

Status of Property Nominee for Employees Provident Fund

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Abstract: The movable and immovable assets owned by the deceased while he was alive are categorized, as asset inheritance including any incomes, interests, rentals or dividends derived from those assets as long as not yet divided and distributed to the rightful heirs. Nonetheless, there are confusions in determining new societal issues of inheritance whether this inheritance can be categorized as a bequest or not, inter alia is the Employees Provident Fund (EPF) savings with assigned nominees. Hence, this working study will explain the status of property nominee for EPF and the role of the nominee over those savings.

Key words: EPF, immovable, assets, income, interests, savings

INTRODUCTION

EPF was established on October 1st, 1951 under the EPF Ordinance 1951. The operation of EPF is subject to the Employees Provident Fund Act 1951 which later was rescinded with the Employees Provident Fund Act 1991 (Act 452) (Nor, 1996). EPF is a social security institution providing retirement benefits to the members, through its trusted and efficient fund management. EPF is also providing an efficient and convenient system for employers to fulfil their legal obligations and uphold their moral obligations to contribute to EPF on behalf of their employees. It is the sixth statutory body established by the government to facilitate employers to save for the future on behalf of their employees. Members of EPF are employees of the private sector and the non-pensionable employees of the public service sector. As of December, 2012 EPF has 13.58 million members with 6.38 million active contributing members. The number of active employers stands at 502,863.

Various schemes have been introduced to the member contributors since its establishment, i.e., saving, investment and withdrawal schemes. The compulsory contribution is the money credited into the members individual EPF account. The credited amount consists of contribution of the employees and the employers calculated based on a percentage of the employees monthly salary. The current rate of contribution depends on the monthly wage/salary received. For an employee whose monthly wage/salary is RM 5,000 and below,

the employee's contribution deduction is 11% of his wage/salary while his employer's share of contribution is 13%. For those who earn >RM 5,000 the employees contribution remains at 11% but the employers contribution is 12%. Members monthly contributions are invested in various approved financial instruments to generate revenues. Among them are the Malaysian government securities, money market instruments, bonds and loans, equities and real estates.

EPF NOMINATION

EPF nomination is a process to nominate an individual to act as an nominee/administrator (executioner) to receive/administer a members EPF savings on the demise of a member. EPF members are encouraged to appoint their chosen nominees in order to facilitate and expedite EPF savings withdrawal by the nominees after their demise. Rationally, if there is no nomination made on savings, the member's next of kin will have difficulties in making claims on the deceased members savings money from EPF.

For a member who dies before he can withdraw the money himself, the savings payment can be made to his next of kin or a nominee. If there is a nominee, then the payment can be made direct to the nominee, otherwise the payment will be made to his next of kin or a petitioner who has been granted a probate letter, administration letter or a distribution order (Talib, 2005).

Generally, the EPF nomination practice has even started, since 1952. This system has been introduced to assist members to appoint a nominee whom they wished and trusted to be entrusted with such big amount of money to keep or to be rightfully distributed after the death of a member. The nominee appointed is not necessarily a member's next of kin. In fact, a member could nominate anyone who has no blood relation to him. In fact, it is up to the member to nominate anyone he wishes when he is still alive. A nominee reserves the right to claim the savings money without having to produce the administration letter.

Members may nominate as many nominees as may be necessary by filling up the form EPF 4 (AHL) and can fill up more than one form if needed. A nominee can be a non-organization individual, an organization, association, a welfare institution and so forth. Members are advised to nominate their close next of kin such as the husbands, wives, children and parents to receive/administer their savings. However, if the nominee is not among the next of kin, the nomination will still be valid but very much likely will face the risk of complication in the future when the rightful heirs come to make claims. Appointment of nominees is effective on the date of submission of completed forms at any EPF counters. Nomination made by members is confidential. However, if a member dies, his next of kin can check the status of nomination with the necessary condition to produce a death certificate and proof of relationship, such as a birth certificate or a marriage certificate. If it is clear that a deceased member has a nominee, then the payment of savings can be made to the nominee according to the percentage break down stated on the nomination form (Abu Bakar, 2010).

MEMBERS FAIL TO MAKE NOMINATION

Officially, the nomination of a nominee is not compulsory. However, members are encouraged to nominate a nominee to ease the procedure of submission and distribution of money to the next of kin upon the demise of a member. In the absence of a nomination, the next of kin needs to obtain a probate letter/letter of administration/distribution order letter from the bequest authority such as Amanah Raya Berhad, the court or the land office for savings exceeding RM 20,000.00. Next of kin will face difficulty in getting those letters which normally takes a long time to obtain and with certain incurred cost. A total savings of <RM 20,000.00, EPF will pay to the party whom they think rightfully entitled to receive the money in the form of lump sum. The applicant must fill up the form EPF 9 (AHL) without having to produce the letter of administration or distribution order (Abu Bakar, 2010).

THE ROLE OF NOMINEES ON MEMBERS CONTRIBUTIONS/SAVINGS

For Muslim members, the issue raised whether the payments made to the nominee absolutely belongs to the nominee or the nominee is only considered as the administrator representative of those assets? In this instance, various fatwas (edicts) have been issued at the national level, inter alia are the following: The Fatwa of the National Council for Islamic Religious Affairs issued for the first time on 9th October, 1973 stated that:

The nominees of EPF savings, post office savings, banks, insurance and cooperative societies are the administrator (executor) of the deceased's will. They can receive the money of the deceased from these sources to be divided among those who are entitled pursuant to the division of the faraid law

The Fatwa Committee of the 49th Forum of the National Council for Islamic Religious Affairs, Malaysia on 19th September, 2000 decided that:

EPF savings money is the legacy that must be distributed according to the law of faraid and that the EPF nominee is the executor or administrator of the estate. The nominee shall distribute the EPF money (of the deceased person) accordingly under the faraid law

The Fatwa Committee of the 61st Forum of the National Council for Islamic Religious Affairs, Malaysia on 27th January, 2004 regarding the ruling of EPF payment belonging to Muslim converts decided that:

- According to syarak, a non-Muslim has no right to inherit a Muslim's assets and vice versa
- If a non-Muslim embraces Islam and has accumulated savings in the EPF and has nominated a non-Muslim nominee to his assets, he must find a Muslim nominee to replace the existing non-Muslim nominee. If there is no Muslim nominee and no Muslim next of kin who is entitled to receive the estate, in the event of his (the EPF member's) death, the non-Muslim nominee is not allowed to receive the money and the money will be handed over to the Bitulmal
- A Muslim can only bequest 1/3 of his estate in his will to a non-Muslim

The Fatwa Committee of the 67th Forum of the National Council for Islamic Religious Affairs, Malaysia on 22nd February, 2005 regarding the ruling of EPF contributions as matrimonial property has decided that:

The EPF contributions money cannot be deemed as a matrimonial property and decided that the money as a bequest inheritance that has to be divided according to the law of faraid

Besides the national fatwas, there are several other states fatwas with regards to EPF savings. The fatwas can be divided into 2 parts (Abu Bakar, 2010) and those are: The fatwas of the state of Selangor, the Federal Territories, the states of Negeri Sembilan, Kedah, Pahang and Terengganu conform to the fatwa of the Forum of the National Council, i.e., the nominee acts only as an executor (administrator) to the bequest EPF savings and thus, is required to distribute the EPF money to the rightful next of kin. The nomination of a nominee is not an indication that a member has established a will. Therefore, those assets are bequest assets.

The fatwas of the states of Perak and Kelantan are more inclined to declare that the EPF nomination of nominee can be deemed as a will. Hence, the nominee can act as the will beneficiary. In this matter, if the nominee is one of the rightful next of kin to receive the inheritance, then the will is subject to agreement of the rest of rightful next of kin. If the nominee is not the rightful next of kin, he will be entitled to not $>1/3$ of the total estate as hibah (gift). If it is $>1/3$, it must be agreed by the rest of the rightful next of kin to give.

According to Harun (2008), the deceaseds EPF savings money is a bequest inheritance. Form EPF (4) clearly informs and reminds members of the status and role of a nominee with regards to members savings or contribution money. For Muslim members, the nominee only acts as the executor/administrator responsible to distribute the savings inheritance to the rightful next of kin according to faraid. On the contrary, for non-Muslim members, the nominees are the absolute beneficiaries to the savings of the deceased upon the demise of the member. If the member succeeds the nominee, the members closest next of kin is the qualified applicant. In the event, the nominee passes on after the demise of the member, the qualified applicant is the nominees closest next of kin. This is because the nominee is now the absolute owner of the deceaseds asset.

For EPF members who are Muslims, the members accumulated saving is not a hibah bequeath to the nominee. Apart from the restrictions of the EPF Act 1991 and regulations, a members savings at the date of nomination is not an absolute property of the nominee, as the exact amount of savings for hibah is not known and not possible to be stated in the hibah aqad or nomination.

To bequeath something that would only exist in the future is illegal according to the views of the jumhur fuqahas (majority Muslim scholars) except for the Maliki of thoughts. Besides, the nomination does not give absolute ownership of a members asset to the nominee while the member is still alive. Indeed the transfer of ownership to the nominee will not be in effect while the member is still alive and until he attains his retirement. Contributors have the right to make withdrawals of his savings for the purposes of buying a housing, paying for education and medical expenses. Therefore, savings of the EPF nominees are categorized as bequest inheritance as what has been decreed by fatwa.

The asset of the EPF nominee can also be categorized as a bequeath will from the EPF member to the nominee because the ownership of his asset will be transferred to the nominee after the demise of the member. The execution of this will is only up to $1/3$ of the deceaseds assets and the nominee must not be one of the rightful next of kin. If he is one of the rightful next of kin or the savings exceeds $1/3$ of the members total estate, then the will or the excess can only be effected by a consent or agreement from the rest of the rightful heirs of the deceased. However, all EPF members savings fall under the jurisdiction of the EPF Act 1991 and regulations which defines a nominee as acting in his capacity, as an administrator or executor and not as a will beneficiary.

NO CLAIMS MADE BY THE NOMINEES

A members savings will be temporarily freezed upon the death of a member. In the event where no claim is made for 7 years or more, the money will be handed over to the unclaimed money of the federal consolidated fund. In some cases, the monies have not been claimed due to the nominees were unaware of their nominations. In other situations, before the nominees could make claims, the nominees pass on soon after the death of the members. Normally when a nominee dies before the member, the nomination is null and void. However, if the nominee passes on after the death of the member, the next of kin of the nominee has the right to make claims on the savings money under the no nominee withdrawal procedure.

CONCLUSION

The savings money of EPF members are bequest assets that can be inherited by the rightful next of kin. This is because the savings have been contributed by the members while they were still alive and belong to the

rights and ownership of the members and in fact the savings money is regulated by the EPF Act 1991 and the prescribed regulations. The person nominated in the Form EPF 4 is merely the administrator or executor of the EPF savings money to be divided and distributed according to the faraid law. The purpose of this nomination system, is more towards the facilitation and expedition of the members saving money delivery to the next of kin or divided among the rightful next of kin. This EPF nomination is not in contradiction with the law of syarak. Even, a number of fatwas have been issued at the national and state levels relating to the position, of these assets. All the fatwas are in consensus with the ruling that the savings money contributed by the EPF members are not a bequest to be bequeathed to the nominee but instead is the bequest assets to be inherited by the members next of kin and the nominee merely acts as an administrator or executor of the savings money. Nevertheless, there are others who think that the nominee is the will beneficiary.

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