

Funeral Funds Regulation 2001

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New South Wales

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Notes—

- **Does not include amendments by**
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Funeral Funds Regulation 2001



New South Wales

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Funeral Funds Regulation 2001



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Funeral Funds Act 1979*.

JOHN WATKINS, M.P., Minister for Fair Trading

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Funeral Funds Regulation 2001*.

2 Commencement

This Regulation commences on 1 September 2001.

Note—

This Regulation replaces the *Funeral Funds Regulation 1994* which is repealed on 1 September 2001 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

approved form means a form approved for the time being by the Director-General.

the Act means the *Funeral Funds Act 1979*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 3.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Funeral contribution funds

5 Additional documents to accompany applications for registration to carry on

contributory funeral benefit business (section 12)

- (1) For the purposes of section 12 (2) (b) (iii) of the Act, the following documents are prescribed as documents that must accompany an application for registration to carry on a contributory funeral benefit business:
 - (a) a statement of the capital structure of the company (including the capital paid-up and the nature and value of the shares),
 - (b) a copy of each agreement made with a person for the carrying out of funeral services for the company,
 - (c) a copy of each agreement made with a person for the collection of contributions on behalf of the company,
 - (d) a description of the types of funeral services proposed to be provided by the company,
 - (e) a statement of the company's proposed records with respect to membership, accounts and statistics,
 - (f) an actuarial assessment of the adequacy of the records referred to in paragraph (e) for the proper conduct of the funeral contribution business of the company,
 - (g) a copy of the tables of contribution rates proposed to be used by the company, together with a statement of the bases and formulas from which those rates have been calculated,
 - (h) actuarial projections of the expected income and expenditure of the company over the next 10 years, prepared in accordance with Schedule 1,
 - (i) a statement of the proposed manner of providing for any financial deficiencies, including financial deficiencies appearing from the projections referred to in paragraph (h),
 - (j) a statement of the proposed method of offsetting any overdue contributions against the amount to be paid out on a contributorship if the contributor ceases contributing to the fund before any contingency occurs on which a benefit is required to be provided.
- (2) An actuarial assessment or projection referred to in subclause (1) must contain a statement to the effect that the assessment or projection has been prepared by an actuary in the knowledge of the aims of the company and of the types of contributions agreements proposed to be transacted by the company.

6 Requirements for registration (section 13)

- (1) For the purposes of section 13 (1) (g) of the Act, \$20,000 is prescribed as the

maximum payment (by way of a funeral benefit) that a company may provide for in its rules, being the amount above which the company ceases to be entitled to be registered to carry on contributory funeral benefit business.

(2) For the purposes of section 13 (1) (i) of the Act, the rules of a company proposing to carry on contributory funeral benefit business must provide that, on the death of any person:

(a) who has contributed for at least 10 years to the funeral contribution fund proposed to be constituted by the company, and

(b) who has ceased before his or her death so to contribute,

the company will pay an amount, equal to the paid-up value of the person's contributions, towards the cost of a funeral service for the person to be provided under an agreement between the company and a funeral director.

(3) For the purposes of this clause, the paid-up value of contributions paid by a person is taken to be:

(a) the amount certified by an actuary to be the equitable share to which the person is entitled in the funeral contribution fund proposed to be constituted by the company, or

(b) the amount calculated in accordance with a formula certified by an actuary to be a formula from which that share can be calculated,

having regard to the contributions paid and benefits received by the person before the person ceased contributing to the fund.

7 Documents to accompany application for approval of alteration of or addition to rules (section 15)

For the purposes of section 15 (2) of the Act, the following documents must accompany an application for approval of an alteration of or addition to the rules of a funeral contributions fund:

(a) a copy of a record of the alteration or addition, each signed by a director, and by the secretary, of the fund,

(b) a statement, signed by an actuary, that the alteration or addition will not prejudice the stability of the fund.

8 Limitations on certain management expenses (section 21)

For the purposes of section 21 (1) of the Act, the maximum amount that a funeral contribution fund may pay for the purposes referred to in paragraphs (a), (b) and (c) of that subsection is 2 per cent of the income accrued from the investments of the fund.

9 Additional particulars in returns by funeral contribution funds (section 24)

For the purposes of section 24 (2) (e) of the Act, the following additional particulars must be contained in a funeral contribution fund's annual return:

- (a) the number of persons who were contributing to the fund on the first day of the fund's financial year,
- (b) the number of persons who began contributing to the fund during the fund's financial year,
- (c) the numbers of service funeral benefits provided during the fund's financial year:
 - (i) for single cover contributors to the fund, and
 - (ii) for family cover contributors to the fund,
- (d) the numbers of cash funeral benefits provided during the fund's financial year:
 - (i) for single cover contributors to the fund, and
 - (ii) for family cover contributors to the fund,
- (e) the number of persons who ceased contributing to the fund during the fund's financial year otherwise than by reason of the provision of a funeral benefit,
- (f) the number of persons who were contributing to the fund on the last day of the fund's financial year.

10 Additional particulars to appear in register of contributors to funeral contribution fund (section 26)

For the purposes of section 26 (2) (d) of the Act, if:

- (a) a person ceases to be a contributor to a funeral contributions fund, and
- (b) an amount equal to the paid-up value of the person's contributions is paid towards the cost of a funeral service for that person,

the fund must enter in its register of contributors a statement of the amount so paid.

11 Contents of abstract of actuary's report of investigation of funeral contribution fund (section 28)

For the purposes of section 28 (2) of the Act, an abstract of an actuary's report of an investigation of a funeral contribution fund:

- (a) must be prepared in the manner, and must contain the particulars, specified in Schedule 2, and
- (b) in relation to the statements and information required by clauses 2 and 3 of Schedule

2—must contain those statements and that information in the same order, and with the same numbering and lettering, as set out in the clauses under which the statements and information are required.

Part 3 Pre-arranged funeral funds

12 Documents to accompany application for registration of trustees (section 35)

For the purposes of section 35 (2) (b) of the Act, a copy of the bond or arrangement referred to in clause 13 is prescribed as a document required to accompany an application for registration as the trustee or trustees of trust funds.

13 Qualifications for registration as trustee (section 36)

For the purposes of section 36 (1) (c) of the Act, the prescribed qualification for registration as a trustee of trust funds is that the corporation or group of individuals concerned has entered into a bond (or such other financial arrangement as approved by the Director-General) for an amount that, in the opinion of the Director-General, is sufficient to secure the due administration of the trust funds for which the corporation or group proposes to act as trustee.

14 Maximum commission chargeable (section 46)

For the purposes of section 46 (b) of the Act, the maximum amount of commission to which a pre-arranged funeral fund is entitled is 2 per cent of the income accrued from the investments of the fund.

15 Particulars of funeral service to be contained in contract (section 51)

For the purposes of section 51 of the Act:

- (a) the funeral services to which that section applies are those specified in Column 1 of the Table to this clause, and
- (b) the particulars prescribed in relation to any such service are those specified in Column 2 of that Table in relation to that service.

Table

| Column 1 | Column 2 |
|----------------------------|---|
| Supply of coffin or casket | The principal material to be used in the coffin or casket The type of lid on, and the method of closure of, the coffin or casket The types of any external or internal trimmings on or in the coffin or casket The finish to be applied to the external surfaces of the coffin or casket |

| | |
|---|--|
| Provision of vehicles | The classes of vehicles The number of vehicles in each class |
| Conveyance of persons and the remains of the deceased | The maximum distance over which conveyance will be provided The maximum number of persons who will be conveyed The hours and days when conveyance will be provided without additional charge |
| Disposal of the remains of the deceased | Whether disposal is to be by way of burial or cremation |
| Provision of memorial or urn | The design and material of the memorial or urn |

16 Accounts and register

- (1) A pre-arranged funeral fund must keep accounts of all trust funds under pre-arranged contracts for which the fund acts as trustee in such a manner as to disclose their true position and to enable the accounts to be conveniently and properly audited.
- (2) In particular, the accounts must contain, in relation to each pre-arranged contract for which the fund acts as trustee:
 - (a) the name and address of each person who is a party to the contract, and
 - (b) the date and file reference of the contract, and
 - (c) particulars of each amount of money paid or other valuable consideration given in respect of which the fund acts as trustee.
- (3) A pre-arranged funeral fund:
 - (a) must keep a register of investments in or to the effect of the approved form, and
 - (b) within 7 days after purchasing or realising an investment, or receiving interest on it, must enter details of that transaction in the register.

Maximum penalty: 2 penalty units.

17 Independent auditor to prepare auditor's report

- (1) A pre-arranged funeral fund must cause an independent auditor:
 - (a) to audit the records which the fund is required to keep under any law, including the accounts of the fund, and
 - (b) to furnish it with a report of that audit within 3 months after the last day of the fund's financial year.
- (2) A pre-arranged funeral fund must, within 7 days of receiving a report under subclause

(1) (b), lodge with the Director-General:

(a) a copy of the report, and

(b) a copy of every financial statement on which the report is based, together with every explanatory note that forms part of such a statement.

Maximum penalty: 2 penalty units.

18 Qualifications as an independent auditor

(1) A person is not qualified to be an auditor of a pre-arranged funeral fund unless the person is a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).

(2) An auditor of a pre-arranged funeral fund is not an independent auditor:

(a) if (otherwise than as auditor) the person is an officer or employee of the fund, or

(b) if the person is a partner, employer or employee of a person who is (otherwise than as an auditor) an officer or employee of the fund.

(3) Appointment as the public officer of a pre-arranged funeral fund for the purposes of any law relating to taxation does not in itself render a person unqualified to be an independent auditor of the fund.

19 Form and content of auditors' reports

An auditor's report on a pre-arranged funeral fund must include statements by the auditor as to the following:

(a) whether the auditor has obtained all the information and explanations which, to the best of his or her knowledge and belief, were necessary for the purposes of the audit,

(b) whether the financial statements on which the auditor based the report are in agreement with the fund's books of account and returns,

(c) whether, in his or her opinion, proper books of account have been kept by the fund,

(d) whether, in his or her opinion and to the best of his or her knowledge and according to the explanations given to him or her, the accounts give the information required by or under the Act in the manner so required and disclose a true and fair view of the state of the trust accounts as at the end of the fund's financial year,

(e) whether, in his or her opinion, the records that the fund is required to keep by or under the Act have been properly kept,

(f) whether the requirements of the law relating to the administration of trust funds, including the requirements of the Act and this Regulation, have been observed.

20 Access to books

An auditor of a pre-arranged funeral fund is entitled:

- (a) to be given access at all times to the books, accounts, vouchers, securities and documents of the fund, and
- (b) to be given by the fund such information and explanations as the auditor thinks necessary for the performance of his or her duties.

21 Annual returns to be furnished

Within 3 months after the last day of a pre-arranged funeral fund's financial year, or within such further time as the Director-General may allow, the fund must lodge with the Director-General a return specifying the following:

- (a) the number of pre-arranged contracts in respect of which the fund held money or other valuable consideration, as at the first day of that year,
- (b) the number of pre-arranged contracts in respect of which the fund commenced holding money or other valuable consideration during that year,
- (c) the numbers of pre-arranged contracts in respect of which the fund ceased holding money or other valuable consideration during that year, separately specified according to whether it ceased to hold that money or consideration pursuant to section 47 of the Act or pursuant to section 48 of the Act,
- (d) the number of pre-arranged contracts that were cancelled pursuant to section 49 of the Act during that year (being contracts in respect of which the fund was holding money or other valuable consideration when they were cancelled),
- (e) the number of pre-arranged contracts in respect of which the fund held money or other valuable consideration, as at the last day of that year.

Maximum penalty: 2 penalty units.

22 Funds to provide information in certain cases

- (1) The Director-General may, by notice in writing served on a pre-arranged funeral fund or on any officer or agent of the fund, require the fund or that officer or agent to lodge with the Director-General, within such period as is specified in the notice, any one or more of the following:
 - (a) such particulars as may be so specified with respect to existing or former pre-arranged contracts,
 - (b) such particulars as may be so specified with respect to payments by the fund of amounts held in trust by it,

(c) such further particulars with respect to the fund, or to any of its officers or agents or to its affairs, as may be so specified.

(2) A person must not, without reasonable excuse, fail to comply with a requirement under this clause.

Maximum penalty: 2 penalty units.

(3) Information provided by a person in response to a requirement under this clause is not admissible in evidence in any proceedings for an offence taken against that person, other than the offence of contravening subclause (2), so long as the person providing the information objected to doing so, at the time of providing it, on the ground that it might tend to incriminate the person.

23 Public inspection of annual returns

On being requested to do so by a person attending the Director-General's office during the ordinary business hours of that office, and on the payment by the person of the appropriate fee, the Director-General:

- (a) must make available for inspection by the person any return lodged with the Director-General under clause 21, and
- (b) must provide the person with a copy of any such return, or of such part of the return as the person specifies, certified under the Director-General's hand and seal to be a true copy.

Part 4 Miscellaneous

24 Fees

The fees to be taken in the office of the Director-General are as set out in the Table to this clause.

Table

| Matter | Fee |
|---|------------|
| For registering a funeral contribution fund | \$346 |
| For registering a pre-arranged funeral fund | \$346 |
| For approving an alteration of or addition to the rules of a funeral contribution fund | \$116 |
| For confirming a scheme of transfer or amalgamation of the contributory funeral benefit business of a funeral contribution fund | \$46 |
| For confirming a scheme of transfer of trust funds under pre-arranged contracts | \$46 |

| | |
|--|---|
| For receiving an application for the enlargement or abridgment of time for the doing of any act required by or under the Act to be done | \$46 |
| For receiving a return and any accompanying documents referred to in section 24 (1) of the Act or a return referred to in clause 21 | \$46 |
| For receiving a copy of an auditor's report on a pre-arranged funeral fund under clause 17 (2) | \$46 |
| For providing a copy of a return or document, or part of a return or document, certified under the hand and seal of the Director-General to be a true copy | \$1 per page provided that the total fee does not exceed \$30 |
| For confirming the appointment of a substitute or additional trustee under section 38 of the Act | \$46 |

25 Savings

Any act, matter or thing that, immediately before the repeal of the *Funeral Funds Regulation 1994*, had effect under that Regulation is taken to have effect under this Regulation.

Schedule 1 Actuarial projections

(Clause 5)

1 Actuarial projections

- (1) The actuarial projections referred to in clause 5 (1) (h) of this Regulation must include:
 - (a) a "worst case" projection based on the assumption that a conservative expansion in the company's funeral contribution business (that is, the minimum expansion necessary to ensure the viability of the company) occurs during each of the years to which the projection relates, and
 - (b) a "best case" projection based on the assumption that a reasonably rapid expansion in the company's funeral contribution business occurs during each of the years to which the projection relates.
- (2) Each projection:
 - (a) must contain details of the basis of the projection (including the assumptions used as a basis for determining the rate of expansion in the company's funeral contribution business), and
 - (b) must contain summaries of statistics for family cover and single cover funeral contribution business, and
 - (c) must separately specify the gross contributions for family cover and single cover funeral contribution business payable in each of the years of the company's

projected operations, and

- (d) must contain a projected revenue account for each of the years of the company's projected operations, and
- (e) must contain a projected balance sheet as at the end of each of the years of the company's projected operations, and
- (f) must contain a projected valuation balance sheet as at the end of each of the years of the company's projected operations.

2 Summaries of statistics

- (1) The summaries of statistics referred to in clause 1 (2) (b) of this Schedule must separately specify in respect of family cover and single cover funeral contribution business:
 - (a) the number of contributors, and
 - (b) the total amount of benefits for which the contributors to the fund are contributing, based on the retail prices of the services included in those benefits, but excluding any contingent benefits in respect of the children of the contributors.
- (2) The summaries of statistics referred to in clause 1 (2) (b) of this Schedule must take into account:
 - (a) all business existing at the beginning of each of the years to which the projection relates, and
 - (b) all business acquired during each of those years, and
 - (c) all business discontinued during each of those years, classified according to the cause of the discontinuation.

3 Projected revenue account

The projected revenue account must distinguish between the following types of income and expenditure:

- (a) income derived from contributions,
- (b) income derived from investments,
- (c) income derived from other sources,
- (d) claims,
- (e) new contributorship commissions,

- (f) other expenses involved in the acquisition of new contributorships,
- (g) contributorship renewal commissions,
- (h) other expenses involved in the renewal of existing contributorships,
- (i) income tax.

Schedule 2 Actuarial abstracts

(Clause 11)

1 Definitions

In this Schedule:

contribution term, in relation to a contract with a contributor, means the period during which contributions are payable under the contract.

date of a valuation means the date as at which the valuation is made.

inter-valuation period, in relation to an abstract prepared for the purposes of section 28 (2) of the Act, means the period that ends on the date of the valuation included in the report on which the abstract is based and that begins:

- (a) if a valuation has previously been made for the purposes of an investigation under section 28 (1) of the Act—on the date of the previous valuation, or
- (b) if no such valuation has previously been made, but a like valuation has been made—on the date of the like valuation, or
- (c) if no such valuation has previously been made and a like valuation has not been made—on the date on which the company to which the valuation relates began carrying on contributory funeral benefit business.

net contributions, in relation to a valuation, means those contributions for which credit is taken in the valuation.

2 Statements to appear in abstract

The following statements must be prepared in the approved form and must be annexed to every abstract furnished for the purposes of section 28 (2) of the Act:

- (a) a consolidated revenue account for the inter-valuation period,
- (b) a summary and valuation of the contributors to the fund at the valuation date,
- (c) a valuation balance sheet,
- (d) a statement of the rules of the fund that provide for the fund, and that define the benefits payable by, and the contributions payable to, the fund,

- (e) a summary of the contributorship to the fund.

3 Information to appear in abstract

- (1) The following information must be shown in every abstract prepared for the purposes of section 28 (2) of the Act:

- (a) the valuation date,
- (b) the general principles, and full details of the methods, adopted in the valuation,
- (c) if, in the valuation:
 - (i) published tables were used of mortality or of any other contingencies (including family composition) on which payment of benefits or contributions depends—the name and date of those tables, or
 - (ii) unpublished tables were used of any of the contingencies referred to in subparagraph (i)—the matters set out in the Form (or the date of any previous abstract in which identical statements in or to the effect of the matters set out in the Form were made),
- (d) the rate of interest assumed in the valuation in relation to the assets of the fund,
- (e) if, by the method of valuation, future expenses are allowed for by reserving a proportion of annual contributions—that proportion,
- (f) the average rates of interest earned by the assets of the fund for each of the 5 years preceding the valuation date or, if the company registered as the fund was formed less than 5 years before that date, for each year, or part of a year, since that formation,
- (g) the total surplus or total deficiency arising during the inter-valuation period, including surplus sums transferred to reserve funds or other accounts during the period, and the amount of surplus or deficiency brought forward from the preceding valuation,
- (h) the means by which the surplus or deficiency brought forward from the previous valuation and the surplus or deficiency arising during the inter-valuation period have been dealt with,
- (i) the contribution rates (in tabular form, if practicable) in force at the valuation date and referred to the following determinants:
 - (i) whether the rates apply in respect of single lives or for family cover, and
 - (ii) the ages at entry of the contributors,
- (j) the effect of a contributor's change in marital status on the contribution rate

determined in respect of the contributor,

(k) the benefits to be provided and the retail values, at the valuation date, of those benefits, according to the contribution rates specified pursuant to paragraph (i),

(l) the changes that have occurred in contribution rates during the inter-valuation period and the dates of those changes.

(2) The statement of principles and methods referred to in subclause (1) (b) must include statements on the following matters:

(a) whether the principles were determined by the constitution or by its other rules, or, if not, how the principles were determined,

(b) the method by which the values of actuarial liabilities have been arrived at and how the ages at entry and contribution terms have been treated for the purposes of the valuation,

(c) how the valuation ages and the future contribution terms have been treated for the purposes of the valuation,

(d) if a proposed benefit is a funeral service, the future changes in the amount of the benefit which have been allowed for in the valuation,

(e) if a proposed benefit is expressed as a cash amount, the rate and type of future bonus (if any) on the bonus that has been allowed for in the valuation, where, by the method of valuation, definite provision is made for future bonuses,

(f) if the rules of the fund provide for increases on contributions—details of the future increases in contributions for which credit has been taken in the valuation,

(g) the method of allowing for the incidence of the contribution income,

(h) the method of allowing for the frequency of contribution payments,

(i) the method of allowing for the immediate payment of benefits,

(j) the method of allowing for future expenses,

(k) the method of allowing for present and possible future liabilities in respect of persons whose contributions have lapsed if those persons are not included in the valuation,

(l) if the rules of the fund provide for the waiver of a contributor's contributions during his or her disability or unemployment or during some other specified contingency—the method of allowing for liabilities in respect of present and possible future waivers of contributions,

(m) whether, under the valuation method adopted, any contributorship would be

treated as an asset, and what steps have been taken to eliminate any such asset from the valuation,

- (n) how the mortality experienced by the fund compares with the mortality assumed in the valuation.

4 Particular requirements as to calculation and presentation

- (1) If, in an abstract prepared for the purposes of section 28 (2) of the Act or in a statement annexed to such an abstract, amounts of money are shown otherwise than as contribution rates, they must be shown to the nearest dollar.
- (2) In stating the proportion of contributions reserved as referred to in clause 3 (1) (e) of this Schedule, no credit may be taken for any adjustments made in order to ensure that no agreement to contribute to the fund is treated as an asset.
- (3) In calculating the average rate of interest earned in any year, as stated for the purposes of clause 3 (1) (f) of this Schedule, the interest earned in that year must be divided by the mean fund of that year, where:
- (a) the interest earned in that year is taken as the whole of the investment income credited to the fund during that year, and
- (b) the mean fund of that year is ascertained by adding half of the value of the fund as it stood at the beginning of that year to half of the value of the fund as it stood at the end of that year, and deducting from that sum half the interest earned in that year.

5 Statements in actuarial abstracts

An abstract prepared for the purposes of section 28 (2) of the Act:

- (a) must be signed by the actuary who made the relevant investigation under section 28 (1) of the Act, and
- (b) must contain a statement, signed by the actuary, to the effect that the abstract is in accordance with the valuation report on which it purports to be based, and
- (c) if the actuary is a permanent officer of the fund concerned, must contain a statement, signed by the actuary, to the effect that the actuary is satisfied that the data on which the valuation is based is accurate, or
- (d) if the actuary is not a permanent officer of the fund concerned, must contain:
- (i) a statement, signed by the actuary, specifying the precautions the actuary has taken to ensure that the data on which the valuation is based is accurate, and
- (ii) a statement, signed by a permanent officer of the fund, to the effect that the officer is satisfied that the data supplied to the actuary as the basis of the

valuation is accurate.

Schedule 3 Forms

(Clause 3 (2))

Form

(Funeral Funds Act 1979, Schedule 2, clause 3)

Specimen valuation liabilities used by (Name of fund determined by class of contributor, age of contributor on joining fund and period of payment of contributions by contributor) in valuation made at (date).

Contributions paid by contributors at that date (determined according to the same factors).

| Period during which contributor has been paying contributions | | 5 years | | 10 years | | (see note) | |
|---|----------------------------|---------------------------|---------------------|---------------------------|---------------------|---------------------------|---------------------|
| Class of contributor | Age of contributor (years) | Current contribution rate | Valuation liability | Current contribution rate | Valuation liability | Current contribution rate | Valuation liability |
| 1 Male who was single at the time he commenced to contribute and who has not since married | 20 30 40 50 | | | | | | |
| 2 Female who was single at the time she commenced to contribute and who has not since married | 20 30 40 50 | | | | | | |

| | | | | | | | |
|---|----------------------|--|--|--|--|--|--|
| 3 Male who was already married at the time of commencing to contribute and who has remained married to the same woman, that woman being 5 years younger than he | 20 30 40 50 | | | | | | |
|---|----------------------|--|--|--|--|--|--|

Note

Add like columns as necessary corresponding to intervals of 10 years until all periods of contributions on which valuation is based are accounted for in this table.

Current retail value (at the valuation date) of the funeral service which is taken as the basis of the valuation liabilities stated in the table is as follows:

Basis on which provision is made for future expenses in this table is as follows:

Signature:

Date: