

## THE TOBACCO CONTROL BILL, 2020

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### MEMORANDUM

The objects of this Bill are to -

- (a) declare tobacco product, tobacco device, nicotine product or nicotine device as a restricted product;
- (b) provide for the protection of present and future generations from the devastating, health, social, environmental and economic consequences of tobacco use, nicotine addiction, and exposure to the harmful emissions of tobacco products, tobacco devices, nicotine products or nicotine devices;
- (c) prevent the initiation, continually and substantially reduce the use of tobacco product, tobacco device, nicotine product or nicotine device, and encourage quitting;
- (d) domesticate the World Health Organisation Framework Convention on Tobacco Control; and
- (e) provide for matters incidental to, and in connection with, the foregoing.

LIKANDO KALALUKA<sup>'</sup>  
**Attorney General**

# **THE TOBACCO CONTROL BILL, 2020**

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1ST DRAFT

**A BILL**

**ENTITLED**

An Act to provide for the declaration of tobacco products, tobacco devices, nicotine products or nicotine devices as a restricted product; protection of present and future generations from the devastating, health, social, environmental and economic consequences of tobacco consumption, nicotine addiction, and exposure to the harmful emissions of tobacco products, tobacco devices, nicotine products or nicotine devices, ; the prevention of use initiation, continually and substantially reducing consumption of tobacco and nicotine products or nicotine devices, and encourage quitting; domesticate the World Health Organisation Framework Convention on Tobacco Control; and to provide for matters connected with or incidental to the foregoing.

Enactment

**ENACTED** by the Parliament of Zambia

**PART I**

**PRELIMINARY PROVISIONS**

Short title and commencement

1. This Act may be cited as Tobacco Control Act, 2020.

Interpretation



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

“additive” means a substance other than tobacco or nicotine that is added to the tobacco product or nicotine product during processing, manufacturing, packaging, distribution or storage, including a substance that can be activated at the option of the consumer;

“advertising and promotion” means any form of commercial communication, recommendation, or action with the aim, effect, or likely effect of promoting a tobacco product, tobacco device, nicotine product or nicotine device or tobacco or nicotine use, directly or indirectly;

“authorised officer” means -

- (a) a police officer;
- (b) council police;
- (c) local authority inspectot;
- (d) officer of customs;
- (e) an immigration officer;
- (f) an army officer;
- (g) an intelligence officer;
- (h) Health Inspector;
- (i) Medical Officer of Health;
- (j) an officer from the Drug Enforcement Commission;

- (k) an officer from the Anti-Corruption Commission;
- (l) any person appointed as such in writing by the Minister;

“characterising flavour” means a distinct taste or smell, other than one of tobacco or nicotine, resulting from a natural or artificial additive or a combination of additives, including, but not limited to, fruit, spice, herbs, alcohol, candy, menthol, mint, chocolate, or vanilla, which is distinct before or during the consumption of the product, including a taste or smell that can be activated at the option of the consumer;

“Chairperson” means the Chairperson of the Committee established under section 3;

“Committee” means the Tobacco Control Committee established under section 3;

“conference of parties” means a meeting of the governing body of World Health Organisation Framework Convention on Tobacco Control comprising of parties to the Convention whose purpose is to regularly review the implementation of the Convention and make decisions to promote its effective implementation;

“Convention” means the World Health Organisation Framework Convention on Tobacco Control adopted by the 56th World Health Assembly held in Geneva, Switzerland on 23rd May, 2003 and includes its protocols and guidelines;

“cross border” with respect to advertising, promotion, and sponsorship, means that which originates within the territory of the Republic of Zambia and enters another territory or could be received in another territory, such as through broadcasts or other communication technologies, as well as that which originates outside the territory of the Republic of Zambia and enters the territory or could be received within the territory;

“Drug Enforcement Commission” means the Drug Enforcement Commission established under the Constitution;

“Emoluments Commission” means the Emoluments Commission established under the Constitution;

“employee” means any person who has entered into works under a contract of service, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or work done, or is in cash or kind, and includes a person employed under a

contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee and “employment” shall be construed accordingly;

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“enclosed” means any space covered by a roof or roof-like structure with one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary;

“flavouring” means an additive that imparts a taste or smell;

“health warning” means prescribed content required by the Ministry to be displayed on packaging and labelling conveying health and other consequences of use of a tobacco product, tobacco device, nicotine product or nicotine device and exposure to their emissions, and any other prescribed messages;

“illicit trade” means any practice or conduct prohibited by law which relates to manufacture, shipment, receipt, possession, distribution, sale, or purchase of a tobacco product, tobacco device, nicotine product or nicotine device including any practice or conduct directly or indirectly intended to facilitate any such activity;

“importer” means a person that brings a tobacco product, tobacco device, nicotine product or nicotine device into the Republic of Zambia for sale or distribution within the country, and “import” shall have a corresponding meaning;

“ingredient” includes tobacco, nicotine, paper, filter, any additive, any processing aid, residual substance after storage or processing, and any substance that migrates from the packaging into the product;

“manufacture” means to fabricate, produce, process, package or label a tobacco product, tobacco device, nicotine product or nicotine device for sale within the Republic of Zambia, and “manufacturer” shall have a corresponding meaning;

**“nicotine” means an addictive substance derived from tobacco leaf and also includes the manufactured version of the substance.**

“nicotine device” means a system manufactured for consuming a nicotine product by producing an aerosol or vapour for inhalation and includes part of the system whether or not sold separately;

“nicotine product” means a manufactured substance or mixture containing nicotine but is not a tobacco product, including the cartridge or other

receptacle containing the nicotine substance or mixture;

“occupational activity” means any kind of employment, contract, consulting, or other work or service activity, whether it is gainful or not, and whether it is full-time, part-time, occasional, temporary, or permanent;

“outdoor” means any space that is not “enclosed”;

“packaging and labelling” means the packaging and labelling used in retail sale of a tobacco product, tobacco device, nicotine product or nicotine device;

“principal display areas” means the main surface areas of packaging normally visible to the consumer;

“public conveyance” means any mode of public transportation used to carry members of the public, usually for reward or commercial gain, and includes any commercial or chartered aircraft, ship, boat, train, bus, taxi, or other means of public transportation;

“public place” means any place accessible to the general public or any place for collective use, regardless of ownership or right of access;

“public plaza” means an open public space used for gatherings of the public;

“Regulatory Agency” has the meaning assigned to the words in the Business Regulatory Act, 2014;

“responsible for tobacco control” includes being involved in, contributing to, or being in a position to be involved in or contribute to the setting or implementation of tobacco control policy within Government at the national or at a sub-national level and “responsibility for tobacco control” shall be construed accordingly;

“responsible person” means the owner, manager, or other person in charge of a public place, workplace, or public conveyance;

“retail sale” means the direct sale to the consumer of a tobacco product, tobacco device, nicotine product or nicotine device within the Republic of Zambia;

“sell” means to supply a tobacco product, tobacco device, nicotine product or nicotine device at wholesale or retail within the Republic of Zambia for a fee or other consideration, and “seller” shall have a corresponding meaning;

“smoke” means being in possession or control of a lit tobacco product, tobacco device, nicotine product or nicotine device producing an aerosol or vapour;

“sponsorship” means a contribution to Government, an event, activity, organisation, or individual that has the aim, effect, or likely effect of promoting a

tobacco product, tobacco device, nicotine product, nicotine device or tobacco or nicotine use either directly or indirectly;

“standardised packaging” means with respect to a tobacco product, tobacco device, nicotine product or nicotine device, refers to-

- (a) packaging required to have a uniform appearance, a plain colour and texture, and standardised shape, size, means of opening and packaging materials;
- (b) packaging prohibited from having any branding, logos or other promotional elements on, inside or attached to the packaging, product or device, other than the brand name and product name appearing in a standard size, colour and typeface, together with other mandatory information;
- (c) requirements as to the standard appearance of an individual tobacco product, tobacco device, nicotine product or nicotine device and the quantity of products contained in an individual package; and
- (d) any other requirements to limit or prohibit the features of packaging or the features of



the individual product or device which could be used to distinguish different brands of the product or device for the purpose of promoting that product or device;

“tobacco” means leaves and other natural processed or unprocessed parts of a tobacco plant, including expanded and reconstituted tobacco;

“tobacco control” means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing the consumption of tobacco products, nicotine addiction, and exposure to smoke and other harmful emissions from a tobacco product, tobacco device, nicotine product or nicotine device;

“tobacco device” means a system manufactured to enable consumption of a tobacco product or nicotine product and includes the individual parts of a system whether or not sold or distributed separately;

“tobacco industry” means manufacturers, wholesale distributors, and importers of tobacco products or tobacco devices, and excludes tobacco growers;

“tobacco product” means a product entirely or partly made of the leaf tobacco as raw material which is

manufactured to be used for smoking, sucking, chewing, inhaling, snuffing, or consumed by any other means but does not include a nicotine product; and

“workplace” means any place, including vehicle, used by one or more persons during their employment or work, whether compensated or voluntary, including all associated or attached areas as well as areas commonly used in or incidental to the course of work, such as stairways, elevators, corridors, cafeterias, toilets, vehicles, mines and tunnels.

## **PART II**

### **THE TOBACCO CONTROL COMMITTEE**

Establishment and composition of Tobacco Products and Nicotine Products Control Committee

3. (1) There is constituted the Tobacco Control Committee which is responsible for the implementation of this Act.

(2) The Committee shall consist of the following part time members appointed by the Minister:

(a) a representative each from the Ministry responsible for -

- i. health, who shall be the
- ii. Chairperson;
- iii. finance;
- iv. commerce and trade;

- v. education;
- vi. local Government;
- vii. environment;
- viii. information;
- ix. youth and sport; and
- x. Attorney General's Chambers; and

(b) two representative from the civil society with relevant knowledge and experience in matters relevant to this Act.

(2) The ministries, institutions, or organisations under subsection (2)(a) shall nominate their representatives for appointment by the Minister.

(4) The members shall elect the Vice- Chairperson from among themselves.

(5) The members appointed under subsection (2)(a) shall be persons at senior management level.

(6) A person shall not be nominated or appointed as a member of the Committee if that person -

(a) is directly or indirectly affiliated to the tobacco industry or its subsidiary;

(b) has been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months, without the option of a fine;

(c) is in lawful custody or the person's freedom of movement is restricted under any law in force within or outside the Republic;

(d) is legally disqualified from performing the functions of a member; or

(e) is an undischarged bankrupt.

(3) The members appointed under subsection (2)(a) shall be persons at senior management level.

Prohibition of members of committee from affiliation to tobacco industry

4. (1) A member of the Committee shall not directly or indirectly be affiliated to the tobacco industry or its subsidiaries.

(2) A member who fails to disclose that members affiliation to the tobacco industry or its subsidiary commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred and fifty thousand penalty units or imprisonment for a period not exceeding two years or both.

(3) The Committee shall, where the Committee becomes aware of any allegation of a member's affiliation to the tobacco industry, submit a report to the Minister recommending the replacement of that member and the member shall not take part in any of the meetings of the Committee from the date of the recommendation to the Minister until the determination has been made by the Minister on the matter.

(4) The Minister shall, on receipt of the recommendation under subsection (3), notify the member of

the allegations and require the member to show cause, within a period of not more than thirty days, why the member should not be replaced.

(5) The Minister shall in making a determination on the replacement of a member, consider the submission made by the member under subsection(4).

Functions of  
Committee

5. (1) The Committee shall—
- (a) coordinate the development and implementation of a national strategic approach to tobacco control;
  - (b) coordinate implementation of the WHO FCTC so as to mainstream tobacco-control activities in all sectors;
  - (c) establish relevant Technical Working Groups (TWGs) as part of the coordination mechanism to guide on specific interventions relating to different articles of the WHO FCTC;
  - (d) advise Government on relevant policy for implementation of the WHO FCTC;
  - (e) provide guidance to tobacco-control stakeholders on effective implementation of the WHO FCTC; and
  - (f) perform any other function it determines to be effective in highlighting the health

Tenure of  
office and  
vacancy of  
member

effects, social and environmental costs of tobacco and for increasing public and consumer awareness of pertinent tobacco related issues.

6. (1) A member of the Committee shall, hold office for a term of three years and may be re appointed for a further term of three years.

(2) On the expiration of the term for which a member is appointed, the member shall continue to hold office until another member is appointed, but in no case shall any extension of the period exceed three months.

(3) The office of a member shall be vacated -

- (a) on the member's death;
- (b) subject to section 4, if the member directly or indirectly becomes affiliated to the tobacco industry or its subsidiary;
- (c) if the member is adjudged bankrupt;
- (d) if the member is absent from three consecutive meetings of the Committee, of which the member has had notice, without the prior approval of the Committee; and

- (e) on the expiry of one month's notice of the member's intention to resign, given by the member in writing to the Minister.

Disclosure of interest 7. (1) A person who is present at a meeting of a Committee or technical working group at which any matter, is subject of consideration and in which that person or any member of the person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Committee or technical working group otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which the disclosure is made.

Director, staff  
and  
secretariat of  
the Committee

8. (1) The Director in the department responsible for tobacco control in the Ministry responsible for health shall

be an ex-officio member of the Committee and supervise the secretariat.

(2) There shall be staff as the Minister may appoint who shall be employees of the Ministry of health and shall be secretariat of the Committee.

### **PART III**

#### **SMOKE-FREE ENVIRONMENTS**

Protection from exposure to tobacco smoke and other emissions

9. (1) A person shall not smoke in an enclosed workplace, enclosed public place, a public conveyance, or in the outdoor spaces specified in subsection (2).

(2) A person shall not smoke in any outdoor area that is –

- (a) within a prescribed distance of any doorway, operable window, or air intake mechanism of any enclosed public place or enclosed workplace;
- (b) within a prescribed distance of any waiting area or queue, including but not limited to public transport stops;
- (c) anywhere on the premises of a child care facility or educational or vocational facility at any level of instruction, of any type of health care facility, a playground or amusement park;
- (d) a trading place, public plaza or public park;



- (e) a space for the service or consumption of food or drink or within ten metres of that area;
- (f) a stadium, arena, or any kind of performance space, including seating or standing areas for audiences, or concessions or vending spaces on the premises;
- (g) designated by the person responsible for the premises as an area where smoking is prohibited; or
- (h) a public space or workspace prescribed in regulations.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand penalty units or to imprisonment for a term not exceeding three months or to both.

Duties of  
responsible  
person

10. (1) A responsible person shall ensure that –
- (a) signs notifying persons on the premises of the prohibitions under section 14 are posted in a manner as may be prescribed with regard to format, content, design, size, display, location, and all other details;

- (b) ashtrays are removed from enclosed areas of the premises and any outdoor areas where smoking is prohibited;
- (c) reasonable steps are taken to stop a person from smoking where prohibited under section 14, including –
  - (i) directing the person who is smoking to stop;
  - (ii) if the person refuses, discontinuing service to that person;
  - (iii) directing the person to leave the premises and, in the case of public conveyance, to leave the vehicle when it is safe to do so; or
  - (iv) contacting law enforcement or other appropriate authority;
- (d) compliance with the requirements of this Part; and
- (e) take any action necessary after a complaint has been issued by a patron.

(2) Subject to section ..., an authorised officer may order the closure of the premises that do not comply with this section.

(3) A responsible person who contravenes this section commits an offence and is liable, on conviction, to a

fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding one year, or to both.

Employees  
rights

11. (1) A responsible person shall ensure that –
- (a) an employee’s right to object to anyone smoking in the workplace in a manner that contravenes this Act;
  - (b) an employee who does not want to be exposed to tobacco smoke in the workplace are not so exposed;
  - (c) it is not a condition of employment, expressly or implied, that an employee is required to work where smoking is permitted; and
  - (d) an employee is not required to sign any indemnity for working where smoking is permitted.

(2) An owner, manager or other person in charge of a public place, work place or a public conveyance who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding four hundred thousand penalty units or to a term of imprisonment not exceeding four years, or to both.

Duties of person  
responsible for  
premises with  
vending  
machines

12. (1) A person shall not sell or arrange for sale a tobacco product, tobacco device, nicotine product

or nicotine device by way of an automatic vending machine.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units, or to imprisonment for a term not exceeding six months, or to both.

#### **PART IV**

#### **ADVERTISING, PROMOTION, AND SPONSORSHIP**

Comprehensive  
ban on  
advertising,  
promotion and  
sponsorship

13. (1) All forms, methods, and means of domestic and cross-border advertising, promotion and sponsorship of a tobacco product, tobacco device, nicotine product or nicotine device, and tobacco or nicotine use, are prohibited, including their display at retail.

(2) A person shall not -

- (a) initiate any such advertising and promotion or sponsorship;
- (b) produce or publish any such advertising and promotion or sponsorship content;
- (c) disseminate any such content when that person is aware of or reasonably should be aware of the content; and
- (d) engage or participate in any sponsorship as a media or event organizer, sportsperson, celebrity, artist, or other performer, as a

provider or recipient of any sponsorship contribution, or as an intermediary that facilitates any contribution.

(3) In furtherance of subsection (2)(c), a person involved in making content available through the internet or other electronic means shall, upon becoming aware of the advertising, promotion, or sponsorship content, remove the content or disable access to it.

(4) Despite the generality of subsection (1), the following, include activities that amount to advertising, promotion and sponsorship:

- (a) communication through audio, visual or audio-visual means, or other digital communication platforms;
- (b) direct person-to-person communications;
- (c) brand-marking of any indicia associated with a tobacco product, tobacco device, nicotine product or nicotine device;
- (d) display or visibility of a tobacco product, tobacco device, nicotine product or nicotine device at retail points of sale;
- (e) sales of a tobacco product, tobacco device, nicotine product or nicotine device through vending machines and through the internet;

- (f) product diversification by brand stretching and brand sharing;
- (g) product placement, with reference to a tobacco product, tobacco device, nicotine product or nicotine device, service or trademark in the context of communication in return for payment or other consideration;
- (h) provision or offer of gifts or discounted products with the purchase of a tobacco product, tobacco device, nicotine product or nicotine device;
- (i) supply or offer of free samples of a tobacco product, tobacco device, nicotine product or nicotine device, including marketing surveys and taste testing;
- (j) incentive promotions or loyalty schemes;
- (k) competitions associated with a tobacco product, tobacco device, nicotine product, nicotine device or brand names whether requiring the purchase of a tobacco product, tobacco device, nicotine product, nicotine device or not;
- (l) direct targeting of individuals with promotional, including informational, material;

- (m) promotion of discounted tobacco product, tobacco device, nicotine product or nicotine device;
- (n) sale or supply of toys, snacks, or sweets or other non-tobacco products that resemble a tobacco product, tobacco device, nicotine product or nicotine device;
- (o) payments or other contributions to retailers to encourage or induce them to sell a tobacco product, tobacco device, nicotine product or nicotine device;
- (p) promotional design features of a tobacco product, tobacco device, nicotine product or nicotine device;
- (q) payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or device or particular manufacturer's product or device in a retail outlet or at a venue or an event;
- (r) sale, supply, placement and display of products or devices at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events;

- (s) provision of financial or other support of any kind, whether or not in exchange for attribution, acknowledgment including corporate social responsibility activities, to events, activities or to persons;
- (t) provision of financial or other support to venue operators or recreational venues to promote tobacco products, tobacco devices, or nicotine product or nicotine device; or
- (u) any other form of advertising, promotion or sponsorship of a tobacco product, tobacco device, or nicotine product or nicotine device, by persons in the tobacco industry by any method or means.

(5) A person that contravenes this section, commits an offence and is liable, on conviction –

- (a) in the case of a body corporate or an unincorporate body, to a fine not exceeding twenty-five percent of its annual turnover; and
- (b) in the case of an individual, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.



(6) Where a person who contravenes this section, and is a subject of a penalty under subsection (5), commits a second or subsequent offence-

- (a) in the case of a body corporate or an unincorporate body, to a fine exceeding twenty-five percent but not exceeding fifty percent of its annual turnover; and
- (b) in the case of an individual, to a fine exceeding seven hundred thousand penalty units but not exceeding one million penalty units or to a term of imprisonment not exceeding ten years, or to both.

Incidental  
promotional  
effect

14. The following, even if likely to have an incidental promotional effect, shall not be subject to the provisions of section 18(1) (the comprehensive ban provision) –

- (a) a plain black-and-white-only price list made available upon request to customers where a tobacco product, tobacco device, nicotine product or nicotine device are available for sale, provided the list contains nothing more than the brand name, package quantity or weight, price, and any other Government-required or authorized information;

- (b) depiction of a tobacco product, tobacco device, nicotine product or nicotine device, or tobacco or nicotine use, where the depiction is justified by reasons of legitimate journalistic, artistic or academic expression, provided no branding or indicia of branding is depicted and no payment or other consideration was offered or made by a tobacco product, tobacco device, nicotine product or nicotine device manufacturer, importer, wholesale distributor, retailer, or any person acting on their behalf in exchange for the depiction;
- (c) genuine political, social, editorial, or scientific commentary about a tobacco product, tobacco device, nicotine product or nicotine device, or tobacco or nicotine use, provided no payment or other consideration was offered or made by a tobacco product, tobacco device, nicotine product or nicotine device manufacturer, importer, wholesale distributor, retailer, or any person acting on their behalf in exchange for the commentary or publication of the commentary;

- (d) information necessary for business administration or for required corporate reporting but only to the extent access is limited to the persons who need to receive it for the purpose of business administration or corporate reporting;
- (e) product information made accessible to businesses within a tobacco product, tobacco device, nicotine product or nicotine device trade who need the information for trading decisions, but only to the extent that access is limited to those persons; or
- (f) a tobacco product, tobacco device, nicotine product or nicotine device manufacturers' newsletters destined for and distributed only to the manufacturers' employees, contractors, suppliers, and other related business partners, and only to the extent their distribution is limited to such persons.

## **PART V**

### **PACKAGING AND LABELLING**

15. (1) A person shall not manufacture, import, or sell a tobacco product or tobacco device unless its packaging and labelling contains health warnings describing the harmful

Health warnings and other information required on tobacco product and tobacco device packaging and labelling

effects of tobacco use and other appropriate messages as prescribed.

(2) The health warnings under this section shall be comprised of text and full-colour pictures appearing together.

(3) In addition to the required health warnings, the packaging and labelling of all tobacco products and tobacco devices shall display prescribed descriptive-only information on constituents and emissions.

(4) Only prescribed warnings and constituents and emissions information shall be displayed.

(5) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Display of health warnings on tobacco product and tobacco device packaging and labelling

16. (1) A manufacturer or other person who packages or re-packages a tobacco product or tobacco device shall cause to be displayed on the packaging and labelling of a tobacco product or tobacco device health warnings on the use of tobacco in the following manner -

- (a) the warnings shall cover the proportion of each principal display as prescribed, which shall be no less than seventy-five per cent of each principal display area;
- (b) the text of the warnings shall be in the English language;

- (c) the visibility and integrity of the warnings must not be, and must not be susceptible to being, damaged, concealed, obstructed, obscured, permanently disrupted, covered, or changed by any package design feature or mechanism or by anything supplied by the manufacturer, importer, or seller; and
- (d) visibility of the warnings must not be obstructed or covered in whole or in part by a tax stamp or any other marking.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Rotation of health warnings on tobacco product and tobacco device packaging and labelling

17. (1) The Minister shall prescribe a set of multiple health warnings to be concurrently displayed for a prescribed period, to be known as the “rotation period”.

(2) At the expiration of each rotation period, the warnings shall be replaced with the next set of prescribed warnings.

(3) The first rotation period shall be for two years.

(4) The Minister shall prescribe the length of subsequent rotation periods after that.

(5) At the expiration of each rotation period, the warnings shall be replaced with the next set of prescribed warnings.

(6) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding one year, or to both.

Packaging and labelling during rotation period

18. (1) During a rotation period, each of the different health warnings in the set for that period shall appear on packaging and labelling concurrently so that each of the warnings appears on an equal number of retail packages for each brand within each brand family of the product for each package size and type.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding one year, or to both.

Second and subsequent rotations

19. (1) At the beginning of the second and subsequent rotation periods, products in packaging already in circulation with the health warnings from the last rotation period may continue to be sold for a phase-in period of no longer than 60 days from the first day of the new rotation period.

(2) At the end of the 60 days, only tobacco products whose packaging and labelling displays the warnings required for the current rotation period may be sold or may be on the market for sale.

(3) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding one year, or to both.

Single supply  
deadline for  
compliance with  
health warnings  
and constituents  
and emissions  
information  
requirements

20. (1) A person shall not, after six months of the publication of the regulations under section 22(1) sell or make available for sale any tobacco product or tobacco device whose packaging and labelling does not comply with the requirements of sections 18 to 22. (the ones directly above this section)

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding one year, or to both.

Prohibition on  
misleading  
packaging and  
labelling,  
regulation of the  
promotional  
elements of  
packaging and  
labelling

21. (1) A person shall not manufacture, import, or sell a tobacco product whose packaging and labelling promotes the product by any means that are false, misleading, deceptive or likely to create an erroneous impression about the product's characteristics, health effects, hazards, or emissions.

(2) A person shall not manufacture, import, or sell a tobacco product whose packaging and labelling promotes the product, including using any term, descriptor, trademark, figurative, colour, number, symbol, or other sign of any kind in whole or in part that directly or indirectly creates or is likely to create the impression that a particular tobacco product is less harmful than others, including by using terms such as “low tar”, “light”, “ultra-light”, “mild”, “slim”, “smooth”, “natural”, “organic”, “additives-free”, “extra”, “ultra”, or other terms in any language that are likely to mislead consumers, including when used as part of a brand name or trademark.

(3) A person shall not cause the appearance of the tobacco product itself to create or be likely to create an erroneous impression about its characteristics, health effects, hazards, or emissions or an impression that it is less harmful than another tobacco product.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Health warnings  
and other  
information  
required on  
packaging and  
labelling of  
nicotine product

22. (1) A person shall not manufacture, import, or sell a nicotine product unless its packaging and labelling contains the following health warning –

(a) ‘this product contains nicotine which is a highly addictive substance;’ or



(b) other health warning as prescribed by the Minister.

(2) The health warnings must comply with the display requirements specified in section 24 (Display of health warnings on tobacco product and tobacco device packaging and labelling).

(3) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

## **PART VI PRODUCT SALES**

Regulation of  
sale of a tobacco  
product,  
tobacco device,  
nicotine product  
or nicotine  
device

23. (1) A person shall not sell a tobacco product, tobacco device, nicotine product or nicotine device to a person under the age of twenty-one years or engage any person younger than that age in selling such products or devices.

(2) Despite the provisions of subsection (1), it shall be a defence if the seller demonstrates that the seller took effective steps to verify that the purchaser was at least twenty-one years of age, including scrutinising documentation specified in subsection (3) reasonably believed to be authentic.

(3) The following documentation may be used to verify a person's age –

(a) a national identity card issued by the Republic of Zambia or any other country;

- (b) a driving licence issued by the Republic of Zambia or any other country;
- (c) a passport issued by the Republic of Zambia or any other country; or
- (d) any other documentation as the Minister may prescribe.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Resemblance to tobacco products

24. (1) A person shall not manufacture, import, or sell sweets, snacks, or toys or other products that resemble tobacco products.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding four hundred thousand penalty units or to a term of imprisonment not exceeding four years, or to both.

Prohibitions on product sales

25. (1) A person shall not –  
(a) provide for the retail sale of a tobacco product, tobacco device, nicotine product or nicotine device in a manner that makes the product or device directly accessible to a retail consumer prior to the sales transaction;

- (b) sell, arrange for, or facilitate the retail sale, payment, or delivery of a tobacco product, tobacco device, nicotine product or nicotine device through any means by which the purchaser and seller are not in the same physical location. This includes but is not limited to, sales by mail, through the internet, or through other remote means; and
- (c) sell or arrange for a tobacco product, tobacco device, nicotine product or nicotine device to be sold through a vending machine or other automated means.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Requirement of intact package

26. (1) A person shall not sell a tobacco product or nicotine product unless it is in an intact package that –
- (a) in the case of tobacco product or nicotine product sold as units, contains at least 20 units of cigarettes, smokeless tobacco portion pouches, or other sticks, pods, or cartridges containing tobacco or nicotine; and

(b) in the case of loose tobacco, contains at least 30 grams of loose tobacco, such as tobacco for water pipes, chewing tobacco, and tobacco for rolling by the consumer.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding one year, or to both.

Display of sign

27. (1) A retail seller of a tobacco products, tobacco devices, nicotine product or nicotine device shall display a sign as prescribed by the Minister notifying the public of the prohibition of selling to persons below the age of twenty-one.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to a term of imprisonment not exceeding one year, or to both.

Delivery of a tobacco product, tobacco device, nicotine product or nicotine device

28. (1) A person shall not, for consideration, cause a tobacco product, tobacco device, nicotine product or nicotine device to be delivered or sent by mail unless the delivery is between manufacturers or retailers.

(2) A person shall not advertise an offer to deliver or mail a tobacco product, tobacco device, nicotine product or nicotine device anywhere within the Republic of Zambia.

(3) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand penalty units, or to imprisonment for a term not exceeding one year, or to both.

Additional requirements

29. The Minister may prescribe additional requirements –

- (a) related to the number of units of nicotine containing substance or refill substance that may or must be contained in a package;
- (b) to prevent and reduce access by persons below the age of twenty-one sale to a tobacco products, tobacco devices, nicotine product or nicotine device, and associated items that promote or are likely to promote tobacco or nicotine use, or
- (c) that otherwise further the objectives of the Act.

## **PART VII**

### **PRODUCT REGULATION AND REPORTING**

Regulation of ingredients and emissions

30. (1) A person shall not manufacture, import, or sell a tobacco product or nicotine product that–

- (a) has a characterizing flavor;

- (b) contains any additive with properties associated or likely to be associated with energy or vitality, a health benefit, or reduced health risk, such as but not limited to, amino acids, caffeine, taurine and other stimulants, vitamins, and minerals, or is represented or suggested as containing any such additives or having such properties;
- (c) contains additives with colouring properties for emissions;
- (d) contains a flavouring in any of its components such as filters, papers, portion pouches, and capsules or that has any technical feature allowing the consumer to modify the smell or taste of the product or the intensity of its smoke, aerosol or vapour; and
- (e) is represented or suggested, including through words, images, pictures, symbols, smells, colours, or other signs or signals, as being a flavoured product, or as having any of the additives or properties described in paragraphs (b)-(d).

(2) A person shall not manufacture, import, or sell a tobacco device or nicotine device with any technical feature

allowing a consumer to modify the smell, taste, intensity of the aerosol or vapour of the tobacco product or nicotine product.

(3) After 90 days from the date this Act takes effect, a person shall not manufacture, import, or sell a tobacco product, tobacco device, nicotine product or nicotine device that fails to comply with the provisions of subsections (1) and (2) and any implementing regulations.

(4) A person shall not manufacture, import, or sell a stand-alone flavouring or other ingredient manufactured for use with a tobacco product, tobacco device, nicotine product or nicotine device that can be added by the consumer.

(5) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

## **PART VIII**

### **INFORMATION, EDUCATION AND COMMUNICATION**

31. (1) The Government shall promote public awareness about the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and the harmful effects thereof through a comprehensive nation-wide education and information campaign conducted by the Government through

Government to undertake information, education and communication

the relevant Ministries, departments, authorities and other agencies.

(2) The education and information campaign referred to in subsection (1) shall focus on the individual and family as the basic social unit and shall be carried out in all schools and other institutions of learning, all correctional facilities and other places of confinement, amongst the disciplined forces, at all places of work and in all communities throughout Zambia.

(3) The Government shall provide training, sensitisation and awareness programmes on tobacco control for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons for proper information, dissemination and education on a tobacco product, tobacco device, nicotine products and nicotine devices.

(4) Every local authority in collaboration with civil society, other concerned persons and the Ministry, shall conduct education and information campaigns on tobacco within its area of jurisdiction.

Ministry responsible for education to integrate tobacco matters into syllabuses

32. The Ministry responsible for education, utilising official information provided by the Ministry responsible for health shall integrate instruction on the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke in subjects



taught in public and private schools at all levels of education, including informal and non-formal and indigenous learning systems.

Tobacco control education and dissemination to form part of health care

33. (1) Tobacco control education and information dissemination shall form part of health care services by healthcare providers or relevant officers.

(2) For the purposes of subsection (1), the Government shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on tobacco.

#### **PART IX**

### **PROTECTION OF TOBACCO CONTROL POLICIES FROM THE COMMERCIAL AND OTHER VESTED INTERESTS OF THE TOBACCO INDUSTRY**

Obligation to protect tobacco control policies

34. (1) Government shall protect tobacco control policies from the commercial and other vested interests of the tobacco industry.

(2) For the purposes of this Part, reference to the tobacco industry shall include any entity or individual working on behalf of or to further the interests of the tobacco industry.

Limitation on interactions between Government and the tobacco industry; transparency

35. (1) A person engaged in occupational activity with Government having responsibility for tobacco control

shall limit interactions with the tobacco industry to only those strictly necessary, and only to the extent necessary, for effective regulation of the tobacco industry, a tobacco product, tobacco device, nicotine product or nicotine device.

(2) Whenever there is an interaction or contact of any kind, regardless of which party initiates it, the Government shall ensure transparency of the interaction or contact.

(3) Transparency of Government-tobacco industry interactions and contacts shall require, at a minimum –

- (a) conducting any interactions in a public forum, such as through public hearings, with advance public notice unless doing so would jeopardize effective regulation or would not be legally possible, for example, in the case of inspections or investigations or certain interactions pursuant to litigation;
- (b) documenting all interactions and contacts, whether they are face-to-face or through some other means of communication, and providing details about those interactions and contacts as may be prescribed or Government policy;
- (c) making the documentation readily accessible to the public in a timely manner as prescribed, unless public disclosure

would jeopardize effective regulation or would not be legally possible; and

- (d) any other transparency measures as may be prescribed or specified in policies or procedures.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Prohibition on partnerships and endorsements, tobacco industry involvement in tobacco control initiatives

36. Government shall not participate in, support, endorse, or accept –

- (a) any legal measure or policy measure related to tobacco control or a tobacco product, tobacco device, nicotine product or nicotine device drafted by or in collaboration with the tobacco industry, or any offer of drafting assistance from the tobacco industry;
- (b) any non-binding or non-enforceable agreement or industry code of conduct in the place of a legally enforceable measure;
- (c) any tobacco industry involvement in any manner in any initiative, campaign, program, or activity directly or indirectly related to tobacco control or public health,

including but not limited to any youth access or education program, or public education campaign regarding a tobacco product, tobacco device, nicotine product or nicotine device;

- (d) a voluntary financial or other contribution or funding of any kind provided that a legally mandated payment or a payment made in settlement of litigation shall not be considered voluntary; and
- (e) any other form of partnership, endorsement, or involvement with the tobacco industry as may be prescribed or specified in policies and procedures.

Prevention and  
management of  
conflicts of  
interest

37. (1) Each branch of Government shall ensure the screening, disclosure, and management of tobacco-related conflicts of interest on the part of persons with responsibility for tobacco control, including at a minimum –

- (a) requiring disclosure of relevant past occupational activity and any other affiliation with the tobacco industry that may give rise to a conflict of interest by persons under consideration for occupational activity that would have or include responsibility for tobacco control;

- (b) prohibiting persons from engaging in concurrent occupational activity with the tobacco industry;
- (c) prohibiting the acceptance of a contribution, gift, favour, or perquisite of any kind from any entity or individual in the tobacco industry;
- (d) prohibiting the acquisition or maintenance of any previously held investment in the tobacco industry; and
- (e) requiring notice of intent to engage in occupational activity with the tobacco industry after leaving Government service and placing any appropriate limitations on such activity, such as a waiting period, before engaging in such activity after leaving Government service.

(2) A person from the tobacco industry shall not be nominated or appointed to serve on a delegation to any meeting of the WHO FCTC Conference of the parties, its subsidiary bodies or any other bodies established pursuant to decisions of the conference of the parties.

(3) A person from the tobacco industry shall not be nominated or appointed to serve as a member of any Government body, committee, or advisory group that sets or implements tobacco control or public health policy.

Reports on tobacco industry activities and practices

38. (1) Businesses in the tobacco industry shall submit periodic reports to the Minister containing information as may be prescribed, which may include information on tobacco product and tobacco device production, nicotine product or nicotine device production if applicable, market share, revenues, and other activities and practices, including lobbying.

(2) The Ministry shall make information from the reports readily accessible to the public in a timely manner.

(3) The Minister shall, in making the information accessible under subsection (2), take reasonable action as necessary to prevent disclosure of information, if any, that may be protected by law, that may be misleading, or that may promote use of a tobacco product, tobacco device, nicotine product or nicotine device, or the tobacco industry making the report.

Prohibition on incentives to tobacco or nicotine businesses

39. (1) A Government official or person in authority shall not provide any incentive to any person to establish or run a tobacco product, nicotine product or nicotine device manufacturing, importing, wholesale, or retail business.

(2) A Government official or person in authority shall not provide any incentive or privilege related to any phase of

the production or marketing of tobacco products, nicotine product or nicotine devices.

(3) The prohibitions contained in subsection (1) and (2) refer to actions that include, but is not necessarily limited to, subsidies, investment incentives, direct investments or loans, tax exemptions or reductions or other forms of favourable tax treatment, research and development grants or loans.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

(5) Part VIII of the Zambia Development Agency Act, 2006 does not apply to the tobacco industry.

## **PART X LICENCING**

Licensing of a tobacco product, tobacco device, nicotine product or nicotine device

40. (1) The Minister responsible for local government shall declare a tobacco product, tobacco device, nicotine product or nicotine device as a restricted products.

(2) the Ministry responsible for Local Government shall be responsible for the carrying out of the provisions of this Part in relation to issuance of licences or permits, as the case may be, to persons who manufacture, import, export, or sell a

tobacco product, tobacco device, nicotine product or nicotine device in the Republic of Zambia.

Single licensing system

Act No. 3 of 2014

41. (1) Subject to this Act, the Ministry responsible for Local Government shall operate a single licensing system for the tobacco industry in accordance with the Business Regulatory Act, 2014.

(2) The Ministry responsible for Local Government shall endorse on the permit or licence-

- (a) the name of the permit or licence;
- (b) the nature and scope of the activity authorised under the permit or licence;
- (c) the conditions attached to the permit or licence; and
- (d) any other relevant information that the Regulatory Agency may request to be so endorsed.

(3) Any licensee found to have violated any provision of this Act or implementing regulations may be subject to licensure sanction, which may include limitation, suspension, or revocation, at the discretion of the Minister for trade, consistent with the purposes of this Act.

(4) Any applicant who is denied a licence at initial application or renewal, and any licensee whose licence is the subject of a sanction action, shall have the right to appeal in



accordance with the prescribed appeals procedure or relevant legislation in force in Zambia.

Prohibition of manufacture, import, distribute, export or sell without a permit or licence

42. (1) A person shall not manufacture, import, distribute at wholesale or retail, export or sell a tobacco product, tobacco device, nicotine product or nicotine device without obtaining a licence or permit under section 38.

(2) A person shall not sell a tobacco product, tobacco device, nicotine product or nicotine device to any manufacturer, importer, exporter, or seller without confirming that such person has a valid licence or permit as the case may be.

(3) A person shall not purchase or take possession of any tobacco product, tobacco device, nicotine product or nicotine device from any manufacturer, importer, exporter, or wholesaler without confirming that the manufacturer, importer, exporter, or wholesaler holds a valid licence or permit, as the case may be.

(4) A person who contravenes this section commits an offence and is liable on conviction to a fine of seven hundred thousand penalty units or imprisonment for a term not exceeding seven years or to both.

Validity period and transferability of licence

43. (1) A licence shall be valid for a period of twelve months.

(2) A licence granted shall not be transferrable to any other person.

Transitional provision

44. A person engaged in the business of manufacturing or selling products and devices before the passage of this Act shall have a period of up to six months from the date this Act comes into operation to apply for a licence.

Application for permit or licence

45. (1) A person who intends to manufacture or sell a tobacco product, tobacco device, nicotine product or nicotine device shall apply to the Minister responsible for local government for a licence in the prescribed manner and form on payment of the prescribed fee.

(2) A person who intends to import or export a tobacco product, tobacco device, nicotine product or nicotine device shall apply to the Minister responsible for trade for a permit in the prescribed manner and form on payment of the prescribed fee.

Act No. 3 of 2014

(3) The Minister shall before issuing a licence or permit under section 38 consult with appropriate authorities in accordance with the Business Regulatory Act, 2014 and any other written law.

(4) The Minister responsible for trade shall consider and determine the application within sixty days of receipt of the application.

(5) Where an application, lodged in accordance with this section, is not considered and determined within sixty days of lodging of the application, the applicant's licence or permit, as the case may be, is deemed to have been granted, and the Minister responsible for Local Government shall, immediately, issue the licence or permit as prescribed.

Appeals

46. A person who is aggrieved with the decision of the Minister responsible for Local Government under this Part may, within thirty days of being notified of the decision, appeal to the High Court against the decision.

## **PART XI**

### **CONTROL OF ILLICIT TRADE**

Measures to reduce trade in illicit tobacco

47. (1) A person shall not sell or import for sale any tobacco product, unless the package bears the statement, "Sales only allowed in Zambia" or any other marking indicating the origin thereof and the final destination for sale.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding eight hundred thousand penalty units or to a term of imprisonment not exceeding ten years, or to both.

Prevention of illicit trade of a tobacco product, tobacco device, nicotine product or nicotine device

48. The Minister responsible for trade may on the recommendation of the Minister prescribe regulations for the prevention of illicit trade in a tobacco product, tobacco device,

nicotine product or nicotine device to ensure the fulfilment of public health objectives.

## **PART XII**

### **ENFORCEMENT**

Appointment  
of authorised  
officer

49. The Minister shall, for the purposes of this Act, appoint authorised officers.

Powers of entry  
of authorised  
officer

50. An authorised officer may, pursuant to a periodic inspection, or an investigation based on reasonable grounds to believe that a person is or has engaged in an activity in contravention of the provisions of this Act, or upon reasonably believing evidence relevant to a contravention may be present, enter and inspect at any reasonable time –

- (a) any public place, workplace, or public conveyance in terms of Part III (smoke free environments);
- (b) a public place or workplace where a tobacco product, tobacco device, nicotine product or nicotine device is manufactured, tested, stored, packaged, labelled, received, distributed, supplied, sold or otherwise found or are likely to be found;
- (c) a public place or workplace where equipment or material used in the manufacture, storage, packaging,

promotion, sale or testing of tobacco product, tobacco device, nicotine product or nicotine device is likely to be found; and

- (d) any other public place or workplace necessary to enter for the proper administration or enforcement of the Act.

Duties of  
authorised  
officers

51. (1) An authorised officer shall have the power and duty to—

- (a) examine, open and test any equipment, tool, material, package or any other item relating to the manufacturing of tobacco product, tobacco device, nicotine product or nicotine device that the authorised officer reasonably believes is used, or is capable of being used, for the manufacture, packaging, labelling, storage, distribution, advertising or promotion of tobacco product, tobacco device, nicotine product or nicotine device;
- (b) examine any operation or process being carried out in any of the places described in section 8;
- (c) question a tobacco product, tobacco device, nicotine product or nicotine device manufacturer, importer, wholesale

distributor or retailer, all of whom shall be required to co-operate fully and truthfully with the authorised officer;

- (d) take tobacco product samples, tobacco device, nicotine product or nicotine device, and their packaging, and have them analysed by an internationally accredited laboratory in accordance with testing standards and methods or as may be prescribed by the Minister;
- (e) in collaboration with the security agencies and when it is deemed fit, stop and search any commercial aircraft, vessel, ship, vehicle or other mode of transportation or storage which the authorised officer reasonably believes contains tobacco product, tobacco device, nicotine product or nicotine device and open, examine, sample and test the said tobacco product, tobacco device, nicotine product or nicotine device;
- (f) on a written notice, in the prescribed form, where the authorised officer on reasonable grounds believes that there has been non-compliance with the Act or any other applicable legislation; and

(g) take any other action reasonable or necessary for the effective and efficient administration or enforcement of this Act.

(2) A person shall not –

(a) hinder an authorised officer in the performance of the authorised officer’s duties and functions under this Act;

(b) conceal or destroy evidence;

(c) furnish false or misleading statements to an authorised officer; or

(d) refuse to furnish the authorised officer with any evidence or information legally required to be given.

(3) A person who contravenes subsection (2) commits an offence and liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both.

Inspection of private places

52. An authorised officer shall not enter a dwelling place save with the informed consent of the occupant thereof or with a warrant.

Confiscation of tobacco product, tobacco device, or nicotine inhaling product

53. Where a tobacco product, tobacco device, nicotine product or nicotine device is determined not to meet requirements provided for in this Act or as prescribed, it must

be confiscated by or on behalf of the authorised officer in question.

Identification of authorized officers

54. An authorised officer entering a place to inspect it or conduct an investigation, namely, those places described in section 8, shall, on request, provide the necessary proof of identity.

Administrative notification

55. The authorised officer may apply the fines through the process of administrative notification as prescribed.

### **PART XIII THE TOBACCO CONTROL FUND**

Establishment of fund for control of tobacco products and nicotine products

56. (1) There is established the Tobacco Control Fund.

(2) Subject to the Public Finance Management Act, 2018, the Fund shall be administered by the Minister responsible for health and applied for the purposes of –

- (a) the management and control of tobacco and nicotine related issues;
- (b) paying administrative and management expenses of the Fund;



(c) contributing to the treatment of tobacco and nicotine related illnesses and diseases;

(d) conducting training on tobacco and nicotine related programmes; and

(e) providing funding for -

(i) the formulation and implementation of projects and programmes in order to control the use of tobacco and nicotine products; and

(ii) technical assistance, guidance and training in the identification, planning, preparation, appraisal, monitoring, evaluation, financing, implementation or management of projects and programmes referred to in subparagraph (I).

(3) The Fund consists of -

(a) such monies as may be received by the Fund from donations and grants from any source, with the approval of the Minister;

(b) such other monies as may vest in or accrue to the Fund;

(c) interest arising out of any investment of the Fund; and

(d) such other monies as may, by or under any other law, be payable to the Fund.

Administration of  
Fund and  
accountability

57. (1) The Minister may, by statutory instrument, make regulations to provide for -
- (a) the manner of financing programmes and activities to which the Fund shall be applied;
  - (b) fiscal controls and accounting procedures governing the Fund;
  - (c) reporting procedures for matters relating to the Fund;
  - (d) investment of the monies of the Fund; and
  - (e) any other matter necessary for the efficient operation, administration and management of the Fund.

Financial year of  
fund and auditing  
of books,  
accounts and  
balance sheets

58. (1) The financial year of the Fund ends on 31<sup>st</sup> December in each year.
- (2) The Permanent Secretary must -
- (a) keep such books of account as are necessary to represent fairly the state of affairs and business of the Fund and to explain the transactions and financial position of the Fund; and
  - (b) not later than three months after the end of each financial year, submit such accounts to the Auditor-General for audit.

(3) The Auditor-General must submit a report on the audit of the Fund to the Minister who must table the report in the National Assembly within 60 days, if the National Assembly is in session, or, if it is not in session, within 30 days after commencement of its next session.

(4) Any money of the Fund which is not required for immediate use may be invested as the Minister, with the concurrence of the Minister responsible for finance, may direct.

(5) Any unexpended balance in the Fund at the end of any financial year must be carried forward as a credit in the Fund to the ensuing financial year.

Exemption from payment of tax and other charges

59. No tax or charge on income or transfer or stamp duty imposed by or under any law is payable by the Fund.

## **PART XVI**

### **GENERAL PROVISIONS**

Excise duty

**60.** The Minister responsible for finance may, on the recommendation of the Minister, prescribe regulations to implement excise duty on a tobacco product, tobacco device, nicotine product or nicotine device that significantly contribute to reducing tobacco use and nicotine addiction.

General penalties

61. A person who contravenes any provision of this Act for which there is no penalty prescribed, commits an offence and shall, on conviction be liable to a fine not exceeding three hundred thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

Offence by body corporate or unincorporated body

62. Where an offence under this Act is committed by a body corporate or unincorporated body, and the director, manager or shareholder of that body is suspended to have committed the offence and is charged of that offence, that director, manager or shareholder of that body corporate or unincorporated body is liable, upon conviction, to the penalty specified for the offence unless the director, manager or shareholder proves to the satisfaction of the court that the act consisting the offence was done without the knowledge, consent or connivance of the director, manager or shareholder or that the director, manager or shareholder took reasonable steps to prevent the commission of the offence.

Penalties and liabilities

63. (1) Despite the other provisions of this Act, where a person contravenes this Act or Regulations, the following penalties may be imposed:

- (a) suspension, revocation or limitation of licences;
- (b) removal by an authorised officer of an offending person from the premises or

public conveyance, and confiscation and forfeiture of any tobacco product, tobacco device, nicotine product or nicotine device in violation of the provisions of this Act; and

- (c) confiscation and forfeiture of—
- (i) any item that contains advertising on any tobacco product, tobacco device, nicotine product or nicotine device advertising and promotion prohibited under this Act;
  - (ii) any tobacco product, tobacco device, nicotine product or nicotine device packaged or labelled in a manner that does not conform with this Act;
  - (iii) any tobacco product, tobacco device, nicotine product or nicotine device owned by or under the control of the person found;
  - (iv) equipment, machinery, raw materials, components, packaging and labelling materials, and any other items used to manufacture tobacco products;
  - (v) all tobacco product, tobacco device, nicotine product or nicotine device or components that fail to conform with

the product requirements under this Act; and

- (vi) all tobacco product, tobacco device, nicotine product or nicotine device for which all applicable taxes and duties have not been paid or that otherwise have not legally entered the jurisdiction.

(2) For any continuing violation, each day the violation continues shall constitute a separate offence.

(3) Where any person derives any monetary or financial benefit directly or indirectly from any act or omission that constitutes a violation under this Act, Regulations or other applicable law, including any imposing duties and taxes, all proceeds so gained shall be forfeited in addition to any other penalty imposed.

Consideration  
of the court in  
passing  
sentence

64. (1) The Court in convicting a person of an offence under this Act may declare any tobacco product, tobacco device, nicotine product or nicotine device to which the offence relates, be forfeited to the State.

(2) A tobacco product, tobacco device, nicotine product or nicotine device forfeited under subsection (1) must be destroyed or otherwise dealt with as prescribed.

Protection for employees

65. An employer shall not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee or deny that employee a benefit on the ground that the employee testifies against an employer in an action brought under this Act.

Guidelines

66. (1) The Minister may make guidelines for the better carrying out of the provisions of this Act.

(2) The guidelines referred to in subsection (1) shall, on publication in the Gazette, be binding on all persons regulated under this Act.

Regulations

67. The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.