING SERVICE BENEFITS[57]

40 Benefit entitlement[58]

(1) Subject to this Act, the Fund shall provide the Leaving Service Benefits to a member in the following events —

(a) attainment of retirement age;

(b) permanent and total disablement before retirement age;

(c) death before retirement age; or

(d) early release of benefits.

(2) The Leaving Service Benefit is an amount payable to a member (or his beneficiary) on the occurrence of any of the events specified in subsection (1), which is equal to the sum of —

(a) employer's contribution;

(b) employee's contribution;

(c) voluntary contribution;

(d) transfer contributions;

(e) interests on investments; and

(f) insurance.

41 Applications for benefits

Applications for benefits shall be submitted to the Fund in the prescribed form with all documents and other information prescribed by Regulations.[59]

42 Life Insurance entitlement[60]

(1) If a member dies before retirement age, his Leaving Service Benefits shall also include the amount of life insurance benefits declared by the Board and in force at the date of death.

(2) A person who is only a voluntary contributor shall not be entitled to the life insurance benefit.

43 Nominated beneficiary[61]

(1) Any member of the Fund may nominate one or more beneficiary to receive the Leaving Service Benefits.

(2) The Court upon application would appoint a person to be the trustee of a beneficiary if he is under 21 years of age.

44 Permanent and total disablement[62]

Subject to this Act, the Leaving Service Benefits shall be payable to a member who is under the retirement age if he is certified by the Chief Executive Officer for Heath as suffering from permanent and total disablement for the type of employment he has undertaken.

45 Death benefit[63]

(1) The prescribed beneficiary shall be entitled to the Leaving Service Benefits on the death of a member.

(2) When there are two or more children eligible as beneficiaries, they shall be paid in equal portions.

PART VII - DETERMINATION OF CLAIMS AND QUESTION

46 Determination of claims

(1) The Board shall determine, within one month of receiving, questions on liability to contribute, right to benefit and any other question arising under the Act, and such decision shall be in writing with reasons.

(2) The Board may, on new facts coming to its notice, or if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to some material fact, review and revise its decision.

47 Right of appeal

(1) There shall be a right of appeal from the decision of the Board under section 46.

(2) (a) Appeals against a decision of the Board shall be filed with the office of the Fund within 21 days of the day of such decision. **[64]**

(b) The notice of such appeal shall be in writing and shall contain a statement of the grounds of appeal.

48 Establishment of Appeal Board

(1) There shall be an Appeal Board established under this Act.

(2) The Minister shall appoint members of the Appeal Board which shall consist of a Chairman and two assessors to hear appeals under this Act.

(3) The decisions made by the Appeal Board shall be final.

49 Membership of Appeal Board.

(1) The Minister shall appoint the two assessors from nominations received from organisations representing employers and employees.

(2) The Chairman shall be a person who has for 10 years been a law practitioner in the Kingdom.

50 Powers of the Appeal Board

(1) The Appeal Board shall have the powers to issue summons, call for the production of documents, examine witnesses, and administer oaths and record evidence.

(2) An order of the Appeal Board shall be enforceable as if it were a judgment of the Supreme Court.

PART VIII - OFFENCES AND PENALTIES

51 Offences and Penalties

(1) Any person who fails to —

(a) pay to the Fund in any month any amount required under section 20(1);

(b) submit returns under section 25(2);

(c) produce at the time specified, any document required to be produced by notice in writing under section 26(3);

(d) pay any contribution or other amount which he is require to pay under section 28;

(e) pay the Fund, within such period as may be prescribed, any surcharge which he is liable to pay under the provisions of section 29; or

(f) transfer to the Fund within the prescribed time any sum which he is required to transfer to it under section 35;

commits an offence and shall be liable upon conviction to a fine not exceeding $2,500.

(2) Notwithstanding the provisions of any other Act, proceedings may be taken for any offence under this Act within three years of the date of commission of such offences

52 Offences relating to officers

(1) Any person who —

(a) obstructs any officer or servant of the Fund in the exercise of his duties; or

(b) procures any member, officer, servant or agent of the Fund to communicate any such matter which is not permitted by the Board;

commits an offence and shall be liable upon conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding three years or both.

(2) Any Board member, officer, servant or agent of the Fund who communicates to any person any information which is not permitted by the Board commits an offence and shall be liable upon conviction to a fine not exceeding $10,000 or to imprisonment of a term not exceeding three years or both.

(3) Any Board member, officer, servant or agent of the Fund unlawfully using inside information for his own benefit or the benefit of another person commits an offence and shall be liable upon conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding 5 years or both.

53 Offences relating to contributions

Any person who —

(a) makes any deductions or calculations of contributions at a time other than the time at which such contributions are payable;

(b) deducts from the wages of the employee any sum greater than that permitted under this Act; or

(c) having made any deductions, fails to pay to the Fund in the months in which they are due,

commits an offence and shall be liable upon conviction to a fine not exceeding $2,500.

54 Liability of officers of Corporation

(1) Where an offence under this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager or secretary shall be personally liable for that offence.

(2) It shall be a defence for any person named in subsection (1) to prove that the offence was committed without his consent and that he exercised due diligence to prevent the commission of the offence.[65]

55 Civil Proceedings

(1) For the purposes of this section the word "**contribution**" shall be deemed to include any surcharge under the provisions of section 29.

(2) All contributions payable under the provisions of this Act may be recoverable by the Fund as a debt due.

(3) Notwithstanding any other Act, proceedings for the recovery of debts relating to contributions may be brought within five years from the date the contribution becomes due.

(4) Proceedings for the recovery of debts may be instituted by the Fund or its nominee authorised in writing. [66]

56 *Repealed by Act 25 of 2014*

PART IX - MISCELLANEOUS

57 Power of Minister on exemptions

(1) Any person listed in the First Schedule is exempted from the provisions of this Act.

(2) The Minister may, on the recommendations of the Board exempt any other person or category of person from the provisions of this Act.

58 Power to Minister to make Regulations

The Minister may, with the consent of Cabinet, make regulations for giving effect to any purposes of this Act including, but not limited to the following —

(a) the registration of employers and employees;

(b) the payment and collection of contributions;

(c) the submission and adjudication of claims to benefits;

(d) the exemption of existing retirement benefit schemes as complying schemes under this Act;

(e) the investment of the Fund including the appointment of fund management institutions;

(f) the manner and time of payment of contributions and the supply of information to the Fund; and

(g) the proper and effective administration of this Act.

59 Exemption from tax

(1) There shall be no tax liability in respect of benefits paid by the Fund. [67]

(2) The contributions paid by employers shall be deductible as an expense for the assessment of taxes.

60 Overpayment of benefits

(1) Any person who has received any benefit or payment under this Act to which he is not entitled, shall be liable to refund the overpayment to the Fund.

(2) An overpayment is a debt due to the Fund.[68]

61 Limitations on contributions and benefits

Notwithstanding any other law —

(a) no sum deducted from the wages of a member of the Fund under section 19;

(b) no amount payable by the employer as his contribution;

(c) no amount standing to the credit of a member of the Fund; and

(d) no other benefit under the Act; [69]

shall be assignable, transferable, liable to be attached, sequestered, for, or in respect of, any debt or claim whatsoever.

62 Insured person working abroad

(1) An employer who assigns a member to undertake duties under his contract of service outside Tonga for a period not exceeding twelve months shall —

(a) notify the Fund of the date the employee leaves and when he returns; and

(b) be liable to contribute to the Fund as if the employee is in Tonga.

(2) Employees working outside Tonga on assignment shall be included in the contribution schedule with information on the remuneration in Tongan currency. [70]

63 Beneficiary abroad

(1) Subject to this Act, a person shall not be disqualified from receiving any benefit for any period during which that person is absent from Tonga.

(2) Benefits of persons abroad may be payable in Tonga in Tongan currency to a person appointed to act for and on behalf of the beneficiary, or to the bank account of the beneficiary in Tonga as may be approved by the Fund.[71]

64 Confirmation of Entitlement[72]

The Fund shall contact every member at least once every year to confirm continued eligibility to receive retirement benefits.

FIRST SCHEDULE

(Section 57)

EXEMPTIONS

1 Any domestic employee or out-worker.

2 Any casual worker.[73]

3 Any person who is a member of a complying scheme.

4 Any person who is detained in a prison or mental hospital.

5 Any person who is not a Tongan subject and has diplomatic privileges and immunities extended to him by the Kingdom of Tonga.

6 Any person who is not a Tongan subject employed in Tonga who provides proof satisfactory to the Board that either he or she is —

(a) contributing to a national superannuation scheme in another country established under legislation, which provides equivalent or better benefits than those prescribed under this Act. [74]

SECOND SCHEDULE

(Section 20)

RATES OF CONTRIBUTION

Contribution rates payable by employers and employees shall not be less than the following percentages of each complete pa'anga of insurable earnings: [75]

		Employers	**Employees**
	For the first five years of Implementation of this Act	5 per cent	5 per cent
	After the first five years of this Act	7.5 per cent	5 per cent

ENDNOTES

[1] **Act 41 of 2010**

Amendments

Amending Acts	Commencement
Act 5 of 2012	30 July 2012
Act 3 of 2012	14 January 2013
Act 16 of 2013	4 September 2013
Act 25 of 2014	8 January 2015

[2] GS 38/2010

[3] Amended by Act 25 of 2014

[4] Amended by Acts 3 of 2012 and 25 of 2014

[5] Substituted by Act 25 of 2014

[6] Inserted by Act 25 of 2014

[7] Substituted by Act 25 of 2014

[8] Amended by Act 25 of 2014

[9] Substituted by Act 25 of 2014

[10] Amended by Act 5 of 2012

[11] Inserted by Act 25 of 2014

[12] Inserted by Act 25 of 2014

[13] Inserted by Act 25 of 2014

[14] Amended by Act 25 of 2014

[15]Substituted by Act 25 of 2014

[16] Substituted by Act 25 of 2014

[17] Substituted by Act 25 of 2014

[18] Substituted by Act 25 of 2014

[19] Amended by Act 3 of 2012

[20] Substituted by Act 25 of 2014

[21] Inserted by Act 25 of 2014

[22] Amended by 25 of 2014

[23] Amended by Act 25 of 2014

[24] Amended by Act 25 of 2014

[25] Substituted by Act 25 of 2014

[26] Substituted by Act 25 of 2014

[27] Inserted by Act 25 of 2014

[28] Amended by Act 25 of 2014

[29] Amended by Act 3 of 2012

[30] Amended by Act 25 of 2014

[31] Amended by Act 25 of 2014

[32] Amended by Act 25 of 2014

[33] Substituted by Act 25 of 2014

[34] Amended by Act 3 of 2012 and Act 25 of 2014

[35] Amended by Act 25 of 2014

[36] Amended by Act 3 of 2012

[37] Amended by Acts 3 of 2012 and 25 of 2014

[38] Amended by Act 25 of 2014

[39] Amended by Acts 3 of 2012 and 25 of 2014

[40] Translation corrected by Law Revision Commissioner to accord with Tongan version

[41] Amended by Act 25 of 2014

[42] Amended by Act 25 of 2014

[43] Amended by Acts 3 of 2012 and 25 of 2014

[44] Amended by Acts 3 of 2012 and 25 of 2014

[45] Amended by Act 3 of 2012

[46] Amended by Act 25 of 2014

[47] Amended by Act 25 of 2014

[48] Amended by Act 25 of 2014

[49] Amended by Act 16 of 2013

[50] Amended by Act 3 of 2012

[51] Amended by Act 3 of 2012

[52] Amended by Act 25 of 2014

[53] Amended by Act 25 of 2014

[54] Amended by Act 25 of 2014

[55] Amended by Act 25 of 2014

[56] Amended by Act 25 of 2014

[57] Amended by Act 25 of 2014

[58] Substituted by Act 25 of 2014

[59] Amended by Act 25 of 2014

[60] Substituted by Act 25 of 2014

[61] Substituted by Act 25 of 2014

[62] Substituted by Act 25 of 2014

[63] Substituted by Act 25 of 2014

[64] Amended by Act 25 of 2014

[65] Amended by Act 25 of 2014

[66] Amended by Act 25 of 2014

[67] Amended by Act 25 of 2014

[68] Amended by Act 25 of 2014

[69] Amended by Act 25 of 2014

[70] Amended by Act 25 of 2014

[71] Amended by Acts 3 of 2012 and Act 25 of 2014

[72] Substituted by Act 25 of 2014

[73] Substituted by Act 25 of 2014

[74] Amended by Act 25 of 2014

[75] Amended by Act 25 of 2014