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NATIONAL WAGES CONSULTATIVE COUNCIL ACT 2011

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NATIONAL WAGES CONSULTATIVE COUNCIL ACT 2011

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LAWS OF MALAYSIA**Act 732****NATIONAL WAGES CONSULTATIVE COUNCIL
ACT 2011**

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LAWS OF MALAYSIA

Act 732

NATIONAL WAGES CONSULTATIVE COUNCIL ACT 2011

An Act to establish a National Wages Consultative Council with the responsibility to conduct studies on all matters concerning minimum wages and to make recommendation to the Government to make minimum wages orders according to sectors, types of employment and regional areas, and to provide for related matters.

[1 December 2011]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the National Wages Consultative Council Act 2011.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of this Act in different parts of Malaysia.

Interpretation

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

“wages” has the same meaning assigned to it in section 2 of the Employment Act 1955 [*Act 265*], section 2 of the Sabah Labour Ordinance [*Cap. 67*] or section 2 of the Sarawak Labour Ordinance [*Cap. 76*];

“minimum wages” means the basic wages to be or as determined under section 23;

“Director General” means—

- (a) in respect of Peninsular Malaysia, the Director General of Labour appointed under subsection 3(1) of the Employment Act 1955;
- (b) in respect of Sabah, the Director of Labour appointed under subsection 3(1) of the Sabah Labour Ordinance; or
- (c) in respect of Sarawak, the Director of Labour appointed under subsection 3(1) of the Sarawak Labour Ordinance;

“contract of service” means any agreement, whether oral or in writing, and whether express or implied, whereby one person agrees to employ another person as an employee and that other person agrees to serve his employer as an employee, but does not include an apprenticeship contract;

“court” means the Magistrate Court;

“employer” means any person who has entered into a contract of service to employ another person as an employee and includes the agent, manager or factor of such first-mentioned person;

“Council” means the National Wages Consultative Council established under section 3;

“Minister” means the Minister charged with the responsibility for human resources;

“enforcement officer” means the officers appointed under section 3 of the Employment Act 1955, section 3 of the Sabah Labour Ordinance or section 3 of the Sarawak Labour Ordinance;

“employee” means any person or class of persons specified in the following schedules:

- (a) the First Schedule to the Employment Act 1955;
- (b) the Schedule to the Sabah Labour Ordinance; or
- (c) the Schedule to the Sarawak Labour Ordinance,

but does not include the person or class of persons to whom the minimum wages order is not applicable;

“Chairman” means the Chairman of the Council appointed under section 5;

“minimum wages order” means the order made by the Minister under section 23;

“Secretary” means the Secretary of the Council appointed under section 5.

PART II

NATIONAL WAGES CONSULTATIVE COUNCIL

National Wages Consultative Council

3. A council by the name of the “National Wages Consultative Council” is established.

Functions and powers of the Council

4. (1) The functions of the Council shall be—

- (a) to advise the Government on all matters relating to minimum wages, including its development at the international level;
- (b) to make recommendations to the Government on the minimum wages rates and coverage according to sectors, types of employment and regional areas, and other matters relating to minimum wages and wages;
- (c) to consult the public on the minimum wages rates and coverage;
- (d) to collect and analyse data and information and to conduct research on wages and the socioeconomic indicators;
- (e) to coordinate and supervise, and to evaluate the impact of, the implementation of minimum wages;
- (f) to review the minimum wages order;
- (g) to deliberate on all matters relating to minimum wages;
- (h) to disseminate information and analysis on wages; and
- (i) to carry out any other functions as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

(2) The Council shall have the power to do all things expedient or reasonably necessary for or incidental to the performance of its functions.

Membership of the Council

5. (1) The Council shall consist of the following members who shall be appointed by the Minister by notification in the *Gazette*:

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) a Secretary;
- (d) at least 5 members from amongst the public officers;
- (e) at least 5 members representing the employees;
- (f) at least 5 members representing the employers; and
- (g) at least 5 other members.

(2) The Chairman, Deputy Chairman and the members of the Council referred to in paragraph (1)(g) shall be appointed from amongst persons—

- (a) who are not the public officers, employers or members of any trade union; and
- (b) who, in the opinion of the Minister, have knowledge, experience and expertise in matters relating to labour and industrial relations.

(3) The Secretary appointed under paragraph (1)(c) shall be a public officer.

(4) The members of the Council referred to in paragraphs (1)(c) and (d) shall be appointed by office.

(5) The number of members of the Council appointed under paragraph (1)(e) shall be the same as the number of members of the Council appointed under paragraph (1)(f) at any one time.

(6) The Council shall consist of members not exceeding twenty-nine persons at any one time.

Temporary exercise of functions of the Chairman

6. (1) The Deputy Chairman shall act as the Chairman for the period when—

- (a) the office of the Chairman is vacant;
- (b) the Chairman is absent from duty or from Malaysia; or
- (c) the Chairman is, for any other reason, unable to carry out his functions.

(2) The Deputy Chairman shall, during the period in which he is carrying out the functions of the Chairman under this section, be deemed to be the Chairman.

Secretary

7. (1) The Secretary shall be responsible—

- (a) to manage the affairs of the Council;
- (b) to implement the decisions of the Council; and
- (c) to carry out any other duties as directed by the Council.

(2) The Secretary shall, in carrying out his responsibilities, act under the power and direction of the Council.

Tenure of office

8. (1) The members of the Council shall hold office for a term not exceeding three years and may be reappointed.

(2) Notwithstanding subsection (1), the members of the Council appointed under paragraphs 5(1)(c) and (d) shall hold office until the appointment is revoked under subsection 10(1).

Allowances

9. The members of the Council shall be paid such allowances as the Minister may determine.

Revocation of appointment and resignation

10. (1) The Minister may, at any time, revoke the appointment of a member of the Council.

(2) A member of the Council may resign from office by giving thirty days' written notice to the Minister.

Vacation of office

11. (1) The office of a member of the Council shall be vacated if—

- (a) he dies;
- (b) there has been proved against him, or he has been convicted of, 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) he becomes a bankrupt;
- (d) he is of unsound mind or is otherwise incapable of discharging his duties;

- (e) he absents himself from two consecutive meetings of the Council without leave of the Chairman, or in the case of the Chairman, without leave of the Minister;
- (f) his resignation is accepted by the Minister; or
- (g) his appointment is revoked by the Minister.

(2) If the office of a member of the Council is vacated, the Minister may, if necessary, appoint another person to hold the office for the remaining period vacated by that member or for an interim period until a new member is appointed to that office, as the Minister thinks fit.

Meetings

12. (1) The Council shall meet at least four times in a year as the Chairman may determine.

(2) At least fourteen days' notice in writing or by electronic mail shall be given to the members of the Council.

Procedure at meetings

13. (1) The Chairman shall preside at all meetings of the Council and—

- (a) in the absence of the Chairman at any meeting of the Council for any reason, the Deputy Chairman shall preside at the meeting; or
- (b) in the absence of the Chairman and the Deputy Chairman at any meeting of the Council for any reason, any other member of the Council appointed by the Chairman shall preside at the meeting.

(2) The quorum of the Council shall be two-thirds of the members of the Council, including the Chairman.

(3) Every member present at the meeting of the Council shall be entitled to one vote.

(4) If there is an equality of votes, the Chairman, the Deputy Chairman or any other member presiding at the meeting of the Council under subsection (1) shall have the casting vote.

Minutes

14. (1) The Council shall cause the minutes of all its meetings to be maintained and kept in proper form.

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

(3) Every meeting of the Council in respect of which minutes of the proceedings have been made in accordance with subsection (2) shall be deemed to have been duly convened and held and all members at the meeting to have been duly qualified to act.

Council may invite others to meetings

15. (1) The Council may invite any person not being a member of the Council to attend its meetings to advise on any matter under discussion, but that person is not entitled to vote at the meeting.

(2) Any person invited under subsection (1) may be paid such allowances as the Council may determine.

Procedure

16. Subject to this Act, the Council may determine its own procedure.

Council may establish committees

17. (1) The Council may establish any committee as it considers necessary or expedient to assist it in the performance of its functions.

(2) The Council shall appoint any of its members to be the chairman of a committee.

(3) The Council may appoint any of its members or any qualified persons to be members of a committee.

(4) The members of a committee may be paid such allowances as the Council may determine.

(5) The Council may at any time revoke the appointment of any member of a committee, make changes in the composition of the members of a committee or dissolve a committee.

(6) Subject to any direction of the Council, the committee may determine its own procedure.

(7) The chairman of each committee shall cause minutes of all its meetings to be maintained and kept in proper form and copies of the minutes shall be submitted by the committee to the Council as soon as practicable.

(8) A committee may invite any person not being a member of the committee to attend its meetings to advise on any matter under discussion, but that person is not entitled to vote at the meeting.

(9) Any person invited under subsection (8) may be paid such allowances as the Council may determine.

Secretariat

18. (1) There shall be a secretariat to the Council with such number of public officers to assist the Council and the Secretary.

(2) The secretariat shall be subject to the direction, control and supervision of the Secretary.

Funds

19. The Government shall provide sufficient funds for the Council annually to enable the Council to perform its functions and exercise its powers under this Act.

Validity of acts and proceedings

20. 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 establishment of, the Council; or
- (b) any omission, defect or irregularity not affecting the merits of the case.

PART III

MINIMUM WAGES ORDER

Council to have consultation, etc.

21. Before any recommendation is made under section 22, the Council shall take the following actions:

- (a) have consultation with the public on the minimum wages rates and coverage in such manner as the Minister may determine; and
- (b) collect and analyse data and information and conduct research on wages and the socioeconomic indicators.

Council to make recommendation

22. (1) Based on the actions taken under section 21, the Council shall, at such time as the Minister may determine, make a recommendation to the Government through the Minister on the following matters:

- (a) the minimum wages rates;
- (b) the coverage of the recommended minimum wages rates according to sectors, types of employment and regional areas;
- (c) the non-application of the recommended minimum wages rates and coverage to any sectors, types of employment and regional areas or to any person or class of persons;
- (d) the commencement of the minimum wages order and the different dates for the commencement of the minimum wages order to different sectors, types of employment and regional areas, or to different persons or class of persons; and
- (e) other matters relating to the minimum wages, including the implementation of the recommended minimum wages rates and coverage.

(2) The Government may, after considering the recommendation—

- (a) agree with the recommendation; or
- (b) direct the Council to review the recommendation within the period as the Government may determine and make a fresh recommendation.

(3) Where the Government directs the Council to review the recommendation and make a fresh recommendation under paragraph (2)(b), section 21 and subsection (1) shall apply.

(4) The Government may, after considering the fresh recommendation made pursuant to subsection (3)—

- (a) agree with the fresh recommendation; or
- (b) disagree with the fresh recommendation and determine the matters specified in paragraphs (1)(a) to (e).

Minimum wages order

23. (1) Where the Government agrees with the recommendation of the Council under paragraph 22(2)(a) or 22(4)(a) or determines the matters under paragraph 22(4)(b), the Minister shall, by notification in the *Gazette*, make a minimum wages order on the matters specified in paragraphs 22(1)(a) to (e) as agreed to or determined by the Government.

(2) The Minister may, upon the direction of the Government, by notification in the *Gazette*, amend or revoke the minimum wages order.

Effect of the minimum wages order

24. (1) For the purpose of this section, “contract of service” includes the collective agreement made under section 14 of the Industrial Relations Act 1967 [*Act 177*].

(2) Where the rates of the basic wages agreed in a contract of service is lower than the minimum wages rates as specified in the minimum wages order, the rates shall be substituted with any rates not lower than the minimum wages rates as specified in the minimum wages order.

(3) Where the rates of the basic wages agreed in a contract of service is higher than the minimum wages rates as specified in the minimum wages order, the rates shall not be reduced to any rates lower than the rates of the basic wages agreed in the contract of service.

(4) Nothing in this section shall be construed as preventing an employer and an employee from agreeing to any rates of the basic wages which are higher than the minimum wages rates as specified in the minimum wages order.

Council to review minimum wages order

25. (1) The Council shall, at least once in every two years, review the minimum wages order.

(2) Notwithstanding subsection (1), the Council may, on its own accord or upon the direction of the Government, review the minimum wages order.

(3) The review made under subsection (1) or (2) shall be on the matters specified in paragraphs 22(1)(a) to (e) and for the purpose of evaluating the effectiveness of the minimum wages order and its implication on the social and economic development of the country.

(4) Where the Council is satisfied that any matter specified in the minimum wages order needs to be amended, sections 21, 22 and 23 shall apply.

PART IV

INVESTIGATION AND ENFORCEMENT

Powers of the enforcement officer

26. An enforcement officer shall have all powers to—

- (a) investigate into any offence under this Act;
- (b) conduct any inquiry under this Act; and
- (c) enforce any provision of this Act.

Production of authority card

27. (1) The Director General shall issue to each enforcement officer an authority card which shall be signed by the Director General.

(2) Whenever such enforcement officer exercises any of the powers under this Act, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Search and seizure with warrant

28. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is a 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 the conduct of an investigation into,

the commission of an offence under this Act, the Magistrate may issue a warrant authorizing an enforcement officer named in the warrant, at any reasonable time, by day or by night and with or without assistance, to enter the premises and if need be by force.

(2) A warrant issued under subsection (1) may authorize the enforcement officer to—

- (a) search the premises for, and to seize or remove from the premises any book of account of wages, register, financial statement or other document that is reasonably believed to furnish evidence of the commission of the offence;
- (b) take samples of any book of account of wages, register, financial statement or other document found in the premises for the purposes of ascertaining, by examining or otherwise, whether the offence has been committed; and
- (c) make copies of or take extracts from any book of account of wages, register, financial statement or other document found in the premises.

(3) Any book of account of wages, register, financial statement or other document shall be admissible as evidence in any proceedings in court under this Act against the person or any other person.

(4) An enforcement officer entering any premises under this section may take with him such other persons and equipment as may appear to him to be necessary.

(5) An enforcement officer may, in the exercise of his powers under this section, if it is necessary so to do—

- (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 into the premises;

- (b) forcibly enter the premises and every part of the premises;
- (c) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and
- (d) detain any person found in the premises until the search has been completed.

(6) Where, by reason of its nature, size or amount, it is not practical to remove any book of account of wages, register, financial statement or other document seized under this section, the enforcement officer shall, by any means, seal such book of account of wages, register, financial statement or other document in the premises or container in which it is found.

(7) Any person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes the book of account of wages, register, financial statement or other document under seal or attempts to do so commits an offence.

Search and seizure without warrant

29. If the enforcement officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 28 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the enforcement officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 28 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Access to recorded information, computerized data, etc.

30. (1) An enforcement officer exercising his powers under section 28 or 29 shall be given access to any recorded information or computerized or digitalized data, whether stored in a computer or otherwise.

(2) In exercising his powers, the enforcement officer—

(a) may inspect and check the operation of any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been used in connection with that information or data; and

(b) may require—

(i) the person, by whom or on whose behalf, the officer has reasonable cause to suspect, the computer is or has been so used; or

(ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material, to provide him with such reasonable assistance as he may require for the purposes of this section.

(3) The enforcement officer may make copies or take extracts of the recorded information, computerized or digitalized data if he deems it necessary.

(4) For the purposes of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information, computerized or digitalized data.

Warrant admissible notwithstanding defects

31. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application for the warrant, and any book of account of wages, register, financial statement or other document seized under the warrant shall be admissible in evidence in any proceedings under this Act.

List of book of account of wages, *etc.*, seized

32. (1) Except as provided in subsection (2), where any book of account of wages, register, financial statement or other document is seized under this Act, the enforcement officer making the seizure—

(a) shall prepare—

(i) a list of the book of account of wages, register, financial statement or other document seized and shall sign the list; and

(ii) a written notice of the seizure containing the grounds for the seizure and shall sign the notice; and

(b) shall as soon as practicable serve a copy of the list of the book of account of wages, register, financial statement or other document seized and the written notice of the seizure to the occupier of the premises which have been searched, or to his agent or servant at those premises.

(2) The written notice of the seizure shall not be required to be served under paragraph (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Act are intended to be taken, or in the presence of the owner of the property or his agent, as the case may be.

(3) If the premises are unoccupied, the enforcement officer shall post a copy of the list of the book of account of wages, register,

financial statement or other document seized conspicuously on the premises.

Release of the book of account of wages, *etc.*, seized

33. (1) If any book of account of wages, register, financial statement or other document has been seized under this Act, the enforcement officer who effected the seizure may, after referring to the Public Prosecutor, release the book of account of wages, register, financial statement or other document to the person as he determines to be lawfully entitled to it, if the book of account of wages, register, financial statement or other document is not required for the purpose of any proceedings under this Act or for the purpose of any prosecution under any other written law, and in such event neither the enforcement officer effecting the seizure, nor the Federal Government, or any person acting on behalf of the Federal Government shall be liable to any proceedings by any person if the seizure and the release of the book of account of wages, register, financial statement or other document had been effected in good faith.

(2) A record in writing shall be made by the enforcement officer effecting the release of the book of account of wages, register, financial statement or other document under subsection (1) specifying in detail the circumstances of and the reason for the release, and he shall send a copy of the record to the Public Prosecutor within seven days of the release.

No cost or damages arising from seizure to be recoverable

34. No person shall, in any proceedings before any court in respect of any book of account of wages, register, financial statement or other document seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Obstruction to exercise of powers by enforcement officer

35. Any person who—

- (a) refuses any enforcement officer access to any premises which the enforcement officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays any enforcement officer in effecting any entry which the enforcement officer is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act; or
- (c) refuses any enforcement officer any information relating to an offence or suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give,

commits an offence.

Powers to require the production of book of account of wages, etc.

36. (1) An enforcement officer in carrying out an investigation under this Part may require any person whom he believes to be acquainted with the facts and circumstance of the case—

- (a) to produce to the enforcement officer, any book of account of wages, register, financial statement or other document whether in physical form or in electronic medium; and
- (b) to make copies of, or extracts from any book of account of wages, register, financial statement or other document

and to produce copies or extracts of such documents, as the case may be, to the enforcement officer.

(2) Any person who refuses or fails to comply with the direction made by the enforcement officer under this section commits an offence.

Enforcement officer may retain documents

37. (1) The enforcement officer may take and retain, for as long as is necessary, possession of any document obtained under this Part.

(2) The person who provided the document is entitled to be supplied, as soon as practicable, with a copy certified by the enforcement officer to be a true copy of the document.

(3) Notwithstanding the provisions of any other written law, the certified copy of the document shall be admissible as evidence as if it were the original document.

(4) If the enforcement officer is satisfied that the retaining of the document is no longer necessary, the enforcement officer may return the document to the person who provided the document as soon as practicable.

Access to records

38. (1) A person shall, if at any time directed by an enforcement officer, allow the enforcement officer to have access to his book of account of wages, register, financial statement or other document for the purposes of carrying out any of the enforcement officer's powers under this Act.

(2) Any person who fails to comply with the direction made by the enforcement officer under subsection (1) commits an offence.

Power to require attendance of persons acquainted with case

39. (1) An enforcement officer making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to the enforcement officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses or fails to attend as so required, the enforcement officer may report such refusal or failure to a Magistrate who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

Examination of persons acquainted with case

40. (1) An enforcement officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be bound to answer all questions relating to the case put to him by the enforcement officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

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

after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

Admission of statements in evidence

41. (1) Except as provided in this section, no statement made by any person to an enforcement officer in the course of an investigation made under this Act shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to the enforcement officer in the course of the investigation under this Act and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [*Act 56*].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with an offence in relation to—

(a) the making; or

(b) the contents,

of any statement made by him to an enforcement officer in the course of an investigation made under this Act, that statement may be used as evidence in the prosecution's case.

Admissibility of documents, etc.

42. (1) For the purpose of any proceedings under this Act, an enforcement officer may prepare a report which consists of the following:

- (a) the difference between the minimum wages rates as specified in the minimum wages order and the basic wages paid by the employer to the employee, including the outstanding differences;
- (b) other payments accrued from the calculation of wages based on the basic wages which shall be in accordance with the minimum wages rates as specified in the minimum wages order; and
- (c) other matters relating to the employer, employee and contract of service.

(2) The report prepared under subsection (1) and any documents issued by the employer to the employee indicating the payment of wages shall be *prima facie* evidence in any proceedings under this Act.

PART V

OFFENCES AND PENALTIES

Offence

43. An employer who fails to pay the basic wages as specified in the minimum wages order to his employees commits an offence and shall, on conviction, be liable to a fine of not more than ten thousand ringgit for each employee.

Court order

44. (1) Where the employer has been convicted of an offence under section 43, the court before which he is convicted may order the employer to pay—

- (a) the difference between the minimum wages rate as specified in the minimum wages order and the basic wages paid by the employer to the employee, including the outstanding differences; and
- (b) other payments accrued from the calculation of wages based on the basic wages which shall be in accordance with the minimum wages rates as specified in the minimum wages order.

(2) The calculation of the differences and other payments accrued under subsection (1) shall be made in accordance with the Employment Act 1955, Sabah Labour Ordinance or Sarawak Labour Ordinance, as the case may be.

(3) Where an employer fails to comply with an order made under subsection (1), the court shall, on the application of the employee, issue a warrant to levy the employer's property for the differences and other payments accrued under subsection (1) in the following manner:

- (a) by way of distress and sale of the employer's property in accordance with the same procedure of execution under the Subordinate Courts Rules 1980 [*P.U. (A) 328/80*] and this execution shall apply *mutatis mutandis* notwithstanding the amount in the order; or
- (b) in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [*Act 593*].

General penalty

45. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Penalty in the case of a continuing offence

46. Any person convicted of an offence under this Act shall, in the case of a continuing offence, be liable, in addition to any other penalty to which he is liable under this Act in respect of such offence, to a daily fine not exceeding one thousand ringgit for each day the offence continues after conviction.

Penalty in the case of a repeated offence

47. Any person convicted of an offence under this Act shall, in the case of a repeated offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding five years.

PART VI

GENERAL

Responsibility of employer for offences committed by members of board of directors, *etc.*

48. (1) Where an offence against any provision of this Act has been committed by a person who at the time of the commission of the offence was—

- (a) a member of the board of directors;
- (b) an officer;
- (c) an employee; or
- (d) an agent,

of the employer, the employer shall be deemed to have also committed that offence.

(2) In a prosecution against an employer under subsection (1), by virtue of an offence committed by—

- (a) a member of the board of directors;
- (b) an officer;
- (c) an employee; or
- (d) an agent,

of the employer, it shall be a defence for any employer prosecuted under subsection (1) if the employer proves—

- (A) that the offence was committed without the knowledge, consent or connivance of the employer; and
- (B) that the employer has taken all reasonable precautions and exercised all due diligence to prevent the commission of the offence as the employer sought to have taken and exercised, having regard to the nature of the functions of the member of the board of directors, officer, employee or agent in that capacity and to all the circumstances.

Offences by body corporate, *etc.*

49. If an employer who is a body corporate, partnership or society commits an offence under this Act—

- (a) in the case of a body corporate, 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;
- (b) in the case of a partnership, every partner in the partnership at the time of the commission of the offence; or

- (c) in the case of a society, every office-bearer of the society at the time of the commission of the offence,

may be charged severally or jointly in the same proceedings with the body corporate, partnership or society and if the body corporate, partnership or society 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.

Public Authorities Protection Act 1948

50. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Director General or any member of the Council or committee or any enforcement officer in respect of any act, neglect or default done or omitted by him in such capacity.

Public servant

51. The Director General or any member of the Council or committee or any enforcement officer while discharging his duty or performing his functions or exercising his powers under this Act in such capacity shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

Protection against suits and legal proceedings

52. No action, suit, prosecution or any other proceeding shall lie or be brought, instituted or maintained in any court against—

- (a) the Government;
- (b) the Minister;
- (c) the Director General;
- (d) any member of the Council or committee; or
- (e) any person lawfully acting on behalf of the Council,

in respect of any act, neglect or default done or omitted by him or it in good faith, in such capacity.

Protection of informers

53. (1) Except as provided in subsections (2) and (3), no witness in any civil or criminal proceedings pursuant to this Act shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or state any matter which might lead to his discovery.

(2) If any book of account of wages, register, financial statement or other document which is in evidence or is liable to inspection in any civil or criminal proceedings whatsoever contains any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated in so far as may be necessary to protect the informer from discovery.

(3) If in a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the informer willfully made in his complaint a material statement which he knew or

believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties in the proceeding without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit an inquiry and require full disclosure concerning the informer.

Obligations of secrecy

54. (1) Except for any of the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law, or as approved by the Minister—

- (a) no member of the Council or committee, or officer of the Council, while he serves as chairman, member or officer, shall disclose any information which has been obtained by him in the course of his duties; and
- (b) no other person who, by any means, has access to any information or documents relating to the affairs of the Council shall disclose such information or documents.

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

Prosecution

55. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Compounding of offences

56. (1) The Director General may, with the consent in writing of the Public Prosecutor, compound any offence committed by any

person 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 an 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.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and 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.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any book of account of wages, register, financial statement or other document seized in connection with the offence may be released or forfeited by the Director General, subject to such terms and conditions as he thinks fit to impose in accordance with the conditions of the compound.

Power to make regulations

57. The Minister may make such regulations as may be necessary and expedient for the purpose of carrying into effect the provisions of this Act.

Repeal and dissolution

58. (1) The Wages Council Act 1947 [*Act 195*] (“the repealed Act”) is repealed.

(2) All wages councils established under the repealed Act are dissolved.

Savings

59. (1) Any wages council order made under the repealed Act shall continue in force until it is revoked or replaced by the minimum wages order made by the Minister under this Act.

(2) All rules, regulations, orders, notices, forms, directions and letters of authorization made, issued or given under the repealed Act shall, in so far as the rules, regulations, orders, notices, forms, directions and letters of authorization are consistent with this Act, continue in force until it is revoked or replaced by this Act.

(3) Any inquiry, trial or proceedings done, taken or commenced under the repealed Act immediately before the commencement of this Act shall be continued and concluded under and in accordance with the provisions of the repealed Act.

References

60. All references to the repealed Act in any written law or document shall be construed as references to this Act.

Things done in anticipation of the enactment of this Act

61. All acts and things done by any person in preparation for or in anticipation of the enactment of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorized under this Act, provided that the acts and things done are consistent with the general intention and purposes of this Act, and all rights and obligations acquired or incurred as a result of the doing of those acts or things, including any expenditure incurred in relation thereto, shall on the coming into operation of this Act be deemed to be the rights and obligations of the Council.

LAWS OF MALAYSIA

Act 732

NATIONAL WAGES CONSULTATIVE COUNCIL ACT 2011

LIST OF AMENDMENTS

Amending law

Short title

In force from

-NIL -

LAWS OF MALAYSIA**Act 732****NATIONAL WAGES CONSULTATIVE COUNCIL ACT 2011****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
	-NIL-	
