

CONTROL OF TOBACCO PRODUCT AND SMOKING BILL 2022

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation

PART II

REGISTRATION

3. Requirement for registration of tobacco product, etc.
4. Application for registration
5. Cancellation of registration
6. Register of tobacco product, etc.

PART III

ADVERTISEMENT, PROMOTION AND SPONSORSHIP

7. Prohibition on advertisement of tobacco product, etc.
8. Prohibition on advertisement of imitation of tobacco product, etc.
9. Prohibition on promotion or sponsorship of tobacco product, etc.

PART IV

CONTROL OF SALE

10. Prohibition of sale of tobacco product, etc.
11. Prohibition of sale of imitation of tobacco product, etc.
12. Prohibition of tobacco product, etc., as a gift or prize
13. Prohibition of sale of tobacco product, etc., to person born on 1 January 2007 onwards

Bill

PART V

CONTROL OF PRICE, PACKAGING, LABELLING, MANUFACTURING, ETC.

Clause

14. Retail price or minimum selling price
15. Packaging and labelling

PART VI

PROHIBITION OF SMOKING

16. Non-smoking area or place
17. Prohibition of smoking or possession of tobacco product, etc., on person born on 1 January 2007 onwards
18. Duty of proprietor of the building, etc.

PART VII

LIABILITY OF THE MANUFACTURER, IMPORTER AND DISTRIBUTOR

19. Presumption of matters related to label and packaging
20. Responsibility of manufacturer, importer and distributor

PART VIII

ADMINISTRATION

21. Acute or critical situation
22. Appointment of analysts
23. Approved laboratories
24. Appointment of authorized officers

PART IX

ENFORCEMENT

25. Power of investigation
26. Power to enter premises
27. Power to take sample
28. Procedure for taking sample
29. Presumption

Clause

30. Power to open packages and examine tobacco product, etc.
31. Power to stop, search and seize conveyance
32. Search and seizure with warrant
33. Search and seizure without warrant
34. Access to recorded information, computerized data, etc.
35. Seizure of things, etc.
36. List of things seized
37. Temporary return of conveyance, etc.
38. Cost of holding seized tobacco product, etc.
39. Power to require attendance of person acquainted with case
40. Examination of person acquainted with case

PART X

TRIALS AND PROCEEDINGS

41. Prosecution
42. Advance notice of expert evidence in court
43. Jurisdiction to try offences
44. Protection of informer
45. Evidence of agent provocateur admissible
46. Non-disclosure of information
47. Power to order appearance in court

PART XI

GENERAL

48. Compounding of offences
49. Offence by body corporate, etc.
50. Protection against suit and legal proceedings
51. Indemnity
52. Delegation of power
53. Power to make regulations

PART XII

SAVING AND TRANSITIONAL

Clause

54. Savings

55. Transitional

A BILL

i n t i t u l e d

An Act to provide for the registration of tobacco product, smoking substance or substitute tobacco product, the control of advertisement, promotion and sponsorship, sale and purchase of tobacco product, smoking substance, substitute tobacco product or smoking device, and the prohibition of smoking of tobacco product or substitute tobacco product and the prohibition of the use of smoking device, by any person that was born in 2007 onwards and for related matters.

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ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Control of Tobacco Product and Smoking Act 2022.

(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 different parts or provisions of this Act.

Interpretation

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

“smoking substance” means any substance or combination of substance comprising of propylene glycol, glycerol or triethylene glycol for the purpose of smoking;

“prescribed” means prescribed by the Minister in the regulations made under this Act;

“tobacco product” means processed tobacco or any product that contains tobacco which is designed for human consumption;

“advertisement” includes any representation by any means for the purpose of promoting directly or indirectly any tobacco product, smoking substance, substitute tobacco product or smoking device;

“import” means to bring or cause to be brought into Malaysia by land, water or air for the purposes of sales from any place outside Malaysia but does not include the bringing into Malaysia any tobacco product, smoking substance or substitute tobacco product which is proved it is intended to be taken out of Malaysia on the same vehicle, vessel or aircraft on which the tobacco product, smoking substance or substitute tobacco product were brought into Malaysia without any transshipment or landing;

“analyst” means any analyst appointed by the Minister under section 22 or any chemist registered under section 15 of the Chemists Act 1975 [*Act 158*];

“Director General” means the Director General of Health, Malaysia;

“sell” or “sale” includes—

- (a) barter or exchanging of goods;
- (b) offering or attempting to sell;
- (c) causing or allowing to be sold;
- (d) exposing for sale;

- (e) receiving, sending, conveying, distributing, transmitting or delivering for sale or exchange or by sale or exchange or in pursuance of such sale or exchange;
- (f) supplying any tobacco product, smoking substance, substitute tobacco product or smoking device where a reward is to be received by the supplier for such supply either specifically or as part of a service contracted for sale;
- (g) having in possession any tobacco product, smoking substance, substitute tobacco product or smoking device for sale or exchange; or
- (h) having in possession any tobacco product, smoking substance, substitute tobacco product or smoking device knowing that the tobacco product, smoking substance, substitute tobacco product or smoking device may be sold, offered, displayed or exposed for sale, or disposed of, for any consideration, and this includes electronic sale;

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

“smoking” means inhaling and expelling the smoke or vapour, of any tobacco product or substitute tobacco product, and includes the holding of or control over any tobacco product or substitute tobacco product which is ignited, heated or vaporized or used in any other methods;

“authorized officer” means any person appointed by the Minister under section 24;

“manufacturer” includes any person who packs or labels a tobacco product, smoking substance or substitute tobacco product;

“importer” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of, or is otherwise entitled to the custody or control, of a tobacco product, smoking substance or substitute tobacco product which is imported;

“smoking device” means any electronic device or battery operated device or other device including hookah which is used to heat, vaporize or burn a tobacco product, smoking substance or substitute tobacco product for smoking;

“premises” includes—

- (a) any building or tent or any other structure, permanent or otherwise together with the land on which the building, tent or other structure is situated and any adjoining land used in connection therewith; or
- (b) any vehicle, conveyance, vessel or aircraft used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of any tobacco product, smoking substance, substitute tobacco product or smoking device;

“substitute tobacco product” means any product, with or without any smoking substance, intended for smoking which is not a tobacco product.

“tobacco” means any product obtained from the leaf of *Nicotiana tabacum* or other *Nicotiana* species, whether in the state of uncured or cured state and includes the hybrid of these species, hybrid as a result of the cross of these species or hybrid with any other tree species or other hybrid, or the version of species which is genetically engineered or hybrid of such species.

PART II

REGISTRATION

Requirement for registration of tobacco product, etc.

3. (1) No tobacco product, smoking substance or substitute tobacco product shall be imported, manufactured or distributed by any person unless registered under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

- (a) where the person is not a body corporate—
 - (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and

- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Application for registration

4. (1) An application for the registration of a tobacco product, smoking substance or substitute tobacco product shall be made by the applicant to the Director General in the manner as prescribed.

(2) The application made under subsection (1) may be withdrawn at any time by the applicant prior to any approval by the Director General.

(3) Every application under subsection (1) shall be accompanied by the fee as prescribed and any document or information as determined by the Director General.

(4) At any time after receiving an application under subsection (1), the Director General may, in writing, require the applicant to provide any additional information, particulars or document within any period specified by the Director General.

(5) If the applicant fails to comply with the request made under subsection (4) within the period specified in the request or any extension of time granted by the Director General, the application shall be deemed to be withdrawn without affecting the right of the applicant to make a fresh application.

(6) Upon approval of the application made under subsection (1), the Director General may impose any condition as he deems fit and the Director General may vary or revoke any of the condition imposed.

Cancellation of registration

5. (1) Subject to subsection (2), the Director General may cancel any approval of the registration made under section 4 if the applicant—

- (a) has contravened any provision of this Act or any regulations made under this Act;
- (b) has breached any condition of the registration; or
- (c) has been convicted of any offence under this Act or any regulations made under this Act.

(2) The Director General shall, by notice in writing, before cancelling any approval of any tobacco product, smoking substance or substitute tobacco product under subsection (1), give an opportunity to the applicant to make any representation in writing against the cancellation, and pending the decision all importation, manufacturing or distribution of the tobacco product, smoking substance or substitute tobacco product shall be suspended from the date of the receipt of the notice.

(3) Any applicant whose registration of tobacco product, smoking substance or substitute tobacco product has been cancelled under subsection (1) shall not be entitled to claim any—

- (a) compensation for any loss caused by the cancellation; and
- (b) refund of the fee paid under subsection 4(3).

Register of tobacco product, etc.

6. (1) The Director General shall keep and maintain any register of tobacco product, smoking substance and substitute tobacco product registered under section 4.

(2) The register shall be kept in any manner and shall contain any particular as determined by the Director General.

PART III

ADVERTISEMENT, PROMOTION AND SPONSORSHIP

Prohibition on advertisement of tobacco product, etc.

7. (1) No person shall publish or facilitate any person to publish any advertisement of a tobacco product, smoking substance or substitute tobacco product which—

- (a) contains any tobacco product, smoking substance or substitute tobacco product;
- (b) contains any brand name or trademark relating to any tobacco product, smoking substance or substitute tobacco product;
- (c) contains any offer or invitation to purchase any tobacco product, smoking substance or substitute tobacco product;
- (d) is intended or likely to encourage any person to smoke;
or
- (e) promotes the tobacco product, smoking substance or substitute tobacco product as a quit smoking product.

(2) No person shall publish or facilitate any person to publish any advertisement of a smoking device which—

- (a) contains any offer or invitation to purchase any tobacco product, smoking substance or substitute tobacco product;
- (b) is intended or likely to encourage any person to smoke;
or

(c) promotes the smoking device as a quit smoking product.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Prohibition on advertisement of imitation of tobacco product, etc.

8. (1) No person shall publish or facilitate any person to publish, cause to be published, or take part in the publication, of any advertisement relating to any imitation of tobacco product, smoking substance or substitute tobacco product which—

- (a) contains any express or implied inducement, suggestion or encouragement to purchase any imitation of tobacco product, smoking substance or substitute tobacco product; or
- (b) its use is calculated, expressly or impliedly, is intended or likely to encourage any person to smoke.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than ten thousand ringgit and not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than thirty thousand ringgit and not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Prohibition on promotion or sponsorship of tobacco product, etc.

9. (1) No person shall promote or sponsor, or participate in any arrangement that promotes any tobacco product, smoking substance, substitute tobacco product or smoking device, which is intended or likely to encourage any person to smoke or to be promoted as a quit smoking product.

(2) For the purposes of this section, “arrangement” includes any agreement, undertaking or understanding that has or likely to have effects of promoting any tobacco product, smoking substance, substitute tobacco product or smoking device—

(a) by giving or accepting any sponsorship, gift, prize, reward, scholarship or other like benefit; or

(b) by organising any campaign, course, workshop, forum, road show, consultation or event.

(3) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART IV

CONTROL OF SALE

Prohibition of sale of tobacco product, etc.

10. (1) No person shall sell or display for sale any tobacco product, smoking substance or substitute tobacco product unless the sale or display for sale complies with the requirement as prescribed.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Prohibition of sale of imitation of tobacco product, etc.

11. (1) No person shall sell any imitation of tobacco product, smoking substance or substitute tobacco product.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both; and

- (ii) for the second or subsequent offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than ten thousand ringgit and not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than thirty thousand ringgit and not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Prohibition of tobacco product, etc., as a gift or prize

12. (1) No person shall sell—

- (a) any tobacco product, smoking substance or substitute tobacco product together with any coupon, reward, goods, offer or services as a gift or prize;
- (b) any goods or services together with any tobacco product, smoking substance or substitute tobacco product as a gift or prize;
- (c) any tobacco product, smoking substance or substitute tobacco product together with any tobacco product, smoking substance or substitute tobacco product as a gift or prize; or
- (d) any tobacco product, smoking substance or substitute tobacco product which is packaged or labelled together or otherwise with any other goods or services.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Prohibition of sale of tobacco product, etc., to person born on 1 January 2007 onwards

13. (1) No person shall—

- (a) sell any tobacco product, smoking substance, substitute tobacco product or smoking device to any person who was born on 1 January 2007 onwards; or
- (b) provide any services for smoking to any person who was born on 1 January 2007 onwards.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) No person who was born on 1 January 2007 onwards shall purchase any tobacco product, smoking substance, substitute tobacco product or smoking device.

(4) Any person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

PART V

CONTROL OF PRICE, PACKAGING, LABELLING, MANUFACTURING, ETC.

Retail price or minimum selling price

14. (1) The retail price or minimum selling price of any tobacco product, smoking substance or substitute tobacco product shall be in accordance with the price and conditions as prescribed.

(2) Any application by any manufacturer or importer to determine the retail price or minimum selling price of any tobacco product, smoking substance or substitute tobacco product shall be made to the Director General in the manner as prescribed.

(3) The price prescribed under subsection (1) shall include any excise duty or other related tax.

(4) No person shall sell any tobacco product, smoking substance or substitute tobacco product not in accordance with the price and conditions prescribed under subsection (1).

(5) Any person who contravenes this section commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Packaging and labelling

15. (1) No person shall manufacture, import or distribute any tobacco product, smoking substance or substitute tobacco product unless the tobacco product, smoking substance or substitute tobacco product is packaged and labelled in accordance with the requirement as prescribed.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART VI**PROHIBITION OF SMOKING****Non-smoking area or place**

16. (1) The Minister may, by order published in the *Gazette* and subject to any condition as he deems fit, declare any building or part of the building, a place or part of the place, or any area or vehicle, where public have access as a non-smoking area or place.

(2) No person shall smoke at the non-smoking area or place as declared by the Minister under subsection (1).

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Prohibition of smoking or possession of tobacco product, etc., on person born on 1 January 2007 onwards

17. (1) No person who was born on 1 January 2007 onwards—

- (a) shall smoke any tobacco product or substitute tobacco product;
- (b) shall use any smoking device; or
- (c) shall possess any tobacco product, smoking substance, substitute tobacco product or smoking device.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Duty of proprietor of the building, etc.

18. (1) The proprietor or occupier of any non-smoking area or place declared under section 16—

- (a) shall display a warning sign of prohibition of smoking in the form as prescribed;
- (b) shall not provide any smoking equipment or facilities or any method intended to encourage any person to smoke; or
- (c) shall take all reasonable measures as determined by the Director General to prevent any person from smoking in the building or vehicle, or at the place or area.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

PART VII

LIABILITY OF THE MANUFACTURER, IMPORTER OR DISTRIBUTOR

Presumption of matters related to label and packaging

19. In any proceeding under this Act, any evidence that a package containing any tobacco product, smoking substance, substitute tobacco product or smoking device bearing the name, address or registered mark of an importer, manufacturer or distributor, or of the owner of the rights of the manufacturer, packer, or of an agent of any of them, shall be *prima facie* evidence that the tobacco product, smoking substance, substitute tobacco product or smoking device is imported, manufactured or packed, as the case may be, by each of the persons whose name, address or the registered mark is borne on the packaging.

Responsibility of manufacturer, importer or distributor

20. (1) Every manufacturer, importer or distributor of a tobacco product, smoking substance, substitute tobacco product or smoking device shall provide any information as determined by the Director General or any authorized officer in relation to the tobacco product, smoking substance, substitute tobacco product or smoking device.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction—

- (a) where the person is not a body corporate, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both; or
- (b) where the person is a body corporate, be liable to a fine not less than ten thousand ringgit and not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

PART VIII

ADMINISTRATION

Acute or critical situation

21. (1) The Minister may, upon the advice of the Director General that there is acute or critical situation relating to the use or consumption of any tobacco product, smoking substance or substitute tobacco product that may seriously endangers lives, health or safety of any population in any part of the country, establish a committee, as soon as reasonably practicable, to coordinate and advise him on the matter.

(2) If the Minister is satisfied that there is acute or critical situation that seriously endangers lives, health or safety of population, the Minister may, on the recommendation of the committee established under subsection (1), by order published in the *Gazette*, prohibit the importation, manufacturing, distribution or selling of the tobacco product, smoking substance or substitute tobacco product.

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction—

(a) where the person is not a body corporate—

- (i) for the first offence, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (ii) for the second or subsequent offence, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) where the person is a body corporate—

- (i) for the first offence, be liable to a fine not less than twenty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

- (ii) for the second or subsequent offence, be liable to a fine not less than fifty thousand ringgit and not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Appointment of analysts

22. (1) The Minister may appoint any person to be an analyst for the purposes of this Act.

(2) The appointment of an analyst made under subsection (1) shall be published in the *Gazette*.

Approved laboratories

23. (1) The Minister may, by order published in the *Gazette*, approve such number of laboratories for the purposes of this Act.

(2) Any laboratory approved under subsection (1) shall be issued with a certificate of approval which in any legal proceedings under this Act, shall be admissible in evidence as *prima facie* proof of the facts stated in the certificate.

(3) The Minister shall prepare or cause to be prepared a list of approved laboratories and the Minister may revise the list as circumstances require.

Appointment of authorized officer

24. (1) The Minister may appoint any person to be an authorized officer for the purposes of this Act.

(2) Any authorized officer appointed under subsection (1) shall be issued with a certificate of authorization which in any legal proceedings under this Act, shall be admissible in evidence as *prima facie* proof of the facts stated in the certificate.

PART IX

ENFORCEMENT

Power of investigation

25. An authorized officer shall have the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [*Act 593*] in relation to investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

Power to enter premises

26. For the purposes of this Act, any authorized officer shall have the power to enter any premises at any reasonable time for the purpose of—

- (a) inspecting any tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of any tobacco product, smoking substance, substitute tobacco product or smoking device;
- (b) inspecting any goods or equipment that the authorized officer believes is used or can be used for manufacturing, packaging, storage, delivery, distribution or sale of tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of any tobacco product, smoking substance, substitute tobacco product or smoking device;
- (c) collecting any sample of tobacco product, smoking substance or substitute tobacco product; or
- (d) examining and seizing any article found in any premises where the authorized officer believes that it contains any information in relation to any tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of any tobacco product, smoking substance, substitute tobacco product or smoking device.

Power to take sample

27. (1) Upon payment to any person who sells tobacco product, smoking substance or substitute tobacco product or to his agent or servant, of the current market value of the tobacco product, smoking substance or substitute tobacco product, any authorized officer may at any place demand and select and take or obtain samples of the tobacco product, smoking substance or substitute tobacco product for the purpose of analysis.

(2) An authorized officer may at any place demand and select and take or obtain samples of the tobacco product, smoking substance or substitute tobacco product for the purpose of analysis without payment from any importer, manufacturer or distributor or from his agent or servant.

(3) Any person who refuses or neglects to comply with any demand made under subsection (1) or (2) 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 one year or to both.

Procedure for taking sample

28. (1) If any sample of any tobacco product, smoking substance or substitute tobacco product is required for any analysis, the authorized officer purchasing or otherwise procuring the sample shall inform to the seller or his agent or servant selling the tobacco product, smoking substance or substitute tobacco product that he intends to have the sample analysed by an analyst.

(2) The procedure for taking and dealing with the samples shall be as determined by the Director General.

Presumption

29. When any tobacco product, smoking substance or substitute tobacco product suspected of being in violation of the provision of this Act has been seized and the tobacco product, smoking substance or substitute tobacco product is contained in a number of receptacles, it shall be sufficient to analyse samples of the contents of a number not less than ten per centum of such receptacles and if such analysis establishes that such samples are all of the same

nature and description, it shall be presumed, until the contrary is proved, that the contents of all the receptacles were of the same nature and description as the samples so analyzed and if such analysis establishes that such samples consist of or contain tobacco product, smoking substance or substitute tobacco product, it shall be presumed, until the contrary is proved, that the contents of all the receptacles consist of or contain the same proportion of such tobacco product, smoking substance and substitute tobacco product.

Power to open packages and examine tobacco product, etc.

30. For the purposes of this Act, an authorized officer may open any baggage, package, or any other container and may examine any tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of tobacco product, smoking substance, substitute tobacco product or smoking device contained therein, and for the purposes of such examination bring the same goods to the office of the authorized officer.

Power to stop, search and seize conveyance

31. (1) Where an authorized officer has reasonable cause to suspect that any conveyance is carrying any tobacco product, smoking substance, substitute tobacco product, smoking device, machinery, equipment, book, record, document or any other article in respect of which an offence under this Act is being or has been committed, the officer may stop and search the conveyance and may, if on examination he has reasonable cause to believe that such conveyance is or has been used for the commission of such offence, seize the conveyance and any tobacco product, smoking substance, substitute tobacco product, smoking device, machinery, equipment, book, record, document or any other article found in the conveyance that is reasonably believed to furnish evidence of the commission of such offence.

(2) The person in control or in charge of the conveyance shall, if required to do so by the authorized officer—

- (a) stop the conveyance and allow the authorized officer to search the conveyance; and

(b) open all parts of the conveyance for search and take all measures necessary to enable or facilitate the carrying out of the search as the authorized officer considers necessary.

(3) Any person who contravenes subsection (2) 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 one year or to both.

Search and seizure with warrant

32. (1) If it appears to a Magistrate, upon written information on oath from the authorized officer and after such inquiry as he considers necessary, that there is reasonable cause to believe that—

(a) any premises has been used for 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 or any regulations made under this Act, the Magistrate may issue a warrant authorizing any authorized officer named in the warrant, to enter the premises at any reasonable time by day or night, and with or without assistance, and if need be by force.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the authorized officer to—

(a) seize or take samples of any tobacco product, smoking substance, substitute tobacco product or smoking device or other things; or

(b) seize any document, record, manual, book, material or other article or make a copy of or extract from the document, record, manual, book, material or other article.

(3) An authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, examine any person who is in or on the premises.

(4) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

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

(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) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect under this section; and

(c) detain any person found in the premises until the search has been completed.

(6) Where, by the reason of its nature, size or amount, it is not practical to remove any receptacle, package, conveyance, book, document or other thing seized under this section, the authorized officer shall seal the conveyance, container or premises in which the receptacle, package, book, document or other thing is found.

(7) Any person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes the receptacle, package, conveyance, book, document or other thing seized under seal or attempts to do so, 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 one year or to both.

Search and seizure without warrant

33. Where an authorized officer has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 32—

(a) the investigation would be adversely affected;

- (b) the object of the entry is likely to be frustrated;
- (c) the tobacco product, smoking substance, substitute tobacco product or smoking device, article or other things sought may be removed or interfered with; or
- (d) the evidence sought may be tampered with or destroyed,

the officer may enter the premises and exercise in respect of the premises, all the powers referred to in section 32 in as full and ample manner as if the officer were authorized to do so by a warrant issued under that section.

Access to recorded information, computerized data, etc.

34. (1) Any authorized officer exercising his powers under this Act shall be given access to any recorded information or computerized data, whether stored in a computer or otherwise.

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

- (a) may inspect and check the operation of any computer and any associated apparatus or material which the authorized officer has reasonable cause to suspect is or has been used in connection with that information or data;
- (b) may require—
 - (i) the person, whom the authorized officer has reasonable cause to suspect that the person is using or have used the computer in connection with that information or data;
 - (ii) the person, whom the authorized officer has reasonable cause to suspect that the computer is used or has been used, on behalf of the person, in connection with that information or data; or
 - (iii) 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 purpose of this section.

(3) The authorized officer may make copies of or take extracts from the recorded information or computerized 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 the recorded information or computerized data.

Seizure of things, etc.

35. (1) Any tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of tobacco product, smoking substance, substitute tobacco product or smoking device, conveyance, machinery, equipment, book, record, document, article or other things that an authorized officer reasonably suspects has been used or will be used in the commission of any offence under this Act may be seized and detained by the authorized officer.

(2) When no person is charged for any offence, the thing seized shall, unless it is claimed by the owner or the person from whom it was seized within a period of thirty days of the seizure, be disposed of at the discretion of the Director General or authorized officer but if within the period a claim is made by the owner or any person from whom the thing was seized, it shall be returned to him.

List of things seized

36. (1) Where any seizure is made under this Part, an authorized officer making the seizure shall prepare a list of tobacco product, smoking substance, substitute tobacco product, smoking device, conveyance, machinery, equipment, book, record, document, articles or other things seized and of the premises in which it is found and shall sign the list.

(2) The list prepared in accordance with subsection (1) shall be delivered immediately to—

- (a) the occupant of the premises where any tobacco product, smoking substance, substitute tobacco product or smoking device, conveyance, machinery, equipment, book, record, document, article or other things seized is found; and
- (b) the person in control or in charge of the conveyance, where the seizure is made under section 31.

(3) Where the seizure is made in or from any premises, which is unoccupied, the authorized officer shall whenever possible post a list of things seized conspicuously at the premises.

Temporary return of conveyance, etc.

37. Where any conveyance, machinery or equipment is seized under this Act, the court may at any time order temporary return of the conveyance, machinery or equipment to the owner of the conveyance, machinery or equipment or the person from whose possession, custody or control it was seized, subject to such terms and conditions as the court may impose, and subject in any case, to sufficient security being furnished to the satisfaction of the court that the conveyance, machinery or equipment shall be produced to the court on demand and that such terms and conditions, if any, shall be complied with.

Cost of holding seized tobacco product, etc.

38. Where any tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of any tobacco product, smoking substance, substitute tobacco product or smoking device, conveyance, machinery, equipment or article seized or surrendered under this Act is held in the custody of the authorized officer pending completion of any proceedings in respect of an offence under this Act, the cost of holding it in custody shall be recoverable as a civil debt due to the Government.

Power to require attendance of person acquainted with case

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

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

Examination of person acquainted with case

40. (1) An authorized officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) The person shall be bound to answer all questions relating to the case put to him by the authorized officer, but that person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge, 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 authorized officer examining a person under subsection (1) shall first inform to that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making the statement or affixed with his thumb print, as the case may be, after—

- (a) the statement has been read to him in the language in which he made it; and
- (b) the person has been given an opportunity to make any correction he may wish.

PART X

TRIALS AND PROCEEDINGS

Prosecution

41. No prosecution for or in relation to any offence under this Act or any regulations made under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Advance notice of expert evidence in court

42. In any proceedings for an offence under this Act, no expert evidence shall be received in evidence unless, within a period ending ten clear days before the trial, the person charged with the offence has served on the prosecution notice in writing that he intends to adduce expert evidence, and shall disclose in the notice the name of the expert and the nature of the expert evidence, and shall also furnish a copy of any document that the expert proposes to adduce at the hearing.

Jurisdiction to try offences

43. Notwithstanding any written law to the contrary, a court of a First Class Magistrate shall have jurisdiction to try any offence under this Act and to impose punishment under this Act for any such offence.

Protection of informer

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

(2) If any books, records, accounts, documents or computerized data which are produced in evidence or liable to inspection in any civil or criminal proceeding contains any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all the passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If in the trial for any offence under this Act, the court, after full enquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew 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 that proceeding without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry and require full disclosure, concerning the informer.

Evidence of agent provocateur admissible

45. (1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any rule of law or this Act or any other written law to the contrary, and that the agent provocateur is an authorized officer, any statement, whether oral or in writing, made to an agent provocateur by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.

Non-disclosure of information

46. Nothing in this Act or in any regulations made under this Act shall require any authorized officer to disclose facts or to produce documents which he considers—

- (a) to be against the public interest to disclose or produce;
- or
- (b) would compromise the protection of a witness.

Power to order appearance in court

47. (1) Where the Director General or any authorized officer has reasonable grounds for believing that any person committed an offence under this Act, he may, in lieu of applying to the court for a summons, forthwith serve upon that person a notice ordering that person to appear before the nearest court of a Magistrate having jurisdiction to try the offence, at a time and date to be stated in the notice.

(2) If any person who was served with a notice as provided by subsection (1) fails to appear in person or by counsel, the court may, if satisfied that the notice was served, issue a warrant for the arrest of that person unless it appears that it was not reasonably possible for that person so to appear.

(3) The notice under subsection (1) shall be as prescribed.

PART XI

GENERAL

Compounding of offences

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

(a) any offence under this Act or any regulations made under this Act as an offence which may be compounded; and

(b) the method and procedure for compounding such offence.

(2) The Director General or any authorized officer authorized by the Director General may, with the consent in writing of the Public Prosecutor, at any time before a charge is being instituted, compound any offence prescribed as an offence which may be compounded by making a written offer to the person reasonably suspected of having committed the offence to compound the offence upon payment to the Director General of a sum of money not exceeding fifty per centum of the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence, within such time as may be specified in the written offer.

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

(4) If the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(5) Where an offence has been compounded under this section—

(a) no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made; and

(b) any document or thing seized in connection with the offence may be released by the Director General, subject to such terms as the Director General thinks fit.

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

Offence by body corporate, etc.

49. (1) Where any company, limited liability partnership, firm, society or other body of persons commits an offence under this Act, a person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society or other body of persons or was assisting in its management—

(a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or the body of persons; and

(b) if the company, limited liability partnership, firm, society or the body of persons is found guilty of the offence, shall be deemed to be guilty of that offence and shall be liable to the same punishment or penalty as an individual unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge; or

(ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) Where any person would be liable under this Act to any punishment, penalty or forfeiture for any act, omission, neglect or default, he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of the person's employee or agent, or of the employee of the person's agent, if the act, omission, neglect or default was committed—

(a) by that person's employee in the course of his employment;

(b) by that person's agent when acting on behalf of that person; or

(c) by the employee of that person's agent when acting in the course of his employment by the person's agent or otherwise on behalf of the person's agent acting on behalf of that person.

Protection against suit and legal proceedings

50. No action, suit, prosecution or other proceedings shall be brought, instituted or maintained in any court against any authorized officer on account of or in respect of any act done or omitted to be done for the purpose of carrying into effect this Act unless it can be proven that the act was done or omitted to be done in bad faith and not in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Indemnity

51. (1) The Government shall not be liable to make good any damage which an owner or occupier or person in charge of any premises may sustain as a result of an entry, search or seizure under this Act, unless the damage was caused by the wilful neglect or default of a public officer.

(2) In the event of any dispute as to the amount of compensation in respect of any damage so caused, the amount shall be summarily ascertained and determined by a Magistrate's court.

Delegation of power

52. (1) The Director General may, in writing, delegate any of the powers, duties or functions of the Director General, other than the power under section 48, to any officer under the control, direction and supervision of the Director General subject to any condition, limitation or restriction as the Director General thinks fit.

(2) Any delegation under this section shall not preclude the Director General himself from performing or exercising, at any time of the delegated powers, duties or functions.

Power to make regulations

53. (1) The Minister may make regulations as may be necessary or expedient for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may prescribe—

- (a) all matters relating to the manner of application, cancellation, suspension or withdrawal of the registration of a tobacco product, smoking substance or substitute tobacco product;
- (b) all matters relating to particulars to be provided by an applicant, the manner of approval, the terms, conditions and restrictions of the registration to be imposed on the applicant;

- (c) all fees required by this Act to be prescribed;
- (d) all matters relating to prohibition on the advertisement of tobacco product, smoking substance, substitute tobacco product or smoking device;
- (e) all matters relating to prohibition on the promotion or sponsorship of tobacco product, smoking substance, substitute tobacco product or smoking device;
- (f) all matters relating to prohibition on the sale of tobacco product, smoking substance or substitute tobacco product;
- (g) all matters relating to the retail price or minimum selling price of tobacco product, smoking substance or substitute tobacco product;
- (h) all matters relating to packaging and labelling of tobacco product, smoking substance or substitute tobacco product;
- (i) all matters relating to non-smoking area or place;
- (j) all matters relating to prohibition on possession, sell, purchase, smoke or consumption of any tobacco product, smoking substance, substitute tobacco product or smoking device by a person born on 1 January 2007 onwards;
- (k) all matters relating to prohibition of sale of tobacco product, smoking substance, substitute tobacco product or smoking device to a person born on 1 January 2007 onwards;
- (l) all matters relating to the procedure of taking and dealing with the sample and analysis; and
- (m) any other matters required by this Act to be prescribed.

(3) Any regulations made under subsection (1) may prescribe any act or omission in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both for the offence.

PART XII

SAVING AND TRANSITIONAL

Savings

54. (1) Notwithstanding—

(a) paragraph 13(1)(a) or (b), no person—

(i) shall sell any tobacco product, smoking substance, substitute tobacco product or smoking device; or

(ii) shall provide any services for smoking,

to any person who was born before 1 January 2007 which is yet to reach eighteen years old on the date of coming into operation of this Act; or

(b) subsection 13(3) or 17(1), any person who was born before 1 January 2007 which is yet to reach eighteen years old on the date of coming into operation of this Act—

(i) shall not purchase any tobacco product, smoking substance, substitute tobacco product or smoking device;

(ii) shall not smoke any tobacco product or substitute tobacco product;

(iii) shall not use any smoking device; or

(iv) shall not possess any tobacco product, smoking substance, substitute tobacco product or smoking device.

(2) Any person who contravenes—

(a) paragraph 54(1)(a), commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or be imprisonment for a term not exceeding two years or both; or

- (b) paragraph 54(1)(b), commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

Transitional

55. (1) Any person who imports, manufactures or distributes the tobacco product, smoking substance or substitute tobacco product before the coming into operation of subsections 3(1) and 14 (1) of this Act shall, within six months from the date of the coming into operation of this Act, apply to the Director General to be registered under subsection 3(1) of this Act.

(2) If the Director General rejects the application for registration made under subsection 3(1), the importer, manufacturer, distributor or seller of the tobacco product, smoking substance or substitute tobacco product shall, at its own expense, recall and stop the sale of the tobacco product, smoking substance or substitute tobacco product.

EXPLANATORY STATEMENT

The Control of Tobacco Product and Smoking Bill 2022 (“the proposed Act”) seeks to provide for the registration of tobacco product, smoking substance and substitute tobacco product, the control of advertisement, promotion and sponsorship, sale and purchase of tobacco product, smoking substance, substitute tobacco product or smoking device, and the prohibition of smoking of tobacco product or substitute tobacco product and the prohibition of the use of smoking device, by any person that was born in 2007 onwards.

PART I

2. Part I of the proposed Act deals with preliminary matters.
3. *Clause 1* contains the short title and provision on the commencement of the proposed Act.
4. *Clause 2* contains the definitions of certain words and expressions used in the proposed Act.

PART II

5. Part II of the proposed Act deals with provisions relating to the registration and cancellation of registration of any tobacco product, smoking substance or substitute tobacco product under the proposed Act.
6. *Clause 3* seeks to require all tobacco product, smoking substance or substitute tobacco product to be registered under the proposed Act. Any person who fails to comply with this *clause* commits an offence.
7. *Clause 4* seeks to provide that an application for the registration of any tobacco product, smoking substance or substitute tobacco product shall be made to the Director General in the manner with fee as prescribed.
8. *Clause 5* seeks to provide for the cancellation of registration of the tobacco product, smoking substance or substitute tobacco product.
9. *Clause 6* seeks to provide that the Director General shall keep and maintain a register of tobacco product, smoking substance and substitute tobacco product registered under *clause 4*.

PART III

10. Part III of the proposed Act deals with the prohibition of any advertisement, promotion and sponsorship of a tobacco product, smoking substance, substitute tobacco product or smoking device and its imitation, and smoking device.
11. *Clause 7* seeks to prohibit any publication of any advertisement of tobacco product, smoking substance, substitute tobacco product or smoking device. Any person who fails to comply with this *clause* commits an offence.
12. *Clause 8* seeks to prohibit any publication of any of advertisement of imitation of tobacco product, smoking substance or substitute tobacco product. Any person who fails to comply with this *clause* commits an offence.
13. *Clause 9* seeks to prohibit any promotion or sponsorship of any tobacco product, smoking substance, substitute tobacco product or smoking device which is intended or likely to encourage any person to smoke or to be promoted as a quit smoking product. Any person who fails to comply with this *clause* commits an offence.

PART IV

14. Part IV of the proposed Act deals with control of sale of any tobacco product, smoking substance or substitute tobacco product and its imitation, and smoking device.
15. *Clause 10* seeks to prohibit any person from selling or displaying for sale any tobacco product, smoking substance or substitute tobacco product, unless the sale or display for sale comply with the requirement as prescribed in the regulations. Any person who fails to comply with this *clause* commits an offence.

16. *Clause 11* seeks to prohibit any person from selling any imitation of tobacco product, smoking substance or substitute tobacco product. Any person who fails to comply with this *clause* commits an offence.

17. *Clause 12* seeks to prohibit any tobacco product, smoking substance, substitute tobacco product or smoking device to be given as a gift or prize. This *clause* also seeks to prohibit the sale of any tobacco product, smoking substance, substitute tobacco product or smoking device with any coupon, reward, goods, offer or services. Any person who fails to comply with this *clause* commits an offence.

18. *Clause 13* seeks to prohibit the sale and purchase of any tobacco product, smoking substance, substitute tobacco products or smoking device to and by any person who was born on 1 January 2007 onwards. Any person who fails to comply with this *clause* commits an offence.

PART V

19. Part V of the proposed Act deals with control of price, packaging, labelling, manufacturing, importation or distribution of any tobacco product, smoking substance or substitute tobacco product.

20. *Clause 14* seeks to provide that the retail price or minimum selling price of any tobacco product, smoking substance or substitute tobacco product shall be in accordance with the price and conditions as prescribed. Any person who fails to comply with this *clause* commits an offence.

21. *Clause 15* seeks to provide that the packaging and labelling of any tobacco product, smoking substance or substitute tobacco product shall be in accordance with the requirement as prescribed. Any person who fails to comply with this *clause* commits an offence.

PART VI

22. Part VI of the proposed Act deals with provisions relating to prohibition of smoking.

23. *Clause 16* seeks to empower the Minister, by order published in the *Gazette*, to declare any building or part of the building, a place or part of the place, or any area or vehicle, where public have access as a non-smoking area or place. This *clause* also provides that any person who smoke at the non-smoking area or place commits an offence under this Act.

24. *Clause 17* seeks to prohibit any person who was born on 1 January 2007 onwards from smoking any tobacco product or substitute tobacco product, using any smoking device or possessing any tobacco product, smoking substance, substitute tobacco product or smoking device. Any person who fails to comply with this *clause* commits an offence.

25. *Clause 18* seeks to provide for the duty of the proprietor or occupier of any building, place, area or vehicle relating to the order made under the proposed *clause 16*. Any person who fails to comply with this *clause* commits an offence.

PART VII

26. Part VII of the proposed Act deals with the liability of the manufacturer, importer and distributor.

27. *Clause 19* seeks to provide for that a label or package containing any tobacco product, smoking substance, substitute tobacco product or smoking device bearing the name, address or registered mark of an importer, manufacturer or distributor shall be *prima facie* evidence that the tobacco product, smoking substance, substitute tobacco product or smoking device is imported, manufactured or packed by the person whose name, address or registered mark appears on the packaging.

28. *Clause 20* seeks to provide for the responsibility of every manufacturer, importer or distributor to provide any information as determined by the Director General or any authorized officer relating to any tobacco product, smoking substance, substitute tobacco product or smoking device. Any person who fails to comply with this *clause* commits an offence.

PART VIII

29. Part VIII of the proposed Act deals with matters relating to the administration of the proposed Act.

30. *Clause 21* seeks to empower the Minister, upon the advice of the Director General that there is an acute or critical situation relating to the use or consumption of any tobacco product, smoking substance or substitute tobacco product, to establish a committee to advise him on the matter. This *clause* also seeks to empower the Minister, on the recommendation of the committee, to prohibit the importation, manufacturing, distribution and selling of any tobacco product, smoking substance or substitute tobacco product by order published in the *Gazette*. Any person who fails to comply with this *clause* commits an offence.

31. *Clause 22* seeks to empower the Minister to appoint any person to be an analyst for the purposes of this Act.

32. *Clause 23* seeks to empower the Minister, by order published in the *Gazette*, to approve any laboratory to be an approved laboratory for the purposes of this Act and the approved laboratories will be issued with a certificate of approval.

33. *Clause 24* seeks to empower the Minister to appoint any person to be an authorized officers for the purposes of this Act.

PART IX

34. Part IX of the proposed Act deals with provisions relating to enforcement.
35. *Clause 25* seeks to provide that an authorized officer shall have all or any of the powers of a police officer in relation to the investigation provided under the Criminal Procedure Code [*Act 593*].
36. *Clause 26* seeks to empower authorized officer to have access to any premises at any reasonable time for the purpose of investigation. This *clause* also provides certain investigation powers to be exercised by the authorized officer upon entering the premises.
37. *Clause 27* seeks to empower an authorized officer, upon payment made to any person who sells the tobacco product, smoking substance or substitute tobacco product, to take sample for the purpose of analysis. This *clause* also seeks to empower the authorized officer to take sample from any manufacturer, importer or distributor or from his agent or servant without any payment. Any person who fails to comply with this *clause* commits an offence.
38. *Clause 28* seeks to provide for the procedure for taking sample of any tobacco product, smoking substance or substitute tobacco product intended for analysis by an analyst.
39. *Clause 29* seeks to provide for the presumption relating to any tobacco product, smoking substance or substitute tobacco product suspected of being in violation of the provision of this Act that have been seized in a number of receptacles, it shall be sufficient to analyse samples of the contents of a number not less than ten per centum.
40. *Clause 30* seeks to empower an authorized officer to open any baggage, package, or any other container and examine any tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of tobacco product, smoking substance, substitute tobacco product or smoking device contain therein.
41. *Clause 31* seeks to empower the authorized officer to stop, search and seize any conveyance if he has reasonable cause to suspect an offence under this Act is being or has been committed. Any person who fails to comply with this *clause* commits an offence.
42. *Clause 32* seeks to provide for the search and seizure with warrant by an authorized officer upon issuance of a warrant by the Magistrate to enter the premises at any reasonable time, with or without assistance. Any person who fails to comply with this *clause* commits an offence
43. *Clause 33* seeks to provide for the search and seize without warrant if the authorized officer has a reasonable cause to believe that delay in obtaining a search warrant will affect the investigation.
44. *Clause 34* seeks to empower the authorized officer to have access on recorded information, computerized data, etc.

45. *Clause 35* seeks to empower an authorized officer to seize any tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of tobacco product, smoking substance, substitute tobacco product or smoking device, conveyance, machinery, equipment, book, record, document, articles or other things that an authorized officer reasonably suspects has been used or will be used in the commission of any offence under this Act.

46. *Clause 36* seeks to provide that an authorized officer shall prepare a list of tobacco product, smoking substance, substitute tobacco product, smoking device or imitation of tobacco product, smoking substance, substitute tobacco product or smoking device, conveyance, machinery, equipment, book, record, document, articles or other things seized and shall sign the list.

47. *Clause 37* seeks to provide for the temporary return of any conveyance, machinery or equipment seized under the proposed Act.

48. *Clause 38* seeks to provide for that the cost of holding any seized tobacco product, smoking substance, substitute tobacco product, smoking device or their imitation conveyance, machinery, equipment or article in the custody of the authorized officer pending completion of any proceedings under this Act, shall be recoverable as a civil debt due to the Government.

49. *Clause 39* seeks to empower the authorized officer making an investigation under the proposed Act to require the attendance of any person who appears to him to be acquainted with the facts and circumstances of the case and the person shall attend as required.

50. *Clause 40* seeks to empower an authorized officer to examine orally any person supposed to be acquainted with the facts and circumstances of the case.

PART X

51. Part X of the proposed Act deals with manner relating to trials and proceedings.

52. *Clause 41* seeks to provide that prosecution made under this Act or any regulation made under this Act shall be instituted with the consent in writing of the Public Prosecutor.

53. *Clause 42* seeks to provide that if expert evidence is intended to be adduced by a person charged, the prosecution shall be notified by notice in writing within a period of ten clear days before the trial.

54. *Clause 43* seeks to provide that the First Class Magistrate shall have full jurisdiction to try any offence under this Act.

55. *Clause 44* seeks to provide for the protection of the informer for the purpose of this Act.

56. *Clause 45* seeks to provide for matters relating to agent provocateur.

57. *Clause 46* seeks to provide that any authorized officer shall not disclose any information against the public interest and compromise the protection of witness.

58. *Clause 47* seeks to empower the Director General or any authorized officer to serve upon any person who commits an offence under this Act a notice ordering that person to appear before a magistrates' court.

PART XI

59. Part XI of the proposed Act deals with general provisions.

60. *Clause 48* seeks to provide for matters relating to compounding offences.

61. *Clause 49* deals with offences committed by a body corporate, etc.

62. *Clause 50* seeks to provide for the protection of authorized officer from liability in the course of carrying out his duties under the proposed Act.

63. *Clause 51* seeks to provide for the protection of the Government from any liability relating to any damage during the investigation.

64. *Clause 52* seeks to empower the Director General to delegate any power, duty or function to any officer under his control, direction and supervision.

65. *Clause 53* seeks to empower the Minister to make regulations for the purposes of the proposed Act.

PART XII

66. *Clause 54* and *55* of Part XII deals with saving and transitional provisions.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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