

LAWS OF BRUNEI

CHAPTER 167

EMPLOYEE TRUST

S 32/1992

Amended by
S 10/1993

1999 Edition, Chapter 167

Amended by
S 9/1999
S 9/2000
S 16/2003
S 2/2007
S 6/2010
S 27/2014
S 29/2014
S 29/2015
S 2/2016

REVISED EDITION 2019

LAWS OF BRUNEI

REVISED EDITION 2019

CHAPTER 167

EMPLOYEE TRUST

ARRANGEMENT OF SECTIONS

Section

PART 1

PRELIMINARY

1. Citation
2. Interpretation
3. *Repealed*
- 3A. *Repealed*
4. *Repealed*
5. Appointment of inspectors
- 5A. *Repealed*
- 5B. Power to examine persons
- 5C. Power to assess contributions based on information available
- 5D. Powers of Managing Director to require information and application for search warrant

PART 2

CONTRIBUTIONS TO TRUST

6. Establishment of Employee Trust
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. *Repealed*
13. *Repealed*
14. Contributions to be paid into Fund
15. Crediting of contributions into an ordinary account
16. Payment of cash grant by Government into Trust

PART 3

WITHDRAWAL OF CONTRIBUTIONS

17. Authority for withdrawals from Trust
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 4

OFFENCES, PENALTIES AND PROCEEDINGS

- 23. Offences
- 24. Publication of information to unauthorised person
- 25. Offences by bodies corporate etc.
- 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
- 31A. Civil proceedings to recover contributions
- 31B. Joint and several liability on directors etc.

PART 5

GENERAL

- 32. Protection of employee's interest in execution proceedings and sale under mortgage or charge
- 32A. *Repealed*
- 33. Power to exempt
- 34. *Repealed*
- 35. *Repealed*
- 36. Transfer to Trust from private provident fund

37. Board may engage in activities not directly related to Trust and may call for information
 38. Regulations and rules
-

EMPLOYEE TRUST ACT

An Act to establish the Employee Trust and to provide for all matters connected therewith and incidental thereto *[S 2/2016]*

Commencement: 1st January 1983
[S 1/1983]

PART 1

PRELIMINARY

Citation

1. This Act may be cited as the Employee Trust Act.

[S 2/2016]

Interpretation

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

“Board” means the Tabung Amanah Pekerja Board established under section 3 of the Tabung Amanah Pekerja Board Order, 2016 (S 2/2016);

[S 2/2016]

“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 the 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 the Sultan and Yang Di-Pertuan by notification published 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 Fund established under section 11 of the Tabung Amanah Pekerja Board Order, 2016 (S 2/2016);

[S 2/2016]

“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 (Chapter 57);

“member” means a member of the Trust to whose credit any amount is standing in the Trust;

[S 2/2016]

“Minister” means the Minister responsible for finance;

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

“Trust” means the Employee Trust established under section 6(1);

[S 2/2016]

“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 published in the *Gazette*, specify.

[S 2/2016]

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

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

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

Appointment of inspectors

5. (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 Act into effect.

(2) The Commissioner of Labour and Deputy Commissioners of Labour, Assistant Commissioners of Labour under the Employment Order, 2009 (S 37/2009) 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 Trust.

[S 2/2016]

(4) If any person —

(a) wilfully 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 —

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

(c) wilfully —

- (i) withholds any information as to who are the employees of any employer or as to who is the employer of any employee; or
- (ii) 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 is deemed to obstruct an inspector or 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) is guilty of an offence.

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

Power to examine persons [S 29/2015]

5B. (1) Without prejudice to section 5(3), an inspector or any of the officers referred to in section 5(2), in the course of an inspection under section 5(3), may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be legally bound to answer the questions truthfully relating to such case put to him by the inspector or any of the officers referred to in section 5(2), but may refuse to answer any questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) A statement made by any person under the provisions of this section shall be read over to him and shall, after correction if necessary, be signed by him.

(4) Any person who obstructs an inspector or any of the officers referred to in this section is guilty of an offence.

Power to assess contributions based on information available [S 29/2015]

5C. (1) An inspector may assess any contributions which is due by any employer based on any information available if the employer —

(a) fails to keep or maintain any statement, particulars, register book or any record pertaining to each employee as required to be performed by him under this Act; or

(b) fails or refuse to submit any statement, particulars, register book or record pertaining to each employee as required to be submitted by him under this Act.

(2) The assessment made under subsection (1) shall be sufficient proof of the Board's claim for the summary recovery of any contributions under section 31A.

Powers of Managing Director to require information and application for search warrant [S 29/2015; S 2/2016]

5D. (1) For the purposes of obtaining full information for ascertaining whether any person is liable to pay contributions under this Act, the Managing Director may, by notice in writing, require any person —

[S 2/2016]

(a) to furnish the Managing Director within a time specified in the notice, not being less than 30 days from the date of such notice, any information or particulars specified in the notice;

[S 2/2016]

(b) to attend personally before the Managing Director or any person authorised in that behalf by the Managing Director and produce for examination all books, accounts, records and other documents which the Managing Director or authorised officer deems necessary; or

[S 2/2016]

(c) to furnish the information or particulars in accordance with paragraph (a) and also to attend in accordance with paragraph (b).

(2) Where a person is found guilty of an offence under subsection (4)(a), the court before which the person is found guilty shall order such person to comply with the notice of the Managing Director under subsection (1) within 21 days from the date of the order of the court.

[S 2/2016]

(3) Whenever it appears to any court, upon written information on oath, and after any enquiry it may think necessary, that there are reasonable grounds for suspecting that there are on particular premises any book, account, record or other document the production of which has been required pursuant to subsection (1) and which has not been produced in compliance with that requirement, such court may issue a warrant authorising the Managing Director or any person named therein with or without assistance —

[S 2/2016]

(a) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises; and

(b) to take possession of, or secure against interference, any book, account, record or other document that appear to be the book, account, record or other document the production of which was so required.

(4) Any person who —

(a) fails to comply with subsection (1); or

(b) obstructs the Managing Director or any person named therein referred to in subsection (3),

[S 2/2016]

is guilty of an offence.

PART 2

CONTRIBUTIONS TO TRUST

*[S 2/2016]***Establishment of Employee Trust***[S 2/2016]*

6. (1) For the purposes of this Act, there shall be established a trust to be known as the Employee Trust 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.

[S 2/2016]

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

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

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

[S 2/2016]

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 Trust 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.

*[S 2/2016]***Rate of contributions**

7. (1) Subject to any regulations made under section 38, every employer of an employee shall pay to the Trust monthly in respect of each employee contributions at the appropriate rates as shall be prescribed by the regulations under 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.

[S 2/2016]

(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 Trust within such time as may be prescribed, he is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 5 years or both.

[S 2/2016]

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

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

[S 2/2016]

(b) an employee may pay contributions in excess of the appropriate rate by —

- (i) deduction by his employer from his monthly wages by giving to his employer written notice to that effect, and if he desires to cease to have such excess monthly contributions deducted from his wages he shall give written notice to his employer to that effect; or
- (ii) paying directly to the Trust in such manner as may be approved by the Board; or

[S 6/2010; S 2/2016]

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

[S 2/2016]

(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 is 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 Trust in accordance with section 14.

[S 2/2016]

(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 is 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.

Recovery by employer of employee's contributions

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.

(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 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.

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

Payment of service charge on contributions in arrears

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 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 Trust 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:

[S 2/2016]

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 Trust 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.

[S 2/2016]

(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 Trust in error to make written application for refund and to furnish such information as the Board may require to determine the amount so paid.

[S 2/2016]

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

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

Contributions to be paid into Fund

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

[S 2/2016]

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

[S 2/2016]

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

[S 2/2016]

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

[S 6/2010; S 2/2016]

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 Trust.

[S 2/2016]

(2) The Board shall credit to the ordinary account specified in subsection (1) every contribution paid into the Trust 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.

[S 2/2016]

(3) Where any contributions are paid into the Trust 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.

[S 2/2016]

Payment of cash grant by Government into Trust

[S 2/2016]

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 scheme approved by the Minister; and the Board shall credit the cash grant into such account of that person as the Minister may direct.

[S 29/2015]

(1A) Any cash grant paid into the Trust under subsection (1) shall be disbursed in accordance with the terms and conditions of the cash grant.

[S 29/2015; S 2/2016]

(2) Any cash grant paid into the Trust 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.

[S 2/2016]

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

[S 29/2015; S 2/2016]

(a) 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) 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 3

WITHDRAWAL OF CONTRIBUTIONS

Authority for withdrawals from Trust

[S 2/2016]

17. (1) No sum of money standing to the credit of a member in his ordinary account may be withdrawn from the Trust 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 the member —

[S 29/2015; S 2/2016]

(a) has died;

[S 2/2016]

(b) has attained the age of 55 years;

[S 2/2016]

(c) is physically or mentally incapacitated from engaging in any further employment;

[S 2/2016]

(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) 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 who —

[S 2/2016]

(a) has attained the age of 50 years, authorise, subject to section 18, not more than one withdrawal from the Trust 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 authorised;

[S 2/2016]

(b) has entered into an agreement to build or purchase a house, authorise, 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, whichever is the less, to the vendor or chargee of such house or such other person as the Board may approve;

[S 2/2016]

(c) 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, authorise not more than one payment of a sum not exceeding —

- (i) 20 *per cent* 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 may approve:

Provided that the amount withdrawn shall not exceed 45 *per cent* of the amount standing to the credit of such member or the prescribed amount;

[S 2/2016]

and a member 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.

[S 2/2016]

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

[S 2/2016]

(4) When a member withdraws under subsection (1) any amount standing to his credit in the Trust, 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:

[S 2/2016]

Provided that —

(a) if a member withdraws under section 17(1)(c) any amount standing to this credit in the Trust 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 Trust until he has attained the age of 55 years or after a lapse of 5 years from the year of further employment, whichever is the later;

[S 2/2016]

(b) where a member withdraws under section 17(1)(b) or (d) and he is subsequently engaged in any employment, he may elect to pay monthly contributions to the Trust 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;

[S 2/2016]

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

[S 2/2016]

(5) An election referred to in subsection (4)(b) 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 —

(a) 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

(b) requesting for the return of the equivalent of the employer's share of contributions remitted to the Trust in respect of the pensionable employee by the Government or from all such employers of the pensionable employee, together with any dividend credited thereon,

[S 2/2016]

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 Trust shall be the reduced amount as from the time.

[S 2/2016]

Withdrawals

20. (1) Upon an application for the withdrawal of the sum of money standing to the credit of a member 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 Trust and any dividend calculated in accordance with section 14(2) up to the date of the authorisation:

[S 2/2016]

Provided that when —

(a) any contributions are due to be paid for a member 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 Trust is authorised; and

[S 2/2016]

(b) the contributions are not paid to the Trust until after the date of authorisation,

[S 2/2016]

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.

Board to inform Probate Officer

21. If the Board is satisfied that a member 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).

[S 2/2016]

Contributions and deposits not to be assigned or attached

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

[S 2/2007]

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

[S 2/2016]

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

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

[S 2/2016]

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.

PART 4**OFFENCES, PENALTIES AND PROCEEDINGS****Offences**

23. Any person who —

(a) for any purposes 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 Trust 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;

[S 2/2016]

(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,

is guilty of an offence.

Publication of information to unauthorised person

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

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

[S 2/2016]

(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 etc. [S 29/2015]

25. Where an offence against this Act or any regulations or rules made thereunder committed by a body corporate, partnership, association or other body of persons is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of that body corporate, partnership, association or other body of persons, or any person who was purporting to act in that capacity, he as well as that body corporate, partnership, association or other body of persons is guilty of that offence and liable to be proceeded against and punished accordingly.

Penalties

26. Any person convicted of an offence under this Act 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 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.

Sanction for prosecution

27. No court shall take cognisance of any offence under this Act or any regulations or rules made thereunder except with the sanction of the Public Prosecutor.

Compounding of offences

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.

Saving for criminal proceedings

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.

Certificate of authorised officer to be evidence

30. In any legal proceedings a copy of an entry in the accounts of the Trust duly certified under the hand of such officer of the Board as it may authorise shall be *prima facie* evidence of such entry having been made and of the truth of the contents thereof.

[S 29/2015; S 2/2016]

Conduct of prosecutions

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.

Civil proceedings to recover contributions [S 6/2010]

31A. (1) Notwithstanding the provisions of any other written law all contributions payable under this Act may, without prejudice to any other remedy, be recoverable by the Board summarily as a civil debt.

(2) 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” includes any dividend, service charge and penalty on any contribution charged by the Board under this Act or any subsidiary legislation made thereunder.

Joint and several liability on directors etc. [S 29/2015]

31B. (1) Where any contributions remain unpaid by a body corporate, partnership, association or body of persons, then, notwithstanding anything to the contrary in this Act or any other written law —

(a) the directors or former directors of such body corporate;

(b) the partners or former partners of such partnership;

(c) the members of such association or body of persons or the office bearers of such association or body of persons, as the case may be, during such period in which contributions were liable to be paid,

shall together with the body corporate, partnership, association or body of persons is liable to pay the contributions, be jointly and severally liable for the contributions due and payable to the Trust.

[S 2/2016]

(2) In this section, “contributions” includes any dividend, service charge and penalties due on any contributions, charged by the Board under this Act or any regulations or rules made thereunder.

PART 5

GENERAL

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

32. (1) Whenever —

(a) a writ of seizure and sale has been issued in execution of a judgment against an employer;

(b) any movable or immovable property or other assets belonging to the employer has been seized or sold or otherwise realised in pursuance of the execution; and

(c) prior to the payment of the proceeds of the sale or other realisation to an execution creditor, notice has been given to the officer charged with the execution of the writ by the Board that any sum is due to the Trust,

[S 2/2016]

no part of the proceeds shall be paid to an execution creditor, unless and until the court issuing the writ has ascertained and provided for the sum due to the Trust at the date of such sale or other realisation.

[S 2/2016]

(2) In the event of —

(a) 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

(b) the Board giving to the officer charged with the conduct of the sale notice that a sum of money is due by the debtor to the Trust,

[S 2/2016]

the proceeds of the sale shall not be paid to any creditor other than to the Government or a secured creditor unless and until the court ordering the sale has ascertained and provided for the amount due to the Trust at the date of the sale or unless the court is satisfied that all sums due to the Trust have been paid up to the date of sale.

[S 2/2016]

32A. *(Repealed by S 2/2016).*

Power to exempt

33. His Majesty the Sultan and Yang Di-Pertuan may by order exempt any person or class of persons from all or any of the provisions of this Act.

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

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

Transfer to Trust from private provident fund*[S 2/2016]*

36. Where by virtue of his employment as an employee, any member 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 Trust and treated as an excess contributions paid for him under section 7(4).

*[S 2/2016]***Board may engage in activities not directly related to Trust and may call for information***[S 2/2016]*

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

*[S 2/2016]***Regulations and rules**

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

(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 Trust;

[S 2/2016]

(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 is 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 the Sultan and Yang Di-Pertuan may specify who derives income from any trade, business, profession or vocation, or from any other source or sources as His Majesty the Sultan and Yang Di-Pertuan may prescribe, to contribute to the Trust in respect of such income in such a manner and at such rate as may be prescribed by His Majesty the Sultan and Yang Di- Pertuan;

[S 2/2016]

(f) to provide for member to apply, assign or withdraw all or part of the contributions and dividend standing to their credit in the Trust 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 Trust;

[S 2/2016]

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

[S 9/1999]

(h) generally for giving effect to the objects and purposes of this Act and for the due administration thereof.

[S 9/1999]

(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;

(ba) to provide for the registration with the Board of employers and employees;

[S 9/1999]

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

[S 2/2016]

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

[S 2/2016]

(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 Trust;

[S 2/2016]

(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 Trust;

[S 2/2016]

(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;

(ja) to prescribe fees;

[S 2/2016]

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

(l) generally for giving effect to the objects and purposes of this Act and for the due administration thereof.

[S 9/1999]