



LAWS OF MALAYSIA

REPRINT

Act 556

LEMBAGA AKREDITASI NEGARA ACT 1996

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

LEMBAGA AKREDITASI NEGARA ACT 1996

Date of Royal Assent 13 September 1996

Date of publication in the *Gazette* 26 September 1996

PREVIOUS REPRINT

First Reprint 2002

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ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

THE LEMBAGA

3. Establishment of the Lembaga
4. Functions of the Lembaga
5. Membership of the Lembaga
6. Deputy Chairman
7. Remuneration and allowances
8. Committees
9. Provisions relating to the Chairman, members of the Lembaga and committees
10. Delegation of the functions of the Lembaga
11. Power of Minister to give directions
12. Returns, reports, accounts and information

PART III

CHIEF EXECUTIVE, OFFICERS, SERVANTS

13. The Chairman as chief executive
14. The Secretary
15. Appointment of officers and servants of the Lembaga

Section

16. Regulations with respect to conditions of service
17. Power to grant loans and make advances to officers and servants
18. Payment of retirement benefits, gratuities and other allowances
19. Prior approval of Treasury, Public Services Department, *etc.*, to be obtained
20. Discipline of officers and servants
21. Disciplinary committees
22. Appeal against decision of disciplinary committee
23. Power to make disciplinary regulations
24. Imposition of surcharge
25. Show cause notice before surcharge
26. Notification of surcharge
27. Withdrawal of surcharge
28. Recovery of surcharge
29. Lembaga may adopt regulations, *etc.*

PART IV

FINANCIAL PROVISIONS

30. The fund
31. Expenditure to be charged on the fund
32. Conservation of the fund
33. Power to borrow
34. Deposit and investment of the fund
35. Expenditure and preparation of estimates
36. Accounts and reports
37. Statutory Bodies (Accounts and Annual Reports) Act 1980 to apply

PART V

ACCREDITATION

38. Application for accreditation
39. Power of the Lembaga to grant or refuse application
40. Power of the Lembaga to impose conditions

Section

41. Records and documents to be kept and produced
42. Reassessment of certificates, diplomas and degrees
43. Revocation of certificate of accreditation
44. Register

PART VI

OFFENCES AND ENFORCEMENT

45. Offences and penalties
46. Presumption
47. Liability of director of company, *etc.*, for offences committed by private higher educational institution established by it, *etc.*
48. Interpretation of investigating officer
49. Power of investigating officer
50. Power to search and seize
51. Search and seize without warrant
52. Power to call for examination
53. Power to compound
54. Institution and conduct of prosecution
55. No entitlement as to costs on proceedings, damages or other relief, *etc.*

PART VII

GENERAL

56. Power to make regulations
57. Obligation of secrecy
58. Public servants
59. Public Authorities Protection Act 1948
60. Things done in anticipation of the enactment of this Act

SCHEDULE

LAWS OF MALAYSIA

Act 556

LEMBAGA AKREDITASI NEGARA ACT 1996

An Act to establish the Lembaga Akreditasi Negara and to provide for its functions and power and for matters connected therewith.

[15 May 1997, P.U. (B) 193/1997]

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

PART I

PRELIMINARY

Short title and commencement

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

Interpretation

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

“accreditation” means a formal recognition of the fact that the certificates, diplomas and degrees awarded by private higher educational institutions, or by other educational institutions or professional bodies consequent upon a course of study or training programme conducted by a private higher educational institution jointly or in affiliation, association or collaboration with such other educational institutions or professional bodies, are in accordance with the standard set by the Lembaga;

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

“Chairman” means the Chairman of the Lembaga appointed under paragraph 5(1)(a);

“chief executive” means the chief executive of the Lembaga who is also the Chairman;

“committee” means a committee established under section 8;

“course of study” means a course of study, including a training programme, conducted by a private higher educational institution;

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

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

“fund” means the fund established under section 30;

“Lembaga” means the Lembaga Akreditasi Negara established under section 3;

“member” means a member of the Lembaga;

“Minister” means the Minister charged with the responsibility for education;

“private higher educational institution” means a private higher educational institution established or deemed to have been established under the Private Higher Educational Institutions Act 1996 [Act 555];

“professional” means a person whose profession is regulated by a legislation relating to the registration thereof;

“Secretary” means the Secretary of the Lembaga appointed under section 14.

PART II

THE LEMBAGA

Establishment of the Lembaga

3. (1) There is hereby established a body corporate by the name of “Lembaga Akreditasi Negara”.

(2) The Lembaga shall have perpetual succession.

(3) The Lembaga may sue and be sued in its name.

(4) Subject to and for the purposes of this Act, the Lembaga may, upon such terms as the Lembaga deems fit—

(a) enter into contracts;

(b) acquire, purchase, take, hold and enjoy movable and immovable property of every description; and

(c) convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of, or deal with—

(i) any movable or immovable property; and

(ii) any interest in any movable or immovable property,

vested in the Lembaga.

Functions of the Lembaga

4. (1) The functions of the Lembaga are—

(a) to formulate policies on the standard and quality control of—

(i) courses of study; and

(ii) certificates, diplomas and degrees;

(b) to set, monitor, review and oversee the standard and quality—

(i) of courses of study; and

- (ii) for accreditation of certificates, diplomas and degrees;
- (c) to determine the level of achievement for the national language and the compulsory subjects specified in the Private Higher Educational Institutions Act 1996 as prerequisites to the award of certificates, diplomas and degrees; and
- (d) to advise and make recommendations to the Minister for his approval of courses of study to be conducted by private higher educational institutions with regard to—
 - (i) the suitability of arrangements relating to the educational facilities relevant to the courses of study; and
 - (ii) the standard and quality assurance of the courses of study.

(2) The Lembaga shall have the power to do all things expedient or reasonably necessary for, or incidental to, the performance of its functions and, in particular, but without prejudice to the generality of the foregoing—

- (a) to impose fees or any other charges as it deems fit for giving effect to any of its functions; and
- (b) to do such other things as the Lembaga considers fit to enable it to carry out its functions effectively.

Membership of the Lembaga

5. (1) The Lembaga shall consist of the following members:

- (a) a Chairman who shall be appointed by the Yang di-Pertuan Agong, upon the advice of the Minister; and
- (b) not less than six and not more than ten other persons who shall be appointed by the Minister.

(2) The Chairman and members of the Lembaga shall be from amongst persons of standing, achievement and experience in the academic field or from amongst professionals who possess relevant experience in educational matters.

(3) The provisions of the Schedule shall apply to the Lembaga.

Deputy Chairman

6. The Minister shall appoint a Deputy Chairman from amongst the members of the Lembaga who shall, during the absence of the Chairman at any sitting, preside over the sitting.

Remuneration and allowances

7. (1) The Chairman shall be paid such remuneration and allowances as the Minister may determine, after consultation with the Minister of Finance.

(2) Every member of the Lembaga shall be paid allowances at such rates as the Minister may determine, after consultation with the Minister of Finance.

Committees

8. (1) The Lembaga may appoint committees as it thinks expedient—

- (a) to advise it on matters concerning its functions;
- (b) for the proper discharge and performance of its functions;
- or
- (c) for any purpose arising out of or connected with its functions.

(2) The Lembaga shall appoint to a committee—

- (a) at least one member of the Lembaga, who shall be the chairman of the committee; and
- (b) such other persons as the Lembaga thinks fit.

(3) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.

(4) The Lembaga may revoke the appointment of any member of a committee without assigning any reason therefor.

(5) A member of a committee may, at any time, resign by giving notice in writing to the chairman of the committee.

(6) The Lembaga may, at any time, discontinue or alter the constitution of a committee.

(7) Subject to this Act and directions given by the Lembaga, a committee may regulate its own procedure.

(8) A committee shall conform to directions given to it by the Lembaga.

(9) Meetings of a committee shall be held at such times and places as the chairman of the committee may determine.

(10) A committee may invite any person to attend its meeting for the purpose of advising it on any matter under discussion but that person shall not be entitled to vote at the meeting.

(11) A committee shall cause—

(a) minutes of all its meetings to be maintained and kept in a proper form; and

(b) copies of the minutes of all its meetings to be submitted to the Lembaga as soon as practicable.

(12) Members of a committee and any person invited under subsection (10) shall be paid such allowances and other expenses as the Lembaga may determine, after consultation with the Minister.

Provisions relating to the Chairman, members of the Lembaga and committees

9. (1) No person shall be appointed as the Chairman or as a member of the Lembaga or as a member of a committee unless before such appointment such person makes a statutory declaration whether he has any interest, financial or otherwise, in any undertaking involving private higher educational institutions.

(2) If the Chairman or a member of the Lembaga or a member of a committee acquires any interest, financial or otherwise, in any undertaking involving private higher educational institutions he shall, within two weeks after so doing, give notice in writing to the Minister specifying the interest so acquired, and the Minister, after taking the matter into consideration may, if he thinks fit, declare that the person has vacated his office.

Delegation of the functions of the Lembaga

10. (1) The Lembaga may delegate any of its functions and power, except its power to make regulations, to—

- (a) the Chairman;
- (b) a member of the Lembaga;
- (c) a committee;
- (d) the chief executive; and
- (e) an officer or servant of the Lembaga.

(2) A delegation under this section shall not preclude the Lembaga itself from performing or exercising at any time any of the functions or power so delegated.

Power of Minister to give directions

11. (1) The Lembaga shall be responsible to the Minister.

(2) The Minister may, from time to time, give directions not inconsistent with the provisions of this Act, to the Lembaga.

(3) The directions given by the Minister under subsection (2) may be in relation to—

- (a) any matter which appears to the Minister to affect the National Education Policy; or
- (b) the proper implementation of the national policies, strategies and guidelines on higher education formulated and determined by the National Council on Higher Education established under the National Council on Higher Education Act 1996 [*Act 546*].

(4) The Lembaga shall, as soon as possible, give effect to all directions given under this section.

Returns, reports, accounts and information

12. (1) The Lembaga shall furnish to the Minister, and such public authority as may be directed by the Minister, such returns, reports, accounts and information with respect to its property and activities as the Minister may, from time to time, require or direct.

(2) Without prejudice to the generality of subsection (1), the Lembaga shall, as soon as practicable after the end of each financial year, cause to be prepared and transmitted to the Minister, and if so directed by the Minister to any public authority, a report dealing with the activities of the Lembaga during the preceding financial year.

(3) The report under subsection (2) shall be in such form and shall contain such information relating to the proceedings and policy of the Lembaga as the Minister may, from time to time, specify.

PART III

CHIEF EXECUTIVE, OFFICERS, SERVANTS

The Chairman as chief executive

13. (1) Without prejudice to the other provisions of this Act, the Chairman shall also be the chief executive of the Lembaga.

(2) The Lembaga shall vest in the chief executive such power and impose upon him such duties as may be determined by the Lembaga.

(3) The chief executive shall be responsible for the overall administration and management of the functions and the day to day affairs of the Lembaga.

(4) The chief executive shall have general control of the officers and servants of the Lembaga.

(5) The chief executive shall perform such further duties as the Minister and the Lembaga may, from time to time, direct.

(6) In discharging his duties, the chief executive shall act under the general authority and directions of the Lembaga.

(7) If the chief executive is temporarily absent from Malaysia or incapacitated through illness or for any other sufficient reason is unable to perform his duties, the Lembaga may appoint the Secretary to carry out the duties of the chief executive during such temporary absence or incapacity.

The Secretary

14. (1) The chief executive shall, with the concurrence of the Lembaga, appoint a Secretary of the Lembaga.

(2) The Lembaga shall vest in the Secretary such powers and impose upon him such duties as may be determined by the Lembaga.

(3) The Secretary shall assist the chief executive in carrying out his duties under this Act.

(4) The Secretary shall perform such further duties as the chief executive may, from time to time, direct.

(5) In discharging his functions, the Secretary shall act under the general authority and directions of the chief executive.

(6) If the Secretary is temporarily absent from Malaysia or is incapacitated through illness or for any other sufficient reason is unable to perform his duties, the chief executive may direct any of the officer of the Lembaga to carry out the duties of the Secretary during such temporary absence or incapacity.

Appointment of officers and servants of the Lembaga

15. The Lembaga may appoint such number of officers and servants as it thinks desirable and necessary and upon such terms and conditions as it considers appropriate for carrying out the purposes of this Act.

Regulations with respect to conditions of service

16. The Lembaga may, with the approval of the Minister, make regulations with respect to the conditions of service of its officers and servants.

Power to grant loans and make advances to officers and servants

17. The Lembaga may grant loans and make advances to its officers and servants for such purposes and on such terms and conditions as the Lembaga may determine.

Payment of retirement benefits, gratuities and other allowances

18. The Lembaga may make arrangements for the payment to its officers and servants and their dependants of such retirement benefits, gratuities and other allowances as the Lembaga may determine.

Prior approval of Treasury, Public Services Department, etc., to be obtained

19. Notwithstanding the provisions of sections 15, 17 and 18, the Lembaga shall not—

- (a) establish or modify any post or scheme of service for officers and servants of the Lembaga, including the terms and conditions of service and the salaries; and
- (b) make arrangements for the officers and servants of the Lembaga with respect to—
 - (i) any pension scheme, retirement benefits, gratuities and any scheme relating to allowances and other remuneration; and
 - (ii) loan and advance facilities,

without the prior approval of the Treasury, Public Services Department or other relevant authorities, as the case may be.

Discipline of officers and servants

20. The Lembaga shall have disciplinary authority over all its officers and servants and shall exercise disciplinary control in respect of all such persons in accordance with this Act and any regulations made under section 23.

Disciplinary committees

21. (1) There shall be established a disciplinary committee of the Lembaga in respect of the Secretary consisting of—

- (a) the Secretary General of the Ministry of Education who shall be the chairman of the committee; and
- (b) at least two members of the Lembaga, as shall be determined from amongst the members themselves.

(2) The Lembaga may, by notification in the *Gazette*, establish different disciplinary committees for different categories of officers or servants of the Lembaga.

(3) The following shall apply to any disciplinary committee established under subsection (2):

- (a) such disciplinary committee shall consist of any number of members of the Lembaga, other than the Chairman of the Lembaga, or officers of the Lembaga, or any combination of such members and officers; and
- (b) an officer who is a member of a disciplinary committee shall not be lower in rank than any officer or servant over whom the disciplinary committee of which he is a member has disciplinary authority.

(4) The disciplinary committee established under subsection (2) shall exercise its powers in all matters relating to the discipline of officers and servants placed under its jurisdiction.

(5) In the exercise of its disciplinary functions and powers, a disciplinary committee referred to under subsections (1) and (2) shall have the power to take disciplinary action and impose any disciplinary punishment or any combination of two or more disciplinary punishments as may be provided for under any regulations made under section 23.

Appeal against decision of disciplinary committee

22. (1) A decision of the disciplinary committee under subsection 21(1) shall be appealable to the Minister.

(2) A decision of the disciplinary committee under subsection 21(2) shall be appealable to the Disciplinary Appeal Board which shall consist of the following members:

- (a) the Chairman of the Lembaga, who shall be the chairman of the Disciplinary Appeal Board and who shall have the casting vote; and
- (b) three members of the Lembaga, not being members of the disciplinary committee whose decision is the subject matter of the appeal, to be appointed by the chairman of the Disciplinary Appeal Board with the approval of the Lembaga for the purpose of the appeal.

(3) The Minister or the Disciplinary Appeal Board, as the case may be, may confirm, reverse or vary the decision of the disciplinary committee.

(4) When the Minister or the Disciplinary Appeal Board considers an appeal under subsection (1) or (2), a member of the disciplinary committee against whose decision the appeal is made shall not be present or in any way participate in any proceedings relating to that appeal.

(5) The decision of the Minister or the Disciplinary Appeal Board under subsection (3) shall be final.

Power to make disciplinary regulations

23. (1) The Lembaga may, with the approval of the Minister, make regulations to provide for the discipline of its officers and servants.

(2) The disciplinary regulations made under this section—

(a) may create disciplinary offences;

(b) may provide for disciplinary punishments as the Lembaga may deem appropriate, and the punishments may extend to—

(i) a warning;

(ii) a fine;

(iii) a forfeiture of emoluments;

(iv) a deferment of salary movement;

(v) a reduction of salary;

(vi) a reduction in rank; and

(vii) a dismissal;

(c) shall provide for an opportunity to the person against whom disciplinary proceedings are taken to make representations against the disciplinary charge laid against him before a decision is arrived at by the disciplinary committee except in the following cases:

(i) where an officer or servant of the Lembaga is dismissed or reduced in rank on the ground of misconduct in respect of which a criminal charge has been proved against him;

- (ii) where the Lembaga, on the recommendations of the Minister charged with the responsibility of home affairs, is satisfied that in the interest of the security of Malaysia or any part thereof it is not expedient to carry out the requirements of this paragraph; or
- (iii) where there has been—
 - (A) made against an officer or servant of the Lembaga any order of detention, supervision, restricted residence, banishment or deportation; or
 - (B) imposed on an officer or servant of the Lembaga any form of restriction or supervision by bond or otherwise,

under any law relating to the security of Malaysia or any part thereof, prevention of crime, preventive detention, restricted residence, banishment, immigration, or protection of women and girls;
- (d) may provide for the interdiction with reduced emoluments of an officer or servant of the Lembaga during the pendency of a criminal proceeding against him or disciplinary proceeding against him with the view to his dismissal or reduction in rank; and
- (e) may provide for the suspension without emoluments of an officer or servant of the Lembaga—
 - (i) where the officer or servant has been convicted by a criminal court; or
 - (ii) where an order of detention or restriction has been made in respect of or imposed on the officer or servant.

Imposition of surcharge

- 24.** (1) A person who is or was in the employment of the Lembaga may be surcharged if it appears to the Lembaga that the person—
- (a) has failed to collect money owing to the Lembaga for the collection of which he is or was responsible;
 - (b) is or was responsible for any improper payment of money from the Lembaga or for any payment of money which is not duly approved;

- (c) is or was responsible, directly or indirectly, for any deficiency in, or for the destruction of, any money, store or other property of the Lembaga;
- (d) being or having been an accounting officer, fails or has failed to keep proper accounts or records; or
- (e) has failed to make any payment, or is or was responsible for any delay in the payment from the Lembaga, of money to any person to whom such payment is due under any law or under any contract, agreement or arrangement entered into between that person and the Lembaga.

(2) In this section, “accounting officer” includes every officer and servant who is charged with—

- (a) the duty of collecting, receiving or accounting for, or who in fact collects, receives or accounts for, any money of the fund;
- (b) the duty of disbursing, or who does in fact disburse, any money of the fund; or
- (c) the receipt, custody or disposal of, or the accounting for, any store and property of the Lembaga or who in fact receives, holds, disposes or accounts for such store and property.

Show cause notice before surcharge

25. (1) The Lembaga shall, before a person is surcharged, serve on him a written notice calling on him to show cause why he should not be surcharged.

(2) If a satisfactory explanation is not received within fourteen days from the date of service of the aforesaid notice, the Lembaga may—

- (a) in the case of paragraphs 24(1)(a), (b) and (c), surcharge against the person a sum not exceeding the amount not collected, or of the improper payment made, or of the deficiency in or destruction of the property caused; and
- (b) in the case of paragraphs 24(1)(d) and (e), surcharge against the person, such sum as the Lembaga thinks fit.

Notification of surcharge

26. The Lembaga shall notify the person surcharged in respect of any surcharge made under section 24.

Withdrawal of surcharge

27. Notwithstanding sections 24 and 25, the Lembaga may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made, and the Lembaga shall forthwith notify the person surcharged of the withdrawal.

Recovery of surcharge

28. The amount of any surcharge made under section 24 and not withdrawn under section 27 shall be a debt due to the Lembaga from the person surcharged and may be sued for and recovered in any court at the suit of the Lembaga and may also, if the Lembaga so directs, be recovered by deduction—

(a) from the salary of the person surcharged; or

(b) from the pension of the person surcharged,

by equal monthly instalments not exceeding one-fourth of the total monthly salary or pension, as the case may be, of that person.

Lembaga may adopt regulations, etc.

29. In making regulations under this Part, the Lembaga may, with the approval of the Minister, adopt with such modifications any regulations, rules, policies, circulars and directives enacted or issued by the Federal Government.

PART IV

FINANCIAL PROVISIONS

The fund

30. (1) There is hereby established a fund for the purposes of this Act to be administered and controlled by the Lembaga.

- (2) The fund shall consist of—
- (a) money as may be allocated by the Government from time to time for the purposes of this Act;
 - (b) fees or other charges imposed by the Lembaga under this Act;
 - (c) money borrowed by the Lembaga under section 33;
 - (d) money earned or arising from any property, investment, mortgages, charges or debentures acquired by or vested in the Lembaga;
 - (e) money earned from the consultancy and advisory services and any other service provided by the Lembaga;
 - (f) all other moneys which may in any manner become payable to or vested in the Lembaga in respect of any matter incidental to its functions and powers; and
 - (g) all other moneys lawfully received by the Lembaga.

Expenditure to be charged on the fund

31. The fund shall be expended for the purposes of—
- (a) paying any expenditure lawfully incurred by the Lembaga;
 - (b) paying for the remuneration and allowances of the Chairman and the allowances and other expenses of the members of the Lembaga, members of committees, officers and servants appointed and employed by the Lembaga, including retirement benefits, pensions and gratuities;
 - (c) paying any other expenses, costs or expenditure properly incurred or accepted by the Lembaga in the performance of its functions and exercise of its powers;
 - (d) repaying any money borrowed under section 33 and the interest due thereon;
 - (e) granting loans and advances to officers and servants of the Lembaga under section 17; and
 - (f) generally, paying any expenses for carrying this Act into effect.

Conservation of the fund

32. It shall be the duty of the Lembaga to conserve the fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Lembaga are sufficient to meet all sums properly chargeable to its revenue account, including depreciation and interest on capital, taking one year with another.

Power to borrow

33. The Lembaga may, from time to time, borrow in such form and at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise, as the Minister, with the concurrence of the Minister of Finance, may approve, any money required by the Lembaga for meeting any of its obligations or discharging any of its functions or exercising any of its powers.

Deposit and investment of the fund

34. The Lembaga may, with the approval of the Minister—

- (a) place the fund on deposit with a bank in Malaysia; and
- (b) invest in securities of the Government or such other securities as may be authorized by the Minister of Finance, such money of the fund as are not immediately required to be expended under this Act.

Expenditure and preparation of estimates

35. (1) The expenditure of the Lembaga up to such amount as may be authorized by the Minister for any one year shall be defrayed out of the fund.

(2) Before the beginning of September of each year, the Lembaga shall submit to the Minister an estimate of its expenditure (including those for research and development programmes) for the following year in such form and containing such particulars as the Minister may direct.

(3) The Minister shall, before the beginning of the following year, notify the Lembaga of the amount authorized for expenditure generally or of amounts authorized for each description of expenditure based on the estimates prepared under subsection (2).

(4) The Lembaga may, at any time, submit to the Minister a supplementary estimate of its expenditure for any one year and the Minister may allow the whole or any part of the additional expenditure included therein.

Accounts and reports

36. (1) The Lembaga shall cause to be kept proper accounts of the fund and proper reports of its activities and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year—

- (a) a statement of accounts of the Lembaga which shall include a balance sheet and an account of its income and expenditure; and
- (b) a statement of its activities.

(2) The Lembaga shall as soon as possible send a copy of the statement of accounts in paragraph (1)(a) and the statement of its activities in paragraph (1)(b), certified by auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament.

Statutory Bodies (Accounts and Annual Reports) Act 1980 to apply

37. The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Lembaga.

PART V

ACCREDITATION

Application for accreditation

38. (1) An application by a private higher educational institution for the accreditation of its certificates, diplomas and degrees shall be made to the Lembaga—

- (a) in such form; and
- (b) accompanied by—
 - (i) such documents and information for the purpose of determining the application; and
 - (ii) such fees,

as may be prescribed by the Lembaga.

(2) At any time after receiving an application for accreditation and before it is determined, the Lembaga may by written notice require the private higher educational institution to provide additional documents and information within a specified period.

(3) The documents and information required under subparagraph (1)(b)(i) and subsection (2) may differ as between different courses of study.

(4) Where the additional documents and information required under subsection (2) are not provided by the private higher educational institution within the specified period or any extension thereof, the application—

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

(b) shall not be further proceeded with,

without prejudice to the right of the private higher educational institution to submit a fresh application.

Power of the Lembaga to grant or refuse application

39. (1) After having considered an application under subsection 38(1), the Lembaga—

(a) may approve the application and grant a certificate of accreditation to the private higher educational institution upon payment of the prescribed fees;

(b) may, in approving the application, grant to the private higher educational institution, upon payment of the prescribed fees, a certificate of accreditation of a different academic distinction from that applied for by the private higher educational institution in its application form; or

(c) may refuse the application, stating the grounds for refusal.

(2) The decision of the Lembaga shall be final.

Power of the Lembaga to impose conditions

40. The Lembaga may, either at the time of granting a certificate of accreditation or at any time thereafter, impose such conditions as appear to the Lembaga to be requisite or expedient and such conditions may be varied, amended or revoked from time to time.

Records and documents to be kept and produced

41. (1) It shall be the duty of a private higher educational institution to which an accreditation certificate has been granted to keep such records and documents relating to the certificate, diploma or degree in respect of which the accreditation certificate has been granted, as may be prescribed by the Lembaga.

(2) The Lembaga or the chief executive may require the private higher educational institution to produce such records and documents at any time and to provide reasonable facilities for checking and examining the records and documents.

(3) If any person fails to comply with the requirement of this section, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one month, or to both.

Reassessment of certificates, diplomas and degrees

42. The Lembaga shall have the power to reassess from time to time the certificates, diplomas and degrees in respect of which certificates of accreditation have been granted.

Revocation of certificate of accreditation

43. (1) The Lembaga may, at any time, revoke the certificate of accreditation granted under paragraph 39(a) or (b)—

- (a) if in the opinion of the Lembaga, the private higher educational institution has failed to maintain the standard and quality required of it, upon reassessment of the certificate, diploma or degree awarded by the private higher educational institution in respect of which the certificate of accreditation has been granted;
- (b) if in the opinion of the Lembaga, any condition attached to the certificate of accreditation has been breached;
- (c) if the provisions of section 41 have not been complied with; or
- (d) for any other sufficient reason.

(2) A notice of intention to revoke the certificate of accreditation shall be served on the private higher educational institution to which it was granted and the notice shall specify the grounds on which it is proposed to revoke the certificate of accreditation.

(3) The private higher educational institution shall be given an opportunity to make written representations within thirty days from the date of receipt of the notice in subsection (2).

(4) After the expiry of the period of thirty days mentioned in subsection (3) and after considering any representation made under that subsection by the private higher educational institution, the Lembaga shall—

- (a) proceed with the proposed action to revoke the certificate of accreditation;
- (b) issue a warning and give directions for the private higher educational institution to rectify the situation to the satisfaction of the Lembaga; or
- (c) take no further action.

Register

44. (1) The Secretary shall keep or cause to be kept a register in which shall be recorded the details of all certificates of accreditation granted by the Lembaga.

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

PART VI

OFFENCES AND ENFORCEMENT

Offences and penalties

45. (1) Where any person or private higher educational institution makes any statement or representation, whether in writing or otherwise, with reference to any course of study that conveys or is likely to convey the impression that the certificate, diploma or degree with respect to such course of study which is not accredited under this Act is so accredited, that person or that private higher educational institution shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years, or to both.

- (2) Where any person or private higher educational institution—
- (a) for the purpose of obtaining a certificate of accreditation, makes any statement or declaration or furnishes any particulars or information which to his or its knowledge is false or incorrect, either in whole or in part, or in any material part misleading;
 - (b) makes any entry in any return, account, report, record or document required to be kept, maintained or furnished under this Act which is false or incorrect, either in whole or in part, or in any material part misleading;
 - (c) makes any statement or representation, whether in writing or otherwise, that conveys or is likely to convey the impression that a certificate, diploma or degree complies with the requirements of accreditation under this Act when it does not so comply; or
 - (d) uses a certificate of accreditation after its revocation or otherwise than in accordance with the conditions of the certificate of accreditation,

that person or that private higher educational institution 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.

(3) In the case of a continuing offence under subsection (1) or (2), the person or private higher educational institution convicted for such offence shall be liable to a further fine not exceeding one thousand ringgit for every day on which the offence is continued.

Presumption

46. In any proceeding for an offence under this Act—

- (a) when it has been proved that any application or information is or any particulars, returns, accounts, documents or statements, whether written or not, are—
 - (i) false or incorrect in whole or in part; or
 - (ii) misleading in any material particular,

it shall be presumed until the contrary is proved, that such application or information is, or particulars, returns, accounts, documents or statements are, false or incorrect

in whole or in part or misleading in any material particular, as the case may be, to the knowledge of the person signing, delivering or supplying the same; and

- (b) relating to certificates of accreditation, in so far as it may be necessary to establish the offence charged against a private higher educational institution or any person, it shall be presumed until the contrary is proved that the certificate, diploma or degree awarded by the private higher educational institution has not been accredited.

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

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

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

shall be deemed to be guilty of that offence.

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

- (a) that the offence was committed without his knowledge or connivance; or
- (b) that he—
 - (i) took all reasonable precaution; and
 - (ii) exercised all due diligence,

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

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

Interpretation of investigating officer

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

- (a) an enforcement officer of the Lembaga;
- (b) the Registrar General, Deputy Registrar General, Registrar, Deputy Registrar and Assistant Registrar appointed under the Private Higher Educational Institutions Act 1996; and
- (c) a police officer not below the rank of Inspector.

Power of investigating officer

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

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

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

(4) A person who—

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

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one month, or to both.

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

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

Power to search and seize

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

(a) any premises have been used or are about to be used for;
or

(b) there is in any premises evidence necessary to establish,

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

(aa) to enter the premises, if need be by force; and

(bb) there to search for and seize, and therefrom to remove any book, minute book, register, material, document, article or any other thing—

(i) in respect of which an offence has been committed;

(ii) in respect of which an offence is suspected to have been committed; or

(iii) that is reasonably believed to furnish evidence of the commission of the offence.

(2) An investigating officer may—

(a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry thereinto;

(b) remove by force any obstruction to the entry, search, seizure or removal as he is empowered to effect under subsection (1); and

(c) detain every person found in the premises until it has been searched.

Search and seize without warrant

51. If an investigating officer has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 50—

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

he may exercise in, and in respect of, the premises all the powers referred to in section 50 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Power to call for examination

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

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

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

- (a) after it has been read to him; and
- (b) after he has been given an opportunity to make any correction he may wish.

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

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

(6) Any person who—

- (a) fails to appear before an investigating officer as required under subsection (1);
- (b) refuses to answer any question put to him by an investigating officer under subsection (2); or
- (c) furnishes to an investigating officer information or a statement that is false, incorrect or misleading in any material particular,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one month, or to both.

Power to compound

53. (1) The Lembaga may compound any offence committed by a private higher educational institution or a person under this Act or the regulations made under this Act, which is prescribed to be a compoundable offence.

(2) A written offer shall be made to the private higher educational institution or the person to compound the offence by paying to the Lembaga—

- (a) such sum of money as may be so specified, but which shall not be more than fifty per centum of the maximum fine to which the private higher educational institution or the person would have been liable if it or he had been convicted of the offence; and
- (b) within such time as may be specified in the offer.

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

(4) Where an offence has been compounded—

- (a) no further proceeding shall be taken and no prosecution shall be instituted against such private higher educational institution or person to whom the offer to compound was made; and

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

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

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

Institution and conduct of prosecution

54. (1) An investigating officer shall have the authority to appear in court—

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

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

(3) For the avoidance of doubt, a person prosecuting an offence under this Act shall not be the investigating officer of the offence in respect of which the person is prosecuting.

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

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

PART VII

GENERAL

Power to make regulations

56. (1) The Lembaga may, with the approval of the Minister, make such regulations as may be expedient or necessary for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for prescribing—

- (a) the procedure, manner and form for the application of certificate of accreditation;
- (b) the form of the certificate of accreditation;
- (c) the fees and charges to be paid under this Act;
- (d) the records, accounts, reports and documents required to be kept, maintained and furnished under this Act;
- (e) the procedure for reassessment of certificates, diplomas and degrees in respect of which certificates of accreditation have been granted;
- (f) the manner of service of any notice required to be served under this Act;
- (g) the procedure for revocation of certificates of accreditation;
- (h) the offences that may be compounded under this Act; and
- (i) any other matter which is required by this Act to be prescribed or specified or which is necessary or expedient to be prescribed or specified for carrying this Act into effect.

Obligation of secrecy

57. (1) Except for any of the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law, no member of the Lembaga, member of a committee, officer or servant of the Lembaga shall disclose any information which has been obtained by him in the course of his duties and which is not published in pursuance of this Act.

(2) Any person contravening subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one month, or to both.

Public servants

58. The Chairman, all members of the Lembaga and members of any committee, the officers, servants and agents of the Lembaga, while discharging their duties as the Chairman or such members, officers, servants or agents shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Public Authorities Protection Act 1948

59. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Lembaga, or against the Chairman, any member of the Lembaga, any member of a committee, officer, servant or agent of the Lembaga in respect of any act, neglect or default done or committed by him in such capacity.

Things done in anticipation of the enactment of this Act

60. All things done by any person or authority on behalf of the Lembaga in the preparation of and towards the proper implementation of any of the provisions of this Act, and any expenditure incurred in relation thereto, in anticipation of the enactment of this Act shall be deemed to have been authorized by this Act, and all rights acquired or obligations incurred on behalf of the Lembaga from anything so done shall upon the coming into force of this Act be deemed to be the rights and obligations of the Lembaga.

SCHEDULE

[Subsection 5(3)]

Appointment, revocation and resignation

1. (1) Subject to such conditions as may be specified in his instrument of appointment, the Chairman and a member of the Lembaga shall hold office for a term not exceeding three years and is eligible for reappointment.

(2) The appointment of—

(a) the Chairman may, at any time, be revoked by the Yang di-Pertuan Agong; and

(b) any member may, at any time, be revoked by the Minister,

without assigning any reason therefor.

(3) The Chairman may, at any time, resign his office by letter addressed to the Yang di-Pertuan Agong.

(4) A member may, at any time, resign his office by letter addressed to the Minister.

Chairman and members to devote time to Lembaga

2. The Chairman and every member shall devote such time to the business of the Lembaga as is necessary to discharge their duties effectively.

Vacation of office

3. (1) The office of the Chairman or a member of the Lembaga shall be vacated—

(a) if he dies,

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

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

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

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

(c) if his conduct, whether in connection with his duties as the Chairman or a member of the Lembaga or otherwise, has been such as to bring discredit on the Lembaga;

(d) if he becomes a bankrupt;

(e) if he is of unsound mind or is otherwise incapable of discharging his duties;

(f) in the case of the Chairman, if he absents himself from a meeting of the Lembaga without leave of the Minister;

- (g) in the case of a member, if he absents himself from three consecutive meetings of the Lembaga without leave of the Chairman;
- (h) in the case of the Chairman, if his resignation is accepted by the Yang di-Pertuan Agong and in the case of a member of the Lembaga, if his resignation is accepted by the Minister; or
- (i) in the case of the Chairman, if his appointment is revoked by the Yang di-Pertuan Agong and in the case of a member of the Lembaga, if his appointment is revoked by the Minister.

Meetings

4. (1) The Lembaga shall meet as and when required to do so by the Chairman.

(2) The Chairman, or the Deputy Chairman if he is presiding over that meeting, and five other members of the Lembaga shall form a quorum at any meeting of the Lembaga.

(3) If on any question to be determined by the Lembaga there is an equality of votes, the Chairman, or the Deputy Chairman if he is presiding over that meeting, shall have a casting vote in addition to his deliberative vote.

Lembaga may invite others to meetings

5. (1) The Lembaga may invite any person to attend any meeting or deliberation of the Lembaga for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

(2) A person invited under subparagraph (1) shall be paid such allowances as may be determined by the Lembaga.

Minutes

6. (1) The Secretary shall cause minutes of all the meetings of the Lembaga to be maintained and kept in a proper form.

(2) Any minutes made of a meeting of the Lembaga shall, if duly signed, be admissible in evidence in all legal proceedings without further proof.

(3) Every meeting of the Lembaga in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

Disclosure of interest

7. (1) A member of the Lembaga having, directly or indirectly, by himself or his partner—

- (a) an interest in a company or undertaking with which the Lembaga proposes to make a contract; or
- (b) an interest in a contract or matter under discussion by the Lembaga,

shall disclose to the Lembaga the fact of his interest and its nature.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the Lembaga and, unless specifically authorized by the Chairman, such member shall take no part in the deliberation or decision of the Lembaga relating to the contract or matter.

Validity of acts and proceedings

8. No act done or proceeding taken under this Act shall be questioned on the ground of—

- (a) any vacancy in the membership of, or any defect in the constitution of, the Lembaga;
- (b) a contravention by any member of the Lembaga of the provisions of paragraph 7; or
- (c) any omissions, defect or irregularity not affecting the merits of the case.

Common seal

9. (1) The Lembaga shall have a common seal which shall bear a device approved by the Lembaga.

(2) The common seal may from time to time be broken, changed, altered and made anew as the Lembaga thinks fit.

(3) Until a seal is provided by the Lembaga, a stamp bearing the words “Lembaga Akreditasi Negara” may be used and shall be deemed to be the common seal of the Lembaga.

(4) The common seal shall be kept in the custody of the Chairman and shall be authenticated by the Chairman, or the Deputy Chairman in the absence of the Chairman.

(5) All deeds, documents and other instruments purporting to be sealed with the common seal and authenticated as in subparagraph (4) shall be deemed to have been validly executed, until the contrary is shown.

(6) A deed, a document or an instrument which if executed by a person not being a body corporate would not be required to be under seal may in like manner be executed by the Lembaga.

(7) All deeds, documents and other instruments mentioned in subparagraph (6) may be executed on behalf of the Lembaga by a member of the Lembaga or an officer of the Lembaga generally or specially authorized by the Lembaga in that behalf.

(8) The common seal of the Lembaga shall be officially and judicially noticed.

Procedure

10. Subject to this Act, the Lembaga shall, at its discretion, determine its own procedure.

LAWS OF MALAYSIA**Act 556****LEMBAGA AKREDITASI NEGARA ACT 1996**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A1201	Lembaga Akreditasi Negara (Amendment) Act 2003	21-08-2003

LAWS OF MALAYSIA**Act 556****LEMBAGA AKREDITASI NEGARA ACT 1996**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A1201	21-08-2003
