

## PART VIII - WITHDRAWAL OF CONTRIBUTIONS

### *Withdrawal to be approved by Board*

**30.**—(1) Money standing to the credit of a member in the Fund shall not be withdrawn from the Fund except with the authority of the Board.<sup>1</sup>

(2) The Board shall not give its authority under subsection (1) before the date of entitlement of the member of the Fund.<sup>2</sup>

(3) The Board may, on the application of a member, having regard to his age or other circumstances, permit that member to withdraw all or part of the money in the Fund standing to his credit at that time.<sup>3</sup>

(4) Notwithstanding subsection (2), any excess contributions in the Fund standing to the credit of a member may be withdrawn by the member at any time subject to the guidelines approved by the Board.<sup>4</sup>

### *Withdrawal otherwise than upon death*

**31.** The Board shall, after the date of entitlement of any member of the Fund otherwise than upon his death, and upon his application or that of any committee of his person appointed under the provisions of the Mental Treatment Act, pay to the applicant the amount standing to the credit of such member in the Fund.<sup>5</sup>

### *Withdrawal by nominee*

**32.** The Board shall, after the death of any member of the Fund and upon the application of a person nominated under the provisions of section **34**, pay to the applicant such part of the sum standing to the credit of such member as shall have been set out in the memorandum executed in accordance with that section.<sup>6</sup>

### *Evidence*

**33.** All applications for withdrawal shall be supported by such evidence as may be prescribed and by such further evidence as the Board may reasonably require.<sup>7</sup>

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<sup>1</sup> The FNPF Board has the sole authority to allow any member to withdraw his/her Funds from the FNPF account.

<sup>2</sup> The authority to withdraw will only be given by the FNPF Board when the member reaches the date of entitlement. According to Section 2 of the FNPF Act, date of entitlement means the date on which the members application for withdrawal is approved after (a) has attained the age of 55 years; or (b) has died; or (c) is physically or mentally incapacitated from ever engaging in any further employment; or (d) is about to leave or has left Fiji with no intention of returning thereto; or (f) has withdrawn all the money pursuant to section 30.

<sup>3</sup> Once the authority of the Board is given, the member will be allowed to withdraw either the whole amount or part of it.

<sup>4</sup> If the member has made more than 16% contributions to the FNPF account, then the member can withdraw the excess amount at any time and does not need to wait to reach the date of entitlement. Excess contribution withdrawals have to be made in accordance with the guidelines. The current guidelines for withdrawal of excess contribution is one withdrawal per year.

<sup>5</sup> The member will be paid all his FNPF money once he makes an application for withdrawal. The Board will only release monies to the members nominee if he is deceased or to the committee or person if the member is mentally unstable. Under the Mental Treatment Act, a doctor needs to provide a medical certificate stating that the member is mentally unstable or Under Regulation 62 of the FNPF Act, the FNPF Board will require a medical certificate from a nominated medical practitioner.

<sup>6</sup> A members nomination for the distribution of FNPF monies supercedes and overrides any terms of a Will. In the case of *Virisila Namino –v- Fiji National Provident Fund Board* [2002] HBC0032/02S Judgment of 31 October 2002, Justice Pathik ruled that the Plaintiff nominee, being one of 4 nominees is only entitled to ¼ of amount standing to credit of deceased, and cannot resort to the mischief rule to claim the whole amount, as the Act is very clear.

<sup>7</sup> When making withdrawal applications, the member must provide evidence together with the application for withdrawal that he has reached the date of entitlement.

### *Nomination*

**34.** Any employee or member of the Fund may, by a memorandum executed in the prescribed manner, nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund under the provisions of section **32** on his death as such memorandum shall indicate, and any employee who does not nominate such a person may be required by the Board to declare, in writing, that he does not desire to do so:

Provided that the subsequent marriage of a nominator shall render any nomination made by him null and void.<sup>8</sup>

### ***Procedure where there is no nominee or a minor nominee***

35.—(1) If, at the time of the death of a member of the Fund, there is no person nominated under section 34 the Board, on being notified of the death of the member, shall pay into Court the amount standing to the credit of the member in the Fund for disposal in accordance with the law. (2) If, at the time of the death of a member of the Fund—

(a) a sole nominee under section 34 is dead; or

(b) a nomination under section 34 is of no effect,

the Board, on being notified of the death of the member, shall pay into Court such proportion of the amount standing to the credit of the member in the Fund, as is indicated in the nomination for disposal in accordance with the law.<sup>9</sup>

(3) Where no claim is made in respect of money paid into Court in accordance with subsection (1) or (2) within one year of being so paid in to Court, the Court shall repay the money to the Board and the Board shall credit it to the general reserves of the Fund.<sup>10</sup>

(4) Where a person, other than a spouse, is—

(a) nominated under section 34; or

(b) entitled by virtue of subsection (1) or (2) to receive all or part of the amount standing to the credit of a deceased member of the Fund,

and the person so nominated or entitled is under the age of 18 at the time of payment of the amount payable out of the Fund, the amount to be paid shall be paid by the Board or the Court, as the case may be, to the Public Trustee for the benefit of the person so nominated or entitled.<sup>11</sup>

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<sup>8</sup> If the member does not wish to make any nominations then the member must declare to FNPF that he does not wish to do so.

<sup>9</sup> If the member does not make any nominations, then the money is paid by FNPF to Court and the Court pays it to the Public Trustee. In matters where a member dies leaving a Will, such as the case of **Jane Peters –v- Hector & Jack and Charles Maull** (1986) 32 FLR 98, Justice Cullinan ruled that a Will specifies the applicant as sole executor and beneficiary and the Court must distribute according to the law of testacy.

<sup>10</sup> If no claim is made within one year, then the Court must pay back to the FNPF the amount that was paid out for the members beneficiaries. The money is then credited to the FNPF's general reserves.

<sup>11</sup> If a person nominated is under the age of 18, the FNPF Board or the Court pays the money to the Public Trustee.

(5) Where no claim is made in respect of money paid to the Public Trustee in accordance with subsection (4) within one year of being so paid to the Public Trustee, the Public Trustee shall repay the money to the Board and the Board shall credit it to the general reserves of the Fund.<sup>12</sup>

(6) Subsections (3) and (5) do not prejudice the right of any person found to be entitled to receive any amount paid into the general reserves of the Fund in accordance with those subsections.<sup>13</sup>

(7) Where a person is found entitled to receive any amount which has been credited to the general reserves of the Fund pursuant to subsection (3) or (5) the Board shall, subject to subsection (8), pay interest on that amount calculated from date upon which it was credited to the general reserves of Fund until the date upon which payment is made by the Board to the person entitled thereto at the maximum rate of interest being offered by licensed banks in Fiji for savings deposits on the date of such payment by the Board.<sup>14</sup>

(8) Nothing in subsection (7) shall be construed as requiring the Board to pay interest upon interest.<sup>15</sup>

#### *Payment of special death benefit*

36.—(1) On the death of an entitled member after 1 January 1971, the amount standing to his credit in the Fund shall be increased by such proportion of the maximum sum as may be prescribed and the amount of such increase shall be paid from the general revenues of the Fund.<sup>16</sup> (*Amended by Act No. 15 of 1995 s. 12(a)*)

(2) The amount to be added to the deceased members credit for the purpose of subsection (1) shall be payable in such manner as may be prescribed.<sup>17</sup> (*Substituted by Act No. 15 of 1995 s. 12(b)*)

(3) The amount payable under subsection (1) shall not be taken into consideration in the assessment of compensation or damages payable to the dependants or beneficiaries of the deceased member under the provisions of the Compensation to Relatives Act.<sup>18</sup>

*(Substituted by Act 1 of 1970, s. 8.)*

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<sup>12</sup> If no claim is made within one year from the Public Trustee, then the Public Trustee must pay back to the FNPF the amount that was paid out for the members beneficiaries. The money is then credited to the FNPF's general reserves.

<sup>13</sup> Persons who do not claim from either the Court or Public Trustee within one year can claim from the FNPF at any period after the one year lapses. The FNPF will then pay out the sum from its General Reserves.

<sup>14</sup> When paying out to the beneficiary from the general reserves, the FNPF has to pay interest on that amount from the time the money was credited to the general reserves until the date of payment at the maximum rate of interest, the same rate which is being provided by the licensed banks in Fiji for savings deposits.

<sup>15</sup> The FNPF is not required to pay any more interest if interest has already been added to the contributions.

<sup>16</sup> When a member dies, the FNPF pays an additional sum from its general reserves to the members account. The current special death benefit is in the sum of \$8,500.00.

<sup>17</sup> Once the advise of death form is received by FNPF, the FNPF assesses the account and if the member is eligible, the money is credited to the deceased members account.

<sup>18</sup> The special death benefit does not form part of any compensations to relatives. It is paid out to the beneficiaries as nominated by the member.

