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Geographical Indications Bill

Bill No. 13/2014.

Read the first time on 5th March 2014.

GEOGRAPHICAL INDICATIONS ACT 2014

(No. of 2014)

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation
3. Application of Act

PART II

PROTECTION FOR GEOGRAPHICAL INDICATIONS

4. Interested party may bring action for certain uses of geographical indication
5. Remedies
6. Order for delivery up of goods, material and articles
7. Order as to disposal of goods, material or articles
8. Remedy for groundless threats of proceedings under section 4
9. Declaration by Court
10. Homonymous geographical indications for prescribed goods

PART III

EXCEPTIONS

Division 1 — Exceptions applicable to all geographical indications

11. Certain uses of geographical indications excepted

Section

12. Exceptions regarding prior users
13. Exception for use of personal name
14. Exception for failure to take action

Division 2 — Exceptions applicable to registered geographical indications

15. Certain uses of registered geographical indications excepted
16. Exceptions for prior users of registered geographical indications and trade marks

PART IV

REGISTRY OF GEOGRAPHICAL INDICATIONS
AND ADMINISTRATION

Division 1 — The Registrar

17. Registrar of Geographical Indications and other officers
18. Delegation by Registrar
19. Registry of Geographical Indications
20. Seal of Registry

Division 2 — The register

21. Register of geographical indications
22. Rectification or correction of register, etc.
23. Inspection of and extract from register
24. Falsification of register, etc.
25. Falsely representing geographical indication as registered

Division 3 — Powers and duties of Registrar

26. Costs awarded by Registrar
27. Security for costs
28. Evidence before Registrar
29. Disobedience to summons an offence
30. Refusal to give evidence an offence
31. Exclusion of liability in respect of official acts
32. Appeals from Registrar

Division 4 — Forms, fees, hours of business and publication

33. Forms and directions of Registrar
34. Fees
35. Hours of business and excluded days
36. Publication of geographical indication applications, etc.

Section

37. Recognition of agents

PART V

REGISTRATION OF GEOGRAPHICAL INDICATIONS

Division 1 — Registration

38. Persons who may apply for registration
 39. Application for registration of geographical indications
 40. Registration only in respect of prescribed categories of goods
 41. Grounds for refusal of registration
 42. Registration of homonymous geographical indications
 43. Examination
 44. Appointment of technical advisor
 45. Publication and opposition proceedings
 46. Requests for qualification to be entered in register
 47. Withdrawal or amendment of application
 48. Registration
 49. Revocation of acceptance

Division 2 — Administration of registered geographical indications

50. Duration of registration
 51. Renewal of registration
 52. Cancellation of registration of geographical indication
 53. Transfer of registration of registered geographical indication

Division 3 — Miscellaneous

54. Amendment of other documents

PART VI

ASSISTANCE BY BORDER AUTHORITIES

Division 1 — Border measures

55. Interpretation of this Part
 56. Request for detention of suspected infringing goods
 57. Security for liability or expense of detention, storage and disposal
 58. Secure storage of detained goods
 59. Notice of detention
 60. Inspection of detained goods
 61. Compulsory release of detained goods to importer or exporter

Section

- 62. Compensation for failure to take action
- 63. Infringement actions
- 64. Retention of control of detained goods
- 65. Disposal of detained goods
- 66. Insufficient security
- 67. Detention and examination of suspected infringing goods

Division 2 — Powers of inspection

- 68. Powers of inspection in relation to vehicles
- 69. Examination of packages, etc.
- 70. Power to remove packages and goods to examination station
- 71. Inspection of baggage and belongings on person
- 72. Powers of authorised officers to enter certain premises
- 73. Obstruction
- 74. Protection from personal liability

PART VII

MISCELLANEOUS AND GENERAL PROVISIONS

- 75. Registration to be prima facie evidence
 - 76. Certificate of validity of contested registration
 - 77. Certificate of Registrar
 - 78. Costs of proceedings before Court
 - 79. Burden of proving use of registered geographical indication
 - 80. Offences by bodies corporate, etc.
 - 81. Composition of offences
 - 82. Jurisdiction of courts
 - 83. Minister may designate other qualifying countries
 - 84. General power to make rules
 - 85. Rules of Court
 - 86. Rights under other laws unaffected
 - 87. Repeal
 - 88. Savings and transitional provisions
 - 89. Related amendments to Intellectual Property Office of Singapore Act
 - 90. Related amendments to Trade Marks Act
- The Schedule — Categories of goods under which
geographical indication may be registered
-

A BILL

intituled

An Act to repeal and re-enact with amendments the Geographical Indications Act (Chapter 117B of the 1999 Revised Edition) to provide for the protection of geographical indications in relation to goods, and for matters connected therewith, and to make related amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I
PRELIMINARY

Short title and commencement

- 5 **1.** This Act may be cited as the Geographical Indications Act 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

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

“Court” means the High Court;

10 “earlier geographical indication”, in relation to an application for registration of a geographical indication made under section 39 (referred to in this definition as the application in question), means a geographical indication —

(a) which has been registered under section 48; or

15 (b) an application for registration of which has been made under section 39,

before the date of the application in question;

“geographical indication” means any indication used in trade to identify goods as originating from a place, provided that —

20 (a) the place is a qualifying country or a region or locality in a qualifying country; and

(b) a given quality, reputation or other characteristic of the goods is essentially attributable to that place;

25 “goods” means any natural or agricultural product or any product of handicraft or industry;

“homonymous geographical indication” means a geographical indication that, in part or in whole, has the same spelling as, or sounds the same as, a geographical indication for any goods having a different geographical origin;

30 “interested party”, in relation to goods identified by a geographical indication, means a producer of the goods, a

trader of the goods, or an association of such producers or traders or of such producers and traders;

“international trade mark (Singapore)” has the same meaning as in the Trade Marks Act (Cap. 332);

“Office” means the Intellectual Property Office of Singapore established under the Intellectual Property Office of Singapore Act (Cap. 140); 5

“Paris Convention” means the Convention for the Protection of Industrial Property signed at Paris on 20th March 1883, and any revision or amendment thereto which has come into force and has been accepted by the Government; 10

“place”, in relation to a geographical indication, means a country or territory and includes a region or locality in a country or territory;

“producer” means — 15

(a) in relation to agricultural products, a person who produces those products for sale or other commercial purposes;

(b) in relation to natural products, a person who exploits those products for sale or other commercial purposes; or 20

(c) in relation to products of handicraft or industry, a person who manufactures those products for sale or other commercial purposes;

“proprietor” means —

(a) in relation to a registered trade mark, the person in whose name the trade mark is registered; 25

(b) in relation to an unregistered trade mark that is a well known trade mark, the person to whom the trade mark belongs; or

(c) in relation to a trade mark referred to in section 41(5)(b), the person who used the trade mark in accordance with that provision; 30

“qualifying country” means any country or territory which is —

- (a) a member of the World Trade Organization;
- (b) a party to the Paris Convention; or
- (c) designated by the Minister as a qualifying country under section 83;

5

“register” means —

- (a) when used as a noun, the register of geographical indications maintained by the Registrar under section 21; and

10

- (b) when used as a verb, to enter in the register;

“registered geographical indication” means a geographical indication that is registered under section 48;

“registered trade mark” means a trade mark registered under the Trade Marks Act;

15

“registrant”, in relation to a registered geographical indication, means the person in whose name the geographical indication is registered;

“Registrar” means the Registrar of Geographical Indications appointed under section 17 and includes any Deputy Registrar or Assistant Registrar of Geographical Indications appointed under that section;

20

“Registry” means the Registry of Geographical Indications established under section 19;

“repealed Act” means the Geographical Indications Act (Cap. 117B) repealed by this Act;

25

“trade mark” has the same meaning as in the Trade Marks Act;

“trader”, in relation to goods, means any person —

- (a) who sells the goods in Singapore; or
- (b) who supplies the goods in Singapore for the purpose of their being sold by another person in Singapore;

30

“use” means use as part of, or in connection with —

- (a) any transaction, including a purchase, a sale or an exchange;
- (b) any importing or exporting;
- (c) any advertisement; or
- (d) any invoice, wine list, catalogue, business letter, business paper, price list or other commercial document;

5

“well known trade mark” has the same meaning as in the Trade Marks Act.

Application of Act

10

3.—(1) Unless expressly provided otherwise in subsection (2) or elsewhere in this Act, this Act shall apply to all geographical indications, whether or not registered under section 48.

(2) Sections 4(6) to (9), 75, 76 and 79, Division 2 of Part III, Division 2 of Part V, and Part VI shall only apply to registered geographical indications.

15

PART II

PROTECTION FOR GEOGRAPHICAL INDICATIONS

Interested party may bring action for certain uses of geographical indication

20

4.—(1) Subject to the provisions of this Act, an interested party of goods identified by a geographical indication may bring an action against a person for carrying out an act to which this section applies in relation to the geographical indication.

(2) This section shall apply to the following acts:

25

- (a) the use of a geographical indication in relation to any goods which did not originate in the place indicated by the geographical indication, in a manner which misleads the public as to the geographical origin of the goods;

(b) any use of a geographical indication which constitutes an act of unfair competition within the meaning of Article 10 *bis* of the Paris Convention;

5 (c) any use of a geographical indication, being a geographical indication which identifies a wine, in relation to a wine which did not originate from the place indicated by the geographical indication, whether or not —

(i) the true geographical origin of the second-mentioned wine is used together with the geographical indication;

10 (ii) the geographical indication is used in translation; or

(iii) the geographical indication is accompanied by any of the words “kind”, “type”, “style” or “imitation” or any similar word or expression; and

15 (d) any use of a geographical indication, being a geographical indication which identifies a spirit, in relation to a spirit which did not originate from the place indicated by the geographical indication, whether or not —

(i) the true geographical origin of the second-mentioned spirit is used together with the geographical indication;

20 (ii) the geographical indication is used in translation; or

(iii) the geographical indication is accompanied by any of the words “kind”, “type”, “style” or “imitation” or any similar word or expression.

25 (3) Any use of a geographical indication within the meaning of subsection (2) shall be deemed to be an act to which this section applies, even if the geographical indication is literally true as to the geographical origin of the goods in question, provided that such use falsely represents to the public that the goods originate in another place.

30 (4) For the purposes of subsection (2), “use of a geographical indication” includes the use of a trade mark which contains or consists of the geographical indication in question.

(5) Subsection (2)(c) and (d) shall not apply to the use of a geographical indication to identify an ingredient of a wine and an

ingredient of a spirit, respectively, if the geographical indication is literally true as to the geographical origin of the ingredient in question, provided that such use does not falsely represent to the public that the wine or spirit (as the case may be) originates in the place indicated by the geographical indication. 5

(6) This section shall apply to any use of a registered geographical indication which identifies any agricultural product or foodstuff (other than a wine or a spirit) belonging to a category of goods listed in the Schedule, in relation to any goods which are of the same category as that agricultural product or foodstuff, but which did not originate in the place indicated by the registered geographical indication, whether or not — 10

- (a) the true geographical origin of those goods is used together with the registered geographical indication;
- (b) the registered geographical indication is used in translation; or 15
- (c) the registered geographical indication is accompanied by any of the words “kind”, “type”, “style” or “imitation” or any similar word or expression.

(7) Any use of a registered geographical indication within the meaning of subsection (6) shall be deemed to be an act to which this section applies, even if the geographical indication is literally true as to the geographical origin of the goods in question, provided that such use falsely represents to the public that the goods originate in another place. 20

(8) For the purposes of subsection (6) — 25

“foodstuff” means any natural or agricultural product that is meant for human consumption;

“use of a registered geographical indication” includes the use of a trade mark which contains or consists of the geographical indication in question. 30

(9) Subsection (6) shall not apply to the use of a registered geographical indication to identify an ingredient of any goods, if the geographical indication is literally true as to the geographical origin of the ingredient in question, provided that such use does not

falsely represent to the public that the goods originate in the place indicated by the geographical indication.

Remedies

5 **5.** Subject to the provisions of this Act, if it is established to the satisfaction of the Court that the defendant to an action brought under section 4 has carried out or is carrying out an act to which that section applies, the Court may grant to the plaintiff one or both of the following:

10 (a) an injunction (subject to such terms, if any, as the Court thinks fit) to restrain the further carrying out of the act;

(b) damages or an account of profits.

Order for delivery up of goods, material and articles

15 **6.—(1)** In any action brought under section 4 in relation to a geographical indication, the Court may, in addition to any relief granted under section 5, order any of the following in the possession of the defendant to the action or before the Court to be delivered up to the plaintiff:

20 (a) goods in respect of which the defendant has been found to be carrying out or to have carried out, in relation to the geographical indication, an act to which section 4 applies;

(b) material —

(i) which bears an indication identical with or similar to the geographical indication;

25 (ii) which is used by the defendant for labelling or packaging goods, or as a business paper, or for advertising goods; and

30 (iii) in respect of which the defendant has been found to be carrying out or to have carried out, in relation to the geographical indication, an act to which section 4 applies;

(c) articles —

(i) used by the defendant to make upon material referred to in paragraph (b), copies of an indication identical with or similar to the geographical indication; or

(ii) which the defendant has in his possession, custody or control, knowing or having reason to believe that they have been, or are to be, used to make upon material referred to in paragraph (b), copies of an indication identical with or similar to the geographical indication. 5

(2) No order shall be made under this section unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 7. 10

(3) A person to whom any goods, material or articles are delivered up pursuant to an order under this section shall, if an order under section 7 is not made, retain them pending the making of an order under that section, or until the decision not to make such order. 15

Order as to disposal of goods, material or articles

7.—(1) Where any goods, material or articles have been delivered up pursuant to an order under section 6, an application may be made to the Court — 20

(a) for an order that they be destroyed or forfeited to such person as the Court may think fit; or

(b) for a decision that no such order should be made.

(2) In considering what order, if any, should be made, the Court shall have regard to — 25

(a) whether other remedies available in an action under section 4 would be adequate to compensate the plaintiff and protect his interest; and

(b) the need to ensure that no goods, material or articles are disposed of in a manner that would adversely affect the plaintiff. 30

(3) The Court shall issue directions as to the service of notice on persons having an interest in the goods, material or articles.

(4) Any person having an interest in the goods, material or articles is entitled —

5 (a) to appear in proceedings for an order under this section, whether or not that person is served with notice under subsection (3); and

 (b) to appeal against any order made, whether or not that person appears in the proceedings for that order.

10 (5) An order made under this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

15 (6) Where there is more than one person interested in the goods, material or articles, the Court may direct that the goods, material or articles be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

 (7) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the goods, material or articles were before being delivered up, is entitled to their return.

20 **Remedy for groundless threats of proceedings under section 4**

8.—(1) Where a person threatens another with proceedings for an action for carrying out an act to which section 4 applies, other than —

25 (a) the application of a geographical indication in relation to goods or to material used or intended to be used for labelling or packaging goods; or

 (b) the importation of goods to which, or to the packaging of which, the geographical indication has been used,

any aggrieved person may bring proceedings for relief under this section.

30 (2) The relief which may be applied for is any of the following:

 (a) a declaration that the threats are unjustifiable;

 (b) an injunction against the continuance of the threats;

(c) damages in respect of any loss an aggrieved person has sustained by the threats.

(3) A plaintiff to an action under this section is entitled to the relief referred to in subsection (2) unless the defendant shows that the act in respect of which proceedings were threatened constitutes (or if done would constitute) an act to which section 4 applies.

5

(4) If the defendant to an action under this section shows that the act in respect of which proceedings were threatened constitutes (or if done would constitute) an act to which section 4 applies, the plaintiff is nevertheless entitled to relief if he shows that an exception under this Act applies to the act concerned.

10

(5) The mere notification that a geographical indication is registered, or that an application for registration has been made, does not constitute a threat of proceedings for the purposes of this section.

15

(6) Nothing in this section shall render an advocate and solicitor liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

Declaration by Court

9. Without prejudice to the jurisdiction of the Court to make a declaration apart from this section, the Court may, in proceedings between a person carrying out or proposing to carry out an act and any interested party of goods identified by a geographical indication, make a declaration that section 4 does not apply to that act or proposed act, notwithstanding that no assertion to the contrary has been made by that interested party or any other interested party of goods identified by the geographical indication.

20

25

Homonymous geographical indications for prescribed goods

10.—(1) Any interested party of any prescribed goods identified by homonymous geographical indications may take action under section 4 against the carrying out of an act to which that section applies.

30

(2) Any interested party of any prescribed goods identified by homonymous geographical indications may, where no practical

conditions in respect of the homonymous geographical indications have been imposed by the Registrar under section 42(2), apply to the Court for a declaration of the practical conditions under which the homonymous geographical indications are to be differentiated from one another.

(3) The Court shall, in making a declaration under subsection (2), take into account —

(a) the need to ensure equitable treatment of all the interested parties concerned; and

(b) the need to ensure that consumers are not misled.

PART III

EXCEPTIONS

Division 1 — Exceptions applicable to all geographical indications

Certain uses of geographical indications excepted

11. Section 4 shall not apply to —

(a) the use of a geographical indication, being a geographical indication which is contrary to public policy or morality;

(b) the use of a geographical indication, being a geographical indication which is not or has ceased to be protected in its country or territory of origin;

(c) the use of a geographical indication in relation to any goods or services which is identical with the common name of the goods or services in Singapore;

(d) the use of a geographical indication, being a geographical indication which is identical with the customary name of a grape variety existing in Singapore as of 1st January 1995, with respect to products of the vine of that or any other grape variety; or

(e) the use of a geographical indication which is not registered under this Act, and which has fallen into disuse in its country or territory of origin.

Exceptions regarding prior users

12.—(1) Section 4 shall not apply to the use by a qualified person of a geographical indication (being a geographical indication identifying a wine or a spirit) in relation to any goods or services if the qualified person has, or he and his predecessor in title have, continuously used in Singapore that geographical indication in relation to those goods or services or related goods or services either — 5

(a) for at least 10 years preceding 15th April 1994; or

(b) in good faith preceding that date.

(2) Section 4 shall not apply to the use by a person of a trade mark which is identical or similar to a geographical indication if — 10

(a) the application for the registration of the trade mark was made in good faith, or the trade mark was registered in good faith, under the Trade Marks Act (Cap. 332) or any previous written law relating to trade marks; or 15

(b) he has, or he and his predecessor in title have, continuously used that trade mark in good faith in Singapore in the course of trade,

either —

(i) before 15th January 1999; or 20

(ii) before the geographical indication in question is protected in its country or territory of origin.

(3) For the purposes of subsection (1), “qualified person” means —

(a) a citizen of Singapore or an individual resident in Singapore;

(b) a body corporate incorporated under any written law in Singapore; or 25

(c) any other person who has a real and effective industrial or commercial establishment in Singapore.

Exception for use of personal name

13. Section 4 shall not apply to the use in the course of trade by a person of that person’s name or the name of that person’s predecessor 30

in business, except where the name is used in such a manner as to mislead the public.

Exception for failure to take action

5 **14.**—(1) No action under section 4 against a person for the use of a trade mark which contains or consists of a geographical indication shall be brought after the expiry of 5 years beginning immediately after the earlier of the following dates:

(a) the date on which such use by that person or his predecessor in title has become generally known in Singapore;

10 (b) the date on which the trade mark was actually registered under the Trade Marks Act (Cap. 332) or any previous written law relating to trade marks, if the trade mark has been published by that date.

(2) Subsection (1) shall not apply where the trade mark was used, or registered, in bad faith.

Division 2 — Exceptions applicable to registered geographical indications

Certain uses of registered geographical indications excepted

15. Section 4 shall not apply to —

20 (a) the use in the course of trade of any name contained in a registered geographical indication in relation to any goods or services, where the name is identical with the term customarily used in common language to describe such goods or services in Singapore; or

25 (b) the use in the course of trade of a registered geographical indication, or any term contained in a registered geographical indication, that is the name of a plant variety or an animal breed.

Exceptions for prior users of registered geographical indications and trade marks

30 **16.**—(1) Section 4 shall not apply to the use by a qualified person of a registered geographical indication (being a geographical indication

identifying any goods other than a wine or a spirit) in relation to any goods or services if the qualified person has, or he and his predecessor in title have, continuously used in Singapore that geographical indication in relation to those goods or services or related goods or services either —

5

- (a) for at least 10 years preceding 1st January 2004; or
- (b) in good faith preceding that date.

(2) Section 4 shall not apply to the use by a person of a trade mark which is identical or similar to a registered geographical indication if —

10

- (a) the trade mark is a registered trade mark or an international trade mark (Singapore), and taking into account (where appropriate) the priorities claimed in respect of the trade mark under the Trade Marks Act (Cap. 332) —

- (i) the application for the registration of the trade mark was made in good faith; or

15

- (ii) the trade mark was registered in good faith,

- under the Trade Marks Act or any previous written law relating to trade marks, before the date of the application for registration of the geographical indication in Singapore; or

20

- (b) he has, or he and his predecessor in title have, continuously used that trade mark in good faith in Singapore in the course of trade, before the date of the application for registration of the geographical indication in Singapore.

(3) Section 4 shall not apply to the use by a person of a trade mark which is identical or similar to a registered geographical indication if —

25

- (a) the trade mark is, before the date of the application for registration of the geographical indication in Singapore, a well known trade mark in Singapore; and

30

- (b) the application of section 4 to the use of that trade mark is liable to mislead consumers as to the true identity of the goods identified by that geographical indication.

- (4) For the purposes of subsection (1), “qualified person” means —
- (a) a citizen of Singapore or an individual resident in Singapore;
 - (b) a body corporate incorporated under any written law in Singapore; or
 - 5 (c) any other person who has a real and effective industrial or commercial establishment in Singapore.

PART IV

REGISTRY OF GEOGRAPHICAL INDICATIONS AND ADMINISTRATION

Division 1 — The Registrar

Registrar of Geographical Indications and other officers

17.—(1) There shall be a Registrar of Geographical Indications who shall have the control of the Registry of Geographical Indications.

15 (2) There shall be one or more Deputy Registrars of Geographical Indications who shall, subject to the control of the Registrar, have all the powers and functions of the Registrar under this Act, other than the powers of the Registrar under section 18.

(3) There shall be one or more Assistant Registrars of Geographical Indications.

20 (4) The Registrar and all the other officers under this section shall be appointed by the Minister.

Delegation by Registrar

18.—(1) The Registrar may, in relation to a particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Act (except this power of delegation) to an Assistant Registrar of Geographical Indications, any public officer, or any person with the relevant qualifications for or experience in the matter or class of matters, so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

(2) A delegation under this section is revocable at will and no delegation shall prevent the exercise of a power or function by the Registrar or by a Deputy Registrar of Geographical Indications.

(3) A person with the relevant qualifications or experience referred to in subsection (1) shall, when exercising the delegated powers and functions, be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

5

Registry of Geographical Indications

19. For the purposes of this Act, there shall be established an office which shall be known as the Registry of Geographical Indications.

10

Seal of Registry

20. There shall be a seal of the Registry and impressions of the seal shall be judicially noticed.

Division 2 — The register

Register of geographical indications

15

21.—(1) The Registrar shall maintain a register of geographical indications.

(2) There shall be entered in the register in accordance with this Act —

(a) registered geographical indications; and

20

(b) such other matters relating to registered geographical indications as may be prescribed.

(3) The register may be kept in whole or in part using a computer.

(4) Any record of a particular or other matter made by using a computer for the purpose of keeping the register is taken to be an entry in the register.

25

Rectification or correction of register, etc.

22.—(1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register.

(2) An application for rectification may not be made in respect of a matter affecting the validity of the registration of a geographical indication.

5 (3) An application for rectification may be made either to the Registrar or to the Court, except that —

(a) if proceedings concerning the geographical indication in question are pending in the Court, the application must be made to the Court; and

10 (b) if in any other case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the Court.

(4) The Registrar or the Court may allow an application for rectification if satisfied that an error or omission exists in the register, and that the rectification should be made.

15 (5) Except where the Registrar or the Court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

20 (6) The Registrar may, on request made in the prescribed manner by the registrant of a registered geographical indication, enter any change in his name or address as recorded in the register.

(7) The Registrar may remove from the register any matter appearing to him to have ceased to have effect.

Inspection of and extract from register

25 **23.—**(1) The register shall be available at the Registry for inspection by any person during the hours when the Registry is open for business.

(2) If the register, or any part of the register, is kept by using a computer, subsection (1) is satisfied if a person who wants to inspect the register or that part of the register is given access to a computer terminal from which he can read on a screen, or obtain a printed copy of, the particulars or other matters recorded in the register or that part
30 of the register.

(3) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or an extract on payment of the prescribed fee.

(4) In this section, “certified copy” and “certified extract” mean a copy and an extract certified by the Registrar.

5

Falsification of register, etc.

24. Any person who —

- (a) makes, or causes to be made, a false entry in the register;
- (b) makes, or causes to be made, any thing false purporting to be a copy of an entry in the register; or
- (c) produces or tenders or causes to be produced or tendered in evidence any thing referred to in paragraph (b),

10

knowing or having reason to believe that the entry or thing, as the case may be, is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years or to both.

15

Falsely representing geographical indication as registered

25.—(1) Any person who —

- (a) falsely represents that a geographical indication is a registered geographical indication; or
- (b) makes a false representation as to the goods for which a geographical indication is registered,

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knowing or having reason to believe that the representation is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

25

(2) For the purposes of this section, the use in Singapore, in relation to a geographical indication, of —

- (a) the word “registered”; or
- (b) any other word or symbol importing a reference (express or implied) to registration,

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shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in Singapore and that the geographical indication is in fact so registered for the goods in question.

5 *Division 3 — Powers and duties of Registrar*

Costs awarded by Registrar

26.—(1) The Registrar may award costs in respect of the matters, and in the amounts provided for in rules made under this Act, against any party to proceedings brought before him.

10 (2) The rules may provide for the taxation of the costs, or any part of the costs, by the Registrar.

(3) A party desirous to obtain costs or to have the costs taxed must apply to the Registrar in accordance with the rules.

15 (4) If a party is ordered to pay the costs of another party, the costs may be recovered in a court of competent jurisdiction as a debt due by the first party to the other party.

Security for costs

27. If a person who neither resides nor carries on business in Singapore —

20 (a) gives notice of opposition under section 45;

(b) makes a request under section 46 for the entry in the register of a qualification of the rights conferred upon a registered geographical indication; or

25 (c) applies to the Registrar under section 52 for the registration of a geographical indication to be cancelled,

the Registrar may require the person to give security for the costs for the proceedings and may, if security is not given, dismiss the proceedings.

Evidence before Registrar

30 28. The Registrar may, for the purposes of any proceedings before him under this Act —

- (a) summon witnesses;
- (b) receive evidence on oath, whether orally or otherwise; and
- (c) require the production of documents or articles.

Disobedience to summons an offence

29.—(1) A person who has been summoned to appear as a witness before the Registrar shall not, without lawful excuse, fail to appear in obedience to the summons. 5

(2) A person who has been required by the Registrar to produce any document or article shall not, without lawful excuse, fail to produce the document or article. 10

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

Refusal to give evidence an offence 15

30.—(1) A person who appears before the Registrar shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, which he is lawfully required to produce or answer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both. 20

Exclusion of liability in respect of official acts

31.—(1) The Office and the Registrar shall not be taken to warrant the validity of the registration of a geographical indication under this Act or under any treaty, convention, arrangement or engagement to which Singapore is a party. 25

(2) Neither the Office nor the Registrar is subject to any liability by reason of, or in connection with, any examination required or authorised by this Act, or any such treaty, convention, arrangement or 30

engagement, or any report or other proceedings consequent on such examination.

(3) No proceedings shall lie against an officer of the Office or the Registrar in respect of any matter for which, by virtue of this section,
5 the Office or the Registrar is not liable.

Appeals from Registrar

32.—(1) Except as provided under subsection (2) or by rules made under this Act, there shall be no appeal from a decision of the Registrar for any matter under this Act or the rules made thereunder.

10 (2) The following shall be subject to appeal to the Court:

- (a) a decision of the Registrar under section 22;
- (b) a decision of the Registrar under section 40(2) as to whether any specific goods fall within a category of goods set out in the Schedule;
- 15 (c) a decision of the Registrar as to the registrability of a geographical indication;
- (d) a decision of the Registrar under section 42(2) on the practical conditions differentiating a homonymous geographical indication from an earlier geographical indication;
- 20 (e) a decision of the Registrar under section 46(5) on a request for entry in the register of a qualification of the rights conferred upon a registered geographical indication; and
- (f) a decision of the Registrar relating to a request for cancellation under section 52.

25 *Division 4 — Forms, fees, hours of business and publication*

Forms and directions of Registrar

33. The Minister may make rules for the publication by the Registrar of —

- 30 (a) the forms to be used for any purpose relating to the registration of a geographical indication or any other proceedings before the Registrar under this Act; and

(b) the practice directions issued by the Registrar.

Fees

34.—(1) There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed. 5

(2) The Minister may make rules as to the remission of fees in the prescribed circumstances.

(3) All fees collected shall be paid into the funds of the Office.

Hours of business and excluded days

35.—(1) The Registrar may issue practice directions to specify — 10

(a) the hours of business of the Registry; and

(b) the days which are to be treated as excluded days.

(2) The Minister may prescribe the effect of doing any business under this Act —

(a) on any day after the hours of business of the Registry; or 15

(b) on any day which is an excluded day.

(3) For the purposes of subsections (1) and (2) —

(a) different hours of business may be specified for different classes of business;

(b) different excluded days may be specified for different classes of business; and 20

(c) different effects of doing business —

(i) outside the hours of business of the Registry; or

(ii) on an excluded day,

may be prescribed for different classes of business. 25

(4) In this section, “excluded day”, in relation to any specific class of business, means any day on which the Registry shall be taken to be closed for the purposes of the transaction by the public of that class of business.

Publication of geographical indication applications, etc.

5 **36.** The Minister may make rules for the publication by the Registrar of the particulars of any application for registration of a geographical indication and such other information relating to geographical indications as the Registrar thinks fit.

Recognition of agents

10 **37.** Except as otherwise provided by rules, any act required or authorised by this Act to be done by or to a person in connection with the registration of a geographical indication, or any procedure relating to a registered geographical indication, may be done by or to an agent authorised by that person orally or in writing.

PART V

REGISTRATION OF GEOGRAPHICAL INDICATIONS

Division 1 — Registration

15 **Persons who may apply for registration**

38. Each of the following persons shall be entitled to file an application for registration of a geographical indication:

- 20 (a) a person who is carrying on an activity as a producer in the geographical area specified in the application with respect to the goods specified in the application;
- (b) an association of persons referred to in paragraph (a);
- (c) a competent authority having responsibility for the geographical indication for which registration is sought.

Application for registration of geographical indications

25 **39.—(1)** An application for registration of a geographical indication shall be made to the Registrar in the prescribed manner and shall specify —

- (a) the name, address and nationality of the applicant;
- 30 (b) the capacity in which the applicant is applying for registration;

- (c) the geographical indication for which registration is sought;
 - (d) the geographical area to which the geographical indication applies;
 - (e) the goods to which the geographical indication applies;
 - (f) the quality, reputation or other characteristic of the goods and how that quality, reputation or other characteristic (as the case may be) is essentially attributable to the place from which the goods originate; 5
 - (g) where the geographical indication for which registration is sought relates to a qualifying country other than Singapore, evidence that the geographical indication has obtained recognition or registration as a geographical indication in the qualifying country of origin, where applicable; and 10
 - (h) such other particulars as may be prescribed.
- (2) The application shall be subject to the payment of the application fee and such other fees as may be appropriate. 15
- (3) The Registrar shall not accept an application unless —
- (a) all the requirements under subsection (1) are satisfied;
 - (b) all the fees payable under subsection (2) are paid; and
 - (c) the applicant is entitled, under section 38, to file an application for registration of a geographical indication. 20

Registration only in respect of prescribed categories of goods

- 40.**—(1) An application for registration of a geographical indication may only be sought in respect of goods falling within one or more of the categories of goods set out in the Schedule. 25
- (2) The Registrar shall determine whether or not any specific goods fall within a category of goods set out in the Schedule.
- (3) The Minister may, by notification published in the *Gazette*, amend the Schedule.

Grounds for refusal of registration

41.—(1) The following shall not be registered:

- (a) an indication which does not fall within the meaning of “geographical indication” as defined in section 2;
- 5 (b) a geographical indication which identifies goods that do not fall within any of the categories of goods set out in the Schedule;
- (c) a geographical indication which is contrary to public policy or morality;
- 10 (d) a geographical indication which is not or has ceased to be protected in its country or territory of origin;
- (e) a geographical indication which is identical to the common name of any goods in Singapore, where registration of the geographical indication is sought in relation to those goods;
- 15 (f) a geographical indication which contains the name of a plant variety or an animal breed and is likely to mislead the consumer as to the true origin of the product.

(2) For the purposes of subsection (1)(e), any marketing material in Singapore which uses a geographical indication shall be relevant
 20 evidence that the geographical indication is not the common name of any goods in Singapore, if the marketing material suggests (for example, by using words or pictures) in a misleading manner that the goods to which the marketing material relate originate in the geographical origin of the geographical indication, when those
 25 goods originate elsewhere.

(3) Subject to section 42, a geographical indication shall not be registered if there exists a likelihood of confusion on the part of the public because the geographical indication is identical with or similar
 30 to, and has the same geographical origin as, an earlier geographical indication.

(4) Subject to subsection (7), a geographical indication shall not be registered if there exists a likelihood of confusion on the part of the public because —

- (a) the geographical indication is identical with or similar to a trade mark; and
- (b) the trade mark fulfils either or both of the conditions specified in subsection (5).
- (5) The conditions referred to in subsection (4)(b) are as follows: 5
- (a) the trade mark is a registered trade mark or an international trade mark (Singapore), and taking into account (where appropriate) the priorities claimed in respect of the trade mark under the Trade Marks Act (Cap. 332) —
- (i) the application for the registration of the trade mark 10
was made in good faith; or
- (ii) the trade mark was registered in good faith,
under the Trade Marks Act or any previous written law
relating to trade marks, before the date of application for
registration of the geographical indication in Singapore; 15
- (b) the trade mark has been used in good faith in Singapore in the course of trade before the date of application for registration of the geographical indication in Singapore.
- (6) Subject to subsection (7), a geographical indication that is identical with or similar to a trade mark shall not be registered if — 20
- (a) the trade mark is, before the date of application for registration of the geographical indication in Singapore, a well known trade mark in Singapore; and
- (b) registration of the geographical indication is liable to mislead consumers as to the true identity of the goods identified by that geographical indication. 25
- (7) The Registrar may, in his discretion, register any geographical indication referred to in subsection (4) or (6), if the proprietor of the trade mark referred to in subsection (4) or (6), as the case may be —
- (a) consents to the registration; or 30
- (b) fails to give notice to the Registrar of his opposition to the registration in accordance with section 45(2).

(8) In this section, “marketing material” includes material used for labelling or packaging goods, or for advertising goods.

Registration of homonymous geographical indications

5 **42.**—(1) The Registrar may register a geographical indication that is a homonymous geographical indication in relation to an earlier geographical indication.

(2) For the purposes of subsection (1), the Registrar may register the homonymous geographical indication with practical conditions differentiating the homonymous geographical indication from the
10 earlier geographical indication.

(3) In determining the practical conditions to be imposed under subsection (2), the Registrar shall take into account —

- (a) the need to ensure equitable treatment of all the interested parties concerned;
- 15 (b) the need to ensure that consumers are not misled; and
- (c) the views and submissions of the applicant for registration of the homonymous geographical indication and of the applicant for registration or registrant, as the case may be, of the earlier geographical indication.

20 (4) The Minister may make rules to provide for proceedings for the purposes of subsection (3)(c) and for matters relating thereto.

(5) Where the Registrar decides to impose practical conditions under subsection (2), the Registrar shall impose practical conditions on all the homonymous geographical indications in question.

Examination

25 **43.**—(1) The Registrar shall examine whether an application for registration of a geographical indication satisfies the requirements of this Act (including any requirements imposed by rules made under this Act).

30 (2) For the purpose of subsection (1), the Registrar may carry out a search, to such extent as he considers necessary, of earlier trade marks and earlier geographical indications.

(3) If it appears to the Registrar that the requirements for registration are not met or that additional information or evidence is required to meet those requirements, the Registrar shall inform the applicant and give him an opportunity, within such period as may be prescribed, to make representations, to amend the application or to furnish the additional or any other information or evidence. 5

(4) If the applicant responds within the period referred to in subsection (3) but fails to satisfy the Registrar that those requirements are met, or to amend the application or furnish the additional information or evidence so as to meet them, the Registrar may refuse to accept the application. 10

(5) If the applicant fails to respond within the period referred to in subsection (3), the application shall be treated as abandoned.

(6) If it appears to the Registrar that the requirements for registration are met, the Registrar shall accept the application. 15

(7) For the purpose of this section, “earlier trade mark” means —

(a) a registered trade mark or an international trade mark (Singapore), the application for registration of which was made earlier than the application for registration of the geographical indication in question, taking into account (where appropriate) the priorities claimed in respect of the trade mark under the Trade Marks Act (Cap. 332); or 20

(b) a trade mark which, at the date of application for registration of the geographical indication in question, was a well known trade mark, 25

and includes a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of paragraph (a) subject to its being so registered.

Appointment of technical advisor 30

44.—(1) The Registrar may appoint one or more technical advisors to provide an opinion to the Registrar with regard to any matter before the Registrar, and to the performance of any of his functions under this Act.

(2) The Registrar shall not be bound to accept any opinion provided by a technical advisor appointed under subsection (1).

Publication and opposition proceedings

5 **45.**—(1) When an application for registration of a geographical indication has been accepted, the Registrar shall cause the application to be published in the prescribed manner.

(2) Any person may, within the prescribed time after the date of the publication of the application, give notice to the Registrar of his opposition to the registration.

10 (3) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition and such other matter as may be prescribed.

(4) The Minister may make rules to provide for opposition proceedings and for matters relating thereto.

15 **Requests for qualification to be entered in register**

46.—(1) Any person may, at any time after the date of the publication of an application for registration under section 45, request that a qualification, of the rights conferred under this Act in respect of a registered geographical indication, be entered in the register —

(a) in relation to any name contained in the geographical indication; or

(b) in relation to any term which may be a possible translation of the geographical indication.

25 (2) The request under subsection (1) may only be made on either or both of the following grounds:

(a) that one or more of the exceptions referred to under Part III applies;

30 (b) that the term referred to in subsection (1)(b) is not a translation of the geographical indication.

(3) The request shall be made to the Registrar in writing in the prescribed manner, and shall include a statement of the grounds for the request and such other matter as may be prescribed.

(4) The Minister may make rules to provide for proceedings for the purposes of this section and for matters relating thereto. 5

(5) Subject to subsection (6), the Registrar shall, if satisfied that either or both of the grounds referred to in subsection (2) is made out, cause to be entered in the register a qualification of the rights conferred under this Act in relation to such of the following as may be applicable: 10

- (a) any name contained in the registered geographical indication;
- (b) any term which is not a translation of the registered geographical indication; or
- (c) any term which is a translation of the registered geographical indication. 15

(6) Where any proceedings for the purposes of this section are concluded before the registration of the geographical indication under section 48, a qualification shall only be entered in the register upon the registration of the geographical indication in question.

(7) Where a registered geographical indication is subject to a qualification under subsection (5), the rights of an interested party in respect of the geographical indication are restricted accordingly. 20

(8) The Minister may make rules as to the publication and entry in the register of a qualification under subsection (5).

Withdrawal or amendment of application 25

47.—(1) The applicant may at any time withdraw his application for registration of a geographical indication.

(2) An application for registration of a geographical indication may be amended, at the request of the applicant, only by correcting —

- (a) the name or address of the applicant; 30
- (b) errors of wording or of copying; or
- (c) obvious mistakes,

and then only where the correction does not substantially affect the identity of the geographical indication.

5 (3) The Minister may make rules for the publication of any amendment which affects the geographical indication, or the goods covered by the application for registration of the geographical indication, and for the making of objections by any person claiming to be affected by it.

Registration

10 **48.**—(1) Where an application for registration of a geographical indication has been accepted and —

(a) no notice of opposition is given within the period referred to in section 45(2); or

(b) all opposition proceedings are withdrawn or decided in favour of the applicant,

15 the Registrar shall register the geographical indication.

(2) The date of registration shall be the date on which the Registrar registers the geographical indication under subsection (1).

(3) On the registration of a geographical indication, the Registrar shall issue to the applicant a certificate of registration.

20 (4) Where a request for the qualification of the rights conferred in respect of a registered geographical indication was made before the date of registration of the geographical indication, and the request is still pending at the date of such registration, no interested party shall, pending the determination of the request, bring an action under
25 section 4 against the person who made the request for carrying out an act, in relation to the geographical indication, that is the subject of the request.

Revocation of acceptance

30 **49.**—(1) Notwithstanding section 48(1), if, before a geographical indication is registered, the Registrar is satisfied —

(a) that the application for registration of the geographical indication was accepted because of an error or omission in the course of the examination; or

(b) that, in the special circumstances of the case, the geographical indication should not be registered,

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the Registrar may revoke the acceptance of the application.

(2) If the Registrar revokes the acceptance —

(a) the application is taken to have never been accepted; and

(b) section 43 again applies in relation to the application.

*Division 2 — Administration of registered
geographical indications*

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Duration of registration

50.—(1) A geographical indication shall be registered for a period of 10 years from the date of registration.

(2) The registration of a geographical indication may be renewed in accordance with section 51 for further periods of 10 years in respect of each renewal.

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Renewal of registration

51.—(1) Any person may apply for a renewal of the registration of a geographical indication in the prescribed manner and by paying the prescribed fee.

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(2) The Minister may make rules for the Registrar to inform the registrant of a registered geographical indication, before the expiry of the registration, of the date of expiry and the manner in which the registration may be renewed.

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(3) An application for renewal shall be filed not later than 6 months after the date of expiry of the registration.

(4) A renewal of the registration of a geographical indication shall take effect from the expiry of the previous registration.

(5) If the registration is not renewed in accordance with this section and the rules referred to in subsection (2), the Registrar shall remove the geographical indication from the register.

Cancellation of registration of geographical indication

5 **52.**—(1) The registration of a geographical indication may be cancelled —

- (a) by the Registrar upon an application by the registrant; or
- (b) by the Court or the Registrar upon an application by any other person on any of the grounds referred to in subsection (2).

10 (2) The grounds for the cancellation of the registration of a geographical indication referred to in subsection (1)(b) are as follows:

- (a) that the geographical indication was registered in breach of section 41;
- (b) that the registration was obtained fraudulently or by
15 misrepresentation;
- (c) that the geographical indication has ceased to be protected in its country or territory of origin;
- (d) that there has been a failure to maintain, in Singapore, any commercial activity or interest in relation to the geographical
20 indication, including commercialisation, promotion or market monitoring;
- (e) that, in consequence of a lack of any activity by any interested party of goods identified by a registered geographical
25 indication, the geographical indication has become the common name of those goods in Singapore.

(3) An application for the cancellation of the registration of a geographical indication under subsection (1)(b) may be made either to the Registrar or to the Court, except that —

- (a) if proceedings concerning the geographical indication in
30 question are pending in the Court, the application must be made to the Court; and

(b) if in any other case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the Court.

(4) The Minister may make rules —

(a) to provide for the manner by which a registration of a geographical indication may be cancelled under subsection (1)(a); and 5

(b) for protecting the interests of other persons having an interest in the registered geographical indication.

(5) Where the registration of a geographical indication is cancelled under subsection (1)(a), the rights conferred by the registration on any interested party of goods identified by the geographical indication shall cease to exist with effect from the date of the cancellation of the registration. 10

(6) Where the registration of a geographical indication is cancelled on a ground referred to in subsection (2)(a) or (b), the geographical indication shall be deemed never to have been registered. 15

(7) Where the registration of a geographical indication is cancelled on a ground referred to in subsection (2)(c), (d) or (e), the rights conferred by the registration on any interested party of goods identified by the geographical indication shall cease to exist with effect from — 20

(a) the date of the application for cancellation; or

(b) if the Registrar or the Court is satisfied that the ground existed at an earlier date, that earlier date. 25

(8) A cancellation of the registration of a geographical indication under this section shall not affect any rights in respect of the geographical indication that are not conferred by the registration.

Transfer of registration of registered geographical indication

53.—(1) A registrant may apply to the Registrar for the registration of a registered geographical indication to be transferred to another person. 30

(2) The registration shall not be transferred to another person unless that person —

(a) is entitled to file an application for registration of the geographical indication under section 38; and

5 (b) consents to having the registration transferred to him.

Division 3 — Miscellaneous

Amendment of other documents

10 **54.** The Registrar may, at the written request of a person who has made an application (other than an application for registration of a geographical indication), or filed a notice or other document for the purposes of this Act, or at the written request of the person’s agent, amend the application, notice or document —

(a) to correct a clerical error or an obvious mistake; or

15 (b) if the Registrar is of the opinion that it is fair and reasonable in all the circumstances of the case to do so.

PART VI

ASSISTANCE BY BORDER AUTHORITIES

Division 1 — Border measures

Interpretation of this Part

20 **55.** In this Part, unless the context otherwise requires —

“aircraft” has the same meaning as in section 2 of the Regulation of Imports and Exports Act (Cap. 272A);

“authorised officer” means —

25 (a) an officer of customs as defined in section 3(1) of the Customs Act (Cap. 70); or

(b) any officer or class or description of officers appointed by the Minister by notification in the *Gazette* to exercise the powers and perform the duties conferred and imposed on an authorised officer by this Part;

- “conveyance” has the same meaning as in section 2 of the Regulation of Imports and Exports Act;
- “detained goods” means goods detained under section 56 or 67;
- “Director-General” means the Director-General of Customs appointed under section 4(1) of the Customs Act; 5
- “goods in transit” means goods imported, whether or not landed or transhipped within Singapore, which are to be carried to another country either by the same or another conveyance;
- “infringement action” means an action under section 4 concerning the importation or exportation of detained goods; 10
- “requestor” means a person who gives a written notice under section 56(1) to the Director-General;
- “retention period”, in relation to detained goods, means —
- (a) the period specified in a notice given under section 59 in respect of the goods; or 15
 - (b) if that period has been extended under section 59, that period as so extended;
- “senior authorised officer” means —
- (a) a senior officer of customs as defined in section 3(1) of the Customs Act; or 20
 - (b) any officer or class or description of officers appointed by the Minister by notification in the *Gazette* to exercise the powers and perform the duties conferred and imposed on a senior authorised officer by this Part;
- “suspected infringing goods” means goods which, or the packaging of which, bear a term identical with a registered geographical indication, but which do not originate from the place indicated by that registered geographical indication; 25
- “vehicle” has the same meaning as in section 2 of the Regulation of Imports and Exports Act; 30
- “vessel” has the same meaning as in section 2 of the Regulation of Imports and Exports Act.

Request for detention of suspected infringing goods

56.—(1) An interested party of goods identified by a registered geographical indication may give the Director-General a written notice —

- 5 (a) stating that he is —
- (i) a producer of goods identified by the registered geographical indication;
 - (ii) a trader of goods identified by the registered geographical indication; or
 - 10 (iii) an association of such producers or traders, or of such producers and traders, of goods identified by the registered geographical indication;
- (b) stating that goods which are suspected infringing goods in relation to the registered geographical indication are expected to be imported or exported;
- 15 (c) providing sufficient information —
- (i) to identify the goods;
 - (ii) to enable the Director-General to ascertain when and where the goods are expected to be imported or exported, as the case may be; and
 - 20 (iii) to satisfy the Director-General that the goods are suspected infringing goods; and
- (d) requesting the Director-General to detain the goods.
- (2) A notice given under subsection (1) shall be supported by such documents and information, and accompanied by such fee, as may be prescribed by rules made under this Act.
- (3) A notice under subsection (1) shall remain in force until the end of the period of 60 days commencing on the day on which the notice was given, unless it is revoked, before the end of that period, by a written notice given to the Director-General by the requestor.
- 30

(4) If —

- (a) a notice has been given under subsection (1) in respect of a registered geographical indication;
- (b) the notice has not lapsed or been revoked; and
- (c) a person imports or exports goods, not being goods in transit, that, in the opinion of an authorised officer, are suspected infringing goods in relation to the registered geographical indication in question,

5

an authorised officer may detain the goods.

(5) The Minister may make rules to provide for —

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- (a) the forms of notices under this section;
- (b) the times at which, and the manner in which, notices are to be given; and
- (c) the giving of information and evidence to the Director-General.

15

Security for liability or expense of detention, storage and disposal

57. An authorised officer may refuse to detain goods under section 56 unless the requestor —

- (a) deposits with the Director-General a sum of money that, in the opinion of the Director-General, is sufficient; or
- (b) gives security, to the satisfaction of the Director-General,

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for the reimbursement of the Government for any liability or expense it is likely to incur in relation to the detention, storage and disposal of the goods, and for the payment of such compensation as may be ordered by the Court under section 62(2) or 63(6).

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Secure storage of detained goods

58. Detained goods shall be taken, by the person in possession, custody or control of those goods immediately before the detention thereof, to such secure place as the Director-General directs.

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Notice of detention

5 **59.**—(1) As soon as is practicable after goods are detained under section 56, the Director-General shall give to the importer or exporter (as the case may be), and the requestor, either personally or by post, a written notice identifying the goods and stating that they have been detained.

(2) A notice under subsection (1) shall state that the goods will be released to the importer or exporter (as the case may be) unless —

10 (a) an infringement action in respect of the goods is instituted by the requestor within a specified period after the day specified in the notice; and

(b) the requestor gives written notice to the Director-General within that period stating that the infringement action has been instituted.

15 (3) The period to be specified for the purposes of subsection (2)(a) is the period prescribed for the purposes of that provision.

(4) The day specified for the purposes of subsection (2)(a) shall not be earlier than the day on which the notice is given.

20 (5) The requestor may, by written notice given to the Director-General before the end of the period specified in a notice for the purposes of subsection (2)(a) (the initial period), request that the period be extended.

(6) Subject to subsection (7), if —

(a) a request is made in accordance with subsection (5); and

25 (b) the Director-General is satisfied that it is reasonable that the request be granted,

the Director-General may extend the initial period by such period as is prescribed.

30 (7) A decision on a request made in accordance with subsection (5) must be made within 2 working days after the request is made, but such a decision cannot be made after the end of the initial period to which the request relates.

Inspection of detained goods

60.—(1) The Director-General may permit the requestor, or the importer or exporter (as the case may be), to inspect the detained goods.

(2) If the requestor gives the Director-General the requisite undertakings, the Director-General may permit the requestor to remove a sample of the detained goods from the custody of the Director-General for inspection by the requestor. 5

(3) If the importer or exporter (as the case may be) gives the Director-General the requisite undertakings, the Director-General may permit the importer or exporter (as the case may be) to remove a sample of the detained goods from the custody of the Director-General for inspection by the importer or exporter (as the case may be). 10

(4) The requisite undertakings are undertakings in writing that the person giving the undertaking will — 15

(a) return the sample to the Director-General at a specified time that is satisfactory to the Director-General; and

(b) take reasonable care to prevent damage to the sample.

(5) If the Director-General permits inspection of the detained goods, or the removal of a sample, by the requestor in accordance with this section, the Director-General is not liable to the importer or exporter (as the case may be) for any loss or damage suffered by the importer or exporter (as the case may be) arising out of — 20

(a) damage to any of the detained goods incurred during that inspection; or 25

(b) anything done by the requestor or any other person to, or in relation to, a sample removed from the custody of the Director-General or any use made by the requestor of such a sample.

Compulsory release of detained goods to importer or exporter

61.—(1) The Director-General shall release the detained goods to the importer or exporter (as the case may be) on the expiration of the 30

retention period for the goods if the requestor has not, before the expiration of that period —

- (a) instituted an infringement action in relation to the goods; and
- (b) given written notice to the Director-General stating that the infringement action has been instituted.

(2) If —

- (a) an infringement action has been instituted in relation to the detained goods; and
- (b) at the end of a period of 3 weeks commencing on the day on which the action was instituted, there is not in force an order of the Court in which the action was instituted preventing the release of the goods,

the Director-General shall release the goods to the importer or exporter (as the case may be).

(3) If the requestor gives written notice to the Director-General stating that he consents to the release of the detained goods, the Director-General shall release the goods to the importer or exporter (as the case may be).

(4) This section has effect subject to section 64.

Compensation for failure to take action

62.—(1) Where goods have been detained pursuant to a notice given under section 56(1) and the requestor concerned fails to take infringement action within the retention period for the goods, a person aggrieved by such detention may apply to the Court for an order of compensation against the requestor.

(2) Where the Court is satisfied that the plaintiff to an action under this section had suffered loss or damage as a result of the detention of the goods, the Court may order the requestor to pay compensation in such amount as the Court thinks fit to the plaintiff.

Infringement actions

63.—(1) The Court in which an infringement action is pending may, on the application of a person having a sufficient interest in the

subject-matter of the action, allow the person to be joined as a defendant to the action.

(2) An authorised officer is entitled to be heard on the hearing of an infringement action.

(3) In addition to any relief that may be granted apart from this section, the Court may — 5

(a) at any time, order that the detained goods be released to the importer or exporter (as the case may be) subject to such conditions, if any, as the Court thinks fit; or

(b) order that the detained goods not be released to the importer or exporter (as the case may be) before the end of a specified period. 10

(4) A Court may not make an order under subsection (3)(a) if it is satisfied that the Government or any statutory authority is required or permitted under any other law to retain control of the detained goods. 15

(5) The Director-General shall comply with an order made under subsection (3).

(6) If —

(a) the infringement action is dismissed or discontinued, or if the Court decides that section 4 does not apply to the importation or the exportation (as the case may be) of the detained goods; and 20

(b) a defendant to the infringement action satisfies the Court that he has suffered loss or damage as a result of the detention of the goods, 25

the Court may order the requestor to pay compensation in such amount as the Court thinks fit to that defendant.

Retention of control of detained goods

64. Notwithstanding section 61, in a case in which no order has been made under section 63(3) in relation to the detained goods, the Director-General is not obliged to release or dispose of the goods if the Government is required or permitted, under any other law, to retain control of the goods. 30

Disposal of detained goods

5 **65.** If the importer or exporter (as the case may be) does not take custody of the detained goods within such prescribed period after the notification by the Director-General of the release of the goods to the importer or exporter (as the case may be), the Director-General may dispose of the goods —

- (a) in the manner prescribed by rules made under this Act; or
- (b) if no manner of disposal is so prescribed, as the Director-General directs.

10 **Insufficient security**

66.—(1) If the reasonable expenses incurred by the Director-General in relation to any action taken by the Director-General under this Part, or taken in accordance with an order of the Court under this Part, exceed the amount deposited, or the amount of the security given, under section 57, the amount of the excess is a debt due to the Government.

(2) The debt created by subsection (1) is due by the requestor, or, if there are 2 or more requestors, by the requestors jointly and severally.

Detention and examination of suspected infringing goods

20 **67.—**(1) Notwithstanding section 56(4), any authorised officer may detain or examine any goods that are imported into, or that are to be exported from, Singapore, and that are not goods in transit, which he reasonably suspects are suspected infringing goods in relation to a registered geographical indication.

25 (2) As soon as practicable after goods are detained under subsection (1), the Director-General shall give —

- (a) to the importer or exporter (as the case may be) of the detained goods; and
- (b) to the registrant of the registered geographical indication,

30 a written notice identifying the goods, stating that they have been detained and setting out the matters referred to in subsection (5).

(3) The Director-General may permit the registrant of the registered geographical indication, or the importer or exporter (as the case may be), to inspect the detained goods.

(4) If the Director-General permits inspection of the detained goods in accordance with subsection (3), the Director-General is not liable to the importer or exporter (as the case may be) for any loss or damage suffered by the importer or exporter (as the case may be) arising out of damage to any of the detained goods incurred during that inspection.

(5) The detained goods shall be released to the importer or exporter (as the case may be) of the goods, unless, within the prescribed period, an interested party of the registered geographical indication —

(a) gives the Director-General a written notice referred to in section 56(1);

(b) submits the documents and information, and pays the fee, referred to in section 56(2) to the Director-General; and

(c) deposits with the Director-General the sum of money or gives the security referred to in section 57.

Division 2 — Powers of inspection

Powers of inspection in relation to vehicles

68.—(1) A senior authorised officer, or an authorised officer acting in accordance with the general or special directions of a senior authorised officer, may board any vehicle in Singapore and may inspect all parts of the vehicle for goods liable to be detained under section 56 or 67.

(2) For the more effective exercise of the powers conferred by this section, a senior authorised officer or an authorised officer may require the person in charge of a vehicle —

(a) to stop and not to proceed until so authorised; or

(b) to bring the vehicle to any examination station.

(3) It shall be presumed in any proceedings arising out of any thing done under this section, unless the contrary is proved, that any authorised officer, not being a senior authorised officer, by whom the

thing was done was acting in accordance with the general or special direction of a senior authorised officer.

5 (4) Any person who contravenes this section or who fails to comply with any lawful requisition or direction given or made thereunder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 12 months or to both.

Examination of packages, etc.

10 **69.**—(1) Any goods, package, box, chest or other article which is being or has recently been imported, or is being exported, and in regard to which a reasonable suspicion exists that it is or that it contains goods liable to be detained under section 56 or 67 may be —

15 (a) examined and inspected by an authorised officer or detained until any person in charge thereof has opened it for examination and inspection;

(b) subjected to such tests or analysis as the authorised officer thinks fit; or

(c) marked, locked, sealed or otherwise secured by an authorised officer pending examination and inspection.

20 (2) An authorised officer may require the person in charge of any package, box, chest or other article referred to in subsection (1) to open the package, box, chest or article (as the case may be) for examination and inspection.

25 (3) If the person in charge of the package, box, chest or other article referred to in subsection (1) refuses, or fails after being given reasonable time and opportunity, to comply with the requirement under subsection (2), a senior authorised officer, or an authorised officer acting in accordance with an order of a senior authorised officer, may forcibly open the package, box, chest or article (as the case may be) to facilitate the examination and inspection thereof.

30 (4) Any person, other than an authorised officer, who removes, opens, breaks or tampers with any mark, lock, seal or other means of securing any goods, package, box, chest or other article referred to in subsection (1)(c) shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 6 months or to both.

Power to remove packages and goods to examination station

70.—(1) For the more convenient exercise of the powers conferred by section 69, an authorised officer may remove any package, box, chest or other article or any goods to an examination station or may require it or them to be so removed by the owner thereof or his agent or any person having the custody, charge or control thereof. 5

(2) Any person who fails to comply with any such requirement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000. 10

(3) Upon the failure by a person to comply with such a requirement, an authorised officer may remove the package, box, chest, article or goods (as the case may be) in the manner provided by subsection (1), and all the expenses of such removal (as certified by a senior authorised officer) shall be recoverable as a fine from that person or from the owner of the package, box, chest, article or goods (as the case may be). 15

Inspection of baggage and belongings on person

71.—(1) Any person landing or being about to land or having recently landed from any vessel or aircraft, or leaving any vessel or aircraft in Singapore whether for the purpose of landing or otherwise, or entering or having recently entered Singapore by land, sea or air, shall — 20

(a) on demand by an authorised officer, either permit his goods and baggage to be inspected by the officer for any goods liable to be detained under section 56 or 67 or, together with the goods and baggage, accompany the officer to an examination station, and there permit his goods and baggage to be inspected in the presence and under the supervision of a senior authorised officer for any goods liable to be detained under section 56 or 67; 25 30

(b) on demand by a senior authorised officer, permit his goods and baggage to be inspected by the officer, or in the presence

and under the supervision of the officer, for any goods liable to be detained under section 56 or 67; or

- (c) on demand by a senior authorised officer, remove belongings kept in or under the clothing of the person, for inspection for any goods liable to be detained under section 56 or 67.

(2) The goods and baggage of any person who requests to be present when they are inspected shall not be inspected except in his presence, unless he fails to be present after being given reasonable facility for being present.

(3) Any person who refuses or fails, without reasonable excuse, to comply with any lawful demand made under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 3 months or to both.

Powers of authorised officers to enter certain premises

72.—(1) For the purpose of exercising the powers conferred by sections 68 to 71, an authorised officer may, without warrant, enter upon —

- (a) any islet, landing place, wharf, dock, railway or quay;
- (b) any premises of a provider of port services or facilities licensed or exempted under the Maritime and Port Authority of Singapore Act (Cap. 170A); or
- (c) any premises of any airport operated under a licence or exemption under the Civil Aviation Authority of Singapore Act 2009 (Act 17 of 2009).

(2) In this section, “railway” has the same meaning as in the Railways Act (Cap. 263).

Obstruction

73. Any person who —

- (a) refuses any authorised officer or senior authorised officer access to any vehicle or place which the officer is entitled to under this Part; or

- (b) obstructs or hinders any authorised officer or senior authorised officer in the execution of any power conferred upon that officer by this Part,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both.

5

Protection from personal liability

74. No liability shall lie personally against the Director-General or any officer or employee of the Government acting under the direction of the Director-General for anything done or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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- (a) the exercise or purported exercise of any power under this Part;
- (b) the performance or purported performance of any function or the discharge or purported discharge of any duty under this Part; or
- (c) the compliance or purported compliance with this Part.

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PART VII

MISCELLANEOUS AND GENERAL PROVISIONS

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Registration to be prima facie evidence

75. In all legal proceedings relating to a registered geographical indication or any right thereunder (including proceedings for rectification of the register) —

- (a) the register shall be prima facie evidence of anything contained therein; and
- (b) the registration of a registered geographical indication shall be prima facie evidence that the grounds referred to in section 41 are absent.

25

Certificate of validity of contested registration

76.—(1) If in proceedings before the Court the validity of the registration of a geographical indication is contested, and it is found by the Court that the geographical indication is validly registered, the Court may give a certificate to that effect.

(2) If the Court gives such a certificate and in subsequent proceedings —

(a) the validity of the registration is again questioned; and

(b) the registrant obtains a final order or judgment in his favour, he is entitled to be indemnified as to his costs as between solicitor and client in the subsequent proceedings unless the Court directs otherwise.

(3) Subsection (2) does not extend to the costs of an appeal in the subsequent proceedings.

Certificate of Registrar

77. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is authorised to make or do under this Act, shall be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Costs of proceedings before Court

78. In all proceedings before the Court under this Act, the Court may award to any party (including the Registrar) such costs as it may consider reasonable, but the Registrar shall not be ordered to pay the costs of any of the other parties.

Burden of proving use of registered geographical indication

79. If in any proceedings commenced under section 52(1)(b) a question arises as to the use to which a registered geographical indication has been put, it is for the registrant to show what use has been made of it.

Offences by bodies corporate, etc.

80.—(1) Where an offence under this Act committed by a body corporate is proved —

(a) to have been committed with the consent or connivance of an officer; or 5

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 10

(3) Where an offence under this Act committed by a partnership is proved —

(a) to have been committed with the consent or connivance of a partner; or 15

(b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved — 20

(a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such an officer or member, 25

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” includes a limited liability partnership as defined in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

5 “officer” —

(a) in relation to a body corporate, means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

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(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of such a committee and includes any person purporting to act in any such capacity;

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“partner” includes a person purporting to act as a partner.

(6) The Minister may make rules to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a country or territory outside Singapore.

20

Composition of offences

25 **81.**—(1) The Registrar or any person authorised by the Registrar in writing may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

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(a) one half of the amount of the maximum fine that is prescribed for the offence;

30

(b) \$2,000.

(2) On payment of such sum of money, no further proceedings shall be taken against such person in respect of the offence.

(3) The Office may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded.

(4) All sums collected under this section shall be paid into the Consolidated Fund. 5

Jurisdiction of courts

82. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court or a Magistrate's Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence. 10

Minister may designate other qualifying countries

83. The Minister may, by notification in the *Gazette*, designate any country or territory as a qualifying country for the purposes of this Act. 15

General power to make rules

84.—(1) The Minister may make rules —

(a) for any purpose for which rules are authorised or required to be made under this Act; 20

(b) for prescribing matters authorised or required by this Act to be prescribed;

(c) for prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act; and

(d) for prescribing matters necessary or convenient to be prescribed for the conduct of any proceedings or other matter before the Registrar. 25

(2) Without prejudice to the generality of subsection (1), the rules may make provision —

(a) as to the practice and procedure of any proceedings or other matter before the Registrar; 30

- (b) as to the manner of filing of applications or other documents;
- (c) requiring persons to make such statutory declarations as may be prescribed in support of any application, notice or request;
- 5 (d) requiring and regulating the translation of documents and the filing and authentication of any translation;
- (e) as to the service of documents;
- (f) authorising the rectification of irregularities of procedure;
- (g) prescribing time limits for anything required to be done in connection with any proceedings under this Act;
- 10 (h) for the extension of any time limit which has been prescribed, or which the Registrar has specified, and which has not expired;
- (i) as to the giving of evidence in proceedings before the Registrar under this Act by affidavit or statutory declaration;
- 15 and
- (j) for the processing of any application which is treated as abandoned under section 43(5).

Rules of Court

20 **85.** The Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act (Cap. 322) may make rules with respect to —

- (a) proceedings and the practice and procedure of the Court in respect of any matter under this Act; and
- (b) the fees and costs of such proceedings.

25 **Rights under other laws unaffected**

86. Nothing in this Act shall affect the rights of a person under the Trade Marks Act (Cap. 332) or the law relating to passing off.

Repeal

87. The Geographical Indications Act (Cap. 117B) is repealed.

Savings and transitional provisions

88.—(1) Notwithstanding section 87, on and after the date of commencement of that section, the repealed Act shall continue to apply to —

(a) every use of a geographical indication that takes place before that date; and 5

(b) every action brought under section 3 of the repealed Act in force immediately before that date.

(2) Sections 4(6) to (9), 15 and 16 shall not apply to any use of a registered geographical indication that takes place before the date of commencement of those provisions. 10

(3) Part VI shall not apply to any goods that are imported to or exported from Singapore before the date of commencement of that Part.

(4) Sections 75 and 76 shall not apply to any legal proceedings that are commenced before the date of commencement of those sections. 15

(5) The Minister may, in relation to any provision of this Act, for a period of 2 years after the date of commencement of that provision, prescribe by rules published in the *Gazette* such provisions of a savings or transitional nature consequent on the enactment of that provision as he considers necessary or expedient. 20

Related amendments to Intellectual Property Office of Singapore Act

89. The Intellectual Property Office of Singapore Act (Cap. 140, 2002 Ed.) is amended — 25

(a) by deleting the word “or” at the end of paragraph (b) of the definition of “intellectual property agent” in section 2;

(b) by inserting the word “or” at the end of paragraph (c) of the definition of “intellectual property agent” in section 2, and by inserting immediately thereafter the following paragraph: 30

“(d) in connection with the registration of a geographical indication or any procedure

relating to a registered geographical indication under the Geographical Indications Act 2014;”;

(c) by deleting the words “and designs” in section 7(1)(a) and substituting the words “, designs and geographical indications”;

(d) by inserting, immediately after the words “(Cap. 266),” in section 34(3), the words “the Registrar of Geographical Indications referred to in section 17 of the Geographical Indications Act 2014,”; and

(e) by inserting, immediately after paragraph 3 of the Third Schedule, the following paragraph:

“4. Sections 25, 29 and 30 of the Geographical Indications Act 2014.”.

Related amendments to Trade Marks Act

90. The Trade Marks Act (Cap. 332, 2005 Ed.) is amended —

(a) by deleting the words “Geographical Indications Act (Cap. 117B)” in the definition of “geographical indication” in section 2(1) and substituting the words “Geographical Indications Act 2014”;

(b) by deleting the words “Geographical Indications Act (Cap. 117B)” in section 4(2) and substituting the words “Geographical Indications Act 2014”; and

(c) by inserting, immediately after subsection (10) of section 7, the following subsections:

“(10A) Notwithstanding subsection (2), a trade mark shall not be registered if —

(a) it contains or consists of a geographical indication which is registered, or in respect of which an application for registration has been made, under the Geographical Indications Act 2014 before the date of the application for registration of the trade mark; and

(b) the goods for which the trade mark is sought to be registered —

(i) are identical or similar to the goods for which the geographical indication is registered or for which registration of the geographical indication is sought; and

5

(ii) do not originate in the place indicated by the geographical indication.

(10B) Subsection (10A) shall apply whether or not the trade mark has, or is accompanied by, an indication of the true geographical origin of the goods, or an expression such as “kind”, “type”, “style”, “imitation” or the like, and irrespective of the language the geographical indication is expressed in that trade mark.

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(10C) A trade mark shall not be refused registration by virtue of subsection (10A) if the application for its registration had been made in good faith, or if it had been used continuously in good faith in the course of trade by the applicant for its registration or his predecessor in title, either —

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(a) before the date of the application for registration of the geographical indication in question in Singapore; or

(b) before the geographical indication in question became protected in its country of origin.”.

25

THE SCHEDULE

Sections 4(6), 32(2)(b), 40(1), (2)
and (3) and 41(1)(b)

CATEGORIES OF GOODS UNDER WHICH GEOGRAPHICAL INDICATION MAY BE REGISTERED

- 5
1. Wines
 2. Spirits
 3. Beers
 4. Cheese
 - 10 5. Meat and meat products
 6. Seafood
 7. Edible oils
 8. Non-edible oils
 9. Fruits
 - 15 10. Vegetables
 11. Spices and condiments
 12. Confectionery and baked goods
 13. Flowers and parts of flowers
 14. Natural gum

EXPLANATORY STATEMENT

This Bill seeks to repeal and re-enact with amendments the Geographical Indications Act (Cap. 117B) (the repealed Act) —

- (a) to provide statutory protection for producers and traders of goods identified by geographical indications, at standards not lower than those set out in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
- (b) to introduce certain other measures relating to geographical indications which Singapore will be required to implement under the proposed Free Trade Agreement between the European Union and the Republic of Singapore; and

(c) to make related amendments to the Intellectual Property Office of Singapore Act (Cap. 140) and the Trade Marks Act (Cap. 332).

PART I PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 provides that clauses 4(6) to (9), 75, 76 and 79, Division 2 of Part III, Division 2 of Part V, and Part VI will only apply to registered geographical indications, and that all other provisions of the Bill will apply to all geographical indications, whether or not registered.

PART II PROTECTION FOR GEOGRAPHICAL INDICATIONS

Clause 4(1) to (4) re-enacts section 3 of the repealed Act to enable an interested party (defined in clause 2 as a producer or trader of goods identified by a geographical indication, or an association of such persons) to bring an action in respect of certain uses of a geographical indication. Clause 4(5) refines the ambit of the protection conferred by clause 4(2)(c) and (d). Clause 4(6) to (9) provides an interested party with a new right of action in respect of certain non-misleading uses of a registered geographical indication identifying an agricultural product or foodstuff belonging to a category of goods listed in the Schedule.

Clause 5 re-enacts section 4 of the repealed Act to provide for the remedies that may be granted by the High Court (the Court) in an action under clause 4.

Clause 6 provides that the Court may, in addition to any relief granted under clause 5, order the delivery up of certain goods, material or articles to the plaintiff.

Clause 7 provides for the disposal of the items delivered up pursuant to an order under clause 6.

Clause 8 provides for a remedy for a person aggrieved by a groundless threat of proceedings under clause 4.

Clause 9 empowers the Court to make a declaration that clause 4 does not apply to an act or a proposed act.

Clause 10 re-enacts (with modifications) section 5 of the repealed Act, to extend the protection conferred by clause 4 to an interested party of any prescribed goods identified by homonymous geographical indications (that is to say, geographical indications which have, in part or in whole, the same spelling, or which sound the same, but are for goods with different geographical origins).

PART III
EXCEPTIONS

Clauses 11 to 14 re-enact (with modifications) sections 6 to 9 of the repealed Act to provide that the protection conferred by clause 4 is subject to the following exceptions:

- (a) no relief may be claimed in relation to a geographical indication which —
 - (i) is contrary to public policy or morality (clause 11(a));
 - (ii) is not or has ceased to be protected in its country or territory of origin (clause 11(b)); or
 - (iii) is not registered, and has fallen into disuse in its country or territory of origin (clause 11(e));
- (b) a person may use a geographical indication in relation to any goods or services, if the geographical indication is identical with the common name of those goods or services in Singapore (clause 11(c));
- (c) a person may use a geographical indication with respect to any products of the vine, if the geographical indication is identical with the customary name of a grape variety existing in Singapore as of 1st January 1995 (clause 11(d));
- (d) a person with any of certain types of relationships to Singapore may continue to use a geographical indication identifying a wine or spirit in relation to any goods or services, if he has (or he together with his predecessor in title have) continuously used in Singapore that geographical indication in relation to those goods or services or related goods or services either for at least 10 years before 15th April 1994, or in good faith preceding that date (clause 12(1));
- (e) a person may continue to use a trade mark identical or similar to a geographical indication if the application for the registration of the trade mark was made in good faith, the trade mark was registered in good faith, or the trade mark was continuously used in good faith in certain circumstances, before 15th January 1999, or before the geographical indication in question is protected in its country or territory of origin (clause 12(2));
- (f) a person may use his name or that of his predecessor in business, except if used in a manner as to mislead the public (clause 13); and
- (g) an action in respect of the use of a trade mark containing or consisting of a geographical indication must be brought no later than 5 years after the date on which the use has become generally known in Singapore or the

date on which the trade mark was actually registered (if the trade mark has been published by then), whichever is the earlier (clause 14).

Clauses 15 and 16 provide that the protection conferred by clause 4 is subject to the following further exceptions applicable only to registered geographical indications:

- (a) a person may use in the course of trade any name contained in a registered geographical indication in relation to any goods or services, if the name is identical with the term customarily used in common language to describe those goods or services in Singapore (clause 15(a));
- (b) a person may use in the course of trade a registered geographical indication, or any term contained in a registered geographical indication, that is the name of a plant variety or an animal breed (clause 15(b));
- (c) a person with certain types of relationships to Singapore may continue to use a registered geographical indication (identifying any goods other than a wine or a spirit) in relation to any goods or services, if he has (or he together with his predecessor in title have) continuously used in Singapore that registered geographical indication in relation to those goods or services or related goods or services either for at least 10 years before 1st January 2004, or in good faith preceding that date (clause 16(1));
- (d) a person may continue to use a trade mark identical or similar to a registered geographical indication, if —
 - (i) the trade mark is a registered trade mark or an international trade mark (Singapore); and
 - (ii) the application for the registration of the trade mark was made in good faith, or the trade mark was registered in good faith, before the date of the application for registration of the geographical indication in Singapore (clause 16(2)(a));
- (e) a person may continue to use a trade mark identical or similar to a registered geographical indication, if the trade mark was continuously used in good faith in certain circumstances, before the date of the application for registration of the geographical indication in Singapore (clause 16(2)(b)); and
- (f) a person may continue to use a trade mark identical or similar to a registered geographical indication, if —
 - (i) the trade mark is, before the date of application for registration of the geographical indication in Singapore, a well known trade mark in Singapore; and
 - (ii) the application of clause 4 to the use of that trade mark is liable to mislead consumers (clause 16(3)).

PART IV
REGISTRY OF GEOGRAPHICAL INDICATIONS
AND ADMINISTRATION

Clause 17 establishes the positions of the Registrar of Geographical Indications (the Registrar), the Deputy Registrars of Geographical Indications and the Assistant Registrars of Geographical Indications.

Clause 18 empowers the Registrar to delegate his powers and functions.

Clause 19 establishes the Registry of Geographical Indications (the Registry).

Clause 20 provides for there to be a seal of the Registry.

Clause 21 provides for the maintenance of the register of geographical indications (the register) and for its contents.

Clause 22 provides for the rectification or correction of the register.

Clause 23 relates to inspection of the register and the right to obtain a copy or an extract from it.

Clause 24 provides for it to be an offence to do certain acts leading to the falsification of an entry in the register.

Clause 25 provides for the offence of falsely representing a geographical indication as registered, or making a false representation as to the goods for which a geographical indication is registered.

Clauses 26, 27 and 28 provide for certain powers of the Registrar, including the power to award costs and to require a person to give security for costs, and the power to summon witnesses, receive evidence, and require the production of documents and articles.

Clause 29 provides for the offence of disobedience to a summons to appear as a witness before the Registrar, or failure to produce a document or an article when required by the Registrar to do so.

Clause 30 relates to the offence of refusal to give evidence to the Registrar.

Clause 31 excludes any liability of the Intellectual Property Office of Singapore and the Registrar in respect of an official act.

Clause 32 specifies the decisions of the Registrar which may be subject to appeal to the Court.

Clause 33 empowers the Minister to make rules for the publication by the Registrar of forms relating to the registration of a geographical indication or for proceedings before the Registrar, and of practice directions.

Clause 34 provides for the fees to be paid for any application, registration or other matter under the Bill.

Clause 35 relates to the hours of business of the Registry and excluded days, and the effect of doing any business under the Bill after the hours of business of the Registry or on an excluded day.

Clause 36 provides for the publication by the Registrar of the particulars of any application for registration of a geographical indication and other information.

Clause 37 enables the authorisation of geographical indication agents to do certain acts.

PART V

REGISTRATION OF GEOGRAPHICAL INDICATIONS

Clause 38 sets out the persons who are entitled to file an application for registration of a geographical indication.

Clause 39 covers procedural matters relating to an application for registration of a geographical indication.

Clause 40 provides that an application for registration of a geographical indication may only be sought in respect of goods falling within a category of goods set out in the Schedule.

Clause 41 sets out the grounds on which registration may be refused.

Clause 41(1) prohibits the registration of the following:

- (a) an indication which is not a geographical indication;
- (b) a geographical indication which identifies goods that do not fall within any category of goods set out in the Schedule;
- (c) a geographical indication which is contrary to public policy or morality;
- (d) a geographical indication which is not or has ceased to be protected in its country or territory of origin;
- (e) a geographical indication which is identical to the common name of any goods in Singapore in relation to which registration of the indication is sought;
- (f) a geographical indication which contains the name of a plant variety or an animal breed and is likely to mislead consumers as to the true origin of the product.

Clause 41(2) provides that for the purposes of clause 41(1)(e), marketing material in Singapore which uses a geographical indication is relevant evidence that a geographical indication is not the common name of goods in Singapore, if the marketing material suggests in a misleading manner that the goods to which the marketing material relate originate in the geographical origin of the geographical indication, when those goods originate elsewhere.

Clause 41(3) sets out grounds for refusal of registration which concern a conflict between the geographical indication and an earlier geographical indication.

Clause 41(4) and (6) sets out grounds for refusal of registration which concern a conflict between the geographical indication for which registration is sought and a registered trade mark, a trade mark continuously used in good faith in certain circumstances, or a well known trade mark in Singapore, each being earlier than the date of application for registration of the geographical indication. The Registrar may register a geographical indication referred to in clause 41(4) or (6) if the proprietor of the trade mark concerned consents to the registration, or fails to give notice of his opposition to the registration.

Clause 42 relates to the registration of homonymous geographical indications.

Clause 43 requires the Registrar to examine each application for registration to determine if it satisfies the requirements of the Bill.

Clause 44 provides for the appointment of technical advisors to provide opinions to the Registrar.

Clause 45 provides for an application for registration to be published when accepted, and requires any notice of opposition to registration to be filed within the prescribed time and in the prescribed manner.

Clause 46 provides that after the date of publication of an application for registration, any person may request that a qualification, of the rights conferred in respect of a registered geographical indication, be entered in the register in relation to any name contained in the geographical indication, or in relation to any term which may be a possible translation of the geographical indication. The request may only be made on the ground that one or more of the exceptions under Part III applies, or that the term is not a translation of the geographical indication.

Clause 47 provides for the withdrawal or amendment of an application for registration. An application may not be amended except for limited purposes.

Clause 48 provides for the registration of a geographical indication. If no notice of opposition is given, or if the opposition proceedings are withdrawn or decided in the applicant's favour, the geographical indication is to be registered. Registration takes effect from the date the Registrar registers the geographical indication. Where a qualification request in respect of the geographical indication was made under clause 46 and is still pending at the date of the registration, an interested party is not allowed to bring an action under clause 4 against the person who made the qualification request for an act that is the subject of that request, until the request is determined.

Clause 49 provides that an acceptance of an application for registration may be revoked in certain situations. Once revoked, the application is taken to have never been accepted and must be re-examined.

Clause 50 provides that a registration is for a term of 10 years and may be renewed for periods of 10 years.

Clause 51 covers procedural matters relating to a renewal of registration. Any person may apply for renewal of the registration.

Clause 52 deals with the cancellation of the registration of a geographical indication. The registration may be cancelled upon the registrant's application (no ground necessary), or upon any other person's application on any of certain specified grounds. Cancellation does not affect any rights in respect of the geographical indication that are not conferred by registration.

Clause 53 deals with the transfer of the registration of a registered geographical indication from the registrant to another person.

Clause 54 deals with the amendment of a document other than an application for registration of a geographical indication.

PART VI

ASSISTANCE BY BORDER AUTHORITIES

Part VI (consisting of clauses 55 to 74) relates to measures involving assistance by border authorities. It outlines the circumstances under which customs and other authorities may detain suspected infringing goods being imported into or exported from Singapore. For this purpose, goods are suspected infringing goods if the goods or their packaging bear a term identical with a registered geographical indication, but do not originate from the place indicated by that registered geographical indication. The provisions in Part VI are generally based on the provisions in Part X of the Trade Marks Act, with modifications to reflect the wholly civil nature of an infringing use of a registered geographical indication.

PART VII

MISCELLANEOUS AND GENERAL PROVISIONS

Clause 75 provides that the registration of a geographical indication is prima facie evidence that the grounds for refusal of registration in clause 41 are absent.

Clause 76 empowers the Court, in a proceeding where the registration of a geographical indication is challenged, to issue a certificate of validity in respect of the registration.

Clause 77 provides that a certificate of the Registrar regarding certain matters shall be prima facie evidence of those matters.

Clause 78 relates to costs of proceedings before the Court.

Clause 79 provides that the registrant has the burden to prove use of a registered geographical indication where this is an issue in any proceedings for the

cancellation of the registration of the geographical indication under clause 52(1)(b).

Clause 80 makes certain officers of a body corporate, a partnership or an unincorporated association liable for offences committed by the body corporate, partnership or unincorporated association, respectively.

Clause 81 provides for the composition of offences under the Bill.

Clause 82 confers jurisdiction on the District Court and the Magistrate's Court to try any offence under the Bill and to impose the full penalty or punishment in respect of that offence.

Clause 83 empowers the Minister to designate a qualifying country for the purposes of the Bill.

Clause 84 empowers the Minister to make rules for the purposes for which rules are required under the Bill, and to prescribe matters necessary or convenient for giving effect to the Bill.

Clause 85 empowers the Rules Committee constituted under section 80(3) of the Supreme Court of Judicature Act (Cap. 322) to make rules with respect to proceedings and the practice and procedure of the Court for any matter under the Bill, and the fees and costs of such proceedings.

Clause 86 provides that the Bill does not affect a person's rights under the Trade Marks Act or the law relating to passing off.

Clause 87 repeals the Geographical Indications Act (Cap. 117B, 1999 Ed.).

Clause 88 contains savings and transitional provisions, and enables the Minister, for a limited time, to prescribe provisions of a savings or transitional nature consequent on the enactment of any provision of the Bill.

Clause 89 makes related amendments to the Intellectual Property Office of Singapore Act.

Clause 90 makes related amendments to the Trade Marks Act.

The Schedule sets out the list of categories of goods under which geographical indications may be registered under the Bill.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
