



# **LAWS OF MALAYSIA**

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**REPRINT**

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**Act 640**

## **SKILLS DEVELOPMENT FUND ACT 2004**

*Incorporating all amendments up to 1 June 2006*

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**SKILLS DEVELOPMENT FUND ACT 2004**

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## Act 640

### SKILLS DEVELOPMENT FUND ACT 2004

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## LAWS OF MALAYSIA

### Act 640

## SKILLS DEVELOPMENT FUND ACT 2004

An Act to establish the Skills Development Fund, to incorporate the Perbadanan Tabung Pembangunan Kemahiran and to provide for related matters.

[1 June 2006, P.U. (B) 151/2006]

**ENACTED** by the Parliament of Malaysia as follows:

### PART I

#### PRELIMINARY

#### **Short title and commencement**

**1.** (1) This Act may be cited as the Skills Development Fund Act 2004.

(2) 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—

“inspector” means any public officer or officer of the Corporation appointed as Inspector under section 66;

“committee” means a committee established under section 21;

“skill” means an acquired and practised ability to competently carry out a task or job;

“Chief Executive” means the principal executive officer of the Corporation appointed under section 25;

“Fund” means the Skills Development Fund established under section 3;

“Board” means the Board of Directors established under section 16;

“Inland Revenue Board” means the Inland Revenue Board of Malaysia established under section 3 of the Inland Revenue Board of Malaysia Act 1995 [*Act 533*];

“National Vocational Training Council” means the body by that name established by the Government for the purpose of formulating, promoting and co-ordinating vocational and industrial training strategies and programmes in keeping with the country’s technological and economic developmental needs, or any other body which succeeds that Council;

“Minister” means the Minister charged with the responsibility for human resources;

“trainee” means a person receiving skills training by a skills training provider;

“loan recipient” means a trainee to whom has been approved, and who is in receipt of, a skills training loan under this Act;

“Chairman” means the Chairman of the Board appointed under paragraph 16(2)(a);

“skills training provider” means an establishment or organization which provides skills training either privately or through government funding;

“Corporation” means the Perbadanan Tabung Pembangunan Kemahiran established under section 6;

“skills training loan” means a loan approved and paid out by the Corporation to a trainee under this Act, inclusive of any tuition fees, cost of living expenses, financial assistance for educational equipment and aids, insurance and any administrative fees or other charges imposed by the Corporation;

“approved training programme” means a skills training programme conducted in Malaysia which is accredited by the National Vocational Training Council and which is approved by the Corporation under section 44.

PART II

THE FUND

**Establishment of the Fund**

**3.** (1) For the purposes of this Act a fund called the Skills Development Fund which shall be administered and controlled by the Corporation is established.

(2) The Fund shall consist of—

- (a) such moneys as may be allocated by the Government from time to time for the purposes of this Act;
- (b) all grants, donations, gifts, contributions and bequests made to or in favour of the Corporation;
- (c) moneys earned by the operation of any project, agency, scheme or enterprise financed from the Fund;
- (d) tuition fees, insurance claims and administrative fees and other charges imposed by the Corporation under this Act;
- (e) such moneys as may be paid from time to time to the Corporation and all moneys from time to time falling due to the Corporation in respect of the repayment of any financing or financial assistance, including skills training loans, given out of the Fund;
- (f) moneys borrowed by the Corporation;
- (g) any property, investment, mortgage, lease, tenancy, charge or debenture acquired by or vested in the Corporation;
- (h) all other moneys or property which may in any manner become payable to or vested in the Corporation in respect of any matter incidental to its functions, powers or duties;
- (i) moneys earned or arising from any property, investment, mortgage, lease, tenancy, charge or debenture acquired by or vested in the Corporation; and
- (j) all other moneys lawfully received by the Corporation.

**Expenditure to be charged on the Fund**

**4.** The Fund may be expended for the purpose of—

- (a) the granting of skills training loans to trainees for the payment of fees, educational equipment and aids, and cost of living expenses during the trainees' period of training in an approved skills training programme;
- (b) the financing of, or the granting of financial assistance to, trainees in an approved skills training programme other than by way of skills training loan;
- (c) exercising the Corporation's additional powers under and in accordance with section 11;
- (d) repayments on borrowings and such other outgoings and expenditure as may be permitted by this Act or any regulations made under this Act;
- (e) administrative expenses, including the remuneration, retirement benefits, gratuities and other allowances of the officers and servants of the Corporation; and
- (f) other expenses incidental to the management of the Fund and the functions of the Corporation including any moneys required to satisfy any judgment, decision, or award by any court or tribunal against the Corporation, or any member of the Board or any committee, or any officer, servant or agent of the Corporation in respect of any act, neglect or default done or committed by him in carrying out the functions of the Corporation.

**Reserve Fund**

**5.** (1) The Corporation may establish and manage a Reserve Fund within the Fund.

(2) The Corporation may, from time to time, transfer assets into or from the Reserve Fund.

(3) Notwithstanding subsection (2), the transfer of funds into and out of the Reserve Fund shall be as determined by the Minister.

(4) The Reserve Fund shall only be used for the purpose of advancing skills training loans and for investment in government bonds and securities.

PART III

THE CORPORATION

**Establishment of the Corporation**

6. (1) A body corporate by the name of Perbadanan Tabung Pembangunan Kemahiran which shall be responsible for the management of the Fund is established.

(2) The Corporation 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 Corporation, upon such terms as it deems fit, may—

- (a) enter into contracts;
- (b) acquire, purchase, take, hold and enjoy movable and immovable property of every description; and
- (c) convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of, or deal with any movable or immovable property and any interest in any movable or immovable property, vested in the Corporation.

**Common seal of the Corporation**

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

(2) The common seal shall be kept in the custody of the Chief Executive and shall be authenticated by him or by any officer authorized by the Corporation 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 be deemed to have been validly executed, until the contrary is proved.

(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 Corporation, and such document or instrument may be executed on behalf of the Corporation by an officer or servant of the Corporation generally or specially authorized by the Corporation in that behalf.

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

### **Functions of the Corporation**

**8.** The functions of the Corporation shall be—

- (a) to identify and to approve skills training programmes eligible for skills training loan;
- (b) to provide and grant skills training loans and financial assistance other than skills training loans to trainees, and, to provide services in administering, monitoring and collecting repayments of the loans; and
- (c) to perform such other functions as are conferred on the Corporation by this Act or any other written law.

### **Powers of the Corporation**

**9.** (1) The Corporation shall have power to do all things expedient or reasonably necessary for or incidental to the carrying out of its functions.

(2) Without prejudice to the generality of subsection (1), the powers of the Corporation shall include power—

- (a) to enter into contracts;
- (b) to utilize any property of the Corporation, movable or immovable, in the interest of the Fund in such manner as the Corporation may think expedient, including the raising of loans by mortgaging such property;
- (c) to engage in any activity, either by itself or in conjunction with other organizations, for the purpose of co-ordinating, streamlining or rationalizing the giving and administration of skills training loans to trainees in an approved training programme;

- (d) to impose fees, including cost of living, insurance and administrative fees, and other charges for services rendered by the Corporation;
- (e) to grant loans and make advances to the officers and servants of the Corporation for such purpose as may be approved by the Minister;
- (f) to provide recreational facilities and promote recreational activities for, and activities conducive to, the welfare of the officers and servants of the Corporation;
- (g) to provide training for the officers and servants of the Corporation and to grant loans or otherwise pay for such training; and
- (h) to do anything incidental to any of its powers.

**Power to invest**

**10.** (1) The moneys of the Fund, in so far as they are not immediately required to be expended by the Corporation under this Act, shall be invested wholly in investments in Malaysia in accordance with subsection (2).

(2) The moneys of the Fund in subsection (1) may be invested in—

- (a) deposits in—
  - (i) Bank Negara Malaysia;
  - (ii) banks and financial institutions licensed under the Banking and Financial Institutions Act 1989 [*Act 372*]; or
  - (iii) any other financial institutions established by or licensed or registered under any other written law and approved by the Minister of Finance for the purposes of this Act;
- (b) bonds and securities of the Government;
- (c) investments authorized by or under the Trustee Act 1949 [*Act 208*]; and
- (d) such securities or investments as may be approved by the Minister of Finance.

(3) For the purposes of this section, “securities” has the same meaning as that assigned to “securities” under section 2 of the Securities Commission Act 1993 [*Act 498*].

### **Additional powers of the Corporation**

**11.** The Corporation may, with the approval of the Minister and the consent of the Minister of Finance—

- (a) where it appears requisite, advantageous or convenient for or in connection with the discharge of the functions, exercise of the powers and carrying on of the activities of the Corporation, enter into equity participation, partnership, joint venture, undertaking or any other form of cooperation or arrangement in association, or otherwise, with—
  - (i) an enterprise, a company, or a private undertaking constituted for the carrying on of business in Malaysia or elsewhere;
  - (ii) the Federal Government or any State Government;
  - (iii) any statutory authority; or
  - (iv) a commission; and
- (b) 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 is being undertaken by the Corporation.

### **Guarantee and indemnity**

**12.** The Corporation shall not issue any letter of guarantee or indemnity to a person under this Act without the written approval of the Minister and the Minister of Finance.

### **Expenditure and preparation of estimates**

**13.** (1) The expenditure of the Corporation up to such amount as may be authorized by the Minister for any one year shall be defrayed out of the Fund.



(2) Before the beginning of September of each year, the Corporation shall submit to the Minister an estimate of its expenditure for the following year in such form and containing such particulars as the Minister may direct.

(3) The Minister shall notify the Corporation before the beginning of the following year of the amount authorized for expenditure generally, or the amount authorized for each description of expenditure, based on the estimates prepared under subsection (2).

(4) The Corporation may submit to the Minister at any time a supplementary estimate of its expenditure for any one year and the Minister may allow the whole or any part of the additional expenditure to be included in the supplementary estimate.

### **Provision of skills training loans in annual estimates**

**14.** (1) The Corporation shall provide in its annual estimates under section 13 such sum of money as may be agreed to by the Minister for the purposes of skills training loans under this Act.

(2) The sum of money provided for under subsection (1) shall be charged on the Fund, but the Corporation shall keep and maintain the Fund in credit at all times.

### **Accounts and reports**

**15.** (1) The Corporation shall cause to be kept proper accounts of the Fund and proper reports of its activities.

(2) As soon as practicable after the end of each financial year, the Corporation shall cause to be prepared for the financial year—

(a) a statement of accounts of the Corporation which shall include a balance sheet and an account of its income and expenditure; and

(b) a statement of its activities.

(3) The Corporation shall as soon as possible send a copy of the statement of accounts prepared under paragraph (2)(a) and the statement of its activities prepared under paragraph (2)(b), certified by its auditors, and a copy of the auditors' report to the Minister who shall cause them to be laid before both Houses of Parliament.

**PART IV****THE BOARD****The Board of Directors**

**16.** (1) The Board of the Corporation, which shall exercise the powers and perform the functions of the Corporation, is established.

(2) The Board shall consist of the following members:

- (a) a Chairman who shall be appointed by the Minister;
- (b) the Chief Executive of the Corporation;
- (c) the Director General of the National Vocational Training Council or his representative;
- (d) a representative from the Ministry of Finance;
- (e) a representative from the Prime Minister's Department;
- (f) two persons representing private skills training providers, to be appointed by the Minister; and
- (g) two persons who possess special knowledge or experience in financial or commercial matters, to be appointed by the Minister.

(3) A member appointed under paragraph (2)(f) or (g) shall hold office for a term of three years and shall be eligible for reappointment.

(4) The Minister may revoke the appointment of a member appointed under paragraph (2)(f) or (g) without giving reasons for such revocation.

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

**Representative of successor or renamed organization**

**17.** (1) Where a member of the Board is a representative of a Ministry, department or organization and that Ministry, department or organization is renamed, or where the functions of the Ministry,

department or organization have been assumed by another Ministry, department or organization, the member shall be named by the Ministry, department or organization by whom the functions are assumed.

(2) Where a person is appointed to be a member of the Board to represent skills training providers, that person shall remain as a member until the expiry of his term of appointment or his appointment is revoked by the Minister, whichever is earlier, notwithstanding that he is no longer a skills training provider or involved in skills training.

### **Deputy Chairman and Secretary**

**18.** (1) The Minister shall appoint a Deputy Chairman of the Board from amongst the members of the Board.

(2) The Board shall appoint an officer of the Corporation to be the Secretary of the Board.

### **Alternate member**

**19.** (1) The Minister may appoint a person to be an alternate member in respect of each of the members of the Board appointed under paragraphs 16(2)(f) and (g) to attend meetings of the Board in place of the member when the member is for any reason unable to attend.

(2) When attending meetings 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 such member if the member for whom he is an alternate member ceases to be a member.

### **Allowances or reimbursements**

**20.** There may be paid to every member of the Board who is not an employee of the Corporation such allowances or reimbursements out of the Fund at such rate or rates as the Minister may determine.

**Committees**

**21.** (1) For the purposes of performing the functions of the Corporation the Board may establish such committees as it considers necessary, and with such terms of reference as it may specify.

(2) The members of a committee shall be appointed by the Board.

(3) Members of a committee established under subsection (1) may consist of members of the Board only or of members of the Board and such other persons as the Board thinks fit, but every committee shall be chaired by a member of the Board.

(4) Persons who are disqualified for being members of the Board under the Schedule shall also be disqualified for being members of a committee.

(5) 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.

(6) A member of a committee may resign at any time by giving notice in writing to the Chairman of the Board.

(7) The Board may revoke the appointment of any member of a committee without giving any reason for the revocation.

(8) Subject to this Act and such directions as may be given by the Board, a committee may regulate its own procedure.

(9) Meetings of a committee shall be held at such times and places as the chairman of the committee may determine.

(10) A committee may invite any person who is not a member of the committee to attend any of its meetings for the purpose of advising it on any matter under discussion but that person is not entitled to vote at the meeting.

(11) A committee shall cause—

- (a) minutes of all its meetings to be maintained and kept in a proper form; and
- (b) copies of the minutes of all its meetings to be submitted to the Board as soon as practicable.

(12) Members of a committee and persons invited under subsection (10) who are not employees of the Corporation shall be paid such allowances and other expenses as the Board may determine, after consultation with the Minister.

### **Delegation of functions**

**22.** (1) The Board may delegate to a committee established under section 21 any of the functions and powers of the Corporation as it may deem necessary or desirable, except the power to make regulations.

(2) Any function or power delegated under this section—

- (a) may be so delegated subject to such conditions or restrictions as the Board may impose either generally or specifically; and
- (b) shall be performed or exercised by the committee in the name and on behalf of the Board.

(3) A delegation made under this section shall not preclude the Board itself from performing or exercising at any time any of the functions and powers so delegated.

### **Power of Minister to give directions**

**23.** (1) The Board shall be responsible to the Minister.

(2) The Minister may give directions consistent with the provisions of this Act to the Board from time to time.

(3) The Board shall give effect to all directions given under this section as soon as possible.

### **Disclosure of interest**

**24.** (1) Any member of the Board or any member of a committee who has or who acquires a direct or indirect interest by himself, through a member of his family or through his associate in relation to any matter under discussion by the Board or the committee shall disclose to the Board or committee, as the case may be, the fact of his interest and the nature of that interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board or the committee, as the case may be, in which the matter is discussed, and after the disclosure, when the matter is discussed or decided upon, the member—

- (a) shall be disregarded for the purpose of constituting a quorum of the meeting of the Board or committee; and
- (b) shall not take part in or be present during any discussion or decision of the Board or committee.

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

(4) For the purpose of this section—

(a) “a member of his family”, in relation to a member of the Board or a committee, means—

- (i) his spouse;
- (ii) his parent (including a parent of his spouse);
- (iii) his child (including an adopted child or stepchild);
- (iv) his brother or sister (including a brother or sister of his spouse); and
- (v) a spouse of his child, brother or sister; and

(b) “associate”, in relation to a member of the Board of the Corporation or a member of committee, means—

- (i) any person who is a nominee or an employee of such member;
- (ii) any firm of which such member or any nominee of his is a partner;
- (iii) a partner of such member;
- (iv) a trustee of a trust under which such member or a member of his family is a beneficiary; or
- (v) any corporation, within the meaning of the Companies Act 1965, of which such member or any nominee of his or a member of his family is a director or has a controlling interest or shares to the total value of not less than thirty percent of the total issued capital of the corporation.

PART V

OFFICERS AND SERVANTS

**Chief Executive**

**25.** (1) The Minister shall appoint a person, designated as the “Chief Executive”, to be the principal executive officer of the Corporation, and shall vest in him such powers and impose upon him such duties as may be determined by the Act.

(2) The Chief Executive shall be responsible for the overall administration and management of the functions and the day-to-day affairs of the Corporation.

(3) The Chief Executive shall have general control of the officers and servants of the Corporation.

(4) The Chief Executive shall perform such further duties as the Board or the Minister may direct from time to time.

(5) In discharging his duties, the Chief Executive shall act under the general authority and directions of the Board.

(6) If the Chief Executive is temporarily absent from Malaysia or is unable through illness or any other reason, to perform his duties, the Deputy Chief Executive shall carry out the duties of the Chief Executive during such temporary absence or inability.

**Appointment of Deputy Chief Executive**

**26.** The Board, with the approval of the Minister, may appoint a Deputy Chief Executive to assist the Chief Executive to perform his duties as stipulated in subsection 25(6).

**Appointment of officers and servants of the Corporation**

**27.** (1) The Corporation may appoint or employ such number of officers and servants to assist the Corporation in carrying out its functions under this Act.

(2) Subject to paragraph 9(2)(e) and sections 28 and 29, the Corporation, with the approval of the Minister, may determine the terms and conditions of service of its officers and servants.

### **Regulations with respect to conditions of service**

**28.** The Corporation may, with the approval of the Minister, make regulations with respect to the conditions of service of its officers and servants.

### **Payment of retirement benefits, gratuities and other allowances**

**29.** The Corporation may make arrangements for the payment to its officers and servants and their dependants of such retirement benefits, gratuities and other allowances as the Board may determine.

### **Prior approval of the Treasury, the Public Services Department, etc., to be obtained**

**30.** Notwithstanding the provisions of paragraph 9(2)(e) and sections 28 and 29, the Corporation shall not, without the prior written approval of the Treasury, the Public Services Department or other relevant authorities—

- (a) establish or modify any post or scheme of service for officers and servants of the Corporation, including the terms and conditions of service and the wages; or
- (b) make arrangements with respect to—
  - (i) any pension scheme, retirement benefits, gratuities and any scheme relating to allowances and other remuneration; and
  - (ii) loan and advance facilities.

### **Appointment of agents, consultants, etc.**

**31.** The Corporation may appoint or employ agents and consultants, including advocates and solicitors, and 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,



**Corporation may adopt regulations, etc.**

**32.** For the purposes of this Part, the Corporation, with the approval of the Minister, may adopt with such modifications as may be necessary any regulations, rules, policies, circulars and directives enacted or issued by the Federal Government.

PART VI

REGISTRATION OF SKILLS TRAINING PROVIDER

**Registration of skills training provider**

**33.** (1) No skills training provider may apply for a skills training loan facility unless—

- (a) it is registered under this Part; and
- (b) it conducts a skills training programme registered under Part VII.

(2) A skills training provider shall not be registered under this Part unless—

- (a) it has been accredited by the National Vocational Training Council; and
- (b) it conducts an approved training programme.

(3) An application for registration shall be submitted by a skills training provider in such form and manner as may be determined by the Corporation.

(4) Every application shall be accompanied with—

- (a) such fees as may be determined by the Corporation; and
- (b) such document and information for the purpose of determining the application as may be determined by the Chief Executive.

(5) At any time after receiving the application for registration and before it is determined, the Chief Executive may by written notice require the skills training provider to provide additional documents and information within a specified period.

(6) Where the additional documents and information required under subsection (5) are not provided by the applicant within the specified period or such extended period as may be allowed by the Chief Executive, the application shall be deemed to be withdrawn and not be further proceeded with, but a fresh application may be made by the applicant.

(7) The Chief Executive or any officer of the Corporation may at any time inspect the skills training provider's premises to verify the status of the applicant.

(8) Application for registration may be withdrawn at any time before it is granted or refused.

(9) The Chief Executive shall present the application together with his report on it to the Corporation.

### **Power to approve or refuse application for registration**

**34.** The Corporation may, after considering the report of the Chief Executive—

- (a) register the skills training provider; or
- (b) refuse the application, stating the grounds for its refusal.

### **Refusal of application for registration**

**35.** An application for registration by any person under section 33 may be refused on any or all of the following grounds:

- (a) that the applicant does not conduct a training programme which is approved by the Corporation;
- (b) that the applicant has not complied with the provisions of this Act and regulations made under this Act in relation to such applications; and
- (c) that the applicant has provided any information which he knows to be false or which he does not believe to be true, or has intentionally suppressed any material fact, or provided any misleading information.

**Certificate of registration**

**36.** (1) When a skills training provider is registered under section 34, the Chief Executive shall issue to the skills training provider a certificate of registration.

(2) The certificate of registration shall specify the principal premises where the skills training provided by the skills training provider is being carried on.

(3) The skills training provider shall cause a copy of the certificate of registration to be exhibited in a conspicuous place in the premises specified in the certificate of registration.

(4) Every skills training provider registered under section 34 shall comply with the provisions of this Act and subsidiary legislation made under this Act.

(5) Upon any skills training provider ceasing to provide skills training, the skills training provider shall surrender the certificate of registration to the Chief Executive within three months from the date of such cessation.

**Power to suspend or revoke registration of skills training provider**

**37.** (1) The Corporation may, at any time, suspend or revoke the registration of a skills training provider registered under section 33 if—

- (a) the skills training provider ceases to be accredited by the National Training Vocational Council;
- (b) none of the skills training programmes conducted by the skills training provider is accredited by the National Vocational Training Council;
- (c) the skills training provider has breached any conditions imposed under section 34; or
- (d) the skills training provider has breached any provisions of this Act or any subsidiary legislation made under this Act.

(2) A written notice of the intention to suspend or revoke the registration of a skills training provider registered under section 34 shall be served on the skills training provider and the notice shall specify the grounds for such suspension or revocation.

(3) The skills training provider referred to in subsection (2) shall be given a reasonable opportunity of being heard before the registration is suspended or revoked.

### **Public to be informed of the revocation of the registration of skills training provider**

**38.** The Chief Executive shall cause the fact of the revocation of registration of any skills training provider to be published for the information of the general public.

### **Powers to impose conditions**

**39.** The Corporation may, at any time at the time of or after the registration of a skills training provider under section 34, impose such conditions as it may deem necessary or reasonable and may vary, amend or revoke any conditions or impose new or additional conditions from time to time.

### **Register**

**40.** The Chief Executive shall cause to be kept a register of all skills training providers registered under section 34 and such register shall contain all particulars relating to the skills training providers submitted in their applications and the skills training programmes conducted by them.

### **Appeal**

**41.** Any person who is aggrieved by—

- (a) the refusal of the Corporation under section 34 to register a skills training provider; or
- (b) the suspension or revocation of the registration of a skills training provider under section 37,

may appeal in writing to the Minister within thirty days from the date on which the notice of refusal or suspension or revocation is served on the skills training provider.

**Power of Minister on appeals**

**42.** (1) The Minister, on an appeal being made to him under section 41, may confirm, revoke or vary the decision of the Corporation under section 34 or 37.

(2) The Minister shall communicate his decision in writing to the person making the appeal and to the Corporation through the Chief Executive.

**Decision of Minister on appeals**

**43.** The decision of the Minister on an appeal shall be final.

**PART VII****APPROVED TRAINING PROGRAMMES****Approved training programmes**

**44.** The Corporation may identify and approve any skills training programme as an approved training programmes for the purposes of skills training loans facilities under this Act.

**Application for approval of training programmes**

**45.** (1) A skills training provider registered under section 34 may apply to the Corporation to have any of its training programmes approved under section 44.

(2) An application under subsection (1) shall be made to the Chief Executive and accompanied by such information and documents as may be determined by the Corporation.

**Power to suspend or revoke approved training programmes**

**46.** (1) The Corporation may, at any time, revoke the approval of a skills training programme under section 44 if the Corporation determines that the training programme is no longer an appropriate programme for the purposes of a skills training loan facility.

(2) A written notice of the intention to revoke the approval of a skills training programme shall be served by the Chief Executive on every registered skills training provider who is registered in the register kept under section 40 and the particulars of whose registration indicate that the skills training provider is conducting the training programme.

(3) No approval of a skills training programme shall be revoked unless every skills training provider who would be affected by revocation and who wishes to make representations on the matter has been given an opportunity to be heard.

(4) The decision of the Corporation shall be final and conclusive.

(5) The Chief Executive shall cause the fact of the revocation of approval of a skills training programme to be published for the information of the general public.

## PART VIII

### APPLICATION FOR SKILLS TRAINING LOAN

#### **Registration of skills training loan application**

**47.** (1) A skills training provider registered under section 34 may submit applications for skills training loans facilities to the Corporation for trainees undergoing skills training by the skills training provider in a programme approved by the Corporation.

(2) Every application for a skills training loan shall be made to the Chief Executive in such form and manner as may be determined by the Corporation.

(3) Every application shall be accompanied with—

(a) such documents and information as may be determined by the Chief Executive; and

(b) such fees, if any, as may be determined by the Corporation.

(4) No fee shall be imposed under subsection (3) in respect of an application by an institution owned or operated by the Government or a State Government or a statutory body.

(5) At any time after receiving the application for a skills training loan and before it is determined, the Chief Executive may by written notice require the skills training provider to provide additional documents and information within a specified period.

(6) Where the additional documents and information required under subsection (5) are not provided by the applicant within the specified period or such extended period as may be allowed by the Chief Executive, the application shall be deemed to be withdrawn and not be further proceeded with, but a new application may be made by the applicant.

(7) The Chief Executive or any officer of the Corporation may at any time inspect the premises of the skills training provider to verify the authenticity of the application.

(8) An application for a skills training loan may be withdrawn at any time before it is granted or refused.

#### **Power to grant or refuse application of skills training loan**

**48.** The Chief Executive may—

- (a) approve the application; or
- (b) refuse the application, stating the grounds for his refusal.

#### **Refusal of application of skills training loan**

**49.** An application of a skills training loan may be refused on any or all of the following grounds:

- (a) that the sum of money provided for skills training loans in the annual estimates under section 14 is not sufficient;
- (b) that the training programme conducted is not an approved training programme;
- (c) that the applicant has not complied with the provisions of this Act and regulations made under this Act in relation to such application;
- (d) that the applicant has provided any information which he knows to be false or which he does not believe to be true, or has intentionally suppressed any material fact, or provided any misleading information;

- (e) that the approval of a skills training loan in respect of the training programme has been revoked under section 53; or
- (f) that a notice of the intention to revoke the skills training provider's registration under section 34 or the approval of the training programme under section 44 has been issued.

### **Change of training provider or programme**

**50.** (1) The Chief Executive may approve any application for change of training provider or training programme by a trainee.

(2) An application for the change of training provider or training programme shall be made to the Chief Executive in such form as may be determined by the Corporation.

(3) Every application shall be accompanied with—

- (a) such documents and information as may be determined by the Chief Executive; and
- (b) such fees, if any, as may be determined by the Corporation.

### **Disbursement of skills training loan**

**51.** (1) The skills training loan under this Act shall be given and disbursed to eligible trainees in approved training programmes in such sums and manner as the Corporation may decide from time to time.

(2) For the purpose of subsection (1), the Corporation may prescribe such means test as the Corporation deems necessary and expedient in order to determine and select trainees eligible for the skills training loan.

### **Skills training loan agreement**

**52.** (1) A person to whom a skills training loan has been approved shall sign an agreement with the Corporation.

(2) The terms and conditions of the loan agreement shall be determined by the Corporation.



**Revocation of approved skills training loan**

**53.** (1) Any loan approved under paragraph 48(a) may be revoked if—

- (a) the applicant applies to revoke the skills training loan;
- (b) the applicant fails to submit the duly signed agreement within the specified time;
- (c) the applicant fails to comply with terms and conditions of the approval;
- (d) the applicant provides any information which he knows to be false, or believes not to be true, or intentionally suppresses any material fact, or furnishes any information which is misleading in any material particular;
- (e) the loan recipient refuses or fails to follow the skills training programme; or
- (f) any other reason deemed reasonable by the Corporation.

(2) Where a loan is revoked under subsection (1), no disbursement or no further disbursement shall be made by the Corporation.

(3) Notwithstanding the revocation of a loan under subsection (1), any amount paid and any additional amount chargeable under the terms of the loan agreement shall be recoverable by the Corporation in accordance with the agreement.

**Duty to maintain record of skills training loan**

**54.** (1) The Corporation shall cause to be maintained a record of all skills training loans paid out of the Fund and their repayments.

(2) The record kept and maintained under subsection (1) shall include—

- (a) the particulars of every loan recipient, including his name, identity card number and address;
- (b) the amount of the skills training loan, its repayment schedule, the amount of each repayment required to be made, the date of the commencement of the repayment, and the records of the repayments;

- (c) the name of the skills training provider where the loan recipient is receiving his training, the approved training programme under which he is receiving his training, the duration of such training and the tentative date of completion of such training; and
- (d) such other particulars as the Corporation deems necessary or expedient for the purposes of the Act.

## PART IX

### REPAYMENT OF SKILLS TRAINING LOAN

#### **Corporation to be responsible for the recovery and collection of repayments of skills training loan**

**55.** (1) The Corporation shall be responsible for the recovery and collection of repayments of skills training loans paid out to loan recipients.

(2) Any skills training loan or any part of any skills training loan that is not repaid may be treated as a civil debt owed by the loan recipient to the Corporation and the Corporation may recover such debts through any means provided under the law for the recovery of such debts.

#### **Return of amount of skills training loan**

**56.** Any loan recipient, shall return any amount of any skills training loan—

- (a) which was made to him by mistake;
- (b) which was overpaid;
- (c) for which payment was made to him as a result of fraud or misrepresentation or any other illegal act;
- (d) if training was not completed by the loan recipient in accordance with the approved training programme; or
- (e) if training was not attended by the loan recipient.

### **Responsibility of loan recipient**

**57.** The loan recipient shall inform the Corporation of—

- (a) any change of address; and
- (b) his employment, including self-employment when he is employed.

### **Collection agents**

**58.** (1) Without prejudice to the responsibilities and powers of the Corporation to recover the repayment of skills training loan under section 55, the Inland Revenue Board shall be appointed to be a collection agent for and on behalf of the Corporation for the recovery of any skills training loan due for repayment to the Corporation by any loan recipient.

(2) In addition to the Inland Revenue Board, the Corporation, with the approval of the Minister and the concurrence of the Minister of Finance, may appoint such number of collection agents as may be expedient or necessary for the recovery of skills training loan repayments.

### **Commencement of repayment of skills training loan**

**59.** (1) It shall be the duty of a loan recipient to commence repayment of his skills training loan to the Corporation not later than the time period specified in the loan agreement.

(2) Notwithstanding subsection (1) and subject to the terms and conditions of the loan agreement entered into between the Corporation and the loan recipient under this Act, the Chief Executive, on application by the loan recipient made before the expiry of the specified time period referred to in subsection (1), may extend the period of time for the commencement of repayment of the skills training loan upon such terms and conditions as the Chief Executive deems fit to impose.

### **Notice of loan repayment**

**60.** The Chief Executive shall cause to be issued to each loan recipient a notice specifying the amount and date of commencement of repayment of the skills training loan in respect of each loan recipient before the specified period for the repayment of the loan.

**Recovery and collection of repayments of skills training loan**

**61.** (1) For the purpose of the recovery and collection of the repayments of skills training loans—

(a) the Corporation shall provide the Inland Revenue Board or a collection agent appointed under section 58—

- (i) a copy of the record kept and maintained under section 54;
- (ii) a copy of the notice of loan repayment issued under section 60; and
- (iii) any other particular as may be requested for by the Inland Revenue Board or collection agent; and

(b) the Inland Revenue Board or the collection agent shall—

- (i) keep and maintain a record of the collection of the repayments made in respect of each loan recipient in such manner and containing such particulars as the Inland Revenue Board or collection agent deems fit and necessary to show the true state of affairs of the collection of the repayments;
- (ii) furnish the Corporation with a copy of the record kept and maintained under subparagraph (i) within such period as may be agreed between the Corporation and the Inland Revenue Board or collection agent; and
- (iii) not later than the first working day of the following week or month or every quarter of the calendar year as may be agreed between the Corporation and Inland Revenue Board or collection agent, commencing from the first collection of the repayments of the skills training loans, pay to the Corporation the total sum of repayments collected under this Act together with such returns as the Inland Revenue Board or collection agent may receive on the sum so collected.

(2) The Inland Revenue Board or collection agent, in its sole discretion, may devise such administrative methods, procedures and processes to facilitate the collection of the repayments of skills training loans that have fallen due to the Corporation.

**Lawful methods for collection of repayments of skills training loan**

**62.** For the purpose of this Act, the Inland Revenue Board or collection agent may use such methods that are permitted under the law to give effect to the collection of the repayments of skills training loan in respect of each loan recipient.

**Employer and self-employed person shall assist the Inland Revenue Board**

**63.** It shall be the duty of an employer of a loan recipient and the duty of a self-employed person, upon being notified in writing by the Inland Revenue Board—

- (a) to deduct from the wages of the loan recipient or, in the case of a self-employed person, from his own wages such sum of money as is notified by the Inland Revenue Board, being the monthly amount of repayment required of the loan recipient towards the discharge of his skills training loan; and
- (b) to remit the amount so deducted to the Inland Revenue Board not later than the last day of the month following the month in which his wages is paid.

**Notice of Corporation to be conclusive**

**64.** The notice issued by the Corporation under section 60 shall be conclusive proof of the amount of skills training loan outstanding and due to the Corporation from a loan recipient for the purpose of the recovery and collection of the repayments of that skills training loan by the Inland Revenue Board or a collection agent under this Act.

**Payment of commission to collection agents**

**65.** The Corporation, with the approval of the Minister of Finance, may pay to the Inland Revenue Board or a collection agent appointed under section 58 such rate of commission for services rendered in collecting the repayments of skills training loans.

**PART X****VERIFICATION AND INSPECTION OF SKILLS TRAINING PROVIDER****Inspector**

**66.** For the purposes of this Part, the Corporation may appoint any public officer or any officer of the Corporation as Inspector to perform the duties of verification and inspection under this Act.

**Inspection to be made from time to time**

**67.** An inspector shall, from time to time, inspect a skills training provider registered under this Act for the purpose of determining that this Act and the regulations made under this Act have been and are being complied with.

**Power to inspect skills training provider**

**68.** For the purpose of verification or inspection under this Act, an inspector may—

- (a) enter, during working hours any premises or any part of the premises which belongs to or are being used, whether permanently or otherwise, by a skills training provider for the purpose of providing skills training;
- (b) examine such book, minute book, register, document, financial statement, material or other article as he may consider necessary;
- (c) require any person, who is a member of the board of directors, an employee, or a trainee of such skills training provider, to produce for his inspection any book, minute book, register, document, financial statement, material or other article which is in that person's possession or custody or under his control or within his power to furnish—
  - (i) relating to the management of the skills training provider; or
  - (ii) relating to the skills training carried on by the skills training provider; and
- (d) to make copies or take extracts from any book, minute book, register, document, financial statement, material or other article inspected under paragraph (c).

**Seizure of documents, etc.**

**69.** Where an inspector carrying out an inspection under this Act has any reasonable cause to believe that an offence has been committed against this Act, the inspector may seize and detain any book, minute book, register, document, financial statement, material or other article inspected under section 68.

**Authority card**

**70.** (1) An inspector when exercising any power under this Act shall declare his office and shall produce to the person against whom he is acting or from whom he seeks any information such authority card as the Corporation may direct to be carried by such officer.

(2) The authority card specified in subsection (1) shall be issued by the Chief Executive.

**No entitlement as to costs on proceedings, damages or other relief, etc.**

**71.** No person shall, in any proceedings before any court in respect of the seizure of anything seized or detained in the exercise or the purported exercise of any power conferred under this Part, be entitled to the costs of such proceedings or any damages or other relief, other than the order for the return of such things seized or detained, or the payment of its value unless such seizure or detention was made without reasonable or probable cause.

**PART XI****OFFENCES AND PENALTIES****Prohibition on advertisement, etc.**

**72.** (1) No person shall hold himself out to be, or promote, a skills training provider, whether by advertisement, prospectus, brochure or otherwise, as a skills training provider in respect of whose trainees loan facilities are available under this Act unless the skills training provider is registered under this Act.

(2) Any person who contravenes subsection (1) 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 six months or to both.

### **Penalty for contravening conditions**

**73.** A skills training provider who contravenes any condition imposed when the skills training provider is registered under this Act commits an offence and shall, on conviction be, liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **Offences and penalties relating to applications made under the Act**

**74.** Any person who, on making an application for the registration of a skills training provider, registration of approved skills training programme or application for skills training loan under this Act, makes any statement which he knows to be false, or he does not believe to be true, or intentionally suppresses any material fact, or furnishes any information which is misleading in any material particular commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **Offences and penalties relating to certificate of registration of skills training provider**

**75.** Where—

- (a) a skills training provider fails to cause a copy of the certificate of registration of such skills training provider to be exhibited in accordance with subsection 36(3); or
- (b) a skills training provider who has ceased to provide skills training fails to surrender the certificate of registration of the skills training provider to the Chief Executive in accordance with subsection 36(5),

such skills training provider 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 six months or to both.



**Penalty relating to inspection, enforcement and investigation**

**76.** Any person—

- (a) who fails to produce such book, minute book, register, document, financial statement, material or article required by the inspector under section 68; or
- (b) who obstructs or hinders an inspector from performing functions of verification or inspection under this Act,

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

**Offences relating to repayment by employer and self-employed person**

**77.** Any employer or self-employed person, who fails to deduct from the wages of the loans recipient, after being notified by the Inland Revenue Board, being the monthly amount of repayment required of the loan recipient towards the discharge of his skills training loan 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 three months or to both.

**General penalty**

**78.** A person who is convicted of an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

**Penalty in the case of a continuing offence**

**79.** Any person convicted of an offence under this Act shall, in the case of a continuing offence, be liable, in addition to any other penalty to which he is liable under this Act in respect of such offence, to a daily fine not exceeding one thousand ringgit for each day the offence continues after conviction.

**Offences by bodies Corporate, etc.**

**80.** Where an offence under this Act has been committed by a body corporate, partnership or society—

- (a) in the case of a body corporate, any person who was a director, manager, secretary or other similar officer of the body corporate at the time of the commission of the offence;
- (b) in the case of a partnership, every partner in the partnership at the time of the commission of the offence; or
- (c) in the case of a society, every office-bearer of the society at the time of the commission of the offence,

may be charged severally or jointly in the same proceedings as the body corporate, partnership or society and shall be deemed to have committed the 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.

**Responsibility of skills training provider for offences committed by members of board of directors, officers, employees or agents**

**81.** (1) Where an offence against any provision of this Act has been committed by a person who at the time of the commission of the offence was—

- (a) a member of the board of directors;
- (b) an officer;
- (c) an employee; or
- (d) an agent,

of the skills training provider, the skills training provider shall be deemed to have also committed that offence.

(2) In a prosecution against a skills training provider under subsection (1), by virtue of an offence committed by—

- (a) a member of the board of directors;
- (b) an officer;
- (c) an employee; or
- (d) an agent,

of the skills training provider, it shall be a defence for any skills training provider prosecuted under subsection (1) if the skills training provider proves—

(aa) that the offence was committed without the knowledge or connivance of the skills training provider; or

(ab) that the skills training provider—

(i) took all reasonable precautions; and

(ii) exercised all due diligence,

to prevent the commission of the offence as the skills training provider ought to have taken and exercised, having regard to the nature of the functions of the member of the board of directors, officer, employee or agent in that capacity and all circumstances.

### **Compounding of offences**

**82.** (1) The Chief Executive may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under section 72, 73, paragraph 75(a), section 77 or 78 of this Act or any regulations made under this Act which is prescribed to be a compoundable offence by making a written offer to the person who committed the offence to compound the offence upon payment to the Corporation of an amount of money not exceeding twenty 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 Chief Executive 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 to the Corporation, as may be determined by the Chief Executive, subject to such terms and conditions as he thinks fit.

(4) All sums of money received by the Corporation under this section shall be paid into and form part of the Fund.

### **Institution of prosecution**

**83.** Prosecution in respect of an offence under this Act shall not be instituted without the written consent of the Public Prosecutor.

### **Presumption**

**84.** In any proceeding for an offence under this Act when it has been proved that any application, information, particular, return, account, record, document or statement, whether written or not, is—

- (a) false or incorrect in whole or in part; or
- (b) misleading in any material particular,

it shall be presumed until the contrary is proved that such application, information, particular, return, account, record, document or statement is false or incorrect in whole or in part or misleading in any material particular, as the case may be, to the knowledge of the person signing, delivering or supplying it.

## **PART XII**

### **MISCELLANEOUS**

#### **Power of Minister to exempt**

**85.** (1) The Minister may by order published in the *Gazette* exempt, subject to such conditions as he may deem fit to impose—

- (a) any person or class of persons; or
- (b) any skills training provider,

from all or any of the provisions of this Act or any regulations made under this Act.

(2) The Minister may, at any time, by order published in the *Gazette*, revoke any order made under subsection (1) if he is satisfied that the exemption should no longer be granted.

### **Protection from personal liability**

**86.** No member of the Board or of any committee, and no officer, servant or agent of the Corporation, 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.

### **Public Authorities Protection Act 1948**

**87.** The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Corporation, or against any member of the Board or any committee, or any officer, servant or agents of the Corporation in respect of any act, neglect or default done or committed by him in such capacity.

### **Protection against suit and legal proceedings**

**88.** No action shall lie or prosecution shall be brought, instituted or maintained against the Government, Minister, Chief Executive or against any officer of the Government or any person acting under the direction of the Minister or the Chief Executive in any court for any thing done or omitted to be done under this Act—

- (a) in good faith;
- (b) in the reasonable belief that it was necessary for the purpose intended to be served by such thing; or
- (c) for carrying into effect the provisions of this Act.

### **Public servants**

**89.** The Chairman, all members of the Board and of any committee, and the officers, servants and agents of the Corporation, while discharging their duties as the Chairman or such members, officers, servants or agents shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

**Statutory Bodies (Accounts and Annual Reports) Act 1980**

**90.** The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Corporation.

**Obligation of secrecy**

**91.** (1) Except for any of the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law, no member of the Board, member of a committee, officer, servant or agent of the Corporation shall disclose any information which has been obtained by him in the course of his duties and which is not published in pursuance of this Act.

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

**Power to make regulations**

**92.** (1) The Corporation, with the approval of the Minister, may make such regulations as may be expedient or necessary for the purpose of carrying out the provisions of this Act.

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

- (a) the criteria to be used in the granting of skills training loans;
- (b) the forms to be used and the information to be furnished in respect of any application under this Act and for other purposes under this Act;
- (c) the procedure to be followed and the fees or charges to be imposed in respect of any application under this Act;
- (d) the form in which a register or other records shall be kept or maintained under this Act and the entries to be made in the register and records;
- (e) fees or charges to be imposed in respect of anything done under this Act other than an application under this Act;

- (f) the manner of appointment, and the terms and conditions of service, of the officers and servants of the Corporation;
- (g) the payment of gratuities and other benefits to the officers and servants of the Corporation;
- (h) the terms and conditions and the procedure for the grant of loans or advances to any officer or servant of the Corporation including, where the loan is for the purpose of purchasing or erecting a house or discharging any encumbrance on a house, on the condition that the house including the land on which it stands shall be charged or assigned to the Corporation as security for the loan;
- (i) the payment of allowances and other benefits to members of the Board and the committees;
- (j) any matter required to be prescribed under this Act; and
- (k) any other matter which the Corporation deems expedient or necessary for the purposes of this Act.

### **Amendment of Schedule**

**93.** The Minister may from time to time amend the Schedule by order published in the *Gazette*.

### **Things done in anticipation of the enactment of the Act**

**94.** All things done by any person or authority on behalf of the Corporation in the preparation of and towards the proper implementation of any of the provisions of this Act, and any expenditure incurred in relation thereto, in anticipation of the enactment of this Act shall be deemed to have been authorized by this Act, and all rights acquired or obligations incurred on behalf of the Corporation from anything so done shall upon the coming into operation of this Act be deemed to be the rights and obligations of the Corporation.

### **Disposal of documents after more than three years**

**95.** (1) The Chief Executive may authorize any paper-based document belonging to the Corporation to be copied onto an electronic medium by such means as will ensure that the exact image of that document is capable of being viewed, reproduced and copied.

(2) Where a paper-based document has been copied in accordance with subsection (1), the Chief Executive may authorize the disposal of the paper-based document after the expiry of the period of three years from making of such electronic copy.

(3) A copy of the document kept on an electronic medium in accordance with subsection (1) shall be admissible as evidence of any fact stated in the copy in accordance with section 90A of the Evidence Act 1950 [*Act 56*].

### PART XIII

#### TRANSITIONAL AND SAVING PROVISIONS

#### **Registration of skills training provider after the commencement of this Act**

**96.** Any person or group of persons who, immediately before the appointed date, was carrying out skills training activities which were eligible for loan facilities from the Skills Development Fund managed by the Skills Development Fund Division of the Ministry responsible for human resources may continue to do so during the period of twelve months from the appointed date, but during that period such person or group of persons shall, as soon as practicable, apply for registration under this Act.

#### **Vesting provisions**

**97.** (1) Subject to this Act, the Minister may, from time to time, by order published in the *Gazette*, appoint a vesting date and on such date all properties of the Government of Malaysia and all the rights or liabilities of the Government of Malaysia shall, by virtue of this Act, be transferred to and vested in the Corporation without any conveyance, assignment or transfer of title.

(2) Every property vested by virtue of subsection (1) in the Corporation shall so vest in the Corporation for the like title, estate or interest and on the like tenure as the property was vested or held immediately before the vesting date.



(3) Every right or liability vested by virtue of subsection (1) in the Corporation may, on and after the vesting date, be sued on, recovered or enforced by the Corporation in its own name and it shall not be necessary for the Corporation, the Government, or any person on behalf of the Government of Malaysia or the Corporation to give notice to the person bound by the right or liability of the vesting effected by virtue of subsection (1).

(4) Any pending legal proceedings by or against the Government or any officer of the Government which relate to any property, rights or liability transferred to and vested in the Corporation by virtue of subsection (1) may, on and after the vesting date, be continued by or against the Corporation.

(5) In the case of rights or liabilities arising under any loan, which is vested in the Corporation on the vesting date, the Corporation may enter into such arrangements or agreements over such rights and liabilities with the Government or any third party.

(6) On and after the vesting date, any arrangement or agreement relating to any property, rights and liabilities transferred to and vested in the Corporation under subsection (1) to which the Government, or any officer of the Government was a party immediately before the vesting date, whether in writing or not, and whether or not of such a nature that rights and liabilities under the arrangement or agreement could be assigned by the Government, or the officer shall have effect as if the Corporation had been a party to the arrangement or agreement.

### **Employment of Government employees**

**98.** (1) The Corporation shall, on the appointed date, accept into its employment every public officer who immediately before that date was employed in the Skills Development Fund Division of the Ministry responsible for human resources and had been given an option by the Government of Malaysia and had opted to serve as an employee of the Corporation.

(2) Every person who opts under subsection (1) to serve as an employee of the Corporation shall be employed by the Corporation on terms and conditions of service that are not less favourable than the terms and conditions of service to which he was entitled immediately before the appointed date.

(3) Until such time as the terms and conditions of service of its employees are drawn up by the Corporation, the scheme and terms and conditions of service of employees of the Government shall continue to apply to every person employed by the Corporation under subsection (1).

(4) The Minister may by order make such modifications as may be necessary to the scheme and terms and conditions referred to in subsection (3) for the purpose of removing any difficulties as a consequence of the provisions of that subsection.

(5) Where any person who has opted to serve as an employee of the Corporation dies while in the service of the Corporation or retires or is discharged from such service is not eligible for any pension or other superannuation scheme as a consequence of that option the Corporation may grant to him or to any person wholly or partly dependent on him, as the Corporation deems fit, such allowance or gratuity as the Corporation may determine.

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SCHEDULE

[Subsection 16(5)]

**Revocation and resignation**

1. (1) The Minister may at any time revoke the appointment of any member or alternate member of the Board appointed by him without assigning any reason for the revocation.

(2) Any member or alternate member appointed by the Minister may resign his office at any time by letter addressed to the Minister.

**Vacation of office**

2. (1) The office of a member of the Board appointed by the Minister is vacated—

- (a) if he dies;
- (b) if there has been proved against him, or he has been convicted on, a charge in respect of—
  - (i) an offence involving fraud, dishonesty or moral turpitude;
  - (ii) an offence under any law relating to corruption; or
  - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (c) if his conduct, whether in connection with his duties as, Deputy Chairman or member of the Board or otherwise, has been such as to bring discredit to the Board;
- (d) if he becomes a bankrupt;
- (e) if he is of unsound mind or is otherwise incapable of discharging his duties; or
- (f) in the case of the Chairman, if he absents himself from three consecutive meetings of the Board without reasonable cause or permission in writing from the Minister.

(2) The provisions of subparagraph (1) other than subsubparagraph (f) shall apply *mutatis mutandis* to an alternate member.

**Meetings**

3. (1) The Board shall meet for the dispatch of its business at least once in every three months at such time and place as the Chairman may determine from time to time.

(2) At any meeting of the Board, five members shall form a quorum.

(3) The Chairman of the Board shall preside over all meetings of the Board.

(4) Notwithstanding subparagraph (3), if for any reason the Chairman is unable to attend a meeting of the Board, the Deputy Chairman shall exercise the powers of the Chairman during the absence of the Chairman.

(5) In the event that both the Chairman and Deputy Chairman are unable to attend a meeting of the Board, the remaining Board members shall elect from among themselves a person to preside over the meeting and the person elected shall have all the powers of the Chairman for the purpose of and for the duration of that meeting.

(6) If on any question to be determined by the Board there is an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

### **Board may invite others to meetings**

4. (1) 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 the meeting or deliberation.

(2) A person invited under subparagraph (1) shall be paid such allowances as may be determined by the Board.

### **Minutes**

5. (1) The Board shall cause minutes of all the meetings of the Board to be maintained and kept in a proper form.

(2) Any minutes made of a meeting of the Board shall, if duly signed, be admissible in evidence in all legal proceedings without further proof.

(3) Every meeting of the Board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members at the meeting to have been duly qualified to act.

### **Disclosure of interest**

6. (1) A member of the Board having, directly or indirectly, by himself or his partner—

(a) an interest in a company or undertaking with which the Corporation proposes to make a contract; or

(b) an interest in a contract or matter under discussion by the Board,

shall disclose to the Board the fact of his interest and its nature.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the Board and such member shall take no part in the deliberation or decision of the Board relating to the contract or matter.

**Validity of acts and proceedings**

7. No act done or proceedings taken under this Act shall be questioned on the grounds of—

- (a) any vacancy in the membership of, or any defect in the constitution of, the Board;
- (b) a contravention by any member of the Board of the provisions of paragraph 6; or
- (c) any omission, defect or irregularity not affecting the merits of the case.

**Procedure**

8. Subject to this Act, the Board may determine its own procedure.

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**LAWS OF MALAYSIA**

**Act 640**

**SKILLS DEVELOPMENT FUND ACT 2004**

**LIST OF AMENDMENTS**

Amending law	Short title	In force from
	– NIL –	

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**LAWS OF MALAYSIA****Act 640****SKILLS DEVELOPMENT FUND ACT 2004****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
	– NIL –	

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