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No. S 49

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

TOBACCO ORDER, 2005

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

TOBACCO ORDER, 2005

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Tobacco Order, 2005 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is "An Order to prohibit advertisements relating to smoking, to control the use of tobacco products, to control the sale, promotion, packaging and trade description of tobacco products, to prohibit smoking in specified places and vehicles and to provide for matters connected therewith and incidental thereto".

Interpretation.

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

"advertisement" includes any notice, circular, pamphlet, brochure, programme, price-list, label, wrapper or other document and any announcement, notification or intimation, to the public or any section thereof or to any person made —

(a) orally or in writing;

(b) by means of any poster, placard, notice or other document affixed, posted up or displayed on any wall, billboard or hoarding or on any other object or thing;

(c) by means of producing or transmitting sound or light and whether for aural or visual reception or both;

(d) by means of any writing on any vehicle or any other object or thing; or

(e) in any other manner whatsoever;

"authorised officer" means any person appointed under subsection (1) of section 23;

"cigarette" means any product which consists in whole or in part of cut, shredded or manufactured tobacco, or any tobacco derivative or substitute, rolled up in paper, tobacco leaf or other material and which is in such form as to be capable of immediate use for smoking;

"Director-General" means the Director-General of Health Services;

"imitation tobacco product" means any of the products referred to in subsection (1) of section 6;

"manager", in relation to a specified building, includes any owner, occupier, lessee or person who is responsible for the management of that building or is in charge or in control thereof, and includes an assistant manager or supervisor and any person holding an appointment analogous to that of manager, assistant manager or supervisor;

"Minister" means the Minister of Health;

"newspaper" includes any magazine, journal, periodical or any other publication containing news, intelligence, information or reports of occurrences, or any remarks, observations or comments in relation either to such news, intelligence, information or occurrences or to any other matter of interest to the public or any section of the public, issued in any language at regular or irregular intervals;

"operator", in relation to a specified vehicle, means any owner, ticket or tour conductor, driver, ticket inspector or person who is in charge or in control of the specified vehicle;

"public service vehicle" has the same meaning as in subsection (1) of section 2 of the Road Traffic Act (Chapter 68);

"publish", in relation to an advertisement, includes issuing, showing, displaying, exhibiting or making known an advertisement in any manner whatsoever;

"smoking" means inhaling and expelling the smoke of tobacco or any other substance and includes the holding of any cigar, cigarette, pipe or any other form of tobacco product which is alight or emitting smoke;

"specified place" means any premises or building or any part thereof as specified in a notification made under subsection (1) of section 14;

"specified vehicle" means any public service vehicle or any part thereof as specified in a notification made under subsection (1) of section 14;

"tobacco" means the leaf of the *Nicotiana Tobacum* plant or other related plants, and any product obtained therefrom;

"tobacco product" means a cigarette, cigar or any other form of tobacco including any mixture containing tobacco;

"tobacco product advertisement" means any advertisement —

- (a) containing any express or implied inducement, suggestion or request to purchase or to smoke any tobacco product;
- (b) relating to smoking in terms which are calculated, expressly or impliedly, to lead to, induce, urge, promote or encourage the use of any tobacco product for the purpose of smoking; or
- (c) which mentions, illustrates or depicts —
 - (i) the name or trade name of any person associated or concerned with the manufacture, distribution or marketing of any tobacco product;
 - (ii) a brand name of or trade mark relating to any tobacco product; or
 - (iii) any pictorial device commonly associated with a brand name of or trade mark relating to any tobacco product;

"vending machine" means a machine or device that is constructed to contain tobacco products and which can automatically dispense any tobacco product upon the insertion of any note, coin, token or similar object into such a machine or device.

PART II

CONTROL OF TOBACCO PRODUCTS

Prohibition on importation and sale of tobacco products.

3. (1) No person shall import, sell or offer for sale —

(a) any chewing tobacco; or

(b) such other tobacco product as the Minister may, by notification published in the *Gazette*, specify, intended, labelled or described as suitable for inhaling, chewing or any oral use other than smoking.

(2) No person shall import, sell or offer for sale any cigarette containing —

(a) a yield of more than 1.3 milligrams of nicotine per cigarette or such other minimum amount as the Minister may by order prescribe; or

(b) a yield of more than 15.0 milligrams of tar (nicotine free smoke condensate) per cigarette or such other minimum amount as the Minister may by order prescribe.

(3) Notwithstanding subsection (2), no person shall import, sell or offer for sale any tobacco product that contains or the emissions of which contain, any substance in excess of such amount as the Minister may by order prescribe for that substance.

(4) Subsections (1), (2) and (3) do not apply to the importation of any tobacco product which is intended for re-export.

(5) Any person who contravenes subsection (1), (2) or (3) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

(6) In subsection (3), "emission" means any substance that is produced when a tobacco product is used.

Number of cigarettes in package.

4. (1) No person shall —

(a) sell or offer for sale cigarettes by retail; or

(b) permit the sale or offer for sale of cigarettes by retail,

except in a package that contains not less than the prescribed number of cigarettes.

(2) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000, imprisonment for a term not exceeding 12 months or both.

(3) In subsection (1) —

"package" —

(a) means any box, carton or other container in which cigarettes are supplied by the manufacturer or importer of the cigarettes for the purpose of sale by retail; and

(b) includes, in the case where the package is, or several packages are, contained inside one or more larger packages, the smaller package or each of the smaller packages, as the case may be;

"prescribed number of cigarettes" means —

(a) 20 cigarettes, where no other number of cigarettes is specified under paragraph (b); or

(b) such number of cigarettes as the Minister may, by notification published in the *Gazette*, specify.

Prohibition on sale by vending machines.

5. (1) No person shall place, or cause or knowingly permit to be placed, in any premises a vending machine containing any tobacco product.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000.

Prohibition on sale of imitation tobacco products.

6. (1) No person shall import, sell or offer for sale, any confectionery or other food product, or any toy or other article, that is designed to resemble a tobacco product or which is sold in a package designed to resemble the packaging commonly associated with tobacco products.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000.

Prohibition on sales promotion.

7. (1) No person shall sell or offer for sale —

(a) any goods with any tobacco product as a free gift;

(b) any tobacco product with any other goods as a free gift; or

(c) any tobacco product packaged or labelled together or otherwise in conjunction with any other goods.

(2) No person shall distribute, or give or cause to be distributed, or give or assist in the distribution or giving of, any free sample of a tobacco product to the public or any section of the public, other than to persons who are associated or concerned in the manufacture, distribution or sale of tobacco products.

(3) No person shall offer or give any tobacco product as a prize in any lottery, raffle, draw, game or competition.

(4) Any person who contravenes or fails to comply with subsection (1), (2) or (3) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

Prohibition on sponsorship etc.

8. (1) No person shall under any contract, agreement, undertaking or understanding, whether legally binding or otherwise, with another person —

(a) promote a tobacco product in exchange for any sponsorship, gift, prize, reward, scholarship or like benefit given or agreed to be given by the other person or by any other person; or

(b) give or agree to give any sponsorship, gift, prize, reward, scholarship or like benefit in exchange for the promotion of a tobacco product by the other person.

(2) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both and, in the case of a

second or subsequent conviction, to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

Prohibition on supply to persons below age of 18 years.

9. (1) Any person who, directly or indirectly —

(a) sells to a person below the age of 18 years, any tobacco product;

(b) buys or acquires any tobacco product for the purpose of giving it, whether or not for a consideration, to a person below the age of 18 years; or

(c) gives or furnishes any tobacco product to a person below the age of 18 years,

is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000.

(2) In any proceedings for an offence under subsection (1), it shall be a defence for the person charged to prove that he —

(a) had reasonable grounds to believe and did make reasonable inquiries to ascertain that the person to whom the tobacco product was sold, given or furnished was not below the age of 18 years; or

(b) had received from the person to whom the tobacco product was sold, given or furnished evidence purporting to show that that person was not below the age of 18 years, and that it was reasonable to believe and he did accept that evidence as correct.

Control of smoking etc. by persons below age of 18 years.

10. (1) Any person who, being below the age of 18 years, smokes or chews any tobacco product in a public place, or buys or has in his possession, whether for his own use or not, any tobacco product, is guilty of an offence and liable on conviction to a fine not exceeding \$500 and, in the case of a second or subsequent conviction, to a fine not exceeding \$1,000.

(2) Where a police officer or an authorised officer finds in any public place a person, whom the officer reasonably suspects of being below the age of 18 years, smoking or chewing or about to smoke or chew any tobacco product, the officer may seize any tobacco product in the possession of such person.

Notice of prohibition.

II. (1) Every retailer shall —

(a) cause to be displayed suitable and sufficient numbers of notices of an adequate size or sizes in conspicuous positions in the premises or place where the product is sold, stating to the effect that the sale of any tobacco product to persons below the age of 18 years is prohibited by law; and

(b) if so directed by the Director-General, display such notices in such premises or place, phrase them in such manner or cause them to be of such sizes, as the Director-General may consider fit.

(2) The retailer may, subject to any direction that may be given by the Director-General under paragraph (b) of subsection (1), in addition to such notices, adopt any means, method or device as he may think fit for bringing such prohibition to the attention of members of the public in such premises or place.

(3) A retailer who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000.

(4) For the purpose of this section, "retailer" means a person who sells or offers for sale any tobacco product by retail.

Power to license importers etc.

12. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations require any person who imports, distributes, sells or offers for sale, permits to be sold or offered for sale or has in his possession for sale, any tobacco product to be licensed by the Director-General.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for or with respect to —

(a) the class or classes of licence to be granted, the form and duration of licences, the conditions upon which and the circumstances in which licences may be granted, held, suspended, cancelled, altered, extended, renewed or replaced and the fees payable in respect thereof;

(b) a register to be kept of such licences, the particulars to be entered in that register and for the publication of the names of licensees;

(c) the form and manner in which an application for or renewal of a licence shall be made;

(d) requiring such information or security as he considers necessary in relation to the application for the grant or renewal of a licence;

(e) prescribing the books, records or accounts to be kept by licensees; and

(f) the exemption of any person or class of person from the provisions of any regulations made under this section.

(3) A person required by regulations made under subsection (1) to be licensed, who carries out any activity referred to in that subsection without a licence is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and in the case of a second or subsequent conviction, to a fine not exceeding \$10,000.

Health warning and labelling.

13. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations —

(a) impose requirements to ensure that such tobacco products as may be specified therein be marked with, labelled or accompanied by any warning relating to health, information or description as may be prescribed; and

(b) control or prohibit the supply of tobacco products in the case where such requirements are not complied with.

(2) Any person who contravenes or fails to comply with the requirements imposed under paragraph (a) of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

PART III

SMOKING IN SPECIFIED PLACES AND SPECIFIED VEHICLES

Prohibition of smoking.

14. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette* and subject to such conditions as the Minister may think fit, specify —

(a) any premises or building or any such part thereof or any class of premises or buildings or any such parts thereof —

- (i) being used for commercial, industrial or recreational purposes; or
- (ii) to which members of the public or a section of the public have or ordinarily would have access whether on payment of a fee or otherwise;

(b) any common property of any residential premises or building; or

(c) any public service vehicle or any part thereof or any class of public service vehicle or any part thereof,

as being a place or a vehicle in which smoking shall not be permitted either permanently or during such time or for such period or under such circumstances as the Minister may, with the approval of the His Majesty the Sultan and Yang Di-Pertuan, prescribe.

(2) Any person who smokes in any specified place or specified vehicle in contravention of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Notice of prohibition.

15. (1) The manager of every specified place and the operator of every specified vehicle shall —

(a) cause to be displayed a suitable and sufficient number of notices of an adequate size in conspicuous positions therein stating to the effect that smoking is prohibited by law; and

(b) if so directed by the Director-General, display such notices in such places, phrase them in such manner or cause them to be of such size, as the Director-General may consider fit.

(2) The manager or operator may, subject to any direction that may be given by the Director-General under paragraph (b) of subsection (1), in addition to such notices, adopt any means, method or device as he may think fit for bringing such prohibition to the attention of members of the public in any specified place or of passengers in any specified vehicle.

(3) Any manager of any specified place or any operator of any specified vehicle who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Duties of managers and operators.

16. (1) The manager of any specified place or the operator of any specified vehicle shall require any person who smokes therein in contravention of any notification made under subsection (1) of section 14 —

(a) to cease smoking immediately, indicating the penalty provided under subsection (2) of section 14; and

(b) if that person refuses, neglects or fails to cease smoking, he shall require him to leave the specified place or specified vehicle immediately.

(2) If such person refuses to leave the specified place or specified vehicle or to cease smoking, the manager or operator shall —

(a) seek the assistance of any police officer or authorised officer; and

(b) render such assistance to that officer as is reasonable to deal with such person in the manner provided in section 24.

(3) Where any person smokes in a specified place or a specified vehicle in contravention of any notification made under subsection (1) of section 14, any other person who is aggrieved by the smoking of that person may lodge a complaint to the manager of that specified place or operator of that specified vehicle and it shall be the duty of that manager or operator —

(a) to take all reasonable steps to investigate into the complaint; and

(b) if the complaint is found to be true, to take action in accordance with subsection (1) or (2) against the person smoking in that place or vehicle.

(4) If the manager of any specified place or the operator of any specified vehicle fails or neglects to comply with the provisions of —

(a) subsection (1) or (2) in relation to any person whom he knows or ought reasonably to know is smoking in that place or vehicle; or

(b) subsection (3) in relation to any complaint received by him that a person is smoking in that place or vehicle,

in contravention of any notification made under subsection (1) of section 14, that manager or operator is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a second or subsequent conviction, to a fine not exceeding \$2,000.

(5) For the purposes of subsection (4), a manager of a specified place shall be presumed, until the contrary is proved, to have the knowledge referred to in

that subsection where a person who is under his charge or supervision and who is employed at that place knows that a person is smoking in that place in contravention of a notification made under subsection (1) of section 14.

(6) Any person who hinders, obstructs, threatens, abuses, molests or assaults any manager or operator in the performance of his duties under this section is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 6 months or both.

(7) No manager of a specified place or operator of a specified vehicle is liable to repay or refund any fee or other consideration paid by a person for the purpose of gaining admission into that place or vehicle where that person has been required to leave that place or vehicle in accordance with subsection (1).

(8) Nothing in this section shall affect the liability of any person for an offence under subsection (2) of section 14.

PART IV

CONTROL OF ADVERTISEMENTS

Prohibition on advertisements relating to smoking.

17. (1) Subject to the provisions of any other written law, any person who —

(a) prints, publishes or causes to be printed or published or takes part in the publication of, any tobacco product advertisement;

(b) displays or affixes, or causes or permits to be displayed or affixed, a tobacco advertisement;

(c) sells, or causes or permits to be sold, any magazine, newspaper, film or videotape or any other thing that contains a tobacco product advertisement; or

(d) distributes, or causes or permits to be distributed, any tobacco product advertisement,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

(2) The Minister may approve, for such time and upon such conditions as he may think fit, the publication of an advertisement or class of advertisement which mentions or refers to the brand name associated with or the name or trade

name of a person associated or concerned in the manufacture, distribution or marketing of a tobacco product for the purpose of promoting or identifying any goods or services unconnected with any tobacco product which are manufactured, distributed, marketed or provided by that person.

(3) Subsection (2) does not apply to any advertisement or class of advertisement which, directly or indirectly, leads to, induces, urges, promotes or encourages the use of any tobacco product for the purpose of smoking.

(4) Any application for approval under subsection (2) shall be made in such form and with such particulars as the Minister may determine.

(5) Where any person fails to comply with any condition imposed under subsection (2), the Minister may cancel the approval in relation to which that condition was imposed without assigning a reason therefor.

Defence.

18. In any proceedings for a contravention of subsection (1) of section 17, it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was published in such circumstances that he did not know and had no reason to believe that he was taking part in the publication of the advertisement.

Offences by owner and occupier.

19. Any person being the owner or occupier of any premises or place to which the public or any section of the public has access, on payment or otherwise, who knowingly permits or suffers such premises or place or any part thereof to be kept or used for the publication of any advertisement in contravention of subsection (1) of section 17 is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

Presumption relating to printed documents.

20. Where any notice, poster, pamphlet, brochure or other printed document, containing a tobacco product advertisement which has been published, is found in the possession of or in premises occupied by any person who is associated or concerned in the manufacture, distribution or marketing of any tobacco product associated with or related to the brand name, trade name or trade mark mentioned or depicted in the advertisement, he shall be presumed, until the contrary is proved, to have knowingly taken part in the publication of the advertisement in contravention of subsection (1) of section 17.

Advertisements in newspapers published outside Brunei Darussalam.

21. (1) This Part does not apply to any tobacco product advertisement contained in any newspaper which is printed or published outside Brunei Darussalam and which is brought into Brunei Darussalam for sale, free distribution or personal use, other than a newspaper of a class or description specified by the Minister by notification published in the *Gazette*.

(2) Notwithstanding subsection (1), no person shall distribute or supply or cause to be distributed or supplied, whether free of charge or otherwise, any newspaper or printed matter containing any tobacco product advertisement which is printed or published outside Brunei Darussalam and which is brought into Brunei Darussalam, if such newspaper or printed matter —

(a) forms part of, or is supplemental to, any newspaper that is printed or published in Brunei Darussalam; and

(b) is supplied or distributed to any purchaser or subscriber of any newspaper that is printed or published in Brunei Darussalam, whether or not the first-mentioned newspaper or printed matter is supplied or distributed at the same time as, or together with, the newspaper printed or published in Brunei Darussalam.

(3) Any person who contravenes or fails to comply with subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

Advertisements not exempted.

22. Nothing in subsection (1) of section 21 shall be construed as exempting from the provisions of this Order any tobacco product advertisement contained in any notice, circular, pamphlet, brochure or other printed matter or document which is not a newspaper within the meaning of this Order and which is printed or published outside Brunei Darussalam and brought into Brunei Darussalam for distribution solely or mainly for the purpose of announcing or commending the qualities of any brand of tobacco product.

PART V

ENFORCEMENT

Appointment of authorised officers.

23. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, appoint any person to be an authorised officer for the purposes of this Order.

(2) In the exercise of his powers and in carrying out his duties under this Order, an authorised officer shall comply with such directions as may be given to him by the Director-General.

Powers of police and authorised officers.

24. (1) Any person reasonably suspected of having committed an offence under this Order may be arrested without warrant by any police officer or authorised officer and produced before a court.

(2) Notwithstanding any other written law, any police officer or authorised officer who, having effected an arrest in accordance with subsection (1), is satisfied as to the identity, name and place of residence of the person arrested may, instead of producing such person before a court or to a police station, serve upon him a notice in such form as may be determined under section 36 requiring him to attend at such court, at such time and on such date as may be specified in the notice.

(3) For the purpose of satisfying himself as to the identity of the person arrested, the police officer or authorised officer may require such evidence of identity as he may consider necessary to be furnished by that person.

(4) A duplicate of the notice served under subsection (2) shall be prepared by the police officer or authorised officer and produced by him to the court if so required by the court.

(5) Where an accused person appears before a court in accordance with a notice served under subsection (2), the court shall take cognizance of the offence alleged and shall proceed as though he were produced before it under subsection (1).

(6) If a person upon whom a notice has been served under subsection (2) fails to appear before the court in accordance with the notice, the court may issue a warrant for his arrest.

(7) Where a person arrested in pursuance of a warrant issued under subsection (6) is produced before a court, the court shall —

(a) proceed as though he were produced before it under subsection (1); and

(b) at the conclusion of such proceedings, call upon him to show cause why he should not be punished for failing to attend in compliance with the notice served under subsection (2).

(8) If due cause is not shown by that person under subsection (7), the court may order him to pay a fine not exceeding \$2,000 or may commit him to prison for a term not exceeding one month.

(9) In relation to an offence under this Order, an authorised officer shall have the same powers of investigation of a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Power of entry etc.

25. (1) The Director-General, any police officer and any authorised officer may, at all reasonable hours, exercise the following powers —

(a) for the purpose of ascertaining whether any offence under this Order has been committed, inspect any advertisement, tobacco product, imitation tobacco product or vending machine and enter any business premises;

(b) if he has reasonable cause to believe that an offence under this Order has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any article relating to that trade or business and take copies, or of any entry in, any such article;

(c) if he has reasonable cause to believe that an offence under this Order has been committed, seize and detain any advertisement, tobacco product, imitation tobacco product or vending machine for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;

(d) seize and detain any advertisement, tobacco product, imitation tobacco product, vending machine or document which he has reason to believe may be required as evidence in proceedings for an offence under this Order; and

(e) for the purpose of exercising his powers under this subsection to seize any advertisement, tobacco product, imitation tobacco product or vending machine, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Order are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.

(2) The Director-General, any police officer or any authorised officer may, if he has reasonable cause to believe that an offence against subsection (1) of section 17 has been committed in respect of a tobacco product advertisement —

(a) require the person reasonably suspected of having committed the offence to remove the advertisement from the view of members of the public; and

(b) if that person fails to do so, cause the advertisement to be so removed.

(3) The person referred to in subsection (2) shall be liable to pay to the Director-General the reasonable costs of removal and disposal of the advertisement, which costs may be recovered as a debt due to the Government.

(4) In the exercise of his powers under this section, the Director-General, any police officer or any authorised officer shall —

(a) on seizing any advertisement, tobacco product, imitation tobacco product, vending machine or document, inform the person from whom it was seized of such seizure; and

(b) in the case of tobacco products seized from a vending machine, inform the person whose name and address are stated on the machine as being the proprietor or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(5) The Director-General, any police officer or any authorised officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary.

Power to require tobacco products for testing or analysis and furnishing of information.

26. (1) Any person carrying on a trade or business which consists of or includes the manufacture, distribution, importation or sale of any tobacco or imitation tobacco product shall —

(a) supply free of charge to the Director-General, any police officer or an authorised officer samples of any tobacco product or any imitation tobacco product as the Director-General, police officer or authorised officer may require for the purpose of testing, analysis or investigation; and

(b) furnish to the Director-General, police officer or authorised officer such information as the Director-General, police officer or authorised officer may require in respect of those products.

(2) Any person involved or concerned with the importation, distribution, sale or supply of any newspaper which is printed or published outside Brunei Darussalam shall furnish to the Director-General, a police officer or an authorised officer such information as the Director-General, or that police officer or authorised officer may require in respect of such newspaper.

Notice of test and intended prosecution.

27. Where any tobacco or imitation tobacco product seized under this Order is submitted to a test, the Director-General shall —

(a) if the product is seized, inform the person mentioned in subsection (4) of section 25 of the result of the test;

(b) if the product was purchased and the test leads to the institution of proceedings for an offence under this Order, inform the person from whom the product was purchased or, in the case of a product sold through a vending machine, the person mentioned in subsection (4) of section 25 of the result of the test; and

(c) if as a result of the test proceedings for an offence under this Order are instituted against any person, allow him to have the product tested on his behalf if it is reasonably practicable to do so.

Forfeiture.

28. (1) Any advertisement, tobacco product, imitation tobacco product or vending machine seized in exercise of any power conferred under this Order shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any advertisement, product or vending machine seized in exercise of any power conferred by this Order shall be made by the court before which the prosecution with regard thereto has been instituted.

(3) An order for the forfeiture of the advertisement, tobacco product, imitation tobacco product or vending machine may be made if it is proved to the satisfaction of the court that —

(a) an offence under this Order has been committed; and

(b) the advertisement, tobacco product, imitation tobacco product or vending machine was the subject-matter of or was used in the commission of the offence,

notwithstanding that no person may have been convicted of that offence.

(4) Where no prosecution has commenced in respect of any advertisement, tobacco product, imitation tobacco product or vending machine seized in the exercise of any power conferred by this Order, the advertisement, product or vending machine shall be forfeited to the Government at the expiration of one month from the date of the seizure, unless a claim thereto is made before that period in accordance with subsection (5).

(5) A person asserting that he is the owner of any advertisement, tobacco product, imitation tobacco product or vending machine seized and that the advertisement, tobacco product, imitation tobacco product or vending machine is not liable to forfeiture may personally, or by his agent authorised in writing, give written notice to the Director-General that he claims the same.

(6) On receipt of such notice, the Director-General may direct that the advertisement, tobacco product, imitation tobacco product or vending machine be released or may refer the matter to the court for its decision.

(7) On a reference made to it under subsection (6), the court shall issue a summons requiring the person asserting that he is the owner and the person from whom the thing was seized to appear before it and shall proceed to the examination of the matter.

(8) On proof that an offence against this Order has been committed and that such thing was the subject-matter of or was used in the commission of any such offence, the court shall order it to be forfeited to the Government notwithstanding that no person may have been convicted of that offence or may, in the absence of such proof, order its release.

(9) All things forfeited shall be delivered to the Director-General and shall be disposed of in accordance with the directions of the Minister.

Obstruction of officers.

29. (1) Any person who —

(a) wilfully obstructs the Director-General, any police officer or any authorised officer acting in pursuance of this Order;

(b) wilfully fails to comply with any requirement under section 26 properly made to him by the Director-General, any police officer or any authorised officer; or

(c) without reasonable cause, fails to give the Director-General, any police officer or any authorised officer any other assistance, information or document which the Director-General, police officer or authorised officer may reasonably require for the purpose of the performance of his functions under this Order,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

(2) Any person who, in giving any such information as is mentioned in subsection (1), makes any statement which he knows to be false is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

PART VI

GENERAL

Offences by bodies corporate.

30. (1) Where an offence against this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (1), means any member of that body corporate.

Composition of offences.

31. (1) The Director-General or any person authorised by him in writing in that behalf may, subject to such conditions as he considers fit to impose, compound

any offence under this Order which is prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed that offence a sum not exceeding \$500.

(2) On compliance with any such conditions and on payment of such sum of money, no further proceedings shall be taken against that person in respect of that offence.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to prescribe the offences which may be compounded and the method and procedure thereof.

(4) Where the person reasonably suspected of having committed an offence under this Order was below the age of 18 years at the time of the alleged offence, a condition that may be imposed under subsection (1) in compounding that offence includes requiring that person and his parent or guardian to attend at such place as the Director-General may specify for the purpose of counselling.

Immunity from suit.

32. No action, suit or other proceedings shall be brought or instituted in any court against any party to a contract for failing, neglecting or refusing to publish any tobacco product advertisement, the subject-matter of such contract, where such failure, neglect or refusal is solely attributable to, or occasioned by, the commencement of this Order or of any written law amending this Order, but nothing in this section shall affect the operation of any law relating to the frustration of contracts.

Limitation of liability.

33. No action shall be brought against the Director-General, any police officer or any authorised officer in respect of anything done or omitted to be done by any of them in good faith in the exercise, performance or purported exercise or performance, of any powers or duties under this Order.

Forms.

34. The Director-General may determine such forms as he may think fit for any of the purposes of this Order, and may require any person to complete any of those forms for any such purpose.

Exemptions.

35. (1) The Minister may, either generally or in any particular case, and for such period as he may think fit, exempt any person or class of person, or any

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place or type of place, or any event or occasion or class of event or occasion, or any object or thing or type of object or thing, from all or any of the provisions of this Order.

(2) In granting any such exemption, the Minister may impose such conditions as he may think fit.

Regulations.

36. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 6th. day of Jamadilawal, 1426 Hijriah corresponding to the 13th. day of June, 2005 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM