

LAW OF MALAYSIA
ACT 612
PEMBANGUNAN SUMBER MANUSIA BERHAD ACT 2001

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LAWS OF MALAYSIA

ACT 612

PEMBANGUNAN SUMBER MANUSIA BERHAD ACT 2001

An Act to provide for the imposition and collection of a human resources development levy for the purpose of promoting the training and development of employees, apprentices and trainees the establishment and the administration of the Fund by the Corporation and for matters connected therewith.

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ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the *Pembangunan Sumber Manusia Berhad Act 2001*.

(2) This Act shall apply to the classes of employers in the industries specified in Part I of the First Schedule.

(3) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

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

"apprenticeship contract" means a written contract entered into by a person with an employer who undertakes to employ the person and train or have him trained systematically for a trade for a specified period approved by the Chief Executive in the course of which the apprentice is bound to work in the employer's service;

"contract of service" means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee, and includes an apprenticeship contract;

"Fund" means the Human Resources Development Fund established under section 22;

"Board" means the board of directors of the Corporation;

"levy" means the human resources development levy imposed under section 14 or 15;

"employer" means any person who has entered into a contract of service to employ any other person as an employee, and includes an agent, manager or factor of such first-mentioned person;

"Minister" means the Minister charged with the responsibility for human resources;

"authorized officer" means an authorized officer appointed under section 28;

"Officer in Charge" means the Officer in Charge appointed by the Minister under section 28;

"employee" means any citizen of Malaysia who is employed for wages under a contract of service with an employer, but does not include any domestic servant;

"trainee" means a person who is undergoing a practical training programme at an employer's premises;

"training provider" means any body corporate or other body of persons involved in the training or development of human resources;

"apprentice" means a person who is undergoing a skill training in a particular field through an apprenticeship contract with an employer and is bound to work in the employer's service;

"Corporation" means the Pembangunan Sumber Manusia Berhad referred to in section 3;

"employers' association" means any association of employers formed with the object of safeguarding the interests of

employers and whose members or any of its members are registered with the Corporation;

"appointed date" means the date appointed by the Minister under subsection 1(3);

"wages" means the basic salary and fixed allowances or other emoluments of a like nature paid in cash by or on behalf of an employer to an employee, and includes any leave pay and arrears of wages but does not include -

- (a) any contribution paid by an employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (d) any gratuity payable on discharge or retirement;
- (e) any bonus or commission; or
- (f) any allowances paid to an apprentice under apprenticeship contract;

“monthly wages” means the wages paid by an employer to an employee for the whole or part of the month during which the employee is employed by the employer.

PART II

THE CORPORATION

Main objective of the Corporation

3. The main objective of the Corporation incorporated under the Companies Act 1965 [Act 125] under the name "Pembangunan Sumber Manusia Berhad" shall be the imposition and collection of a human resources development levy for the purpose of promoting the training and development of employees, apprentices and trainees and the establishment and administration of the Fund.

Functions of the Corporation

4. The functions of the Corporation are -
- (a) to assess and determine the types and extent of employees', apprentices' and trainees' training and retraining in keeping with the human resources needs of industries;
 - (b) to promote and stimulate manpower training; and

- (c) to determine the terms and conditions under which any financial assistance or other benefits are to be given.

Powers of the Corporation

5. Without prejudice to its powers as prescribed in its Memorandum and Articles of Association, the Corporation shall have power to do all things expedient or necessary for, or incidental to, the carrying out of its functions, and in particular, but without prejudice to the generality of the foregoing provisions-

- (a) to collect and recover or cause to be collected and recovered all monies due to the Fund;
- (b) to establish guidelines for the processing of applications to the Fund for financial assistance;
- (c) to determine the terms and conditions for the making of grants or loans from the Fund, including the amounts that may be approved in respect of each application;
- (d) to determine the proportion of monies of the Fund which should be used for grants or for loans, including the proportion that should be provided in the form of a grant or by way of a loan in respect of each approved application;

- (e) to organize, establish, upgrade and maintain, or to assist in the organization, establishment, upgrading and maintenance of, training facilities;
- (f) to organize and supervise, or to assist in the organization and supervision of, the implementation of training courses, projects and programmes;
- (g) to examine any records, accounts and any other document relating to the grant, loan or any other benefit granted under this Act to any employer to ensure the grant, loan or other benefit is utilised for the purpose it is granted;
- (h) to obtain any information from employers to ascertain whether they are required to register under this Act;
- (i) to employ and pay agents, advocates and solicitors, bankers, stockbrokers or any other persons to transact any business or do any act required to be transacted or done in the exercise of its powers or in the carrying out of its duties or for the better carrying into effect of the purposes of this Act;
- (j) to grant loans or make advances to its officers and servants from the Fund for such purposes as may be approved by the Minister and on such terms and conditions as the Corporation shall determine;

- (k) to grant loans or make grants from the Fund on such terms and conditions as the Corporation shall determine to any training provider who in the opinion of the Corporation is able to contribute to the development of human resources;
- (l) to grant loans or make grants from the Fund on such terms and conditions as the Corporation shall determine to any employer associations to be used for the development of human resources of its members;
- (m) to prescribe procedures to be followed in matters relating to finance and accounts of the Fund; and
- (n) to do such other thing as may be expedient or necessary for the efficient management and administration of the Corporation and the Fund.

Budget

6. The Corporation shall, in each calendar year, frame a budget showing the estimate income and expenses which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the Minister before such date as may be fixed by the Minister and such budget shall contain provisions adequate in the opinion of the Corporation for the discharge of the liabilities incurred by the Corporation and for the maintenance of a working balance.

The Board

7. (1) The board of directors of the Corporation, which shall be responsible for the policy and general administration of the affairs of the Corporation and the Fund, shall comprise of the following members who, notwithstanding the provisions of section 128 of the Companies Act 1965, shall be appointed by the Minister:

- (a) ten persons representing employers;
- (b) three persons representing the Government and public sector agencies responsible for manpower development or training;
- (c) a representative of the Ministry of Human Resources;
- (d) a representative of the Ministry of Finance;
and
- (e) the Chief Executive.

(2) The Minister may, in addition to the persons mentioned in subsection (1), appoint to be members of the Board not more than two persons who, in the opinion of the Minister, are able to contribute to the work of the Corporation.

(3) The Minister shall appoint from among the persons mentioned in subsection (1) a Chairman and Deputy Chairman of the Corporation.

(4) The person appointed to be Chairman shall be a member appointed under paragraph (1) (a).

(5) The provisions of the Second Schedule shall apply to the members of the Board.

Alternate members

8. (1) The Minister may, in respect of each of the members of the Board other than the Chairman, the Deputy Chairman, the Chief Executive and members appointed under subsection 7(2), appoint a person to be an alternate member to attend, in place of that member, meetings of the Board that the members are for any reason unable to attend.

(2) When attending a meeting of the Board in place of a member, an alternate member shall for all purposes be deemed to be a member of the Board.

(3) An alternate member shall cease to be an alternate member when the member in respect of whom he is an alternate member ceases to be a member of the Board.

Committees

9. In addition to the provisions contained in the Memorandum and Articles of Association, the Board may establish committees consisting of members of the Board or persons who are not members of the Board or a combination of both to advise or assist the Board on such matters concerning its functions as it considers fit, and the Board may delegate subject to such conditions or

restrictions as it may impose, such of its functions as it considers fit to any such committees.

Application of the Corporation's Memorandum and Articles of Association

10. (1) Any matter not provided for in this Act shall be determined in accordance with and regulated by the Memorandum and Articles of Association of the Corporation.

(2) Where there is any conflict or inconsistency between the provisions of this Act and the provisions of the Memorandum and Articles of Association of the Corporation, the provisions of this Act shall prevail.

Disclosure of interest

11. (1) A member of the Board or any committee established by the Board having directly or indirectly any interest in relation to any matter under discussion by the Board or the committee shall disclose to the Board or committee the existence of his interest and the nature of that interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Board or the committee.

(3) Upon the disclosure under subsection (1) the member -

(a) shall not take part nor be present in any deliberation or decision of the Board or the committee; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board or the committee,
relating to the matter.

(4) A member of the Board or a committee who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) No act or proceedings of the Board or a committee shall be invalidated on the ground that any member of the Board or the committee has contravened the provisions of this section.

Accounts

12. (1) The Corporation shall cause its statement of accounts to be audited by an approved company auditor appointed by it and shall, as soon as practicable, send a copy of the audited statement of accounts together with a copy of the auditor's report thereon to the Minister.

(2) In this section "approved company auditor" has the same meaning as in section 4 of the Companies Act 1965.

PART III REGISTRATION AND HUMAN RESOURCES DEVELOPMENT LEVY

Duty of employer to register with the Corporation

13. (1) Every employer to whom this Act applies shall register with the Corporation within such time and in such manner as may be prescribed.

(2) Any employer who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(3) Where any person ceases to be an employer under this Act, he shall within thirty days of such cessation notify the Corporation in such manner as may be prescribed.

(4) Any person who contravenes subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) The Corporation shall maintain a register of all employers registered under this Act, together with a record (including a computer print out) of any payments made.

Imposition of levy

14. (1) Subject to section 19, there shall be paid by every employer to whom this Act applies a human resources

development levy in respect of each of his employees at the rate of one per centum of the monthly wages of the employee.

(2) The Minister may, from time to time, by order published in the *Gazette*, reduce or increase the rate of the levy specified in subsection (1).

(3) Any employer who fails to pay any levy due under subsection (1) within such period as may be prescribed commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(4) Prosecution for an offence under subsection (3) shall not affect the right of the Corporation to recover the amount of any levy due under this Act from the employer.

Imposition of levy on employer who opts to be registered

15. (1) Notwithstanding subsection 14(1), an employer in the class specified in Part II of the First Schedule may opt to be registered with the Corporation, and such registration shall be in such manner as may be prescribed.

(2) Upon registration under subsection (1), there shall be paid by the employer a human resources development levy in respect of each of his employees at the rate of 0.5 per centum of the monthly wages of the employee.

(3) In the event of any default in the payment of any levy due under subsection (1), the provisions of subsections 14(3) and (4) shall apply.

(4) If the number of employees of an employer referred to in subsection (1) increases to more than the maximum number for his class as specified in Part II of the First Schedule, the rate of levy shall be one per centum of the monthly wages of each of the employees.

(5) If the number of employees of an employer referred to in subsection (4) decreases to below the maximum number for his class as specified in Part II of the First Schedule, the rate of levy shall remain at one per centum of the monthly wages of each of the employees until the end of the current year.

(6) If the number of employees of an employer referred to in subsection (5) remains below the maximum number for his class as specified in Part II of the First Schedule after the current year, the rate of levy shall be 0.5 per centum of the monthly wages of each of the employees.

(7) If the number of employees of an employer referred to in subsection (6) increases to more than the maximum number for his class as specified in Part II of the First Schedule, the rate of levy shall immediately increase to one per centum of the monthly wages of each of the employees.

(8) The Minister may, from time to time, by order published in the *Gazette*, reduce or increase the rates of the levy specified in this section.

Deregistration of employers

16. (1) No employer who is registered with the Corporation shall be deregistered.

(2) Regardless of subsection (1), if the number of employees of an employer to whom this Act applies decreases to below ten for three consecutive months, the employer may submit an application to the Corporation for deregistration together with any relevant documents to prove such decrease.

Re-registration of employers

17. (1) An employer who has been deregistered by the Corporation under subsection 16(2) and is re-registered within a period of two years from the date of deregistration shall continue to be eligible to receive any financial assistance or other benefits to which the employer was entitled prior to the deregistration.

(2) If an employer has been deregistered under subsection (1), and has not been re-registered within the period of two years from the date of deregistration, the employer shall lose the eligibility to receive any financial assistance or other benefits to which the employer was entitled prior to the deregistration.

Interest on levy due but not paid in time

18. (1) An employer who fails to pay within such period as may be prescribed, any levy due from him shall be liable to pay

interest on the unpaid levy at the rate of ten per centum per annum in respect of each day of default or delay in payment.

(2) If the amount of interest calculated in accordance with subsection (1) is less than five ringgit, the interest payable shall be five ringgit in respect of each month or part of a month of the default or delay in payment.

(3) If the amount of interest calculated in accordance with subsection (1) exceeds five ringgit, the interest payable shall be calculated to the next higher ringgit in respect of each month or part of a month of the default or delay in payment.

(4) The Board may, in any case in which it thinks fit, remit in whole or in part the payment of any interest due under this section.

Exemption from levy

19. The Minister may, from time to time, by order published in the *Gazette* exempt fully or partly any employer or class of employers from the payment of the levy in such circumstances and subject to such conditions as may be prescribed in the order.

Qualifying conditions

20. (1) Subject to section 19, any employer who has been registered and paid the levy shall be eligible to receive any financial assistance or other benefit provided under this Act for the purpose of promoting the training and development of his employees, apprentices and trainees.

(2) Subject to section 19, any subsidiary company of a registered employer which is liable to be registered under this Act but has not yet commenced its business operation shall be eligible to receive any financial assistance or other benefit provided under this Act for the purpose of promoting the training and development of his employees, apprentices and trainees.

(3) If the employer ceases to be an employer under this Act, the employer shall not be eligible to receive any financial assistance or other benefit provided under this Act.

(4) Where an employer has acquired the interests of another employer registered under subsection 13(1) or 15(1), the first-mentioned employer shall be substituted for that other employer and shall be eligible to receive or continue to receive any financial assistance or other benefit provided under this Act, as the case may be, in respect of the employees, apprentices and trainees of the employer whose interests have been acquired.

(5) Any employer who is in receipt of, or eligible to receive, any financial assistance or other benefit provided under this Act shall be disqualified from receiving such financial assistance or other benefit if he is in default of any payment of the levy and such disqualification shall remain until such time that all outstanding payments and interest on such payments have been fully paid up.

(6) Notwithstanding subsection (5), the Chief Executive shall have the discretionary power to allow financial assistance or other benefit in relation to any claim made by any training provider

for any training conducted by the training provider for the employer mentioned in subsection (5) if the amount outstanding is in respect of the interest on the levy only.

(6A) Notwithstanding subsections (5) and (6), the Board may, upon a written application to the Perbadanan by any employer mentioned in subsection (5), allow any financial assistance or other benefit to be given to the employer, subject to such terms and conditions as may be determined by the Board.

(7) Any training provider shall be eligible to receive any financial assistance or other benefit provided under this Act for the purpose of promoting the development of human resources upon such terms and conditions as the Corporation shall determine.

(8) Any employers' association which in the opinion of the Corporation may contribute to the development of human resources of its members shall be eligible to receive any financial assistance or other benefit provided under this Act for the purpose of promoting the development of human resources upon such terms and conditions as the Corporation shall determine.

Duty of employer to prepare and keep information

21. In addition to the registers that an employer is required to prepare and keep under the Employment Act 1955 [Act 265], every employer shall keep documents containing such information on employees and wages, and such documents shall be kept for such period that every particular recorded in the documents shall be available for inspection for a period of six years after the recording thereof.

PART IV
HUMAN RESOURCES DEVELOPMENT FUND

Establishment of Fund

22. (1) For the purpose of this Act, there shall be established a Human Resources Development Fund, into which shall be paid -

- (a) all monies collected by way of levy under sections 14 and 15;
- (b) all monies recoverable from loans and grants granted under this Act;
- (c) all monies earned or arising from any property, investments, charges, interest on levy or debentures acquired by or vested in the Corporation;
- (d) any gift, donation, contribution or any other sums received by the Corporation from any source; and
- (e) all other monies lawfully recovered by the Corporation under this Act.

- (2) The Fund shall be expended for the purpose of –
- (a) promoting, developing and upgrading the skills of employees, apprentices and trainees including providing, establishing, expanding, upgrading or maintaining training facilities;
 - (b) providing financial assistance to employers by way of grant, loan or otherwise for the purposes mentioned in paragraph (a), including defraying or subsidising the costs incurred by any employer in the training or retraining of his employees, apprentices and trainees;
 - (c) carrying out, subject to such terms and conditions as may be approved by the Minister, activities or projects to train or retrain retrenched persons or persons to be retrenched;
 - (d) paying any expenses lawfully incurred by the Corporation including any fees and costs, the remuneration of officers and servants employed by the Corporation, and allowances payable to any members of the Board or the Investment Panel or any committee established under this Act;

- (e) providing financial assistance by way of loan or grant to any training provider or employers' associations as specified under subsections 20(7) and (8) respectively; and
- (f) generally paying any expenses for carrying into effect the provisions of this Act and in connection with the administration of the Fund.

Corporation to be Trustee of Fund

23. The Corporation shall be the Trustee of the Fund.

Recovery of levy and loan

24. Any levy payable or loan granted under this Act, together with any interest thereon, shall be a debt due to and recoverable by the Corporation.

Non-utilization of Fund

25. If an employer does not make any claims against the Fund within such period as may be determined by the Board from the date of its registration with the Corporation or from the date of the last financial assistance or other benefits granted by the Corporation, the employer shall lose his eligibility to receive any financial assistance or other benefits not claimed for the period.

Investment Panel

26. (1) In addition to the provisions contained in the Memorandum and Articles of Association of the Corporation, there shall be established an Investment Panel which shall, subject to

such directions as may be issued by the Corporation, be responsible for matters pertaining to the investments of the Fund.

(2) The Investment Panel shall consist of -

- (a) the Chairman of the Board or the person for the time being performing the functions of the Chairman of the Board, as chairman;
- (b) two members appointed by the Board from amongst its members;
- (c) the Chief Executive;
- (d) a representative of the Ministry of Finance;
- (e) a representative of the Central Bank of Malaysia; and
- (f) two other persons with business and financial experience to be appointed by the Minister.

(3) A person appointed in accordance with paragraph (2)(f) shall serve for a period of two years from the date of his appointment.

(4) The provisions of the Third Schedule shall apply to the members of the Investment Panel.

Power to invest

27. (1) In addition to the provisions contained in the Memorandum and Articles of Association of the Corporation, the Investment Panel may, from time to time, invest the Fund or any part of the Fund not being monies immediately required for meeting the Fund's obligations and expenses -

(a) in investments or securities authorized for the investment of trust funds under any written law for the time being in force;

(b) in shares and debentures in any public company the prices of which are quoted on a stock exchange established in Malaysia; or

(c) in such other investments or securities as the Investment Panel may decide.

(2) Any investment made under this Act may be varied, transposed or realised from time to time.

(3) The Minister may, at any time, direct the vacation in part or in whole, or prohibit, investment in any security or class of securities.

(4) The Investment Panel shall report to the Board of the status of its investment whenever the Board requests the Panel to do so.

(5) For the purposes of this section -

"debenture" includes stock, bonds, notes or any other securities or obligations of a company whether constituting a charge on the assets of the company or not, and also includes the right to subscribe for any debenture;

"share" means the paid-up shares (whether fully paid or not) in the share capital of a company and includes stock and right to subscribe for any stock or share.

PART V ENFORCEMENT AND INVESTIGATION

Authorized officers

28. (1) For the purposes of this Part, the Minister may appoint from any public office such number of officers, to be known as authorized officer, as he deems necessary.

(2) The Minister shall appoint an officer to be known as Officer in Charge from amongst the authorized officers appointed under subsection (1).

Functions of the Officer in Charge

29. The functions of the Officer in Charge are –

- (a) to direct, control and supervise authorized officers;
- (b) to ensure that the Corporation performs its duty in accordance with the provisions of this Act;

- (c) to receive and consider any report of the commission of an offence under this Act and investigate such of the reports as he considers practicable; and
- (d) to detect and investigate –
 - (i) any suspected offence under this Act;
 - (ii) any suspected attempt to commit any offence under this Act; or
 - (iii) any suspected conspiracy to commit any offence under this Act.

Delegation of powers

30. (1) The Officer in Charge may in writing delegate any of his functions under this Part, subject to such conditions, limitations or restrictions as he thinks fit, to any authorized officer except his function under paragraph 29(b), and the authorized officers to whom those functions are delegated may perform those functions in the same manner and with the same effect as if those functions had been conferred on such authorized officers under this Part.

(2) A delegation made under this section shall not preclude the Officer in Charge himself from performing or exercising at any time any of the functions so delegated.

Public servants

31. All authorized officers acting under this Part shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

Production of authority card

32. An authorized officer when acting under this Part shall declare his office and produce to the person against who he is acting or from whom he seeks any information such authority card as the Minister may direct to be carried by such officer.

Power of authorized officer to ask for information and assess levy

33. (1) For the purpose of obtaining full information for ascertaining whether any employer is required to register or to pay the levy under this Act, an authorized officer may by notice in writing require any person -

- (a) to furnish the authorized officer within the time specified in the notice, not being less than thirty days from the date of such notice, any information or particulars specified in the notice; and
- (b) to attend personally before the authorized officer and produce for examination all books, accounts, records and other documents which the authorized officer deems necessary.

(2) Any person who contravenes subsection (1) commits an offence.

(3) The authorized officer may assess any payment of levy due by any employer based on 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 under this Act; or

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

(4) The assessment made under subsection (3) shall be sufficient proof of the Corporation's claim for the recovery of any levy under section 24.

Power to examine persons

34. (1) The authorized officer making an investigation under this Act 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) The person referred to in subsection (1) shall be legally bound to answer all question relating to the case put to him by the authorized officer.

(3) The person referred to in subsection (1) may refuse to answer any question if the answer to such question would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(4) A person making a statement under this section shall be legally bound to state the truth whether or not the statement is made wholly or partly in answer to questions.

(5) The authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2), (3) and (4).

(6) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

Admissibility of statement

35. (1) Where a person is charged with an offence under this Act, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of investigation under this Act or not, and whether or

not wholly or partly in answers to questions, by the person to or in the hearing of an authorized officer and whether or not interpreted to him by any other authorized officer or any other person whether concerned or not in the case, shall be admissible at his trial in evidence and, if the person tenders himself as a witness, any such statement may be used in his cross-examination and for the purpose of impeaching his credit.

(2) A statement referred to in subsection (1) shall not be admissible or used in cross-examination or for the purpose of impeaching the credit of the person making the statement -

- (a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him; or
- (b) in the case of the statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

“It is my duty to warn you, that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not may be given in evidence”.

(3) Notwithstanding subsection (2), a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible.

(4) A person accused of an offence to which subsection (1) applies shall not be bound to answer any questions relating to the case after the caution referred to in subsection (2) has been administered to him.

Power of search and seizure

36. (1) An authorized officer may, for the purpose of carrying out the objective of this Act or any regulations made under this Act, at any reasonable time enter, inspect and examine any place of work.

(2) Whenever it appears to a Magistrate upon information, and after such inquiry as he thinks necessary, that there is reasonable cause to believe that in any place there is an evidence of the commission of an offence under this Act, the Magistrate may by warrant direct any authorized officer to enter the place, by force if necessary, and search for, seize and detain any such evidence.

(3) The authorized officer may, whenever it is necessary to do so -

- (a) break open any outer or inner door of a place of work and enter into the place;
- (b) forcibly enter into the place and every part of the place;
- (c) remove by force any obstruction to such entry, search, seizure or removal as he is empowered to effect;
- (d) detain any person found in the place until the place has been searched; or
- (e) seize any book, account, record or other document containing information as to the commission of an offence under this Act or any thing relating to the offence.

(4) Whenever it appears to any authorized officer that there is reasonable cause to believe that in any place there is concealed or deposited any books, accounts or other documents which are suspected to contain information as to the commission of an offence under this Act or any other thing relating to the offence and such officer has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the books, accounts or other documents are likely to be removed, the authorized officer may exercise in and in respect of such place all

the powers mentioned in subsection (1) as if he were empowered to do so by warrant issued under subsection (2).

(5) Notwithstanding subsections (1), (2) or (4), the authorized officer shall obtain a written consent from the Minister before entering, inspecting and examining any place of work under this section.

List of things seized

37. (1) The authorized officer seizing any books, accounts, documents or other things under this Act shall prepare a list of the books, accounts, documents or other things seized and forthwith deliver a copy signed by him to the employer or his agent or servant present in the place of seizure.

(2) The list referred to in subsection (1) shall not be treated as a statement, admission or confession made by the employer or his agent or servant in the course of the investigation but shall be admissible in evidence.

Obstruction of search, etc.

38. Any person who -

- (a) assaults, obstructs, hinders or delays any authorized officer in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act; or

- (b) fails to comply with any lawful demand of an authorized officer in the execution of his duty under section 36,

commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Compounding of offences

39. (1) The Officer in Charge may, with the consent in writing of the Public Prosecutor, compound any offence, except an offence under section 40 or 41, committed by any person under this Act or any regulations made under this Act and prescribed by the Minister to be a compoundable offence by regulations made under this Act by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Officer in Charge of an amount of money not exceeding fifty percent of the amount of maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Officer in Charge may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) If an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the

offence against the person to whom the offer to compound was made and any thing seized in connection with the offence may be released or forfeited by the Officer in Charge, subject to such terms and conditions as he thinks fit.

(4) All sums of money received by the Officer in Charge under this section shall be paid into and form part of the Federal Consolidated Fund.

PART VI OFFENCES AND PENALTIES

Incorrect declaration, failure to furnish return, etc.

40. (1) Any person who -
- (a) makes in writing, or signs any declaration, return or other document required by this Act or any regulations made under this Act which is untrue or incorrect in any particular; or
 - (b) fails or refuses to furnish or produce any declaration, return or other document required by this Act or any regulations made under this Act to be furnished or produced,
- commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding two years or to both.

(2) Where any person is found guilty of an offence under this section, the Court shall order such person to furnish or produce any declaration, return or other document required under this Act or any regulations made under this Act to be furnished or produced.

Penalty for attempting to obtain or obtaining money or benefit by false or misleading statement or document

41. Any person who -

- (a) attempts to obtain any financial assistance or other benefit provided under this Act by means of false or misleading statement or document; or
- (b) obtains any financial assistance or other benefit provided under this Act by means of false or misleading statement or document,

commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Repayment

42. Where a person is convicted of an offence under section 41, the Court may, in addition to imposing a penalty under that section, order the person to make repayment of the amount of money or value of benefit wrongfully obtained together with interest at the rate of ten per centum per annum in respect of each day from the day he received the financial assistance or other benefit.

General penalty

43. Any person who contravenes any provision of this Act or any regulations made under this Act for which no penalty is expressly provided shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Offences by body corporate or other bodies

44. Where an offence under this Act or any regulations made under this Act has been committed by a body corporate or other body of persons –

- (a) any person who, at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the body corporate or other body of persons; or
- (b) was purporting to act in such capacity,

shall, as well as the body corporate or other body of persons, be deemed to have committed that offence unless he proves that the offence was committed without his knowledge or connivance or that he took all reasonable precautions or that he had exercised due diligence to prevent the commission of the offence.

Joint and several liability of directors, etc.

45. Where any levy remains unpaid by an employer who is a body corporate or other body of persons, the directors of such body corporate or other body of persons including any person who was a director of such body corporate or other body of persons

during the period in which the levy was liable to be paid, or, in the case of a firm, the partners of such firm, including any person who was a partner of such firm during the period in which the levy was liable to be paid, as the case may be, shall together with the body corporate or firm be liable jointly and severally for the levy due and payable to the Corporation.

Institution of prosecution

46. No prosecution in respect of an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Order to register or pay levy

47. (1) Where an employer is found guilty of an offence under subsection 13(2), the Court shall order the employer to register with the Corporation as provided under subsection 13(1) and order the employer to pay the outstanding amount of levy, together with any interest thereon, due and payable to the Corporation.

(2) Where an employer is found guilty of an offence under subsection 14(3), the Court shall order such employer to pay the levy, together with interest thereon, due and payable to the Corporation.

PART VII GENERAL PROVISIONS

Regulations

48. (1) The Minister may make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for prescribing -

(a) the registration of employers for the purposes of this Act;

(b) matters relating to enforcement;

(c) the imposition and collection of the levy;

(d) offences which may be compounded and the procedure for compounding such offences; or

(e) any other matter which is expedient or necessary for the purposes of this Act.

Power to amend First Schedule

49. The Minister may, from time to time, by order published in the *Gazette*, add to, delete from, vary or amend the First Schedule.

Power of Minister to give directions

50. The Corporation shall be responsible to the Minister, and the Minister may give directions which are consistent with the

provisions of this Act to the Corporation and the Corporation shall, as soon as possible, give effect to all such directions.

Secrecy

51. (1) Except for any of the purposes of this Act or for the purpose of any civil or criminal proceedings under this Act, no member, officer, servant or agent of the Corporation or authorized officer shall disclose any information which has been obtained by him in the course of his duties under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Information from any public authorities or statutory bodies

52. The Corporation may request from any public authorities or statutory bodies information in relation to any employer who is registered under this Act or liable to be registered under this Act.

PART VIII

REPEAL AND TRANSITIONAL PROVISIONS

Repeal

53. On the appointed date -

- (a) the Human Resources Development Act 1992 [Act 491] (in this Part referred to as "the repealed Act") is repealed; and

- (b) the Human Resources Development Council (in this Part referred to as "the Council"), being a body corporate established under the repealed Act, shall cease to exist.

Continuance of laws, etc.

54. (1) Subject to the provisions of this Act, all written laws, orders, regulations and rules affecting or for the protection of the Council and in force immediately before the appointed date shall, until amended or revoked under this Act, continue in force on and after the appointed date and be construed as if this Act has not been passed; and any reference therein to the Council shall, unless the context otherwise requires, be construed as a reference to the Corporation, and expressions importing such a reference shall be construed accordingly.

(2) All orders, directions, appointments, notifications and regulations made under the repealed Act and in force immediately before the appointed date shall to the extent that they are not inconsistent with the provisions of this Act, be deemed to have been made under this Act and shall continue to be in force until they are replaced, amended or revoked under this Act.

Transfer of powers, rights, liabilities and duties

55. Subject to the provisions of this Act, all powers, rights, privileges, duties, liabilities or obligations which immediately before the appointed date are those of the Council shall as from that date devolve on the Corporation.

Transfer of property

56. Subject to the provisions of this Act, all moveable or immoveable properties vested in the Council immediately before the appointed date shall on that day be vested in the Corporation without any conveyance, assignment or transfer.

Existing contracts

57. Subject to the provisions of this Act, all deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the appointed date and affecting any of the property transferred under section 56 shall be as of full force and effect against or in favour of the Corporation and enforceable as fully and effectually as if, instead of the Council, or any person acting on behalf of the Council, the Corporation had been named therein or had been a party thereto.

Continuance of liability

58. Any employer who failed to register under the repealed Act may be prosecuted and the Corporation shall have the right to recover any amount of levy due to the Council under the repealed Act.

Continuance of civil and criminal proceedings

59. (1) Subject to the provisions of this Act, neither the repeal of the repealed Act nor anything contained in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Act before the appointed date, or any proceedings brought or sentence imposed before that date in respect of such offence.

(2) Subject to the provisions of this Act, any proceedings (whether civil or criminal) or cause of action pending

or existing immediately before the appointed date by or against the Council or any person acting on behalf of the Council may be continued or instituted by or against the Corporation as it might have been continued or instituted by or against the Council or such person as if this Act had not been passed.

(3) Any appeal brought or any leave to appeal applied for on or after the appointed date against a decision given in any legal proceedings before that date may be brought by or against the Corporation as it might have been brought by or against the Council as if this Act had not been passed.

Transfer of Fund

60. Subject to the provisions of this Act, all monies or levy standing in, and due to be paid to, the Fund set up under section 9 of the repealed Act shall on the appointed date be transferred to the Fund.

Officers and servants of the Council

61. (1) The Corporation shall accept into its employment on the appointed date every person who immediately before that date is an officer or servant of the Council and who has been given an option by the Council and has opted to serve as an employee of the Corporation.

(2) Every person who opts to serve as an employee of the Corporation shall be employed by the Corporation on terms and conditions of service not less favourable than the terms and conditions of service to which he is entitled immediately before the appointed date.

Transfer of registration of employers

62. Every employer registered under the provisions of the repealed Act or any regulations made under the repealed Act shall be deemed to have been registered under this Act.

Prevention of anomalies

63. (1) If any difficulty arises with respect to the transitional provisions provided for in this Part, the Minister may, by order, make such modifications in those provisions as may appear to him necessary for preventing overcoming or preventing such difficulties.

(2) The Minister shall not exercise the powers conferred by subsection (1) after the expiration of two years from the appointed date.

(3) In this section, "modifications" includes amendments, additions, deletions, substitutions, adaptations, variations, alterations and non-application of any provision of this Part.

FIRST SCHEDULE
(Subsections 1(2) and 15(1))

PART I

Class of Employers

Industry

A. Manufacturing Sector

(1) Employers with fifty or more employees

Manufacturing, that is, the making or processing of an article by labour or machine or both, including the transformation of parts or components into another article of a different nature or character by way of altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, including the building of a ship or the assembly of parts of a ship.

(2) Employers with ten or more but less than fifty employees and with a paid-up capital of two million five hundred thousand ringgit (RM2,500,000) and above

B. Service Sector

(1) Employers with ten or more employees

- (i) Hotel, that is, the provision on a fee basis, of lodging, in hotels, inns, boarding-houses, rent houses, chalets, resorts or other similar places, whether open to the general public or restricted to members of a particular organization;
- (ii) Air transport, that is, the provision of transportation by air, on a fee or contract basis, of passengers or freight whether by regular services or by private charter, including the over-haul, repair, maintenance and cleaning of aircraft;
- (iii) Tour operating business, that is, any business of organizing or conducting for sale or commission of inbound tours only or travel agency business;

- (iv) Telecommunication, that is, the provision of a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy of –
 - (A) speech, music and other sounds;
 - (B) visual images;
 - (C) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sound or visual images; or
 - (D) signals serving for the actuation or control of machinery or apparatus;

- (v) Freight forwarding, that is, any arrangement of freight by air, sea or land from the port of loading/origin to the port of discharge/destination, or the provision of total logistic

activities, and includes the business of a forwarding agent, that is a business involving activities for the obtaining of customs clearance for freight, but does not include delivery transportation by business units for their own use;

- (vi) Shipping, that is, the operation of vessels for the transport of freight or passengers overseas or coastwise, including towing services on the high seas or within harbours, the operation of vessels for transport by rivers, canals and other inland waterways including ferries operated across rivers, domestic lakes or within harbours, water taxis, sight-seeing boats, towing or tugboats services on inland waterways, and includes the overhaul, repair, maintenance and cleaning of ships;
- (vii) Postal or courier, that is, the delivery of postal articles such as letters, postcards,

newspapers, books, documents, pamphlets, patterns or sample packets, small packets, parcels, packages or other articles or things transmissible by post or courier services;

(viii) Advertising, that is, the provision of advertising services by advertising agencies to or for clients on a fee or contract basis in various types of media or the conducting of market research work;

(ix) Computer services, that is, software development or improvement, the maintenance of software or database, systems integration or networking, contract staffing, facilities management, computer installation or maintenance service, or the provision of advisory service or consultancy;

- (x) Energy, that is, the supply and provision of electrical energy or electricity when generated, transmitted, distributed or utilized for any purpose except the transmission of any communication or signal;
- (xi) Training, that is, the business of providing general or specialized training or skills by any body corporate or body of persons but does not include training by the Government or the Government of any State training providers;
- (xii) Higher education, that is, the providing of instruction or training on or teaching of a course of study leading to the award of a certificate, diploma or degree upon the successful completion thereof or the providing of distance education, but does not include higher education or distance education provided by educational institutions established and managed directly by the

Government or the Government of any State or provided by any University or University College established under the Universities and University Colleges Act 1971 [Act 30] or the Universiti Teknologi MARA Act 1976 [Act 173] or the Politeknik Ungku Omar established under the Politeknik Ungku Omar Act 1974 [Act 145].

- (xiii) Direct selling, that is, a door-to-door sale or a mail order sale within the meaning of Direct Sales Act 1993 [Act 500];
- (xiv) Port services, that is, the undertaking of all or any work of every description in connection with the management or operation of the port by any private port, inland port or, any company, firm or person authorised by way of licence to undertake such work;
- (xv) Engineering support and

maintenance services, that is, the operation, testing or maintenance of electrical, electronic, software engineering and mechanical systems and equipment, including but not limited to the testing and the commissioning of any new equipment which services are provided to any companies, businesses, factories or public authorities;

(xvi) Research and development, that is the conducting of research and development activities that includes-

(A) pure research such as experimental or theoretical work undertaken primarily to acquire new scientific or technical knowledge;

(B) applied research such as original or critical research undertaken in order to acquire a new scientific or technical

knowledge, or directed towards a specific practical objective; and

(C) the use of scientific or technical knowledge in order to produce new or substantially improved materials, devices, products or services to install new processes or systems prior to the commencement of commercial production or applications, or improving substantially those already produced or installed;

(xvii) Warehousing services, that is, the provision of a bonded warehouse or any other place licensed for the warehousing of dutiable goods which includes all goods subject to the payment of customs duty and on which duty has not yet been paid;

Repeal

~~(xviii) Accounting and auditing, that~~

is, the practice of public accounting or auditing or taxation or furnishing of reports or other documents filed with the relevant authorities or otherwise prepared under the securities laws;

Repeal

(xix) Engineering consultancy, that is, the provision of engineering services and advice that includes any one or more of the following activities such as feasibility study, planning, survey, quantity survey, designing, construction, commissioning, operation, maintenance and management of engineering works or projects and includes any other engineering services approved by the Malaysian Board of Engineers;

(xx) Security services, that is, the provision of private security services that includes providing guard and patrol, security consultancy, armoured car or providing advice relating to the

security of property, premises, personnel, plant and equipment;

(xxi) Private hospital services, that is, the provision of treatment or wards to a patient in any premises other than a Government hospital or institution and includes any private maternity home but does not include private nursing home within the meaning of the Private Healthcare Facilities and Services Act 1998 [Act 586];

(xxiia) Commercial land transport, that is, the provision of commercial vehicles including but not limited to public service vehicles and good vehicles for carrying passengers or goods as defined under the Commercial Vehicles Licensing Board Act 1987 [Act 334], as follows:

(A) bus

(B) charter bus

- (C) express bus
- (D) feeder bus
- (E) mini bus
- (F) stage bus
- (G) school bus
- (H) airport taxi cab
- (I) hire car
- (J) limousine taxi cab
- (K) taxi cab; and
- (L) lorry

(xxiib) Railway transport services, that is, the provision of any railway transportation for the public carriage of passenger or goods or both including trains, commuters, monorails, transportation on a wage, fee or contract basis; and

(2) Employers with fifty or more employees

(i) Hypermarket, supermarket and departmental store services, that is, the sale of items such as groceries, daily necessities, garden produce, meat, confectionery, beverages, domestic hardware and toilet requisites, menswear, womenswear, children's wear and any other types of

apparels, electrical goods, furniture or any other goods for sale.

C. Change of number of employees

In the event that the number of employees of the employer under subparagraph A (1) decreases to below fifty or the paid-up capital of the employer under subparagraph A (2) decreases to below two million five hundred thousand ringgit, the rate of levy imposed shall remain at one per centum of the monthly wages of each of the employees.

PART II

Class of Employers

Employers with ten or more but less than fifty employees and with a paid-up capital of less than two million five hundred thousand ringgit (RM 2,500,000)

Industry

Manufacturing, that is, the making or processing of an article by labour or machine or both, including the transformation of parts or components into another article of a different nature or character by way of altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, including the building of a ship or the assembly of parts of a ship.

SECOND SCHEDULE

(Subsection 7 (5))

1. Subject to the provisions of this paragraph, every member of the Board shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.

2. (1) A member of the Board -

- (a) who, at three consecutive meetings of the Board, without reasonable cause or the permission in writing of the Chairman, has neither been present nor been represented by the alternate member, if any, appointed in respect of that member;
- (b) who has been found or declared to be of unsound mind;
- (c) who has become bankrupt or made an arrangement with his creditors;
- (d) who has been convicted of an offence involving any law relating to corruption, fraud, dishonesty or moral turpitude, or an offence under this Act or any regulations made thereunder;
- (e) whose resignation is accepted by the Minister; or

(f) whose appointment is revoked by the Minister,

shall cease to be a member of the Board.

(2) Where any person ceases to be a member of the Board by reason of any of the provisions of this Act, another person shall be appointed in his place in accordance with the provisions relating to such appointment.

(3) The provisions of subparagraph (1), other than subparagraph (a), shall apply *mutatis mutandis* to an alternate member.

3. Subject to paragraph 4, a member of the Board shall, unless he sooner resigns or his appointment is sooner revoked, hold office for such period not exceeding two years as the Minister may determine at the time of his appointment and shall be eligible for reappointment.

4. (1) The appointment of a member of the Board may at any time be revoked by the Minister.

(2) A member of the Board may at any time resign his office by giving a written notice addressed to the Minister.

5. (1) The Minister shall summon the first meeting of the Board.

(2) The Board shall meet with such frequency that there is no lapse of more than three months between meetings.

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

(4) If on any question to be determined by the Board there is an equal division of votes, the Chairman, Deputy Chairman or member presiding shall have a casting vote in addition to his deliberative vote.

6. There shall be paid such remuneration or allowances to such members or alternate members of the Board for attending meetings of the Board as the Minister may determine.

7. The Board may invite any person to attend any meeting or deliberation of the Board for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at that meeting or deliberation.

8. No member of the Board shall incur personal liability for any loss or damage caused by any act or omission in administering the affairs of the Board or Corporation unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

9. The Board may determine its own procedure.

10. The seal of the Corporation shall be authenticated by the Chairman and one member of the Board and any document that purports to be sealed with the seal of the Corporation and is so

authenticated shall, until the contrary is shown, be deemed to have been validly sealed.

THIRD SCHEDULE
(Subsection 26(4))

1. The following persons shall be disqualified from being appointed or being a member of the Investment Panel:

- (a) a person who has been convicted of an offence involving fraud, dishonesty or moral turpitude;
- (b) a bankrupt; or
- (c) a person who is of unsound mind or is otherwise incapable of discharging his duties.

2. A member of the Investment Panel shall cease to be a member-

- (a) if he fails to attend three consecutive meetings of the Investment Panel without leave of the Chairman of the Investment Panel; or
- (b) if his appointment is revoked by the Minister, in the case of a person appointed under paragraph 26 (2) (f).

3. A member appointed by the Minister under paragraph 26 (2) (f) may resign as a member of the Investment Panel by giving one month's notice in writing addressed to the Minister.

4. If any member of the Investment Panel has any beneficial interest in any matter under consideration by the Investment Panel, he shall forthwith declare to the Chairman the nature and extent of his interest in such matter and the Investment Panel shall decide whether or not he may take part in the meeting of the Investment Panel when such matter is being considered, notwithstanding his interest in such matter.

5. (1) The Investment Panel shall meet as and when required to do so by the Chairman of the Investment Panel.

(2) The Chairman of the Investment Panel and three other members of the Investment Panel shall form a quorum at any meeting of the Investment Panel.

6. A member of the Investment Panel may be paid such remuneration or allowances for attending meetings of the Investment Panel as may be determined by the Board, with the approval of the Minister.