

# **NATIONAL TOBACCO BOARD (INCORPORATION) ACT 1973**

## **ACT 111**

### **Preamble**

An Act to establish the National Tobacco Board for the betterment and proper conduct of the tobacco producing industry, and to make provisions respecting the Board and the industry.

### **PRELIMINARY**

#### **1. Short title and commencement.**

(1) This Act may be cited as the **National Tobacco Board (Incorporation) Act 1973**.

(2) This Act shall come 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 different provisions thereof.

#### **2. Interpretation.**

In this Act, unless the context otherwise requires -

"air-curing" means a process of curing whereby uncured tobacco is ventilated in widely ventilated barns under natural atmospheric conditions with little or no artificial heat;

"analyst" means an analyst appointed under section 43;

"barn" means a building or part thereof constructed, adapted, or used for curing tobacco therein;

"Board" means the National Tobacco Board established under section 3;

"certificate of authorization" means a certificate of authorization issued under subsection 19 (2A);

"Chairman" means the Chairman of the Board and includes any person exercising the functions of chairman and deemed to be the Chairman under section 6;

"Classifier" means a person appointed as Classifier under section 7;

"close season" means a period declared to be a close season under section 23;

"cured tobacco" means tobacco that has undergone the process of curing;

"curing" means a process whereby tobacco leaves or other parts of the tobacco plant are dried for the purposes of preservation and maturation, and includes the process of flue-curing, air-curing, fire-curing and suncuring;

"Director General" means the Director General of the Board appointed under section 7;

"fire-curing" means a process of curing whereby uncured tobacco is exposed in ventilated barns with an open fire to allow the smoke to come into contact with the tobacco;

"flue-curing" means a process whereby uncured tobacco is subjected to atmosphere heated by a controllable source of heat in a building or part thereof that is so constructed as not to permit the passage of more air and moisture thereinto or therefrom than is necessary for the success of the process;

"Fund" means the National Tobacco Board Fund established under section 25;

"licensed curer" means a person licensed under section 19 to carry on the business of curing tobacco;

"licensed purchaser" means a person licensed under section 19 to purchase cured tobacco;

"manufacturer" means a person who manufactures tobacco into a state in which it is fit for immediate consumption by smoking or otherwise and includes a subsidiary body of a body corporate that is a manufacturer;

"officer of customs" or "senior officer of custom" has the meaning assigned thereto in the Customs Act 1967 (Act 235);

"rules" and "regulations" mean rules and regulations made under this Act;

"seizing officer" means a Tobacco Inspector or officer of customs who has seized tobacco under Part V;

"sun-curing" means a process of curing whereby uncured tobacco is exposed to the full rays of the sun for the major part of the curing period;

"tobacco" means any plant of the species *Nicotiana tabacum*, and any part of that plant whether in the uncured or cured state, but does not include tobacco that has been manufactured into a state in which it is fit for immediate consumption by smoking or otherwise;

"Tobacco Inspector" means a Tobacco Inspector appointed under section 7.

## **PART II**

### **THE BOARD AND ITS FUNCTIONS**

#### **3. Establishment of the Board.**

(1) There shall be established a body corporate named "National Tobacco Board" which shall have perpetual succession and a common seal and power to acquire and hold movable and immovable property and to dispose thereof or otherwise deal therewith, and which may sue and be sued in its corporate name.

(2) The Schedule shall apply to the Board.

#### **4. Composition of the Board.**

(1) The Board shall, subject to subsections (2) and (3), consist of the following members who, with the exception of the Director General, shall be appointed by the Minister by name -

(a) a Chairman;

(b) a representative of the Ministry for the time being responsible for the tobacco-producing industry;

- (c) a representative of the Ministry for the time being responsible for agriculture;
  - (d) a representative of the Treasury;
  - (e) a representative of the Economic Planning Unit of the Prime Minister's Department;
  - (f) two persons to represent the interests of tobacco manufacturers;
  - (g) two persons to represent the interests of tobacco curers;
  - (h) one person to represent the interests of tobacco growers;
  - (i) a representative of the Farmers' Organization Authority; and
  - (j) the Director General.
- (2) The Minister may, in addition to the persons mentioned in subsection (1), appoint to be members of the Board not more than three such other persons as the Minister considers fit.
- (3) Whenever the office of Director General is vacant, subsection (1) shall be read as if paragraph (j) had been deleted.

#### **5. Alternate members.**

- (1) The Minister may, in respect of each member appointed under paragraphs 4 (1) (b) to (j), appoint one person to be an alternate member to attend in place of the member meetings of the Board or of any committee set up by the Board that the member is for any reason unable to attend.
- (2) When attending meetings of the Board or any committee set up by the Board an alternate member shall for all purposes be deemed to be a member of the Board.
- (3) An alternate member shall, unless he sooner resigns his membership or his appointment is sooner revoked, cease to be an alternate member when the member in respect of whom he is an alternate member ceases to be a member of the Board.

#### **6. Temporary exercise of functions of chairman.**

- (1) The Minister may appoint any member of the Board to exercise the functions of chairman during the period in which the Chairman is for any reason unable to exercise his functions or during the period of any vacancy in the office of chairman; and such member shall, during the period in which he is exercising the functions of chairman under this subsection, be deemed to be the Chairman.
- (2) Until an appointment is made under subsection (1) or in default of such appointment, the member appointed under paragraph 4 (1) (b) shall exercise the functions of and be deemed to be the Chairman; and if that member is for any reason unable to act under this subsection, the member appointed under paragraph 4 (1) (c) shall exercise the functions of and be deemed to be the Chairman.

#### **7. Appointment of officers and servants.**

(1) Subject to subsection (2), the Board may appoint a Director General, and such number of other officers and servants, including Tobacco Inspectors and Classifiers, as the Board considers expedient for the purposes of this Act.

(2) The appointment of the Director General shall be with the prior approval of the Minister.

(3) The appointment of Tobacco Inspectors and Classifiers shall be published in the Gazette.

(4) The Board shall, before establishing or modifying any scheme of service of its officers and servants or of any class thereof, including the terms and conditions of service and the salaries, allowances, and other remuneration payable, obtain the Minister's approval of the scheme or its modification.

## **8. Duties of Director General.**

(1) The Director General shall -

(a) be responsible for putting into execution the policy decisions of the Board and for the general administration of its affairs;

(b) exercise supervision and control over all officers and servants of the Board; and

(c) perform such other duties as the Board, subject to any direction of the Minister, may from time to time determine or as the Chairman, subject to any resolution of the Board, may from time to time direct.

(2) The Director General shall be present at and throughout every meeting of the Board unless -

(a) he is prevented from doing so by reason of illness or absence from the Federation; or

(b) he is excused from doing so by the Chairman or the person presiding at the meeting.

(3) (Repealed by Act A314).

## **9. Public servants.**

All members, officers and servants of the Board shall be deemed to be public servants within the meaning of the Penal Code (F.M.S Cap. 45)

## **10. Offices.**

The Board shall have a principal office in Malaysia at such place as the Board may determine, and may establish such other branch offices as the Board considers expedient.

## **11. Duties and administrative powers of the Board.**

(1) The duties of the Board are -

(a) to regulate, control, and co-ordinate all activities relating to the growing, curing, sale, purchase, storage, export and movement of tobacco;

(b) to consider and promote measures for improving those activities;

(c) to consider, promote, and take measures to prevent the occurrence and spread of diseases affecting tobacco; and

(d) generally to do everything for the betterment and proper conduct of the tobacco-producing industry.

(2) The Board shall have power to do all things reasonably necessary for, or expedient or incidental to, the discharge of its duties, and in particular, but without prejudice to the generality of this subsection -

(a) to enter into such negotiations and contracts as the Board considers necessary for the promotion of the general interests of the tobacco-producing industry;

(b) to set up and maintain such establishments or premises as the Board considers necessary for the discharge of its duties; and

(c) to grant any form of assistance or services to persons involved in the tobacco-producing industry for the purpose of improving the activities in which they are so involved.

#### **11A. Committees.**

(1) The Board may from time to time establish committees to advise or assist the Board on such matters concerning the functions of the Board as it sees fit.

(2) The Board may from time to time discharge, alter, continue, or reconstitute any committee established under subsection (1).

(3) Any person may be appointed to be a member of a committee notwithstanding that he is not a member of the Board.

(4) There shall be paid such allowances to such members of the committee as the Minister may, with the approval of the Minister of Finance, determine.

(5) Subject to any direction given by the Board, every committee may regulate its own procedure.

#### **11B. Delegation.**

(1) The Board may, either generally or otherwise as provided by the instrument of delegation, by writing under its common seal, delegate to any person or to a committee appointed under section 11A any of its powers and functions under this Act, except this power of delegation and the power to make rules or regulations.

(2) A power or function delegated under subsection (1) to any person may be exercised by that person in accordance with the instrument of delegation and, when so exercised, shall, for the purposes of this Act, be deemed to have been exercised by the Board.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a function or power by the Board.

#### **12. (Repealed by Act A314).**

### **PART III REGULATION AND CONTROL**

#### **13. Control of purchase of cured tobacco.**

(1) No person shall purchase cured tobacco unless he is licensed purchaser.

(2) No licensed purchaser shall purchase cured tobacco other than from a licensed curer.

(3) No person shall purchase tobacco, knowing or having reason to believe that the tobacco is intended to be cured, unless he is a licensed curer.

#### **14. Control of sale of cured tobacco.**

(1) No person shall sell cured tobacco unless he is a licensed curer.

(2) No licensed curer shall sell cured tobacco other than to a licensed purchaser.

(3) Notwithstanding any provision to the contrary in this Act, a licensed purchaser may, subject to such conditions and restrictions as may be prescribed by regulations, export cured tobacco purchased from a licensed curer

#### **14A. Agents.**

For the purposes of sections 13 and 14, the terms "licensed purchaser" and "licensed curer" shall include a person who is authorized to act for or on behalf of the licensed purchaser or licensed curer.

#### **15. Control of curing business.**

(1) No person shall carry on the business of curing tobacco unless he is a licensed curer.

(2) No person shall take part, whether as employee or otherwise, in any activity forming part of or incidental to the process of curing tobacco unless he does so for or on behalf of a licensed curer.

#### **16. Control of storage and possession of cured tobacco.**

No person shall store or have in his possession cured tobacco unless he is a licensed purchaser or a licensed curer or a person doing so for or on behalf of a licensed purchaser or a licensed curer.

#### **17. Control of movement of cured tobacco.**

No person shall remove, carry, or transport or take part in the removal, carriage, or transportation of cured tobacco unless he is a licensed purchaser or a licensed curer or a person doing so for or on behalf of a licensed purchaser or a licensed curer.

#### **18. Penalty.**

Any person who contravenes any of the provisions of sections 13, 14, 15, 16 and 17 is guilty of an offence and is liable to imprisonment for two years or to a fine of ten thousand ringgit or to both.

#### **19. Licensing.**

(1) Any person who desires to be licensed as a licensed purchaser or as a licensed curer, and any person who desires to act for or on behalf of a licensed purchaser or a licensed curer in respect of the activities specified in sections 13, 14, 16 and 17, may apply to the Board in accordance with the rules or regulations for a licence or certificate of authorization, as the case may be.

(2) Subject to subsection (3) the Board may, on payment of the prescribed fee, license an applicant under subsection (1) as a licensed purchaser or a licensed curer, as the case may be, by issuing to him a licence in the prescribed form.

(2A) The Director General may, on payment of the prescribed fee, authorize an applicant under subsection (1) to act for or on behalf of a licensed purchaser or a licensed curer, as the case may be, by issuing to him a certificate of authorization in the prescribed form.

(3) In considering an application under subsection (1) the Board shall give due consideration to the need to promote and protect the interests of the tobacco-producing industry and, for that purpose, to prevent practices that are or are likely to be detrimental to those interests and the participation in the industry of persons who are likely to introduce or propagate those practices.

(4) If the Board refuses to grant a licence under this section it shall inform the applicant in writing of the refusal and the reasons therefor.

(5) Every licence under this section shall be valid for one year from the date of issue but may be renewed from time to time on application in the prescribed manner and payment of the prescribed fee.

(6) The Board may, with the approval of the Minister, by rules prescribe the manner of making an application under this section, the particulars to be supplied by an applicant, the fees payable, the forms of licences, and other matters pertaining to licensing and licences; and the rules may include such requirements of an applicant as the Board considers necessary to enable it to achieve the objective of subsection (3).

(7) The Board may impose such conditions or restrictions as it thinks fit on any licence issued under this section, including those restricting the amount of tobacco that may be dealt with, and the persons with whom dealings may be had, by the licensee; and the Board may from time to time, after giving the licensee reasonable notice and opportunity to make representations and after considering those representations, vary the conditions or restrictions.

(8) The provisions of subsections (3), (4), (5), (6) and (7) shall mutatis mutandis apply to an application for a certificate of authorization under subsection (1).

## **20. Register.**

The Board shall keep and maintain or cause to be kept and maintained a register of persons who are for the time being licensed curers and licensed purchasers in such manner as it may determine but subject to any direction given by the Minister.

## **21. Power to suspend, cancel or to refuse to renew licence.**

(1) The Board may, if it is satisfied that any condition or restriction imposed on a licence under section 19 has not been complied with by the licensee or that the continuance of the licence would contravene this Act or the rules or regulations or that the licensee has contravened any provision of this Act or of the rules or regulations, call upon the licensee to show cause why his licence should not be cancelled or why the Board should not refuse to renew his licence.

(2) A person called upon to show cause under subsection (1) -

(a) shall be supplied by the Board with the particulars, in writing, forming the basis for the call to show cause; and

(b) may, if he so desires, be present at the hearing by the Board or be represented thereat by another person authorized by him in writing.

(3) If after the hearing the Board is of the opinion that the person called upon to show cause has failed to do so, the Board may, notwithstanding any criminal action that may be brought against him, cancel or refuse to renew his licence, as the case may be.

(3A) The Board may, instead of cancelling the licence under subsection (3), suspend the licence for a period not exceeding six months where it considers it appropriate and just so to do.

(4) A person whose licence has been cancelled or has, by refusal by the Board, not been renewed -

(a) shall not be licensed again for such period, not exceeding two years from the date of the cancellation or refusal to renew, as the Board shall determine at the time of the cancellation or refusal to renew; and

(b) shall, on being so required by the Board in writing, surrender to the Board his licence within such period as the Board may specify.

(5) Any person who, while his licence is suspended under subsection (3A), carries on any activity authorized under the suspended licence, or who wilfully fails to comply with the requirement of the Board under paragraph (4) (b), is guilty of an offence.

[Am. Act A701]

## **21A. Power of Director General to suspend, cancel or refuse to re new certificate of authorization.**

The Director General shall have the power to suspend, cancel, or refuse to renew a certificate of authorization, and the provisions of section 21 shall mutatis mutandis apply to the exercise of such power.

## **22. Appeals.**

(1) If any person is aggrieved by a decision of the Board to suspend, cancel, or refuse to issue or renew a licence, he may, within one month of the date when the decision was communicated to him, appeal in the prescribed manner to the Minister.

(2) If any person is aggrieved by a decision of the Director General to suspend, cancel, or refuse to issue or renew a certificate of authorization, he may, within one month of the date when the decision was communicated to him, appeal in the prescribed manner to the Board whose decision shall be final and shall not be questioned in any court.

(3) An appeal under subsection (1) or (2) shall not operate as a stay of the decision made thereunder, unless otherwise allowed by the Board or by the Director General, as the case may be.

(4) The Minister shall appoint a committee for the purpose of hearing an appeal under subsection (1) and of advising him as to the decision that should be made thereon.

(5) No member of the Board shall be appointed to the committee set up under subsection (4).

(6) There shall be paid such allowances to such members of the committee as the Minister may, with the approval of the Minister of Finance, determine.

(7) The Minister shall not be bound to accept the advice tendered by the committee appointed under subsection (4) but may, after considering any appeal under subsection (1) and the advice of the committee, make such order thereon as to him seems just and necessary.

(8) Every order made by the Minister under subsection (7) shall be final and shall not be questioned in any court.

### **23. Close seasons.**

(1) For the purpose of preventing the occurrence or spread of diseases affecting tobacco, the Board may from time to time by notification in the Gazette declare specified periods to be close seasons for the growing and curing of tobacco for specified areas.

(2) No person shall, during a close season -

(a) plant or grow tobacco;

(b) allow tobacco planted or grown by or for him, or on land owned or occupied by him, to remain grown; or

(c) carry on or take part, or permit, cause, suffer, or procure any person to carry on or take part, in any activity forming part of or incidental to the process of curing tobacco.

(3) Any person who contravenes subsection (2) is guilty of an offence and is liable to imprisonment for one year or to a fine of five thousand ringgit or to both.

### **24. Power of the Board to make rules and regulations.**

The Board may, with the approval of the Minister, make such rules and regulations as it considers necessary for the effective discharge of its duties under subsection 11 (1), and in particular, but without prejudice to the generality of the power conferred by this section, such rules and regulations may -

(a) provide for the practices to be observed or avoided by tobacco-growers or in the growing of tobacco, in order to secure production of high-quality tobacco and to prevent the occurrence or spread of diseases affecting tobacco;

(b) subject to section 23 and for furthering the purpose of close seasons, prohibit the doing, or require the performance, of certain acts during or in connection with those seasons;

(c) provide for the practices to be observed or avoided by licensed curers or in curing tobacco, in order to secure production of high-quality cured tobacco and to prevent the occurrence or spread of diseases affecting tobacco;

(d) prescribe the specifications for barns and prohibit the carrying on of curing activities other than in barns that conform to those specifications;

(e) prescribe the methods of storing and transporting tobacco and the measures to be taken to prevent damage or deterioration of tobacco, or the occurrence or spread of diseases affecting tobacco, during storage or transportation;

(f) prescribe the grades of tobacco and the methods of determining them and prohibit the sale or purchase of tobacco otherwise than on the basis of those grades so determined;

- (g) prescribe the qualities of tobacco and prohibit dealings in tobacco that does not conform to those qualities;
- (ga) specify the duties and functions of Classifiers;
- (h) prescribe the minimum prices in relation to specified qualities or grades at which tobacco may be sold other than for export;
- (ha) prescribe the manner in which cured tobacco may be exported, the quality of cured tobacco that may be exported and the conditions and restrictions relating to the quality of such tobacco;
- (i) prescribe the records to be kept by licensed purchasers and licensed curers relating to dealings in tobacco;
- (ia) prescribe the practices to be observed or avoided by licensed curers and licensed purchasers in all activities relating to the sale and purchase of tobacco; and
- (j) prescribe penalties for the contravention of the provisions thereof of fines not exceeding five thousand ringgit.

#### **PART IV** **FINANCE, REPORT, AND MINISTERIAL SUPERVISION**

##### **25. The Fund.**

- (1) The Board shall establish and administer a fund named "Tobacco Industry Board Fund".
- (2) There shall be paid into the Fund -
  - (a) such sums as may be provided from time to time by Parliament;
  - (b) all monies collected by way of fees prescribed by the rules and regulations;
  - (c) all monies collected or paid under section 26;
  - (d) all monies collected under the rules and regulations other than fines;
  - (e) sums borrowed by the Board under section 27;
  - (f) all monies earned or arising from any investment under section 28, or from any property, mortgages, charges, or debentures acquired by or vested in the Board; and
  - (g) all other sums or property that may in any manner become payable to or vested in the Board in respect of any matter incidental to its duties and powers.
- (3) The Fund may be applied for -
  - (a) defraying such expenditure as the Board may incur in carrying out its duties and exercising its powers;
  - (b) settling any sum borrowed by the Board under section 27; and
  - (c) lending to employees of the Board for the purpose of purchasing or building dwelling-houses or purchasing conveyances on such terms and conditions as may be prescribed.

(4) The Board shall keep or cause to be kept a separate account in respect of monies provided by Parliament under paragraph (2) (a).

## **26. Levy on sale or purchase of tobacco.**

(1) For the purposes of this Act the Minister may, after consulting the Minister of Finance and the Board, make an order or orders for the imposition, variation, or cancellation of a cess or cesses on the sale or purchase, or sale as well as purchase, of tobacco by a licensed curer, a licensed purchaser, or any other person involved in the tobacco-producing industry, and may, by such order or by a different order, prescribe the methods by which such cess or cesses shall be levied.

(2) Any person who -

(a) knowingly receives into or has in his possession, custody, or control any tobacco on which any cess that should have been paid under subsection (1) has not been paid;

(b) knowingly harbours, keeps, or conceals, or permits, causes, suffers, or procures to be harboured kept, or concealed any tobacco on which such cess has not been paid; or

(c) is in any way knowingly concerned in conveying, removing, depositing, or dealing with any tobacco with intent to evade payment of any cess imposed under subsection (1),

is guilty of an offence and is liable -

(aa) on a first conviction, to a fine of not less than ten times the amount of the cess or five thousand ringgit, whichever is the lesser amount, and of not more than twenty times the amount of the cess or five thousand ringgit, whichever is the greater amount; or, if the amount of cess cannot be ascertained, to a fine of five thousand ringgit; and

(bb) on a second or subsequent conviction, to imprisonment for two years or to a fine reckoned in accordance with paragraph (aa) or to both.

(3) In any prosecution for any act contrary to subsection (2) the defendant shall be deemed to have done that act knowingly unless he proves otherwise.

## **27. Borrowing power.**

The Board may, upon such terms and conditions as may be approved by the Minister of Finance, borrow monies for the purpose of carrying out its duties.

## **28. Power to invest.**

The Board may from time to time, with the approval of the Minister who shall act after consulting the Minister of Finance, invest the Fund or any part thereof, not being immediately required for meeting the Board's obligations or carrying out its duties -

(a) in investments or securities authorized for the investment of trust funds by any written law for the time being in force; or

(b) in such other investments or securities as the Boards thinks fit.

## **29. Annual estimates.**

(1) The Director General shall, not later than one month before the commencement of each financial year, lay before the Board an estimate of the revenue and expenditure, including capital expenditure, of the Board for the ensuing financial year in such detail and form as the Board may determine.

(2) The Director General shall cause to be sent to every member of the Board a copy of the estimate not later than fourteen days prior to the date of the meeting at which the estimate is to be laid.

### **30. Accounts and audit.**

(1) The Board shall keep or cause to be kept proper accounts and other records in respect of its operations and shall prepare or cause to be prepared statements of account in respect of each financial year.

(2) The Board shall cause its accounts to be audited annually by the Auditor General or any other auditor appointed by the Board with the approval of the Minister given after consulting the Minister of Finance.

(3) After the end of each financial year, as soon as the accounts of the Board have been audited, the Board shall cause a copy of the statements of account to be transmitted to the Minister with a copy of the observations made by the auditor on any statement of account or on the accounts of the Board.

(4) The Minister shall cause a copy of the statements and observations transmitted to him under subsection (3) to be laid on the table of each House of Parliament.

### **31. Annual report.**

(1) The Board shall, not later than the 30 June of each year, cause to be transmitted to the Minister a report dealing with the activities of the Board during the proceeding financial year and containing such information relating to the proceedings and policy of the Board as the Minister may from time to time require.

(2) The Minister shall cause a copy of every report transmitted to him under subsection (1) to be laid on the table of each House of Parliament.

### **32. Power of Minister to issue directions.**

(1) The Board shall be responsible to the Minister who may from time to time issue to the Board directions on any aspect of the functions of the Board; and every such direction shall be binding on the Board;

(2) The Board shall furnish the Minister with such returns, accounts, and activities as the Minister may from time to time require.

## **PART V ENFORCEMENT**

### **33. Power of arrest.**

(1) A Tobacco Inspector or officer of customs may arrest without warrant any person whom he sees or finds committing or attempting to commit or abetting the commission, or whom he reasonably suspects of being engaged in committing or attempting to commit or abetting the commission, of an offence against this Act or the rules or regulations if the person refuses or fails

to furnish his name and address or if there are reasonable grounds for believing that he has furnished a false name or address or that he is likely to abscond.

(2) A person making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station.

(3) No Person who has been arrested under subsection (1) shall be released except on his own bond or on bail or on the order in writing of a Magistrate.

#### **34. Search with warrant.**

(1) If it appears to a Magistrate upon written information on oath and after such inquiry as he thinks necessary to make that there is reasonable cause to believe that in any building or place or on any land there is concealed, deposited, or grown any tobacco in respect of which an offence against this Act or the rules or regulations is being or has been committed, the Magistrate may issue a warrant authorizing any Tobacco Inspector or officer of customs named therein, by day or night and with or without assistance, to enter the building, place, or land and there search for and seize, and therefrom remove, any tobacco in respect of which the offence is suspected to be or to have been committed and any book or document that is reasonably believed to furnish evidence of the commission of the offence.

(2) A Tobacco Inspector or officer of customs acting under subsection (1) may -

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

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

(c) detain every person found in the building or place or on the land until it has been searched.

#### **35. Search without warrant.**

If it appears to a Tobacco Inspector or officer of customs that there are reasonable causes to believe that in any building or place or on any land there is concealed, deposited, or grown any tobacco in respect of which an offence against this Act or the rules or regulations is being or has been committed, and if he has reasonable grounds for believing that by reason of the delay in obtaining a warrant under section 34 the tobacco is likely to be removed, he may exercise in, upon, and in respect of the building, place, or land all the powers mentioned in section 34 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

#### **36. Power stop and search conveyances.**

(1) If any Tobacco Inspector or officer of customs has reasonable suspicion that any conveyance is carrying tobacco in contravention of this Act or the rules or regulations or in respect of which an offence against this Act or the rules or regulations is being or has been committed, he may stop and examine the conveyance.

(2) The person in control or in charge of the conveyance shall, if required to do so by the Tobacco Inspector or officer of customs -

(a) stop the conveyance and allow the Tobacco Inspector or officer of customs to examine it;

(b) open all parts of the conveyance for examination and take all measures necessary to enable or facilitate the carrying out of such examination as the Tobacco Inspector or officer of customs considers necessary to make; and

(c) move the conveyance to any place as may be directed by the Tobacco Inspector or officer of customs.

### **36A. Seizure of tobacco the subject of an offence.**

Any tobacco in respect of which there is reasonable cause to suspect that there is being or has been committed an offence against this Act or the rules or regulations, together with any conveyance in which the tobacco may have been found or that has been used in connection with the offence, and any book or document that is reasonably believed to have a bearing on the case or to furnish evidence of the commission of the offence, may be seized by a Tobacco Inspector or officer of customs.

### **37. Notice of seizure.**

(1) Except as provided in subsection (2), where any tobacco or conveyance is seized under this Part, the seizing officer shall forthwith give notice of the seizure and grounds thereof to the owner of the tobacco or conveyance, if known, either by delivering the notice to him personally or by post at his place of abode or business, if known.

(2) No notice is required to be given under subsection (1) if the seizure is made in the presence of the offender or the owner, or agent of the owner, of the tobacco or conveyance.

### **38. Action after seizure of tobacco.**

(1) A seizing officer shall take all measures to ensure that, until an order is made for the disposal of the tobacco consequent upon a prosecution or claim in respect thereof, the tobacco does not deteriorate in quality or value; but if it is not possible to take those measures owing to the lack or absence of adequate or proper facilities or otherwise, the seizing officer may, subject to subsection (2), sell the tobacco, or cause or arrange for it to be sold, in such manner as will secure the highest possible price for it in the circumstances.

(2) The seizing officer shall not sell, or cause or arrange to be sold, any tobacco under subsection (1) if he has reason to suspect that the tobacco is of a quality, standard, or grade lower than that prescribed or permitted by the rules or regulations, but shall forthwith cause the tobacco to be tested by an analyst.

(3) If an analyst certifies, or if the result of the test as certified by the analyst proves, that the tobacco tested by him under subsection (2) is of a quality, standard, or grade lower than that prescribed or permitted by the rules or regulations, the seizing officer shall keep it in custody or, if no prosecution is instituted in respect of the tobacco, cause it to be destroyed.

(4) If an analyst certifies, or if the result of the test as certified by the analyst proves, that the tobacco tested by him under subsection (2) is of a quality, standard, or grade that conforms to or is higher than that prescribed or permitted by the rules or regulations, subsection (1) shall apply to the tobacco.

(5) Until the result of a test under subsection (2) is obtained, the seizing officer shall take all reasonable measure possible and available in the circumstances to ensure that the tobacco does not deteriorate in quality or value.

(6) A seizing officer who keeps tobacco in custody under subsection (3) is only required to ensure that the tobacco is safe from loss and physical damage, but is not required to take measures to preserve its quality, standard, or grade.

(7) The proceeds of sale of tobacco under subsection (1) shall be held to abide the result of any prosecution or claim in respect thereof.

#### **38A. Temporary release of tobacco or conveyance.**

Where any tobacco or conveyance has been seized under this Part, the Director General or a senior officer of customs may temporarily release it to its owner or to the person from whose possession, custody, or control it was seized, subject to sufficient security being furnished to his satisfaction that the tobacco or conveyance shall be surrendered to him on demand or be produced before a court of competent jurisdiction.

#### **39. Court to order release or forfeiture.**

The court before which a prosecution with regard to tobacco seized under this Part is held shall make an order for forfeiture or release of the tobacco or the proceeds of sale thereof, and of any conveyance seized together with the tobacco, but shall order forfeiture if it is proved to its satisfaction that an offence against any provision of this Act or the rules or regulations has been committed and, in the case of the tobacco, that it was the subject matter of the offence or, in the case of the conveyance, that it was used in the commission of the offence, notwithstanding that no person may have been convicted of the offence.

#### **40. Time bar to prosecution.**

No prosecution in respect of tobacco seized under this Part shall be instituted more than two calendar months after the date of seizure thereof.

#### **41. Claims for seized tobacco or proceeds of sale thereof and for conveyance seized.**

(1) If no prosecution is instituted in respect of tobacco seized under this Part within the period prescribed in section 40, the tobacco or proceeds of sale thereof, and any conveyance seized together with the tobacco, shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of expiration of the prescribed period unless a claim thereto is made within that month under and in accordance with this section.

(2) Any person asserting that he is the owner of the tobacco or the proceeds of sale thereof or the conveyance and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to the seizing officer that he claims the tobacco or the proceeds of sale thereof or the conveyance.

(3) On receipt of a notice under subsection (2) the seizing officer shall refer the claim to the Chairman who may direct that the tobacco or the proceeds of sale thereof or the conveyance be released or may direct the seizing officer, by information in writing, to refer the matter to a Magistrate.

(4) The Magistrate shall issue a summons requiring the Board and the person asserting that he is the owner of the tobacco or the proceeds of sale thereof or the conveyance and the person from whom the tobacco or conveyance was seized to appear before him, and upon their appearance or default to appear, due service of the summons being proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence against this Act or the rules or regulations

has been committed and, in the case of the tobacco or the proceeds of sale thereof, that the tobacco was the subject matter of the offence or, in the case of the conveyance, that it was used in the commission of the offence, shall order the tobacco or the proceeds of sale thereof or the conveyance, as the case may be, to be forfeited or, in the absence of such proof, shall order its release.

(5) In a claim under this section the person making the claim shall be the claimant and the Board shall be the respondent; and the Board may be represented by an officer or servant thereof authorized in writing by the Chairman to so represent the Board.

#### **42. Property in forfeited tobacco or proceeds of sale thereof and in conveyance forfeited.**

Any tobacco or proceeds of sale thereof or any conveyance forfeited, or taken and deemed to be forfeited, under this Part shall be the property of the Board.

#### **43. Appointment and certificates and reports of analysts.**

(1) For the purpose of this Act Minister may appoint analysts to examine and test tobacco and to certify its condition, type, method of curing, quality, standard and grade.

(2) In any prosecution for an offence against this Act or the rules or regulations, a certificate of analysis of tobacco or a report on the condition, type, method of curing, quality, standard, or grade thereof, purporting to be signed by an analyst shall, on production thereof by the prosecutor or defendant, be sufficient evidence of the facts stated therein unless the prosecutor or defendant requires that the analyst be called as a witness, in which case he shall give notice thereof to the other side not less than three clear days before the date of hearing.

(3) A copy of the certificate or report referred to in subsection (2) shall be sent to the defendant or the prosecutor at least seven clear days before the date of hearing, and if it is not so sent the court may adjourn the hearing on such terms as it thinks proper.

(4) Subsection (2) shall apply to a claim under section 41 as if for the words prosecutor and defendant there were substituted respectively the words claimant and respondent.

#### **44. Proportional examination or testing of seized tobacco.**

Where it is necessary to examine or test tobacco seized under this Part, it shall be sufficient to examine or test only ten per centum of the tobacco or of each different type or description thereof or, if the tobacco is packed in different packages, of the contents of each package; and the court shall presume that the rest of the type, description, or package of tobacco conforms, in condition, type, method of curing, quality, standard, grade, or otherwise to the related ten per centum thereof examined or tested.

#### **45. Power of investigation.**

(1) A Tobacco Inspector or officer of customs shall have the power to investigate the commission of any offence against this Act or the rules or regulations.

(2) Every person required by a Tobacco Inspector or officer of customs to give information or produce any book, document, or matter relating to the commission of the offence and which it is in the person's power to give shall give the information or produce the book, document, or matter.

(3) A Tobacco Inspector or officer of customs acting under subsection (2) may make or cause to be made copies of or extracts from any such books or documents, and such copies or extracts

certified as the copies or extracts of the original by such Tobacco Inspector or officer of customs shall, unless the contrary is proved, be deemed to be true and correct copies and extracts of the original.

(4) Any person required by a Tobacco Inspector or officer of customs to give any statement on any matter into which such officer is investigating shall be legally bound to give such statement.

#### **45A. Offences with respect to information, etc.**

Any person who -

(a) Wilfully furnishes or causes to be furnished to any Tobacco Inspector or officer of customs false particulars or information in respect of any matter which the Tobacco Inspector or officer of customs requires in the course of investigation;

(b) refuses to answer or wilfully gives a false answer to any question put by any Tobacco Inspector or officer of customs for the purpose of obtaining any particulars or information required in the course of investigation; or

(c) refuses to produce any book, document, or matter required in the course of investigation, is guilty of an offence and is liable to imprisonment not exceeding twelve months or to a fine not exceeding five thousand ringgit or to both.

#### **45B. Offences committed by corporate body.**

Where an offence under this Act committed by a corporation is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or employee of the corporation, or any person who was purporting to act in any such capacity, he, as well as the corporation, commits the offence and shall be liable to be proceeded against and punished accordingly.

#### **46. Conduct of prosecution.**

Without prejudice to any other written law relating to criminal procedure, any prosecution in respect of an offence against this Act or the rules or regulations may be conducted by a Tobacco Inspector or by any other officer or servant of the Board authorized in writing by the Chairman to conduct the prosecution.

#### **46A. Burden of proof.**

In any prosecution in respect of an offence under this Act or under any rules or regulations upon a charge of doing any act which is unlawful unless the person doing such act is entitled to do so by reason of his being the holder of a licence, permit, written permission, consent, authorization, or exemption entitling him to do such act, it shall be sufficient for the prosecution to allege and prove his doing such act and the onus shall then be upon the accused to show that he was entitled to do such act.

#### **47. Identification of officers when taking action.**

(1) A Tobacco Inspector or officer of customs must, if not in uniform, on deemed declare his office and produce to the person against whom he is acting -

(a) in the case of a Tobacco Inspector, the prescribed certificate of identity; or

(b) in the case of an officer of customs, such authority or identity card or certificate of appointment as he is required to carry by or under any written law governing him in his official capacity.

(2) A person may refuse to comply with any request, demand, or order made by a Tobacco Inspector or officer of customs acting or purporting to act under this Act if he is not in uniform and refuses, on demand by the person, to declare his office and produce his certificate of identity, authority or identity card, or certificate of appointment, as the case may be.

**47A. Power to compound offences.**

(1) Any offence against this Act or any rules or regulations which is prescribed by the Minister as a compoundable offence may be compounded by the Director General or by any officer of the Board specially authorized by the Board in writing in that behalf, in accordance with the rules made under this Act, by accepting from the person reasonably suspected of having committed the offence a sum of money not exceeding one thousand ringgit.

(2) Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and any tobacco seized in connection with the offence may be released, subject to such terms and conditions as may be imposed.

**47B. Offences for assaulting or obstructing Tobacco Inspector or rescuing tobacco seized.**

Any person who -

(a) assaults or obstructs any Tobacco Inspector or officer of customs in the exercise of his functions under this Act or any rules or regulations;

(b) rescues or endeavours to rescue or causes to be rescued any tobacco which has been duly seized; or

(c) before or after any seizure, causes the disappearance of, or damages, or destroys any tobacco in order to prevent the seizure thereof or the securing of the same,

is guilty of an offence and is liable to imprisonment not exceeding six months or to a fine not exceeding two thousand ringgit or to both.

**47C. Miscellaneous offences.**

Any person who -

(a) fraudulently alters any licence, certificate, book, record, or other document issued or required to be kept under this Act; or

(b) makes or attempts to make or causes to be made any incorrect entry in any book, document, or instrument required to be kept under this Act,

is guilty of an offence and is liable to imprisonment not exceeding twelve months or to a fine not exceeding five thousand ringgit or to both.

**PART VI  
GENERAL**

**48. Secrecy.**

Except for the purposes of this Act or of any criminal proceedings under this Act, no member, officer, or servant of the Board shall disclose any information that has been obtained by him in the course of his duties under this Act.

#### **49. General penalty.**

Any person who contravenes any provision of this Act or the rules or regulations is guilty of an offence and, if no penalty is specially prescribed therefor, is liable to a fine of two thousand ringgit.

#### **49A. Exemption from liabilities.**

Neither the Director General, any officer of the Board nor any officer of customs shall be liable for any loss, injury, or damage caused to any person or property consequent upon the exercise of his powers and duties under this Act or any rules or regulations, unless the loss, injury, or damage was occasioned intentionally or through recklessness or gross negligence.

#### **50. Power of Minister to make rules.**

The Minister may make rules to prescribe anything required by this Act to be prescribed and for the better carrying out of the provisions of this Act and, without prejudice to the generality of this section, the rules may -

- (a) prescribe the procedure to be followed in showing cause under section 21;
- (b) prescribe the procedure for appeals under section 22 and the fees payable therefor;
- (c) prescribe the uniform to be worn, and the certificate of identity to be produced on demand, by Tobacco Inspectors when on duty;
- (d) prescribe the terms and conditions of loans to employees of the Board under section 25;
- (e) prescribe the types of offences that may be compounded and the procedure for compounding offences; and
- (f) prescribe the methods and procedure of taking samples of tobacco by a Tobacco Inspector, officer of customs or Classifier for the purposes of this Act or any rules or regulations.

#### **51. Validation of acts done in anticipation of Act.**

(1) All acts and things done by any person or authority, whether or not purporting to be done for or on behalf of the Board, in preparation for or in anticipation of the promulgation of this Act and any expenditure incurred in relation thereto shall be deemed to have been authorized by this Act, provided that the acts and things are not inconsistent with the general intention and purpose of this Act; and all rights and obligations acquired or incurred as a result of the doing of those acts and things or of any expenditure so incurred shall be deemed to be the rights and obligations of the Board.

(2) For the avoidance of doubt it is declared that subsection (1) does not authorize the appointment of members, officers, or servants of the Board except in so far as to authorize the temporary appointment of such persons until appointed under this Act.

#### **52. Amendment of Act.**

Section 24 of the Federal Agricultural Marketing Authority Act 1965 (49/ 65) is amended by substituting the words "pineapple, rubber, padi, rice and tobacco" for the words "pineapple, rubber, padi and rice" appearing in the DEFINITION of "agricultural produce".

## **SCHEDULE**

(Subsection 3 (2))

[Am. Act A314; A701]

### **SUPPLEMENTARY PROVISIONS RESPECTING THE BOARD.**

1.(1) A member of the Board who -

(a) at three consecutive meetings of the Board, without reasonable cause or the permission in writing of the Chairman, has neither been present nor represented by the alternate member, if any, appointed in respect of that member;

(b) has been found or declared to be of unsound mind;

(c) has become bankrupt or made an arrangement with his creditors; or

(d) has been convicted of any offence involving fraud, dishonesty, or moral turpitude, or any offence under this Act or the rules or regulations,

shall cease to hold office.

(2) The provisions of subparagraph (1), other than subparagraph (1) (a), shall apply mutatis mutandis to an alternate member.

(3) The terms and conditions of the appointment of the Chairman shall be determined by the Minister.

(4) There shall be paid such remuneration to the Chairman and such allowances to such members of the Board as the Minister may, with the approval of the Minister of Finance, determine.

(5) The appointment of every member and alternate member of the Board shall be published in the Gazette.

(6) No member of the Board shall incur personal liability for any loss or damage caused by any act or omission in administering the affairs of the Board, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

2.(1) The Minister shall summon the first meeting of the Board.

(2) The Board shall meet with such frequency that there is no lapse of more than three months between meetings.

(3) The quorum of the Board shall be five.

(4) If at any meeting of the Board neither the Chairman nor the person exercising the functions of chairman is present, the members present elect one of their number to preside at the meeting.

(5) If on any question to be determined by the Board there is an equal division of votes, the Chairman or member presiding shall have a casting vote in addition to his deliberative vote.

(6) Subject to this paragraph, the Board may determine its own procedure.

(7) The seal of the Board shall be authenticated by the Chairman and one other member of the Board; and any document that purports to be sealed with the seal of the Board and is so authenticated shall, until the contrary is shown, be deemed to have been validly sealed.