



LAWS OF MALAYSIA

Act A1352

**PRIVATE HIGHER EDUCATIONAL INSTITUTIONS
(AMENDMENT) ACT 2009**

Date of Royal Assent 18 April 2009

Date of publication in the
Gazette 30 April 2009

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(AMENDMENT) ACT 2009**

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 2009.

(2) This Act shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

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 “Assistant Registrar” the following definition:

‘ “audit” means an evaluation of a private higher educational institution which is carried out in accordance with section 64A;’;

(b) by inserting after the definition of “book” the following definition:

‘ “branch” means a branch of a private higher educational institution established under this Act;’;

- (c) in the definition of “diploma”, by inserting after the words “equivalent thereof” the words “, and includes an advanced diploma”;
- (d) in the definition of “constituent documents”, by deleting the words “, except an individual applicant,”;
- (e) in the definition of “private higher educational institution”, by inserting after the words “means an” the words “organization or”;
- (f) by inserting after the definition of “private higher educational institution” the following definition:
 - ‘ “registrable offence” has the meaning assigned to it in the Registration of Criminals and Undesirable Persons Act 1969 [Act 7];’;
- (g) by substituting for the definition of “course of study” the following definition:
 - ‘ “course of study” means either a single course or a set of related courses leading to the award of a certificate, diploma or degree upon the successful completion thereof;’;
- (h) by substituting for the definition of “student” the following definition:
 - ‘ “student” means a registered student, other than a student at an institution allied to the private higher educational institution, who is following a course of study, instruction, training or research of any description at the preparatory, under-graduate, post-graduate or post-doctoral level on a full time or part-time basis in, by or from the private higher educational institution and includes a distance-learning, off-campus, exchange and non-graduating student;’;
- (i) by substituting for the definition of “applicant” the following definition:
 - ‘ “applicant” for the purpose of an approval for the establishment of a private higher educational institution, means a company locally incorporated or otherwise;’; and
- (j) by deleting the definition of “Education Service”.

Amendment of section 3

3. Subsection 3(1) of the principal Act is amended by deleting the words “from amongst the officers in the Education Service”.

Amendment of section 6

4. Section 6 of the principal Act is amended—

(a) in subparagraph (2)(c)(i), by inserting after the words “educational institution” the words “which shall include the proposed courses of study”; and

(b) by substituting for subparagraph (2)(c)(iii) the following subparagraph:

“(iii) the following documents:

(aa) a copy of its constituent document, duly verified by a statutory declaration made by an authorized officer of the applicant; and

(bb) a copy of the latest audited balance sheet, profit and loss account and the reports, if any, of the auditors and the directors of the applicants, if applicable; and”.

Amendment of section 7

5. Section 7 of the principal Act is amended in the English language text—

(a) by deleting the words “his or” wherever they appear in that section;

(b) in paragraph (a), by deleting the words “him or”; and

(c) in paragraph (b), by deleting the words “he or”.

Amendment of section 11

6. Section 11 of the principal Act is amended—

(a) in paragraph (d), by inserting after the words “the Registrar General;” the word “and”;

- (b) by deleting paragraph (e); and
- (c) by substituting for paragraph (f) the following paragraph:

“(f) no one who has been convicted of an offence involving fraud or dishonesty or who is an undischarged bankrupt is holding office as director, manager or secretary or other similar office or position.”.

Substitution of section 12

7. The principal Act is amended by substituting for section 12 the following section:

“Applicant to ensure compliance of requirements when granted an approval

12. (1) Upon being granted an approval, the successful applicant, whether it be a locally incorporated company or otherwise, shall ensure that—

- (a) its issued and paid up capital shall be of an amount as determined by the Minister;
- (b) its equity participation and composition of the board of directors shall be as determined by the Minister; and
- (c) the sole object of the applicant’s memorandum and articles of association shall be to establish and manage private higher educational institution.

(2) If the successful applicant is not a locally incorporated company, the applicant shall, within one year from being notified of the approval, incorporate a company locally.

(3) The prior written approval of the Registrar General on the proposed memorandum and articles of association of a company to be incorporated locally shall be obtained before an application is made for its incorporation.

(4) If the applicant fails to incorporate locally a company within the time specified in subsection (2), the approval granted for the establishment of a private higher educational

institution shall be deemed to have been withdrawn unless an extension of time is granted by the Registrar General.”.

Deletion of section 13

8. The principal Act is amended by deleting section 13.

Amendment of section 20

9. Section 20 of the principal Act is amended by substituting for subparagraph (a)(ii) the following subparagraph:

“(ii) paragraphs 12(1)(a) and (b);”.

Amendment of section 24

10. Paragraph 24(2)(a) of the principal Act is amended by substituting for the words “five years” the words “three years”.

New section 24A

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

“Renewal of registration

24A. (1) A private higher educational institution may submit an application to the Registrar General for renewal of its registration not later than six months prior to the expiry of the registration.

(2) Any application for renewal of registration which is not made within the time specified in subsection (1) but made before the expiry of the registration shall be subject to a payment of a penalty as may be determined by the Registrar General.

(3) No application for renewal of registration shall be considered if the application is made after the date of expiry of the registration.

(4) The Registrar General shall renew a registration if the applicant has complied with all conditions imposed by the Registrar General under subsection 24(10), and the Registrar General may impose new conditions or vary, cancel, alter or add to any of the conditions imposed when renewing a registration.

(5) A renewal of registration shall be subject to payment of the prescribed fee.”.

Amendment of section 28

12. Section 28 of the principal Act is amended in the English language text, in the shoulder note, by substituting for the word “premise” the word “premises”.

Amendment of section 31

13. Section 31 of the principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) The office of a chief executive shall be located at the main administrative centre of a private higher educational institution.

(1B) It shall be the responsibility of a chief executive to inform the Registrar General of the address of his office and any change of that address from time to time.”.

Substitution of section 33

14. The principal Act is amended by substituting for section 33 the following section:

“**33.** The chief executive shall, subject to the provisions of this Act and the constitution of the private higher educational institution—

(a) exercise general supervision over the arrangements for instruction, administration, day to day affairs,

welfare and discipline in the private higher educational institution and all its branches;

- (b) submit to the Registrar General audited annual reports of the company in relation to the private higher educational institution it has established; and
- (c) provide such other information as may be required by the Registrar General from time to time for data collection.”.

Amendment of section 35

15. Section 35 of the principal Act is amended in the English language text, by substituting for paragraph (c) the following paragraph:

“(c) any other communication is necessary between the Registrar General and the private higher educational institution,

it shall be addressed to the chief executive, unless otherwise provided.”.

Amendment of section 37

16. Subsection 37(3) of the principal Act is amended by substituting for the words “, within twenty-one days from the service of such decision, appeal to the Minister” the words “appeal in writing to the Minister within twenty-one days from being notified of the decision appealed against.”.

Amendment of section 38

17. Section 38 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “Minister” the words “Registrar General”; and
- (b) in subsection (1), by substituting for the word “Minister” the words “Registrar General”.

Substitution of section 39

18. The principal Act is amended by substituting for section 39 the following section:

“Refusal to grant approval

39. (1) The Registrar General shall grant his approval under section 38 if he is satisfied—

- (a) with the suitability of arrangements relating to the educational facilities;
- (b) with the quality assurance of the courses of study or training programmes; and
- (c) that the approval is not inconsistent with the national policies, strategies and guidelines on higher education,

based upon the recommendation of an authority established under a written law for such purpose.

(2) Where the Registrar General refuses to grant his approval, he shall notify the applicant in writing of the grounds for his refusal.

(3) An applicant who is aggrieved by the decision of the Registrar General under subsection (1) may appeal in writing to the Minister within twenty-one days from being notified of the decision appealed against.”.

Amendment of section 40

19. Section 40 of the principal Act is amended—

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

“(1) When granting approval under section 38, the Registrar General may impose—

- (a) conditions relating to the requirements for admission of students;
- (b) such fee as may be prescribed; and

- (c) any other conditions as he thinks fit.”; and
(b) by inserting after subsection (1) the following subsections:

“(1A) The Registrar General may serve on a private higher educational institution a notice of intention to revoke the approval under section 38 if he is satisfied that the institution has contravened any of the conditions imposed under subsection (1).

(1B) Such private higher educational institution shall be allowed to make written representation within twenty-one days from the date the notice of intention is served on the institution.

(1C) After the expiry of the period of twenty-one days, the Registrar General shall consider any representation made under subsection (1B), if any, and shall decide whether—

- (a) to proceed with the proposed action;
- (b) to take no further action;
- (c) to add, alter or vary the conditions of the approval; or
- (d) to issue a warning.

(1D) Where the Registrar General proceeds to revoke the approval for the conduct of a course of study under paragraph (1C)(a), he shall notify the private higher educational institution in writing, providing the grounds for his decision.

(1E) A private higher educational institution whose approval for the conduct of a course of study has been revoked by the Registrar General may appeal in writing to the Minister within twenty-one days from being notified of the decision appealed against.”.

Amendment of section 41

20. Section 41 of the principal Act is amended—

- (a) by substituting for subsection (3) the following subsection:

“(3) Notwithstanding subsection (1), a private higher educational institution may conduct a course of

study in any other language as it deems appropriate subject to the approval of the Minister.”;

- (b) by substituting for subsection (4) the following subsection:

“(4) If any course of study or a substantial part of any course of study in any private higher educational institution is conducted in any language other than the national language, the national language shall be taught as a compulsory subject for the students following such course of study in such language.”;

- (c) in subsection (5), by substituting for the words “authority referred to in section 39” the words “Registrar General”; and

- (d) by inserting after subsection (5) the following subsections:

“(6) The Registrar General may exempt any student who has attained a certain level of achievement in the national language from the requirement of subsection (4).

(7) The provision of subsection (4) shall not apply to students who are not citizens of Malaysia following such course of study.”.

Amendment of section 43

21. Section 43 of the principal Act is amended—

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

“(1) All private higher educational institutions shall teach such compulsory subjects which shall be determined by the Registrar General.”;

- (b) in subsection (2), by substituting for the words “mentioned in paragraphs (1)(a) to (c)” the words “determined by the Registrar General under subsection (1)”; and

(c) in subsection (3)—

- (i) by substituting for the words “specified in paragraphs (1)(a) to (c)” the words “determined by the Registrar General under subsection (1)”; and
- (ii) by substituting for the words “authority referred to in section 39” the words “Registrar General”.

Substitution of section 44

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

“Award of degree

44. Any private higher educational institution with the status of a University or a University College or a branch campus may award a degree.”.

Deletion of section 45

23. The principal Act is amended by deleting section 45.

Amendment of section 46

24. Section 46 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) The chief executive shall inform the student of a private higher educational institution in writing of the grounds on which it is proposed to take action against him and shall afford him a reasonable opportunity of being heard.

(4) A student of a private higher educational institution shall have the right to be represented by an employee or another student of the private higher educational institution in any disciplinary proceedings taken against him.

(5) A student of a private higher educational institution shall be allowed to make a written or an oral representation in any disciplinary proceedings taken against him.

(6) The decision of the chief executive in any disciplinary proceedings taken against a student of a private higher educational institution shall be communicated in writing to the student within fourteen days from the date of the decision.

(7) Any student of a private higher educational institution who is dissatisfied with the decision of the chief executive under subsection (6) may, within fourteen days from the date of receipt of the decision, submit an appeal in writing to the Registrar General.

(8) The Registrar General may, within fourteen days from the date of receipt of an appeal under subsection (7), appoint a committee of two or more persons to consider the appeal and make its recommendations to the Registrar General within fourteen days from the date of its appointment.

(9) In submitting his appeal, a student of a private higher educational institution shall be allowed to make a written representation to the Registrar General.

(10) The Registrar General shall, within thirty days from the date of receipt of the appeal under subsection (7) or the date of receipt of the recommendations under subsection (8), as the case may be, decide on the appeal.

(11) The decision of the Registrar General on the appeal shall be communicated in writing to the student of a private higher educational institution within fourteen days from the date of his decision.”.

Amendment of section 47

25. Section 47 of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

“Student or students’ organization, body or group associating with societies, etc.”;

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

“(1) The constitution of a private higher educational institution shall not contain prohibition—

(a) on a student of the private higher educational institution from being a member of any society, organization, body or group of persons, whether or not it is established under any written law, whether it is in or outside the private higher educational institution, and whether it is in or outside Malaysia, other than—

(i) any political party, whether in or outside Malaysia;

(ii) any unlawful organization, body or group of persons, whether in or outside Malaysia; or

(iii) any organization, body or group of persons which the Registrar General has specified in writing to the chief executive of the private higher educational institution to be unsuitable to the interests and well-being of students or the private higher educational institution;

(b) on an organization, body or group of students of the private higher educational institution which is established by, under or in accordance with the constitution having any affiliation, association or other dealing with any society, organization, body or group of persons, whether or not it is established under any written law, whether it is in or outside the private higher educational institution, whether it is in or outside Malaysia, other than—

(i) any political party, whether in or outside Malaysia;

(ii) any unlawful organization, body or group of persons, whether in or outside Malaysia; or

(iii) any organization, body or group of persons which the Registrar General has specified in writing to the chief

executive to be unsuitable to the interests and well-being of the students or the private higher educational institution.”;

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

“(1A) It shall be the responsibility of the chief executive to communicate to the students of the private higher educational institution, and the organizations, body or group of students of the private higher educational institution, the names of the organization, body or group of persons specified by the Registrar General under subparagraphs (1)(a)(iii) and (b)(iii) to be unsuitable to the interests and well-being of the students or the private higher educational institution.

(1B) The Registrar General may, on the application of a student of the private higher educational institution, exempt the student from the provision of subparagraph 1(a)(i), subject to such terms and conditions as he thinks fit.

(1C) No student of the private higher educational institution and no organization, body or group of students of the private higher educational institution which is established by, under or in accordance with the constitution, shall express or do anything which may reasonably be construed as expressing support for or sympathy with or opposition to—

- (a) any political party, whether in or outside Malaysia;
- (b) any unlawful organization, body or group of persons, whether in or outside Malaysia; or
- (c) any organization, body or group of persons specified by the Registrar General under subparagraphs (1)(a)(iii) and (b)(iii) to be unsuitable to the interests and well-being of the students or the private higher educational institution.

(1D) Notwithstanding subsection (1C), a student of the private higher educational institution shall not be prevented from—

- (a) making a statement on an academic matter which relates to a subject on which he is engaged in a study or research; or
- (b) expressing himself on the matter referred to in paragraph (a) at a seminar, symposium or similar occasion that is not organized or sponsored by any political party, whether in or outside Malaysia, any unlawful organization, body or group of persons, whether in or outside Malaysia, or any organization, body or group of persons specified by the Registrar General under subparagraphs (1)(a)(iii) and (b)(iii) to be unsuitable to the interests and well-being of the students or the private higher educational institution.”;

(d) by substituting for subsection (4) the following subsection:

“(4) Any student of the private higher educational institution who contravenes paragraph (1)(a) or subsection (1C) shall be liable to disciplinary action.”;

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

“(4A) Any organization, body or group of students of the private higher educational institution which contravenes paragraph (1)(b) or subsection (1C) shall be dealt with in accordance with section 49.”; and

(f) by substituting for subsection (5) the following subsection:

“(5) Any private higher educational institution which fails to observe its constitution commits an offence and shall, upon conviction, be liable to a fine not exceeding fifty thousand ringgit.”.

Substitution of section 48

26. The principal Act is amended by substituting for section 48 the following section:

“Liability of students or students’ organization, body or group

48. Where a registrable offence has been committed under any written law and such offence has been committed or purports to have been committed in the name or on behalf of any organization, body or group of students of the private higher educational institution which is established by, under or in accordance with the constitution, every student of a private higher educational institution convicted of such offence shall be liable to disciplinary action and such organization, body or group of students shall be dealt with in accordance with section 49.”.

New section 48A

27. The principal Act is amended by inserting after section 48 the following section:

“Suspension of student charged with registrable offence and matters relating to detention, etc.

48A. (1) Where a student of a private higher educational institution is charged with a registrable offence—

- (a) he may, in the discretion of the chief executive, be suspended from being a student; and
- (b) if so suspended, he shall not during the pendency of the criminal proceedings, remain in or enter the private higher educational institution.

(2) Where a student of a private higher educational institution charged with a registrable offence under subsection (1) is convicted of that offence, the student shall be liable to disciplinary action.

(3) Where a student of a private higher educational institution is detained or is subjected to any order imposing restrictions on him under any written law relating to preventive detention or internal security, the student shall be liable to disciplinary action.

(4) A student of a private higher educational institution who is detained or is subjected to any order imposing restrictions on him under any written law relating to preventive detention or internal security, or is imprisoned or detained for whatever reason, may, with the consent of the Registrar General, be permitted to sit for the examination of the private higher educational institution subject to such order made or approval given by the Minister responsible for internal security or any other competent authority, as the case may require.

(5) A student of a private higher educational institution who is suspended from being a student of the private higher educational institution under subsection (1) may, while he is so suspended, be admitted as a student of any private higher educational institution established under this Act with the written approval of the Registrar General, and if the Registrar General grants such approval, the Registrar General may impose such terms and conditions as he thinks fit.

(6) A student of the private higher educational institution who ceases to be a student under this Act may be admitted as a student of that or any other private higher educational institution established under this Act with the written approval of the Registrar General, and if the Registrar General grants such approval, the Registrar General may impose such terms and conditions as he thinks fit.

(7) If the determination of any application, appeal or other proceedings by the court in respect of any criminal proceedings against a student of the private higher educational institution for a registrable offence, results in his discharge or acquittal, the student, if suspended from the private higher educational institution or has served any period of imprisonment, as the case may be, shall be allowed to resume his studies at the private higher educational institution.

(8) If the determination of any application, petition, appeal or other proceedings by the court or any competent authority in respect of the detention order against or order imposing restrictions on a student of the private higher educational institution under any written law relating to preventive detention or internal security, results in his release or the restrictions being revoked, the student shall be allowed to resume his studies at the private higher educational institution.”.

Amendment of section 49

28. Section 49 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) Any organization, body or group of students aggrieved by the suspension or dissolution made under subsection (1) may, within fourteen days from the date of receipt of the notice of the suspension or dissolution, appeal in writing to the Minister.”.

Deletion of section 50

29. The principal Act is amended by deleting section 50.

Amendment of section 51

30. Section 51 of the principal Act is amended by inserting after subsection (6) the following subsections:

“(7) All private higher educational institutions shall keep or cause to be kept a register of teachers in such form and manner as may be determined by the Registrar General.

(8) Any private higher educational institution which fails to keep or cause to be kept a register of teachers commits 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 54

31. Section 54 of the principal Act is amended—

- (a) in paragraph (1)(c), by substituting for the words “standard of education” the words “quality assurance”; and
- (b) in subsection (2), by substituting for the words “(f)” the words “(e)”.

Amendment of section 56

32. Section 56 of the principal Act is amended by substituting for subsection (4) the following subsection:

“(4) A private higher educational institution whose registration has been cancelled by the Registrar General may appeal in writing to the Minister within twenty-one days from being notified of the decision appealed against.”.

Amendment of section 60

33. Subsection 60(4) of the principal Act is amended by substituting for the words “paragraph 56(e)” the words “paragraph 59(e)”.

Substitution of section 61

34. The principal Act is amended by substituting for section 61 the following section:

“**61.** (1) Six months prior to the closing down of a private higher educational institution, 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.

(2) A private higher educational institution which fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

Amendment of section 64

35. Section 64 of the principal Act is amended by inserting after the word “article” wherever it appears the words “whether in the physical form or in the electronic medium”.

New section 64A

36. The principal Act is amended by inserting after section 64 the following section:

“Audit

64A. (1) For the purposes of this Act, the Registrar General may carry out audit on the private higher educational institution in the form and manner as may be prescribed.

(2) The procedure in carrying out the audit may differ according to the purposes of the audit.”.

Amendment of section 66

37. Section 66 of the principal Act is amended by inserting after the word “article” or “articles” wherever they appear the words “, whether in the physical form or in the electronic medium,”.

Amendment of section 67

38. Paragraph 67(1)(bb) of the principal Act is amended by inserting after the word “thing” the words “whether in the physical form or in the electronic medium”.

Amendment of section 68

39. Paragraph 68(c) of the principal Act is amended by inserting after the word “sought” the words “, whether in the physical form or in the electronic medium,”.

Amendment of section 69

40. Section 69 of the principal Act is amended in the English language text, by substituting for the word “premise” wherever it appears the word “premises”.

Amendment of section 74

41. Section 74 of the principal Act is amended—

- (a) in paragraph (c), by substituting for the words “*Cinematograph Films (Censorship) Act 1952” the words “Films (Censorship) Act 1952”; and
- (b) in paragraph (d), by inserting after the words “conveyed by” the words “electronic or”.

Amendment of section 80

42. Paragraph 80(a) of the principal Act is amended in the English language text, by substituting for the word “premise” the word “premises”.

Amendment of section 82

43. Section 82 of the principal Act is amended by substituting for the words “five thousand” the words “ten thousand”.

Amendment of section 85

44. Section 85 of the principal Act is amended—

- (a) in the shoulder note, by deleting the words “established by company”;
- (b) in subsection (1), by substituting for the words “educational institution or any person” the words “educational institution, any person”; and
- (c) by deleting subsection (4).

Amendment of section 88

45. Subsection 88(2) of the principal Act is amended by inserting after paragraph (o) the following paragraph:

“(oa) the manner in which audit may be carried out;”.

Saving and transitional provisions

46. (1) Where on the coming into operation of this Act a criminal proceeding pending before any court against a student of a private higher educational institution results in his conviction, the student shall be liable to a disciplinary action and shall be dealt with under and in conformity with the provisions of this Act.

(2) Where on the coming into operation of this Act any application, petition, appeal or other proceeding pending before the court or any competent authority in respect of any criminal proceeding against a student of a private higher educational institution, or detention order against or order imposing restrictions on a student of a private higher educational institution under any written law relating to preventive detention or internal security, results in his acquittal or release, the student shall be dealt with under and in conformity with the provisions of this Act.

(3) Where on the coming into operation of this Act, a disciplinary proceeding is pending against a student of a private higher educational institution, the proceeding shall be continued by the chief executive under and in conformity with the provisions of this Act.

(4) Where on the coming into operation of this Act any applications, approvals or decisions are pending before the Minister or the Registrar General, as the case may be, the provisions of the principal Act applicable to the applications, approvals or decisions shall continue to apply as if the principal Act had not been amended by this Act.