



REPUBLIC OF SINGAPORE

**GOVERNMENT GAZETTE**

**BILLS SUPPLEMENT**

*Published by Authority*

---

---

NO. 24]

THURSDAY, MAY 17

[2018

---

---

First published in the *Government Gazette*, Electronic Edition, on 17 May 2018 at 5 pm.

**Notification No. B 24** — The Intellectual Property (Border Enforcement) Bill is published for general information. It was introduced in Parliament on 17 May 2018.



# Intellectual Property (Border Enforcement) Bill

---

**Bill No. 24/2018.**

*Read the first time on 17 May 2018.*

A BILL

*i n t i t u l e d*

An Act to amend the Copyright Act (Chapter 63 of the 2006 Revised Edition), the Geographical Indications Act 2014 (Act 19 of 2014), the Registered Designs Act (Chapter 266 of the 2005 Revised Edition) and the Trade Marks Act (Chapter 332 of the 2005 Revised Edition), to enhance border enforcement measures for intellectual property rights, and to make related amendments to certain other Acts.

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

## Short title and commencement

1. This Act is the Intellectual Property (Border Enforcement) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5

## PART 1

### AMENDMENTS TO COPYRIGHT ACT

#### *Division 1 — Phase 1 Amendments*

#### **New section 140AA**

10

2. The Copyright Act (Cap. 63) is amended by inserting, immediately after section 140A, the following section:

#### **“Delegation of Director-General’s powers**

15

**140AA.** The Director-General may delegate to a senior officer of customs (within the meaning of section 3(1) of the Customs Act) any of the powers of the Director-General under this Division (except the power of delegation conferred by this section), subject to such conditions or restrictions as the Director-General may determine.”.

#### **Amendment of section 140C**

3. Section 140C of the Copyright Act is amended —

20

(a) by deleting the words “or expense it is likely to incur as a result of the seizure of the copies” in paragraph (a) and substituting the words “or reasonable expense it is likely to incur in relation to the seizure, storage and disposal of the copies,”; and

25

(b) by inserting, immediately after the word “seizure” in the section heading, the words “, storage and disposal”.

#### **New sections 140EA and 140EB**

4. The Copyright Act is amended by inserting, immediately after section 140E, the following sections:

**“Persons bound to give information or produce documents**

**140EA.**—(1) At any time after copies of copyright material have been seized under section 140B(7), an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2), may require that person to provide to the officer that information or document at a time and place specified by the officer. 5

(2) The purposes mentioned in subsection (1) are —

(a) to enable the Director-General to satisfy a request under section 140EB (whether or not such a request has actually been received); 10

(b) to enable any action to be taken under this Division in relation to future shipments of goods; and

(c) for a statistical or research purpose. 15

(3) A person who —

(a) without reasonable excuse, fails to comply with a requirement under subsection (1); or

(b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular, 20

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. 25

(4) A person is not excused from providing any information or document in compliance with a requirement under subsection (1) on the ground that it might tend to incriminate the person.

(5) Where the person claims, before providing any information or document pursuant to a requirement under subsection (1), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (3). 30

(6) No information or document that is provided pursuant to a requirement under subsection (1) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2).

5 (7) A person who contravenes subsection (6) 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.

### **Information on import**

10 **140EB.**—(1) After copies of copyright material have been seized under section 140B(7), the Director-General may, upon the request of the objector, and if the Director-General is satisfied that the information is necessary to enable the objector to institute an action for infringement of copyright, give the  
15 objector the name and contact details of any person connected with the import of the seized copies.

(2) Subsection (1) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person to whom the Director-General has delegated the power under that  
20 subsection.”.

### **Amendment of section 140G**

5. Section 140G of the Copyright Act is amended —

(a) by inserting, immediately after the words “by written notice” in subsection (1), the words “and the giving of the prescribed written undertakings”; and  
25

(b) by deleting the words “gives such a notice” in subsection (3) and substituting the words “satisfies the requirements of subsection (1)”.

### **Amendment of section 140K**

#### **6. Section 140K of the Copyright Act is amended —**

- (a) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) If —

(a) the Director-General gives to the importer a written notice of the release of seized copies; and

(b) the importer fails to take custody of the seized copies within the period specified in the notice,

the Director-General may dispose of the copies —

(i) in the manner prescribed by regulations; or

(ii) if no manner of disposal is so prescribed, as the Director-General directs.”; and

- (b) by deleting the words “ordered to be forfeited” in the section heading.

### **Amendment of section 140LA**

#### **7. Section 140LA of the Copyright Act is amended —**

- (a) by inserting, immediately after subsection (2), the following subsections:

“(2A) At any time after copies of copyright material have been detained under subsection (1)(a), an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2B), may require that person to provide to the officer that information or document at a time and place specified by the officer.

(2B) The purposes mentioned in subsection (2A) are —

5           (a) to enable the Director-General to satisfy a request under subsection (2H) (whether or not such a request has actually been received);

          (b) to enable any action to be taken under this Division in relation to future shipments of goods; and

10           (c) for a statistical or research purpose.

(2C) A person who —

          (a) without reasonable excuse, fails to comply with a requirement under subsection (2A); or

15           (b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

20 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.

25 (2D) A person is not excused from providing any information or document in compliance with a requirement under subsection (2A) on the ground that it might tend to incriminate the person.

30 (2E) Where the person claims, before providing any information or document pursuant to a requirement under subsection (2A), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (2C).



(2F) No information or document that is provided pursuant to a requirement under subsection (2A) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2B).

5

(2G) A person who contravenes subsection (2F) 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.

10

(2H) The Director-General may, upon the request of the owner of the copyright in the copyright material, and if the Director-General is satisfied that the information is necessary to enable the owner to institute an action for infringement of the copyright, give the owner the name and contact details of any person connected with the import or proposed export (as the case may be) of the detained copies.

15

(2I) However, no disclosure under subsection (2H) is permitted unless the owner of the copyright in the copyright material to whom disclosure is to be made —

20

(a) in the case of copies that are imported into Singapore and that are not goods in transit, has carried out the acts in subsection (3)(a)(i), (ii) and (iii); or

25

(b) in the case of copies that are to be exported from Singapore or copies that are goods in transit and consigned to a person with a commercial or physical presence in Singapore —

30

(i) satisfies the Director-General that copyright subsists in the copyright material and that he is the owner of the copyright; and

35

(ii) has carried out the act mentioned in subsection (3)(b)(iii).

(2J) Subsection (2H) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person to whom the Director-General has delegated the power under that subsection.”; and

(b) by deleting the words “or expense it has and is likely to further incur as a result of the detention of the copies” in subsection (3)(b)(iii)(A) and substituting the words “or reasonable expense it has and is likely to further incur in relation to the detention, storage and disposal of the copies”.

*Division 2 — Phase 2 Amendments*

**New Subdivision (1) heading to Division 6 of Part V**

8. The Copyright Act is amended by inserting, immediately above section 140A, the following Subdivision heading:

*“Subdivision (1) — Preliminary provisions”.*

**Amendment of section 140A**

9. Section 140A of the Copyright Act is amended —

(a) by deleting the definition of “objector”; and

(b) by inserting, immediately after the definition of “pilot of an aircraft”, the following definitions:

“requestor”, in relation to particular seized copies, means the person who gave the written notice under section 140B(1) as a result of the giving of which the copies were seized;

“retention period”, in relation to particular seized copies, means —

(a) the period specified in the notice given under section 140E(2) in respect of those copies; or

- (b) if that period has been extended under section 140E(6), that period as so extended;”.

### **New section 140AB**

**10.** The Copyright Act is amended by inserting, immediately after section 140AA, as inserted by section 2, the following section: 5

#### **“Fees**

**140AB.**—(1) The Minister charged with the responsibility for customs duties may make regulations to prescribe the fees payable to the Director-General in connection with the administration of this Division and Division 7. 10

(2) Without limiting subsection (1), regulations may be made to prescribe fees for the following purposes:

- (a) for the escort of a conveyance conveying copies of copyright material seized under section 140B(7) or 140LA; 15
- (b) for the attendance of an authorised officer or a senior authorised officer in connection with the inspection or destruction of such seized copies;
- (c) for the attendance of an authorised officer or a senior authorised officer in connection with any other act or service under this Division or Division 7.”. 20

### **New Subdivision (2) heading to Division 6 of Part V**

**11.** The Copyright Act is amended by inserting, immediately above section 140B, the following Subdivision heading: 25

*“Subdivision (2) — Seizure of copies on request”.*

### **Amendment of section 140B**

**12.** Section 140B of the Copyright Act is amended —

- (a) by inserting, immediately after the word “imported” in subsection (1)(b) and (c)(ii), the words “or exported”; 30

(b) by deleting paragraph (d) of subsection (1) and substituting the following paragraph:

“(d) requesting the Director-General to seize the copies.”;

5 (c) by deleting subsections (2) and (3) and substituting the following subsections:

“(2) A notice under subsection (1) must be —

10 (a) in the form determined by the Director-General, and supported by such documents and information as the Director-General may require; and

(b) accompanied by the fee prescribed under section 140AB.

15 (3) Subject to subsection (4), this section applies to copies of copyright material —

(a) made wholly or partly outside Singapore the making of which was carried out without the consent of the owner of the copyright; or

20 (b) made in Singapore the making of which constituted an infringement of copyright.”;

(d) by deleting the words “the end of the period of 60 days commencing on” in subsection (5)(a) and substituting the words “the 59th day after”;

25 (e) by inserting, immediately after the word “material” in subsection (7)(a), the words “that complies with subsection (2)”;

(f) by deleting paragraph (c) of subsection (7) and substituting the following paragraph:

30 “(c) a person imports or proposes to export copies of the copyright material to which this section applies,”;

(g) by deleting subsection (8) and substituting the following subsection:

“(8) The Minister may make regulations that are necessary or convenient to be prescribed for carrying out or giving effect to this Subdivision, and in particular to provide —

(a) for the times at which, and the manner in which, notices are to be given;

(b) for the giving of information and evidence to the Director-General; and

(c) that an authorised officer may refuse to seize copies of any copyright material because of non-compliance with any direction of the Director-General or any such regulation.”; and

(h) by inserting, immediately after the word “importation” in the section heading, the words “or exportation”.

### **Amendment of section 140C**

**13.** Section 140C of the Copyright Act, as amended by section 3, is amended by deleting the word “objector” in paragraphs (a) and (b) and substituting in each case the word “requestor”.

### **Repeal and re-enactment of section 140D**

**14.** Section 140D of the Copyright Act is repealed and the following section substituted therefor:

#### **“Secure storage of seized copies**

**140D.** At the Director-General’s direction, seized copies must be taken to a secure place the Director-General directs, either by the person in possession, custody or control of those copies immediately before the seizure or the requestor, whoever the Director-General considers appropriate.”.

### **Amendment of section 140E**

**15.** Section 140E of the Copyright Act is amended —

- 5 (a) by deleting the words “and the objector, either personally or by post” in subsection (1) and substituting the words “or exporter (as the case may be), and the requestor, personally, by post or (with the prior consent of the addressee) by email”;
- (b) by inserting, immediately after the word “importer” in subsection (2), the words “or exporter”;
- 10 (c) by deleting the word “objector” in subsections (2)(a) and (b) and (5) and substituting in each case the word “requestor”;
- (d) by deleting the word “from” in subsection (2)(a) and substituting the word “after”; and
- 15 (e) by deleting the words “retention period” in subsections (5), (6) and (7) and substituting in each case the words “initial period”.

### **Amendment of section 140EA**

20 **16.** Section 140EA(2) of the Copyright Act, as inserted by section 4, is amended by deleting the words “this Division” in paragraph (b) and substituting the words “this Subdivision or Subdivision (3)”.

### **Amendment of section 140EB**

**17.** Section 140EB of the Copyright Act, as inserted by section 4, is amended —

- 25 (a) by deleting the word “objector” wherever it appears in subsection (1) and substituting in each case the word “requestor”;
- (b) by inserting, immediately after the word “import” in subsection (1), the words “or proposed export (as the case may be)”; and
- 30 (c) by inserting, immediately after the word “import” in the section heading, the words “or export”.

### **Amendment of section 140F**

**18.** Section 140F of the Copyright Act is amended —

- (a) by deleting the word “objector” wherever it appears in subsections (1), (2) and (5) and substituting in each case the word “requestor”; 5
- (b) by inserting, immediately after the word “importer” in subsection (1), the words “or exporter (as the case may be)”;
- (c) by deleting the words “one sample” in subsections (2) and (3) and substituting in each case the words “a sample”; 10
- (d) by inserting, immediately after the words “If the importer” in subsection (3), the words “or exporter (as the case may be)”;
- (e) by inserting, immediately after the words “permit the importer” in subsection (3), the words “or exporter”; 15
- (f) by inserting, immediately after the words “by the importer” in subsection (3), the words “or exporter”; and
- (g) by inserting, immediately after the word “importer” wherever it appears in subsection (5), the words “or exporter”. 20

### **Amendment of section 140G**

**19.** Section 140G of the Copyright Act, as amended by section 5, is amended —

- (a) by inserting, immediately after the word “importer” in subsection (1), the words “or exporter (as the case may be)”;
- (b) by inserting, immediately after the word “importer” in subsection (3), the words “or exporter”. 25

### **Amendment of section 140H**

**20.** Section 140H of the Copyright Act is amended —

- (a) by inserting, immediately after the word “importer” in subsection (1), the words “or exporter (as the case may be)”;
- (b) by deleting the words “on the expiration” in subsection (1) and substituting the words “as soon as possible after the expiration”;
- (c) by deleting the word “objector” in subsections (1) and (4) and substituting in each case the word “requestor”;
- (d) by deleting subsection (2);
- (e) by deleting the words “at the end of the period of 3 weeks commencing on” in subsection (3)(b) and substituting the words “on the 22nd day after”;
- (f) by inserting, immediately after the words “to the importer” in subsection (3), the words “or the exporter (as the case may be) as soon as possible after the firstmentioned day”;
- (g) by inserting, immediately after the words “to the importer” in subsection (4), the words “or the exporter (as the case may be) as soon as possible”; and
- (h) by inserting, immediately after the word “importer” in the section heading, the words “or exporter”.

### **Amendment of section 140I**

**21.** Section 140I of the Copyright Act is amended —

- (a) by inserting, immediately after the words “importation of seized copies” in subsection (1), the words “or by the making of seized copies”;
- (b) by inserting, immediately after the word “importer” in subsection (4)(a) and (b), the words “or exporter (as the case may be)”;
- (c) by inserting, immediately after the word “importation” in subsection (7)(a), the words “or making”; and



- (*d*) by deleting the word “objector” in subsection (7) and substituting the word “requestor”.

### **Amendment of section 140IA**

**22.** Section 140IA of the Copyright Act is amended —

- (*a*) by deleting the word “objector” wherever it appears in subsections (1) and (2) and substituting in each case the word “requestor”; and 5
- (*b*) by deleting subsection (3).

### **Amendment of section 140K**

**23.** Section 140K(2) of the Copyright Act, as inserted by section 6, is amended by inserting, immediately after the word “importer” wherever it appears in paragraphs (*a*) and (*b*), the words “or exporter”. 10

### **Amendment of section 140L**

**24.** Section 140L of the Copyright Act is amended —

- (*a*) by deleting the words “this Division” wherever they appear in subsection (1) and substituting in each case the words “this Subdivision”; 15
- (*b*) by deleting the word “objector” in subsection (2) and substituting the word “requestor”; and
- (*c*) by deleting the word “objectors” wherever it appears in subsection (2) and substituting in each case the word “requestors”. 20

### **Repeal of section 140LA and new Subdivision (3) of Division 6 of Part V**

**25.** Section 140LA of the Copyright Act, as amended by section 7, is repealed and the following Subdivision heading and sections substituted therefor: 25

*“Subdivision (3) — Ex-officio seizure of copies*

**Seizure and inspection of infringing copies**

**140LA.**—(1) Despite section 140B(7), an authorised officer may —

5           (a) examine any copies of copyright material to which this subsection applies, including goods in transit; or

          (b) seize any copies of copyright material to which this subsection applies —

10                 (i) that are imported into, or that are to be exported from, Singapore; and

                  (ii) that are not goods in transit, unless they are consigned to a person with a commercial or physical presence in Singapore.

15           (2) Subsection (1) applies to copies of copyright material that the authorised officer reasonably suspects are infringing copies of the copyright material.

20           (3) As soon as practicable after the copies of the copyright material are seized under subsection (1)(b), the Director-General must give personally, by post or (with the prior consent of the addressee) by email, a written notice to —

          (a) the importer, exporter or consignee (as the case may be) of the seized copies (called in this Subdivision the dealer); and

          (b) the owner of the copyright in the copyright material.

25           (4) The written notice in subsection (3) must —

          (a) identify the copies seized; and

          (b) set out the rights of the dealer in section 140F (as applied by subsection (5)), and the requirements in section 140LB.

30           (5) Section 140F applies in relation to the seized copies as it applies in relation to copies of copyright material seized under section 140B(7), with the following modifications:

- (a) replace a reference to the requestor with a reference to the owner of the copyright in the copyright material;
- (b) replace a reference to the importer or exporter with a reference to the dealer.

(6) At the Director-General's direction, seized copies must be taken to a secure place the Director-General directs by such of the following as the Director-General considers appropriate: 5

- (a) the person in possession, custody or control of those copies immediately before the seizure;
- (b) the owner of the copyright material (but only if the owner has satisfied section 140LB(1)(a) and (b)). 10

### **Requirements for continued detention**

**140LB.**—(1) If the owner of the copyright in the copyright material wants the Director-General to continue to detain the seized copies of the copyright material so that the owner may institute an action for infringement of copyright in relation to them, the owner must, within the prescribed period after the date of the notice in section 140LA(3) — 15

- (a) give to the Director-General a written notice of this in the form determined by the Director-General, supported by such documents and information as the Director-General may require, and accompanied by the fee prescribed under section 140AB; and 20

(b) either —

- (i) deposit with the Director-General a sum of money that, in the Director-General's opinion, is sufficient for the purpose mentioned in subsection (2); or 25

- (ii) give security to the Director-General's satisfaction for such purpose, 30

unless the owner had earlier given such deposit or security to the Director-General and the deposit had

not been forfeited or returned or the security is still effective.

(2) The purpose in subsection (1) is the reimbursement to the Government of —

5 (a) any liability or reasonable expense it is likely to incur in relation to the seizure, storage and disposal of the copies; and

(b) the payment of such compensation as the court may order under section 140LI or section 140I(7) (as applied by section 140LH).

(3) If subsection (1) is not satisfied, the Director-General must release the seized copies to the dealer.

(4) The Minister may make regulations that are necessary or convenient to be prescribed for carrying out or giving effect to this Subdivision, and in particular to provide —

(a) for the times at which, and the manner in which, notices are to be given;

(b) for the giving of information and evidence to the Director-General; and

20 (c) that the Director-General may release seized copies of any copyright material to the dealer concerned because of non-compliance with any direction of the Director-General or any such regulation.

### **Notice to take action**

25 **140LC.**—(1) If section 140LB(1)(a) and (b) has been satisfied by the owner of the copyright in the copyright material, the Director-General must, as soon as practicable, give to the owner and the dealer personally, by post or (with the prior consent of the addressee) by email, a written notice stating that the copies will be released to the dealer unless —

30 (a) an action for infringement of copyright in relation to the copies is instituted by the owner within a

prescribed period after the day specified in the notice;  
and

- (b) the owner gives written notice to the Director-General within the period in paragraph (a) stating that such action has been instituted. 5

(2) Section 140E(4) to (7) applies in relation to a notice under subsection (1) as it applies in relation to a notice under section 140E(1), as if a reference to the requestor is a reference to the owner of the copyright in the copyright material.

### **Persons bound to give information or produce documents** 10

**140LD.**—(1) At any time after copies of copyright material have been seized under section 140LA, an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2) may require that person to provide to the officer that information or document at a time and place specified by the officer. 15

(2) The purposes mentioned in subsection (1) are —

(a) to enable the Director-General to satisfy a request under section 140LE (whether or not such a request has actually been received); 20

(b) to enable any action to be taken under this Subdivision or Subdivision (2) in relation to future shipments of goods; and

(c) for a statistical or research purpose. 25

(3) A person who —

(a) without reasonable excuse, fails to comply with a requirement under subsection (1); or

(b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

5 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.

10 (4) A person is not excused from providing any information or document in compliance with a requirement under subsection (1) on the ground that it might tend to incriminate the person.

15 (5) Where the person claims, before providing any information or document pursuant to a requirement under subsection (1), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (3).

20 (6) No information or document that is provided pursuant to a requirement under subsection (1) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2).

(7) A person who contravenes subsection (6) 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.

### 25 **Information on import or export**

30 **140LE.**—(1) After section 140LB(1)(a) and (b) has been satisfied by the owner of the copyright material, the Director-General may, upon the request of the owner, and if the Director-General is satisfied that the information is necessary to enable the owner to institute an infringement action, give the owner the name and contact details of any person connected with the import or proposed export (as the case may be) of the seized copies.

(2) Subsection (1) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person to whom the Director-General has delegated the power under that subsection.

### **Forfeiture of seized copies by consent**

5

**140LF.**—(1) Subject to subsection (2), the dealer may, by written notice and the giving of the prescribed written undertakings to the Director-General, consent to the seized copies being forfeited to the Government.

(2) The notice must be given before any action for infringement of copyright in relation to the copies is instituted.

10

(3) If the dealer satisfies the requirements of subsection (1), the copies are forfeited to the Government and must be disposed of —

(a) in the manner prescribed by regulations; or

15

(b) if no manner of disposal is so prescribed, as the Director-General directs.

### **Compulsory release of seized copies to dealer**

**140LG.**—(1) The Director-General must release the seized copies (not being copies forfeited to the Government under section 140LF) to the dealer as soon as possible after the date of expiry of the period specified in the notice under section 140LC(1) (including any extension of that period under section 140E(6) as applied by section 140LC(2)), if the owner of the copyright in the copyright material has not, before that date —

20

(a) instituted an action for infringement of the copyright in respect of the copies; and

25

(b) given written notice to the Director-General stating that the action has been instituted.

30

(2) If —

(a) an action for infringement of copyright has been instituted in respect of the seized copies; and

(b) on the 22nd day after the day on which the action was instituted, there is not in force an order of the court preventing the release of the copies,

the Director-General must release the copies to the dealer as soon as possible after the firstmentioned day.

(3) If the owner of the copyright in the copyright material gives a written notice to the Director-General stating that the owner consents to the release of the seized copies, the Director-General must release the copies to the dealer as soon as possible.

### **Provisions relating to actions for infringement of copyright**

**140LH.** Section 140I applies in relation to an action for infringement of copyright constituted by the import of the copies seized under section 140LA or the making of the copies so seized, as it applies in relation to an action for infringement of copyright constituted by the import of the copies seized under section 140B(7) or the making of the copies so seized, with the following modifications:

(a) replace a reference to the requestor with a reference to the owner of the copyright in the copyright material;

(b) replace a reference to the importer or exporter with a reference to the dealer.

### **Compensation for failure to take action**

**140LI.—(1)** Where —

(a) copies of copyright material have been seized under section 140LA;

(b) the copies continue to be detained because section 140LB(1)(a) and (b) has been satisfied; and



- (c) the owner fails to take infringement action within the period specified in the notice under section 140LC(1) (including any extension of that period under section 140E(6) as applied by section 140LC(2)),

a person aggrieved by the seizure may apply to the court for an order of compensation against the owner. 5

(2) Where the court is satisfied that the applicant has suffered loss or damage as a result of the seizure of the copies, the court may order the owner to pay to the applicant compensation of such amount as the court thinks fit. 10

### **Retention of control of seized copies**

**140LJ.** Despite section 140LG and any regulation made under section 140LB(4)(c), in a case in which no order has been made under section 140I(4) (as applied by section 140LH) in relation to the seized copies, the Director-General is not obliged to release or dispose of the copies if the Government is required or permitted, under any other law, to retain control of the copies. 15

### **Disposal of seized copies**

**140LK.** Section 140K applies in relation to copies of copyright material seized under section 140LA, as it applies in relation to copies of copyright material seized under section 140B(7), with a reference to the importer or exporter replaced with a reference to the dealer. 20

### **Insufficient security**

**140LL.—**(1) If the reasonable expenses incurred by the Director-General in relation to any action taken by the Director-General under this Subdivision, or taken in accordance with an order of a court under this Subdivision exceed the amount deposited, or the amount of the security given, under section 140LB, the amount of the excess is a debt due to the Government. 25 30

(2) The debt created by subsection (1) is due by the owner of the copyright in the copyright material or, if there are 2 or more such owners, by the owners jointly and severally.”.

#### **Amendment of section 140M**

5     **26.** Section 140M(1) of the Copyright Act is amended by deleting the words “detained under section”.

#### **Amendment of section 140N**

**27.** Section 140N of the Copyright Act is amended —

10     (a) by inserting, immediately after the word “imported” in subsection (1), the words “, or is being exported,”;

(b) by deleting the words “detained under section” in subsection (1);

15     (c) by deleting the words “tests or analysis” in subsection (1)(b) and substituting the words “infringement verification, or tests or analysis,”; and

(d) by inserting, immediately after subsection (2), the following subsection:

20             “(3) In this section, “infringement verification” means any process (whether or not involving the owner of the copyright in the copyright material concerned) to determine if any article is or contains a copy of copyright material liable to be seized under section 140B(7) or 140LA.”.

#### **Amendment of section 140O**

25     **28.** Section 140O(3) of the Copyright Act is amended by deleting the word “goods” wherever it appears and substituting in each case the words “package, box, chest, article or goods (as the case may be)”.

#### **Amendment of section 140P**

30     **29.** Section 140P(1) of the Copyright Act is amended by deleting the words “detained under section” wherever they appear in paragraphs (a) and (b).

## Repeal and re-enactment of section 140Q

**30.** Section 140Q of the Copyright Act is repealed and the following section substituted therefor:

### “Powers of authorised officers to enter certain premises

**140Q.**—(1) For the purpose of exercising the powers conferred by sections 140M to 140P, an authorised officer may, without warrant, enter upon — 5

(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 10

(c) any premises of any airport operated under a licence or exemption under the Civil Aviation Authority of Singapore Act (Cap. 41).

(2) In this section, “railway” has the meaning given by the Railways Act (Cap. 263).” 15

## PART 2

### AMENDMENTS TO GEOGRAPHICAL INDICATIONS ACT 2014

#### Amendment of Division heading of Part VI 20

**31.** Part VI of the Geographical Indications Act 2014 (Act 19 of 2014) (called in this Part the principal Act) is amended by deleting the words “Border measures” in the heading of Division 1 and substituting the words “Preliminary provisions”.

#### Amendment of section 55 25

**32.** Section 55 of the principal Act is amended —

(a) by deleting the definition of “detained goods”;

(b) by deleting the words “detained goods” in the definitions of “infringement action” and “retention period” and substituting in each case the words “seized goods”; and 30

(c) by inserting, immediately after the definition of “retention period”, the following definition:

““seized goods” means goods seized under section 56;”.

5 **New sections 55A and 55B**

**33.** The principal Act is amended by inserting, immediately after section 55, the following sections:

**“Delegation of Director-General’s powers**

10 **55A.** The Director-General may delegate to a senior officer of customs (within the meaning of section 3(1) of the Customs Act (Cap. 70)) any of the powers of the Director-General under this Part (except the power of delegation conferred by this section), subject to such conditions or restrictions as the Director-General may determine.

15 **Fees**

**55B.—**(1) The Minister charged with the responsibility for customs duties may make rules to prescribe the fees payable to the Director-General in connection with the administration of this Part.

20 (2) Without limiting subsection (1), rules may be made to prescribe fees for the following purposes:

- (a) for the escort of a conveyance conveying goods seized under section 56 or 67;
- 25 (b) for the attendance of an authorised officer or a senior authorised officer in connection with the inspection or destruction of goods seized under section 56 or 67;
- (c) for the attendance of an authorised officer or a senior authorised officer in connection with any other act or service under this Part.”.

## **New Division heading of Part VI**

**34.** Part VI of the principal Act is amended by inserting, immediately above section 56, the following Division heading:

*“Division 2 — Seizure of goods on request”.*

## **Amendment of section 56**

5

**35.** Section 56 of the principal Act is amended —

(a) by deleting the word “detain” in subsections (1)(d) and (4) and substituting in each case the word “seize”;

(b) by deleting subsection (2) and substituting the following subsection:

10

“(2) A notice under subsection (1) must be —

(a) in the form determined by the Director-General, and supported by such documents and information as the Director-General may require; and

15

(b) accompanied by the fee prescribed under section 55B.”;

(c) by deleting the words “the end of the period of 60 days commencing on” in subsection (3) and substituting the words “the 59th day after”;

20

(d) by deleting the words “or exports” in subsection (4)(c) and substituting the words “or proposes to export”;

(e) by deleting subsection (5) and substituting the following subsection:

“(5) The Minister may make rules that are necessary or convenient to be prescribed for carrying out or giving effect to this Division, and in particular to provide —

25

(a) for the times at which, and the manner in which, notices are to be given;

30

(b) for the giving of information and evidence to the Director-General; and

(c) that an authorised officer may refuse to seize any goods because of non-compliance with any direction of the Director-General or any such rule.”; and

5 (f) by deleting the word “detention” in the section heading and substituting the word “seizure”.

### **Amendment of section 57**

**36.** Section 57 of the principal Act is amended —

10 (a) by deleting the word “detain” and substituting the word “seize”;

(b) by inserting, immediately before the word “expense”, the word “reasonable”; and

(c) by deleting the word “detention” (including in the section heading) and substituting in each case the word “seizure”.

### **15 Repeal and re-enactment of section 58**

**37.** Section 58 of the principal Act is repealed and the following section substituted therefor:

#### **“Secured storage of seized goods**

20 **58.** At the Director-General’s direction, seized goods must be taken to a secure place the Director-General directs, either by the person in possession, custody or control of those goods immediately before the seizure or the requestor, whoever the Director-General considers appropriate.”.

### **Amendment of section 59**

25 **38.** Section 59 of the principal Act is amended —

(a) by deleting the word “detained” wherever it appears in subsection (1) and substituting in each case the word “seized”;

- (b) by deleting the words “either personally or by post” in subsection (1) and substituting the words “personally, by post or (with the prior consent of the addressee) by email”; and
- (c) by deleting the word “detention” in the section heading and substituting the word “seizure”. 5

### **New sections 59A and 59B**

**39.** The principal Act is amended by inserting, immediately after section 59, the following sections:

#### **“Persons bound to give information or produce documents” 10**

**59A.**—(1) At any time after goods have been seized under section 56(4), an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2), may require that person to provide to the officer that information or document at a time and place specified by the officer. 15

(2) The purposes mentioned in subsection (1) are —

(a) to enable the Director-General to satisfy a request under section 59B (whether or not such a request has actually been received); 20

(b) to enable any action to be taken under this Division or Division 3 in relation to future shipments of goods; and

(c) for a statistical or research purpose. 25

(3) A person who —

(a) without reasonable excuse, fails to comply with a requirement under subsection (1); or

(b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

5 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.

10 (4) A person is not excused from providing any information or document in compliance with a requirement under subsection (1) on the ground that it might tend to incriminate the person.

15 (5) Where the person claims, before providing any information or document pursuant to a requirement under subsection (1), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (3).

20 (6) No information or document that is provided pursuant to a requirement under subsection (1) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2).

(7) A person who contravenes subsection (6) 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.

## 25 **Information on import or export**

30 **59B.**—(1) After goods have been seized under section 56(4), the Director-General may, upon the request of the requestor, and if the Director-General is satisfied that the information is necessary to enable the requestor to institute an infringement action, give the requestor the name and contact details of any person connected with the import or proposed export (as the case may be) of the seized goods.

(2) Subsection (1) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person



to whom the Director-General has delegated the power under that subsection.”.

### **Amendment of section 60**

**40.** Section 60 of the principal Act is amended by deleting the word “detained” wherever it appears in subsections (1), (2), (3) and (5) and in the section heading and substituting in each case the word “seized”.

5

### **Amendment of section 61**

**41.** Section 61 of the principal Act is amended —

(a) by deleting the word “detained” in subsections (1), (2)(a) and (3) and in the section heading and substituting in each case the word “seized”;

10

(b) by deleting the words “on the expiration” in subsection (1) and substituting the words “as soon as possible after the expiration”;

(c) by deleting the words “at the end of a period of 3 weeks commencing on” in subsection (2)(b) and substituting the words “on the 22nd day after”;

15

(d) by inserting, immediately after the words “(as the case may be)” in subsection (2), the words “as soon as possible after the firstmentioned day”; and

20

(e) by inserting, immediately after the words “(as the case may be)” in subsection (3), the words “as soon as possible”.

### **Amendment of section 62**

**42.** Section 62 of the principal Act is amended —

(a) by deleting the word “detained” in subsection (1) and substituting the word “seized”; and

25

(b) by deleting the word “detention” in subsections (1) and (2) and substituting in each case the word “seizure”.

**Amendment of section 63**

43. Section 63 of the principal Act is amended —

- (a) by deleting the word “detained” in subsections (3)(a) and (b), (4) and (6)(a) and substituting in each case the word “seized”; and
- (b) by deleting the word “detention” in subsection (6)(b) and substituting the word “seizure”.

**Amendment of section 64**

44. Section 64 of the principal Act is amended by deleting the word “detained” (including in the section heading) and substituting in each case the word “seized”.

**Amendment of section 65**

45. Section 65 of the principal Act is amended —

- (a) by deleting the words “detained goods within such prescribed period” and substituting the words “seized goods within the period specified in the notice”; and
- (b) by deleting the word “detained” in the section heading and substituting the word “seized”.

**Amendment of section 66**

46. Section 66(1) of the principal Act is amended by deleting the word “Part” wherever it appears and substituting in each case the word “Division”.

**Repeal and re-enactment of section 67 and new sections 67A to 67J**

47. Section 67 of the principal Act is repealed and the following Division heading and sections substituted therefor:

*“Division 3 — Ex-officio seizure of goods*

**Seizure and inspection of suspected infringing goods**

67.—(1) Despite section 56(4), an authorised officer may seize or examine any goods that are —

- (a) imported into Singapore; or
- (b) to be exported from Singapore,

and that are not goods in transit, which the officer reasonably suspects are suspected infringing goods in relation to a registered geographical indication. 5

(2) As soon as practicable after the goods are seized under subsection (1), the Director-General must give personally, by post or (with the prior consent of the addressee) by email, a written notice to —

- (a) the importer or exporter of the seized goods (called in this Division the dealer); and 10
- (b) the registrant of the registered geographical indication.

(3) The written notice in subsection (2) must —

- (a) identify the goods seized; and
- (b) set out the rights of the dealer in section 60 (as applied by subsection (5)), and the requirements in section 67A. 15

(4) The Director-General may permit an interested party of the registered geographical indication, or the dealer, to inspect the seized goods. 20

(5) Section 60(2) to (5) applies in relation to the seized goods as it applies in relation to goods seized under section 56(4), with the following modifications:

- (a) replace a reference to the requestor with a reference to an interested party of the registered geographical indication; 25
- (b) replace a reference to the importer or exporter with a reference to the dealer.

(6) At the Director-General's direction, seized goods must be taken to a secure place the Director-General directs, by such of the following as the Director-General considers appropriate: 30

- (a) the person in possession, custody or control of those goods immediately before the seizure;
- (b) an interested party of the registered geographical indication who has satisfied section 67A(1)(a) and (b).

5       **Requirements for continued detention**

10       **67A.**—(1) If any interested party of the registered geographical indication (called in this Division the relevant interested party) wants the Director-General to continue to detain the seized goods so that the relevant interested party may institute an infringement action in relation to them, the relevant interested party must, within the prescribed period after the date of the notice in section 67(2) —

15       (a) give to the Director-General a written notice of this in the form determined by the Director-General, supported by such documents and information as the Director-General may require, and accompanied by the fee prescribed under section 55B; and

(b) either —

20       (i) deposit with the Director-General a sum of money that, in the Director-General's opinion, is sufficient for the purpose mentioned in subsection (2); or

(ii) give security to the Director-General's satisfaction for such purpose,

25       unless the relevant interested party had earlier given such deposit or security to the Director-General and the deposit had not been forfeited or returned or the security is still effective.

30       (2) The purpose in subsection (1) is the reimbursement to the Government of —

(a) any liability or reasonable expense it is likely to incur in relation to the seizure, storage and disposal of the goods; and

(b) the payment of such compensation as the Court may order under section 67G or section 63(6) (as applied by section 67F).

(3) If subsection (1) is not satisfied, the Director-General must release the seized goods to the dealer. 5

(4) The Minister may make rules that are necessary or convenient to be prescribed for carrying out or giving effect to this Division, and in particular to provide —

(a) for the times at which, and the manner in which, notices are to be given; 10

(b) for the giving of information and evidence to the Director-General; and

(c) that the Director-General may release any seized goods to the dealer concerned because of non-compliance with any direction of the Director-General or any such rule. 15

### **Notice to take action**

**67B.**—(1) If section 67A(1)(a) and (b) has been satisfied by the relevant interested party, the Director-General must, as soon as practicable, give to the relevant interested party and the dealer personally, by post or (with the prior consent of the addressee) by email, a written notice stating that the goods will be released to the dealer unless — 20

(a) an infringement action in relation to the goods is instituted by the relevant interested party within a prescribed period after the day specified in the notice; and 25

(b) the relevant interested party gives written notice to the Director-General within the period in paragraph (a) stating that such action has been instituted. 30

(2) Section 59(4) to (7) applies in relation to a notice under subsection (1) as it applies in relation to a notice under section 59(1), as if a reference to the requestor is a reference to the relevant interested party.

### **Persons bound to give information or produce documents**

5 **67C.**—(1) At any time after goods have been seized under section 67, an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2), may require that person to provide to the officer that information or document at a time and place specified by the officer.

(2) The purposes mentioned in subsection (1) are —

10 (a) to enable the Director-General to satisfy a request under section 67D (whether or not such a request has actually been received);

(b) to enable any action to be taken under this Division or Division 2 in relation to future shipments of goods; and

15

(c) for a statistical or research purpose.

(3) A person who —

(a) without reasonable excuse, fails to comply with a requirement under subsection (1); or

20 (b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

25 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.

(4) A person is not excused from providing any information or document in compliance with a requirement under subsection (1) on the ground that it might tend to incriminate the person.

(5) Where the person claims, before providing any information or document pursuant to a requirement under subsection (1), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (3). 5

(6) No information or document that is provided pursuant to a requirement under subsection (1) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2). 10

(7) A person who contravenes subsection (6) 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.

### **Information on import or export** 15

**67D.**—(1) After section 67A(1)(a) and (b) has been satisfied by the relevant interested party, the Director-General may, upon the request of the relevant interested party, and if the Director-General is satisfied that the information is necessary to enable the relevant interested party to institute an infringement action, give the relevant interested party the name and contact details of any person connected with the import or proposed export (as the case may be) of the seized goods. 20

(2) Subsection (1) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person to whom the Director-General has delegated the power under that subsection. 25

### **Compulsory release of seized goods to dealer**

**67E.**—(1) The Director-General must release the seized goods to the dealer as soon as possible after the date of expiry of the period specified in the notice under section 67B(1) (including any extension of that period under section 59(6) as applied by section 67B(2)), if the relevant interested party has not, before that date — 30

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

5 (2) If —

- (a) an infringement action has been instituted in respect of the seized goods; and
- (b) on the 22nd day after the day on which the action was instituted, there is not in force an order of the Court preventing the release of the goods,

10

the Director-General must release the goods to the dealer as soon as possible after the firstmentioned day.

(3) If the relevant interested party gives a written notice to the Director-General stating that the relevant interested party consents to the release of the seized goods, the Director-General must release the goods to the dealer as soon as possible.

15

### **Provisions relating to infringement action**

**67F.** Section 63 applies in relation to an infringement action concerning goods seized under section 67, as it applies in relation to an infringement action concerning goods seized under section 56(4), with the following modifications:

20

- (a) replace a reference to the requestor with a reference to the relevant interested party;
- (b) replace a reference to the importer or exporter with a reference to the dealer.

25

### **Compensation for failure to take action**

**67G.**—(1) Where —

- (a) goods have been seized under section 67;
- (b) the goods continue to be detained because section 67A(1)(a) and (b) has been satisfied; and

30



(c) the relevant interested party fails to take infringement action within the period specified in the notice under section 67B(1) (including any extension of that period under section 59(6) as applied by section 67B(2)),

a person aggrieved by the seizure may apply to the Court for an order of compensation against the relevant interested party.

(2) Where the Court is satisfied that the applicant has suffered loss or damage as a result of the seizure of the goods, the Court may order the relevant interested party to pay to the applicant compensation of such amount as the Court thinks fit.

### **Retention of control of seized goods**

**67H.** Despite section 67E and any rule made under section 67A(4)(c), in a case in which no order has been made under section 63(3) (as applied by section 67F) in relation to the seized 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.

### **Disposal of seized goods**

**67I.** Section 65 applies in relation to goods seized under section 67, as it applies in relation to goods seized under section 56(4), with a reference to the importer or exporter replaced with a reference to the dealer.

### **Insufficient security**

**67J.—(1)** If the reasonable expenses incurred by the Director-General in relation to any action taken by the Director-General under this Division, or taken in accordance with an order of the Court under this Division, exceed the amount deposited, or the amount of the security given, under section 67A, the amount of the excess is a debt due to the Government.

(2) The debt created by subsection (1) is due by the relevant interested party or, if there are 2 or more relevant interested parties, by them jointly and severally.”

## **Deletion and substitution of Division heading of Part VI**

**48.** Part VI of the principal Act is amended by deleting the heading of Division 2 and substituting the following Division heading:

*“Division 4 — Powers of inspection”.*

### **5 Amendment of section 68**

**49.** Section 68(1) of the principal Act is amended by deleting the word “detained” and substituting the word “seized”.

### **Amendment of section 69**

**50.** Section 69 of the principal Act is amended —

10       (a) by deleting the words “detained under” in subsection (1) and substituting the words “seized under”;

      (b) by inserting, immediately after the words “subjected to such” in subsection (1)(b), the words “infringement verification,”; and

15       (c) by inserting, immediately after subsection (4), the following subsection:

      “(5) In this section, “infringement verification” means any process (whether or not involving an interested party of the geographical indication concerned) to determine if any article is or contains goods liable to be seized under section 56(4) or 67.”.

20

### **Amendment of section 71**

**51.** Section 71(1) of the principal Act is amended by deleting the word “detained” wherever it appears in paragraphs (a), (b) and (c) and substituting in each case the word “seized”.

25

### **Amendment of section 74**

**52.** Section 74 of the principal Act is amended by deleting the words “or any officer or employee of the Government” and substituting the words “, an authorised officer, a senior authorised officer, or any person”.

30

## PART 3

## AMENDMENTS TO REGISTERED DESIGNS ACT

**New Part VIA**

**53.** The Registered Designs Act (Cap. 266) is amended by inserting, immediately after section 68, the following Part:

5

## “PART VIA

## ASSISTANCE BY BORDER AUTHORITIES

*Division 1 — Preliminary provisions***Interpretation of this Part**

**68A.** In this Part, unless the context otherwise requires —

10

“aircraft” has the same meaning as in section 2(1) of the Regulation of Imports and Exports Act (Cap. 272A);

“authorised officer” means —

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

15

(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;

20

“conveyance” has the same meaning as in section 2(1) of the Regulation of Imports and Exports Act;

“Director-General” means the Director-General of Customs appointed under section 4(1) of the Customs Act;

“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;

25

“infringement action” means an action for an infringement of a registered design;

30

“infringing article” means an article in respect of which a design is registered and to which the design, or a design not substantially different from that design, has been applied, where —

5                   (a) the article is made in Singapore without the consent of the registered owner and in a way that infringes the design; or

10                   (b) the article is made in another country or territory without the consent of the registered owner and in a way that, had it been made in Singapore, would have infringed the design;

15 “infringing device” means a device for projecting a non-physical product, being a non-physical product in respect of which a design is registered and to which the design or a design not substantially different from that design, has been applied, where —

20                   (a) the device is made in Singapore without the consent of the registered owner and in a way that infringes the design; or

                      (b) the device is made in another country or territory without the consent of the registered owner and in a way that, had it been made in Singapore, would have infringed the design;

25 “infringing goods” means an infringing article or infringing device;

“owner”, in relation to the registered design, means the registered owner of the registered design and includes an exclusive licensee of the registered design;

30 “requestor” means a person who gives a written notice under section 68D(1) to the Director-General;

“retention period”, in relation to seized goods, means —

                      (a) the period specified in a notice given under section 68G(2) in respect of those goods; or

(b) if that period has been extended under section 68G(6), that period as so extended;

“seized goods” means goods seized under section 68D(4);

“senior authorised officer” means —

(a) a senior officer of customs as defined in section 3(1) of the Customs Act; or 5

(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; 10

“vehicle” and “vessel” have the respective meanings given by section 2(1) of the Regulation of Imports and Exports Act.

### **Delegation of Director-General’s powers** 15

**68B.** The Director-General may delegate to a senior officer of customs (within the meaning of section 3(1) of the Customs Act (Cap. 70)) any of the powers of the Director-General under this Part (except the power of delegation conferred by this section), subject to such conditions or restrictions as the Director-General may determine. 20

### **Fees**

**68C.—**(1) The Minister charged with the responsibility for customs duties may make rules to prescribe the fees payable to the Director-General in connection with the administration of this Part. 25

(2) Without limiting subsection (1), rules may be made to prescribe the fees for the following purposes:

(a) for the escort of a conveyance conveying seized goods; 30

- (b) for the attendance of an authorised officer or a senior authorised officer in connection with the inspection or destruction of seized goods;
- (c) for the attendance of an authorised officer or a senior authorised officer in connection with any other act or service under this Part.

*Division 2 — Seizure of goods on request*

**Request for seizure of infringing goods**

**68D.**—(1) The owner of a registered design may give the Director-General a written notice —

- (a) stating that the owner is —
  - (i) the registered owner of the registered design; or
  - (ii) the exclusive licensee of the registered design;
- (b) stating that goods that are infringing goods in relation to the registered design are expected to be imported or exported;
- (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
  - (iii) to satisfy the Director-General that the goods are infringing goods in relation to the registered design; and
- (d) requesting the Director-General to seize the goods.

(2) A notice under subsection (1) must be —

- (a) in the form determined by the Director-General, and supported by such documents and information as the Director-General may require; and
- (b) accompanied by the fee prescribed under section 68C.

(3) A notice under subsection (1) remains in force until the 59th day after 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.

(4) If —

5

(a) a notice has been given under subsection (1) in respect of a registered design;

(b) the notice has not lapsed or been revoked; and

(c) a person imports or proposes to export goods, not being goods in transit, that, in the opinion of an authorised officer, are infringing goods in relation to the registered design in question,

10

an authorised officer may seize the goods.

(5) The Minister may make rules that are necessary or convenient to be prescribed for carrying out or giving effect to this Division, and in particular to provide —

15

(a) for the times at which, and the manner in which, notices are to be given;

(b) for the giving of information and evidence to the Director-General; and

20

(c) that an authorised officer may refuse to seize any goods because of non-compliance with any direction of the Director-General or any such rule.

### **Security for liability or expense of seizure, storage and disposal**

25

**68E.** An authorised officer may refuse to seize goods under section 68D unless the requestor —

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

30

(b) gives security, to the satisfaction of the Director-General,

5 for the reimbursement to the Government of any liability or reasonable expense it is likely to incur in relation to the seizure, storage and disposal of the goods, and for the payment of such compensation as may be ordered by the Court under section 68M(2) or 68N(6).

### **Secure storage of seized goods**

10 **68F.** At the Director-General's direction, seized goods must be taken to a secure place the Director-General directs, either by the person in possession, custody or control of those goods immediately before the seizure or the requestor, whoever the Director-General considers appropriate.

### **Notice of seizure**

15 **68G.**—(1) As soon as is practicable after goods are seized under section 68D, the Director-General must give to the importer or exporter (as the case may be), and the requestor, personally, by post or (with the prior consent of the addressee) by email, a written notice identifying the goods and stating that they  
20 have been seized.

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

25 (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.

30 (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) must not be earlier than the day on which the notice is given.

(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) (called in this section the initial period), request that the period be extended. 5

(6) Subject to subsection (7), if —

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

(b) the Director-General is satisfied that it is reasonable that the request be granted, 10

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

(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. 15

### **Persons bound to give information or produce documents**

**68H.**—(1) At any time after goods have been seized under section 68D, an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2), may require that person to provide to the officer that information or document at a time and place specified by the officer. 20 25

(2) The purposes mentioned in subsection (1) are —

(a) to enable the Director-General to satisfy a request under section 68I (whether or not such a request has actually been received);

(b) to enable any action to be taken under this Division in relation to future shipments of goods; and 30

(c) for a statistical or research purpose.

(3) A person who —

(a) without reasonable excuse, fails to comply with a requirement under subsection (1); or

(b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

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.

(4) A person is not excused from providing any information or document in compliance with a requirement under subsection (1) on the ground that it might tend to incriminate the person.

(5) Where the person claims, before providing any information or document pursuant to a requirement under subsection (1), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (3).

(6) No information or document that is provided pursuant to a requirement under subsection (1) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2).

(7) A person who contravenes subsection (6) 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.

### **Information on import or export**

**68I.**—(1) After goods have been seized under section 68D, the Director-General may, upon the request of the requestor, and if the Director-General is satisfied that the information is necessary to enable the requestor to institute an infringement action, give the requestor the name and contact details of any person

connected with the import or proposed export (as the case may be) of the seized goods.

(2) Subsection (1) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person to whom the Director-General has delegated the power under that subsection. 5

### **Inspection of seized goods**

**68J.**—(1) The Director-General may permit the requestor, or the importer or exporter (as the case may be), to inspect the seized goods. 10

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

(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 to remove a sample of the seized goods from the custody of the Director-General for inspection by the importer or exporter. 15

(4) The requisite undertakings are undertakings in writing that the person giving the undertaking will — 20

(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 seized 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 — 25

(a) damage to any of the seized goods incurred during that inspection; or 30

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

5       **Forfeiture of seized goods by consent**

**68K.**—(1) Subject to subsection (2), the importer or exporter (as the case may be) may, by written notice and the giving of the prescribed written undertakings to the Director-General, consent to the seized goods being forfeited to the Government.

10       (2) The notice in subsection (1) must be given before any infringement action in relation to the seized goods is instituted.

(3) If the importer or exporter (as the case may be) satisfies the requirements of subsection (1), the seized goods are forfeited to the Government and must be disposed of —

- 15           (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.

20       **Compulsory release of seized goods to importer or exporter**

**68L.**—(1) The Director-General must release the seized goods (not being goods forfeited to the Government under section 68K) to the importer or exporter (as the case may be) as soon as possible after the date of expiry of the retention period for the goods if the requestor has not, before that date —

- 25           (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.

30       (2) If —

- (a) an infringement action has been instituted in relation to the seized goods; and

- (b) on the 22nd day after 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 must release the goods to the importer or exporter (as the case may be) as soon as possible after the firstmentioned day. 5

(3) If the requestor gives written notice to the Director-General stating that the requestor consents to the release of the seized goods, the Director-General must release the goods to the importer or exporter (as the case may be) as soon as possible. 10

(4) This section has effect subject to section 68O.

### **Compensation for failure to take action**

**68M.**—(1) Where goods have been seized pursuant to a notice given under section 68D(1) and the requestor concerned fails to take infringement action within the retention period for the goods, a person aggrieved by such seizure may apply to the Court for an order of compensation against the requestor. 15

(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 seizure of the goods, the Court may order the requestor to pay compensation in such amount as the Court thinks fit to the plaintiff. 20

### **Infringement actions**

**68N.**—(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. 25

(2) An authorised officer is entitled to be heard on the hearing of an infringement action. 30

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

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

5 (b) order that the seized goods not be released to the importer or exporter (as the case may be) before the end of a specified period; or

(c) order that the seized goods be forfeited to the Government.

10 (4) The 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 seized goods.

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

15 (6) If —

(a) the infringement action is dismissed or discontinued, or the Court decides that the relevant registered design was not infringed; and

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

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

### **Retention of control of seized goods**

25 **68O.** Despite section 68L, in a case in which no order has been made under section 68N(3) in relation to the seized 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.

### **Disposal of seized goods**

30 **68P.**—(1) If the Court orders that seized goods are to be forfeited to the Government, the goods must be disposed of —

- (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.

(2) If —

- (a) the Director-General gives to the importer or exporter a written notice of the release of seized goods; and
- (b) the importer or exporter fails to take custody of the seized goods within the period specified in the notice,

the Director-General may dispose of the goods —

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

### **Insufficient security**

**68Q.**—(1) If the reasonable expenses incurred by the Director-General in relation to any action taken by the Director-General under this Division, or taken in accordance with an order of the Court under this Division exceed the amount deposited, or the amount of the security given, under section 68E, 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.

### *Division 3 — Powers of inspection*

#### **Powers of inspection in relation to vehicles**

**68R.**—(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 seized under section 68D.

(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 is presumed in any proceedings arising out of anything 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.

(4) Any person who contravenes this section or who fails to comply with any lawful requisition or direction given or 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 12 months or to both.

### **Examination of packages, etc.**

**68S.**—(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 seized under section 68D may be —

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

(b) subjected to such infringement verification, or 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.

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



(3) If the person in charge of the package, box, chest or other article mentioned 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 to facilitate the examination and inspection of it.

5

(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 mentioned 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.

10

(5) In this section, “infringement verification” means any process (whether involving the owner of the registered design concerned or not) to determine if any article is or contains goods liable to be seized under section 68D(4).

15

### **Power to remove packages and goods to examination station**

**68T.**—(1) For the more convenient exercise of the powers conferred by section 68S, an authorised officer may remove any package, box, chest or other article or any goods to an examination station or may require it to be so removed by the owner of it or the owner’s agent or any person having the custody, charge or control of it.

20

25

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

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

30

35

### **Inspection of baggage and belongings on person**

5 **68U.**—(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, must —

10 (a) on demand by an authorised officer, either permit the person's goods and baggage to be inspected by the officer for any goods liable to be seized under section 68D or, together with the goods and baggage, accompany the officer to an examination station, and there permit those goods and baggage to be inspected in the presence and under the supervision of a senior authorised officer for any goods liable to be seized under section 68D;

20 (b) on demand by a senior authorised officer, permit the person's 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 seized under section 68D; 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 seized under section 68D.

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

30 (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**

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

- (a) any islet, landing place, wharf, dock, railway or quay; 5
- (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 (Cap. 41). 10

(2) In this section, “railway” has the meaning given by the Railways Act (Cap. 263).

#### *Division 4 — Miscellaneous provisions*

### **Obstruction** 15

**68W.** 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 on that officer by this Part, 20

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. 25

### **Protection from personal liability**

**68X.** No liability shall lie personally against the Director-General, an authorised officer, a senior authorised officer, or any person 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 — 30

- (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.”.

**Amendment of section 73**

**54.** Section 73 of the Registered Designs Act is amended by inserting, immediately after subsection (3), the following subsection:

“(4) Subsection (2) does not apply to fees prescribed for the purposes of Part VIA.”.

PART 4

AMENDMENTS TO TRADE MARKS ACT

*Division 1 — Phase 1 Amendments*

**New section 81A**

**55.** The Trade Marks Act (Cap. 332) (called in this Part the principal Act) is amended by inserting, immediately after section 81, the following section:

**“Delegation of Director-General’s powers**

**81A.** The Director-General may delegate to a senior officer of customs (within the meaning of section 3(1) of the Customs Act (Cap. 70)) any of the powers of the Director-General under this Part (except the power of delegation conferred by this section), subject to such conditions or restrictions as the Director-General may determine.”.

**Amendment of section 83**

**56.** Section 83 of the principal Act is amended —

- (a) by deleting the words “or expense it is likely to incur as a result of the seizure of the goods” in paragraph (a)(i) and

substituting the words “or reasonable expense it is likely to incur in relation to the seizure, storage and disposal of the goods”; and

- (b) by inserting, immediately after the word “seizure” in the section heading, the words “, storage and disposal”.

5

### **New sections 85A and 85B**

**57.** The principal Act is amended by inserting, immediately after section 85, the following sections:

#### **“Persons bound to give information or produce documents**

**85A.**—(1) At any time after goods have been seized under section 82(4), an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2), may require that person to provide to the officer that information or document at a time and place specified by the officer.

10

15

(2) The purposes mentioned in subsection (1) are —

- (a) to enable the Director-General to satisfy a request under section 85B (whether or not such a request has actually been received);
- (b) to enable any action to be taken under this Part in relation to future shipments of goods; and
- (c) for a statistical or research purpose.

20

(3) A person who —

- (a) without reasonable excuse, fails to comply with a requirement under subsection (1); or

25

(b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

5 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.

(4) A person is not excused from providing any information or document in compliance with a requirement under subsection (1) on the ground that it might tend to incriminate the person.

(5) Where the person claims, before providing any information or document pursuant to a requirement under subsection (1), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (3).

(6) No information or document that is provided pursuant to a requirement under subsection (1) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2).

(7) A person who contravenes subsection (6) 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.

### 25 **Information on import**

**85B.**—(1) After goods have been seized under section 82(4), the Director-General may, upon the request of the objector, and if the Director-General is satisfied that the information is necessary to enable the objector to institute an infringement action, give the objector the name and contact details of any person connected with the import of the seized goods.

(2) Subsection (1) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person

to whom the Director-General has delegated the power under that subsection.”.

### **Amendment of section 87**

**58.** Section 87 of the principal Act is amended —

- (a) by inserting, immediately after the words “by written notice” in subsection (1), the words “and the giving of the prescribed written undertakings”; and 5
- (b) by deleting the words “gives such a notice” in subsection (3) and substituting the words “satisfies the requirements of subsection (1)”. 10

### **Amendment of section 92**

**59.** Section 92 of the principal Act is amended —

- (a) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection: 15
  - “(2) If —
  - (a) the Director-General gives to the importer a written notice of the release of seized goods; and
  - (b) the importer fails to take custody of the seized goods within the period specified in the notice, 20

the Director-General may dispose of the goods —

  - (i) in the manner prescribed by rules made under this Act; or 25
  - (ii) if no manner of disposal is so prescribed, as the Director-General directs.”; and
- (b) by deleting the words “ordered to be forfeited” in the section heading.

## Amendment of section 93A

60. Section 93A of the principal Act is amended —

(a) by inserting, immediately after subsection (2), the following subsections:

5                   “(2A) At any time after goods have been detained under subsection (1)(a), an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the  
10                   purposes in subsection (2B), may require that person to provide to the officer that information or document at a time and place specified by the officer.

(2B) The purposes mentioned in subsection (2A) are —

15                   (a) to enable the Director-General to satisfy a request under subsection (2H) (whether or not such a request has actually been received);

20                   (b) to enable any action to be taken under this Part in relation to future shipments of goods; and

(c) for a statistical or research purpose.

(2C) A person who —

25                   (a) without reasonable excuse, fails to comply with a requirement under subsection (2A); or

30                   (b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

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.

(2D) A person is not excused from providing any information or document in compliance with a requirement under subsection (2A) on the ground that it might tend to incriminate the person.

5

(2E) Where the person claims, before providing any information or document pursuant to a requirement under subsection (2A), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under subsection (2C).

10

(2F) No information or document that is provided pursuant to a requirement under subsection (2A) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2B).

15

(2G) A person who contravenes subsection (2F) 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.

20

(2H) The Director-General may, upon the request of the proprietor of the registered trade mark, and if the Director-General is satisfied that the information is necessary to enable the proprietor to institute an infringement action, give the proprietor the name and contact details of any person connected with the import or proposed export (as the case may be) of the detained goods.

25

30

(2I) However, no disclosure under subsection (2H) is permitted unless the proprietor of the registered trade mark to whom disclosure is to be made —

(a) in the case of goods that are imported into Singapore and that are not goods in transit, has carried out the acts in subsection (3)(a)(i), (ii) and (iii); or

5 (b) in the case of goods that are to be exported from Singapore or goods that are goods in transit and consigned to a person with a commercial or physical presence in Singapore —

10 (i) satisfies the Director-General that the trade mark concerned is a registered trade mark and that he is the proprietor of it; and

15 (ii) has carried out the act mentioned in subsection (3)(b)(iii).

20 (2J) Subsection (2H) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person to whom the Director-General has delegated the power under that subsection.”; and

25 (b) by deleting the words “or expense it has incurred and is likely to further incur as a result of the detention of the goods” in subsection (3)(b)(iii)(A) and substituting the words “or reasonable expense it has incurred and is likely to further incur in relation to the detention, storage and disposal of the goods”.

*Division 2 — Phase 2 Amendments***Deletion of heading and new Division heading of Part X**

**61.** Part X of the principal Act is amended by deleting the heading immediately above section 81 and substituting the following Division heading:

5

*“Division 1 — Preliminary provisions”.*

**Amendment of section 81**

**62.** Section 81 of the principal Act is amended —

(a) by deleting the words “the importation of” in the definition of “infringement action” and substituting the words “any use of a sign (within the meaning of section 27(4)) in relation to the”;

10

(b) by deleting the definition of “objector”; and

(c) by inserting, immediately after the definition of “proprietor”, the following definition:

15

““requestor”, in relation to particular seized goods, means the person who gave the written notice under section 82(1) as a result of the giving of which the goods were seized;”.

**New section 81B**

20

**63.** The principal Act is amended by inserting, immediately after section 81A as inserted by section 55, the following section:

**“Fees**

**81B.**—(1) The Minister charged with the responsibility for customs duties may make rules to prescribe the fees payable to the Director-General in connection with the administration of this Part.

25

(2) Without limiting subsection (1), rules may be made to prescribe fees for the following purposes:

(a) for the escort of a conveyance conveying goods seized under section 82(4) or 93A;

30

(b) for the attendance of an authorised officer or a senior authorised officer in connection with the inspection or destruction of such seized goods;

5 (c) for the attendance of an authorised officer or a senior authorised officer in connection with any other act or service under this Part.”.

### **New Division heading of Part X**

64. Part X of the principal Act is amended by inserting, immediately above section 82, the following Division heading:

10 *“Division 2 — Seizure of goods on request”.*

### **Amendment of section 82**

65. Section 82 of the principal Act is amended —

(a) by inserting, immediately after the words “be imported” in subsection (1)(b) and (c)(ii), the words “or exported”;

15 (b) by deleting paragraph (d) of subsection (1) and substituting the following paragraph:

*“(d) requesting the Director-General to seize the goods.”;*

20 (c) by deleting subsection (2) and substituting the following subsection:

*“(2) A notice under subsection (1) must be —*

25 (a) in the form determined by the Director-General, and supported by such documents and information as the Director-General may require; and

(b) accompanied by the fee prescribed under section 81B.”;

30 (d) by deleting the words “the end of the period of 60 days commencing on” in subsection (3) and substituting the words “the 59th day after”;

(e) by inserting, immediately after the words “a person imports” in subsection (4)(c), the words “or proposes to export”;

(f) by deleting subsection (5) and substituting the following subsection:

5

“(5) The Minister may make rules that are necessary or convenient to be prescribed for carrying out or giving effect to this Division, and in particular to provide —

(a) for the times at which, and the manner in which, notices are to be given;

10

(b) for the giving of information and evidence to the Director-General; and

(c) that an authorised officer may refuse to seize any goods because of non-compliance with any direction of the Director-General or any such rule.”; and

15

(g) by inserting, immediately after the word “importation” in the section heading, the words “or exportation”.

### **Amendment of section 83**

20

**66.** Section 83 of the principal Act, as amended by section 56, is amended by deleting the word “objector” in paragraphs (a) and (b) and substituting in each case the word “requestor”.

### **Repeal and re-enactment of section 84**

**67.** Section 84 of the principal Act is repealed and the following section substituted therefor:

25

#### **“Secure storage of seized goods**

**84.** At the Director-General’s direction, seized goods must be taken to a secure place the Director-General directs, either by the person in possession, custody or control of those goods immediately before the seizure or the requestor, whoever the Director-General considers appropriate.”.

30

### **Amendment of section 85**

**68.** Section 85 of the principal Act is amended —

- (a) by deleting the words “and the objector, either personally or by post” in subsection (1) and substituting the words “or exporter (as the case may be), and the requestor, personally, by post or (with the prior consent of the addressee) by email”;
- (b) by inserting, immediately after the words “the importer” in subsection (2), the words “or exporter”;
- (c) by deleting the word “objector” in subsections (2)(a) and (b) and (5) and substituting in each case the word “requestor”; and
- (d) by deleting the word “from” in subsection (2)(a) and substituting the word “after”.

### **Amendment of section 85A**

**69.** Section 85A(2) of the principal Act, as inserted by section 57, is amended by deleting the words “this Part” in paragraph (b) and substituting the words “this Division or Division 3”.

### **Amendment of section 85B**

**70.** Section 85B(1) of the principal Act, as inserted by section 57, is amended —

- (a) by deleting the word “objector” wherever it appears and substituting the word “requestor”;
- (b) by inserting, immediately after the word “import”, the words “or proposed export (as the case may be)”; and
- (c) by inserting, immediately after the word “import” in the section heading, the words “or export”.

### **Amendment of section 86**

**71.** Section 86 of the principal Act is amended —

- (a) by deleting the word “objector” wherever it appears in subsections (1), (2) and (5) and substituting in each case the word “requestor”; 5
- (b) by inserting, immediately after the words “the importer” in subsection (1), the words “or exporter (as the case may be)”;
- (c) by inserting, immediately after the words “If the importer” in subsection (3), the words “or exporter (as the case may be)”;
- (d) by inserting, immediately after the words “permit the importer” in subsection (3), the words “or exporter”;
- (e) by inserting, immediately after the words “by the importer” in subsection (3), the words “or exporter”; and 10
- (f) by inserting, immediately after the words “the importer” wherever they appear in subsection (5), the words “or exporter”. 15

### **Amendment of section 87**

**72.** Section 87 of the principal Act, as amended by section 58, is amended — 20

- (a) by inserting, immediately after the word “importer” in subsection (1), the words “or exporter (as the case may be)”;
- (b) by inserting, immediately after the word “importer” in subsection (3), the words “or exporter”. 25

### **Amendment of section 88**

**73.** Section 88 of the principal Act is amended —

- (a) by inserting, immediately after the words “the importer” in subsection (1), the words “or exporter (as the case may be)”;
- 30

- (b) by deleting the words “on the expiration” in subsection (1) and substituting the words “as soon as possible after the expiration”;
- 5 (c) by deleting the word “objector” in subsections (1) and (3) and substituting in each case the word “requestor”;
- (d) by deleting the words “at the end of a period of 3 weeks commencing on” in subsection (2)(b) and substituting the words “on the 22nd day after”;
- 10 (e) by inserting, immediately after the words “to the importer” in subsection (2), the words “or exporter (as the case may be) as soon as possible after the firstmentioned day”;
- (f) by inserting, immediately after the words “to the importer” in subsection (3), the words “or exporter (as the case may be) as soon as possible”; and
- 15 (g) by inserting, immediately after the word “importer” in the section heading, the words “or exporter”.

### **Amendment of section 89**

74. Section 89 of the principal Act is amended by deleting the word “objector” wherever it appears and substituting in each case the word “requestor”.

20

### **Amendment of section 90**

75. Section 90 of the principal Act is amended —

- 25 (a) by inserting, immediately after the words “the importer” in subsection (3)(a) and (b), the words “or exporter (as the case may be)”;
- (b) by deleting the words “the importation of the” in subsection (6)(a) and substituting the words “the use of a sign (within the meaning of section 27(4)) in relation to the”; and
- 30 (c) by deleting the word “objector” in subsection (6) and substituting the word “requestor”.



### **Amendment of section 92**

**76.** Section 92(2) of the principal Act, as inserted by section 59, is amended by inserting, immediately after the word “importer” wherever it appears in paragraphs (a) and (b), the words “or exporter”.

### **Amendment of section 93**

5

**77.** Section 93 of the principal Act is amended —

- (a) by deleting the word “Part” wherever it appears in subsection (1) and substituting in each case the word “Division”;
- (b) by deleting the word “objector” in subsection (2) and substituting the word “requestor”; and
- (c) by deleting the word “objectors” wherever it appears in subsection (2) and substituting in each case the word “requestors”.

10

### **Repeal and re-enactment of section 93A and new sections 93B to 93L**

15

**78.** Section 93A of the principal Act, as amended by section 60, is repealed and the following Division heading and sections substituted therefor:

*“Division 3 — Ex-officio seizure of goods*

20

#### **Seizure and inspection of counterfeit goods**

**93A.—(1)** Despite section 82(4), an authorised officer may —

- (a) examine any goods to which this subsection applies, including goods in transit; or
- (b) seize any goods to which this subsection applies —
  - (i) that are imported into, or that are to be exported from, Singapore; and
  - (ii) that are not goods in transit, unless they are consigned to a person with a commercial or physical presence in Singapore.

25

30

(2) Subsection (1) applies to goods that the authorised officer reasonably suspects are counterfeit goods in relation to a registered trade mark.

5 (3) As soon as practicable after the goods are seized under subsection (1)(b), the Director-General must give personally, by post or (with the prior consent of the addressee) by email, a written notice to —

10 (a) the importer, exporter or consignee (as the case may be) of the seized goods (called in this Division the dealer); and

(b) the proprietor of the registered trade mark.

(4) The written notice in subsection (3) must —

(a) identify the goods seized; and

15 (b) set out the rights of the dealer in section 86 (as applied by subsection (5)), and the requirements in section 93B.

20 (5) Section 86 (which provides for the inspection of seized goods) applies in relation to the seized goods as it applies in relation to goods seized under section 82(4), with the following modifications:

(a) replace a reference to the requestor with a reference to the proprietor of the registered trade mark;

(b) replace a reference to the importer or exporter with a reference to the dealer.

25 (6) At the Director-General's direction, seized goods must be taken to a secure place the Director-General directs by such of the following as the Director-General considers appropriate:

(a) the person in possession, custody or control of those goods immediately before the seizure;

- (b) the proprietor of the registered trade mark (but only if the proprietor has satisfied section 93B(1)(a) and (b)).

### Requirements for continued detention

**93B.**—(1) If the proprietor of the registered trade mark wants the Director-General to continue to detain the seized goods so that the proprietor may institute an infringement action in relation to them, the proprietor must, within the prescribed period after the date of the notice in section 93A(3) —

- (a) give to the Director-General a written notice of this in the form determined by the Director-General, supported by such documents and information as the Director-General may require, and accompanied by the fee prescribed under section 81B; and

(b) either —

- (i) deposit with the Director-General a sum of money that, in the Director-General's opinion, is sufficient for the purpose mentioned in subsection (2); or

- (ii) give security to the Director-General's satisfaction for such purpose,

unless the proprietor had earlier given such deposit or security to the Director-General and the deposit had not been forfeited or returned or the security is still effective.

(2) The purpose in subsection (1) is the reimbursement to the Government of —

- (a) any liability or reasonable expense it is likely to incur in relation to the seizure, storage and disposal of the goods; and

- (b) the payment of such compensation as the Court may order under section 93I or section 90(6) (as applied by section 93H).

(3) If subsection (1) is not satisfied, the Director-General must release the seized goods to the dealer.

(4) The Minister may make rules that are necessary or convenient to be prescribed for carrying out or giving effect to this Division, and in particular to provide —

(a) for the times at which, and the manner in which, notices are to be given;

(b) for the giving of information and evidence to the Director-General; and

(c) that the Director-General may release any seized goods to the dealer concerned because of non-compliance with any direction of the Director-General or any such rule.

### **Notice to take action**

**93C.**—(1) If section 93B(1)(a) and (b) has been satisfied by the proprietor of the registered trade mark, the Director-General must, as soon as practicable, give to the proprietor and the dealer personally, by post or (with the prior consent of the addressee) by email, a written notice that states that the goods will be released to the dealer unless —

(a) an infringement action in relation to the goods is instituted by the proprietor within a prescribed period after the day specified in the notice; and

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

(2) Section 85(4) to (7) applies in relation to a notice under subsection (1) as it applies in relation to a notice under section 85(1), as if a reference to the requestor is a reference to the proprietor of the registered trade mark.

### **Persons bound to give information or produce documents**

**93D.**—(1) At any time after goods have been seized under section 93A, an authorised officer or a senior authorised officer who has reasonable cause to believe that a person has any information or document that the officer considers is relevant for any of the purposes in subsection (2), may require that person to provide to the officer that information or document at a time and place specified by the officer. 5

(2) The purposes mentioned in subsection (1) are —

(a) to enable the Director-General to satisfy a request under section 93E (whether or not such a request has actually been received); 10

(b) to enable any action to be taken under this Division or Division 2 in relation to future shipments of goods; and 15

(c) for a statistical or research purpose.

(3) A person who —

(a) without reasonable excuse, fails to comply with a requirement under subsection (1); or

(b) in purported compliance with such requirement, knowingly or recklessly provides any information or document that is false or misleading in a material particular, 20

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. 25

(4) A person is not excused from providing any information or document in compliance with a requirement under subsection (1) on the ground that it might tend to incriminate the person.

(5) Where the person claims, before providing any information or document pursuant to a requirement under subsection (1), that it might tend to incriminate the person, then the information or document is not admissible in evidence against the person in 30

criminal proceedings other than proceedings for an offence under subsection (3).

5 (6) No information or document that is provided pursuant to a requirement under subsection (1) may be published, or communicated or disclosed to any person, except where and to the extent it is necessary for a purpose in subsection (2).

10 (7) A person who contravenes subsection (6) 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.

### **Information on import or export**

15 **93E.**—(1) After section 93B(1)(a) and (b) has been satisfied by the proprietor of the registered trade mark, the Director-General may, upon the request of the proprietor, and if the Director-General is satisfied that the information is necessary to enable the proprietor to institute an infringement action, give the proprietor the name and contact details of any person connected with the import or proposed export (as the case may be) of the seized goods.

20 (2) Subsection (1) applies despite any duty of confidentiality imposed by the common law on the Director-General or a person to whom the Director-General has delegated the power under that subsection.

### **Forfeiture of seized goods by consent**

25 **93F.**—(1) Subject to subsection (2), the dealer may, by written notice and the giving of the prescribed written undertakings to the Director-General, consent to the seized goods being forfeited to the Government.

30 (2) The notice must be given before any infringement action in relation to the goods is instituted.

(3) If the dealer satisfies the requirements of subsection (1), the goods are forfeited to the Government and must be disposed of —

- (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.

### **Compulsory release of seized goods to dealer**

5

**93G.**—(1) The Director-General must release the seized goods (not being goods forfeited to the Government under section 93F) to the dealer as soon as possible after the date of expiry of the period specified in the notice under section 93C(1) (including any extension of that period under section 85(6) as applied by section 93C(2)), if the proprietor of the registered trade mark has not, before that date —

10

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

15

(2) If —

- (a) an infringement action has been instituted in respect of the seized goods; and
- (b) on the 22nd day after the day on which the action was instituted, there is not in force an order of the Court preventing the release of the goods,

20

the Director-General must release the goods to the dealer as soon as possible after the firstmentioned day.

(3) If the proprietor of the registered trade mark gives a written notice to the Director-General stating that the proprietor consents to the release of the seized goods, the Director-General must release the goods to the dealer as soon as possible.

25

### **Provisions relating to infringement action**

**93H.** Section 90 applies in relation to an infringement action concerning goods seized under section 93A, as it applies in

30

relation to an infringement action concerning goods seized under section 82(4), with the following modifications:

- (a) replace a reference to the requestor with a reference to the proprietor of the registered trade mark;
- 5 (b) replace a reference to the importer or exporter with a reference to the dealer.

### **Compensation for failure to take action**

**93I.**—(1) Where —

- (a) goods have been seized under section 93A;
- 10 (b) the goods continue to be detained because section 93B(1) has been satisfied; and
- (c) the proprietor fails to take infringement action within the period specified in section 93C(1) (including any extension of that period under section 85(6) as applied
- 15 by section 93C(2)),

a person aggrieved by the seizure may apply to the Court for an order of compensation against the proprietor.

- (2) Where the Court is satisfied that the applicant has suffered loss or damage as a result of the seizure of the goods, the Court
- 20 may order the proprietor to pay to the applicant compensation of such amount as the Court thinks fit.

### **Retention of control of seized goods**

**93J.** Despite section 93G and any rule made under section 93B(4)(c), in a case in which no order has been made

25 under section 90(3) (as applied by section 93H) in relation to the seized 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.

### **Disposal of seized goods**

30 **93K.** Section 92 applies in relation to goods seized under section 93A, as it applies in relation to goods seized under



section 82(4), with a reference to the importer or exporter replaced with a reference to the dealer.

### **Insufficient security**

**93L.**—(1) If the reasonable expenses incurred by the Director-General in relation to any action taken by the Director-General under this Division, or taken in accordance with an order of the Court under this Division exceed the amount deposited, or the amount of the security given, under section 93B, the amount of the excess is a debt due to the Government.

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

### **Deletion of heading and new Division heading of Part X**

**79.** Part X of the principal Act is amended by deleting the heading immediately above section 94 and substituting the following Division heading:

*“Division 4 — Powers of search”.*

### **Amendment of section 94**

**80.** Section 94(1) of the principal Act is amended by deleting the words “detained under section”.

### **Amendment of section 95**

**81.** Section 95 of the principal Act is amended —

- (a) by inserting, immediately after the word “imported” in subsection (1), the words “, or is being exported,”;
- (b) by deleting the words “detained under section” in subsection (1);
- (c) by inserting, immediately after the words “to such” in subsection (1)(b), the words “infringement verification, or”; and

(d) by inserting, immediately after subsection (2), the following subsection:

“(3) In this section, “infringement verification” means any process (whether or not involving the proprietor of the registered trade mark concerned) to determine if any article is or contains goods liable to be seized under section 82(4) or 93A.”.

### **Amendment of section 96**

**82.** Section 96(3) of the principal Act is amended by deleting the word “goods” wherever it appears and substituting in each case the words “package, box, chest, article or goods (as the case may be)”.

### **Amendment of section 97**

**83.** Section 97(1) of the principal Act is amended by deleting the words “detained under section” wherever they appear in paragraphs (a) and (b).

### **Repeal and re-enactment of section 98**

**84.** Section 98 of the principal Act is repealed and the following section substituted therefor:

#### **“Powers of authorised officers to enter certain premises**

**98.**—(1) For the purpose of exercising the powers conferred by sections 94 to 97, 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 (Cap. 41).

(2) In this section, “railway” has the meaning given by the Railways Act (Cap. 263).”.

## **New Division heading of Part X**

**85.** Part X of the principal Act is amended by inserting, immediately above section 99, the following Division heading:

*“Division 5 — Miscellaneous provisions”.*

## **Repeal and re-enactment of section 100**

5

**86.** Section 100 of the principal Act is repealed and the following section substituted therefor:

### **“Protection from personal liability**

**100.** No liability shall lie personally against the Director-General, an authorised officer, a senior authorised officer, or any person 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 —

10

(a) the exercise or purported exercise of any power under this Part;

15

(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.”.

20

## **PART 5**

### **RELATED AMENDMENTS TO OTHER ACTS**

#### **Related amendments to Customs Act**

**87.—(1)** Section 89(1) of the Customs Act (Cap. 70, 2004 Ed.) is amended —

25

(a) by deleting the word “or” at the end of paragraph (viii);

(b) by deleting the full-stop at the end of paragraph (ix) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

30

“(x) satisfying a request for information under section 140EB or 140LA(2H) of the Copyright Act, or section 85B or 93A(2H) of the Trade Marks Act.”.

5 (2) Section 89(1) of the Customs Act, as amended by subsection (1), is amended —

(a) by deleting “140LA(2H)” in paragraph (x) and substituting “140LE”; and

10 (b) by deleting “93A(2H)” in paragraph (x) and substituting “93E”.

(3) Section 89(1) of the Customs Act, as amended by subsection (1), is amended by inserting, immediately after the words “Copyright Act” in paragraph (x), the words “, section 59B or 67D of the Geographical Indications Act 2014, section 68I of the Registered Designs Act”.

### 15 **Related amendments to Regulation of Imports and Exports Act**

**88.**—(1) Section 31(1) of the Regulation of Imports and Exports Act (Cap. 272A, 1996 Ed.) is amended by inserting, immediately after paragraph (viii), the following paragraph:

20 “(viii*a*) satisfying a request for information under section 140EB or 140LA(2H) of the Copyright Act, or section 85B or 93A(2H) of the Trade Marks Act;”.

(2) Section 31(1) of the Regulation of Imports and Exports Act, as amended by subsection (1), is amended —

25 (a) by deleting “140LA(2H)” in paragraph (viii*a*) and substituting “140LE”; and

(b) by deleting “93A(2H)” in paragraph (viii*a*) and substituting “93E”.

30 (3) Section 31(1) of the Regulation of Imports and Exports Act, as amended by subsection (1), is amended by inserting, immediately after the words “Copyright Act” in paragraph (viii*a*), the words “, section 59B or 67D of the Geographical Indications Act 2014, section 68I of the Registered Designs Act”.

## PART 6

## SAVING AND TRANSITIONAL PROVISIONS

**Saving and transitional provisions for Part 1**

**89.**—(1) Despite section 3 of this Act, section 140C of the Copyright Act as in force immediately before the date of commencement of Division 1 of Part 1 of this Act (called in this section the Phase 1 date) continues to apply to the following cases: 5

(a) a case where a notice was given in accordance with section 140B of the Copyright Act before the Phase 1 date, not being a notice given pursuant to section 140LA(3)(a)(i) of that Act; 10

(b) a case where copies of copyright material that were imported into Singapore and that were not goods in transit, were detained under section 140LA of the Copyright Act before the Phase 1 date. 15

(2) Despite section 7(b) of this Act, section 140LA(3)(b)(iii)(A) of the Copyright Act as in force immediately before the Phase 1 date continues to apply to a case where copies of copyright material —

(a) that were to be exported from Singapore; or

(b) that were goods in transit and consigned to a person with a commercial or physical presence in Singapore, 20

were detained under section 140LA of the Copyright Act before the Phase 1 date.

(3) Subject to subsections (1) and (2), the Copyright Act as amended by Division 1 of Part 1 of this Act, applies to a case where copies of copyright material were seized or detained pursuant to section 140B or 140LA of the Copyright Act before the Phase 1 date. 25

(4) The Copyright Act as amended by Division 2 of Part 1 of this Act, applies in relation to a notice —

(a) that was given in accordance with section 140B of the Copyright Act before the date of commencement of Division 2 of Part 1 of this Act (called in this section the Phase 2 date); 30

(b) pursuant to which copies of copyright material have yet to be seized before that date; and

(c) that remained in force immediately before that date,

as if it were a notice given in accordance with section 140B of the Copyright Act on or after the Phase 2 date.

(5) For the purposes of subsection (4), a reference in a provision of Division 6 of Part V of the Copyright Act (as amended by Division 2 of Part 1 of this Act) to the requestor is a reference to the person who gave the notice mentioned in that subsection.

(6) Despite Division 2 of Part 1 of this Act, sections 140A to 140LA of the Copyright Act as in force immediately before the Phase 2 date continue to apply to a case where copies of copyright material were seized or detained under section 140B or 140LA of the Copyright Act on or after the Phase 1 date but before the Phase 2 date.

#### **Saving and transitional provisions for Part 4**

**90.**—(1) Despite section 56 of this Act, section 83 of the Trade Marks Act as in force immediately before the date of commencement of Division 1 of Part 4 of this Act (called in this section the Phase 1 date) continues to apply to the following cases:

(a) a case where a notice was given in accordance with section 82 of the Trade Marks Act before the Phase 1 date, not being a notice given pursuant to section 93A(3)(a)(i) of that Act;

(b) a case where goods that were imported into Singapore and that were not goods in transit, were detained under section 93A of the Trade Marks Act before the Phase 1 date.

(2) Despite section 60(b) of this Act, section 93A(3)(b)(iii)(A) of the Trade Marks Act as in force immediately before the Phase 1 date continues to apply to a case where goods —

(a) that were to be exported from Singapore; or

- (b) that were goods in transit and consigned to a person with a commercial or physical presence in Singapore,

were detained under section 93A of the Trade Marks Act before the Phase 1 date.

(3) Subject to subsections (1) and (2), the Trade Marks Act as amended by Division 1 of Part 4 of this Act, applies to a case where goods were seized or detained pursuant to section 82 or 93A of the Trade Marks Act before the Phase 1 date.

(4) The Trade Marks Act as amended by Division 2 of Part 4 of this Act, applies in relation to a notice —

- (a) that was given in accordance with section 82 of the Trade Marks Act before the date of commencement of Division 2 of Part 4 of this Act (called in this section the Phase 2 date);

- (b) pursuant to which goods have yet to be seized before that date; and

- (c) that remained in force immediately before that date,

as if it were a notice given in accordance with section 82 of the Trade Marks Act on or after the Phase 2 date.

(5) For the purposes of subsection (4), a reference in a provision of Part X of the Trade Marks Act (as amended by Division 2 of Part 4 of this Act) to the requestor is a reference to the person who gave the notice mentioned in that subsection.

(6) Despite Division 2 of Part 4 of this Act, sections 81 to 93A of the Trade Marks Act as in force immediately before the Phase 2 date continue to apply to a case where goods were seized or detained under section 82 or 93A of the Trade Marks Act on or after the Phase 1 date but before the Phase 2 date.

(7) Despite section 86 of this Act, section 100 of the Trade Marks Act as in force immediately before the Phase 2 date continues to apply to an act done or omitted to be done before the Phase 2 date.

## **Minister may make other saving and transitional provisions by regulations**

5 **91.** For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such other provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

---

### EXPLANATORY STATEMENT

This Bill seeks to amend 4 Acts to enhance the border enforcement measures for intellectual property rights, as well as to implement Singapore's obligations under the proposed Free Trade Agreement between the European Union and the Republic of Singapore (called the EUSFTA) concerning those measures. Specifically, the Bill —

- (a) enables seizure on request of suspected infringing goods under the Copyright Act (Cap. 63) and Trade Marks Act (Cap. 332) that are to be exported;
- (b) creates a regime under the Registered Designs Act (Cap. 266) for the seizure on request of suspected infringing goods that are imported or to be exported;
- (c) clarifies the operation of the provisions for ex-officio seizure of infringing goods in the Copyright Act, Trade Marks Act and Geographical Indications Act 2014 (Act 19 of 2014);
- (d) enables information to be gathered under all 4 Acts to facilitate the taking of infringement and enforcement actions; and
- (e) standardises the terms and provisions relating to border enforcement across all 4 Acts so that the same procedures may be used for different intellectual property rights.

The Bill also makes related amendments to the Customs Act (Cap. 70) and the Regulation of Imports and Exports Act (Cap. 272A).

Clause 1 relates to the short title and commencement.

Part 1 contains amendments to the Copyright Act.

The amendments to the Copyright Act are set out in 2 Divisions.



Division 1 contains amendments that are to come into effect before the amendments giving effect to the EUSFTA.

Clause 2 inserts a new section 140AA to enable the Director-General of Customs (called the Director-General) to delegate his or her powers under Division 6 of Part V to a senior officer of customs.

Clause 3 amends section 140C (Security for liability or expense of seizure) to require the security or deposit to be given by the objector, to be an amount sufficient to cover not just the liability or expense for the seizure and the amount of compensation ordered by a court, but also for any liability and expense for the storage and disposal of seized copies. It also clarifies that the Government's expense to be covered by the deposit or security must be "reasonable expense", for consistency with section 140L.

Clause 4 inserts new sections 140EA and 140EB.

The new section 140EA enables an authorised officer or a senior authorised officer to require a person to provide information or documents to the officer at a specified time and place, in order to enable the Director-General to satisfy a request for information under the new section 140EB, to enable action to be taken under Division 6 of Part V in relation to future shipments of goods, or for a statistical or research purpose.

The new section 140EB provides that, where copies of copyright material have been seized on a request by a person under section 140B(7), the Director-General may, on a request by that person, provide to that person certain information that the Director-General is satisfied is necessary for instituting an infringement action.

Clause 5 amends section 140G (Forfeiture of seized copies by consent) to require an importer who wishes to consent to the forfeiture of seized copies to the Government, to give prescribed written undertakings to the Government.

Clause 6 amends section 140K (Disposal of seized copies ordered to be forfeited) to enable the Director-General to dispose of seized copies if he or she gives a notice of the release of the copies to the importer, and the importer fails to take custody of the copies within the period specified in the notice.

Clause 7 amends section 140LA (Detention of infringing copies) to provide for powers and duties similar to the new sections 140EA and 140EB, in a case where copies of copyright material are detained on an ex-officio basis. It also amends the section to require the security or deposit to be given for the continued detention of copies of copyright material that are to be exported or are goods in transit and consigned to a local consignee, to be an amount sufficient to cover not just the liability or expense for the detention and the amount of compensation ordered by a court, but also for any liability and expense for the storage and disposal of the seized copies. Finally, it clarifies that the Government's expense to be covered by the deposit or security must be "reasonable expense".

Division 2 contains amendments to give effect to the EUSFTA, and other amendments to enhance the border enforcement measures in the Copyright Act.

Clause 8 introduces a new Subdivision heading to Division 6 of Part V for section 140A and the new sections 140AA and 140AB. Subdivision headings are introduced in Division 6 for better organisation of the provisions of that Division.

Clause 9 amends section 140A (Interpretation of Divisions 6 and 7 of Part V) —

- (a) to replace the definition of “objector” with a definition of “requestor”, for the purpose of standardising the term used to describe the person requesting for the seizure of goods by an authorised officer across all 4 Acts; and
- (b) to move the definition of “retention period” (currently in sections 140H(2) and 140IA(3)) to the section.

Clause 10 inserts a new section 140AB to enable the Minister in charge of customs duties to prescribe fees in connection with the administration of Divisions 6 and 7 of Part V.

Clause 11 introduces a new Subdivision heading to Division 6 of Part V, for the provisions of the Division dealing with seizure of infringing copies on a request of the copyright owner.

Clause 12 amends section 140B (Restriction of importation of copies of works, etc.) —

- (a) to enable the owner or a licensee of copyright in copyright material (called the requestor) to request the Director-General to seize infringing copies that are expected to be exported from Singapore, and to enable an authorised officer to seize such goods;
- (b) to clarify the period of time a notice of such request is to remain in force;
- (c) to enable an authorised officer to seize goods that are imported whether or not they are imported for sale, hire or other trade purposes;
- (d) to enable the forms of notices under the section to be determined by the Director-General (instead of being prescribed in regulations); and
- (e) to expand the regulation-making power in that section.

Clause 13 makes amendments to section 140C (Security for liability or expense of seizure) that are consequential on the replacement of the term “objector” with the term “requestor”.

Clause 14 repeals and re-enacts section 140D (Secured storage of seized copies). The new section enables the Director-General to direct the person in possession, custody or control of copies before their seizure to take them to a secure place. It

also enables the Director-General to give a similar direction to the requestor for the seizure.

Clause 15 makes various amendments to section 140E (Notice of seizure) that are consequential on the expansion of the regime for seizing infringing copies on request to cover copies to be exported from Singapore, the replacement of the term “objector” with the term “requestor”, and the introduction of the definition of “retention period” in section 140A. The clause also amends section 140E to enable a notice of seizure to be served by email with the addressee’s prior consent.

Clause 16 makes an amendment to section 140EA (inserted by clause 4) that is consequential on the division of the provisions of Division 6 of Part V into Subdivisions.

Clause 17 makes amendments to section 140EB (inserted by clause 4) that are consequential on the expansion of the regime mentioned above, and the replacement of the term “objector” with the term “requestor”.

Clause 18 makes various amendments to section 140F (Inspection, release, etc., of seized copies) that are consequential on the expansion of the regime mentioned above, and the replacement of the term “objector” with the term “requestor”. It also replaces the term “one sample” with “a sample” for consistency with the Trade Marks Act and the Geographical Indications Act 2014.

Clause 19 makes amendments to section 140G (Forfeiture of seized copies by consent) that are consequential on the expansion of the regime mentioned above.

Clause 20 amends section 140H (Compulsory release of seized copies to importer) —

- (a) to clarify the periods of time mentioned in that provision;
- (b) to clarify that the Director-General is to release the seized copies as soon as possible after the prescribed date or event; and
- (c) to make other amendments that are consequential on the expansion of the regime mentioned above, the replacement of the term “objector” with the term “requestor”, and the introduction of the definition of “retention period” in section 140A.

Clause 21 amends section 140I (Provision relating to actions for infringement of copyright) to expand the term “infringement action” to include an action for infringement by the making of the copies seized. This is necessitated by the expansion of the regime mentioned above. The clause makes other amendments to the section as a result of the expansion of the regime mentioned above, as well as the replacement of the term “objector” with the term “requestor”.

Clause 22 makes various amendments to section 140IA (Compensation for failure to take action) that are consequential on the replacement of the term

“objector” with the term “requestor”, and the introduction of the definition of “retention period” in section 140A.

Clause 23 makes amendments to section 140K (Disposal of seized copies ordered to be forfeited) as a result of the expansion of the regime for seizing copies of copyright material on request mentioned above.

Clause 24 amends section 140L (Insufficient security) which provides that expenses for certain actions taken that exceed the amount of the security or deposit given by the requestor is a debt due to the Government. The amendment restricts the provision to expenses incurred for actions taken in relation to copies that are seized on request. The clause also amends section 140L(2) to replace the term “objector” with the term “requestor”.

Clause 25 repeals section 140LA and inserts a new Subdivision (3), comprising the new sections 140LA to 140LL. The new sections re-enact section 140LA which concerns the ex-officio seizure of suspected infringing copies by an authorised officer, but with greater clarity on the procedure following the seizure.

The new section 140LA enables an authorised officer to seize copies of copyright material imported or that are to be exported, if the authorised officer reasonably suspects that they are infringing copies of copyright material. The authorised officer may not seize goods in transit unless they are consigned to a person with a commercial or physical presence in Singapore. After such seizure, the Director-General must give a written notice to the importer, exporter or consignee (called the dealer), as well as the owner of the copyright in the copyright material. The new section applies section 140F (which provides for the inspection of copies seized on request) to copies seized under the new section.

The new section 140LB provides that if the copyright owner would like the Director-General to continue to detain the seized copies so that the copyright owner may start an infringement action, the copyright owner must give a notice of this to the Director-General along with the prescribed fee, supporting documents and information, and a security deposit for reasonable expenses relating to the seizure, storage and disposal of the copies and for payment of any compensation that a court may order. The new section also enables the making of regulations that are necessary or convenient for carrying out or giving effect to the Subdivision.

The new section 140LC provides that if the copyright owner gives such notice, supporting documents and security deposit, the Director-General must give to the copyright owner and the dealer a notice that the copies will be released to the dealer unless an infringement action is started within a prescribed period and notice of this is given to the Director-General.

The new section 140LD enables an authorised officer or a senior authorised officer to require a person to provide information or documents to the officer at a specified time and place, in order to enable the Director-General to satisfy a request for information under the new section 140LE, to enable action to be taken under

Subdivision (2) or (3) of Division 6 of Part V in relation to future shipments of goods, or for a statistical or research purpose.

The new section 140LE provides that, where section 140LB(1)(a) and (b) has been satisfied, the Director-General may, on a request by the owner of the copyright in the copyright material, provide to the owner certain information that the Director-General is satisfied is necessary for instituting an infringement action.

The new section 140LF enables the dealer to consent to the forfeiture of the seized copies to the Government upon giving a notice and certain undertakings to the Director-General. The copies forfeited must be disposed of in the prescribed manner or as the Director-General directs.

The new section 140LG requires the seized copies to be released to the dealer as soon as possible if, on the expiry of the period specified in section 140LC(1), the copyright owner had not instituted an infringement action and given notice of this to the Director-General. Seized copies must also be released to the dealer as soon as possible if an infringement action has been instituted but there is no court order in force on the 22nd day after the day on which the action was instituted preventing the release of the copies. Finally, the copies must be released as soon as possible to the dealer if the copyright owner gives notice of consent to such release to the Director-General.

The new section 140LH applies section 140I (which contains provisions for an infringement action pursuant to the seizure of copies on request under Subdivision (2)) to an infringement action pursuant to an ex-officio seizure of copies under Subdivision (3).

The new section 140LI gives a person aggrieved by the seizure of copies of copyright material under Subdivision (3) a right to compensation for a failure by the copyright owner to take infringement action after the copyright owner has given notice to the Director-General requiring the continued detention of those copies.

The new section 140LJ provides that the Director-General need not release or dispose of seized copies if the Government is required or permitted under any law to retain control of those copies.

The new section 140LK applies section 140K (which makes provision for the disposal of copies forfeited to the Government or which the importer or exporter fails to take custody of despite a notice of release from the Director-General) to copies seized under Subdivision (3).

The new section 140LL provides that if the reasonable expenses incurred by the Director-General in relation to action taken under Subdivision (3) or pursuant to a court order under the Subdivision exceeds the amount of the security deposit, the excess is a debt due to the Government by the owner of the copyright in the copyright material concerned.

Clause 26 makes a technical amendment to section 140M (Powers of search in relation to vessels, aircrafts and vehicles) arising from the replacement of the term “detain” with “seize” in the re-enacted section 140LA.

Clause 27 extends the power to examine goods, packages, boxes, chests and other articles under section 140N (Examination of packages) to articles that are being exported. It also amends the section to allow any goods, package, box, chest or other article reasonably suspected to be or to contain a copy of copyright material liable to seizure, to be subject to a process to determine if it is or contains such a copy. Finally, it makes a technical amendment to the section for the same reason as the amendment that is made to section 140M.

Clause 28 amends section 140O (Power to remove packages and goods to police station or examination station) to enable an authorised officer to remove a package, box, chest or other article (and not just goods), and recover the expenses from the owner or person having control of it, upon the latter’s failure to comply with a requirement to remove it to a police station or examination station.

Clause 29 makes amendments to section 140P (Search of persons and baggage) arising from the replacement of the term “detain” with “seize” in the re-enacted section 140LA.

Clause 30 repeals and re-enacts section 140Q (Powers of authorised officers to enter premises) to make it consistent with the equivalent section in the Geographical Indications Act 2014.

Part 2 contains amendments to the Geographical Indications Act 2014.

Clause 31 amends the Division heading of Part VI. More Division headings are added to the Part for better organisation of the provisions of that Part.

Clause 32 amends section 55 (Interpretation of Part VI) to replace all references to “detained goods” with “seized goods”, for consistency with the Copyright Act and the Trade Marks Act.

Clause 33 inserts new sections 55A and 55B.

The new section 55A enables the Director-General to delegate his or her powers under Part VI to a senior officer of customs.

The new section 55B enables the Minister in charge of customs duties to prescribe fees in connection with the administration of Part VI.

Clause 34 inserts a new Division heading for sections 56 to 66, which deal with the seizure of suspected infringing goods on request.

Clause 35 makes various amendments to section 56 (Request for detention of suspected infringing goods) —

- (a) to replace the references to “detention” and “detain” with “seizure” and “seize”, for consistency with the Copyright Act and the Trade Marks Act;
- (b) to clarify the period of time a notice of request for seizure of goods is to remain in force;
- (c) to allow an authorised officer to detain goods which are proposed to be exported and which the officer suspects to be infringing goods;
- (d) to enable the forms of notices under the section to be determined by the Director-General (instead of being prescribed in rules); and
- (e) to expand the rule-making power in that section.

Clause 36 amends section 57 (Security for liability or expense of detention, storage and disposal) to replace the references to “detention” and “detain” with “seizure” and “seize”, for consistency with the Copyright Act and the Trade Marks Act. It also clarifies that the Government’s expense to be covered by the deposit or security must be “reasonable expense”, for consistency with section 66.

Clause 37 repeals and re-enacts section 58 (Secured storage of detained goods), to replace the references to “detained” and “detention” with “seized” and “seizure”, for consistency with the Copyright Act and the Trade Marks Act, and to provide that the requirement in that section to take seized goods to a secure place only applies on a direction of the Director-General. It also enables the Director-General to give a similar direction to the requestor for the seizure.

Clause 38 amends section 59 (Notice of detention) to replace the references to “detention” and “detained” with “seizure” and “seized”, for consistency with the Copyright Act and the Trade Marks Act. It also amends section 59 to enable a notice of seizure to be served by email with the addressee’s consent.

Clause 39 inserts new sections 59A and 59B.

The new section 59A enables an authorised officer or a senior authorised officer to require a person to provide information or documents to the officer at a specified time and place, in order to enable the Director-General to satisfy a request for information under the new section 59B, to enable action under Division 2 or 3 of Part VI to be taken in relation to future shipments of goods, or for a statistical or research purpose.

The new section 59B provides that, where goods have been seized on a request by a person under section 56(4), the Director-General may, on a request by that person, provide to that person certain information that the Director-General is satisfied is necessary for instituting an infringement action.

Clauses 40, 42, 43 and 44 amend sections 60, 62, 63 and 64, respectively, to replace the references to “detention” and “detained” with “seizure” and “seized”, for consistency with the Copyright Act and the Trade Marks Act.

Clause 41 amends section 61 (Compulsory release of detained goods to importer and exporter) —

- (a) to clarify the period of time mentioned in that provision;
- (b) to clarify that the Director-General is to release the seized goods as soon as possible after the prescribed date or event; and
- (c) to replace the reference to “detained” with “seized”, for consistency with the Copyright Act and the Trade Marks Act.

Clause 45 amends section 65 (Disposal of detained goods) to state that the Director-General may dispose of seized goods if they are not retrieved by the importer or exporter after the expiry of the period specified to the importer or exporter to retrieve them. It also amends the section to replace the references to “detained” with “seized”, for consistency with the Copyright Act and the Trade Marks Act.

Clause 46 amends section 66 (Insufficient security) to restrict the provision to expenses incurred for actions taken in relation to goods that are seized on request.

Clause 47 inserts a new Division 3 comprising sections 67 to 67J. The Division contains provisions for the ex-officio seizure of suspected infringing goods by an authorised officer.

The provisions are substantially similar to the provisions in the new Subdivision (3) of Division 6 of Part V of the Copyright Act (inserted by clause 25), except that no goods in transit may be seized, whether or not they are consigned to a person with a presence in Singapore.

Clause 48 renumbers Division 2 of Part VI as Division 4, because of the reorganisation of the sections of the Part into new Divisions, and the insertion of a new Division 3, by the Bill.

Clauses 49, 50 and 51 amend sections 68, 69 and 71, respectively, to replace the references to “detained” with “seized”, for consistency with the Copyright Act and the Trade Marks Act. Clause 50 also amends section 69 to allow any goods, package, box, chest or other article reasonably suspected to be or to contain any goods liable to seizure, to be subject to a process to determine if it is or if it contains such goods.

Clause 52 amends section 74 (Protection from personal liability) to particularise the persons who are given the immunity under that section when carrying out or exercising a duty, function or power under Part VI of the Act. These persons are an authorised officer, a senior authorised officer, and any person acting under the direction of the Director-General.

Part 3 contains amendments to the Registered Designs Act.



Clause 53 inserts a new Part VIA. The new Part, comprising the new sections 68A to 68X, contains provisions to facilitate the seizure of suspected infringing goods on request. The provisions are substantially similar to those in the other 3 Acts amended by the Bill, except in relation to the types of goods that may be seized. The goods that may be seized under the Registered Designs Act are either infringing articles or infringing devices.

The new section 68A contains definitions of terms used in the new Part VIA. Of note are the definitions of “infringing articles” and “infringing devices”.

An infringing article is defined as one in respect of which a design is registered and to which the design (or a design that is not substantially different from that design) has been applied, where either the article is made in Singapore without the registered owner’s consent and in a way that infringes the design, or made elsewhere without such consent and in a way that would have infringed the design had it been made in Singapore.

An infringing device is defined as one for projecting a non-physical product in respect of which a design is registered and to which the design (or a design that is not substantially different from that design) has been applied, where either the device is made in Singapore without the registered owner’s consent and in a way that infringes the design, or made elsewhere without such consent and in a way that would have infringed the design had it been made in Singapore.

These definitions follow the definition of “pirated design goods” under the EUSFTA.

The new section 68B enables the Director-General to delegate his or her powers under the Part to a senior officer of customs.

The new section 68C enables the Minister in charge of customs duties to prescribe fees in connection with the administration of the new Part VIA.

The new section 68D enables the registered owner or exclusive licensee of a registered design (called the requestor) to give a notice to the Director-General requesting for the seizure of goods expected to be imported or exported which the requestor claims to be infringing goods. During the period the notice is in force, an authorised officer may seize goods that are imported or exported (not being goods in transit), if the officer is of the opinion that they are infringing goods.

The new section 68E provides that an authorised officer may refuse to seize goods unless the requestor gives a security deposit that is sufficient to cover the Government’s liability and reasonable expenses for the seizure, storage and disposal of the goods, as well as the payment of any compensation that the Court may order in relation to the seizure.

The new section 68F provides that where goods are seized, the Director-General may direct the person who had possession, custody or control of the goods before

they were seized, or the requestor, to take them to such secure place as the Director-General may direct.

The new section 68G provides that, as soon as practicable after the seizure of goods, the Director-General must give a notice of this to the requestor as well as the importer or exporter. The notice must state that the goods will be released to the importer or exporter unless an infringement action is started within a specified period by the requestor and notice of this is given to the Director-General. The period may be extended on application by the requestor.

The new section 68H enables an authorised officer or a senior authorised officer to require a person to provide information or documents to the officer at a specified time and place, in order to enable the Director-General to satisfy a request for information under the new section 68I, to enable action under Division 2 of Part VIA to be taken in relation to future shipments of goods, or for a statistical or research purpose.

The new section 68I provides that, where goods have been seized on a request by a person under section 68D, the Director-General may, on a request by that person, provide to that person certain information that the Director-General is satisfied is necessary for instituting an infringement action.

The new section 68J provides that the Director-General may permit the requestor and the importer or exporter to inspect the seized goods. Upon giving the requisite undertakings to the Director-General, the requestor or the importer or exporter may take a sample of the goods. The Director-General is not liable to the importer or exporter for any damage to the goods as a result of the inspection, or for any loss or damage resulting from any action taken on or use of the sample by the requestor or other person.

The new section 68K enables the importer or exporter to consent to the forfeiture of the seized goods to the Government upon giving a notice and the prescribed undertakings. Goods so forfeited must be disposed of in the prescribed manner or in the manner directed by the Director-General.

The new section 68L provides that the Director-General must release the seized goods as soon as possible to the importer or exporter under any of the following circumstances:

- (a) if the requestor did not institute an infringement action within the retention period for the goods and give notice of this to the Director-General within that period;
- (b) if an infringement action has been instituted but on the 22nd day after the day on which the action was instituted, there is not in force an order of the High Court preventing the release of the goods;
- (c) if the requestor gives a notice to the Director-General consenting to the release.

The new section 68M gives a person aggrieved by the seizure a right to compensation for a failure by the requestor to take action within the retention period for the goods.

The new section 68N contains various provisions relating to an infringement action concerning seized goods. A person with sufficient interest in the subject matter may apply to be joined as a defendant. An authorised officer is entitled to be heard in the proceedings. The High Court may order the goods to be released on terms, not to be released for a specified period, or forfeited to the Government. Lastly, if the Court finds that there has been no infringement or if the action is dismissed or discontinued, the Court may order the requestor to pay compensation to the importer or exporter.

The new section 68O provides that the Director-General need not release or dispose of the seized goods if the Government is required or permitted under any law to retain control of those goods.

The new section 68P makes provision for the disposal of seized goods that are forfeited to the Government or which the importer or exporter fails to take custody of despite a notice of release from the Director-General.

The new section 68Q provides that if the reasonable expenses incurred by the Director-General in relation to any action taken under Division 2 of the new Part VIA (which deals with seizure of goods on request), or pursuant to a court order under that Division, exceed the amount of the security or deposit, the excess is a debt due to the Government by the requestor.

The new sections 68R to 68V confer various powers on authorised officers and senior authorised officers to search for infringing goods.

The new section 68W makes it an offence to refuse an authorised officer or a senior authorised officer access to a vehicle or place the officer is entitled to under the new Part VIA, or to obstruct such officer in exercising a power under the new Part.

The new section 68X protects the Director-General, an authorised officer, a senior authorised officer, or a person acting under the direction of the Director-General, from liability for anything done with reasonable care and in good faith when exercising a power or performing a function or duty under the new Part VIA.

Clause 54 amends section 73 (Fees) to provide that fees collected under the new Part VIA are not to be paid into the funds of the Intellectual Property Office of Singapore.

Part 4 contains amendments to the Trade Marks Act.

The amendments to the Trade Marks Act are set out in 2 Divisions.

Division 1 contains amendments that are to come into effect before the amendments giving effect to the EUSFTA.

Clause 55 inserts a new section 81A to enable the Director-General to delegate his or her powers under Part X of the Trade Marks Act to a senior officer of customs.

Clause 56 amends section 83 (Security for liability or expense of seizure) to require the security or deposit to be given by the objector, to be an amount sufficient to cover not just the liability or expense for the seizure and the amount of compensation ordered by a court, but also for the liability and expense for the storage and disposal of seized goods. It also clarifies that the Government's expense to be covered by the deposit or security must be "reasonable expense", for consistency with section 93.

Clause 57 inserts new sections 85A and 85B.

The new section 85A enables an authorised officer or a senior authorised officer to require a person to provide information or documents to the officer at a specified time and place, in order to enable the Director-General to satisfy a request for information under the new section 85B, to enable action to be taken under Part X in relation to future shipments of goods, or for a statistical or research purpose.

The new section 85B provides that, where goods have been seized on a request by a person under section 82, the Director-General may, on a request by that person, provide to that person certain information that the Director-General is satisfied is necessary for instituting an infringement action.

Clause 58 amends section 87 (Forfeiture of seized goods by consent) to require an importer who wishes to consent to the forfeiture of seized goods to the Government, to give prescribed written undertakings to the Government.

Clause 59 amends section 92 (Disposal of seized goods ordered to be forfeited) to enable the Director-General to dispose of seized goods if he or she gives a notice of the release of the goods to the importer, and the importer fails to take custody of the goods within the period specified in the notice.

Clause 60 amends section 93A (Detention of infringing goods) to provide for powers and duties similar to the new sections 85A and 85B, in a case where goods are detained on an ex-officio basis. It also amends section 93A to require the security or deposit to be given for the continued detention of goods that are to be exported or are goods in transit and consigned to a local consignee, to be an amount sufficient to cover not just the liability or expense for the detention and the amount of compensation ordered by a court, but also for any liability and expense for the storage and disposal of the seized goods. Finally, it clarifies that the Government's expense to be covered by the security or deposit must be "reasonable expense".

Division 2 contains amendments to give effect to the EUSFTA, and other amendments to enhance the border enforcement measures in the Trade Marks Act.

Clause 61 inserts a new Division heading for section 81 and new sections 81A and 81B in Part X. More Division headings are added to Part X for better organisation of the provisions of that Part.

Clause 62 amends section 81 (Interpretation of Part X) —

- (a) to replace the definition of “objector” with a definition of “requestor”, for the purpose of standardising the term used to describe the person requesting for the seizure of goods by an authorised officer across all 4 Acts; and
- (b) to amend the definition of “infringement action” because of the expansion of the regime for seizing goods on request, to cover goods that are to be exported from Singapore.

Clause 63 inserts a new section 81B to enable the Minister in charge of customs duties to prescribe fees in connection with the administration of Part X.

Clause 64 introduces a new Division heading for the provisions of Part X dealing with seizure of infringing goods on request by a proprietor or licensee of a registered trade mark.

Clause 65 amends section 82 (Restriction of importation of infringing goods) —

- (a) to enable a proprietor or licensee of a registered trade mark (called the requestor) to request the Director-General to seize infringing goods that are expected to be exported from Singapore, and to enable an authorised officer to seize such goods;
- (b) to clarify the period of time a notice of such request is to remain in force;
- (c) to enable the forms of notices under the section to be determined by the Director-General (instead of being prescribed in rules); and
- (d) to expand the rule-making power in that section.

Clause 66 makes amendments to section 83 (Security for liability or expense of seizure) that are consequential on the replacement of the term “objector” with the term “requestor”.

Clause 67 repeals and re-enacts section 84 (Secured storage of seized goods). The new section enables the Director-General to direct the person in possession, custody or control of goods before their seizure to take the seized goods to a secure place. It also enables the Director-General to give a similar direction to the requestor for the seizure.

Clause 68 makes various amendments to section 85 (Notice of seizure) that are consequential on the expansion of the regime for seizing goods on request to goods to be exported from Singapore, and the replacement of the term “objector” with the

term “requestor”. It also amends section 85 to enable a notice of seizure to be served by email with the addressee’s consent.

Clause 69 makes an amendment to section 85A (inserted by clause 57) that is consequential on the division of the provisions of Part X into Subdivisions.

Clause 70 makes amendments to section 85B (inserted by clause 57) that are consequential on the expansion of the regime mentioned above, and the replacement of the term “objector” with the term “requestor”.

Clause 71 makes amendments to section 86 (Inspection, release, etc., of seized goods) that are consequential on the expansion of the regime mentioned above, and the replacement of the term “objector” with the term “requestor”.

Clause 72 makes amendments to section 87 (Forfeiture of seized goods by consent) that are consequential on the expansion of the regime mentioned above.

Clause 73 amends section 88 (Compulsory release of seized goods to importer) —

- (a) to clarify the period of time mentioned in that provision;
- (b) to clarify that the Director-General is to release the seized goods as soon as possible after the prescribed date or event; and
- (c) to make other amendments that are consequential on the expansion of the regime mentioned above, and the replacement of the term “objector” with the term “requestor”.

Clause 74 makes amendments to section 89 (Compensation for failure to take action) that are consequential on the replacement of the term “objector” with the term “requestor”.

Clause 75 makes amendments to section 90 (Actions for infringement of registered trade mark) that are consequential on the expansion of the regime mentioned above, and the replacement of the term “objector” with the term “requestor”.

Clause 76 makes amendments to section 92 (Disposal of seized goods ordered to be forfeited) as a result of the expansion of the regime for seizing goods on request mentioned above.

Clause 77 amends section 93 (Insufficient security) which provides that expenses for certain actions taken that exceed the amount of the security or deposit given by the requestor is a debt due to the Government. The amendment restricts the provision to expenses incurred for actions taken in relation to goods that are seized on request. The clause also amends section 93 to replace the term “objector” with the term “requestor”.

Clause 78 repeals section 93A and inserts a new Division 3, comprising the new sections 93A to 93L. The new sections re-enact section 93A which concerns the

ex-officio seizure of suspected counterfeit goods by an authorised officer, but with greater clarity on the procedure following the seizure. The provisions are substantially similar to the provisions in the new Subdivision (3) of Division 6 of Part V of the Copyright Act (inserted by clause 25).

Clause 79 inserts a number for the Division heading for sections 94 to 98.

Clause 80 makes a technical amendment to section 94 (Powers of search in relation to vessels, aircraft and vehicles) arising from the replacement of the term “detain” with “seize” in the re-enacted section 93A.

Clause 81 extends the power to examine goods, packages, boxes, chests and other articles under section 95 (Examination of packages, etc.) to articles that are being exported. It also amends the section to allow any goods, package, box, chest or other article reasonably suspected to be or to contain goods liable to seizure, to be subject to a process to determine if it is or if it contains such goods. Finally, it makes a technical amendment to the section for the same reason as the amendment that is made to section 94.

Clause 82 amends section 96 (Power to remove packages and goods to police station or examination station) to enable an authorised officer to remove a package, box, chest or other article (and not just goods), and recover the expenses from the owner or person having control of it, upon the latter’s failure to comply with a requirement to remove it to a police station or examination station.

Clause 83 makes amendments to section 97 (Search of persons and baggage) arising from the replacement of the term “detain” with “seize” in the re-enacted section 93A.

Clause 84 repeals and re-enacts section 98 (Powers of authorised officers to enter certain premises) to make it consistent with the equivalent section in the Geographical Indications Act 2014.

Clause 85 inserts a new Division heading for sections 99 and 100.

Clause 86 repeals and re-enacts section 100 (Immunity of Government, etc.). The provision now protects the Director-General, an authorised officer, a senior authorised officer and any person acting under the Director-General’s direction against liability, for anything done or omitted to be done with reasonable care and in good faith when exercising any power or performing any function or duty under Part X.

Part 5 contains related amendments to section 89 of the Customs Act and section 31 of the Regulation of Imports and Exports Act. These amendments are intended to create an exception to the duty of confidentiality imposed by those sections on information obtained for the purposes of those Acts, so as to enable the Director-General to satisfy a request for information by intellectual property right owners to institute an infringement action. Such requests may be made pursuant to various amendments made in Parts 1 to 4 of the Bill.

Part 6 contains saving and transitional provisions.

Clause 89 makes the following saving and transitional provisions in relation to the amendments to the Copyright Act under Part 1:

- (a) despite the amendment to section 140C of the Copyright Act by clause 3 (which increases the matters which the security or deposit furnished by the objector must cover), the current section 140C continues to apply to a case where a notice of objection was given before the commencement date of Division 1 of Part 1, and to a case where copies of copyright materials were detained before that date on an ex-officio basis that were imported goods and not goods in transit;
- (b) despite the amendment to section 140LA(3)(b)(iii)(A) of the Copyright Act by clause 7(b) (which increases the matters which the security or deposit furnished by the owner of copyright material must cover for the continued detention of copies to be exported or are goods in transit consigned to a local consignee), the old section 140LA(3)(b)(iii)(A) continues to apply to a case where copies of copyright material were detained before the commencement date of Division 1 of Part 1;
- (c) except as provided by paragraphs (a) and (b), the Copyright Act as amended by Division 1 of Part 1 applies to copies of copyright material seized or detained before the commencement date of Division 1 of Part 1. This means that, for example, the new sections 140EA and 140EB apply to enable the Director-General to obtain information or documents concerning copies seized before that date, and to provide to right holders on their request certain information for the purpose of instituting an infringement action;
- (d) the Copyright Act as amended by Division 2 of Part 1 applies to a notice objecting to the import of goods given before the commencement date of Division 2 of Part 1, pursuant to which no seizure has yet to be made before that date and that remained in force immediately before that date, as if it were a notice requesting for seizure of goods given on or after that date;
- (e) sections 140A to 140LA of the Copyright Act as in force before the date of commencement of Division 2 of Part 1 continue to apply to copies of copyright material seized or detained on or after the date of commencement of Division 1 of Part 1, and before the date of commencement of Division 2 of Part 1.

Clause 90 contains saving and transitional provisions in relation to the amendments to the Trade Marks Act under Part 4, which correspond to the provisions in relation to the amendments to the Copyright Act in clause 89. The clause also provides that section 100 of the Trade Marks Act (Immunity of Government, etc.) as in force immediately before the commencement date of



Division 2 of Part 4 continues to apply to acts done or omitted to be done before that date.

Clause 91 enables the Minister to make regulations for additional saving and transitional provisions for any provision in the Bill, for a period of 2 years after the commencement of that provision.

## EXPENDITURE OF PUBLIC MONEY

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

---