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LAWS OF MALAYSIA

Act 176

EXCISE ACT 1976*

An act to amend and consolidate the law relating to excise in the Federation.

[1st July 1977]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows :

1. Short title, commencement and application

(1) This Act may be cited as the Excise Act 1976, and shall come into force on such date as the Minister may by notification in the Gazette appoint.

(2) This Act shall apply throughout Malaysia.

PART I

PRELIMINARY

2. Interpretation

(1) In this Act unless the context otherwise requires –

"agent" has the meaning assigned by subsection 2 (1) of the Customs Act 1967;

"aircraft" has the meaning assigned by section 2 (1) of the Customs Act 1967;

"alcohol" means ethyl alcohol;

"beer" includes ale, stout, porter and all other fermented liquors made from malt;

"bottle" includes any container, not exceeding half a gallon in capacity, for intoxicating liquor capable of being corked or sealed, and "bottling" shall be construed accordingly;

"cigarette" means a cigarette prepared from tobacco either with or without any other added ingredient and includes any form of tip and the paper thereof;

"collection station" has the meaning assigned by subsection 2 (1) of the Customs Act 1967 ; ' ;

"computer" has the meaning assigned thereto in section 3 of the Evidence Act 1950;

"customs airport" has the meaning assigned by subsection 2 (1) of the Customs Act 1967;

"Customs Appeal Tribunal" means the Customs Appeal Tribunal established under section 141B of the Customs Act 1967 [Act 235]; and
(Gazette: 08 Feb 2007. By inserting the above definition)

"customs port" has the meaning assigned by subsection 2 (1) of the Customs Act 1967;

"customs ruling" means the customs ruling made by the Director General under section 5B;
(Gazette: 08 Feb 2007. By inserting the above definition)

"Director General" has the meaning assigned by section 2(1) of the Customs Act 1967;

"document" has the meaning assigned thereto in section 3 of the Evidence Act 1950;

"dutiable goods" means goods subject to the payment of excise duty and on which such duty has not been paid;

"electronic data interchange" means the transfer, from computer to computer, of commercial and administrative transactions using an agreed message standard to structure the data pertaining to a transaction; .

"excise duty" means any duty fixed under section 6;

"export" has the meaning assigned by section 2 (1) of the Customs Act 1967;

"free zone" has the meaning assigned by section 2 of the Free Trade Zones Act 1990, and for the purposes of this Act, a free zone shall be deemed to be a place outside Malaysia;

"goods" has the meaning assigned by section 2 (1) of the Customs Act 1967;

"import" has the meaning assigned by subsection 2 (1) of the Customs Act 1967;

"importer" has the meaning assigned by subsection 2 (1) of the Customs Act 1967 ;

"inland clearance depot" has the meaning assigned by subsection 2(1) of the Customs Act 1967 [Act 235];

"intoxicating liquor" has the meaning assigned by section 2(1) of the Customs Act 1967;

"legal landing place" has the meaning assigned by subsection 2(1) of the Customs act 1967; ' ;

"licensed carrier" has the meaning assigned by section 2(1) of the Customs Act 1967;

"licensed premises" includes any warehouse, area or place licensed under sections 20, 24, 25 and 35 of this Act and sections 65 and 65A of the Customs Act 1967;

"licensed tobacco manufacturer" means a person licensed under section 20 to manufacture tobacco;

"licensed warehouse" means a warehouse or other place licensed under section 25 for the warehousing of dutiable goods, and includes -

- (a) customs warehouse under section 65;
- (b) any warehouse licensed under sections 65 and 65A;
- (ba) any duty free shop licensed under section 65D; and
- (c) any inland clearance depot licensed under section 65E,

of the Customs Act 1967, for the warehousing of goods of a similar class to such dutiable goods;

"Licensing Boards" means a Board established under section 31;

"local craft" has the meaning assigned by subsection 2(1) of the Customs Act 1967;

"manufacture" means,

- (a) in the case of intoxicating liquors, distilling, brewing, fermenting, bottling of intoxicating liquor, and includes the addition of any substance (other than water) to any intoxicating liquor and the blending, compounding and varying of intoxicating liquors with intent that the compound so formed shall be sold for human consumption, but does not include any such compound prepared at the order

of the purchaser, and for his immediate consumption:

Provided that in the case of toddy, it also includes tapping, bottling and canning;

(b) in the case of tobacco, any process converting any raw or leaf tobacco into tobacco fit for smoking; snuffing or chewing, and includes the making of cigarettes from manufactured tobacco;

(c) in the case of petroleum, refining, compounding and includes the addition of any foreign substance; and

(d) in other cases, the conversion by manual or mechanical means of organic or inorganic materials into a new product by changing the size, shape, composition, nature or quality of such materials and includes the assembly of parts into a piece of machinery or other products, but does not include the installation of machinery or equipment for the purpose of construction;

"master" has the meaning assigned by subsection 2 (1) of the Customs Act 1967;

"Minister" means the Minister charged with responsibility for finance;

"native liquor" means any of the intoxicating liquors customarily fermented, made or prepared by natives in Sabah and Sarawak for their own consumption;

"occupier" includes a lessee or tenant or a person in possession, management or control of any land or premises;

"officer of excise" means –

(a) any officer of customs as defined in section 2 (1) of the Customs Act 1967;

(b) any District Officer or Assistant District Officer in any district in which there is for the time being no senior officer of customs as defined in section 2 (1) of the Customs Act 1967;

"owner" in respect of goods includes any person (other than an officer of excise acting in his official capacity) being or holding himself out to be the owner, manufacturer, assembler, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the goods;

"owner" means the registered proprietor or, where no system of land registration is in force, the legal owner or holder by customary tenure of any land;

"petroleum" has the meaning assigned by section 2(1) of the Customs Act 1967;

"pilot of an aircraft" has the meaning assigned by subsection 2 (1) of the Customs Act 1967;

"proper officer" means any officer of excise acting in the fulfillment of his duties under this Act, whether such duties are assigned to him specially or generally, or expressly or by implication; and every person, whether an officer of excise or not, engaged by the orders or with the concurrence of the Director General (whether previously or subsequently expressed) in the performance of any act or duty relating to an assigned matter which is by law required or authorized to be performed by or with an officer of excise shall be deemed to be the proper officer by or with whom that act or duty is to be performed, and any person so deemed to be the proper officer shall have all the powers of an officer of excise in relation to that act or duty;

"public excise warehouse" means a warehouse established under section 24;

"senior officer of excise" means –

(a) any officer of excise, other than a police officer below the rank of Inspector or a Customs Officer appointed under section 4 of the Customs Act 1967;

(b) any person appointed by the Director General by notification in the Gazette to exercise the powers of a senior officer of excise;

"tobacco" includes manufactured and unmanufactured tobacco of every description, including tobacco stalks and tobacco refuse but does not include uncured tobacco;

"toddy" means the fermented juice of the coconut or other palm;

"uncured tobacco" means raw leaf tobacco not yet subject to any process of drying or curing;

"unexcisable goods" means goods in respect of which a breach of the provisions of this Act or any subsidiary legislation made thereunder has been committed;

"value" means -

(a) in relation to locally manufactured goods, the price which a buyer would give for the goods on purchase in the open market at the time when duty is payable but will exclude any excise duty, costs, charges and expenses of transportation and storage immediately after removal from the place of manufacture ; and

(b) in relation to imported goods -

(i) the value of such goods for the purpose of customs duty determined in accordance with the Customs Act 1967; and

(ii) the amount of customs duty, if any, payable on such goods.

(2) For the purpose of this Act goods shall be deemed to be under excise control whilst they are deposited or held in any distillery, brewery or other places of manufacture, or in any public excise warehouse, licensed warehouse, post office, or in any vessel, train, conveyance, aircraft, pipeline or place from which they may not be removed except with the permission of the proper officer.

PART II

APPOINTMENT OF OFFICERS

3. Functions of Director General.

The Director General shall be the Chief Officer of Excise and shall have the superintendence of all matters relating to the excise, but subject to the direction and control of the Minister.

4. Deputy Director General and other officers to have powers of Director General.

(1) Any Deputy Director General, Assistant Director General, Director, Senior Assistant Director and Assistant Director of Customs and Excise appointed under section 3 of the Customs Act 1967 shall, subject to the general direction and supervision of the Director General, have and exercise all the powers conferred on the Director General by or under this Act; other than those conferred by section 18.

(2) The Director General may, by authorization in writing invest any officer of excise, not being a senior officer of excise, with all or any of the powers of a senior officer of excise for a period not exceeding ninety days in respect of any one authorization.

(3) The Minister may, by notification in the Gazette, invest any officer of excise, not being a senior officer of excise, with all or any of the powers of a senior officer of excise.

5. Authority cards, etc., to be produced.

(1) Every officer of excise when acting against any person under this Act shall, if not in uniform, on demand declare his office and produce to the person against whom he is acting a badge or authority card as he has been directed to carry under section 9(1) of the Customs Act 1967.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer of excise acting or purporting to act under this Act, if such officer is not in uniform and refuses to declare his office and produce his badge or authority card on demand being made by such person.

PART IIA

CUSTOMS RULING

(Gazette: 08 Feb 2007. By inserting the following)

5A. Application for customs ruling.

(1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:

- (a) the classification of goods;
- (b) the principles to be adopted for the purposes of determination of value of goods; or
- (c) any other matters to be prescribed by the Director General.

(2) An application under subsection (1) may be made

- (a) in respect of imported goods
 - (i) at any time before the goods, that are the subject matter of the application, are to be imported or intended to be imported into Malaysia; or
 - (ii) at any later time, if the Director General may in his discretion permit; or

(b) in respect of manufactured goods

- (i) at any time before the goods that are the subject matter of the application, are to be manufactured; or
- (ii) at any later time, if the Director General may in his discretion permit.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

5B. Making of customs ruling

(1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 5A and such ruling shall bind the applicant.

(2) Any such customs ruling may be subject to such conditions as the Director General may deem fit to impose.

(3) The Director General may decline to make a customs ruling if, in his opinion—

- (a) the information given by the applicant is insufficient to do so;
- (b) the application is for a hypothetical situation; or
- (c) an appeal under this Act is pending involving the subject matter referred to in the application.

5C. Amendment, modification or revocation of customs ruling

(1) A customs ruling may be amended, modified or revoked by the Director General if—

- (a) it contains an error which needs to be corrected;
- (b) the customs ruling was based on an error of fact or law;
- (c) there is a change in law relating to excise; ' or
- (d) there is a change in the material fact or circumstances on which the ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any duty liability in respect of any goods, and—

- (a) the goods are imported within three months of the date the notice of the amendment, modification or revocation is given pursuant to a binding contract entered into before that date;
- (b) the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Malaysia on the date the notice of the amendment, modification or revocation of the ruling is given; or
- (c) the goods are imported on or before the date the notice of the amendment, modification or revocation is given but have not been released for the home consumption, then the customs ruling which was made prior to the amendment, modification or revocation under this section shall be applied to such goods.

(4) Notwithstanding subsection (2), and subject to section 13, if the amendment, modification or revocation to a customs ruling has the effect of decreasing any duty liability in respect of any goods, any higher duty that has been paid shall be treated as if the higher duty paid in error.

5D. Director General to declare rulings to be null, etc.

The Director General shall by a notice declare a customs ruling made under section 5B to be null, void and of no effect if the ruling has been obtained by the applicant by way of fraud, misrepresentation or falsification of facts.

5E. Receiving of two customs rulings

Where an applicant receives two or more different customs rulings on the same subject matter, such rulings shall be treated as being null and void and such applicant shall immediately notify the Director General who shall, within thirty days from the date of the notification, issue a new customs ruling.".\

PART III

LEVYING OF EXCISE DUTIES

6. Power of Minister to fix the rates of excise duties.

(1) The Minister may from time to time, by order published in the Gazette, fix excise duties to be levied and paid on -

(a) any goods manufactured in Malaysia ; or

(b) any goods imported into Malaysia

and may prescribe the method according to which such duties shall be levied and paid.

(2) Any order made under subsection (1) shall, at the next meeting of the Dewan Rakyat, be laid on the table of the Dewan Rakyat and shall, at the expiration of one hundred and twenty days from being so laid or of such extended period as the Dewan Rakyat may, by resolution direct, cease to have effect if and in so far as it is not confirmed by a resolution passed by the Dewan Rakyat within the said one hundred and twenty days or, if such period has been extended, within such extended period.

(3) Where an order ceases to have effect in whole or in part as provided by subsection (2), then any duty levied in pursuance of such order or, as the case may be, of such part thereof as ceases to have effect shall, subject to sub-section (4), be repayable to the person from whom such duty was levied.

(4) Unless the Minister shall otherwise direct, no duty repayable under subsection (3) shall be repaid unless the person entitled to such repayment makes a claim therefor to the Director General within one year from the day on which the order ceases to have effect in whole or in part as provided by subsection (2).

(5) Any such claim shall be made in writing and shall contain such particulars as the Director General may, by general or special order, require.

(6) Without prejudice to any other remedy, any excise duty payable under this Act may be recovered by the Minister as a civil debt due to the Government.

7. Value of goods for purposes of duty.

The Minister may, from time to time, by notification in the Gazette, fix, for the purpose of the levy and payment of excise duty, the value of any dutiable goods

8. Assessment of duty.

(1) The proper officer may in respect of any dutiable or unexcisable goods -

(a) determine the class of goods to which such dutiable or unexcisable goods belong ; and

(b) value, weigh, measure or otherwise examine or cause to be valued, weighed, measured or otherwise examined such dutiable goods, for the purpose of ascertaining the amount of excise duty leviable thereon

(2) All necessary operations relating to the weighing, measuring and examination of dutiable goods shall be performed by or at the expense of the owner thereof or his agent:

Provided that the proper officer may at his discretion direct that any such operations shall be performed by persons under his control, and in any case such operations shall be performed at the expense of the owner or his agent.

(3) When a valuation of any goods has been made by the proper officer such valuation shall be presumed to be correct until the contrary is proved.

8A. Payment of excise duty under protest

Any person who is dissatisfied with a decision of a proper officer under subsection 8(1) as to whether

any particular goods are or are not included in a class of goods appearing in an order made under subsection 6(1) or with the valuation, weighing, measuring or examination of any goods may pay the excise duty levied under protest.

8B. Director General to determine question on classification and valuation

Where excise duty has been paid under protest, the proper officer shall, within thirty days of such payment being made, refer any question as to classification or valuation of goods to the Director General for his decision.

9. Power of the Director General to reassess.

Whenever the Director General has reason to believe or suspect that the quantity or quality of dutiable goods produced from any given quantity or quality of raw materials or component parts is lesser in quantity or lower in quality than that which ought to have been obtained therefrom, the Director General may reassess the duty payable at such greater quantity or higher quality as he deems proper. Every assessment made by the Director General under this Act shall be deemed to be correct.

10. Power of Minister to prescribe charges for assessment.

The Minister may by order prescribe the charges to be paid for operations performed under section 8 by officers of excise or other persons under the control of the proper officer, and may remit any charges due.

11. Exemption of excise duties.

(1) The Minister may by order exempt, subject to such conditions as he may deem fit to impose, any class of goods or persons from the payment of the whole or any part of any excise duty or any other prescribed fees or charges which may be payable.

(2) The Minister may in any particular case:

(a) exempt any person from the payment of the whole or any part of the excise duties or any other prescribed fees or charges which may be payable by such person on any goods; or

(b) may direct the refund to any person of the whole or any part of the excise duties or any other prescribed fees or charges which have been paid by such person on any goods,

and in granting such exemption or directing such refund may impose such conditions as he may deem fit.

(3) Any goods in respect of which an exemption from the payment of excise duties has been granted under subsection (1) or (2) shall be deemed to be dutiable goods until the conditions, if any, subject to which the exemption from duty was granted are fulfilled, and shall be liable to all other charges, not being excise duties, to which they would be subject if no such exemption had been granted.

11A. Minister may remit excise duties

The Minister may, if he think it is just and equitable to do so, and subject to such conditions as he may deem fit to impose, remit the whole or any part of the excise duties or any other prescribed fees or charges payable under this Act.

12. Re-imposition of duty.

(1) If any of the conditions subject to which exemption from duty granted under section 11 on any goods on which excise duty has not been paid, have not been complied with, or such goods cease to

be kept or used by the person or for the purposes qualifying them for such exemption, such goods shall on non-fulfillment of such conditions or upon such cesser, become liable to the excise duty and the person to whom such exemption was granted and any person found in possession of such goods shall be jointly and severally liable to pay such excise duty.

(2) If any goods, which are liable to excise duty under subsection (1) and on which such duty has not been paid, are found in the possession or on the premises of any person other than the person authorized to possess them under the terms of such exemption, such goods shall, until the contrary is proved, be deemed to be dutiable goods within the meaning of this Act.

13. Refund of duty or other charges overpaid.

It shall be lawful for the Director General, if it is proved to his satisfaction that any money has been overpaid or erroneously paid as excise duties or as warehouse rent or as any other charges under this Act, to order the refund of the money so over-paid or erroneously paid:

Provided that-

(a) no such refund shall be allowed unless a claim in respect of the money overpaid or erroneously paid is made in writing to the Director General within one year after the over-payment or erroneous payment was made; or

(b) in the case where any excise duty has been paid under protest under section 8A, no claim for refund shall be allowed unless such claim is made in the prescribed form within one year after the decision on classification or valuation is made known to the claimant.

14. Remission of duty on goods lost, damaged or destroyed.

(1) If any dutiable goods are damaged, destroyed or, by unavoidable accident, lost at any time before removal from excise control, the Director General may remit the whole or any part of the excise duty payable thereon.

(2) After removal from excise control no abatement of excise duty shall be allowed on any such goods –

(a) on account of damage; or

(b) on account of any claim that the weight, measure, volume or value as determined by the proper officer for the purpose of ascertaining the excise duty on such goods, is incorrect unless notice in writing of such claim has been given at or before the time of such removal.

15. Payment of duty short paid or erroneously refunded.

(1) Whenever-

(a) through inadvertence, negligence, error, collusion, or misconstruction on the part of any officer of excise, or through misstatement as to value, quantity, quality or description by any person, or for any other reason, the whole or any part of any excise duties or other moneys payable under this Act has not been paid; or

(b) the whole or any part of such excise duties or other moneys, after having been paid, has been, owing to any cause, erroneously refunded,

the person liable to pay such excise duties or other moneys, or the deficient excise duties or others moneys or the person to whom such refund has erroneously been made, as the case may be, shall pay the excise duties or other moneys, or the deficient excise duties or other moneys, or repay the amount paid to him in error on demand being made within three years from the date on which excise duties or other moneys were payable, or deficient excise duties or other moneys were paid or the

refund was made, as the case may be; and without prejudice to any other remedy for the recovery of the amount due any dutiable goods belonging to such person which may be in any distillery, brewery or other place of manufacture licensed under section 20 or in any public excise warehouse or in any licensed warehouse may be detained until the excise duties or others moneys be paid or repaid.

(2) Where any amount is payable in accordance with subsection (1), the Director General may allow the amount to be paid by instalments in such amounts and on such dates as he may determine.

(3) If after a reasonable time has lapsed and the amount due is not paid by such person, after giving not less than thirty days' notice in writing to such person, the Director General may sell any goods detained under subsection (1).

(4) The proceeds of sale of any such goods shall be applied to the payment of the amount due, and the surplus, if any, shall be paid to such person.

(5) If the sale of such goods is by auction, such auction shall be conducted by or in the presence of a senior officer of excise.

15A. Recovery of excise duty from persons leaving Malaysia

(1) Where the Director General has reason to believe that any person is about or is likely to leave Malaysia without paying any excise duty payable by him, he may issue to any Director of Immigration a certificate containing particulars of the excise duty so payable with a request that such person be prevented from leaving Malaysia unless and until he pays the excise duty, so payable, or furnishes security to the satisfaction of the Director General for its payment.

(2) Subject to any order issued or made under any written law for the time being in force relating to banishment or immigration, any Director of Immigration who receives a request under subsection (1) in respect of a person shall exercise all measures which may include the removal and retention of any certificate of identity, passport, exit permit or other travel documents in relation to that person as may be necessary to give effect to the request.

(3) The Director General shall cause a notice of the issue of a certificate under subsection (1) to be served personally or by registered post on the person to whom the certificate relates:

Provided that the non-receipt of the notice by that person shall not invalidate anything done under this section.

(4) Where the person in respect of whom a certificate has been issued under subsection (1) produces on or after the date of the certificate a written statement signed by the Director General stating that all the excise duty specified in the certificate has been paid, or that security has been furnished for its payment, that statement shall be sufficient authority for allowing that person to leave Malaysia.

(5) No legal proceedings shall be instituted or maintained against the Government, a State Government or any other public officer in respect of anything lawfully done under this section.

(6) In this section, "Director of Immigration" means any Director of Immigration appointed under subsection 3(1A) of the Immigration Act 1959-1963.

16. Rate of excise duty.

(1) the rate of excise duty applicable to any goods shall be-

a. a. in the case of goods manufactured in Malaysia, the rate of excise duty or valuation (if any) in force on the day on which such goods are removed from the distillery, brewery or other place of manufactured, or from the public excise warehouse or licensed warehouse in which they are stored or from any other place under excise control ;

- b. in the case of goods lawfully imported -
 - i. if such goods (other than petroleum in a licensed warehouse) are warehoused, or if excise duty is paid at a collection station, the rate in force on the day on which the removal of the goods is authorized by the proper officer or, in the case of a collection station, by an officer appointed under the provisions of any law for the time being in force in Singapore relating to the collection of excise duties payable to Government of Malaysia
 - ii. if such goods consist of petroleum which is in a licensed warehouse, the rate in force on the day on which such petroleum is removed from such warehouse;
 - iii. if such goods are imported by post, the rate in force on the day on which duty is assessed by the proper officer; and
 - iv. in any other case, the rate in force on the day on which such goods are released by the proper officer; and
 - c. in the case of unexcisable goods, the rate in force on the day on which such goods became unexcisable goods, if known, or the rate in force on the day of seizure, whichever is the higher.
- (2) For the purpose of calculating the excise duty payable, the valuation applicable to any goods shall be made in the prescribed manner .

17. Imposition or abolition of excise duty.

When by virtue of an order made under section 6(1) an excise duty is fixed on any goods which previously were not dutiable or any excise duty on goods is abolished, such imposition or abolition of duty shall be deemed to have had effect at the time such goods are removed from the place of manufacture or excise control.

18. Question in respect of goods deemed to be dutiable.

If any question arises whether any particular goods are or are not included in a class of goods appearing in an order under section 6 (1), such question shall be decided by the Director General.

18A. Certificate of Director General admissible in evidence

Notwithstanding anything contained in any written law or rule of evidence to the contrary, where in any proceedings a document purporting to be a certificate under the hand of the Director General in respect of a decision made by him under section 5B, 8B or 18 is produced, such document shall be admissible in evidence and shall be accepted as sufficient evidence of the facts therein stated and the Director General shall not be required to give evidence in respect of such decision unless the court otherwise orders. (Gazette: 08 Feb 2007)

19. Drawback.

(1) Where any goods are exported by the manufacturer as part or ingredient of any goods manufactured in Malaysia or as the packing, or part or ingredient of the packing, of such, manufactured goods, then if excise duty has been paid on that part or ingredient of such manufactured goods or on the packing or that part or ingredient thereof, the Director General may, on such export, allow to the manufacturer a full drawback of the duty so paid, if -

- (a) the finished goods have been manufactured on premises approved by the Director General;
- (b) such books and account are kept as the Director General may require for the purpose of ascertaining the quantity of the goods used in such manufacture or for or in the packing of such manufactured goods;

(c) such goods are so exported within twelve months of the date upon which excise duty was paid or such further period as the Director General may approve; and

(d) written notice has been given on the export declaration form that a claim for drawback will be made, and such claim is made in the prescribed form and established to the satisfaction of the senior officer of excise within six months of the date such export or such further period as the Director General may approve.

(2) In this section, the expression "manufacturer" includes any person to whom the manufactured goods have been sold or otherwise disposed of.

19A. Drawback on imported goods

(1) When any imported goods, upon which excise duty has been paid, are re-exported, nine-tenths of the duties calculated in accordance with subsection (2) may be repaid as drawback if -

(a) the goods are identified to the satisfaction of a senior officer of excise at the customs port or customs airport at which such goods are shipped or loaded for re-export, or at the place of re-export;

(b) the drawback claimed in respect of any one consignment of re-exported goods is not less than fifty ringgit;

(c) the goods are re-exported within twelve months of the date upon which the excise duty was paid;

(d) payment of drawback upon goods of a class to which the goods to be re-exported belong has not been prohibited by regulations made under this Act;

(e) written notice has been given to a senior officer of excise at or before the time of re-export that a claim for drawback will be made, and such claim is made in the prescribed form and established to the satisfaction of a senior officer of excise within three months of the date of re-export; and

(f) the goods have not been used after importation.

(2) The amount of drawback allowed shall be calculated at the rate of the excise duty levied at the time of import, or at the rate of excise duty leviable on goods of a like description at the time of re-export of the goods, whichever is the lower.

19B. Declaration by claimant

Every person claiming drawback on any goods re-exported shall, personally or by his agent, make to a senior officer of excise a declaration in duplicate, substantially in the prescribed form, that such goods have actually been re-exported and have not been relanded or detained and are not intended to be relanded or detained at any customs port, customs airport or place in Malaysia or within any port Malaysia, where goods of a like description are liable to excise duty.

19C. Definition of "re-export" in sections 19A and 19B

For the purposes of sections 19A and 19B, the expression "re-export" includes the movement of goods to a warehouse licensed under section 65A of the Customs Act 1967 and to a duty free shop licensed under section 65D of the Customs Act 1967.

19D. Drawback on destroyed goods

The Director General may, at his discretion, allow drawback of excise duty on goods which suffer deterioration or damage and are destroyed in the presence of a senior officer of excise, if the conditions set out in section 19A in respect of re-exported goods are fulfilled in respect of such destroyed goods, and sections 19A and 19B shall, mutatis mutandis, apply to such destroyed goods.

19E. Refund to visitors and owners of samples

When any personal effects or other goods which have been imported by visitors to Malaysia for their personal use, or samples imported by commercial travellers, or trade samples or such other goods as may be prescribed, on which excise duty has been paid are re-exported within three months from the date of importation or within such further period as the Director General may, either generally or in any special case allow, the Director General may allow a drawback of such excise duty.

19F. Relief from duty on goods temporarily imported

Where the Director General is satisfied that goods are imported only temporarily with a view to subsequent re-exportation, he may permit the goods to be delivered on importation without payment of duty subject to the payment of a deposit equivalent to not less than the amount of duty which would be payable if the goods were imported for home use or security being given to the satisfaction of the Director General for the payment of such duty, and such deposit shall be refunded or such security discharged if the goods are re-exported within three months of the date of importation or within such further period as the Director General may allow.

PART IV

MANUFACTURE OF DUTIABLE GOODS

20. Licence to distil, ferment or otherwise manufacture dutiable goods.

(1) Subject to this Part no person shall distil, ferment or otherwise manufacture any dutiable goods, or manufacture any tobacco or intoxicating liquor except under and in accordance with a licence in the prescribed form issued by the Director General, and at the distillery, brewery or other place of manufacture specified in such licence.

(2) The Minister may by order exempt, subject to such conditions as he may deem fit to impose, any class of persons from subsection (1).

(3) A licence under this section shall be issued at the discretion of the Director General and shall be issued on payment of such fees, and subject to such conditions as may be fixed by him in each case and to such further conditions as the Director General may direct to be endorsed on the licence.

(4) Notwithstanding the generality of subsection (3), the Director General may require any person being granted a licence under this section to give such security for the due compliance by that person with this Act and generally for the protection of the excise revenue as the Director General deems fit; and pending the giving of the said security the Director General may refuse to issue any licence.

(5) A licence issued under this section may be transferred, suspended or cancelled at any time by the Director General.

(6) When a licence is suspended or cancelled the licensee shall not be entitled to refund of any licence fees paid.

(7) Any licensee may apply in writing to the Director General –

(a) to transfer his licence to any other person; and in any such case such other person shall join in such application;

(b) to transfer his refinery or his place of manufacture to any other place,

and the Director General may, at his discretion, refuse to grant any such application; and where the Director General has granted any such application he shall, on surrender of the existing licence and on payment of the prescribed fee, if any, make the necessary endorsement thereon or issue a fresh licence as he may deem most convenient.

(8) A licence to distil, ferment or otherwise manufacture dutiable goods, shall be deemed to include a licence for warehousing dutiable goods as provided for under section 25(1).

(9) Any regulations made under section 85 to regulate the control of licensed warehouses shall apply to warehouses deemed to be so licensed under subsection (8) to such extent as the Director General may direct.

21. No person except a licensee to keep a still, etc.

(1) Subject to subsection (4) and section 20(2), no person other than the holder of a licence under section 20 (1) or a person exempted under section 22 shall knowingly keep or have in his possession any still, utensil or other apparatus for distilling, fermenting or otherwise manufacturing dutiable goods, or any power-operated machine for manufacturing tobacco or any part or accessory of such machine.

(2) No person other than a licensed tobacco manufacturer, or a person exempted under section 20(2), shall knowingly keep or have in his possession any manually-operated machine for manufacturing tobacco or any part or accessory of such machine.

(3) The owner or occupier of any land or premises upon which any still, utensil or other apparatus for distilling or fermenting or otherwise manufacturing any dutiable goods or any power-operated or manually-operated machinery for the manufacture of tobacco is found shall each be deemed, until the contrary is proved, knowingly to have kept or had in his possession such still, utensil or other apparatus or power-operated or manually operated machinery for the manufacture of tobacco, as the case may be.

(4) Nothing in subsection (1) shall apply to any still, utensil or other apparatus for distilling, fermenting or otherwise manufacturing dutiable goods, or to any power-operated machine for manufacturing tobacco, or to any part or accessory of such machine -

(a) held as stock by a bona fide dealer in such apparatus or machinery;

(b) with the approval of the Director General, in the possession of any person constructing a distillery, brewery or other place of manufacture of dutiable goods, or in the possession of any person in occupation of any such distillery, brewery or other place of manufacture in respect of which a licence under section 20(1) had previously been in force and had with the approval of the Director General been surrendered, suspended or not renewed on account of the cessation of the operation for which the place of manufacture was licensed.

22. Exemptions.

(1) Nothing in this Act shall apply to any distillation of dutiable goods by -

(a) a registered medical practitioner;

(b) a registered pharmacist; or

(c) a qualified chemist with the approval of the Director General,

where such distillation is proved to the satisfaction of the Director General to be for genuine medical or scientific purposes.

(2) Nothing in this Act shall apply to any native-

(a) knowingly keeping or having in his possession any utensil, other than a still, for manufacturing; or

(b) manufacturing, other than by distillation,

any native liquor for his own consumption.

23. Removal of dutiable goods from licensed premises.

(1) No dutiable goods shall be removed from –

(a) any distillery, brewery or other place of manufacture specified in a licence issued under section 20; or

(b) a public excise warehouse established under section 24; or

(c) any licensed warehouse;

(d) any other place under excise control,

except in accordance with a permit in the prescribed form approved by the proper officer or in accordance with regulations made under section 85.

(2) If it appears at any time that in any place or warehouse referred to in subsection (1) there is a deficiency in any lot, consignment or package of dutiable goods which ought to be found therein, the licensee of such place or warehouse shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Act, be liable to pay forthwith to the proper officer the duty leviable on the goods found deficient:

Provided that if it is shown to the satisfaction of the Director General that such deficiency has been caused by unavoidable leakage, breakage or other accident, or by evaporation, the Director General may remit the whole or any part of the duty leviable on the goods found deficient.

23A. Liquidator of company to give notice of winding-up and set aside duty.

(1) Where an effective resolution is passed or an order is made for the winding-up of a company to which a licence under this Act is issued or which is an importer, the liquidator of the company shall give notice thereof to the Director General within fourteen days thereafter, and shall before disposing of any of the assets of the company set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any excise duty that is or will thereafter become payable in respect of the company, and shall pay such excise duty.

(2) A liquidator of any such company who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the excise duty as required by that subsection shall be personally liable for any excise duty that is or becomes payable as aforesaid.

(2A) Any liquidator of a company who fails to comply with subsection (1) shall be guilty of an offence against this Act and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) Where two or more persons are appointed liquidators or are required by law to carry out the winding-up of any such company, subject to a right of contribution between themselves as in cases of contract, the obligations and liabilities attaching to a liquidator under this section shall attach to all such persons jointly and severally.

23B. Appointment of receiver to be notified to the Director General

(1) Where a receiver is appointed of the property of a company to which a licence under this Act is

issued or which is an importer, the receiver shall give notice thereof to the Director General within fourteen days thereafter, and shall before disposing of any of the assets of that company set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any excise duty that is or will thereafter become payable in respect of the dutiable goods that have been sold by the company before the appointment of the receiver, and shall pay such excise duty.

(2) A person appointed as receiver who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the excise duty as required by that subsection shall be personally liable for any excise duty that is or becomes payable as aforesaid.

(2A) Any receiver who fails to comply with subsection (1) shall be guilty of an offence against this Act and shall, on conviction, be liable to fine not exceeding ten thousand ringgit.

(3) Where two or more persons are appointed receivers, subject to a right of contribution between themselves as in cases of contract, the obligations and liabilities attaching to a receiver under this section shall attach to all such persons jointly and severally.

PART V

STORAGE OF DUTIABLE GOODS

24. Public excise warehouses.

The Minister may establish public excise warehouses wherein dutiable goods may be deposited and kept without payment of duty, and may by order prescribe from time to time the amount to be paid as warehouse dues on any dutiable goods so deposited.

25. Warehouse licences.

(1) The Director General may, in his discretion and on payment of such fees as may be fixed by him in each case, grant to any person a licence for warehousing goods liable to duty in such place or places as may be specified in such licence and may transfer, suspend or cancel such licence.

(2) Any such licence shall be for such period and subject to such conditions as the Director General may in each case specify in such licence.

26. Storage and possession of dutiable goods.

No person shall without lawful authority store or keep or have in his possession or control any dutiable goods, other than tobacco, except in a distillery, brewery or other place of manufacture specified in a licence under section 20, or in a public excise, or licensed warehouse, or in any other place under excise control.

27. Deposit and removal of dutiable goods

No dutiable goods shall be deposited in or removed from a licensed warehouse except in accordance with such regulations as may be made under section 85.

27A. Dutiable goods to be deposited in a warehouse on arrival

(1) All goods imported into Malaysia shall, on first arrival or landing, be deposited by the importer or his agent in a licensed warehouse or in a warehouse approved by the Director General:

Provided that, subject to such conditions as the Director General may impose either generally, by order or in any special case-

(a) the Director General, if satisfied that on account of the weight, quantity or bulk of any such goods or for any other reason it is not practical to deposit such goods in a licensed warehouse, may direct

that such goods be kept in any other place where such goods shall be deemed to be under excise control;

(b) any such goods imported by rail may lawfully be consigned to any person at an inland clearance depot or inland customs station, and such goods shall be deemed, for the purposes of this Part and Part VIII B, to have first arrived on reaching such inland clearance depot or inland customs station;

(c) where the bill of lading, airway bill, invoice or other document covering any such goods landed at customs port or airport shows them to be consigned to a person at an inland clearance depot or at an inland customs station, such goods may be forwarded by rail or road to an inland clearance depot or to an inland customs station, and such goods shall be deemed for the purposes of this Part and Part VIII B, to have first arrived on reaching such inland clearance depot or inland custom station;

(d) such goods on first landing at a customs airport where there is in licensed warehouse may be dealt with as the Director General may direct.

(2) No goods deposited in a warehouse or directed to be deposited in any other place, under subsection (1), shall be remove from such warehouse or from such place except with the permission of the proper officer.

(3) Dutiable goods deposited in a warehouse, not being a licensed warehouse, shall be removed therefrom within ten days, or such extended time as the Director General may allow, of their being so deposited and if the goods are not so removed, the proper officer may remove them to a licensed warehouse at the expense of the owner of such goods.

(4) The provisions of this section shall not apply -

(a) to goods imported by post;

(b) to goods imported by road or by sea at places of import where there is no licensed warehouse;

(c) to passengers' baggage containing personal effects only.

(5) Notwithstanding anything contained in subsection (1), if the Director General is of the opinion that having regard to any particular goods imported into Malaysia it would be in the public interest not to require such goods to be deposited by the importer or his agent in accordance with that subsection, he may direct such goods to be released subject to such conditions as he may impose.

27B. Power to open and examine packages

A senior officer of excise may, at any time, direct that any goods or package lodged in any licensed warehouse shall be opened, weighed or otherwise examined, and after such goods or package has been so opened or examined, may cause the goods or package to be sealed or marked in such manner as he sees fit.

27C. Detention of goods where doubt exists

(1) The proper officer may detain in a licensed warehouse or any other place deemed to be under excise control any goods if he is in doubt whether such goods are dutiable or not or for any other reason.

(2) In every such case the proper officer shall make a report to a senior officer of excise who shall, without undue delay, decide whether such goods are dutiable or not.

(3) If any such goods are found not to be dutiable, no warehouse rent, handling or other charges shall be payable in respect of such goods.

28. No removal except on payment of duty or under bond.

No dutiable goods shall be consumed or made use of in, or removed from, a place licensed under section 20 or from a public excise warehouse or a licensed warehouse or excise control except -

(a) upon payment of duty thereon or, if the order under section 6 relating to the duty so allows, upon

security being given as provided by that order for payment of the duty;

(b) under bond for deposit in another public excise or in other place under excise control or for manufacture in another place under section 20;

(c) for export to and consumption in a place outside Malaysia.

29. Payment of dues in public excise warehouse

(1) The owner of any goods deposited in a public excise warehouse or his agent shall pay on demand to the proper officer, at the prescribed rates, the warehouse dues which may be due in respect of such goods.

(2) If any warehouse rent in respect of any goods is not duly paid in the manner provided by subsection (1), a senior officer of excise may, after giving not less than fourteen days' notice in writing to the owner (if the name and address of such owner is known to him), or after due notice in the Gazette (if the name and address of such owner is not known to him), sell such goods: Provided that goods of a perishable nature deposited in any excise warehouse shall be cleared forthwith, and if not so cleared a senior officer of excise may sell such goods.

(3) The proceeds of the sale of any such goods shall be applied to the payment of any excise duties, warehouse rent and other charges and railway freight which may be due in respect of such goods or of any other goods deposited by the owner of such goods, and the surplus, if any, shall be paid to the owner of such goods and if the owner cannot be found within one month of the sale, such surplus shall be paid to the Consolidated Fund of Malaysia.

PART VI

PETROLEUM AND PETROLEUM PRODUCTS

30. Method of payment of excise duty.

Notwithstanding section 28 dutiable petroleum and petroleum products may be removed from their place of manufacture licensed under section 20 or from any licensed a warehouse in which they are stored -

(a) upon the manufacturer, licensee or his duly authorized agent signing an undertaking in the form as may be prescribed by the Director General and to pay the duty in full as prescribed under section 6 (1);

(b) upon the manufacturer, licensee or his duly authorized agent providing security as prescribed .under section 6 (1).

PART VII

LICENSING

31. Appointment of Licensing Boards.

(1) The Minister may establish Licensing Boards for such areas in Malaysia as he may deem fit.

(2) Each Licensing Board shall consist of a Chairman, a Vice-Chairman and not less than two nor more than five other members, all of whom shall be appointed by the Minister:

Provided that, with the exception of the Chairman, no public officer who in his official capacity has any dealings or is in any way concerned with the sale or purchase of intoxicating liquors or with premises in which such sale or purchase is or may be carried on shall be appointed to any Board.

(3) Subject to this section each member of a Licensing Board shall hold office for such period not exceeding three years from the date of his appointment as may be specified in his appointment unless he shall previously have resigned from his office.

(4) A member of a Licensing Board may be re-appointed upon the expiration of the term of his

appointment.

(5) The Minister may at any time revoke the appointment of any member of a Licensing Board, if he deems it expedient to do so, without assigning any reason therefor.

32. Retail sale to be licensed.

(1) No person shall sell by retail, or offer for sale by retail, any intoxicating liquor whether for consumption on or off the premises of the vendor except under and in accordance with a licence issued under this Part and in a place specified in such licence:

Provided that nothing in this subsection shall apply -

(a) to the sale by retail of beer or toddy in unopened bottles having their proper seals and capsules intact or in unopened cans; or

(b) in the case of Sabah, to a native selling by retail or offering to sell by retail any native liquor which is not a distilled liquor; or

(c) to the sale by retail of intoxicating liquors in duty free shops licensed under section 65D of the Customs Act 1967.

(2) Except as provided in section 33 (2) the delivery of intoxicating liquor in quantities of less than twenty seven litres shall be taken in any proceeding under this Act to be prima facie evidence of sale by retail and that money or other consideration was given for the same.

(3) The Minister may in any deserving case and subject to any conditions he may deem fit to impose by order authorize any person to sell any intoxicating liquor by retail.

(4) The sale or offering for sale by retail of any intoxicating liquor under and in accordance with any order made under subsection (3) shall not constitute an offence against subsection (1).

33. Sale by wholesale to be licensed.

(1) No person shall sell by wholesale, or offer for sale by wholesale, any intoxicating liquors except under and in accordance with a licence issued under this Part:

Provided that any person licensed under section 20 to distil, ferment or otherwise manufacture intoxicating liquor may sell such intoxicating liquor by wholesale without a licence issued under this Part -

(a) at the premises where such liquor is manufactured; or

(b) if such liquor is supplied to a purchaser direct from the said premises.

(2) The delivery of intoxicating liquors in any quantity to any person licensed or authorized to sell liquor by retail or wholesale, and the delivery of intoxicating liquors to any other person in quantities of or exceeding twenty seven litres in any one day, shall be taken in any proceeding under this Act to be prima facie evidence of sale by wholesale and that money or other consideration was given for the same.

(3) The Minister may in any deserving case and subject to any conditions he may deem fit to impose by order authorize any person to sell any intoxicating liquor by wholesale.

(4) The sale or offering for sale by wholesale of any intoxicating liquor under and in accordance with any order made under subsection (3) shall not constitute an offence against subsection (1).

34. Storage of intoxicating liquors on which duty has been paid.

(1) No person licenced to sell intoxicating liquors by retail or by wholesale shall keep or store such liquors, on which duty has been paid, elsewhere than in such premises as shall be specified in his licence:

Provided that this section shall not apply to intoxicating liquors bona fide and actually in course of transit or kept solely for private consumption.

(2) No person other than a person holding a licence under this Part may have in his possession any intoxicating liquors except such as he may have purchased or obtained bona fide for his own private consumption and not for sale.

(3) This section shall not apply in the case of any person in respect of whom an order has been made under section 32(3) or section 33(3).

35. Type of licences.

(1) The Licensing Board for any area shall have authority in its discretion to issue or transfer licences within such area as follows:

(a) public house licences - for the sale by retail of intoxicating liquors, excluding toddy, for consumption on the premises or at the place where they are sold;

(b) beer house licences - for the sale by retail of beer for consumption on the premises or at the place where it is sold: provided that the holders of public house licences are exempted from beer house licences;

(c) retail shop licences - for the sale by retail of intoxicating liquors, excluding toddy, for consumption elsewhere than on the premises or at the place where they are sold;

(d) wholesale dealer's licences - for the sale by whole sale of intoxicating liquors, excluding toddy.

(2) The Licensing Board may, in its direction, subject the issue or transfer of any licence under this section to such restrictions or conditions which are not otherwise inconsistent with the provisions of this Act or any regulations made thereunder as it may deem fit to impose, to be endorsed on the licence.

(3) The Licensing Board may, in its discretion, refuse to issue or transfer any licence under this Part, and suspend or cancel such licence at any time; and the Licensing Board shall not be compelled to assign any reasons for any decision to refuse the issue or transfer of or to suspend or cancel any licence.

(4) The holder of a licence issued under this Part shall not be entitled to any compensation for the suspension or cancellation of his licence under subsection (3), or to the refund of any fee paid in respect of such licence.

(5) In the case of death, mental disorder, illness or bankruptcy of any person licensed under this Part, the Licensing Board may, by endorsement on the licence, authorize any other person to exercise the rights conferred by the licence until the expiration of the term for which it was originally granted, or any shorter period, subject to all the conditions originally imposed by such licence and to such further conditions as the Licensing Board may deem fit to impose.

(6) The Licensing Board may, in its discretion, require as a condition of the issue of any licence that the applicant shall enter into recognisances with sureties in the prescribed form.

(7) Any person aggrieved by the decision of the Licensing Board may within thirty days of being notified of the decision appeal therefrom to the Minister whose decision shall be final.

36. Licensee to keep accounts, etc.

Every person licensed under this Part shall –

(a) exhibit his licence at all times in a conspicuous place on the licensed premises;

(b) maintain over the principal entrance to the licensed premises a legend, in the National Language or English and in a form approved by the Licensing Board, stating his name, the nature of the business

which he is licensed to transact, and such other matters as may be required by the Licensing Board;

(c) keep in the National Language or English such books of account, in which shall be set out detailed particulars of all receipts and despatches of intoxicating liquors, as may be prescribed;

(d) permit, at any time at which he is authorized by his licence to sell intoxicating liquors, any member of the Licensing Board for the area in which the licensed premises are situated, or the proper officer, to enter his licensed premises and inspect such premises and any intoxicating liquors therein and all accounts kept in connection therewith, and to take such copies or extracts thereof as such member of the Licensing Board or proper officer, as the case may be, may deem fit.

37. Licensee not to keep dutiable liquor on premises.

(1) No person licensed under section 35 shall store or keep on his licensed premises any dutiable intoxicating liquor.

(2) In the absence of proof to the contrary any dutiable intoxicating liquor found on licensed premises shall be presumed to be kept or stored by the licensee.

38. Unlicensed person not to exhibit sign.

No person, other than a person licensed under this Part, shall display any sign, writing, painting or other mark which may imply or give reasonable cause to believe that his premises are so licensed.

PART VIII

TODDY

39. Toddy Regulations.

(1) The Minister may make regulations for any or all of the following matters –

(a) the establishment and operation of toddy shops and the sale of toddy by retail for consumption on such premises;

(b) the regulation of prices at which toddy shall be sold by retail in toddy shops;

(c) the issue of toddy shop licences and the terms and conditions to be imposed on such licences;

(d) regulation and control of bottling or canning of toddy; and

(e) for such other matters in respect of which regulations may be made under this Part.

(2) The power to make regulations under this section shall be without prejudice to the power of the Minister to make regulations under section 85.

40. Penalties.

Any regulations made under section 39 may provide for persons guilty of any offence thereunder to be liable on conviction to a fine or a term of imprisonment or both, but may not provide for any such fine to exceed two thousand Ringgit or any such term of imprisonment to exceed six months.

PART VIII A

GENERAL PROVISIONS AFFECTING VESSELS IN TERRITORIAL WATERS

40A. Goods unaccounted for to be deemed unexcisable

If goods, other than bona fide ship's stores, are found by a proper officer in any vessel in territorial waters and such goods are not correctly accounted for in the manifest or other documents which ought to be aboard such vessel, then such goods shall be deemed to be unexcisable goods and shall be liable to seizure.

40B. Prohibition of carriage of dutiable goods in local craft

(1) No goods of a class dutiable on import shall be carried in any local craft except with the permission of the Director General and subject to such conditions as the Director General may impose.

(2) Such permission may be granted either generally, by notification in the Gazette, in respect of all local craft or any class or classes of local craft, or specially, in writing under the hand of the Director General or an officer authorized by him in that behalf, in respect of a particular local craft.

(3) No vessel shall go alongside a legal landing place or alongside an ocean going vessel except with the permission of the proper officer.

40C. Application to aircraft

The provisions of this part shall be apply, with such modifications and adoptions as may be necessary, in respect of aircraft arriving at, or departing from, any customs airport.

PART VIIB

DECLARATION OF GOODS

40D. Declaration of dutiable goods imported

(1) Every importer of dutiable goods, warehoused under section 27A or exempted from being warehoused by virtue of paragraph (a) of the proviso to subsection 27A (1), shall, before removal of such goods or any part thereof from excise control or if such goods are not removed within a period of one month from the date on which they were landed, within such period, make personally or by his agent to the proper officer at such warehouse, a declaration, substantially in the prescribed form, of the goods imported, and in any particular case the proper officer may, by notice in writing, require the importer to submit such declaration either personally or by his agent within three days of the receipt of such notice, and the importer shall be required to comply with such notice if it is within his power to do so:

Provided that in the case of goods imported by road such declaration shall be made on the arrival of such goods at the place of import.

(2) Every importer of dutiable goods exempted from being warehoused under the provisions of paragraphs 27A(4)(b) and (c) shall, upon the arrival of such goods at a place of import, make personally or by his agent to the proper officer at such place of import, a declaration, in such manner or in such form as may be prescribed, of the goods imported, and shall pay the excise duties and other charges leviable thereon, within fourteen days of such declaration.

(3) The addressee of any dutiable goods imported by post shall, on demand by the proper officer, make personally or by his agent to such officer a declaration, substantially in the prescribed form, of the goods imported.

40E. Declaration to give full and true account

(1) The declaration referred to in section 40D shall give a full and true account of the number and description of packages, of the description, weight, measure or quantity, and value of all such dutiable goods, and of the country of origin of such goods:

Provided that if it is shown to the satisfaction of the proper officer that such goods are urgently required for home consumption and that it is not within the power of the importer to furnish all the details required, such officer may, at his discretion, release the goods on payment of such excise duty as he may estimate to be leviable thereon, together with a deposit of such amount as a such officer may determine not exceeding such estimated duty and on an undertaking being given by the importer or his agent to furnish a correct declaration within two months or such further period as the proper

officer may allow.

(2) On the submission of a correct declaration the proper amount of excise duty and other charges leviable shall be assessed and any money paid and deposited in excess of such amount shall be returned to the importer or his agent and in default of such submission within the period specified in subsection (1) the deposit shall be forfeited and paid into the Consolidated Fund.

40F. Goods which have been declared at collection stations, passengers' baggage and postal good etc. exempted

The provisions of this Part shall not apply-

- (a) to goods imported from a collection station or to goods are forwarded to a collection station, subject to such conditions are restrictions as the Director General may, either generally by order or in any particular case, impose;
- (b) to accompanied passengers' baggage or personal effects; and
- (c) to goods sent by post, except as provided for in subsection 40D(3).

40G. Declaration to be in duplicate

Every declaration required to be made under this Part shall be in duplicated or in such other number of copies as the person to whom such declaration is required to be made may direct.

PART IX

MISCELLANEOUS PROVISIONS

41. Persons bound to give information.

(1) It shall be the duty of every proper officer to enforce and ensure due compliance with the provisions of this Act and any subsidiary legislation made thereunder, and to make all due enquiries in relation thereto.

(2) Every person having information upon any matter into which it is the duty of the proper officer to enquire shall, upon being required by such officer to do so, be legally bound to give such information.

(3) Every person required by the proper officer to produce a document or other thing which is within the power of such person to produce and which is a document or thing required under this Act or a document or thing used in any transaction or other matter relating to excise, or a document or thing into which it is the duty of such officer to enquire under this Act, shall be legally bound to produce such document or thing

41A. Documents to be produced on demand

On demand of the proper officer the importer of any goods or his agent shall produce to such officer all invoices, bills of lading, certificates of origin or of analysis and any other documents which such officer may require to test the accuracy of any declaration made by such importer to any officer of excise and the proper officer may retain any such invoice, bill of lading, certificate of origin or analysis or other documents.

41B. Records of imported goods

(1) Every person who has possession of documents and records pertaining to valuation of goods imported shall preserve for a period of six years following the importation of the goods all records that relate to the purchase of, importation of, cost of, value of, payment for and disposal of the goods.

(2) Any person who contravenes subsection (1) commits an offence and-

- (a) where the value of the goods can be ascertained, shall be liable to a fine of not less than two times and not more than ten times the value of the goods; or
- (b) where the value of the goods cannot be ascertained, shall be liable to fine of not less than one hundred thousand ringgit and not more than five hundred thousand ringgit.

41C. Stationmaster to produce railway invoices and waybills

The stationmaster at the place of import of goods by rail at the customs section to which dutiable goods are consigned shall on demand produce to the proper officer the railway invoice or waybill, as the case may be, in respect in such goods.

41D. Goods not accounted for in manifest

(1) If any goods entered in the manifest of any vessel, as required under the Customs Act 1967, are not accounted for the satisfaction of the proper officer within two months of the presentation of such statement or within such further period as such officer may allow, the master or the agent of the vessel shall be liable to pay to such officer on demand a sum not exceeding five hundred ringgit and, in addition, in the case of dutiable goods, the agent shall be liable to pay such officer on demand the amount of excise duty leviable on such goods or, when the correct duty cannot be assessed, an amount not exceeding two thousand ringgit.

(2) If the person liable to the penalties in subsection (1) refuses or fails to pay the penalties demanded from him, any senior officer of excise may sue for and recover such penalties in a court of a Magistrate of the First Class.

42. Service of notices, etc

(1) Every notice or other document required by this Act to be served on any person may be served—

- (a) personally upon that person; or
- (b) by sending it to that person by registered post.

(2) A notice or other document sent by registered post to a person shall be deemed to have been served on that person at the time at which it would have been delivered to that person in the ordinary course of the post if such notice or other document was addressed –

- (a) in the case of a company, a firm, a society, an association or other body of persons –
 - (i) to its registered office;
 - (ii) to its last known address; or
 - (iii) to any person authorized by it to accept service of process; and
- (b) in the case of an individual, to his last known address.

42A. Baggage of passengers

(1) Notwithstanding anything in this Act contained, every passenger or other person arriving in Malaysia shall declare all dutiable goods in his possession, either on his person or in any baggage or in any vehicle, to the proper officer, and if he fails so to do such goods shall be deemed to be unexcisable goods.

(2) The baggage of passengers may be examined and delivered in such manner as the Director General may direct, and it shall be the duty of the person in charge of such baggage to produce, open, unpack and repack such baggage.

42B. Packing of dutiable goods

No dutiable goods shall be packed in any manner calculated to deceive an officer of excise so that a proper account of such goods may not be taken.

43. Proper Officer may take samples.

(1) The proper officer may at any time, if his duties so require, take samples of any goods to ascertain whether they are goods of a description liable to any duty, or to ascertain the duty payable on such goods, or for such other purposes as the proper officer may deem necessary, and such samples may be disposed of in such manner as the Director General may direct.

(2) No payment shall be made for any sample taken under subsection (1), but the proper officer shall give a receipt for any such sample.

44. Access to licensed places or premises

(1) A senior officer of excise or any officer deputed by him for the purpose of due compliance of this Act and regulations made thereunder shall at all times have access to any place or premises licensed under section 20 or 25 or where the importer carries on his business.

(2) Where any senior officer of excise enters upon any premises in accordance with the provisions of this section, then-

a. a. he may require the manufacturer or importer, as the case may be, to produce any book, data, document, record or thing, which such manufacturer or importer is required to keep under provisions of this Act, or which relate to any dutiable goods;

b. b. he may examine any book, data, document, record or thing and take copies of any book, data, document or record;

c. c. he may seize and detain any book, data, document, record or thing, if in his opinion it may afford evidence of the commission of any offence under this Act;

d. d. he may require any manufacturer or importer or any person employed by such person or importer to answer questions relating to any book, data, document, record or thing, or to any entry in any book, data or document or to any dutiable goods;

e. e. he may require any container, envelope, or other receptacle, in any such premises to be opened;

f. f. he may at the risk and expense of the manufacturer or importer, open and examine any package, or any goods or materials, in any such premises; and

g. g. he may take and retain without payment such samples of any goods or materials as he may think necessary for the performance of his duties.

(3) Where the senior officer of excise acting under the provisions of this section is unable to obtain free access to any premises where an importer carries on his business or where a person who has dealings with such importer carries on his business or to any receptacle contained in those premises, he may, at any time, enter such premises and open such receptacle in such manner, if necessary by force, as he think necessary.

(4) Where, on the entry upon any premises under the provisions of this section, any dutiable goods are found in relation to which any offence under the provisions of this Act has been committed, then such dutiable goods shall be liable to forfeiture.

44A. Power of Director General to require security

(1) The Director General may, at his discretion, either generally or in a particular case or in respect of a particular area, require security to be given by any person moving dutiable goods within Malaysia

and where any such security has been required to be given no person shall move such goods unless such security has been given.

(2) The security required under subsection (1) shall not exceed the amount of duty leviable on such goods.

45. Addition or deduction of new or altered duties in the case of contract.

(1) where any new excise duty is imposed or where any excise duty is increased, and any goods in respect of which the duty is payable are delivered after the day on which the new or increased duty takes effect in pursuance of a contract made before that day, the seller of the goods may, in the absence of agreement to the contrary, recover as an addition to the contract price a sum equal to any amount paid by him in respect of the goods on account of the new duty or increase of duty, as the case may be.

(2) Where any excise duty is cancelled or decreased and any goods affected by the duty are delivered after the day on which the duty is cancelled or the decrease in the duty takes effect in pursuance of a contract made before that day, the purchaser of the goods may, in the absence of agreement to the contrary and if the seller of the goods has had in respect of those goods the benefit of the cancellation or decrease of the duty, deduct from the contract price a sum equal to the amount of duty or decrease of duty, as the case may be.

46. Clerks and servants may transact business.

The clerk or servant of any person or firm may transact business generally with any officer of excise on behalf of such person or firm:

Provided that a senior officer of excise may refuse to transact business with such clerk or servant unless such person or a member of such firm identifies such clerk or servant to such officer as empowered to transact such business, and deposits with such officer a signed authority authorizing such clerk or servant to transact such business on behalf of such person or firm.

47. Appeal to Customs Appeal Tribunal. (Gazette: 08 Feb 2007. By substituting the following section)

(1) Any person aggrieved by a decision of the Director General may, except in any matter relating to compound or subsection 67(3), within thirty days of being notified of such decision in writing, appeal to the Customs Appeal Tribunal whose decision shall be final.

(2) All provisions relating to the Customs Appeal Tribunal shall be applicable to this Act.

47A. Deleted. (Gazette: 08 Feb 2007)

48. Forms to be used.

Where a form has been prescribed under section 85(2)(e) no person shall for the purposes of this Act use any form printed or issued otherwise than by the authority of the Director General:

Provided that the Director General may, at his discretion and subject to such conditions as he may deem fit to impose, permit any person to use any form not so printed or issued, as aforesaid, or permit the use of any form submitted through an electronic data interchange.

49. Protection of Government and officers.

Neither the Government nor any proper officer or other person employed by the Government in connection with excise shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while the goods are in any public excise warehouse or in the lawful custody or control of any such officer or person unless the loss is caused by the willful neglect or default of that officer or person.

50. Fees for services.

The Director General may charge such fee as he may consider reasonable in respect of any act or service done or rendered by the Excise Department which is not required to be done or rendered under this Act and for which no fee is prescribed by any written law.

PART X

INSPECTION, INVESTIGATION, SEARCH, SEIZURE AND ARREST

50A. Power of investigation

A proper officer shall have all the powers necessary to carry out an inspection and to investigate the commission of any offence under this Act

51. Magistrate may issue search warrant.

(1) Whenever it appears to any Magistrate, upon written information on oath and after any enquiry which he may deem necessary that there is reasonable cause to believe that in any dwelling house, shop, or other building or place, or on board any vessel other than a vessel which is or has the status of a ship of war or any aircraft, there are concealed or deposited any goods liable to forfeiture under this Act, or under any regulations made thereunder, or as to which an offence under this Act or any regulations made thereunder has been committed, such Magistrate may issue a warrant authorising any officer of excise named therein, by day or night and with or without assistance –

(a) to enter such dwelling house, shop or other building, place, vessel or aircraft and there to search for and seize any goods reasonably suspected of being liable to forfeiture under this Act, or under any regulations made thereunder, or as to which any offence under this Act is suspected to have been committed, and any books or documents which may reasonably be believed to have a bearing on the matter; and

(b) to arrest any person or persons being in such dwelling house, shop or other building, place, vessel or aircraft in whose possession such goods as aforesaid may be found or whom such officer may reasonably suspect to have concealed or deposited such goods.

(2) Such officer may if it is necessary so to do –

(a) break open any outer or inner door of such dwelling house, shop or building, place, vessel or aircraft and enter thereinto;

(b) forcibly enter such place, vessel or aircraft and every part thereof;

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

(d) detain every person found in such place, vessel or aircraft until such place, vessel or aircraft has been searched.

52. When search may be made without warrant.

Whenever it appears to any officer of excise that there is reasonable cause to believe that in any dwelling house, shop or other building, place, vessel or aircraft there are concealed or deposited any

goods liable to forfeiture under this Act or any regulations made thereunder, or as to which an offence under this Act or any regulations made there under has been committed, and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant such goods are likely to be removed, such officer may exercise in, upon and in respect of such dwelling house, shop or other building, place, vessel or aircraft all the powers mentioned in section 51 in as full and ample a manner as if he were empowered so to do by a warrant issued under that section.

53. Power to stop and search vehicles, vessels and aircraft.

(1) Any proper officer may stop and examine any vehicle vessel or aircraft for the purpose of ascertaining whether an dutiable goods are contained therein, and the person in control or in charge of such vehicle, vessel or aircraft shall, if required so to do by such officer, stop such vehicle and allow such officer to examine the same or move the vehicle, vessel or aircraft to another place for search, and shall not proceed until permission to do so has been given by such officer.

(1A) A proper officer may-

(a) go on board any vessel or aircraft in any customs port or customs airport or place or within territorial waters;

(b) require the master of such vessel or the pilot of such aircraft to give such information relating to the vessel or aircraft, cargo, stores, crew, passengers or voyage as he may deem necessary;

(c) rummage and search all parts of such vessel or aircraft for unexcisable goods;

(d) examine all goods on board and all goods then being loaded or unloaded;

(e) demand all documents which ought to be on board such vessel or aircraft; and

(f) require all or any such documents to be brought to him for inspection

and the master of any vessel and the pilot of any aircraft refusing to allow such officer to board or search such vessel or aircraft, or refusing to give such information or to produce such documents on demand shall be guilty of an offence against this Act.

(1B) If any place, box or chest on board such vessel or aircraft is locked and the key withheld, such officer may break open any such place, box or chest.

(1C) If any goods are found concealed on board any vessel or aircraft, they shall be deemed to be unexcisable goods.

(2) The person in control or in charge of any vehicle, vessel or aircraft examined under the provisions of this section shall on request by the proper officer open all parts of the vehicle, vessel or aircraft for examination by such officer and take all measures necessary to enable such examination as such officer considers necessary to be made.

(3) Notwithstanding any written law to the contrary, any senior officer of excise may, if he considers it necessary so to do for the enforcement of this Act, erect or place or cause to be erected or placed any barriers on or across any public road or street or in any public place in such manner as he may deem fit; and any proper officer may take all reasonable steps to prevent any person from passing or any vehicle from being driven past any such barrier , including any measure to pursue and apprehend any such person or stop any such vehicle where, having regard to the attendant circumstances at a given moment of time, it is apparent that if such measure is not taken the escape of such person and vehicle to avoid detection or otherwise is likely to be imminent.

(4) Any person who fails to comply with any reasonable signal of a proper officer requiring such person or vehicle to stop before reaching any such barrier shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding one thousand ringgit or to both such fine and imprisonment; and any proper officer may, without warrant,

arrest such person unless he gives his name and address or otherwise satisfies the proper officer that he will duly answer any summons or other proceedings that may be taken against him.

(5) No proper officer shall be liable for any loss, injury or damage caused to any person or property consequent upon his taking the steps mentioned in subsection (3).

53A. Access to recorded information or computerised data.

(1) Any officer of excise exercising his powers under section 51, 52 and 53 shall be given access to any recorded information or computerised data, whether stored in a computer or otherwise.

(2) In addition, an officer of excise exercising his powers under sections 51, 52 and 53-

(a) may inspect and check the operation of any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been used in connection with that information or data; and

(b) may require-

(i) the person by whom or on whose behalf the officer of excise has reasonable cause to suspect the computer is or has been so used; or

(ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material,

to provide him with such reasonable assistance as he may require for the purposes of this section.

(3) For the purposes of subsection(1), "access" includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information or computerised data.

53B. Power to open packages and examine goods

Any proper officer may examine any goods in the course of being imported or exported or intended to be imported and may for the purposes of such examination bring the goods to a customs office and may open any package or receptacle.

53C. Search of persons arriving in Malaysia

Any person landing, or being about to land, or having recently landed, from any vessel or aircraft, or leaving any vessel or aircraft in territorial waters, whether for the purpose of landing or otherwise, or entering or having recently entered Malaysia by road or railway shall, on demand by any proper officer, either permit his person, goods and baggage to be searched by such officer or, together with such goods and baggage, accompany such officer to a customs office or police station and there permit his person, goods and baggage to be searched by an officer of excise:

Provided that-

a. a. any person who requests that his person be searched in the presence of a senior officer of excise shall not be searched except in the presence of and under the supervision of such officer, but such person may be detained until the arrival of such officer, or taken to any customs officer or police station where such officer may be found;

b. b. the goods and baggage of any person who requests to be present when they are searched and so presents himself within a reasonable time shall not be searched except in his presence; and

c. c. no female shall be searched except by another female with strict regard to decency.

54. Seizure of goods the subject of an offence.

(1) All goods in respect of which there has been, or there is, reasonable cause to suspect that there

has been committed an offence against this Act or any regulations made hereunder, or any breach of any of the provisions of this Act or of any regulations made hereunder, or of any restriction or condition subject to or upon which any licence or permit has been granted under this Act, together with any receptacle, package, vehicle, vessel not exceeding two hundred tons net registered tonnage, or aircraft in which the same may have been found or which has been used in connection with such offence or breach, and any books or documents which may reasonably be believed to have a bearing on the case, may be seized by any officer of excise in any place in Malaysia, and either on land or in territorial waters.

(2) All such goods and such receptacles, packages, vehicles, vessels or aircraft shall, as soon as practicable, be delivered into the care of the proper officer whose duty it is to receive the same.

(3) Whenever any goods, vehicles, vessels or aircraft are seized under this Act, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of such goods, vehicles, vessels or aircraft, if known, either by delivering such notice to him personally or by post at his place of abode, if known:

Provide that no such notice shall be required to be given where such seizure is made on the person or in the presence of the offender or the owner or his agent or, in the case of a vessel or an aircraft, in the presence of the master or pilot thereof, as the case may be.

(4) The provisions of this section relating to the seizure of –

(a) any goods shall apply to all the contents of any package or receptacle in which the same are found, and to any article used to conceal the same;

(b) any vessel or aircraft shall apply also to the tackle, equipment and furnishings of such vessels or aircraft; and

(c) any vehicle shall apply to all equipment thereof, and to any animal by which the same is drawn.

55. Return or disposal of movable property.

(1) Where any goods have been seized under this Act, a senior officer of excise may, at his discretion –

(a) temporarily return the goods to the owner thereof or to the person from whose possession, custody or control they were seized, or to such person as a senior officer of excise may consider entitled thereto, subject to such terms and conditions as such officer may impose, and subject, in any case, to sufficient security being furnished to the satisfaction of such officer that the goods shall be surrendered to him on demand being made by him and that the said terms and conditions, if any, shall be complied with; or

(b) return the goods to the owner thereof or to the person from whose possession, custody or control they were seized, or to such person as a senior officer of excise may consider entitled thereto, with liberty for the person to whom the goods are so returned to dispose of the same, such return being subject to security being furnished to the satisfaction of such officer in an amount not less than an amount which, in the opinion of such officer, represents –

(i) for dutiable or unexcisable goods, their value on the date on which the goods are returned;

(ia) for goods other than goods mentioned in subparagraph (i) their open market value;

(ii) the excise duty payable in respect thereof; and

(iii) any tax payable in respect thereof under any written law,

for the payment of the amount so secured to the Director General in the event of the court making an order for the forfeiture of such amount under section 66(3) or 67(4), or in the event of such amount being forfeited under section 69, as the case may be; or

(c) sell or destroy the goods, as appropriate in the circumstances, where they are a living creature or where, in the opinion of a senior officer of excise, they are of a perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where they are so sold, he shall hold the proceeds of sale to abide the result of any prosecution or claim, or a forfeiture under section 69, as the case may be.

(2) Any person who –

(a) fails to surrender on demand to a senior officer of excise the goods temporarily returned to him under subsection (1)(a); or

(b) fails to comply with or contravenes any of the terms or conditions imposed under subsection (1)(a),

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine.

(3) The criminal liability of any person under subsection (2) shall be in addition to any other liability that the said person or any other person may incur under the terms and conditions relating to the return of the goods under subsection (1)(a).

(4) The provisions of subsection (2) shall not apply to such person, if any, who is the guarantor or surety of the person to whom the goods are returned under subsection (1)(a).

(5) The Minister may, from time to time, either generally or in any particular case or class of cases, give such directions to the Director General as he may deem necessary or expedient with regard to the exercise of the powers conferred on a senior officer of excise under subsection (1).

(6) No person shall be entitled to maintain any action on account of any act done or any decision taken by or on behalf of the Minister or by or on behalf of a senior officer of excise under this section, and no court shall have any jurisdiction to entertain any such action.

55A. Production of a certificate of an analyst, or a senior officer of excise, or a person authorized by the Minister.

(1) In any proceedings in respect of any offence against this Act or any regulations made thereunder in which the existence, description, classification, composition, quantity, quality or value of, or any other matter in relation to, any goods returned under paragraph (a) or (b) of subsection (1) of section 55 or sold or destroyed under paragraph (c) of the said subsection, is in question, any document produced by the prosecutor purporting to be a certificate in respect of any such matter given and signed by –

(a) any analyst within the meaning of section 61(5); or

(b) a senior officer of excise; or

(c) any person, regardless whether or not he is a public officer, authorized by or on behalf of the Minister, either generally or in any particular case, for the purposes of this section,

shall be admissible in evidence and its conclusiveness shall not be challenged on the ground that the goods in respect of which the certificate is given has not been produced before the court either in part or in entirety and it shall be evidence of its contents, including the facts stated therein, without proof of the signature to such certificate.

(2) The provisions of this section shall apply notwithstanding anything contained in any other written law or rule of evidence to the contrary.

56. Powers of arrest.

(1) Any officer of excise may arrest without warrant –

(a) any person found committing or attempting to commit, or employing or aiding any person to commit, or abetting the commission of, an offence against this Act or any regulations made thereunder;

(b) any person whom he may reasonably suspect to have in his possession any goods liable to seizure under this Act; and

(c) any person against whom a reasonable suspicion exists that he has been guilty of an offence against this Act or any regulations made thereunder,

and may search or cause to be searched any person so arrested :

Provided that no female shall be searched except by another female with strict regard to decency.

(2) Every person so arrested shall be taken to a police station or may be detained in the custody of the proper officer.

(3) If any person liable to arrest under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape he may at any time thereafter be arrested and dealt with as if he had been arrested at the time of committing such offence.

(4) Every person so arrested may be released from custody-

(a) on his depositing such reasonable sum of money as the proper officer of excise may require;

(b) on his executing a bond, with such surety or sureties, as the proper officer of excise may require; or

(c) on his depositing such reasonable sum of money as the proper officer of excise may require and his executing a bond, with such surety or sureties, as the proper officer of excise may require.

(5) Any person who has been released from custody under subsection (4) may be arrested without warrant by any officer of excise-

(a) if such officer has reasonable grounds for believing that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be breached; or

(b) on being notified in writing by the surety of such person that such person is likely to breach any condition on or subject to which such person was released and that the surety wishes to be relieved of his obligation as surety.

56A. Power to examine persons

(1) A senior officer of excise investigating an offence under this Act may-

(a) order any person who appears to be acquainted with the facts and circumstances of the case to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence; or

(b) order any person to produce before him any book, document or any certified copy of it, or any other article which may, in his opinion, assist in the investigation into the offence.

(2) Paragraph (1)(b) shall not apply to banker's books.

(3) A person to whom an order under paragraph (1)(a) has been given shall-

(a) attend in accordance with terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and

(b) during such examination, be bound to answer all questions relating to the case put to him and shall be legally bound to state the truth, whether or not such answer is made wholly or partly in answer to questions 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 of forfeiture.

(4) A person to whom an order has been given under subsection (1)(b) shall not conceal, destroy, alter, remove from Malaysia, or deal with, expend, or dispose of, any book, document or article specified in the order, or alter or deface any entry in any such book or document, or cause such act to be done, or assist or conspire to do such act.

(5) A person to whom an order is given under subsection (1) shall comply with such order and with the requirements of subsections (3) and (4) notwithstanding any written law to the contrary.

(6) A statement made by any person in the course of an investigation under this Act whether or not a caution has been administered to him under section 56B(3) shall be recorded in writing by the senior officer of excise examining him and the statement so recorded shall be read to and signed by the person, and where such person refuses to sign the record, the senior officer of excise shall endorse on it under his hand the fact of such refusal and the reason for it, if any, stated by the person examined.

(7) The record of an examination made in the course of an investigation under this Act or any book, document or article produced under subsection (1)(b) or otherwise in the course of an examination under subsection (1)(a), shall, notwithstanding any written law to the contrary, be admissible in evidence in any proceedings under this Act in any court-

(a) for an offence under this Act; or

(b) for the forfeiture of property pursuant to section 66, 67 or 69,

regardless whether such proceedings are against the person who was examined, or who produced the book, document or article, or against any other person.

56B. Admissibility of statements in evidence

(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 or whether it 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 any officer of excise, and whether or not interpreted to him by any other officer of excise or any other person, shall, notwithstanding any written law to 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 in cross-examination or for the purpose of impeaching the credit of the person making of the statement 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 for an offence under this Act, he shall be cautioned in the following words or words to the like effects:

"It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence."

(4) A statement made by any person accused of an offence under this Act made before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of no such caution having been administered if it has been administered as soon as possible.

(5) Notwithstanding anything to the contrary contained in any written law, a person accused of an

offence under this Act to which subsection (1) applies, shall not be bound to answer any question relating to the case after any caution referred to in subsection (3) has been administered to him.

56C. Procedure where investigation cannot be completed within twenty-four hours

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within a period of twenty-four hours and there are grounds for believing that the accusation or information is well founded, the senior officer of excise making the investigation under this Act shall immediately transmit to a Magistrate a copy of the entries in the diary prescribed under section 56D relating to the case and shall at the same time produce such person before the Magistrate.

(2) The Magistrate before whom a person is produced under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of such person in such custody as the Magistrate considers fit for a term not exceeding fifteen days in the whole.

(3) If the Magistrate has no jurisdiction to try the case and considers further detention unnecessary, he may order such person to be produced before a Magistrate having such jurisdiction or, if the case is trouble only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmitting the case for trial by the High Court.

(4) A Magistrate authorizing detention under this section shall record his reasons for so doing.

56D. Diary of proceedings in investigation

(1) Every officer of excise making an investigation under this Act shall day by day enter his proceedings in the investigation in a diary setting forth-

(a) the time at which the order, if any, for investigation reached him;

(b) the time at which he began and closed the investigation;

(c) the place or places visited by him; and

d) a statement of the circumstances ascertained through his investigation.

(2) Notwithstanding anything contained in the Evidence Act 1950, an accused person shall not be entitled, either before or in the course of any proceedings under this Act, to call for or inspect any such diary:

Provided that if the officer of excise who has made the investigation refers to the diary for the purposes of section 159 or 160 of the Evidence Act 1950, such entries only as the officer has referred to shall be shown to the accused, and other entries to be concealed from view or obliterated.

PART XI

PROVISIONS AS TO TRIALS AND PROCEEDINGS

57. (Deleted) by Act 1112

58. Magistrate of the First Class to have full jurisdiction.

Notwithstanding any written law to the contrary, a Magistrate of the First Class shall have jurisdiction to try any offence under this Act, and to award the full punishment therefor.

59. Burden of proof.

If, in any prosecution in respect of any goods seized for non-payment of excise duties, or for any other cause of seizure, or for the recovery of any penalty or penalties under this Act, any dispute arises as to whether duties have been paid in respect of such goods, or whether the same have been

lawfully produced, fermented, distilled, tapped or imported, or concerning the place whence any dutiable goods were brought or where such dutiable goods were loaded or stored, then in every such case, the burden of proof thereof shall lie on the defendant in such prosecution.

60. Proportional examination of goods seized to be accepted by Courts.

(1) When any goods suspected of being dutiable or otherwise liable to seizure have been seized, it shall be sufficient to open and examine five per centum only of each description of the package or receptacle in which such goods are contained.

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

(3) The court shall presume that the goods contained in the 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.

61. Evidence of analysis may be given in writing.

(1) In any prosecution under this Act or any regulations made thereunder, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein, unless the defendant requires that the analyst be called as a witness, in which case he shall give notice thereof to the prosecutor not less than three clear days before the day of the trial.

(2) In like manner a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the defendant, be sufficient evidence of the facts stated therein, unless the prosecutor requires that the analyst be called as a witness, in which case he shall give notice thereof to the defendant not less than three clear days before the day of the trial.

(3) A copy of the certificate referred to in subsections (1) and (2) shall be sent to the defendant or prosecutor at least ten clear days before the day of the trial, and if it is not so sent the court may adjourn the trial on such terms as it may deem fit.

(4) Analysts are by this Act bound to state the truth in certificates of analysis under their hands.

(5) In this section "analyst" means -

(a) a person employed as Chemist in the Department of Chemistry, or as Chemist or Assistant Chemist at the Institute for Medical Research;

(b) the Senior Chemist, Department of Agriculture;

(c) a person employed as chemist or geologist in the Geological Survey Department;

(d) Government Medical Officers;

(e) any person appointed by the Minister by notification in the Gazette, to be a Document Examiner;

(f) the Inspector of weights and Measures appointed as such under any written law relating to weights and measures in force in Malaysia;

(g) the Agronomist or Senior Agronomist;

(h) the Botanist or Senior Botanist;

(i) the Plant Pathologist or Senior Plant Pathologist;

(j) the Plant Entomologist or Senior Plant Entomologist; and

(k) any person or class of persons to whom the Minister by notification in the Gazette declares that this section shall apply.

(6) If any analyst is called by the defendant as provided by subsection (1), he shall be called at the expense of the defendant.

(7) If in any trial or proceeding held under this Act it is necessary to determine the alcoholic content of any liquor, the certificate of a senior officer of excise as to such alcoholic content shall be accepted as if such officer were an analyst, and in any such case the provisions of subsections (1), (4) and (6) shall apply in the same manner and to the same extent as if such officer were an analyst.

62. Proof as to registration or licensing of vessels and conveyances in Malaysia and Singapore

Where in any prosecution under this Act it is relevant to ascertain particulars as to the registration and licensing of any vessel or conveyance registered or licensed in any port or place in Malaysia or Singapore, a certificate purporting to be signed by the officer responsible under any written law for the time being in force in Malaysia or any part thereof or in Singapore for such registration or licensing shall be prima facie evidence as to all particulars concerning such registration or licensing contained therein, and the burden of proving the incorrectness of any particulars stated in such certificate shall be on the person denying the same.

62A. Proof as to tonnage or build of a craft

(1) Where in any prosecution under this Act or any regulation made thereunder it is relevant to ascertain the tonnage or build or such other particulars descriptive of the identity of a craft, and if any of these particulars descriptive of the identity of a craft is in question, then any document produced by the prosecution purporting to be a certificate in respect of any such matter given and signed by any officer responsible for such matter under any written law for the time being in force in Malaysia shall be admissible in evidence, and it shall be evidence of its contents, including the facts stated therein, without proof of the signature to such certificate.

(2) The provisions of this section shall apply notwithstanding anything contained in any other written law or rule of evidence to the contrary.

62B. Proof as to accuracy of a compass radar, etc.

Where in any proceedings it is necessary to prove the accuracy of a compass, radar or any other navigational aid, a certificate purporting to be signed by a harbour master or any officer appointed by the Minister responsible in respect of such compass, radar or any other navigational aid, shall be accepted by the court as prima facie proof of the facts certified in such certificate.

62C. Proof as to countervailing and anti dumping duties payable

Where in any proceedings it is necessary to prove the amount of countervailing duty or anti dumping duty payable, the production of a certificate signed by the Director General stating the amount of duty payable shall be sufficient authority for the court to give judgement for that amount.

63. Manner of seizure not to be enquired into on trial or an appeal to High Court

In any trial before any court, and in any proceeding on appeal to the High Court, relating to the seizure of goods subject to forfeiture under this Act the court shall proceed to such trial or hear such appeal on the merits of the case only without enquiring into the manner or form of making any seizure except in so far as the manner and form of seizure may be evidence on such merits.

63A. Obligation of secrecy.

(1) Except as provided under section 64, the name and address of an informer and the substance of

the information received from an informer shall be kept secret and shall not be disclosed by any proper officer or any person who in the ordinary course of his duties comes into possession of or has control of or access to such information to any person except the designated officer of excise authorised by the Director General.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence against this Act and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

64. Protection of informers from discovery

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

(2) If any books, documents or papers, which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever, contain 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 as far as may be necessary to protect the informer from discovery.

(3) If on the trial for any offence against this Act or any regulations made thereunder, 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 opinion that justice cannot fully be done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

64A. Confidentiality of information

(1) Any information relating to valuation is confidential and any proper officer or any person who in the ordinary course of his duties come into possession of or has control of or access to such information shall not-

- (a) communicate such information; or
- (b) suffer or permit any person to have access to such information.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) notwithstanding subsection (1), it shall not be an offence-

(a) as regards information relating to the valuation or imported goods, if disclosure is made-

- (i) on the order of a court; or
 - (ii) after written consent has been obtained from the person or government giving such information;
- and

(b) as regards information relating to the valuation of exported goods, if the Director General deems it expedient or necessary to allow disclosure of certain information to such person as he thinks fit.

65. Goods liable to seizure liable to forfeiture

(1) All goods liable to seizure under this Act shall be liable to forfeiture.

(2) For the purpose of this section and of sections 66, 67, 68 and 69 the word "goods" shall be deemed to include receptacles, conveyances, vessels not exceeding two hundred tons net registered tonnage and aircraft.

(3) All things forfeited shall be delivered to the proper officer and shall be disposed of in accordance with the directions of the Director General.

66. Court to order disposal of goods seized.

(1) An order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this Act shall be made by the court before which a prosecution with regard thereto has been held.

(2) An order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence against this Act or any regulations made thereunder has been committed and that the goods were the subject matter of, or were used in the commission of, the offence notwithstanding that no person may have been convicted of such offence.

(3) The amount secured under paragraph (a) or (b) of subsection (1) of section 55 or the amount realized by sale under paragraph (c) of the said subsection (1) shall be forfeited by the court if it is proved to the satisfaction of the court that an offence against this Act or any regulations made thereunder has been committed and that the goods in respect of which the amount was secured or realized by sale, as the case may be, were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

67. Goods seized in respect of which there is no prosecution, or the proceeds of sale thereof, are forfeited if not claimed within one month.

(1) If there be no prosecution with regard to any goods seized under this Act, such goods or the proceeds of sale of such goods which are held pursuant to paragraph (c) of subsection (1) of section 55 shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure of the goods unless, before such expiration –

(a) a claim to such goods or the proceeds of sale of such goods is made under subsection (2);

(b) a written application is made for the return of such goods under paragraph (a) or (b) of subsection (1) of section 55; or

(c) such goods are returned under the said paragraph (a) or (b).

(2) Any person asserting that he is the owner of such goods or the proceeds of sale of such goods, as the case may be, and that they are not liable to forfeiture may give written notice to a senior officer of excise that he claims the same.

(3) On the expiration of the period mentioned in subsection (1) , or, if a decision is made earlier that there be no prosecution with regard to the goods, on the making of the decision, the senior officer of excise shall, if such goods or the proceeds of sale of such goods are not taken and deemed to be forfeited under that subsection, refer the claim to the Director General who may direct that such goods or the proceeds of sale of such goods or the security furnished under paragraph (a) or (b) of subsection (1) of section 55, as the case may be, be released, or may direct such senior officer of excise, by information in the prescribed form, to refer the matter to a Magistrate of the First Class for his decision.

(4) The Magistrate of the First Class shall issue a summons requiring the person asserting that he is the owner of the goods or the proceeds of sale of such goods, and the person from whom the goods were seized, to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the Magistrate of the First Class shall proceed to the examination of the matter, and upon proof that an offence against this Act or any regulations made thereunder has been committed and that such goods were the subject matter, or were used in the commission, of such offence, shall order such goods or the proceeds of sale of such goods or the amount secured under paragraph (a) or (b) of subsection (1) of section 55, as the case may be, to be forfeited, or in the absence of such proof, may order the release of such goods or the proceeds of sale of such goods or

the security furnished under paragraph (a) or (b) of subsection (1) of section 55, as the case may be.
(5) In any proceedings under subsection (4), section 59 shall apply to the person asserting that he is the owner of the goods and to the person from whom they were seized as if such owner or person had been the defendant in a prosecution under this Act.

68. Goods or amount forfeited may be delivered or refunded to the owner or other person. The Minister may, upon application made to him in writing through the Director General, order –

- (a) any goods seized under this Act; or
- (b) any amount secured under paragraph (a) or (b) of subsection (1) of section 55 or the amount realized by sale under paragraph (c) of the said subsection (1),

whether forfeited or taken or deemed to be forfeited, pursuant to section 66, 67 or 69 to be delivered, or refunded, as the case may be, to the owner or other person entitled thereto upon payment of such amount and upon such terms and conditions as he may deem fit:

Provided that any such application shall be made before the expiration of one calendar month from the date on which such goods or the amount are forfeited or are taken and deemed to be forfeited, as the case may be

69. Compounding of offences.

(1) Any senior officer of excise may compound any offence, which is prescribed to be a compoundable offence, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding five thousand ringgit and issuing a receipt in respect of sum so received from such person.

(1A) In addition to the power to compound in subsection (1), the Director General may compound any offence under subsection 74(1) by accepting from the person reasonably suspected of having committed such offence, in the case of dutiable goods, a sum of money which shall be a sum not more than ten times the excise duty.

(1B) Notwithstanding subsection 4(1), for the purpose of subsection (1A) the power conferred on the Director General shall only be exercised by the Director General himself or by any other senior officer of excise not below the rank of Senior Assistant Director of Customs and Excise.

(2) On the payment of such sum of money-

(a) the person reasonably suspected of having committed an offence, if in custody, shall be discharged and no further proceedings shall be taken against such person; and

(b) if any goods were seized-

(i) and the goods were locally manufactured dutiable goods, such goods or the amount secured under paragraph 55(1)(a) or (b) or the amount realised by the sale under paragraph 55(1)(c), as the case may be, shall be forfeited and no further proceedings shall be taken against such goods;

(ii) and the goods were imported dutiable goods, such goods or the amount secured under paragraph 55(1)(a) or (b) or the amount realised by the sale under paragraph 55(1)(c), as the case may be, shall be released after payment of the excise duties payable.

(3) Notwithstanding paragraph (2)(b) the Director General may on application by the person concerned release the goods or refund the amount secured or the amount released by sale, as the case may be, on payment of such amount and on such terms and conditions as he deems fit.

70. No costs of damages arising from seizure to be recoverable unless seizure without reasonable cause.

No person shall, in any proceedings before any court in respect of the seizure of any goods seized in exercise or purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such goods or the payment of their value unless such seizure was made without reasonable cause.

PART XII

OFFENCES AND PENALTIES

71. Penalty on making incorrect statements and on falsifying documents.

Whoever –

(a) makes, orally or in writing, or signs any statement, certificate or other document required by this Act, which is untrue or incorrect in any particular; or

(b) makes, orally or in writing, or signs any statement or document, made for consideration of any officer of excise on any application presented to him, which is untrue or incorrect in any particular; or
(c) counterfeits or falsifies, or uses, when counterfeited or falsified, any document which is or may be required under this Act or any document used in the transaction of any business or matter relating to excise;

(d) fraudulently alters any document or counterfeits the seal, signature, initials or other mark of, or used by, any officer of excise for the verification of any such document or for the security of any goods or any other purpose in the conduct of business relating to excise;

(e) being required by this Act to make a declaration of dutiable goods imported, fails to make such declaration as required; or

(f) fails or refuses to produce to a proper officer any document required to be produced under subsection 41(3).

shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

72. Special provision relating to incorrect statements, etc., under section 71.

(1) When any such statement or declaration, whether oral or written, or any such certificate or other document as is referred to in section 71(a), (b) and (c) and (e) has been proved to be untrue or incorrect or counterfeited or falsified in whole or in part, it shall be no defence to allege that such statement or declaration, certificate or other document was made or used inadvertently or without criminal or fraudulent intent, or that the person signing the same was not aware of, or did not understand the contents of, such document; or where any statement or declaration was made or recorded in the National Language or in English by interpretation from any other language that such statement or declaration was misinterpreted or not fully interpreted by any interpreter provided by the declarant.

(2) For the purposes of section 71 and this section, "falsified" in relation to a document shall be deemed to include a document which is untrue or incorrect in any material particular, and "falsifies" has a similar meaning.

73. Penalty on refusing to answer questions or on giving false information.

(1) Whoever, being required by this Act to give any information which may reasonably be required of him by the proper officer and which it is in his power to give, or to produce to such officer documents

which it is within his power to produce, refuses to give such information or furnishes as true information which he knows or has reason to believe to be false, or refuses to produce such documents shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand Ringgit or to both such imprisonment and fine.

(2) When any such information is proved to be untrue or incorrect in whole or in part, it shall be no defence to allege that such information or any part thereof was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

74. Penalty on evasion of excise duty and on illegal manufacture of dutiable goods.

(1) Whoever –

(a) shall contrary to the provisions of this Act receive into or have in his possession, custody or control any goods on which the excise duty leviable by law shall not be proved to have been paid or which have been illegally distilled, fermented or otherwise manufactured or imported; or

(b) assists or is otherwise concerned in the illegal removal or withdrawal of any dutiable goods from any distillery, brewery or other place of manufacture of dutiable goods or from any licensed warehouse or excise control or place of security in which dutiable goods may have been deposited; or

(c) knowingly harbours, keeps, conceals or is in possession of, or permits, suffers, causes or procures to be harboured, kept or concealed any dutiable goods which have been illegally removed; or

(d) is in any way knowingly concerned in conveying, removing, depositing or dealing with any dutiable goods with intent to defraud the Government of any duties thereon, or to evade any of the provisions of this Act; or

(e) is in any way knowingly concerned in any fraudulent evasion or attempt at fraudulent evasion of any excise duty; or

(f) is in any way knowingly concerned in distilling, fermenting or otherwise manufacturing any dutiable goods, or manufacturing any tobacco, in contravention of the provisions of section 20; or

(g) except by lawful authority, opens, breaks, alters or in any way interferes with any lock, seal, mark, or other fastening placed by a proper officer; or

(h) without reasonable cause interferes in any way with any vessel, aircraft, vehicle, instrument or other thing used for any purposes relating to excise; or

(i) is concerned in importing any unexcisable goods contrary to whether such unexcisable goods be shipped, unshipped, delivered or not; or

(j) ships, unships, delivers or assists or is concerned in the shipping, unshipping or delivery of any exercisable goods; or

(k) being a passenger or other person is found to have in his baggage or upon his person or otherwise in his possession, after having denied that he has any dutiable in his baggage or upon his person or otherwise in his possession, any dutiable goods.

commits an offence and shall on conviction be liable -

(i) in the case of locally manufactured goods- (Gazette: 08 Feb 2007. By substituting the following section)

(A) for the first offence, to a fine of not less than ten times the amount of the excise duty and of not more than twenty times the amount of the excise duty, or to imprisonment for a term not exceeding three years or to both; and

(B) for the second offence or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty and of not more than forty times the amount of the excise duty, or to

imprisonment for a term not exceeding five years or to both:

Provided that when no excise duty is involved or the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both;"; and

(ii) in the case of imported goods- (Gazette: 08 Feb 2007. By substituting the following section)

(A) for the first offence, to a fine of not less than ten times the amount of the excise duty and of not more than twenty times the amount of the excise duty, or to imprisonment for a term not exceeding three years or to both; and

(B) for a second or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty and of not more than forty times the amount of the excise duty, or to imprisonment for a term not exceeding five years or to both:

Provided that where the amount of the excise duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both."

(2) In any prosecution under this section any dutiable goods shall be deemed to be dutiable goods to the knowledge of the defendant unless the contrary be proved by such defendant.

75. Penalty for possession of still, etc.

Every person, other than a person licensed or exempted from licensing under section 20(1), who knowingly keeps or has in his possession any still, utensil or any other apparatus for distilling, fermenting or otherwise manufacturing dutiable goods or any machinery for the manufacture of tobacco, shall, on conviction, be liable to imprisonment for a term not exceeding three years or to fine not less than two thousand ringgit but not exceeding ten thousand ringgit, or to both such imprisonment and fine.

76. Penalty for sale of liquor without licence.

Any person who shall sell intoxicating liquors otherwise than in accordance with a licence issued under section 35(1) shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

77. Penalty for assaulting or obstructing excise officers and rescuing goods.

Every person who –

(a) assaults or obstructs any officer of excise, or other public servant, or any person acting in aid of him, or duly employed for the prevention of offences under this Act, in the execution of his duty or in the due seizing of any goods liable to seizure under this Act; or

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

(c) before or after any seizure, staves in, breaks or otherwise destroys any vessel, receptacle, container or package whatsoever, or the contents thereof, to prevent the seizure thereof or the securing of the same,

shall be guilty of an offence and shall be liable -

(i) on the first conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine; and

(ii) on the second or subsequent conviction, to imprisonment for a term not exceeding five years or to

a fine not exceeding twenty thousand ringgit or to both.

78. Penalty for receiving or offering bribes and abuse of authority.

(1) If any officer of excise or other person duly employed for the prevention of offences under this Act

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(a) makes any collusive seizure or delivers up any article, or makes any agreement to deliver up or not to seize any vessel or aircraft or other means of conveyance or any goods liable to seizure; or

(b) accepts, agrees to accept, or attempts to obtain any bribe, gratuity, recompense or reward for the neglect or non-performance of his duty; or

(c) conspires or connives with any person to do any act or thing whereby the excise revenue is or may be defrauded, or which is contrary to this Act or the proper execution of his duty; or

(d) (i) knowingly demands from any person an amount in excess of the authorized duty; or

(ii) withholds for his own use or otherwise any portion of the amount of the duty collected; or

(iii) renders a false return, whether orally or in writing, of the amounts of duty collected or received by him; or

(iv) defrauds any person, embezzles any money, or otherwise uses his position to deal wrongly with excise; or

(v) not being authorized under this Act to do so, collects or attempts to collect duty,

every such officer so offending shall be guilty of an offence against this Act and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine.

(2) Any officer of excise who is found when on duty to have in his possession any money in contravention of any departmental regulations issued in writing shall be presumed, until the contrary is proved, to have received the same in contravention of subsection (1).

(3) If an officer of excise has reasonable suspicion that another officer of excise junior in rank to him has in his possession any money received in contravention of paragraph (1) (b) he may search such other officer.

79. Penalty for offences not otherwise provided for.

Every omission or neglect to comply with and every act done or attempted to be done contrary to this Act or any regulations made thereunder, or any breach of the conditions and restrictions subject to, or upon which, any licence or permit is issued or any exemption is granted under this Act, shall be an offence against this Act and in respect of any such offence for which no penalty is expressly provided the offender shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding five year or to both.

80. Attempts and abetment.

Whoever attempts to commit any offence punishable under this Act, or abets the commission of such an offence, shall be punished with the punishment provided for such offence.

81. Imprisonment for non-payment of fine.

Notwithstanding the Criminal Procedure Code, the period of imprisonment imposed by any court in respect of the non-payment of any fine under this Act or any regulations made thereunder or in respect of the default of a sufficient distress to satisfy any such fine, shall be such period as in the

opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale :

-Where the fine –	-the period may extend to-
-does not exceed fifty ringgit ...	two months
-exceeds fifty ringgit but does not exceed one hundred ringgit	four months
-exceeds one hundred ringgit but does not exceed two hundred ringgit	six months

with two additional month for every one hundred ringgit after the first two hundred ringgit of the fine until a maximum period of six years is reached:

Provided always that -

- (a) if before the expiration of such period of imprisonment such a proportion of the fine be paid or levied as is not less than proportional to the unexpired portion of such period, the imprisonment shall terminate;
- (b) where a person is sentenced to both fine and imprisonment and the fine not being paid is commuted into imprisonment, such imprisonment shall be in addition to the imprisonment ordered by the original sentence.

81A. Joint and several liability of director. etc.

(1) Where any excise duty is payable by-

- (a) a company
- (b) a firm; or
- (c) a society, an association or other body of persons, then notwithstanding anything to the contrary in the Act or in any other written law, the directors of such company or the partners of such firm or the members of such society, association or other body of persons, as the case may be, shall, together with such company, firm, society, association or other body of persons be jointly and severally liable for excise duty payable.

(2) In the case of a company that is being wound up, the directors of such company shall only be so liable where the assets of the company are insufficient to meet the amount due, after paying any sums having priority over the excise duty under the Companies Act 1965 in relation to the application of the assets of the company in such winding up.

82. Offences by bodies of persons and by servants and agents.

(1) Where an offence against this Act or against any regulations made thereunder has been committed by a company, a firm, a society, an association or other

body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the company, firm, society, association or other body of persons or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of such an offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person would be liable under this Act, or under any regulations made thereunder, to any punishment, penalty or forfeiture for any act, omission, neglect or default he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any clerk, servant or agent, or of any clerk or servant of such agent, provided that such act, omission, neglect or default was committed by such clerk or servant in the course of his employment, or by such agent when acting on behalf of such person, or by the clerk or servant of such agent when acting in the course of his employment in such circumstances that had such act, omission, neglect or default been committed by the agent his principal would have been liable under this section.

83. Rewards.

The Director General may order such reward as he may deem fit to be paid to any officer of excise or other person for services rendered in connection with the detection of evasion of excise duty or other evasion of this Act and may order to be paid in respect of any seizure made under this Act to the person or persons making the same, or by whose assistance the same was made such reward as he may deem fit.

84. Action of public officer no offence.

Nothing done by a public officer in the course of his duties shall be deemed to be an offence under this Act.

PART XIII

REGULATIONS

85. Power to make regulations

(1) The Minister may make regulations for carrying this Act into effect.

(2) In particular, and without prejudice to the generality of the foregoing power,

such regulations may –

(a) regulate the powers and duties to be exercised and performed by officers of excise;

(b) regulate the conduct of all matters relating to the collection of excise duties;

(ba) regulate the conduct of all matters relating to customs rulings;

(Gazette: 08 Feb 2007. By inserting the above paragraph)

(bb) prescribe and impose fees relating to customs rulings and provide the manner for collecting and disbursing such fees;

(Gazette: 08 Feb 2007. By inserting the above definition)

(bc) prescribe the forms to be used for the purpose of customs rulings: "

(Gazette: 08 Feb 2007. By inserting the above definition)

(c) regulate the proceedings of Licensing Boards, the issue and transfer of licences under their authority and the fees for such licences or transfer of licences;

(d) regulate the management of premises licensed by Licensing Boards;

(e) prescribe the forms to be used under and for purposes connected with this Act;

(f) prescribe the days and times during which any excise office, public excise or licensed warehouse may be open for business;

(g) regulate the deposit, custody and withdrawal of goods in and from public excise and licensed warehouses, and the management and control of the same;

(h) prescribe the amount to be paid as warehouse rent on goods deposited in a public excise warehouse;

(i) regulate the erection, inspection, supervision, management and control of premises licensed under section 20 and the fittings, implements, machinery and apparatus maintained therein, including such seals and weights, lights, ladders, and other equipment as may be necessary in order to enable a proper officer to take account of or check by weight, gauge or measure, all dutiable goods or materials in such premises;

(j) regulate the hours during which manufacture may or may not take place and during which goods may be removed from premises licensed under this Act;

(k) prescribed what accommodation any person licensed under section 20 shall provide free of cost for such excise officers as the Director General may deem to be necessary for the control of the licensed premises;

(l) regulate the blending, compounding, varying and bottling of intoxicating liquors, and fix the fees to be paid for bottling dutiable intoxicating liquor and may provide for the control of the movement of intoxicating liquors to and from any distillery or any place of manufacture specified in a licence issued under section 20;

(m) prescribe the books to be kept by licensees;

(n) regulate the issue and transfer of licences;

(o) prescribe the rates and method of collection of overtime fees to be paid when proper officers are required to work beyond reasonable hours prescribed and the conditions under which such overtime shall be permitted;

(p) prescribe the offences which may be compounded and the manner in which, and the officers of excise by whom, they may be compounded;

(q) prescribe penalties for any contravention of or failure to comply with any of the regulations made under this section or with the restrictions or conditions of

any licence or permission granted under any such regulations :

Provided that no such penalty shall exceed the penalty prescribed under section 79;

(r) to regulate the production, storage, use and warehousing of petroleum products in premises

including refineries and the removal of such goods to or from such premises;

(ra) regulate all matters relating to goods subject to excise duty on import; and

(s) prescribe anything which is to be or may be prescribed under this Act.

86. Power of delegation

The Minister may, by notification in the Gazette and subject to such conditions and restrictions as may be prescribed in such notification, delegate the exercise of the powers or the performance of the duties conferred or imposed on him by this Act to any person described by name or office:

Provided that such delegation shall not affect the exercise of any such power or the performance of any such duty by the Minister.

PART XIV

SPECIAL PROVISIONS DEALING WITH LABUAN

87. Interpretation.

In this Part, unless the context otherwise requires –

"Labuan" means the Island of Labuan and its dependent islands viz. Rusukan Besar, Rusukan Kechil, Keraman, Burong, Papan and Daat;

"principal customs area" means Malaysia exclusive of Labuan, Langkawi and Tioman.

88. Dutiable goods in Labuan.

The provisions of this Act shall not apply to goods manufactured in or imported into Labuan, other than the following other than goods which the Minister may from time to time declare by order published in the Gazette.

89. Goods manufactured in Labuan shall be deemed to be manufactured outside Malaysia.

Goods subject to excise duty, other than those referred to in section 88, when manufactured in Labuan shall be deemed to be manufactured outside Malaysia and when moved from Labuan to the other territories in Malaysia shall be deemed to be import into those territories and the provisions of the Customs Act, 1967 shall be apply.

90. Goods manufactured in other territories of Malaysia shall be deemed

to be export when moved into Labuan Goods subject to excise duty,

other than those referred to in section 88 manufactured in other

territories of Malaysia when moved into Labuan shall be deemed to

be export from such territories to a place outside Malaysia for the

purpose of sections 19 and 28(d).

90A. Excise duties on goods imported into Labuan or transport to or

form Labuan or to the principal customs area

(1) Notwithstanding anything to the contrary contained in this Act-

(a) no excise duty shall be payable upon any goods imported into Labuan,

other than the goods which the Minister may from time to time declare by order published in the Gazette;

(b) excise duty shall be payable upon all dutiable goods transported to the principal customs area from Labuan to all intents as if such transportation to the principal customs area were importation into Malaysia;

(c) the Minister may, by order, prescribe the meaning of the word

"value" in relation to goods transported from Labuan to the principal customs area.

(2) Subsection 6 (2), (3), (4), and (5) shall apply to any order made by the

Minister under paragraph (1) (a).

(3) Nothing in this section shall render inapplicable to Labuan any other excise duty which may be fixed by the Minister under subsection 6 (1).

90B. Transportation of goods to or from Labuan from or to the principal customs area
Where goods are transported-

(a) from Labuan to the principal customs area; or

(b) from the principal customs area to Labuan,

the provision of this Act shall, with such modifications and adaptation

as may be necessary, apply as if such goods were imported into or,

as the case may be, exported from, the principal customs area from

or to a place outside Malaysia, and without prejudice to the above generality,

the provisions of Part X shall apply to goods transported to or from Labuan

from or to the principal customs area and to persons and vessels and aircraft

transporting such goods as if Labuan were a place outside Malaysia.

90C. Declaration of goods transported from Labuan to the principal

customs area The person in charge of any vessel or aircraft

on which goods are transported from Labuan to the principal

customs area shall make a declaration substantially in the prescribed

form giving particulars of the goods transported in such vessel or aircraft.

90D. Dutiable goods to be deemed to be non-dutiable while in Labuan

Any dutiable goods, other than goods declared by the Minister

under paragraph 90A (1) (a) or deemed to have been declared

by the Minister under that paragraph, shall, while in Labuan,

be deemed to be non-dutiable goods and the provisions of

this Act shall be construed accordingly.

90E. Collection of duties in Labuan

In making regulations under section 85 the Minister may provide-

- (a) for the collection in Labuan of excise duties payable in respect of goods transported or about to be transported from Labuan to or from the principal customs area;
- (b) for the limitation or restriction of vessel and aircraft which may be used to transport such goods; and
- (c) for the licensing or control of persons or vessel or aircraft transporting such goods.

90F. Application of provision relating to drawback to goods transported to Labuan

The provisions relating to drawback under this Act shall apply to goods (other than goods declared by the Minister under paragraph 90A (1) (a) or deemed to have been declared by the Minister under that paragraph), transported from the principal customs area to Labuan as if such goods had been re-exported.

PART XV

SPECIAL PROVISIONS DEALING WITH SABAH AND SARAWAK

91. Agreements between Sabah and Sarawak relating to movement of goods.

- (1) Notwithstanding anything to the contrary in this Act any agreement in force in respect of Sabah and Sarawak relating to the movement of goods between those States shall, until the Minister otherwise directs, have effect with such modifications as the Minister may specify by notification in the Government Gazettes of Sabah and Sarawak.
- (2) Notwithstanding anything to the contrary contained in this Act, section 40A shall not apply in Sabah and Sarawak to-
 - (a) any vessel, the master of which satisfies the proper officer that its entry into the water of Malaysia was due to circumstances beyond his control, and that its entry and the reason therefore was at the first possible opportunity reported to the nearest customs or police authority, and that after such entry no person on board or connected with the vessel has done any act contrary to any written law; or
 - (b) any local craft if the person in charge thereof can show to the satisfaction of a proper officer that he has come from a place of departure from which it is unusual to grant or carry clearances or manifest.
- (3) Notwithstanding anything to the contrary contained in this Act, all excise payable in Sarawak under this Act shall be paid within such period after the date of importation or loading of the goods for transshipment, as the case may be, as the Minister may by regulation made hereunder provide, or in default of any such regulation, before such goods are removed from excise control:
Provided that the excise duty on goods stored in a customs licensed or

approved warehouse in accordance with any regulation made hereunder in that behalf shall be paid at such manner as may be prescribed by such regulations.

PART XVA

SPECIAL PROVISIONS DEALING WITH LANGKAWI

91A. Interpretation.

In this Part, unless the context otherwise requires -

"Langkawi" means the Langkawi Island and all adjacent islands lying nearer to Langkawi Island than to the mainland;

"principal customs area" means Malaysia exclusive of Labuan, Langkawi and Tioman.

91B. Dutiable goods in Langkawi.

The provisions of this Act shall not apply to goods manufactured in or imported into Langkawi, other than goods which the Minister may from time to time declare by order published in the Gazette.

91C. Goods manufactured in Langkawi shall be deemed to be manufactured outside Malaysia.

Goods subject to excise duty, other than those referred to in section 91B, when manufactured outside Malaysia and when moved from Langkawi to the other territories in Malaysia shall be deemed to be import into those territories and the provisions of the Customs Act 1967 shall apply.

91D. Goods manufactured in other territories of Malaysia shall be deemed to be export when moved to Langkawi.

Goods subject to excise duty, other than those referred to in section 91B, when manufactured in other territories of Malaysia when moved to Langkawi shall be deemed to be export from such territories to a place outside Malaysia, for the purpose of sections 19 and 28(d).

91DA. Excise duties relating to Langkawi

(1) Notwithstanding anything to the contrary contained in this Act-

(a) no excise duty shall be payable upon any goods imported into Langkawi, other than the goods which the Minister may from time declare by order published in the Gazette;

(b) excise duty be payable upon all dutiable goods transported to the principal customs area from Langkawi to all intents as if such transportation to the principal customs area were importation into Malaysia;

(c) the Minister may, by order, prescribe the meaning of the word

"value" in relation to goods transported from Langkawi to the principal customs area.

(2) Subsection 6 (2), (3), (4) and (5) shall apply to any order made by the Minister under paragraph (1) (a).

(3) Nothing in this section shall render inapplicable to Langkawi any other excise duty which may be fixed by the Minister under subsection 6 (1).

91DB. Transportation of goods to or from Langkawi from or to the principal customs area

Where goods are transported-

- (a) from Langkawi to the principal customs area; or
 - (b) from the principal customs area to Langkawi,
- the provisions of this Act shall, with such modifications and adaptations as may be necessary, apply as if such goods were imported into, or as the case may be, exported from, the principal customs area from or to a place outside Malaysia, and without prejudice to the above generality, the provisions of Part X shall apply to goods transported to or from Langkawi from or to the principal customs area and to persons and vessels and aircraft transporting such goods as if Langkawi were a place outside Malaysia.

91DC. Declaration of goods transported from Langkawi to the principal customs area
The person in charge of any vessel or aircraft on which goods are transported from Langkawi to the principal customs area shall make a declaration substantially in the prescribed form giving particulars of the goods transported in such vessel or aircraft.

91DD. Dutiable goods to be deemed to be non-dutiable while in Langkawi
Any dutiable goods, other than goods declared by the Minister under paragraph 91DA (1) (a) or deemed to have been declared by the Minister under that section, shall while in Langkawi, be deemed to be non-dutiable goods and the provisions of this Act shall be construed accordingly.

91DE. Collection of duties in Langkawi
In making regulation under section 85 the Minister may provide-

- (a) for the collection in Langkawi of excise duties payable in respect
 - of goods transported or about to be transported from or to Langkawi to
 - or from the principal customs area;
- (b) for the limitation or restriction of vessels and aircraft which may be
 - used to transport such goods; and
- (c) for the licensing or control of person or vessels or aircraft transporting such goods.

91DF. Application of provisions relating to drawback to goods transported to Langkawi
The provision relating to drawback under this Act shall apply to goods other than goods declared by the Minister under paragraph 91DA (1) (a) or deemed to have been declared by the Minister under that section, transported from the principal customs area to Langkawi as if such goods had been re-exported.

PART XV B

SPECIAL PROVISIONS DEALING WITH TIOMAN

91E. Interpretation

In this Part, unless the context otherwise requires -

"Tioman" means the Island of Tioman and the islands Soyak, Rengis, Tumok, Tulai, Chebeh, Labas, Sepoi and Jahat.

"principal customs area" means Malaysia exclusive of Labuan, Langkawi and Tioman.

91F. Dutiable goods in Tioman.

The provisions of this Act shall not apply to goods manufactured in or imported into Tioman, other than goods which the Minister may from time to time declare by order published in the Gazette.

91G. Goods manufactured in Tioman shall be deemed to be manufactured outside Malaysia. Goods subject to excise duty, other than those referred to in section 91E, when manufactured outside Malaysia and when moved from Tioman to the other territories in Malaysia shall be deemed to be import into those territories and the provisions of the Customs Act 1967 shall apply.

91H. Goods manufactured in other territories of Malaysia shall be deemed to be export when moved to Tioman.

Goods subject to excise duty, other than those referred to in section 91E, when manufactured in other territories of Malaysia when moved to Tioman shall be deemed to be export from such territories to a place outside Malaysia, for the purpose of sections 19 and 28(d).

91I. Excise duties relating to Tioman.

(1) Notwithstanding anything to the contrary contained in this Act-

(a) no excise duty shall be payable upon any goods imported into

Tioman, other than the goods which the Minister may from time declare
by order published in the Gazette;

(b) excise duty be payable upon all dutiable goods transported to

the principal customs area from Tioman to all intents as if such
transportation to the principal customs area were importation into Malaysia; and

(c) the Minister may, by order, prescribe the meaning of the word

"value" in relation to goods transported from Tioman to the
principal customs area.

(2) Subsection 6 (2), (3), (4) and (5) shall apply to any order made by the Minister
under paragraph (1) (a).

(3) Nothing in this section shall render inapplicable to Tioman any other
excise duty which may fixed by the Minister under subsection 6 (1).

91J. Transportation of goods to or from Tioman from or to the principal customs area
Where goods are transported-

(a) from Tioman to the principal customs area; or

(b) from the principal customs area to Tioman,

the provisions of this Act shall, with such modifications and
adaptations as may be necessary, apply as if such goods were
imported into or, as the case may be, exported from, the principal
customs area from or to a place outside Malaysia, and without prejudice
to the above generality, the provisions of Part X shall apply to goods

transported to or from Tioman from or to the principal customs area and to person, and vehicles, vessels and aircraft transporting such goods as if Tioman were a place outside Malaysia.

91K. Declaration of goods transported from Tioman to the principal customs area
The person in charge of any vessel or aircraft on which goods are transported from Tioman to the principal customs area shall make a declaration substantially in the prescribed form giving particulars of the goods transported in such vessel or aircraft.

91L. Dutiable goods to be deemed to be non-dutiable while in Tioman
Any dutiable goods, other than goods declared by the Minister under paragraph 91I (1) (a) or deemed to have been declared by the Minister under that section shall, while in Tioman, be deemed to be non-dutiable goods and the provisions of this Act shall be construed accordingly.

91M. Collection of duties in Tioman

In making regulations under section 85 the Minister may provide-

- (a) for the collection in Tioman of excise duties payable in respect of goods transported or about to be transported from or to Tioman to or from the principal customs area;
- (b) for the limitation or restriction of vessels and aircraft which may be used to transport such goods; and
- (c) for the licensing or control of persons or vessel or aircraft transporting such goods.

91N. Application of provisions relating to drawback to goods transported to Tioman
The provisions relating to drawback under this Act shall apply to goods other than goods declared by the Minister under paragraph 91I (1) (a) or deemed to have been declared by the Minister under that section, transported from the principal customs area to Tioman as if such goods had been re-exported.

PART XVC

SPECIAL PROVISION DEALING WITH THE JOINT DEVELOPMENT AREA

91O. Movement of goods into or from Joint Development Area

- (1) The movement of goods from a country other than Malaysia or the Kingdom of Thailand or from a licensed warehouse of Malaysia or the Kingdom of Thailand into the Joint Development Area shall be deemed to be an importation of such goods into the Joint Development Area.
- (2) The movement of goods produces in the Joint Development Area from the Joint Development Area into Malaysia, the Kingdom of Thailand or any other country shall be deemed to be an exportation of such goods from the Joint Development Area.
- (3) The movement of goods from Malaysia or the Kingdom of Thailand

into the Joint Development Area for use in the Joint Development Area and the movement of such goods from the Joint Development Area into Malaysia or the Kingdom of Thailand shall be an internal movement of such goods.

91P. Excise duty payable on importation into Joint Development Area
Excise duty shall be payable on all goods imported into the Joint Development Area.

PART XVI

REPEAL

92. Repeal and saving

The written laws specified in the Schedule hereto are hereby repealed except in so far as they relate to toddy:

Provided that any appointment made, duty imposed, licence issued, and rules or regulations made under any of the written laws hereby repealed shall, in so far as it is not inconsistent with this Act, remain in force until other provision is made therefor under this Act.

SCHEDULE (Section 92)

F.M. Act 34 of 1961	Excise Act, 1961
Malaysia Act 18 of 1966	Customs (Malaysian Common Tariffs) Act, 1966
Sabah Ordinance No. 18 of 1959	Excise Ordinance, 1959
Sabah Cap. 73	Liquors Revenue Ordinance
Sarawak Cap. 27	Excise Ordinance.

NOTES

Saving and transitional

- (1) Notwithstanding section 3 of this Act, any customs ruling made by the Director General prior to the coming into operation of the section, is deemed to have been made under that section and valid for a period of three years from the date of coming into operation of such section.
- (2) Any appeal under section 47 of the principal Act to the Minister made before the appointed date and is pending on such date shall, after the appointed date, be continued as if the principal Act had not been amended by this Act.
- (3) Any appeal under section 47A of the principal Act to the court made before the appointed date and is pending on such date shall, after the appointed date, be continued as if the principal Act had not been amended by this Act.
- (4) For the purposes of subsections (2) and (3), "appointed date" means

the date appointed by the Minister under subsection 1(2).