

No. S 58

**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 Order, 2009 and shall commence on 1st. January, 2010.

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

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;

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

"Board" means the Supplemental Contributory Pensions Board established by section 3(1);

"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 Supplemental Contributory Pensions Trust Fund established by section 7(1) and includes the survivorship protection fund;

"*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 of the Fund" means any person to whose credit any amount is standing in the Fund and includes a self-employed person who contributes to the Fund voluntarily under section 9;

"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 of the Fund;

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

"SCP member" has the same meaning as "member of the Fund";

"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.

Establishment of Supplemental Contributory Pensions Board.

3. (1) For the purposes of this Order, there is hereby established the Supplemental Contributory Pensions Board.

(2) The Board shall consist of a chairman, deputy chairman and such other members as may be appointed under section 4(2).

Membership and functions of Board.

4. (1) His Majesty the Sultan and Yang Di-Pertuan shall, on the recommendation of the Minister, appoint persons to be the chairman and deputy chairman of the Board and the managing director of the Board.

(2) The other members of the Board shall consist of —

(a) the managing director of the Board who shall be an *ex-officio* member; and

(b) not more than 9 other members to be appointed by His Majesty the Sultan and Yang Di-Pertuan, 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 the Sultan and Yang Di-Pertuan.

(5) The appointment of members of the Board, including the chairman and deputy chairman, may be revoked at any time by His Majesty the Sultan and Yang Di-Pertuan, but they shall, unless their appointment is so revoked or they resign, hold office for a term of 2 years or for such shorter period as His Majesty the Sultan and Yang Di-Pertuan may in any case determine.

(6) His Majesty the Sultan and Yang Di-Pertuan may renew the term of any member of the Board after the expiry of the 2 year term.

(7) The term of 2 years prescribed by subsections (5) and (6) does not apply to the managing director of the Board.

(8) 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.

(9) 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 or member of the Board, as the case may be, and by that duly authorised other 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.

(10) 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.

(11) The Board shall have such powers and shall perform such duties as are given or imposed by this Order or as may be prescribed by His Majesty the Sultan and Yang Di-Pertuan and the Board may by instrument in writing delegate to any person or agent all or any of those powers and duties.

(12) The Board shall have power to engage staff consisting of officers and such other persons as are in the opinion of the Board necessary for the purpose of carrying out the provisions of this Order and shall have all other powers and functions reasonably necessary to achieving its purposes under this Order including —

(a) the development and payment for its own operating budget and other reasonable costs out of the assets of the Fund, but only insofar as such budget is reasonable and intended solely for the purpose of achieving the purpose of the Fund under section 7(1);

(b) the procuring and entering into contracts for goods and services on reasonable terms, reasonably necessary to achieving the purposes of the Fund consistent with this Order;

(c) all powers and functions reasonably necessary to invest and manage the Fund's assets.

(13) The members of the Board and any person employed thereby shall be deemed to be public servants within the meaning of the Penal Code (Chapter 22).

(14) 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.

(15) 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 its decisions.

(16) The Board shall convene meetings as may be required but not less frequently than once every 3 months.

(17) The Board shall cause minutes of its proceedings and decisions to be kept.

Investments, standard of care and internal governance of Fund.

5. (1) The Board shall establish the policy regarding the investment structure and management of the assets of the Fund.

(2) For the purpose of subsection (1), the Board shall adopt standards and procedures that a reasonably prudent person would apply to a portfolio of investments to achieve the purpose of the Fund under section 7(1), including reasonably diversifying its assets and risks, avoiding undue risk of loss and seeking to obtain a reasonable return, at all circumstances.

(3) The Board shall invest, manage and administer the Fund's assets in accordance with such policies, standards and procedures and solely for the purpose of achieving the Fund's objectives.

(4) In developing such policies, standards and procedures, the Board shall take into consideration that the value of the SCP account balances of members may fluctuate actual total returns achieved on the investments of the Fund.

(5) Certain investment risks, therefore, may be inappropriate for the Fund.

(6) The Board shall exercise extra care in approving and managing investments which may entail the use of leverage, result in the assumption of risks which could compromise the liquidity needs of the Fund or which are designed to benefit primarily from speculative activities or both.

(7) Subject to the foregoing, the Board may invest the Fund's assets in any investment specified in subsection (8).

(8) The investments referred to in subsection (7) are —

(a) any stocks, funds, shares or securities in companies incorporated or operating in Brunei Darussalam; and

(b) any investment in any entity or instrument of issuers based in any other country or territory alternating or originating in any other currency, including —

- (i) any fixed interest securities issued by or guaranteed by a government, state or municipality or by an international institution guaranteed by a government, whether or not traded on an exchange;
- (ii) any floating rate and inflation protected security;
- (iii) any obligation of a corporation, commercial bank or a bank-holding company; asset-backed security and mortgage-backed security issued or unconditionally guaranteed by a corporate entity or trust; any repurchase and reverse repurchase agreement with a major commercial bank or a primary dealer;
- (iv) futures, forwards, options contracts or swaps on any investments authorised by this subsection which are traded on an exchange regulated by a national authority;
- (v) any security listed and traded on an exchange regulated by a national authority;

- (vi) any exchange-traded funds, instruments that provide exposure to market indices for any investments authorised by this subsection, a private equity fund and a hedge fund;
- (vii) any Islamic financial instrument;
- (viii) any bullion, commodity and currency;
- (ix) any other specific investment not included in this subsection as may be authorised by the Board.

(9) The Board may establish and adhere to policies, standards and procedures that are as broad as or more restrictive than those permitted by subsection (8).

(10) The Board may delegate appropriate authority to a seconded officer from another agency or department of the Government or to any company (including but not limited to an investment management firm, insurance company and a bank) (each of which is in subsection (12) referred to as a service provider), provided that —

(a) such delegation is appropriately documented;

(b) the delegate provides a written acknowledgment of the appropriate responsibility, liability and duties associated with the delegation; and

(c) the Board monitors the performance of each delegate.

(11) The Board shall perform its duties solely to achieve the purpose of the Fund under section 7(1).

(12) The Board shall establish and adhere to policies and procedures to detect and prevent conflicts of interest and to impose reasonable ethical standards on its members, all members of any advisory group that it may utilise, all seconded officers and all service providers which the Board hires (all of whom are in this section referred to as covered persons).

(13) Such policies and procedures shall include a provision that —

(a) every covered person who has a direct or indirect personal financial or other interest in a contract or investment made or proposed to be made by the Fund shall disclose the nature of his interest at the first meeting of the Board after the relevant facts have come to his knowledge;

(b) a disclosure under paragraph *(a)* shall be recorded in the minutes of the Board meeting and, after the disclosure, the covered person shall —

- (i) not take part in any deliberation or decision of the Board or its staff regarding, or otherwise influence or seek to influence the substance, terms or any other aspect of the contract or investment;
- (ii) if he is a member of the Board, be disregarded for the purpose of constituting a *quorum* of the Board for any such deliberation or decision;
- (iii) if he is a member of any advisory group to the Board, a seconded officer or a service provider, abstain from taking any action regarding that contract or investment;

(c) no act or proceeding of the Board shall be questioned by a person who is not a member of the Board on the ground that a covered person has contravened this subsection, except that an auditor or the Auditor General under section 15 may question any such act or proceeding on that ground; and

(d) no member of the Board shall act as a delegate on the Board of any commercial, financial, agricultural, industrial or other interest with which he may be connected.

(14) The Board shall establish and adhere to a written system of internal controls regarding its investment programme, the receipt and distribution of monies and other activities.

(15) The system referred to in subsection (14) shall require the separation of functions and internal audit processes which are appropriate under the circumstances.

(16) The Board shall prudently and objectively consider and make decisions regarding the management of the Fund's assets and the mechanisms for financing and providing benefits and shall thereafter implement arrangements accordingly.

(17) Regarding asset management, the Board shall consider whether to implement the Fund's investment policies and manage the Fund's assets —

(a) internally through its own staff and resources;

(b) through the staff and resources of any other fund, board, department, agency or organisation of Government;

(c) externally through hiring a third-party; or

(d) through combination of these alternatives.

(18) In considering and making decisions on the matters referred to in subsection (17), the Board shall consider, among other possible factors, the relative costs to the Fund of each alternative, how promptly the Board is likely to implement each alternative, and the feasibility and operational implications of each alternative.

(19) The Board shall consider whether to finance and deliver benefits to members under this Order and obtain and provide other services reasonably necessary or helpful to financing and delivering such benefits —

(a) with the Fund's own assets and through the Board's own staff, resources and administration;

(b) through any other fund, board, department, agency or organisation of the Government;

(c) through a third-party that insures, finances or provides such benefits or services; or

(d) through any combination of these alternatives.

(20) In considering and making decisions on the matters referred to in subsection (19), the Board shall consider, among other possible factors, the relative costs to the Fund of each alternative, the quality and nature of benefits likely to be provided through each alternative, the likelihood of providing the statutorily promised benefits in full and on time, how promptly the Board is likely to implement each alternative and the feasibility and operational implications of each alternative.

(21) The Board shall consider whether to finance and deliver benefits to eligible beneficiaries and dependants under this Order and obtain and provide other services reasonably necessary or helpful to financing and delivering such benefits —

(a) with the Fund's own assets and through the Board's own staff, resources and administration;

(b) through any other fund, board, department, agency or organisation of the Government;

(c) through a third-party that insures, finances or provides such benefits or services; or

(d) through any combination of these alternatives.

(22) In considering the matters referred to in subsection (21), the Board shall consider, among other possible factors, the relative costs to the Fund of each

alternative, the quality and nature of benefits likely to be provided through each alternative, the likelihood of providing the statutorily promised benefits in full and on time, how promptly the Board is likely to implement each alternative the feasibility and operational implications of each alternative.

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 Fund.

(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 FUND

Establishment of Supplemental Contributory Pensions Trust Fund.

7. (1) For the purposes of this Order, there is hereby established a fund to be called the Supplemental Contributory Pensions Trust Fund 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.

(2) The Board shall be the trustee of the Fund and all monies belonging to the Fund shall be invested in accordance with section 5.

(3) The Board may establish a committee for the purpose of the investment, management and administration of the Fund.

(4) Each member shall be assigned an individual account within the Fund 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 fund under sections 8, 9 and 10.

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

(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 Fund 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 Fund.

(10) If the Board is at any time unable to pay any sum which the Fund 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.

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 Fund 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.

(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 Fund 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.

(7) Every employee shall pay to the Fund 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.

(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 Fund 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 Fund 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 Fund in addition to the contributions under subsections (1) and (7).

(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 Fund in accordance with section 16.

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 Fund.

(2) Any self-employed person who chooses to pay voluntary contributions to the Fund shall pay to the Fund 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.

(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 Fund a sum additional to the contribution under subsection (2).

(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 9 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.

(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 Fund 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.

(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 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.

14. All expenses incurred by the Board, including the cost of auditing the accounts of the Fund as provided for in section 15(1), shall be defrayed out of the moneys of the Fund.

Statement of accounts.

15. (1) The accounts of the Fund shall be audited annually by —

(a) the Auditor General; or

(b) any person who has been authorised to perform the duties required by section 131(3) of the Companies Act (Chapter 39) to be performed by an auditor, who shall be appointed annually by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan.

(2) Where the accounts have been audited under subsection (1)(b), they may be verified by the Auditor General before a copy is submitted to the Minister, who shall then submit the copy to His Majesty the Sultan and Yang Di-Pertuan.

(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, of contributions received and of payments made and of annual 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 accounts and statement referred to in subsection (3) together with the report of the Auditor General or other authorised person thereon shall be and presented to the Minister and published in the *Gazette*.

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

Contributions to be paid into Fund.

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

(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, 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 Fund at such time as the Board may determine.

Crediting of contributions into SCP account.

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

(2) The Board shall credit to the SCP account every contribution paid into the Fund 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.

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 FUND

Authority for payment from Fund.

19. No sum of money standing to the credit of a member of the Fund may be paid from the Fund 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.

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

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

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

(b) if the SCP 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.

Amount of SCP benefit.

21. (1) Where a SCP 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.

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

(3) The SCP benefit shall have the following characteristics —

(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 SCP member.

(5) Where a SCP member has contributed to the Fund 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).

(6) Where a SCP member has contributed to the Fund 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.

Amount of survivorship benefit.

22. (1) Where a SCP 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 SCP 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 SCP 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).

(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 SCP 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 SCP 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).

(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 SCP 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 SCP member and dependent on him for support;

"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 SCP member who dies at any time in January, 2010.

Amount of derivative SCP benefit.

23. (1) Where a SCP 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.

(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 SCP 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.

(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 SCP 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.

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

(b) if the SCP 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.

(9) In this section, "eligible beneficiaries" —

(i) in relation to a SCP member who was a Muslim, means the beneficiaries of his estate in accordance with *Hukum Syara'*;

(ii) in relation to a SCP 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.

Board to inform Probate Officer.

24. If the Board is satisfied that a member of the Fund 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).

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 of the Fund under section 11;

(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, 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.

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 Fund 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;

(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 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 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 Fund 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.

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 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 realisation.

(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.

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 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.

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 Fund;

(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 Fund;

(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 Fund;

(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