

RESOLUTION
OF THE BOARD OF TRUSTEES OF THE NORTHERN
MARIANA ISLANDS RETIREMENT FUND FOR NON-RECOGNITION
OF RETIREE ADOPTIONS FOR SURVIVOR BENEFITS PURPOSES
BR 09-002

WHEREAS, the Northern Mariana Islands Retirement Fund ("Fund") was statutorily created as a pension plan to provide retirement security and other benefits to retired, qualified, prior and present Northern Mariana Island Government ("Government") employees and their eligible dependents; and

WHEREAS, the Retirement Fund Board of Trustees ("Board") are statutorily mandated to direct the management of an actuarially sound pension plan funded by the Government in accord with the constitutional provisions protecting members' rights; and

WHEREAS, the Northern Mariana Island Constitution ("Constitution") protects the accrued benefits of the Retirement Fund's pension system from being diminished and/or impaired; and

WHEREAS, the Fund's assets has plummeted from over \$500 million in 2007 to approximately \$300 million in 2009, a mere two years, due in tandem to the 2008 world wide investment market decline and investment drawdowns in order to pay pension payments; and

WHEREAS, the Fund, against advice of its investment consultants, is forced to drawdown investment assets in order to pay biweekly pension to Fund members because the Government has yet to remit statutorily mandated contributions and obligations; and

WHEREAS, the Board has sought, to no avail, the assistance of the Executive and Legislative Branches in order to address the Retirement Fund's continuing fiscal emergency due to the non-payment of employer contributions, the 2008 world wide decline in investment markets, and the drastic Retirement Fund drawdowns to meet pension payment obligations; and

WHEREAS, the CNMI continues to be delinquent in employer contributions and various other obligations despite years of Board and Retirement Fund collection efforts; and

WHEREAS, the Retirement Fund was openly criticized on June 30, 2005 for using invested funds to pay for monthly pension checks and for failing to commence litigation in 2002 by the current head of the Executive Branch of the Government; and

WHEREAS, the Retirement Fund has already fallen below a level of forty-five percent (45%) actuarial funding at the conclusion of fiscal year 2008, and has not reached a level of total funded actuarial liability of sixty percent (60%) fiscal year 2000; and

WHEREAS, the Employee Retirement Income Security Act of 1974 ("ERISA"), enacted by Public Law 93-406, 88 Stat. 829, is a federal law that established the minimum standards for pension plans in private industries; and

WHEREAS, ERISA, and subsequent amendments, provides that a pension plan may not make lump sum or other accelerated payments and provides for the cessation of benefit accruals under a plan that is less than 60% funded as well as the cessation of certain contingent benefit payments under the plan; and

WHEREAS, private pension programs subject to ERISA laws would have ceased lump sum or other accelerated payments and had benefits frozen if their funding level was currently at the Retirement Fund level; and

WHEREAS, the Board and the Retirement Fund, although not subject to ERISA, looks to case laws interpreting ERISA and case laws from other jurisdictions with similar constitutionally protected pension plans as persuasion in interpreting and implementing laws mandating the management of the Retirement Fund; and

WHEREAS, Public Law 15-98 amended 1 CMC § 8356 and increased from ten to fifteen (15) years all eligible Class I Retirement Fund members electing to withdraw their contribution from the Fund; and

WHEREAS, the Fund was forced to liquidate and drawdown investment assets in order to comply with Public Law 15-98 and 1 CMC § 8356; and

WHEREAS, the Fund has paid in compliance with Public Law 15-98 and 1 CMC § 8356 the following amounts: Fiscal Year ("FY") 2000 almost \$4 million; FY2001 over \$3 million; FY2002 over \$4 million; FY2003 over \$3.5 million; FY2004 over \$3 million; FY2005 almost \$3 million; FY2006 over \$4.5 million; FY2007 over \$5 million; FY2008 over \$5.5 million; and as of December 31, 2008 almost \$1.5 million; and

WHEREAS, the over one hundred twenty-one million, five hundred sixty-four thousand dollars (\$121,564,000.00) in total investment drawdowns occurring since fiscal year 2005, to include the inception of the effective date of Public Law 15-15 (retroactive to March 1, 2006), to meet pension obligations and refund payments have seriously impacted the Retirement Fund's ability to increase their investment portfolio; and

WHEREAS, the Board has been for years gravely concerned that the Retirement Fund assets have been and are being severely diminished and/or impaired by the acts and/or omissions of the Government and the Legislature; and

WHEREAS, the Board, in upholding their fiduciary duty, filed a lawsuit in 2006 after years of demanding payment for various employer contributions and other Government obligations that went unanswered; and

WHEREAS, numerous retired persons have adopted persons following retirement with the effect of rendering an enhanced retiree survivor benefit for persons who were not listed as beneficiaries upon the original submission of the Retiree's Retirement Fund Application, with the effect of this practice to increase the Retirement Fund's unfunded liability; and

WHEREAS, House Bill 16-19 (“HB 16-19”) was introduced in the House of Representatives on February 7, 2008 that has since been referred to committee with no action for well over a year.

WHEREAS, the Board must protect the Retirement Fund’s assets for all Retirement Fund members by any means necessary due to the Executive and Legislative Branches non-response to numerous requests for assistance to address the Retirement Fund’s current fiscal emergency, most especially to the passage of H.B 16-19.

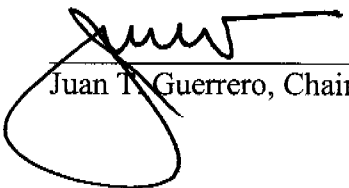
WHEREAS, the June 29, 2009 Superior Court judgment in Civil Action No, 06-0367, the Fund was criticized by the court as follows: “The Fund is also partially responsible for the mess that is in . It has been too generous in allowing the grandchildren and great grandchildren of the first generation of retirees to obtain benefits long after the original retiree has died The Fund was designed to provide for retirees and their spouses. It is assumed that when a person retires that his or her children are already grown up. The Fund is not for the children of the retirees’ children. This is unfair to future retirees who could possibly see the original retiree’s family avail themselves of the Fund for over eighteen years.”

BE IT THEREFORE RESOLVED that the Retirement Fund Board of Trustees, in upholding their fiduciary duty, hereby directs the Retirement Fund management and staff to cease processing any amendments or additions to originally filed Applications for Retirement to list additional beneficiaries arising through adoption for purposes of computation of survivor benefits until such time as the Retirement Fund is no longer in a fiscal emergency.

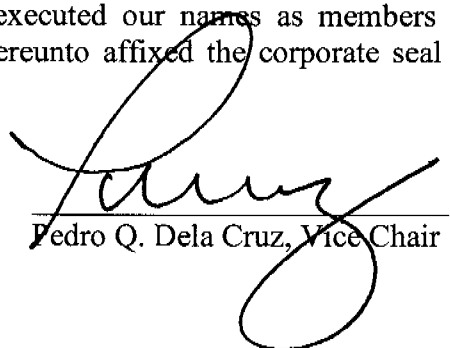
BE IT FURTHER RESOLVED that this directive will take effect on the 1st day of September, 2009 after notice has been given to all members by publication in newspapers in general circulation in the Northern Mariana Islands on three (3) different occasions, the first notice to be publicized no later than July 15, 2009.

The undersigned duly appointed and authorized representatives of the NMI Retirement Fund, a Public, autonomous agency duly formed pursuant to the laws of the Commonwealth of the Northern Mariana Islands hereby certify that the foregoing is an officially sanctioned resolution duly adopted at a meeting of the Board of Trustees of the NMI Retirement Fund, held in accordance with CNMI laws and procedures on the 7th day of July, 2009, and that said resolution is now in full force and effect.

IN WITNESS WHEREOF, We have executed our names as members of the NMI Retirement Fund Board of Trustees and have hereunto affixed the corporate seal of the NMI Retirement Fund this 7th day of July, 2009.

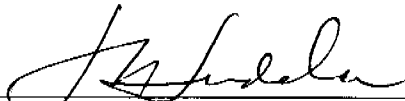


Juan T. Guerrero, Chairman




Pedro Q. Dela Cruz, Vice Chair


Bernadita Palacios, Member



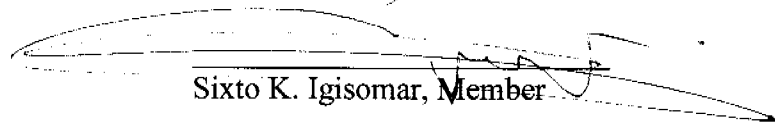
Marian DLG Tudela, Member



Francisco P. Rosario, Member



Adelina C. Roberto, Member



Sixto K. Igisomar, Member