



**GUIDELINES FOR THE APPLICATION FOR APPROVAL
UNDER SECTION 150 OF THE INCOME TAX ACT 1967
FOR THE ESTABLISHMENT OF A PENSION SCHEME
OR AN EMPLOYEES' PROVIDENT FUND**

1. INTRODUCTION

These Guidelines explain the procedure to be followed for application for approval under Section 150 of the Income Tax Act 1967 for the establishment of a pension scheme or an employees' provident fund.

2. PROVISION FOR APPROVAL

Section 150 of the Income Tax Act 1967 provides that :

“The Director General may, subject to such conditions as he may think fit to impose, approve any pension or provident fund, scheme or society for the purpose of this Act.”

3. APPLICATION PROCEDURE AND THE ESTABLISHMENT OF THE SCHEME

3.1 The application to obtain approval under Section 150 of the Income Tax Act 1967 for the establishment of a pension scheme or an employees' provident fund with the objective of providing retirement benefits to employees upon their retirement must be forwarded to:

The Chief Executive/Director General,
Inland Revenue Board, Malaysia
12th Floor, Block 9,
Government Office Complex,
Jalan Duta, P. O. Box 11833,
50758 Kuala Lumpur

(for the attention of: Director of Technical Division)

3.2 The application is to be made by way of letter attaching the following documents for verification by the Inland Revenue Board (IRB):

- Draft of the Trust Deed of the pension scheme / provident fund;
- Draft of the Rules of the Fund of the pension scheme / provident fund;
- The Board of Director's resolution approving the establishment of the pension scheme / provident fund;
- Form 49 of the Companies Act, 1965; and
- The sponsoring company's profile (as in **Appendix B**)

3.3 The pension scheme / provident fund must be established through a *Trust Deed* and *Rules of the Fund*. The *Trust Deed* and *Rules of the Fund* must be clearly expressed and must fully meet the requirements as stipulated below:

3.3.1 There must be alienation of contribution to the fund. The contributions made by both the employee and the employer must be alienated from both parties and be held by a third party which is the *Board of Trustees*.

3.3.2 More than 50% of the members of the Board of Trustees must not be members of the Board of Directors of the company that sets up the pension scheme / provident fund. Members of the Board of Trustees must be odd in number.

3.3.3 The payment of the retirement benefits can only be made on the occurrence of one of the following events, which is when the employee :

- i. reaches the retirement age of 55; or
- ii. retires early due to ill -health; or
- iii. dies; or
- iv. leaves Malaysia permanently.

3.3.4 The pension scheme / provident fund **is not permitted** to have clauses in its *Trust Deed* and *Rules of the Fund* providing for :

- i. the **payment in cash** of the retirement benefits to the member in the situations other than those mentioned in paragraph 3.3.3. For example no benefit can be paid in cash to the member who ceased to be employed or when the pension scheme is dissolved;
- ii. the **return of surplus to the employer** upon dissolution of the fund or when there is no participant left in the fund as at the date of liquidation; and
- iii. **Forfeiture of entitlement** when an employee leaves service / resigns voluntarily but not with intention to escape dismissal because of fraud, embezzlement, etc.

3.3.5 When an employee ceases to be employed by the employer who sets up the scheme or, when the scheme itself is dissolved, the Trustees of the pension scheme / provident fund are required to take any one of the following actions:

- i. Withhold the total amount of money due to a member until any situation mentioned in paragraph 3.3.3 arises; or
- ii. Transfer the total sum of money due to the member to the Employees' Provident Fund (EPF) or to any other approved pension scheme / provident fund; or
- iii. Pay the total sum of money due to the member in the form of a *non-assignable and non-commutable life pension*; or
- iv. Convert the total sum of money due to the member into a life insurance policy which matures upon the death or upon attaining the normal retirement age and that policy must be assigned to the Trustees.

3.3.6 An approved pension scheme / provident fund is required to follow the investment policy as laid down by IRB in **Appendix A**.

- 3.3.7 A clause to enable any subsequent amendments to the Trust Deed and / or the Rules of the Fund.
 - 3.3.8 A clause to enable any new appointment / resignation of Trustees.
 - 3.3.9 A clause to enable a subsidiary company to participate / cease to participate in an approved pension scheme / provident fund.
 - 3.3.10 A clause to state the circumstances under which the approved pension scheme / provident fund will be dissolved and the conditions to be complied with following the dissolution.
- 3.4 If the draft copies of the Trust Deed and the Rules of the Fund are in order and meet the required conditions, the IRB will notify the party concerned to execute and stamp the Trust Deed and the Rules of the Fund.
- 3.5 The documents (Trust Deed and the Rules of the Fund) will then have to be forwarded to the IRB for the purpose of obtaining approval of the Director General of Inland Revenue (DGIR).
- 3.6 For a pension / provident fund that had been approved under Section 150 of the Income Tax Act 1967 by the DGIR, any subsequent application by the pension scheme / provident fund will need prior approval if the Fund undertakes any one of the following actions:
- 3.6.1 Amends the Trust Deed and/or the Rules of the Fund; or
 - 3.6.2 Appoints new Trustees or cessation of old Trustee; or
 - 3.6.3 Allows participation or cessation of participation by a subsidiary company in the scheme; or
 - 3.6.4 Dissolution of the pension scheme / provident fund.

4. PROCEDURE TO AMEND TRUST DEED OR RULES OF THE FUND AND DISSOLUTION OF PENSION SCHEME / PROVIDENT FUND

4.1 Amendment of Trust Deed and / or Rules of the Fund (Deed of Variation)

Any amendments to the Trust Deed and / or the Rules of the Fund which has been approved by the DGIR, can only be made through a “Deed of Variation” and it requires the DGIR’s prior approval.

The procedure is as follows:

- i. Forward the draft “Deed of Variation”
- ii. The draft “Deed of Variation” needs only to contain the relevant subjects to be amended.
- iii. Send the draft “Deed of Variation” to the DGIR at the address stated in paragraph 3.1
- iv. Execute and stamp the “Deed of Variation” immediately after being informed by IRB that the draft copy is in order and all requirements have been fulfilled.
- v. Then forward the “Deed of Variation” that had been executed and stamped to IRB for obtaining approval.

4.2. Appointment of new Trustees or Cessation of Trustees (Deed of Appointment of Trustees)

Any resignation/new appointment of Trustees of the pension scheme / provident fund which has been granted approval by the DGIR under Section 150 of the Income Tax 1967 must be made through a “Deed of Appointment” and this requires IRB prior approval. The procedure is the same as in paragraph 4.1.

4.3 Participation of subsidiary companies or Cessation of participation in a Pension Scheme / Provident Fund (Deed of Adherence and Deed of Cessation of Adherence)

Subject to the approval of the DGIR, a subsidiary company can participate in a pension scheme / provident fund set up by its holding company which has been granted approval under Section 150 of the Income Tax Act 1967. This participation can be made by forwarding to IRB a “Deed of Adherence”.

Associated / related companies, other than subsidiary companies, are not allowed to participate in the pension scheme / provident fund.

The cessation of participation by a subsidiary company in a pension scheme / provident fund which is set up by its holding company and which has been granted approval under Section 150 of the Income Tax Act 1967 can be made through a “Deed of Cessation of Adherence”. However, such participation and cessation must be provided for in the Rules of the Fund of the pension scheme / provident fund.

4.4 Dissolution of an Approved Pension Scheme / Provident Fund.

The dissolution of an approved pension scheme / provident fund must have prior approval of the DGIR and it can be made through a “Deed of Dissolution” and supported with the following documents:

- The sponsoring company’s Board of Director’s resolution approving the dissolution of the pension scheme / provident fund;
- The Realization Account of the pension scheme / provident fund at the date of dissolution; and
- Evidence indicating payment has been made to the appropriate authorities. (Please refer to sub-paragraph 3.3.5).

5. INVESTMENT POLICY FOR AN APPROVED PENSION SCHEME / PROVIDENT FUND

A pension scheme / provident fund which has been approved under Section 150 of the Income Tax Act 1967 is required to follow the investment policy as laid in **Appendix A**. The policy must be complied with by the pension scheme / provident fund as a condition to maintain the status as an approved pension scheme / provident fund.

6. EMPLOYER’S CONTRIBUTION

6.1 With effect from the Year of Assessment 1998, the total amount contributed by the employer to an approved pension scheme / provident fund (including contributions to the EPF) can be allowed as a deduction in computing the adjusted income of the employer. However, the total amount of contribution must not exceed 19% of the total employees’ remuneration.

6.2 In addition to the above, a special contribution can be allowed as a deduction in computing the adjusted income of the employer upon the establishment of the pension scheme / provident fund for the first time. The total amount of this special contribution that is to be allowed is at the discretion of the Director General of Inland Revenue. However, the following restrictions will apply :

- The special contribution shall be based on the remuneration of qualified employees for a period not exceeding 6 years of past services; and
- The special contribution shall not exceed the current contribution rate made by the employer subject to the allowable percentage of 19% (inclusive of the contribution made to the EPF) .

[Note: If approved by the DGIR, the total amount of the special contribution must be paid in the basis period the pension scheme / provident fund is established].

6.3 The employer is not allowed to make any other contribution other than those stated in paragraph 6.1 and 6.2 above.

7. IMPLEMENTATION

The approval granted by the DGIR is subject to the terms and conditions stipulated in paragraph 3. Although contribution to the fund can be made provisionally by the company, it is the prerogative of the DGIR to approve the fund. If no approval is given, no deduction will be allowed for the contribution made by the company and tax will be imposed on the pension scheme / provident fund from the date the provisional contribution is made.

8. FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS STIPULATED

If it is found that the pension scheme / provident fund does not comply with the terms and conditions as stipulated, the approval granted to a pension scheme / provident fund may be revoked retrospectively.

*Technical Division,
Technical Department,
Inland Revenue Board,
MALAYSIA.
1 September 2004.*

**INVESTMENT POLICY
FOR A PENSION SCHEME / PROVIDENT FUND
APPROVED UNDER SECTION 150 OF THE INCOME TAX ACT 1967**

The following are types of investments that can be made by a pension scheme / provident fund which has been granted approval under Section 150 of the Income Tax Act 1967:

1. Where the **contributions** are made by both the employer and the employee and the contributions are assigned to an insurance company which has been contracted to pay the benefits provided under the pension scheme / provident fund, there is no restriction imposed with regard to the investments. Matters pertaining to the insurance business is regulated by the **Insurance Act 1996**.
2. Where the pension scheme / provident fund manages its own investments, the following investment policy is applicable:
 - 2.1 If all the members of the pension scheme / provident fund are **not domiciled** in Malaysia, the pension scheme / provident fund can make investments without any restriction.
 - 2.2 If all or some members of the pension scheme / provident fund are **domiciled** in Malaysia, the investment policy is as follows:
 - 2.2.1. 20% of the total fund of the pension scheme / provident fund can be invested without any restriction.
 - 2.2.2. 20% of the total fund of the pension scheme / provident fund is to be invested in Malaysian Government Securities or other short term, medium term or long term investments guaranteed by the Malaysian Government such as the Malaysian Treasury Bills (MTB), Government Investment Issues (GII), Bank Negara Malaysia Bills (BNMB), Cagamas Instruments, Danaharta bonds and other instrument of a similar nature.
 - 2.2.3. Balance 60% of the total fund of the pension scheme / provident fund is to be invested in Malaysia in the form of assets listed below:
 - i. Debentures / loans issued under any law by any authority or body incorporated under any written law in Malaysia;

- ii. Shares, debentures or securities in a company incorporated in Malaysia listed at any Stock Exchange approved under the **Securities Industry Act 1983**;
- iii. Shares, debentures or other securities in an organization registered under the **Co-operative Societies Act 1993**;
- iv. Real properties situated in Malaysia or loans granted with real properties as collateral (the loans granted not exceeding the market value of the properties);
- v. Fixed deposit / investment account in financial institutions licensed under the **Banking and Financial Institutions Act 1989** or the **Islamic Banking Act 1983**;
- vi. Units in a unit trust approved by the Securities Commission;
- vii. Bonds or Mortgaged Papers, Commercial Notes, Banker's Acceptances, Money Market Papers, Certificates of Deposits, Private Debt Securities, Promissory Notes and Bills of Exchange in the context of **Bills of Exchange Act 1949** and other similar negotiable instruments.

*Technical Division,
Technical Department,
Inland Revenue Board,
MALAYSIA.
1 September 2004*

**PROFILE OF COMPANY
SPONSORING THE PENSION SCHEME / PROVIDENT FUND**

1.	Name of Company	
2.	Date of incorporation	
3.	Address	
4.	Attach Form 49 Companies Act, 1965	
5.	Company's income tax reference number	
6.	IRB Branch that manages the company's income tax file	
7.	Employer's income tax reference number - E file	
8.	IRB Branch that manages the employer's income tax file - E file	
9.	Board of Directors a. Number of members b. For each member, state- - Name of member - Occupation / Position - I/C number - Correspondence address - Income tax reference number	
10.	Chief executive officer - Name - I/C number - Correspondence address - Income tax reference number	
11.	Company's secretary - Name - I/C number - Correspondence address - Income tax reference number	
12.	Auditor - Name - Correspondence address	
13.	Authorized capital	
14.	Paid up capital	
15.	Number of employees	
16.	Major equity holders	

**CHECKLIST
FOR APPLICATION TO OBTAIN APPROVAL
UNDER SECTION 150 OF THE INCOME TAX ACT 1967
FOR THE ESTABLISHMENT OF A PENSION SCHEME / PROVIDENT FUND**

1. Name of pension scheme / provident fund
2. Income tax reference number (T/F)
3. Name of sponsoring company
4. The following documents are attached and information incorporated:
 - a. Draft of the Trust Deed
 - b. Draft of the Rules of the Fund
 - c. Sponsoring company's profile - as in **Appendix B**
 - d. Form 49 under Companies Act, 1965
 - e. Board of Directors' Resolution approving the establishment of the pension scheme / provident fund
 - f. Clause providing that the pension scheme / provident fund is established for the sole purpose of providing retirement benefit to employees payable upon retirement
 - g. Members of the Board of Trustees
 - Detailed information regarding each trustee (name/ I/C number/ passport number/ occupation/ correspondence address)
 - More than 50% of the Trustees must not be members of the Board of Directors of the sponsoring company that established the pension scheme / provident fund; and
 - Must be odd in number
 - h. Clause fo enable any subsequent amendments to the Trust Deed and/or the Rules of the Fund be made with the approval of the Director General of Inland Revenue (DGIR) via Deed of Variation

- i. Clause to enable subsidiaries to participate in an approved pension scheme / provident fund with the approval of DGIR via Deed of Adherence
- j. Clause to enable subsidiaries to cease participation in an approved pension scheme / provident fund with the approval of DGIR via Deed of Cessation of Adherence
- k. Clause providing for alienation of the fund i.e the pension scheme / provident fund to be administered by the Board of Trustees
- l. Employers contribution does not exceed 19% of total employees remuneration
- m. Terms for payment of retirement benefits :
- Upon reaching 55 or the normal retirement age
 - Early retirement due to ill-health
 - Upon death
 - Leaving Malaysia for good
- n. Clause providing that except in above situation (m), no payment can be made in cash
- o. Clause providing that in the event of dissolution of the pension scheme / provident fund, the contribution must be transferred to the EPF / another approved fund / used to purchase pension annuities which is non-commutable and non-assignable / to purchase a life policy which matures upon retirement or death
- p. Clause providing that in the event when employee ceases to be employed by the sponsoring company or adhering company before reaching the compulsory retirement age, the contribution must be transferred to the EPF
- q. Dissolution of the pension scheme / provident fund must be made through a Deed of Dissolution and must obtain prior approval of the DGIR

5. When any amendment is made to the Trust Deed / Rules of the Fund or dissolution of the fund, the following documents are required to be submitted :

- a. Amendments to the Trust Deed and / or Rules of the Fund.
 - (i) A draft Deed of Variation
 - (ii) The Board of Director's resolution approving the amendments

- b. Resignation/Appointment of Trustees
 - (i) A draft Deed of Appointment
 - (ii) The Board of Director's resolution approving the resignation / appointment of new Trustees
 - (iii) Particulars of Trustees (name / I/C number / passport number / occupation / name of employer / correspondence address)

- c. Participation of Subsidiaries
 - (i) A draft Deed of Adherence
 - (ii) Form 49 under Companies Act, 1965
 - (iii) Equity structure of sponsoring company in the subsidiaries and Form 24 under Companies Act, 1965.(Return of Allotment of Shares)

- d. Cessation of participation of Subsidiaries
 - (i) A draft Deed of Cessation of Adherence
 - (ii) The Board of Director's resolution regarding the above cessation
 - (iii) Evidence that payment of contribution has been transferred to the EPF or other approved retirement schemes

- e. Dissolution of an approved Pension Scheme/ Provident Fund
 - (i) A draft Deed of Dissolution
 - (ii) The Board of Director's resolution regarding the above dissolution
 - (iii) Realization Account at the date of Dissolution
 - (iv) Evidence that payment of contribution has been transferred to the relevant authorities.(Please refer to paragraph 3.3.5 of the Application Guidelines)