

A BILL

i n t i t u l e d

An Act to amend the Limitation Act 1953.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Limitation (Amendment) Act 2018.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

New section 6A

2. The Limitation Act 1953 [*Act 254*], which is referred to as the “principal Act” in this Act, is amended by inserting after section 6 the following section:

“Limitation of actions to claim damages for negligence not involving personal injuries

6A. (1) Notwithstanding subsection 6(1), this section shall apply to any action for damages for negligence not involving

personal injuries, where the starting date for calculating the period of limitation under subsection (2) falls after the date on which the cause of action accrued.

(2) An action to which this section applies shall not be brought after the expiration of three years from the starting date if the period of three years expires later than the period of limitation prescribed in subsection 6(1).

ILLUSTRATIONS

- (a) *C* bought a house from *D* in 2000. In 2010, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2002, two years after *C* moved into the house. *C* has three years from 2010 to file an action in court against *D* for damages.
- (b) *C* bought a house from *D* in 2000. In 2006, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2002, two years after *C* moved into the house. *C* has three years from 2006 to file an action in court against *D* for damages.
- (c) *C* bought a house from *D* in 2000. In 2005, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2002, two years after *C* moved into the house. *C* has three years from 2005 to file an action in court against *D* for damages.

(3) Notwithstanding subsection (2), no action shall be brought after the expiration of fifteen years from the date on which the cause of action accrued.

ILLUSTRATION

C bought a house from *D* in 2000. In 2017, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2001, one year after *C* moved into the house. *C* cannot commence an action because he has already exceeded the fifteen-year limitation period.

(4) For the purposes of this section—

- (a) “starting date” means the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such action;

(b) “knowledge required for bringing an action for damages in respect of the relevant damage” means knowledge of—

(i) the material facts about the damage in respect of which damages are claimed;

(ii) other facts relevant to the current action:

(A) that the damage was attributable in whole or in part to that act or omission which is alleged to constitute negligence;

(B) the identity of the defendant; and

(C) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant, and

(iii) includes the knowledge which the plaintiff or any person in whom the cause of action was vested before him might reasonably have been expected to acquire—

(A) from facts observable or ascertainable by him; or

(B) from facts ascertainable by him with the help of appropriate expert advice which is reasonable for him to seek,

but the plaintiff or the person in whom the cause of action was vested before him shall not be limited under this subparagraph to knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain and, where appropriate, to act on that advice.

(5) Knowledge that any act or omission did or did not, as a matter of law, involve negligence is irrelevant for the purposes of subsection (4).”

New section 24A

3. The principal Act is amended by inserting after section 24 the following section:

“Extension of limitation period under section 6A in case of disability

24A. (1) If on the date when any right of action accrued for which a period of limitation is prescribed under section 6A, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of three years from the date when such person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation had expired.

(2) An action may not be brought by virtue of subsection (1) after the end of limitation period prescribed under subsection 6A(3).

(3) Where any such person as is referred to in subsection (1) was on such date under two disabilities or where before the disability which he was under on such date had ceased he was affected by another disability he shall be deemed for the purposes of this section to have continued under a disability until both such disabilities have ceased.

(4) Nothing in subsections (1) and (3) shall affect any case where the right of action first accrued to some person not under a disability through whom the person under a disability claims.

(5) When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person.”.

ILLUSTRATIONS

- (a) In 1987, *D* constructs a building in such a way that he is liable in the tort of negligence to *P*, the owner. Actual damage occurs, triggering the cause of action, in 1988. The damage becomes discoverable in 1992, but in 1989 *P* becomes mentally incapable, and does not regain his capacity until 1993. *P* has three years from 1993 to file an action in court against *D* for damages.
- (b) In 1987, *D* constructs a building in such a way that he is liable in the tort of negligence to *P*, the owner. Actual damage occurs, triggering the cause of action, in 1988. The damage becomes discoverable in 1992, but in 1989 *P* becomes mentally incapable, and does not regain his capacity until 2004. *P* cannot commence an action because the fifteen-year limitation period has been exceeded.

Explanation—

- (a) *Illustration (a)* is for the situation where an action may be brought within three years from the date a person under a disability ceased to be under the disability.
- (b) *Illustration (b)* is for the situation where an action cannot be brought after the expiration of fifteen years from the date on which the cause of action accrued.

Amendment of section 29

4. Section 29 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1); and
- (b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Section 6A shall not apply to any action to which paragraph (1)(b) applies.”.

Savings and transitional

- 5. (1)** Where on the date of coming into operation of this Act any cause of action for an action under section 6A has accrued, the provision of the principal Act as amended by this Act shall apply.

(2) Any action or proceedings commenced or pending immediately before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued as if the principal Act had not been amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Limitation Act 1953 ("Act 254") to provide for the extension of the limitation period in relation to actions for damages for negligence not involving personal injuries.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
3. *Clause 2* seeks to introduce a new section 6A into Act 254 to enable a person to take action founded on negligence not involving personal injuries by allowing an extended limitation period of three years from the date of knowledge of the person having the cause of action. This proposed new section 6A considers negligence cases involving latent damage in construction cases, where the damage was not discoverable through general inspection and that the person having the cause of action did not know or could not have been reasonably expected to know of the damage. However, the proposed new section 6A prevents any person from instituting court proceedings more than fifteen years after the cause of action accrued even if it results in the extended limitation period being less than three years or even though the damage is discovered after fifteen years.
4. *Clause 3* seeks to introduce a new section 24A into Act 254 to provide for a special limitation period for person under disabilities for cases under the proposed new section 6A. The limitation period is three years from the date the person ceased to be under a disability or died but the action cannot be brought after fifteen years from the date the cause of action accrued.
5. *Clause 4* seeks to introduce a new subsection 29(2) into Act 254 to exclude the proposed new section 6A from any action relating to the right of action that has been concealed by fraud.
6. *Clause 5* deals with savings and transitional provisions.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.