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SOCIAL SECURITY ORDINANCE

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(1ST July, 1980.)

17/1979

10/1981

7/1985

2/1990

1. This Ordinance may be cited as the Social Security Ordinance. Short title.

2. (1) In this Ordinance- Interpretation.
 - “appointed day” shall have the meaning ascribed to it in Section 48;
 - beneficiary” means a person entitled to benefit;
 - “benefit” means any benefit under this Ordinance;
 - “Board” means the Social Security Board established under section 4;
 - “claimant” means a person who has claimed benefit;
 - “contribution” means a contribution under this Ordinance;
 - “contributory period” means the prescribed period in respect of which the contribution is payable;
 - “contributory week” means a period of seven days commencing from midnight between Sunday and Monday;
 - “employee or employed person” means a person who is insured by virtue of subsection (2) (a) of section 18;
 - “gratuities” include service charges and tips payable to employees engaged in the catering trades;
 - “incapable of work” means incapable of work by reason of a specific disease or bodily or mental disablement or deemed in accordance with regulations to be so incapable;
 - “insurable employment” means subject to subsection (3) of section 18 any employment specified in subsection (2) of section 18;
 - “insured” means insured under this Ordinance;

“Investment Committee” means the Social Security Fund Investment Committee of the Board established by subsection (1) of section 13;

“Minister” means the Minister responsible for the subject of Social Security;

“wages” means the basic pay and overtime, but for the avoidance of doubt it is hereby declared to exclude pensions and gratuities.

(2) For the purposes of this Ordinance, a person shall be deemed to be over or under any age therein mentioned according to whether he has or has not attained that age and a person shall be deemed to be between the ages therein mentioned if he has attained the first-mentioned age but has not attained the second-mentioned age.

PART I

ADMINISTRATION AND FINANCE

3. (1) There is hereby established a fund to called the Social Security Fund, hereinafter called the Fund, into which shall be paid-

- (a) all contributions;
- (b) all rent, interest or investments, or other income derived from the assets of the Fund;
- (c) all sums recovered under this Ordinance as fines, fees, penalties or costs;
- (d) all sums properly accruing to the Fund under this Ordinance including the repayment of benefit; and
- (e) such other sums as may be provided by the Consolidated Fund for the purposes of the Ordinance or as may be received and accepted by the Board on behalf of the Fund.

(2) There shall be paid out of the Fund –

- (a) all benefits;
- (b) refunds of contributions; and

Social Security Fund.

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- (c) all expenses properly incurred in the administration of this Ordinance (including the grant of special credits under section 21).

4. (1) There is hereby established a Board to be called the Social Security Board in which the Fund shall be vested and which shall subject to the provisions of this Ordinance, be responsible for administering the Fund, and the provisions of the Schedule shall apply in respect of the constituting of the Board and its proceedings.

Social Security
Board.
19/2005

(2) The Board shall be a body corporate with perpetual succession and a common seal, in its corporate name, be capable of suing and being sued and, subject to the provisions of this Ordinance, shall have power of purchasing or otherwise acquiring, holding, charging and alienating real or personal property and of doing or performing such acts as bodies corporate may by law do or perform.

(3) The Board shall have a Head Office in Road Town, Tortola and service on the Board of any notice, order or other document shall be executed by delivering the same or sending the same by post, addressed to the Director and of such other person as the Board may appoint for the purpose.

(4) The seal of the Board shall be kept in the custody of the Director and shall not be affixed to any instrument except by the authority of a resolution of the Board, and the sealing of any instrument shall be authenticated by the signature of the Director and of such other person as the Board may appoint for the purpose.

(5) The Board shall consider and advise upon all matters which may from time to time be referred to it by the Minister, and shall furnish to the Minister such information as he may reasonably require about the operation of the Ordinance.

(6) The Board shall render annual reports to the Minister by the 31st day of March each year and the Minister shall within thirty days after receiving any such report, lay a copy thereof before the Legislative Council.

(7) The Executive Council may, by Order published in the *Gazette* and in at least one newspaper published and circulating in the Territory, amend the Schedule and such Order shall be subject to a negative resolution to the Legislative Council.

5. (1) Subject to the provisions of this Ordinance the Board may appoint such committees of the Board as it may think fit:

Committees of
the Board.

Provided that any such committee shall include not less than two members of the Board and may include persons who are not members of the Board.

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(2) Subject to the provisions of this Ordinance, the Constitution and functions of a committee of the Board shall be determined by the Board.

6. There shall be paid out of the Fund-

Remuneration of the Board and its Committees.

(a) to the Chairman, Deputy Chairman and each member of the Board in respect of his office as such, such remuneration and allowances as the Legislative Council may determine; and

(b) to any person, not being a member of the Board, who serves on the Committee of the Board, such remuneration and allowances as the Legislative Council may determine upon a recommendation by the Board.

7. (1) The Executive Council shall appoint a fit and proper person to be the Director of the Board on such terms and conditions as are considered appropriate.

Director

19/2005

(1A) For the purposes of subsection (1),

(a) the Minister shall, before referring the matter of the appointment of the Director to the Executive Council, consult with the Board; and

(b) the appointment of the Director shall be subject to a negative resolution of the Legislative Council.

(2) The Director shall subject to the provisions of this Ordinance, and any direction by the Minister, be charged with the administration of the staff of the Board and for the management of the Fund and in particular for -

(a) the collection of contributions under this Ordinance;

(b) the payment of benefit under this Ordinance, and of the expenditure necessary for the administration of the Fund; and

(c) accounting for all moneys collected, paid and invested under this Ordinance.

8. (1) The Director, may in relation to any matter or class of matters, by writing under his hand delegate to an officer or employee of the Board any of his functions under the Ordinance, except this power of delegation, so that the delegated function may be

Delegation by the Director.

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performed by such officer or employee with respect to the matter or class of matters specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the performing of any function by the Director.

9. (1) The Executive Council shall appoint a fit and proper person to be the Deputy Director of the Board on such terms and conditions as are considered appropriate.

Director's
Deputy.

(1A) For the purposes of subsection (1),

19/2005

(a) the Minister shall, before referring the matter of the appointment of the Deputy Director to the Executive Council, consult with the Board; and

(b) the appointment of the Deputy Director shall be subject to a negative resolution of the Legislative Council.

(2) On the occurrence of a vacancy in the office of Director (whether caused by death, resignation or otherwise) and in the case of illness, absence or temporary incapacity of the Director from whatever cause arising, and so long as such vacancy, illness, absence or incapacity continues, the Deputy Director shall have and may exercise all the powers, duties and functions of the Director.

(3) The fact that the Deputy Director exercises any power, duty or function as aforesaid shall be sufficient evidence of his authority so to do.

10. The Board may from time to time appoint persons to be officers or employees of the Board.

Staff of the
Board.

11. The terms and conditions of employment of officers and employees of the Board (other than those of the Director and the Deputy Director) shall be prescribed from time to time by the Board.

Terms and
conditions of
employment with
the Board.

12. (1) The Board may designate such officers or employees in its service as it thinks fit to be inspectors for the purposes of this Ordinance.

Inspectors.

19/2005

(2) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purposes of this Ordinance shall produce the certificate.

(3) The premises or places liable to inspection under this section shall include any premises or place where an inspector has reasonable cause to believe that any persons

are employed whether or not such premises or place is used exclusively for residential purposes.

(4) An inspector shall for the purposes of this Ordinance have power to enter at all reasonable times any premises or place liable to inspection under this Ordinance and there make any examination or inquiry necessary for the purposes of this Ordinance, and to require the production of any documents relating to contributions or liability to contribute to the Fund, for inspection by him on the said premises or place, and to copy such documents or make extracts therefrom.

(5) The occupier of any premises or place liable to inspection under this section, and any other person who is or has been employing any person, and the servants or agents or any such occupier or other person shall furnish to an inspector any such information and shall produce for his inspection all such documents as the inspector may reasonably require.

(6) Any person who without reasonable cause obstructs, impedes, molests or refuses admission to an inspector in the exercise of any of his powers under this section or refuses or neglects to furnish any information or produce any document when required to do so under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars.

13. (1) There is hereby established a committee to be called the Social Fund Investment Committee.

(2) The Investment Committee shall consist of –

- (a) the Chairman of the Board, who shall be the Chairman of the Committee;
- (b) one person nominated by the Minister of Finance;
- (c) a member of the Board nominated by the Minister;
- (d) the Director.

(3) The Investment Committee shall meet as often as necessary and may regulate the procedure of its meetings, and shall be able to act notwithstanding any vacancy among its members. Three members of the Committee including the Chairman, shall form a quorum.

(4) The Investment Committee shall, in addition, meet at such time or times as the Chairman or the Minister may request, to give consideration and advice on such matters relating to the operation of this Ordinance as the Minister may require.

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(5) In the absence of the Director, the Deputy Director shall attend any meeting and in such case the Deputy Director shall be deemed to be a member of the Committee for the purpose of that meeting.

(6) The Investment Committee shall give general or give specific directions from time to time on the investment of moneys in the Fund which are surplus to current needs and the Director shall give the Investment Committee any information necessary for the discharging of its functions.

14. (1) Moneys in the Fund may, subject to the approval of the Legislative Council, may be lawfully expended by the Board in the purchase of land or building deemed by the Board to be necessary for the proper administration of this Ordinance. Investment of moneys.

(2) The investment of moneys in the Fund not otherwise required shall, subject to any direction of the Board, be made by the Director in accordance with any directions of the Investment Committee.

(3) The Investment Committee shall submit a report of its work to the Board half-yearly and at such times as the Board directs.

(4) Without limiting or affecting the powers of the Director or of the Board, where an investment proposed to be made under this section is by way of loan to a statutory body –

- (a) The loan shall only be made after the Legislative Council has passed a resolution giving its approval for the making of the loan; and
- (b) The Government of the Territory shall be deemed to be the guarantor of every loan so made.

15. (1) Any temporary insufficiency in the assets of the Fund to meet the liabilities of the Fund shall be advanced out of the Consolidated Fund as soon as may be practicable. Temporary insufficiency of assets.

(2) Subject to the provisions of this Ordinance, any sums advanced under subsection (1) shall be repaid to the Consolidated Fund.

16. (1) The Board shall cause to be kept proper books of accounts and other books and records in relation thereto, in which shall be recorded all financial transactions of the Fund. Accounts and audit.

(2) The accounts of the Funds shall be prepared in such form as may be prescribed in the Financial regulations to be framed by the Minister and such Regulations shall provide for the form and conduct of the accounts of the Fund and, in particular, for

- (a) the establishment and maintenance of different branches of such accounts; and
- (b) the establishment and maintenance within the Fund of different reserves, for different purposes, and the Chief Auditor shall examine every document.

(3) The Board shall –

- (a) submit to the Minister every account certified by the appointed auditor in accordance with subsection (2), within one month of the date of such certificate; and
- (b) submit annually to the Minister a statement of the securities in which moneys forming part of the Fund are for the time being invested.

(4) The Minister shall within thirty days after receiving any account in accordance with subsection (3), lay a copy thereof before the Legislative Council.

17. (1) The Board shall with the assistance of an actuary approved by the Minister review the operation of this Ordinance, during the period ending with the 31st day of December, 1983 and thereafter during the period with the thirty-first day of December in every third year, and on each such review shall make a report to the Minister on the financial condition of the Fund and the adequacy or otherwise of contributions to support benefits, having regard to its other liabilities under this Ordinance:

Provided that the Minister may at any time direct that the period to be covered by any review and the report under this subsection shall be reduced and that the making of that and subsequent reviews shall be accelerated accordingly.

(2) The Minister shall, within thirty days after receiving any report in accordance with subsection (1) lay a copy thereof before the Legislative Council.

PART II**INSURED PERSONS AND CONTRIBUTIONS****INSURED PERSONS.**

18. (1) Subject to the provisions of this Ordinance-

Persons to be insured.

- (a) Every person who on or after the appointed day being over the age of fifteen years and under the age of sixty-five years, is gainfully occupied in an insurable employment shall be insured under this Ordinance; and
- (b) Any person who at the said date is, or who subsequently becomes insured under the Ordinance shall thereafter continue throughout his life to be so insured.

(2) Notwithstanding the provisions of subsection (1), any person employed by or under the crown being a person who is the substantive holder of a permanent and pensionable office shall be exempt from the requirement to be insured under this Ordinance in respect of the contingency in relation to which sickness benefit is provided under paragraph (a) of subsection (1) of section 25 and there shall not be payable to or in respect of any such person any benefit payable by virtue of the said paragraph.

(3) Notwithstanding anything to the contrary in any enactment where the employment of a person to whom subsection (2) applies is for any reason terminated and that person becomes otherwise employed he shall be deemed to have been insured in respect of the contingency in relation to which sickness benefit is payable under paragraph (a) of subsection (1) of section 25 during his employment as a person mentioned in subsection (2) of that section and the insurable earnings of such person during such employment shall be taken into account in computing his average insurable earnings for the purpose of sickness benefit.

(4) For the purposes of this Ordinance, insured persons shall be divided into the following two classes, namely –

- (a) employed persons, that is to say, persons gainfully occupied in employment in the British Virgin Islands, being employment under a contract of service;
- (b) self-employed persons, that is to say, persons gainfully occupied in employment in the British Virgin Islands who are not employed persons.

(5) Regulations may provide for modifying the classifications aforesaid in relation to cases where it appears to the Minister desirable by reason of the nature or circumstances of a person's employment or otherwise, and such regulations may, in particular, provide –

- (a) for treating as an employed contributor's employment –
 - (i) employment under a public or local authority constituted in the British Virgin Islands notwithstanding that it is not employment under a contract of service;
 - (ii) employment outside the British Virgin Islands in continuation of employment in the service of an employer liable to employer's contributions under this Ordinance;
- (b) for treating as not being an employed contributor's employment or for disregarding –
 - (i) employment in which is of a causal or subsidiary nature or in which the insured person is engaged only to an inconsiderable extent;
 - (ii) employment in the service, or for the purposes of the trade or business, or as a partner, of the insured's person husband or wife;
 - (iii) employment by a relative in the common home of the insured person and the employer;
- (c) for treating a person's employment as continuing during periods of holiday or incapacity for work and in such other circumstances as may be prescribed.
- (d) for treating as not being in insurable employment in the service of any international organization or country other than the British Virgin Islands, as may be prescribed.

(6) Insured persons shall be insured under this Ordinance in respect of the several contingencies in relation to which benefits are provided under subsection (1) of section 26 and there shall be payable to or in respect of any such person, in the prescribed circumstances, any benefit payable by virtue of the said subsection.

(7) Regulations may provide for the insurance of persons under fifteen years of age and for persons over sixty-five years of age in respect of any of the several contingencies in relation to which benefits are provided under this Ordinance.

CONTRIBUTIONS

19. (1) For the purposes of this Ordinance, contributions shall, subject to the provisions of this Ordinance, be payable by insured persons and by employers. Source of Funds.

(2) Regulations shall provide for fixing, from time to time, the rates of contribution to be paid by such different categories of insured persons and employers as may be prescribed.

20. (1) Except where regulations otherwise provide an employer liable to pay a contribution in respect of a person employed by him shall be liable to pay also of and to the exclusion of such person any contribution payable by such person for the same contributory period, and for purposes of this Ordinance contributions so paid by an employer shall be deemed to be contributions paid by such person. Contribution by employed persons and employers.

(2) Notwithstanding any contract to the contrary an employer shall not be entitled to deduct from the wages of a person employed by him or otherwise recover from such person the contribution of the employer in respect of such person.

(3) An employer shall be entitled, subject to and in accordance with regulations, to recover from the pecuniary remuneration of a person employed by him the amount of any contribution paid or to be paid by him on behalf of such person and, notwithstanding anything in any enactment, such regulations may authorize such recovery to be made by deduction from wages of such person.

21. Regulations may provide for exempting insured persons and their employers from liability to pay contributions for such periods as may be prescribed. Exemption from liability for and crediting of contributions.

22. Where an employed person is employed successively or concurrently in a contributory week or part of a contributory week by more than one employer, each employer shall be liable to pay to the Fund contributions with respect to the wages paid by each employer to that person. Employment by more than one employer.

23. Regulations may provide – Collection of contributions etc.

(a) for the registration of employed persons;

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- (b) for the payment and collection of contributions;
- (c) for the maintenance by employers of records of the payment of contributions;
- (d) for treating, for the purpose of any right to benefit, contributions paid after the due dates as paid on such dates, or on such later dates as may be prescribed, or as not having been paid;
- (e) for treating, as paid for the purpose of any right to benefit, contributions payable by an employer on behalf of an insured person but not paid where the failure to pay is shown not to have been due to any negligence on the part of such person;
- (f) for treating contributions appropriate to the wrong category of person, or at the wrong rate, as paid on account of the contributions properly payable;
- (g) for the return of contributions paid in error; and
- (h) for any other matters incidental to the payment and collection of contributions under this Ordinance.

24. (1) Any insured person who is not liable to pay contributions shall be entitled on making application to the Director within such time and in such manner as may be prescribed to receive a certificate of voluntary insurance if he satisfied the prescribed conditions.

(2) An insured person holding a certificate of voluntary insurance may pay within such time and in such manner as may be prescribed, the contributions at the prescribed rate for any contributory period for which he is not liable to pay a contribution as an insured person, and regulations may prescribe the circumstances in which such a person may cease to be entitled to contribute in default of payment of contributions within the prescribed time.

Voluntary insurance.

PART III

BENEFITS

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| <p>25. (1) Benefits payable under this Ordinance shall be of the following kinds, namely –</p> | <p>Description of benefits.</p> |
| <p>(a) sickness benefit, that is to say, periodical payments to an insured person who is rendered incapable of work other wise than as a result of injury;</p> | <p>19/2005</p> |
| <p>(b) maternity benefit, that is to say, a payment of periodical payments to an insured woman or the wife of an insured man, in the case of her confinement;</p> | |
| <p>(c) invalidity benefit, that is to say, a payment of periodical payments to an insured person who is rendered permanently incapable of work otherwise than as a result of employment injury;</p> | |
| <p>(d) survivor’s benefit, that is to say, a payment or periodical payments made inspect of an insured person who dies otherwise than as a result of an employment injury;</p> | |
| <p>(e) funeral grant, that is to say, a payment on the death of an insured person, or the spouse of an insured person;</p> | |
| <p>(f) age benefit, that is to say, a payment of periodical payments to an insured person who has reached sixty-five years of age;</p> | |
| <p>(g) employment injury benefits, that is to say, a payment of periodical payments to an insured person in respect of an injury or a prescribed disease arising out of or in the course of employment.</p> | |
| <p>(2) Employment injury benefits payable under this Ordinance are as follows-</p> | <p>1/10/93</p> |
| <p>(a) injury benefit, that is to say, in addition to such free medical care and attention as may be prescribed, a payment of periodical payments to an employed person who suffers personal injury which is caused by an accident arising out of and in the course of insurable employment or develops any prescribed disease being a disease due to the nature of such employment;</p> | |

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- (b) disablement benefit, that is to say, in addition to such free medical care and attention as may be prescribed, a payment or periodical payments to an employed person who as a result of an injury or disease as is referred to in paragraph (a) suffers loss of faculty;
- (c) medical expenses, that is to say, payment of medical expenses in respect of an employed person who suffered personal injury or disease as is referred to in paragraph (a);
- (d) death benefit, that is to say, a payment of periodical payments of benefits in respect of an employed person who dies as a result of such injury as is referred to in paragraph (a);
- (e) funeral benefit; that is to say, payment on the death of an employed person, who dies as a result of such injury or disease as is referred to in paragraph (a).

(3) Employment injury benefits shall not be payable in respect of an accident happening or prescribed disease developing, while the insured person is outside the territory.

(4) From and after the employment injury date when regulations relating to employment injury benefits under subsection (2) come into operation an insured person who suffers any personal injury or develops any such disease as entitles him to employment injury benefit shall not in relation to such injury or disease be regarded as a workman for the purposes of the Workmen's Compensation Ordinance.

26. (1) Regulations shall provide for –

- (a) the rates or amounts of benefits and the variation of such rates or amounts in different or special circumstances;
- (b) the conditions subject to which and the periods for which benefit may be granted;
- (c) the date from which benefit is provided.

(2) Regulations made under subsection (1) shall include provisions that where it is a condition of title to benefit that a person is the wife, husband, widow or widower of an insured person, the Director may treat -

- (a) a single woman as if in law, she was his wife; or
- (b) a single man or widower who was living with a single woman or widow as if in law, he was never her husband.

Rate of and
conditions for
benefit

(3) Where the question of marriage or re-marriage or the date of the marriage or re-marriage arises in regard to title to benefit, the Director shall in the absence of the subsistence of a lawful marriage decide whether or not the person concerned should be treated as if he were married or had re-married as the case may be, and if so from what date; and in determining the question, the Director shall have regard to the provisions of subsection (2).

(4) The determination of the Director under subsection (2) or (3) shall, unless the context otherwise requires, have the effect of extending, as regards title to benefit, the meaning of the word ‘marriage’ to include the cohabitation of a single man or widower with a single woman or widow as aforesaid and the words ‘wife’, husband, ‘widow’, ‘widower’ and ‘spouse’ shall be construed accordingly.

27. (1) It shall be a condition of a person’s right to a benefit –

Time and manner of making claims.

- (a) that within the prescribed time, he makes a claim therefore to the Director on the form provided by the Director for the purpose or in such other manner as the Director may accept in the circumstances of the case; and
- (b) that he produces such certificates, documents, information and evidence for the purpose of determining the right to benefit as the Director may require, and for that purpose attends at such office or place as the Director may appoint.

(2) Regulations may require employers to maintain such records, to make such reports and to furnish such information as may be prescribed for the purpose of establishing any person’s title to benefit.

28. Regulations may provide –

Time and manner of paying benefit; disqualifications; adjustments or extinguishment of benefit; persons unable to act; deceased persons.

- (a) for disqualifying a person for the receipt of any benefit if he fails to make a claim therefore within the prescribed time:

Provided that any such regulation shall provide for extending the time within which the claim is to be made in the cases where good cause is shown for the delay;

- (b) for the prevention of the receipt of two benefits and the adjustment of benefits in special circumstances;
- (c) as to the time and manner of payment of benefit and the information to be furnished by any person when applying for payment;

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- (d) for adjusting the commencement and termination of benefit, or changes in the rate of benefit, so that except in the case of sickness benefit, payments shall not be made in respect of any period shorter than a contributory week or at different rates for different parts of a contributory week;
- (e) for extinguishing the right to payment of any sum by way of benefit if payment is not obtained within a prescribed period;
- (f) for disqualifying a person for receiving sickness benefit, or such other benefit as may be prescribed for such period as may be prescribed if that person –
 - (i) has become incapable of work through his own misconduct;
 - (ii) fails without good cause to attend for or submit to such medical examination or treatment as may be required in accordance with the regulations; or
 - (iii) does any work as an employed or self-employed person.
- (g) for suspending payment of benefit to or in respect of any person during any period when he –
 - (i) is absent from the British Virgin Islands; or
 - (ii) is undergoing imprisonment or detention in legal custody.

And for specifying the circumstances and manner in which the whole or any part of the benefit may instead of being suspended be made during any such period to any prescribed person nominated by the beneficiary, or for the maintenance of any prescribed person who the Director is satisfied is a dependant of the beneficiary;

- (h) for enabling a person to be appointed to exercise on behalf of any person who may be or become unable for the time being to act, any right or power which that other person may be entitled to exercise under this Ordinance and for authorizing a person so appointed to receive and deal with any sum payable by way of benefit to that other person;
- (i) in connection with the death of any person for enabling a claim for benefit to be made or proceeded with in his name, for authorizing payment to or among persons claiming as his personal representatives,

legatees, next of kin, creditors or otherwise, and for dispensing with strict proof of title of persons so claiming; and

(j) for such other matters as may be necessary for the proper administration of benefits, including the obligations of claimants, beneficiaries, and employers.

29. (1) Regulations may provide for the appointment of medical officers or medical referees or other professional persons and for the establishment of medical boards for the purposes of this Ordinance.

Appointment and remuneration of medical officers or referees.

(2) There shall be paid out of the Fund to a medical officer or medical referee or professional person appointed under such regulation, and to a member of a medical board so established, such salary or other remuneration as the Board with the prior approval of the Governor in Council may determine and such expenses incurred in connection with the work of such medical officer, medical referee or member or professional person as may be so determined.

30. (1) If it is found that any person by reason of the non-disclosure or misrepresentation by him of a material fact (whether such non-disclosure or misrepresentation was or was not fraudulent) has received any sum by way of benefit, he shall be liable to repay the sum so received by him.

Repayment of benefit improperly received.

(2) Where any person is liable to repay any sum received by him by way of benefit, that sum may be recovered without prejudice to any other remedy by means of deductions from any payment of benefit to which he thereafter becomes entitled.

31. Every assignment of or charge on benefit, and every agreement to assign or charge benefit shall be void, and on the bankruptcy of a beneficiary the benefit shall not pass to any trustee or other person acting on behalf of creditors.

Benefits to be alienable.

PART IV

ADJUDICATION AND LEGAL PROCEEDINGS

32. (1) Regulations may provide for the determination by the Board, by the Director, or by a person or tribunal appointed or constituted in accordance with the regulations of any question arising under or in connection with benefit, and subject to the provisions of the regulations, the decision in accordance therewith of any such question shall be final.

Determination of claims and questions.

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(2) Without prejudice to the generality of subsection (1), regulations made thereunder may in relation to the determination of questions in accordance with regulations include provision –

- (a) as to the procedure to be followed, the form of any document, the evidence to be required, and the circumstances in which the official record or certificate is to be sufficient or conclusive evidence;
 - (b) as to the time to be allowed for making any claim or appeal, for raising any question with a view to the review of any decision, or for producing any evidence.
 - (c) for summoning persons to attend and give evidence or produce documents for authorizing the administration of oaths and witnesses;
 - (d) as to the representation of one person at the hearing of a case by another person whether having professional qualifications or not,
- and except in so far as it may be applied by such regulations the Arbitration Ordinance shall not apply to any proceedings under this section.

(3) Notwithstanding anything in any enactment, the decision of the High Court in a reference or appeal shall be final, and the Court may order the Board to pay costs of any person whether or not the decision is in favour of the Board and whether or not the Board appears on the reference or appeal.

33. (1) Regulations may provide as respects matters arising –

- (a) pending the determination under this Ordinance (whether in the first instance or on appeal or review) of any claim for benefit or of any question affecting the right of any person to benefit or to the receipt thereof; or
- (b) out of the revision or appeal or review of any decision of any such claim or question.

(2) Without prejudice to the generality of subsection (1), regulations thereunder may include provision -

- (a) for the suspension of benefit where it appears to the Director that there is or may be a question whether the conditions for the receipt thereof are or were fulfilled or whether the award ought to be revisited;

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- (b) as to the date from which any decision or review is to have effect;
- (c) for treating any benefit paid to any person which it is subsequently decided was not payable, or as paid on account of any other benefit which it is decided was payable to him, or for the repayment of any such benefit;
- (d) for treating benefit paid to a person in respect of a child as properly payable for any period notwithstanding that by reason of a subsequent decision another person is entitled to benefit in respect of that child for that period; and for reducing or withholding accordingly, any arrears payable for that period by virtue of that subsequent decision.

34. There shall be paid out of the Fund to any person appointed under regulations made under subsection (1) of section 32 to a member of a tribunal constituted under such regulations such salary or other remuneration as the Board with the approval of the Governor in Council may determine and such expenses in connection with the work of such person or member as may be so determined.

Remuneration of persons and tribunal appointed under section 32.

35. (1) Any person who fails to pay at or within the time prescribed for the purpose, any contribution which he is liable under this Ordinance to pay, shall for each such failure be liable on summary conviction to a fine not exceeding five hundred dollars and in default of payment of such fine, to imprisonment for a term not exceeding three months.

Offences and penalties.

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(2) An employer who deducts or attempts to deduct or otherwise recovers or attempts to recover the whole or any part of the contributions of the employer in respect of any person from the wages or other remuneration of such person, shall be liable on summary conviction to a fine not exceeding five hundred dollars and in default of payment of such fine to imprisonment not exceeding three months.

(3) Any person who for the purpose of obtaining any benefit or other payment under this Ordinance, whether for himself or for some other person, or for any other purpose connected with this Ordinance –

- (a) knowingly makes any false statement or false representation; or
- (b) produces or furnishes, causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in material particular,

shall be liable on summary conviction to a fine not exceeding five hundred dollars or imprisonment for a term not exceeding three months.

35A. (1) Where a body corporate has failed to deduct, withhold, remit or pay an amount as required by this Ordinance and regulations made thereunder, every Director and manager of such body corporate at the time the body corporate was required to deduct, withhold, remit or pay moneys, is jointly and severally liable together with the body corporate to pay that amount and interest and penalties relating thereto.

(2) No director or manager shall be liable for a failure under subsection (1) when he exercised a degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) In determining whether a director or manager exercised the degree of care, diligence and skill to prevent the failure referred to in subsection (1), the court shall take into account all the circumstances of the case but shall not make a finding that the director or manager exercised the degree of care, diligence and skill to prevent the failure referred to in subsection (1) unless the court is satisfied that the director or manager had regard to the interests of the employees of the body corporate.

(4) No action or proceedings to recover any amount payable by a director or manager of a body corporate shall be commenced more than three years after the director or manager has ceased to be a director or manager of that body corporate.

(5) Where a director or manager pays an amount in respect of any liability of the body corporate that is proved in liquidation, dissolution or bankruptcy proceedings, he is entitled to any preference the Social Security Fund could have been entitled to and such amount not been so paid.

(6) For the purposes of this section, the reference to director or manager shall be construed to mean the director or manager who has responsibility for the administration or operation of the body corporate.

36. (1) Proceedings for an offence under this Ordinance shall not be instituted except by or with the consent of the Board or by an officer of the Board authorized in that behalf by specific or general directions of the Board.

(2) Any such officer although not a barrister or a solicitor may prosecute or conduct before a court of summary jurisdiction any such proceedings as aforesaid.

(3) Notwithstanding any provisions in any enactment fixing the period within such summary proceedings may be commenced, proceedings for an offence under this Ordinance may be commenced at any time within six years after evidence sufficient in the opinion of the Board to justify a prosecution for the offence comes to its knowledge

and for the purpose of this subsection a certificate purporting to be signed on behalf of the Board as to the date on which such evidence came to its knowledge shall be conclusive evidence thereof.

(4) In any proceedings for an offence under this Ordinance the wife or husband of the accused shall be competent to give evidence against the accused:

Provided that a wife or husband shall not be compelled to give evidence to disclose any communication made to her or him during the marriage with the accused.

(5) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any negligence on the part of any directors, manager, secretary or other officer of the body corporate, they as well as that body shall be deemed to be guilty of that offence and shall be liable to be proceeded against and penalized.

37. (1) In any case where a person has been convicted of the offence under subsection (1) of section 35 of failing to pay a contribution he shall be liable to pay to the Fund a sum equal to the amount which he failed to pay.

Recovery of contributions on prosecution.

(2) On any such conviction as is mentioned in subsection (1) above, if notice of intention to do so has been served with the summons or warrant, evidence may be given of the failure on the part of the person concerned to pay other contributions during the two years preceding the date of the offence, and on proof of such failure the persons concerned shall be liable to pay to the Fund a sum equal to the total of all the contributions which he is so proved to have failed to pay.

(3) Where any person is charged with an offence as is mentioned in subsection (1) or (2) and a probation order is made in respect of such offence the forgoing provisions of this section shall apply as if the making of the order were a conviction.

(4) Any sum ordered to be paid out of the Fund under this section shall be recoverable as a penalty.

(5) Any sum paid by an employer under this section shall be treated as a payment in satisfaction of the unpaid contributions and any part of such which represents employee's contribution shall not be recoverable by the employer from the insured person.

(6) If an employer being a corporate body fails to pay to the Fund any sum which the employer has been ordered to pay under this section such sum or part thereof as remains unpaid shall be a debt due to the Fund jointly and severally from any directors of the body corporate who knew or reasonably be expected to have known of the failure to pay the contribution in question.

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(7) Nothing in this section shall be construed as preventing the Board from recovering any sums due to the Fund by means of civil proceedings.

38. (1) All sums due to the Fund under this Ordinance shall be recoverable as debts due to the Board and, without prejudice to any remedy may be recoverable as a civil debt:

Provided that any sum due by way of contributions shall for such date as may be prescribed, bear interest at the rate of ten per cent per annum or such other rate as may be prescribed.

(2) Proceedings for the summary recovery of sums due to the Fund may, notwithstanding anything in any enactment to the contrary, be brought at any time from the time when the matter complained of arose.

(3) Proceedings for the summary recovery as civil debts of sums due to the Fund may be instituted by an Officer of the Board authorized in that behalf by special or general directions of the Board and any such officer may, although not a barrister or a solicitor conduct such proceedings.

38A. (1) An officer or agent of the board authorized in that behalf (hereinafter referred to as “the authorized officer”) may make an application to the court for an order to seize goods and chattels of the defendant in execution of a judgment debt where such judgment debt has remained unpaid despite a court order to that effect.

(2) The Court on the application of the authorized officer shall cause to be issued an order of attachment and sale whereby the authorized officer shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the Territory, the money payable under the judgment and the costs of the execution.

(4) Where a Court has made an order for payment of any sum of money by installments, no order of execution of the judgment shall be issued until after the default in payment of some installments according to the order.

(5) In or upon every order of execution against the property of any person, the court shall specify the sum of money and costs adjudged, and the fees of the execution of the order.

(6) Every authorized officer executing any order of execution issued from a court against the property of chattels of any person may by virtue thereof seize _

(a) any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and implements of

Civil proceedings.

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Seizure of property.

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his trade, to the value, which shall to that extent be protected from seizure;
and

(b) any money, bank notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.

(7) Goods seized in execution under process of a court shall thereof be safeguard in such manners as the court directs.

(8) The authorized officer shall hold any bills of exchange, promissory bonds, specialties or other securities for money seized in execution under an order of a court as security of the amount directed to be levied by the execution, or for so much thereof as has not been otherwise levied or raised for the benefit of the Board, and the authorized officer may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.

(9) If any person rescues or attempts to rescue any goods seized in execution under an order of the court or in any other way resists or obstructs the execution of an order for the enforcement of a judgment of a court, he shall be liable, either on an order made in that behalf by the court from which the order of execution issues, or on summary conviction, to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding three months.

(10) The provisions of Part XI of the Magistrate's Code of Procedure shall apply with the necessary modification in respect of an order made under this section save that for purposes of this section the word "constable" in that Part shall be read as if it were a reference to the words "authorized officer" in this section.

39. (1) Where an employer has failed or neglected to pay any contribution which he is liable to pay in respect of or on behalf of an insured person, and by reason of such failure or neglect such person or any other person becomes disentitled to any benefit on a lower scale, the Director may, on being satisfied that the contributions should have been paid by the employer, pay to the person or the other person benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Board shall be entitled to recover from the employer summarily as a civil debt a sum equal to the amount of the benefit so paid or the contributions not paid whichever be the greater.

Proceedings for benefits lost by employer default.

(2) Proceedings may be taken under this section notwithstanding that proceedings have been taken under any other provision of this Ordinance in respect of the same failure or neglect.

(3) Proceedings under this section may, notwithstanding any enactment to the contract, be brought at any time within one year after the date on which the person concerned, would, but for the employer's failure or neglect have been entitled to receive the benefit in question.

PART V

MISCELLANEOUS

Crown Servants.

40. This Ordinance shall apply to persons employed by or under the Crown in like manner as if the Crown were a private person, with such modifications as may be made therein by regulations for the purpose of adapting the provisions of this Ordinance to the case of such persons:

Provided that the provisions of this Ordinance shall not affect adversely any vested rights of an employee under any pension or superannuation scheme in existence before the coming into operation of this Ordinance.

Persons employed aboard ships, vessels or aircraft.

41. (1) Without prejudice to the generality of any other power to make regulations the Minister may make regulations modifying in such manner as he thinks proper the provisions of this Ordinance in relation to persons who are or have not been employed on board any ship, vessel, or aircraft.

(2) Regulations made under subsection (1) may in particular provide –

- (a) for the insurance under this Ordinance of persons who are or have been employed on or after the appointed day on board ships, vessels, or aircraft notwithstanding they do not fulfill the conditions of section 18;
- (b) for excepting for insurance under this Ordinance or from liability to pay contributions, any persons employed as aforesaid who neither are domiciled nor have a place of residence in the Territory;
- (c) for the taking of evidence for the purpose of any claim for benefit in any place outside the Territory;
- (d) for enabling persons on board ships, vessels, or aircraft to authorize the payment of the whole or any part of their dependants as may be prescribed;
- (e) for withholding any benefit which may be payable to a mariner for any period while the owner of his ship or vessel is under a statutory obligation to pay him wages.

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42. For the purposes of giving effect to any agreement with the Government of any other part of the Commonwealth or the Government of any other country, being an agreement which provides reciprocity in matters of Social Security, it shall be lawful for

Reciprocal agreements with other countries.

the Minister by order, to modify or adapt the provisions of this Ordinance in their application to cases affected by the agreement.

43. (1) Stamp duty shall not be chargeable upon any draft or order or receipt given in respect of any benefit or upon any receipt given in respect of any other payment out of the Fund under subsection (2) of section 3 of this Ordinance or upon any receipt given by an officer or employee of the Board for or in respect of any sum payable to the Fund.

Exemption from stamp duty.

(2) Nothing in subsections (1) shall be deemed to exempt any person from liability to pay stamp duty on any power of attorney or on any documents other than those mentioned in subsection (1) which is otherwise liable to duty under the Stamp Duty Act.

Cap. 212 .

44. (1) The Minister may make regulations as are required by this Ordinance to be made.

Power to make regulations.

(2) Such regulations may modify or affect the operation of any provision of this Ordinance as he may consider necessary or desirable generally for giving effect to the principles of this Ordinance.

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(3) Notwithstanding anything to the contrary in any other law, where no penalty is specified for any offence under this Ordinance or regulations made thereunder, regulations may provide a penalty for one hundred dollars for each offence being a contravention of or failure to comply with any regulation, or where the offence consists of continuing thereof, five hundred dollars together with a further twenty-five dollars for each day on which it so continues.

(4) Any power conferred by this Ordinance to make regulations may be exercised –

(a) either in relation to all cases to which the power extends or in relation to all such cases subject to specified exceptions or in relation to any specified cases or class of cases;

(b) so as to make as represents the cases in relation to which it is exercised –

(i) the full provision for all cases to which the power extends or any less provision;

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- (ii) the same provision for all cases to which the power is exercised, or different provision for different cases, or different provision as respects the same case for different purposes of this Ordinance;

- (iii) any such provision either unconditionally or subject to any specified condition.

(5) Without prejudice to any specific provision of this Ordinance any regulation may contain such incidental or supplementary provisions as appear to the Minister to be expedient for the purposes of the regulations.

45. (1) All regulations shall be laid before the Legislative Council as soon as may be after they are made and if within a period of thirty days beginning with the day on which such regulations are so laid the Legislative Council resolves that the regulations be annulled they shall thereupon cease to have effect but without prejudice to anything previously done thereunder or to the making of new regulations.

(2) In reckoning any period of thirty days specified in subsection (1) no account shall be taken of any time during which the Legislative Council is dissolved or prorogued or during which the Legislative Council is adjourned for more than fourteen days.

46. (1) Nothing in this Ordinance shall be deemed to prevent an employer from operating any private schemes providing, for any person who is or has been employed by him, benefits of any kind whether similar to benefits under this Ordinance or greater.

(2) Where any such employer desires to modify any such scheme in operation before the coming into effect of this Ordinance such modification shall have prior approval of the Minister.

47. (1) In any case where –

- (a) any warrant of distress of executed against the property of any employer and the property is seized or sold in pursuance of the execution; or

- (b) on the application of a secured creditor the property of an employer is sold, the proceeds of the sale of the property shall not be distributed to any person entitled thereto until the Court ordering the sale has made provision for the payment of any amounts due in respect of contributions payable by the employer.

Regulations to be laid before the legislative council.

Operation of private schemes.

Protection of contribution in all cases.

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(2) For the purposes of this section, the expression “employer” includes any company in liquidation under the provisions of the Bankruptcy Act.

Cap. 8.

(3) Notwithstanding anything contained in any other law, contributions made under this Ordinance by employers shall be regarded as a deduction allowed under Section 11 of the Income Tax Ordinance.

10/1981.

Cap. 206.

48. (1) In this Ordinance the expression “the appointed day” means subject to the following provisions of this section, such day as the Minister may by Order published in the Gazette appoint, and different days may be appointed for different provisions of this Ordinance.

Appointed Day.

(2) Any Order made under subsection (1) may contain such incidental or supplementary provisions as appear to the Minister to be necessary or expeditious for the orderly implementation of the provisions and purposes of this Ordinance.

49. For the purposes of this Ordinance, an accident arising in the course of an insured’s person employment shall be deemed in the absence of evidence to the contrary to have arisen out of that employment.

Presumption as to accident in certain cases.

50. (1) An accident shall be deemed to arise out of or in the course of an insured person’s employment notwithstanding that he is at the time of the accident acting in contravention of any statutory, or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if –

Accidents happening while acting in breach of regulations etc.

(a) the accident would have been deemed to have arisen had the act not been done as aforesaid without instructions from his employer, as the case may be; and

(b) the act is done for the purpose of and in connection with the employer’s trade or business..

51. (1) An accident happening while an insured person is, with the express or implied permission of his employer, traveling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of the employment, if at that time of the accident, the vehicle is being operated by or on behalf of his employer or by some other person, firm or company who is providing the service in pursuance of arrangements made with the employer and is otherwise not being operated in its ordinary course or as a public transport service.

Accidents while travelling in employer’s transport.

(2) In this section reference to a vehicle includes a ship, aircraft or other vessel.

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Accidents happening while meeting emergency situations.

52. An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to have arisen out of and in the course of his employment if it happened while he was taking steps, on an actual or supposed emergency at those premises, to rescue, succour, or to protect persons who, are, thought to be or may possibly be, injured or imperiled, or to avert, or to minimize serious damage to property.

Industrial disease and injuries not caused by accident.

53. (1) A person under this Ordinance, is insured against personal injury caused by accident arising out of and in the course of his employment shall be deemed to be insured also against any prescribed disease or injury being a disease or injury due to the nature of the employment and which developed on after the appointed day.

(2) A disease may be prescribed as liable for employment injury benefit in relation to any insured person, if the Director is satisfied that –

- (a) it ought to be treated, having regard to its cause and incidence and any other relevant considerations, as a risk of their occupation and not as a risk common to all persons; and
- (b) it is such that, in absence of special circumstances, the attribution of particular cases can be established with reasonable certainty to the nature of employment.

Regulations relating to disease and injuries, medical officers and boards.

54. Regulations may provide for-

- (a) determining the time at which a person is to be treated for the purposes of this Ordinance as having developed any prescribed disease or injury and the circumstances in which any such disease or injury is, where the person in question has previously suffered therefrom, to be treated as having been developed or received afresh;
- (b) for presuming any prescribed disease or injury-
 - (i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time, whether continuous or not, before he developed the disease or injury;
 - (ii) not to be due to a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed length of time, whether continuous or not, before he developed the disease or injury.

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(c) the establishment of special medical boards and the appointment of medical officers for the purposes of this Ordinance.

(d) Such other matters as may appear to the Minister to be incidental to or consequential on provisions included in the regulations by virtue of the foregoing provisions of this section.

55. No suit or prosecution shall be instituted against the Director or against any member of the Board for any act which in good faith is done or purported to be done by such Director, member or officer under this Ordinance or on the direction of the Board.

Protection for action taken under the Ordinance.

56. In all actions brought under this Ordinance where it is alleged that any person is an employer it will be sufficient for the Director or the Board to allege that any person who pays contributions or is otherwise liable to pay contributions is an employer within the meaning of the Ordinance and the onus of proof shall be on that person to prove that he is not such an employer.

Onus on employer to prove he is not employer.

SCHEDULE.S.4.
19/2005**Constitution and Proceedings of the Social Security Board.**

1. The Board shall consist of seven persons appointed by the Minister of whom-
 - (a) one shall be the Director, or in his absence his Deputy;
 - (b) two shall represent Government;
 - (c) two shall represent employers; and
 - (d) two shall represent employed persons:

Provided that members of the Legislative Council shall not be eligible for appointment to the Board.
2. The members representing employers shall be appointed after consultation with such associations or employers, or such persons or bodies, as appear to the Minister likely to produce representation for employers generally throughout the Territory.
3. The members representing employed persons shall be appointed after consultation with such persons or bodies, as appear to the Minister to be representative of employees throughout the Territory.
4. (1) The Minister shall with the concurrence of the Leader of the Opposition designate two representative members of the Board to be Chairman and Deputy Chairman.
 - (2) Where, within a period of twenty-one days after the Minister notifies the Leader of the Opposition in writing of a proposal for the appointment of a Chairman or Deputy Chairman, an agreement on the appointment is not reached, the Minister shall refer the matter to the Executive Council whose decision shall be final.
5. The representative members of the Board shall hold office for such period not exceeding three years as may be determined by the Minister. Any member of the Board shall be eligible for re-appointment.

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6. A member of the Board may at any time, by notice in writing addressed to the Minister, resign his office; and if a member becomes, in the opinion of the Minister, unfit to continue in office or incapable of performing his duties, the Minister shall in such manner as he thinks fit declare the office of the member vacant.
 7. The quorum for any meeting of the Board shall be three including the Chairman or Deputy Chairman, one of whom shall preside at all meetings; the Director or Deputy Director shall be present and the Board may act notwithstanding any vacancy in its membership.
 8. A substitute member may be appointed by the Minister after consultation with the appropriate body, for any one meeting which a member is unable to attend.
 9. The decision of the Board shall be a majority of votes and in the event of an equality of votes the Chairman presiding at the meeting shall have a casting vote.
 10. Minutes of each meeting shall be kept in a proper form by such officer of the Board as the Board may appoint for the purpose, and shall be confirmed by the Board at its next meeting and signed by the Chairman or Deputy Chairman as the case may be.
 11. The Board may invite one or more persons to attend any particular meeting of the Board for the purpose of advising or assisting the Board, but no such invited person shall have any right to vote.
 12. If any member of the Board or other person present at a meeting of the Board is directly or indirectly interested in any contract or proposed contract or other matter, he shall, at the meeting and as soon as is practicable after the commencement of the meeting disclose the fact of his interest and shall not take part in the discussion, consideration or voting on such contract or other matter.
 13. Subject to the provisions of this Ordinance, the Board shall have power to regulate its own proceedings.
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