

No. , 1950.

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## A BILL

To make further and better provision in respect of the liability for costs of certain litigation; to establish a Suitors' Fund to meet such liability; and for purposes connected therewith.

[MR. C. E. MARTIN;—7 November, 1950.]

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of  
5 the same, as follows:—

1. (1) This Act may be cited as the "Suitors' Fund Act, 1950." Short title and commencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation  
10 published in the Gazette.

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*Suitors' Fund.*

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2. In this Act, unless the context or subject matter otherwise indicates or requires—

Definitions.

“Appeal” includes any motion for a new trial and any proceeding in the nature of an appeal.

5 “Costs of the appeal” includes—

(a) the costs of any intermediate appeal but, except as provided in paragraph (b) of this definition, does not include costs incurred in a court of first instance;

10

(b) where the appeal is by way of motion for a new trial, the costs of the first trial.

15 “Court” includes The Workers’ Compensation Commission of New South Wales.

“Fund” means the Suitors’ Fund established under this Act.

3. (1) There shall be a “Suitors’ Fund” into which shall be paid the moneys referred to in section five of this Act and from which shall be paid the amounts referred to in subsection two of section six of this Act.

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Suitors’  
Fund.  
Act No. 53,  
1928, s. 15.

(2) In addition to the moneys payable out of the Fund under this Act all costs of management of the Fund as certified by the Auditor-General shall be a charge against and shall be paid out of the Fund.

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(3) The Fund shall, subject to this Act and the regulations, be under the direction, control and management of the Under Secretary of the Department of the Attorney-General and of Justice.

(4) All moneys payable to the Fund under this Act shall be paid to an account in Special Deposits Account in the Treasury, and such moneys and interest allowed thereon shall be made available to the Under Secretary of the Department of the Attorney-General and of Justice for investment or for the purpose of paying the amounts referred to in subsection two of section six of this Act or any other amount properly payable out of the Fund.

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(5).

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*Suitors' Fund.*

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(5) Interest at a rate to be determined by the Colonial Treasurer shall be allowed on the amount at the credit of such account.

(6) The Fund shall as far as practicable be invested in securities in which trustees are by law authorised to invest.

(7) Interest derived from the investment of the Fund shall form part thereof.

(8) The income of the Fund shall not be subject to taxation under any Act of this State.

(9) The accounts relating to the Fund shall be audited by the Auditor-General.

4. (1) For the purposes of the exercise and discharge of the powers, authorities, duties, functions and obligations conferred and imposed upon him by this Act, the Under Secretary of the Department of the Attorney-General and of Justice is hereby declared to be a corporation sole under the name of "The Under Secretary of the Department of the Attorney-General and of Justice."

Under Secretary of Department of Attorney-General and Justice to be corporation sole.

20 The said corporation sole shall have perpetual succession and an official seal and may in the corporate name sue and be sued and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property and of doing and suffering all such other acts and things as a body corporate may by law do and suffer.

(2) The assets of the Fund shall be vested in the said corporation sole.

30 (3) Where any property real or personal or the interest therein or charge thereon is vested in or is acquired by the said corporation sole, the same shall unless otherwise disposed of by the said corporation sole pass to and devolve on and vest in its successors.

35 (4) The seal of the said corporation sole shall not be affixed to any instrument or writing except in the presence of the Under Secretary of the Department of the Attorney-General and of Justice who shall attest by his signature the fact and date of the seal being so affixed.

(5)

*Suitors' Fund.*

(5) The appointment of the Under Secretary of the Department of the Attorney-General and of Justice and his official seal shall be judicially noticed.

5       **5.** (1) As soon as practicable after the last day of each month, there shall be paid to the Fund such percentage, not exceeding in any case ten parts per centum, of the fees of court collected in any court or in any jurisdiction of any court which are paid into the Consolidated Revenue Fund during the month ending on  
10 that day, as may be fixed by the Governor, upon the recommendation of the Colonial Treasurer, by proclamation published in the Gazette with respect thereto.

Contributions to the Fund.

The Governor may from time to time in like manner vary or revoke any such proclamation.

15       (2) Any proclamation under subsection one of this section may fix different percentages in respect of—

- (a) different courts;
- (b) different jurisdictions of the same court;
- (c) courts held at different places.

20       (3) Any amounts payable to the Fund under subsection one of this section shall be paid out of the Consolidated Revenue Fund, and are hereby specially appropriated.

25       **6.** (1) Where an appeal against the decision of any court on a question of law succeeds, the court determining the appeal may grant to the respondent thereto a certificate (hereinafter in this section referred to as an "indemnity certificate").

Indemnity certificates.

30       (2) Where a respondent to an appeal has been granted an indemnity certificate, such certificate shall entitle the respondent to be paid from the Fund—

- (a) the whole of the appellant's costs of the appeal ordered to be paid and actually paid by the respondent;
- 35       (b) the costs of the appeal incurred by the respondent:

Provided

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*Suitors' Fund.*

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Provided that the amount payable from the Fund pursuant to paragraph (b) of this subsection shall not exceed the amount payable pursuant to paragraph (a) hereof:

5 Provided further that the amount payable from the Fund under or pursuant to any one indemnity certificate shall not in any case exceed the sum of five hundred pounds or such other amount as may be fixed in lieu thereof by the Governor by proclamation published in the Gazette. The Governor may from time to time in  
10 like manner vary or revoke any such proclamation.

(3) Where a court of appellate jurisdiction (in this subsection referred to as the "court of higher appellate jurisdiction") grants an indemnity certificate to the respondent to the appeal heard by it, an indemnity certificate granted previously to any person who is a party  
15 to such appeal by a court of lower appellate jurisdiction in the appeal or series of appeals which preceded the appeal to the court of higher appellate jurisdiction shall be vacated.

20 (4) (a) An indemnity certificate shall have no force or effect during the time limited for appealing against the decision of the court which granted such certificate or, in the event of an appeal being made against that decision, during the pendency of the appeal.

25 (b) Where a court of appellate jurisdiction (in this paragraph referred to as the "court of higher appellate jurisdiction") does not grant an indemnity certificate to the respondent to the appeal heard by it, an indemnity certificate granted previously to any person who is a  
30 party to such appeal by a court of lower appellate jurisdiction in the appeal or series of appeals which preceded the appeal to the court of higher appellate jurisdiction shall, if that indemnity certificate has not been vacated pursuant to subsection three of this section, be deemed,  
35 for the purpose only of paragraph (a) of this subsection, to have been granted by the court of higher appellate jurisdiction.

(5) The grant or refusal of an indemnity certificate shall be in the discretion of the court and no appeal shall  
40 lie against any such grant or refusal.

(6).

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*Suitors' Fund.*

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(6) An indemnity certificate shall not be granted in respect of any appeal from proceedings begun in a court of first instance before the commencement of this Act.

(7) An indemnity certificate shall not be granted in  
5 favour of the Crown or any company or foreign company having a paid-up capital of one hundred thousand pounds or more.

In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of  
10 section six of the Companies Act, 1936, as amended by subsequent Acts.

7. (1) The Governor may make regulations not incon- Regulations.  
sistent with this Act prescribing all matters which, by this Act, are required or permitted to be prescribed or  
15 which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

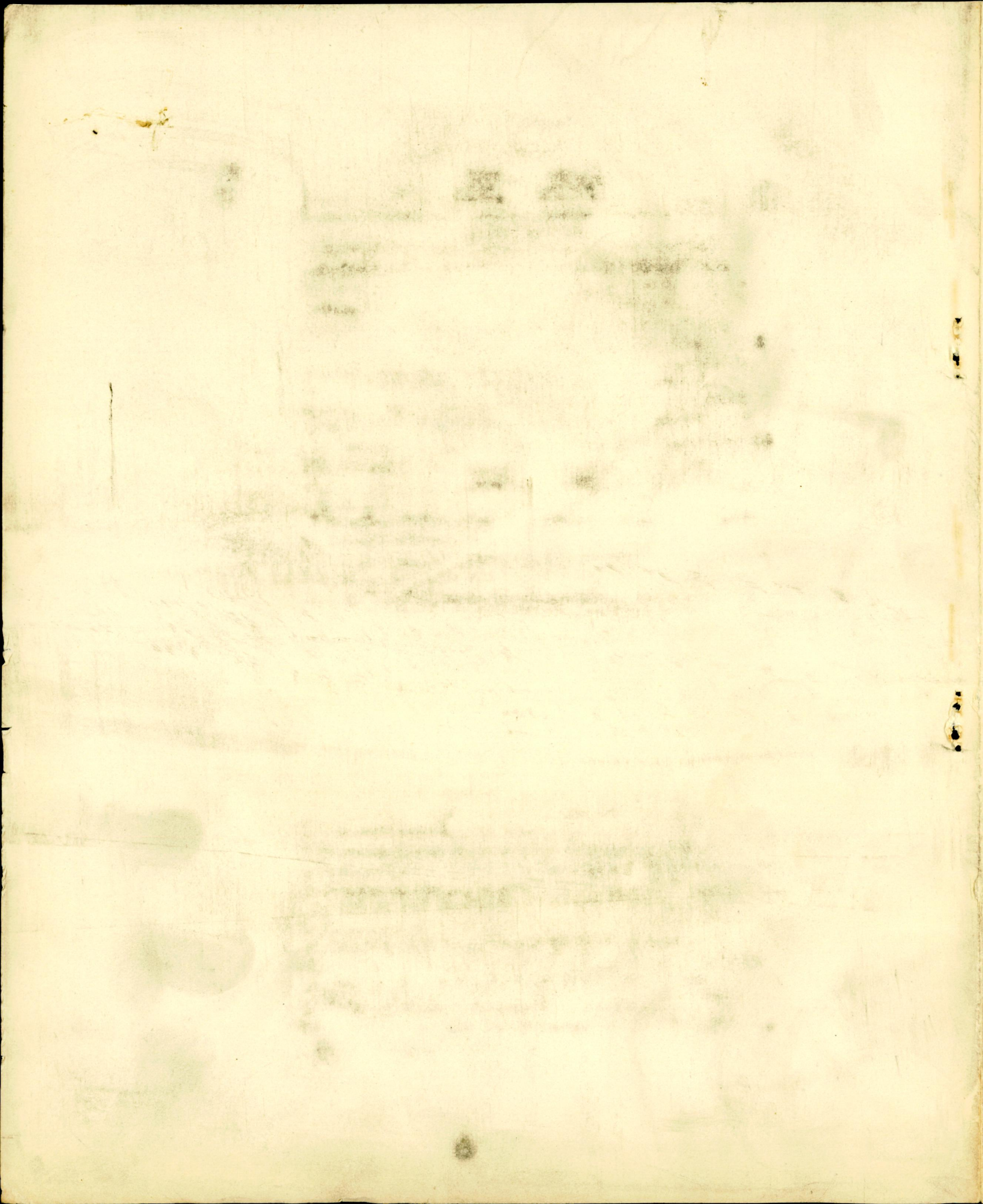
(2) Without prejudice to the generality of subsection one of this section the regulations may make provision with respect to the manner of operating on the  
20 Fund and the custody of documents evidencing investment of the Fund.

(3) The regulations shall—

- (a) be published in the Gazette;
- 25 (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- 30 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such  
35 regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.







## Suitors' Fund Bill, 1950.

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### EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to provide for the establishment of a Suitors' Fund to which shall be paid a percentage of all fees of court collected in the various courts and carried to the Consolidated Revenue Fund;
- (b) to provide that any appellate court may grant to the unsuccessful respondent to any appeal an "indemnity certificate";
- (c) to provide that the holder of an "indemnity certificate" shall be entitled to be paid from the Suitors' Fund—
  - (i) the appellant's costs of the appeal ordered to be paid and actually paid by him; and
  - (ii) his own costs of the appeal (not exceeding the amount payable pursuant to paragraph (i) above).

The Bill provides, further, that the amount payable pursuant to any one indemnity certificate shall be limited to £500, or such other amount as may, by proclamation, be fixed in lieu thereof.

The measure includes certain provisions of a machinery character incidental to the objects referred to above.



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Suitors’ Fund.  
c.f. Act No. 53, 1928, s. 15.

(2) In addition to the moneys payable out of the Fund under this Act all costs of management of the Fund as certified by the Auditor-General shall be a charge against and shall be paid out of the Fund.

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(3) The Fund shall, subject to this Act and the regulations, be under the direction, control and management of the Under Secretary of the Department of the Attorney-General and of Justice.

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(4) All moneys payable to the Fund under this Act shall be paid to an account in Special Deposits Account in the Treasury, and such moneys and interest allowed thereon shall be made available to the Under Secretary of the Department of the Attorney-General and of Justice for investment or for the purpose of paying the amounts referred to in subsection two of section six of this Act or any other amount properly payable out of the Fund.

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(6) The Fund shall as far as practicable be invested in securities in which trustees are by law authorised to invest.

(7) Interest derived from the investment of the Fund shall form part thereof.

(8) The income of the Fund shall not be subject to taxation under any Act of this State.

(9) The accounts relating to the Fund shall be audited by the Auditor-General.

4. (1) For the purposes of the exercise and discharge of the powers, authorities, duties, functions and obligations conferred and imposed upon him by this Act, the Under Secretary of the Department of the Attorney-General and of Justice is hereby declared to be a corporation sole under the name of "The Under Secretary of the Department of the Attorney-General and of Justice."

Under Secretary of Department of Attorney-General and Justice to be corporation sole.

The said corporation sole shall have perpetual succession and an official seal and may in the corporate name sue and be sued and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property and of doing and suffering all such other acts and things as a body corporate may by law do and suffer.

(2) The assets of the Fund shall be vested in the said corporation sole.

(3) Where any property real or personal or the interest therein or charge thereon is vested in or is acquired by the said corporation sole, the same shall unless otherwise disposed of by the said corporation sole pass to and devolve on and vest in its successors.

(4) The seal of the said corporation sole shall not be affixed to any instrument or writing except in the presence of the Under Secretary of the Department of the Attorney-General and of Justice who shall attest by his signature the fact and date of the seal being so affixed.

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Provided

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(3) Where a court of appellate jurisdiction (in this subsection referred to as the "court of higher appellate jurisdiction") grants an indemnity certificate to the respondent to the appeal heard by it, an indemnity certificate granted previously to any person who is a party  
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In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of  
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7. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which, by  
15 this Act, are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of subsection one of this section the regulations may make  
20 provision with respect to the manner of operating on the Fund and the custody of documents evidencing investment of the Fund.

(3) The regulations shall—

- (a) be published in the Gazette;
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