

A BILL

i n t i t u l e d

An Act to amend the Private Employment Agencies Act 1981.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Private Employment Agencies (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 Employment Agencies Act 1981 [*Act 246*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in the shoulder note, by deleting the words “**and exemption**”;
and

(b) by substituting for subsection (2) the following subsection:

“(2) This Act shall not apply to the Federal Government and State Governments.”.

Amendment of section 3**3. Section 3 of the principal Act is amended—**

- (a) by substituting for the definition of “private employment agency” the following definition:

‘ “private employment agency” means a body corporate which is incorporated under the Companies Act 2016 [Act 777] and is granted a licence under this Act to carry on recruiting activity;’;

- (b) in the definition of “prescribed”, by inserting after the word “Minister” the words “by regulations made under this Act”;

- (c) by substituting for the definition of “fee” the following definition:

‘ “fee” means the fee as specified in the First Schedule;’;

- (d) in the definition of “advertisement”, by substituting for the words “or any document and any announcement made orally or by any means of producing or transmitting light or sound” the words “, invitation or information which has been disseminated, published or displayed in relation to recruiting activities by any means or form including oral or written communication by means of print, electronic or any other media”;

- (e) by substituting for the definition of “Director General” the following definition:

‘ “Director General” means—

- (a) in respect of Peninsular Malaysia, the Director General of Labour appointed under subsection 3(1) of the Employment Act 1955 [Act 265];

- (b) in respect of Sabah, the Director of Labour appointed under subsection 3(1) of the Labour Ordinance [*Sabah Cap. 67*]; or
- (c) in respect of Sarawak, the Director of Labour appointed under subsection 3(1) of the Labour Ordinance [*Sarawak Cap. 76*];;
- (f) by substituting for the definition of “licence” the following definition:

 - ‘ “licence” means a licence granted under section 9A;’;
- (g) by substituting for the definition of “employer” the following definition:

 - ‘ “employer” means any person who engages a private employment agency to recruit an employee for himself;’;
- (h) in the definition of “Minister”, by substituting for the words “labour and manpower” the words “human resources”;
- (i) by inserting after the definition of “private employment agency” the following definition:

 - ‘ “recruiting” means activities which have been carried on by any person, including advertising activities, as intermediaries between an employer and a job seeker to—

 - (a) offer to look for an employment, offer an employment or obtain an employment, for a job seeker; or
 - (b) offer to look for an employee, offer an employee or obtain an employee, for an employer;’;
- (j) by inserting before the definition of “licence” the following definition:

 - ‘ “labour officer” means the officer appointed under subsection 3(2) of the Employment Act 1955, subsection 3(1A) of the Labour Ordinance [*Sabah Cap. 67*] or subsection 3(1A) of the Labour Ordinance [*Sarawak Cap. 76*], as the case may be;’;

- (k) by deleting the definition of “worker”;
- (l) by inserting after the definition of “fee” the following definition:

‘ “job seeker” means a person who is registered with a private employment agency for the purpose of looking for an employment or is offered an employment or has accepted an offer of employment, but not including a non-citizen;’;

- (m) by deleting the definition of “mass media”; and
- (n) by inserting after the definition of “Minister”, the following definition:

‘ “money guarantee” means a guarantee in the form of cash or financial guarantee issued by a licensed bank under the Financial Services Act 2013 [Act 758] or a licensed Islamic bank under the Islamic Financial Services Act 2013 [Act 759] but not including a licensed international Islamic bank, which is deposited pursuant to section 14c;’.

Substitution of section 4

- 4. The principal Act is amended by substituting for section 4 the following section:

“Functions and powers of the Director General

- 4. (1) The Director General shall have the following functions:
 - (a) to administer and regulate all matters relating to the licensing of a private employment agency;
 - (b) to regulate all matters relating to the recruiting activity carried on by a private employment agency including issuing a written direction;
 - (c) to collect, receive, utilize or forfeit money guarantee deposited by a private employment agency;

- (d) to direct a private employment agency to submit any information and documents relating to the private employment agency and its activities;
- (e) to require submission of any information by a private employment agency to assist the Director General in the performance of his functions; and
- (f) to do anything incidental to any of his functions under this Act.

(2) The Director General shall have the powers to do all things necessary or expedient for or in connection with the performance of his functions under this Act.”.

New section 4A

5. The principal Act is amended by inserting after section 4 the following section:

“Delegation of functions and powers of the Director General

4A. (1) Subject to subsection (2) and any limitation as may be prescribed by the Minister, a labour officer may exercise all the function and powers conferred upon the Director General under this Act and every function and power so exercised shall be deemed to have been exercised for the purposes of this Act.

(2) A labour officer shall not exercise any of the functions and powers of the Director General under this Act unless he is in possession of an authority card signed by the Director General authorizing him to exercise such functions and powers.”.

Deletion of section 5

6. The principal Act is amended by deleting section 5.

Substitution of section 6

7. The principal Act is amended by substituting for section 6 the following section:

“Protection against suits and legal proceedings

6. No action, suit, prosecution or any other proceeding shall lie or be brought, instituted or maintained in any court against the Government, the Minister, the Director General or any labour officer in respect of any act, neglect or default done or omitted by it or him in good faith, in such capacity.”.

Substitution of section 7

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

“Requirement for licence

7. (1) No person shall carry on any recruiting activity unless he has been granted a licence under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.”.

Amendment of section 8

9. The principal Act is amended by substituting for section 8 the following section:

“(1) An applicant for a licence under this Act shall submit an application made in accordance with the category of licence as specified in the Second Schedule to the Director General in such form and manner as may be determined by the Director General.

(2) The application shall be accompanied by the processing fee as specified in the First Schedule.

(3) Upon receiving an application under subsection (1), the Director General may require the applicant to provide further particulars, information or documents as he thinks necessary.

(4) If any particulars, information or documents required under subsection (3) are not provided by the applicant within the time determined by the Director General, the application shall be deemed to have been withdrawn without prejudice to a fresh application being made by the applicant.

(5) If an application under subsection (1) is withdrawn at any time before the application is approved or refused, the processing fee paid under subsection (2) shall not be refunded.”.

Substitution of section 9

10. The principal Act is amended by substituting for section 9 the following section:

“Compliance with conditions imposed on licence application

9. (1) The Director General may approve an application for a licence made pursuant to section 8 if the applicant complies with the following conditions:

(a) the applicant is a body corporate incorporated under the Companies Act 2016—

(i) with minimum paid-up capital as specified in the Second Schedule; and

(ii) at least fifty-one per cent of the total shares of the company are held by citizens of Malaysia;

(b) the director of the company, who is named in the application form who is in charge of the affairs of the private employment agency—

(i) is a citizen of Malaysia;

(ii) is not an undischarged bankrupt; and

- (iii) has not been convicted of any offence under any written law in relation to anti-trafficking in persons and forced labour;
 - (c) the applicant has suitable premises for carrying on recruiting activity as determined by the Director General; and
 - (d) the applicant shall have the words “Agensi Pekerjaan” precede the name of the company.
- (2) Notwithstanding subsection (1), the Director General may impose any other conditions as he thinks necessary.”.

New sections 9A and 9B

11. The principal Act is amended by inserting after section 9 the following sections:

“Grant of or refusal to grant licence

9A. (1) Upon receiving and having considered the application for a licence under section 8, the Director General may grant or refuse to grant a licence.

(2) The Director General shall issue to the applicant a written notice of his decision whether to grant or refuse to grant a licence under subsection (1).

(3) If the application under subsection (1) is approved, the applicant shall, within thirty days from the date of the notice under subsection (2), pay the licence fee as specified in the First Schedule and deposit the money guarantee as specified in the Second Schedule for the purposes of granting the licence.

(4) If the applicant fails to pay the licence fee and money guarantee within thirty days as specified under subsection (3), the Director General may refuse to grant the licence without prejudice to a fresh application being made by the applicant.

Power to impose conditions

9B. Subject to this Act, the Director General may impose any conditions as he thinks necessary upon granting a licence under section 9A and may amend the conditions imposed.”.

Substitution of section 10

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

“Duration of licence

10. Every licence granted under section 9A or renewed under paragraph 11(2)(a), unless the licence is suspended or revoked, shall be valid for a period of twenty-four months from the date of—

(a) granting of the licence; or

(b) renewal of the licence,

as the case may be.”.

Amendment of section 11

13. The principal Act is amended by substituting for section 11 the following section:

“(1) Application for renewal of licence shall be submitted by the applicant to the Director General together with the processing fee as specified in the First Schedule at least sixty days before the expiry date and shall be in such form and manner together with any document and information as determined by the Director General.

(2) The Director General may, after giving consideration to the application for the renewal of licence under subsection (1)—

(a) renew the licence, with or without conditions; or

(b) refuse to renew the licence.

(3) If the Director General renews the licence, he shall notify the applicant of his decision by written notice and the applicant shall, within thirty days from the date of the notice, pay the licence fee as specified in the First Schedule and deposit the money guarantee as specified in the Second Schedule.

(4) The Director General shall refuse the application for the renewal of licence if—

- (a) the application is made after the expiry of the licence;
- (b) the application is not made in accordance with subsection (1);
- (c) the applicant fails to remedy the contravention or take the corrective action within the period as may be specified by the Director General pursuant to subsection 11A(6); or
- (d) the applicant fails to comply with any of the provisions of this Act or any regulations made under this Act.

(5) If the renewal of licence is refused under paragraph (2)(b), the Director General shall notify the applicant of his decision by written notice.

(6) An application under subsection (1) may be withdrawn at any time before the application is approved or refused but the fee paid under subsection (1) shall not be refunded.

(7) The Director General may consider any application to renew the licence which is received after the specified period under subsection (1) but before the expiry of the licence.

(8) If the Director General renews the licence under subsection (7), a processing fee as specified in the First Schedule at double the rate shall be imposed for the purpose of the renewal.”.

New section 11A

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

“Suspension or revocation of licence

11A. (1) The Director General may, by written notice to a private employment agency and without any compensation, suspend or revoke a licence granted under this Act if he is satisfied that the private employment agency—

- (a) has contravened or failed to comply with any of the provisions of this Act or any regulations made under this Act;
- (b) has failed to comply with any conditions imposed by the Director General;
- (c) has been convicted of an offence under this Act or the director of the private employment agency has been detained under any written law in relation to anti-trafficking in persons and forced labour;
- (d) has wound up or otherwise dissolved;
- (e) has failed to comply with any written directions issued by the Director General under this Act;
- (f) has induced the granting of the licence by a false representation of fact;
- (g) has used the licence granted under this Act for an unlawful purpose; or
- (h) has ceased to carry on recruiting activities.

(2) The Director General shall not suspend or revoke a licence unless he is satisfied that, after giving the private employment agency an opportunity to make any representation in writing as to why the licence should not be suspended or revoked within the period specified in the written notice, the licence should be suspended or revoked.

(3) After the expiry of the period specified in the written notice and after considering the representation made under subsection (2), the Director General shall decide whether or not to suspend or revoke the licence.

(4) The Director General shall inform a private employment agency of his decision under subsection (3) by written notice.

(5) The private employment agency shall after receipt of the written notice on the suspension or revocation under subsection (4)—

- (a) advertise the notice of cessation of operation in at least one national language newspaper having nationwide circulation;
- (b) display the notice of cessation of operation in a conspicuous space at the private employment agency's premises; and
- (c) publish in the private employment agency's website continuously on the cessation of operation, if any.

(6) Where a licence has been suspended under subsection (3), the Director General shall require the private employment agency to remedy the contravention or to take corrective action within the period as specified by the Director General.

(7) Where the Director General is satisfied that the private employment agency has failed to remedy the contravention or take corrective action as required under subsection (6), the Director General shall revoke the licence of the private employment agency.

(8) A private employment agency may, within twenty-one days from the date of receipt of a revocation notice from the Director General, appeal to the Minister.

(9) Where a licence—

- (a) has been revoked, the licence shall have no effect from the date of revocation and the private employment agency shall within fourteen days from the date of revocation of the licence, surrender the licence to the Director General; or
- (b) has been suspended, the licence shall have no effect during the period of suspension.”.

Amendment of section 13

15. Section 13 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1);
- (b) in the renumbered subsection (1), by substituting for the words “where the business is carried on” the words “as specified in the licence”; and
- (c) by inserting after the renumbered subsection (1) the following subsection:

“(2) Any private employment agency which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.”.

New sections 13A, 13B, 13C, 13D, 13E, 13F and 13G

16. The principal Act is amended by inserting after section 13 the following sections:

“Replacement of licence

13A. (1) If the licence of a private employment agency is lost, destroyed or damaged, the private employment agency shall apply for a copy of the licence from the Director General in such form and manner as determined by the Director General.

(2) The application under subsection (1) shall be accompanied by the processing fee for replacing the licence as specified in the First Schedule.

(3) Any private employment agency which contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Assignment or transfer of licence

13b. (1) A private employment agency shall not assign or transfer any licence granted under this Act to any person unless with the prior written approval of the Director General.

(2) Any private employment agency which contravenes subsection (1) commits 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 two years or to both.

Rent or lease of licence

13c. (1) A private employment agency shall not rent out or lease any licence granted under this Act to any person.

(2) Any private employment agency which contravenes subsection (1) commits 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 two years or to both.

Identification document

13d. (1) A private employment agency which has been granted a licence under section 9A shall apply to the Director General, in such form and manner as determined by the Director General, for an identification document of its employees who carry out recruiting activities.

(2) The private employment agency shall give the identification document to its employees who carry out recruiting activities.

(3) The Director General may impose any condition for the purpose of granting an identification document to the private employment agency.

(4) Any private employment agency which contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(5) Any employee of a private employment agency who fails to produce an identification document when required while carrying out any recruiting activity commits an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

(6) If an identification document is lost, destroyed or damaged, the private employment agency shall apply for a replacement of the identification document to the Director General and the application shall be accompanied by the processing fee as specified in the First Schedule.

(7) Any private employment agency which contravenes subsection (6) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Establishment of branch

13E. (1) A private employment agency which intends to establish a branch shall make an application to the Director General for a licence to carry out recruiting activities in the branch.

(2) The conditions as specified under section 9 shall apply for the application of licence under this section.

(3) Every application of licence for establishment of the branch shall be made to the Director General in such form and manner as determined by the Director General and shall be accompanied by the processing fee as specified in the First Schedule.

(4) The Director General shall issue the applicant a written notice of his decision whether to grant or refuse to grant a licence under subsection (1).

(5) If the application under subsection (1) is approved, the applicant shall, within thirty days from the date of the notice under subsection (4), pay the licence fee as specified in the First Schedule and deposit the money guarantee as specified in the Second Schedule.

(6) If the applicant fails to pay the licence fee and money guarantee within thirty days as specified under subsection (5), the Director General may refuse to grant the licence without prejudice to a fresh application being made by the applicant.

(7) Any private employment agency which contravenes subsection (1), commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for three years or to both.

Application for changing category of licence

13F. (1) A private employment agency may apply to the Director General to change its category of licence in accordance with the categories of licences as specified in the Second Schedule in such form and manner as determined by the Director General and the application shall be accompanied by the processing fee as specified in the First Schedule.

(2) The Director General may, after considering the application made under subsection (1), approve or refuse the application.

(3) If the Director General approves such application under subsection (2), the Director General shall issue a written notice to the applicant, and within a period of thirty days from the date of a written notice, the applicant shall pay the licence fee as specified in the First Schedule and deposit the money guarantee as specified in the Second Schedule.

(4) If the applicant fails to pay the licence fee and money guarantee within thirty days as specified under subsection (3), the Director General may refuse to grant the licence without prejudice to a fresh application being made by the applicant.

(5) If the Director General refuses the application under subsection (2), the Director General shall notify the applicant by a written notice of his decision.

Notice of cessation of operation

13G. (1) A private employment agency which intends to cease operation at any time before the date of the expiry of the licence or does not intend to renew the licence shall, within the period of at least sixty days from the date of cessation of operation—

- (a) submit a written notice to the Director General;
- (b) advertise the notice of cessation of operation once in at least one daily national language newspaper nationwide;
- (c) display the notice of cessation of operation in an appropriate and conspicuous area of the premises of the private employment agency until the last date of the operation; and
- (d) publish the notice of cessation of operation on its website continuously until the date of cessation, if any.

(2) Any private employment agency which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a period not exceeding two years or to both.”.

Amendment of section 14

17. The principal Act is amended—

- (a) in subsection (1)—
 - (i) by inserting after the words “any service rendered a fee” the words “on the job seeker and non-citizen employee”; and
 - (ii) by substituting for the words “prescribed in the Schedule” the words “as specified in the First Schedule”; and
- (b) by deleting subsection (2).

New sections 14A, 14B, 14C, 14D, 14E and 14F

18. The principal Act is amended by inserting after section 14 the following sections:

“Registration fee

14A. A private employment agency may impose registration fee as specified in the First Schedule on any job seeker for all categories of employment within or outside Malaysia upon the registration of the job seeker with the private employment agency.

Placement fee

14B. (1) A private employment agency may impose placement fee as specified in the First Schedule on any job seeker or non-citizen employee upon the acceptance of an offer of employment by them.

(2) The placement fee imposed under subsection (1) may be paid by an employer of the job seeker or non-citizen employee.

(3) If the placement fee is paid in accordance with subsection (2), no placement fee shall be demanded by the private employment agency from the job seeker or non-citizen employee.

Money guarantee

14C. Upon the grant of a licence by the Director General under section 9A, a private employment agency shall deposit a money guarantee to the Director General in accordance with the category of licence as specified in the Second Schedule.

Utilization of money guarantee by the Director General

14D. (1) The Director General may, upon giving prior notice to the private employment agency, utilize the money guarantee deposited under this Act for the purpose of ensuring the

responsibilities of the private employment agency to the job seeker, non-citizen employee or the employer has been fulfilled.

(2) If the Director General uses the money guarantee under subsection (1), the private employment agency shall issue additional deposit in the form of money guarantee so that the total sum of the money guarantee shall be maintained at all times to be of the value as specified in the Second Schedule after receiving the notice for additional deposit from the Director General.

(3) If the private employment agency fails to deposit the additional money guarantee within the period specified in the notice referred to in subsection (2) issued by the Director General, the Director General may issue a notice to suspend the private employment agency's licence.

(4) If the private employment agency fails to deposit the additional money guarantee within the period as specified in the suspension notice, the Director General shall revoke the private employment agency's licence.

Return of money guarantee

14E. (1) The Director General may return a money guarantee to a private employment agency, subject to any deduction, upon a written application from the private employment agency when—

- (a) the private employment agency has ceased operation;
- (b) the licence of the private employment agency has been revoked; or
- (c) the licence of the private employment agency has expired and no application for renewal of licence has been made by the private employment agency.

(2) The Director General may impose any terms and conditions on the private employment agency upon receiving the application under subsection (1) for the purpose of approval.

(3) Upon the approval of the application under subsection (2), the money guarantee shall be returned within ninety days to the private employment agency from the date of the approval.

(4) Notwithstanding subsection (2), the Director General may, return the money guarantee to a private employment agency as soon as possible where there is a change in the category of licence of the private employment agency.

Forfeiture of money guarantee

14f. (1) Where a private employment agency has ceased operation or its licence has been revoked or has expired, the private employment agency shall claim its money guarantee within twelve months from the date of the cessation of operation or expiration of licence.

(2) Where the private employment agency fails to claim its money guarantee within the period specified in subsection (1), the Director General, shall, by notification in the *Gazette*, notify the relevant private employment agency that their money guarantee will be forfeited after the expiration of three months from the date of the *Gazette*.

(3) The money guarantee which is forfeited under subsection (2) shall be paid into the Federal Consolidated Fund.”.

Deletion of sections 15, 16 and 17

19. The principal Act is amended by deleting sections 15, 16 and 17.

Amendment of section 18

20. Section 18 of the principal Act is amended—

(a) in paragraph (1)(b), by substituting for the words “vacancies, qualifications thereof and terms and conditions of employment” the words “the advertisement”; and

- (b) in subsection (2), by substituting for the words “in breach of subsection (1) shall be guilty of an offence under this Act” the words “which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding one year or to both.”.

Substitution of section 19

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

“Preparation, maintenance and keeping of records

19. (1) Every private employment agency shall prepare, maintain and keep records as determined by the Director General as follows:

- (a) records of registration of job seekers;
- (b) records of registration of employers;
- (c) records of vacancies of employment;
- (d) records of placement of job seekers and for non-citizen employees;
- (e) records of fees collected; and
- (f) any other records as may be required by the Director General.

(2) A private employment agency shall keep the records for a period of not less than six years from the date after it is recorded.

(3) A private employment agency shall submit all the records under subsection (1) if the Director General, by written direction, requires the private employment agency to submit such records.

(4) A private employment agency which contravenes subsections (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.”.

New section 19A

22. The principal Act is amended by inserting after section 19 the following section:

“Notification of change in information furnished

19A. A private employment agency shall notify the Director General in writing of the occurrence of any material change in any information furnished to the Director General in relation to—

- (a) information relating to all the records under section 19;
- (b) the director who is named in the application form who is in charge of the affairs of the private employment agency; and
- (c) any other information or a written explanation as required by the Director General, in respect of any information furnished by the private employment agency.”.

Deletion of section 20

23. The principal Act is amended by deleting section 20.

Substitution of section 21

24. The principal Act is amended by substituting for section 21 the following section:

“Powers of enforcement, inspection and investigation

21. The Director General or any labour officer under section 4A shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593], in relation to enforcement, inspection and investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.”.

Deletion of section 22

25. The principal Act is amended by deleting section 22.

Deletion of sections 24 and 25

26. The principal Act is amended by deleting sections 24 and 25.

Amendment of section 26

27. Section 26 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1);
- (b) in the renumbered subsection (1), by deleting the words “whose decision shall be final and shall not be questioned in any court of law”; and
- (c) by inserting after the renumbered subsection (1) the following subsections:

“(2) The Minister may, after considering the appeal under subsection (1), confirm, reverse or vary the decision of the Director General.

(3) For the avoidance of doubt, an appeal made under subsection (1), does not suspend the decision being appealed against.”.

Substitution of section 27

28. The principal Act is amended by substituting for section 27 the following section:

“Power to make regulations

27. (1) The Minister may make regulations as are necessary or expedient for the purposes of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:

- (a) prescribing any matter which is required under this Act to be prescribed; or
- (b) prescribing a fine not exceeding two hundred and fifty thousand ringgit for the contravention of or failure to comply with any of the provisions of any regulations made under this Act.”.

New section 27A

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

“Power to amend Schedules

27A. The Minister may, by order published in the *Gazette*, amend any of the Schedules.”.

Substitution of section 28

30. The principal Act is amended by substituting for section 28 the following section:

“Offences and penalties

28. Any person who—

- (a) imposes or receives personally or through another person, for his services, any amount greater than the fee as specified in the First Schedule;
- (b) knowingly deceives any job seekers, employers or non-citizen employees by giving false information;
or

- (c) contravenes any provisions of this Act or any subsidiary legislation made under this Act,

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.”.

Deletion of section 29

- 31.** The principal Act is amended by deleting section 29.

Substitution of section 30

- 32.** The principal Act is amended by substituting for section 30 the following section:

“Offence by body corporate

30. Any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate commits an offence under this Act, may be charged severally or jointly in the same proceedings with the body corporate and if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to, the nature of his functions in that capacity and to all circumstances, he proves—

- (a) that the offence was committed without his knowledge, consent or connivance; and
- (b) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.”.

Amendment of section 31

- 33.** Section 31 of the principal Act is amended by substituting for the words “by or on behalf of the Public Prosecutor or by a police officer not below the rank of Inspector” the words “with the written consent of the Public Prosecutor”.

Substitution of section 32

34. The principal Act is amended by substituting for section 32 the following section:

“Power to compound offences

32. (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

- (a) any offence under this Act and any regulations made under the Act that may be compounded;
- (b) the criteria for compounding such offence; and
- (c) the method and procedure for compounding such offence.

(2) The Director General may, with the consent in writing of the Public Prosecutor, compound any offence, except offences under subsections 7(2), 13B(2), 13C(2), 13E(7), 13G(2), 18(2) and section 28 committed by any person under this Act or any regulations made under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Director General of such amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in his written 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) If the amount specified in the offer is not paid within the time specified in the offer or such extended time as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(5) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any document or thing seized in connection with the offence may be released by the Director General, subject to such terms as he thinks fit.

(6) All sums of money received by the Director General under this section shall be paid into and form part of the Federal Consolidated Fund.”.

Substitution of Schedule

35. The principal Act is amended by substituting for the Schedule the following Schedules:

“FIRST SCHEDULE

[Sections 8, 9A, 11, 13A, 13D, 13E, 13F, 14, 14A, 14B, 28]

Types of Fee	Total Fee
For establishment of private employment agency	
(a) Licence Fee	RM500
(b) Processing Fees	
(i) Application for licence	RM300
(ii) Renewal of licence	RM100
(iii) Application for licence for a branch	RM100
(iv) Replacement of licence	RM100
(v) Application for changing category of licence	RM100
(vi) Identification document	RM50
(vii) Replacement of identification document	RM50

Types of Fee	Total Fee
Fee imposed on job seeker or non-citizen employee	
<p>(a) Registration Fees</p> <p>(i) Fee imposed for registration of all categories of employment within Malaysia to a job seeker, the registration to be valid for all categories of employment for a period of twelve months.</p> <p>(ii) Fee imposed for registration of all categories of employment outside Malaysia to a job seeker, the registration to be valid for all categories of employment for a period of six months.</p>	<p>RM30 and below</p> <p>RM50 and below</p>
<p>(b) Placement Fees</p> <p>(i) Job seeker who is employed within Malaysia</p> <p>(ii) Job seeker who is employed outside Malaysia</p> <p>(iii) Non-citizen employee who is employed within Malaysia</p>	<p>Not more than 25% of the basic wages for the first monthly wages</p> <p>Not more than 25% of the basic wages for the first monthly wages</p> <p>Not more than one month of the basic wages for the first monthly wages</p>

SECOND SCHEDULE

[Sections 8, 9, 9A, 11, 13E, 13F, 14C, 14D]

Category of Licence	Paid-up capital	Money Guarantee	Money Guarantee to establish a new branch
Licence A – Job placement for a job seeker within Malaysia	RM50,000	RM5,000	RM5,000

Category of Licence	Paid-up capital	Money Guarantee	Money Guarantee to establish a new branch
Licence B – Job placement for a job seeker within and outside Malaysia, and foreign domestic servant within Malaysia	RM100,000	RM100,000	RM30,000
Licence C – Job placement for a job seeker within and outside Malaysia, and non-citizen employee within Malaysia	RM250,000	RM250,000	RM100,000

Savings and transitional

36. (1) Any licence issued, or approval or permission granted under the principal Act before the commencement of this Act shall continue in full force until the licence expires, is amended, suspended or revoked, or the approval or permission expires or is revoked under the principal Act, for which purpose only the principal Act shall continue to be in full force and effect.

(2) All rules and regulations, forms, directions and letters of authorisation made, issued or granted under the principal Act shall, to the extent that the rules and regulations, forms, directions and letters of authorisation are consistent with this Act, continue in force until such rules and regulations, forms, directions and letters of authorisation are revoked or amended.

(3) Any investigation, trial or proceedings done, taken or commenced under the principal Act immediately before the coming into operation of this Act shall, on the coming into operation of this Act, be dealt with as if the principal Act had not been amended by this Act.

(4) Any private employment agency which, on the date of the coming into operation of this Act, is undertaking an activity to which this Act applies shall, within six months from the date of the coming into operation of this Act, apply for a licence under this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Private Employment Agencies Act 1981 (“Act 246”). The proposed amendment seeks to make the provisions of the Act more comprehensive by setting out the procedure for application for licence, the conditions and fees imposed and other related matters. The proposed amendment also seeks to enhance the enforcement and offence provisions.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 246 to provide that the Act shall be applicable to all private employment agencies which carry out recruiting activities. However, this Act shall not apply to the Federal Government and State Governments.

4. *Clause 3* seeks to amend section 3 of Act 246 to introduce new definitions and to amend certain existing definitions.

5. *Clause 4* seeks to amend section 4 of Act 246 to provide for the functions and powers of the Director General.

6. *Clause 5* seeks to introduce a new section 4A into Act 246 to provide that the Director General may delegate his functions and power under Act 246 to a labour officer.

7. *Clause 7* seeks to amend section 6 Act 246 to provide for the protection of the Government, the Minister, the Director General or any labour officer from any suit and any other legal proceedings subject to the qualifications as stated in the provision.

8. *Clause 8* seeks to amend section 7 of Act 246 to require a private employment agency to obtain a valid licence in order to carry out recruiting activities.

9. *Clause 9* seeks to amend section 8 of Act 246 to provide more comprehensive procedures for the application of licence under this Act.

10. *Clause 10* seeks to amend section 9 of Act 246 to require a private employment agency to comply with the conditions laid down by the Director General under this Act for the purpose of approval of an application for a licence.

11. *Clause 11* seeks to introduce new sections 9A and 9B into Act 246. The new sections 9A and 9B empower the Director General to decide whether to grant or refuse a licence under this Act and to impose any conditions on a licence upon granting the licence.

12. *Clause 12* seeks to substitute section 10 of Act 246 to provide for the duration of licence.

13. *Clause 13* seeks to amend section 11 of Act 246 to require a private employment agency to renew its licence in compliance with the conditions specified under this proposed amendment.

14. *Clause 14* seeks to introduce a new section 11A into Act 246. The new section 11A seeks to empower the Director General to suspend or revoke the licence of any private employment agency.

15. *Clause 15* seeks to amend section 13 of Act 246 to impose obligation on a private employment agency to display its licence in a conspicuous place in the premises and to provide for penalty provision for the contravention of or failure to comply with such obligation.

16. *Clause 16* seeks to introduce new sections 13A, 13B, 13C, 13D, 13E, 13F and 13G into Act 246. The new section 13A requires a private employment agency to apply for the replacement of a licence when it is lost, destroyed or damaged whilst the new section 13B seeks to prevent a private employment agency from assigning or transferring ownership of its licence to any person without the consent of the Director General. Further, the new section 13C seeks to prevent a private employment agency from renting out or leasing the licence to any person and the new section 13D seeks to require a private employment agency to apply to the Director General for an identification document for their employees who carry out recruiting activities.

The new sections 13E, 13F and 13G seek to provide for the requirement on a private employment agency to obtain a licence to establish branches, for the application for changing the category of licence by the private employment agency and to require a private employment agency to notify the Director General if the private employment agency intends to cease its operation before the expiry of the licence, respectively.

17. *Clause 17* seeks to amend section 14 of Act 246 to prevent a private employment agency from imposing any other fees on a job seeker and non-citizen employee other than as specified in the First Schedule.

18. *Clause 18* seeks to introduce new sections 14A, 14B, 14C, 14D, 14E and 14F into Act 246. The new sections 14A and 14B seek to enable a private employment agency to impose registration and placement fees on a job seeker or non-citizen employee as specified in the proposed First Schedule of Act 246, respectively.

The new section 14C seeks to require a private employment agency to furnish a money guarantee as specified in the proposed Second Schedule of this Act. The new section 14D empowers the Director General to utilize the money guarantee deposited by a private employment agency if the agency fails to fulfil its responsibilities towards a job seeker, non-citizen employee and employer.

The new section 14E seeks to provide for the return of the money guarantee to the private employment agency that has ceased operations, has had its licence revoked or the licence has expired. The new section 14F empowers the Director General to forfeit the money guarantee where a private employment agency fails to claim its money guarantee in the event where it has ceased operations, had its licence revoked or the licence has expired.

19. *Clause 19* seeks to delete sections 15, 16 and 17 of Act 246. Sections 15 and 17 are deleted as the new section 9B now empowers the Director General to impose any condition upon the granting of a licence. Section 16 is deleted because the provision in respect of recruitment of a job seeker outside Malaysia is provided in section 8 and the proposed Second Schedule of this Act.
20. *Clause 20* seeks to amend section 18 of Act 246 to provide higher penalties under Act 246.
21. *Clause 21* seeks to amend section 19 of Act 46 to impose an obligation on a private employment agency to prepare, maintain and keep the records as determined by the Director General.
22. *Clause 22* seeks to introduce a new section 19A into Act 246 to impose an obligation on a private employment agency to notify the Director General of the occurrence of any material change in any information furnished to the Director General.
23. *Clause 24* seeks to amend section 21 of Act 246 to empower the Director General and his officers with the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [*Act 593*], in relation to enforcement, inspection and investigation.
24. *Clauses 25 and 26* seek to delete sections 22, 24 and 25. Section 22 is deleted as a private employment agency is no longer deemed to be a public place. Section 24 is deleted because the forfeiture of money guarantee is now provided in the new section 14F. Section 25 is deleted because revocation of licence is now provided in the new section 11A.
25. *Clause 27* seeks to amend section 26 of Act 246 to outline the appeal process by an aggrieved party against a decision made by the Director General under Act 246.
26. *Clause 28* seeks to amend section 27 of Act 246 to empower the Minister to prescribe a fine not exceeding two hundred and fifty thousand ringgit for contravention of or failure to comply with any provisions of any regulations made under Act 246.
27. *Clause 29* seeks to introduce a new section 27A into Act 246 to empower the Minister to amend the Schedules by an order published in the *Gazette*.
28. *Clause 30* seeks to amend section 28 of Act 246 to provide the offences and penalties under Act 246.
29. *Clause 32* seeks to amend section 30 of Act 246 to provide for offences committed by a body corporate.
30. *Clause 33* seeks to amend section 31 of Act 246 to provide that proceeding for offences against the Act or against any regulations made shall not be instituted or conducted except after obtaining the consent of the Public Prosecutor.

31. *Clause 34* seeks to amend section 32 of Act 246 to empower the Minister with the approval of the Public Prosecutor to make regulations prescribing any offence under Act 246 to be compoundable as well as the criteria, method and procedure for compounding such offence. This amendment also seeks to empower the Director General to compound such offences with the consent in writing of the Public Prosecutor.

32. *Clause 35* seeks to amend Act 246 by introducing a new First Schedule and Second Schedule. The new First Schedule seeks to provide for the types of fees charged to a private employment agency under Act 246. The new Second Schedule seeks to provide for the categories of the licence, based on the paid-up capital of a private employment agency and the scope of the job placement carried out and the amount of a money guarantee imposed on the private employment agency.

33. *Clause 36* deals with savings and transitional provisions.

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

FINANCIAL IMPLICATIONS

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

[PN(U2)2887]