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*“ASEAN + 1 & The Ageing Society: Incorporation &
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ASEAN + 1 & The Ageing Society: Incorporation & Protection of Older Employees

This paper is an attempt to discuss the subject of incorporation & protection of older employees in Malaysia. It is based on the policies and legislations applicable in Malaysia in relation to elderly population with specific focus on older employees. Having said that, I wish to qualify by stating that the views expressed herein are exclusively mine and shall not be interpreted as that of the Malaysian Industrial Court. Any observations, opinions and /or comments expressed herein are not binding upon the Court or any other tribunals.

INTRODUCTION

Malaysia is a federal state that has a monarchy system of governance. Malaysia is made out of 14 states including the Federal Territories which is made out of 3 different territories. The land area of Malaysia is spread across 330,803 square kilometres which is divided to two parts, namely Peninsular Malaysia and the states of Sabah and Sarawak located in the island of Borneo. The population of Malaysia is estimated in 2018 to be around 32.04 million. Peninsular Malaysia has an urban population of 70%. The urban area consists of approximately 25 million people, as such the population is mostly concentrated here. Kuala Lumpur is the capital and is also the center of financial and commercial activities. Putrajaya was established in Malaysia to spread the growing population in Kuala Lumpur and is currently where the Malaysian Government sits.

BACKGROUND

Population

The annual growth of Malaysia is statistically estimated to be 1.6%. As we see in the population growth statistics, Malaysia's growth rate gets lower each year. From being 2% in 2000, it went down to 1.8 % in 2005, and then declined to 1.72% in 2009. It dropped to 1.61% in 2010, 1.54% in the year 2012 and finally at a growth rate of 1.32% in the current year. Based on statistics, it is shown that with a population of 32,042,458 in the current year, the percentage of male population is 51.58% and the female population is at 48.42% with a density of 96.86 km². This statistical analysis shows that there is a need for Malaysia to raise its population growth rate by increasing the birth ratio over the death ratio. There are some measures taken by the government of Malaysia in areas such as health and social services in order to increase the population growth rate.

Based on statistics, it is said that in 2018, the average life expectancy of a female in Malaysia is up to 77.6 years and as for the male it is up to 72.7 years. Therefore, a female is expected to live an average of 4.9 years longer than a male. Life expectancy at birth for male has increased by 0.5 years from 72.2 years in the year 2012 compared to 72.7 years in the year 2018, while for a female it has increased by 0.7 years compared to 76.9 years in the year 2012 compared to 77.6 years in the year 2018.

Age Group

In the year 2017, the population of Malaysia can be divided based on age group. The age group between 0-14 years is 24.1%, the age group between 15-64 years is 69.7% and the age group above 65 years is 6.2%. Malaysia has adopted the definition of older persons as stated in the World Assembly on Ageing in 1982 which was held in Vienna wherein older persons are defined as those who are 60 years and above. Although the population of Malaysia is still relatively young compared to those in the developed countries, but changes in the age structure resulting from fertility decline and increased longevity are contributing towards the ageing of

population. These changes will inevitably drive Malaysia to be one of the countries in this region towards being an ageing society.

The key challenge for Malaysia like many other nation of this region is in managing and planning for her ageing society. By 2030, 15% of the Malaysian population will be above 60 years of age. This indicates that Malaysia's government has to ensure decent employment as well as awareness programmes and services for the young, while at the same time, providing necessary assistance of life options for the elderly. The changes and increasing life expectancy, the economic development and the challenging of family relationships pose a number of challenges if not hurdles, especially in financial sustainability, adequacy of retirement incomes, healthcare financing, care and support and social security for older persons.

In the year 2017, statistics show that there were 597,700 persons (equivalent to 8.5% of the Malaysian population) who were retired from their employment, an increase of 0.5% from the year 2016.

Country's Efforts and Plans

As older employees in Malaysia come within the same age bracket of the older persons i.e. 60 years and above, this paper will address the efforts taken by the Government of Malaysia in incorporating and protecting older persons prior to venturing into the matters relating to older employees.

In addressing the concerns related to the wellbeing of older persons in the society, the Government had taken many measures. The most primary measure is the formulation of the National Policy for Older Persons in the year 1995. Pursuant to this policy, the National Advisory and Consultative Council for Older Persons (Council) under the chairmanship of the Minister for Women, Family and Community Development was set up in May 1996. As an outcome of the establishment of the Council, a Plan of Action for the Older Persons was formulated in December 1998.

The Department of Social Welfare under the Ministry of Women, Family and Community Development is the secretariat for the Council and it serves as the focal point for all issues related to older persons. On 5th January 2011, the new and current National Policy for Older Persons (The New Policy) and Plan of Action for Older Persons (the Plan) was approved by the Malaysian government. The New Policy and the Plan acknowledges older persons as citizens with varied background and experiences. Through this New Policy and the Plan, the government commits to create a conducive environment for older persons to live independently, with dignity, with high sense of self-worth and be respected by optimizing their self-potential through a healthy, positive, active, productive and supportive life.

A. The New Policy and the Plan

There are altogether 6 basic objectives set by the government through the New Policy. These objectives are to develop the community concerned about the phenomenon of ageing and endeavouring the society to deal with old age, to facilitate lifelong learning access among older persons, families and communities, to ensure that older persons are safe and secure, to form an effective and integrated older persons service delivery system, to increase the involvement of older persons in various societies and to promote the use of research findings as basis for planning, monitoring and evaluation of older persons programmes.

There are 6 strategies outlined in this policy in order to achieve the objectives of this policy, they are namely through:

- (i) Promotion and Advocacy;
- (ii) Life-long Learning;
- (ii) Safety and Security;
- (iv) Governance and Shared Responsibility;
- (v) Intergenerational Solidarity; and
- (vi) Research and Development.

The New Policy and The Plan were formulated taking into consideration the various international conferences that focus on ageing societies including principles outlined in the Madrid International Plan of Action on Ageing (MIPAA). They were drafted based on the three priority areas outlined in the MIPAA which are as follows:

- (i) Priority Direction I : Older Persons and Development
- (ii) Priority Direction II : Advancing health and well-being into old age
- (iii) Priority Direction III : Ensuring enabling and supportive environments

Meanwhile, the implementation of the Plan is inter-sectoral and multi-disciplinary that involves coordination among the ministries, agencies, non-governmental organizations, private sectors and the society. The implementation of the programmes involves short, medium and long term. The Plan also enables the Council to monitor and evaluate the effectiveness of programmes carried out for the older persons. The members of the Council consist of 34 members from various government agencies, NGOs, private sectors and individuals who have interest on ageing. At National level, the Council is chaired by the Minister of the Women, Family and Community Development. The Technical Committee which is for the purpose of implementation is chaired by the Secretary General. Under the supervision of the Secretary General there are the 7 sub-committees which come under the purview of each related Ministry/Agency:

- i. Health - Ministry of Health
- ii. Social and Recreational – Department of Social Welfare
- iii. Education and Spirituality – Ministry of Education
- iv. Housing and Environment – Ministry of Urban Wellbeing, Housing and Local Government
- v. Economy – Economic Planning Unit
- vi. Employment - Ministry of Human Resources
- vii. Research and Development – Ministry of Science, Technology and Innovation

At the state and district level, there is a Committee for Development of Older Persons which is chaired by the Deputy Secretary of State and the Chief Assistant District Officer respectively.

B. Universal Health Coverage for Active Ageing

In view of the need of a more effective, coordinated and comprehensive health care, the National Health Policy for Older Persons 2008 (the Health Policy) had been developed. 6 guiding principles were adopted in formulating the Health Policy, they are:

- (i) Maintaining Autonomy and Self Reliance;
- (ii) Recognizing the Distinctive needs of Older Persons;
- (iii) Supporting Careers;
- (iv) Promoting Healthy Ageing;
- (v) Providing Continuity of Care; and
- (vi) Maintaining the Rights of Older Person to Quality of Life and Death

Through the Health Policy, the government has made a commitment to ensure older persons will achieve the optimal health through integrated and comprehensive health and health related services. In order to implement the Health Policy, 7 strategies were identified:

- (i) Health Promotion;
- (ii) Provision of a Continuum of Comprehensive Health Care Services;
- (iii) Human Resource Planning and Development;
- (iv) Information System;
- (v) Research and Development;
- (vi) Interagency and Intersectoral Collaboration; and
- (vii) Legislation.

C. Medical and Welfare Services, Health Promotion and Disease Prevention

Malaysia's commitment to the welfare of health of older persons is reflected on various activities which include:

- (i) Activities related to recreational, social and welfare are carried out by communities and older persons within an operational area of a health centre. These activities include:
 - a. Health promotion and education;
 - b. Health screening and assessment;
 - c. Medical examination, counseling, treatment and referral;
 - d. Home visits and home care;
 - e. Rehabilitation; and
 - f. Social recreation and welfare.

- (ii) At all the government's primary hospitals, healthcare services for the older persons are provided. These services include:
 - a. Acute medical cares
 - b. Long term care
 - c. Discharge plan
 - d. Psycho geriatric care
 - e. Physiotherapy
 - f. Occupational therapy
 - g. Clinical pharmacy
 - h. Counselling
 - i. Medico social / welfare

- (iii) In relation to Health Promotion And Prevention Activities involving older persons and preferably their family members, there are many different forms of activities such as those listed below:-

- a. health education and information through talks, seminars, public forums, exhibitions, pamphlets etc;
 - b. education and training of health staff and family members;
 - c. counseling for older persons and their family members;
 - d. nutritional assessment, counseling and advice;
 - e. health assessment including mental health assessment;
 - f. assessment of activity of daily living;
 - g. regular physical exercise in the clinic environment as a group activity; and
 - h. screening for early stage of illness such as breast examination and cervical cytology for women, and heart disease assessment for both sexes.
- (iv) In the area of rehabilitative and extended care, there are Community Care Physiotherapy and other form of rehabilitation services offered primarily at hospitals. However, in order to reduce hospital stays, older persons can avail of such services at some designated clinics. There are government-managed institutions which provide:-
- a. Care and protection;
 - b. guidance and counseling; and
 - c. medical treatment comprising of both preventive and cure treatment.

The community via the country's NGOs have extended care for the older persons through many homes which are run privately.

- (v) There are also Homes for Older Persons which are provided by the government, NGO's and by the private sectors. The objective of the services provided by the Ministry of Women, Family and Community Development through the Department of Social Welfare is to meet the needs of the poor older persons. However, institutional services are

provided as the last resort for the older persons as it is the culture of the nation of this region to care for the elderly and this values are always instilled in the society. It is acknowledged and recognized that care and support extended by members of the family is the best support system for the elderly. Currently, there are Homes for the Older Persons which are located throughout the country which are directly under the management of the Department of Social Welfare which is being financed by the Government. These homes are known as *Rumah Seri Kenangan* . The objective of setting up these homes are to provide proper care and protection for the needy elderly and with better quality of life. Activities and programmes provided via these institutions are such as health services and therapy, religious studies, skill training, economic empowerment programme, lifelong learning, indoor and outdoor games and recreational activities. The Ministry of Women, Family and Community Development has also established homes for the chronically ill known as *Rumah Ehsan*. The objective of these homes is to provide a comfortable and tranquil surrounding, care, treatment and shelter for those who are not self-sufficient and for those who are suffering due to chronic illnesses.

D. Local Communities that Support the Elderly

Various measures are taken to provide conducive environment for older persons in order for them to remain healthy, active and secure. There is also a great need to create awareness among family members and the community in matters relating to caring for older persons. In this regard, values such as family responsibilities, understanding and caring for older persons are emphasized. In line with this, programmes for older persons which focuses on enhancing elderly friendly infrastructure, improving access to affordable healthcare, ensuring adequate provision of shelters and improving financial security and opportunities for employment are also carried out. In addressing the increasing challenges and needs of older persons, programmes such as Help Services have been introduced.

The Ministry of Women, Family and Community Development has established the Home Help Services throughout the country through smart partnership with NGOs to provide care for older persons and persons with disabilities (PWDs) living alone. Among the services provided are bringing the bedridden older persons and PWDs to hospitals or clinics for health treatment and assisting the older persons and PWDs in their daily activity especially in the aspect of personal hygiene. The “*Unit Penyayang*” (“We Care Services”) is a transportation service established to bring older persons to hospitals or clinics for medical treatments. This service is also a medium of accessibility for older persons or person with disabilities. This service was introduced in 2008 and established by the Department of Social Welfare.

Activity Centers for older persons has been set up to encourage older persons to be healthy, active and to live more productive lives while their family members are out to work. To date there are 59 Activity Centres for older persons throughout the country including the states of Sabah and Sarawak. Activities and programmes that are provided at the Activity Centres are indoor and outdoor games, health services and therapy, religious studies, skill training and volunteer services, economic empowerment programmes and lifelong learning.

E. Social Involvement and Contribution by Older Persons

The government through the Department of Social Welfare provides financial assistance for older persons amounting RM300 (about USD100) per month to assist the poor elderly to remain in their families and communities. The recipients of this financial assistance must be registered with the Department of Social Welfare, must be Malaysian citizens aged 60 years and above, and with a household income below RM720 per month for Peninsular Malaysia, RM830 for Sarawak and RM960 for Sabah and fulfil the requirement based on factors which confirm that the family is in fact a family in need.

F. Economic Plan

The Eleventh Malaysia Plan for the period from 2016 – 2020 which is the ongoing economic plan for the country has placed the prosperity and wellbeing of the citizens at the heart of economic growth. Wellbeing refers to a standard of living and quality of life that addresses an individual's socio-economic, physical, and psychological needs. The government had promised through this plan that every Malaysian will have equal access to quality healthcare and affordable housing and this clearly include the older persons of the country. In order to achieve human capital development, the government has assured through this plan that it will improve labour productivity and create more job opportunities that require highly-skilled workers and that the existing workforce will have many opportunities to continuously enrich and develop themselves, so as to stay relevant in the changing economy. In this effort, the government had not included the older persons whose experience and expertise is recognized as valuable to the country.

G. Exemptions/Relieves

The government of Malaysia is also very committed towards providing conducive environment for older persons. In view of this, various benefits are provided for the older persons to participate actively in the society. Among these benefits are:

- a. Health
 - i. Tax relief up to RM5,000 has been extended to those who are providing care for their elderly which includes cost of sending to the day care;
 - ii. cost of salary for maids who are hired specifically for the care of elderly and cost of purchasing daily needs such as disposable diapers;
 - iii. Exemption from registration charge for out-patient consultation as well for specialist consultation at all government hospitals and clinics; and

- iv. Older persons are also given 50% discount and up to maximum of RM250 for every admission at the third class wards at all government hospitals.

- b. Transportation
 - i. In line with social inclusiveness as national agenda; and
 - ii. older persons are also provided with discounts between 25% and 50% for major modes of transportation in the country.

EMPLOYMENT

In terms of employment, the concern here is on matters relating to older employees. Based on statistic, in the year 2017, the number of employed persons by age group between 60-64 years in Malaysia was 380.4 number (thousand). The employed in Malaysia for the year 2017 was 14.5 million while those aged 60 - 64 years were 380.4 thousand. This shows that up to 2.62% of the employed was those in the category of older persons. The Malaysian labour force (age between 15-64) increased by 0.7 % to 15.19 million persons in the first quarter in the year 2018 as compared to 15.09 million in the previous quarter.

Laws Related to Older Persons and Older Employees

Although the New Policy and the Plan was launched in 2011 and 1998 respectively with the intention to develop the potential of the older persons so that they remain active and productive in the national development whilst creating opportunities for the older persons to live independently and respectfully, the truth is, there is no legislation that is passed which is meant only for the protection of the older persons. However, it is undeniable that the existence of the country's Federal Constitution remains the main protector for all including the older persons under the aspect of human rights, equality before the law, freedom of movement, freedom of speech and rights to property. For the elderly living in an institutional care and community based

care, laws that govern them are the Rules for the Management of Old Person's Home 1983, Rules for the Management of Homes for the Chronically Ill 1978 and Care Centre Act 1994.

In terms of employment, the Workmen's Compensation Act 1952 and the Employee's Social Security Act 1969 are enacted to provide indemnity against employment – related accidents and injuries. These legislations include the elderly insured employees as well. The Pensions Act 1980 and Employee's Provident Fund Act 1991 are legislations that provide for income security or old age financial support after retirement. The Employment (Part-Time Employees) Regulations 2010 was enforced by the government effective from 1 October 2010 and the main objective of the regulation is to encourage flexibilities in work place and workforces such as housewives, older persons, person with disabilities and students to enter into the labor market. The mandatory retirement age for the public sector has been raised from 58 years to 60 years, effective from January 2012. As for the private sector, the Minimum Retirement Age Act 2012 was enforced effective July 2013 wherein the minimum age for retirement was set to be 60 years for employees. However, the retirement age of the Judges of the Superior Courts of Malaysia is set as 66 years in accordance to Article 125 of the Federal Constitution of Malaysia.

The Employment Act 1955 and the Industrial Relations Act 1967 govern the employment of a person, however, they do not have any special provisions in relation to protection of older employees. The Minimum Wage Order 2012 (under The National Wages Consultative Council Act 2011) which was gazetted on 16th July 2012 and enforced effective 2013 prescribes minimum wage to employees in the private sector regardless of age.

Although the general understanding of the current retirement age is 60 years for employees or workmen in this country but in the private sector where the terms and conditions of employment is based on an agreed contract, the retirement age can vary according to the parties to the contract with the minimum retirement age of 60

years. In most employment contract involving an employee above the age of 60 years i.e older employee, the tenure of the contract of employment is normally on a yearly renewal basis. However, this does not seem to be the case for those who have professional qualifications and/or skills. In such cases their experience and expertise will outweigh their age. For example, judges who had retired from serving the judiciary are often sought to be arbitrators, consultants in legal firms, directors in corporate companies and alike.

Limitations for Older Employees

As it has been established that older persons and older employees fall within the same age bracket, whatever policies that are made in relation to older persons will also apply or benefit older employees.

In the private sectors where currently the minimum retirement age is 60 years and by way of a contract of employment the tenure of an employee who is above 60 years of age can be extended but there are provisions in law which such an employee may not be entitled to. Such a provision is the eligibility to apply for invalidity pension under Section 17 (1) of the Employee's Social Security Act 1969 (this Act). Pursuant to this provision a contributing employee (insured person) who has reached the age of 60 years is no longer entitled to apply for this benefit under this Act. There are a large number of applications for invalidity pension under this Act that are rejected on the basis that the applicant is above 60 years and as such has come before the appeal panel which is presided by the Industrial Court Chairman together with a representative from the union and a representative from the employers. On an average, there are almost 50 % of cases appealed involving invalidity pension and due to the age limitation stated in this Act, these appeals are eventually rejected on this very same grounds. This goes to show that older employees are not protected under this Act in relation to receiving this benefit i.e. invalidity pension even if they continue contributing under this Act.

The other area where older employees face challenges due to their age is the provision for reinstatement of employment under Section 20(1) of the Industrial Relations Act 1967. Under this provision, an older employee who considers himself as being dismissed without just cause or excuse by this employer may make representation for reinstatement to the Director General of the Industrial Relations Department and if the matter does not get resolved at the Industrial Relations Department, it is subsequently referred to the Industrial Court by the Minister of Human Resources. Should an older employee succeed in this action, the Industrial Court can only award backwages and not award reinstatement or in the absence of reinstatement, compensation in lieu of reinstatement. This is due to the Federal Court Malaysia decision in the case of **Unilever (M) Holdings Sdn Bhd v. So Lai & Anor [2015] 3 CLJ 900** where it was held that because the first respondent had reached his retirement age, as such, reinstatement is not possible and due to that compensation in lieu of reinstatement was also not applicable. In this case, the backwages was also reduced from 24 months to 14 months i.e. the duration of time left between the dismissal till his date of retirement.

Proposals

In the attempt to ensure older persons live independently, with dignity, with high sense of self-worth and be respected by optimizing their self-potential through a healthy, positive, active, productive and supportive life, there must be a review of the sum of RM300 monthly which is being given by the Department of Social Welfare to older persons who are registered with them and come within the bracket of poor persons. This is because of the current cost of living which is undeniably high and a sum such as RM300 monthly is certainly insufficient to pay for any primary needs such as housing, utilities and/or groceries.

The other area that should be reviewed is the minimum retirement age. Considering the fact that the percentage of older persons in employment is increasing every quarter, there would soon be a need for the minimum retirement age to be further extended to 65 years. By increasing the retirement age to 65 years, older employees can continue being employed if they decide to or opt for an early retirement. In

situations where early retirement is opted, older employees may be more ready to face retirement and as such will be able to move on positively. On the other hand, for those who still need to be in employment, the additional 5 years will provide them time and security to stabilize themselves before facing retirement.

One issue which always brings great discomfort to me is the issue relating to Section 17(1) of the Employee's Social Security Act 1969 i.e. invalidity pension. For the benefit of those who are still in employment above the age of 60 and contributing under the Employee's Social Security Act 1969, the age limit of 60 years under this section should be removed altogether so as to enable them to be eligible to apply for invalidity pension. As it is known, just by being eligible to apply in terms of age alone does not assure success to the applicant. The applicant's greater hurdle is to be medically certified as invalid in order to receive pension under this provision. As such, there is no great detriment if the age limitation under this provision is removed, on the contrary, if a person who still has the burden of feeding his family even at his older age becomes invalid, such a pension would be of great help to him and his family.

Conclusion

A projection to the year 2035 indicates that the ageing factors of the society may affect the contribution to the economy of Malaysia, even though the current unemployment rate is relatively stable. Based on this, the government should continuously monitor the ageing factors of the society. Serious efforts must be taken by the government to ensure the success of the Eleventh Malaysia Plan as it currently marks as the final leg in the journey towards realising Vision 2020. Keeping in mind, the diversity among older persons, their families and the communities they live in and the multiplicity of issues related to ageing, practical innovative policies and programmes should be introduced and implemented. In championing this mission to ensure older persons of this country live with self respect and dignity, it is essential for all sectors to study and understand the current pattern of living of this nation. In line with this, the current noticeable trend of

individuals marrying late and having relatively young families when approaching retirement age, it cannot be denied that it has become a necessity for older persons in such circumstances to continue being in employment in order to fulfill their obligations as bread winners.

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