

TOBACCO CONTROL ACT, 2016

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SCHEDULES



THE GAMBIA
NO. 10 OF 2016
Assented to by The President,
this 30 day of Dec 2016



A handwritten signature in black ink, appearing to read 'Yahya A. J. J. Jammeh'.

YAHYA A. J. J. JAMMEH.
President

An Act to control the demand and supply of tobacco and tobacco related products, implement the World Health Organisation Framework Convention on Tobacco Control, and for connected matters.

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ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the Tobacco Control Act, 2016.
- (2) The Minister shall, by order published in the gazette appoint a date on which this Act shall come into force.

2. Interpretation

In this Act, unless the context otherwise requires-

"additive" means any substance chemical compound or component other than tobacco or water, that is introduced in the tobacco product during processing, manufacturing or packaging including, as applicable, those obtained in the paper, filter, portion pouch, or similar part of the tobacco product, its package or accessories;

"authorized agency" means any Ministry, department, parastatal agency, local government council or public office in which or upon which any law vests functions of control or management of any segments of tobacco control;

"authorised officer" means a public officer or other person upon whom any law vests functions of; ensuring public health, public safety, inspection and investigation, testing, examining the manufacturing process, searching, seizing and detaining, sampling, tracking and tracing, maintenance of law and order and other functions as authorized by the Minister;

"brand name" means a name by which a tobacco product is marketed or sold;

"Committee" means the Tobacco Control Committee established under Section 3;

“conflict of interest” means a conflict between the public duties and private interests of any person working in or on behalf of government in any capacity where that person has tobacco-related interests which could improperly influence, the performance of his or her official duties and responsibilities;

“cross border advertising” with respect to tobacco advertising, promotion, and sponsorship means that advertisement which originates from within the territory of The Gambia to another territory or could be received in another territory, including by means such as, but not limited to, placement on the internet or through broadcasts or other communication technologies, as well as that which is originated from outside the territory of The Gambia to or is designed to be used in the territory;

“constituents” means chemicals, including particles, vapours and gases found in tobacco or tobacco product;

“content” means constituents with respect to processed tobacco, and ingredients with respect to tobacco products;

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

“electronic nicotine delivery systems” means an electronic device that can be used to deliver nicotine vapour or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo or pipe.

“emissions” are substances that are released when a tobacco product is used as intended; in the case of cigarettes, and other combusted products, emissions are the substances found in the smoke; in the case of smokeless tobacco products for oral use, emissions mean the substances released during the process of chewing or sucking; and in the case of nasal use, refer to substances released by particles during the process of snuffing;

“exporter” means any person who sends or arranges to send a tobacco product outside The Gambia for sale or supply in another country;

“Government” includes Governmental and semi- or quasi-Governmental institutions, bodies, boards, commissions, committees, working groups, or entities;

“health warnings and messages” means prescribed text and accompanying full colour pictures required by the Ministry to be displayed on tobacco packaging and labelling that convey the health;

and other consequences of tobacco use and exposure to tobacco smoke and any other tobacco control messages as prescribed by the Minister;

"importer" means any person who receives or arranges for the receipt of a tobacco product from another country for sale in The Gambia;

"ingredients" mean tobacco, components, including materials used to manufacture those components, additives, processing aids, residual substances found in tobacco, following storage and processing and substances that migrate from the packaging material into the product;

"manufacturer" means a legal entity, that manufactures, fabricates, produces, processes, packages and/or labels tobacco products, and includes any entity that is associated with manufacture, any entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that is controlled by the manufacturer;

"media" means broadcast, print, electronic and any other avenues of communicating to the public;

"Member" means a member of the Committee established under section 3(1);

"Minister" means Minister responsible for Health and Social Welfare;

"Ministry" means Ministry responsible for Health and Social Welfare;

"minor" means any person below the age of 18 years;

"occupational activity" includes any kind of employment, contract, consultancy, or other work, or service activity, whether it is gainful or not;

"open space" means any space that is not enclosed, as that term is defined in this act;

"outside packaging" means any packaging in the retail sale of tobacco products, including multiple packages of tobacco products such as cartons, and includes any label and other written or graphic information on or in it;

"package" means any covering, wrapper, container, or other enclosure that contains a tobacco product;

"person responsible for the premises" means the owner, manager, or other person in charge of the public place, workplace, or means of public transport;

"public office holder" means an appointed or elected government official, representative, advisor, or employee within any branch of

government at the national level or at the level of the local government;

“public place” includes an area, permanent or temporary, fixed or mobile, that is accessible to the general public or for collective use by the general public regardless of ownership or right of access;

“public transport” means any means of transport used for the carriage of members of the public;

“publish” means to make public to at least one other person by any means;

“related to tobacco control” includes tax, levies, price, trade, agriculture and other policies that affect or are likely to affect tobacco control policies;

“responsible for tobacco control” or “responsibility for tobacco control” includes being involved in or contributing to, or being in a position to be involved in or contribute to, the development, implementation, administration, or enforcement of tobacco control policies, or those relevant or related to tobacco control, within any branch of government at the national or regional levels;

“smoking” means possessing or controlling a lit or heated tobacco product regardless of whether the smoke is being actively inhaled or exhaled;

“smokeless tobacco product” means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for chewing, sucking or snuffing or any other means of oral consumption;

“subsidiary” means any business in the tobacco industry in which another tobacco corporation has a controlling share and includes any corporation organized and chartered under the laws of another State;

“supplier” means a person who sells, offers to sell, displays for sale, gives, or in any other way transfers possession of a tobacco product for a commercial purpose or who offers to transfer possession for a fee or other consideration or as a sample, gift, prize, or without charge;

“supply” means to sell, give, exchange, convey, consign, deliver, furnish, or transfer possession of or title to any tobacco product for the purpose of obtaining financial or business gain, or arrange or offer to do so, whether for a fee or other consideration or without charge;

“tobacco” means a tobacco plant including its seeds and leaves;

"tobacco advertising and promotion" means any form of commercial communication, recommendation, or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly and includes any commercial communication, act or practice that promotes or is likely to promote a tobacco manufacturer, wholesaler, distributor, or importer;

"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 their consumption of tobacco products and exposure to tobacco smoke;

"tobacco control policies" includes formulation, implementation, administration, or enforcement of tobacco control policies, laws, regulations, programmes, or initiatives, and includes policies relevant or related to tobacco control;

"tobacco industry" means-

- (a) for the part II and part IX "tobacco manufacturers, wholesale distributors and importers of tobacco products and any person or entity working on their behalf or to further their interests, or
- (b) for Part VIII and section 43, tobacco manufacturers, wholesale distributors and importers of tobacco products;

"tobacco product" means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing, snuffing, or consumed by any means;

"tobacco smoke, second hand smoke or environmental tobacco smoke" means the smoke or other emissions released from a tobacco product or the smoke exhaled by a person smoking a tobacco product;

"tobacco sponsorship" means any form of contribution to any event, activity, organization, or individual that has the aim, effect, or likely effect of promoting a tobacco product or tobacco use directly or indirectly;

"trade mark" includes any trademark and any recognizable variation of it; and

"workplace" means an area, permanent or temporary, in which a person performs duties of employment or work, regardless of whether the work is done for compensation or on a voluntary basis and includes private offices, common areas and any other area which generally is used or frequented during the course of employment or work.

PART II - THE TOBACCO CONTROL COMMITTEE

3. Establishment of the Committee

(1) There is established by this Act a Committee known as the Tobacco Control Committee.

(2) The Committee shall consist of -

- (a) the Director of Health Promotion from the Ministry who shall be the Chairperson of the Committee;
- (b) the National Tobacco Focal Point who shall be the Secretary;
- (c) a representative from the Office of the President;
- (d) a representative from the Office of the Vice President and Ministry of Women's Affairs;
- (e) a representative from the Ministry of Trade, Industry, Regional Integration and Employment;
- (f) a representative from the Ministry of Basic and Secondary Education;
- (g) a representative from the Ministry of Higher Education, Research, Science and Technology;
- (h) a representative from the Ministry of Interior ;
- (i) a representative from the Ministry of Foreign Affairs;
- (j) a representative from the Ministry of Agriculture;
- (k) a representative from the Ministry of Finance and Economic Affairs;
- (l) a representative from the Ministry of Information and Communication Infrastructure;
- (m) a representative from the Ministry of Lands and Regional Government;
- (n) a representative from the Ministry of Environment, Water, Climate change, Parks and Wild life;
- (o) a representative from The Gambia Revenue Authority;

- (p) a representative from The Gambia Bureau of Statistics;
- (q) a representative from the National Environmental Agency;
- (r) a representative from the Ministry of Youth and Sports;
- (s) a representative from the Ministry of Tourism and Culture;
- (t) a representative from the Attorney General's Chambers and Ministry of Justice;
- (u) a representative from the Office of the Inspector General of Police;
- (v) a representative from Women's Bureau;
- (w) a representative from the Drug law Enforcement Agency;
- (x) a representative from the National Assembly;
- (y) a representative from the Edward Francis Small Teaching Hospital;
- (z) a representative from the Association of health journalists
- (aa) two representatives from Civil society who are-
 - (i) engaged in tobacco control, and
 - (ii) nominated in consultation with the Committee by a forum of organisations engaged in tobacco control.

(3) A Member shall-

- (a) be nominated by the Permanent Secretaries or heads of the respective Ministries or Institutions;
- (b) not have any affiliation with the tobacco industry; and
- (c) not further the interests of the tobacco industry or its subsidiaries.

(4) Members of the Committee shall select a Vice-Chairperson from among themselves.

4. Tenure of office

(1) A Member other than an ex-officio member-

- (a) shall hold office for a term of five years and is eligible for re-appointment for one further term;

- (b) may cease to be a member of the Committee if he or she-
 - (i) fails to attend three consecutive meetings of the Committee without notice in writing to the Chairperson;
 - (ii) is incapacitated by physical or mental illness and is incapable of performing his or her duties as a member of the Committee for a period of not less than six months;
 - (iii) is convicted of an offence by a Court of Law; or
 - (iv) has any affiliation with the tobacco industry or any person or entity furthering the interests of the tobacco industry or its subsidiaries,
- (c) may resign his or her office by giving thirty days notice in writing to the Chairperson.

5. Functions of the Committee

- (1) The Committee shall-
 - (a) be the national coordinating mechanism for purposes of the effective implementation of the WHO Framework Convention on Tobacco Control;
 - (b) develop, review and implement tobacco control policies, strategies, plans, programs and projects, in accordance with the WHO FCTC and its implementing guidelines, and protocols;
 - (c) coordinate and monitor tobacco control interventions;
 - (d) amend and formulate policies relating to tobacco control;
 - (e) mobilise resources for tobacco control;
 - (f) monitor interference and insulate tobacco control related policies from commercial and other vested interests of the tobacco industry;
 - (g) advise the Minister on the implementation of tobacco control measures; and
 - (h) perform any other function incidental to the effective implementation of the provisions of this Act as may from time to time be assigned by the Minister.

6. Meetings of the committee

(1) The provisions of the Fourth Schedule to this Act shall have effect with regards to meetings of the Committee.

(2) Subject to this Act and to any direction given in writing by the Minister, the Committee may regulate its own procedure.

7. Functions of the Secretary

The Secretary to the Committee shall-

- (a) coordinate the meetings of the Committee;
- (b) provide technical support for the implementation of tobacco control interventions within the Ministry and other sectors;
- (c) produce and disseminate information on tobacco control;
- (d) perform any other duties related to tobacco control; and
- (e) perform any other functions as may from time to time be assigned by the Committee.

8. Protection from liability

The Secretary or any other person acting on behalf of the Committee shall not be held personally liable in respect of any act or omission done in good faith in the performance of his or her functions under this Act.

PART III - TOBACCO SMOKE-FREE ENVIRONMENT

9. Right to tobacco smoke-free environment

(1) Every person has a right to a tobacco smoke-free environment.

(2) A person consuming a tobacco product shall ensure that he or she does not expose another person to tobacco smoke.

10. Prohibition of smoking in public places, workplaces, and public transport

(1) A person shall not smoke in any part of any public place, workplace, or public transport as prescribed in the First Schedule to this Act.

(2) A person shall not smoke in an enclosed space that is-

- (a) within 100 meters of a public place, workplace, public transport or any other place that provides services primarily to a minor;
 - (b) within 100 meters of a window, door, or air intake mechanism of a public place or workplace or a waiting area or queue;
 - (c) within 100 meters from the place of service or consumption of food or drinks; or
 - (d) designated as a nonsmoking area by the person responsible for the premises.
- (3) A person responsible for a public place, workplace or public transport shall ensure the observance of subsections (1) and (2).
- (4) A person responsible for a public place, workplace or public transport shall-
- (a) order any person who is found contravening this section to immediately cease smoking, indicating the penalty for contravention;
 - (b) require a person who fails or refuses to comply with paragraph (a) to leave the place or disembark from the public transport immediately, where practical; or
 - (c) cause arrest or contact a law enforcement agent or other authority if a person fails to comply with a caution prescribed under paragraph (a) or (b).
- (5) A person responsible for the public place, workplace or public transport shall ensure that there are no items that suggest smoking in a public place, workplace or public transport enclosed areas, and any open space where smoking is prohibited.
- (6) A person who –
- (a) contravenes the provisions of this section commits an offence and is liable on conviction, to a fine not exceeding two thousand five hundred dalasis but not less than one thousand dalasis or to imprisonment for a term not exceeding three months or both fine and imprisonment; or
 - (b) is responsible for the public place, workplace or public transport, and any managing agent of such person who continuously contravenes subsections (2) and (3), shall have his or her license for the public place, workplace or

public transport revoked by the authorised licensing authority or such a public place, workplace or public transport shall be closed for a period of not less than six months.

11. Display of notices

(1) A person responsible for a public place, workplace or public transport where smoking is prohibited shall display in a conspicuous place, a clear and prominent notice in the English language and a non smoking sign that states that smoking is prohibited.

(2) The notice mentioned in sub section (1) shall contain the prescribed penalty for offence.

(3) A notice required under this section shall be in such form, size, format, and content, and shall be displayed or posted in such places as shall be prescribed by the Minister in the regulations.

(4) A person responsible for the public place, workplace or public transport who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding three thousand dalasis or, to imprisonment for a term not exceeding three months or both fine and imprisonment.

(5) A person who continuously contravenes the provisions of this section shall have his or her licence revoked or suspended by the authorised authority for a period not less than six months.

PART IV - COMPREHENSIVE BAN ON TOBACCO ADVERTISING, PROMOTION AND SPONSORSHIP

12. Comprehensive ban on tobacco advertising, promotion and sponsorship

(1) All forms of tobacco advertisement, promotion or sponsorship including cross-border as provided for in the Second schedule to this Act are prohibited.

(2) A person shall not-

- (a) initiate any tobacco advertisement, promotion, or sponsorship including cross-border advertisement, promotion, and sponsorship;
- (b) produce, publish or make accessible any material for tobacco; or
- (c) engage in any tobacco advertisement, promotion, or sponsorship.

(3) A person involved in the production, placement, publication or dissemination of any information shall take reasonable steps to prevent the production, placement, publication or dissemination of tobacco advertisement, promotion or sponsorship.

(4) This section applies to all domestic and cross border tobacco advertising, promotion and sponsorship, including that which is initiated, produced, published, disseminated or engaged in by residents of this country in another territory.

(5) Notwithstanding the provisions of subsection (1), the following may be allowed-

- (a) plain black-and-white price lists, as prescribed, made available on request where tobacco products are sold, provided the price lists contain no material other than the product brand name, package quantity, and price, as well as the prescribed health warnings and any other information that may be required by the Ministry;
- (b) the name of the manufacturer, product, and brand on tobacco product packages, subject to any conditions imposed in regulations;
- (c) tobacco product information communicated in such a manner to be accessible only to persons within the commercial tobacco trade who need the information to make trading decisions;
- (d) tobacco manufacturers' newsletters destined for and distributed only to the manufacturer's employees, contractors, suppliers, or other business partners; or
- (e) depiction of tobacco products or tobacco use in the media where the depiction is justified for educational purposes of tobacco control.

(6) A person shall not employ any means to convey any information that is false, misleading or deceptive or likely to create an erroneous impression about a tobacco product's characteristics, health effects, hazards or emissions.

13. Penalties for violation of the comprehensive ban on tobacco advertising, promotion and sponsorship

(7) A person who violates a provision of this section commits an offence and is liable on conviction to-

- (a) a fine not less than one hundred thousand dalasis or imprisonment for a term not less than one year or both fine and imprisonment;
- (b) where a person convicted under this section is a corporate entity, the court may in addition to the penalty stipulated-
 - (i) impose a fine of not less than two hundred and fifty thousand dalasis; or
 - (ii) suspend a trading licence of that person for a period not less than six months; and
- (c) in addition to the penalty prescribed in sub-section (7)(b), the Court may order the seizure, forfeiture or destruction of any prohibited material at the cost of the offender.

PART V - TOBACCO PRODUCT PACKAGING AND LABELLING

14. Packaging and labeling of tobacco and tobacco products

(1) A person shall not import, manufacture, distribute, sell or offer for sale a tobacco product unless the unit packet, package of tobacco product or outside packaging and labeling of such product conforms to the packaging and labeling requirements prescribed by the Minister.

(2) Subject to subsection (1), the text and pictures comprising the health warnings and messages shall appear together and shall occupy no less than 75% of each principal display area of the unit packet, package of tobacco product or outside packing, and shall not include the space taken up by any border surrounding the health warnings and messages.

(3) A person shall not label or package a tobacco product by any means including any term, descriptor, trademark, figurative or other sign that are false, misleading, deceptive or likely to directly or indirectly create an erroneous impression about the product's characteristics, health effects, hazards or emissions.

15. Penalties for violation of packaging and labeling of tobacco and tobacco products requirements

(4) A person who violates a provision of this section commits an offence and is liable on conviction to-

- (a) a fine not less than five hundred thousand dalasis or imprisonment for a term not less than one year or both;

- (b) where a person convicted under this section is a corporate entity, the court may in addition to the penalty stipulated-
- (i) impose a fine of not less than two million dalasis;
 - (ii) order for the surrender of any proceeds of sale of such product to government; or
 - (iii) suspend a trading licence of that person for a period of not less than six months.
- (c) in addition to the penalty prescribed in sub-section (4)(b), court shall order the seizure, forfeiture or destruction of any prohibited material at the cost of the offender.

PART VI - RESTRICTIONS ON THE SALE, SUPPLY AND USE OF TOBACCO PRODUCTS

16. Sale and display of tobacco and tobacco products

- (1) A person shall not sell, arrange to sell, facilitate a sale or buy tobacco or a tobacco product in a place specified in the Second Schedule to this Act.
- (2) A person shall not import, manufacture, distribute, possess, sell or offer for sale an electronic nicotine delivery system or a smokeless tobacco product.
- (3) A person shall not display or make visible a tobacco product at any point of sale.
- (4) A person shall not sell a tobacco product using any of the following methods –
- (a) through an automated vending machine;
 - (b) by delivery, mail order or via the internet, telecommunication, or any other means by which the age of the person cannot be ascertained;
 - (c) as a duty-free item;
 - (d) any other means by which the purchaser and seller are not in the same physical location; or
 - (e) any other means as may be prescribed by the minister.
- (5) A person shall not import, manufacture, distribute, sell or offer for sale a unit packet of tobacco or a tobacco product unless the packet

is intact and contains 20 sticks of cigarettes or 20 sticks of cigarillos or 20 sticks of any other tobacco product or 100 grams of tobacco or a tobacco product.

(6) Notwithstanding subsection (5), the Minister may by statutory instrument prescribe other requirements.

(7) A person who violates any provision of this section commits an offence and is liable on conviction to-

- (a) a fine not less than ten thousand dalasis or imprisonment for a term not less than one year or both;
- (b) where a person convicted under this section is a corporate entity, the court shall in addition to the penalty stipulated-
 - (i) impose a fine of not less than one hundred thousand dalasis;
 - (ii) order for the surrender of any proceeds of sale of such product to Government; or
 - (iii) suspend a trading licence of that person for a period of not less than six months.
- (c) in addition to the penalty prescribed in subsection (4)(b), the court may order the seizure, forfeiture or destruction of any prohibited material at the cost of the offender.

(8) For purposes of this section, a director, manager or officer of a corporate entity, may be personally held liable for the offence committed.

17. Prohibition of supply of tobacco products to and by minors

(1) A person shall not employ or involve a minor in the importation, distribution, selling or offer for sale or purchase of tobacco or a tobacco product or in any other tobacco related activity.

(2) A person shall not import, manufacture, distribute, sell or offer for sale a sweet, snack, toy, or any other object in the form of tobacco or a tobacco product including an object which resembles mimics or imitates a tobacco product which may appeal to a minor.

(3) It shall not be a defence for a person charged for an offence under this section to claim that he or she did not know that the person was a minor.

(4) A person who violates any provision of this section commits an offence and is liable on conviction to-

- (a) fine of not less than five thousand dalasis or imprisonment for a term not less than three months or both;
- (b) where a person convicted under this section is a corporate entity, the court may in addition to the penalty stipulated-
 - (i) impose a fine of not less than one hundred thousand dalasis ; or
 - (ii) order for the surrender of any proceeds of sale of such product to Government; or
 - (iii) suspend a trading licence of that person for a period of not less than six months.
- (c) in addition to the penalty prescribed in subsection (4)(b), the court shall order the seizure, forfeiture or destruction of any prohibited material at the cost of the offender.

(5) For purposes of this section, a director, manager or officer of a corporate entity, may be personally held liable for the offence committed.

PART VII - REGULATION OF TOBACCO PRODUCTS; TOBACCO PRODUCT CONTENTS AND EMISSIONS DISCLOSURES

18. Regulation of tobacco products

(1) A person shall not import, manufacture, distribute, sell or offer for sale a tobacco product unless the tobacco product conforms to the tobacco product standards on contents and emissions requirements prescribed by the Minister.

(2) A person shall not import, manufacture, distribute, sell or offer for sale a tobacco product unless the person prior to the importation, manufacture, distribution, sale or offer for sale and subsequent thereto remains compliant with the tobacco products contents, constituents, emissions or other disclosure requirements as prescribed by the minister.

(3) A person who violates any provision of this section commits an offence and is liable on conviction to-

- (a) a fine not less than ten thousand dalasis or imprisonment for a term not less than one year or both;

- (b) where a person convicted under this section is a corporate entity, the court may in addition to the penalty stipulated-
- (i) impose a fine of not less than one hundred thousand dalasis;
 - (ii) order for the surrender of any proceeds of sale of such product to Government; or
 - (iii) suspend a trading licence of that person for a period of not less than six months;
- (c) in addition to the penalty prescribed in subsection (3)(b), the court shall order the seizure, forfeiture or destruction of any prohibited material at the cost of the offender.

PART VIII - INSULATION OF PUBLIC HEALTH POLICIES FROM COMMERCIAL AND OTHER VESTED INTERESTS OF THE TOBACCO INDUSTRY

19. Duty of Government

- (1) In the implementation of this Act and of any public health policy related to tobacco control, it shall be the duty of Government through the Minister to-
- (a) protect the public against the influence of and interference by the commercial and other vested interests of the tobacco industry;
 - (b) ensure that there is transparency in her interactions with the tobacco industry; and
 - (c) subject to paragraph (b), interactions with the tobacco industry, shall be limited to those necessary for the regulation of tobacco products and the tobacco industry and shall be open to the public.
- (2) Meetings held between the Government and the tobacco industry shall be convened by an authorized agency, when necessary, by giving timely and advance notice and an agenda of the meeting to the public.
- (3) All records and documents related to the interactions, communications and contacts held between the Government and the tobacco industry shall be forwarded to the tobacco control committee by the authorised agency in a timely manner.

20. Government interactions with the tobacco industry

A person, body or entity that contributes to, or could contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control shall not interact with the tobacco industry except where it is strictly necessary for effective regulation of the tobacco industry or the tobacco product and such interactions must be transparent.

21. Prohibition on partnerships and endorsements of the tobacco industry

A person, body or entity that contributes to, or could contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control shall not participate in, support, endorse or accept-

- (a) a partnership of any kind with the tobacco industry, including with respect to initiatives or activities of the tobacco industry described, characterized, implied, or likely to be perceived as socially responsible;
- (b) any non-binding or non-enforceable agreement, memorandum of understanding, voluntary arrangement, or tobacco industry code of conduct in the place of legally enforceable tobacco control measures;
- (c) any direct or indirect financial or resource contribution or involvement in any manner in any initiative, campaign, or programme directly or indirectly related to tobacco control or public health, including but not limited to, youth access and education programmes, public education campaigns, and other initiatives; or
- (d) any proposals, drafts, or offers of assistance with the development or implementation of any tobacco control policies.

22. Prohibition on voluntary contributions from the tobacco industry

A person, body or entity that contributes to, or could contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control shall not solicit or accept contributions from the tobacco industry.

23. Prohibition on incentives or privileges to tobacco businesses

A person, body or entity that contributes to, or could contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control shall not-

- (a) provide any incentive, benefits, privileges or preferential tax exemptions to the tobacco industry;
- (b) invest in the tobacco industry or related ventures;
- (c) establish or operate a tobacco manufacturing, wholesale or import business; or
- (d) give any incentive or offer a privilege related to any phase of the production or marketing of tobacco products.

24. Prevention and management of conflict of interest

(1) A person who contributes to, or could contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control shall not engage in any occupational activity that may create a conflict of interest.

(2) Conflict of interest shall be taken to arise where a person referred to in sub section (1) -

- (a) deals with a matter in which he or she has interest and where he or she is in a position to influence the matter, directly or indirectly, in the course of his or her duty; and
- (b) by virtue of the official position the person holds and the services he or she offers to a person or private body is or are in conflict with his or her official duties.

(3) A person shall not be assigned a position to contribute to, or likely to contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control activities if that person has engaged in any occupational activity with the tobacco industry within less than two years of being in such a position.

(4) A person who contributes to, or could contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control shall not engage in any occupation activity with the tobacco industry within a period of twenty four months of leaving Government service, and shall be bound by the confidentiality clause with respect to any matter involving tobacco control policy or programme development or implementation as prescribed by the Minister.

(5) A person previously engaged in any occupational activity with the tobacco industry, seeking employment in a body, private or public, that contributes to, or is likely to contribute to, the formulation, implementation, administration, enforcement or monitoring of public health policies on tobacco control, shall disclose the nature and extent of his or her duties during the period when he or she engaged in any occupation activity with the tobacco industry.

(6) A person who contravenes the provisions of this section commits an offense and is liable to-

- (a) be warned or cautioned;
- (b) demotion;
- (c) suspension;
- (d) dismissal;
- (e) vacate office; or
- (f) A fine of not less than ten thousand dalasis or imprisonment for a term not less than one year or both.

(7) In addition to the penalty prescribed in subsection (7), the court may, having regard to the loss suffered by the government or public body, order a person to pay by way of compensation to Government or public body such sum as in the court's opinion is just;

25. Punishment.

A person who contravenes the provisions of sections 20, 21, or 22 commits an offense, the court may order-

- (a) cancellation of partnership, or endorsement or memorandum of understanding or any other agreement;
- (b) forfeiture of the contribution from the tobacco industry; or
- (c) revocation of incentive, benefit, privilege or preferential tax exemptions.

PART IX – ENFORCEMENT

26. Appointment of authorised officers

(1) The Minister may, by notice published in the Gazette, appoint a person or class of persons to be authorised officers for the purposes of this Act.

(2) Authorised officers under sub-regulation (1) shall include –

- (a) public health officers;
- (b) environmental inspectors;
- (c) customs officers;
- (d) police officers; and
- (e) any other person appointed by the Minister as an authorised officer.

27. Power of authorised officer to enter premises

(1) For the purpose of ensuring compliance with this Act, an authorised officer may, at any time, enter any premises in which the authorised officer believes on reasonable grounds that –

- (a) tobacco or a tobacco product is or has been produced, manufactured, tested, stored, labeled, sold or used;
- (b) there are items or substances used in the production, manufacture, testing, packaging, labeling, promotion or sale of a tobacco product; and
- (c) there is information relating to the production, manufacture, testing, packaging, labeling, promotion or sale of a tobacco product.

(2) An authorised officer entering premises under this section shall, if so required, identify him or herself to a person who is in charge of the premises.

28. Inspection powers of authorised officer

In carrying out an inspection of premises, an authorised officer may –

- (a) examine tobacco, a tobacco product or other item regulated under this Act;
- (b) require a person on the premises to produce for inspection, in the manner and form requested by the officer, tobacco, a tobacco product or other item regulated under this Act;
- (c) open or require a person on the premises to open any container or package found on the premises which the officer believes on reasonable grounds contains tobacco, a tobacco product or other item regulated under this Act;
- (d) take or require a person to produce a sample of tobacco, a tobacco product or other item found on premises and submit the samples to any tests he or she may consider necessary;

- (e) require any person found on premises to produce, for inspection or copying, any written or electronic information that is relevant to the inspection or to the enforcement of this Act; or
- (f) confiscate tobacco, a tobacco product or other item that does not conform to the provisions of this Act.

29. Additional powers of authorised officer

In carrying out an inspection of premises, an authorised officer may also –

- (a) use or cause to be used any computer system on the premises to examine data contained in or available on the computer system that is relevant to the enforcement of this Act;
- (b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;
- (c) use or cause to be used any copying equipment on the premises to make copies of any data, record, photos or document; and
- (d) scrutinise any other record system in use on the premises.

30. Obligation to make an inventory

An authorised officer who has carried out an inspection of premises and has confiscated tobacco, a tobacco product or other item that does not conform to the provisions of this Act shall make a full inventory of the tobacco, tobacco product or other item that he or she has confiscated.

31. Application for a warrant

Where an authorised officer anticipates being denied entry into premises for the purpose of carrying out an inspection, he or she may apply in advance for the issue of a warrant to enter and search the premises.

32. Use of force

(1) An authorised officer executing a warrant issued under section 29 shall not use force unless that officer is accompanied by a police officer.

(2) Where the authorised officer is a police officer, he or she may not need to be accompanied by another police officer.

33. Inspection report

An authorised officer who has inspected tobacco, a tobacco product or other item regulated under this Act, or a sample of it, shall issue a report setting out the result of his or her inspection.

34. Obligation to assist authorised officers

The owner or the person in charge of premises or an agent of the owner or the person in charge of premises to be inspected by an authorised officer shall –

- (a) assist the authorised officer to carry out his or her duties under this Act; and
- (b) provide the authorised officer with such information, materials or any other item which the authorised officer requires for the purpose of the inspection.

35. Obstruction and making false and misleading statements

A person shall not –

- (a) obstruct an authorised officer while the authorised officer is carrying out his or her duties under this Act; or
- (b) knowingly make a false or misleading statement to an authorised officer.

36. Removal and storage

(1) An authorised officer may direct that any tobacco, tobacco product or other item confiscated by him or her be removed from the premises where it was confiscated and transferred to another place.

(2) Where removal is not feasible, an authorised officer may direct that any tobacco, tobacco product or other item confiscated by him or her be stored at the premises where it was confiscated.

37. Obligation not to interfere with confiscated tobacco

Unless directed by an authorised officer, a person shall not remove, alter or interfere with, in any manner, any tobacco, tobacco product or other item confiscated.

38. Application for restoration of confiscated tobacco

(1) A person from whom tobacco, a tobacco product or other item has been confiscated may, within fourteen days after the date of seizure, apply to the High Court for an order of restoration of the tobacco, a tobacco product or other item.

(2) The High Court may order that the tobacco, tobacco product or other item be restored to the applicant if, on hearing the application, the Court is satisfied that –

- (a) the applicant is entitled to possession of the tobacco, tobacco product or other item confiscated; and
- (b) the tobacco, tobacco product or item confiscated is not and shall not be required as evidence in any proceedings in respect of an offence under this Act.

39. Forfeiture of confiscated tobacco

Tobacco, a tobacco product or other item shall be forfeited to the State and may be destroyed or disposed off as the court or Minister may direct where –

- (a) no application has been made under section 37, or an application has been made but on the hearing of such application no order for restoration has been made;
- (b) a person has been convicted of an offence under this Act in respect of which tobacco, a tobacco product or other item has been confiscated; or
- (c) an authorised officer has confiscated tobacco, a tobacco product or other item and the owner or the person in whose possession it was found at the time of confiscation consents in writing to its forfeiture.

PART X – MISCELLANEOUS

40. Offences by or relating to authorised officers

(1) An authorised officer who –

- (a) directly or indirectly asks for, or takes in connection with any of his or her duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward which the authorised officer was lawfully entitled to receive; or
- (b) enters into or acquiesces in any agreement to do or to abstain from doing, permit, connive at or conceal any act or thing with the intention of compromising the implementation of the provisions of this Act,

commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis or imprisonment of not less than one year or to both a fine and imprisonment.

(2) A person who –

- (a) directly or indirectly offers or gives an authorised officer payment or reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward, not being a payment or reward which the authorised officer was lawfully entitled to receive; or
- (b) proposes or enters into an agreement with an authorised officer in order to induce the authorised officer to do or to abstain from doing, permit, connive or conceal any act or thing with the intention of compromising the implementation of the provisions of this Act

commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis or imprisonment of not less than one year or to both a fine and imprisonment.

41. Making false or misleading statements

(1) A person who –

- (a) makes a statement to an authorised officer or to the committee that is false or misleading in a material particular; or
- (b) omits from a statement made to an authorised officer or to the committee any matter or thing without which the statement is misleading in a material particular

commits an offence and is liable on conviction –

- (i) where the statement or omission was made knowingly or recklessly, to a fine not exceeding ten thousand dalasis or to imprisonment for a term not exceeding one year or to both a fine and imprisonment; or
- (ii) in any other case, to a fine not exceeding five thousand dalasis

(2) Where a person convicted under this section is a corporate entity, the court may –

- (a) impose a fine of not less than one hundred thousand dalasis on the corporate entity; or
- (b) suspend the trading licence of the corporate entity for a period of not less than six months.

42. Obligation to report to the Committee

- (1) A manufacturer, importer, supplier or distributor of tobacco or tobacco products shall provide reports to the Committee periodically or upon request, as provided in the Fifth Schedule to this Act.
- (2) A report required under subsection (1) or under any other provision of this Act shall contain such information as may be prescribed by regulations.
- (3) The information required under this section shall be made available to the public, as may be prescribed by regulations.
- (4) The Secretary to the Committee shall maintain the reports for a period of at least five years and shall make information from the reports readily accessible to the public in a timely manner.
- (5) The Secretary to the Committee shall take reasonable action to prevent disclosure of any information that may be protected by law and any information that may be misleading or that may promote the tobacco business.

43. Protection from discrimination

A person shall not be discriminated against because he or she has made a complaint, reported, disclosed, or opposed any conduct, activity, or practice that violates any provision of this Act or brought a legal action, or testified in any proceeding or hearing, or assisted or participated in any way in any inspection or investigation under this Act or any other enactment of the National Assembly.

44. Regulations

The Minister may, in consultation with the Committee, make regulations –

- (a) for the manufacture, packaging and labelling, importation, distribution and sale of tobacco products, reporting requirements for manufacturers and sellers;
- (b) for tobacco product testing and measuring methods that must be used in relation to required reports on product constituents and emissions and in relation to any product standards that may be prescribed;
- (c) prescribing or prohibiting anything required to be prescribed or prohibited by this Act; and
- (d) generally for the more effectual implementation of the provisions of this Act.

FIRST SCHEDULE

(Section)

Indicative, non-exhaustive list of public places in which smoking is prohibited under this Act –

- (a) offices, office buildings and work places including individual offices, public areas, corridors, lounges, guest rooms, lodging, eating areas, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries, amenity areas;
- (b) court buildings;
- (c) factories;
- (d) hotels;
- (e) bars and restaurants;
- (f) hospitals, clinics and other health institutions;
- (g) education institutions of all levels;
- (h) premises in which children are cared for;
- (i) public places of worship;
- (j) prisons;
- (k) police cells;
- (l) public service vehicles and other means of public transport;
- (m) public transport terminals, including airports and airfields;
- (n) retail establishments including markets and shopping malls;
- (o) cinemas and theatrical performance halls;
- (p) sports stadia; and
- (q) such other place as may be prescribed by regulations.

SECOND SCHEDULE

(Section 13)

Indicative, non-exhaustive list of the forms, media and means of tobacco advertising, promotion and sponsorship prohibited under this Act –

- (a) communication through audio, visual or audiovisual means, such as print (for example, newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (such as computer games, video games or online games), other digital communication platforms (such as the Internet and mobile phones) and theatre or other live performance;
- (b) brand-marking, including in entertainment venues and retail outlets and on vehicles and equipment, such as by use of words, designs, images, sounds and colours, including brand names, trademarks, logos, names of tobacco manufacturers or importers and colours or schemes of colours, in whole or part and any other indicia associated with tobacco products, manufacturers or importers;
- (c) display or visibility of tobacco products at points of sale and any other commercial display of tobacco products;
- (d) sales of tobacco products through vending machines and the internet;
- (e) product diversification through brand stretching and brand sharing;
- (f) product placement, such as the inclusion of or reference to a tobacco product, service or trademark in the context of communication in return for payment or other consideration;
- (g) provision or offer of gifts or discounted products with the purchase of tobacco products, such as key rings, T-shirts, baseball hats, cigarette lighters, CDs, other trinkets or tobacco products;
- (h) supply or offer of free samples of tobacco products, including in conjunction with marketing surveys and taste testing;
- (i) incentive promotions or loyalty schemes, such as redeemable coupons provided with purchase of tobacco products;

- (j) competitions associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
- (k) direct targeting of individuals with promotional, including informational material, such as direct mail, telemarketing, "consumer surveys" or "research" or person-to-person conversation;
- (l) promotion of discounted products;
- (m) sale or supply of toys or sweets or other non-tobacco products that resemble tobacco products;
- (n) payments or other contributions to retailers to encourage or induce them to sell tobacco products, including retailer incentive programmes, such as rewards to retailers for achieving certain sales volumes;
- (o) packaging and product design features;
- (p) payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or particular manufacturer's product in a retail outlet or at a venue or an event;
- (q) sale, supply, placement and display of products at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events;
- (r) provision of financial or other support to events, activities, individuals or groups, such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare and other public interest organisations, government institutions or organisations, politicians, and political candidates or political parties, whether or not in exchange for attribution, acknowledgement or publicity, including corporate social responsibility activities of any kind;
- (s) provision of financial or other support to venue operators, such as pubs, clubs or other recreational venues, in exchange for building or renovating or decorating premises to promote tobacco products or the use or provision of awnings, sunshades and similar items; and
- (t) any other form of tobacco advertising, promotion or sponsorship by any method or means.

THIRD SCHEDULE

(Section 15)

Indicative, non-exhaustive list of places in which the selling of tobacco and tobacco products is prohibited under this Act –

- (a) hospitals, clinics and other health institutions and within one hundred meters from those premises;
- (b) educational institutional of all levels and within one hundred meters from those premises;
- (c) premises in which children are cared for and within one hundred meters from those premises;
- (d) public places of worship and within one hundred meters from those premises;
- (e) prisons;
- (f) police stations;
- (g) public service vehicles and other means of public transport;
- (h) public transport terminals, including airports and airfields and within one hundred meters from those premises;
- (i) cinemas and theatrical performance halls and within one hundred meters from those premises;
- (j) sports arenas and within one hundred meters from those premises; and
- (k) any other place as may be prescribed by regulations.

FOURTH SCHEDULE
(Section 6)

Meetings of the Committee

1. The quorum at any meeting of the committee shall be eleven members.
2. The chairperson shall preside over every meeting of the committee and in his or her absence, the vice chairperson shall preside and in the absence of both chairperson and vice chairperson, the members present shall select one person from among their number to chair the meeting.
3. The committee shall meet for the discharge of business at such a time and place as the Secretary, in consultation with the chairperson, may appoint, and shall meet at least once in every three quarter.
4. A question proposed at a meeting of the committee shall be determined by consensus but where consensus cannot be reached, it shall be determined by a simple majority of members present and voting.
5. In the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberate vote.
6. The chairperson may invite any person not being a member of the committee to attend a meeting for the purpose of assisting or advising the committee on any relevant matter but that person shall not vote on any matter at the meeting.
7. The proceedings of any meetings of the committee shall be valid notwithstanding any vacancy of its members or by reason of defect in the appointment of any of them.
8. The committee shall cause the minutes of the proceedings of its meeting to be recorded and kept, and the minutes of each meeting shall be approved by the committee at the next meeting and shall be signed by the chairperson and the secretary.
9. The chairperson of the committee shall submit to the Minister a copy of the minutes of each meeting as soon as the minutes have been approved by the committee for effective implementation.
10. The Committee may regulate its own procedure.

FIFTH SCHEDULE
(Section 43)

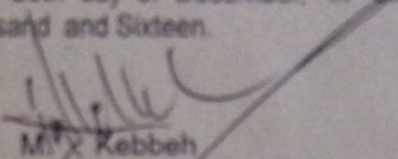
Contents of reports by the tobacco industry to the Committee

- (a) quantity of tobacco or a tobacco product manufactured, imported or distributed by the manufacturer, importer or supplier, the quantity of this sold, and market share and revenues;
- (b) corporate taxes owed and paid;
- (c) contents and emissions of the tobacco product;
- (d) tobacco product revenues and profits, broken down by region and sector and, in the case of tobacco manufacturers, by wholesaler and retailer;
- (e) location, address and corporate name of all tobacco and non-tobacco subsidiaries, affiliates, joint ventures, partners, suppliers, and licensees;
- (f) litigation in which the corporation or its officers or directors or a subsidiary and its officers or directors is or was at any time during the litigation a party to the litigation;
- (g) any and all legal violations committed or prosecuted against the corporation or any of its officers or directors;
- (h) market share for all brands and brand families in all markets in the territory, including by age and sex, and globally;
- (i) information on tobacco product imports and exports, as specified in regulations, and import and export partners and locations;
- (j) all activities attempted or undertaken to influence the formulation or implementation of any policy or legislation directly or indirectly related to tobacco control or public health;
- (k) the identification of lobbyists and lobbying firms and all other persons, including employees used for the purpose of taking or attempting action to influence the formulation or implementation of any policy or legislation directly or indirectly related to tobacco control or public health, including issue advocacy advertising, along with an itemization of all costs incurred and payments made in regard to these activities;

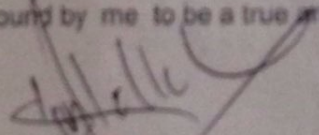
- (l) membership in any trade or business associations, payments made to any trade or business associations, including not for profit associations, and the purpose(s) of any such payments;
- (m) payments made to any persons that engaged in any advocacy concerning tobacco control or public health policy or legislation;
- (n) any conference, seminar, workshop, training event, and other forum related directly or indirectly to tobacco, tobacco products, or tobacco control organised or supported in whole or in part, or attended, along with any other required information about the forums as may be prescribed in regulations;
- (o) any offer or payment provided to a scientist, researcher, journalist, and any other person specified in regulations and the purpose for the payment;
- (p) any offer or payment, gift, contribution of any kind, or prerequisites made, given, or offered directly or indirectly to any public office holder responsible for tobacco control;
- (q) any offers or contribution or payment of any kind to any Government institution, body, board, commission, committee, work group, and other organ, and the purpose of the contribution or payment;
- (r) any contact initiated and any interaction with any public office holder having any responsibility for tobacco control;
- (s) any offer or payment made to any political party, candidate, campaign, or any person acting on their behalf;
- (t) such other information as may be required by the Committee; and
- (u) any other information as may be prescribed by regulations.

Tobacco Control Act, 2016

PASSED in the National Assembly this 20th day of December, in the year of Our Lord Two Thousand and Sixteen.


D. C. M. Kebbeh
Clerk of the National Assembly

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.


D. C. M. Kebbeh
Clerk of the National Assembly