



LAWS OF MALAYSIA

Act A1504

**EMPLOYEES PROVIDENT FUND
(AMENDMENT) ACT 2016**

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LAWS OF MALAYSIA

Act A1504

**EMPLOYEES PROVIDENT FUND
(AMENDMENT) ACT 2016**

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 2016.

(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).

