



LAWS OF MALAYSIA

Act A1535

**PRIVATE HIGHER EDUCATIONAL INSTITUTIONS
(AMENDMENT) ACT 2017**

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LAWS OF MALAYSIA

Act A1535

PRIVATE HIGHER EDUCATIONAL INSTITUTIONS (AMENDMENT) ACT 2017

An Act to amend the Private Higher Educational Institutions Act 1996.

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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 Private Higher Educational Institutions (Amendment) Act 2017.

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

Amendment of section 2

2. The Private Higher Educational Institutions Act 1996 [*Act 555*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) by inserting after the definition of “higher education” the following definition:

‘ “initial fund” means an account containing cash contribution that a company limited by guarantee is required to have prior to registration under section 24;’;

- (b) in the definition of “private higher educational institution”, by substituting for the words “a University College or a branch campus” the words “a University College or a foreign branch campus or a College”;
- (c) in the definition of “branch campus”, by deleting the words “and includes a branch of a foreign University or a University College,”;
- (d) by inserting before the definition of “higher education” the following definition:
- ‘ “foreign branch campus” means a branch of a foreign University or a University College that is established under this Act;’;
- (e) by inserting after the definition of “chief executive” the following definition:
- ‘ “College” means a private higher educational institution without the status of a University or University College or a foreign branch campus;’;
- (f) in the definition of “University” and “University College”, by deleting the words “, and include such private higher educational institution which is affiliated to a University or University College whether within or outside Malaysia, conferred with the status of a University or a University College”;
- (g) by inserting before the definition of “national language” the following definition:
- ‘ “Minister” means the Minister charged with the responsibility for higher education;’; and
- (h) by inserting after the definition of “distance education” the following definition:
- ‘ “fee structure” means a detailed amount of payment charged to students for undergoing a course of study or training programme;’.

Amendment of section 12

3. Section 12 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “, whether it be a locally incorporated company or otherwise,”;
- (b) in paragraph 1(c), by inserting after the word “institution” the words “and shall contain provisions for such matters as may be prescribed”; and
- (c) by inserting after subsection (1) the following subsection:

“(1A) If the successful applicant is a company limited by guarantee, the applicant shall ensure that—

- (a) its initial fund shall be of an amount as determined by the Minister;
- (b) the source of its initial fund to be disclosed to and approved by the Minister;
- (c) its composition of the board of directors shall be as determined by the Minister; and
- (d) the sole object of the applicant’s memorandum and articles of association shall be to establish and manage private higher educational institution and shall contain provisions for such matters as may be prescribed.”.

Amendment of section 14

4. Section 14 of the principal Act is amended by substituting for the words “and 17” the words “, 17 and 19”.

Amendment of section 15

5. Section 15 of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1);

(b) by substituting for subsection (1) as renumbered the following subsection:

“(1) An approval from the Registrar General shall be obtained before a company changes or alters—

- (a) its name;
 - (b) its issued and paid-up capital;
 - (c) the amount of its initial fund;
 - (d) its equity participation;
 - (e) the composition of its board of directors; and
 - (f) its memorandum and articles of association.”;
- and

(c) by inserting after subsection (1) as renumbered the following subsections:

“(2) An application for an approval under subsection (1) shall be made to the Registrar General—

- (a) on the prescribed form and in the prescribed manner; and
- (b) accompanied by the prescribed fee.

(3) At any time after receiving the application and before it is determined, the Registrar General may by written notice require the company to provide additional information, particulars or documents.

(4) Where any additional information, particulars or documents required under subsection (3) is or are not provided within the time specified in the requirement or any extension thereof, the application—

- (a) shall be deemed to have been withdrawn; and
- (b) shall not be proceeded with,

without prejudice to a fresh application being made by the company.

(5) The Registrar General shall, upon an application having been duly made under this section and after being provided with all the information, particulars and documents as he may require under subsection (3)—

- (a) approve the application with or without any modification, variation or condition; or
- (b) refuse the application without assigning any reason for such refusal.

(6) Where the Registrar General refuses the application, the Registrar General shall notify the company in writing of the refusal.

(7) Any person who contravenes the provisions of this section shall be guilty of an offence under this Act.”.

Amendment of section 19

6. Section 19 of the principal Act is amended—

- (i) in subsection (1), by substituting for the words “A private higher educational institution” the words “A company”; and
- (ii) in subsection (8), by substituting for the words “the private higher educational institution” the words “the company”.

Amendment of section 24

7. Subsection 24(2) of the principal Act is amended—

- (a) in paragraph (c), by deleting the word “and” at the end of the paragraph;
- (b) in paragraph (d), by substituting for the full stop at the end of the paragraph the words “; and”; and
- (c) by inserting after paragraph (d) the following paragraph:
 - “(e) any other information, particulars or documents as may be required by the Registrar General.”.

Amendment of section 26

8. Section 26 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**registration**” the words “, *etc.*”;
- (b) in subsection (1), by substituting for the word “used” the word “registered”; and
- (c) in subsection (2), by inserting after the word “institution” the words “, and the details of the premises registered for its purpose and the approved fee structure of the course of study or training programme shall be made available and accessible to the public by whatever means”.

Amendment of section 28

9. Section 28 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “shall not move” the words “, add or renovate”; and
- (b) in subsection (2), by inserting after the words “the registration of the new” the words “, additional or renovated”.

Substitution of section 30

10. The principal Act is amended by substituting for section 30 the following section:

“Constitution

30. (1) The constitution of a private higher educational institution shall contain provisions for such matters as may be prescribed.

(2) Subject to the provisions of this Act, every private higher educational institution shall be managed in strict accordance with its constitution.

(3) The constitution shall not be amended without the prior approval of the Registrar General.

(4) Any private higher educational institution which contravenes the provisions of this section shall be guilty of an offence.”.

Amendment of section 31

11. Section 31 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) Every private higher educational institution shall have a chief executive appointed by the company.”;

(b) in subsection (2), by inserting after the words “chief executive shall” the words “apply to”; and

(c) in subsection (3)—

(i) in paragraph (d), by deleting the word “or” at the end of the paragraph;

(ii) in paragraph (e), by substituting for the full stop at the end of the paragraph the words “; or”;

(iii) by inserting after paragraph (e) the following paragraph:

“(f) on any other reason that the Registrar General deems proper in the interest of the public or the students.”; and

(iv) by inserting after subsection (3) the following subsections:

“(4) No person shall carry out the duties or functions of a chief executive under this Act where—

(a) he is not registered as a chief executive;
or

(b) his registration as a chief executive has been cancelled under subsection (3) or paragraph 37(1)(bb).

(5) Any person who contravenes the provisions of subsection (4) shall be guilty of an offence.”.

New section 33A

12. The principal Act is amended by inserting after section 33 the following section:

“Duty to maintain register

33A. (1) Every private higher educational institution shall keep and maintain a register containing information on—

- (a) the students;
- (b) the persons who have been appointed to teach in the private higher educational institution;
- (c) the programmes conducted or provided by private higher educational institutions;
- (d) the persons who have been conferred with degrees at doctoral level, including an honorary doctorate;
- (e) the persons who have been appointed as professors and include persons who have been conferred with the title of Professor Emeritus; and
- (f) any other matter relating to the private higher educational institution which the Registrar General deems necessary.

(2) The register containing information in subsection (1) shall be in such form and manner as determined by the Registrar General and shall be made accessible to the Registrar General as and when he requires them.

(3) The register containing the information under subsection (1) shall be periodically updated as determined by the Registrar General.

(4) Any private higher educational institution which contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) Any private higher educational institution which provides false information or intentionally suppresses any material fact or furnishes any information as required under subsection (1) which is misleading shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.”.

Amendment of section 36

13. Section 36 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.”.

Amendment of section 38

14. Section 38 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) No course of study or training programme shall be conducted by the private higher educational institution unless the private higher educational institution has been registered under section 24.”.

Amendment of section 40

15. Section 40 of the principal Act is amended by inserting after subsection (1E), the following subsections:

“(1F) The Registrar General may add, vary, cancel or alter any of the conditions referred to in subsection (1) as he deems fit;

(1G) The private higher educational institutions may apply to the Registrar General for variation or alteration any of the conditions mentioned in subsection (1); and

(1H) The application referred to in subsection (1G) may be made on the prescribed form and in the prescribed manner.”.

New section 40A

16. The principal Act is amended by inserting after section 40 the following section:

“Renewal of approval to conduct course of study or training programme

40A. (1) A private higher educational institution may submit an application on the prescribed form and in the prescribed manner to the Registrar General for renewal of approval to conduct a course of study or training programme not later than six months prior to the expiry of the approval.

(2) Any application for renewal of the approval to conduct a course of study or training programme which is not made within the time specified in subsection (1) shall be subject to a payment of a penalty as may be determined by the Registrar General.

(3) The Registrar General shall renew an approval to conduct a course of study or training programme if the applicant has complied with all conditions imposed by the Registrar General under subsection 40(1).

(4) The Registrar General may impose new conditions or vary, cancel, alter or add to any of the conditions imposed under subsection 40(1) when renewing an approval to conduct a course of study or training programme.

(5) A renewal of approval to conduct a course of study or training programme shall be subject to payment of the prescribed fee.”.

Amendment of section 42

17. Subsection 42(1) of the principal Act is amended by substituting for the words “paragraph 41(3)(a)” the words “subsection 41(3)”.

Amendment of section 43

18. Section 43 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) Subject to such conditions as may be imposed, the Registrar General may exempt any student from following such compulsory subjects.”.

Substitution of section 44

19. The principal Act is amended by substituting for section 44 the following section:

“Award of degree

44. No private higher educational institution may award a degree unless such private higher educational institution is a University or a University College or a foreign branch campus.”.

Amendment of section 46

20. Section 46 of the principal Act is amended—

(a) by substituting for the words “chief executive” wherever appearing the words “disciplinary authority”;

(b) by substituting for subsection (1) the following subsection:

“(1) The disciplinary authority of the private higher educational institution in respect of every student of the private higher educational institution shall be the chief executive.”;

(c) by inserting after subsection (1) the following subsection:

“(1A) The disciplinary authority shall have the power to take such disciplinary action and impose such disciplinary punishment as may be provided for under any disciplinary rules that may be made by the private higher educational institution.”; and

(d) by inserting after subsection (2), the following subsection:

“(2A) The disciplinary authority may delegate his disciplinary functions, powers or duties to any employee of the private higher educational institution who is in charge of student affairs, in respect of any particular student or any class or category of students of the private higher educational institution.”.

Amendment of section 51

21. Section 51 of the principal Act is amended—

(a) by inserting after subsection (4) the following subsection:

“(4A) The Registrar General may impose any other conditions as he deems fit upon issuing a permit under subsection (4).”; and

(b) in subsection (5), by substituting for the words “subject or subjects” the words “field or fields of study”.

Amendment of section 54

22. Subsection 54(1) of the principal Act is amended—

(a) in paragraph (d), by deleting the word “or” at the end of the paragraph; and

(b) by inserting after paragraph (d) the following paragraph:

“(da) that the private higher educational institution has failed to renew its registration under section 24A; or”.

Amendment of section 61

23. Section 61 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Where a private higher educational institution ceases its operation pursuant to—

(a) paragraph 59(a), paragraph 59(b), subparagraph 59(d)(ii) or paragraph 59(e), the board of directors shall ensure that the requirements to be determined by the Registrar General for the continuation of the education of the students are complied with within a time period as determined by the Registrar General; or

(b) paragraph 59(c) or subparagraph 59(d)(i), the board of directors shall ensure that the requirements to be determined by the Registrar General for the continuation of the education of the students are complied with within six months prior to the closing down of a private higher educational institution.”.

Amendment of section 62

24. Section 62 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Upon the surrender of the certificate of registration of the private higher educational institution, the approval of the private higher educational institution shall be deemed to be revoked.”.

New section 75A

25. The principal Act is amended by inserting after section 75 the following section:

“Obligation to comply

75A. Where the Act requires a private higher educational institution to do or prohibits it from doing something, the obligation to comply is imposed on the company to which approval has been given to establish the private higher educational institution.”.

Amendment of section 76

26. Subsection 76(1) of the principal Act is amended—

(a) in paragraph (b), by deleting the word “or” at the end of the paragraph;

(b) in paragraph (c), by substituting for the comma at the end of the paragraph a semicolon; and

(c) by inserting after paragraph (c) the following paragraphs:

“(d) issue a certificate, diploma or degree to a person without such person having successfully completed his course of study; or

(e) carry out any other activities in connection with higher education,”.

Amendment of section 77

27. Section 77 of the principal Act is amended by substituting for the words “section 44” the words “this Act”.

Amendment of section 78

28. Section 78 of the principal Act is amended by substituting for the words “and its registration” the words “or its registration or any condition imposed on its renewal of registration”.

Amendment of section 79

29. Section 79 of the principal Act is amended—

(a) in paragraph (a), by deleting the word “or” at the end of the paragraph;

(b) in paragraph (b), by substituting for the comma at the end of the paragraph the words “; or”; and

(c) by inserting after paragraph (b) the following paragraph:

“(c) person who, on making any application,”.

Substitution of section 82

30. The principal Act is amended by substituting for section 82 the following section:

“General penalty

82. Any person who contravenes or fails to comply with any provisions of this Act, shall be guilty of an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable—

(a) in the case of a person who is an individual, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both; or

(b) in the case of a company, to a fine not exceeding fifty thousand ringgit.”.

Amendment of section 83

31. Section 83 of the principal Act is amended by substituting for the words “five hundred” the words “one thousand”.

Amendment of section 85

32. Subsection 85(1) of the principal Act is amended—

(a) in paragraph (g), by deleting the word “or” at the end of the paragraph;

(b) in paragraph (h), by substituting for the comma at the end of the paragraph the words “; or”; and

(c) by inserting after paragraph (h) the following paragraph:

“(i) a person who was purporting to act in any capacity in paragraphs (1)(a) to (h), or was in any manner or to any extent responsible for the management of any of the affairs of such private higher educational institution, or was assisting in such management,”.