

TRADE DESCRIPTIONS BILL 2011

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A BILL

i n t i t u l e d

An Act for the purpose of promoting good trade practices by prohibiting false trade descriptions and false or misleading statements, conduct and practices in relation to the supply of goods and services and to provide for matters connected therewith or incidental thereto.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Trade Descriptions Act 2011.

(2) This Act comes into operation on a date to be appointed by the Minister, by notification in the *Gazette*.

Interpretation

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

“goods” includes ships, aircrafts, vehicles, animals, plants and crops and all kinds of movable property;

“electronic” means the technology of utilizing electrical, optical, magnetic, electromagnetic, biometric, photonic or other similar technology;

“advertisement” means every form of advertising (whether or not accompanied by or in association with spoken or written words or other writing or sounds and whether or not contained or issued in a publication) by the display of notices or by means of catalogues, price lists, circulars, labels, cards or other documents or materials or by the exhibition of films or of pictures or photographs, or by means of radio or television, or in any other way including through electronic means;

“ship” includes any boat and any other description of vessel used in navigation;

“precious metal” means gold, silver or platinum in its fine form or gold, silver or platinum alloy;

“supply” means—

(a) in relation to goods, the supply, including resupply, by way of sale, exchange, lease, hire or hire-purchase of the goods; and

(b) in relation to services, the provision by way of sale, grant or conferment of the services,

by any means including through electronic means.

“Minister” means the Minister charged with the responsibility for domestic trade and consumerism;

“Registrar” means the Registrar of Trade Description Order appointed under section 4;

“Controller” means the Controller of Trade Descriptions appointed under section 3;

“Assistant Controller” means the Assistant Controller of Trade Descriptions appointed under section 3;

“service” means a service of any description, whether industrial, trade, professional or otherwise but does not include anything done under contract of service;

“premises” means any place, stationary or otherwise established or set up by any person, whether such place is with or without enclosure, and includes vehicles, aircrafts, ships and any other vessel;

“standard of fineness”, in relation to articles made of precious metals, means the number of parts by weight of fine gold, silver or platinum in one thousand parts by weight of precious metal;

“publish”, in relation to an advertisement, means to place the advertisement before the public or any member of the public by any means, including through electronic means; and

“Deputy Controller” means the Deputy Controller of Trade Descriptions appointed under section 3.

Appointment of Controller, Deputy Controller, Assistant Controllers, etc.

3. (1) The Minister may appoint, from among public officers, a Controller, such number of Deputy Controllers, Assistant Controllers and other officers as may be necessary for the purposes of this Act.

(2) The Controller shall perform the duties imposed and exercise the powers conferred on him subject to the general direction and control of the Minister.

(3) The Deputy Controllers, Assistant Controllers and other officers appointed under subsection (1) shall be under the direction and control of the Controller.

(4) The Deputy Controllers may perform all the duties imposed and exercise all the powers conferred on the Controller.

(5) The Controller and Deputy Controllers may perform all the duties imposed and exercise all the powers conferred on the Assistant Controllers.

(6) An officer appointed under this section when acting against any person under this Act shall, on demand, declare his office and produce to the person against whom he is acting such authority card as the Controller may direct to be carried by such officer.

(7) An officer appointed under this section shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

Appointment of Registrar of Trade Description Order

4. (1) For the purposes of this Act, there shall be a Registrar of Trade Description Order.

(2) The Minister shall appoint, from among public officers, a Registrar of Trade Description Order who shall cause a public register of trade description orders to be established and maintained.

PART II**PROHIBITION OF FALSE TRADE DESCRIPTIONS****Prohibition of false trade description**

5. (1) Any person who—

- (a) applies a false trade description to any goods;
- (b) supplies or offers to supply any goods to which a false trade description is applied; or
- (c) exposes for supply or has in his possession, custody or control for supply any goods to which a false trade description is applied,

commits an offence and shall, on conviction, be liable—

- (A) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit; or
- (B) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) The terms used in this section and wherever else occurring in this Act shall be interpreted in accordance with sections 6 to 11.

Trade description

6. (1) Without prejudice to section 8, a trade description is an indication, whether direct or indirect and by any means given, of any of the following matters with respect to any goods or parts of goods:

- (a) nature or designation;
- (b) quantity, length, width, height, area, volume, capacity, weight, size or gauge;
- (c) method of manufacture, production, processing or reconditioning;
- (d) composition;
- (e) fitness for purpose, strength, performance, behaviour or accuracy;
- (f) the standard of fineness of articles made of precious metal;
- (g) any physical or technological characteristics not included in the preceding paragraphs;
- (h) date of expiration of the goods;
- (i) testing by any person and results thereof;
- (j) quality otherwise than as specified in the preceding paragraphs;
- (k) approval by any person or conformity with a type approved by any person;
- (l) place or date of manufacture, production, processing or reconditioning;
- (m) person who manufactured, produced, processed or reconditioned the goods;
- (n) other history, including previous ownership or use.

(2) The matters specified in subsection (1) shall be taken—

- (a) in relation to any animal, to include sex, breed or cross, fertility and soundness;

(b) in relation to any semen, to include the identity and characteristics of the animal from which it was taken and measure of dilution.

(3) Where the application of any description is prohibited under the provisions of the law specified in the Schedule except where applied to goods which comply with the requirements of that law, no such description applied in accordance with the requirements of that law shall be a false trade description.

(4) The Minister may amend the Schedule referred to in subsection (3) by order published in the *Gazette*.

(5) For the purposes of this Act, a trade description or statement published in any newspaper, book or periodical or in any film or sound or television broadcast or any other medium, including through electronic means, shall not be deemed to be a trade description or a statement unless it is or forms part of an advertisement.

False trade description

7. (1) A false trade description is a trade description which is false to a material degree.

(2) A trade description which, though not false, is misleading, that is to say, likely to be taken for an indication of any of the matters specified in section 6 as would be false to a material degree, is deemed to be a false trade description.

(3) Anything which, though not a trade description, that is to say, likely to be taken for an indication of any of the matters specified in section 6 as would be false to a material degree, is deemed to be a false trade description.

(4) A false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognized by any person or implied by the approval of any person is deemed to be a false trade description, if there is no such person or no standard so specified, recognized or implied.

Prohibition of false trade description in relation to trademark

8. (1) Notwithstanding sections 5 and 6, a trade description shall include an indication, whether direct or indirect, and by any means given, in respect of any goods or parts of goods relating to any rights in respect of trade mark registered under the Trade Marks Act 1976 [*Act 175*].

(2) Any person who—

- (a) applies a false trade description to any goods as if the goods were subject to any rights relating to registered trade mark;
- (b) supplies or offers to supply any goods to which a false trade description is applied as if the goods were subject to any rights relating to registered trade mark; or
- (c) exposes for supply or has in his possession, custody or control for supply any goods to which a false trade description is applied,

commits an offence and shall, on conviction, be liable—

- (A) if that person is a body corporate, to a fine not exceeding fifteen thousand ringgit for each goods bearing the false trade description, and for a second or subsequent offence, to a fine not exceeding thirty thousand ringgit for each goods bearing the false trade description; or
- (B) if that person is not a body corporate, to a fine not exceeding ten thousand ringgit for each goods bearing the false trade description or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding twenty thousand ringgit for each goods bearing the false trade description, or to imprisonment for a term not exceeding five years or to both.

(3) Any person who applies, supplies or offers to supply, exposes for supply or has in his possession, custody or control for supply any goods bearing an identical mark with the registered

trade mark without the consent of the registered owner of the trade mark is deemed to apply, supply or offer to supply goods bearing false trade description unless the contrary is proved.

Trade description order

9. (1) Where any person being a registered owner of a registered trade mark under the Trade Marks Act 1976 claim that his rights in respect of such trade mark are being infringed in the course of trade, by any other mark or get-up used by any other person, which is not identical with his registered trade mark but can be passed off as his registered trade mark, he may apply to the High Court to declare that the infringing mark is a false trade description for the purpose of section 8.

(2) For the purpose of subsection (1), the person referred to in subsection (1) in making the application shall identify specifically the infringing trade or other mark or get-up and the High Court may, on the application of such person, make an order declaring that the infringing trade or other mark or get-up is for the purposes of this Act, a false trade description in its application to such goods as may be specified in the order.

(3) An order of the High Court made under this section may be referred to as a trade description order.

(4) A subsisting trade description order made by any High Court in Malaysia shall be admissible in evidence in any proceedings under section 8 in which it is relevant as conclusive proof of a false trade description.

(5) A trade description order shall expire at the end of one year from the date on which it is made unless it is renewed by the High Court upon such terms and for such further period as the High Court may decide on the application of the person referred to in subsection (1) or his successor-in-title.

(6) Any person who obtains a trade description order under this section shall register the trade description order with the Registrar.

Applying a trade description to goods

10. (1) A person applies a trade description to goods if he or any person authorized by him—

(a) affixes or annexes it to or in any manner marks it on or incorporates it with—

(i) the goods themselves; or

(ii) anything in, on or with which the goods are supplied;

(b) places the goods in, on or with anything which the trade description has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods; or

(c) uses the trade description in any manner likely to be taken as referring to the goods.

(2) For the purpose of this Act, an oral statement may amount to the use of a trade description.

(3) Where goods are supplied in pursuance of a request in which a trade description is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods corresponding to that description, the person supplying the goods is deemed to have applied that trade description to the goods.

Trade description used in advertisements for class of goods

11. (1) This section shall have effect where in an advertisement a trade description is used in relation to any class of goods.

(2) The trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published—

(a) for the purpose of determining whether an offence has been committed under paragraph 5(1)(a); and

(b) where goods of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, for the purpose of determining whether an offence has been committed under paragraph 5(1)(b).

(3) In determining whether any goods are of a class to which a trade description used in an advertisement relates, regard shall be had—

(a) to the form and content of the advertisement;

(b) to the time, place, manner and frequency of its publication;
and

(c) to all other matters,

making it likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class in relation to which the trade description is used in the advertisement.

(4) For the purpose of this section, “class of goods” means the class of goods prescribed under the Trade Marks Act 1976.

Possession for supply

12. A person having in his possession three or more of the same goods of similar description and bearing the same trade description mentioned under sections 6 and 8 is deemed to have in possession the goods for supply.

PART III

MISSTATEMENTS OTHER THAN FALSE TRADE DESCRIPTIONS

Interpretation

13. For the purpose of this Part, “false” or “misleading” means any conduct, representation, statement or practice which is capable of leading any person into error.

False or misleading indication as to price of goods

14. (1) A person who offers to supply any goods shall not make any false or misleading indication, by any means, whether direct or indirect—

(a) that the price at which the goods are offered is equal to or less than the recommended price;

(b) that the goods are being offered at a price less than that at which they are in fact being offered; or

(c) that the goods are being offered at a price less than being offered by any other person.

(2) Where any person is charged with an offence under this section, the onus of proving that—

(a) the price of the goods offered by him is less than the price offered by any other person; or

(b) the existence and terms of any recommended price relied upon or that the requirements of subsection (3) have been complied with,

shall be upon the person charged.

(3) For the purposes of this section—

(a) an indication as to a recommended price—

(i) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended by the manufacturer or producer; and

(ii) shall be treated, unless the contrary is expressed, as an indication that it is a price recommended generally for supply by retail in the area where the goods are offered;

(b) anything likely to be taken as an indication as to a recommended price shall be treated as such an indication; and

(c) any person advertising goods as available for supply shall be taken as offering to supply them.

Price deemed to include tax

15. Where in any advertisement the price of any goods or services is quoted, such price shall, unless the contrary appears, be deemed to include all eligible government taxes and duties and any other charges.

False representation as to supply or approval of goods or services

16. (1) No person shall make any false representation by any means, whether direct or indirect, that any goods or services supplied by him or any methods adopted by him are of a kind supplied to or approved by any person including any government or government department or agency or any international body or agency whether in Malaysia or abroad.

(2) Subsection (1) shall have effect without prejudice to the provisions of any written law prohibiting or restricting the use of any name, emblem, insignia, seal, flag, pennant, title, coat-of-arms, sign, words or letters or any other form of description in the course of trade, business, calling or profession.

False or misleading statements as to services, etc.

17. (1) No person shall—

- (a) make a statement which he knows to be false;
- (b) recklessly make a statement which is false; or
- (c) make any statement which is likely to deceive or mislead any person,

as to any of the following matters:

- (A) the provision of any services, accommodation or facilities;
- (B) the nature of any services, accommodation or facilities;
- (C) the time at which, manner in which or persons by whom any services, accommodation or facilities are so provided;
- (D) the examination, approval or evaluation by any person of any services, accommodation or facilities are so provided;
- (E) the location or amenities of any accommodation are so provided; or
- (F) the rates or charges for any services, accommodation or facilities are so provided.

(2) For the purpose of this section—

- (a) a statement, whether or not referring to any matter specified in subsection (1), which is likely to be taken as a statement to any of those matters as might be false, is deemed to be a false statement as to that matter; and
- (b) a statement made regardless of whether it is true or false is deemed to be made recklessly, whether or not the person making it had reason for believing that it might be false.

(3) In relation to any services consisting of or including the application of any treatment or process or the carrying out of any repair, the matters specified in subsection (1) shall be taken to include the effect of the treatment, process or repair.

False or misleading statement in advertisement

18. (1) No person shall make any false or misleading statement in any advertisement in relation to any goods or services.

(2) Where any person is charged with an offence under this section, the onus of proving that the statement made by him is true or not misleading shall be upon the person charged.

Presumption of liability on advertisers, etc.

19. The following persons shall, unless the contrary is proved, be deemed to have given a false or misleading statement in any advertisement:

- (a) the person who directly or indirectly offers to supply the goods or services;
- (b) the person on whose behalf the advertisement is made.

False or misleading statement in relation to contest, games, etc.

20. No person shall make any false or misleading statement—

- (a) that the goods or services offered by him are able to facilitate winning in any contest or game of chance; or

- (b) that any person has already won, will win, or will, on doing a particular act, win a prize or other equivalent benefit, where in fact—
- (i) there is no prize or other equivalent benefit;
 - (ii) the prize or other equivalent benefit is not provided as offered; or
 - (iii) taking any action in relation to claiming the prize or other equivalent benefit is subject to that person paying money, incurring cost or any unreasonable condition.

Contravention of Part III to be an offence

21. Any person who contravenes any of the provisions of this Part commits an offence and shall, on conviction, be liable—

- (a) if such person is a body corporate, to a fine not exceeding five hundred thousand ringgit and for a second or subsequent offence, to a fine not exceeding one million ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

PART IV

DEFENCES

Offences due to fault of another person

22. (1) Where the commission of an offence by any person (referred to in this section as the “first-mentioned person”) is due to the act or default of another person, that other person who commits the act or default shall, on conviction, be guilty of the offence.

(2) For the purpose of subsection (1), any person may be charged with and convicted of the offence, whether or not proceedings are taken against the first-mentioned person.

Defence of personal or domestic use

23. (1) In any proceedings for an offence, it shall be a defence for the person charged to prove that the commission of the offence was for the purpose of personal or domestic use.

(2) Where a body corporate is charged with an offence under this Act, such body corporate shall not be entitled to rely on the defence referred to in this section.

Defence of mistake, accident, etc.

24. (1) Subject to subsection (2), in any proceedings for an offence, it shall be a defence for the person charged to prove that the commission of the offence was due to—

- (a) a mistake on his part;
- (b) reliance on information supplied to him;
- (c) the act or default of another person; or
- (d) an accident or some other cause beyond his control,

and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such offence by himself or any person under his control.

(2) If in any case the defence involves the allegation that the commission of the offence was due to a mistake on his part or to reliance on information supplied to him or to the act or default of another person, the person charged shall not, without leave of the Court, be entitled to rely on that defence unless, within a period of fourteen days of his being charged in Court, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of that other person.

(3) In any proceedings for an offence of supplying or offering to supply goods to which a false trade description is applied, it shall be a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained, that the goods did not conform to the description or that the description had been applied to the goods.

(4) Where a body corporate is charged with an offence under this Act, such body corporate shall not be entitled to rely on the defence referred to in this section.

Innocent publication of advertisement

25. In any proceedings for an offence committed by reason of publication of an advertisement, it shall be a defence for the person charged to prove—

- (a) that he is a person whose business is to publish or arrange for the publication of advertisement;
- (b) that he received the advertisement for publication in the ordinary course of business; and
- (c) that he did not know or had no reason to suspect that its publication would amount to an offence under this Act.

PART V

PROHIBITION OF IMPORTATION OF CERTAIN GOODS, *ETC.*

Prohibition of importation of goods bearing false indication of origin

26. The Minister may make an order prohibiting the importation of goods into Malaysia where a false trade description is applied to any goods outside Malaysia and the false indication, or one of the false indications, given, or likely to be taken as given, is an indication of the place of manufacture, production, processing or reconditioning of the goods or any part of the goods.

Abetting of offences committed abroad

27. (1) Subject to subsection (2), any person who, in Malaysia, assists in or induces the commission of an act in any other country in respect of goods which if the act were committed in Malaysia would be an offence under section 5, commits an offence, if—

- (a) the false trade description concerned is an indication (or anything likely to be taken as an indication) that the goods or any part thereof were manufactured, produced, processed or reconditioned in Malaysia; or
- (b) the false trade description concerned—
 - (i) consists of or comprises an expression (or anything likely to be taken as an expression) to which a meaning is assigned by an order made under paragraph 28(1)(b); and
 - (ii) where that meaning is so assigned only in circumstances specified in the order, the trade description is used in those circumstances.

(2) A person does not commit an offence under subsection (1) if, by order made under section 56, the Minister has specified the non-application of section 5 to those goods being intended for dispatch to a destination outside Malaysia.

(3) Any person who, in Malaysia, assists in or induces the commission of an act in any other country, in respect of goods which if the act were committed in Malaysia would be an offence under section 26, commits an offence.

PART VI**POWER TO DEFINE TERMS, TO REQUIRE
INFORMATION TO BE GIVEN, ETC.****Definition orders**

28. (1) Where it appears to the Minister—

- (a) that it would be in the interest of persons to whom any goods are supplied or any services are provided; or

- (b) that it would be in the interest of persons by whom any goods are exported and would not be contrary to the interest of persons to whom such goods are supplied in Malaysia,

that any expression used in relation to the goods or services should be understood as having definite meanings, the Minister may by order, assign such meanings either—

- (A) to those expressions when used in the course of trade or business as, or as part of, a trade description applied to the goods or services; or
- (B) to those expressions when so used in such circumstances as may be specified in the order,

and where such a meaning is so assigned to an expression it shall be deemed for the purposes of this Act to have that meaning when used as mentioned in paragraph (A) or, as the case may be, paragraph (B).

(2) It is an offence for any person who uses the expression which has been defined in the order specified in subsection (1) as a trade description of goods or services, in order to mislead or confuse the person who wants to buy or obtain the goods or services, as if the goods or services were supplied according to the definition given to that expression.

(3) Any person who commits an offence under this section shall, on conviction, be liable—

- (a) if such person is a body corporate, to a fine not exceeding five million ringgit, and for a second or subsequent offence, to a fine not exceeding ten million ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

Informative marking and certification orders

29. (1) Where it appears to the Minister necessary or expedient in the interest of persons to whom any goods or any services in relation to that goods are supplied that the goods should be—

- (a) certified by a competent authority;
- (b) marked with a mark determined by the Minister; or
- (c) accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods,

the Minister may, by order, impose requirements for securing that the goods are so certified, marked or accompanied and regulate or prohibit the supply of the goods and the requirements may extend to the form and manner in which the information or instruction is to be given.

(2) Where an order under this section is in force with respect to goods of any description, any person who, in the course of any trade or business—

- (a) certifies;
- (b) marks;
- (c) supplies; or
- (d) offers to supply,

goods of that description in contravention of the order commits an offence and shall, on conviction, be liable—

- (A) if such person is a body corporate, to a fine not exceeding two hundred thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit; or
- (B) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) For the purpose of this section, “competent authority” means a competent authority named by the Minister after obtaining the agreement of the competent authority.

PART VII

INVESTIGATION AND ENFORCEMENT

Chapter 1

Investigation and complaints

Investigation by the Assistant Controller

30. Where the Assistant Controller has reasonable grounds to suspect that any offence is or will be committed under this Act, the Assistant Controller may conduct such investigation as the Assistant Controller thinks expedient for the due administration of this Act.

Complaints to the Assistant Controller

31. (1) The Assistant Controller may, upon a complaint by a person, conduct an investigation on any person who has committed or is committing any offence under this Act.

(2) The complaint shall specify the person against whom the complaint is made or the premises where the alleged offence is committed and details of the alleged offence under this Act.

Chapter 2

Information gathering powers

Power of the Assistant Controller to require provision of information

32. (1) This section applies if the Assistant Controller in carrying out an investigation under this Part has reason to believe that any person—

- (a) has any information or any document that is relevant to the performance of the Assistant Controller’s powers and functions under this Act; or

(b) is capable of giving any evidence which the Assistant Controller has reason to believe is relevant to the performance of the Assistant Controller's powers and functions under this Act.

(2) Notwithstanding any provision of any other written law, the Assistant Controller, by written notice, may direct any person—

- (a) to provide the Assistant Controller, within the period and in the manner and form specified in the notice, any information or document referred to in subsection (1);
- (b) to produce to the Assistant Controller, within the period and in the manner specified in the notice, any information or document referred to in subsection (1), whether in physical form or in electronic media;
- (c) to make copies of, or extracts from, any document referred to in subsection (1) and to produce copies or extracts of such documents, as the case may be, to the Assistant Controller within the period and in the manner specified in the notice;
- (d) if the person is an individual, to appear before the Assistant Controller at a time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media;
- (e) if the person is a body corporate or a public body, to cause a relevant and competent officer of the body to appear before the Assistant Controller at a time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media;
- (f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear before the Assistant Controller at a time and place specified in the notice to give any information, either orally or in writing, and produce any document referred to in subsection (1), whether in physical form or in electronic media; or

(g) to make a statement to the Assistant Controller providing an explanation of any information or document referred to in subsection (1) within the period and in the manner and form specified in the notice.

(3) Where the Assistant Controller directs any person to produce any document under subsection (2) and the person is not in custody of the document, that person shall—

(a) state, to the best of his knowledge and belief, where the document may be found; and

(b) identify, to the best of his knowledge and belief, the last person who had custody of the document and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(4) Any person directed to provide information under subsection (2) or (3) shall ensure that the information provided is true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information which would make the information provided untrue or misleading.

(5) Any person who refuses or fails to comply with the direction made by the Assistant Controller under this section commits an offence.

Assistant Controller may retain documents

33. (1) The Assistant Controller may take and retain for such duration as he deems necessary, possession of any document obtained under this Part.

(2) The person who provided the document is entitled to be supplied, as soon as practicable, with a copy certified by the Assistant Controller to be a true copy of the document.

(3) Notwithstanding the provisions of any other written law, the certified copy of the document shall be admissible as evidence as if it was the original document.

(4) If the Assistant Controller is satisfied that the retaining of the document is no longer necessary, the Assistant Controller may return the document to the person who provided the document, as soon as practicable.

Access to records

34. (1) Any person shall, if at any time directed by the Assistant Controller, allow the Assistant Controller access to his books, records, accounts, documents, computerized data, goods or thing for the purpose of carrying out any of the Assistant Controller's functions or powers under this Act.

(2) Any person who fails to comply with the direction under subsection (1) commits an offence.

Confidentiality

35. (1) Any person who discloses or makes use of any confidential information or document with respect to a particular enterprise or the affairs of an individual obtained by virtue of any provision of this Act commits an offence.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where—

- (a) the disclosure is made with the consent of the person from whom the information or document was obtained;
- (b) the disclosure is made in circumstances where the information provided is framed in such a manner that the source of the information could not be ascertained;
- (c) the information is already in the public domain;
- (d) the disclosure is made to facilitate the performance of the functions or powers of the Controller, Deputy Controller or Assistant Controller;
- (e) the disclosure is reasonably made during any proceedings under this Act provided that such disclosure is not made against any direction by the Controller, Deputy Controller or Assistant Controller before whom those proceedings are taking place; or

- (f) the disclosure is made in connection with the investigation of an offence under this Act.

(3) For the purposes of this section, “confidential information” means trade, business or industrial information that belongs to any person, that has economic value and is not generally available to or known by others.

Privileged communication

36. (1) No person shall be required, under any provision of this Part, to produce or disclose any communication between a professional legal adviser and his client which would be protected from disclosure in accordance with section 126 of the Evidence Act 1950 [*Act 56*].

(2) Where—

- (a) the Controller makes a requirement under section 33 of an advocate and solicitor in respect of any information or document; and
- (b) the information or document contains a privileged communication made by or on behalf of or to the advocate and solicitor in his capacity as an advocate and solicitor,

the advocate and solicitor is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under receivership or is in the course of being wound up, the receiver or the liquidator, as the case may be, agrees to the advocate and solicitor complying with the requirement but, where the advocate and solicitor so refuses to comply with the requirement, the advocate and solicitor shall forthwith furnish in writing to the Controller the name and address of the person to whom or by or on behalf of whom the communication was made.

Giving false or misleading information, evidence or document

37. A person who fails to disclose or omits to give any relevant information, evidence or document, or provides any information,

evidence or document that he knows or has reason to believe is false or misleading, in the course of investigation by the Assistant Controller, commits an offence.

Destruction, concealment, mutilation and alteration of records

38. A person who—

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from his premises or send out of Malaysia,

any book, record, accounts, document, computerized data, goods or thing kept or maintained with intent to defraud the Assistant Controller or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Assistant Controller under this Act commits an offence.

Chapter 3

Powers of arrest, search and seizure

Power of arrest

39. (1) Any Assistant Controller may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under section 8.

(2) Any Assistant Controller making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as is provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Power to enter premises and inspect and seize goods and documents

40. (1) Any Assistant Controller may, at all reasonable hours exercise the following powers:

- (a) he may, for the purpose of ascertaining whether any offence under this Act has been committed, inspect any goods and enter any premises other than premises used only for dwelling;
- (b) if he has reasonable cause to believe that an offence under this Act has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
- (c) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;
- (d) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Act and of any order made under this Act are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.

(2) An Assistant Controller seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(3) Where the goods or documents seized by the Assistant Controller in the exercise of his powers under this section are by reason of their nature, size or amount not practical to be removed from where they are found, he may by any means seal such goods or documents in the premises or container in which they are found and it shall be an offence for any person without lawful authority to break, tamper with or damage such seal or to remove such goods or documents or to attempt to do so.

Power to enter premises with search warrant

41. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there are reasonable grounds to believe that any person has committed or is committing an offence under this Act, so that any evidence or thing which is necessary to the conduct of an investigation into any offence may be found in any premises, the Magistrate may issue a warrant authorizing any Assistant Controller named in the warrant to enter the premises at any time, with or without assistance, and if need be by force to search for and seize any such evidence or thing.

(2) An Assistant Controller entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(3) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the search and seizure of any book, record, accounts, document, computerized data, goods or thing which contains or is reasonably suspected to contain information as to any offence suspected to have been committed or is otherwise necessary to conduct an investigation into any offence.

(4) The Assistant Controller conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(5) The Assistant Controller making a search of a person under subsection (4) may seize, or take possession of, and place in safe custody all things other than the necessary clothing found upon the person, and any other things, in respect of which there is reason to believe are the instruments or evidence of the offence, and such things may be detained until the order by the Court for its disposal.

(6) If, by reason of its nature, size or amount, it is not practicable to remove any book, record, accounts, document, computerized data, goods or thing seized under this section, the Assistant

Controller who effected the seizure shall by any means seal the premises or container in which such book, record, accounts, document, computerized data, goods or thing is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any book, record, accounts, document, computerized data, goods or thing under seal or attempts to do so commits an offence.

Power of entry and search and seizure without a warrant

42. If the Assistant Controller is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 41 the investigation would be adversely affected or evidence of the commission of an infringement or offence is likely to be tampered with, removed, damaged or destroyed, the Assistant Controller may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 41 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Access to recorded information or computerized data, etc.

43. (1) Any Assistant Controller exercising his powers under section 41 or 42 shall be given access to any recorded information or computerized or digitalized data, whether stored in a computer or otherwise.

(2) In exercising his powers, the Assistant Controller—

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

(b) may require—

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

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

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

(3) The Assistant Controller may make copies or take extracts of the recorded information or computerized data or digitalized data if he deems necessary.

(4) For the purposes of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information and computerized data or digitalized data.

Tipping-off

44. (1) Any person who—

- (a) knows or has reason to suspect that an Assistant Controller is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reason to suspect that a disclosure has been made to an Assistant Controller under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence.

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

- (a) to his client or the client’s representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

(5) An Assistant Controller or any other person does not commit an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of this Act.

Warrant admissible notwithstanding defects

45. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application for such warrant and any book, record, accounts, document, computerized data, goods or thing seized under such warrant shall be admissible in evidence in any proceedings under this Act.

List of things seized

46. (1) Except as provided in subsection (2), where any book, record, accounts, document, computerized data, goods or thing is seized under this Part, the Assistant Controller who effected the seizure shall as soon as practicable prepare a list of the things seized and immediately deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(2) Where the premises are unoccupied, the Assistant Controller who effected the seizure shall wherever possible post a list of the things seized conspicuously on the premises.

Forfeiture of goods

47. (1) All goods seized in exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any goods seized in exercise of any power conferred under this Act shall be made by the Court before which the prosecution with regard thereto has been held and an order for the forfeiture of the goods shall be made if it is proved to the satisfaction of the Court that an offence under this Act has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

(3) If there is no prosecution with regard to any goods seized in exercise of any power conferred under this Act, such goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim to such goods is made before the date in the manner hereinafter set forth.

(4) Any person asserting that he is the owner of such goods and that they are not liable to forfeiture may personally or by his agent authorised in writing give written notice to an Assistant Controller that he claims the same.

(5) On receipt of such notice the Assistant Controller shall refer the claim to the Controller who may direct that such goods be released or forfeited or may direct the Assistant Controller to refer the matter to a Court for decision.

(6) The Court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before it and upon his appearance or default to appear, due service of the summons being proved, the Court shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that such goods were the

subject matter or were used in the commission of such offence shall order the same to be forfeited or may in the absence of such proof order their release.

(7) All things forfeited or deemed to be forfeited shall be delivered to the Assistant Controller and shall be disposed of in accordance with the directions of the Controller.

(8) Where any goods seized in exercise of the powers conferred by this Act are of a perishable nature or where the custody of such goods involves unreasonable expense and inconvenience, such goods may be sold at anytime and the proceeds of the sale held to abide by the result of any prosecution or claim under this section.

Release of things seized

48. (1) If any book, record, accounts, document, computerized data, goods or thing has been seized under this Act, the Assistant Controller who effected the seizure may release the book, record, accounts, document, computerized data, goods or thing to the person as he determines to be lawfully entitled to it, if he is satisfied that the book, record, accounts, document, computerized data, goods or thing is not otherwise required for the purpose of any proceedings under this Act, or for the purpose of any prosecution under any other written law, and in such event neither the Assistant Controller effecting the seizure, nor the Federal Government, the Controller or any person acting on behalf of the Federal Government or the Controller shall be liable to any proceedings by any person if the seizure and the release of the book, record, accounts, document, computerized data, goods or thing had been effected in good faith.

(2) A record in writing shall be made by the Assistant Controller effecting the release of anything under subsection (1) specifying in detail the circumstances of and the reason for the release.

Seizure of perishable goods

49. Where any goods seized in exercise of the powers conferred by this Act are of a perishable nature or where the custody of such goods involves unreasonable expense and inconvenience,

such goods may be sold by the Assistant Controller at any time and the proceeds of the sale held to abide by the result of any prosecution or claim under this section.

No cost or damages arising from seizure to be recoverable

50. No person shall, in any proceedings before any court in respect of any book, record, accounts, document, computerized data, goods or thing seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Obstruction

51. Any person who—

- (a) refuses to give any Assistant Controller access to any premises which the Assistant Controller is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays any Assistant Controller in effecting any entry which the Assistant Controller is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act; or
- (c) refuses to give any Assistant Controller any information relating to an offence or suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give,

commits an offence.

Power to make test purchases

52. Any Assistant Controller shall have the power to make such purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of this Act and order made under this Act are being complied with.

Evidence of *agent provocateur* is admissible

53. (1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no *agent provocateur* shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, and that the *agent provocateur* is an Assistant Controller, any statement, whether oral or in writing made to the *agent provocateur* by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.

Taking of samples

54. (1) Where any goods which are the subject matter of an offence under this Act are found in two or more packages or receptacles of the same description, it shall be presumed until the contrary is proved that all the packages or receptacles contain goods of the same nature, quantity and quality.

(2) Where packages or receptacles containing goods which contravene the provisions of this Act or are otherwise liable to seizure have been seized, it shall be sufficient only to open and examine one per centum or not less than five samples, whichever is the lesser, of the contents of each package or receptacle seized.

(3) The court shall presume that the remaining samples contained in the package or receptacle is of the same nature as those samples examined.

Power of investigation

55. Any Assistant Controller investigating any commission of an offence under this Act may exercise all or any of the powers in relation to police investigation in seizable cases given by the Criminal Procedure Code [Act 593].

PART VIII

GENERAL

Exemption

56. The Minister may, by order published in the *Gazette*, specify that any of the provisions of this Act shall not apply with respect to any description of goods which are intended for—

- (a) dispatch to a destination outside Malaysia; or
- (b) any specific use or purpose as mentioned in the order.

Contract unaffected by contravention

57. A contract for the supply of any goods shall not be void or unenforceable by reason only of a contravention of any provision of this Act.

Market research experiments

58. (1) In this section, “market research experiment” means any activities conducted for the purpose of ascertaining the opinion of persons (referred to in this section as “participants”) on—

- (a) any goods;
- (b) anything in, on or with which the goods are supplied;
- (c) the appearance or any other characteristic of the goods or of any such thing; or
- (d) the name or description under which the goods are supplied.

(2) This section applies to any market research experiment with respect to which the following conditions are satisfied:

- (a) that any participant to whom any goods are supplied in the course of the experiment is informed, at or before the time at which they are supplied to him, that they are supplied for such a purpose as is mentioned in subsection (1); and

- (b) that no consideration in money or money's worth is given by a participant for the goods or any goods supplied to him for comparison.

(3) Sections 5 and 28 shall not apply in relation to goods supplied or offered to be supplied, whether to a participant or any other person, in the course of a market research experiment to which this section applies.

General penalty

59. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable—

- (a) if such person is a body corporate, to a fine not exceeding twenty-five thousand ringgit, and for a second or subsequent offence, to a fine not exceeding fifty thousand ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both, and for a second or subsequent offence, to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Jurisdiction to try offences

60. Notwithstanding anything to the contrary in any written law, a Sessions Court shall have jurisdiction to try any offence under this Act and to impose the full punishment for any such offence.

Delegation of powers

61. (1) The Controller or the Deputy Controller may in writing delegate all or any of his powers, duties or functions under this Act to any Assistant Controller, and may at any time revoke any such delegation.

(2) The delegation under subsection (1) shall not preclude the Controller or the Deputy Controller from exercising at any time the delegated powers, duties or functions.

Institution of prosecution

62. No prosecution for or in relation to any offence under this Act shall be instituted without the consent of the Public Prosecutor.

Compounding of offences

63. (1) The Controller may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act by accepting from the person committing such offence, a sum of money not exceeding the maximum fine for that offence within such time as may be specified in the offer to compound.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Controller may grant, prosecution for the offence may be instituted at the expiry of the time stipulated in the offer against the person to whom the offer was made.

(3) Upon receipt of the payment under subsection (1), no prosecution shall be taken against such person in respect of such offence.

(4) The Controller may forfeit or return the goods seized during the case upon receipt of the payment under subsection (1).

(5) All sums of money accepted under subsection (1) shall be paid into the Federal Consolidated Fund.

Principal liable for acts of servant or agent

64. Where the servant or agent of a person commits an offence or does anything or omits to do anything (which if done or omitted to be done by that person would constitute an offence under this Act), that person shall, notwithstanding that he has no knowledge of the offence, be deemed to be guilty of the offence and shall be liable to punishment for the offence unless he proves that—

- (a) the act or omission complained of was not within the ordinary scope of the employment of the servant or of the agency of the agent; or

- (b) the act or omission complained of was done or omitted to be done without his consent or connivance and that he exercised all such diligence to prevent the commission or omission as he ought to have exercised having regard to all the circumstances of the case.

Offences by body corporate

65. (1) If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

Reward for information

66. In the case of a conviction involving a fine, the court imposing the fine may, on the application of the prosecuting officer, direct the payment of any part of the fine in such proportion as the court thinks fit but in any case not exceeding one half of such fine to the person who gave the information leading to the conviction.

Public Authorities Protection Act 1948

67. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Controller, Deputy Controller, Assistant Controller or any officer appointed under section 3 in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith, in such capacity.

Protection of officers and other persons

68. No action or prosecution shall be brought, instituted or maintained in any court against—

- (a) the Controller, Deputy Controller, Assistant Controller or any other person in respect of any act ordered or done for the purpose of carrying into effect this Act; and
- (b) any other person in respect of any act done or purported to be done by him under the order, direction or instruction of the Controller if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

Power of Minister to make regulations

69. (1) The Minister may make any regulations as may be expedient or necessary for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:

- (a) assigning the meaning of any expression or indication used in the course of trade or business;

- (b) prohibiting, restricting or otherwise regulating or controlling the use of any expression or indication used in the course of trade or business;
- (c) prescribing the fee to be imposed in respect of the use of any expression or indication used in the course of trade or business;
- (d) providing for the maintenance of a register or records used in the course of trade or business and prescribing the particulars to be recorded in such register or records;
- (e) prescribing the forms to be used for the purpose to regulate any matter prescribed under this Act;
- (f) prescribing the standard of fineness of articles made of precious metals and regulating or controlling the use of any expression or indication used in the course of trade or business in relation to such standard of fineness; and
- (g) prescribing a penalty of a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding five years for the contravention of or failure to comply with any of the provisions of any regulations made under this Act.

Repeal

70. The Trade Description Act 1972 [*Act 87*] is repealed.

Savings and transitional

71. Notwithstanding the repeal of the Trade Description Act 1972 under section 70—

- (a) all persons, things and circumstances appointed or created by or under the Trade Description Act 1972 (“the repealed Act”) or existing or continuing under the repealed Act immediately before the commencement of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had as if the repealed Act had not been so repealed;

- (b) in particular and without affecting the generality of paragraph (a), such repeal shall not affect appointments, orders, rules and regulations issued or made under or by virtue of the repealed Act and in force immediately before the commencement of this Act and such appointments, orders, rules and regulations shall remain in force and shall continue to remain in force as if every such appointment, order, rule and regulation were issued or made under and by virtue of this Act until replaced or revoked by any appointment, order, rule or regulation issued or made under or by virtue of this Act;
- (c) nothing shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Act immediately before the coming into operation of this Act and the prosecution of such offences shall be taken in accordance with the repealed Act;
- (d) any pending legal proceedings, criminal prosecution, investigation or disciplinary proceedings under the repealed Act shall be continued under the repealed Act; and
- (e) any reference to the repealed Act in any written law shall be construed as a reference to this Act and any reference to any specific provision of the repealed Act in any written law shall be construed as a reference to a provision of this Act which corresponds as nearly as may be to such specific provision.

SCHEDULE

[Subsection 6(3)]

Sale of Drugs Act 1952 [*Act 368*]

EXPLANATORY STATEMENT

The Trade Descriptions Bill 2011 (“the Bill”) is enacted to reform the law on trade description. The purpose of the Bill is to promote good trade practices by prohibiting false trade descriptions and false or misleading statements, conduct and practices in relation to supply of goods and services, thereby protecting the interest of consumers.

PART I

2. Part I deals with preliminary matters.
3. *Clause 1* contains the short title of the proposed Act and empowers the Minister to appoint the date for the coming into operation of the proposed Act.
4. *Clause 2* contains the definitions of certain words used in the proposed Act.
5. *Clause 3* provides for the appointment of a Controller, such number of Deputy Controllers and Assistant Controllers by the Minister to implement and enforce the provisions under the proposed Act.
6. *Clause 4* provides for the appointment of a Registrar of Trade Description Order who shall cause a public register of trade description orders to be established and maintained.

PART II

7. Part II contains provisions on the prohibition of false trade descriptions.
8. *Clause 5* seeks to prohibit any person from applying false trade description to goods or supplying or offering to supply any goods to which a false trade description is applied or exposing for supply or having in his possession for supply any goods to which a false trade description is applied.
9. *Clause 6* specifies the indication of a trade description whether direct or indirect in respect of goods or parts of goods.
10. *Clause 7* clarifies what amounts to false trade description.
11. *Clause 8* seeks to include a trade mark registered under the Trade Marks Act 1976 as an indication of a trade description whether direct or indirect. It is an offence for a person to apply false trade description to any goods as if the goods were subject to any rights relating to registered trade mark or supply or offer to supply any goods to which a false trade description is applied as if the goods were subject to any rights relating to registered trade mark.
12. *Clause 9* allows a person, being a registered owner of a registered trade mark under the Trade Marks Act 1976, to claim that his rights in respect of such trade mark are being infringed in the course of trade, by any other mark or get-up used by other person, not being identical with his registered mark, and to apply to the High Court to declare that the infringing mark is a false trade description for the purpose of *clause 8* and the order given by the Court may be referred to as a trade description order.
13. *Clause 10* sets out how a trade description is applied to goods by a person or his authorized person.

14. *Clause 11* provides for trade descriptions used in advertisements for class of goods.

15. *Clause 12* deals with possession of three or more of the same goods of similar description and bearing the same trade description.

PART III

16. Part III deals with provisions relating to misstatements other than false trade descriptions.

17. *Clause 13* provides for the interpretation of 'false' and 'misleading'.

18. *Clause 14* provides for the prohibition of false or misleading indication as to price of goods. A person in offering to supply any goods is prohibited from making any false or misleading indication that the price at which the goods are offered is equal to or less than the recommended price, the goods are being offered at a price less than at which they are in fact being offered or the goods are being offered at a price less than being offered by any other person.

19. *Clause 15* provides that where in any advertisement the price of any goods or services is quoted, the price shall be deemed to include all eligible government taxes and duties and any other charges unless the contrary appears.

20. *Clause 16* seeks to make it an offence for a person to make a false representation as to supply or approval of goods or services.

21. *Clause 17* provides for the prohibition of false or misleading statements as to services, *etc.*.

22. *Clause 18* provides for the prohibition of false or misleading statements in advertisements.

23. *Clause 19* provides for the presumption of liability on advertisers, *etc.*.

24. *Clause 20* provides for the prohibition of false and misleading statements in relation to contests, games, *etc.*.

25. *Clause 21* provides for the penalty for offences under this Part.

PART IV

26. Part IV contains provisions on defences.

27. *Clause 22* seeks to provide for defence where offence is due to the fault of another person.

28. *Clause 23* seeks to provide for the defence of personal or domestic use but this defence is not applicable to bodies corporate.
29. *Clause 24* seeks to provide for the defence of mistake, accident, *etc.*.
30. *Clause 25* seeks to provide for the defence of innocent publication of advertisement.

PART V

31. Part V contains provisions on the prohibition of importation of certain goods, *etc.*.
32. *Clause 26* provides for the prohibition of importation of goods bearing false indication of origin.
33. *Clause 27* seeks to make it an offence for a person who abets offences committed abroad.

PART VI

34. Part VI contains provision on the power to define terms, to require information to be given, *etc.*.
35. *Clauses 28* and *29* empower the Minister to assign any expressions used in relation to goods or services as having definite meanings. The Minister may by order assign such meanings either to expressions when it is used in the course of trade or business or when it is used in such circumstances as may be specified in the order. The Minister may also by order, impose requirements for securing that the goods are so certified, marked or accompanied by any information and regulate or prohibit the supply of the goods with respect to which the requirements may extend to the form and manner in which the information or instruction is to be given.

PART VII

36. Part VII contains provision on investigation and enforcement. This part is divided into 3 Chapters. Chapter 1 contains provisions on investigation and complaints, Chapter 2 contains provisions on information gathering powers and Chapter 3 contains provisions on the power of arrest, search and seizure.
37. *Clause 30* seeks to empower the Assistant Controller to undertake an investigation where the Assistant Controller has reasonable grounds to suspect that any offence is or will be committed under the proposed Act.
38. *Clause 31* seeks to empower the Assistant Controller to conduct an investigation upon a complaint made by a person.

39. *Clause 32* provides for the powers of the Assistant Controller to require the provision of information by a person that is reasonably believed to have such information and is capable of giving such information.
40. *Clause 33* seeks to provide for the power of the Assistant Controller to retain documents for as long as necessary for the purpose of information gathering.
41. *Clause 34* seeks to provide for the power of the Assistant Controller to access books, records, accounts, documents, computerized data, goods or thing for the purpose of information gathering.
42. *Clause 35* prohibits the disclosure of confidential information otherwise than as permitted.
43. *Clause 36* allows a person to refuse any requirement for disclosure of any communication between a professional legal adviser and his client.
44. *Clause 37* provides for the offence of providing false or misleading information, documents or evidence in the course of investigation by an Assistant Controller.
45. *Clause 38* seeks to make it an offence to destroy, conceal, mutilate, alter, send or attempt to send, conspire with any other person to remove from his premises or send out of Malaysia, any records, *etc.*, with intent to defraud or to prevent, delay or obstruct any investigation or the exercise of any power.
46. *Clause 39* empowers the Assistant Controller to arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under section 8 of the proposed Act.
47. *Clause 40* seeks to allow the Assistant Controller to enter and inspect any premises, to search any goods and documents for the purpose of ascertaining whether an offence under the proposed Act has been committed and seize any goods and documents which he has reason to believe may be required as evidence in proceedings for an offence under the proposed Act.
48. *Clauses 41* and *42* deal with the provisions relating to the powers of search and seizure with warrant and search and seizure without warrant, respectively.
49. *Clause 43* seeks to provide the Assistant Controller with power to access recorded information or computerized data.
50. *Clause 44* provides for the offence of disclosing to any other person information that is likely to prejudice an investigation under the proposed Act.
51. *Clause 45* provides that a search warrant issued under the proposed Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant.

52. *Clause 46* imposes a duty on the Assistant Controller to prepare a list of the books, records, accounts, documents, computerized data, goods or thing seized under the proposed Act.
53. *Clause 47* provides for the procedures regarding the forfeiture of goods.
54. *Clause 48* deals with the release of things seized under the proposed Act if such things are not required for the purpose of any proceedings under the proposed Act or for the purpose of any prosecution under any other written law.
55. *Clause 49* provides for the procedures relating to the seizure of perishable goods.
56. *Clause 50* provides that no person shall be entitled to the cost or damages in any proceedings before the court arising from any seizure unless the seizure was made without reasonable cause.
57. *Clause 51* seeks to make it an offence to obstruct any Assistant Controller conducting a search by refusing access to the premises, assaulting, obstructing, hindering or delaying the Assistant Controller in the performance of his functions under the proposed Act.
58. *Clause 52* seeks to provide the Assistant Controller with the power to make test purchases for the purpose of determining whether the proposed Act or any regulations made under the proposed Act are being complied with.
59. *Clause 53* seeks to enable the evidence given by an *agent provocateur* to be received in any proceedings for an offence under the proposed Act.
60. *Clause 54* seeks to provide a presumption where two or more packages or receptacles of the same description are found.
61. *Clause 55* seeks to provide the Assistant Controller with all the powers of investigation in seizable cases given by the Criminal Procedure Code.

PART VIII

62. Part VII deals with general provisions.
63. *Clause 56* empowers the Minister to make exemptions in respect of goods for dispatch to a destination outside Malaysia or specific use or any other purpose as mentioned in the order.
64. *Clause 57* provides that a contract for the supply of any goods is valid although it contravenes any provision of the proposed Act.
65. *Clause 58* provides for the definition of market research experiments and application of the proposed section on market research experiments.

66. *Clause 59* provides for the general penalty for offences under the proposed Act.
67. *Clause 60* provides for the jurisdiction of the Sessions Court to try offences.
68. *Clause 61* enables the Controller or the Deputy Controller to delegate his powers, duties or functions to any Assistant Controller.
69. *Clause 62* deals with the prosecution of offences under the proposed Act.
70. *Clause 63* provides for the compounding of offences.
71. *Clause 64* provides that a principal is liable for offences committed by his servant or agent.
72. *Clause 65* provides that if a body corporate commits an offence under the proposed Act, the director, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate may be charged severally or jointly in the same proceedings with the body corporate.
73. *Clause 66* deals with reward to a person who gives information leading to a conviction.
74. *Clause 67* provides for the Public Authorities Protection Act 1948 to be applicable.
75. *Clause 68* provides for the protection from legal action against the Controller, Deputy Controller, Assistant Controller or any other person in respect of any act ordered or done for the purpose of carrying into effect the proposed Act.
76. *Clause 69* empowers the Minister to make regulations.
77. *Clause 70* provides for repeal of the Trade Descriptions Act 1972.
78. *Clause 71* provides for savings and transitional matters.

FINANCIAL IMPLICATIONS

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

[PN(U²)2756]