

EMERGENCY STATE - DRAFT RULES FOR DISCUSSION AT AGM

Confidential to members of the MBF – discussion draft

8 September 2020

New Rule – Trustees’ special powers during an emergency:

Rule X:

- (a) Notwithstanding any other provision of these rules, where an **Emergency State** has arisen, the trustees may in their absolute discretion decide during the **Period of the Emergency State** to use the special powers as set out in (f) below, including but not limited to make temporary or permanent changes to **disability payments** under rule 7.
- (b) An **Emergency State** is a state of affairs, current at the time that the trustees decide to act under this rule, in which there is a serious and continuing and material disruption to the aviation industry within which members are employed and/or any financial market in which more than one tenth of the assets of the Fund is invested, and includes:
 - a. when any notice of epidemic is in force under the Epidemic Preparedness Act 2006 (or any later Act passed in substitution for this Act);
 - b. when any national notice of civil defence emergency is in force under the Civil Defence Emergency Act 2002 (or any later Act passed in substitution for this Act);
 - c. when a state of war exists between New Zealand and any country to which members operate scheduled passenger flights;
 - d. when there is serious financial market disruption or market suspension in any country in which more than one tenth of the assets of the Fund is invested;
 - e. when the Air Operator’s Certificate of any airline employing one tenth or more of the members of the Fund is suspended or cancelled;
 - f. when any “state of emergency” has been declared by the New Zealand government under any Rule or power of Parliament.
- (c) The **Period of the Emergency State** is such period as includes the term of any notice, suspension, or other action by the New Zealand government and such period following that term as in the sole judgment of the trustees acting reasonably that the effects of the Emergency State on the Fund have not yet ended.

- (d) A **disability benefit** is all benefits paid or payable (including benefits first becoming payable during the Period of the Emergency State) which are paid under rule 7 of these rules. For the avoidance of doubt, the special powers do not apply to any capital benefit payable under rule 8 or the exercise by the trustees of their power under rule 5(d) to vary capital benefits.
- (e) A decision by the trustees to act under this rule shall be notified to members of the Fund as soon as is reasonably feasible.
- (f) The special powers which may be exercised by the trustees during this Emergency State are, notwithstanding any other provisions of these rules:
 - a. to vary the amount payable for any disability benefit which a member would otherwise, in the discretion of the trustees, be entitled to receive at any future date;
 - b. to determine special conditions, including waiting periods or reduced benefit levels, for new entrants who apply to join the Fund during the Period of the Emergency State or who apply to increase their level of cover;
 - c. to adjust, defer or otherwise vary the payment dates of any disability benefit in any of the following ways:
 - i. To alter the date on which any payment of disability benefit may be paid to new claimants as a class so as to take into account the resources and cashflow of the Fund;
 - ii. To defer and so “freeze” payment of a disability benefit to any class of claimant members by adoption of a specified future date so the initial payments are not a current liability of the Fund;
 - iii. To alter the level of benefits with effect from a future date.
- (g) In exercising the special powers, the trustees shall have regard to:
 - a. The overall state of the Fund (including future projections of revenue and claims);
 - b. Any actuarial advice held by them;
 - c. The Objects of the Fund (Rule 1 (b));
 - d. That it is a mutual discretionary Fund;
 - e. The need to achieve equity between members to the extent that the Fund’s resources and powers allow;

- f. Any general representations or recommendations received from members and/or the New Zealand Airline Pilots' Association;

but shall be wholly free to make such decision as in the sole discretion of the Trustees they determine.

- (h) For the avoidance of doubt the special powers may be exercised from time to time during the Period of the Emergency State.
- (i) Any special power must be exercised in relation to a class of members, or applicants for membership even if that class comprises only one member but may not be exercised solely in respect of any identified member.

Special meetings – add to rule 22 the following:

- (e) If a special meeting is called within a Period of Emergency State the trustees in their absolute discretion may:
 - a. determine the time date and location of such meeting,
 - b. abbreviate the time periods for giving notice;
 - c. determine that the meeting is held by such means as in their sole judgment are appropriate including (without limiting the general power) by internet or other electronic conferencing, electronic voting, any form of member poll, or the use of proxy voting.

Consequential amendments:

- A. Amend rule 7(a) to commence:

“Subject to rules 6, 8(f) and rule XXX...”

- B. Amend rule 24(c) to state at the end:

“For the avoidance of doubt, the adoption by the Fund of rule XXX and any decisions afterwards made under that rule affecting a disability benefit are not an alteration prohibited by this sub-rule.”