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LAWS OF MALAYSIA

Act 535

TABUNG HAJI ACT 1995

An Act to establish the Lembaga Tabung Haji; and to provide for matters connected therewith and incidental thereto.

[1 Jun 1995, P.U. (B) 244/1995]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and application

1. (1) This Act may be cited as the Tabung Haji Act 1995.
- (2) This Act shall apply throughout Malaysia.

Interpretation

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

“appointed day” means the day appointed by the Minister under subsection 1(1);

“Chief Executive Officer” means the person appointed under section 12;

“committee” means a committee established under

subsection 11(1);

“depositor” means a person who is permitted by the Lembaga under section 16 to deposit money with the Lembaga for the purposes specified in that section;

“financial year” means a period of twelve calendar months ending on 31st day of December;

“Fund” means the Fund of the Lembaga Tabung Haji established under section 15;

“Lembaga” means the Lembaga Tabung Haji established under section 3;

“Minister” means the Minister charged with the responsibility for pilgrimage control;

“Muslim” means a person who professes the religion of Islam;

“passenger” means any person carried in an aircraft in consideration for the payment of a fare therefor;

“Passport Haji” means the travel document in the prescribed form issued under section 35 to a pilgrim;

“person” includes a body of persons, corporate or unincorporated;

“pilgrim” means any Muslim who travels from any point of exit or other place in Malaysia or elsewhere for the purpose of pilgrimage to the Holy Land;

“pilgrim aircraft” means an aircraft chartered, or in respect of which arrangements are made, for the purpose of conveying pilgrims from or to any airport in Malaysia to or from any airport which is the entry point to or the exit point from the Holy Land, and includes any aircraft carrying passengers more than a quarter of whom are pilgrims being so conveyed;

“pilgrim organizer” means any person who is licensed under section 28;

“pilgrim organizer licence” means a licence issued under section 28;

“pilgrim ticket” means a ticket which entitles, or purports to entitle, any person to a passage on a pilgrim aircraft;

“remuneration” includes salary or wages, allowances, medical benefits, free or subsidized housing and other privileges capable of being valued in money;

“Reserve Fund” means the fund established under section 21;

“unclaimed money” means —

(a) moneys which are payable to a depositor but have remained unpaid not less than twelve months after they become payable; and

(b) moneys to the credit of a depositor’s account that has not been operated by the depositor either by deposit or withdrawal for a period of not less than seven years.

(2) In this Act, unless the context otherwise requires, any reference to a failure to do any act or thing shall include a reference to a refusal to do that act or thing.

PART II

LEMBAGA TABUNG HAJI

Establishment of Lembaga Tabung Haji

3. (1) There is hereby established a body corporate by the name of “Lembaga Tabung Haji”.

(2) The Lembaga shall have perpetual succession and a common seal and may sue and be sued in its name.

(3) Subject to and for the purposes of this Act, the Lembaga may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may

convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Lembaga upon such terms as it deems fit.

Functions of the Lembaga

4. (1) The Lembaga shall have the following functions:

- (a) to administer the Fund;
- (b) to administer all matters concerning the welfare of pilgrims and to formulate policies in connection therewith; and
- (c) to do such other things as it may be required or permitted to do under this Act.

(2) The Lembaga shall have power to perform any or all of its functions wholly or partly in Malaysia or outside Malaysia.

(3) The Lembaga may, with the approval of the Minister —

- (a) enter into any partnership, joint venture, undertaking or any other form of co-operation or arrangement for the sharing of profits or carry on its activities in association with, or otherwise, any person, public authority or government carrying on or engaging in any such activities;
- (b) take or otherwise acquire shares and securities in any public authority, corporation or other body and may sell, hold or re-issue such shares or securities or otherwise dispose of or deal with them;
- (c) establish a corporation by such name as the Lembaga may think fit to carry out and have the charge, conduct and management of any project, scheme or enterprise which has been planned or undertaken by the Lembaga; or
- (d) establish or promote the establishment of companies under the Companies Act 1965 [*Act 125*] to carry on or

engage in any activity which has been planned or undertaken by the Lembaga.

(4) The provisions of the Schedule shall apply to a corporation established under paragraph (3)(c).

Common seal of the Lembaga

5. (1) The common seal of the Lembaga shall bear such device as the Lembaga may approve and such seal may from time to time be broken, changed, altered and made anew by the Lembaga as it may think fit.

(2) The common seal shall be kept in the custody of the Chief Executive Officer and shall be authenticated by him or by any officer authorized by the Lembaga in writing.

(3) All deeds, documents, and other instruments purporting to be sealed with the common seal and authenticated in accordance with subsection (2) shall, until the contrary is proved, be deemed to have been validly executed.

(4) Notwithstanding subsection (3), any document or instrument which if executed by a person not being a body corporate would not be required to be under seal may in like manner be executed by the Lembaga, and any such document or instrument may be executed on behalf of the Lembaga by any officer or servant of the Lembaga generally or specially authorized by the Lembaga in that behalf.

(5) The common seal of the Lembaga shall be officially and judicially noticed.

Membership of the Lembaga

6. (1) The Lembaga shall consist of the following members:

(a) a Chairman, who shall be appointed by the Minister;

(b) a representative of the Prime Minister's Department;

(c) a representative of the Treasury; and

(d) not more than seven other members who shall be appointed by the Minister.

(2) No person shall be appointed to be a member of the Lembaga unless he is a Muslim and is a Malaysian citizen.

(3) The following persons shall be disqualified from being appointed to be members or from being members of the Lembaga:

(a) a bankrupt;

(b) a person who has been convicted of an offence and sentenced to imprisonment for a term of not less than one year; or

(c) a person who is of unsound mind or is otherwise incapable of performing his functions as a member of the Lembaga.

(4) If a member of the Lembaga—

(a) fails to attend three consecutive meetings of the Lembaga without the permission in writing of the Chairman of the Lembaga; or

(b) becomes disqualified under subsection (3), his office as a member of the Lembaga shall become vacant.

(5) The Minister may at any time revoke the appointment of any member of the Lembaga without assigning any reason therefor.

(6) A member of the Lembaga may at any time resign by giving notice in writing to the Minister.

(7) Subject to subsections (4), (5) and (6), a member of the Lembaga shall hold office for a term not exceeding three years and is eligible for reappointment.

Remuneration

7. Subject to subsection 12(3), members of the Lembaga shall not be entitled to any remuneration but may be paid such honorarium and travelling and subsistence allowances as the Minister may determine.

Meetings of the Lembaga

8. (1) The Lembaga shall meet at least once in every three months.

(2) Three members of the Lembaga shall form a quorum at any meeting of the Lembaga.

(3) The Chairman or, in his absence, the member elected by the members present shall preside over the meetings.

(4) If the votes on any question are equal, the Chairman shall have the casting vote in addition to his original vote.

(5) Any minutes made of meetings of the Lembaga shall, if duly signed, be receivable in evidence in all legal proceedings without further proof and every meeting of the Lembaga in respect of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

(6) Subject to subsections (1), (2), (3), (4) and (5), the Lembaga may determine its own procedure.

Disclosure of interest in transactions with the Lembaga

9. (1) Any member of the Lembaga who has or acquires, directly or indirectly, by himself, his partner or his agent—

(a) any share or interest —

(i) in any contract made with the Lembaga;

(ii) in any work done for the Lembaga; or

(iii) in any company or firm with which the Lembaga proposes to enter into a contract in respect of any undertaking; or

(b) any beneficial interest in land proposed to be acquired, purchased, leased or otherwise dealt with by the Lembaga, which he knows to be affected or likely to be affected by

any project, scheme or enterprise approved or proposed to be approved by the Lembaga,

shall declare the nature and extent of his share or interest to the Lembaga.

(2) The declaration required to be made by a member subsection (1) shall be made—

- (a) at a meeting of the Lembaga at which any question relating to the contract, acquisition, purchase, lease, dealing, project or scheme referred to in that subsection is first taken into consideration;
- (b) if the member does not have any such share or interest as is referred to in paragraph (a) at the date of the meeting mentioned in that paragraph, at the next such meeting held after he acquires such share or interest; or
- (c) if a member acquires any share or interest in any contract with the Lembaga after it has been made, at the first meeting held after that member acquires such share or interest.

(3) For the purposes of this section, a general notice given to the other members by a member to the effect that he is a shareholder or director of any specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with or by that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) A notice given under subsection (3) shall be of no effect unless it is given at a meeting of the Lembaga or the member concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the Lembaga after it is given.

(5) Every declaration made in pursuance of this section shall be recorded in the minutes of the meeting at which it was made or read.

(6) No member of the Lembaga shall vote upon any resolution or question relating to any contract, acquisition, purchase, lease, dealing, project or scheme in which he has any share or interest, whether or not he has declared his share or interest, or take part in any

deliberation (except by the invitation of the Lembaga) or decision relating thereto or to any matter incidental thereto and if he does so—

(a) his vote shall not be counted; and

(b) he shall not be counted in the quorum present at the meeting for the purpose of such resolution or question.

Power of Minister to give directions and require information

10. (1) The Minister may give to the Lembaga such directions of a general character not inconsistent with this Act relating to the performance of the Lembaga's functions and the Lembaga shall give effect to all such directions.

(2) The Lembaga shall furnish the Minister with such returns, accounts and other information with respect to the property and activities of the Lembaga as he may from time to time require.

Committees

11. (1) For the purposes of performing its functions, the Lembaga may establish, if it considers necessary, committees, each consisting of such number of members and with such terms of reference as it may specify.

(2) Persons who are disqualified from being appointed to be members or from being members of the Lembaga under subsection 6(3) shall also be disqualified from being appointed to be members or from being members of a committee.

(3) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.

(4) The Lembaga may revoke the appointment of any member of a committee without assigning any reason therefor.

(5) A member of committee may at any time resign by giving notice in writing to the Chief Executive Officer.

(6) Each committee shall meet at least once in every two months.

(7) If a member of a committee —

(a) fails to attend three consecutive meetings of the committee without the permission in writing of the Chief Executive Officer; or

(b) becomes disqualified under subsection (2),

his office as a member of the committee shall become vacant.

(8) Subject to subsections (6) and (9), sections 7, 8 and 9 shall apply to a committee and its members as they apply to the Lembaga and its members.

(9) In their application to a committee—

(a) section 7 shall be read as if for the word “Minister” there is substituted the word “Lembaga”; and

(b) section 9 shall apply to a member of a committee in respect of any contract or any acquisition, purchase, lease or dealing in land or any project, investment or scheme with which such committee is concerned.

PART III

OFFICERS, SERVANTS AND AGENTS OF THE LEMBAGA

Chief Executive Officer

12. (1) The Minister may appoint any member of the Lembaga to be the Chief Executive Officer of the Lembaga upon such terms and conditions as the Lembaga may, with the concurrence of the Minister, determine.

(2) The Chief Executive Officer shall have such powers and duties as may be conferred or imposed upon him by this Act or from time to time by the Lembaga in addition to such powers and duties as may be specified in his letter of appointment.

(3) Notwithstanding section 7, the Chief Executive Officer may be paid such salary or allowances as the Lembaga may, with the concurrence of the Minister, determine.

Appointment of officers, servants, agents, advisers, etc.

13. (1) Subject to such regulations as may be made under sections 14 and 15, the Lembaga may from time to time—

(a) appoint and employ on such terms and conditions as the Lembaga may think fit such persons to be the managing director, executive director, general manager and such other officers and servants as may be necessary for carrying out the purposes of this Act; and

(b) exercise disciplinary control over its officers and servants.

(2) The Lembaga may employ and pay agents and technical advisers including advocates and solicitors, bankers, stockbrokers, surveyors or valuers or other persons, to transact any business or to do any act required to be transacted or done in the execution of its functions or for the better carrying into effect the purposes of this Act, and may pay from the Fund all charges and expenses so incurred.

(3) The Lembaga may by instrument under its seal appoint any person whether in Malaysia or any place outside Malaysia to be its attorney and a person so appointed may, subject to the terms of the instrument, do any act or execute any power or function which he is authorized by the instrument to do or execute.

Power to make regulations in respect of conditions of service and discipline

14. (1) The Lembaga may, from time to time, with the approval of the Minister, make regulations with respect to the conditions of service of its officers and servants and with respect to the discipline of its officers and servants.

(2) Regulations made under this section with respect to the discipline of officers and servants of the Lembaga may create such disciplinary offences and provide for such disciplinary punishments

as the Lembaga may deem appropriate, and the punishments so provided may extend to dismissal or reduction in rank, and may include provisions for—

- (a) the interdiction with reduction in salary or in other remuneration; or
- (b) the suspension without salary or other remuneration,

of an officer or servant of the Lembaga during the pendency of disciplinary proceedings against him.

PART IV

FINANCE

Fund

15. (1) There shall be established, for the purposes of this Act, a fund to be administered and controlled by the Lembaga.

(2) The Fund shall consist of—

- (a) deposits received under section 16;
- (b) all grants, donations, gifts, contributions, and bequests made to or in favour of the Lembaga;
- (c) such sums as may be paid from time to time to the Lembaga from any financing or financial assistance made by the Lembaga and all sums from time to time falling due to the Lembaga in respect of the repayment of any financing or financial assistance made from the Fund;
- (d) moneys earned by the operation of any project, agency, scheme or enterprise financed from the Fund;
- (e) such fees and other moneys as may be prescribed;
- (f) any property, investment, mortgage, lease, tenancy, charge or debenture acquired by or vested in the Lembaga and moneys earned or arising therefrom;

- (g) all income from the investment of the Reserve Fund;
 - (h) all sums borrowed by the Lembaga; and
 - (i) all other sums or property which may in any manner become payable to or vested in the Lembaga in respect of any matter incidental to its functions, powers or duties.
- (3) The Fund may be expended for all or any of the following purposes:
- (a) withdrawals of deposits with or without such distributable profits as may be determined by the Lembaga thereon in accordance with this Act;
 - (b) repayments on borrowings and such other outgoings and expenditure as may be permitted by this Act or any regulation made under this Act;
 - (c) administrative expenses including remuneration and termination benefits;
 - (d) other expenses incidental to the management of the Fund and the functions of the Lembaga including any moneys required to satisfy any judgment, decision or award by any court or tribunal against the Lembaga, any member of the Lembaga or any committee, or any officer, servant or agent of the Lembaga in respect of any act, neglect or default done or committed by him in carrying out the functions of the Lembaga; and
 - (e) the granting of loans and making of advances to officers and servants of the Lembaga where permitted by this Act or regulations made under this Act.

Deposits

16. (1) The Lembaga may receive deposits from any individual Muslim person who is a citizen of and residing in Malaysia.

- (2) Deposit shall be received only for the following purposes:

- (a) saving towards the pilgrimage of the individual to the Holy Land; or
- (b) as savings for investment or for any other purpose permitted by the Lembaga.

Financing or financial assistance

17. (1) The Lembaga may, with the approval of the Minister, give financing or financial assistance to any company established under paragraph 4(3)(d) and to any company related to it, and such financing or financial assistance may be granted subject to such terms and conditions as the Lembaga may deem fit to impose in particular cases.

(2) No guarantee or indemnity letter shall be issued by the Lembaga or any corporation established under this Act without the written approval of the Minister of Finance.

Borrowing powers

18. The Lembaga may, with the approval of the Minister and Minister of Finance and upon such terms and conditions and for such period as they may approve, borrow any sums required by the Lembaga for the purposes of this Act.

Regulations in relation to deposits and withdrawals

19. The Lembaga may, with the approval of the Minister in relation to deposits and withdrawals, make regulations as to—

- (a) the manner in which deposits into the Fund are to be made;
- (b) the provision for separate accounts to be kept for each depositor;
- (c) the manner in which withdrawals are to be made of any amount standing to the credit of any depositor's account; and
- (d) the evidence to be produced on any application for withdrawal.

Investment of Fund

20. (1) The assets of the Fund shall, in so far as they are not required to be expended by the Lembaga under this Act, be invested wholly or partly within Malaysia or outside Malaysia and in such manner as the Lembaga may think fit.

(2) The Lembaga shall not exercise the powers of investment under subsection (1) without the approval of the Minister.

Reserve Fund

21. (1) The Lembaga shall establish and manage a Reserve Fund within the Fund.

(2) The Lembaga may from time to time transfer assets from the Reserve Fund to the Fund or from the Fund to the Reserve Fund.

(3) Transfers into the Reserve Fund shall be determined by the Lembaga and transfers out of the Reserve Fund shall be determined by the Minister.

(4) Section 20 shall apply to the assets of the Reserve Fund as it applies to the assets of the Fund.

Declaration of distributable profit

22. (1) Subject to this section, the Lembaga may at its absolute discretion determine at any time whether it is prudent to declare a sum as distributable profit in respect of any particular period or year of the Fund and if it determines to so declare, the Lembaga shall, with the approval of the Minister, declare a sum as distributable profit in respect of any particular period or year of the Fund.

(2) If a declaration is made under subsection (1), the Lembaga shall also determine the manner, amount and time for crediting such distributable profit to each depositor.

(3) No distributable profit shall be declared unless the Lembaga has first established a Reserve Fund, and no distributable profit shall be declared in any year unless at the end of that year—

- (a) the assets of the Fund were not less than the aggregate liabilities of the Fund, amounts due to depositors being calculated as if immediately payable; and
- (b) the assets of the Reserve Fund were not less than such percentage of the amounts actually standing to the credit of the depositors as at the end of that year including the distributable profit, as the Treasury may approve.

(4) Any payment required to be made out of the Fund for the purposes of this section shall, in so far as the moneys in the Fund are insufficient for that purpose, be made out of the Reserve Fund.

(5) Any decision by the Lembaga in respect of the amount of distributable profit to be apportioned to a depositor shall be final and binding on the depositor and a certificate by the Chief Executive Officer shall be conclusive evidence of the distributable profit apportioned to the depositor.

Unclaimed moneys

23. (1) Where the Lembaga has been declared under section 8 of the Unclaimed Moneys Act 1965 [*Act 370*] not to be a company to which Part II of that Act applies, all unclaimed moneys held by the Lembaga shall be entered in a register kept by the Chief Executive Officer.

(2) Notwithstanding any law to the contrary, all unclaimed moneys shall be held under the Fund until those moneys are paid to the appropriate depositors at any time subsequent thereto.

(3) For the purposes of this section, “depositors”, in respect of any individual person, includes that individual’s heirs, executors, personal representatives, administrators, assigns, lawful attorney and agent.

Government's guarantee of payments

24. (1) If any expenditure of the Lembaga in relation to withdrawals by depositors cannot be met out of the Fund or the Reserve Fund it shall be charged on and payable out of the Consolidated Fund.

(2) Any payment out of the Consolidated Fund shall as soon as practicable be repaid by the Lembaga to the Consolidated Fund and until it is repaid it shall be a debt to the Government and a first charge on the assets of the Fund and the Reserve Fund.

Annual estimates

25. (1) The Chief Executive Officer shall, not later than one month before the commencement of each financial year, lay before the Lembaga an estimate of the expenditure of the Lembaga (including capital expenditure) for the ensuing year in such detail and form as the Lembaga may determine.

(2) A copy of the estimates referred to in subsection (1) shall be sent to each member of the Lembaga not less than fourteen days prior to the meeting before which the estimates are to be laid.

Statutory Bodies (Accounts and Annual Reports) Act 1980

26. The provisions of the Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Lembaga.

PART V

PILGRIM ORGANIZER

Restriction on pilgrim organizers

27. (1) No person shall —

- (a) carry out or transact the business of organizing travel for the purpose of pilgrimage to the Holy Land;
- (b) advertise that he carries out or transacts the business of organizing travel, or that he organizes travel, for the purpose of pilgrimage to the Holy Land;
- (c) make or continue to make any representation to the effect that he carries out or transacts the business of organizing travel, or that he organizes travel, for the purpose of pilgrimage to the Holy Land; or

- (d) do any act or thing which can reasonably lead the Lembaga to believe that such person will carry out or transact the business of organizing travel, or will organize travel, for the purpose of pilgrimage to the Holy Land,

unless he is the holder of a valid pilgrim organizer licence issued by the Lembaga.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall on conviction—

- (a) in respect of a first offence, be liable to a fine not less than one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (b) in respect of the second or any subsequent offence, be liable to a fine not less than five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Application for licence and issuance of licence

28. (1) An application for a pilgrim organizer licence shall be made to the Lembaga in writing in such manner as may be prescribed.

(2) The Lembaga may require an applicant for a pilgrim organizer licence to provide such additional information or document as it may deem necessary for the purpose of determining the application.

(3) The Lembaga may, after considering an application made under subsection (1) and any additional information or document provided pursuant to a requirement under subsection (2), issue to the applicant a pilgrim organizer licence upon payment of the prescribed fee and subject to such terms and conditions, if any, as it deems fit or may, if it deems fit, refuse to issue such licence without assigning any reason therefor.

(4) Every pilgrim organizer licence shall, unless sooner revoked or suspended, continue in force for the duration of the period specified in the licence.

Security deposit

29. (1) Every applicant to whom a pilgrim organizer licence is issued shall deposit with the Lembaga as soon as may be after the issuance of the licence, and in any case not later than such period as may be specified by the Lembaga, and shall thereafter maintain with the Lembaga a security deposit in the form of—

(a) a bank guarantee in such form and for such amount as may be approved by the Lembaga; and

(b) a cash deposit to such amount as may be determined by the Lembaga.

(2) The Lembaga may require any pilgrim organizer to furnish a fresh bank guarantee or to deposit further cash to such amount and in such manner as the Lembaga may determine as sufficient security for the time being for the continuance of the pilgrim organizer licence.

(3) The security deposit required under subsection (1) shall be held as security for the due compliance with the terms and conditions imposed by the Lembaga under subsection 28(3) and for the due performance of the obligations imposed under section 31.

(4) Where any pilgrim organizer fails to comply with any of the terms and conditions or to perform any of the obligations referred to in subsection (3), he shall forfeit to the Lembaga such part of the security deposit as may be determined by the Lembaga.

(5) It shall be lawful for the Lembaga from time to time to deduct from the security deposit such amount or amounts as may be required—

(a) to cover the amount of any forfeiture under subsection (4);

(b) to pay any sum claimed under section 31;

(c) to repay any sum which may have been paid by the Lembaga in good faith to any person claiming a right to or interest in such sum.

Penalty for contravening term and condition of licence

30. (1) Any pilgrim organizer who contravenes any term or condition of his licence shall be guilty of an offence and shall on conviction—

- (a) in respect of a first offence, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (b) in respect of the second or any subsequent offence, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) The Lembaga shall revoke the licence of any pilgrim organizer who has been found guilty under subsection (1).

(3) The Lembaga may, upon any pilgrim organizer being charged with an offence under subsection (1), suspend his pilgrim organizer licence pending the disposal of the case.

Obligation of pilgrim organizer where pilgrim is detained in the Holy Land or elsewhere

31. (1) Every pilgrim organizer or his agent resident in Malaysia shall be responsible for the due performance of the following obligations in respect of every aircraft chartered or arranged for by him for the conveyance of pilgrims to or from the Holy Land:

- (a) that where any pilgrim is detained in the Holy Land or elsewhere for a period longer than twenty-four hours from the hour and date when accommodation on such aircraft was to have been available, the pilgrim organizer shall pay to the Malaysian Ambassador or Consul in the Holy Land or elsewhere such sum as the Lembaga may from time to time determine to be sufficient as subsistence allowance for each such pilgrim until such pilgrim has an opportunity of being conveyed back to Malaysia; and
- (b) that where any pilgrim provided with a return ticket issued in Malaysia is detained in the Holy Land or elsewhere

owing to no accommodation being offered by an aircraft for which his ticket is available, for a period longer than the maximum number of days determined by the Lembaga from time to time to be calculated from the hour and date when such accommodation on an aircraft was to have been available, such pilgrim organizer shall pay to the Minister in respect of each such pilgrim any sum which the Minister may claim as the cost of repatriating such pilgrim.

(2) The period referred to in subsection (1) shall not begin to run so long as the aircraft is prevented from carrying pilgrims on the homeward voyage by war disturbance or vis major of any kind.

(3) A certificate of such detention purporting to be signed and sealed with the consular seal of the Malaysian Ambassador or Consul in the Holy Land or elsewhere shall be admissible as evidence of all facts stated therein and shall be received in evidence without prior proof of signature in any court of law in Malaysia or in any arbitration.

Issue of ticket to pilgrims

32. (1) Every pilgrim organizer shall issue or cause to be issued to a pilgrim whose travel to the Holy Land is organized by him a return air ticket for that pilgrim's travel to the Holy Land and return therefrom.

(2) Notwithstanding subsection (1), a ticket for the return journey need not be issued to any pilgrim who produces a written authority as mentioned in section 33.

(3) Every ticket issued under subsection (1) shall be issued within such time as to enable the pilgrim to whom it is issued to perform the pilgrimage.

(4) Any pilgrim organizer who contravenes subsection (1) or (3) shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(5) Notwithstanding any penalty under subsection (4), the Lembaga shall, where a pilgrim organizer has failed to comply with subsection (1), be entitled to arrange for the purchase of a ticket for the return journey of a pilgrim and the pilgrim organizer shall be liable for and bear all costs incurred therefor and shall indemnify the Lembaga for the costs on demand.

Authority to issue single journey ticket

33. The Lembaga may issue a written authority, subject to such terms and conditions as it may deem fit to impose, authorizing the issue to any pilgrim of a single journey ticket to the Holy Land.

PART VI

PILGRIMS

Conditions for travel to the Holy Land

34. (1) No pilgrim shall travel or attempt to travel to the Holy Land to perform the pilgrimage unless the Lembaga has issued to him a written certificate confirming that the pilgrim has—

- (a) been duly issued with a Passport Haji;
- (b) been issued by the relevant authorities and through the Lembaga a valid visa to perform the pilgrimage in the Holy Land for the current pilgrimage season;
- (c) paid or caused to be paid in full for his return ticket to travel to the Holy Land to perform the pilgrimage and return therefrom or, in the case of a pilgrim to whom written authority has been granted under section 33, has paid or caused to be paid in full for his single journey ticket;
- (d) paid or caused to be paid in full such further sum as may be determined by the Lembaga to be sufficient for the pilgrim's living expenses for the whole duration of his stay in the Holy Land and such payment has been duly confirmed as received by the Lembaga or by the relevant pilgrim organizer; and

- (e) undergone such medical examination as may be approved by the Lembaga.

(2) The Lembaga may in its absolute discretion exempt any person from the application of any part of this section or amend or vary any of the requirements under this section in respect of any person.

Lembaga to issue Passport Haji

35. (1) The Lembaga shall issue a Passport Haji to each pilgrim and such Passport Haji shall be deemed to be a valid passport and re-entry permit as if granted under any law relating to passports and immigration.

(2) A Passport Haji shall not be valid except for the purpose of travel to the Holy Land to perform the pilgrimage or return therefrom.

Price to be marked upon ticket

36. (1) No person shall sell to a pilgrim any pilgrim ticket unless the price at which it is so sold is legibly marked upon it in the Malay and English languages.

(2) Any person who contravenes this section shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding ten thousand ringgit.

PART VII

MISCELLANEOUS

Evidence under this Act

37. In any proceeding for the adjudication of any penalty under this Act—

- (a) any document purporting to be made and signed by any officer of any Malaysian or foreign Embassy or Consulate; and

- (b) any copy of the proceedings of any court of law duly authenticated,

shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is held.

Provision as to jurisdiction

38. For the purpose of giving jurisdiction under this Act every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which the same actually was committed or arose or in any place in which the offender or person complained against is found.

General penalty and attempts, *etc.*, to commit offence

39. (1) Any person who is guilty of an offence under this Act or any regulation made under this Act for which no express penalty is provided shall on conviction be liable—

- (a) in respect of a first offence, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three months or to both; and
- (b) in respect of the second or any subsequent offence, to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Any person who—

- (a) attempts to commit any offence under this Act or any regulation made under this Act;
- (b) does any act preparatory to or in furtherance of the commission of any offence under this Act or any regulation made under this Act; or
- (c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code [Act 574]) any offence under this Act or any regulation made under this

Act, whether or not the offence is committed in consequence thereof,

shall be guilty of such offence and shall be liable to the penalty provided for such offence.

Liability of managers, etc.

40. (1) Where any offence under this Act has been committed by a person, who in this section is referred to as the “principal”, any person who at the time of the commission of the offence was in any manner or to any extent responsible for the management of the business or affairs of the principal or was assisting in such management shall be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he has taken all reasonable precautions as he ought to have taken, having regard to the nature of his functions in that capacity, to prevent the commission of the offence.

(2) Where any principal would be liable under this Act or any regulation made under this Act to any punishment or penalty, including the revocation of his licence, for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any of his servants or agents if such act, omission, neglect or default was committed by such servant in the course of his employment or by the agent when acting on behalf of the principal.

Power to compound offences

41. (1) The Lembaga may compound any offence against this Act or any regulation made under this Act which is prescribed by the Lembaga to be a compoundable offence by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding fifty per centum of the maximum fine with which the offence is punishable.

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence.

(3) Any moneys paid to the Lembaga pursuant to the provisions of this section shall be paid into and form part of the Fund.

Obligation of secrecy

42. (1) No officer or servant of the Lembaga or other person who has access to any statement, accounts, record, correspondence, document, information or any other material obtained pursuant to his employment or engagement by the Lembaga shall disclose such statement, accounts, record, correspondence, document, information or other material to any other person unless such disclosure is authorized by the Lembaga.

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

Protection for members, officers, servants and agents

43. (1) No member of the Lembaga or any committee, or officer, servant or agent of the Lembaga, shall incur any personal liability for any loss or damage caused by any act or omission in carrying out his powers or duties under this Act unless such loss or damage is occasioned by an intentionally wrongful act or omission on his part.

(2) The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceeding against the Lembaga or against any member of the Lembaga or any committee, or any officer, servant or agent of the Lembaga, in respect of any default done or committed by him in such capacity.

Public servants

44. All members of the Lembaga and of every committee and all officers and servants of the Lembaga shall be deemed to be public servants within the meaning of the Penal Code.

Power to make regulations

45. (1) The Lembaga may with the approval of the Minister make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out the purposes of

this Act or any provision thereof, or for the further, better or more convenient implementation of the provisions of this Act.

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

- (a) with respect to the establishing of committees and the procedure of such committees;
- (b) to impose fees in such cases as may be determined by the Lembaga;
- (c) for the keeping, closing and auditing of the accounts of the Lembaga including matters on its own financial and accounting procedures;
- (d) to regulate its own procedure including the procedure relating to personnel and operational matters and the borrowing of moneys;
- (e) to deal with deposits into and withdrawals from the Fund, and in particular—
 - (i) to provide for the nomination by a depositor of the persons to whom any amount standing to his credit in the Fund at the time of his death is to be paid on his death, for the manner in which such nomination may be revoked and for the circumstances in which it is to be treated as having ceased to be operative and for payment of such amount to the nominee so nominated;
 - (ii) to provide for the payment of the sum standing to the credit of a depositor at the time of his death where there is no nomination by the depositor of the person to whom such sum is to be paid on his death; or
 - (iii) to provide for the manner of payment of the distributable profit in the case of the death of a depositor or upon withdrawal;

- (f) to prescribe the responsibilities and control of officers and servants of the Lembaga including matters relating to disciplinary proceedings and disciplinary punishments and appeals in respect thereof and in respect of salaries, allowances, terms and conditions of service, period of service and leave of its officers and servants;
- (g) to prescribe the manner in which documents, cheques and instruments of any description shall be signed or executed on behalf of the Lembaga;
- (h) to provide for the form of and procedure in issuing Passport Haji;
- (i) to prescribe the person by whom and the conditions upon which Passport Haji may be granted;
- (j) to provide for the grant of loans or advances to any officer or servant of the Lembaga—
 - (i) for the purchase or erection of a house in which he resides or intends to reside or to discharge any charge or mortgage or other encumbrance on such a house;
 - (ii) for the purchase of a vehicle for his personal use,
 - (iii) for the acquisition of personal computers or other articles necessary or useful for the better performance of his duties as such officer or servant; or
 - (iv) for any educational or medical expenses he needs;
- (k) to prescribe the terms and conditions and the procedure for the grant of loans or advances to any officer or servant of the Lembaga including, where the loan is for the purpose of purchasing or erecting a house or discharging any encumbrance on a house, the condition that the house including the land on which it stands shall be charged or assigned to the Lembaga as security for such loan;

- (l) to provide for the procedure for the compounding of offences;
 - (m) to provide for the destruction of records and documents after prior consultation with the National Archives; and
 - (n) to provide for all matters which are required to be prescribed or which are necessary or expedient to give effect to this Act.
- (3) Regulations made under this section—
- (a) may provide that any act or omission in contravention of any provision thereof shall be an offence; and
 - (b) may provide for the imposition of a fine not exceeding five thousand ringgit or a term of imprisonment not exceeding one year for such offence.

Power to amend Schedule

46. The Minister may by order published in the Gazette amend, add to or vary the Schedule to this Act.

PART VIII

REPEAL AND TRANSITIONAL

Repeal of the Lembaga Urusan dan Tabung Haji Act 1969

47. On the appointed day—

- (a) the Lembaga Urusan dan Tabung Haji Act 1969 [Act 81], which in this Act is referred to as the “repealed Act”, shall cease to have effect and shall be repealed; and
- (b) the Lembaga Urusan dan Tabung Haji, being a body corporate established under the repealed Act, shall cease to exist.

Continuance of members

48. Every person who immediately before the appointed day held office as an appointed member of the Lembaga Urusan dan Tabung Haji shall on that day be a member of the Lembaga and shall be subject to all the provisions of this Act relating to such members and shall be deemed to have been appointed under this Act.

Continuance of laws, etc.

49. (1) Subject to this Act, all written laws affecting or for the protection of the Lembaga Urusan dan Tabung Haji and in force immediately before the appointed day shall, until amended or revoked by the authority having power so to do, continue in force on and after the appointed day and be construed as if this Act had not been enacted.

(2) All subsidiary legislations made or deemed to have been made under the repealed Act and in force immediately before the appointed day shall, insofar as they are not inconsistent with the provisions of this Act, be deemed to have been made under this Act and shall continue in force until they are revoked, they are replaced or they expire.

(3) Any reference in any written law to the repealed Act or the Lembaga Urusan dan Tabung Haji shall, unless the context otherwise requires, be construed as references to this Act or the Lembaga, as the case may be, and expressions importing such a reference shall be construed accordingly.

Transfer of powers, rights, liabilities and duties

50. Subject to this Act, all powers, rights, privileges, duties, liabilities or obligations which immediately before the appointed day were those of the Lembaga Urusan dan Tabung Haji shall as from that day devolve on the Lembaga.

Transfer of land and property

51. (1) Subject to this Act, all lands immediately before the appointed day vested in or reserved under the provisions of any written law relating to land for the purpose of the Lembaga Urusan

dan Tabung Haji shall on that day vest on, or be deemed to be reserved for the purpose of, as the case may be, the Lembaga.

(2) Subject to this Act and to any direction of the Minister, all property and assets other than land which immediately before the appointed day were vested in the Lembaga Urusan dan Tabung Haji or in any person on behalf of the Lembaga Urusan dan Tabung Haji shall on that day vest in the Lembaga.

Existing contracts

52. Subject to this Act, all deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the appointed day and affecting any of the property transferred under section 51 shall be of full force and effect against or in favour of the Lembaga and enforceable as fully and effectually as if, instead of the Lembaga Urusan dan Tabung Haji, the Lembaga had been named therein or had been a party thereto.

Continuance of civil and criminal proceedings

53. (1) Subject to 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 day, or any proceedings brought or sentence imposed before that day in respect of such offence.

(2) Subject to this Act, any proceedings (whether civil or criminal) or cause of action pending or existing immediately before the appointed day by or against the Lembaga Urusan dan Tabung Haji or any person acting on behalf of the Lembaga Urusan dan Tabung Haji may be continued or instituted by or against the Lembaga as it might have been by or against the Lembaga Urusan dan Tabung Haji or such person as if this Act had not been enacted.

(3) Any appeal brought or any leave to appeal applied on or after the appointed day against a decision given in any legal proceedings before that day may be brought by or against the Lembaga as it might have been brought by or against the Lembaga Urusan dan Tabung Haji as if this Act had not been enacted.

Transfer of Fund

54. Subject to this Act, all moneys standing in, and due to be paid to, the Fund established under section 19 of the repealed Act shall on the appointed day be transferred to the Fund.

Transfer of depositor to the Fund

55. Every person who immediately before the appointed day was a depositor to the Fund set up under section 19 of the repealed Act shall on that date be a depositor to the Fund and subject to all the provisions of this Act relating to depositors to the Fund.

Validation of acts

56. (1) Every act or thing done by the Lembaga Urusan dan Tabung Haji before the appointed day that would have been lawful if it had been done by the Lembaga under this Act is hereby validated and declared to have been lawfully done.

(2) Without prejudice to subsection (1)—

(a) every company established or purported to be established by the Lembaga Urusan dan Tabung Haji under the Companies Act 1965 shall be deemed to have been lawfully established and shall continue to exist as if it had been established by the Lembaga under paragraph 4(3)(d); and

(b) any financing or financial assistance given by the Lembaga Urusan dan Tabung Haji to a company referred to in paragraph (a) shall be deemed to have been lawfully given.

Continuance of Director General, officers and servants

57. (1) The person who was the Director General of the Lembaga Urusan dan Tabung Haji immediately before the appointed day shall on that day—

(a) be the Chief Executive Officer of the Lembaga as if he had been appointed under section 12 until the expiry of the period for which he was appointed under the repealed

Act, unless he sooner resigns or his appointment is sooner revoked by the Minister under that section; and

(b) be a member of the Lembaga so long as he continues to be the Chief Executive Officer.

(2) Every person who immediately before the appointed day was employed as an officer or servant of the Lembaga Urusan dan Tabung Haji shall on that day be deemed to be employed as such officer or servant, as the case may be, of the Lembaga upon the same terms and conditions of service as those applicable immediately before the appointed day.

Pending disciplinary proceedings

58. All disciplinary proceedings which, immediately before the appointed day, were pending against any officer or servant of the Lembaga Urusan dan Tabung Haji may, on or after that date, be continued against the officer or servant under this Act.

Use of seal

59. Until a seal is provided by the Lembaga under section 5, the common seal of the Lembaga Urusan dan Tabung Haji shall be the common seal of the Lembaga.

SCHEDULE

[Subsection 4(4)]

Regulations in respect of corporation

1. The Lembaga shall, on or before the date on which any corporation is established under paragraph 4(3)(c), make regulations in respect of such corporation defining —

- (a) the purposes and objects for which such corporation is established;
- (b) the rights, powers, duties and functions of such corporation
- (c) the system of management of such corporation; and
- (d) the relations between such corporation and the Lembaga and its rights of control over such corporation.

Effect of regulations

2. Subject to this Act, any regulations made under paragraph 1 shall be binding on the corporation in respect of which they were made and shall have effect for all purposes as if they had been enacted in this Act.

Amendment of regulations

3. The Lembaga may at any time amend, revoke, or add to, any regulation made in respect of any corporation under paragraph 1.

Winding up

4. (1) The Lembaga may, with the approval of the Minister, direct that any corporation established by it be wound up and dissolved.

(2) Upon the dissolution of any corporation under this paragraph, assets of the corporation after payment of all liabilities shall be transferred to and vested in the Lembaga.

(3) The winding up of a corporation under this paragraph shall be conducted in such manner as the Lembaga may prescribe.

Status of corporation

5. Every corporation established under paragraph 4(3)(c) shall be a body corporate by such name as the Lembaga shall give to such corporation and shall have perpetual succession and a common seal and may sue and be sued in such name, and may enter into contracts and may hold and deal in or with any immovable or movable property and may do all other matters and things incidental or appertaining to a body corporate not inconsistent with this Act and subject to such restrictions or limitations as may be prescribed by the Lembaga in each case.

Common seal

6. (1) Every such corporation shall have a common seal, which shall bear such device as the corporation, with the approval of the Lembaga, may determine, and such seal may from time to time be broken, changed, altered and made anew by the corporation, with the approval of the Lembaga as the corporation shall think fit.

(2) Until a seal is provided by the corporation under this paragraph a stamp bearing the name of the corporation encircling the letters "TABUNG HAJI" may be used as common seal.

(3) The common seal, or the stamp referred to in subparagraph (2) shall be in the custody of such person as the corporation shall direct and shall be authenticated by such person.

(4) All deeds, documents and other instruments purporting to be sealed with the seal, authenticated as provided in subparagraph (3), shall until the contrary is proved, be deemed to have been validly executed.

(5) Any document or instrument which if executed by a person not being a body corporate would not be required to be under seal may in like manner be executed by the corporation; and any such document or instrument may be executed on behalf of the corporation by any officer or servant of the corporation generally or specially authorized by the corporation in that behalf.

(6) The seal of every corporation shall be officially and judicially noticed.

LAWS OF MALAYSIA**Act 535****TABUNG HAJI ACT 1995****LIST OF AMENDMENTS**

Amending law

Short title

In force from

—NIL—

LAWS OF MALAYSIA**Act 535****TABUNG HAJI ACT 1995****LIST OF SECTIONS AMENDED**

Section	Amending authority	In from force
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—NIL—
