

**The Board of the
National Superannuation Fund**

Superannuation fund trust deed

Certified as a true and correct copy of the Trust Deed

dated 30 June 2015.



Ireen Muir

Senior Manager Client Services

Public Trust

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Parties

1. **The Board of the National Superannuation Fund** established by the Cook Islands National Superannuation Act 2000 ('the board')
2. **Public Trust**, a Crown Entity and Statutory Body Corporate under the Public Trust Act 2001 (New Zealand) ('the trustee')

Background

- A The Board established the Cook Islands National Superannuation Fund (**Fund**) under section 11 of the Cook Islands National Superannuation Act 2000 (**Act**). In accordance with section 11(2) of the Act the Board:
- a. prepared a trust deed that governs the fund; and
 - b. appointed the Public Trustee of New Zealand, a corporation sole established by the Public Trust Official Act 1957 (**PTOA**) to act as first trustee of the fund.
- B The trust deed was signed by the Public Trustee of New Zealand and the Board on 9 September 2001 (**trust deed**).
- C Under the Public Trust Act 2001 (**PTA**) the PTOA was repealed and replaced.
- D Under clause 149 of the PTA the fiduciary rights and liabilities of the Public Trustee of New Zealand under the trust deed vested in the Public Trust.
- E Clauses 113 and 114 of the trust deed set out the provisions for amendment.
- F Clause 113 of the trust deed provides that the Board may rescind, alter or add to any of the provisions in the trust deed in the manner prescribed by section 21 of the Act.
- G Section 21(1) of the Act gives the Board the power to rescind, alter or add to any provisions in the trust deed, subject to the Act and after consulting with the trustee.
- H Clause 21(2) of the Act prohibits any amendment to the trust deed which will have an adverse effect on a contributor's right or claim to benefits or the amount of benefits that have accrued up until the date of the amendment, unless:
- a. the consent of the contributor is obtained;
 - b. the amendment is necessary to comply with the Act; or

- c. the amendment is solely to correct a mistake which has advantageously altered a contributor's right or claim to accrued benefits or the amount of those accrued benefits.

I Clause 114 of the trust deed provides that no amendment shall be made to the trust deed which may adversely alter a member's right or claim to accrued benefits or the amount of those accrued benefits unless:

- a. the consent of the member is obtained in accordance with the requirements of the Act;
- b. the amendment is necessary for compliance with the Act;
- c. in the case of an amendment solely to correct a mistake which has advantageously altered a member's right or claim to accrued benefits or the amount of those accrued benefits.

J The board now wishes to amend the trust deed to:

- a. provide for the trustee to establish separate investment funds within the fund;
- b. allow members to nominate an investment fund or investment funds within which their contributions will be invested;
- c. make amendments to the insurance provisions; and
- d. make other minor amendments.

K The board has consulted with the trustee regarding these amendments, in accordance with section 21(1) of the Act.

L The board and the trustee are satisfied that this Deed, when it takes effect, will:

- a. comply with clause 113 of the trust deed and section 21(1) of the Act;
- b. comply with section 21(2) of the Act in that it will not have an adverse effect on a contributor's right or claim to benefits or the amount of benefits that have accrued; and
- c. comply with clause 114 of the trust deed in that it will not adversely alter a member's right or claim to accrued benefits or the amount of those accrued benefits.

OPERATIVE PROVISIONS

The trust deed is hereby altered by rescinding each and every one of the existing clauses and by subjecting to clauses of this deed to the extent that the entire provisions of the trust deed for the fund are those contained in the clauses of this deed.

It is agreed

Constitution of fund

Establishment of fund

1. The fund to be known as the Cook Islands National Superannuation Fund is constituted by this deed.

Period of fund

2. The fund will commence upon the date of this deed and shall terminate in accordance with the provisions of this deed and the act.

Appointment of trustee

3. In accordance with section 11(2)(b) of the act the board appoints the trustee as the first trustee of the fund and the trustee agrees to act as trustee for the members and pensioners and to hold the fund assets in trust for the members and pensioners upon and subject to the terms and conditions contained or implied in this deed.

Rights to benefits and interest in fund

Member interest

4. Except as provided in this deed a member or pensioner will have no right to or interest in any money or other assets of the fund.

Employer and employee rights not restricted

5. Nothing herein contained will restrict the right of an employer to dismiss an employee or be used to increase damages in any action brought against the employer in respect of such dismissal or affect the legal rights of a member or legal personal representative arising out of or in the course of his or her employment with the employer.

Eligibility and membership

Eligibility

6. The persons eligible for membership of the fund under the act will provide such information and complete such form as is prescribed from time to time by the trustee before becoming a member of the fund.

Membership

7. A person eligible for membership under clause 6 will become a member on the day determined by the trustee.

Cessation of membership

8. A member's membership will cease on the first of the following dates:
 - 8.1 the date of death of the member
 - 8.2 the date the member receives a benefit or commences receipt of a pension under this deed.

Contributions

Employer contributions

9. Each employer will from time to time contribute to the fund for each employee who is a member the mandated employer contribution with respect to that employer as required under the act.

Member contributions

10. A member will contribute to the fund the mandated employee contribution with respect to that member as required under the act.
11. All members may, subject to clause 12, make voluntary contributions to the member's voluntary account in the fund.
12. Contributions paid under clause 11 may only be made with the prior consent of the board, and:
 - 12.1 lump sum payments must be at least \$1,000
 - 12.2 regular voluntary contributions must be at least 1% of earnings or such other amount as the board may specify from time to time.

Collection and application of contributions

13. The board will enforce the collection of contributions to the fund and subject to section 19 of the act, the trustee in its absolute discretion will determine the manner in which contributions will be invested.

Payment of penalty

14. Any penalty interest on the amount of any money owed to the fund by any person calculated in accordance with section 67 of the act will be paid to the trustee by the board and be apportioned by the trustee as required under section 52(4) of the act.

Fund accounts

Establishment of fund accounts

15. The trustee will establish and maintain within the fund the following accounts for each member who is liable to contribute to the fund under section 36 of the act:
 - 15.1 compulsory account
 - 15.2 voluntary account.
16. The trustee will establish and maintain within the fund a pension account for each pensioner.
17. The trustee will establish and maintain within the fund a voluntary account for all members not included under clause 15.

Compulsory account

18. The compulsory account for each employee who is a member will show such of the following amounts as may be required:
 - 18.1 mandated employee contributions in respect of the member
 - 18.2 mandated employer contributions in respect of the member
 - 18.3 any amounts transferred to the fund in accordance with clause 63 and to be credited to the compulsory account of the member
 - 18.4 any insured benefit that has been paid and credited to the compulsory account
 - 18.5 insurance premiums determined by the trustee to be debited and paid from the compulsory account of the member under clause 63
 - 18.6 income credited or debited to the compulsory account pursuant to clause 35
 - 18.7 an amount determined from time to time by the trustee, subject to the consent of the board, to be debited and paid to the reserve account to meet fund expenses
 - 18.8 other sums credited or debited to the compulsory account pursuant to the provisions of this deed.

Voluntary account

19. The voluntary account for each member will show such of the following amounts as may be required:
 - 19.1 voluntary contributions paid by or in respect of the member

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- 19.2 any amounts transferred to the fund in accordance with clause 73 and to be credited to the voluntary account of the member
 - 19.3 income credited or debited to the voluntary account pursuant to clause 35
 - 19.4 other sums credited or debited to such account under the provisions of this deed.

Pension account

- 20. The pension account for each pensioner will show such of the following amounts as may be required:
 - 20.1 sums credited from compulsory accounts under clause 21
 - 20.2 the payment of pension to the pensioner or the pensioner's spouse as the case may be
 - 20.3 the purchase of annuities
 - 20.4 income credited or debited to the pension account pursuant to clause 0
 - 20.5 other sums credited or debited to the pension account under the provisions of this deed.

Transfer to pension account

- 21. The amount standing to the credit of the compulsory account of a member will, subject to clauses 25, 40, 48 and 49 and after deduction of any amount payable under clauses 48 or 52, be transferred and credited to the pension account established for that member on becoming a pensioner on the day the member elects to receive payment of a pension under clause 45 or clause 48.

Examination of pension accounts by an actuary

- 22. The trustee will arrange for an actuary to examine the pension accounts as required by the act and at any other time the trustee in its absolute discretion considers necessary.

Trustee may alter amount of pensions

- 23. After considering the report of the actuary and taking into account any surplus or deficit in the pension accounts or the pension reserve account disclosed by the report the trustee may after considering the advice of the actuary and in consultation with the board carry out any one or more of the following actions:
 - 23.1 increase or reduce the pension factor and the amount of any or all pensions

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- 23.2 arrange for an amount to be transferred from the reserve account to the pension reserve account as described in clause 28
 - 23.3 arrange for an amount to be transferred from the pension reserve account to the reserve account
 - 23.4 vary the lump sum entitlement under clause 52.

Application of pension account

- 24. All money held in a pensioner's pension account will be applied in the payment of a pension to the pensioner or the spouse of the pensioner in respect of whom money was credited pursuant to clause 21 or in the purchase of an annuity from a life insurance company pursuant to clause 25 or as otherwise permitted by clause 20.

Trustee may purchase an annuity from life insurance company

- 25. The trustee may at its discretion purchase one or more annuity contracts from a life insurance company to meet all or part of any pension payable in respect of the amounts credited to the pensioner's pension account under clause 21 on such terms and conditions as will be agreed upon between the member or pensioner (as the case may be), the trustee and the life insurance company.

Assignment of a benefit under the Matrimonial Property Act 1976

- 26A. The trustee will give effect to any agreement entered into between a pensioner or other beneficiary and the pensioner or other beneficiary's husband or wife.
- 26B. The trustees will also give effect to any other agreement or order of a court in the Cook Islands, the effect of which is to assign the benefit payable under the fund to the dependant of the pensioner or other beneficiary and for this purpose the execution by the pensioner or other beneficiary of such an agreement will be deemed for the purpose of the trust deed to be an election to receive a reduced pension or other benefit in consideration of the provision of a pension or other benefit to the dependant of the pensioner or other beneficiary.

Reserve account

- 27. The trustee will establish and maintain within the fund an account in its name to be known as the reserve account which will show such of the following amounts as may be required:
 - 27.1 benefits forfeited
 - 27.2 reserves of earnings as determined under clause 34
 - 27.3 other amounts not applied to a specific member account, pension account or the pension reserve account

27.4 transfers from the pension reserve account under clause 23.3

27.5 transfers from members' compulsory accounts under clause 18.

28. Amounts in the reserve account may be applied by the trustee to the credit of one or more member accounts, pension accounts, the pension reserve account or to make a payment under clause 66 or to pay particular fund expenses or applied to meet the general fund expenses or to pay insurance premiums under clause 62.

Pension reserve account

29. The trustee will establish and maintain within the fund an account in its name to be known as the pension reserve account which will show such of the following amounts as may be required:

29.1 transfers from or to the reserve account under clause 23

29.2 payment of pensions to pensioners (or their spouses) where the pensioners' pension account balances are exhausted

29.3 income credited or debited to the pension reserve account under clause 35.

Other accounts

30. The trustee will keep such other accounts as may be necessary to record the financial transactions by the trustee and to record the members' and pensioners' entitlements and any changes in the nature of entitlements.

Interest and income

Crediting rates

31. The trustee will from time to time after having regard to the value of the assets of each investment fund and after making such provision as the trustee considers appropriate determine a crediting rate for each investment fund which may be positive or negative and may be expressed as an annual rate or interim rate or such other rate as the trustee determines from time to time.
32. The trustee will cause the whole of the assets of the fund and each investment fund to be valued from time to time and not less than once a financial year in such manner as the trustee will determine.
33. In valuing the assets the trustee will make provision for such adjustment amounts and fund expenses as the trustee thinks appropriate.
34. Any crediting rate may allow for the provision of reserves.
- 35A. The member accounts will be credited or debited (as the case may be) on an interim basis or an annual basis as the case requires with an amount calculated by

applying the appropriate crediting rate for each member's nominated investment fund or investment funds, calculated on a daily basis for the period the crediting rate applies.

- 35B The pension accounts and the pension reserve account will be credited or debited (as the case may be) on an interim basis or an annual basis as the case requires with an amount calculated by applying the appropriate crediting rate for those accounts' nominated investment fund or investment funds, calculated on a daily basis for the period the crediting rate applies.

Fund expenses

36. The trustee from time to time is to determine the fund expenses and the amount of these fund expenses that are not to be taken into account in determining the crediting rates for the fund.
37. The trustee in its discretion may deduct all fund expenses not to be taken into account in determining the crediting rates for the fund from all member accounts and pension accounts in such proportions as is fair and reasonable between members and pensioners.
38. The trustee may set one or more fees to be deducted from all member accounts and pension accounts.

Benefits

Pension

39. Benefits payable under this deed will, subject to clauses 23, 40, 41, 45 and 52 be paid by way of a pension or in the purchase of an annuity as provided in clause 25.

Lump sum

40. If the balance of the member's compulsory account is less than \$15,000 (after exercise of any lump sum right under clause 52 and any lump sum entitlement under clause 48) at the date the member is eligible for a benefit under clause 42 a benefit equal to the balance of the member's compulsory account will be paid to the member as a lump sum.
41. A benefit equal to the balance of a member's voluntary account will be paid to the member as a lump sum at the date a member is eligible for a benefit under clause 42.

When is benefit payable?

42. The trustee will pay a benefit to a member, subject to clause 45, commencing on the member reaching the normal retirement age provided that the member has not

received an early retirement benefit under clause 55.2 or a total and permanent disablement benefit under clause 48.

43. The trustee will pay a benefit to a member on the early retirement of the member as provided in clause 55.2 below, commencing on the early retirement of the member provided however that where a member is in receipt of a benefit from a Workers Compensation Fund that provides for continuing contributions to this fund on behalf of the member the member shall not be entitled to receive a benefit under clause 55.2 until the continuing contributions to this fund on behalf of the member cease.
44. The trustee will pay a benefit to a member on the total and permanent disablement of the member as provided in clause 48 below, commencing on the total and permanent disablement of the member provided however that where a member is in receipt of a benefit from a Workers Compensation Fund that provides for continuing contributions to this fund on behalf of the member the member shall not be entitled to receive a benefit under clause 48 until the continuing contributions to this fund on behalf of the member cease.
45. A member may elect to defer the commencement date for payment of a pension under clause 42 provided the member advises the trustee in writing at least one month before the member's normal retirement age. In such a case payment of the pension to the member will commence after the trustee receives written advice from the member that the member wishes payment of the pension to commence.
46. On the death of a member a benefit will be paid in accordance with clause 49 or 50 as the case may be.

Withdrawal rights

47. Members will only have the right to withdraw money from the fund in circumstances permitted under the act.

Total and permanent disablement

48. Subject to clause 44, where a member becomes totally and permanently disabled prior to age 55, the member shall be entitled to a lump sum benefit equal to the sum of the amounts standing to the credit of that member's voluntary account and a percentage of that member's compulsory account calculated as follows:

Age	% of member's compulsory account
< 50	100%
50	85%
51	70%
52	55%

53	40%
54	25%

Any such member who has not received the full balance of their compulsory account will, subject to clause 40 be entitled to a pension calculated by reference to that retained balance, in accordance with clause 55.2. The retained balance must be transferred to the pensioner's pension account and payment of the pension will commence at age 55 or at the discretion of the trustee at an earlier date. If the pension commences at a date earlier than age 55 the amount of the pension shall be determined by the trustee at that time after consultation with the board. The lump sum right under clause 52 shall not apply.

Death of member

49. Where the member dies leaving a surviving spouse the trustee will pay a death benefit as a lump sum to or for the benefit of the member's spouse, as follows:
- 49.1 in the case of a member with a compulsory account who dies before the normal retirement age the death benefit payable in respect of that member shall be a lump sum equal to the sum of:
- 49.1.1 the insured benefit payable under clause 58 plus
- 49.1.2 that member's voluntary account balance (if any) plus
- 49.1.3 at the election of the member's surviving spouse up to one quarter of the deceased member's compulsory account balance.
- 49.2 in the case of a member who has a compulsory account and who dies after the normal retirement age and who elected under clause 45 to defer receipt of the pension payable under clause 42 the death benefit payable in respect of that member shall be a lump sum equal to the sum of:
- 49.2.1 that member's voluntary account balance (if any) plus
- 49.2.2 at the election of the member's surviving spouse up to one quarter of the deceased member's compulsory account balance.
- 49.3 in the case of a member who does not have a compulsory account the death benefit payable in respect of that member shall be a lump sum equal to the balance of that member's voluntary account.
50. Where the member dies leaving no surviving spouse the trustee will pay a death benefit as a lump sum to or for the benefit of such of the dependants and the legal personal representatives of the deceased member as the trustee in its absolute discretion considers appropriate as follows:

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- 50.1 in the case of a member with a compulsory account who dies before the normal retirement age the trustee shall pay a cash lump sum equal to the sum of:
- 50.1.1 the insured benefit payable under clause 58 plus
- 50.1.2 the deceased member's compulsory account balance plus
- 50.1.3 the deceased member's voluntary account balance (if any).
- 50.2 in the case of a member who has a compulsory account and who dies after the normal retirement age but who elected under clause 45 to defer receipt of the pension payable under clause 42 the death benefit payable shall be a cash lump sum equal to the sum of:
- 50.2.1 the deceased member's compulsory account balance plus
- 50.2.2 the deceased member's voluntary account balance (if any).
- 50.3 in the case of a member who does not have a compulsory account the death benefit payable shall be a cash lump sum equal to the balance of the deceased member's voluntary account.

Determining pension entitlements

51. Subject to clause 23, in determining any pension amount or lump sum amount payable the trustee may take and rely upon such advice including actuarial advice as it thinks fit.
52. Subject to clause 54, where the trustee is about to commence payment of a pension, the person or persons entitled to receive the pension may by notice in writing to the trustee, given prior to the date of the commencement of the pension, elect to take a cash lump sum up to one quarter of the balance of the member's compulsory account.
53. An election made in accordance with clause 52 will be irrevocable and upon any such election being made that part of the member's compulsory account will be paid as a cash lump sum.
54. Subject to clause 23, no amount of pension will be calculated by a factor which is greater than the factor recommended by the actuary.
55. Subject to the trustee's power to vary pension amounts from time to time under clause 23, and to clauses 40 and 54, and subject to the member's rights under clause 52, the annual pension payable to a pensioner shall be determined as at the date the pension is to commence as follows:
- 55.1 on the normal retirement age the pension payable will be \$80 per \$1,000 transferred into the pensioner's pension account

- 55.2 subject to clause 43, on early retirement the pension payable will be \$70 per \$1,000 transferred into the pensioner's pension account increasing by \$2 for each annual increase in age as outlined below:

Age	Pension rate per \$1,000
55	\$70
56	\$72
57	\$74
58	\$76
59	\$78

and any such pension will be payable monthly to a bank for credit to an account nominated by the pensioner, until the date of death of the pensioner.

Death of pensioner

56. If a pensioner dies and there is no surviving spouse, then the balance of the pensioner's pension account (if any) will be paid as a lump sum to or for the benefit of such of the dependants and legal personal representatives of the deceased pensioner as the trustee in its absolute discretion considers appropriate.

Spousal pensions

57. Spousal pensions shall be payable to the surviving spouses of deceased members and deceased pensioners as follows:
- 57.1 in the case of the surviving spouse of a member who died before the member's normal retirement age and subject to any election made under clause 49.1.3, the remaining balance or the balance of a deceased member's compulsory account, as the case may be, shall be paid to the surviving spouse as a pension for life, commencing on the date of death of the deceased member and the following provisions shall apply:
- 57.1.1 the amount of pension payable shall be determined by the trustee in its absolute discretion following actuarial advice and taking into account the age of the surviving spouse
- 57.1.2 if the pension payable under clause 57.1.1 is less than 30% of the deceased member's annual earnings or less than the Old Age Pension, the remaining balance or the balance of the deceased member's compulsory account, as the case may be, shall be paid as a lump sum to the surviving spouse
- 57.2 in the case of the surviving spouse of a member who died on or after the member's normal retirement age and who elected under clause 45 to defer the pension payable under clause 42, and subject to any election made under

clause 49.2.2, the remaining balance or the balance of the deceased member's compulsory account, as the case may be, shall be paid to the surviving spouse as a pension for life commencing on the date of death of the deceased member and the following provisions shall apply:

- 57.2.1 the amount of the pension payable is determined by the trustee in its absolute discretion following actuarial advice and taking into account the age of the surviving spouse
- 57.2.2 if the pension payable under clause 57.2.1 is less than 30% of the deceased member's annual earnings or less than the Old Age Pension, the remaining balance or the balance of the deceased member's compulsory account shall be paid as a lump sum to the surviving spouse
- 57.3 on the death of a pensioner with a surviving spouse who is older than or the same age as or who is less than 10 years younger than the deceased pensioner at the date of the deceased pensioner's death, the surviving spouse shall be paid a pension for life subject to clause 23 at the rate received by the deceased pensioner commencing on the date of death of the deceased pensioner
- 57.4 on the death of a pensioner with a surviving spouse who is 10 years or more younger than the deceased pensioner at the date of the deceased pensioner's death, the surviving spouse shall be paid a pension for life commencing on the date of death of the deceased pensioner. The amount of the pension so payable shall be determined by the trustee in its absolute discretion following actuarial advice and taking into account the age of the surviving spouse, provided, however, that if the resulting pension is less than the Old Age Pension, then the remaining balance of the deceased pensioner's account will be paid as a lump sum to the surviving spouse
- 57.5 if a surviving spouse to whom a pension is paid under this clause dies while receiving a pension, the balance, if any, of the deceased pensioner's pension account will be paid as a lump sum to such of the dependants and the legal personal representatives of the deceased spouse as the trustee in its absolute discretion considers appropriate.

Insurance benefits

Insured benefit

- 58. If a member with a compulsory account dies before the member becomes entitled to a benefit under clauses 42 or 48 of this deed or before the member's normal retirement age (whichever is earlier) an insured benefit shall be payable in respect of that member as a lump sum in accordance with clauses 49.1 and 50.1, subject to clauses 61 and 62 and shall be a lump sum equal to the member's annual

earnings for the 12 month period before the review date immediately preceding the date of death of the member or the date that member was admitted to membership of the fund whichever is the later.

Trustee to effect necessary death insurances

59. To provide the insured benefit, the trustee will effect one or more group insurance policies with an insurer for amounts and on terms and conditions agreed between the trustee and the insurer.

Commencement of death insurance

60. A person will not be insured against death under any policy arranged by the trustee until:
- 60.1 he or she is admitted as a member
 - 60.2 the member and any relevant employer have provided all information required by the insurer.

Cessation of insurance cover

61. Subject to any future amendments to the policy as disclosed in the members' booklet, a member's interest in and rights under the death policy arranged by the trustee cease:
- 61.1 if the member ceases to be within the class of persons covered by the policy or otherwise ceases to be covered under the terms of the policy
 - 61.2 upon the insurer terminating the policy or the member's cover
 - 61.3 90 consecutive days after mandated employee contributions and mandated employer contributions cease to be paid
 - 61.4 on the member's compulsory account balance falling to zero
 - 61.5 on the trustee determining that it is not reasonably practicable to obtain or renew a policy of life insurance on terms acceptable to the trustee
 - 61.6 on the member's receipt of a pension or payment of a lump sum benefit, whichever is the earlier.

Scope of insured benefit

- 61A Any insured benefit will be subject to the terms of the insurance policy or policies taken out by the trustee to provide the relevant insured benefit and no payment will be required to be made in respect of a member in satisfaction of any insured benefit that is greater than the amount received by the trustee under the insurance policy in

respect of that member after deduction of all administration charges and expenses and taxes attributable to those amounts.

Other insurance benefits

- 61B Subject to the trust deed, the trustee may, in consultation with the Board, arrange additional insurance benefits under any insurance policy, as disclosed in the members' booklet.

Payment of insurance premiums

62. The trustee may pay insurance premiums out of the member's compulsory accounts or the reserve account, or as otherwise provided in the act.

Forfeiture and assignment of benefits

Forfeiture of benefits

63. If any member or beneficiary shall, in the opinion of the trustee, become of unsound mind or incapable of managing that person's affairs or shall become bankrupt, assign, charge, alienate or borrow against the member's interest in such a benefit (or attempt so to do) other than in accordance with this deed, then to the maximum extent permitted by law, that member or beneficiary shall forfeit his or her entitlement to all benefits. The trustee shall apply such forfeited benefits for the benefit of the member or beneficiary of any dependants of that person, in such a manner that the trustee shall in its absolute discretion think fit. In exercising its discretion the trustee must have regard to the purpose of the scheme which is to provide benefits in retirement. The trustee is not under any obligation to make enquiries as to whether circumstances exist in respect of any member or beneficiary which may give rise to the operation of this clause.

Assignment

64. Subject to clauses 26, 56 and 57 the interest of a member in the fund is personal to the member and the trustee will not recognise any assignment, claim or charge in respect of that interest unless that assignment, claim or charge is permitted expressly or by necessary implication by the act.

Unclaimed money

65. Where a member or pensioner is entitled to a benefit either as a lump sum or as a pension and the trustee is unable to locate the member or pensioner in order to pay that benefit for a period of 6 years the trustee will pay the balance of the member's compulsory account and voluntary account or pensioner's pension account (as the case may be) to the reserve account. The 6 year period starts on the date the member became eligible for the payment of a lump sum, or from the first date on which the trustee is unable to pay the pension, as applicable. All

obligations that the trustee has with respect to that member or pensioner shall cease upon payment of the unclaimed money into the reserve account.

66. If at any time after the period of 6 years the member or pensioner, his or her spouse, dependents or the legal personal representative of a member or pensioner substantiates a claim for the benefit then the trustee may in its absolute discretion make payment of the benefit from the reserve account.

Certificates

Without prejudice to clause 78

67. The trustee may rely upon and treat as conclusive evidence of its content:
- 67.1 any certificate given by the chairman of the board in respect of:
- information provided by the board
 - the status of any person as a spouse or dependant of a member
 - matters of Cook Islands custom
 - the amount and nature of any cost and expenses of the board
- 67.2 any certificate given by any person that the trustee reasonably believes to be expert in relation to the matters to which the certificate relates
- 67.3 whenever pursuant to any provision hereof any certificate, notice, direction or other communication is to be given by the board to the trustee, the trustee may accept as sufficient evidence thereof a document signed on behalf of the board by any person or persons authorised by the board
- 67.4 the trustee shall not be responsible for any loss incurred by any person or by the fund as a result of any act, omission, deceit, neglect, mistake or default of the board or any agent of the board (whether in relation to the investment or management of the fund's assets, the calculation and payment of benefits or otherwise) nor shall the trustee be responsible to check any instruction, information, document, form, list or calculation supplied to it by the board.

General provisions relating to benefits

Benefits fully vested

68. All amounts standing to a member's compulsory account will, subject to clauses 39, 42 and 47 be fully vested in the member.

Legal incapacity of recipient

69. Where any amount is payable or transferable to a person who is a minor or who, in the opinion of the trustee, is unable to give a good receipt or is otherwise under a legal incapacity, then the trustee may in its absolute discretion:
- 69.1 defer payment of such moneys or transfer of such assets or any part thereof until such time as such person is in the opinion of the trustee able to give a good receipt thereof and in the meantime invest such moneys in any investment authorised hereunder or
 - 69.2 pay or transfer the amount or any part thereof to any parent guardian or committee of such first mentioned person or to any person with whom he is residing for his maintenance, education, advancement or benefit
 - 69.3 pay or transfer the amount to a public trustee or a trustee company or 2 or more trustees to be held by it upon trust to pay or apply to transfer or otherwise deal with the same in its discretion in such shares and proportions and in such manner as it will think fit to or for the benefit of such persons or any one or more of them and with power for such trustee to pay or transfer the same in accordance with clause 70.2.

Trustee receipt

70. The trustee will not be concerned to see to the application of any amount paid in accordance with clause 70 and the receipt of the recipient will be in good and sufficient discharge for any moneys so paid or any assets so transferred.

Evidence of entitlement

71. As a precondition to payment, the trustee may require the payee of any benefit to produce satisfactory evidence of his or her entitlement and to execute documents and do other things reasonably required by the trustee. Payment of the benefit payable in respect of a member to the person entitled will discharge the trustee and satisfy the member's rights under the trust deed.

Transfer from another fund

- 71A The trustee may accept into the fund in respect of a member an amount transferred from another superannuation fund or similar fund or fund in which the member has participated and the benefit payable under the fund in respect of the member will be credited to the member's accounts in such a manner as is agreed upon by the board, the trustee and the member to take into account the value of the amount transferred.

Transfer to another fund

- 71B For members who are not Cook Island residents, and whose term of employment contract has expired, the trustee may at its discretion transfer the allowable member's account balance to an overseas superannuation fund or similar fund to which the member belongs.

Trustee covenants

72. The trustee covenants:

- 72.1 to act honestly in all matters concerning the fund
- 72.2 to exercise, subject to section 19 of the act, in relation to all matters affecting the fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide
- 72.3 to ensure that the trustee's duties and powers are performed and exercised in the best interests of the members
- 72.4 to keep the money and other assets of the fund separate from any money and assets, respectively:
 - that are held by the trustee personally, or
 - that are money or assets, as the case may be, of an employer or an associate of an employer
- 72.5 not to enter into any contract, or do any other act or thing, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers
- 72.6 subject to the requirements of the act to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the fund including, but not limited to, the following:
 - the risk involved in making, holding and realising, and the likely return from, the fund's investments having regard to its objectives and its expected cash flow requirements
 - the composition of the fund's investments as a whole including the extent to which the investments are diverse or involve the fund being exposed to risks from inadequate diversification
 - the liquidity of the fund's investments having regard to its expected cash flow requirements
 - the ability of the fund to discharge its existing and prospective liabilities

- if there are any reserves of the fund, to formulate and to give effect to a strategy for their prudential management, consistent with the fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due
 - to allow a member access to any information or any documents prescribed by the act
- 72.7 to keep and regard during and after its trusteeship all information received by it through its trusteeship as confidential provided that information may be passed for the purpose of administering the fund to the board and to those directly concerned with the administration of the fund or the payment of benefits from the fund, any life insurance company or any appointed adviser to the trustee.
- 72.8 the trustee will act continuously as trustee until the fund is terminated as provided in this deed or it retires or is removed as trustee in the manner provided in this deed or the act.

Discretions and decisions of trustee

Trustee meetings

73. The trustee (or through its directors in the case of the trustee being a company) may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

Trustee discretions

74. The trustee in the exercise of the authorities powers and discretions hereby vested in it will have an absolute and uncontrolled discretion and may exercise or enforce all or any of the authorities powers or discretions from time to time or may refrain from exercising all or any of such authorities, powers or discretions from time to time and its decision as to the interpretation and effect of this deed will be final.

Trustee decisions

75. The trustee may act by resolution and in the case of the trustee being a company by resolution of its board of directors.

Limited personal liability

76. The trustee and any director of the trustee will only be personally liable in respect of any loss or breach of trust in respect of the fund or the benefits of a member if the loss or breach of trust is due to:
- 76.1 its or his or her own failure to act in good faith or honestly in a matter concerning the fund

76.2 its or his or her own wilful or negligent default or wilful or negligent breach of trust or the dishonesty or fraud of any of its or his or her directors, its officers or any other person or persons appointed by the trustee to manage or administer the fund or any part of the fund under clause 91

76.3 a liability for a monetary penalty under a civil penalty order under any act.

Indemnity

77. The trustee and the directors of the trustee will be indemnified against all liabilities and expenses incurred by them in the execution of their duties hereunder and will have a first and paramount lien on the fund for such indemnity.

78. The costs, charges and expenses incurred by the trustee in and incidental to the management, administration and winding up of the fund or otherwise in relation thereto will be paid out of the fund.

79. The indemnity in this clause will not apply to the trustee or a director of the trustee where:

79.1 the trustee or that director fails to act in good faith or honestly in a matter concerning the fund

79.2 the actions or omissions of the trustee or that director are the result of wilful or negligent default or wilful or negligent breach of trust or the dishonesty or fraud of any of its or his or her directors, officers or any other person or persons appointed by the manager or administrator of the fund under clause 91

79.3 the liability is for a monetary penalty under a civil penalty order under any act.

Appoint a trustee

80. The board may by deed appoint a trustee to replace the trustee as required under the act.

Removal of trustee

81. The board may by deed remove a trustee from being the trustee upon giving such trustee not less than 60 days notice in writing.

82. The board will remove a corporate trustee from being the trustee immediately in the event of the appointment of:

82.1 a liquidator or receiver over the whole or substantial part of the corporate trustee's assets, or

82.2 a statutory manager of the corporate trustee.

New trustee

83. A new trustee of the fund appointed by the board, as required under the act, must, prior to such appointment execute a deed in such form as the board may require whereby the new trustee undertakes to the board, members and pensioners to be bound by all the covenants of the trust deed from the date of such appointment and from such date the retiring trustee shall be absolved and released from all such covenants (except in respect of any antecedent breach thereof). The new trustee shall thereafter exercise all the powers and exercise all the rights and will be subject to all the duties and obligations as trustee hereunder in all respects as if such new trustee had been originally named as party hereto.

Vacancy of office

84. The office of trustee will be vacated if the trustee:
- 84.1 resigns such office upon giving to the board not less than 90 days notice in writing, or
 - 84.2 reasonably believing that the trust deed or the act is or is proposed to be amended (including by way of regulations pursuant to section 20 of the act) in a manner which materially and adversely alters the trustee's rights, duties, powers, responsibilities or obligations under the trust deed or the act, resigns such office upon giving the board notice effective from the date the amendment to the trust deed or act takes effect.
 - 84.3 is removed from such position by the board pursuant to clauses 81 or 82, or
 - 84.4 becomes for any reason unable to perform the duties of the trustee.

Trustee remuneration

85. The trustee will be paid, in respect to its ongoing services under this deed, a fee to be agreed in writing by the board and the trustee from time to time. The fee will be paid out of the fund.

Expenses

86. The expenses of the management and administration of the fund and the expenses of the board as permitted under the act will be met by the trustee out of the fund.

Trustee interested

87. No director of the trustee will by virtue of his office be disqualified from being or becoming a member or from exercising any rights or deriving any benefit as a member and a director of the trustee who is or is about to become a member may be counted in a quorum and vote at any meeting of the trustee or its board of directors and generally participate in the exercise of the functions of the trustee notwithstanding that he is interested in the matter.

Custodian

88. The trustee in consultation with the board may appoint on such terms as it considers appropriate, a corporate body as custodian trustee to hold on its behalf the title to some or all of the securities, policies or other assets or investments of the fund.

Managers and administrators

89. The trustee in consultation with the board may appoint in writing, on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more corporate bodies to act on behalf of the trustee in regard to the investment and management of the assets and administration of the fund.

Member's attorney

90. Each member hereby irrevocably appoints the trustee his attorney to execute and sign all such deeds and instruments and do all such things the trustee considers necessary or desirable in administering the fund.

Exercise of discretion by person other than trustee

91. No discretion under these trusts is exercisable by a person other than the trustee unless:
- 91.1 the trustee consents to the exercise of that discretion, or
 - 91.2 the exercise of the discretion relates solely to a decision to terminate the fund, or
 - 91.3 the circumstances in which the discretion was exercised are covered by the act.

Trustee powers

Investment

92. The trustee, in addition to all powers conferred upon it by law, will, subject to section 19 of the act, have all the powers as if it was beneficial owner of the fund, including power to enter into any type of commercial or other undertaking either alone or together with others and, without limiting the generality of the foregoing, will have the following powers:
- 92.1 to invest the fund or any part thereof in any part or parts of the world
 - 92.2 to invest in companies incorporated anywhere in the world by way of shares, stock, options or debentures or in rights of any kind to any such shares, stock, options or debentures:

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- whether or not listed on a stock exchange
 - whether such company's liability is limited or not
 - whether or not the shares or stock carry any rights to dividends or not or to share in any distribution of capital on a winding up or reduction of capital
 - whether or not the shares or stock carry any rights to vote or not
- 92.3 to invest in real property of any description and to subdivide and build on any land and to maintain improve extend and demolish any buildings in whole or part
- 92.4 to lend or advance money with or without security
- 92.5 to acquire any interest in a trust of any kind including a cash management trust, an equity trust, a public securities trust or a property trust
- 92.6 to acquire book debts, options, futures contracts, futures options, swap agreements, forward rate agreements, foreign currency, other contracts of a derivative nature and other choses in action wheresoever situated or enforceable and any shares or interests therein
- 92.7 to invest in collective investment schemes and other pooled or mixed forms of investment in common with other investors
- 92.8 to establish investment funds
- 92.9 to enter into securities lending arrangements
- 92.10 to invest in any reversionary or deferred property or rights of any description wheresoever situate or enforceable and whether by way of original creation or assignment or otherwise
- 92.11 to invest part of the fund in assets for the purposes of capital gain only
- 92.12 subject to the act, to borrow from a bank or other financial institution on such terms and conditions, without security, as it will in its absolute discretion think fit for the purposes of temporary finance in order to overcome cash flow problems in the payment of superannuation benefits or to settle an acquisition of an asset
- 92.13 subject to the act to invest or expend any part of the fund in any policy for an annuity or policy of assurance or insurance upon the life of any of the members or pensioners to secure payment upon the death of a member or the happening of any other event in respect of a member for such amount as the trustee in its absolute discretion thinks fit
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- 92.14 to invest all or part of the fund in one or more superannuation policies or pooled superannuation trusts
 - 92.15 to make deposits with any bank in any part of the world for any period whatsoever
 - 92.16 to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments
 - 92.17 to enter into bill facility or promissory note agreements.

Restrictions on investment

- 93. The trustee may not lend any money or give other financial assistance to a member or relative of a member.
- 94. The trustee must not invest money of the fund unless the trustee and the other party to the relevant transaction are dealing with each other at arm's length in respect of the transaction or, if the trustee or any of its directors is interested and if permitted by the act, the terms are no less favourable to the trustee than those which it is reasonable to expect if the parties had been dealing with each other at arms length in respect of the transaction.
- 95. The trustee will not acquire an asset (other than cash) from a member or a relative or associate of a member except where permitted by the act.
- 96. The trustee may not enter into any guarantee or underwriting arrangements.

Trustee powers in relation to fund

- 97. The trustees will have the following powers to be exercised or not by it in its absolute discretion in relation to the fund and such powers may be exercised together or separately and from time to time and at any time or times and may be exercised alone or jointly with any other person or persons:
 - 97.1 to sell, transpose, exchange, or vary any or all assets from time to time included in the fund for others which the trustee is by this deed or by law authorised to acquire
 - 97.2 to sell, transfer, mortgage, charge, exchange, lease, hire or license the use of the whole or any part of the fund upon such terms and conditions as to payment or repayment as it will think fit
 - 97.3 to pay, agree or settle all or any accounts arising out of or in relation to the acquisition, purchase, sale or disposal of any investments made under the powers and trusts declared in this deed and for any such purpose to execute and deliver effectual receipts, releases and discharges

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- 97.4 for the purposes of investment, to establish, promote, acquire, invest in, or cause the incorporation or join in or consent to the establishment or re-organisation of companies, partnerships, joint ventures or unit trusts, as it will think fit and to act from time to time as director, manager, officer or agent of any such body
- 97.5 to grant or cause to be granted options over the whole or any part of the fund or over the capital of any company or the units of any unit trust in which part of the fund may stand invested or over patent, property or other rights to which it may be entitled, whether directly or indirectly, as trustee
- 97.6 to employ managers, servants, agents and contractors irrespective of whether such person has any beneficial interest, whether direct or indirect, in the fund or any parts thereof and to pay out of the fund any person or persons to do any act or acts (including the receipt of money) in connection with or arising out of the exercise of the powers under this deed and including, without restricting the generality hereof, acts which the trustee could perform personally
- 97.7 to establish or maintain, as it may think fit from time to time, reserve funds or sinking funds to provide for the amortisation of the cost of or depreciation in the value of any property forming part of the fund or of any liability to which it is subject
- 97.8 to prosecute and as it may think fit to defend, answer, discontinue, compromise or settle any claims, actions, suits, or proceedings whatsoever and to refer and submit to arbitration any dispute or matter concerning any part of the fund or relating to the trusts of this deed
- 97.9 to make, do, sign, seal, deliver and execute all acts, deeds, matters and things whatsoever necessary or incidental to the exercise or performance of the powers or trusts of this deed or to satisfy its obligations under the act or give any notices required under that act
- 97.10 to take and act upon the opinion or advice of any accountant, auditor, banker, lawyer, valuer or other expert or professional person or body (whether or not a shareholder or director of the trustee) and in relation to any such opinion or advice the trustee will not be responsible for any loss, depreciation or damage of any nature to the fund resulting from any decision of the trustee to act or not to act as the trustee may in his absolute discretion think fit in accordance with any such opinion or advice
- 97.11 to open any account or accounts with any bank or banks and to operate in all usual ways on such accounts
- 97.12 to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the trustee by law or this deed
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- 97.13 to compromise, compound, abandon, release, forgive, submit to arbitration or otherwise settle any debt, claim or thing whatsoever relating to the fund or owing to the trustee on any account whatsoever
- 97.14 to take on lease or hire and make improvements to any real or personal property on such terms and conditions as the trustee will in its absolute discretion determine
- 97.15 to pay out of the fund or the income thereof all costs, charges and expenses incidental to the management of the fund or to the exercise of any power, authority or discretion herein contained or in carrying out or performing the trusts hereof which the trustee may at any time incur including all income or other taxes payable in respect of the fund
- 97.16 to allocate tax credits as the trustee considers reasonable
- 97.17 to deduct and pay as required all taxes, charges and levies payable on contributions made to the fund and on benefits payable from the fund and to charge for the costs and expenses directly or indirectly attributable to administering such tax, charge or levy.

Investment funds

Establishment of investment funds

98. The trustee shall establish from time to time separate investment funds. Each investment fund must have a SIPO. The initial investment funds shall be:
- 98.1 Conservative fund.
- 98.2 Balanced fund.
- 98.3 Growth fund.
99. The trustee shall invest all member accounts in investment funds, in accordance with the provisions in clauses 94 to 98 of this deed.
100. The trustee shall obtain and comply with each investment direction and, subject to clauses 114 and 110.6, is prohibited from investing members' accounts other than in accordance with the member's investment direction.
101. The requirement to obtain and comply with each investment direction is a contrary intention for the purposes of sections 2(5) and 2(5A)(d) of the Trustee Act 1956 as amended from time to time and the wide power of investment contained in clause 92 shall only apply to the extent that such contrary intention permits.

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102. Nothing in clause 103 shall be a contrary intention for the purposes of section 13D(1) of the Trustee Act 1956 as amended from time to time and sections 13B and 13C of that Act shall apply in all respects to this Deed.
103. Notwithstanding the preceding provisions of these clauses 98 to 102 or anything to the contrary in section 13D(1) of the Trustee Act 1956 the trustee shall, in exercising the limited power of investment, exercise the care diligence and skill required by sections 13B or 13C of that Act.]
104. All other powers of investment conferred on the trustee under this deed in respect of investment shall be read subject to these clauses 98 to 104.

Suspension of investment funds

105. If by reason of:

- 105.1 a decision to terminate an investment fund; or
- 105.2 financial, political or economic conditions applying in respect of any financial market in which investments may be sold; or
- 105.3 the nature of any investments of an investment fund; or
- 105.4 a suspension of or other circumstances relating to an investment fund; or
- 105.5 the occurrence or existence of any other circumstances or events,

the trustee shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of members of the fund or members invested in an investment fund as the case may be, for the trustee to realise investments or borrow in accordance with this deed in order to permit payment of benefits then the trustee may give notice (a 'suspension notice') to that effect to the members of the fund or the members who have invested in the investment fund as the case requires.

106. Where practicable, the trustee shall consult with the Board prior to issuing a suspension notice but in any event shall provide the Board with a copy of the notice immediately upon issuing it.
107. A suspension notice shall have the effect of suspending the operation of all existing and future benefit requests and payments in respect of members who invested in the investment fund as the case may be until:
- 107.1 the trustee gives notice to such members to the effect that the relevant suspension notice is cancelled either in whole or in part; or
 - 107.2 six months from the date of the suspension notice; or
 - 107.3 the date a suspension is lifted in respect of investment by an investment fund into a collective investment scheme,

whichever is the later.

108. If payments from any collective investment scheme are suspended or deferred the trustee may give a deferral notice to members who have accounts invested in the investment fund. A deferral notice shall have the effect of deferring the operation of all existing and future benefit requests and payments in respect of those members until:

108.1 the trustee gives notice to such members to the effect that the deferral notice is cancelled; or

108.2 the expiration of the period of suspension or deferral of the relevant collective investment scheme,

whichever is the later.

Closure of an investment fund

109. The trustee may resolve to terminate investment in an investment fund at any time in accordance with the following provisions:

109.1 A resolution by the trustee terminating an investment in an investment fund shall specify a closing date on which the closure will take effect (in this clause called 'the closing date').

109.2 After the passing of the resolution, each member whose investment direction instructs the trustee to invest their member accounts in that investment fund shall be promptly given notice in writing of the termination of their ability to invest in that investment fund.

109.3 No further contributions received after the closing date will be invested in the investment fund.

109.4 The trustee shall withdraw all the investments in the investment fund after the closing date.

109.5 Each member whose accounts were invested in the investment fund shall complete a new investment direction in respect of the investment of future contributions to their member accounts. Existing investments in the investment funds shall be transferred to another investment fund in accordance with the new investment direction.

109.6 If a member does not make an investment direction under clause 110.5, the member's accounts will be withdrawn from that investment fund and invested in an investment fund chosen by the trustee until such time as the trustee receives an investment direction from that member.

109.7 No new members of the fund shall be entitled to invest in the investment fund after the closing date.

Nominated investment fund

Investment direction

- 110. All members shall complete an investment direction in accordance with clauses 112 and 113.
- 111. An investment direction is a direction by a member to the trustee as to which investment fund(s) the trustee shall invest all the member's accounts and future contributions of the member.
- 112. A member shall complete an investment direction in such form and manner as is prescribed from time to time by the trustee at the time of becoming a member.
- 113. Effective from 1 July 2015, if a member fails to give an investment direction to the trustee, the trustee shall invest all of the member's accounts and future contributions of the member in the investment fund or investment funds nominated by the trustee.
- 114. Once a year, a member may:
 - 114.1 amend or vary that member's investment direction for the investment of future contributions and such amendment or variation shall be in writing and in a form approved or prescribed from time to time by the trustee;
 - 114.2 at the trustee's discretion and, subject to this deed and to such controls or restrictions as may be imposed by the trustee from time to time, request the trustee to switch the amount of a member's accounts held in one investment fund to invest in another investment fund such request to be in writing in the form approved or prescribed from time to time by the trustee.
- 115. If a member wishes to amend their investment direction in relation to their future contributions or their member account more than once a year the trustee may charge a reasonable fee.

Delegation by trustee

- 116. Without in any way affecting the trustee's obligations to carry out and perform the duties and obligations on its part contained in this deed, the trustee may in carrying out and performing the duties and obligations on its part which are contained in this deed and subject to the trustee remaining liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:
 - 116.1 delegate all or any of its powers, authorities, functions and discretions exercisable under this deed whether or not requiring the trustee's judgement and discretion to its officers and employees or to any other person nominated by the trustee

- 116.2 by power of attorney appoint any person in any part of the world to be attorney or agent of the trustee for such purposes and with such powers, authorities and discretions (not exceeding those vested in the trustee) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions
- 116.3 appoint any person in any part of the world to be an agent in respect of the investments or any of them and confer upon and delegate to such person all or any of the powers, authorities or discretions of the trustee under this deed (including power for such person to sub-delegate). Any such appointment shall be upon such terms as the trustee may in its discretion determine, and the trustee may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment.

Related party transactions

Transactions with related party

117. Subject always to clause 120, the trustee may not:

- 117.1 sell, purchase or otherwise dispose of or acquire any asset or investment to or from the trustee or any related person
- 117.2 enter into any contract, agreement or any arrangement with the trustee or any related person to provide management or consultancy services or any other services for the fund
- 117.3 enter into any other transaction with the trustee or any related party in relation to any fund asset or investment or other property of the fund

unless the particular transaction is effected on reasonable commercial terms and the trustee has obtained the prior written approval of the board.

Investment with related party

- 118. Notwithstanding clause 119, the trustee may cause any investment assets that comprise cash to be invested or deposited with the trustee or any related party provided that:
 - 118.1 the trustee ensures that the particular transaction is effected on reasonable commercial terms and investment or deposit in the particular investment vehicle has the prior written approval of the board
 - 118.2 any such investment is within the investment strategy and objectives for the fund.

No liability to account

119. Neither the trustee, nor any related party shall be liable to account to the fund or any member for any profit, loss, fees, brokerage or commissions arising from any transaction entered into in accordance with the 2 preceding clauses.

Limitation of powers

120. The powers contained in clauses 119 and 120 are subject to section 19 of the act.

Other appointments

121. Nothing in this deed shall be construed to prevent the trustee from establishing or acting as trustee for trusts whether of a nature similar to or different from the trusts of this deed.

Member information

Trust deed available for inspection

122. A copy of the trust deed will be kept by the board at its office in the Cook Islands and will be open to inspection by the members and employers at all reasonable times.

Information of joining fund

123. The trustee will give each person before that person becomes a member a written statement containing details of the kinds of benefits provided to members by the fund, the conditions relating to those benefits and the method of determining entitlements of members, as well as any other information required by the act.

Annual statement

124. The trustee will give to each member of the fund as soon as practicable after the end of each financial year and in any event not later than 6 months after the end of the financial year a written statement setting out the information required by the act as to the member's entitlements and any other information required by the act.

Information on cessation of membership

125. Where a member ceases to be a member of the fund the trustee will give, or arrange to be given, to the member (or if the member is deceased his legal personal representative) as soon as is practicable thereafter a written statement setting out:

125.1 the entitlements of that member

125.2 such other information as is required by the act.

Other information

126. The trustee will give to the members any information required to be given by the act and such other information as the trustee reasonably believes a member reasonably needs to understand the nature or purpose of the event or to make an informed decision about the effects generally and on the member's current and future entitlements where:

126.1 an event in relation to the fund is such as to require the members to be informed, or

126.2 such other circumstances as are required by the act.

Information to board

127. The trustee will ensure that the board is given such notices of entitlements of the fund and is advised of such matters as will be necessary for the board to comply with any requirements of the act.

Audit of fund

128. Each year an auditor appointed by the trustee will audit the accounts and records of the fund and will report to the trustee not later than the date the return is required to be lodged with the board.

Alterations to trust deed

By supplemental deed

129. The board may by deed rescind, alter, or add to any of the provisions of this deed for the time being, in the manner prescribed by section 21 of the act.

130. No amendment may alter adversely a member's right or claim to accrued benefits or the amount of those accrued benefits unless:

130.1 the consent of the member is obtained in accordance with the requirements of the act

130.2 the amendment is necessary for compliance with the act

130.3 in the case of an amendment solely to correct a mistake which has advantageously altered a member's right or claim to accrued benefits or the amount of those accrued benefits.

Compliance with act

Management

131. Notwithstanding anything expressed or implied to the contrary in this deed, the fund will be managed and administered in accordance with the act.

Inconsistency

132. To the extent that there is an inconsistency between the provisions of this deed and the act or that this deed does not deal with any matter required to be dealt with by the act those requirements will be deemed to be included in this deed and any inconsistent provisions of this deed will be deemed to be amended or deleted to the extent necessary.

Dissolution of the fund

Date of dissolution

133. Unless the act determines otherwise the fund will terminate upon whichever of the following dates first occurs:
- 133.1 the date on which there cease to be any members or pensioners of the fund
 - 133.2 the date on which the board determines in consultation with the trustee and Cabinet to terminate the fund
 - 133.3 the day prior to the date of expiration of the perpetuity period.

Benefits on dissolution

134. On the dissolution of the fund the trustee will realise the assets of the fund and after deducting expenses in accordance with clause 138 and allowing for liabilities allocate the proceeds to members and pensioners in the following order of priority:
- 134.1 first, in paying members and pensioners a lump sum benefit equal in value to the sum of the member accounts and pension accounts at the dissolution date
 - 134.2 secondly, in respect of each pensioner, augmenting the benefit under clause 136.1 from the pension reserve account as determined by the trustee on the advice of the actuary
 - 134.3 thirdly, in the distribution to each member and pensioner as at the dissolution date in proportion to such member's compulsory account, and/or pension account at the dissolution date, the balance of the fund.

135. If in following the priorities of payment referred to above there is insufficient money to satisfy all the obligations of the fund in any subclause above the amount of each benefit provided secured by reference to the subclause under consideration will be abated rateably among all members and pensioners entitled to the benefits under that subclause.

Expenses of dissolution

136. On the dissolution of the fund the trustee will be reimbursed its expenses of administering and dissolving the fund out of the assets of the fund.

Surplus

137. If after providing benefits for members under the provisions of this deed a surplus remains, such surplus or part thereof may, at the discretion of the trustee, be paid to members, former members or pensioners or their dependants by way of further benefits.

Final accounts

138. The trustee will cause final accounts of the fund to be taken in accordance with internationally accepted accounting standards and will have those accounts audited by the auditor.

Successors and assigns

139. A person includes the trustee, executor, administrator, successor in title and assign of that person. This clause must not be construed as permitting a party to assign any right under this deed.

Notices

140. Notices may be given as follows:

- 140.1 any notice or other document to be given to any member of the fund will be deemed to have been given if:

- delivered to the member personally or to the member's principal place of abode, or
- sent by prepaid post to the address of the member last known to the trustee.

- 140.2 any notice sent by prepaid post to a member will be deemed to have been sent 7 days after the date of posting from within New Zealand, to Rarotonga, or 14 days from Rarotonga to any of the outer islands and 21 days after the date of posting from New Zealand to any of the outer islands.

140.3 any document or notice to be given or required to be given to the trustee may be:

- sent by registered mail with postage prepaid to such address as the trustee may specify by notice in writing, or
- delivered personally to the place of business of the trustee, or
- made by facsimile, or
- made in such other manner as may be agreed from time to time by the trustee

140.4 a notice given to the trustee will be deemed to have been duly given or made:

- 7 days after being deposited in the mail by the sender with mail postage prepaid from Rarotonga, or from New Zealand and 21 days after being deposited in the mail postage prepaid from any of the outer islands
- on delivery when delivered by hand by the sender
- if sent by facsimile when a completed transmission report is received by the sender unless a verifiable query as to material eligibility is properly raised
- if made in any other manner as agreed by the trustee.

Proper law

141. This deed will in all respects be governed and construed in accordance with the law of the Cook Islands.

Relationship with the act

142. The provisions of this deed are subject to the provisions of the act.

Definitions and interpretation

Definitions

143. In this agreement unless the context otherwise states:

‘act’ means the Cook Islands National Superannuation Act 2000

‘actuary’ means actuary as defined in section 2 of the act

‘adjustment amounts’ means:

- estimated costs and expenses of realising the investments of the fund
- allowance for future losses in respect of any investment for which the market value cannot be fairly or accurately assessed
- allowance for the averaging of the earnings of the fund whether on income account or on capital account, to take into account possible or actually periodic fluctuations in those earnings and any losses of the fund not otherwise deducted
- allowance for any other purpose or purposes that the trustee considers desirable or necessary

‘annual earnings’ means at any date the total earnings received by the member in the 12 months preceding the relevant review date

‘assets’ means any money, property or assets whatsoever and such expression includes:

- real and personal property
- any debt
- any right or interest or other benefit

and any interest in any of the foregoing whether in possession or not.

‘auditor’ means the auditor appointed to audit the fund under the act

‘benefit’ means in relation to a member the benefits the member is entitled to under this deed

‘board’ means the National Superannuation Board of the Cook Islands National Superannuation Fund as described in the act

‘Cabinet’ means the Cabinet of Ministers of the Cook Islands

‘collective investment scheme’ means units, subunits or other shares or interests in any unit trust, any group investment fund, any superannuation scheme, any mutual fund or any similar undertaking or scheme or other pooled or mixed form of investment

‘compulsory account’ means at any date the compulsory account in respect of a member as defined in clause 18

‘Cook Islands resident’ has the meaning given in the act

‘corporate trustee’ has the meaning given to it in the act

‘death benefit’ means the benefit payable in accordance with clause 49

‘dependant’ of a member means:

- child, and may include adopted child, feeding child, step child and ex-nuptial child
- any other person who is dependent on a member or in the case of a deceased member was dependent at the time of the member’s death for their maintenance in accordance with usual Cook Islands custom

‘early retirement’ means in respect of a member the date on or after the member attains 55 years of age and on which the member ceases employment as the result of the ill health or redundancy of the member and early retirement date will have the same meaning

‘earnings’ means earnings as defined in section 40 of the act

‘employed’ means to be engaged in manual labour, clerical or professional work or in any business, trade, occupation, vocational calling in respect of which earnings as defined in section 40 of the act are paid or derived and employment, employ and employs shall have the same meaning

‘employee’ means an employee, as defined in the act, who is required to contribute to the fund under the act

‘employer’ means an employer, as defined in the act, who is required to contribute to the fund under the act and a Workers Compensation Fund that provides for continuing contributions to this fund on behalf of any member shall be deemed to be an employer under the act

‘financial year’ means the period ending 31 December 2001 and every anniversary thereafter

‘fund’ means the superannuation fund governed by this deed and consists of all money, investments and insurance policies held by the trustee subject to this deed and includes any money investments held in any investment fund

‘fund expenses’ means all amounts or costs to be taken into account in operating the fund including:

- taxation of contributions of the fund, its assets or income
- administration costs, charges or expenses
- costs and expenses of investing the fund

‘ill health’ means that a member having been absent from employment through illness for 6 consecutive months and in the opinion of the trustee, having

considered the medical evidence, the member is unlikely to ever engage in employment for reward in any occupation

‘insured benefit’ means in relation to a member the amount of death cover in respect of that member effected under a policy

‘insurer’ means any life insurance company approved for the time being by the trustee with which a policy is effected

‘investment fund’ means any investment fund established by the trustee under clause 100

‘investment direction’ means an investment direction given by a member to the trustee or the employer in accordance with clauses 111 to 113 (inclusive)

‘mandated employee contributions’ means, with respect to an employee, the contributions the employee is required to make to the fund under the act

‘mandated employer contributions’ means, with respect to an employer, the contributions the employer is required to make to the fund under the act

‘member’ means a person who becomes and for the time being is a member of the fund, also known as a contributor under the act

‘member accounts’ means at any date the members’ accounts maintained in accordance with clauses 15 to 19 (inclusive)

‘normal retirement age’ means in respect of a member or a pensioner the member or pensioner’s 60th birthday

‘Old Age Pension’ means any pension payable under the Welfare Act 1989

‘outer islands’ means Aitutaki, Atiu, Mangaia, Manuae, Mauke, Mitiaro, Palmerston, Takutea, Manihiki, Nassau, Penrhyn, Pukapuka, Rakahanga and Suvarrow

‘pension account’ means at any date the pension account in respect of the member as defined in clause 20

‘pension factor’ means the factor applicable to the calculation of a pension at retirement under clause 55

‘pensioner’ means a former member who is in receipt of a pension from the fund

‘pension reserve account’ means the reserve pension account as defined in clause 29

‘perpetuity period’ means for the purpose of this deed the period commencing on the date of execution of this deed and ending 21 years after the date of death of the

last survivor of the lineal descendants of His Majesty the late King George V of the United Kingdom who are and were alive at the date of execution of this deed and at all times during the period of 12 months immediately preceding the date of execution of this deed

'policy' means any policy or policies of insurance effected by the trustee with a life insurance company in accordance with clause 59

'redundancy' means a member ceasing to be employed as a result of redundancy as determined by the trustee taking into account any industrial agreement applicable to the member or the terms of any individual employment contract entered into or applicable to the member

'related party' means:

- the trustee and any company anywhere in the world that is a related company of the trustee
- any unit trust, superannuation scheme or other fund or entity that is directly or indirectly owned or controlled by any company that falls within the above bullet point of this definition including situations where the control is over the investment of funds beneficially owned by others

'reserve account' means the reserve account as defined in clause 27

'review date' means the 31 December in each year or such other date as may be determined by the trustee from time to time with the consent of the board as the review date of the fund for the purposes of clause 58

'SIPO' means the statement of investment policy and objectives agreed between the trustee and the board with regard to each investment fund as amended from time to time

'spouse' of a member means as determined in the trustee in its absolute discretion:

- the husband or wife of that member, or
- another person who, although not legally married to the member lives with the member in a relationship in the nature of a marriage as the husband or wife or partner of the member, or
- in the case of a deceased member the widow or widower or a person who was at the date of death of the member living with the member in a relationship in the nature of a marriage as the husband or wife or partner of the member

'totally and permanently disabled' means in relation to a member having been absent from all employment through injury or illness for 6 consecutive months and

in the opinion of the trustee after consideration of medical evidence having become incapacitated to such an extent as to render the member unlikely to ever engage in or work for reward in any occupation or work for which the member is reasonably qualified by education training or experience provided that the member shall be deemed to have become totally and permanently disabled if the member has suffered the loss of the use of 2 limbs or the sight of both eyes or the loss of the use of one limb and the sight of one eye, where 'limb' means the whole hand or the whole foot;

and 'total and permanent disablement' has the corresponding meaning.

'trust deed' and 'this deed' means this deed of trust dated [] as varied from time to time

'trustee' means the trustee for the time being of the fund

'voluntary account' means the voluntary account as defined in clause 19

'voluntary contributions' means all contributions other than mandated employer contributions or mandated employee contributions

'workers compensation' means any payment of a benefit to a member from a Workers Compensation Fund to compensate for accidents

'Workers Compensation Fund' means any fund or funds established under an Act of the Cook Islands Parliament that pays workers compensation for accidents.

Interpretation

144. A reference to:

144.1 a business day means a day during which banks are open for general banking business in the Cook Islands

144.2 this deed includes the recitals of and any schedules, annexures and exhibits to this deed and where amended means this deed as so amended.

145. Unless the context otherwise requires a word which denotes:

145.1 the singular includes the plural and vice versa

145.2 any gender includes the other genders

145.3 a person includes an individual and a body corporate.

146. Unless the context otherwise requires a reference to:

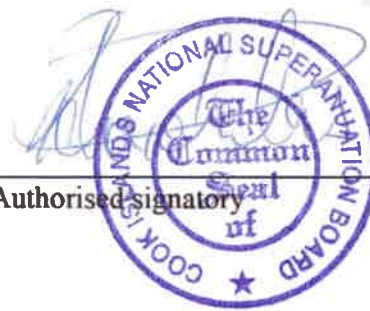
- 146.1 any legislation includes any regulation or instrument made under it and where amended re-enacted or replaced means that amended re-enacted or replacement legislation
- 146.2 any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced
- 146.3 a clause, schedule, annexure or exhibit is a reference to a clause of, annexure to, schedule to or exhibit to this agreement
- 146.4 a group of persons includes any one or more of them
- 146.5 any thing or amount is a reference to the whole and each part of it
- 146.6 a word or phrase appearing in a certain context which when used in a similar context in the act would have a particular meaning, has that meaning in this deed.

Headings and table of contents

- 147. Headings and the table of contents must be ignored in the interpretation of this deed.

This agreement was executed on

Authorised signatory



30 June 2015

Witness signature: 

Witness name: Leah Tumudog

Occupation: Finance Officer

Address: Takuvaime.

Public Trust by its attorney in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Martyn John Ogilvie

Senior Trust Officer

Corporate Trustee Services

Public Trust

Occupation of witness

Wellington

Address of witness

Ireen Muir
Senior Manager
Client Services
Public Trust
Wellington

**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, Ireen Muir, of Wellington holding the office of Senior Manager Client Services
with Public Trust:

HEREBY CERTIFY:

1. THAT by Deed dated 22 November 2013, a copy of which is deposited in the Land Registry Office at Wellington Public Trust appointed me as its attorney on the terms and subject to the conditions set out in the said Deed and the attached document is executed by me under the powers thereby conferred.
2. THAT at the date hereof I hold the position of Senior Manager Client Services with Public Trust.
3. THAT at the date hereof the transaction or obligation evidenced by the attached document is of a kind I am authorised to enter into by virtue of a delegation from the Board or Chief Executive of Public Trust.
4. THAT at the date hereof I have not received any notice of the revocation of that appointment.

SIGNED at Wellington this 30th day of June 2015



By Ireen Muir