

CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

SUPPLEMENTAL CONTRIBUTORY PENSIONS ORDER, 2009

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CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

SUPPLEMENTAL CONTRIBUTORY PENSIONS ORDER, 2009

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

**PART I
PRELIMINARY**

Citation, commencement and long title.

1. (1) This Order may be cited as the Supplemental Contributory Pensions Trust Order, 2009 and shall commence on 1st. January, 2010.

[S 2/2016]

(2) The long title of this Order is “An Order to establish the Supplemental Contributory Pensions Trust and to provide for all matters connected therewith or incidental thereto”.

[S 30/2014;S 2/2016]

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

“annual dividend” means the rate of dividend on SCP account balance of members declared annually by the Board under section 7(6);

“approve” means approved by the Board;

BLUV as at 18th January 2016

“average wage” means the average of wages applicable to an employee, as computed pursuant to the regulations made under section 39;

“Board” means the Tabung Amanah Pekerja Board established under section 3 of the Tabung Amanah Pekerja Board Order, 2016;

[S 30/2014; S 2/2016]

“contract” means any contract, whether written or oral and whether expressed or implied;

“derivative SCP benefit” means the monthly derivative SCP benefit payable to any person under section 23;

“employee” means any person between the ages of 18 and 60 being a citizen of Brunei Darussalam or a permanent resident of who –

(a) is employed under a contract of service or apprenticeship or other agreement to work for an employer; and

(b) had not received any payment under section 20(1):

Provided that the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by an order signified in the *Gazette* declare any person or class of persons not to be an employee for purposes of this Order;

“employer” means the person with whom an employee has entered into a contract of service or apprenticeship and includes –

(a) any person, company, association or body of persons, whether or not statutory or incorporated, by whom an employee is employed;

(b) the owners of any vessel on which an employee is employed;

(c) any manager, agent or person who is responsible for the payment of wages to an employee on behalf of an employer;

(d) any foreign mission in Brunei Darussalam;

(e) the Government in respect of such categories, classes or descriptions of officers or employees as may be declared by the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette* to be employees for the purposes of this Order:

Provided that no such officer or employee employed by or on behalf of the Government shall be personally liable for anything done or omitted to be done by him as an officer or employee of the Government in good faith;

“Fund” means the Tabung Amanah Pekerja Fund established under section 11 of the Tabung Amanah Pekerja Board Order, 2016;

[S 2/2016]

“*Hukum Syara*” means the laws of Islam according to the *Shafi’ee, Hanafi, Maliki* or *Hanbali* sect of *Ahlis Sunnah Waljamaah*;

“inspector” means an inspector appointed under section 6(1);

“member” means a member of the Trust to whose credit any amount is standing in the Trust and includes a self-employed person who contributes to the Trust voluntarily under section 9;

[S 2/2016]

“Minister” means the Minister of Finance;

“SCP account” means an SCP account maintained under section 17(1);

“SCP account balance” means the sum of money standing to the credit in the SCP account of a member;

[S 2/2016]

“SCP benefit” means the monthly SCP benefit payable to a member under section 21;

“self-employed person” means any person between the ages of 18 and 60 years who, being a citizen of Brunei Darussalam or permanent resident and not being employed under a contract of service or apprenticeship, engages in any trade, vocation, profession or other activity in Brunei Darussalam for the purpose of gain;

“survivorship benefit” means the monthly survivorship benefit payable to a person under section 22;

“survivorship protection fund” means the survivorship protection fund referred to in section 7(4);

“wages” means the remuneration in money due to an employee in respect of his employment whether agreed to be paid monthly, weekly, daily or otherwise and includes any bonus, commission or allowance payable by the employer whether such bonus, commission or allowance is payable under his contract of service, apprenticeship or agreement or otherwise, but does not include –

- (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any amenity or services;
- (b) any contribution paid by the employer on his own account to any pension fund or provident fund;
- (c) any travelling allowance or the value of any travelling concession;
- (d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (e) any gratuity payable on discharge or retirement;

- (f) service charge;
- (g) overtime benefit;
- (h) retrenchment, lay-off or termination benefits; or
- (i) such other remuneration or payment as the Minister may, by notification in the *Gazette*, specify.

(2) For the purpose of this Order, where the amount of bonus payable by an employer to an employee –

(a) is 2 months or less in the aggregate for one year, such amount of bonus shall be disregarded in the computation of the wages of the employee;

(b) exceeds 2 months in the aggregate for one year, only such amount of bonus as is in excess of 2 months shall be included in the computation of the wages of the employee.

3. *(Repealed by S 30/2014).*

3A. *(Repealed by S 2/2016).*

4. *(Repealed by S 30/2014).*

5. *(Repealed by S 2/2016).*

Appointment of inspectors.

6. (1) The Board may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint such number of inspectors as it may consider necessary for carrying this Order into effect.

(2) The Commissioner of Labour, Deputy Commissioner of Labour and any Assistant Commissioner of Labour under the Employment Order, 2009 (S 37/09) may exercise all or any of the powers of an inspector for the purposes of this Order.

(3) In the course of an inspection, an inspector or any of the officers referred to in subsection (2) may at any reasonable time –

(a) enter any premises or place where he has reasonable cause to believe that a person is employed therein;

(b) examine, either alone or in the presence of any other person with respect to any matters under this Order or which he may reasonably require information, any person whom he has reasonable cause to believe to be or to have been an employee or an employer, and require every such person to be examined and for the purposes of such examination may summon any such person to attend at the place and time specified in such summons;

(c) put questions concerning employees to their employers or to any person who may be in charge of them, or to the employees themselves, or to any other person whom he may consider desirable to question and the employers or employees or other person shall be legally bound to answer the questions truthfully to the best of his ability;

(d) require any employer to produce before him all or any of the employees employed by him together with any contract of service, book of account of salary, register and other document concerning employees of their employment and to answer such questions relating thereto as he may think proper to ask;

(e) require any employer to produce for his inspection the audited statements of accounts of his undertaking and other records relating to the accounts and to answer such questions relating thereto as he may think proper to ask; and

(f) make copies of any book, document or paper required to be produced under paragraphs (d) or (e) and take possession of such book, document or paper when in his opinion –

(i) the copying thereof cannot reasonably be performed without taking possession;

(ii) the book, document or paper may be tampered with unless possession is taken; or

- (iii) the book, document or paper may be required as evidence in any proceedings for an offence under this Order or in any proceedings for the recovery of any monies due to the Trust.

[S 2/2016]

(4) If any person wilfully –

(a) delays an inspector or any of the officers referred to in subsection (2) in the exercise of any power under this section;

(b) fails to comply with the requisition of an inspector or any such officer in pursuance of this section or to produce any records, certificate, notice or document which he is required by this section to produce;

(c) withholds any information as to the identity of the employees of any employer or as to the identity of the employer of any employee; or

(d) conceals, prevents, attempts to conceal or prevent a person from appearing before or being examined by an inspector or such officer,

he shall be deemed to have obstructed that inspector or officer in the execution of his duties under this Order.

(5) Any person who obstructs an inspector or any of the officers referred to in subsection (2) is guilty of an offence.

PART II

CONTRIBUTIONS TO TRUST

[S 2/2016]

Establishment of Supplemental Contributory Pensions Trust.

7. (1) For the purposes of this Order, there is hereby established a trust to be known as the Supplemental Contributory Pensions Trust into which shall be paid all contributions authorised under this Order and out of which shall be met all payments authorised to be paid under this Order.

[S 2/2016]

(2) *(Deleted by S 2/2016).*

(3) *(Deleted by S 2/2016).*

(4) Each member shall be assigned an individual account within the Trust to be called the SCP account to which all contributions for that member shall be credited, excluding that portion of contributions to be paid into the survivorship protection Trust under sections 8, 9 and 10.

[S 2/2016]

(5) An annual dividend reflecting the income generated from investment of the Trust also shall be credited to the SCP account.

[S 2/2016]

(6) An annual dividend shall be payable on the SCP account balance at such rate as the Board may declare.

(7) The Board shall not declare a rate of annual dividend except with the approval of the Minister.

(8) The Board, with the objective of reducing fluctuations in the rate of annual dividend from year to year, may not declare a rate of annual dividend in any one year which is higher than the average of actual total annual return on investments of the Trust over the 5 years up to and including that year, calculated following internationally accepted accounting principles and standards for valuing investment portfolios; the surplus from years where the declared rate of annual dividend is lower than the actual total return shall be accounted for separately and used solely for allocation to members' SCP account balances in years where the declared rate of annual dividend is higher than the actual total return.

(9) During the first 4 years, the Board may not declare a rate of annual dividend in any year which is higher than the average annual total return up to that year since the establishment of the Trust.

[S 2/2016]

(10) If the Board is at any time unable to pay any sum which the Trust is required to pay under this Order, the sum required to be so paid shall be charged on and advanced to the Board from the Consolidated Fund and the Board shall as soon as practicable repay to the Government the sum so advanced.

[S 2/2016]

Rate of contributions by employers, employees and Government.

8. (1) Subject to any regulations under section 39, and except as otherwise provided in this section, every employer of an employee shall pay to the Trust monthly in respect of each employee contributions at the rate of 3 percent of his wages, plus an additional 0.5 percent to the survivorship protection fund.

[S 2/2016]

(2) The Board may, in its discretion and on such terms and conditions authorise an employer or a class of employers to pay the contributions under subsection (1) at other intervals not exceeding 3 months.

(3) Irrespective of an employee's wage, the minimum monthly contribution from the employer on behalf of the employee shall be \$17.50, of which \$15 shall be credited to the member's SCP account and \$2.50 shall be paid to the survivorship protection fund.

(4) With respect to contributions under subsection (1) in respect of an employee, the applicable wage shall be capped at 200 percent of average wage of the employee, such that contributions are not required for any amount over this threshold.

(5) Notwithstanding any written law or any contract to the contrary, an employer shall be entitled to recover from the monthly wages of an employee the amount recoverable from the employee.

(6) Where any employer who has recovered any amount from the monthly wages of an employee in accordance with subsection (5) fails to pay the contributions to the Trust within such time as may be prescribed by the Board, he is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 5 years or both.

[S 2/2016]

(7) Every employee shall pay to the Trust monthly in respect of himself, contributions at the rate of 3 percent of his wages plus an additional 0.5 percent to the survivorship protection fund.

[S 2/2016]

(8) The Board may, on such terms authorise an employee or a class of employees to pay the contributions under subsection (7) at other intervals not exceeding 3 months.

(9) The minimum monthly contribution from an employee under subsection (7) shall be \$17.50, of which \$15 shall be credited to the member's SCP account and \$2.50 shall be paid to the survivorship protection fund.

(10) Where 3.5 percent of an employee's wage amounts to less than \$17.50, the Government shall make a contribution on the employee's behalf to make up the shortfall between the employee's 3.5 percent contribution and \$17.50.

(11) With respect to the contributions under subsection (7) in respect of an employee, the applicable wage shall be capped at 200 percent of the average wage of the employee, such that contributions are not required for any amount over this threshold.

(12) Without prejudice to subsections (1) to (11) –

(a) an employer may at any time pay to the Trust voluntary contributions in respect of his employees at a rate in excess of the contribution rate under subsection (1);

(b) an employee may at any time contribute voluntarily to the Trust a sum additional to the contribution under subsection (7);

(c) an employee who desires to have the excess monthly contributions under paragraph (b) deducted from his monthly wages by his employer may give to his employer written notice to that effect, and thereafter, so long as he is employed by that employer, the employer shall make the deductions from his wages for each month until such time, not being less than 6 months from the giving of the previous notice, as he gives further written notice to his employer of his desire to cease to have the excess monthly contributions deducted from his wages, and the employer shall pay the amount of the excess deductions to the Trust in addition to the contributions under subsections (1) and (7).

[S 2/2016]

(13) Notwithstanding subsections (7) to (11), where wages are payable at intervals of less than one month, the employer may deduct from that employee's wages at the time of each payment.

(14) All voluntary contributions paid by or for any employee under subsection (12) shall be credited to the SCP account of the employee.

(15) In the event of the death of an employee, no contributions shall be due under this section by or on behalf of the employee in respect of the month during which his death occurs.

(16) Where any contribution referred to in subsection (15) has been received it shall be carried to the Trust in accordance with section 16.

[S 2/2016]

Voluntary contributions by self-employed person.

9. (1) Subject to the regulations or rules made under section 39, any self-employed person may at any time contribute voluntarily to the Trust.

[S 2/2016]

(2) Any self-employed person who chooses to pay voluntary contributions to the Trust shall pay to the Trust monthly in respect of himself a contribution of \$17.50, of which \$15 shall be credited to the person's SCP account and \$2.50 shall be paid to the survivorship protection fund.

[S 2/2016]

(3) The Board may on such terms and conditions authorise any self-employed person or class of self-employed persons to pay contributions under subsection (2) at other intervals not exceeding 3 months.

(4) Where any self-employed person has paid any voluntary contribution under subsection (2), the Government shall match the person's contribution with a contribution of \$17.50, of which \$15 shall be credited to the person's SCP account and \$2.50 shall be paid to the survivorship protection fund.

(5) Any self-employed person may at any time contribute voluntarily to the Trust a sum additional to the contribution under subsection (2).

[S 2/2016]

(6) All voluntary contribution made by a self-employed person under subsection (5) shall be credited to his SCP account.

(7) This section does not apply to any self-employed person who has received payment under section 20(1).

Payment of contributions.

10. (1) Except where otherwise provided in this Order, the employer shall, in the first instance, be liable to pay both the contributions payable by himself and also, on behalf of and to the exclusion of the employee, the contributions payable by that employee; and for the purposes of this Order, contributions paid by an employer on behalf of an employee shall be deemed to be contributions by the employee.

(2) Contributions payable by the employer for himself and on behalf of the employee under subsection (1) shall be paid in respect of the first and subsequent month's wages.

(3) Notwithstanding section 12, where an employer fails to pay any contributions due within the specified period, the employer shall in addition to such contributions be liable to pay the annual dividend which would have accrued on such contributions if such contributions had been paid by the employer within the specified period and such annual dividend shall be calculated and credited to the SCP account of the employee such proportion as the Board may determine.

(4) Where the annual dividend for a particular year has not been declared by the Board, the annual dividend declared for the year preceding that year shall apply for the purpose of calculating annual dividend for that year.

Recovery by employer of employee's contributions.

11. (1) Subject to this section, the employer shall be entitled to recover from the employee, the amount of any contribution payable on behalf of the employee.

(2) The amount of any contribution payable by the employer on behalf of the employee shall, notwithstanding any written law or any contract to the contrary, be so recoverable by means of deductions from the wages of the employee due from the employer to the employee and not otherwise.

- (3) No deduction of any contribution shall be made –
- (a) except at the time wages are paid to the employee; and
 - (b) other than the contribution in respect of the wages which are then being paid.

(4) Subject to such conditions as may be prescribed by the Board, where an employer has, by error not occasioned by the employer's negligence omitted to deduct any contribution or part of any contribution payable by him on behalf of the employee, then, such contribution or part thereof may be deducted from the wages payable by such employer to the employee not later than 6 months from the date of the payment of the wages in respect of which the contribution or part thereof was omitted to be deducted.

- (5) Any employer who contravenes subsections (2) or (3) is guilty of an offence.

Payment of service charge on contributions in arrears.

12. (1) Where the amount of the contributions which an employer is liable to pay under section 8 in respect of any month is not paid within the specified period, the employer is liable to pay service charge on such amount for every day such amount remains unpaid commencing from the first day of the month succeeding the month in respect of which the amount is payable and the service charge shall be calculated at such rate as may be determined by the Board.

[S 2/2016]

(2) The Board may, in any case in which it thinks fit, waive the payment of the whole or part of, or remit in whole or in part, any service charge due or paid under subsection (1).

Refund of contributions paid in error.

13. (1) Where the Board is satisfied that any amount has been paid in error to the Trust in respect of any person or as service charge under section 12, the Board may refund the amount so paid in error to the Government or the person by whom it was paid, as the case may be.

[S 2/2016]

(2) If the refund of any amount paid in error under subsection (1) is not claimed within one year from the date on which it was paid, the amount paid in error shall not be refunded but shall be deemed to have been properly paid under the provisions of this Order as service charge or for the Government or the person in respect of whom it was paid, as the case may be.

(3) No refund shall be made and no amount shall be set off under this section except with the consent of the Board which may require the Government or any person who claims to have paid any amount to the Trust in error to make written application for refund and to furnish such information as the Board may require to determine the amount so paid.

[S 2/2016]

14. *(Repealed by S 2/2016).*

15. *(Repealed by S 2/2016).*

Contributions to be paid into Fund.

16. (1) All sums recovered or collected on account of contributions to the Trust under this Order shall be paid into or carried to the Fund in such manner as the Board may determine.

[S 2/2016]

- (2) The Board shall cause to be credited to each member –
- (a) the amount of every contribution paid to the Trust for him, excluding that portion of contribution to be paid into the survivorship protection fund; and
 - (b) annual dividend at the rate declared under section 7(6) at such intervals as the Board may determine and on the amount standing to his credit in the Trust at such time as the Board may determine.

[S 2/2016]

Crediting of contributions into SCP account.

17. (1) There shall be maintained for each member in respect of the money standing to his credit a SCP account in the Trust.

[S 2/2016]

- (2) The Board shall credit to the SCP account every contribution paid into the Trust for a member, excluding that portion of contribution paid into the survivorship protection fund under sections 8, 9 and 10, in such manner as the Minister may direct, and the Minister may give different directions in respect of different classes of members.

[S 2/2016]

Catch-up payment by Government for transition generation.

18. (1) Where a person belongs to the transition generation, there shall be paid by the Government a lump sum catch-up contribution of such amount as the Minister may determine to be paid to his SCP account.

- (2) The lump sum catch-up contribution payable to a person under subsection (1) shall be –

- (a) for the period the person attains the age of 25 years at any time after 1st. January, 1993 up to 31st. December, 2009; and
- (b) determined after taking into account the number of months the person has contributed to Tabung Amanah Pekerja as at 31st. December, 2009.

(3) For the purpose of this section, “transition generation” means citizens of Brunei Darussalam and permanent residents who are members of Tabung Amanah Pekerja on 31st. December, 2009 and who have not attained the age of 55 years on that date.

PART III
PAYMENTS FROM TRUST

[S 2/2016]

Authority for payment from Trust.

19. No sum of money standing to the credit of a member may be paid from the Trust except with the authority of the Board and, subject to any regulations and rules made under section 39 such authority shall not be given unless the Board is satisfied that the member –

- (a) has died;
- (b) has attained the age of 60 years; or
- (c) is about to leave Brunei Darussalam with no intention of returning thereto.

[S 2/2016]

Lump sum payment for member leaving Brunei Darussalam permanently or dying without dependants.

20. (1) Where authority is granted to a member under section 19(c), a lump sum payment equal to his SCP account balance shall be paid to him.

(2) Where a member dies and no person is eligible to be paid any monthly survivorship benefit under section 22, a lump sum payment equal to his SCP account balance at the time of his death shall be paid to his estate and distributed in accordance with –

- (a) if the member was a Muslim at the time of his death, *Hukum Syara*’;
- (b) if the member was a non-Muslim at the time of his death, his will or if there is no will, the law relating to intestate succession.

[S 2/2016]

Amount of SCP benefit.

21. (1) Where a member has attained the age of 60 years, there shall be paid to him a monthly SCP benefit of such amount as the Board may determine during the prescribed period of his life in accordance with this section.

[S 2/2016]

(2) The member's SCP account balance shall determine the amount of the monthly SCP benefit.

(3) The SCP benefit shall have the following characteristic –

(a) the amount of the SCP benefit shall be determined based on the approved benefit schedule for the SCP benefit, which may be revised periodically, and will reflect, among other factors, the size of the member's SCP account balance at the time he attains the age of 60 years;

(b) the amount of the SCP benefit may be periodically revised by the Board thereafter as specified in rules or regulations made under section 39.

(4) The Board shall, with the approval of the Minister periodically determine and announce the threshold amount above which a SCP account balance will result in a monthly SCP benefit payment to a member.

[S 2/2016]

(5) Where a member has contributed to the Trust for a period of less than 420 months when he attains the age of 60 years and his SCP account balance is below such threshold amount as the Board may determine, the Board may in its discretion pay to the member a lump sum payment that is equal to his SCP account balance instead of the monthly SCP benefit under subsection (1).

[S 2/2016]

(6) Where a member has contributed to the Trust for a period of not less than 420 months when he attains the age of 60 years and does not have sufficient funds in his SCP account to finance a minimum monthly SCP benefit of \$150, in accordance with approved benefit schedules for the SCP benefit prevailing at that time, the Government shall make up the shortfall in the member's SCP account balance in order to ensure a SCP benefit resulting in a monthly SCP benefit of \$150.

[S 2/2016]

Amount of survivorship benefit.

22. (1) Where a member dies –
- (a) before attaining the age of 60 years; and
 - (b) has made any contribution under this Order for the month immediately preceding the month in which his death occurs, there shall be paid –
 - (i) to a widow or a widow and children or children of a member, a monthly survivorship benefit of at least \$400 to them collectively for a fixed period of 15 years with effect from the date immediately following the death of such member; or
 - (ii) if no person is eligible to be paid any monthly survivorship benefit under sub-paragraph (i) to the estate of a member, a lump sum payment equal to the total amount of such benefit which would have been payable for the period of 15 years under sub-paragraph (i), and the lump sum payment shall be distributed in accordance with sections 20(2)(a) or (b).

[S 2/2016]

(2) Where a widow in respect of whom a monthly survivorship benefit is granted under this section re-marries or dies, such benefit shall be paid to her children to whom a monthly survivorship benefit is paid or payable under subsection (1).

(3) A child in respect of whom a monthly survivorship benefit is paid under this section shall cease to be eligible for such benefit upon such child attaining the age of 21 years or upon marriage below such age.

(4) Where the children of a member in respect of whom a monthly survivorship benefit are paid under this section have attained the age of 21 years before the expiry of the 15 years period referred to in subsection (1)(b)(i), the total of their monthly survivorship benefit which would have been payable to them under this section if they had not attained the age of 21 years shall be paid to the estate of a member monthly from the date the last child attains the age of 21 years up to the expiry of the 15 years period referred to in subsection(1)(b)(i) and shall be distributed in accordance with sections 20(2) (a) or (b).

[S 2/2016]

(5) Where the monthly survivorship benefit payable to any person under this section is below such threshold as the Board may determine, the Board may in its discretion pay to the person a lump sum of such amount as the Board may determine instead of the monthly survivorship benefit.

(6) The monthly survivorship benefit may be adjusted periodically pursuant to regulations made under section 39.

(7) The lump sum payment and monthly survivorship benefit shall be funded from the survivorship protection fund.

(8) Subject to subsection (4), any monthly survivorship benefit payable collectively under this section shall be distributed in accordance with the rules made under section 39.

(9) In this section –

“child” means a person under 21 years of age and includes –

(a) a posthumous child;

(b) a step-child or illegitimate child born before the death of the member and wholly or mainly dependent upon him for support; and

(c) an adopted child, adopted in manner recognised by law, before the death of the member and dependent on him for support;

[S 2/2016]

“widow” means, in the case of a deceased member who was a Muslim, all his legal wives living at the time of his death.

(10) Subsection (1)(b) shall not apply to any member who dies at any time in January, 2010.

[S 2/2016]

Amount of derivative SCP benefit.

23. (1) Where a member dies before attaining the age of 60 years, there shall be paid to the eligible beneficiaries collectively a monthly derivative SCP benefit of such amount as the Board may determine for a fixed period of 15 years with effect from the date immediately following the death of that member.

[S 2/2016]

(2) The amount of monthly derivative SCP benefit payable under subsection (1) shall be determined based on an approved formula, which may be revised periodically, and will reflect, among other factors, the size of the member’s SCP account balance at his death.

(3) Where a member dies between the ages of 60 and 75 years, there shall be paid to the eligible beneficiaries collectively a monthly derivative SCP benefit of such amount as the Board may determine for a fixed period with effect from the date immediately following the death of the member and continuing up to the time the deceased member would have attained the age of 75 years, if living.

[S 2/2016]

(4) The amount of monthly derivative SCP benefit payable under subsection (3) shall be determined based on an approved formula, which may be revised periodically, and will reflect, among other factors, the size of the member's SCP account balance at the time he attained the age of 60 years, and the amount of SCP benefit already paid out to the member at his death.

(5) Where a member dies after the age of 75 years, a lump sum of such amount as the Board may determine shall be paid to the eligible beneficiaries collectively.

[S 2/2016]

(6) The lump sum amount payable under subsection (5) shall be determined based on an approved formula, which may be revised periodically, and will reflect, among other factors, the size of the member's SCP account balance at the time he attained the age of 60 years, and the amount of derivative SCP benefit already paid out to the member at his death.

(7) The Board shall periodically determine and announce the threshold amount above which a SCP account balance will result in a monthly payment of derivative SCP benefit; for a member whose SCP account balance is below such threshold amount, a lump sum payment shall be made to eligible beneficiaries collectively that is equal to the amount of the SCP account balance.

(8) Any monthly derivative SCP benefit paid collectively under this section shall be distributed and disposed of in accordance with –

(a) if the member was a Muslim at the time of his death, the *Hukum Syara'*;

(b) if the member was a non-Muslim at the time of his death, his will or if there is no will, the law relating to intestate succession.

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- (9) In this section, “eligible beneficiaries” –
- (a) in relation to a member who was a Muslim, means the beneficiaries of his estate in accordance with *Hukum Syara*’;
 - (b) in relation to a member who was a non-Muslim, means the beneficiaries of his estate under his will or, if there is no will, such beneficiaries as determined in accordance with the law relating to intestate succession.

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Board to inform Probate Officer.

24. If the Board is satisfied that a member or person to whom any benefit is payable under this Order has died, it shall thereupon inform the Probate Officer who shall proceed forthwith to exercise his powers under section 13 of the Probate and Administration Act (Chapter 11).

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Contributions and deposits not to be assigned or attached.

25. Notwithstanding any other written law –

- (a) no sum deducted from the wages of a member under section 11;
- (b) no amount payable by the employer as his contribution; and
- (c) no amount standing to the credit of a member,

shall be assignable, transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever, nor shall the Official Receiver be entitled to or have any claim on any such sum or amount.

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PART IV
OFFENCES, PENALTIES AND PROCEEDINGS

Offences.

26. Any person who for any purpose connected with this Order –

- (a) knowingly makes any false statement;

(b) produces or furnishes or causes or knowingly allows to be produced or furnished any document which he knows to be false in a material particular;

(c) fails to pay to the Trust within such period as may be prescribed any amount which he is liable under this Order to pay in respect of or on behalf of any employee in any month;

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(d) obstructs any officer or employee of the Board in the discharge of his functions as such;

(e) fails to comply with any regulation or rule made under this Order; or

(f) fails to pay to the Board within such period as may be prescribed any amount that he is liable to pay under this Order,

is guilty of an offence.

Publication of information to unauthorised person.

27. (1) Any person employed by the Board who without lawful authority publishes or communicates to any person, otherwise than in the ordinary course of his duty or employment, any information acquired by him in the course of his duty or employment is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(2) The Board may, on an application by a prospective employer who is considering whether or not to employ any person as an employee, give to the prospective employer the following particulars of that person –

(a) the name of his previous employer or, if he has been in the employment of more than one employer, the name of all his employers during the past 3 years; and

(b) the period for which contributions were paid into the Trust for that person by each of his employers.

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(3) A prospective employer who wishes to obtain any of the particulars referred to in subsection (2) shall apply to the Board in such form as the Board may determine and shall pay the prescribed fee.

(4) The Board may require an applicant under subsection (3) to furnish proof that he is considering whether to employ the person in respect of whom the application is made.

(5) No refund shall be made of any fee paid under subsection (3).

Offences by bodies corporate.

28. Where an offence under this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or any similar officer of that body corporate, or of any person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of that offence and liable to be proceeded against and punished accordingly.

Penalty for offences not otherwise provided for.

29. (1) Any person convicted of an offence under this Order for which no penalty is provided is liable to a fine not exceeding \$3,000 and, in the case of a second or subsequent offence, to a fine not exceeding \$10,000.

(2) The court before which the conviction is had may in addition to the fine order him to pay the amount of any contributions together with any dividend due thereon certified by an officer appointed by the Board in that behalf to be due from that person at the date of the conviction and the amount may be recovered according to the law relating to the recovery of fines.

Consent of Public Prosecutor to prosecutions.

30. A prosecution under this Order or any regulations or rules made thereunder shall not be instituted except by or with the consent of the Public Prosecutor.

Compounding of offences.

31. The Board may compound any offence punishable under this Order or any regulations or rules made thereunder as may be prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed that offence a sum of money as the Minister thinks fit towards such compound, being a sum not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

Saving for criminal proceedings.

32. The provisions of this Order or of any regulations or rules made thereunder shall be without prejudice to any other proceedings under any other written law.

Certificate of authorised officer to be evidence.

33. In any legal proceedings a copy of an entry in the accounts of the Trust duly certified under the hand of any officer authorised by the Board as is prescribed by the Board shall be *prima facie* evidence of such entry having been made and of the truth of the contents thereof.

[S 2/2016]

Conduct of prosecutions.

34. Proceedings in respect of any offence under the provisions of this Order or of any regulation or rule made thereunder may be conducted by an officer authorised in writing in that behalf by the chairman of the Board.

**PART V
GENERAL**

Protection of employees' interest in execution proceedings and sale.

35. (1) Where a writ of seizure and sale has been issued in execution of a judgment against an employer and any property or other assets belonging to the employer has been

seized or sold or otherwise realised in pursuance of the execution, and, prior to the payment of the proceeds of the sale or other realisation to an execution creditor, notice has been given to the officer charged with the execution of the writ by the Board that any sum is due to the Trust, no part of the proceeds shall be paid to an execution creditor, unless and until the court issuing the writ has ascertained and provided for the sum due to the Trust at the date of such sale or other realisation.

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(2) In the event of any interest in any place of employment being sold on the application of a secured creditor under any written law in force for the time being and the Board giving to the officer charged with the conduct of the sale notice that a sum of money is due by the debtor to the Trust, the proceeds of the sale shall not be paid to any creditor other than to the Government or a secured creditor unless and until the court ordering the sale has ascertained and provided for the amount due to the Trust at the date of the sale or unless the court is satisfied that all sums due to the Trust have been paid up to the date of sale.

[S 2/2016]

Power to exempt.

36. His Majesty the Sultan and Yang Di-Pertuan may by notification in the *Gazette* by order exempt any person or class of person from all or any of the provisions of this Order.

Board may engage in activities not directly related to Trust and may call for information.

37. The Board may, if the Minister is satisfied that it is in the public interest to do so, engage in activities not directly related to the administration of the Trust including in particular the compilation of information of a statistical nature or otherwise relating to employers and employees and for this purpose the Board may require employers and employees to furnish such particulars as may be necessary.

[S 2/2016]

Civil proceedings to recover contributions.

38. (1) Notwithstanding any other written law, all contributions payable under this Order may, without prejudice to any other remedy, be recoverable by the Board summarily as a civil debt.

(2) Subject to section 30, proceedings for such summary recovery may be instituted by any person authorised in that behalf by the Board and that person may conduct such proceedings.

(3) In subsection (1), “contributions” include any dividend, service charge and penalty on any contribution charged by the Board under this Order or any rules or regulations made thereunder.

Regulations and rules.

39. (1) The Minister may, after consultation with the Board and with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to or for carrying out the provisions of this Order and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations –

(a) to provide for the disposal of amounts which are unclaimed, unpaid or otherwise remaining in the Trust;

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(b) to specify and periodically revise the class of self-employed persons for the purposes of section 9;

(c) to provide for rates, amounts and time period for contributions specified under this Order;

(d) to determine annually the average wage applicable for the following financial year;

(e) to periodically revise the amounts of the SCP benefit, survivorship benefit and derivative SCP benefit;

(f) to refine the terms and operation of the SCP benefit, survivorship benefit and derivative SCP benefit;

(g) to prescribe anything required to be or which may be prescribed under this Order.

(3) The Board may, in addition to the other duties imposed and powers conferred upon it by this Order, make rules –

(a) to provide for the manner of payment and collection of contributions and any matters incidental thereto;

(b) to provide for –

(i) the return of contributions under this Order or any part of such contributions paid in error; and

(ii) the payment of contributions under this Order, or of any part of such contributions omitted to be paid in error;

(c) to provide for the keeping of books, accounts or records by employers;

(d) to provide for the procedure for payments from the Trust;

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(e) to provide for the evidence to be produced and the person, officer or authority to whom the evidence is to be produced for the purposes of section 33;

(f) to provide for the procedure to be followed when contributions are paid into the Trust;

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(g) to provide, in case where an employee is employed concurrently by 2 or more employers, the extent of the obligation of those employers as to payment of contributions under this Order;

(h) to provide for the form and period of any notice to be given by an employee to his employer under section 8;

(i) to provide for the returns to be made and the forms and registers to be used in the carrying out of the provisions of this Order;

- (j) to provide for the registration with the Board of employers, employees and self-employed persons;
- (k) to prescribe fees;
- (l) to prescribe any other thing required to be or which may be prescribed;
- (m) generally for giving effect to the objects and purposes of this Order and for the due administration thereof.

Made this 26th. day of Zulhijah, 1430 Hijriah corresponding to the 14th. day of December, 2009 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.**