

A BILL

*i n t i t u l e d*

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

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Private Higher Educational Institutions (Amendment) Act 2017.

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

**Amendment of section 2**

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

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

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

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

**Amendment of section 12**

3. Section 12 of the principal Act is amended—

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

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

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

**Amendment of section 14**

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

**Amendment of section 15**

5. Section 15 of the principal Act is amended—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Amendment of section 19**

6. Section 19 of the principal Act is amended—

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

(ii) in subsection (8), by substituting for the words “the private higher educational institution” the words “the company”.

#### **Amendment of section 24**

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

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

(b) in paragraph (d), by substituting for the full stop at the end of the paragraph the words “; and”; and

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

“(e) any other information, particulars or documents as may be required by the Registrar General.”.

**Amendment of section 26**

8. Section 26 of the principal Act is amended—

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

**Amendment of section 28**

9. Section 28 of the principal Act is amended—

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

**Substitution of section 30**

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

**“Constitution**

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

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

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

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

### **Amendment of section 31**

**11.** Section 31 of the principal Act is amended—

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

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

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

(c) in subsection (3)—

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

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

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

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

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

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

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

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

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

**New section 33A**

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

**“Duty to maintain register**

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

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

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

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



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

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

### **Amendment of section 36**

**13.** Section 36 of the principal Act is amended—

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

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

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

### **Amendment of section 38**

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

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

**Amendment of section 40**

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

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

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

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

**New section 40A**

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

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

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

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

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

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

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

#### **Amendment of section 42**

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

#### **Amendment of section 43**

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

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

#### **Substitution of section 44**

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

##### **“Award of degree**

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

**Amendment of section 46**

**20.** Section 46 of the principal Act is amended—

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

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

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

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

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

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

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

**Amendment of section 51**

**21.** Section 51 of the principal Act is amended—

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

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

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

**Amendment of section 54**

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

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

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

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

**Amendment of section 61**

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

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

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

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

**Amendment of section 62**

**24.** Section 62 of the principal Act is amended—

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

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

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

#### **New section 75A**

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

#### **“Obligation to comply**

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

#### **Amendment of section 76**

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

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

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

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

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

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

**Amendment of section 77**

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

**Amendment of section 78**

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

**Amendment of section 79**

29. Section 79 of the principal Act is amended—

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

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

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

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

**Substitution of section 82**

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

**“General penalty**

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

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

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

**Amendment of section 83**

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

**Amendment of section 85**

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

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

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

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

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

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**EXPLANATORY STATEMENT**

This Bill seeks to amend the Private Higher Educational Institutions Act 1996 (“Act 555”).

2. *Clause 1* contains the short title and empowers the Minister to appoint a date of coming into operation of the proposed Act.

3. *Clause 2* seeks to introduce new definitions into Act 555 and to amend certain definitions provided under Act 555.

4. *Clause 3* seeks to introduce a new subsection 12(1A) into Act 555 to enable a company limited by guarantee to establish private higher educational institution and to ensure the compliance of the company with the required conditions once the approval is granted.

5. *Clause 4* seeks to amend section 14 of Act 555 to provide that reference to a company in section 19 of Act 555 shall be a reference to a company to which an approval under Part III is granted and a company established under section 12.



6. *Clause 5* seeks to amend section 15 of Act 555 to substitute for the existing subsection (1) a new subsection (1) and to introduce new subsections 15(2), (3), (4), (5), (6) and (7) into Act 555 to make provision for the application processes for the Registrar General's approval required under subsection 15(1) of Act 555.

7. *Clause 6* seeks to amend section 19 of Act 555 to substitute for the words "Private higher educational institution" the word "Company" to be in line with the actual practice where the company itself which enters into an arrangement or agreement.

8. *Clause 7* seeks to introduce a new paragraph (e) into subsection 24(2) of Act 555 to enable the Registrar General to request for additional information, particulars and documents in considering application for registration of the private higher educational institution.

9. *Clause 8* seeks to amend subsection 26(2) of Act 555 to ensure the details of the premises registered for its purpose and the approved structure of the course of study or training programme to be made available and accessible to the public by whatever means.

10. *Clause 9* seeks to amend section 28 of Act 555 to ensure that the private higher educational institution applies to the Registrar General before any additional or renovation of the premises is made.

11. *Clause 10* seeks to amend section 30 of Act 555 to substitute the existing section concerning the constitution of the private higher educational institution to ensure better management and to strengthen the governance system of the private higher educational institution.

12. *Clause 11* seeks to amend section 31 of Act 555 to make provision for the appointment of the chief executive in every private higher educational institution by the company, the need for the chief executive to be registered and to strengthen the provision to ensure compliance.

13. *Clause 12* seeks to introduce a new section 33A into Act 555 to require the private higher educational institution to maintain a register.

14. *Clause 13* seeks to introduce a new subsection 36(2) into Act 555 to provide for the offence and penalty for a person not eligible to take part in the management of a private higher educational institution.

15. *Clause 14* seeks to introduce a new subsection 38(1A) into Act 555 to make a new condition for grant of approval by the Registrar General in conducting course of study or training programme which is in compliance with section 24 of Act 555.

16. *Clause 15* seeks to introduce new subsections 40(1F), (1G) and (1H) into Act 555 to enable the Registrar General to add, vary, cancel or alter any of the conditions mentioned in subsection 40(1) of Act 555. The proposed amendment is also to enable the private higher educational institution to apply for variation or alteration of the conditions imposed by the Registrar General.

17. *Clause 16* seeks to introduce a new section 40A into Act 555 to enable the private higher educational institution to renew the Registrar General's approval to conduct course of study not less than six months before the approval expires.

18. *Clause 18* seeks to introduce a new subsection 43(4) into Act 555 to empower the Register General to exempt any student from undertaking the compulsory subjects subject to such conditions as may be prescribed.

19. *Clause 19* seeks to amend section 44 of Act 555 to replace the existing section to clarify that only the private higher educational institution with the status of a University or University College or a foreign branch campus may award a degree.

20. *Clause 20* seeks to introduce a new subsection 46(1A) into Act 555 to enable the disciplinary authority to take disciplinary action and impose disciplinary punishment as provided under any disciplinary rules. The proposed amendment also seeks to introduce a new subsection 46(2A) into Act 555 to enable the disciplinary authority to delegate his disciplinary functions to any employee of the private higher educational institution who is in charge of student affairs to ensure better management of student's disciplinary issues.

21. *Clause 21* seeks to introduce a new subsection 51(4A) into Act 555 to enable the Registrar General to impose any other conditions as he deems fit when issuing the permit to teach.

22. *Clause 22* seeks to insert a new paragraph 54(1)(da) into Act 555 to provide for a new ground in revoking the approval of the establishment of a private higher educational institution.

23. *Clause 23* seeks to amend subsection 61(1) of Act 555 to ensure that the arrangements are made by the private higher educational institution with regard to the continuation of education of students prior to its closing down.

24. *Clause 24* seeks to introduce a new subsection 62(2) into Act 555 which provides that the approval of establishment of a private higher educational institution is deemed to be revoked upon surrender of the certificate of registration.

25. *Clause 25* seeks to introduce a new section 75A into Act 555 which provides that the obligation of the company which establishes the private higher educational institution is to comply with the provisions of Act 555.

26. *Clause 26* seeks to introduce new paragraphs 76(1)(d) and (e) into Act 555 which provide for additional prohibition in the establishment of a private higher educational institution.

27. *Clause 28* seeks to amend section 78 of Act 555 to widen the scope of contravening conditions imposed on any private higher educational institution.

28. *Clause 29* seeks to introduce a new paragraph 79(c) into Act 555 to widen the scope of offence and penalty which relates to any application made under Act 555.

29. *Clause 30* seeks to amend section 82 of Act 555 which deals with the general penalty.

30. *Clause 31* seeks to amend section 83 of Act 555 to increase the amount of fine for a continuing offence committed under Act 555 from five hundred ringgit to one thousand ringgit.

31. *Clause 32* seeks to introduce a new paragraph 85(1)(i) into Act 555 which provides that a person who was purporting in any capacity mentioned in paragraphs 85(1)(a) to (h), or in any manner or to any extent responsible for the management of any of the affairs of such private higher educational institution, or assisting in such management shall be deemed to be guilty of the offence committed by a private higher educational institution under section 85 of Act 555.

32. Other amendments not specifically dealt with in this Statement are amendments which are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

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

[PN(U2)3038]