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Act 555

PRIVATE HIGHER EDUCATIONAL INSTITUTIONS ACT 1996

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**PRIVATE HIGHER EDUCATIONAL
INSTITUTIONS ACT 1996**

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LAWS OF MALAYSIA

Act 555

PRIVATE HIGHER EDUCATIONAL INSTITUTIONS ACT 1996

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LAWS OF MALAYSIA**Act 555****PRIVATE HIGHER EDUCATIONAL
INSTITUTIONS ACT 1996**

An Act to provide for the establishment, registration, management and supervision of, and the control of the quality of education provided by, private higher educational institutions and for matters connected therewith.

*[Sections 2, 21 & 22—1 October 1996,
P.U. (B) 427/1996;
The remainder—31 December 1997,
P.U. (B) 542/1997]*

WHEREAS higher education plays an important role in realizing the vision towards academic excellence and professional and technical enhancement whilst meeting the manpower needs of the nation:

AND WHEREAS recognizing the role of private higher educational institutions in providing sufficient educational infrastructure as well as increasing the capacity to meet the demand for higher education:

AND WHEREAS it is imperative to facilitate and regulate private higher educational institutions so as to ensure its healthy development and the provision of quality education:

NOW, THEREFORE, **BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Private Higher Educational Institutions Act 1996 and shall come into force on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“affiliation” includes the conduct of twinning programmes;

“applicant” means an applicant for the establishment of a private higher educational institution and includes a person, or a group of persons, corporate or unincorporate, and either or otherwise established through a constituent document;

“approval” means approval in writing;

“Assistant Registrar” means an Assistant Registrar of Private Higher Educational Institutions appointed under subsection 3(2);

“board of directors” means a board of directors of a company establishing a private higher educational institution;

“book” includes a record of information and an account or accounting record, however compiled, recorded or stored;

“branch campus” means a branch of a private higher educational institution with the status of a University or a University College and includes a branch of a foreign University or a University College, that is established under this Act;

“certificate” means the academic distinction awarded on a person after successful completion by the person of a course of study which is designed to lead to the award of such certificate or the equivalent thereof;

“chief executive” means a chief executive of a private higher educational institution;

“company” means a company incorporated under the Companies Act 1965 [Act 125] establishing a private higher educational institution under this Act;

“constituent documents” means the statute, charter, memorandum and articles of association, rules and by-laws, partnership agreement or other instruments under or by which an applicant, except an individual applicant, for the establishment of a private higher educational institution, is established and wherein its governing and administrative structure, the scope of its functions, business, powers and duties are set out, whether in one or more documents;

“constitution” in any context relating to a private higher educational institution means the constitution of the private higher educational institution;

“correspondence” means correspondence delivered by hand or by post;

“course of study” includes a training programme;

“degree” means the degree awarded on a person at a Bachelor level or a Masters level or a Doctorate level after successful completion of a course of study which is designed to lead to the award of such degree or the equivalent thereof;

“Deputy Registrar” means the Deputy Registrar of Private Higher Educational Institutions appointed under subsection 3(2);

“Deputy Registrar General” means the Deputy Registrar General of Private Higher Educational Institutions appointed under subsection 3(2);

“diploma” means the diploma awarded on a person after successful completion of a course of study which is designed to lead to the award of such diploma or the equivalent thereof;

“distance education” means instruction or training on or teaching of higher education—

- (a) exclusively through the medium of electronics;
- (b) exclusively through correspondence;
- (c) partly through the medium of electronics and partly through correspondence and other methods of instruction, training or teaching; or
- (d) partly through the medium of electronics and partly through correspondence or other methods of instruction, training or teaching;

“Education Service” means a public service under paragraph (1)(h) of Article 132 of the Federal Constitution;

“higher education” means instruction or training on or teaching of a course of study leading to the award of a certificate, diploma or degree upon the successful completion thereof;

“national language” means the Malay language as stipulated in Article 152 of the Federal Constitution;

“premises” means a building used as a private higher educational institution and includes a building for the purpose of providing accommodation and other facilities for students and staff of such institution;

“prescribed” means prescribed by regulations made under this Act;

“prescribed fee” means the fee required to be prescribed under this Act;

“private higher educational institution” means an educational institution, including a University or a University College or a branch campus, approved and registered under this Act, which is not established or maintained by the Government—

- (a) providing higher education;
- (b) providing distance education; or

- (c) providing higher education or distance education in affiliation, association or collaboration with—
 - (i) a private higher educational institution approved and registered under this Act;
 - (ii) other higher educational institutions—
 - (aa) whether or not established under other written laws; or
 - (bb) whether within or outside Malaysia;
 - (iii) a University or University College established under this Act;
 - (iv) a University or University College established under the Universities and University Colleges Act 1971 [*Act 30*];
 - (v) other Universities or University Colleges—
 - (aa) whether or not established under other written laws; or
 - (bb) whether within or outside Malaysia;
 - (vi) a branch campus; or
 - (vii) a professional body whether within or outside Malaysia leading to the award of professional membership of such professional body;

“Registrar” means the Registrar of Private Higher Educational Institutions appointed under subsection 3(2);

“Registrar General” means the Registrar General of Private Higher Educational Institutions appointed under subsection 3(1);

“student” means a person receiving education, instruction, training or teaching from or in a private higher educational institution;

“teacher” means a person employed by a private higher educational institution to be a teacher and includes a senior professor, professor, assistant professor, senior lecturer, lecturer, assistant lecturer and tutor;

“University” and “University College” mean a private higher educational institution conferred with the status of a University or University College under section 21, 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.

PART II

ADMINISTRATION

Appointment of Registrar General, Deputy Registrar General, etc., and their duties

3. (1) There shall be a Registrar General of Private Higher Educational Institutions who shall be appointed by the Minister from amongst the officers in the Education Service.

(2) The Minister shall also appoint a Deputy Registrar General and such number of Registrars, Deputy Registrars and Assistant Registrars of Private Higher Educational Institutions, as may be considered necessary for the purpose of this Act.

(3) The Registrar General shall have the powers and exercise the functions conferred on him by this Act, and in his absence such powers and functions may be had or exercised by the Deputy Registrar General.

(4) The Deputy Registrar General, Registrars, Deputy Registrars and Assistant Registrars shall be under the direction and control of the Registrar General.

(5) The Deputy Registrar General, Registrars, Deputy Registrars and Assistant Registrars may exercise all the powers and functions conferred on the Registrar General by or under this Act, subject to any restriction that may be imposed by the Registrar General.

Power of Minister to issue general directions

4. (1) The Minister may, from time to time, give an officer appointed under this Part directions of a general character, not inconsistent with the provisions of this Act, as to the exercise of the powers and discretion conferred on and the duties required to be discharged by, the officer under this Act.

(2) The directions given under subsection (1) may be in relation to a matter which appears to the Minister to affect the national policies, strategies and guidelines on higher education formulated and determined by the National Council on Higher Education established under the National Council on Higher Education Act 1996 [Act 546].

(3) An officer to whom directions have been given under this section shall give effect to every such direction.

Power of Minister to issue special directions

5. The Minister may, from time to time, give a board of directors, a chief executive or an employee of a private higher educational institution directions, not inconsistent with the provisions of this Act, in relation to matters in respect of which regulations may be made under this Act, and such board of directors, chief executive or employee shall give effect to every such direction.

PART III

ESTABLISHMENT OF PRIVATE HIGHER EDUCATIONAL INSTITUTIONS

Application for approval

6. (1) The prior approval of the Minister shall be obtained before a private higher educational institution may be established or maintained.

(2) An application for an approval under this section shall be made to the Registrar General—

- (a) on the prescribed form and in the prescribed manner;
- (b) accompanied by the prescribed fee;
- (c) by submitting together with the application—
 - (i) a comprehensive plan for the establishment and maintenance of the proposed private higher educational institution;
 - (ii) a copy of the draft of the constitution of the proposed private higher educational institution; and
 - (iii) if the applicant—
 - (aa) is a natural person, a report of his financial standing by his bankers; or
 - (bb) is not a natural person—
 - (A) a copy of its constituent document, duly verified by a statutory declaration made by an authorized officer of the applicant; and

- (B) 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 applicant, if applicable; and
- (d) such other information, particulars or documents as may be requested by the Registrar General for the purpose of determining the application and the suitability of the applicant.

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

(4) The matters specified under subsection (2) and the requirement under subsection (3) may differ as between different applicants, classes, categories or descriptions of applicants.

(5) An application under this section may be withdrawn at any time before it is granted or refused.

(6) Where additional information, particulars or documents required under paragraph (2)(d) or subsection (3) is or are not provided by the applicant within the specified time or an thereof, the application—

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

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

Other interests to be disclosed by applicant

7. Without prejudice to section 6, an applicant shall disclose or furnish in his or its application information in respect of—

- (a) any other approval that has been granted to him or it under this Act;
- (b) any financial interest whatsoever which he or it has in the business of any other person or company which provides or manages a higher educational institution whether within or outside Malaysia;

- (c) any interest or right which any other person has in his or its business and in the case of an applicant being a company, any right which any other person has to nominate any director of the company;
- (d) his or its other business concerns; and
- (e) any financial interest whatsoever or right which any other person or company has in his or its other business concerns.

Registrar General to make recommendations to Minister

8. The Registrar General shall, on an application having been duly made in accordance with sections 6 and 7, and after being provided with all such information, particulars and documents as he may require under those sections—

- (a) take the necessary action to vet the application;
- (b) approve the constitution; and
- (c) make recommendations to the Minister on whether the approval should be granted or refused and the conditions, if any, to be imposed by the Minister.

Registrar General may refuse to proceed with application

9. The Registrar General may refuse to proceed with an application, and may require that the application be appropriately amended or completed and resubmitted or that a fresh application be submitted in its place if—

- (a) the application form as prescribed is not duly completed by reason of any omission or misdescription;
- (b) the application form contains any error or alteration; or
- (c) the application does not comply with any other prescribed requirement.

Grant or refusal of application by Minister

10. (1) Upon receiving and having considered the recommendation of the Registrar General under section 8, the Minister—

- (a) may grant the approval for the establishment of a private higher educational institution, with or without conditions;
or

(b) may refuse the application without assigning any reason for such refusal.

(2) Where the Minister refuses an application the Registrar General shall notify the applicant in writing of the refusal.

(3) The Minister may, in granting an approval under subsection (1), require the applicant to pay the prescribed fee.

(4) The decision of the Minister under this section shall be final.

Approval shall not be granted unless Minister is satisfied

11. An application for the establishment of a private higher educational institution shall not be approved by the Minister unless he is satisfied that—

- (a) the applicant is capable of providing adequate educational facilities for the establishment of the private higher educational institution;
- (b) the applicant is capable of providing adequate and efficient management and administration for the proper conduct of the private higher educational institution;
- (c) adequate measures have been taken to determine and maintain the standards of education provided by the private higher educational institution;
- (d) there is established a proper system of governance of the private higher educational institution with a constitution that shall be approved by the Registrar General;
- (e) the applicant is not himself nor is any member or partner thereof a person convicted of an offence involving fraud or dishonesty or an undischarged bankrupt, if the application is made respectively by a person or a body of persons or a firm; and
- (f) no one who has been convicted of an offence involving fraud or dishonesty or who is an undischarged bankrupt—
 - (i) is holding office as director, manager or secretary or other similar office or position, if the application is made by a company; or

- (ii) is holding office as president, secretary or treasurer or other similar office or position, if the application is made by a society.

Applicant to incorporate company locally

12. (1) Upon approval being granted, 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—

- (a) having issued and paid-up capital of an amount, as may be determined by the Minister;
- (b) subject to such terms and conditions with respect to equity participation and composition of the board of directors, as may be determined by the Minister; and
- (c) with the sole object of establishing and managing private higher educational institutions stated in the memorandum and articles of association.

(2) The prior approval of the Registrar General on the proposed memorandum and articles of association of the company shall be obtained before an application is made for the incorporation of the company.

(3) If the applicant fails to incorporate locally a company within the time specified in subsection (1), 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.

(4) Notwithstanding paragraph (1)(b), if the applicant is a natural person, he shall at all times—

- (a) have a controlling interest in the company; and
- (b) hold such percentage of the voting shares in the company as may be determined by the Minister.

Similar conditions to be imposed on company

13. Similar conditions as in paragraphs 12(1)(a), (b) and (c) may be imposed on a company to which an approval under this Part is granted.

Reference to company

14. For the purposes of sections 15, 16 and 17, a reference to a company shall be a reference to a company to which an approval under this Part is granted and a company established under section 12.

Approval for change or alteration in respect of company

15. Unless prior approval from the Registrar General has been obtained, a company shall not change or alter—

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

Notification of change in address

16. A company shall notify the Registrar General of any change in its business address, within fourteen days of the change.

Information to be supplied to Registrar General upon request

17. It shall be the duty of every company to supply when so requested by the Registrar General, within a period as may be determined by him, particulars—

- (a) of any financial interest whatsoever which any other person has in the business of the company or the right which any other person has to nominate any director of the company; and
- (b) of any interest or right which the company has in the business of any other person whether relating to education or otherwise.

Establishment of branch of, or affiliation, etc., with other, private higher educational institutions

18. (1) The prior approval of the Minister shall be obtained before a private higher educational institution establishes a branch or affiliates, associates or collaborates with other higher educational institutions, whether private or public.

(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 by the Minister, the Registrar General may by written notice require additional information, particulars or documents.

(4) Where the 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 applicant.

(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 he may require under subsection (4)—

- (a) take the necessary action to vet the application; and
- (b) make recommendation to the Minister whether the application should be granted or refused and the conditions, if any, to be imposed by the Minister.

(6) Upon receiving and having considered the recommendation of the Registrar General, the Minister may—

- (a) grant the approval under subsection (1), with or without conditions; or
- (b) refuse the application without assigning any reason for such refusal.

(7) Where the Minister refuses the application, the Registrar General shall notify the applicant in writing of the refusal.

(8) The Minister may, in granting an approval under paragraph (6)(a), require the private higher educational institution to pay such amount of fees as may be prescribed.

(9) The decision of the Minister under this section shall be final.

Prior approval of Minister on arrangement or agreement

19. (1) A private higher educational institution shall not enter into an arrangement or agreement—

(a) to sell, dispose of or to reconstruct; or

(b) to take any action which will affect in any material respect,

its business relating to education either by amalgamation or otherwise, unless approved by the Minister.

(2) An application for an approval under this section shall be made to the Registrar General—

(a) on the prescribed form and in the prescribed manner;

(b) accompanied by the prescribed fee; and

(c) by submitting together with the application—

(i) a copy of the proposed agreement or arrangement;
and

(ii) all other information, particulars and documents as may be related directly or indirectly to the agreement or arrangement or relevant to its consideration.

(3) At any time after receiving an application and before it is determined by the Minister, the Registrar General may by written notice, require 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 further proceeded with,

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

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

(a) take the necessary action to vet the application; and

(b) make recommendation to the Minister whether the application—

(i) may be approved or refused; and

(ii) as to the modifications, variations or conditions, if any, subject to which it may be approved.

(6) Upon receiving and having considered the recommendations of the Registrar General, the Minister may—

(a) approve the application with or without any modification, variation or condition; or

(b) refuse the application without assigning any reason for such refusal.

(7) Where the Minister refuses the application, the Registrar General shall notify the applicant in writing of the refusal.

(8) The Minister may, in granting an approval under paragraph (6)(a), require the private higher educational institution to pay such amount of fees as may be prescribed.

(9) The decision of the Minister under this section shall be final.

Minister may vary conditions

20. The Minister may at any time—

(a) vary, cancel, alter or add to any of the conditions under—

(i) paragraph 10(1)(a);

(ii) paragraphs 12(1)(a), (b) and (4)(b);

(iii) subsection 18(6); and

(iv) subsection 19(6); or

- (b) impose any new or additional condition under the provisions set out in paragraph (a), as the Minister may deem fit for carrying out the provisions of this Act.

PART IV

ESTABLISHMENT OF A PRIVATE HIGHER EDUCATIONAL INSTITUTION WITH THE STATUS OF A UNIVERSITY, UNIVERSITY COLLEGE AND BRANCH CAMPUS

Establishment of University, University College and branch campus

21. The prior approval of the Minister shall be obtained for the establishment of a private higher educational institution with the status of a University or University College or a branch campus thereof or a branch campus of a foreign University or University College.

Application for establishment on invitation

22. (1) An application for an approval under section 21 may be made to the Minister on his invitation to do so.

(2) An invitation under subsection (1) may be made to proposed applicants, including to foreign Universities and University Colleges and foreign branch campuses, directly or through announcements in the media or otherwise.

This Act shall apply to a University, University College or branch campus

23. Except as is expressly provided under sections 21 and 22 all provisions of this Act shall apply to a private higher educational institution with the status of a University or University College or a branch campus thereof or a branch campus of a foreign University or University College established under this Part.

PART V

REGISTRATION OF PRIVATE HIGHER
EDUCATIONAL INSTITUTIONS

All private higher educational institutions to be registered

24. (1) Every private higher educational institution shall be registered under this Part.

(2) An application for registration shall be made to the Registrar General—

- (a) within five years from the date of the approval for the establishment of the private higher educational institution granted under Part III;
- (b) on the prescribed form and in the prescribed manner;
- (c) accompanied by the prescribed fee; and
- (d) together with a comprehensive fee structure to be imposed on students with respect to each course of study.

(3) If the private higher educational institution is not registered within the time specified in paragraph (2)(a), the approval granted for its establishment under Part III shall be deemed to have been withdrawn unless an extension of time is granted by the Minister.

(4) At any time after receiving the application for registration and before it is determined, the Registrar General may by written notice require the private higher educational institution to provide additional information, particulars or documents.

(5) The requirement under subsection (4) may differ as between different descriptions of private higher educational institutions.

(6) An application for registration may be withdrawn at any time before it is granted or refused.

(7) Subject to subsection (3), where additional information, particulars or documents required under subsection (4) is or are not provided within the time specified in the requirement or an extension thereof, the application—

- (a) shall be deemed to have been withdrawn; and

(b) shall not be further proceeded with,

without prejudice to a fresh application being made by the private higher educational institution.

(8) The Registrar General may refuse to proceed with an application, and may require that the application be appropriately amended or completed and resubmitted or that a fresh application be submitted in its place if—

- (a) the application form as prescribed is not duly completed by reason of any omission or misdescription;
- (b) the application form contains an error or alteration; or
- (c) the application does not comply with any other prescribed requirement.

(9) The Registrar General may, upon an application for registration having been duly made and after such investigation as he may think necessary—

- (a) register and issue a certificate of registration to the private higher educational institution upon payment of the prescribed fee; or
- (b) refuse the application.

(10) The Registrar General may impose any condition as he may deem necessary upon registration.

(11) A private higher educational institution aggrieved by the decision of the Registrar General—

- (a) refusing the application for registration; or
- (b) imposing any condition under subsection (10),

may appeal to the Minister, within twenty-one days from being notified of the decision appealed against.

(12) Where there is an appeal made under subsection (11), the Registrar General shall prepare and submit to the Minister the grounds of his decision.

Register of private higher educational institutions

25. (1) The Registrar General shall keep or cause to be kept a register of private higher educational institutions in such form and manner as may be prescribed.

(2) The public may make a search on the register upon payment of a prescribed fee.

Certificate of registration to be exhibited

26. (1) For the purposes of this Part, a private higher educational institution shall be identified by the premises used for its purpose.

(2) A copy of the certificate of registration issued under paragraph 24(9)(a) shall be kept exhibited in a conspicuous part of the premises of the private higher educational institution.

Refusal of registration

27. The Registrar General may refuse to register a private higher educational institution if he is satisfied—

- (a) that the private higher educational institution or any part thereof, for reasons of safety and health—
 - (i) is unsuitable for use as an educational institution;
 - (ii) has no adequate and satisfactory area for the recreation of the students;
 - (iii) is unsuitably sited;
 - (iv) is unsuitable by reason of danger from fire; or
 - (v) is otherwise a dangerous building;
- (b) that the private higher educational institution is likely to be used for a purpose of providing education, instruction or training that the Registrar General, for any reason, deems detrimental to the interest of Malaysia, the public or the students;
- (c) that the name under which the private higher educational institution is to be registered is, in his opinion, undesirable; or

- (d) that the fee structure proposed for the students is unreasonable.

Change of premise

28. (1) A private higher educational institution shall not move premises without the prior approval of the Registrar General.

(2) An application for the registration of the new premises of a private higher educational institution shall be made to the Registrar General on the prescribed form, in the prescribed manner and upon payment of the prescribed fee.

(3) A private higher educational institution contravening subsection (1) 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.

Power of Registrar General to add, vary, cancel or alter conditions

29. The Registrar General may, at any time, exercise his discretion—

- (a) to add, vary, cancel or alter any of the conditions of the registration; or
(b) to impose new or additional conditions on the registration.

PART VI

MANAGEMENT OF PRIVATE HIGHER EDUCATIONAL INSTITUTIONS

Constitution

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

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

Appointment and registration of chief executive

31. (1) Every private higher educational institution shall appoint a chief executive.

(2) A person appointed as a chief executive shall be registered under this Part.

(3) The Registrar General may refuse to register or cancel the registration of a chief executive—

- (a) if there has been proved against him, or he has been convicted on, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under a law relating to corruption; or
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (b) if he is or he becomes a bankrupt;
- (c) if he is of unsound mind or is otherwise incapable of discharging his duties;
- (d) if he acts in a manner which is detrimental to the interest of Malaysia, the public or the students; or
- (e) if his appointment under subsection (1) is revoked.

Regulations on registration of chief executive

32. Without prejudice to the generality of the powers of the Minister to make regulations, the Minister may make regulations as to the procedure on the registration of the chief executive and may prescribe the fee to be imposed for such registration.

Duty of chief executive

33. The chief executive shall, subject to the provisions of this Act and the constitution of the private higher educational institution, exercise general supervision over the arrangements for instruction, administration, day to day affairs, welfare and discipline in the private higher educational institution.

Application under Act to be made by chief executive

34. An application relating to and for the purposes of a private higher educational institution shall be made by the chief executive, unless otherwise provided.

Notice, requirement for information and other communication to be addressed to chief executive

35. Where—

- (a) a notice is required to be served on a private higher educational institution under this Act;
- (b) any information is required to be furnished by a private higher educational institution under this Act; or
- (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.

Person not eligible to take part in the management of private higher educational institution

36. No person who has been—

- (a) a member of the board of directors of a company establishing;
- (b) a chief executive of; or
- (c) directly concerned with the management or business of,

a private higher educational institution which has been closed down under Part XI shall act in such similar capacity with respect to another private higher educational institution, without the approval of the Minister.

Power of Registrar General to deal with chief executive

37. (1) In addition to the Registrar General's power under subsection 31(3), where a chief executive—

- (a) has been acting or is proposing to act unreasonably with respect to the exercise of the power conferred or the discharge of the duty imposed under this Act; or

(b) has failed to discharge the duty imposed upon him under this Act,

the Registrar General may, after giving the chief executive an opportunity to make representations—

(aa) give the chief executive directions in writing as to the exercise of his power or the discharge of his duty as appears to the Registrar General to be expedient; or

(bb) cancel the registration of the chief executive.

(2) The Registrar General shall give the chief executive written notice of his decision to cancel the registration of the chief executive under paragraph (1)(bb) and the decision shall take effect from the date on which the written notice is served on the chief executive.

(3) Where a chief executive is aggrieved by the decision of the Registrar General under paragraph (1)(bb) he may, within twenty-one days from the service of such decision, appeal to the Minister.

(4) If at any time, for a private higher educational institution, there is no chief executive appointed under this Act the Registrar General may for a temporary period appoint any person to be the chief executive until the private higher educational institution appoints its own chief executive.

(5) The temporary period under subsection (4) shall not be more than three months and the person so appointed—

(a) need not be registered; and

(b) shall have his salaries and remuneration paid by the private higher educational institution, in an amount as may be determined by the Registrar General.

(6) Where after the temporary period in subsection (4) expires, the private higher educational institution fails to appoint a chief executive, the registration of the private higher educational institution may be cancelled by the Registrar General.

PART VII

CONDUCT OF COURSES OF STUDY AT PRIVATE HIGHER
EDUCATIONAL INSTITUTIONS**Prior approval of Minister on course of study and affiliation,
etc.**

38. (1) The prior approval of the Minister shall be obtained before a private higher educational institution—

- (a) may conduct a course of study or training programme;
- (b) may conduct a course of study or training programme jointly or in affiliation, association or collaboration with any University, University College, higher educational institution, whether public or private, or professional body, within or outside Malaysia.

(2) A private higher educational institution which contravenes the provision of this section shall be guilty of 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.

**Authority to determine adequacy of educational facilities and
quality assurance of course of study**

39. The Minister shall not grant his approval under section 38 unless he is satisfied—

- (a) with the suitability of arrangements relating to the educational facilities; and
- (b) with the quality assurance of the courses of study or training programmes,

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

Grant of approval subject to conditions

40. (1) When granting approval under this Part, the Minister may impose—

- (a) conditions as he deems fit; and
- (b) a fee as may be prescribed.

(2) Where a private higher educational institution contravenes conditions imposed under subsection (1), it 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.

Medium of instruction

41. (1) All private higher educational institutions shall conduct its courses of study in the national language.

(2) Courses of study under subsection (1) shall include the subjects required to be taught under section 43.

(3) Notwithstanding subsection (1), the private higher educational institution may, with the approval of the Minister—

(a) conduct a course of study or a substantial part of a course of study in the English language; or

(b) conduct the teaching of Islamic religion in Arabic.

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

(5) In the case of students referred to in subsection (4) who are citizens of Malaysia, an achievement in the national language, at a level determined by the authority referred to in section 39, shall be a prerequisite to the award of a certificate, diploma or degree of the private higher educational institution or of any University, University College, higher educational institution, whether public or private, or professional body, within or outside Malaysia, consequent upon a course of study or training programme conducted by the private higher educational institution jointly or in affiliation, association or collaboration with such University, University College, higher educational institution or professional body.

Power of Minister to direct that national language be used

42. (1) In respect of an approval granted by the Minister under paragraph 41(3)(a) the Minister may at any time thereafter direct that the national language be used to conduct such course of study.

- (2) The direction of the Minister under subsection (1)—
- (a) shall only apply to students who are citizens of Malaysia for the new intake of the private higher educational institution who have yet to follow such course of study; and
 - (b) shall not apply to the other students following such course of study unless the Minister is satisfied that they will not be adversely affected.
- (3) The Minister may impose conditions on a private higher educational institution for the purpose of giving effect to his direction under subsection (1).

Compulsory subjects

43. (1) All private higher educational institutions shall teach the following subjects:

- (a) Malaysian studies;
- (b) studies relating to the teaching of Islamic religion for students professing the Islamic religion; and
- (c) moral education for non-Muslim students.

(2) The subjects mentioned in paragraphs (1)(a) to (c) shall be taught in addition to other subjects or courses of study taught in the private higher educational institutions.

(3) In the case of students who are citizens of Malaysia, a pass in the subjects specified in paragraphs (1)(a) to (c), at a level determined by the authority referred to in section 39, shall be a prerequisite to the award of a certificate, diploma or degree of the private higher educational institution or of any University, University College, higher educational institution, whether public or private, or professional body, within or outside Malaysia, consequent upon a course of study or training programme conducted by the private higher educational institution jointly or in affiliation, association or collaboration with such University, University College, higher educational institution or professional body.

Minimum standard to be met before certificates, diplomas or degrees can be awarded

44. (1) All certificates, diplomas and degrees shall only be awarded upon satisfying the minimum standards as determined by the authority referred to in section 39.

(2) Notwithstanding any other provisions of this Act, only a private higher educational institution with the status of a University or a University College or a branch campus may award degrees.

Power of Minister to make regulations for supervision and control of standard of education

45. The Minister may make regulations for the supervision, regulation and control of the standard of education in private higher educational institutions in accordance with the minimum standards determined by the authority referred to in section 39.

PART VIII

DISCIPLINE AND CONDUCT OF STUDENTS

Disciplinary authority in respect of students

46. (1) The chief executive shall be responsible for the discipline and conduct of students in the private higher educational institution.

(2) In the discharge of his duties under subsection (1), the chief executive shall comply with and give effect to directions issued by the Registrar General from time to time in respect of the discipline and conduct of the students of the private higher educational institution.

Prohibition on student, students' association, etc., associating with political party, unlawful society, etc.

47. (1) The constitution of a private higher educational institution shall contain prohibitions—

(a) on a person, while he is a student of a private higher educational institution, becoming a member of, or in any manner associating with, any political party, trade union,

society, association, organization, body or group, unless allowed by the Registrar General—

- (i) whether or not it is established under any law; and
 - (ii) whether it is within or outside Malaysia;
- (b) on any society, association, organization, body or group of students of a private higher educational institution, having any association or other dealing whatsoever with any political party, trade union, society, association, organization, body or group, unless allowed by the Registrar General—
- (i) whether or not it is established under any law; and
 - (ii) whether it is within or outside Malaysia;
- (c) on a person, while he is a student of a private higher educational institution, and any society, association, organization, body or group of students of a private higher educational institution expressing or doing anything which may be construed as—
- (i) expressing support or sympathy with or opposition to any political party or trade union; or
 - (ii) expressing support or sympathy with any unlawful society, association, organization, body or group.

(2) Where at any time the constitution does not contain the provisions under subsection (1), the Registrar General may order the private higher educational institution to include such provision in the constitution.

(3) Where the private higher educational institution fails to comply with the order issued by the Registrar General under subsection (2), the Registrar General may cancel its registration.

(4) A student who contravenes or fails to comply with the provisions of the constitution required to be provided for in the constitution under subsection (1), shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

(5) A private higher educational institution shall also be liable for an offence under subsection (4)—

(a) for not observing its constitution; and

(b) shall on conviction be liable to a fine not exceeding ten thousand ringgit,

unless the private higher educational institution satisfies the court—

(aa) that the offence was committed without its knowledge or connivance; and

(bb) that it had exercised all due diligence to prevent the commission of the offence.

(6) The conviction of a private higher educational institution under subsection (5) may be a ground for revoking the approval for its establishment.

(7) For the avoidance of doubt, the society, association, organization, body and group mentioned in paragraph (1)(a) shall not include any students society, association, organization, body and group established under the provision of the constitution of the private higher educational institution regulating such establishment.

Criminal liability of office-bearers, etc., of students' association, etc.

48. (1) Subsection (2) shall apply where an offence has been committed under any written law—

(a) whether or not any person has been convicted in respect thereof; or

(b) including where such offence has been committed or purports to have been committed in the name or on behalf of, any society, association, organization, body or group of students of a private higher educational institution.

(2) Every office-bearer of such society, association, organization, body or group and every person managing or assisting in the management of such society, association, organization, body or group at the time of the commission of such offence—

(a) shall be deemed to be guilty of such offence; and

(b) shall be liable to the punishment prescribed by law,

unless he satisfies the court that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission of the offence.

(3) An office-bearer of, or a person managing or assisting in the management of any society, association, organization, body or group referred to in subsection (2) shall be liable to be prosecuted under this section, notwithstanding that he may not have taken part in the commission of the offence.

(4) In any prosecution under this section, a document found in the possession of—

- (a) an office-bearer;
- (b) a person managing or assisting in the management; or
- (c) a member,

of such society, association, organization, body or group shall be *prima facie* evidence of the contents thereof for the purpose of proving that anything has been done or purports to have been done by or on behalf of such society, association, organization, body or group.

Power of Registrar General to issue directions to suspend or dissolve a students' association, etc.

49. (1) The Registrar General may direct the chief executive to suspend or dissolve any students' society, association, organization, body or group—

- (a) if such society, association, organization, body or group conducts itself in a manner detrimental or prejudicial to—
 - (i) the safety and security of Malaysia;
 - (ii) public order; or
 - (iii) the interest of students; or
- (b) if such society, association, organization, body or group violates any provision of any written law.

(2) The Registrar General may not give a direction under subsection (1) until he has considered representations made by the society, association, organization, body or group.

(3) The chief executive shall take immediate action to give effect to the directions of the Registrar General under subsection (1), and shall within twenty-one days inform the Registrar General of any such action so taken by him.

(4) Where a direction of the Registrar General under this section is not complied with, the Registrar General may cancel the registration of the chief executive.

Regulations on expulsion of students

50. The Registrar General may prescribe, after consultation with the Minister, regulations for the expulsion of students in certain cases.

PART IX

PERMITS TO TEACH

Issuance of permit to teach

51. (1) A person shall obtain a permit to teach issued by the Registrar General before he may be allowed to teach in any private higher educational institution.

(2) An application for a permit to teach under this Act shall be made to the Registrar General on the prescribed form and in the prescribed manner and upon payment of the prescribed fee.

(3) At any time after receiving the application for a permit to teach and before it is determined, the Registrar General may by written notice require the applicant to provide additional information, particulars or documents, which may differ as between different subjects to be taught by the applicants.

(4) The Registrar General may, after such investigation as he may think necessary on the application for a permit to teach—

(a) issue a permit to teach in such form as may be prescribed and subject to such conditions as may be specified to the person applying for such permit, upon payment by such person of the prescribed fee; or

(b) refuse the application.

(5) A permit to teach shall specify the subject or subjects which may be taught by the person to whom it is issued.

(6) A person aggrieved by the decision of the Registrar General—

(a) in refusing the application; or

(b) in imposing conditions on the permit,

may appeal to the Minister within twenty-one days from being notified of the decision appealed against.

Power of Registrar General to refuse and revoke permit to teach

52. (1) The Registrar General may refuse to issue a permit to teach or revoke a permit to teach if he is satisfied that the person applying for such permit or to whom such permit has been issued—

(a) has no qualification to teach, or has qualifications which in the opinion of the Registrar General are inadequate for the purpose;

(b) has made a false or misleading statement in connection with his application for a permit to teach or has intentionally suppressed a material fact;

(c) suffers from some physical or mental defect or disease rendering him unsuitable to teach;

(d) if there has been proved against him, or he has been convicted on, a charge in respect of—

(i) an offence involving fraud, dishonesty or moral turpitude;

(ii) an offence under any law relating to corruption; or

(iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years; or

(e) is for any reason not a fit and proper person to teach.

(2) Where the Registrar General refuses to issue a permit to teach or revokes the permit to teach, he shall by notice in writing inform the person applying for such permit and the person whose permit is revoked of the refusal or revocation, specifying the grounds of the refusal or revocation.

(3) A person aggrieved by a decision of the Registrar General under this section may, within twenty-one days of being notified of such decision, appeal to the Minister.

Right to make representations to be given and additional grounds for revocation

53. (1) A permit may be revoked by the Registrar General, after giving the person to whom it was issued the right to make representations.

(2) In addition to the grounds specified under paragraphs 52(1)(a) to (e), a permit to teach may be revoked on the following grounds:

- (a) that the holder of the permit is acting in a manner prejudicial or detrimental to the interest of Malaysia, the public or the student; or
- (b) any other grounds as the Registrar General deems appropriate.

PART X

REVOCATION OF APPROVAL AND CANCELLATION OF
REGISTRATION

Grounds for revocation of approval

54. (1) The Registrar General may, under the direction of the Minister, serve on a private higher educational institution a notice of intention to revoke the approval of such private higher educational institution if the Minister is satisfied that it is expedient so to do on any of the following grounds:

- (a) that the approval of such private higher educational institution was obtained by any false or misleading statement;
- (b) that there has been a breach of any condition imposed by the Minister;
- (c) that the standard of education in such private higher educational institution is not adequately maintained;
- (d) that the private higher educational institution has been convicted for an offence under this Act or any other written law; or

- (e) any other reason that the Minister deems proper in the interest of Malaysia, the public or the students.

(2) The grounds under paragraphs (1)(a) to (f) shall be in addition to any other ground as may be provided for under any other provision of this Act.

Grounds for cancellation of registration

55. (1) The Registrar General may serve on a private higher educational institution a notice of intention to cancel the registration of such private higher educational institution if he is satisfied that it is expedient so to do on any of the following grounds:

- (a) that the registration of such private higher educational institution was obtained by any false or misleading statement;
- (b) that there has been a breach of any condition imposed by the Registrar General;
- (c) that an offence under this Act has been committed;
- (d) that the private higher educational institution has been convicted for an offence under this Act or any other written law;
- (e) that discipline in such private higher educational institution is not being adequately maintained;
- (f) that the terms of the constitution of the private higher educational institution are being wilfully disregarded; or
- (g) that the private higher educational institution has been used contrary to the purpose of its establishment.

(2) The grounds under paragraphs (1)(a) to (g) shall be in addition to any other ground as may be provided for under any other provision of this Act.

Notice to revoke approval and to cancel registration

56. (1) A notice of intention to revoke the approval under section 54 or to cancel the registration under section 55 shall specify the grounds on which it is proposed to revoke the approval or to cancel the registration.

(2) The private higher educational institution shall be given an opportunity to make written representations thereon within twenty-one days from the date of service of the notice in subsection (1).

(3) After the expiry of the period of twenty-one days mentioned in subsection (2) and after considering any representation made under that subsection, the Registrar General shall—

(a) with respect to the cancellation of registration, decide whether or not—

(i) to proceed with the proposed action;

(ii) to take no further action;

(iii) to add, alter or vary the conditions of the registration;
or

(iv) to issue a warning; or

(b) with respect to the revocation of approval, make such recommendations to the Minister.

(4) The decision of the Registrar General under paragraph (3)(a) to cancel the registration of the private higher educational institution shall be with the concurrence of the Minister.

Decision to be based on documents and oral hearing not allowed

57. The decision of the Minister and the Registrar General in this Part shall be arrived at on the basis of the documents relating to the matter before them, and there shall be no oral hearing therefor.

PART XI

CLOSING DOWN OF PRIVATE HIGHER EDUCATIONAL INSTITUTIONS

Power of Minister to give directions to safeguard interest of students

58. (1) Where on his own volition a chief executive informs the Minister or where as a result of an inspection made under Part XII or for any other reason the Minister is of the opinion that a private higher educational institution—

(a) is unable to meet its obligations to its students;

- (b) is about to suspend its operations; or
- (c) is carrying on its activities in a manner detrimental to the interest of Malaysia, the public or the students,

the Minister may, without prejudice to the generality of the powers of the Minister to give directions under section 5, for the purpose of safeguarding the interest of Malaysia, the public and the students of the private higher educational institution—

- (aa) direct the private higher educational institution in question to take such steps as the Minister considers necessary to rectify any matter or circumstances;
- (bb) direct that a person or a committee to be appointed or himself appoint a person or a committee to advise the chief executive in the management of the private higher educational institution; or
- (cc) take such action as the Minister considers necessary in the circumstances of the case to bring the affairs of the private higher educational institution into accord with the provisions of this Act.

(2) Every direction of the Minister made under subsection (1) or advice or instruction of a person or a committee appointed under paragraph (1)(bb) shall be binding on the private higher educational institution.

(3) All expenses incurred by the person or the committee appointed under paragraph (1)(bb) shall be paid by the private higher educational institution.

(4) Where a private higher educational institution fails to comply with any advice or instruction given to it by the person or committee appointed under paragraph (1)(bb), such non-compliance may be a ground for revoking its approval.

Cessation of operation

59. A private higher educational institution must cease its operation and terminate its courses of study if—

- (a) the approval for its establishment has been revoked by the Minister;
- (b) its registration has been cancelled by the Registrar General;

- (c) the board of directors so decides;
- (d) the company under which the private higher educational institution is established is wound up—
 - (i) by the company's board of directors; or
 - (ii) by an order of the court; or
- (e) the private higher educational institution needs to be closed down for any other reason.

Notice of intention to close down

60. (1) A private higher educational institution which is about to cease its operations except for the reasons specified in paragraphs 59(a) and (b) and subparagraph 59(d)(ii), shall give a notice of its intention to do so at least for a period of one calendar year before its closing down.

(2) The notice under subsection (1) shall be—

- (a) given to the Registrar General by the chief executive of the private higher educational institution;
- (b) served by A.R. registered mail on the students of the private higher educational institution; and
- (c) published in the newspapers, at least one in the national language and one in any other language.

(3) Where the closing down of the private higher educational institution is by reason of paragraphs 59(a) and (b) and subparagraph 59(d)(ii), the private higher educational institution shall within twenty-one days after being notified of the decision of the Minister to revoke its approval, the decision of the Registrar General to cancel its registration or order of the court for the company to wind up, as the case may be—

- (a) serve a notice of its closing down to its students by A.R. registered mail; and
- (b) publish a notice of its closing down in the newspapers, at least one in the national language and one in any other language.

(4) Where the closing down of the private higher educational institution is by reason of paragraph 56(e), the chief executive shall request for instructions from the Registrar General with respect to the notification of the closing down.

(5) A private higher educational institution which contravenes this section 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.

Arrangements for the continuation of education of students

61. Upon the closing down of a private higher educational institution, the board of directors shall—

- (a) make such arrangements not detrimental or prejudicial to the interest, well being or wishes of the students, as may be necessary, for the continuation of the education of the students of the private higher educational institution;
- (b) inform the Registrar General of the arrangements made under paragraph (a);
- (c) obtain the approval of the Registrar General before putting into effect such arrangements, and
- (d) inform the Registrar General of the conclusion of the arrangements after such arrangements have been finalized.

Surrender of certificates

62. Upon the closing down of a private higher educational institution, the chief executive shall surrender to the Registrar General his certificate of registration and the certificate of registration of the private higher educational institution.

PART XII

INSPECTION OF PRIVATE HIGHER EDUCATIONAL INSTITUTIONS

Inspection to be made from time to time

63. The Registrar General shall, from time to time, inspect or cause to be inspected a private higher educational institution registered under this Act for the purpose of ascertaining that this Act and the regulations made under this Act have been and are being complied with.

Power of Registrar General when inspecting private higher educational institutions

64. In carrying out an inspection under section 63, the Registrar General may—

(a) enter—

(i) any area including the building or structure thereon which belongs to or are used, whether permanently or otherwise, or whether or not registered for use, by a private higher educational institution; or

(ii) any premises;

(b) examine such book, register, document, material or other article as he may consider necessary;

(c) remove and detain any book, register, document, material or other article—

(i) which appears to him to be detrimental to the interest of Malaysia, the public or the students; or

(ii) which, in his opinion, may furnish evidence of the commission of an offence under this Act; and

(d) require any person, being a member of the board of directors, a chief executive, an employee, or a student of such private higher educational institution, to produce for his inspection any book, register, document, material or other article which is in that person's possession or custody or under his control or within his power to furnish—

(i) relating to the management of the private higher educational institution; or

(ii) relating to the teaching, carried on in the private higher educational institution.

PART XIII

ENFORCEMENT AND INVESTIGATION

Interpretation of investigating officer

65. In this Part, “investigating officer” means—

(a) the Registrar General, Deputy Registrar General, Registrar, Deputy Registrar and Assistant Registrar;

- (b) a police officer not below the rank of an Inspector; and
- (c) any other public officer authorized in writing by the Registrar General to perform such duties relating to enforcement and investigation under this Part as may be specified in the authorization.

Power of investigating officer

66. (1) An investigating officer shall have all the powers necessary to carry out investigation of an offence under this Act.

(2) An investigating officer carrying out an investigation under this Act may enter any place or building and may inspect, make copies of, take extracts from, remove and detain any book, minute book, register, document, material or article.

(3) An investigating officer may by notice in writing require any person to produce to him such books, minute books, registers, documents, materials or articles as are in the possession or custody of or under the control of that person or within the power of that person to furnish.

(4) A person who—

- (a) fails to produce any book, minute book, register, document, material or article as is required by an investigating officer; or
- (b) obstructs or hinders an investigating officer while exercising any of his powers under this section,

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.

(5) An investigating officer may grant permission to any person to inspect the books, minute books, registers, documents, materials or articles detained and taken possession of by the investigating officer under subsection (2) if such person is entitled to inspect such books, minute books, registers, documents, materials or articles under this Act.

(6) This section shall not be construed as limiting or affecting any similar powers conferred on any person under any other written law.

Power to search and seize

67. (1) If it appears to a Magistrate upon written information on oath and after such enquiry as he considers necessary that there is reasonable cause to believe that—

- (a) any premises have been used, are being used or are about to be used for; or
- (b) there is in any premises evidence necessary to establish,

the commission of an offence under this Act, the Magistrate may issue a warrant authorizing an investigating officer, at any reasonable time by day or by night and with or without assistance—

- (aa) to enter the premises, if need be by force; and
- (bb) there to search for and seize, and therefrom remove any book, minute book, register, material, document, article or any other thing—
 - (i) in respect of which an offence has been committed;
 - (ii) in respect of which an offence is suspected to have been committed, or
 - (iii) that is reasonably believed to furnish evidence of the commission of the offence.

(2) An investigating officer may—

- (a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry thereinto;
- (b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under subsection (1); and
- (c) detain every person found in the premises until it has been searched.

Search and seize without warrant

68. If an investigating officer has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 67—

- (a) the investigation would be adversely affected;

- (b) the object of the entry is likely to be frustrated;
- (c) the book, minute book, register, document, material, or any other thing sought may be removed or interfered with; or
- (d) the evidence sought may be tampered with or destroyed,

he may exercise in, and in respect of, the premises all the powers referred to in section 67 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Power to seal

69. (1) Where the investigating officer has reasonable cause to believe that any house, building, premise or other place is being used as a private higher educational institution—

- (a) without being approved and registered under this Act; or
- (b) in contravention of any of the conditions imposed by the Minister or the Registrar General,

the investigating officer may forthwith take such steps as he may deem necessary or by any means seal such private higher educational institution.

(2) The person using the house, building, premise or place as a private higher educational institution which has been sealed shall—

- (a) within twenty-one days of such seal produce to the Registrar General the certificate of registration of the private higher educational institution; and
- (b) bear any cost incurred arising out of such action.

(3) The seal shall be removed if—

- (a) such person complies with the requirement of subsection (2); or
- (b) an order of the court is obtained for such person to cease using the house, building, premise or place as a private higher educational institution,

whichever is the earlier.

(4) The investigating officer acting under this section shall not be liable for any cost arising out of such action or damages to the house, building, premise or place sealed under this section unless such damage was wilfully done.

(5) Any action taken under this section in respect of any house, building, premise or other place shall not prohibit the prosecution of any person using such house, building, premise or place as a private higher educational institution in contravention of this Act.

Power to call for examination

70. (1) An investigating officer may by notice in writing require any person acquainted with the facts and circumstances of a case to appear before him and to be examined orally and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be legally bound to answer the questions relating to such case put to him by the investigating officer and to state the truth, whether or not the statement is made wholly or partly in answer to questions, and shall not refuse to answer any question on the ground that it tends to incriminate him.

(3) A statement made by any person under this section shall be taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be—

(a) after it has been read to him; and

(b) after he has been given an opportunity to make any correction he may wish.

(4) Where the person examined under this section refuses to sign or affix his thumb print on the statement, the investigating officer shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person so examined.

(5) Any statement made and recorded under this section shall be admissible as evidence in any proceeding in any court.

(6) Any person who—

(a) fails to appear before an investigating officer as required under subsection (1);

(b) refuses to answer any question put to him by an investigating officer under subsection (2): or

- (c) furnishes to an investigating officer information or a statement that is false or misleading in any material particular,

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.

No entitlement as to costs on proceedings, damages or other relief, etc.

71. No person shall, in any proceedings before any court in respect of the seizure of anything seized or detained in the exercise or the purported exercise of any power conferred under this Part, be entitled to the costs of such proceedings or any damages or other relief, other than an order for the return of such thing seized or detained, or the payment of its value unless such seizure or detention was made without reasonable or probable cause.

PART XIV

OFFENCES AND PENALTIES

Prohibition on advertisement, etc.

72. (1) No person shall promote a private higher educational institution, whether by advertisement, prospectus, brochure or otherwise, unless the establishment of the private higher educational institution has been approved under this Act.

(2) Any person who contravenes subsection (1) 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.

Control of advertisement

73. (1) If the Registrar General is of the opinion that any statement made in any advertisement in relation to a private higher educational institution is false, deceptive, offensive or misleading the Registrar General may by notice in writing direct such private higher educational institution to do all or any of the following:

- (a) cease the continued issue of the advertisement;

- (b) modify the advertisement in such manner as may be specified by the Registrar General;
- (c) cease the issue of any advertisement which is wholly or substantially, a repetition of such advertisement;
- (d) take all practical steps to withdraw the advertisement from every and all publication or display of it; or
- (e) publish a statement in like manner as the advertisement issued earlier to retract or modify such advertisement.

(2) The Registrar General may vary, add to, alter, revoke or otherwise amend any direction issued under subsection (1) by a notice in writing to the private higher educational institution concerned.

(3) Upon registration of a private higher educational institution under Part V, any advertisement in relation to the private higher educational institution shall bear the registration number of the private higher educational institution.

(4) Any person who or private higher educational institution which contravenes the directions of the Registrar General under subsection (1) 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 action that is taken by the Registrar General under this section shall not prejudice the power of the Controller, Deputy Controller or Assistant Controller of Trade Descriptions under the Trade Descriptions Act 1972 [Act 87].

Interpretation of advertisement

74. For the purposes of sections 72 and 73, “advertisement” means any notification or information of the establishment of a private higher educational institution—

- (a) published in any newspaper, journal or magazine or any other form;
- (b) displayed on any hoarding, boarding, roof, wall, paling, fence, frame, signboard, plate, cloth, bar, pillar, post, wire-casting or other erection, structure or contrivance;

- (c) conveyed by means of film within the meaning of the *Cinematograph Films (Censorship) Act 1952 [Act 35] or by means of broadcast sound receivers or television receivers within the meaning of the Telecommunications (Television Receivers) Regulations 1964 [L.N. 69/1964]; or
- (d) conveyed by other means, oral or written and whether of the same kind or not as set out in paragraphs (a) to (c).

Offence and penalty relating to false or misleading statement

75. Any person who makes a false or misleading statement in promoting a private higher educational institution 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.

Establishment of private higher educational institutions, etc., prohibited unless in accordance with Act

76. (1) No person shall—

- (a) establish, form, promote or carry on any activity for the purpose of establishing, forming, or promoting or towards the establishment, formation or promotion of a private higher educational institution;
- (b) operate, manage or maintain any class for the teaching and learning of higher education in a private higher educational institution; or
- (c) establish, form, promote, operate, manage or maintain a private higher educational institution by the use of the word “University”, “University College” or “branch campus”,

except in accordance with the provisions of this Act.

(2) Any person who contravenes subsection (1) shall be guilty of 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.

*NOTE—The Cinematograph Films (Censorship) Act 1952 is now known as the Films (Censorship) Act 1952 [Act 35]—see sections 2 and 3 of the Cinematograph Films (Censorship) (Amendment) Act 1980 [Act A490].

Offence and penalty relating to award of certificate, diploma and degree

77. A private higher educational institution which conducts any course of study or training programme for which a certificate, diploma or degree is awarded contrary to the provisions of section 44, shall be guilty of 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.

Penalty for contravening conditions

78. Any private higher educational institution contravening any condition imposed on the approval for its establishment and its registration, 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.

Offence and penalty relating to applications made under Act

79. Any—

- (a) applicant who, on making an application for the approval for the establishment of a private higher educational institution; or
- (b) private higher educational institution which, on making any application,

under this Act, makes any statement which he or it knows to be false, or does not believe to be true, or intentionally suppresses any material fact, or furnishes any information which is misleading shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to an imprisonment for a term not exceeding two years or to both.

Offence and penalty relating to unlawful activity

80. Any—

- (a) person who, being the owner or occupier of any house, building, premise or place, has failed to take all reasonable steps to prevent the same from being used as a private higher educational institution in contravention of this Act; or

- (b) private higher educational institution which is used—
 - (i) for any unlawful activity or purpose; or
 - (ii) for any activity or purpose of an unlawful organization, society or other body of persons,

shall be guilty of 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.

Offences and penalties relating to certificates of registration and the act of teaching in private higher educational institutions

81. (1) Where—

- (a) a private higher educational institution fails to cause a copy of the certificate of registration of such private higher educational institution to be exhibited in accordance with the provisions of subsection 26(2);
- (b) upon the closing down of a private higher educational institution, the chief executive fails to surrender to the Registrar General his certificate of registration and the certificate of registration of the private higher educational institution;
- (c) any person is working or is a teacher in a private higher educational institution which is not approved and registered under this Act;
- (d) the chief executive of a private higher educational institution is not registered under this Act;
- (e) a person teaches in a private higher educational institution without a permit to teach; or
- (f) a private higher educational institution employs a chief executive who is not registered under this Act or a teacher to whom a teaching permit is not issued,

such private higher educational institution or chief executive or person shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one month or to both.

(2) In the case of an offence under paragraphs (1)(c) to (f), it shall be a defence for a person or a chief executive or a private higher educational institution if he or it proves that having taken all reasonable precautions against committing such an offence that—

- (a) the person or chief executive officer did not know or have any reasonable ground to suspect that such private higher educational institution was not approved or registered;
- (b) the private higher educational institution did not know or have any reasonable ground to suspect that—
 - (i) such chief executive was not so registered; or
 - (ii) such person does not have a permit to teach.

General penalty

82. A person who is guilty of an offence under this Act in respect of which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Penalty in the case of continuing offence

83. A person who is guilty of an offence under this Act shall, in the case of a continuing offence, be liable, in addition to any other penalty to which he is liable under this Act in respect of such offence, to a daily fine not exceeding five hundred ringgit for each day the offence continues after conviction.

Offences by bodies corporate

84. Where a body corporate is guilty of an offence under this Act—

- (a) any person who, at the time of the commission of such offence, is a director, manager, secretary, or other similar officer of such body corporate, may be charged severally or jointly in the same proceedings with the body corporate; and

- (b) every such director, manager, secretary or other similar officer of such body corporate who was, in any way, by act or omission directly or indirectly, concerned in, or party to, the commission of the offence shall be deemed to be guilty of that offence,

unless he proves that the offence was committed without his knowledge or connivance or that he took all reasonable precautions or that he had exercised due diligence to prevent the commission of the offence.

Liability of director of company, etc., for offences committed by private higher educational institution established by company

85. (1) Where an offence against any provision of this Act has been committed by a private higher educational institution or any person who at the time of the commission of the offence was—

- (a) a member of the board of directors;
- (b) a manager;
- (c) a secretary;
- (d) holding an office or position similar to that of a manager or secretary of the company establishing such private higher educational institution;
- (e) a chief executive;
- (f) a clerk;
- (g) a servant; or
- (h) an agent,

of the private higher educational institution shall be deemed to be guilty of that offence.

(2) It shall be a defence for any person prosecuted pursuant to subsection (1) if he proves—

- (a) that the offence was committed without his knowledge or connivance; or
- (b) that he—

- (i) took all reasonable precaution; and
- (ii) exercised all due diligence,

to prevent the commission of the offence as he ought to have taken and exercised,

having regard to the nature of his functions in that capacity and to all the circumstances.

(3) A private higher educational institution liable under this Act to any punishment or penalty for any act or omission shall be liable to the same punishment or penalty for any such act or omission by—

- (a) an agent acting on its behalf; or
- (b) a clerk or servant acting in the course of its employment.

(4) A partner, agent, clerk or servant or the clerk or servant of that partner or agent shall not be relieved from liability to prosecution under this section.

Power to compound

86. (1) The Registrar General may, with the consent in writing of the Public Prosecutor, compound any offence committed by any private higher educational institution or person under this Act or the regulations made under this Act, which is prescribed to be a compoundable offence.

(2) A written offer shall be made to the person to compound the offence upon payment to the Registrar General of such sum of money as may be so specified, which shall not be more than fifty per centum of the maximum fine to which the person would have been liable if he had been convicted of the offence, within such time as may be specified in the offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

- (4) Where an offence has been compounded—
 - (a) no further proceeding shall be taken and no prosecution shall be instituted against such person to whom the offer to compound was made; and

(b) any goods, books, minute books, registers, documents, materials or other articles seized in connection with the offence, may be released subject to such conditions as may be imposed in accordance with the condition of the compound.

(5) Any money received by the Registrar General under this section shall be paid into and form part of the Federal Consolidated Fund.

(6) Where the amount specified in the offer to compound is not paid within the time specified in the offer, or within such extended period as the Registrar General may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

Institution and conduct of prosecution

87. (1) Subject to subsection (3), the Registrar General, Deputy Registrar General, Registrar, Deputy Registrar, Assistant Registrar or a police officer not below the rank of Inspector shall have the authority to appear in court—

- (a) for the conduct of any prosecution in respect of an offence under this Act; or
- (b) for the purposes of any other legal proceeding under this Act.

(2) In the case of a Deputy Registrar General, a Registrar, a Deputy Registrar or an Assistant Registrar, such authority shall be subject to the approval of the Registrar General.

(3) Prosecution in respect of any offence under this Act shall not be instituted or conducted without the written consent of the Public Prosecutor.

PART XV

REGULATIONS

Power of Minister to make regulations

88. (1) Without prejudice to his power to make regulations under any other provision of this Act, the Minister may make regulations for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred in subsection (1), the Minister may make regulations for or in respect of all or any of the following matters:

- (a) the forms to be used and the information to be furnished in any application or for other purposes under this Act;
- (b) the procedure to be followed and the fee deemed proper to be prescribed in respect of any application under this Act or in respect of any certificate, permit or any other document issued under this Act;
- (c) the form in which a register or other records shall be kept or maintained under this Act, entries to be made therein, provision for the inspection and taking extracts therefrom and the supply of copies thereof and the fee to be paid for such inspection, extracts and copies respectively;
- (d) the conduct of courses of study;
- (e) the procedure to be followed for the endorsement, alteration or amendment of certificates of registration, permits to teach or any other document issued under this Act and the replacement of such certificate, permit or other document which is lost or defaced;
- (f) the educational facilities to be provided by a private higher educational institution;
- (g) the provision of distance education;
- (h) the standards of health and security and uses to which premises of private higher educational institutions shall conform, and prescribing different standards and uses for such descriptions of private higher educational institution as may be specified in the regulations;
- (i) the other compulsory subjects to be taught other than those specified under sections 42 and 43;
- (j) the procedure to be followed in respect of appeals made to the Minister from decisions of the Registrar General;
- (k) the records to be kept by the private higher educational institution and the returns to be made including financial records and returns;
- (l) the determination of fee to be imposed on students by the private higher educational institution;

- (m) the fee required to be prescribed under this Act other than those referred to in paragraphs (b) and (c);
- (n) the manner in which an affiliation, association or collaboration between private higher educational institutions may be carried out;
- (o) the prescribing of offences that may be compounded;
- (p) any other matter required to be prescribed under this Act; and
- (q) any other matter which the Minister deems expedient or necessary for the purposes of this Act.

(3) Regulations made under this section may provide that the contravention of any provision in the regulations shall be an offence and that the offence is punishable, on conviction, with a fine or a term of imprisonment or both but may not provide for the fine to exceed ten thousand ringgit or the term of imprisonment to exceed one month.

PART XVI

GENERAL

Distinction of race and creed prohibited

89. (1) Subject to the provision of Article 153 of the Federal Constitution, membership of a private higher educational institution, whether as an officer, teacher or student, shall be open to all persons irrespective of sex, race, religion, nationality or class.

(2) No test of religious belief or profession shall be adopted or imposed in order to entitle any person to be admitted to such membership or to be awarded any degree, diploma or certificate nor shall any fellowship, scholarship, exhibition, bursary, medal, prize, other distinction or award be limited to persons of any particular race, religion, nationality or class.

Protection against suit and legal proceedings

90. No action shall lie or prosecution shall be brought, instituted or maintained against the Government, Minister, Registrar General, Deputy Registrar General, Registrar, Deputy Registrar or Assistant Registrar or against any officer of the Government or any person

acting under the direction of the Minister or the Registrar General, in any court for any thing done or omitted to be done under this Act—

- (a) in good faith;
- (b) in the reasonable belief that it was necessary for the purpose intended to be served thereby; or
- (c) for carrying into effect the provisions of this Act.

Officers deemed to be public servants

91. Every person appointed, or lawfully exercising the powers of a person appointed under this Act, shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

Minister's power to exempt

92. (1) The Minister may, if he considers it desirable and in the interest of a private higher educational institution or in the interest of the students or the public, by order published in the *Gazette*, exempt the private higher educational institution from any provision of this Act.

(2) The exemption granted under subsection (1) shall be subject to such conditions as the Minister may specify in the order.

(3) The power of exemption under subsection (1) shall not include the provisions as to the approval for the establishment of a private higher educational institution and the registration thereof, and the provisions of sections 38 and 39.

(4) The Minister may, at any time, use his discretion to revoke an exemption under this section or alter or add to conditions attached to the exemption.

Requirement as to premises

93. (1) The member of the board of directors, chief executive or any person responsible for the management of a private higher educational institution shall ensure that at all times, the premises of a private higher educational institution conform to such standards as may be prescribed under this Act.

(2) Notwithstanding subsection (1), if the Minister is satisfied with respect to any private higher educational institution that having regard to—

- (a) the nature of its site;
- (b) any existing buildings thereon; or
- (c) other special circumstances affecting its premises,

it would be unreasonable in that case to require conformity with the requirements of the regulations in any particular respect, he may direct that the premises shall be deemed to conform to the prescribed standards if instead of conforming to the requirements of the regulations in that respect the premises conform to such other requirements as may be specified in the direction.

Service

94. (1) Any notice, order, document or other communication required to be given or served under this Act on a private higher educational institution may, unless some other form of service is prescribed, be sent by registered post.

(2) It shall then be deemed that the notice, order, document or such communication has been served on the day succeeding the day on which it would have been received in the ordinary course of such posting.

(3) Where the person to whom there has been addressed a registered letter under subsection (1) is informed of the fact that there is a registered letter awaiting him at a post office and he refuses or neglects to take delivery of the registered letter, such notice, order, document or communication shall be deemed to have been served upon him on the date upon which he was informed.

Non-application

95. This Act shall not apply to—

- (a) an educational institution established by the Minister under or deemed to have been established under the Education Act 1996 [*Act 550*];
- (b) an institution established under the Institute Technology MARA Act 1976 [*Act 173*];

- (c) a University or University College established under the Universities and University Colleges Act 1971; or
- (d) an educational institution established under any other written law.

PART XVII

SAVING AND TRANSITIONAL PROVISIONS

Saving and transitional provisions relating to existing private higher educational institutions

96. (1) The Essential (Higher Educational Institutions) Regulations 1969 [*P.U. (A) 234/1969*] is repealed.

(2) Notwithstanding subsection (1), all private higher educational institutions—

- (a) established under the Essential (Higher Educational Institutions) Regulations 1969; or
- (b) registered or deemed to have been registered under the Education Act 1996,

shall, on the date of coming into force of this Act, be deemed to have been approved, established and registered under this Act.

(3) The conditions imposed on the private higher educational institutions referred to in paragraphs (2)(a) and (b), prior to the coming into force of this Act, shall continue to remain in force until varied or revoked by the Minister.

(4) The provisions of this Act shall apply to such private higher educational institution as if such private higher educational institution was approved, established and registered under this Act.

Conversion of provisional certificates of registration

97. (1) A provisional certificate of registration issued or deemed to have been issued to a private higher educational institution under the Education Act 1996, shall be converted to and deemed to be a certificate of registration issued under this Act.

(2) In addition to a condition that may be imposed under any provision of this Act, the private higher educational institution shall also comply with any other condition as the Registrar General may, from time to time, impose.

Power of Minister to make additional transitional provisions

98. (1) The Minister may, by rules, make such provision as he considers necessary or expedient for the purpose of removing any difficulties occasioned by the application of this Act on private higher educational institutions—

- (a) established under the Essential (Higher Educational Institutions) Regulations 1969;
- (b) registered or deemed to have been registered under the Education Act 1996; and
- (c) to which provisional certificates of registration have been issued or are deemed to have been issued under the Education Act 1996.

(2) The power of the Minister under subsection (1) shall include power to make such modifications so as to give effect to the provisions of this Act.

Transitional provision relating to teachers

99. (1) A person who, on the date of coming into force of this Act, is in the employment of a private higher educational institution as a teacher whether on a full time or part time basis—

- (a) who has been registered as a teacher or is deemed to have been registered under the Education Act 1996 shall, within one month from the date of coming into force of this Act; or
- (b) who has been issued or is deemed to have been issued with a permit to teach under the Education Act 1996 shall—
 - (i) within one month before the expiry of such permit; or

- (ii) within one month from the date of coming into force of this Act,

whichever is the later,

apply for a permit to teach under Part IX of this Act.

(2) Pending the determination of the application for a permit to teach referred to under subsection (1), such person may continue to teach in the private higher educational institution and shall in those circumstances be deemed to be lawfully teaching.

(3) The acknowledgement letter, issued by the Registrar General in respect of an application for a permit to teach under this section, shall be sufficient proof of the making of such application.

LAWS OF MALAYSIA**Act 555****PRIVATE HIGHER EDUCATIONAL
INSTITUTIONS ACT 1996**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A1202	Private Higher Educational Institutions (Amendment) Act 2003	21-08-2003

LAWS OF MALAYSIA**Act 555****PRIVATE HIGHER EDUCATIONAL
INSTITUTIONS ACT 1996****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
2	Act A1202	21-08-2003
41	Act A1202	21-08-2003
43	Act A1202	21-08-2003
44	Act A1202	21-08-2003
77	Act A1202	21-08-2003
