

A BILL

i n t i t u l e d

An Act to amend the Employees Provident Fund Act 1991.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Employees Provident Fund (Amendment) Act 2015.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 2

2. The Employees Provident Fund Act 1991 [*Act 452*], which is referred to as the “principal Act” in this Act, is amended in section 2 by inserting after the definition of “Chairman” the following definition:

‘ “loan” includes financing in accordance with Shariah;’.

New sections 23A, 23B, 23C and 23D

3. The principal Act is amended by inserting after section 23 the following sections:

“Establishment of Shariah Advisory Committee

23A. (1) The Board shall establish a Shariah Advisory Committee which shall be the authority for the ascertainment of Shariah matters for the purposes of advising the Board and the Investment Panel in ensuring that the management of the accounts of the members of the Fund whose elections under section 43A have come into effect complies with Shariah principles, including the contributions, investment and dividend.

(2) The Shariah Advisory Committee may determine its own procedures.

Functions of Shariah Advisory Committee

23B. The Shariah Advisory Committee shall have the following functions:

- (a) to ascertain the application of Shariah principles on any matter relating to the accounts of the members of the Fund whose elections under section 43A have come into effect;
- (b) to advise the Board and the Investment Panel on any matter relating to Shariah and the application of Shariah principles on any matter relating to the accounts of the members of the Fund whose elections under section 43A have come into effect;
- (c) such other functions as may be prescribed by the Board.

Appointment of members of Shariah Advisory Committee

23c. (1) The Board may appoint such number of persons, which shall not be less than three, from amongst persons who are qualified in Shariah, or who have knowledge or experience in Shariah and in banking, finance, law or such other related disciplines, as members of the Shariah Advisory Committee.

(2) Members of the Shariah Advisory Committee shall not be entitled to any remuneration but may be paid such honorarium, and travelling and subsistence allowances, as the Board may determine.

Reference to Shariah Advisory Committee

23D. (1) The Board and the Investment Panel shall refer to the Shariah Advisory Committee any matter relating to Shariah and any matter which requires the ascertainment of Shariah principles by the Shariah Advisory Committee relating to the accounts of the members of the Fund whose elections under section 43A have come into effect.

(2) The advice given by the Shariah Advisory Committee on any matter referred under subsection (1) shall be binding on the Board and the Investment Panel.”.

Amendment of section 26

4. Subsection 26(1) of the principal Act is amended—

(a) in paragraph (a)—

(i) by substituting for subparagraph (ii) the following subparagraph:

“(ii) a bank or an investment bank duly licensed under the Financial Services Act 2013 [Act 758]; or”;

(ii) by substituting for subparagraph (iii) the following subparagraph:

“(iii) an Islamic bank duly licensed under the Islamic Financial Services Act 2013 [Act 759]; or”; and

(iii) by inserting after subparagraph (iii) the following subparagraph:

“(iv) a development financial institution regulated under the Development Financial Institutions Act 2002 [Act 618];”;

(b) in paragraph (b), by substituting for subparagraph (i) the following subparagraph:

“(i) shares offered pursuant to an initial public offering which have been approved under the Capital Markets and Services Act 2007 [Act 671] or shares listed on a stock exchange which have been approved under the same Act; or”; and

(c) in paragraph (e), by substituting for the words “Federal or State Government” the words “the Government of Malaysia or the State Government”.

Substitution of section 27

5. The principal Act is amended by substituting for section 27 the following section:

“Declaration of dividend

27. (1) At or after the end of the financial year, being the 31st December of each year, the Board shall, with the approval of the Minister, declare a dividend on contributions to the Fund in respect of that year—

(a) in relation to contributions made by the members of the Fund who have not elected for their accounts to be managed according to Shariah under section 43A or who have made the elections under section 43A but the elections have not come into effect, at any rate according to the actual performance of the investment made by the Board in relation to the accounts which shall not be less than two and one half per centum per annum; and

(b) in relation to contributions made by the members of the Fund whose elections under section 43A have come into effect, at any rate according to the actual performance of the investment made by the Board in relation to the accounts.

(2) Subject to section 50, the dividend declared under subsection (1) shall be payable on contributions to the Fund according to the accounts of the members of the Fund respectively.

(3) Notwithstanding paragraphs (1)(a) and (b), no rate of dividend exceeding two and one half per centum per annum shall be so declared—

- (a) unless the Board is satisfied that the ability of the Fund to meet all payments required to be paid under this Act is not endangered by the declaration of such rate; and
- (b) if any sums advanced by the Government of Malaysia under section 28 have not then been repaid.”.

Amendment of section 43

6. Section 43 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) Subject to section 52, the monthly contribution of every employee and employer who are subject to the minimum wages order made under the National Wages Consultative Council Act 2011 [Act 732] shall not be less than the monthly contributions based on the amount of the minimum wages for the month as determined under the minimum wages order at the rate respectively set out in the Third Schedule.”; and

(b) in subsection (3), by substituting for the words “subsection (1)” the words “subsections (1) and (1A)”.

New section 43A

7. The principal Act is amended by inserting after section 43 the following section:

“Election for account of member of the Fund to be managed according to Shariah

43A. (1) A member of the Fund may elect for all amount standing to the credit of his account to be managed according to Shariah subject to any terms and conditions as may be prescribed by the Board.

(2) The election under subsection (1) shall be made in such manner as may be prescribed by the Board and the election shall take effect from the date as determined by the Board.

(3) The Board shall notify the effective date of the election determined under subsection (2) to the member of the Fund not less than seven days before the effective date.

(4) The member of the Fund may, before the effective date of the election determined under subsection (2), revoke his election in such manner as may be prescribed by the Board.

(5) After the election made under subsection (1) is effective, the Board shall segregate the account of such member of the Fund from other accounts of the members of the Fund—

(a) who have not made the election under subsection (1); and

(b) who have made the election under subsection (1) but the election has not come into effect,

for the purposes of managing the account of the member of the Fund according to Shariah.”.

Amendment of section 45

8. Section 45 of the principal Act is amended by substituting for subsection (3) the following subsection:

“(3) Notwithstanding section 49, where an employer fails to pay any contributions due within such period as prescribed by the Minister, the employer shall, in addition to such contributions, be liable to pay dividend on such contributions at the rate and in accordance with any manner and calculation determined by the Board.”.

Amendment of section 46

9. Section 46 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) For the purpose of this section—

“contribution” shall be deemed to include any dividend and late payment charges due on any contributions;

“partner”—

(a) means any partner referred to in the Partnership Act 1961 [*Act 135*]; or

(b) has the meaning assigned to it under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 [*Act 707*] and the Limited Liability Partnerships Act 2012 [*Act 743*].”.

Amendment of section 49

10. Section 49 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**Interest**” the words “**Late payment charges**”;

(b) in subsection (1), by substituting for the word “interest” the words “late payment charges”; and

(c) in subsection (2), by substituting for the word “interest” the words “late payment charges”.

Amendment of section 50

11. Subsection 50(2B) of the principal Act is amended by substituting for paragraph (b) the following paragraph:

“(b) dividend shall be credited on any amount standing to the credit of a member of the Fund until all sums of money standing to the credit of such member are transferred to the Registrar of Unclaimed Money under section 51A.”.

Amendment of section 51

12. Section 51 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Notwithstanding subsection (1), the amount standing to the credit of a member of the Fund under paragraph (1)(c) may be forfeited if the amount standing to the credit of such member is subject to an order of forfeiture by a court under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613].”.

Amendment of section 51A

13. Section 51A of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Notwithstanding section 51, the Board may transfer to the Registrar of Unclaimed Money all sums of money standing to the credit of a member of the Fund which have not been claimed when such member has attained the age of one hundred years or any age limit as may be prescribed by the Board, whichever is higher.”.

Amendment of section 54c

14. Section 54c of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

“(2A) A member of the Fund who has made a withdrawal under subsection (1) or (2) shall not make any other withdrawal under the same subsection.”; and

(b) by deleting subsection (3).

New section 55B

15. The principal Act is amended by inserting after section 55A the following section:

“Contribution to and withdrawal from the Fund for a member of the Fund who has attained the age of sixty years

55B. (1) Notwithstanding section 55A, any contribution that has been credited into the account of a member of the Fund after the member has attained the age of fifty-five years may only be withdrawn when the member attains the age of sixty years or such other age as may be prescribed by the Minister by order published in the *Gazette*, whichever is higher.

(2) The Board may authorize a member of the Fund who has attained the age of sixty years or such other age as may be prescribed under subsection (1), whichever is higher, to withdraw all sums or part of the amount standing to his credit subject to any terms and conditions as may be prescribed by the Board.”.

Amendment of section 59

16. Section 59 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) If any person or member of the Fund has made an application for withdrawal for a particular purpose and charged with an offence under subsection (1) in relation to that application, the Board may not authorize another application for withdrawal by the person or member of the Fund for the same purpose until the charge is disposed of in due course of law.”.

Amendment of section 65

17. Subsection 65(3) of the principal Act is amended by substituting for the word “interest” the words “late payment charges”.

Amendment of section 66

18. Subsection 66(2) of the principal Act is amended by substituting for the word “interest” the words “late payment charges”.

New section 69A

19. The principal Act is amended by inserting after section 69 the following section:

“Public Authorities Protection Act 1948

69A. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Board, a member of the Board, a member of the Investment Panel, a member of a committee established by the Board, and any officer and servant of the Board in respect of any act, neglect or default done or committed by it or him, or any omission by it or him, in good faith in such capacity.”.

Amendment of section 70c

20. Section 70c of the principal Act is amended—

(a) by renumbering the existing section as subsection (1);

(b) in the renumbered subsection (1)—

(i) in paragraph (b), by deleting the word “or” at the end of that paragraph;

(ii) in paragraph (c), by substituting for the full stop at the end of that paragraph the words “; or”; and

(iii) by inserting after paragraph (c) the following paragraph:

“(d) the member of the Fund has attained the age of fifty-five years.”; and

(c) by inserting after subsection (1) the following subsections:

“(2) Where a member of the Fund who is not a Malaysian citizen has made a withdrawal of all amount standing to his credit under paragraph (1)(d), the member of the Fund shall not be treated as an employee under this Act unless he has given to the Board and his employer a notice as may be prescribed by the Board of his intention to contribute to the Fund.

(3) Subject to subsections 59(1a) and (3), the Board may authorize an application by a member of the Fund who is not a Malaysian citizen to withdraw part of the amount standing to his credit for the purposes of withdrawal under subsection 54(6) upon any terms and conditions as may be prescribed by the Board.”.

Amendment of section 70E

21. Section 70E of the principal Act is amended by substituting for the words “54, 54A, 55A,” the words “54 (other than subsection (6)), 55A (other than subsection (2)),”.

New section 70H

22. The principal Act is amended by inserting after section 70G the following section:

“Cessation of dividend payments and transfer to Registrar of Unclaimed Money

70H. Notwithstanding subsection 50(2B) and section 51, no dividend shall be credited into the account of a member of the Fund who is not a Malaysian citizen if no contribution has been credited into his account after a period of three years from the date of the last contribution was credited, and the Board may transfer all sums of money standing to his account to the Registrar of Unclaimed Money after the expiration of such period.”.

Amendment of section 71

23. Section 71 of the principal Act is amended by deleting paragraph (g).

Amendment of section 73

24. Section 73 of the principal Act is amended—

(a) by inserting after paragraph (d) the following paragraph:

“(da) to provide for any matter relating to the election by the members of the Fund for their accounts to be managed according to Shariah under section 43A and the management of such accounts;”;

(b) in paragraph (f), by deleting the words “, together with any dividend on such contributions”; and

(c) by deleting paragraph (o).

EXPLANATORY STATEMENT

This Bill seeks to amend the Employees Provident Fund Act 1991 (“Act 452”).

2. *Clause 1* contains the short title of the proposed Act and empowers the Minister to appoint different dates for the coming into operation of different provisions of the proposed Act.

3. *Clause 2* seeks to introduce a new definition of “loan” into Act 452 to clarify that the meaning of the word “loan” is to include financing in accordance with Shariah.

4. *Clause 3* seeks to introduce new sections 23A, 23B, 23C and 23D into Act 452.

The proposed section 23A seeks to provide for the establishment of the Shariah Advisory Committee which shall be the authority for the ascertainment of Shariah matters for the purposes of advising the Board and the Investment Panel in ensuring that the management of the accounts of the members of the Fund whose elections for their accounts to be managed according to Shariah under the proposed section 43A have come into effect complies with Shariah principles.

The proposed section 23B seeks to provide for the functions of the Shariah Advisory Committee.

The proposed section 23C seeks to provide for the appointment of the members of the Shariah Advisory Committee.

The proposed section 23D seeks to require the Board and the Investment Panel to refer to the Shariah Advisory Committee on any matter relating to Shariah and any matters which requires the ascertainment of Shariah principles by the Shariah Advisory Committee relating to the accounts of the members of the Fund whose elections for their accounts to be managed according to Shariah under the proposed section 43A have come into effect. The advice given by the Shariah Advisory Committee on any matter referred is binding on the Board and the Investment Panel.

5. *Clause 4* seeks to amend section 26 of Act 452 to expand the scope of investment of the Fund that may be made by the Board.

Subclause 4(a) seeks to enable the Board to invest moneys belonging to the Fund by depositing the moneys in a bank or an investment bank duly licensed under the Financial Services Act 2013 [*Act 758*], an Islamic bank duly licensed under the Islamic Financial Services Act 2013 [*Act 759*] or a development financial institution regulated under the Development Financial Institutions Act 2002 [*Act 618*].

Subclause 4(b) seeks to enable the Board to invest moneys belonging to the Fund in shares offered pursuant to an initial public offering which have been approved under the Capital Markets and Services Act 2007 [*Act 671*] or shares listed on a stock exchange which have been approved under Act 671.

6. *Clause 5* seeks to substitute section 27 of Act 452.

The proposed subsection 27(1) seeks to require the Board, with the approval of the Minister, to declare dividend on contribution to the Fund. In respect of contributions made by the members of the Fund who have not elected for their accounts to be managed according to Shariah under the proposed section 43A or who have made the elections under the proposed section 43A but the elections have not come into effect, the Board shall declare any rate of dividend according to the actual performance of the investment made by the Board in relation to the accounts which shall not be less than two and one half per centum per annum. In respect of contributions made by the members of the Fund whose elections for their accounts to be managed according to Shariah under the proposed section 43A have come into effect, the Board shall declare dividend at any rate according to the actual performance of the investment made by the Board in relation to the accounts.

The proposed subsections 27(2) and (3) are the existing provisions of section 27 which have been redrafted for the purposes of clarity. The proposed subsection 27(2) seeks to provide that the dividend declared in accordance with the proposed subsection 27(1) shall be payable on contributions to the Fund according to the accounts of the members of the Fund respectively. The proposed subsection 27(3) seeks to prohibit the declaration of any rate of dividend exceeding two and one half per centum per annum in certain situations.

7. *Clause 6* seeks to amend section 43 of Act 452 to provide for the minimum monthly contributions of every employee and employer who are subject to the minimum wages order made under the National Wages Consultative Council Act 2011 [Act 732] which shall not be less than the monthly contributions based on the amount of the minimum wages for the month as determined under the minimum wages order at the rate respectively set out in the Third Schedule.

8. *Clause 7* seeks to introduce a new section 43A into Act 452 to allow a member of the Fund to elect for all amounts standing to the credit of his account to be managed in accordance with Shariah subject to the prescribed terms and conditions. However, the election shall take effect only from the date as determined by the Board. The Board is required to notify the effective date of the election so determined to the member of the Fund not less than seven days before the effective date. The member of the Fund who has made the election may revoke the election at any time before the effective date of the election. After the election is effective, the Board shall segregate the account of the member of the Fund for the purpose of managing the account according to Shariah.

9. *Clause 8* seeks to amend subsection 45(3) of Act 452 to provide that where an employer fails to pay any contributions due within such period as may be prescribed by the Minister, the employer shall, in addition to such contributions, be liable to pay dividend on such contributions at the rate and in accordance with any manner and calculation determined by the Board.

10. *Clause 9* seeks to amend subsection 46(2) of Act 452 to provide for the definitions of “contribution” and “partner”.

11. *Clause 10* seeks to amend section 49 of Act 452 to provide that if the monthly contribution is not paid within the prescribed period, the employer shall be liable to pay late payment charges on such amount at such rate and in accordance with any manner and calculation determined by the Board. The existing provision imposes “interest” on the contribution which is not paid within the prescribed period. However, since the contribution could be from the accounts of the members of the Fund whose elections for their accounts to be managed according to Shariah under the proposed section 43A have come into effect or otherwise, the words “late payment charges” are used instead of the word “interest” so that the words used could be applicable to all accounts.

12. *Clause 11* seeks to amend paragraph 50(2B)(b) of Act 452 to provide that dividend shall be credited on any amount standing to the credit of a member of the Fund until all sums of money standing to the credit of such member are transferred to the Registrar of Unclaimed Money as provided under the proposed subsection 51A(1). The existing provision of paragraph 50(2B)(b) disallows dividend to be credited into the account of a member after he has attained the age of seventy-five years.

13. *Clause 12* seeks to introduce a new subsection 51(2) into Act 452 to provide that the amount standing to the credit of a member of the Fund under paragraph 51(1)(c) of Act 452 as renumbered by this proposed amendment may be forfeited if the amount standing to the credit of such member is subject to an order of forfeiture by a court under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613].

14. *Clause 13* seeks to amend subsection 51A(1) of Act 452 to increase the age limit for the purpose of transferring all sums of money standing to the credit of a member of the Fund which have not been claimed to the Registrar of Unclaimed Money from the existing age of eighty years to one hundred years or at any age limit as may be prescribed by the Board, whichever is higher.

15. *Clause 14* seeks to amend section 54c of Act 452.

Subclause 14(a) seeks to introduce a new subsection 54c(2A) into Act 452 to limit the withdrawal made under subsection 54c(1) or (2) by a member of the Fund who is a pensionable employee to only once.

Subclause 14(b) seeks to delete subsection 54c(3) of Act 452 to remove the provision that where a member of the Fund has made a withdrawal under subsection 54c(1) or (2), he shall not be treated as an employee under Act 452 unless certain requirements are met. This proposed amendment will enable a person who has made the withdrawal under subsection 54c(1) or (2) and opted out from the service of the Government of Malaysia, any State Government or any statutory or local authority to be treated as an employee under Act 452 if the person opts to join the service of the Government of Malaysia, any State Government or any statutory or local authority again.

16. *Clause 15* seeks to introduce a new section 55B into Act 452 to provide that any contribution that has been credited into the account of a member of the Fund after the member has attained the age of fifty-five years may only be withdrawn when the member attains the age of sixty years or such other age as may be prescribed by the Minister by order published in the *Gazette*, whichever is higher.

17. *Clause 16* seeks to introduce a new subsection 59(1A) into Act 452 to provide that if any person or member of the Fund has made an application for withdrawal for a particular purpose and charged with an offence under subsection 59(1) in relation to that application, the Board may not authorize another application for withdrawal by the person or the member of the Fund for the same purpose until the charge is disposed of in due course of law.

18. *Clauses 17 and 18* seek to amend subsections 65(3) and 66(2) of Act 452 respectively to clarify that the word “contribution” referred to in those sections shall be deemed to include “late payment charges”. The existing provisions defined “contribution” to include “interest”. However, since the contribution could be from the accounts of the members of the Fund whose elections for their accounts to be managed according to Shariah under the proposed section 43A have come into effect or otherwise, the words “late payment charges” are used instead of the word “interest” so that the words used could be applicable to all accounts.

19. *Clause 19* seeks to introduce a new section 69A into Act 452 to provide for the application of the Public Authorities Protection Act 1948 [*Act 198*].

20. *Clause 20* seeks to amend section 70c of Act 452.

Paragraph 20(b)(iii) seeks to introduce a new paragraph 70c(1)(d) as renumbered by this proposed amendment into Act 452 to empower the Board to authorize the withdrawal of all amount standing to the credit of a member of the Fund who is not a Malaysian citizen if he has attained the age of fifty-five years.

Subclause 20(c) seeks to introduce new subsections 70c(2) and (3) into Act 452. The proposed subsection 70c(2) seeks to provide that where a member of the Fund who is not a Malaysian citizen has made a withdrawal of all amount standing to his credit under the proposed paragraph 70c(1)(d), the member of the Fund shall not be treated as an employee under Act 452 unless he has given to the Board and his employer a notice as may be prescribed by the Board of his intention to contribute to the Fund. The proposed subsection 70c(3) seeks to enable the Board to authorize an application by a member of the Fund who is not a Malaysian citizen to withdraw part of the amount standing to his credit for the purposes of withdrawal under subsection 54(6) of Act 452 upon any terms and conditions as may be prescribed by the Board.

21. *Clause 21* seeks to amend section 70E of Act 452 to provide that subsection 54(6), section 54A and subsection 55A(2) of Act 452 are now applicable to a member of the Fund who is not a Malaysian citizen. With this proposed amendment, a member of the Fund who is not a Malaysian

citizen and has not attained the age of fifty-five years may withdraw part of the amount standing to his credit under subsection 54(6) of Act 452. This amendment also seeks to require the Board to pay dividend on such amount withdrawn under subsection 54(6) of Act 452 or credit such dividend on the amount so withdrawn into the account of the member of the Fund who is not a Malaysian citizen.

22. *Clause 22* seeks to introduce a new section 70H into Act 452 to provide that no dividend shall be credited into the account of a member of the Fund who is not a Malaysian citizen if no contribution has been credited into his account after a period of three years from the date of the last contribution was credited, and the Board may transfer all sums of money standing to his account to the Registrar of Unclaimed Money after the expiration of such period.

23. *Clause 23* seeks to delete paragraph 71(g) of Act 452 to remove the power of the Minister to make regulations to provide for the offences which may be compounded by the Board.

24. *Clause 24* seeks to amend section 73 of Act 452.

Subclause 24(a) seeks to introduce a new paragraph 73(da) into Act 452 to provide for the power of the Board to make rules for any matter relating to the elections by the members of the Fund for their accounts to be managed according to Shariah under the proposed section 43A and the management of such accounts.

Subclause 24(b) seeks to amend paragraph 73(f) of Act 452 to provide for the power of the Board to make rules for the return of contributions, or any part of such contributions, paid in error without mentioning whether the return of contribution is together with the dividend or not. This is because there are certain circumstances where the return of contribution is made without dividends.

Subclause 24(c) seeks to amend paragraph 73(o) of Act 452 to remove the power of the Board to make rules to prescribe the procedure relating to finance and accounts of the Fund as the procedure will be done administratively.

25. Other amendments not specifically dealt with in this Statement are amendments which are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U)2928]