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Tobacco (Control of Advertisements and Sale) (Amendment) Bill

Bill No. 3/2019.

Read the first time on 14 January 2019.

A BILL

intituled

An Act to amend the Tobacco (Control of Advertisements and Sale) Act (Chapter 309 of the 2011 Revised Edition).

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 Tobacco (Control of Advertisements and Sale) (Amendment) Act 2019 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2(1) of the Tobacco (Control of Advertisements and Sale) Act (called in this Act the principal Act) is amended by inserting, immediately after the definition of “tobacco substitute”, the following definition:

10 ““trade mark” has the meaning given by section 2(1) of the Trade Marks Act (Cap. 332);”.

Repeal of sections 17 and 17A and re-enactment of section 17

3. Sections 17 and 17A of the principal Act are repealed and the following section substituted therefor:

15 “Appearance of tobacco products, packaging and labelling

17.—(1) A person must not —

- (a) import into Singapore; or
- (b) distribute, sell, offer for sale or possess for sale in Singapore,

20 a tobacco product which, or the packaging or labelling of which, does not comply with subsection (3).

(2) However, subsection (1)(a) does not apply to the import of tobacco products into Singapore solely for —

- 25 (a) the re-export of the tobacco products from Singapore —
 - (i) whether or not on the same conveyance on which the tobacco products were brought into Singapore; and
 - 30 (ii) whether or not the tobacco products are landed and kept in any place in Singapore before they are taken out of Singapore; or

(b) the repackaging or relabelling of the tobacco products into packaging or with labelling that complies with subsection (3).

(3) A tobacco product, and the packaging or labelling of any tobacco product —

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(a) must comply with every requirement prescribed in relation to the tobacco product or its packaging or labelling (as the case may be), including any requirement as to size, appearance, design, health warnings and other information to be stated; and

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(b) despite any written law or rule of law, must not bear any trade mark, term, descriptor, figurative or other sign, feature, scent or sound —

(i) that is prescribed as prohibited in relation to the tobacco product or its packaging or labelling; or

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(ii) that promotes the tobacco product by any means that is false, misleading, deceptive or likely to create an erroneous impression about the characteristics, health effects, hazards or emissions of the tobacco product, including the misleading impression that the tobacco product is less harmful than other tobacco products.

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(4) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

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(a) to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both, unless paragraph (b) applies; or

(b) if the person has any prior qualifying conviction, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

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- (5) In subsection (4), “qualifying conviction” means —
- (a) a conviction for an offence under subsection (4); or
 - (b) a conviction for an offence under section 17(2) or 17A(4) as in force immediately before the date of commencement of section 3 of the Tobacco (Control of Advertisements and Sale) (Amendment) Act 2019.”.

Amendment of section 18

4. Section 18(5) of the principal Act is amended —

- (a) by deleting “\$5,000” in paragraph (a) and substituting “\$10,000”; and
- (b) by deleting “\$10,000” in paragraph (b) and substituting “\$20,000”.

Amendment of section 34

5. Section 34 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsections:

“(1) Subject to subsection (3), the Chief Executive or any person authorised by the Chief Executive in writing may compound any offence under this Act that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

- (a) one half of the amount of the maximum fine that is prescribed for the offence;
- (b) \$5,000.

(1A) On payment of such sum of money, no further proceedings are to be taken against that person in respect of the offence.”; and

- (b) by deleting subsection (3) and substituting the following subsection:

“(3) Where the person reasonably suspected of having committed an offence under this Act was an under-aged person at the time of the alleged offence (called the under-aged offender), the offence may be compounded if the under-aged offender and the parents or guardian of the under-aged offender first attend counselling at such place as the Chief Executive may specify.”.

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Amendment of section 37

6. Section 37 of the principal Act is amended —

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(a) by deleting the full-stop at the end of paragraph (d) of subsection (1A) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

“(e) the requirements under this Act for tobacco products and their packaging or labelling, including —

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(i) the requirements as to size, appearance and design of tobacco products and their packaging or labelling;

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(ii) the health warnings and other information to be stated on tobacco products and their packaging or labelling; and

(iii) the trade marks, terms, descriptors, figurative or other signs, features, scents and sounds that are prohibited in relation to tobacco products and their packaging or labelling.”; and

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(b) by inserting, immediately after subsection (1A), the following subsection:

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“(1B) For the purposes of subsection (1A)(e), different requirements or prohibitions may be prescribed for different tobacco products or

different types of packaging or labelling of tobacco products.”.

New sections 38 and 39

7. The principal Act is amended by inserting, immediately after section 37, the following sections:

“Operation of Act not to affect registrability or registration of trade marks

38. Nothing in, or done in accordance with, this Act or any regulations made for the purpose of section 17 —

- (a) prevents an applicant for registration of a trade mark from stating, for the purpose of section 5(2)(e)(ii) of the Trade Marks Act, that the applicant has a bona fide intention to use the trade mark in the course of trade, by the applicant or with the applicant’s consent, in relation to any goods or services in respect of which the applicant seeks to register the trade mark;
- (b) prevents the registration of a trade mark under the Trade Marks Act;
- (c) prevents a trade mark mentioned in paragraph (a) of the definition of “earlier trade mark” in section 2(1) of the Trade Marks Act from being taken into account, for the purpose of section 8(11) of that Act, in determining the registrability of a later mark; or
- (d) is a ground to revoke the registration of a trade mark under section 22 of the Trade Marks Act, or to declare the registration of a trade mark invalid under section 23 of that Act.

Operation of Act not to affect registrability or registration of designs

39.—(1) Nothing in, or done in accordance with, this Act or any regulations made for the purpose of section 17 —

- (a) prevents the registration of a design under the Registered Designs Act (Cap. 266); or

(b) is a ground to revoke the registration of a registered design under section 27 of the Registered Designs Act.

(2) In this section, “design” and “registered design” have the meanings given by section 2(1) of the Registered Designs Act.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Tobacco (Control of Advertisements and Sale) Act (Cap. 309) —

- (a) to require that all tobacco products that are imported into Singapore, or are distributed, sold, offered for sale or possessed for sale in Singapore, and their packaging or labelling, must comply with requirements prescribed under the Act. The prescribed requirements may provide for the standardised presentation of tobacco products and their packaging and labelling (standardised packaging);
- (b) to make clear that the standardised packaging requirement does not affect the registrability and registration of trade marks under the Trade Marks Act (Cap. 332) and designs under the Registered Designs Act (Cap. 266); and
- (c) to make other technical amendments to the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) to introduce a new definition of “trade mark” to support amendments elsewhere in the Bill.

Clause 3 repeals sections 17 and 17A and re-enacts section 17. Under the new section 17(1), a person must not —

- (a) import into Singapore; or
- (b) distribute, sell, offer for sale or possess for sale in Singapore,

a tobacco product which, or the packaging or labelling of which, does not comply with the new section 17(3) (non-compliant tobacco product). A person who contravenes this prohibition commits an offence under the new section 17(4).

However, under the new section 17(2), the prohibition under the new section 17(1) on the import into Singapore of non-compliant tobacco products does not apply to the import of such tobacco products into Singapore solely for either of the following purposes:

- (a) the re-export of the tobacco products from Singapore, whether or not —
 - (i) the tobacco products are re-exported on the same conveyance on which they were brought into Singapore; and
 - (ii) the tobacco products are landed and kept in any place in Singapore before they are taken out of Singapore;
- (b) the repackaging or relabelling of the tobacco products into packaging or with labelling that complies with the new section 17(3).

Under the new section 17(3), a tobacco product and its packaging or labelling —

- (a) must comply with every prescribed requirement, including any requirement as to size, appearance, design, health warnings and other information to be stated; and
- (b) despite any written law or rule of law, must not bear any trade mark, term, descriptor, figurative or other sign, feature, scent or sound —
 - (i) that is prescribed as prohibited in relation to the tobacco product or its packaging or labelling; or
 - (ii) that promotes the tobacco product by any means that is false, misleading, deceptive or likely to create an erroneous impression about the tobacco product's characteristics, health effects, hazards or emissions, including the misleading impression that the tobacco product is less harmful than other tobacco products.

Clause 4 amends section 18(5) to increase the maximum fines that may be imposed for an offence under that provision —

- (a) from \$5,000 to \$10,000 for a first offence; and
- (b) from \$10,000 to \$20,000 for a person who has any prior qualifying conviction as defined in section 18(6).

Clause 5 —

- (a) amends section 34(1) and inserts a new section 34(1A), such that the Chief Executive of the Health Sciences Authority (Chief Executive), or any person authorised by the Chief Executive in writing, may compound any offence under the Act that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum (composition sum) not exceeding the lower of one half of the amount of the maximum fine that is prescribed for the offence or \$5,000. Upon

payment of the composition sum, no further proceedings are to be taken against that person in respect of the offence; and

- (b) amends section 34(3) in light of the amended section 34(1) to specify that attendance at counselling may be a prerequisite to composition.

Clause 6 amends section 37(1A) and inserts a new section 37(1B) to clarify, in support of amendments elsewhere in the Bill, the matters in respect of which regulations may be made for the purposes of the new section 17.

Clause 7 inserts new sections 38 and 39. The new section 38 states that nothing in, or done in accordance with, the Act or any regulations made for the purpose of section 17 —

- (a) prevents an applicant for registration of a trade mark from stating, for the purpose of section 5(2)(e)(ii) of the Trade Marks Act, that the applicant has a bona fide intention to use the trade mark in the course of trade, by the applicant or with the applicant's consent, in relation to any goods or services in respect of which the applicant seeks to register the trade mark;
- (b) prevents the registration of a trade mark under the Trade Marks Act;
- (c) prevents a trade mark mentioned in paragraph (a) of the definition of "earlier trade mark" in section 2(1) of the Trade Marks Act from being taken into account, for the purpose of section 8(11) of that Act, in determining the registrability of a later mark; or
- (d) is a ground to revoke the registration of a trade mark under section 22 of the Trade Marks Act, or to declare the registration of a trade mark invalid under section 23 of that Act.

The new section 39 states that nothing in, or done in accordance with, the Act or any regulations made for the purpose of section 17 —

- (a) prevents the registration of a design under the Registered Designs Act; or
- (b) is a ground to revoke the registration of a registered design under section 27 of that Act.

EXPENDITURE OF PUBLIC MONEY

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