



LAWS OF MALAYSIA

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Act 246

PRIVATE EMPLOYMENT AGENCIES ACT 1981

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**PRIVATE EMPLOYMENT AGENCIES
ACT 1981**

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LAWS OF MALAYSIA**Act 246****PRIVATE EMPLOYMENT AGENCIES ACT 1981**

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LAWS OF MALAYSIA

Act 246

PRIVATE EMPLOYMENT AGENCIES ACT 1981

An Act to regulate private employment agencies in Malaysia.

[1 August 1981, P.U. (B) 427/1981]

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:

Short title

1. This Act may be cited as the Private Employment Agencies Act 1981.

Application and exemption

2. (1) This Act shall apply throughout Malaysia.

(2) The Minister may by order publish in the *Gazette* and subject to such conditions as he may impose, exempt from the whole or any part of this Act any area, occupation, organization or class of persons.

Interpretation

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

“advertisement” shall include any notice, circular, pamphlet or any document and any announcement made orally or by any means of producing or transmitting light or sound;

“Director General” means the Director General of Labour;

“employer” means any person who engages a worker and includes the agent, manager or factor of such employer;

“fee” means payment in whatever form for services rendered;

“licence” means licence issued under this Act;

“mass media” means any medium used by private employment agencies to advertise;

“Minister” means the Minister charged with responsibility for labour and manpower;

“prescribed” means prescribed by the Minister;

“private employment agency” means—

- (a) an employment agency conducted with a view to profit, that is to say, any person, company, institution, agency or other organization which acts as intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers;
- (b) an employment agency not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organization which, though not conducted with a view to derive any pecuniary or other material advantage, levies from either employer or worker from the above service an entrance fee, a periodical contribution or any other charge;

“worker” means any person who works for hire or reward, whether as apprentice or not, and includes any person seeking such work.

Appointment of officers

4. (1) The Minister may appoint a Director General and such other officers as he considers necessary for the purposes of carrying out this Act.

(2) Subject to such limitations, if any, as may be prescribed by regulations made under this Act, any officer appointed under subsection (1) shall perform all the duties imposed and may exercise all the powers conferred upon the Director General by this Act and

every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Act.

All officers to be public servants

5. All officers appointed under section 4 shall be deemed to be public servants for the purposes of the Penal Code [*Act 574*].

Protection of public servants

6. No suit shall lie against any public servant for anything done or omitted to be done by him in good faith without negligence and in intended exercise of any power or performance of any duty provided or imposed by this Act.

Necessity to obtain a licence

7. (1) No person shall carry on the business of a private employment agency except under the authority of a valid licence issued by the Director General:

Provided, however, that it shall not be a contravention of the provisions of this section if a person who has commenced to carry on the business of a private employment agency before the appointed date and who has applied for a licence under this Act within the time allowed by subsection 8(2) continues to carry on such business until the determination of his application for the licence.

(2) The authority of a licence issued under this Act does not absolve any person from complying with the provisions of any other written law for the time being in force.

Application for a licence

8. (1) Every application for a licence shall be in the prescribed form and shall be accompanied with the licence fee as specified in the Schedule.

(2) Every person carrying on the business of a private employment agency on the appointed date shall apply to the Director General for a licence within one month after that date.

Conditions to be fulfilled for the grant of a licence

9. No licence to carry on the business of a private employment agency shall be granted unless—

- (a) where such business is to be carried on by an individual, he is a citizen of Malaysia;
- (b) where such business is to be carried on by a partnership, the partners are citizens of Malaysia;
- (c) where such business is to be carried on by a company, the majority of the shares in the capital of the company are held by citizens of Malaysia;
- (d) the person in-charge of and every employee or agent whose duties are connected with such business—
 - (i) is a person of good character;
 - (ii) is not an undischarged bankrupt; and
 - (iii) has not been convicted of an offence and sentenced to more than one year imprisonment or a fine of more than two thousand ringgit;
- (e) there are suitable premises for carrying on such business;
- (f) such individual who, or the partnership or company which, is to carry on such business undertakes that such business will be carried on in a morally and irreproachable manner;
- (g) such individual, firm or company enters into a bond with the Director General, with two sureties, in such sum as may be prescribed by the Minister in the Schedule. The Minister may prescribe separate sum for employment within Malaysia and for employment abroad and may at any time vary the bond prescribed in the Schedule; and
- (h) such other conditions as may be prescribed for the purposes of this section are fulfilled.

Form and duration of licence

10. Every licence shall be in the prescribed form and unless it is cancelled earlier, shall be in force for a period of twelve months from the date of its issue.

Renewal of licence

11. Application for renewal of licence shall be submitted at least two months before the expiry date and shall be in such form and manner as may be prescribed by the Minister.

Place of business to be as stated in licence

12. A licenced private employment agency shall carry on its business in such place as stated in the licence and shall not change its place of business without the prior permission in writing of the Director General.

Display of licence

13. A licenced private employment agency shall display its licence in a conspicuous place in the premises where the business is carried on.

Fees for services

14. (1) No private employment agency shall charge for any service rendered a fee other than or in excess of that prescribed in the Schedule and for every fee received a receipt shall be issued.

(2) The Minister may by order publish in the *Gazette*, amend the fees prescribed in the Schedule.

Placement injurious to the public interest

15. No private employment agency shall place or seek to place any person in any occupation injurious to the public interest or knowingly sends, directs or takes any person to any place for immoral purposes.

Endorsement for overseas recruitment

16. (1) A licence issued under subsection 7(1) may be endorsed by the Director General for purposes of recruiting persons residing in Malaysia for overseas employment provided that a bond as prescribed in the Schedule is placed with the Director General.

(2) An endorsement shall be valid for the same duration as the original licence.

(3) Prior to registering or recruiting any person residing in Malaysia for overseas employment, a private employment agency shall furnish the Director General with the following:

- (a) the name and address of the prospective employer;
- (b) satisfactory evidence of specific requirement for workers by an overseas employer or employers;
- (c) the category or categories of employment and the number of workers required in respect of each category;
- (d) the terms and conditions of employment to be offered;
- (e) proposed employment agreement to be signed by the prospective worker and employer; and
- (f) any other information as may be required by the Director General.

(4) The Director General may give directives and impose conditions as he deems fit bearing in mind the prevailing local and international labour market situations.

Restriction on registration or recruitment

17. The Minister may by order publish in the *Gazette*, prescribe that a private employment agency may not register the particular category of employment including employment for overseas recruitment.

Advertisement

18. (1) No private employment agency may advertise in any mass media unless the advertisement contains—

- (a) the licence number; and
- (b) correct information relating to vacancies, qualifications thereof and terms and conditions of employment.

(2) Any private employment agency in breach of subsection (1) shall be guilty of an offence under this Act.

Maintenance of records

19. Every private employment agency shall maintain—

- (a) records of registration showing the names, addresses, identity card numbers and qualifications of the workers;
- (b) records of vacancies and all aspects relating to the vacancies, that is, the number of vacancies, the qualifications of candidates required, the names and addresses of the employers notifying the vacancies, the places of employment where the vacancies occur and the terms and conditions of employment;
- (c) records of placement of workers;
- (d) records of fees collected; and
- (e) any other records as may be required by the Director General from time to time.

Returns

20. The Director General may at any time by written direction require a private employment agency to send him in the manner and within the period specified in such direction—

- (a) a return pertaining to any or all records required to be maintained under section 19;
- (b) a notification of changes in any person in-charge of or employed by or is an agent of the agency;
- (c) a return of registrations and placements of persons for employment overseas;
- (d) a return containing any other particulars as he may require in relation to the business of the agency; and
- (e) such written information or written explanation as he may require in respect of any particulars stated in any return sent by such agency.

Power to enter and inspect premises

21. (1) The Director General or any officer duly authorized in writing by the Director General shall have power to enter at any

reasonable time any premises reasonably suspected of being used for the purposes of an employment agency without a licence or where he has reasonable grounds for believing that the business of a private employment agency is in contravention with this Act and shall inspect such premises to make any inquiry which he considers necessary in relation to any matter within the provisions of this Act.

(2) In the course of an inspection under this section the Director General may—

- (a) put questions concerning the business of the private employment agency to the person in-charge of such agency and to any other person whose evidence he may consider necessary, and all such persons shall be legally bound to answer such questions truthfully to the best of their ability;
- (b) require the person in-charge of the agency to produce before him all or any of the records required to be kept under this Act;
- (c) seize or take copies of any record produced before him under paragraph (b); and
- (d) seize any other record or document in the premises of such agency or in the possession of any person found in such premises where the Director General believes that an offence under this Act has been committed.

(3) A person may refuse to comply with any demand or order by an authorized officer acting or purporting to act under this Act if the officer refuses on demand to declare his identity or certificate of authority, as the case may be.

(4) Any person who obstructs or interferes the Director General or any officer duly authorized in writing by the Director General in the exercise of any power or performance of any duty conferred under this Act shall be guilty of an offence.

Private employment agency deemed to be a public place

22. For the purposes of section 21 of the Minor Offences Act 1955 [Act 336], every private employment agency shall be deemed to be a public place.

Power to issue directions

23. The Director General may issue to any private employment agency such directions as he may think necessary for the purposes of ensuring that the running of such agency is in accordance with the provisions of this Act, and any such agency to whom any such direction is issued shall comply with it within such time as stated therein.

Disposal of bond

24. The Director General shall have discretion in the disposal of the bond placed under paragraph 9(g) for the satisfaction of claims which might arise in connection with such business.

Cancellation of licence

25. (1) The Director General may cancel any licence if he is satisfied that the licensee—

- (i) has contravened any of the provisions of this Act or of any regulation made thereunder or of any bond or undertaking entered into by the licensee under this Act; or
- (ii) has been convicted of an offence under this Act; or
- (iii) has not complied with any direction issued by the Director General to the licensee under this Act; or
- (iv) has furnished in any application, or in any return, or in any written information or written explanation, sent by the licensee under this Act, any particulars which to the knowledge of the licensee are false or incorrect:

Provided that the Director General shall give the licensee not less than two week's notice of such intended cancellation, stating the grounds thereof and the licensee may show cause as to why such cancellation should not be done.

(2) Where an application for the renewal of a licence is refused or a licence has been cancelled and no appeal against the refusal or cancellation is made, the licensee shall forthwith surrender the licence to the Director General and if he fails so to do he shall be guilty of an offence under this Act.

Appeal

26. Any person aggrieved by the decision of the Director General under this Act shall within thirty days of the notification of such decision appeal in writing to the Minister whose decision shall be final and shall not be questioned in any court of law.

Regulations

27. The Minister may by notification in the *Gazette* make regulations—

- (a) in respect of all matters authorized by this Act to be prescribed; and
- (b) for the purpose of carrying out or giving effect to the principles and provisions of this Act.

Offences

28. Every person who—

- (a) contravenes any of the provisions of this Act or of any regulation made thereunder; or
- (b) furnishes any return, written information or written explanation containing any particulars which to his knowledge are false or incorrect,

shall be guilty of an offence under this Act.

Miscellaneous offences

29. Any licensee who—

- (a) charges or receives himself or through another person, for his services, any sum greater than the prescribed fee; or
- (b) knowingly and voluntarily deceives any worker by giving false information,

shall be guilty of an offence under this Act.

Offences by bodies of persons

30. Where an offence under this Act is committed by a body of persons, then—

- (a) if that body is a body corporate, every director of that body corporate shall be deemed to be guilty of an offence; and
- (b) if that body is a partnership, every partner shall be deemed to be guilty of an offence:

Provided, however, that no such director or partner shall be deemed to be guilty of an offence under this Act if he proves that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission of that offence.

Prosecution

31. Proceedings for offences against this Act or against any regulation made thereunder shall not be instituted or conducted except by or on behalf of the Public Prosecutor or by a police officer not below the rank of Inspector.

Penalty

32. (1) Any person who is guilty of an offence under section 7 shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a period not exceeding three years or to both.

(2) Any person who is guilty of an offence under section 15 shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a period not exceeding two years or to both.

(3) Any person who is guilty of an offence under section 18 shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a period not exceeding one year or to both.

(4) Any person who is guilty of any offence under this Act shall, on conviction, where no other specific penalty is provided under this Act, be liable to a fine not exceeding two thousand

ringgit or to imprisonment for a period not exceeding six months or to both.

SCHEDULE

(i) <i>Licence Fee</i>	RM25
(ii) <i>Bond</i>	
(i) <i>Local Employment</i>	
Cash Bond	RM1,000
Surety Bond	RM5,000
(ii) <i>Overseas Employment</i>	
Cash Bond	RM5,000
Surety Bond	RM10,000
(iii) <i>Registration Fees</i>	
(i) Fee charged for registration of all categories of local employment, the registration to be valid for multiple employment and for a period of 12 months	Not more than RM12
(ii) Fee charged for registration of all categories of overseas employment, the registration to be valid for multiple employment	Not more than RM20
(iv) <i>Placement Fees</i>	
(i) Fee charged for local placement	Not more than 20% of initial month's pay
(ii) Fee charged for overseas placement	Not more than 25% of initial month's pay

Provided where employers have already paid the agency for the services rendered, the worker shall not be charged on placement.

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LIST OF AMENDMENTS

Amending law	Short title	In force from
P.U. (A) 213/1981	Private Employment Agencies (Amendment) Order 1981	24-07-1981
Act 1246	Private Employment Agencies (Amendment) Act 2005	05-09-2005

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LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
3	Act A1246	05-09-2005
4	Act A1246	05-09-2005
Schedule	P.U. (A) 213/1981	24-07-1981

