

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

Bill No. 7/2010.

Read the first time on 26th April 2010.

A BILL

i n t i t u l e d

An Act to amend the Smoking (Control of Advertisements and Sale of Tobacco) Act (Chapter 309 of the 2003 Revised Edition).

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

Short title and commencement

1. This Act may be cited as the Smoking (Control of Advertisements and Sale of Tobacco) (Amendment) Act 2010 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of long title

2. The long title to the Smoking (Control of Advertisements and Sale of Tobacco) Act (referred to in this Act as the principal Act) is amended by deleting the word “smoking” and substituting the words “any tobacco product or its use”.

Amendment of section 1

3. Section 1 of the principal Act is amended by deleting the words “Smoking (Control of Advertisements and Sale of Tobacco) Act” and substituting the words “Tobacco (Control of Advertisements and Sale) Act”.

Amendment of section 2

4. Section 2 of the principal Act is amended —

(a) by deleting the definition of “advertisement relating to smoking” and substituting the following definition:

““advertisement relating to any tobacco product” means any advertisement referred to in section 3(1) which has not been approved under section 3(2);”;

(b) by deleting the words “for smoking” in the definition of “cigarette”;

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

““emission” means any substance that is produced when a tobacco product is used;”;

(d) by inserting, immediately after the definition of “newspaper”, the following definitions:

““packaging”, in relation to any product or article, means any container and any other packaging material in

which or with which the product or article is supplied, and includes —

- 5 (a) the box, carton, cylinder, packet, pouch, tin or other receptacle which contains the product or article;
- (b) where any such receptacle is or is to be contained in one or more other receptacles, each of the other receptacles;
- (c) wrapper or wrapping of any nature or form;
- 10 (d) any accompanying leaflet, brochure or other written material; and
- (e) any written, printed or graphic representation that appears on or with, or is attached to, the product or article or any part of its packaging;

15 “premises” includes any place or building or part thereof;” and

(e) by deleting the definition of “tobacco product” and substituting the following definitions:

20 ““tobacco product” means any cigarette, cigar or any other form of tobacco, or any tobacco derivative or substitute, including any mixture containing tobacco, or any tobacco derivative or substitute, but excludes any medicinal product registered under the Medicines Act (Cap.176);

25 “tobacco substitute” means any article, object or thing that contains nicotine, but excludes tobacco, tobacco derivatives and any medicinal product registered under the Medicines Act;

30 “use”, in relation to any tobacco product, means smoking, chewing, inhaling, ingesting or otherwise introducing the tobacco product or any of its constituents or emissions into the human body (whether by oral means or otherwise);”.

Amendment of section 3

5. Section 3 of the principal Act is amended —

(a) by deleting the word “smoke” in subsection (1)(a) and substituting the word “use”;

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

10 “(b) relating to any tobacco product or its use in terms which are calculated, expressly or impliedly, to lead to, induce, urge, promote or encourage the use of the tobacco product; or”;

(c) by deleting paragraph (a) of subsection (2);

(d) by deleting the words “for the purpose of smoking” in subsection (3); and

15 (e) by deleting the word “smoking” in the section heading and substituting the words “tobacco products”.

Amendment of section 9

6. Section 9(1) of the principal Act is amended by inserting, immediately after the word “goods” wherever it appears, the words “or services”.

Amendment of section 11

7. Section 11 of the principal Act is amended —

(a) by deleting the words “smokes or chews” in subsection (1) and substituting the word “uses”;

25 (b) by deleting the words “smoking or chewing or about to smoke or chew” in subsection (2) and substituting the words “using or about to use”;

(c) by deleting the words “place, premises or building or part thereof” in the definition of “public place” in subsection (3) and substituting the word “premises”; and

30 (d) by deleting the words “smoking, etc.,” in the section heading and substituting the words “use of tobacco products”.

Amendment of section 12

8. Section 12 of the principal Act is amended —

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

- 5 “(1) No person shall —
- (a) import or permit the import of any cigarette for the purpose of sale;
- (b) distribute or permit the distribution of any cigarette for the purpose of sale;
- 10 (c) sell or offer to sell, or permit the sale of or offer for sale of, any cigarette; or
- (d) possess any cigarette for the purpose of sale,
- except in a package that contains not less than the prescribed number of cigarettes.

15 (1A) Subsection (1) shall not apply to the import of cigarettes into Singapore solely for the purpose of taking them out of Singapore, whether on the same conveyance on which they were brought into Singapore or on another conveyance and whether or not they are landed and kept in any place in

20 Singapore pending their being taken out of Singapore.”;

(b) by inserting, immediately before the definition of “package” in subsection (3), the following definitions:

 ““cigarette” includes any cigarillo;

 “cigarillo” means —

- 25 (a) a cigar that weighs less than 1.4 grams or such other weight as the Minister may by notification in the *Gazette* prescribe; or
- (b) any tobacco product that is labelled, described or promoted as a cigarillo;”;

30 (c) by deleting the definition of “package” in subsection (3) and substituting the following definition:

“ “package” —

- (a) means any box, carton or other container in which cigarettes are supplied for the purpose of sale; and
- (b) includes, in the case where the package is, or several packages are, contained inside one or more larger packages, the smaller package or each of the smaller packages, as the case may be;”.

Repeal and re-enactment of section 15

9. Section 15 of the principal Act is repealed and the following section substituted therefor:

“Prohibition on importation, distribution and sale of harmful tobacco products

15.—(1) Notwithstanding anything in this Act but subject to subsection (3), no person shall import, distribute, sell or offer for sale —

- (a) any chewing tobacco;
- (b) such other tobacco product, or class of tobacco products, intended, labelled or described as suitable for use other than smoking, as the Minister may by regulations prescribe;
- (c) such tobacco product, or class of tobacco products, as the Minister may by regulations prescribe, where the Minister is of the opinion that such product or class of products has or is capable of having the effect of encouraging or otherwise promoting smoking or other uses of tobacco products; or
- (d) such tobacco product, or class of tobacco products, as the Minister may by regulations prescribe, where the Minister is of the opinion that such product or class of products has or is capable of having, directly or indirectly, an adverse effect on the health of the public or any section of the public.

(2) Subject to subsection (3), no person shall import, distribute, sell or offer for sale such tobacco product or class of tobacco products as the Minister may by regulations prescribe, being tobacco product —

- (a) that contains; or
- (b) the emissions of which contain,

any substance in excess of such maximum amounts as may be prescribed for that substance.

5 (3) Subsections (1) and (2) shall not apply to the import of tobacco products into Singapore solely for the purpose of taking them out of Singapore, whether on the same conveyance on which they were brought into Singapore or on another conveyance and whether or not they are landed and kept in any place in Singapore pending their being taken out of Singapore.

10 (4) For the purposes of subsection (2), the Minister may prescribe different maximum amounts for different substances, in relation to different classes or descriptions of tobacco products.

15 (5) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.

20 (6) In subsection (1), “smoking” means inhaling and expelling the smoke produced from the combustion of any tobacco product or any part of such tobacco product.”.

Amendment of section 16

10. Section 16 of the principal Act is amended —

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

25 “(1) No person shall import, distribute, sell or offer for sale any confectionery or other food product or any toy or other article that is designed to resemble a tobacco product or the packaging of which is designed to resemble the packaging commonly associated with tobacco products.”; and

30 (b) by deleting the words “on sale” in the section heading.

Amendment of section 17

11. Section 17(1) of the principal Act is amended by inserting, immediately after the words “such tobacco products”, the words “, and such of their packaging,”.

New section 17A

12. The principal Act is amended by inserting, immediately after section 17, the following section:

“Prohibition of false or misleading packaging and labelling

5 **17A.**—(1) Subject to subsection (3), no person shall import, distribute, sell or offer for sale any tobacco product, the packaging or labelling of which promotes any tobacco product by any means that is false, misleading, deceptive or likely to create an erroneous impression about the characteristics, health effects, hazards or
10 emissions of the tobacco product.

(2) For the purposes of this section, any tobacco product whose packaging or labelling includes or contains —

(a) any term, descriptor or trade mark, or any figurative or other sign, that directly or indirectly creates the false impression
15 that a particular tobacco product is less harmful than other tobacco products; or

(b) such term as the Minister may by regulations prescribe, whether or not the term is part of a descriptor or trade mark, or any figurative or other sign,

20 shall be deemed to be a tobacco product that no person shall import, distribute, sell or offer for sale under subsection (1).

(3) Subsection (1) shall not apply to the import of tobacco products into Singapore solely for the purpose of taking them out of Singapore, whether on the same conveyance on which they were brought into
25 Singapore or on another conveyance and whether or not they are landed and kept in any place in Singapore pending their being taken out of Singapore.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding
30 \$10,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months or to both.”.

Amendment of section 19

13. Section 19 of the principal Act is amended by inserting, immediately after subsection (2), the following subsection:

5 “(3) Every authorised officer shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224).”.

Amendment of section 26

14. Section 26 of the principal Act is amended —

(a) by deleting the word “business” in subsection (1)(a); and

10 (b) by deleting the word “smoking” in subsection (2) and substituting the words “any tobacco product”.

Amendment of section 27

15. Section 27(1) of the principal Act is amended by inserting, immediately after the word “obstructs” in paragraph (a), the words “, hinders or impedes”.

Amendment of section 34

16. Section 34(1) of the principal Act is amended by deleting the words “a sum not exceeding \$2,000.” and substituting the following words:

“a sum not exceeding —

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

(b) \$2,000,

whichever is the lower.”.

Miscellaneous amendments

17. The principal Act is amended —

25 (a) by deleting the word “SMOKING” in the heading of Part II and substituting the words “TOBACCO PRODUCTS”;

(b) by deleting the word “smoking” in sections 6, 7(1) and (2), 8 and 21 and substituting in each case the words “any tobacco product”;

- (c) by deleting the words “or place” wherever they appear in sections 5 and 13(1)(a) and (2);
- (d) by deleting the word “places” in section 13(1)(b) and substituting the word “premises”;
- 5 (e) by inserting, immediately after the words “tobacco retailers” in the section heading of section 18, the word “, etc.”; and
- (f) by deleting the words “place or type of place” in section 22(1) and substituting the words “premises or type of premises”.

References to principal Act in other written laws and documents

- 10 **18.** Insofar as it is necessary for preserving the effect of any written law or document on or after the date of commencement of this Act, any reference to the Smoking (Control of Advertisements and Sale of Tobacco) Act shall be read as a reference to the Tobacco (Control of Advertisements and Sale) Act.

EXPLANATORY STATEMENT

This Bill amends the Smoking (Control of Advertisements and Sale of Tobacco) Act (Cap. 309) (the Act) to strengthen Singapore’s tobacco control efforts and to meet certain obligations under the World Health Organization Framework Convention on Tobacco Control (FCTC). It seeks to do so principally by enhancing the regulation of the import, distribution, advertising, sale and use of tobacco products in Singapore. The Bill also seeks to update and streamline the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends the long title to reflect that the Act, as amended by the Bill, will prohibit advertisements relating to any use of tobacco products and not just the smoking of tobacco products.

Clause 3 amends the short title to change it to Tobacco (Control of Advertisements and Sale) Act.

Clause 4 amends section 2 —

- (a) by substituting the definition of “advertisement relating to smoking” with the definition of “advertisement relating to any tobacco product”, to reflect the scope of section 3(1) as amended by clause 5;
- (b) to insert the definition of “emission” (from section 15(6), which will be repealed by clause 9);

- (c) to amend the definition of “tobacco product” to include tobacco derivatives and substitutes, following the definition of “cigarette” in the section;
- (d) to insert the definitions of “packaging”, “premises”, “tobacco substitute” and “use” (in relation to tobacco products), to clarify their meanings in the Act; and
- (e) to amend the definition of “cigarette” as a consequence of the new definition of “use”.

Clause 5 amends section 3 —

- (a) to clarify that the prohibition of advertisements extends to those relating to the use (and not just smoking) of tobacco products; and
- (b) to repeal the power to approve the publication of advertisements which mention or refer to any brand name, or the name or trade name of any person associated or concerned with manufacturing, distributing or marketing a tobacco product, as the sponsor of an event or congratulating another person or thing.

The clause also makes consequential amendments to section 3 arising from the substitution of the definition of “advertisement relating to smoking” with the definition of “advertisement relating to any tobacco product” (by clause 4(a)), and the new definition of “use” (inserted by clause 4(e)).

Clause 6 amends section 9(1) to extend the prohibition on the sales promotion of tobacco products to include the sale of tobacco products in conjunction with services.

Clause 7 amends section 11 —

- (a) to substitute the terms “smoke” and “chew” (and their grammatical variations) with the term “use”, which is to be defined in section 2 (inserted by clause 4(e)); and
- (b) to streamline subsection (3) arising from the new definition of “premises” (inserted by clause 4(d)).

Clause 8 amends section 12 to widen the prohibition relating to dealings with cigarettes in packages that contain less than the prescribed number of cigarettes to include the importation, distribution and possession of such cigarettes for the purpose of sale, whether by retail or otherwise. The clause also extends the section to apply similarly to cigarillos, which will have the meaning inserted by the clause.

Clause 9 repeals and re-enacts section 15 to empower the Minister to make regulations to prohibit the importation, distribution, sale or offer for sale of certain types of tobacco products (including tobacco derivatives and substitutes), in addition to chewing tobacco and other smokeless tobacco provided for under the current section. The clause accords the Minister flexibility from time to time to prohibit new or emerging tobacco products which might have the effect of encouraging smoking or other uses of tobacco products, or which might pose threats to public health that might not be previously foreseen.

The new section 15 will also empower the Minister to prescribe, by regulations, the limits on certain substances (including nicotine and tar) contained in, or in the emissions of, the specified types or classes of tobacco products imported, distributed, sold or offered for sale in Singapore.

Clause 10 amends section 16 to prohibit the distribution of food and other products which resemble tobacco products or in packages resembling the packaging commonly associated with tobacco products.

Clause 11 amends section 17(1) to make it clear that regulations may be made to require health warnings on the packaging of the tobacco products specified in the regulations.

Clause 12 inserts a new section 17A to prohibit the importation, distribution, sale or offer for sale of any tobacco product that has or is accompanied by any false or misleading packaging or labelling as provided for in the section. The new section is intended to implement Article 11 of the FCTC.

Clause 13 inserts a new subsection (3) in section 19 to deem authorised officers as public servants for the purposes of the Penal Code (Cap. 224).

Clause 14 amends section 26 to empower the Chief Executive of the Health Sciences Authority (Chief Executive) or an authorised officer to enter any premises, and not only business premises, for the purpose of ascertaining whether any offence under the Act has been committed. The clause also amends section 26 arising from the substitution of the definition of “advertisement relating to smoking” with the definition of “advertisement relating to any tobacco product” (by clause 4(a)).

Clause 15 amends section 27(1) to make it an offence for any person to wilfully hinder or impede the Chief Executive or an authorised officer acting in pursuance of the Act.

Clause 16 makes a technical amendment to section 34(1), to clarify that the maximum sum the Chief Executive or any person authorised by him may collect for the composition of any offence under the Act cannot exceed one half of the maximum fine prescribed for the offence, if lower than \$2,000.

Clause 17 contains the following miscellaneous amendments to the Act:

- (a) the amendment of the heading of Part II and sections 6, 7(1) and (2), 8 and 21 arising from the substitution of the definition of “advertisement relating to smoking” with the definition of “advertisement relating to any tobacco product” (by clause 4(a));
- (b) the deletion of the words “or place” in sections 5 and 13(1)(a) and (2), which are no longer necessary by virtue of the new definition of “premises” (inserted by clause 4(d)), and the updating of sections 13(1)(b) and 22(1) accordingly; and
- (c) the technical amendment of the section heading of section 18.

Clause 18 contains a transitional provision as a consequence of the amendment of the short title of the Act (by clause 3).

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
