



Tonga

**NATIONAL RETIREMENT BENEFITS
SCHEME (ADMINISTRATION)
REGULATIONS 2012**



NATIONAL RETIREMENT BENEFITS SCHEME (ADMINISTRATION) REGULATIONS 2012

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NATIONAL RETIREMENT BENEFITS SCHEME (ADMINISTRATION) REGULATIONS 2012

NATIONAL RETIREMENT BENEFITS SCHEME ACT 2010

IN EXERCISE of the powers conferred by section 58 of the National Retirement Benefits Scheme Act 2010, the Minister for Finance, with the consent of Cabinet, makes the following Regulations -

30th January 2012

1 Citation

These Regulations may be cited as the National Retirement Benefits Scheme (Administration) Regulations 2012.

2 Definitions

In these Regulations, unless the context otherwise requires –

“**Act**” means the National Retirement Benefit Scheme Act 2010;

“**benefit**” means any amount paid or payable (as the case may require) by the Board out of the Scheme under these Regulations to or in respect of a Member;

“**distribution date**” means the 1st July of every year;

“**employer contribution account**” means the account in the Scheme established for a Member and maintained in accordance with regulation 5(1) together with interest at the fund earning rate;

“**fund earning rate**” means the interest rate which the Board declares as at the review date having regard to the actual net investment return on the Scheme’s investments;

“**insurer**” means the National Retirement Benefits Organisation or a person appointed by the Board to provide life insurance for Members;

“**interest accrued**” means the interest from the last review date to the date of claiming of leaving service benefits;

“**member contribution account**” means the account in the Scheme established for a Member and maintained in accordance with regulation 4(1) together with interest at the fund earning rate;

“**member transfer contribution account**” means the account in the Scheme established for a transfer of the Member’s contribution accounts or retirement benefits from another scheme and maintained in accordance with regulation 32 together with interest at the fund earning rate;

“**member voluntary contribution account**” means the account in the Scheme established for a Member and maintained in accordance with regulation 4(2) and 5(2) together with interest at the fund earning rate;

“**general revenue account**” means the account in the Scheme established for payments of life insurance premium, claims and administration costs;

“**retirement age**” means the age of 60 years or another age which the Board determines as being the retirement age;

“**review date**” means 1 July every year;

“**salary**” means a Member’s remuneration as employee or such other amount as may be agreed between the employer and the employee; and

“**service**” means continuous service with the employer.

PART 1 - CONTRIBUTIONS

3 Commencement of contribution

Contributions made under the Scheme shall commence on 1 July 2012 or any other date decided by the Board.

4 Employee contribution

(1) A registered employee shall contribute to the Fund five percent of his annual salary applicable at the review date.

- (2) A registered employee may contribute amounts additional to those payable under these regulations at such rate and times as the registered employee determines and advises the Chief Executive Officer.
- (3) A registered employee's contributions paid in accordance with sub-regulation (1) shall be deducted from the registered employee's salary and remitted by the registered employer to the Fund.
- (4) A registered employee's contribution made in accordance with sub-regulation (2) may be:
 - (a) deducted from the registered employee's salary and remitted by the registered employer to the Fund; or
 - (b) paid direct to the Fund by the registered employee.

5 Employer contribution

- (1) A registered employer shall contribute to the Fund for each registered employee five percent of the registered employee's annual salary, applicable at the review date, according to the rates specified in the Second Schedule of the Act.
- (2) A registered employer may contribute amounts additional to those payable under sub-regulation (1) at such rate and times as the registered employer determines and advises the Chief Executive Officer.

6 Voluntary contributor

A voluntary contributor may contribute to the Fund at the prescribed levels and methods approved by the Chief Executive Officer.

7 Payment of contributions

Registered employers shall pay the contributions to the Fund no later than ten working days from the end of each month.

8 Documents accompany contributions

All payments of contributions to the Fund shall be accompanied by the prescribed forms duly completed, or other documents as the Organisation may request.

9 Receipt

A receipt shall be issued by the Chief Executive Officer for all contributions paid to the Fund.

10 Contributions cease

The payment of a registered employee's contribution made under regulation 4(1) and a registered employer's contributions made under regulation 5(1) shall cease when the registered employee ceases service with the registered employer.

11 Contributions suspended

Contributions are not payable while a registered employee is absent on leave without pay.

PART 2 - REGISTRATION OF EMPLOYERS AND EMPLOYEES

12 Employer to register

Every person being an employer on 1 December 2011 shall register with the Scheme within two months from the coming into force of these regulations, by providing the following documents:

- (a) a completed employer registration form prescribed by the Organisation;
- (b) a copy of the current business license;
- (c) a copy of any certificate of incorporation; and
- (d) Any other document or information that may be required by the Organisation.

13 Employee to register

Every employee who holds a permanent post with a registered employer shall register with the Scheme by providing the following forms:

- (a) a completed employee registration form prescribed by the Organisation;
- (b) a copy of his National Identity Card, Tax Identification Number or other form of identification; and
- (c) any other document or information that may be required by the Organisation.

14 Voluntary contributor to register

A person who wishes to become a voluntary contributor shall register with the Scheme by completing the prescribed forms.

15 Certificate of membership

Upon registration under regulations 12, 13 or 14, the Organisation shall provide to the:

- (a) registered employer, a certificate of membership; or
- (b) registered employee or voluntary contributor, a identification card.

16 Reference number

The Organisation shall register and allocate a reference number to every Member of the Scheme.

17 Registers

The Organisation shall establish and maintain a register of:

- (a) employers who register under regulation 12;
- (b) employees who register under regulation 13; and
- (c) voluntary contributors who register under regulation 14.

18 New employees

Any person employed by a registered employer after the employer is registered under the Scheme shall register under regulation 13.

19 Employer ceasing service

Any registered employer who ceases to be an employer shall inform the Organisation accordingly within one month of ceasing to be an employer.

20 Employee leaving service of the employer

Any registered employer who ceases to employ a registered employee shall inform the Organisation within one month of the registered employee ceasing service.

21 Exemption of complying schemes

- (1) Any employer who provides a retirement benefit scheme for his employees may submit an application to the Board for exemption from being a Member of the Scheme.
- (2) The Board may approve an application for exemption if satisfied that:

- (a) the benefit scheme provides benefits equivalent to or better than those provided under the Second Schedule;
 - (b) the benefit scheme has equal representations of members in its board of directors or representatives or equivalent body;
 - (c) the benefit scheme maintains the reporting standards, audit requirements and conform with the requirements of the Act;
 - (d) the benefit scheme has no right to withdraw any part or whole of benefits prior to the date of entitlement to benefits.
- (3) The Board may issue an employer with a certificate of exemption, interim certificate of exemption with required adjustments or reject the application for exemption for non compliance with sub-regulation (2).
- (4) An employer who has been issued with a certificate of exemption shall provide an annual report together with audited financial statements and investment reports to the Organisation for assessment of exemption status.

PART 3 -LEAVING SERVICE BENEFITS

22 Leaving service benefits

- (1) A registered employee shall be entitled to claim his leaving service benefits when he ceases service with a registered employer after reaching his retirement age.
- (2) The registered employee shall complete the prescribed application form with all related information and submit it to the Organisation for processing.
- (3) The leaving service benefit may be paid in lump sum or instalments, or a combination of both.

23 Amount of leaving service benefits

The leaving service benefit is an amount equal to the sum of the balances of:

- (a) the employee contribution account;
- (b) the employee voluntary contribution account;
- (c) the employer contribution account;
- (d) the employee's transfer contribution account;
- (e) the employee's interest accrued account; and
- (f) less any deduction due and outstanding insurance premium

at the date the registered employee ceases employment with a registered employer.

24 Voluntary contributor

- (1) A voluntary contributor is entitled to claim a leaving benefit when he reaches his retirement age.
- (2) The voluntary contributor's leaving benefit is equal to the balances of his contributions account and interest accrued account at the date of retirement.

25 Preservation

A registered employee's leaving service benefit shall be preserved when he leaves the service of a registered employer before attaining his retirement age, except the employee's voluntary contribution account.

26 Early release of benefits

A registered employee may submit a leaving service benefits claim before attaining retirement age, and the Organisation may release all or part of his leaving service benefits if the Chief Executive Officer is satisfied that the registered employee has ceased service with the registered employer due to:

- (a) redundancy;
- (b) medical grounds, and such grounds are confirmed by the Medical Board;
- (c) migration overseas; or
- (d) financial hardship, in accordance with policy set by the Board from time to time, which can be alleviated by an early release of the leaving service benefits.

27 Amount of death benefit

- (1) If an employee dies, the Organisation shall pay a death benefit payment to the registered employee's prescribed beneficiary, otherwise to his estate.
- (2) The death benefit is an amount equal to the sum of the balances of:
 - (a) the employee contribution account;
 - (b) the employee voluntary contribution account;
 - (c) the employer contribution account;
 - (d) the employee transfer contribution account;
 - (e) the employee interest accrued account;
 - (f) the life insurance claim; and
 - (g) less any deductions due and outstanding premium accountat the registered employee's date of death.

28 Death benefit payment

- (1) The death benefit payment is paid as a lump sum.
- (2) A registered employee may nominate any person to receive his death benefit payment.
- (3) A nomination under sub-regulation (2) shall be made by a memorandum of nomination in the prescribed form.
- (4) The memorandum of nomination shall be signed by the registered employee in the presence of two officers of the Organisation, who shall countersign it as witnesses and shall be duly registered by the Chief Executive Officer.
- (5) A nomination may be revoked by:
 - (a) the death of a nominee during the lifetime of the registered employee;
 - (b) a subsequent nomination; or
 - (c) a subsequent will of the registered employee.
- (6) In the event that there is no nomination made by the registered employee under sub-regulation (2), the Organisation shall pay the death benefit to the spouse of the registered employee at the time of the registered employee's death, or if the registered employee had no spouse at the time of death then to the registered employee's surviving legitimate children in equal portions, or if there are no surviving legitimate children at the time of death, then to the father or mother, and if there is no surviving parent, then to the registered employee's legal representative.

29 Life insurance

- (1) Life insurance benefits payments shall be the amount approved by the Board as per the registered employees' life insurance policy.
- (2) Life insurance benefits shall not be payable if:
 - (a) a registered employee's employment with a registered employer ceased before the date of death;
 - (b) a registered employee had already attained the retirement age at the date of death;
 - (c) the insurer has refused to cover the registered employee; or
 - (d) the death of the registered employee was due to an event for which the insurer had excluded liability.

30 Disablement benefit

If a registered employee ceases service with a registered employer because of permanent and total disablement as approved by the Medical Board, the

Organisation shall pay the permanent and total disablement benefit to the registered employee.

31 Amount of permanent and total disablement benefit

- (1) The permanent and total disablement benefit is an amount equal to the sum of the balances of:
 - (a) the employee member contribution account;
 - (b) the employee voluntary contribution account;
 - (c) the employer contribution account;
 - (d) the employee transfer contribution account;
 - (e) the employee interest accrued account; and
 - (f) less any deductions due and outstanding premium account.
- (2) The permanent and total disablement benefit is paid as a lump sum.

32 Transfer of benefit entitlements to the Scheme

The Board may accept a transfer of funds from another retirement benefit scheme, or like arrangement for the provisions of entitlement benefits, in respect of a registered employee's entitlement in that other retirement benefits scheme.

33 Certification of benefits

All benefit entitlements under the Scheme shall be certified by the Organisation's internal auditor or, where appropriate, the Organisation's external auditor, before such benefit entitlement is paid.

PART 4 – MISCELLANEOUS

34 Administration fees and insurance premium

- (1) The Organisation may incur costs in the administration of the Scheme and such costs shall be deducted from the income derived from the investments. Such total amounts shall be guided by the industry standards approved by the Board.
- (2) The Chief Executive Officer shall deduct insurance premium from the employer contribution account as calculated for each employee, other than a voluntary contributor, to be paid to the insurer each year.

- (3) The Organisation may expend from time to time such sum it considers necessary to protect any investment of the Scheme monies from loss or diminution in value.

35 Fund earning rate

- (1) The Board shall declare a fund earning rate for the year as at the review date which shall be credited to the accounts of registered employees and voluntary contributors.
- (2) The Board may from time to time declare an interim fund earning rate to be applied to the accounts of a registered employee entitled to a benefit payment under these regulations for the period since the last fund earning rate was declared.
- (3) Interest at the interim fund earning rate is calculated to the date of payment of a benefit.

36 Records and accounts

- (1) The Organisation shall maintain proper accounts and records as correctly recorded and explain the transactions and financial position of the Scheme.
- (2) The accounting records, minutes and records of the Scheme shall be retained for at least ten years.
- (3) The Organisation shall maintain such records as required under the financial management policy, including a statement of the financial positions and an operating statement for each financial year of the Scheme. Such accounts and statements shall be signed by the Chairman and the Chief Executive Officer.

37 Distribution date

The Board shall declare a distribution date at least once in each financial year for the distribution of the registered employees' statements of account and the annual report together with the audited financial statements to the appropriate persons.

Made at Nuku'alofa this 30th day of January 2012.

Hon. Sunia Fili
Minister for Finance