



# LAWS OF MALAYSIA

## Act 852

### CONTROL OF SMOKING PRODUCTS FOR PUBLIC HEALTH ACT 2024

Date of Royal Assent	... ..	24 January 2024
Date of publication in the <i>Gazette</i>	... ..	2 February 2024

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# LAWS OF MALAYSIA

## Act 852

### CONTROL OF SMOKING PRODUCTS FOR PUBLIC HEALTH ACT 2024

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# LAWS OF MALAYSIA

Act 852

## CONTROL OF SMOKING PRODUCTS FOR PUBLIC HEALTH ACT 2024

An Act to provide for matters relating to the registration, advertisement, control of the sale and purchase of a tobacco product, smoking substance and substitute tobacco product, and to provide for related matters.

[ ]

**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 Smoking Products For Public Health Act 2024.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

## Interpretation

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

“smoking substance” means any substance or any combination of substances, used for smoking, including nicotine, propylene glycol, glycerol and triethylene glycol;

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

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

“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 or substitute tobacco product 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 or substitute tobacco product for sale or exchange; or
- (h) having in possession any tobacco product, smoking substance or substitute tobacco product knowing that the tobacco product, smoking substance or substitute tobacco product 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;

“minor” means any person under the age of eighteen years;

“authorized officer” means any medical officer of health, or any environmental health officer or assistant environmental health officer of the Ministry of Health or of any local authority, or any suitably qualified person, appointed by the Minister to be an authorized officer 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;

“body corporate” means a company, limited liability partnership, firm or other body of persons;

“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 or substitute tobacco product;

“substitute tobacco product” means any product or processed product, other than a tobacco product, that is capable of being smoked, whether with or without smoking substance;

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

“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.

(2) For the purposes of this Act, a reference to “smoking products” shall be construed as a reference to tobacco products, smoking substances or substitute tobacco products.

## 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) or be suspended under subsection (2) shall not be entitled to claim—

(a) any compensation for any loss caused by the cancellation; and

(b) any 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 particulars 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 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;
- (e) promotes any tobacco product, smoking substance or substitute tobacco product as a quit smoking product;  
or
- (f) promotes any goods used in association with any tobacco product, smoking substance or substitute tobacco product.

(2) 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.

**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 or substitute tobacco product, 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 the effects of promoting any tobacco product, smoking substance or substitute tobacco product—

(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 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 tobacco product, etc., to minor**

**13.** (1) No person shall sell any tobacco product, smoking substance or substitute tobacco product, or provide any services for smoking, to a minor.

(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 is a minor shall purchase any tobacco product, smoking substance or substitute tobacco product.

(4) Any person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or be ordered to perform community service pursuant to the Criminal Procedure Code [Act 593] or the Child Act 2001 [Act 611].

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, etc., of tobacco product, etc., on minor**

**17.** (1) No person who is a minor shall smoke, chew or use in any manner whatsoever any tobacco product, or smoke any substitute tobacco product.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or be ordered to perform community service pursuant to the Criminal Procedure Code or the Child Act 2001.

**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; and

(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 MANUFACTURER, IMPORTER OR DISTRIBUTOR

#### **Presumption of matters related to labelling and packaging**

**19.** In any proceedings under this Act, any evidence that a package containing any tobacco product, smoking substance or substitute tobacco product and 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 or substitute tobacco product 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 or substitute tobacco product shall provide any information as determined by the Director General or any authorized officer in relation to the 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, 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 an 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 or restrict, subject to any conditions he deems fit, 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 officers**

**24.** (1) The Minister may appoint such number of authorized officer as he considers necessary 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.

(3) An authorized officer shall, when acting within the scope of his powers and duties under this Act, be deemed to be a public servant within the meaning of the Penal Code [Act 574].

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

**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 a place where the tobacco product, smoking substance or substitute tobacco product is sold, 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 a place where the authorized officer reasonably believes is used or may be used for the purpose of manufacturing, packaging, storage, delivery, distribution or sale of the tobacco product, smoking substance or substitute tobacco product, 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 the sample according to subsection 27(1) or otherwise procuring the sample according to subsection 27(2), shall inform the seller or his agent or servant selling the tobacco product, smoking substance or substitute tobacco product or the importer, manufacturer or distributor or his agent or servant 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 obtained according to section 27 or has been seized according to section 32, 33 or 35, from the place where the authorized officer reasonably believes is used or may be used for the purpose of manufacturing, packaging, storage, delivery, distribution or sale of the tobacco product, smoking substance or substitute tobacco product 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, at a place where the authorized officer reasonably believes is used or may be used for the purpose of manufacturing, packaging, storage, delivery, distribution or sale of a tobacco product, smoking substance or substitute tobacco product, or the imitation of a tobacco product, smoking substance or substitute tobacco product, any baggage, package, or any other container and may examine any tobacco product, smoking substance or substitute tobacco product or imitation of tobacco product, smoking substance or substitute tobacco product contain 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, machinery, equipment, book, record, document or any other article in respect of which an offence under this Act, except for an offence under section 17, 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, 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 have 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 other thing; 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 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 is 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 any premises are used or may be used for the purpose of manufacturing, packaging, storage, delivery, distribution or sale of tobacco product, smoking substance or substitute tobacco product or imitation of any tobacco product, smoking substance or substitute tobacco product and 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 or substitute tobacco product or imitation of any tobacco product, smoking substance or substitute tobacco product, article or other thing 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, except for investigation of an offence under section 17, shall be given access to any recorded information or computerized data relating to the manufacturing, packaging, storage, delivery, distribution or sale of any tobacco product, smoking substance or substitute tobacco product, or imitation of any tobacco product, smoking substance or substitute tobacco product, 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 has 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 or substitute tobacco product or imitation of tobacco product, smoking substance or substitute tobacco product, conveyance, machinery, equipment, book, record, document, article or other thing 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.

(3) Where anything seized in exercise of the powers conferred under this Act is of a perishable nature or is subject to speedy and natural decay, the Director General may direct the thing to be sold or destroyed at any time, and the proceeds of the sale held by the authorised officer to abide by the result of any prosecution under this Act or claim under this section.

### **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, conveyance, machinery, equipment, book, record, document, article or other thing 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, conveyance, machinery, equipment, book, record, document, article or other thing seized is found; and

(b) the person in control or in charge of the conveyance, where the seizure is made under section 33.

(3) Where the seizure is made in or from any premises which are 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.** (1) Where any tobacco product, smoking substance, substitute tobacco product, or imitation of any tobacco product, smoking substance or substitute tobacco product, 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.

(2) The Government shall not be held liable to any person for any deterioration in the quality of any tobacco product, smoking substance, substitute tobacco product, or imitation of any tobacco product, smoking substance or substitute tobacco product, conveyance, machinery, equipment or article, seized or surrendered under this Act.

### **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 proceedings contain 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 those proceedings 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 him 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**

**49.** (1) Where any body corporate 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 body corporate 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 body corporate or other body of persons or was assisting in its management—

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate 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 powers**

**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 any 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 or substitute tobacco product;
- (e) all matters relating to prohibition on the promotion or sponsorship of tobacco product, smoking substance or substitute tobacco product;
- (f) all matters relating to restriction and 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 the procedure of taking and dealing with the sample and analysis; and
- (k) 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

### TRANSITIONAL

#### **Transitional**

**54.** (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 or distributor 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.