

EMPLOYEE WELFARE FUND ACT

Act No. 4391, Aug. 10, 1991

Amended by Act No. 4917, Jan. 5, 1995
Act No. 5247, Dec. 31, 1996
Act No. 6454, Mar. 28, 2001
Act No. 8372, Apr. 11, 2007
Act No. 8407, Apr. 27, 2007
Act No. 8782, Dec. 21, 2007
Act No. 9337, Jan. 7, 2009
Act No. 9793, Oct. 9, 2009

Article 1 (Purpose)

The purpose of this Act is to contribute to the stabilization of workers' living and promotion of their welfare, by making the employer establish, efficiently manage and operate an Employee Welfare Fund financed with a portion of the profits yielded from his/her business operation.

Article 2 (Definition)

The terms in this Act shall be defined as follows :
<Amended by Act No. 8372, Apr. 11, 2007 and Act No. 8407, Apr. 27, 2007>

1. The term "worker" means a worker as prescribed in Article 2 of the Labor Standards Act; and
2. The term "employer" means an employer as prescribed in Article 2 of the Labor Standards Act.

Article 3 (Protection of Workers' Rights and Interests and Maintenance of Working Conditions)

An employer shall not degrade the working conditions concluded by the parties of labor relations, by reason of the creation of and contribution to an Employee Welfare Fund (hereinafter referred to as the "Fund") in accordance with the provisions of this Act.

Article 4 (Scope of Application)

This Act shall apply to all businesses or workplaces (hereinafter referred to as "business") : Provided that this Act may not apply to the businesses as prescribed by the Presidential Decree taking into consideration size, type, etc., of business.

Article 5 (Status and Establishment of Juridical Person)

- (1) The Fund shall be a juridical person.

(2) The employer of a business shall, if he/she intends to establish the Fund as prescribed by this Act, organize a Preparatory Committee on Establishment of the Employee Welfare Fund (hereinafter referred to as "Preparatory Committee"), and make it administrate affairs concerning the creation of the Fund and matters concerning the election of the director or auditor at the time of the creation.

(3) The provisions of Article 8 of this Act shall be applied mutatis mutandis to the way of organizing the Preparatory Committee; and the Preparatory Committee shall be regarded as the Employee Welfare Fund Council (hereinafter referred to as the "Council") organized initially in accordance with the provisions of Article 8, at the same time as the juridical person is brought into existence according to the provisions of paragraph (5).

(4) The Preparatory Committee shall draw up the articles of incorporation prescribed by the Presidential Decree, and shall obtain the authorization thereof from the Minister of Labor.

(5) The Preparatory Committee which have obtained the authorization prescribed by paragraph (4) shall register by joint signature the establishment of the Fund without delay at the seat of the head office; and the Fund shall be brought into being only when the registration of establishment has been completed.

(6) Necessary matters concerning the registration of the establishment of the Fund and other registrations shall be prescribed by the Presidential Decree.

(7) The Preparatory Committee which has completed the registration of establishment shall hand over the business forthwith to the director of the Fund.

Article 6 (Alteration of Articles of Incorporation)

The Fund which intends to alter the articles of incorporation shall obtain an authorization from the Minister of Labor.

Article 7 (Organs of Fund)

The Fund shall set up its own Council, director and auditor.

Article 8 (Composition of Council)

(1) The Council shall be composed of equal numbers of members representing the employer and workers and the number of members from each side shall be neither less than three nor more than ten.

(2) The members representing workers shall be elected by the workers themselves under the provisions of the Presidential

Decree; Provided that if there exists a trade union organized with the majority of workers, the representative of the trade union and other persons commissioned by the union shall become the members. *<Amended by Act No. 6454, Mar. 28, 2001>*

(3) The members representing the employer shall be the representative of the business concerned and other persons commissioned by the representative.

(4) In the case of businesses where a Labor-Management Council exists in accordance with the provisions of the Act on the Promotion of Worker Participation and Cooperation, the members of the Labor-Management Council may become the members of the council, notwithstanding the provisions of paragraphs (2) and (3). *<Amended by Act No. 5247, Dec. 31, 1996 and Act No. 8407, Apr. 27, 2007>*

Article 9 (Function of Council)

(1) The Council shall consult and decide the following matters: *<Amended by Act No. 6454, Mar. 28, 2001>*

1. Matters concerning decisions on the amount of contributions in order to create the Fund;
 2. Matters concerning the election or discharge of the director or auditor;
 3. Matters concerning the approval of the auditor's inspection report;
 4. Matters concerning the alteration of the articles of incorporation; and
 5. Matters concerning decisions on whether or not to integrate the operation of other welfare systems into the Fund.
 6. Matters concerning a merger of the Fund with another Fund, a split of the Fund and a split-merger of the Fund
- <Newly Inserted by Act No. 6454, Mar. 28, 2001>*

(2) Matters concerning the operation of the Council shall be provided for by the Presidential Decree.

Article 9-2 (Keeping of Meeting Minutes)

The Council shall record meeting minutes containing the matters described in any of the following subparagraphs, have them signed or sealed by all members present and keep them for ten years after the date of recording;

1. Meeting date and place;
2. Members present;
3. Matters consulted and decided; and
4. Other matters discussed

<This Article Newly Inserted by Act No. 8407, Apr. 27, 2007>

Article 10 (Director and Auditor)

(1) The Fund shall set up within it not more than three directors and one auditor, each representing the employer and workers in equal numbers.

(2) The directors shall represent the Fund jointly and execute the following matters under the conditions prescribed by the articles of incorporation: *<Amended by Act No. 8407, Apr. 27, 2007>*

1. Matters concerning the management and operation of the Fund;
2. Matters concerning budgeting and settlement of accounts;
3. Matters concerning the preparation of the business report;
4. Matters prescribed by the articles of incorporation of the Fund ; and
5. Other matters discussed and decided by the Council.

(3) The operation of the Fund shall be conducted by a majority vote of the directors.

(4) The auditor shall perform his/her duties to inspect matters concerning the operation or accounting of the Fund.

Article 11 (Term of Office of Director, etc.)

(1) The term of office of members and directors of the Council shall be three years, respectively: and the term of an auditor shall be two years: Provided that the term of office of any successor to fill the vacancy of a member, a director or an auditor of the Council shall be the remaining term of his/her predecessor's term.

(2) A member of the Council, its director, or its auditor shall continue to perform his/her duties until his/her successor has been elected, even in case his term of office has expired.

Article 12 (Status of Director, etc.)

(1) A member of the Council, its director, or its auditor shall work on a part-time basis without remuneration.

(2) The employer shall not treat a member of the Council, its director, or its auditor unfavorably on account of the performance of his/her duties related to the Fund.

(3) The time spent by a member of the Council, its director, or its auditor in connection with the performance of his/her duties related to the Fund shall be regarded as the time devoted to work.

Article 13 (Raising Funds)

(1) An employer may contribute the sum of money decided through deliberation by the Council on the basis of 5/100 of

net profits before deduction of corporate tax or income tax for the immediately preceding business year, to the Fund, under the conditions prescribed by the Presidential Decree.

(2) An employer may contribute equities, cash or other properties to the Fund, in addition to the contributions prescribed in paragraph (1), under the conditions prescribed by the Presidential Decree.

Article 14 (Use of Funds)

(1) The Fund shall utilize its revenues to carry out projects which fall under any of the following subparagraphs under the conditions prescribed by the Presidential Decree: *<Amended by Act No. 6454, Mar. 28, 2001 and Act No. 8782, Dec. 21, 2007>*
<Enforcement Date Jun. 22, 2008>

1. Financial support for worker's property creation, such as support for house purchasing, stock purchasing under an employee stock ownership plan, etc.;
2. Deleted. *<Act No. 6454, Mar. 28, 2001>*
3. Scholarships, disaster relief payments and other financial assistance for workers' livelihood;
- 3-2. Support for costs necessary for maternity protection and reconciliation between work and family life;
4. Disbursement of the expenses needed for the operation of the Fund; and
5. Projects prescribed by the Presidential Decree other than wage payments or other obligations to be performed by the employer for workers in accordance with the provisions of other law and regulations.

(2) The amount equal to a certain proportion of the Fund may be disbursed for the use referred to in paragraph (1) under the conditions prescribed by the Presidential Decree. *<Amended by Act No 4917, Jan. 5, 1995>*

(3) The Fund may provide financial loans to stabilize the livelihood of workers and support their property creation under the conditions prescribed by the Presidential Decree. *<Newly Inserted by Act No. 6454, Mar. 28, 2001>*

Article 15 (Fund Increment)

The funds shall be incremented using the following methods :

1. Deposits or money trust in a financial institution;
2. Purchase of beneficiary certificates of an investment trust company, etc. ;
3. Purchase of securities which the State, a local government, or a financial institution itself has issued, or for which

- obligation is guaranteed by the State, a local government, or a financial institution; and
4. Other programmes prescribed by the Presidential Decree to increment the funds.

Article 16 (Accounting of Fund)

- (1) The fiscal year of the Fund shall be the same as the fiscal year of the employer's business unless otherwise prescribed by the articles of incorporation.
- (2) The Fund shall not be financed by loans.
- (3) Any losses incurred as a result of the settlement of accounts of the Fund during each fiscal year shall be carried over to the next fiscal year and its surplus earned shall be appropriated first to make up for the losses and then transferred into the Fund.
- (4) Necessary matters concerning the accounting and management of the Fund shall be prescribed by the Presidential Decree.

Article 17 (Publicity of Fund Management and Operation)

The Fund shall make public documents falling under any of the following subparagraphs under the conditions prescribed by the Presidential Decree, and shall always make them available to workers :

1. Balance sheet ;
2. Statement of profit and loss ;
3. Auditor's report ;
4. Business report ; and
5. Other documents prescribed by the Presidential Decree.

Article 18 (Keeping Books)

The Fund shall keep documents about its operation for three years.

Article 19 (Fund's Ownership of Real Estate)

The Fund shall not own real estate except when it is needed for the performance of its business.

Article 20 (Relation with Other Welfare Systems)

- (1) An employer shall not discontinue or cut down the operation of existing employee welfare systems or facilities being operated at the time of the establishment of this Fund by reason of the establishment thereof.
- (2) If an employer is implementing the projects prescribed in Article 14 at the time of the establishment of the Fund, projects other than those which shall be established and operated pursuant

to other laws and regulations may be integrated into the Fund for the purpose of operation through deliberation and decision of the Council.

Article 21 (Order of Correction)

If an employer or the Fund violates the provisions of Article 12 (2) and of Articles 14 through 17 of this Act, the Minister of Labor may set a proper period and order the correction of the violation during that period.

Article 22 (Tax Incentives)

The establishment and operation of the Fund may be supported with tax incentives under the conditions prescribed by the tax law.

Article 23 (Causes for Dissolution of Fund)

The Fund shall be dissolved for the reasons described in any of the following subparagraphs:

1. Closure of business;
2. Merger of the Fund with another Fund under Article 23-3; and
3. Split of the Fund and split-merger of the Fund under Article 23-6.

<Wholly Amended by Act No. 6454, Mar. 28, 2001>

Article 23-2 (Disposition of Property of Dissolved Fund)

(1) The property of the Fund dissolved due to business closure shall be used, in accordance with the provisions of the Presidential Decree, first of all, for the payment of unpaid wages and retirement pay, and other money and goods which should be paid by the employer to workers and then if there is remaining property, an amount not exceeding 50/100 of the remaining property may be used to help stabilize the living of the workers covered by the Fund in accordance with the articles of incorporation.

(2) In case there is remaining property after the use under paragraph (1), the remaining property shall be reverted to the person designated by the articles of incorporation : Provided that in case there is no one designated by the articles of incorporation, the remaining property shall be reverted to the Workers Welfare Promotion Fund under the Basis Workers Welfare Act under the conditions prescribed by the Presidential Decree. *<Amended by Act No. 8407, Apr. 27, 2007>*

<This Article Newly Inserted by Act No. 6454, Mar. 28, 2001>

Article 23-3 (Merger of Funds)

(1) Funds may be merged as a result of a business merger and takeover.

(2) When Funds are merged, a contract for the merger containing matters described in any of the following subparagraphs shall be written up and subject to the resolution of the Council:

1. Property of each Fund before the merger and changes in the Fund property after the merger;
2. Level of support which each Fund involved in the merger will give workers after the merger;
3. Schedules for the merger; and
4. Other important matters concerning the merger

(3) The level of support as prescribed in subparagraph 2 of paragraph (2) may be determined differently according to each worker belonging to each Fund before the merger within three years after the merger after taking into account the average fund balances for each worker in each Fund before the merger and the estimated amounts to be contributed by the employers after the merger.

<This Article Newly Inserted by Act No. 6454, Mar. 28, 2001>

Article 23-4 (Creation and Registration of Fund After Merger)

(1) If a Fund is established as a result of a merger of Funds, the employer of the business which is established in the merger of the business shall organize a Preparatory Committee and undergo the procedures for establishing a Fund prescribed in Article 5.

(2) A Fund surviving a merger of Funds shall make an alteration registration, while a Fund extinguished due to the merger shall make a dissolution registration.

<This Article Newly Inserted by Act No. 6454 Mar. 28, 2001>

Article 23-5 (Effectuation and Effect of Merger)

(1) A merger of Funds shall come into force after a fund established by the merger or a fund surviving the merger makes an establishment registration or an alteration registration.

(2) A Fund established or surviving after a merger of Funds shall succeed to the rights and duties of a Fund extinguished due to the merger.

<This Article Newly Inserted by Act No. 6454, Mar. 28, 2001>

Article 23-6 (Split and Split-Merger of Fund)

(1) A Fund may be split or split-merged (hereinafter referred to as "Split, etc.") as a result of the split and split- merger of business.

(2) In the case of a split of a Fund, a contract for the split including matters described in any of the following items shall be written up and subject to resolution of the Council.

1. Distribution of property of the Fund;
2. Schedules for the split; and
3. Other important matters concerning the split

(3) In the case of a split-merger of a Fund, a contract for the split-merger including matters described in any of the following items shall be written up and subject to resolution of the Council.

1. Changes in property of the Fund due to the distribution and merger of the property;
2. Level of support which each Fund involved in the split-merger will give workers after the merger;
3. Schedules for the split-merger; and
4. Other important matters concerning the split-merger

(4) The distribution of property, as prescribed in subparagraph 1 of paragraph (2) and subparagraph 1 of paragraph (3), shall be, in principle, made based on the number of workers but may be made in consideration of each business' contribution to creating its Fund before the split.

(5) The provisions of the Article 23-3 (3) shall apply mutatis mutandis to a decision on the level of support prescribed in subparagraph 2 of paragraph (3). In this case, "merger" shall be read as "split-merger".

<This Article Newly Inserted by Act No. 6454, Mar. 28, 2001>

Article 23-7 (Establishment of Fund through Split, etc. and Its Registration)

(1) If a Fund is established due to a split of a Fund, the employer of the business which is established due to the split or split-merger of the business shall organize a Preparatory Committee and undergo the procedures for establishing a Fund as prescribed in Article 5.

(2) A Fund surviving a split, etc. of a Fund shall make an alteration registration, while a Fund extinguished due to the split, etc., shall make a dissolution registration.

<This Article Newly Inserted by Act No. 6454, Mar. 28, 2001>

Article 23-8 (Effectuation and effect of Split, etc.)

(1) A split, etc., of a Fund shall come into force after a Fund established by the split, etc., or a Fund surviving the split, etc., makes an establishment registration or an alteration registration.

(2) A Fund established by or surviving a split, etc., of a Fund shall succeed to the rights and duties of a Fund extinguished

due to the split, etc., under the conditions prescribed by the split plan or contract for the split-merger.

<This Article Newly Inserted by Act No.6454 Mar. 28, 2001>

Article 24 (Supervision, etc.)

(1) The Minister of Labor shall supervise the Fund, and may give an instruction or order with regard to the operation and management thereof whenever deemed necessary.

(2) Whenever deemed necessary, the Minister of Labor may request the Fund to report on matters concerning its operation, accounting and property, or may have his/her subordinate official investigate books, documents, or other materials of the Fund.

(3) The official performing his/her duty in accordance with the provisions of paragraph (2) shall show the certificate indicating his/her authority to investigate to a related person.

Article 25 (Keeping Confidentiality, etc.)

A member of the Council, its director, or its auditor shall not divulge any secrets obtained while performing his/her duties nor shall he/she hold an additional office concurrently or engage in business deal for himself/herself in connection with the operation of the Fund.

Article 26 (Prohibition of Use of Similar Title)

Any person other than the Fund under this Act shall not use the title of the "Employee Welfare Fund" or other similar titles.

Article 27 (Mutatis Mutandis Application of the Civil Act)

Except as prescribed by this Act, the provisions concerning juristic persons in the Civil Act shall apply mutatis mutandis to the Fund.

<Title of This Article Amended by Act No. 8407, Apr. 27, 2007>

Article 28 (Delegation of Authority)

The Minister of Labor may delegate part of his/her authority under this Act to the head of a local labor office under the conditions as prescribed by the Presidential Decree.

Article 29 (Penal Provisions)

A person who falls under any of the following subparagraphs, shall be punished by imprisonment of up to one year, or by a fine not exceeding three million won : *<Amended by Act No. 6454, Mar. 28, 2001>*

1. A director who manages and operates the Fund in violation

- of the provisions of Article 14 or 15 ;
- 2. An employer or a director who violates the provisions of Article 19;
- 3. An employer who violates the provisions of Article 20 (1);
- 4. Deleted. <Act No. 9793, Oct. 9, 2009>
- 4-2. A liquidator who violates the provisions of Article 23-2; and <Newly Inserted by Act No. 6454, Mar. 28, 2001>
- 5. A member of the Council, a director or an auditor who violates the provisions of Article 25.

Article 30 (Joint Penal Provisions)

If a representative of a juristic person or, an agent, a servant or any other employee of a juristic person or an individual commits the offense prescribed in Article 29 in relation to the business of the juristic person or individual, the fine prescribed in the same Article shall be imposed on the juristic person or individual, in addition to the punishment of the offender : Provided that this shall not apply unless the juristic person or individual neglects to give considerable attention and supervision to the business concerned in order to prevent such offence.

<This Article Amended by Act No. 9337, Jan. 7, 2009>

Article 31 (Fine for Negligence)

(1) An employer or a fund that violates the correction order under Article 21 shall be punished by a fine for negligence not exceeding five million won.

(2) A person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding two hundred thousand won:

- 1. A fund which fails to keep documents about operations in violation of Article 18;
- 2. A person who violates the instruction or order under Article 24 (1) without justifiable reasons; and
- 3. A person who fails to make the report under Article 24 (2) without justifiable reasons or makes a false report or who refuses, interferes with or evades an investigation by a public official

(3) The fine for negligence as referred to in paragraph (1) and (2) shall be imposed and collected by the Minister of Labor under the conditions prescribed by the Presidential Decree.

<This Article Wholly Amended by Act No. 9793, Oct. 9, 2009>

Addendum <Act No. 9337, Jan. 7, 2009>

This Act shall enter into force on the date of its promulgation.

Addenda <Act No. 9793, Oct. 9, 2009>

(1) (Enforcement Date)

This Act shall enter into force at the expiration of three months after its promulgation.

(2) (Transitional Measures Concerning Penal Provisions)

The application of the penal provisions to any act committed before the enforcement of this Act shall be subject to the previous provisions.