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Framework of Malaysian Private Retirement Scheme under Capital Markets and Services Act 2007

Asmah Laili Yeon^{1*}, Mohammad Azam Hussain², Azlin Namili Ramli³

¹School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia, ²School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia, ³School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia. *Email: asmah485@uum.edu.my

ABSTRACT

The Government of Malaysia established the 1 Malaysia Pension Scheme (SP1M) in 2010 and recognizes the importance of savings from an early age to ensure sufficient savings after retirement. After 5 years been introduced to the public, it is significance to evaluate the perception of Private Retirement Scheme (PRS) providers in relation to the existing legal framework of the scheme. The objective of the paper is to examine the perception of PRS providers on the legal framework of the PRS. This is a qualitative research and interviews were conducted amongst providers of PRS. In analysing the data, thematic data analysis was employed to deduce findings from the respondents' views. The finding shows that majority of respondents agreed the legal framework of PRS is adequate to protect investors and providers. However, there are a few suggestions to improve the legal framework and governance of PRS i.e., internal guidelines, provider's fee and etc.

Keywords: Retirement Scheme, Investors' Protection, Retirement Saving, Legal Framework

JEL Classifications: K2, K22, K220

1. INTRODUCTION

In 2010, the Government established the 1 Malaysia Pension Scheme (SP1M), for the self-employed without fixed income to contribute voluntarily to the Employees Provident Fund (2014). To date, about 66,000 contributors have participated in the scheme with total savings exceeding RM240 million. To encourage more people to participate in the scheme, the Government increases its contribution from 5% to 10% or from a maximum of RM60.00 to RM120.00/year. This will be effective from 1 January 2014 to end 2017 and is expected to attract 30,000 new contributors.

The government recognizes the importance of savings from an early age to ensure sufficient savings after retirement. To further increase savings, the government encourages youth to undertake long-term investment through the private retirement scheme (PRS). Towards this, the government proposes a one-off incentive of RM500.00 to contributors who participate in the PRS scheme with a minimum cumulative investment of RM1,000.00 within a year. The incentive, which is available for individuals aged

between 20 and 30 years, is expected to attract 420,000 youth contributors nationwide. The incentive will be implemented from 1 January 2014, for a period of 5 years, involving an allocation of RM210 million (Ministry of Finance, 2013).

The introduction of the PRS framework was a result of recommendations made by the Securities Commission (SC) Malaysia to the government to accelerate development of the private pension industry in Malaysia. PRS which are an integral feature of the private pension industry, seek to enhance choices available for all Malaysians, whether employed or self-employed, to supplement their retirement savings under a well structured and control of the organizations and how regulated environment (SC, 2012).

The Capital Markets and Services Act 2007 (CMSA) is the main Act which regulates and provide provisions related to the PRS in Malaysia. The robust amendment to the Act in 2012 focuses on the insertion of the new provision of PRS and other matters. This is in line with the objective of the Malaysian Capital Markets Master

Plan II (CMMP II) after the great achievement of the CMMP I 1998-2010 (SC, 2011).

The objective of this paper is to discuss the perception of PRS providers on the legal framework of the PRS under CMSA 2007. After 5 years been introduced to the public, it is significant to evaluate the perception of PRS providers in relation to the existing scheme.

2. DRAWBACKS OF PRS

The governance of private pension plans and funds involves the managerial control of the organizations and how they are regulated, including accountability of management and how they supervised.

According to Steward and Juan (2008), the basic goal of pension fund governance regulation is to minimize the potential agency problems, or conflicts of interest that can arise between the fund members and those responsible for the fund's management and which can arise between the fund members and those responsible for fund management and which can adversely affect the security of pensions savings and promises. Ambachtsheer et al. (2006) identify the main governance weaknesses as poor selection processes for members of the governing board, a lack of self-evaluation of board effectiveness and weak oversight by the board.

Other specific problems include lack of delegation clarity between board and management responsibilities, board micro-management and non-competitive compensation policies in pension funds. Even though under the CMSA, has prescribed the general principles of law in relation to PRS and the SC also published the guidelines on PRS 2012, but in terms of the process and procedures, specification of terms of contract between providers and contributors is different amongst providers of PRS and determination of the investment objective and its achievement is the discretion of the providers.

In the United States and United Kingdom show that consequences of voluntary pensions aggregate coverage is only around 50% and coverage being focused on men, unionist, high income workers, white collar workers etc. Coverage of low income workers may have a more powerful effect on national saving than voluntary coverage which leaves them out (Philip, 1995). Meaning that the mandatory pensions scheme is more favourable as given the beliefs that individual may not voluntarily save for old age, and in order to durably reduce future government liabilities, mandatory schemes are often favoured (Vittas, 1994).

Since PRS is an investment, the rule of investment applies when a person chooses a product that aims for high returns, he is exposing himself to high risk that is the risk of not seeing profitable returns or perhaps even losing money. Like any other investments in the market, the gains of PRS are not guaranteed. Though all PRS plans are set out to reap maximum returns based on their investment criteria, there is no stopping the Net Value Asset of a PRS plan from plunging (or sky-rocketing) due to market conditions. So, despite the best efforts of PRS providers and regulators to safeguard investor interest, one should always considers the possibility of not reaping any returns from his hard-earned cash and what those implications are.

Not only the returns of PRS are not guaranteed but the capitals or contributions made to the PRS plan are not protected too. There is always that chance to lose the money contributed all those years in the event of adverse market conditions. In order to mitigate these risks, a person needs to educate himself and keep track of his PRS plans carefully (Ching, 2012).

3. RESEARCH METHODOLOGY

This paper adopts a qualitative research method by conducting interviews with the providers of PRS. In analysing the data, thematic data analysis was employed to deduce findings from the respondents' views. The thematic analysis is sorted out according to the legal framework of PRS in the CMSA 2007 which relates to sources of PRS law, jurisdiction of providers, efficiency of registration and approval process, criminal sanction (CS), responsibilities of SC, ground of refusal of approval, fees, violation of provisions, and disclosure of information. The interview was conducted with five PRS providers. They are AmFunds Management Berhad, Manulife Asset Management Services Berhad, AIA Pension and Asset Management Sdn. Bhd., Affin Hwang Asset Management Berhad and Kenanga Investors Berhad. Interviewees (respondents) are officers who are in charge of PRS in their organization. Their age is range between 26 and 56 years old. They are 6 male respondents and 1 female. The respondents' designation is inter alia as Senior Manager, Senior Clerk, PRS Specialist, and also the Head of the PRS product. Most of them had experienced in managing the PRS since the introduction of the scheme in 2012. Respondents had an experience with the unit trust industry around 2-20 years.

4. FINDINGS

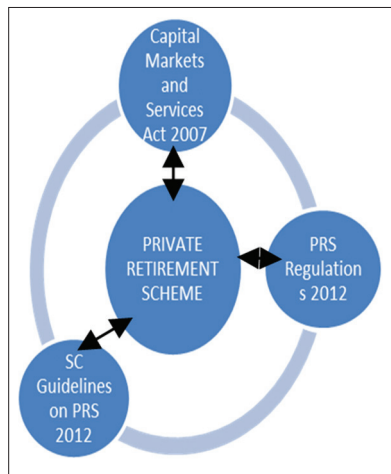
4.1. The Legal Framework of PRS

Section 139A of CMSA, PRS is defined as a retirement scheme governed by a trust, offered or provided to the public for the sole purpose, or having the effect, of building up long-term savings for retirement for members where the amount of the benefits is to be determined solely by reference to the contributions made to the scheme and any declared income, gains and losses in respect of such contributions but does not include:

- a. Any pension fund approved under section 150 of the Income Tax Act 1967; or
- b. Any retirement scheme or retirement fund established or provided by the Federal Government, State Government or any statutory body established by an Act of Parliament or a State law.

The main legal framework of PRS is based on three sources i.e., the CMSA 2007, Capital Markets and Services (PRS Industry) regulations 2012 (PRS regulations 2012) and the SC Guidelines on PRS 2012 (PRS guidelines 2012). The main discussion of this paper will be focused on these three legal sources (Figure 1).

The CMSA 2007 is the main statute to regulate the PRS has been amended by Capital Markets and Services (Amendment) Act 2011 (Act A1406) where new provision pertaining to PRS

Figure 1: Legal framework of private retirement scheme

Industry has been inserted under Part IIIA of the principal Act. The amendment came in force effectively on 3rd October 2011. Due to such amendment, there are 44 sections deal with the PRS (section 139A-139ZR). The provision begin with Division 1 - Preliminary (section 139A), Division 2 - PRS (section 139B - 139ZE), Division 3 - Trustee for employer - sponsored retirement scheme (section 139ZF - a39ZH) and Division 4 - General (139ZI - 139ZR). Secondly, the PRS is regulated by PRS regulations 2012 which provide the duties and responsibilities of PRS providers. This including, fiduciaries duties, management of records, management of deeds, preserving of integrity and management of annual reports and returns.

Finally, the PRS is also governed by the PRS guidelines 2012 issued by SC Malaysia to be observed by the PRS providers effectively on 5 April 2012. In short, the PRS guidelines 2012 cover: Introduction; definitions; the PRS provider; scheme trustee; delegation and outsourcing by PRS providers; Oversight arrangement by PRS providers; constitutions of the scheme; investments of the scheme; charges, fees and expenses; dealing, valuation and pricing; operational matters; reporting and audit; disclosure document and product highlights sheet; and applications, notifications and reporting.

4.2. Perception of Providers on PRS Legal Framework

4.2.1. Sources of law

All respondents agreed that the SC is the main regulator and enforcement body of PRS. The main source of law relating to PRS is under the CMSA 2007. This is said by R1(a); "We refer to the CMSA 2007 and also SC guidelines." This statement is supported by other officers from R2, R3(a), R4 and R5. Further, all providers agreed that their organization refer to the internal PRS policy which is developed by their own company and also known as the standard operating procedure (SOP). This SOP is the company internal guideline that is in line with the CMSA 2007. This is admitted by the officer of R3(a); "Oh, yes we have our internal policy is i.e., our SOP. I think every company has its own SOP on how we operate." It is also supported by the R1 (a); "Basically we will follow the guidelines and legal provisions." In contrast, R5 added that they do not have an internal policy that guide them in managing the PRS instead their organisation

referred to CMSA 2007 and the guideline that issued by the SC. R5 stated that; "If you are talking about internal guideline, we do not have such written document. We follow straightly to the guideline issued by the SC."

4.2.2. Jurisdiction of PRS provider

The jurisdiction of PRS providers is based on the law and regulation related to the PRS. This is agreed by all providers. R2 commented, "I think SC actually granted autonomy to the company to decide on how they restructure their own department. The company knows their individual staff and departments in the company. Of course SC will not monitor strictly on how the fund manager manage the PRS."

Further R4 agreed that providers should have their own PRS handbook. As highlighted by R4; "Yes, we do have a PRS handbook". This is also mentioned by the R5 where "I believe this also one of the reason why we were given the authorization to have seven funds in the scheme which is the other four is up to the company to decide which type of funds that you think suitable to the member of their PRS especially if the objective is to take care of their retirement." Providers are of opinion that they have jurisdiction in managing their own PRS funds based on their own policy and it is still in accordance with the PRS legal framework.

4.2.3. Efficiency of registration and approval process

For the efficiency of registration and also the approval process of PRS providers by SC, majority of providers gave a positive feedback. R5 said, "From my personal experience it is quite good, the process of registration and approval just took couple of months and at this infant stage I think it is suitable and reasonable. My own experience in developing the Shariah-based product it took me about 5 months to register and approve the whole scheme which actually including three funds." All providers agreed that the approval process by SC is quite good and efficient.

4.2.4. CS (providers)

All of providers agreed with the penalty clause stipulated under the CMSA 2007 for the non-compliance of registration and approval requirements of provider's application. According to the CMSA 2007 any person contravenes provision relating to registration and approval requirement commits an offence and shall on conviction be punished with imprisonment and liable to a fine (section 139P and section 372). As mentioned by R2, "So I think at this moment it is sufficient since the industry is still new." This is supported by R4, "We agreed with the CS be in place with the amounts stipulated in the provision. So, we do agree with the CS because we have not been at risk of this CS and we felt that the amount is fair."

4.2.5. Responsibilities of SC

With regards to responsibilities of SC in managing and handling PRS, R5 commented; "I found it is good. From my experience dealing with SC, I would say it is a good experience and it is not something about diplomatic. It just that. ... I think because we have the chance to work with difference officer under this division that actually governing PRS. So I think it is something good. I can learn from different officer from which angle they are looking at the issue and in what manner. So different officer they had a

different experience. Overall I think something good for us. But the process can be depending on the situation. But then in terms of experience, in term of responsibility I think they are doing a good job. I mean they are doing their job right. We as a provider, if we look from our perspective then it would be different. I think they are doing their job". R1(a) added that SC has quite a good relation with providers. Further he mentioned that "They gave feedback on most things. Every 1 or 2 months or once a month they will give feedback. Every time when they want to implement something then they will call us for a meeting."

4.2.6. *Grounds of refusal for approval*

According to CMSA 2007, there are nine grounds of refusal for the approval of application as a PRS providers i.e., (a) the applicant is not a holder of a Capital Markets Services Licence who carries on the business of fund management; (b) the application was not made in accordance with section 139Q; (c) the applicant has failed to comply with any requirement of the Act and Guidelines; (d) any information or document that is furnished by the applicant to SC is false and misleading; (e) the applicant is in the course of being wound up or dissolved; (f) execution against the applicant in respect of a judgment debt has been returned unsatisfied in whole or in part; (g) a receiver and manager or an equivalent person has been appointed within or outside Malaysia or in respect of any property of the applicant; (h) the applicant has entered into a compromise or scheme of arrangement that is still in operation; and (i) the SC has reason to believe that the applicant or any of its principal officer will not be able to act in the interest of the public or the members. Based on the feedbacks from the respondents, there are different views concerning grounds of refusal for approval as PRS providers. According to the R3(b) it is too early to comment about the ground of refusal for the approval process as the PRS is still in the infant stage. R3(b); "So I think at this moment, it too early to comment whether the ground is actually sufficient or you know is that something need to be added". It is different with the other provider as R4 said that the Act must be stringent in term of selecting the providers, because the nature of the PRS is a long-term investment product. R4; "Yes, this ground of refusal I think it is vital to the provider in the first phase, because this is a long-term, product. The nature of the product is extremely involved 20-40 years and involves potentially 100 of 1000 peoples, then by having this in place we have be more stringent in term of selecting the provider, in term how well they can cope with the demand. We tell all corporate if anything this can be strengthens, because down the line the PRS will be products know everyone in Malaysia, then the ground of refusal is a vital." However, R5 disagreed with the ground of refusals because it is too subjective and need to be more specific; "I think maybe this is big and need to be more specific, because it can be quite subjective."

4.2.7. *Efficiency of registration and approval process (SC)*

Regarding the efficiency of registration and approval process of PRS by SC, majority of the PRS providers do not give any responds. However, two respondents responded to the question. R5 has agreed that the process of approval and registration is efficient; "Yes. I think I'm quite satisfied the whole approval process."

4.2.8. *Fee payable by PRS*

For the fee payable by PRS providers, two of the respondent did mentioned that the fee is too high and it was a burden to the provider. The R1(a) and R3(a) disagreed with the amount of fee charged to them. According to R1(a); "I think if there is an exemption it is a good thing." This statement also supported by the R3(a); "I think it is quite costly. After the approval of the product we have to come out with the brochure and marketing expenses to launch the product. Of course it is not ok. We will suffer a lot in terms costing."

But, there is a different opinion which was voice out by one respondent. R4 agreed that the fee payable is okay and moderate. R4 stated that; "It is a business of investment that we have to make and it is essential to get a proper license, to get the confident from the SC and also from the investors. We are a licensed person and should put forward a bit to be a provider. I think we should be more than happy to have this cost in this juncture." There is another opinion regarding the fee payable as R1(a) suggested the best solution is to exempt the product registration fee, "I think if there is an exemption is a good solution."

4.2.9. *Penalty for violation of provisions in the CMSA 2007*

R1(a) agreed with the provisions that the PRS provider must not makes or submits to SC any statements of information that is false or misleading or wilfully omits to state any matter which is related to PRS. Therefore, any person who violates the provision on conviction will be punished with imprisonment for a term not exceeding 10 years and be liable to a fine not exceeding RM3 million. As mentioned by R1(a); "If everybody gives false information then automatically it will harm the investor. I think in the same way you can protect the investor, so the investor can trust this PRS industry. If from the start it is not trustable this industry won't grow. As I mentioned before, for Islamic fund we are the top. Nowadays, with the technology it is very easy for people to find out the information. So don't mislead the public, and in a long run it will be more beneficial to your company. Because once you tell lies to the public and false information than forever they won't buy a product from you. In a long run you are losing out also." In addition, R2 and R5 pointed out that the misleading information need to be evaluated first based on the content and also the type of information. R5 responded to this issue by saying; "Sometimes when we talk about the accuracy of misleading information, we still have to evaluate. I mean misleading in what sort of content? If we intentionally had committed the offence and breach the law, then yes, I think the sanction is making sense. However, if some error in the documentation which is unintentionally, I think it's a different thing."

4.2.10. *Disclosure of information*

Disclosure of the information is one of the essential requirements according to the law and guidelines of PRS and must be observed by the PRS providers. It was agreed by R1(a); "I think it is very important. You know even provider and consultant keep on giving false information or misleading, it is not only will create something bad to the investor, but also to the industry as a whole."

However other respondents suggested that the PRS guideline must be clear with the definition of disclosure. It is pointed out by R5;

“That is why I think they have to really define the information, what is the meaning of the disclosure and the scope of disclosure.”

Additionally, the disclosure of information is very important in increasing the financial or investment knowledge among investors. It is also give the credibility advantages to the fund house. This is voiced out by R4; “So having this transparency in place and having the need for disclosure documents I think, it will give the investors sufficient amount of knowledge of the product and also of what we do and what kind of step we take to ensure that investment are of high credibility, and also is in line with the SC has set up, in line with the rule and regulation of the industry. So I think it is will boost confidence level of the investors and also to create credibility as a fund house.”

4.2.11. Governance policy of PRS

In order to implement the best practices in PRS industry, the guidelines state good governance practices to be complied with by the providers that is the appointment of specialized PRS officer.

In ensuring that PRS product is been complied with the law, regulations and guidelines, the PRS providers are required to appoint the compliance officer in their company. It is an internal officer that ensuring all their business activities is complied with the law that governs PRS industry. R1(a) mentioned that; “Yes we have a compliance department. Let say every marketing material that I pass to you, I have to go through the compliance rating. So even the forms, the application form, publication of prospectus everything they have to get a final say from this department.” It is also supported by others. As R2 mentioned that they have a legal officer in governing their in-house activities; “We have a lawyer here. So normally all issues related to the legal matters will be referred to them.”

Further, other respondents did mentioned they are practicing a multi-tasking work in their companies. However, between them there will be a specific focus on their task. As R5 mentioned; “No specific person here, we practice multi-tasking job ... everyone do the task. For monitoring process, we have the compliance officer.” It is also supported by the R3(a); “We work in a group. As I say I can’t inform you how many because we can’t release out the number. No matter how, we have this compliance officer. Yes, their work is specific.”

As a conclusion Table 1 shows the overall opinion of providers as discussed above in relation to the legal framework of PRS.

5. DISCUSSION, RECOMMENDATION AND CONCLUSION

Based on the above analysis, it can be concluded that the main sources of law which referred to by all five PRS providers is CMSA 2007 and the guideline issued by SC. Three PRS providers have their own internal policy and guideline in managing PRS, but the other two providers did not have their own internal guideline or policy. Researchers are of opinion, all PRS providers should have their own internal guideline or policy as an additional written

Table 1: Perception of providers

SL	ER	CS	SP	Grounds of refusal
All agree	All agree	All agree	All agree	3 different views; a. No comment b. Good and stringent provisions c. Subjective and need to be more specific

SL: Source of law, ER: Efficient in registration, CS: Criminal sanction, SP: SC performance

document to manage the scheme. Internal guideline and control will promote best practice in governance of an organization. This is the spirit of the Malaysian Code of Governance 2012 and it should be implemented by all companies in Malaysia.

Further, the power and jurisdiction of providers is stated in CMSA 2007, Regulations and SC guideline on PRS. However, PRS Handbook or internal guideline developed by providers is a necessity to provide detail process and procedures in managing the scheme. The law and SC guideline on PRS is too general and provide flexibility to providers on how to manage the scheme. Therefore, it is essential for providers to have their own internal policy as a guide to their officers and as a safety net to investors from misconduct of providers’ officers or its agent.

In relation to the standard fees charge by the SC to PRS providers according to each type of PRS products, researchers are of view that the SC should introduce a new package fees and not to charge them for every single products. The discount given to the providers will motivate them to give special package deal or investment to investors/contributors. As for adequacy of penalty for breach of provision concerning disclosure of material information, all providers agreed that it is adequate and can serve as a prevention strategy against unethical behaviour among providers and their agents.

In conclusion, the PRS is an alternative pension scheme to Malaysian citizens as a safety measure and saving for their future life after retirement. It is a good effort by Malaysian government to introduce PRS which is available to all Malaysians, whether employed or self-employed and to supplement their retirement savings under a well structured and regulated environment. However, several issues relating to the legal framework of PRS need to be addressed in order to strengthen the existing legal framework and make it more comprehensive.

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