



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 72

2010

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 1 of 2010: Tobacco Products Control Act, 2010.

ACT

To establish a Tobacco Products Control Committee to advise the Minister on matters relating to the use of tobacco products; to provide for the constitution, powers, duties and functions of the Committee; to provide for the reduction of demand for and supply of tobacco products; to provide for protection from exposure to tobacco smoke; to provide for the establishment of the Tobacco Products Control Fund; to provide for matters relating to the enforcement of the Act; and to provide for matters incidental thereto.

(Signed by the President on 19 March 2010)

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Preamble

ACKNOWLEDGING that the use of tobacco products -

- has been increasing in Namibia;
- is extremely harmful to human health and that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability and negatively impacts on the economy and the environment;
- is a developed habit among people of different ages in society and severely affects the health of individuals contrary to the provisions of Article 95(b) and (j), read together with Article 13 of the Namibian Constitution;
- is contrary to the goals, objectives and principles of the Namibian Health Policy Framework;
- is widely advertised, targeting especially young people, hence the need to establish robust programmes to break the growing habit of using tobacco products;

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- is imposed on society by the tobacco industry, hence the strong need for participation of agencies and non-governmental organisations to develop strategies for the reduction of demand for tobacco products;
- is dependence forming, hence the need for creating awareness on the adverse health and economic outcomes of the consumption of tobacco products;

REALISING that -

- the association of the use of tobacco products with social success, business advancement and sporting prowess through advertising and promotion may have the particularly harmful effects of encouraging children and young people to use tobacco products;
- everyone has a right to a healthy environment free of the harmful effects of the smoke of tobacco products;
- the Government of the Republic of Namibia has as its obligation the responsibility to protect the health of its citizens and the environment from the harmful effect of the smoke of tobacco products;
- the Government must adopt legislation to ensure that persons who are not smokers are protected from the smoke of tobacco products;
- the Government must adopt legislation to ensure that environments where people gather as groups must be free of all forms of smoke of tobacco products; and

RESOLVING to align the health system with the democratic values of the Constitution and the World Health Organisation Framework Convention on Tobacco Control, and to enhance and protect the fundamental rights of citizens by discouraging the use, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death,

NOW THEREFORE BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

PART 1
INTRODUCTORY PROVISIONS

Definitions

- 1.** In this Act, unless the context otherwise indicates -

“advertisement” means any picture, sign, symbol or other visual image (whether still or moving), and any other message (whether audible or written or communicated in any other manner) aimed at the public and designed to promote or publicise a tobacco product or to promote smoking behaviour, and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer’s company name where the name or any part of the name is used as or is included in a tobacco product trade mark;

“brand element” includes the brand name, trade mark, trade name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, print, type-face, recognisable colour and pattern of colours, and any other symbols of product identification, that is likely to be taken as or confused with any brand of tobacco product;

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“Committee” means the Tobacco Products Control Committee established by section 2;

“composition” means the content, arrangement or combination of substances included in the processing and manufacture of a tobacco product;

“constituent”, in relation to any tobacco product, means nicotine, tar and any other constituent of a tobacco product or of tobacco smoke which the Minister may by notice in the *Gazette* declare to be a constituent for the purposes of this Act;

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

“employment” means employment as contemplated in the definitions of “employee” and “employer” contained in section 1 of the Labour Act, 2007 (Act No. 11 of 2007);

“Fund” means the Tobacco Products Control Fund established by section 23;

“indoor, enclosed or partially enclosed, area” includes 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, wall or sides, and regardless of whether the structure is permanent or temporary;

“ingredient” means any product component, material used to manufacture such component, residual substance from agricultural practices, storage and processing and substances that can migrate from packing into the product;

“levy” means a levy imposed under section 36(1);

“local authority” means a local authority council as defined in section 1 of the Local Authorities Act, 1992, and, in relation to a settlement area as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992), the regional council concerned, as the case may be;

“local authority area” means a local authority area as defined in section 1 of the Local Authorities Act, 1992, and in relation to a settlement area as defined in section 1 of the Regional Councils Act, 1992, the area within the boundaries determined as contemplated in section 31 (1) of the Regional Councils Act, 1992, as the case may be;

“manufacturer” includes, where the manufacturer is -

- (a) a company, its holding company or any subsidiary and any subsidiary of its holding company;
- (b) an entity other than a company, an entity that controls or is controlled by such manufacturer or that is controlled by the same entity that controls such manufacturer;

“Minister” means the Minister responsible for health;

“Ministry” means the ministry responsible for health;

“nicotine” means nicotine alkaloids;

“organised activity” means any activity or event -

- (a) which any member of the public attends or in which he or she participates;

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- (b) which is organised for the purposes of entertainment, sport or recreation or for educational or cultural purposes; and
- (c) where a tobacco product, brand element or tobacco manufacturer's company name is used in the name of or portrayal of the activity or event;

“owner of or person in charge of” means -

- (a) in the case of a public place owned by the State or occupied by staff members, the Permanent Secretary of a Ministry, office or agency as contemplated in section 3(3) of the Public Service Act, 1995 (Act No. 13 of 1995);
- (b) in the case of any other public place, the owner thereof, and includes -
 - (i) if the owner is deceased, the executor of his or her estate;
 - (ii) if the estate of the owner has been sequestrated, the trustee of his or her insolvent estate;
 - (iii) if the owner is under any legal disability, his or her legal representative;
 - (iv) if the owner is a company or close corporation which is being wound up, the liquidator of such company or close corporation;
 - (v) the person in whom the ownership of land is vested by statute;
 - (vi) in the case of land which has been allotted, granted, sold or otherwise alienated by the State to any person, but which has not yet been transferred in such person's name, that person; and
 - (vii) the lessee of land held under a lease registered in the deeds registry;

“package” means any packing, carton wrapping or any other container in which tobacco products are generally sold by retail or wholesale;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribe” means prescribe by regulation made under section 37;

“private dwelling” means any part of-

- (a) any room or apartment of a building or structure which is occupied as a residence; or
- (b) any building or structure or outdoor living area which is accessory to, and used wholly or principally for, residential purposes;

“public conveyance” includes transporting people by means of any commercial chartered aircraft, ship, boat, train, bus, mini-bus or taxi;

“public place” means any indoor, enclosed or partially enclosed, area which is open to the public and includes a workplace, a club, a private dwelling, if that private dwelling is used for any commercial childcare activity or for schooling or tutoring, and a public conveyance;

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“regulation” means a regulation made or in force under this Act;

“secretary” means the secretary designated under section 13;

“smoke” means to inhale, exhale, hold or otherwise have control over an ignited tobacco product;

“staff member” means any staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“tar” means the anhydrous and nicotine-free condensate of the smoke of a tobacco product;

“this Act” includes any regulation made under this Act;

“tobacco industry” includes a tobacco manufacturer, a wholesale distributor or an importer of tobacco products;

“tobacco product” means a product containing tobacco, that is intended for human consumption, and includes, but is not limited to, any device, pipe, water pipe, papers, tubes, filters, portion pouches or similar objects manufactured for use in the consumption of tobacco;

“trade mark” includes -

- (a) any mark whether registered or registrable for trade purposes or any recognised version thereof that is likely to be taken as, or confused with, that trade mark;
- (b) a certification trade mark or collective trade mark; and
- (c) “a trade mark” as defined in section 1 of the Trade Marks in South West Africa Act, 1973 (Act No. 48 of 1973); and

“workplace” -

- (a) means any indoor, enclosed or partially enclosed, area in which employees perform the duties of their employment;
- (b) includes any corridor, lobby, stairwell, elevator, cafeteria, lounges, washroom or other common area frequented by such employees during the course of their employment; and
- (c) includes vehicles used in the course of work.

**PART 2
TOBACCO PRODUCTS CONTROL COMMITTEE**

Establishment of Tobacco Products Control Committee

2. There is established a committee to be known as the Tobacco Products Control Committee.

Act No. 1, 2010**TOBACCO PRODUCTS CONTROL ACT, 2010****Constitution of Committee**

3. (1) The Committee consists of 12 members appointed by the Minister, subject to the provisions of this section as follows -

- (a) two persons, one of whom is the chairperson of the Committee and one of whom is a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);
- (b) one registered medical practitioner who is a fully paid up member of the Medical and Dental Council of Namibia contemplated in section 3 of the Medical and Dental Act, 2004 (Act No. 10 of 2004), nominated by the Medical and Dental Council of Namibia;
- (c) one registered nurse who is a fully paid up member of the Nursing Council of Namibia contemplated in section 3 of the Nursing Act, 2004 (Act No. 8 of 2004), nominated by the Nursing Council of Namibia;
- (d) one member representing a non-governmental organisation, nominated by a non-governmental organisation which the Minister reasonably believes represents the interests of persons whose health has been adversely affected by the use of tobacco products;
- (e) six staff members, one each respectively nominated by the Minister responsible for finance, the Minister responsible for agriculture, the Minister responsible for trade and industry, the Minister responsible for the environment, the Minister responsible for labour and the Minister responsible for information;
- (f) one member nominated by the board of the National Youth Council established by the National Youth Council Act, 2009 (Act No. 3 of 2009); and
- (g) one member representing the NUNW.

(2) The Minister must in writing invite the Medical and Dental Council of Namibia, the Nursing Council of Namibia, the non-governmental organisation, the Ministers concerned and the National Youth Council contemplated in subsection (1)(b) to (f), as the case may be, to nominate, within the period stated in the notice, persons as members of the Committee as contemplated therein.

(3) If any Council, organisation or Minister contemplated in subsection (2) fails to submit any nomination concerned as contemplated therein, the Minister must appoint an appropriate member or staff member as a member of the Committee, and a person so appointed is deemed to have been appointed in terms of subsection (1).

(4) The Minister must as soon as possible after the constitution of the Committee or any change in the constitution of the Committee, as the case may be, by notice in the *Gazette* publish the names of the members of the Committee and the dates of commencement of their terms of office.

Alternate members

4. (1) The Minister may appoint for each member of the Committee a person to be the alternate of the member concerned.

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(2) The alternate to a member of the Committee may, in the event of the member's absence from a meeting of the Committee, attend the meeting in the capacity of a member.

Qualifications of members

5. (1) No person is qualified to be a member of the Committee if he or she -

- (a) is not a Namibian citizen or has not been admitted to Namibia for permanent residence;
- (b) is a member of the National Assembly or the National Council;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind and has been so declared by a competent court;
- (e) has been found guilty by a competent court of corrupt practices or any crime, and has been sentenced to imprisonment without the option of a fine;
- (f) is an employee, employer, director, member or trustee of any business, company, close corporation or trust involved in the tobacco industry in any way; or
- (g) has any shares in any business, company, close corporation or trust involved in the tobacco industry.

(2) Any person who is in terms of subsection (1) disqualified to be a member of the Committee and who, while he or she is so disqualified and knowing or having reasonable grounds for knowing that he or she is so disqualified, sits as a member of the Committee, commits an offence and is liable to a penalty of N\$500 for each day on which he or she so sits, which may be recovered by the Committee by action in any competent court for the benefit of the Fund.

Term of office of members

6. (1) Subject to section 7, a member of the Committee holds office for a term of three years.

(2) A member of the Committee is eligible for reappointment at the expiration of that term, but may not hold office for more than two consecutive terms.

Vacation of office by members and filling of vacancies

7. (1) A member of the Committee must vacate her or his office if the member -

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns his or her office by giving the Minister one month's notice in writing of his or her intention to resign;

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- (c) has been absent for three consecutive meetings of the Committee without leave of the Committee;
- (d) is removed from office by the Minister under subsection (2); or
- (e) is subject to disqualification as stated in section 5.

(2) The Minister may, by notice in writing, remove a member of the Committee from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that the member -

- (a) is guilty of neglect of duty or misconduct;
- (b) is incapable, by reason of physical or mental illness, of performing the duties of his or her office;
- (c) is an employee, employer, director, member or trustee of any business, company, close corporation or trust involved in the tobacco industry in any way; or
- (d) has any shares in any business, company, close corporation or trust involved in the tobacco industry.

(3) If the office of a member of the Committee becomes vacant, the vacancy must be filled in the manner provided for in section 3, by the appointment of another person as member of the Committee for the unexpired portion of the term of office of the person who ceased to hold office.

Remuneration

- 8.** (1) Members -
- (a) of the Committee, and
 - (b) of any subcommittee who are not members of the Committee,

who are not in full time employment of the State must be paid such remuneration or allowances, as well as such other benefits, as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(2) Any remuneration, allowance or benefit contemplated in subsection (1) may differ from member to member according to the office held, and duties and functions performed by, the member concerned.

Conduct of members and disclosure of interest

9. (1) A member of the Committee, and a member of any subcommittee who is not a member of the Committee, may not -

- (a) engage in an activity that may undermine the integrity of the Committee or a subcommittee;
- (b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest; or

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- (c) use any confidential information obtained in the performance of his or her functions as a member to obtain, directly or indirectly, a financial or other advantage for himself or herself or any other person.
- (2) Every member of the Committee and every member of any subcommittee who is not a member of the Committee, must in writing disclose to the Minister any direct or indirect financial interest which the member has or acquires in any business carried on in Namibia or elsewhere or in any body corporate carrying on any business in Namibia or elsewhere.
- (3) A member who has or acquires any financial or other personal interest, either directly or indirectly, in any matter which is before the Committee or a subcommittee for discussion and determination must -
- (a) immediately and fully disclose the interest to the Committee or the subcommittee, as the case may be; and
- (b) withdraw from any further discussion or determination by the Committee or subcommittee, as the case may be, of that matter.

Meetings of Committee

- 10.** (1) The Committee must hold at least one meeting per year and -
- (a) the first meeting of the Committee must be held at a date, place and time determined by the chairperson;
- (b) any meeting of the Committee thereafter must be held at a date, place and time determined by the Committee.
- (2) If for any reason a meeting determined by the chairperson or the Committee, as the case may be, cannot take place, the secretary, with the concurrence of the chairperson, must convene the next meeting of the Committee.
- (3) The chairperson -
- (a) may at any time convene a special meeting of the Committee;
- (b) must convene a special meeting of the Committee if requested thereto by the Minister or at least three members of the Committee.
- (4) The chairperson presides at all meetings of the Committee at which he or she is present.
- (5) The members of the Committee must at the first meeting of the Committee elect a deputy chairperson from their ranks.
- (6) If-
- (a) the chairperson is absent from a meeting of the Committee, the deputy chairperson must preside at that meeting;
- (b) both the chairperson and the deputy chairperson are absent from a meeting of the Committee, the members of the Committee present thereat must elect from their ranks a person to preside at that meeting,

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and the deputy chairperson or person so elected, as the case may be, may perform all the functions and duties and exercise all the powers of the chairperson.

(7) At a meeting of the Committee -

- (a) the majority of the members of the Committee constitutes a quorum;
- (b) all questions are decided by a majority of votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of any equality of votes, also a casting vote.

(8) The Committee may invite any person who has expert knowledge of a matter before the Committee for determination, to attend a meeting of the Committee and to take part in discussions in relation to that matter, but such person has no vote.

(9) The secretary must keep or cause records to be kept of all the proceedings at meetings of the Committee.

(10) The secretary must submit or cause to be submitted as soon as possible after any meeting of the Committee has taken place, but not later than 15 working days after the meeting, a copy of the minutes of that meeting to the Minister and the Permanent Secretary.

(11) The Minister may make rules regarding the holding of and procedure at meetings of the Committee.

Subcommittees

11. (1) The Committee may establish one or more subcommittees to -

- (a) investigate and report to the Committee on any matter which the Committee may refer to the subcommittee for the purpose; or
- (b) exercise any power or perform any function of the Committee which the Committee may delegate or assign to the subcommittee.

(2) A subcommittee may consist of members of the Committee, or members of the Committee and other persons, as the Committee may determine.

(3) The Committee must designate a member of the Committee to be the chairperson of a subcommittee.

(4) The chairperson of the Committee may attend any meeting of a subcommittee of which he or she is not a member and may take part in the proceedings thereof as if he or she were appointed as a member thereof.

(5) The Committee may at any time dissolve or reconstitute a subcommittee.

(6) The Committee is not divested or relieved of a power or function which it has delegated or assigned to a subcommittee.

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(7) A decision by a subcommittee in the exercise of a power delegated to the subcommittee is subject to approval by the Committee, and the Committee may at any time vary or set aside the decision.

Consultants

12. The Committee or a subcommittee, with the approval of the Committee, may engage persons to give advice to, and perform services for, the Committee or the subcommittee, as the case may be, on such terms and conditions of engagement as the Committee, or the subcommittee, with the approval of the Committee, may determine.

Secretary and staff of Committee

13. (1) The Minister -

- (a) must designate a staff member in the Ministry to act as the secretary of the Committee; and
- (b) may designate such other staff members in the Ministry to assist the secretary in the implementation and performance of the administrative and secretarial duties and functions of the Committee.

(2) In addition to any other duties and functions imposed by or in terms of this Act, the secretary is responsible for the performance of any secretarial services concerned and the execution of the resolutions of the Committee.

Powers, duties and functions of Committee

14. (1) In addition to any other powers and functions conferred on the Committee, it has the following powers, duties and functions -

- (a) to make recommendations to the Minister in relation to the application of this Act, any amendment to this Act and the making of regulations;
- (b) to advise the Minister on the duties and functions to be performed in terms of this Act and on matters referred to the Committee by the Minister;
- (c) to inquire into, and advise the Minister on, matters relating to the control of tobacco products in Namibia;
- (d) to carry out research into matters referred to the Committee by the Minister;
- (e) to advise the Minister and the Permanent Secretary on the administration of the Fund;
- (f) either on its own initiative, or at the request of the Minister, to consult with the Minister on any matter relating to the control of tobacco products in Namibia;
- (g) to develop comprehensive public awareness programmes on the health dangers and negative economic and environmental outcomes of the use of tobacco products; and

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- (h) to perform any other duty or function assigned to the Committee by the Minister.

(2) Until the Committee is fully constituted, and during any period of time when the Committee is unable to function for any reason, the Minister, or if he or she is not available for any reason, the Deputy Minister responsible for health, or if he or she is not available for any reason, the Permanent Secretary, may perform the duties and functions of the Committee until the Committee is fully constituted or able to function again.

(3) Any duty or function performed by the Minister, the Deputy Minister or the Permanent Secretary, as the case may be, in accordance with subsection (2) is deemed to have been performed by the Committee.

PART 3**REDUCTION OF DEMAND FOR TOBACCO PRODUCTS****Advertising, sponsorship and promotion**

- 15.** (1) Subject to subsection (3), no person may -
- (a) publish, display or broadcast an advertisement relating to the use of tobacco products, including the use of tobacco trade marks, logos, brand names or company names used on tobacco products; or
 - (b) use tobacco trade marks, logos, brand names or company names used on tobacco products for the purposes of advertising any organisation, service activity or event.
- (2) No manufacturer, importer, distributor or retailer of tobacco products may -
- (a) organise or promote any organised activity that is to take place in whole or in part in Namibia;
 - (b) make any financial contribution to any organised activity that is to take place, or is taking place, or has taken place in whole or in part in Namibia;
 - (c) make any financial contribution to any person in respect of-
 - (i) the organisation or promotion of any organised activity in Namibia by that person;
 - (ii) the participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in Namibia.
- (3) A retailer of tobacco products which posts in accordance with any regulation signs at the point of sale that indicate the availability of tobacco products and the price thereof does not contravene subsection (1).
- (4) No replica toy or candy tobacco product may be sold or displayed at any retail or wholesale point or any other place where business is carried on.

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- (5) Notwithstanding this section, the Minister may provide by regulation -
- (a) for the phasing out of existing sponsorship or contractual obligations, if any; and
- (b) for matters relating to advertisements of tobacco products.
- (6) Any person who contravenes or fails to comply with subsection (1), (2) or (4), commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Packaging and labelling of tobacco products

- 16.** (1) Where a person sells or imports for sale any tobacco product and the tobacco product is contained in a package -
- (a) the package must be labelled in the prescribed manner and must bear the prescribed warning concerning the health hazards incidental to the smoking of tobacco products and other relevant information; and
- (d) the quantities of the constituents present in the tobacco product concerned must be stated on the package.
- (2) Any person who contravenes or fails to comply with subsection (1), commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 4**REDUCTION OF SUPPLY OF TOBACCO PRODUCTS****Measures to prevent illicit trade in tobacco products**

- 17.** (1) No person may sell or import for sale any tobacco product, unless the package bears the statement "Sales only allowed in Namibia" or any other effective marking indicating the origin thereof and the final destination for sale.
- (2) Any person who contravenes or fails to comply with subsection (1), commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Prohibition of sale of tobacco products to persons under the age of 18 years

- 18.** (1) No person may -
- (a) sell or supply any tobacco product to any person under the age of 18 years, whether for his or her personal use or not; or
- (b) engage any person under the age of 18 years in the selling of tobacco products.

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(2) Any person who sells by retail or wholesale any tobacco product must prominently display for the notice of the public a notice to the effect that the sale of tobacco products to a person who is under the age of 18 years, is prohibited.

(3) The Minister may prescribe the size and content of the notice referred to in subsection (2).

(4) Any person who contravenes or fails to comply with subsection (1) or (2), commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Prohibition of free distribution and reward

19. (1) No manufacturer, distributor, importer or retailer of a tobacco product may for free, or at a reduced price, other than a normal trade discount -

- (a) distribute any tobacco product; or
- (b) supply any tobacco product,

to any person for subsequent distribution.

(2) No person may offer any gift, cash rebate or right to participate in any contest, lottery or game, to any person in consideration of the purchase of a tobacco product, or the furnishing of evidence of such a purchase.

(3) Any person who contravenes or fails to comply with subsection (1) or (2), commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

Restrictions on use of vending-machines and prohibition of such sale from date determined by Minister

20. (1) From a date determined by the Minister by notice in the *Gazette*, no person may sell tobacco products from a vending-machine.

(2) Until the date determined by the Minister as contemplated in subsection (1), the sale of tobacco products from vending-machines is restricted to places in which purchases from such machines are inaccessible to persons under the age of 18 years.

(3) It is the responsibility of any person during such time as he or she is responsible for or has control of the premises in which any vending-machine is kept to ensure that no person under the age of 18 years makes use of any such machine.

(4) The Permanent Secretary may in writing direct the owner of a vending-machine in question or the person in control thereof -

- (a) to take such precautionary measures as are specified in the direction to prevent the vending-machine being used by persons under the age of 18 years; or
- (b) to remove the vending-machine from the premises within the period specified in the direction.

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(5) Any person who contravenes or fails to comply with subsection (1), (2) or (3) or with a directive issued under subsection (4), commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

**PART 5
MANUFACTURING AND EXPORT STANDARDS**

Standards for manufacturing and export of tobacco products

21. (1) All tobacco product manufacturers must comply with such standards as may be prescribed, irrespective of whether the tobacco product concerned is intended for export or not.

(2) Every tobacco product manufacturer must provide, in the prescribed manner and within the prescribed period, such information about the product and its emissions to the Minister and the public as may be prescribed.

(3) A person may only export a tobacco product from Namibia if the product meets the standards contemplated in subsection (1) as well as the product and testing standards of the country of final destination.

(4) If no product and testing standards exist in the country of final destination, the tobacco product intended for export must comply with the standards referred to in subsection (1).

(5) Any person who contravenes or fails to comply with any standards prescribed under subsection (1) or fails, within the prescribed periods, to provide the Minister with information prescribed under subsection (2) commits an offence and is liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

**PART 6
PROTECTION FROM EXPOSURE TO TOBACCO SMOKE**

Protection from exposure to tobacco smoke

22. (1) The smoking of tobacco products in -

- (a) a public place;
- (b) any area within a prescribed distance from a window of, ventilation inlet of, doorway to or entrance into a public place; or
- (c) any place contemplated in subsection (3),

is prohibited.

(2) The owner of or person in charge of a place or an area contemplated in subsection (1) must ensure that no person smokes in that place or area.

(3) The Minister may prohibit the smoking of any tobacco product in any prescribed outdoor public place, or such portion of an outdoor public place as may be prescribed, if persons are likely to congregate within close proximity of one another or where smoking may pose a fire or other hazard.

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(4) The owner of or person in charge of a place or area contemplated in subsection (1) must display the prescribed signs and must make the prescribed public announcements in order to inform any person who enters or who is in or on such place or area of any prohibitions on smoking.

- (5) An employer must ensure that -
- (a) employees may object to smoking in the workplace in contravention of this Act without retaliation of any kind;
 - (b) employees who do 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 any employee is required to work where smoking is permitted; and
 - (d) employees are not required to sign any indemnity for working where smoking is permitted.

(6) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$500 or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

(7) Any person who contravenes or fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to a fine not exceeding N\$60 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(8) Any person who contravenes or fails to comply with subsection (5) commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART 7**TOBACCO PRODUCTS CONTROL FUND****Establishment of fund for control of tobacco products**

23. There is established a fund to be known as the Tobacco Products Control Fund.

Finances of the Fund

- 24.** The Fund consists of-
- (a) moneys appropriated by Parliament for purposes of the Fund;
 - (b) donations or contributions made to the Fund for the purpose of the achievement of its objectives;
 - (c) moneys accruing to and vesting in the Fund from any other source and which accrues to the Fund;

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- (d) interest and dividends derived from the investment of moneys made on behalf of the Fund; and
- (e) relevant levies imposed by the Minister on the sale of tobacco products.

Utilisation of the Fund

- 25.** (1) The Fund may be utilised -
- (a) for the management and control of tobacco related issues;
 - (b) for defraying expenses incurred in administering the Fund or by members of the Committee or subcommittees of the Committee;
 - (c) to contribute to the treatment of tobacco related illnesses and diseases;
 - (d) to conduct training on tobacco related programmes; and
 - (e) to provide funding for -
 - (i) the formulation and implementation of projects and programmes in order to control the smoking of tobacco 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).
- (2) Specific donations to the Fund may be utilised in a manner as agreed to between the Fund management and the donor.

Administration of Fund and accountability

- 26.** (1) The Permanent Secretary is, for the purposes of the State Finance Act, 1991 (Act No. 31 of 1991), the accounting officer of the Fund.
- (2) The Permanent Secretary is responsible for the administration of the Fund, subject to the directions of the Minister given after consultation with the Committee, and to the rules made under subsection (3).
- (3) The Minister may, with the concurrence of the Minister responsible for finance, make rules relating to the administration of the Fund.
- (4) The Permanent Secretary must, subject to this section, open and maintain a banking or savings account in the name of the Fund with -
- (a) any banking institution or building society registered under the laws governing banking institutions and building societies in Namibia; or
 - (b) the Post Office Savings Bank established in terms of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992).

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- 27.** (1) The financial year of the Fund ends on 31 March 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

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

PART 8**PROVISIONS ON ENFORCEMENT OF THE ACT****Complaints**

- 29.** (1) Any person who believes on reasonable grounds that there has been a contravention of this Act in respect of any public place may in writing complain to the owner or person in charge thereof, specifying the particulars of the complaint.
- (2) The owner or other person referred to in subsection (1) must, within 10 working days of receiving a complaint referred to in that subsection, investigate or cause the complaint to be investigated, and if it appears that a contravention has occurred, he or she must try to resolve the complaint.
- (3) If a contravention referred to in subsection (1) is on the part of-
- (a) the owner or person in charge of the public place concerned, such owner or person must resolve the cause of the complaint or give an assurance that satisfies the complainant that there will be no repetition of the cause of the complaint;
- (b) any employee or other person in such place, the owner or other person referred to in subsection (1) must seek to obtain from that employee or other person an assurance that satisfies the owner or person concerned that there will be no repetition of the cause of the complaint.

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(4) A complainant is entitled to be present at any meeting called by the owner or other person referred to in subsection (1) for the purpose of resolving the complaint and avoiding future causes of complaint.

Appointment of inspectors

30. (1) The Minister may -

- (a) subject to the laws governing the public service, appoint any suitable person as an inspector;
- (b) designate any staff member in the Ministry as an inspector,

to perform the powers contemplated in section 31.

(2) A local authority may, with the prior written approval of the Minister, authorise any staff member of the local authority concerned as an inspector to perform the powers contemplated in section 31 within its local authority area.

(3) Any person appointed or designated as an inspector under subsection (1) or authorised as an inspector under subsection (2) must be furnished with a certificate of appointment signed by the Minister or the chief executive officer of the local authority referred to in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992), as the case may be.

Entry, search and inspection of place, premises, vessel, vehicle or public conveyance

31. (1) In order to monitor and enforce compliance with this Act in so far as it relates to the advertisement and sale of tobacco products and the illicit trade of tobacco products, including counterfeit and contraband tobacco products, an inspector may without warrant or notice, at any reasonable time enter any place, premises, vessel, vehicle or public conveyance, which is not a home.

(2) An inspector may enter a home only -

- (a) with the consent of the owner or occupier; or
- (b) if authorised by a warrant under subsection (3) to do so.

(3) A magistrate, or judge of the High Court, in chambers and having jurisdiction may issue a warrant on written application by an inspector stating under oath or affirmation the reasons for the need to enter the place in order to monitor and enforce compliance with this Act as contemplated in subsection (1).

(4) In order to monitor and enforce compliance with this Act as contemplated in subsection (1) an inspector may -

- (a) question any person either alone or in the presence of any other person on any matter to which this Act relates;
- (b) order any person who has control over or custody of any book, document, tobacco product or thing to produce without delay, at such time and place as may be determined by the inspector, such book, document, tobacco product or thing;

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- (c) seize any book, document, tobacco product or thing which in the opinion of the inspector may serve as evidence in any matter in terms of this Act;
- (d) examine or cause to be examined, make extracts from or copies of, any book, document, tobacco product or thing produced to or seized by the inspector and order any person who in the opinion of the inspector is qualified to do so to explain any entry in the book, document or thing; and
- (e) order an employee to appear before the inspector at such time and place as may be determined by the inspector and question that employee.
- (5) An inspector performing any function in terms of this section -
 - (a) may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection;
 - (b) must produce on request the certificate of appointment referred to in section 30(3);
 - (c) must provide a receipt for any book, document, tobacco product or thing seized or produced in terms of subsection (4); and
 - (d) must return anything so seized or produced within a reasonable time.
- (6) Any person who -
 - (a) fails to give or refuses access to an inspector who requests entrance to any premises;
 - (b) hinders, opposes, obstructs or unduly influences an inspector who is exercising a power or performing a duty conferred or imposed under or by this Act;
 - (c) fails or refuses to give information that he or she may lawfully be required to give to an inspector; or
 - (d) gives to an inspector false or misleading information knowing it to be false or misleading,

commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not less than five years or to both such fine and such imprisonment.

Presumptions and evidence

- 32. In criminal proceedings relating to this Act -
 - (a) a copy of or extract from a book, document or thing made by an inspector under section 31(4)(d) and certified by him or her to be true and correct, is presumed, unless the contrary is proved, to be a true and correct copy of or extract from the relevant book, document or thing, and is on its production in court *prima facie* proof of any entry to which it relates;

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- (b) a certificate stating the result of an examination, analysis or tests carried out in respect of a tobacco product and purporting to be signed by the analyst who carried out the examination, analysis or test, must be accepted as *prima facie* proof of the facts stated in the certificate;
- (c) a quantity of a tobacco product in or upon any place, premises, vessel, vehicle or public conveyance at the time a sample of it is obtained by an inspector for the purposes of this Act is presumed, unless the contrary is proved, to be in the same condition or possess the same properties as such sample.

Forfeiture and destruction

33. (1) The court convicting any person of an offence under this Act may declare any tobacco product or other thing to which the offence relates, to be forfeited to the State.

(2) A tobacco product or any other thing forfeited under subsection (1) must be destroyed or otherwise dealt with as the Permanent Secretary may direct.

Compounding of certain minor offences

34. (1) If a person receives from an inspector a notification in writing alleging that that person has committed, at a place and on a date and at a time or during a period specified in the notification, an offence likewise specified, namely -

- (a) a contravention of or failure to comply with section 15(1), (2) or (4), 16 or 17;
- (b) a contravention of or failure to comply with section 18(1) or (2);
- (c) a contravention of or failure to comply with section 19(1) or (2);
- (d) a contravention of or failure to comply with section 20(1), (2) or (3);
or
- (e) a contravention of or failure to comply with section 22(1), (2), (4) and (5),

and specifying the amount of the fine contemplated in subsection (6) that a court trying that person for the offence in question would probably impose on him or her, that person may within 30 days after the receipt of the notification deliver or transmit the notification, together with a sum of money equal to that amount, to the magistrate of the district or area wherein the offence is alleged to have been committed, and thereupon that person may not be prosecuted for having committed that offence.

(2) A person receiving a notification issued under subsection (1) from an inspector who has been authorised by a local authority as contemplated in section 30(2), may deliver or transmit the notification, together with a sum of money equal to the amount specified in the notification, to the local authority concerned.

(3) The local authority concerned must not later than seven days after receipt of a sum of money as provided in subsection (2), forward to the magistrate of the district or area wherein the offence is alleged to have been committed, a copy of the notification relating to the payment in question.

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(4) If the magistrate finds that the amount specified in the notification exceeds the amount contemplated in subsection (6) in respect of the offence in question, the magistrate must notify the local authority of the amount whereby the amount specified in the notification exceeds the amount so determined, and the local authority concerned must immediately refund the amount of such excess to the person concerned.

(5) Any money paid to a magistrate in terms of subsection (1) or to a local authority in terms of subsection (2) must be dealt with as if it had been paid as a fine for the offence in question.

(6) The amount to be specified in a notification issued under subsection (1) as the amount of the fine that a court would probably impose in respect of an offence, may not exceed -

- (a) in the case of a contravention of or failure to comply with section 22(1), the amount of N\$500;
- (b) in the case of a contravention of or failure to comply with section 15(1), (2) or (4), 16, 17, section 18(1) or (2), section 19(1) or (2), section 20(1), (2) or (3) and section 22(1), (2), (4) and (5) the amount of N\$3 000.

Jurisdiction of magistrate's courts

35. Notwithstanding any other law, a magistrate's court has jurisdiction to impose any penalty provided for in or under this Act.

Levy on import, distribution or sale of tobacco products

36. (1) The Minister, in consultation with the Minister responsible for finance, may by regulation impose a levy on the import, distribution or sale of tobacco products.

(2) A levy referred to in subsection (1) is payable to the Fund in the prescribed manner and at the prescribed times.

- (3) Regulations made in terms of subsection (1) may prescribe -
- (a) the rate and manner of calculating or determining the levy or the amount of the levy;
 - (b) the periods and methods of assessment of the levy;
 - (c) the information to be provided to the Permanent Secretary for the purpose of assessing the levy;
 - (d) in which manner and when the levy is payable;
 - (e) by whom the levy is payable; and
 - (f) penalties for the late payment of the levy, or for providing false information or for the failure to provide information to the Permanent Secretary relating to the assessment of the levy.

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(4) Any person who fails to pay any levy referred to in this section in the prescribed manner and at the prescribed times commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not less than five years or to both such fine and such imprisonment.

Regulations

- 37.** (1) The Minister may make regulations in relation to -
- (a) the manner or method of determining the quantities of constituents in tobacco products;
 - (b) the location, content, size and format of any sign required in terms of this Act;
 - (c) the standards that a tobacco product must comply with, including -
 - (i) the amounts of substances that may be contained in the product or its emissions;
 - (ii) substances that may or may not be added to the product;
 - (iii) the ignition propensity of cigarettes; and
 - (iv) product design and composition;
 - (d) methods to assess conformity, and methods of testing and measuring compliance, with any prescribed standard;
 - (e) any information that a manufacturer of a tobacco product must submit to the Minister and to the public, including information in respect of -
 - (i) research conducted into a tobacco product by a manufacturer or by a person who conducted research paid for in whole or in part by a tobacco manufacturer;
 - (ii) the quantity of a tobacco product manufactured;
 - (iii) marketing expenditure; and
 - (iv) information on product composition, ingredients, hazardous properties and emissions;
 - (f) any ancillary or incidental administrative or procedural matter that is necessary to be prescribed for the proper implementation or administration of this Act; and
 - (g) any other matter required or permitted to be prescribed in terms of this Act in order to achieve the objects of this Act.

(2) Regulations made under subsection (1)(a) may prescribe for the determination of the quantities of constituents in tobacco products any manner or method or standards set out in a publication which in the opinion of the Minister is generally recognized as authoritative.

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(3) The Minister must, not less than three months before issuing any regulation under this Act, cause a draft of the regulation to be published in the *Gazette*, together with a notice declaring the intention of the Minister to issue such a regulation and inviting interested persons to furnish him or her with any comments thereon or representations in connection therewith within a specified period.

(4) Subsection (3) does not apply in respect of -

- (a) a regulation which, after that subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by the Minister in pursuance of the notice published in terms of that subsection;
- (b) any regulation in respect of which the Minister is of the opinion that it is in the public interest that it be issued without delay.

(5) A regulation made in terms of subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith of a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Short title and commencement

38. (1) This Act is called the Tobacco Products Control Act, 2010, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
