Tuvalu

PROVIDENT FUND (CONTRIBUTIONS) REGULATIONS

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Tuvalu

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Tuvalu

PROVIDENT FUND (CONTRIBUTIONS) REGULATIONS[1]

MADE UNDER SECTION 14 OF THE PROVIDENT FUND ACT

1 Citation and Interpretation[2]

(1) These Regulations may be cited as the Provident Fund (Contributions) Regulations.

(2) In these Regulations, unless the context otherwise requires —

"**approved form**" means a form approved by the Board for the purpose of these Regulations;

"**earnings**" means wages, salary or other remuneration payable in respect of employment under a contract of service and includes overtime and bonus payments;

"**guardian**" means any individual(s) who is financially and socially responsible for a minor;

"**gross earnings**" means the earnings figure before deductions for income tax or any other statutory or voluntary purposes;

"**Minor**" means any individual below the age of 18 years;

"**Registering Party**" means the parent(s) or guardian(s) who registered the minor;

"**surcharge**" means a penalty or surcharge payable under section 14 where contributions have not been paid by the proper time.

2 Manner of assessment and calculation of contribution liability

(1) For the purpose of section 12(4) the monthly contributions for each member shall be determined by applying the rates shown in Schedule 1 to the

member's gross earnings for the month, the calculation being taken to the nearer multiple of $0.10.[3]

(2) The calculation of contribution liability in subregulation (1) shall be to the nearest $0.10 and any amount of $0.05 or less shall be disregarded.

3 Method of payment

(1) Every contribution and surcharge due to the Fund shall be paid —

(a) by money order, postal order, cheque or in cash —

(i) delivered or sent by post to the National Bank of Tuvalu;

(ii) delivered to the Island Executive Officer;

(iii) at the office of the Fund to an officer authorised by the Manager to receive monies on behalf of the Fund; or

(iv) to an inspector appointed under section 15; or

(b) in such other manner as the Board may from time to time authorise in any particular case or category of cases.

(2) Where payment is made by post the date of payment for the purposes of the Act shall be the date of receipt of the instrument effecting payment.

(3) Where a payment is made in any currency not acceptable in Tuvalu as legal tender the amount credited to the Fund and accepted on account of the sum due to be paid shall be the amount arrived at by the National Bank of Tuvalu after applying its published rate of exchange and deducting the appropriate commission charge.

(4) Every payment of a contribution or surcharge shall be accompanied by the approved form or forms duly completed.

4 Issue of receipts

(1) A receipt for every sum paid to the Fund shall be issued by the officer receiving it on behalf of the Fund.

(2) For the purposes of subregulation (1) the receipt stamp of the Fund or the Island Executive Officer impressed on a copy of the approved form together with the signature of the official impressing it shall be sufficient.[4]

5 Employment by more than one employer

A person employed by two or more different employers concurrently or employed by the same employer in different capacities involving separate payments of earnings shall have contributions assessed separately on each payment of earnings.

6 Abnormal pay practices

The Manager may, where he is satisfied as to the existence of any abnormal practice in respect of the payment of earnings whereby the incidence of contribution liability is avoided or reduced, give directions for securing that such contributions are payable as if that practice had not been followed.

7 Deductions from employed persons' earnings

(1) An employer liable to pay contributions in respect of an employed person may deduct from that person's gross earnings the group 1 contribution payable on those earnings provided that he does so not later than the time at which those earnings are actually paid.

(2) Where an employer fails to deduct the full amount of the employed person's share of the contribution before paying to him the earnings in respect of which the contribution is payable, the employer may, if —

(a) the failure to make the deduction was due to an error made in good faith;

(b) he gives prior notification to the employed person; and

(c) the amount to be deducted is not greater than the amount properly to be deducted from the same future payment,

recover the amount or part of the amount under deducted from any subsequent payment of earnings to the employed person concerned.

(3) Any employer may make a voluntary contribution to the maximum amount of 3% above the existing compulsory contribution rate stated in (1).[5]

8 Time for payment of contributions

(1) For the purposes of sections 12, 14 and 29, contributions to the Fund shall be paid in the manner prescribed in regulation 3 not later than the 15th day on the month following that in which the payment of earnings in respect of which they are due is actually made.

(2) Where a contribution is not paid by the proper time there shall be payable to the Fund a monthly surcharge on that contribution —

(a) commencing on the 16th day of the month following that in which the payment of earnings was made; and

(b) for every month or part of a month during which the contribution remains unpaid,

equal to 5 per cent of the amount due to be paid but unpaid.

9 Employer to maintain record

(1) An employer shall maintain a record in respect of employed persons in his employ showing for each —

(a) the name, date of birth and membership identity number;

(b) the date on which the employment starts and finishes;

(c) the date and amount of each payment of earnings; and

(d) the deductions made from such payments in respect of the employed person's share of the contribution.

(2) The records maintained under subregulation (1) shall be retained by the employer in good order for a period of not less than 6 years from the date of the last entry and shall be made available to the Manager or to an inspector appointed under section 15 when required in connection with the Act.

(3) The provisions of subregulation (2) shall also apply to copies of approved forms prepared under regulations 10 and 11 and retained by or returned to an employer as proof of payment of contributions.

10 Monthly Contribution Returns and Monthly Contribution Payment Statement[6]

(1) An employer shall be liable to complete monthly contribution returns (hereinafter called "returns") and monthly contribution payment statements (hereinafter called "payment statements") in accordance with this regulation.

(2) In respect of the returns —

(a) the employer shall record the name and membership number of every employee and shall enter each month the amount payable to the Fund in respect of that employee (other than any Group l(ii) contributions as described in the Schedule); and

(b) at the end of every month the employer shall complete the returns by carrying out the required additions and shall send the completed returns to the Manager or Secretary of the Kaupule with the payment statement and remittance for that month.

(3) The employer shall complete the payment statement for each month and shall send it together with a remittance for the total of the amounts payable to the Fund shown on the statement in accordance with regulation 8.

(4) If during the month an employer ceases to be liable to pay contributions, he shall immediately send completed returns and payment statements to the Manager together with all moneys due to the Fund.

(5) If the employer discovers an error in a return or payment statement after dispatch, he shall immediately inform the Manager in writing of the amount and nature of the error and the Manager shall direct how it should be adjusted.

11 Certificate of earnings and contributions paid

(1) An employer shall, on making the final payment of earnings to an employed person —

(a) at the end of each financial year; or

(b) on termination of the employment,

complete an approved form in triplicate certifying the total amount of gross earnings paid to, and contributions paid in respect of, that employed person.

(2) The top copy of the certificate prepared under subregulation (1) shall be submitted with the payment of contributions made under regulation 3, the second copy shall be given to the employed person concerned with his final payment of earnings and the third copy shall be retained in the pad by the employer.

(3) Employers shall take suitable precautions to ensure that pads of certificates for the purposes of this regulation are not misused or stolen

12 Short periods of employment

Notwithstanding anything in the Act or regulations made thereunder no period of employment shall give rise to liability for contributions if the earnings derived from it amount to less than $5.00.

13 Refund and adjustment of contributions paid in error

(1) Where any contribution has been paid in error or has been paid in excess of the amount properly due, the sum overpaid shall be set off against —

(a) any other contribution or surcharge due to the Fund from the employer or employed person concerned; or

(b) any benefit overpaid to the person concerned and liable to be repaid to the Fund.

(2) Where after making such off-set there is an amount overpaid to the Fund in excess of $1.00 the Manager shall refund the sum to the contributor on application to that effect in writing under subregulation (3).

(3) A person desiring to apply for a refund of a contribution paid in error or in excess of the amount due shall make application to that effect in such a manner as the Manager may from time to time determine.

(4) An application under subregulation (3) shall be made within a period of 6 years from the end of the financial year in which the contribution was paid or, if the Manager is satisfied that the person making the application had good cause for not making it within that time, within such longer period as the Manager may allow.

(5) On receipt of an application under this regulation the Manager shall make such enquiries as he may consider necessary to satisfy himself that the contribution claimed to have been paid in error or in excess was originally paid under the erroneous belief that it was properly payable; and in the event of his not being so satisfied the application shall be rejected.

(6) Where a contribution is to be refunded and —

(a) it was originally paid by the employer without the appropriate deduction having been made from the employed person's earnings; or

(b) the employed person consents in writing to the refund of his share being made to the employer,

the refund shall be made in full to the employer.

(7) Where a contribution is to be refunded and —

(a) it was originally paid other than by an employer; or

(b) the employed person does not give his consent under paragraph (6)(b),

the refund of the contribution or share of the contribution shall be made to the person or persons who contributed it.

14 Voluntary Membership[7]

(1) Any person who is neither an employed person under the provisions of the Act nor a person described in subregulation (2), and who is not less than 6 nor more than 60 years of age, may by applying to the Manager on an approved form become a voluntary member of the Fund and shall thereafter pay contributions as set out in Schedule 1 for Group 3 (voluntary members).[8]

(2) The following classes of persons are not entitled to become voluntary members —

(a) non-citizens domiciled outside Tuvalu and residing in Tuvalu solely or principally for the purpose of employment or the employment of a spouse; and

(b) persons who have twice been entitled to benefit from the Fund.

(3) Contributions by voluntary members shall be payable to the Fund and the Manager shall ensure that the voluntary member receives a record of the payment on an approved form.

(4) Voluntary members shall be entitled to the same benefits as other members, except that persons becoming voluntary members after these Regulations have come into operation shall not be entitled to the special death benefit described in section 20(1)(g).

15 Minor Voluntary Scheme[9]

(1) Any minor who is not less than 6 nor more than 18 years of age may be registered in this scheme.

(2) Registration is to be made by the parents or guardians of the minor.

(3) Minimum contribution to be paid is $10 and this is to be paid by the registering party.

(4) When the minor turns 18, their account will automatically be converted to a full voluntary account.

(5) If a minor dies before they turn 18, the funds in the minor's account will automatically be paid to the registering party.

SCHEDULE 1[10]

1. Group 1 contributions (employed persons)

(i) The contribution shall be 13 per cent of the member's gross earnings.

(ii) Members may make additional contribution at their own expense and without any obligation on the employer to make any payment. Such contribution shall be payable to the Fund provided that:

(a) such payments may be made once only in a month; and

(b) shall not be less than $20.

2. Group 2 contributions (employers)

The contribution shall be 10 per cent of the gross earnings for each member employed under a contract of service by an employer who shall initially be liable for the payment of both the group 1(i) and group 2 contributions, subject to recovery of the group l(i) contribution from the employee by deduction from salary.

3. Group 3 contributions (voluntary members)

Not less than $2.00 payable at any time.

SCHEDULE 2[11]

1 Group 1 contributions (employed seafarers)

(i) The contributions shall be 10 per cent of the employed seafarer's gross earnings.

(ii) Employed seafarers may make additional contribution at their own expense and without any obligation on the Agent to make any payment. Such contributions shall be payable to the Fund provided that:

(a) such payments are made once only in a month; and

(b) shall not be less than $20.00.

2 Group 2 contributions (employers / Agents)

(i) For the first 12 months after the coming into effect of these Regulations, the contribution shall be 0 per cent of the gross earnings for each member employed under a contract of service by an employer / Agent.

(ii) After 12 months of the coming into effect of these Regulations, the contribution shall be 5 per cent of the gross earnings for each member employed under a contract of service by an employer / Agent.

3 Contribution rate subject to further adjustment

Subject to further negotiations between the Government of Tuvalu and the employers / Agents and all other stakeholders, the contribution rate in 2(ii) above shall be subject to further adjustment.

4 Liability for payment of contributions

The employer / Agent shall initially be liable for the payment of both group 1 and group 2 contributions, subject to recovery of the group 1 contribution from the employed seafarer by deduction from salary.

ENDNOTES

[1] 1990 Revised Edition; LN 16/1985, LN 18/1984, LN 14/1988
Amended by LN 7/1999, commencement 1 January 2000 by LN 16/1999
Amended by LN 12/2009, commencement 11 September 2009
Amended by LN 8/2021, commencement 20 August 2021

[2] Amended by LN of 2021

[3] Amended by LN 17/1999

[4] Amended by LN 17/1999

[5] Inserted by LN of 2021

[6] Substituted by LN 17/1999

[7] Substituted by LN 17/1999

[8] Amended by LN of 2021

[9] Inserted by LN of 2021

[10] Amended by LN 17/1999, Renumbered and amended by LN 12/2009

[11] Inserted by LN 12/2009