



# **LAWS OF MALAYSIA**

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**REPRINT**

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**Act 692**

## **NATIONAL KENAF AND TOBACCO BOARD ACT 2009**

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**NATIONAL KENAF AND TOBACCO BOARD ACT 2009**

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# LAWS OF MALAYSIA

## Act 692

### NATIONAL KENAF AND TOBACCO BOARD ACT 2009

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## LAWS OF MALAYSIA

### Act 692

#### NATIONAL KENAF AND TOBACCO BOARD ACT 2009

An Act to establish the National Kenaf and Tobacco Board, to make better provisions in respect of the kenaf industry and tobacco industry of Malaysia, to dissolve the National Tobacco Board; and to provide for consequential and incidental matters.

[1 April 2010, P.U. (B) 154/2010]

**ENACTED** by the Parliament of Malaysia as follows:

#### PART I

##### PRELIMINARY

##### **Short title and commencement**

**1.** (1) This Act may be cited as the National Kenaf and Tobacco Board Act 2009.

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

##### **Interpretation**

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

“this Act” includes any subsidiary legislation made under this Act;

“member” means a member of the Board and includes an alternate member;

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

“research finding” means any result from a research and development activity and includes an invention and improvement in any process, apparatus, machine or technique;

“prescribed” means prescribed by regulations made under this Act;

“kenaf industry” means any activity which involves planting, processing, manufacturing and marketing of, or conducting research on, kenaf, kenaf products or kenaf derivatives and includes any industry or services related thereto;

“tobacco industry” means any activity which involves planting, processing, manufacturing and marketing of, or conducting research on, tobacco, tobacco products or tobacco derivatives and includes any industry or services related thereto;

“analyst” means an analyst appointed under section 75;

“rules” and “regulations” mean any rules and regulations made under this Act;

“kenaf product” means any product originated from kenaf or any mixture containing kenaf such as cordage, paper, textile and bio-composite;

“tobacco product” means cigarette or cigar or any other form of products originated from tobacco including any mixture containing tobacco which is designed for human consumption but excludes any medicinal product controlled under the Poisons Act 1952 [Act 366] or the Control of Drugs and Cosmetics Regulations 1984 [P.U. (A) 223/1984];

“kenaf” means *Hibiscus cannabinus* from the plant species of the *Hibiscus* or any part thereof, and includes hybrids of this species, hybrids resulting from crossing this species or hybrids with any other species or hybrids of plants and genetically engineered versions of this species or hybrids;

“Director General” means the Director General of the Board appointed under section 19;

“Fund” means the National Kenaf and Tobacco Board Fund established under section 22;

“Cess Fund” means the Cess Fund established under section 26;

“Board” means the National Kenaf and Tobacco Board established under section 3;

“licence” means a licence issued under section 41;

“close season” means a period declared to be a close season under section 80;

“authorized officer” means—

(a) an officer of the Board or public officer authorized under section 54;

(b) a police officer not below the rank of Inspector; or

(c) an officer of customs as defined under the Customs Act 1967 [*Act 235*];

“licensed purchaser” means a person licensed under section 39 to purchase cured tobacco;

“licensee” means a person who is licensed under this Act;

“conveyance” means any vehicle, vessel, ship, aircraft or any other mode of transport whether by air, sea or land;

“licensed curer” means a person licensed under section 39 to plant and cure tobacco;

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

“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;

“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;

“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;

“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;

“Classifier” means a person appointed as Classifier under section 20—

(a) acting as expert in deciding—

- (i) the grades, standards and qualities of locally produced kenaf;
- (ii) the kenaf that does not conform to those grades, standards and qualities;
- (iii) the grades, standards and qualities of locally produced tobacco; or
- (iv) the tobacco that does not conform to those grades, standards and qualities;

(b) acting as arbitrator in marketing disputes for kenaf and tobacco;

“Chairman” means the Chairman of the Board and includes any person exercising the functions of Chairman and deemed to be the Chairman under section 9;

“manufacturer”—

- (a) in the case of kenaf, means a person who manufactures kenaf or kenaf products and includes its subsidiary body that is a manufacturer; or

(b) in the case of tobacco, means a person who manufactures tobacco into a state in which it is fit for immediate consumption by smoking or otherwise and includes its subsidiary body that is a manufacturer;

“certificate of authorization” means a certificate of authorization issued under subsection 41(2);

“premises” means any place whether open or enclosed or whether on land or sea or whether movable or immovable and includes any house, factory, shop, conveyance, store, room, estate, smallholding, cubicle, shed or barn;

“cigarette” means any product which consists wholly or partly of cut, shredded or manufactured tobacco, or of any tobacco derivative or substitute, rolled up in a single or more wrapper of paper, and which is capable of being immediately used for smoking;

“cess” means the cess imposed under section 27;

“appointed date” means the date on which this Act comes into operation;

“tobacco” means the plant species of *Nicotiana tabacum* or any part thereof, whether in the uncured or cured state and includes hybrids of this species, hybrids resulting from crossing this species or hybrids with any other species or hybrids of plants and genetically engineered versions of this species or hybrids;

“cured tobacco” means tobacco that has undergone any process of curing.

## PART II

### ESTABLISHMENT OF THE BOARD

#### **The Board and its objectives**

**3.** (1) A body corporate by the name of “National Kenaf and Tobacco Board” is established.

(2) The Board shall have perpetual succession and a common seal, and may sue and be sued in its name.

(3) Subject to and for the purpose of this Act, the Board may, upon such terms as the Board deems fit—

- (a) enter into contracts and joint venture agreement whether commercial or trading in nature;
- (b) acquire, purchase, take, hold and enjoy movable or immovable property of every description; and
- (c) convey, assign, surrender, yield up, charge, mortgage, demise, lease, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Board.

(4) The objectives of the Board are—

- (a) to promote and develop the kenaf industry;
- (b) to establish national objectives, policies and priorities for the orderly development and administration of the kenaf industry;
- (c) to regulate, control and co-ordinate all activities relating to the tobacco industry; and
- (d) to promote and develop other economic activities for persons involved in kenaf industry and tobacco industry.

(5) The provisions of the Schedule shall apply to the Board.

### **Functions of the Board**

**4.** The functions of the Board shall be—

- (a) to implement policies and developmental programmes to ensure the viability of the kenaf industry;
- (b) to plan, conduct, promote, co-ordinate, implement and monitor all research and development activities relating to the planting, production, harvesting, extraction, processing, storage, transportation, use and marketing of kenaf and kenaf products;

- (c) to register, co-ordinate and promote all activities relating to the planting, processing, research, movement, storage, grading, marketing, export and import of kenaf and kenaf products, including to regulate the minimum prices in relation to specified qualities or grades at which kenaf may be sold other than for export;
- (d) to implement policies to regulate the tobacco industry;
- (e) to plan, conduct, co-ordinate, implement and monitor all research and development activities relating to the planting, production, harvesting, extraction, processing, storage, transportation, use and marketing of tobacco and tobacco products;
- (f) to regulate, register and co-ordinate all activities relating to the planting, processing, research, movement, storage, grading, marketing, export and import of tobacco and tobacco products, including to regulate the minimum prices in relation to specified qualities or grades at which tobacco may be sold other than for export;
- (g) to conduct research and development in any other areas where the results of the research and development are intended to achieve the objectives of the Board;
- (h) to promote, control and monitor measures towards attaining a high quality for kenaf, kenaf products or tobacco;
- (i) to plan and implement training programmes and human resource development in line with the needs of the kenaf industry and tobacco industry;
- (j) to consider, promote and take measures to prevent the occurrence and spread of diseases affecting kenaf and tobacco;
- (k) to provide technical, advisory, consultancy and related services to the kenaf industry and tobacco industry;
- (l) to gather, manage and disseminate information and maintain records of all relevant matters relating to the kenaf industry and tobacco industry;

- (m) to be the resource and information centre of the kenaf industry and tobacco industry;
- (n) to publish or sponsor the publication of journals, periodicals, booklets and other publications and to collect, collate and disseminate information relating to kenaf and tobacco and other economic activities;
- (o) to engage in the trading of kenaf, kenaf products, tobacco or tobacco products;
- (p) to consider, promote and take measures to develop economic activities for persons involved in the kenaf industry or tobacco industry;
- (q) to liaise and co-ordinate with the relevant State Governments and other bodies in carrying out such activities relating to the kenaf industry or tobacco industry as it deems necessary including being members of associations within and outside Malaysia in the interest of the kenaf industry and tobacco industry; and
- (r) to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

### **Powers of the Board**

#### **5. The powers of the Board shall include powers—**

- (a) to undertake activities relating to research and development on the planting, production, harvesting, extraction, processing and marketing of—
  - (i) kenaf, kenaf products and tobacco;
  - (ii) other usage of kenaf, kenaf products and tobacco,and services related thereto and to commission any person or body to carry out such research and development;
- (b) to enter into such negotiations and agreements or arrangements with any person or body as it deems fit for the discharge of its functions;



- (c) to acquire, hold, dispose of or grant rights in connection with the results of any research conducted by or for the Board or in connection with the results of any research undertaken by any person or organization;
- (d) to co-ordinate such activities as it deems necessary for the purpose of protecting and furthering the interests of the kenaf industry and tobacco industry;
- (e) to regulate the kenaf industry and tobacco industry, including the implementation and enforcement of any regulations made under this Act;
- (f) to grant licences, approvals, certificates and permits under this Act in respect of the kenaf industry and tobacco industry;
- (g) to prescribe the standards or grades of kenaf, tobacco, kenaf products and tobacco products;
- (h) to promote economically viable alternatives for persons involved in the kenaf industry or tobacco industry;
- (i) to provide financial or other assistance, with the approval of the Minister, to persons involved in the kenaf industry or tobacco industry;
- (j) to impose fees or any other charges as it deems fit for the use of any facility relating to research, testing, advisory or any other services provided by the Board;
- (k) to collect and receive any moneys related to its trading activities and the use of its facilities and in consideration of other services rendered by the Board;
- (l) to award certificates of proficiency in respect of training and accredited programmes;
- (m) to make contribution to bodies or organizations of which the Board is a member or to such organizations related to the kenaf industry and tobacco industry as the Minister may determine; and
- (n) to do all things expedient or necessary for or incidental to the performance of its functions under this Act.

**Membership of the Board**

**6.** The Board shall consist of the following members:

- (a) a Chairman who shall be appointed by the Minister;
- (b) the Secretary General of the Ministry responsible for the kenaf industry and tobacco industry;
- (c) the Secretary General of the Ministry responsible for agriculture;
- (d) the Secretary General of the Treasury;
- (e) the Secretary General of the Ministry of Rural and Regional Development;
- (f) the Secretary General of the Ministry of International Trade and Industry;
- (g) the Secretary General of the Ministry of Health;
- (h) the Director General; and
- (i) six other persons who shall be appointed by the Minister who, in the opinion of the Minister, have the experience and shown capacity and professionalism in matters relating to the development of the kenaf industry and tobacco industry, of whom there shall be—
  - (i) a representative of the tobacco manufacturers;
  - (ii) a representative of the licensed curer; and
  - (iii) a representative of the kenaf industry.

**Tenure of office**

**7.** (1) Subject to such conditions as may be specified in his instrument of appointment, a member of the Board appointed under paragraph 6(a) or (i) shall, unless he sooner resigns or vacates his office or his appointment is sooner revoked, hold office for a term not exceeding two years.

(2) A member of the Board appointed under paragraph 6(a) or (i) shall be eligible for reappointment but no member shall hold the office for more than two terms either continuously or otherwise.

### **Alternate members**

**8.** (1) The Minister may, in respect of each member appointed under paragraphs 6(b) to (g), 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 if that member is for any reason unable to attend.

(2) When attending meetings of the Board or of 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.

### **Temporary exercise of functions of Chairman**

**9.** (1) When the office of the Chairman is vacant or the Chairman is absent from duty in Malaysia or the Chairman is, for any other reason, unable to perform the duties of his office, the member appointed under paragraph 6(b) shall temporarily act as the Chairman, and if that member is for any reason unable to act under this subsection, the member appointed under paragraph 6(c) shall act as the Chairman.

(2) A member acting as the Chairman under subsection (1) shall be deemed to be the Chairman.

### **Revocation of appointment and resignation**

**10.** (1) The appointment of any member appointed under paragraphs 6(a) and (i) may at any time be revoked by the Minister without assigning any reason for the revocation.

(2) A member may at any time resign his office by a written notice addressed to the Minister.

**Vacation of office and filling of vacancy**

**11.** (1) The office of a member appointed under paragraph 6(a) or (i) shall be vacated if—

- (a) he dies;
- (b) there has been proved against him, or he has been convicted of, a charge in respect of—
  - (i) an offence involving fraud, dishonesty or moral turpitude;
  - (ii) an offence under any law relating to corruption; or
  - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (c) he becomes a bankrupt;
- (d) he is of unsound mind or is otherwise incapable of discharging his duties;
- (e) he absents himself from three consecutive meetings of the Board without leave of the Chairman or, in the case of the Chairman without leave of the Minister;
- (f) his resignation is accepted by the Minister; or
- (g) his appointment is revoked by the Minister.

(2) Where a member appointed under paragraph 6(a) or (i) ceases to be a member of the Board, the Minister may appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed in accordance with the provisions applying.

**Protection against suit and legal proceedings**

**12.** No action shall lie or prosecution shall be brought, instituted or maintained in any court against—

- (a) the Board;

- (b) any member of the Board, any member of a committee or any servant or agent of the Board; or
- (c) any other person lawfully acting on behalf of the Board, the Director General, Deputy Director General, officer or servant of the Board,

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

### **Public Authorities Protection Act 1948**

**13.** The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Board or against any member, any member of a committee, or any officer, servant or agent of the Board, in respect of any act, neglect, default or omission done or committed by it or him in such capacity.

### **Public servant**

**14.** Every member of the Board, or any member of a committee, or any officer, servant or agent of the Board, while discharging his duties under this Act as such member, officer, servant or agent, shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

### **Power of Minister to give directions**

**15.** (1) The Board shall be responsible to the Minister.

(2) The Minister may give the Board directions of a general character consistent with the provisions of this Act relating to the performance of the functions and the exercise of the powers of the Board.

(3) The Board shall give effect to all directions given under this section as soon as possible.

**Returns, reports, accounts and information**

**16.** (1) The Board shall furnish to the Minister, and any public authority as may be specified by the Minister, such returns, reports, accounts and information with respect to its property and activities as the Minister may from time to time require or direct.

(2) The returns, reports, accounts and information shall be in such form and shall contain such information relating to the proceedings and policy of the Board as the Minister may specify.

**Delegation of Board's functions and powers**

**17.** (1) The Board may, subject to subsection (2) and such conditions, limitations or restrictions as it deems fit to impose, delegate in writing any of its functions or powers, except the power to borrow money, grant loans, establish companies or make regulations, to—

- (a) any member;
- (b) any committee established by the Board; or
- (c) any officer or servant of the Board,

and any function or power so delegated may be performed or exercised by the member, officer or servant, as the case may be, in the name and on behalf of the Board.

(2) Any person delegated with such function and powers shall be bound to observe and have regard to all conditions, limitations or restrictions imposed by the Board.

(3) The Board may delegate to the Director General—

- (a) the power to grant loans and make advances to the officers and servants of the Board under section 21; and
- (b) the authority to sanction expenditure from the Fund or any other moneys vested in or under the control of the Board up to such limit as the Board shall specify.

(4) A delegation under this section shall not preclude the Board itself from performing or exercising at any time any of the functions or powers so delegated.

**Board may establish committees**

**18.** (1) The Board may establish such committees as it considers necessary or expedient to assist it in the performance of its functions under this Act.

(2) The Board may elect any of its members or any other person to be the chairman of a committee established under subsection (1).

(3) The Board may appoint any person to be a member of a committee.

(4) A committee may regulate its own procedure and, in the exercise of its powers under this subsection, such committee shall be subject to and act in accordance with any direction given to the committee by the Board.

(5) Meetings of a committee established under this section shall be held at such times and places as the chairman of the committee may determine.

(6) A committee may invite any person who is not a member of the committee to attend any meeting of the committee for the purpose of advising it on any matter under discussion but that person is not entitled to vote at the meeting.

(7) Members of a committee or any person invited under subsection (6) to attend any meeting of a committee may be paid such allowances and other expenses as the Board may determine.

(8) A member of a committee shall hold office for such term as may be specified in his instrument of appointment and is eligible for reappointment.

(9) The appointment of any member of a committee may at any time be revoked by the Board without assigning any reason therefor.

(10) A member of a committee may at any time resign his office by a written notice addressed to the Chairman of the Board.

## PART III

DIRECTOR GENERAL, OFFICERS AND SERVANTS OF THE  
BOARD**Powers and duties of Director General**

**19.** (1) The Minister shall appoint a Director General and such number of Deputy Director Generals on such terms and conditions as the Minister may determine.

(2) The Board shall vest in the Director General such powers and shall impose upon him such duties as the Board may determine.

(3) The Director General shall be responsible for—

(a) the general conduct, administration and management of the functions, activities and day-to-day affairs of the Board;

(b) the preparation of—

(i) all programmes, schemes, projects and activities;

(ii) an estimate of expenditure for the implementation of the annual programmes; and

(iii) an estimate of income,

for the approval of the Board;

(c) the execution of the annual programmes of the Board;  
and

(d) the carrying out of the decisions and directions of the Board.

(4) The Director General shall perform such further duties as the Board may direct from time to time.

(5) In discharging his duties, the Director General shall act under the general authority and direction of the Board.



(6) The Deputy Director General shall be subject to the direction and control of the Director General and may perform all the duties of the Director General under this Act.

(7) If the Director General is temporarily absent from Malaysia or is temporarily incapacitated through illness or for any other reason from performing his duties, or if the office of the Director General is for the time being vacant, the Minister may direct any Deputy Director General to attend any meeting of the Board.

### **Employment of other officers and servants**

**20.** (1) Subject to any regulations made under subsection (4), the Board may employ such number of other officers and servants including Classifiers as the Board thinks desirable and on such terms and conditions as the Board considers appropriate.

(2) The Director General shall have general control of the officers and servants of the Board.

(3) No person shall be eligible for employment as an officer or servant of the Board if he has, directly or indirectly, by himself or his partner, any share or interest in any contract or proposed contract with, for or on behalf of the Board.

(4) The Board may, with the approval of the Minister, make regulations with respect to the conditions of service of its officers and servants.

(5) The Board may adopt with such modifications as it deems fit any regulations, rules, policies, circulars and directives enacted or issued by the Federal Government in relation to any matter under this Part.

### **Loans, scholarships and advances to officers and servants**

**21.** (1) The Board may grant loans, scholarships and advances to its officers and servants for such purposes and on such terms and conditions as the Board may determine.

(2) The Board may grant loans or grants to institutions of higher learning within or outside Malaysia for the purpose of human resource development in the kenaf industry and tobacco industry.

## PART IV

## FINANCE

**The Fund**

**22.** (1) For the purposes of this Act a fund to be known as the “National Kenaf and Tobacco Board Fund” is established.

(2) The Fund shall be controlled, maintained and operated by the Board.

(3) The Fund shall consist of—

- (a) such sums as may be provided by Parliament for the purposes of this Act from time to time;
- (b) moneys earned by the operation of any project, scheme or enterprise financed from the Fund;
- (c) moneys earned or arising from any property, investment, mortgage, lease, tenancy, charge or debenture acquired by or vested in the Board;
- (d) any property, investment, mortgage, lease, tenancy, charge or debenture acquired by or vested in the Board;
- (e) sums borrowed by the Board for the purposes of meeting any of its obligations or discharging any of its duties;
- (f) moneys earned from consultancy and advisory services and any other services rendered by the Board;
- (g) moneys collected or paid under section 84;
- (h) moneys collected by the Board under the regulations made under this Act and specified therein as sums payable into the Fund;
- (i) donations and contributions received from any organization within or outside Malaysia;

- (j) all other sums or property which may in any manner become payable to or vested in the Board in respect of any matter incidental to its functions and powers; and
- (k) all other moneys lawfully received by the Board.

**Expenditure to be charged on the Fund**

**23.** The Fund shall be expended for the purposes of—

- (a) paying any expenditure lawfully incurred by the Board, including—
  - (i) the remuneration of the officers and servants of the Board, including the granting of loans, superannuation allowances, pensions or gratuities;
  - (ii) insurance coverage for the officers and servants of the Board;
  - (iii) costs incurred in providing for the welfare of the officers and servants of the Board;
  - (iv) allowances of the members and members of committees established under section 18; and
  - (v) legal fees and costs and any other fees and costs;
- (b) financing research and development activities;
- (c) contributing to bodies or organizations, whether within or outside Malaysia, of which the Board is a member or to such organizations related to the kenaf industry and tobacco industry as the Minister may determine;
- (d) providing financial assistance to the kenaf planters or licensed curer with the approval of the Minister after consultation with the Minister of Finance;
- (e) granting loans, scholarships, advances or grants, as the case may be, to any person, officers and servants of the Board or to institutions of higher learning within or outside Malaysia;

- (f) granting loans or providing capital for companies established by the Board under this Act;
- (g) paying any other expenses, costs or expenditure properly incurred or accepted by the Board in the performance of its functions or the exercise of its powers under this Act;
- (h) subject to the approval of the Minister, making contributions to any organization, whether within or outside Malaysia, for the purpose of promoting the marketing of kenaf and kenaf products;
- (i) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act;
- (j) repaying any moneys borrowed under this Act and the interest due on such moneys;
- (k) paying any reward under section 87; and
- (l) generally, paying any expenses for carrying into effect the provisions of this Act.

### **Conservation of Fund**

**24.** It shall be the duty of the Board to conserve the Fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Board are sufficient to meet all sums properly chargeable to its revenue account, including depreciation and interest on capital, taking one year with another.

### **Reserve fund**

**25.** The Board shall establish and maintain a reserve fund within the Fund.

### **Cess Fund**

**26.** (1) A Cess Fund to be administered and controlled by the Board is established.

(2) The Cess Fund shall consist of all cess collected under this Act.

(3) The Cess Fund shall be utilized for the following purposes:

(a) to provide technical and financial assistances to aid tobacco planters and workers, including those whose livelihoods are affected as a consequence of tobacco control programmes;

(b) to finance research and development on tobacco; and

(c) to finance any activity relating to tobacco controls.

### **Cess on tobacco and tobacco products**

**27.** (1) The Minister may, after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a cess on tobacco and tobacco products produced in or imported into Malaysia and the orders may specify the nature, amount and rate of the cess, person or class of persons on whom the cess is imposed and the manner of collection of the cess.

(2) The cess imposed by such order shall, for the purposes of its collection and for the enforcement of the collection thereof, be paid into and form part of the Cess Fund.

(3) An order made under this section may prescribe different amounts, rates and manner of collection for different types of tobacco and tobacco products in relation to different persons or different classes of persons.

(4) A person who fails or refuses to pay any cess imposed under this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten times the amount of cess due or to imprisonment for a term not exceeding three years or to both.

(5) The amount of any cess imposed under this section shall be a debt due to the Board from the person on whom the cess is imposed and may be sued for and recovered in any court at the suit of the Board.

(6) The institution of proceedings under this section shall not relieve any person from liability for the payment of any cess for which he is or may be liable or from liability to make any return which he is required by this Act to make.

### **Expenditure and preparation of estimates**

**28.** (1) The expenditure of the Board up to such amount as may be authorized by the Minister for any one year shall be defrayed out of the Fund.

(2) Before the first day of June of each year, the Board shall submit to the Minister an estimate of the expenditure (including the expenditure for research and development activities) for the following year in such form and containing such particulars as the Minister may direct.

(3) The Minister shall, before the first day of the month of January of the following year, notify the Board of the amount authorized for expenditure generally or of the amounts authorized for each description of expenditure based on the estimate prepared under subsection (2).

(4) The Board may at any time submit to the Minister a supplementary estimate for any one year and the Minister may allow the whole or any part of the additional expenditure included in the supplementary estimate.

### **Financial year**

**29.** The financial year of the Board shall begin on the first day of the month of January and end on the thirty-first day of the month of December of each year.

**Bank account**

**30.** The Board shall open and maintain an account or accounts with such banks in Malaysia as the Board thinks fit, and every account shall be operated as far as practicable by cheques signed by any person as may be authorized by the Board for such purpose from time to time.

**Statutory Bodies (Accounts and Annual Reports) Act 1980**

**31.** The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Board.

PART V

OTHER POWERS OF THE BOARD

**Power to borrow**

**32.** The Board may, with the approval of the Minister and the Minister of Finance, borrow, at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister and the Minister of Finance may approve, any sums required by the Board for meeting any of its obligations or discharging any of its duties.

**Investment**

**33.** The moneys of the Board shall, insofar as they are not required to be expended by the Board under this Act, be invested in such manner as the Minister and the Minister of Finance may approve.

**Commercialization of research finding**

**34.** The Board may make available any research finding vested in the Board to any person or body subject to such conditions and the payment of such fees, royalties or other consideration, if any, as the Board may, with the approval of the Minister, determine for the purpose of its commercialization.

**Power to employ agents, etc.**

**35.** The Board may employ, appoint and pay agents, contractors and technical advisers, including advocates and solicitors, bankers, stockbrokers, surveyors, valuers and other persons, to transact any business or to do any act required to be transacted or done in the performance of its functions, the exercise of its powers or the discharge of its duties or for the better carrying into effect of the purposes of this Act.

**Financial assistance to company established by the Board, etc.**

**36.** For the purpose of this Act, the Board may, with the approval of the Minister and the Minister of Finance, provide financial assistance—

- (a) to any company established under section 37;
- (b) to any person involved in kenaf industry or tobacco industry,

with or without interest and for such period and upon such terms as to the time and method of repayment and otherwise.

**Power to establish companies**

**37.** The Board may establish or expand or promote the establishment or expansion of companies under the \*Companies Act 2016 [*Act 777*]—

- (a) to perform any of its functions or carry out any of its powers; or
- (b) to carry out and have the charge, conduct and management of any activity which has been planned or undertaken by the Board in the performance of its functions or the exercise of its powers.

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\*NOTE—This Act has replaced the Companies Act 1965 [*Act 125*]*—see* subsection 620(1) of Act 777.



PART VI

LICENSING

**Regulation of kenaf industry and tobacco industry**

**38.** The kenaf industry and tobacco industry of Malaysia shall be regulated in accordance with the provisions of this Act.

**Licensing, approval and certificate of authorization**

**39.** (1) No person shall—

- (a) purchase kenaf;
- (b) sell kenaf products;
- (c) process kenaf;
- (d) manufacture kenaf or kenaf products;
- (e) import and export kenaf or kenaf products;
- (f) cure tobacco;
- (g) purchase cured tobacco;
- (h) manufacture tobacco or tobacco products;
- (i) blend tobacco; or
- (j) distribute tobacco or tobacco products,

without a valid licence issued under this Act.

(2) No person shall sell or purchase uncured tobacco unless he has obtained a written approval from the Board.

(3) No person shall act for or on behalf of a licensee in respect of any activities specified in subsection (1) without a certificate of authorization issued by the Director General.

(4) No licence is required to be issued under this Act for the manufacturing of tobacco products or kenaf products where a manufacturing licence has been issued under the Industrial Coordination Act 1975 [*Act 156*].

(5) Any person who contravenes subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(6) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **Application for licence, approval and certificate of authorization**

**40.** (1) An application for a licence, an approval or a certificate of authorization shall be made in writing to the Board, in the manner as may be prescribed.

(2) Every application under subsection (1) shall be accompanied by such document or information as may be prescribed.

(3) The Board may in writing at any time after receiving the application and before it is determined, require the applicant to provide such additional document or information within the time or such extended time as may be specified by the Board.

(4) If the requirements under subsection (1), (2) or (3) are not complied with, the application for a licence, approval or certificate of authorization shall be deemed to have been withdrawn by the applicant and shall not be further proceeded with by the Board, but without prejudice to a fresh application being made by the applicant.

(5) Any person applying to be licensed shall satisfy the following requirements:

- (a) that he has the financial ability to the satisfaction of the Board;

- (b) that he has the necessary qualification or expertise as determined by the Board;
- (c) that he has or will have the necessary facilities and equipment for the kenaf industry or tobacco industry he is to be involved in to the satisfaction of the Board;
- (d) that there is adequate demand for kenaf, kenaf product, tobacco or tobacco product in the long term;
- (e) that the licensing of the applicant or the issuance of a certificate of authorization will not adversely affect the existing kenaf industry or tobacco industry, with particular regard to the existing number of licensee or holder of certificate of authorization and to the availability of resources relating to kenaf or tobacco production; and
- (f) that any other relevant factors or requirements which may be considered appropriate by the Board have been taken into consideration or have been met.

### **Issue of licence, approval and certificate of authorization**

**41.** (1) Upon giving due consideration to the application made in accordance with section 40, the Board may approve or refuse the application.

(2) Where an application for a licence or certificate of authorization is approved, the licence or certificate of authorization shall be issued upon payment of the prescribed fee.

(3) A licence, an approval or a certificate of authorization may be issued subject to such conditions, limitations or restrictions as the Board may deem fit to impose.

(4) The Board may from time to time vary, amend or revoke any condition, limitation or restriction imposed on a licence or certificate of authorization or may impose new or additional conditions, limitations or restrictions after giving the licensee or the holder of the certificate, as the case may be, reasonable notice and opportunity to make representations within the time specified in the notice and after considering those representations.

**Register**

**42.** The Board shall keep and maintain or cause to be kept and maintained a register of persons who are licensed under this Act in such manner as may be prescribed.

**Duration and renewal of licences or certificate of authorization**

**43.** (1) A licence other than a manufacturing licence, or a certificate of authorization shall, unless sooner revoked, be valid for a period not exceeding three years or any period as the Minister deems fit.

(2) An application to renew a licence or certificate of authorization shall be made by the licensee or holder of the certificate not less than two months before the date of expiry of the licence or certificate.

(3) Any application for renewal of a licence or certificate of authorization which is not made within the time specified in subsection (2) but made before the date of expiry of the licence or certificate of authorization shall be subject to a payment of a penalty as may be determined by the Board.

(4) No application for renewal of a licence or certificate of authorization shall be considered if the application is made after the date of expiry of the licence or certificate.

(5) The Board may renew a licence or certificate of authorization if the licensee or the holder of the certificate of authorization has complied with all the conditions, limitations or restrictions imposed under subsection 41(3).

(6) Where an application for renewal of a licence or certificate of authorization is approved, the licence or certificate of authorization shall be issued upon payment of the prescribed fee.

**Licence to be exhibited**

**44.** (1) A licensee shall exhibit his licence at all times at a conspicuous place at the premises where the business is being carried on.

(2) A licensee who fails to exhibit his licence as required under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three months or to both.

### **Transfer of licence**

**45.** (1) A licence shall not be transferred to any person without the prior written approval of the Board.

(2) A licence shall only be transferred to a person who satisfies the requirements of subsection 40(5).

(3) Subject to subsection (2), the Board may approve the transfer of a licence under the following circumstances:

- (a) if the licensee becomes mentally incapacitated;
- (b) if the licensee is adjudged a bankrupt;
- (c) if the licensee dies;
- (d) if the licensee is a company, the company is being wound up;
- (e) if the licensee is a partnership, the partnership is dissolved;  
or
- (f) if the Board thinks it fit or expedient to do so.

(4) A licensee who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **No assignment of licence or certificate of authorization**

**46.** (1) A licensee or the holder of the certificate of authorization shall not assign any right, duty, liability or obligation under his licence or certificate of authorization to another person.

(2) A licensee or the holder of the certificate of authorization who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Revocation or suspension of licence or certificate of authorization**

**47.** (1) The Board may revoke or suspend a licence or certificate of authorization if the Board is satisfied that—

- (a) any provision of this Act or any other written law or any conditions, limitations or restrictions of the licence or certificate of authorization has not been complied with;
- (b) the issuance of the licence or certificate of authorization was induced by a false representation of fact by or on behalf of the licensee;
- (c) the original purpose for which the licence or certificate of authorization was issued no longer exists; or
- (d) the licensee has ceased to carry on or operate any activity for which the licence or certificate of authorization is issued.

(2) Notwithstanding subsection (1), the Board shall not revoke or suspend a licence or certificate of authorization on the grounds referred to in subsection (1) unless the Board is satisfied, after giving the licensee or the holder of the certificate of authorization an opportunity of making any representation in writing he may wish to make, that the licence or certificate of authorization should be revoked or suspended.

(3) Where a licence or certificate of authorization has been revoked, suspended or not renewed, it shall have no effect from the date of revocation or during the period of suspension or from the date of expiry of the licence, as the case may be.

(4) Any person who carries on any activity when his licence or certificate of authorization has been revoked or suspended or not renewed commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(5) Any person whose licence or certificate of authorization has been revoked or has not been renewed shall surrender to the Board his licence or certificate of authorization, within such period as the Board may specify.

(6) Any person who contravenes subsection (5) commits an offence.

## **Appeals**

**48.** (1) A person who is aggrieved—

- (a) by the refusal of the Board to issue a licence, approval or certificate of authorization, as the case may be;
- (b) by the refusal of the Board to renew his licence or certificate of authorization; or
- (c) by the revocation or suspension of his licence or certificate of authorization, as the case may be,

may, within thirty days after being informed in writing of the refusal, revocation or suspension, appeal in writing against such decision to the Minister.

(2) The Minister may, after considering an appeal made under subsection (1), confirm, set aside or vary the decision appealed against, and the decision of the Minister shall be final.

(3) An appeal made under subsection (1) shall not operate as a stay of the decision made by the Board.

## **Control of purchase of cured tobacco**

**49.** (1) No licensed purchaser shall purchase cured tobacco other than from a licensed curer or other licensed purchaser.

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

**Control of sale of cured tobacco**

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

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

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

**Control of storage and possession of cured tobacco**

**51.** (1) No person shall store or have in his possession cured tobacco unless he has obtained a written approval from the Board.

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

**Control of movement of cured tobacco**

**52.** (1) No person shall remove, carry, transport or take part in the removal, carriage or transportation of cured tobacco unless he has obtained a written approval from the Board.

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

**General penalty**

**53.** (1) A person who commits an offence under this Act for which no penalty is expressly provided shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) For the purposes of this section, “this Act” shall not include any regulation made under this Act.



PART VII

POWERS RELATING TO ENFORCEMENT, SEIZURE, *ETC.*

**Authorization of officers**

**54.** The Director General may in writing authorize any officer of the Board or public officer to exercise the powers of enforcement under this Act.

**Power of investigation**

**55.** (1) An authorized officer shall have all the powers necessary to carry out an investigation under this Act.

(2) For the purpose of subsection (1), the Criminal Procedure Code [*Act 593*] shall apply and an authorized officer shall have all the powers as provided for under the Code.

**Authority card**

**56.** (1) The Director General shall issue to each officer authorized under section 54 an authority card which shall be signed by the Director General.

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

**Power to arrest**

**57.** (1) An authorized officer may arrest without warrant any person—

- (a) found committing, attempting to commit or abetting the commission of an offence under this Act; or
- (b) whom the authorized officer reasonably suspects of being engaged in committing, attempting to commit or abetting an offence under this Act.

(2) An authorized officer making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt in accordance with the law relating to criminal procedure for the time being in force.

### **Search and seizure with warrant**

**58.** (1) If it appears to a Magistrate, upon written information on oath and after such enquiry as the Magistrate considers necessary, that there is a reasonable cause to believe that—

- (a) any premises has been used or are about to be used for;  
or
- (b) there is in any premises evidence necessary to the conduct of an investigation into,

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

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

- (a) search the premises for, and to seize or remove from the premises any kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article that is reasonably believed to furnish evidence of the commission of such offence;
- (b) take samples of any kenaf, kenaf product, tobacco, tobacco product or thing found in the premises for the purposes of ascertaining, by testing or otherwise, whether the offence has been committed; and
- (c) make copies of or take extracts from any book, record, document or other article found in the premises.

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

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

- (a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises;
- (b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and
- (c) detain any person found in the premises until the search has been completed.

(5) Where, by reason of its nature, size or amount, it is not practicable to remove any kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this section, the authorized officer shall, by any means, seal such kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article in the premises or container in which it is found.

(6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes the kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article under seal or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Search and seizure without warrant**

**59.** Whenever an authorized officer has reasonable cause to believe that any kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article in respect of which an offence under this Act or the rules or regulations has been committed is likely

to be found in or on any premises, person, vehicle, vessel or conveyance and that by reason of delay in obtaining a warrant under section 58 the object of the search may be frustrated, he may, without warrant, with such assistance and force as is necessary —

- (a) enter and search such premises;
- (b) stop and search such person, vehicle, vessel or conveyance;
- (c) inspect any kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article as he considers necessary;
- (d) verify the accuracy of records, statements or any information given to an authorized officer or to the Board;
- (e) collect samples of any kenaf, kenaf product, tobacco or tobacco product; or
- (f) seize any kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article which may be found and may be evidence of the commission of such offence.

### **Search of persons**

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

### **Access to computerized data**

**61.** (1) Any authorized officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, access shall be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable the comprehension of computerized data.

**Seizure of thing, etc.**

**62.** Any kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article 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.

**Power to stop, search and seize conveyances**

**63.** (1) If an authorized officer has reasonable cause to suspect that any conveyance is carrying any kenaf, kenaf product, tobacco, tobacco product, machinery, contrivance, equipment, book, record, document or any other article in respect of which an offence under this Act is being or has been committed, he may stop and examine 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 such conveyance and any kenaf, kenaf product, tobacco, tobacco product, machinery, contrivance, equipment, book, record, document or 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 an authorized officer—

(a) stop the conveyance and allow the authorized officer to examine it; and

(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 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 one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**List of things seized**

**64.** (1) Where any seizure is made under this Part, an authorized officer making the seizure shall prepare a list of kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article 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 the kenaf, kenaf product, tobacco, tobacco product, conveyance, machinery, contrivance, equipment, book, record, document or other article seized is found; and
- (b) the person in control or in charge of the conveyance, where the seizure is made under section 63.

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

**Temporary return of conveyance, etc.**

**65.** (1) Where any conveyance, machinery, contrivance or equipment is seized under this Act, the Director General may temporarily return the conveyance, machinery, contrivance or equipment to the owner of the conveyance, machinery, contrivance or equipment or to the person from whose possession, custody or control it was seized, subject to such terms and conditions as the Director General may impose, and subject in any case to sufficient security being furnished to the satisfaction of the Director General that the conveyance, machinery, contrivance or equipment shall be surrendered to the Director General on demand and that such terms and conditions, if any, shall be complied with.

(2) Where any seized conveyance, machinery, contrivance or equipment is temporarily returned under subsection (1), a person who—

- (a) fails, on demand, to surrender the conveyance, machinery, contrivance or equipment to the Director General; or

- (b) contravenes any of the terms or conditions imposed under subsection (1),

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding two years or to both.

**Power to require attendance of persons acquainted with case**

**66.** (1) The 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 any such person refuses to attend as required by an order made under subsection (1), the authorized officer may report his refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.

(3) Any person who is required to attend before the authorized officer under subsection (1) or (2) may be paid such allowance as may be prescribed by the Minister.

**Examination of persons acquainted with case**

**67.** (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) Such person shall be bound to answer all questions relating to such case put to him by the authorized officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

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

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

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

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

### **Admissibility of statements in evidence**

**68.** (1) In any trial or inquiry by a court into an offence under this Act, any statement, whether the statement amounts to a confession or not, is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by an accused person to or in the hearing of an authorized officer and whether or not interpreted to him by any other authorized officer or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement made under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person proceeding from a person in authority and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.



(3) Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served by the authorized officer with a notice in writing, which shall be explained to him, to the following effect:

“You have been arrested/informed that you may be prosecuted for ..... (the possible offence under this Act). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.”.

(4) Notwithstanding subsection (3), a statement by any person accused of any offence under this Act made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible thereafter.

(5) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.

(6) Where in any criminal proceedings against a person for an offence under this Act, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, may draw such inference from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(7) Nothing in subsection (6) shall in any criminal proceedings—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence of it would be admissible apart from that subsection; or
- (b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.

**Sale and disposal of seized kenaf or tobacco, *etc.***

**69.** (1) The Director General may at any time direct that any kenaf, kenaf product, tobacco or tobacco product seized under this Act be sold and the proceeds of the sale be held while waiting for the result of any prosecution under this Act where—

- (a) the kenaf, kenaf product, tobacco or tobacco product is of a perishable nature or easily deteriorates in quality;
- (b) the custody of the kenaf, kenaf product, tobacco or tobacco product involves unreasonable expense and inconvenience; or
- (c) there is a lack or absence of adequate or proper facilities for the storage of the kenaf, kenaf product, tobacco or tobacco product.

(2) Notwithstanding subsection (1), where an analyst certifies, or if the results of tests as certified by an analyst proves, that the kenaf, kenaf product, tobacco or tobacco product tested by him is contaminated or is of a quality, standard or grade lower than that prescribed or permitted by any regulation, the seizing officer may keep it in custody, or if no prosecution is instituted in respect of the kenaf, kenaf product, tobacco or tobacco product, cause it to be disposed of in accordance with subsection 70(3).

**Forfeiture of seized kenaf or tobacco, etc.**

**70.** (1) Any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act shall be liable to forfeiture.

(2) An order for the forfeiture of the kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article was the subject matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(3) If there is no prosecution with regard to any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act, such kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article shall be taken and deemed to be forfeited at the expiration of a period of one calendar month from the date of service of a notice to the last-known address of the person from whom the kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article was seized indicating that there is no prosecution in respect of such kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article unless before the expiration of that period a claim thereto is made in the manner set out in subsections (4), (5), (6) and (7).

(4) Any person asserting that he is the owner of the kenaf, kenaf product, tobacco or tobacco product, or the proceeds of sale thereof, or of the conveyance, machinery, contrivance, equipment, book, record, document or other article referred to in subsection (3) and that it is not liable to forfeiture may personally or by his agent authorized in writing, give written notice to the authorized

officer in whose possession such kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article is held that he claims the kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article.

(5) On receipt of the notice referred to in subsection (4), the authorized officer shall refer the matter to the Director General who may direct that the kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article be released or may direct the authorized officer, by information in writing, to refer the matter to a Magistrate.

(6) The Magistrate to whom a matter is referred under subsection (5) shall issue a summons requiring the Board and the person asserting that he is the owner of kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or of the conveyance, machinery, contrivance, equipment, book, record, document or other article and the person from whom it was seized to appear before the Magistrate, and when a representative of the Board and the owner thereof appear or any of them fails to appear, due service of the summons having been proved, the Magistrate shall proceed to the examination of the matter.

(7) If it is proved that an offence under this Act has been committed and that the kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article referred to in subsection (6) was the subject matter of or was used in the commission of such offence, the Magistrate shall order the kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article to be forfeited, and shall, in the absence of such proof, order its release.

(8) Any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article forfeited or deemed to be forfeited shall be delivered to the seizing officer and shall be disposed of in accordance with the directions of the Magistrate.

**Property right in forfeited kenaf or tobacco, etc.**

**71.** Any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article forfeited or deemed to be forfeited under this Part shall be the property of the Board.

**Release of seized kenaf or tobacco, etc.**

**72.** Notwithstanding section 70, the Director General or any officer authorized by the Director General may, where he deems fit, at any time direct that any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Part be released to the person from whose possession, custody or control it was seized.

**Authorized officer may seek assistance to examine things related to offence**

**73.** An authorized officer may seek the assistance of any person to examine any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article, seized or detained under this Act if such person has the necessary qualification to examine such kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article for the purposes of an investigation under this Act.

**Power to take sample**

**74.** (1) The Director General or an authorized officer may demand, select, take or obtain samples of any kenaf, kenaf product, tobacco or tobacco product for the purposes of analysis without payment from any person producing, selling or having possession of such kenaf, kenaf product, tobacco or tobacco product or his or its agent or servant from whom the samples is procured.

(2) The procedure for taking and dealing with the samples shall be as prescribed.

**Appointment of analysts**

**75.** The Board may appoint any qualified person to be an analyst for the purposes of carrying out an analysis on any kenaf, kenaf product, tobacco or tobacco product and to certify its condition, type, method of processing, quality, standard and grade.

**Certificate of analysis**

**76.** (1) A certificate of analysis signed by an analyst shall, on production by the Board in any trial under this Act, be sufficient evidence of the facts stated in the certificate unless the accused requires that the analyst be called as a witness, in which case he shall give a written notice to the Board not less than three clear days before the commencement of the trial.

(2) Where the Board intends to give in evidence any certificate referred to in subsection (1), it shall deliver a copy of such certificate to the accused not less than ten clear days before the commencement of the trial.

**Examination or testing of seized kenaf, tobacco, etc.**

**77.** (1) When any kenaf, kenaf product, tobacco or tobacco product is seized under this Act, it shall be sufficient to open and examine five per centum only of each description of the package or receptacle in which such kenaf, kenaf product, tobacco or tobacco product is contained.

(2) If it is necessary to test any kenaf, kenaf product, tobacco or tobacco product seized under this Act, it shall be sufficient to examine a sample not exceeding five per centum in volume or weight of the kenaf, kenaf product, tobacco or tobacco product examined under subsection (1).

(3) The court shall presume that the kenaf, kenaf product, tobacco or tobacco product contained in unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened.

**No costs or damages arising from seizure to be recoverable**

**78.** No person shall, in any proceedings before any court in respect of the seizure of any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

**Power of the Board to require information on kenaf or tobacco, etc.**

**79.** (1) The Board may require any person undertaking any activity involving kenaf, kenaf products, tobacco or tobacco products to furnish to the Board, within the time specified in a notice, information relating to the composition and use of such kenaf, kenaf products, tobacco or tobacco products.

(2) Any person who fails to furnish any information relating to the composition and use of any kenaf, kenaf product, tobacco or tobacco product as may be required under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

PART VIII

GENERAL

**Close seasons**

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

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

- (a) plant kenaf or tobacco;
- (b) allow kenaf or tobacco planted by or for him, or on land owned or occupied by him, to remain planted; or
- (c) carry on, take part, permit, cause, suffer, or procure any person to carry on, take part, in any activity forming part of or incidental to the process of kenaf or curing tobacco.

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding one year or to both.

### **Duty to maintain secrecy**

**81.** (1) Except for any of the purposes of this Act or for the purpose of any civil or criminal proceedings under any written law, no member, officer or servant of the Board or any member of a committee of the Board or any person invited to any meeting of the Board or any of its committees shall disclose any information which has been obtained by him in the course of his duties and which is not published in pursuance of this Act.

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

### **Offence committed by body corporate**

**82.** (1) Where a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

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



(b) where the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence 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, consent or connivance; and

(ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

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

(a) by his employee in the course of his employment;

(b) by the agent when acting on his behalf; or

(c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent.

### **Abetments and attempts punishable as offences**

**83.** (1) A person who abets the commission of or who attempts to commit any offence under this Act shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for the offence.

(2) A person who does any act preparatory to or in furtherance of the commission of any offence under this Act shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for the offence:

Provided that any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

**Compounding of offences**

**84.** (1) The Director General may, with the consent of the Public Prosecutor, offer in writing to compound any offence committed by any person under this Act and prescribed to be a compoundable offence by regulations made under this Act by making a written offer to such person to compound the offence upon payment to the Board of such amount not exceeding fifty per centum of the amount of the maximum fine for that offence within such time as may be specified in the offer.

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

(3) If the amount specified in the offer under subsection (1) is not paid within the time specified in the offer or within such extended period 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.

(4) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made and any kenaf, kenaf product, tobacco or tobacco product or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized in connection with the offence may be released or forfeited by the Director General, subject to such terms and conditions as the Director General deems fit to impose in accordance with the conditions of the compound.

**Institution and conduct of prosecution**

**85.** (1) No prosecution for or in relation to any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

(2) Any officer of the Board authorized in writing by the Public Prosecutor may conduct the prosecution for any offence under this Act.

**Joinder of offences**

**86.** Notwithstanding anything contained in any other written law to the contrary, where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of such offences committed within the space of any length of time.

**Rewards**

**87.** The Director General may order such rewards as he deems fit to be paid to any person for services rendered in connection with the detection of any offence under this Act, or in connection with any seizures made under this Act.

**Protection of informers**

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

(2) If any book, record, account, document or computerized data which is in evidence or liable to inspection in any civil or criminal proceeding contains any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such 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 on 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 or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties in that proceeding without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit enquiry and require full disclosure, concerning the informer.

**Power to exempt**

**89.** (1) The Minister may by order published in the *Gazette* exempt, subject to such terms and conditions as he may deem fit to impose, any person, class of persons, any activity or class of activities relating to kenaf, kenaf product, tobacco or tobacco product from all or any of the provisions of this Act.

(2) The Minister may, at any time by order published in *Gazette*, revoke any order made under subsection (1) if he is satisfied that such exemption should no longer be needed.

**Amendment of Schedule**

**90.** The Minister may, after consultation with the Board, amend the Schedule by order published in the *Gazette*.

**Regulations**

**91.** (1) The Minister may, after consultation with the Board, make regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

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

- (a) prescribing the manner of applying for licences, approvals and certificate of authorization, under this Act, the particulars to be supplied by an applicant, the manner of licensing and certification, the fees payable therefor, the conditions to be imposed, the form of licences, approvals and certificates, and the power to limit the number of licences;
- (b) prescribing the procedures relating to representation to be made under subsection 47(2);
- (c) prescribing the procedure for appeals under section 48;
- (d) prescribing the offences which may be compounded;

- (e) prescribing the type of tobacco to be blended in any tobacco product;
- (f) promoting, regulating, managing, controlling and developing the market of kenaf or kenaf products;
- (g) regulating, managing and controlling the movement, transportation and storage of tobacco or tobacco products;
- (h) prescribing the practices to be observed or avoided in the kenaf industry or tobacco industry including the planting of tobacco and research on kenaf or tobacco;
- (i) providing for the maintenance of proper standards of conduct in the carrying out of the kenaf industry or tobacco industry and for dealing with infringements thereof;
- (j) prescribing the methods of storing and transporting kenaf or tobacco and the measures to be taken to prevent damage or deterioration of kenaf or tobacco, or the occurrence or spread of diseases affecting kenaf or tobacco, during storage or transportation;
- (k) prescribing the methods and procedure of taking samples of kenaf, kenaf product, tobacco or tobacco products by an authorized officer or Classifier for the purposes of this Act;
- (l) prescribing the standards of processing and methods of preserving, grading or packaging kenaf or tobacco;
- (m) prescribing the standards or grades of kenaf or tobacco and making provision for giving effect to such standards or grades, including provisions for or relating to labelling and prohibiting dealings in kenaf or tobacco that does not conform to those standards or grades;
- (n) prescribing the minimum prices in relation to specified qualities or grades at which kenaf or tobacco may be sold other than for export;

- (o) providing for the registration of contracts relating to the sale and purchase of kenaf or tobacco and the details of such contracts;
- (p) prescribing the procedure to be followed by traders in trading kenaf or tobacco;
- (q) prescribing the procedure to be followed by exporters in exporting kenaf, kenaf product, tobacco or tobacco product;
- (r) specifying the duties and functions of Classifiers;
- (s) prescribing the records and documents to be kept and the returns to be submitted;
- (t) prescribing the fees and charges payable to the Board under this Act and the manner for collecting and disbursing such fees; and
- (u) providing for such other matters as are contemplated by, or necessary for giving full effect to, the provisions of this Act and for their due administration.

(3) Regulations made under this section may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding one hundred and fifty thousand ringgit or imprisonment for a term not exceeding two years or to both for such offence.

### **Acts done in anticipation of the enactment of this Act**

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

PART IX

REPEAL, SAVINGS AND TRANSITIONAL

**Repeal and dissolution**

**93.** (1) The National Tobacco Board (Incorporation) Act 1973 [*Act III*] (the “repealed Act”) is repealed and the National Tobacco Board (the “dissolved Board”) is dissolved.

(2) All regulations, rules, directions and orders made or having effect under the law repealed by this section and in force or having effect on the appointed date shall, without prejudice to the power of the Minister to amend, revoke or withdraw the regulations, rules, directions or orders and subject to such modifications as may be necessary to bring the regulations, rules, directions and orders in conformity with this Act, continue to be in force and have effect as if they had been made under this Act, until otherwise provided for under this Act.

**Transfer of powers, etc.**

**94.** The powers, rights, privileges, liabilities, obligations and duties which immediately before the appointed date were those of the dissolved Board shall devolve on the Board established by this Act as from that date.

**Transfer of property**

**95.** (1) All lands which immediately before the appointed date were vested in, or reserved under any written law for the purposes of the dissolved Board shall, on that date, by virtue of this Act, be vested in or be deemed to be reserved for the purposes of the Board established by this Act.

(2) All property and assets other than land which immediately before the appointed date were vested in the dissolved Board or in any person on behalf of the dissolved Board, as the case may be, shall, on that date, vest in the Board established by this Act.

**Existing contracts**

**96.** All deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the appointed date and affecting any of the property transferred under section 95 shall have full force and effect against or in favour of the Board established by this Act and shall be enforceable as fully and effectually as if, instead of the dissolved Board or any person acting on behalf of the dissolved Board, the Board established by this Act had been named therein or been a party thereto.

**Transfer of moneys in funds**

**97.** All moneys standing in or due to be paid to the funds of the dissolved Board shall, on the appointed date, be vested in the Board established by this Act, be transferred to and be deemed to be part of the Fund established under section 22.

**Membership of dissolved Board**

**98.** (1) Notwithstanding anything to the contrary, the members of the dissolved Board and the members of any committee appointed under the repealed Act who held office before the appointed date shall cease to hold office on that date.

(2) Nothing in subsection (1) shall affect the accountability of the outgoing members of the dissolved Board and as soon as practicable after the appointed date, the dissolved Board shall prepare and submit to the Minister a report including the financial statements required under the repealed Act, but the report shall be limited to the period from 1 January of the relevant year to the day before the appointed date.

**Continuance of officers and servants**

**99.** (1) The persons who immediately before the appointed date are employed as officers and servants of the dissolved Board shall, on the appointed date, be deemed to have been employed by the Board established by this Act.



(2) Every person who immediately before the appointed date was employed as an officer or servant of the dissolved Board shall, on the appointed date, be employed as an officer or servant of the Board established by this Act upon terms and conditions of service not less favourable than the terms and conditions of service to which he was entitled immediately before the appointed date.

(3) If changes are made on and after the appointed date with respect to the conditions of service of the officers and servants of the dissolved Board who are deemed under subsection (1) to have been employed by the Board established by this Act, they shall be given an option whether to continue to be subject to the existing conditions of service or to be subject to the new conditions of service.

### **Savings for licence and register**

**100.** (1) Notwithstanding the repeal and dissolution under section 93 or any provision of this Act to the contrary, every person who, immediately before the appointed date holds a valid licence issued to him under the repealed Act shall on the appointed date be deemed to be licensed under this Act until the expiry of the license and shall be subject to the terms and conditions as the Board established by this Act may impose.

(2) The provisions of this Act relating to the revocation, suspension and renewal of licences shall apply to all persons deemed to be licensed under subsection (1).

(3) Any application for a licence under this Act by a person who is deemed to have been licensed by virtue of subsection (1) shall be treated as a fresh application and not an application for the renewal of the licence.

(4) All registers kept and maintained under the repealed Act shall on the appointed date be deemed to be registers kept and maintained under this Act and shall be deemed to form part thereof.

**Activity to which a licence under this Act applies**

**101.** (1) Subject to section 100, any person who, immediately before the appointed date, is undertaking an activity to which this Act applies shall, within six months from the appointed date, apply for a licence under section 40 and such application shall be treated as a fresh application and not as an application for the renewal of a licence.

(2) Upon receipt of an application under subsection (1) the Board shall issue an acknowledgement to such person.

(3) Pending the determination of such application, such person may continue to undertake the activity.

**Continuance of pending applications, etc.**

**102.** (1) All applications, approvals or decisions, on appeal or otherwise, pending before the dissolved Board under the repealed Act shall, on the appointed date, be dealt with by the Board in accordance with the provisions applying under this Act.

(2) All applications, approvals or decisions, on appeal, pending before the Minister under the repealed Act shall, on the appointed date be dealt with by the Minister under this Act.

(3) All instruments, certificates or documents lodged with the dissolved Board immediately before the appointed date shall, on the appointed date, be deemed to have been lodged with the Board.

**Continuance of civil and criminal proceedings**

**103.** (1) Neither the repeal under section 93 nor anything contained in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Act immediately before the appointed date, or any proceedings brought before that date in respect of such offences.

(2) Any proceedings, whether civil or criminal, or cause of action pending or existing immediately before the appointed date by or against the dissolved Board or any person acting on behalf of the dissolved Board may be continued or instituted by or against the Board established by this Act as it might have been by or against the dissolved Board or such person if this Act had not been enacted.

(3) Any appeal brought or any leave to appeal applied for on or after the appointed date against a decision given immediately before the appointed date in any legal proceedings to which the dissolved Board was a party may be brought by or against the Board established by this Act.

### **Reference in law or document to dissolved Board**

**104.** A reference in any law or document in force immediately before the appointed date to the dissolved Board shall be construed as a reference to the Board established by this Act.

### **Continuance of use of name**

**105.** Notwithstanding sections 93 and 104, the Board established by this Act may continue to use the name “National Tobacco Board” for the purpose of maintaining goodwill or for any purpose the Board deems fit.

### **Prevention of anomalies**

**106.** (1) The Minister may, by order, make such modifications in the provisions of this Act as may appear to him to be necessary or expedient for the purpose of removing any difficulty occasioned by the coming into operation of this Act only as regards the performance of the functions and the exercise of the powers by the Board established under this Act.

(2) The Minister shall not exercise the powers conferred by subsection (1) after the expiration of three years from the appointed date.

(3) In this section, “modification” means amendments, additions, deletions and substitutions of any provision of this Act.

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## SCHEDULE

## [Subsection 3(5)]

**Meetings**

1. (1) The Board shall meet at least once in every three months at such time and place as may be appointed by the Chairman.

(2) The Director General shall on the instruction of the Chairman give a written notice to the members prior to the meeting.

(3) The Chairman shall preside at a meeting of the Board.

(4) Five members shall constitute a quorum at any meeting of the Board.

(5) Every member present at a meeting of the Board shall be entitled to one vote.

(6) If on a question to be determined by the Board there is an equality of votes, the Chairman shall have a casting vote.

**Allowance**

2. Members of the Board may be paid such allowances as the Minister may determine.

**Board may invite others to meetings**

3. (1) The Board may invite any person to attend a meeting or deliberation of the Board for the purpose of advising it on any matter under discussion, but that person shall not be entitled to vote at the meeting or deliberation.

(2) A person invited under subparagraph (1) may be paid such allowances as the Board may determine.

**Common seal**

4. (1) The Board shall have a common seal which shall bear such device as the Board shall approve and such seal may be broken, changed, altered or made anew as the Board deems fit.

(2) Until a seal is provided by the Board, a stamp bearing the words “National Kenaf and Tobacco Board” or “Lembaga Kenaf dan Tembakau Negara” may be used and shall be deemed to be the common seal of the Board.

(3) The common seal shall be kept in the custody of the Director General or such other person as may be authorized by the Board, and shall be authenticated by the Director General or such authorized person or by any officer authorized by the Director General in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall, until the contrary is proved, be deemed to have been validly executed:

Provided that any document or instrument which if executed by a person not being a body corporate would not be required to be under seal may in like manner be executed by the Board; and any such document or instrument may be executed on behalf of the Board by any officer or servant of the Board generally or specially authorized by the Board in that behalf.

(4) The common seal of the Board shall be officially and judicially noticed.

#### **Disclosure of interest**

5. A member of the Board having, directly or indirectly, by himself or his partner, any interest in any company or undertaking with which the Board proposes to make any contract or having any interest in any such contract or in any matter under discussion by the Board shall disclose to the Board the fact of his interest and the nature thereof, and such disclosure shall be recorded in the minutes of the Board and, unless specifically authorized thereto by the Chairman, such member shall take no part in any deliberation or decision of the Board relating to the contract or matter.

#### **Minutes**

6. (1) The Board shall cause minutes of all its meetings to be maintained and kept in a proper form.

(2) Minutes made of meetings of the Board shall, if duly signed, be admissible in evidence in all legal proceedings without further proof.

(3) Every meeting of the Board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

#### **Validity of acts and proceedings**

7. No act done or proceeding taken under this Act shall be questioned on the ground of—

(a) a vacancy in the membership of, or a defect in the constitution of, the Board;

- (b) the contravention by any member of the Board of the provisions of paragraph 5; or
- (c) an omission, a defect or an irregularity not affecting the merit of the case.

**Procedure**

- 8.** Subject to this Act, the Board shall determine its own procedure.

**Member of Board to devote time to business of Board**

- 9.** Every member of the Board shall devote such time to the business of the Board as may be necessary to discharge his duties effectively.
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**LAWS OF MALAYSIA****Act 692****NATIONAL KENAF AND TOBACCO BOARD ACT 2009****LIST OF AMENDMENTS**

Amending law

Short title

In force from

—NIL—

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**LAWS OF MALAYSIA**

**Act 692**

**NATIONAL KENAF AND TOBACCO BOARD ACT 2009**

**LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
—NIL—		

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