

LAWS OF BRUNEI

CHAPTER 167

TABUNG AMANAH PEKERJA

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation
2. Interpretation
3. Establishment of Lembaga Tabung Amanah Pekerja
4. Membership of the Board
5. Appointment of inspectors

PART II

CONTRIBUTIONS TO THE FUND

6. Establishment of Tabung Amanah Pekerja
7. Rate of contributions
8. Payment of contributions
9. Recovery by employer of employee's contributions
10. Payment of service charge on contributions in arrears

11. Refund of contributions paid in error
12. Expenses
13. Statement of accounts
14. Contributions to be paid into the Fund
15. Crediting of contributions into an ordinary account
16. Payment of cash grant by the Government into the Fund

PART III

WITHDRAWAL OF CONTRIBUTIONS

17. Authority for withdrawals from the Fund
18. Amount of withdrawals
19. Release of employer's share of contributions
20. Withdrawals
21. Board to inform Probate Officer
22. Contributions and deposits not to be assigned or attached

PART IV

OFFENCES, PENALTIES AND PROCEEDINGS

23. Offences
24. Publication of information to unauthorised person
25. Offences by corporations
26. Penalties
27. Sanction for prosecution

-
28. Compounding of offences
 29. Saving for criminal proceedings
 30. Certificate of authorised officer to be evidence
 31. Conduct of prosecutions

PART V

MISCELLANEOUS

32. Protection of employee's interest in execution proceedings and sale under mortgage or charge
 33. Power to exempt
 34. Approved fund
 35. Transfer to the Fund
 36. Transfer to the Fund from private provident fund
 37. Board may engage in activities not directly related to the Fund and may call for information
 38. Regulations and Rules
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TABUNG AMANAH PEKERJA ACT

S.32/92
S.10/93

An Act to establish and incorporate the Lembaga Tabung Amanah Pekerja, and to provide for all matters connected therewith and incidental thereto

S.1/93

Commencement : 1st January 1993

PART I

PRELIMINARY

Citation

1. This Act may be cited as the Tabung Amanah Pekerja Act.

Interpreta-
tion

2. In this Act, unless the context otherwise requires :

“approved fund” means —

(i) a provident fund or other scheme for the benefit of employees established by an employer or by a group of employers and declared by the Board under section 34 to be an approved fund, and includes any scheme in respect of —

(a) persons in pensionable employment with the Government or with any statutory authority ; and

(b) persons in employment with any organisation where the appointment to any such employment is made by or with the approval of the Government or a person who prior to such appointment was in employment with the Government or with any statutory authority and where the period of service with such organisation is

reckonable for the purposes of the grant of any pension, gratuity or other benefit by the Government under any written law relating to pensions,

and if any doubt arises as to whether any person is in such employment or not, the decision of the Minister shall be final ; or

- (ii) any scheme expressly established by any written law for the benefit of the employees in any trade, business, industry or occupation :

Provided that such provident fund or scheme as mentioned in paragraphs (i) and (ii) shall cease to be an approved fund upon the Minister declaring that it shall cease to be so ;

“Board” means the Board of Directors of the Lembaga Tabung Amanah Pekerja Board constituted under section 3 ;

“cash grant” means a cash grant made by the Government under any approved scheme for the purpose of section 16 ;

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

“employee” means any person being a citizen or permanent resident of Brunei Darussalam, who is employed under a contract of service or apprenticeship or other agreement to work for an employer :

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 person not to be an employee for purposes of this Act ;

“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 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 of such Government as may from time to time be declared by the Minister with the approval of His Majesty by notification in the *Gazette* to be employees for the purposes of this Act :

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 such Government in good faith ;

“Fund” means the Tabung Amanah Pekerja established under section 6 ;

“inspector” means an inspector appointed under section 5(1) ;

“interest in land” means any interest in land recognised as such by law, and includes an estate in land ;

“land” includes land, freehold or leasehold, or of whatever tenure, whether or not held apart from the surface, and buildings or parts thereof (whether completed or otherwise and whether divided horizontally, vertically or in any other manner), and tenements and hereditaments, corporeal or incorporeal ;

“local authority” includes a Municipal Board appointed under section 3(2) of the Municipal Boards Act ;

Cap. 57

“members of the Fund” or “members” means any person to whose credit any amount is standing in the Fund ;

“Minister” means the Minister responsible for finance ;

“ordinary account” means an ordinary account maintained under section 15 ;

“wages” means the basic wage which includes all remuneration which is payable to a worker for work done in respect of his employment but does not include —

- (i) 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 ;
- (ii) any contribution paid by the employer on his own account to any pension fund or provident fund ;
- (iii) any travelling allowance or the value of any travelling concession ;
- (iv) any sum payable to the worker to defray special expenses entailed on him by the nature of his employment ; or
- (v) any gratuity payable on discharge or retirement.

Establishment of Lembaga Tabung Amanah Pekerja

3. For the purposes of this Act there shall be a Board called Lembaga Tabung Amanah Pekerja consisting of a Chairman, Deputy Chairman and such other members as may be appointed under section 4(2).

Membership of the Board

4. (1) His Majesty shall appoint persons to be the Chairman and Deputy Chairman of the Board and the Managing Director of the Fund.

(2) The other members of the Board shall consist of the Managing Director of the Fund who shall be an ex-officio member ; and not more than 9 other members to be appointed by His Majesty of whom not less than 5 shall be representatives of the Government.

(3) The quorum of the Board shall be 5.

(4) The members of the Board may be paid such allowances as may be fixed by His Majesty.

(5) The appointment of members of the Board including the Chairman and Deputy Chairman shall be liable to be revoked at any time by His Majesty but they shall, unless their appointment is so revoked or they resign in the meantime, hold office for a term of 2 years or for such shorter period as His Majesty may in any case determine :

Provided that the term of 2 years prescribed by this subsection shall not apply to the Managing Director of the Fund.

(6) The Board shall be a body corporate with perpetual succession and shall have a common seal and may sue and be sued in its corporate name.

(7) All deeds, documents and other instruments requiring the seal of the Board shall be sealed with the common seal of the Board by the authority of the Board in the presence of the Managing Director or a member of the Board and of some other person duly authorised by the Board to act in that behalf and shall be signed by the Managing Director of the member of the Board, as the case may be, and by that duly authorised person, and such signing shall be sufficient evidence that the common seal of the Board has been duly and properly fixed and that the seal is the lawful seal of the Board.

(8) The Board may by resolution or otherwise appoint an officer of the Board or any other agent either generally or in a particular case to execute or sign on behalf of the Board any agreement or other instrument not under seal in relation to any matter coming within the powers of the Board.

(9) The Board shall have such powers and shall perform such duties as are given or imposed by this Act or as may be prescribed by His Majesty and His Majesty or the Board may by instrument in writing delegate to any person all or any of those powers and duties.

(10) The Board shall have power to engage a staff consisting of such officers and servants as are in the opinion of the Board necessary for the purpose of carrying out the provisions of this Act.

Cap. 22

(11) The members of the Board and the employees thereof, of every description, shall be deemed to be public servants within the meaning of the Penal Code.

(12) The Board may make rules for all or any of the purposes of this section and in particular may make rules —

(a) for the conduct of its proceedings ; and

(b) for the appointment, promotion, dismissal, termination of service and disciplinary control of all persons employed by the Board except in respect of public officers.

(13) The Managing Director shall be the Chief Executive and shall be entrusted with the day to day administration of the Board and the Fund, preparation of programmes, schemes or projects for the consideration of the Board and the implementation of decisions of the Board.

Appointment
of inspectors

5. (1) The Board may, with the approval of His Majesty, appoint such number of inspectors as it may consider necessary for carrying this Act into effect.

Cap. 93

(2) The Commissioner of Labour and Deputy Commissioner of Labour, Assistant Commissioner of Labour under the Labour Act may exercise all or any of the powers of an inspector for the purposes of this Act.

(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 Act 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 paragraph (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 Act or in any proceedings for the recovery of any monies due to the Fund.

(4) If any person wilfully delays an inspector or any of the officers referred to in subsection (2) in the exercise of any power under this section, or 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 or in pursuance of this section to produce, or wilfully withholds any information as to who are the employees of any employer or as to who is the employer of any employee or conceals or prevents or attempts to conceal or prevent a person from appearing before of being examined by an inspector or such officer, that person shall be deemed to obstruct an inspector of that officer in the execution of his duties under this Act.

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

PART II

CONTRIBUTIONS TO THE FUND

6. (1) For the purposes of this Act, there shall be established a fund to be called the Tabung Amanah Pekerja (Employee Trust Fund) into which shall be paid all contributions authorised under this Act and out of which shall be met all payments authorised to be paid under this Act.

(2) The Board shall be the trustee of the Fund and all monies belonging to the Fund may be —

(a) deposited in a bank or banks approved by the Board ;

(b) invested in any of the investments authorised by the Government for the investment of trust money and the Board shall have power to convert the same into cash ; or

(c) used for the purchase of any property and for the construction of buildings for the purposes of the Board and to let the same or part thereof for the purposes of deriving income therefrom and the Board may dispose of all or any part of the aforesaid property and buildings.

(3) The Board may at any time establish any committee for the purpose of the investment management and administration of the Fund.

(4) Dividend shall be payable on contributions to the Fund at such rate per annum, as the Board may declare from time to time :

Provided that the Board shall not declare a rate of dividend except with the approval of the Minister.

(5) If the Board is at any time unable to pay any sum which the Fund is required to pay under this Act, 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.

7. (1) Subject to section 34 and any regulations made under section 38 every employer of an employee shall pay to the Fund monthly in respect of each employee contributions at

Rate of
contributions

the appropriate rates as shall be prescribed by the regulations under the said section 38 except that the Board may, in its discretion and on such terms and conditions as it may impose, authorise an employer or a class or classes of employers to pay those contributions at other intervals not exceeding 3 months.

(2) Notwithstanding the provisions of 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.

(3) Where any employer who has recovered any amount from the monthly wages of an employee in accordance with subsection (2) fails to pay the contributions to the Fund within such time as may be prescribed, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both.

(4) Without prejudice to subsections (1) and (2) —

(a) an employee may at any time contribute voluntarily to the Fund a sum additional to that prescribed by regulations under section 38(1) as payable by the employee ;

(b) an employee who desires to have contributions in excess of the appropriate rate 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 Fund in addition to the appropriate monthly contributions ; or

(c) an employer may at any time pay to the Fund contributions in respect of any of his employees at a rate in excess of the appropriate rate prescribed by regulations under section 38(1).

(5) Notwithstanding any contract to the contrary, an employer shall not be entitled to recover in any way from an employee in respect of contributions payable under this Act any sum in excess of that permitted to be recovered under subsection (2) together with any sum contributed voluntarily by the employee under subsection (4) and any employer who recovers or attempts to recover any greater sum shall be guilty of an offence.

(6) The portion of any contribution recoverable from the wages of any employee in accordance with subsections (2) and (4) shall be recovered by the employer from the wages in respect of which the contribution is payable at the time of payment of those wages and not otherwise :

Provided that, subject to such conditions, as may be prescribed by the Board, where an employer has by error not occasioned by that employer's negligence, omitted to recover from the wages paid to an employee any amount or part of any amount that he would otherwise have been entitled to recover at the time of payment of the wages, the amount or part thereof may be recovered from the wages payable by the employer to the employee not later than 6 months from the date of the payment of the wages in respect of which the amount or part thereof was omitted to be recovered.

(7) Notwithstanding subsection (6), 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.

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

Provided that where any such contribution has been received it shall be carried to the Fund in accordance with section 14.

(9) All employees and every employer of such employees shall be liable to pay monthly contributions at the rates respectively prescribed by regulations under section 38(1).

Payment of
contributions

8. (1) Except where otherwise provided in this Act, 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 Act 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 10, where an employer fails to pay any contributions due within such period as may be prescribed, the employer shall in addition to such contributions be liable to pay the rate of dividend which would have accrued on such contributions if such contributions had been paid by the employer within the prescribed period and such dividend shall be calculated and credited to the account of the employee :

Provided that where the rate of dividend for a particular year has not been declared by the Board, the rate of dividend declared for the year preceding that year shall apply for the purpose of calculating dividend for that year.

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

Recovery by employer of employee's contributions

(2) The amount of any contribution payable by the employer on behalf of the employee shall, notwithstanding the provisions of 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 :

Provided that, 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 six months from the date of the payment of the wages in respect of which the contribution or part thereof was omitted to be deducted.

(4) Any employer who contravenes the provisions of subsection (2) or (3) shall be guilty of an offence under this Act.

10. (1) Where the amount of the contributions which an employer is liable to pay under section 7 in respect of any month is not paid within such period as may be prescribed, the employer shall be liable to pay service charge on such amount for every day such amount remains unpaid commencing from

Payment of service charge on contributions in arrears

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.

(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

11. (1) When the Board is satisfied that any amount has been paid in error to the Fund in respect of any person or as service charge under section 10, the Board may, subject to subsection (3), refund the amount so paid in error to the person by whom it was paid :

Provided that if the refund of any amount paid in error is not claimed within one year of the date on which it was paid or if the member in respect of whom it was paid has withdrawn it, the amount paid in error shall not be refunded but shall be deemed to have been properly paid under the provisions of this Act as service charge or for the person in respect of whom it was paid.

(2) If any amount is due to the Fund from the person to whom refund of the amount paid in error would otherwise be made, the Board may retain the whole or any part of the amount paid in error and set it off against such amount as is due.

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

Expenses

12. All expenses incurred by the Board including the cost of auditing the accounts of the Fund as provided for in subsection (1) of section 13 shall be defrayed out of the moneys of the Fund.

13. (1) The accounts of the Fund shall be audited at least once annually by an auditor, who has been authorised as a company auditor under section 131(3) of the Companies Act, appointed annually by the Board who shall submit a report thereon to the Board.

Statement of
accounts

Cap. 39

(2) On the instruction of the Board, the audited report of the auditor will be verified by the Auditor-General, or an officer authorised by him to act on his behalf.

(3) As soon as practicable after the end of each financial year the Chairman of the Board shall submit to the Board an account of the revenue and expenditure of the Fund, or contributions received and of withdrawals made and of dividend credited to members of the Fund during the preceding financial year together with a statement of assets and liabilities of the Fund.

(4) The account and statement referred to in subsection (3) together with the report of the Auditor-General or other authorised officer thereon shall be published in the *Gazette* and presented to the Minister.

(5) The financial year of the Fund shall be determined by the Board.

14. (1) All sums recovered or collected on account of contributions to the Fund under this Act shall be paid into or carried to the Fund in such manner as may be prescribed.

Contribu-
tions to be
paid into
the Fund

(2) The Board shall cause to be credited to each member of the Fund —

(a) the amount of every contribution paid to the Fund for him ; and

(b) dividend at the rate declared under subsection 4 of section 6 such intervals as the Board may prescribe and on the amount standing to his credit in the Fund at such time as the Board may determine.

Crediting of contributions into an ordinary account

15. (1) Subject to subsection (3), there shall be maintained for each member in respect of the money standing to his credit in an ordinary account in the Fund.

(2) The Board shall credit to the ordinary account specified in subsection (1) every contribution paid into the Fund for a member in such manner as the Minister may direct, and the Minister may give different directions in respect of different classes of members.

(3) Where any contributions are paid into the Fund by any person pursuant to any regulations made under section 38(1)(e), the Minister may direct that the amount of such contribution be credited into an ordinary account.

Payment of cash grant by the Government into the Fund

16. (1) The Board may accept any cash grant made by the Government for the benefit of any person who qualifies for such grant under any approved scheme ; and the Board shall credit the cash grant into the ordinary account of that person.

(2) Any cash grant paid into the Fund under subsection (1) shall be deemed to be contributions for the purposes of this Act, but such cash grant or dividend thereon shall not be withdrawn under any regulations made under section 38 unless those regulations expressly provide for the withdrawal of such cash grant.

(3) Notwithstanding anything in this Act, the Board shall be entitled to recover on behalf of the Government any cash grant paid into the Fund for the benefits of any person, together with any service charge which he is liable to pay the Government under the terms of the cash grant, from any money standing to the credit of that person in the Fund if —

(a) that person has obtained the cash grant by means of any false or misleading statement or any document that is false or misleading in any particular ;
or

(b) that person has committed a breach of any of the terms and conditions of the cash grant.

(4) Any money recovered by the Board from any person under subsection (3) shall be refunded forthwith to the Government.

PART III

WITHDRAWAL OF CONTRIBUTIONS

17. (1) No sum of money standing to the credit of a member of the Fund may be withdrawn from the Fund except with the authority of the Board and, subject to any regulations and rules made under section 38(1) and (2), such authority shall not be given unless the Board is satisfied that —

Authority for
withdrawals
from the
Fund

(a) the member of the Fund has died ;

(b) the member of the Fund has attained the age of 55 years ;

(c) the member of the Fund is physically or mentally incapacitated from engaging in any further employment ;

(d) is found to be of unsound mind or is otherwise incapable of performing his duties at any time before he attains the age of 55 years ; or

(e) the member is about to leave Brunei Darussalam with no intention of returning thereto or of residing in Brunei Darussalam.

(2) Notwithstanding subsection (1), the Board may in either one or all of the following instances, on application by a member of the Fund —

(a) who has attained the age of fifty years authorize, subject to section 18, not more than one withdrawal from the Fund a sum representing one-fourth of the amount standing to the credit of such member at the commencement of the year in which the withdrawal application is authorized ;

(b) who has entered into an agreement to build or purchase a house, authorize, not more than one payment of a sum not exceeding the prescribed percentage of the purchase price of such house or the amount standing to the credit of such member of the Fund, whichever is the less, to the vendor or chargee of such house or such other person as the Board may approve ;

(c) who has been allotted or has purchased or has entered into an arrangement which in the opinion of the Board is a firm arrangement to purchase or has built or has entered into an arrangement which in the opinion of the Board is a firm arrangement to build a house or has taken a loan made on the security of a charge on the house for its purchase, authorize not more than one payment of a sum not exceeding —

(i) twenty per centum of the purchase price or the cost of building such house ; or

(ii) the amount of the loan outstanding as at the date of application,

as the case may be, to be paid to the vendor or chargee, or such other person as the Board approve :

Provided that the amount withdrawn shall not exceed forty-five per centum of the amount standing to the credit of such member of the Fund or the prescribed amount ;

and a member of the Fund in respect of whom authority for withdrawal has been given under this subsection shall notwithstanding such withdrawal continue to be treated as an employee for the purposes of this Act.

(3) Where a member of the Fund withdraws under either paragraph (b) or (c) of subsection (2) any amount standing to his credit in the Fund he shall not thereafter be eligible to make any subsequent withdrawal under either of those paragraphs.

(4) When a member of the Fund withdraws under subsection (1) any amount standing to his credit in the Fund, he shall not thereafter be treated as an employee, notwithstanding that, but for this subsection, he would be an employee, for the purposes of this Act :

Provided that —

(a) if a member of the Fund withdraws under subsection (1)(c) of section 17 any amount standing to this credit in the Fund and he is subsequently engaged in any further employment, he shall be treated as an employee but he shall not withdraw the further amount standing to his credit in the Fund until he has attained the age of fifty-five years or after a lapse of five years from the year of further employment, whichever is the later ;

(b) where a member of the Fund withdraws under subsection (1)(b) or (1)(d) of section 17 and he is subsequently engaged in any employment, he may elect to pay monthly contributions to the Fund by giving the Board and or his employer, as the case may

be, one month's notice in the manner and form as may be prescribed by the Board, of his intention to be a contributor ;

(c) where a member of the Fund withdraws any sum under subsection (1)(b) or (1)(d) of section 17 thereafter, he shall thereupon cease to be a member of the Fund and shall be precluded from making any further contributions.

(5) An election referred to paragraph (b) of the proviso to subsection (4) shall not be made to take effect retrospectively.

Amount of
withdrawals

18. When authority is granted under section 17(1), withdrawal shall be made in lump sum.

Release of
employer's
share of
contributions

19. The Board may, after receiving a notification in writing from any employer of a pensionable employee stating that the pensionable employee has died in service or is about to retire on the ground of attaining the retirement age applicable to the pensionable employee or on any other ground and requesting for the return of the equivalent of the employer's share of contributions remitted to the Fund in respect of the pensionable employee by the Government or from all such employers of the pensionable employee, together with any dividend credited thereon, pay to the Consolidated Fund, such amount together with dividend credited thereon and thereupon the amount standing to the credit of the pensionable employee in the Fund shall be the reduced amount as from the time.

Withdrawals

20. (1) Upon an application for the withdrawal of the sum of money standing to the credit of a member of the Fund by a person entitled thereto under section 17, the Board may authorise the payment to the applicant of such sum as the member is entitled to withdraw from the Fund and any dividend calculated in accordance with section 14(2) up to the date of the authorisation :

Provided that when any contributions are due to be paid for a member of the Fund in respect of any period ending not later than the last day of the month next following the date on which the withdrawal of the sum of money standing to his credit in the Fund is authorised and the contributions are not paid to the Fund until after the date of authorisation, those contributions may in the discretion of the Board be treated as if they had been included in the amount standing to the credit of the member at the date of authorisation of withdrawal and paid to the applicant accordingly.

(2) All applications for withdrawal shall be supported by such evidence as may be prescribed and by such further evidence as the Board may reasonably require.

21. If the Board is satisfied that a member of the Fund 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.

Board to
inform
Probate
Officer

Cap. 11

22. (1) Notwithstanding anything to the contrary contained in any other written law —

Contribu-
tions and
deposits not
to be assigned
or attached

(a) no sum deducted from the wages of a member of the Fund under section 9 ;

(b) no amount payable by the employer as his contribution ; and

(c) no amount standing to the credit of a member of the Fund,

shall be assignable or 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.

Cap. 22

(2) Notwithstanding the provision of subsection (1) where a member of the Fund has been convicted of any offence under the Penal Code and his employer proves to the satisfaction of a competent court by which the member of the Fund was convicted that he has suffered a definite financial loss as a direct and immediate result of such offence, the court may order that a payment to such employer be made out of the Fund of a sum not exceeding the amount of such loss or the amount of employer's contributions already paid or payable to the Fund by such employer on behalf of such member of the Fund and the dividend thereon, whichever is the lesser, and such sum shall thereupon be paid to such employer from the employer's contributions so paid, or so payable, or from both, and from the dividend thereon.

(3) Notwithstanding the provision of subsection (1) where there is a debt or claim due from a member of the Fund who is or was an employee in the service of the Government or of a statutory or local authority subject to prior written notice having been served upon the Board of any civil claim or other legal proceeding proposed to be instituted against such member of the Fund for a liquidated sum and for such liquidated sum to be withheld pending judgement, the debt or claim ascertained as such liquidated sum or any lesser amount found to be due by the court shall be recoverable from the total amount standing to the credit in the Fund of such member of the Fund at the time of his ceasing employment in the service of the Government or a statutory or a local authority upon the Board being served with the court order and such liquidated amount or the lesser sum found to be due by the court shall be payable to the claimant out of the amount standing to the credit of such member of the Fund but where there is a written notice for withholding under this section and a request for the return of the share of contributions together with dividend thereon of an employer of an employee under section 19, the payment due under section 19 shall be satisfied before any payment or part payment under this subsection is made.

PART IV

OFFENCES, PENALTIES AND PROCEEDINGS

23. Any person who —

Offences

(a) for any purpose connected with this Act —

(i) knowingly makes any false statement ;
or

(ii) 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 ;

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

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

(d) fails to comply with any regulations or rules made under this Act ; or

(e) fails to pay to the Board within such period as may be prescribed any amount which he is liable to pay under the provisions of this Act,

shall be guilty of an offence.

24. (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 shall be guilty of an offence and

Publication of
information
to unautho-
rised person

shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to 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 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 Fund for that person by each of his employers.

(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
corporations

25. Where an offence under this Act has been committed by a body corporate and is found to have been committed with the consent or connivance of or to be attributable to any act or default on the part of any director, manager, secretary or other officer of the body corporate that director, manager, secretary or other officer as well as the body corporate shall be guilty of an offence.

- 26.** Any person convicted of an offence under this Act for which no penalty is provided shall be 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 and 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 for the time being in force relating to the recovery of fines. Penalties
- 27.** No court shall take cognizance of any offence under this Act or any regulations or rules made thereunder except with the sanction of the Public Prosecutor. Sanction for prosecution
- 28.** The Board with the concurrence of the Minister may compound any offence punishable under this Act or any regulations or rules made thereunder by requiring the payment of any sum of money as the Board 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. Compound-
ing of
offences
- 29.** The provisions of this Act or of any regulations or rules made thereunder shall be without prejudice to any other proceedings under any other written law. Saving for
criminal
proceedings
- 30.** In any legal proceedings a copy of an entry in the accounts of the Fund duly certified under the hand of such officer of 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. Certificate of
authorised
officer to be
evidence
- 31.** Proceedings in respect of any offence under the provisions of this Act or of any regulations or rules made thereunder may be conducted by an officer authorised in writing in that behalf by the Chairman of the Board. Conduct of
prosecutions

PART V

MISCELLANEOUS

Protection of
employee's
interest in
execution
proceedings
and sale
under
mortgage
or charge

32. (1) Whenever a writ of seizure and sale has been issued in execution of a judgement against an employer and any movable or immovable property or other assets belonging to the employer has been seized or sold or otherwise realized in pursuance of the execution, and, prior to the payment of the proceeds of the sale or other realization 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 Fund, 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 Fund at the date of such sale or other realization.

(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 Fund, 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 Fund at the date of the sale or unless the court is satisfied that all sums due to the Fund have been paid up to the date of sale.

Power to
exempt

33. His Majesty may from time to time by order exempt any person or class of persons from all or any of the provisions of this Act.

Approved
fund

34. (1) If the Board is satisfied that an employer has established a welfare scheme which provides for the payment to his employees of pensions, gratuities or other pecuniary or welfare benefits (referred to in this Act as an approved fund), the Board shall certify to that effect.

(2) Where the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan amends any order declaring any person or class of persons not to be employees for the purposes of this Act by deleting or adding to any paragraph thereof specifying such person or class of persons, any employer or group employers who before the date on which the order comes into force has established a provident fund or other scheme for the benefit of all or of a group of his or their employees of the description specified in that paragraph shall, within such period as the Board may in its discretion allow, furnish the Board with such particulars of such provident fund or scheme as the Board may prescribe or in any particular case require, and if after examining such provident fund or other scheme as amended if necessary in such manner as the Board may require provides for an employee benefits not less advantageous to him than the benefits which are provided for an employee by the Fund, the Board may, subject to such conditions as it may impose, declare such provident fund or other scheme to be an approved fund.

(3) The Board may, if not satisfied with the management of any approved fund at any time revoke any declaration under subsection (1) but without prejudice to anything previously done or omitted to be done by virtue thereof.

(4) An employee, who is in the employment in respect of which an approved fund has been established shall not be precluded by the rules of such approved fund from contributing thereto during a period of probation.

(5) Where —

(a) an employer who is one of a group of employers by whom an approved fund has been established cease to participate in such approved fund ; or

(b) an employee —

- (i) leaves an employment in respect of which he was a contributor to an approved fund ; or
- (ii) ceases to contribute to an approved fund, in circumstances other than those set out in section 17(1)(a), (b), (c), (d) and (e),

the amount standing to each employee's or to such employee's credit in such approved fund that represents contributions to such approved fund both by the employer and the employee since the date on which section 7 comes into force, together with any dividend thereon, shall, notwithstanding anything to the contrary contained in any other written law, be transferred to the Fund, and the Board shall cause to be credited to each such employee or such employees such amount in such manner as the Board shall direct. Such amount shall be transferred within one month of the employer ceasing to participate in such approved fund or of the employee leaving the employment or ceasing to contribute, as the case may be or within such further period as the Board may in any particular case allow :

Provided that where an employee —

(a) transfers from employment in Brunei Darussalam under an employer by whom an approved fund has been established to employment outside Brunei Darussalam under the same employer ; or

(b) transfers from employment under an employer who is one of a group of employers by whom an approved fund has been established to employment under another employer who is one of the same group,

and in either case upon such transfer is permitted by the rules of such approved fund to continue to contribute thereto on the same terms and conditions as if such transfer had not taken

place, such employee, so long as he continues so to contribute, shall not for the purpose of paragraph (b) of this subsection be deemed to have left an employment in respect of which he was a contributor to an approved fund :

Provided further that where in accordance with the rules of such approved fund the amount standing to the credit of life assurance, such policy shall not be transferred to the fund, but shall be dealt with in accordance with such rules.

(6) An employer who has established a scheme of fund which has been certified as approved fund under subsection (1) shall —

(a) furnish to the Board such accounts in respect of the approved fund, duly audited by an auditor who has been authorised as a company auditor under section 131(3) of the Companies Act as the Board may require ;

Cap. 39

(b) comply with the rules of the fund and pay such contributions in accordance with such fund within such period as the rules of the approved fund require ;

(c) obtain the prior permission of the Board to the making of any amendment to the rules of the approved fund ;

(d) furnish such returns to the Board as the Board may prescribe concerning employees who are members of or who have ceased to contribute to the fund ; and

(e) furnish the Board with such particulars of these employees for whom such approved fund has been established as may be prescribed by the Board.

(7) Any amendment to the rules of any approved fund made without the prior permission of the Board shall for the purposes of this Act be void and of no effect.

(8) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and the court before which any person is convicted for failing to pay contributions into any approved fund within such period as the rules of the approved fund require may, in addition to such fine, order him to pay the amount of any contributions and any dividend due thereon certified by an officer appointed by the Board in that behalf to be due from such person at the date of such conviction and such amount may be recovered according to the law for the time being in force for the recovery of fines.

Transfer to
the Fund

35. Where an employee who is a member of an approved fund leaves the service of his employer before attaining the age of 55 years, the employer concerned shall pay to the Board to be placed to the credit of the employee in the Fund the money (if any) payable to such employee under the approved fund on the termination of his employment.

Transfer to
the Fund
from private
provident
fund

36. Where by virtue of his employment as an employee any member of the Fund has acquired a right to any pecuniary benefit in a provident fund or other scheme, any part or the whole of that benefit may, if the rules of that provident fund or other scheme permit, be transferred to the Fund and treated as an excess contributions paid for him under section 7(4).

Board may
engage in
activities not
directly
related to the
Fund 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 Fund 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.

38. (1) The Minister may, after consultation with the Board and with the approval of His Majesty, make regulations —

Regulations
and rules

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

(b) to provide for the disposal of amounts which are unclaimed, unpaid or otherwise remain in the Fund ;

(c) to provide for the classification of any employment, not being employment under a contract of service or apprenticeship, as an employment in respect of which contributions are payable under the provisions of this Act ;

(d) to provide that where an employee is employed in a specified employment a person specified as the principal employer shall be deemed to be his employer for the purposes of this Act notwithstanding that the principal employer is not the immediate employer of the employee ;

(e) to require such person as His Majesty may specify who derives income from any trade, business, profession or vocation, or from any other source or sources as His Majesty may prescribe, to contribute to the Fund in respect of such income in such a manner and at such rate as may be prescribed by His Majesty ;

(f) to provide for members of the Fund to apply, assign or withdraw all or part of the contributions and dividend standing to their credit in the Fund for the purchase of immovable property or to repay any loan taken to finance or re-finance the purchase of immovable property including the payment of costs,

fees or other incidental expenses incurred for the purchase of an immovable property or for obtaining any loan to finance or re-finance such purchase or in connection with withdrawals of any money from the Fund ;

(g) to prescribe rates of contributions for the purposes of this Act.

Rules

(2) The Board may, in addition to the other duties imposed and powers conferred upon it under this Act, make rules —

(a) to provide for —

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

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

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

(c) to provide for the appointment of medical boards for the purpose of determining whether a member of the Fund is physically or mentally incapacitated ;

(d) to prescribe the procedure for the withdrawal of amounts from the Fund ;

(e) to prescribe the evidence to be produced and the person, officer or authority to whom the evidence is to be produced for the purposes of section 17 ;

(f) to prescribe the procedure to be followed when contributions are paid into the Fund ;

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

(h) to prescribe the form and period of any notice to be given by an employee to his employer under section 7 ;

(i) to prescribe the procedure to be followed when any voluntary contribution is paid to the Fund ;

(j) to prescribe the returns to be made and the forms and registers to be used in the carrying out of the provisions of this Act ; and

(k) to prescribe anything which under this Act may be prescribed by the Board.

SUBSIDIARY LEGISLATION

Order under Section 2

S.2/93
S.5/94

TABUNG AMANAH PEKERJA
(DEFINITION OF EMPLOYEES) ORDER

ARRANGEMENT OF ORDER

Paragraph

1. Citation
2. Persons declared as employees

Commencement : 1st January 1993 S.2/93

1. This Order may be cited as the Tabung Amanah Pekerja (Definition of Employees) Order. Citation

2. For the purposes of the Act it is declared that any person or class of persons shall not be deemed to be an employee unless he is or belongs to any of the class of persons specified in the Schedule hereto. Persons declared as employees

SCHEDULE

(Paragraph 2)

EMPLOYEES

(a) Public servant who joined the public service before the commencement of the Act and is not on the pensionable establishment.

(b) Public servant who joined the public service on or after the commencement of the Act.

(c) Member of any approved fund.

(d) Member of the Royal Brunei Armed Forces, or the Royal Brunei Police Force or the Prison Department who is not on or after the commencement of the Act eligible for a pension by virtue of the provisions of any law governing the grant of such pension to members of the Royal Brunei Armed Forces, the Royal Brunei Police Force and the Prison Department.

(e) Employees in the Private Sector.

SUBSIDIARY LEGISLATION

Regulations under Sections 7 and 38

S.3/93

TABUNG AMANAH PEKERJA
(RATES OF CONTRIBUTIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Rates of contributions

1. These Regulations may be cited as the Tabung Amanah Pekerja (Rates of Contributions) Regulations. Citation

2. For the purposes of the Act the rates of contributions shall be as set out in the Schedule hereto. Rates of contributions

SCHEDULE

(Regulation 2)

RATES OF CONTRIBUTIONS PER MONTH

Employee	5%
Employer	5%