

CHAPTER 33
LAWS OF SARAWAK
(1958 Edition)

**BUSINESSES, PROFESSIONS AND TRADES LICENSING
ORDINANCE**

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LAWS OF SARAWAK
(1958 Edition)

**BUSINESSES, PROFESSIONS AND TRADES LICENSING
ORDINANCE***

An Ordinance to provide for the licensing and taxation of trades and other gainful occupations.

[1st January, 1955]

Short title.

1. This Ordinance may be cited as the Businesses, Professions and Trades Licensing Ordinance.*

* Amended by Ord. 19/62. This Ordinance has been declared Federal Law—See F.L.N. 200/65

Interpretation.

†**2.** In this Ordinance—

[Amended by Ordinance 38 of 1957]

“Appropriate Magistrate” means a Magistrate exercising jurisdiction within the district, or within any one of the districts, within which the premises, upon or from which the business licensed may under such licence be carried on, is situate or, if there are no such premises, within the district or districts in which the business may under the licence be carried on;

“business” means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain but does not include an office or employment or any charitable undertaking;

[Sub. Ord. No 15/60.]

“Collector” means the Director of Inland Revenue and includes a Deputy Collector appointed by or under section 5 (2):

[Sub. Ord. No. 15/60.]

Provided that, subject to any directions of the Minister, the powers of a Deputy Collector shall be exercised in conformity with the instructions of the Collector;

[Mod. F.L.N. 418/65.]

“company” means any incorporated company, whether or not such company is incorporated in Sarawak;

[Inserted by Ordinance 38 of 1957]

“penalty” or “penalty for late payment” in sections 9, 15 and 25 includes the surcharge imposed by section 6 (3) and (4);

“proprietor” means the owner of a business and includes any person carrying on such business in partnership or association with others and, for the purpose of liability to tax, or any penalty for late payment, or any surcharge, includes the personal representatives or trustee in bankruptcy of any of the aforesaid persons and any manager, agent, receiver or other person through or by whom, or in association with whom, the business is carried on, but does not include any employee, other than a manager, whose interest in the business is confined solely to the receipt of remuneration determined in advance and having no relation to the profits made;

[Am. Ord. No. 15/60.]

“registered proprietor” means the person declared by the licence to be the proprietor of the business thereby licensed;

“tax” means the fee payable for a licence issued under this Ordinance;

† Definitions of “month”, “volume of business” and “year” deleted by Ord. 15/60

Prohibition of carrying on business without a licence.

3.—(1) Any person who, whether alone or in partnership or association with others, and whether as principal, agent or manager, or in any other capacity, carries on in Sarawak any business in respect of which a trading licence is not for the time being in force, or who carries on such business in any premises or place, or by means of any vessel or vehicle or other means or thing whatsoever, to which such licence does not extend, shall be guilty of an offence: Penalty, a fine of one thousand ringgit.

(2) A separate trading licence is required for each of the businesses in the First Schedule which may be carried on and, if such Schedule so provides, for every premises at which a business to which this Ordinance applies is being carried on or, as the case may be, for every vessel or vehicle or other means or thing by which such business is carried on.

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(3) For the purpose of this section and the First Schedule, but not so as to exclude any other reason for considering any premises to be distinct or separate from other premises, premises which are separately let or sub-let, or which, although forming the subject matter of the same tenancy, are connected by a lobby, passage or stairway not let or sub-let together with such premises, shall be deemed to be separate premises.

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(4) The issue of a licence and the payment of tax hereunder shall not affect any liability to obtain any licence or other authorization under any other law or to pay any fee prescribed thereunder.

Summary recovery of arrears of tax and surcharge.

4.—(1) Where any person is convicted of an offence under section 3 the court, in addition to any fine it may impose, shall, unless all arrears of tax and

any surcharge payable have been paid, make an order for the payment of the amount due in respect thereof.

[Sub. Ord. No 15/60; Am. Act A154.]

(2) Where an order is made under subsection (1) the court may, in addition to any period of imprisonment imposed for an offence under section 3, impose a period of imprisonment not exceeding three months for non-payment of the amount of such arrears of tax and charge.

[Am. Act A154.]

(3) Any money paid pursuant to an order under this section shall be paid or credited to the Collector.

[Am. Act A154.]

Issue of licences.

5.—(1) A Collector shall, on application therefor by the proprietor of a business to which this Ordinance applies and upon payment of the tax or of the first instalment thereof, as the case may be, by the applicant, issue the appropriate trading licence.

[Sub. Ord. No. 15/60.]

(2) Every District Officer, other than the District Officer, Kuching, is hereby appointed to be a Deputy Collector within his district.

(3) Notwithstanding subsection (2), the Minister may, by notification in the *Gazette*, appoint any person to be a Deputy Collector within any district or area and any such appointment may be made subject to such limitations or restrictions as the Minister may think fit to impose.

[Mod. F.L.N. 418/65.]

(4) For the purposes of an application under subsection (1), a director or the secretary or any person engaged in the management of a company shall be deemed to be a proprietor of a business.

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Duration of licences.

6.—(1) Trading licences issued under this Ordinance shall be valid for a period of one year from the date of issue, but the annual fee may on application in the prescribed form be paid in half yearly instalments.

(2) Where payment is being effected by instalments, each instalment shall become due and payable without demand on the dates specified in the licence.

[Sub. Act A154.]

(3) If any instalment which has become due is not paid by the 16th of the month succeeding that in which it became due, a surcharge equal to the amount of the instalment shall be payable.

[Sub. Ord. No. 15/60.]

(4) If any instalment which has become due is not paid by the end of the month succeeding that in which it became due, a surcharge of double the amount of the instalment shall be payable and the business shall, for the purposes of section 3(1), be deemed to be one in respect of which no licence is in force.

[Sub. Ord. No. 15/60.]

(5) In any case in which an offence against section 3 has been committed by reason of the fact that a licence has ceased to be in force by virtue of this section, the Collector may, with the consent of the ex-licensee, compound the offence by accepting a payment not exceeding one hundred ringgit.

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[Sub. Ord. No. 15/60; Am. Act A154.]

Fees.

7. The fees specified in the First Schedule shall, without prejudice to any adjustment hereinafter provided for, be the fees for the trading licences therein specified for the period of one year, and instalments under section 6 shall be computed proportionately. [6]

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Exemptions.

8.—(1) Without prejudice to section 23—

(a) the Collector may, subject to the directions of the Minister with the concurrence of the Chief Minister, exempt any particular business from payment of tax, or may reduce or remit the tax or any part thereof;

[Mod. F.L.N. 418/65.]

*(b) the Minister with the concurrence of the Chief Minister may, by order signified in the *Gazette* having application to the whole or any area of Sarawak and to any class or description of business and to any period, grant exemption from the payment of tax, or reduce or remit any tax or any part thereof.

[Mod. F.L.N. 418/65.]

(2) The Collector shall give effect to any order made under subsection (1) (b). [7]

* See Businesses, Professions and Trades Licensing (Public Bodies) (Tax Exemption) Order, 1963 (G.N.S. 65/63).

Payment and recovery of tax.

9.—(1) The proprietors of any business which is being carried on to which this Ordinance applies shall, whether or not a licence has been issued in respect thereof and whether or not payment has been demanded, become liable, jointly and severally, to pay to the Government of Sarawak, as a civil debt, the appropriate tax together with any penalty for late payment.

[Mod. F.L.N. 418/65.]

(2) Without prejudice to section 15 or to any lawful remedy, any tax, and any penalty for late payment, may be recovered by the Collector by summons returnable before an Appropriate Sessions Court Judge, and such Magistrate shall have full jurisdiction, notwithstanding any other law and whatever the amount involved, to order and enforce the payment thereof to the Government of Sarawak:

[Am. Act 92; Act A671.]

[Mod. F.L.N. 418/65.]

Provided that—

(a) an appeal shall lie to the High Court from any order made by a Magistrate under this section in like manner as if such order had been made in a civil proceeding; and

(b) the recovery of any tax or penalty shall be deemed to be a civil matter for the purpose of any further appeal to the Federal Court.

[Am. Act 7/64; Act A606 & A885.]

(3) If any tax, other than tax the payment of which is being effected by instalments, remains unpaid for a period of one month after it became due a penalty of one half of the amount of the tax shall, without prejudice to any penalty which may be imposed under section 3, be payable.

[Sub. Ord. No. 15/60.]

(4) Liability to any penalty shall not be affected by the fact that proceedings have been initiated under this section for the recovery of any tax or penalty, or by a case being stated under section 15, but, in any case in which the Court decides that the tax claimed by the Collector was in excess of what was due, it shall adjust the penalty and, if it considers that the proprietor was justified in making no payment or in making such payment, as he did in fact make, until the question of his liability had been determined by the court, it may remit the penalty. [8]

10.

[Repealed by Ordinance 15 of 1960]

11.

[Repealed by Ordinance 15 of 1960]

12.

[Repealed by Ordinance 15 of 1960]

13.

[Repealed by Ordinance 15 of 1960]

14.

[Repealed by Ordinance 15 of 1960]

Collector may state or be required to state a case for the opinion of the High Court.

15.—(1) If any dispute arises between the Collector and any proprietor of any business to which this Ordinance applies as to—

(a) whether there is any liability to tax or to any penalty for the late payment thereof;

(b) whether such proprietor is or was exempt from tax;

(c) the amount of tax or of any penalty payable by such proprietor;
or

(d) the meaning or effect of any of the provisions of this Ordinance,

the Collector may, and, without prejudice to subsection (3) shall, if so required in writing by the registered proprietor, state a case for the opinion of the High Court:

Provided that, save where he has been so required, the Collector shall not state a case without prior notice in writing to the registered proprietor stating briefly why it is proposed to state a case and the circumstances and conditions under which it will not be necessary for him to state a case.

(2) Where a case has been stated pursuant to subsection (1), any proceedings for the recovery of any tax or any penalty under section 9 which may have been initiated shall be stayed until such case has been determined.

(3) If, when he is required to state a case, it appears to the Collector that there are disputed questions of fact affecting the liability to tax or the amount thereof, he may in his discretion, in lieu of stating a case, take proceedings before an Appropriate Sessions Court Judge for the recovery of the tax.

[Am. Act 92; Act A671.]

(4) Where a case has been stated for the opinion of the High Court, the Court shall have power to amend the same or to require the Collector to amend or restate the same, if it appears to the Court that there are disputed questions of fact affecting the liability to tax or the amount thereof, the Court may in its discretion either direct that evidence be adduced, whether by affidavit or by oral testimony, on such questions as a preliminary issue to the determination of the case stated, or in the course of such determination, or direct the Collector to take proceedings before an Appropriate Magistrate for recovery of the tax alleged to be due so that such disputed questions of fact may, without prejudice to any appeal, be determined in such proceedings.

(5) Upon the hearing of any case stated, the Court shall determine the questions submitted:

Provided that—

(a) if in its opinion any tax or penalty is due, it shall, unless the amount of the same is agreed, proceed to assess the same and, without prejudice to its power to re-adjust or remit the penalty, shall order the payment of any tax or penalty;

(b) if in its opinion, no tax or penalty is due, it shall declare accordingly, and make any order necessary to give effect to such declaration and to adjust the rights of the parties; including, where required, an order for the re-payment of any tax or penalty, which may have been paid; and

(c) the Court may make such order as to the payment of costs as, having regard to its determination of the case stated and the conduct of the parties before, and in the course of, such determination, it deems fit.

(6) An appeal shall lie to the Federal Court from the determination of any question submitted on a case stated, and from any order made by the High Court under subsection (5), in like manner as if the same were an original judgment of the High Court within the meaning of section 67 of the Courts of Judicature Act, 1964.
[14]

[Am. Act 7/64; Act A606 & A885.]

[Mod. F.L.N. 418/65; Act 91.]

Collector may require reasonable information.

16.—(1) Without prejudice to any regulations made under section 24, the Collector may, by notice in writing under his hand, require any applicant for a licence or any proprietor to furnish him, within a reasonable time, with any information relevant to the issue of the licence or, as the case may be, relevant to determining liability for, or the quantum of, tax.

(2) Any person who fails to comply, within a reasonable time and without lawful excuse, with a requirement under subsection (1) shall be guilty of an offence: Penalty, a fine of one thousand ringgit and the court may, in addition or in lieu of imposing a fine, make an order for the compliance, within a specified time, with such requirement. [15]

Duty of proprietor to notify cessation of carrying on business.

17. Any person who, being the registered proprietor of a business specified in Part II of the First Schedule, ceases to carry on such business and, without lawful excuse, fails to inform the Collector of the proposed cessation in writing at least fifteen days prior to such cessation shall be guilty of an offence: Penalty, a fine of five hundred ringgit. [16]

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[Amended by Ordinance 16 of 1957]

Penalty for making false declaration or giving false information.

18. Any person who, in completing any form for the purposes of this Ordinance or in supplying any information under section 16 (1), or who, being required by any regulations made under section 24 to furnish any particulars, makes any statement which is false in any material particular, or by reason of the omission of any material particular, and which he either knows or has reason to believe is false shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit. [17]

19.

[Deleted Act A154.]

Transfer.

20. A trading licence may, on payment of the fee prescribed in the First Schedule, be transferred by endorsement by the Collector to different premises or to different ownership or, if the licence is issued in respect of a vessel, vehicle or other chattel, to another vessel, vehicle or chattel, as the case may be. [19]

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Exhibition of licence and powers of entry.

21.—(1) Whenever a separate licence is required in respect of any premises, or in respect of any vessel, vehicle or other chattel, such licence shall be exhibited in a conspicuous place on such premises, vessel, vehicle or chattel.

(2) The Collector or any police officer may, for the purpose of inspecting any licence or demanding its production, enter any premises or board any vessel in respect of which a separate licence is required, and may also, for the purpose of ascertaining whether a licence is in fact required and has been obtained or for ascertaining the name and address of the proprietor of any business being carried on for which a licence is required, enter upon any premises or board any vessel or aircraft upon which there is reason to believe any business is being carried on for which a licence is required under this Ordinance.

(3) Any person who fails to exhibit his licence as required by subsection (1), or refuses entry to or obstructs any person seeking entry or entering in pursuance of subsection (2), shall be guilty of an offence: Penalty, a fine of two hundred ringgit. [20]

Lost licences.

22. The Collector, on being satisfied that a trading licence issued by him has been lost or destroyed and on payment of the fee prescribed in Part IV of the First Schedule, shall issue a duplicate licence to the licensee. [21]

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Minister may amend Schedules.

*23.—(1) The Minister with the concurrence of the Chief Minister may by order signified in the *Gazette* amend any of the Schedules. [22(2)]†

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[Mod. F.L.N. 418/65.]

(2) Any such order may, with the approval of the House of Representatives, have retrospective effect to any date in the year in which the order was made. [22(3)]

[Mod. F.L.N. 418/65.]

(3) Any order made under subsection (1) shall be laid upon the table of the House of Representatives at the next meeting thereof following the publication of such order in the *Gazette* and may be amended by resolution of the House of Representatives moved at that meeting or at any subsequent meeting. [22(4)]

[Mod. F.L.N. 418/65 & Reprint Commissioner.]

[Subsection (3) substituted by Ordinance 2 of 1957]

* See G.N.S. 141/61, 5/62 & 60/62.

† Subsection (1) omitted by Commissioners of Law Revision.

Regulations.

24.—(1) The Minister with the concurrence of the Chief Minister may make regulations generally for carrying out the provisions of this Ordinance and, in particular, such regulations may— [23(1)]

[Mod. F.L.N. 418/65.]

(a) declare what contraventions thereof shall constitute offences and may provide for the punishment thereof by penalties not exceeding imprisonment for three months and a fine of five hundred ringgit; and

[23(2)]

(b) provide for the examination and inspection, by or on behalf of the Collector, of any books or documents, including bills and invoices, which may assist the Collector in making any assessment or adjustment required to be made under this Ordinance, or in determining any liability for, and the quantum of, any tax imposed hereunder. [23(3)]

(2) The forms to be used in connection with the issue and transfer of licences under this Ordinance shall be those set out in the Fourth Schedule.

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[Amended by Commissioners of Law Revision]

Recovery of tax from persons leaving Sarawak.

25.—(1) Where the Collector is of opinion that any person is about to, or likely to, leave Sarawak without paying all tax for which he is then liable, or without paying any penalty which may have become due, he may issue a certificate containing particulars of such tax or penalty and a direction to the Commissioner of Police to prevent such person leaving Sarawak without paying the tax or penalty, or furnishing security to the satisfaction of the Commissioner for payment thereof.

Act. 344.

(2) The Commissioner of Police shall, on receipt of any such certificate and direction issued by the Collector, take, or cause to be taken by any police officer, such measures as may be necessary to prevent the person named in such direction from leaving Sarawak until payment of the tax or penalty or both, as the case may be, has or have been made or secured as aforesaid, including the use of such force as may be necessary, and the seizure, removal or retention of any passport, certificate of identity or other travel document relating to such person and of any exit permit or other document authorizing such person to leave Sarawak.

Act. 344.

(3) At the time of issue of his certificate, the Collector shall issue to such person a notification thereof by personal service, or registered post; but the non-receipt of any such notification by such person shall not invalidate proceedings under this section.

(4) Production of a certificate signed by the Collector, stating that the tax or penalty or both, as the case may be, has or have been paid, or that security has been furnished therefor, or payment of the tax or penalty or both, as the case may be, to the police officer in charge of the police station, shall be sufficient authority for allowing such person to leave Sarawak.

(5) Any person who, knowing that a direction has been issued under this section for the prevention of his departure from Sarawak, leaves or attempts to leave Sarawak without paying all tax for which he is then liable and any penalty which may have become due, or furnishing security to the satisfaction of the Collector for payment thereof shall be guilty of an offence:

Penalty, imprisonment for six months and a fine of one thousand ringgit, and may be arrested, without warrant, by any police officer.

(6) No civil or criminal proceedings shall be instituted or maintained against the Government of the Federation or of Sarawak, the Commissioner of Police or any other police officer in respect of anything lawfully done under the authority of this section. [24]

[Mod. F.L.N. 418/65.]

Act. 344.

Provision for service of notifications and other communications by Collector.

26.—(1) Without prejudice to any other method of service which may be deemed reasonable or sufficient, any notification, demand, assessment, adjustment or other communication required to be served by the Collector shall be deemed to be sufficiently served if served personally on any person, or addressed by registered post to such person at any address given by him to the Collector, which the Collector, at the time of service, has no reason to believe is not a correct address, and, in the case of any proprietor, shall be sufficiently addressed if addressed to the registered proprietor of the business to which the communication relates at the address, if any, declared by the licence to be the appropriate address for the purpose of this section, or, if there is no such address, to the premises, or any of the premises, at or from which it is stated in the licence the business will be carried on.

(2) Any communication shall be deemed to have been served three days after the day upon which acknowledgement of its receipt, for the purpose of dispatch by registered post, was given by the Post Office at which it was posted. [25]

Sessions Court to exercise jurisdiction over offences.

27. Notwithstanding anything in the Criminal Procedure Code, a Sessions Court may exercise jurisdiction in respect of any offence under this Ordinance and may impose any punishment provided for such offence. [26]

F.M.S. Cap. 6. [Added Ord. No. 15/60.]

*[Sections 27 and 28 omitted by Commissioners of
Law Revision]*

Saving in respect of certain businesses.

28. This Ordinance shall not apply to any of the businesses specified in the Third Schedule.

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[Added Ord. No. 15/60.]