

TOBACCO CONTROL ORDINANCE 2015

(Ordinance 22 of 2015)

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TURKS AND CAICOS ISLANDS
TOBACCO CONTROL ORDINANCE 2015
(Ordinance 22 of 2015)

Assent.....21st October 2015
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Commencement..... in accordance with section 1

AN ORDINANCE TO PREVENT TOBACCO USE BY MINORS; REGULATE TOBACCO USE BY INDIVIDUALS; ENHANCE PUBLIC AWARENESS OF THE HAZARDS OF TOBACCO USE AND ENSURE THAT INDIVIDUALS ARE PROVIDED WITH INFORMATION TO MAKE MORE FULLY INFORMED DECISIONS ABOUT USING TOBACCO; PROTECT INDIVIDUALS FROM EXPOSURE TO TOBACCO SMOKE; PROHIBIT AND RESTRICT PROMOTIONAL PRACTICES; PREVENT SMUGGLING OF TOBACCO; PROVIDE FOR REGULATION OF TOBACCO PRODUCTS TO MITIGATE AGAINST THE HARMFUL EFFECTS OF TOBACCO; AND PROVIDE FOR OTHER RELATED MATTERS.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I
PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Tobacco Control Ordinance 2015 and shall come into operation on such day as the Governor may appoint by Notice published in the *Gazette*.

Interpretation

2. In this Ordinance—

“additive” means a substance, chemical, compound, or component, other than tobacco or water, that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch, or similar part of the tobacco product, its package or accessories; and includes any residue of pesticides, fungicide, and other chemicals used during tobacco growing, harvesting, curing, storing, or other stages of preparing a tobacco product for consumption;

“advertisement” in relation to a tobacco product means, a commercial communication through any media or means that is intended to have, or is likely to have, the direct, indirect or incidental effect of—

- (a) creating an awareness of a tobacco product, brand, manufacturer or seller; or
- (b) promoting the purchase or use of a tobacco product or brand;

“authorised officer” means an officer of the Unit, customs officer, police officer, and a health officer as defined under the Public and Environmental Health Ordinance;

“bulk packaging” means packaging containing at least 5,000 cigarettes or cigars, or packaging containing more than 200 grams of other tobacco products;

“child” means an individual who is under the age of eighteen years;

“constituent” means, in relation to—

- (a) a smoked tobacco product, the chemicals, including the particles, vapours and gases found in the smoke; and
- (b) a smokeless tobacco product, the chemicals found in the product itself;

“Convention” means the World Health Organisation (WHO) Framework Convention on Tobacco Control;

“Coordinator” means the head of the Unit as provided under section 6;

“enclosed” means any space covered by a roof completely or substantially enclosed by one or more walls or sides, regardless—

(a) of the type of material used for the roof, wall or sides; and

(b) of whether the structure is permanent or temporary;

“exporter” means a person who sends tobacco products outside the Islands for sale or supply in another country;

“graphic” means a symbol, sign, logo, mark, trademark, pattern, emblem, design, crèche, recognisable colours or patterns of colour, or other indicia of tobacco product or seller identification; and variances of the word “graphic” shall be construed accordingly;

“importer” means a person who receives or arranges for the receipt of tobacco products from another country for sale or supply in the Islands;

“licence” means a licence issued under section 12;

“licensee” means a person who holds a licence issued under this Ordinance;

“manufacturer” means a person who manufactures, fabricates, produces, processes, packages or labels tobacco products;

“message” means a warning or other information, including images about the health effects of tobacco use or exposure to tobacco smoke;

“Minister” means the Minister responsible for health;

“Ministry” means the Ministry responsible for health;

“package” means a covering, wrapper, container, carton or other enclosure that contains a tobacco product including labels and other written or graphic information on or in it;

“place of collective use” means a place open to the public, whether it is enclosed, partially enclosed, or an outdoor public space—

(a) where persons congregate in close proximity to one another;

(b) where smoking might pose a fire hazard; or

(c) including other criteria as may be prescribed;

“public conveyance” means a form or mode of transportation that carries passengers for hire or reward, whether domestically or internationally;

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

- “promotion” in relation to a tobacco product, includes advertisement and a commercial act or practice that is intended to or is likely to encourage or recommend a tobacco product or the use of a tobacco product, directly or indirectly;
- “seller” means a person who supplies a tobacco product for a fee or other consideration, and includes a manufacturer, importer, exporter, distributor and retailer;
- “smoked tobacco product” means a product made entirely or partly of the leaf tobacco as raw material which is intended to be smoked, and includes a cigarette, cigar and pipe;
- “smokeless tobacco product” means a product that contains tobacco or tobacco blends that are either chewed, sucked or sniffed;
- “smoking” means inhaling, exhaling or handling an ignited or heated tobacco product, or a tobacco product producing emissions by any means;
- “substantially enclosed” means an area with no roof, but with 50% or more of its perimeter closed by walls or any means, whether permanent or not, including plastic or other non-permanent enclosure;
- “supply” means to sell, give, exchange, convey, consign, deliver, furnish, or transfer possession of or title to a 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 product” means a product entirely or partly made from the leaf tobacco as raw material, which is manufactured to be used for smoking, sucking, chewing or snuffing;
- “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 a form of contribution to an event, activity, organisation or individual that has the aim, effect or likely effect of promoting a tobacco product or tobacco use, directly or indirectly;
- “Unit” means the Tobacco Control Unit established under section 3;
- “work” includes work done for compensation and voluntary work; and
- “workplace” means a place used by persons during their employment or work and includes vehicles, common areas, and other area which is generally used during the

course of employment or work, but does not include private residences or private vehicles.

PART II

ADMINISTRATION

Establishment of Unit

3. There is established a Unit to be called the Tobacco Control Unit.

Functions of Unit

4. The functions of the Unit shall be to—

- (a) develop and implement, in collaboration with civil society, a national strategic approach to tobacco control;
- (b) undertake impact assessment of national policies and programmes aimed at controlling consumption and production of cigarettes and other tobacco products;
- (c) monitor health trends resulting from tobacco consumption and exposure;
- (d) advise on the design and type of messages to be included on tobacco packages;
- (e) develop and implement a national programme for tobacco control, including public awareness and cessation activities;
- (f) report on the Island's progress to the World Health Organisation and at international conferences hosted for signatories to the Convention;
- (g) monitor activities nationally to ensure compliance with and enforcement of this Ordinance; and
- (h) receive, consider and evaluate applications for licences, issue licences and monitor compliance with licences.

Powers of Unit

5. (1) The Unit shall establish and carry out evidence-based programmes to inform the public of—

- (a) the dangers and addictiveness of tobacco use and the dangers of exposure to tobacco smoke;

- (b) the benefits of quitting and strategies to quit smoking;
 - (c) the tobacco industry and the health, economic and environmental effects of tobacco production and manufacturing;
 - (d) any other information it determines to be effective in highlighting the health effects, social and environmental costs of tobacco, and for increasing public and consumer awareness of pertinent tobacco related issues; and
 - (e) alternative income earning opportunities for small retailers.
- (2) The Unit shall—
- (a) make educational and cessation materials available to district commissioner’s offices, health care workers and facilities, schools, the media, non-governmental organisations and such other entities as it deems appropriate;
 - (b) develop evidence-based educational programmes and materials appropriate to the population at large;
 - (c) establish evidence-based tobacco use cessation programmes, including diagnosis, counselling and treatment services and, as appropriate, access to nicotine replacement therapies; and
 - (d) train authorised officers.

Staff of Unit

6. (1) The Unit shall be headed by a Coordinator, who shall manage the affairs of the Unit.

(2) The Unit shall be provided with adequate staff with the requisite qualifications and experience for the discharge of its functions under this Ordinance.

(3) The Coordinator and officers of the Unit shall be public officers.

Authorised officer

7. An inspection and investigation shall be carried out by an authorised officer.

Powers of authorised officer

8. (1) Subject to subsection (2), an authorised officer shall have the power to—

- (a) examine, open, and cause to be tested any equipment, tool, material, package or anything the authorised officer reasonably believes is used or is capable of being used for the manufacture, packaging and labelling, storage, distribution, advertising or promotion of a tobacco product;
- (b) examine and make copies of or from any books, documents, notes, files, including electronic files, or other records that the authorised officer reasonably believes might contain information relevant to determining compliance with this Ordinance;
- (c) interview any person the authorised officer believes may have information relevant to making a compliance determination;
- (d) take samples of any tobacco product or component of the product, and its packaging, from any business where it is found, to have it tested; and
- (e) where the authorised officer is a customs officer, confiscate products coming into the country that do not have proper labelling as prescribed under this Ordinance.

(2) An authorised officer may at a reasonable time—

- (a) enter the premises of any public place in which he believes on reasonable grounds that a tobacco product is manufactured, stored, sold, transported, received, distributed or supplied, and conduct inspections or investigations;
- (b) stop, search, and detain an aircraft, ship, vehicle or other means of transport or storage in which the authorised officer reasonably believes bulk packaging of tobacco products are or were contained or conveyed, and examine, open, and take samples; and
- (c) seize and detain from a business or order the storage without removal or alteration of a tobacco product or other item the authorised officer reasonably believes does not comply with this Ordinance.

(3) In acting under subsection (2)(c), an authorised officer shall provide the person in possession of the tobacco product or other item with a written record of the tobacco product or other item seized and detained, and the grounds for the seizure or detention.

(4) Where it is determined that a seized and detained tobacco product or other item meets the legal requirements, it shall be returned to the premises from which it was seized within thirty working days of seizure.

(5) Where a seized and detained tobacco product or other item does not meet the legal requirements, it may be confiscated and kept as evidence in legal proceedings.

Identification of authorised officer

9. In carrying out his duties under this Ordinance, an authorised officer shall produce a form of identification or proof that he is an authorised officer.

PART III

LICENSING

Prohibition to act without licence

10. (1) A person shall not manufacture, import, export, sell or distribute a tobacco product without a licence.

(2) A person who contravenes this section commits an offence.

Application for licence

11. (1) A person may apply for a licence to manufacture, import, export, sell or distribute a tobacco product in Form 1 set out in Schedule 1.

(2) An application made under subsection (1) shall be accompanied by a fee set out in Schedule 2.

(3) An application for a licence under this Ordinance shall be made to the Coordinator and submitted in duplicate.

(4) An application shall contain the following particulars—

- (a) the name, place of business and the nature of business of the applicant;
- (b) the name and address of the manufacturer of the tobacco product;

- (c) the trade name and registration number of the tobacco product;
- (d) the size of business premises of the retailer; and
- (e) any other particulars as may be prescribed.

Issue of licence

12. If the Coordinator is satisfied that the application is satisfactory, the Coordinator shall issue a licence to the applicant.

(2) A licence shall be in Form 2 set out in Schedule 1, and shall be issued upon payment of a fee set out in Schedule 2.

(3) A licence shall be made subject to such conditions as may be prescribed, and such special conditions as the Coordinator may, in any particular case, impose.

Validity of licence

13. Unless earlier revoked under section 18, a licence shall be valid for a period of one year, and subject to renewal.

Renewal of licence

14. (1) An application to renew a licence shall be—

- (a) made to the Coordinator in Form 3 set out in Schedule 1;
- (b) accompanied by a fee set out in Schedule 2; and
- (c) made at least sixty days before the expiry date of the licence.

(2) The Coordinator may if he is satisfied that the application meets the requirements, on payment of a licence fee set out in Schedule 2, renew a licence subject to the same conditions on, or different conditions from, which the licence was originally issued.

(3) Where a licence expires before the decision to renew is made, the licensee shall continue to operate until a decision on the renewal is made.

Variation of licence

15. The Coordinator may at any time, on the application of the licensee, vary any condition to which the licence is subject.

Display of licence

16. A licensee shall display a licence in a conspicuous place on the premises occupied by him for the purpose of carrying on business for which he is licensed under this Ordinance.

Transfer of licence

17. A licence is not transferrable.

Revocation of licence

18. A licence shall be revoked if the Coordinator is satisfied that, the licensee—

- (a) has ceased to meet the requirements for one to hold a licence under this Ordinance;
- (b) has made any false or misleading statement or has furnished any false or misleading information in connection with his application for a licence; or
- (c) contravenes the provisions of this Ordinance.

Prohibition to buy from unlicensed persons

19. (1) A person shall not purchase or acquire a tobacco product from a manufacturer, importer, exporter, retailer or distributor who is not licensed under this Ordinance.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$500 and to imprisonment for a term not exceeding three months, or to both.

Appeal against decision of Coordinator

20. A person aggrieved by a decision of the Coordinator—

- (a) refusing to grant a licence;
- (b) imposing any special condition on a licence;
- (c) refusing to renew a licence; or
- (d) revoking a licence,

may appeal to the Minister within thirty days of receipt of notification of the decision.

Appeal against decision of Minister

21. (1) A person aggrieved by a decision of the Minister, shall within thirty days of receipt of notification of the decision, appeal to the Magistrate's Court.

(2) If an appeal to the Magistrate's Court is made for a decision under section 20(c) or (d), the appeal to the Court shall have the effect of suspending the execution of the decision of the Coordinator until the Court gives its decision on the appeal.

Powers of Court on appeal

22. The Magistrate's Court may confirm the decision appealed against or may—

- (a) direct the Coordinator to grant a licence on such terms and conditions as it may determine;
- (b) direct the Coordinator to cancel a condition it has imposed on a licence and substitute such other condition as it may determine; or
- (c) direct the Coordinator to restore a licence he has revoked, or restore it on such terms and conditions as it may determine.

PART IV

PROHIBITIONS

No smoking areas

23. (1) A person shall not smoke or hold a lighted tobacco product in an enclosed public place, enclosed workplace, or public conveyance, including a place listed in Schedule 3.

(2) Notwithstanding the prohibition under subsection (1), the holder of a liquor licensed premises such as a hotel, club or commercial special facility may designate an outdoor smoking area, as may be prescribed.

(3) A manager, owner or lessee of a place specified in subsection (1) shall post signs prominently on the premises or public conveyance, stating that smoking is not permitted in that place or public conveyance.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction—

- (a) to a fine not exceeding \$5,000 or a term of imprisonment not exceeding two years, or to both; and
- (b) for a second or subsequent offence, to a fine not exceeding \$10,000 or a term of imprisonment not exceeding three years, or to both.

(5) A manager, owner or lessee—

- (a) who contravenes subsection (3) commits an offence and is liable on summary conviction—
 - (i) to a fine not exceeding \$10,000 or a term of imprisonment not exceeding three years, or to both; and
 - (ii) for a second or subsequent offence, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding four years, or to both; and
- (b) where the contravention occurs, who authorises or consents to the smoking, commits an offence and is liable on summary conviction—
 - (i) to a fine not exceeding \$3,000 or a term of imprisonment not exceeding eighteen months, or to both; and
 - (ii) for a second or subsequent offence, to a fine not exceeding \$5,000 or a term of imprisonment not exceeding two years, or to both.

Prohibition of sales regarding children

24. (1) A person shall not sell or offer for sale a tobacco product to a child.

(2) A person who sells a tobacco product shall not hire or use a child to sell a tobacco product.

(3) A person who contravenes this section commits an offence.

Prohibition on self service

25. (1) A person shall not sell or offer for sale a tobacco product—

(a) in such a way that a consumer may handle the product without the assistance of a sales clerk or other employee or agent of the seller prior to purchase; or

(b) through any self-service means, including automatic vending machines, mail or internet.

(2) The Minister may by Order published in the *Gazette*, prohibit other means of sale where the age of the purchaser of a tobacco product cannot be verified at the point of sale.

(3) A person who contravenes this section commits an offence.

Prohibition on public displays

26. (1) A person shall not display a tobacco product in such a way that the tobacco product is visible to the public.

(2) The prohibition under subsection (1) shall not apply to individuals incidentally or accidentally displaying a tobacco product during carrying or use.

(3) This section applies to cigarette dispensers provided by a manufacturer, and these devices shall not be used for the purposes of advertisement or the promotion of a tobacco product and shall meet the prescribed requirements.

(4) A person who contravenes this section commits an offence.

Prohibition on sales of tobacco product in certain places

27. (1) A person shall not sell or offer for sale a tobacco product in the following places—

- (a) facilities where health care services are provided;
- (b) sports, athletic or recreational facilities;
- (c) government buildings;
- (d) educational facilities; and
- (e) any other place as may be prescribed.

(2) A person who contravenes this section commits an offence.

Prohibition on toy or candy cigarettes

28. (1) A person shall not—

- (a) import or manufacture; or
- (b) sell or supply, display for sale or distribute,

sweets, snacks, toys or other non-tobacco items or objects in the form of tobacco products, or which imitate tobacco products.

(2) A person who contravenes this section commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding \$5,000 or a term of imprisonment not exceeding two years, or to both; or
- (b) on conviction on indictment, to a fine not exceeding \$10,000 or a term of imprisonment not exceeding three years, or to both.

PART V

ADVERTISING, SPONSORSHIP AND PROMOTION

Prohibition against tobacco advertising

29. (1) A person shall not initiate, produce, publish, engage or participate in a tobacco advertising, promotion or sponsorship.

(2) A person who contravenes this section commits an offence.

Prohibition against incentive promotions and free supply of tobacco product

30. (1) A person shall not offer a free tobacco product and shall not offer or provide a direct or indirect consideration for the purchase or use of a tobacco product, including a bonus, premium, cash rebate or right to participate in a game, lottery or contest.

(2) A person who contravenes this section commits an offence.

Sponsorship

31. (1) Any form of tobacco sponsorship, tobacco advertising and promotion, where the name of a sponsoring entity is publicised, is prohibited.

(2) A person who contravenes this section commits an offence.

Other forms of promotion

32. (1) A person shall not sell, display for sale, supply, or advertise a non-tobacco product or service that contains either on the product, or in an advertisement of the product, a depiction of a tobacco product.

(2) For the purposes of this section, a “non-tobacco product” includes a building, facility, premises, or business that manufactures tobacco products.

(3) A person who contravenes this section commits an offence.

PART VI
PACKAGING AND LABELLING

Conformity with packaging and labelling requirements

33. (1) A person shall not sell or supply, offer for sale, or import a tobacco product that is not packaged and labelled in a manner that complies with the requirements of this Ordinance.

(2) A person who sells a tobacco product shall not acquire a tobacco product that is not packaged and labelled in a manner that complies with the requirements of this Ordinance.

(3) A person who contravenes this section commits an offence.

Labelling

34. (1) A tobacco product shall contain, permanently affixed on its package, a message as may be prescribed.

(2) Where a package does not allow for a permanently affixed message, a message shall be printed on the package.

(3) A person shall not sell or supply a product, device or other item that is intended to be used, or that can be used to cover, obscure, mask, alter, or otherwise detract from the message on a tobacco product package.

(4) A prohibition under subsection (3) includes design of the product package in such a way that parts of the package itself or accessories can cover or obscure the message.

(5) A person who contravenes this section commits an offence.

Constituents and additives disclosure on tobacco product packages

35. (1) A tobacco product shall contain, permanently affixed on its package, a list of the constituents and additives specified, and in a manner as may be prescribed.

(2) A person who fails to comply with this section commits an offence.

Deceptive or misleading information

36. (1) A tobacco product package or label shall not contain information that is false, misleading, deceptive, or is likely or intended, directly or indirectly, to create an erroneous impression about the characteristics, health effects or other hazards of the tobacco product or its emissions.

(2) A tobacco product package shall not make a claim stating, suggesting or implying that its use or exposure to its smoke is not hazardous, or is less hazardous than another tobacco product or brand.

(3) The prohibition under subsection (1) includes the use of—

- (a) words or descriptors, whether or not part of the brand name, such as “light”, “ultra-light”, “mild”, “low tar”, “slim” or similar words or descriptors;
- (b) graphics associated with, or likely or intended to be associated with, such words or descriptors; and
- (c) product package design characteristics, including numbers, colours and logos, associated with, or likely or intended to be associated with, such descriptors.

(4) A person who knowingly issues a tobacco product package, which package is in contravention of this section commits an offence.

Multiple packaging

37. If a tobacco product is placed in multiple layers of packaging, all messages, constituents and additives disclosures shall be permanently affixed or printed on the package in which the tobacco product is intended for consumer use, as well as to any external packaging, including cartons.

Requirements for name, licence number, etc., on package

38. (1) A tobacco product manufacturer, importer and exporter shall ensure that bulk packaging contains the tracking, tracing and tax status labelling information required by this section.

(2) The following information shall be presented in a visible manner, and shall be permanently affixed under the cellophane or other wrapping on all the sides of each tobacco product package, including each carton, at the time of manufacture—

- (a) name and licence number of the manufacturer, as applicable, distributor, importer and exporter;
- (b) unique manufacturer serial number, date of manufacture and location;
- (c) name of the country in which it was manufactured;

- (d) name of the country in which the product is intended for sale; and
- (e) any additional information as may be prescribed.

Requirements for tamper-proof packaging and labelling

39. (1) A tobacco product manufacturer shall design its product packaging and labelling in such a way as to make it tamper-proof, using the best available technology.

(2) A manufacturer, importer, exporter, distributor and retailer shall exercise all reasonable and necessary precautions to prevent tampering with such information while the product is under his or its control or supervision.

Language of labelling information

40. The labelling information on a tobacco product to be sold in the Islands shall be printed in English.

Minimum package size for smoked tobacco product

41. (1) A smoked tobacco product may be sold as an individual unit, provided that the product is individually labelled as required.

(2) A person who sells a smoked tobacco product contrary to subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 or a term of imprisonment not exceeding one year, or to both.

Minimum package size for smokeless tobacco product

42. (1) A smokeless tobacco product shall be contained in a package of at least twenty grams.

(2) A person shall not sell a portion of a smokeless tobacco product package, or sell a smokeless tobacco product other than as part of a complete and intact package that meets the minimum weight requirement.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 or a term of imprisonment not exceeding one year, or to both.

Health warning on package

43. A tobacco product shall contain affixed or printed on its package, a graphical health warning that covers at least 50% of the principal surfaces of the package.

PART VII
MISCELLANEOUS

Anti-smuggling measures

44. (1) A tobacco product manufactured in the Islands and produced for domestic consumption shall not be removed from its place of manufacture before all applicable taxes are paid.

(2) An imported tobacco product shall not be removed from the place of import without proof that all applicable taxes and duties have been paid.

(3) A tobacco product manufactured in the Islands and produced for export shall not be removed from its place of manufacture, or exported without payment of an export bond.

(4) Notwithstanding subsection (3), the tobacco product for export may be transferred from the place of manufacture to a bonded facility, under payment of a transfer bond, prior to export.

(5) The bond shall be payable to the Unit in an amount of \$1,000 and shall be accompanied by—

- (a) the name, licence number, address, telephone, and telefax numbers of the manufacturer, including the country of manufacture;
- (b) the name, licence number, address, telephone, and telefax numbers of the exporter, including the country from which the products were exported;
- (c) the name, licence number, address, telephone, and telefax numbers of all importers or purchasers, and of any persons who receive the shipment on the importers' or purchasers' behalf;
- (d) the name, address, telephone, and telefax numbers of all intended carriers of the shipment, and the means of transport;
- (e) the names of all cities and countries through which the shipment will be transported;
- (f) identification of the country of final destination;
- (g) information on the approximate number of users in the country of destination of each of the brands being shipped and a complete description of the sources of this information;
- (h) the name, licence number, address, telephone, and telefax numbers of any distributors and other intermediaries handling the shipment;

- (i) the date of the shipment, the period of time over which the shipment is to be in transit, the date of expected arrival in the country of final destination, and the itinerary correlated with dates of entry and exit for each point of entry and exit;
- (j) physical description of the products (for example, cigarettes, cigars, bidis, smokeless tobacco, etc.) shipped, including brands and serial numbers of all products contained in the shipment;
- (k) number of individual packages, number of sticks in each package or gram amount;
- (l) number of cartons and number of packages in each carton;
- (m) number of bulk packages, number of individual packages or cartons contained in each bulk package; and the weight of each bulk package contained in the shipment;
- (n) copies of all purchase orders, invoices, shipping or transport, and transit documents related to the shipment;
- (o) copies of tax stamps and a description of special markings and design features on packages contained in the shipment; and
- (p) an affidavit of the manufacturer and exporter stating that—
 - (i) he or it has exhausted all reasonable means to investigate the degree of demand for the products in the country of destination and determined that there is legitimate demand there for the number of products ordered and shipped, along with a description of the means used to investigate the demand in the country of destination, in addition to obtaining the information required in paragraph (g);
 - (ii) there is no substantial basis for believing that any person receiving or handling the shipment has been or is involved in illegal commercial activity or that the products will be sold illegally;
 - (iii) he or it has complied with all labelling and other legal requirements; and

(iv) information and documents supplied are true and correct to the best of his or its knowledge;

(6) The bond made in accordance with subsection (5) shall be forfeited unless the manufacturer or exporter provides the Unit with information specified in subsection (7), within sixty days of the date the goods are shipped.

(7) The information required in subsection (6) is evidence of the chain of custody and proof that all goods reached their final destination without any product being sold or distributed without the full payment of all applicable duties and taxes, including—

- (a) copies of all bills of lading or other evidence of receipt by all importers and intermediaries;
- (b) proof of payment of all applicable duties and taxes;
- (c) copies of invoices received from any intermediaries handling the shipment;
- (d) copies of delivery records;
- (e) copies of all payment records; and
- (f) any other information required by the Coordinator, as may be prescribed.

Annual report

45. (1) Every manufacturer and importer of a tobacco product shall submit to the Coordinator on an annual basis, reports containing the information required under this Ordinance.

(2) An annual report shall include information as may be prescribed, including information on—

- (a) import and export;
- (b) business sales, marketing and distribution;
- (c) new products or brands;
- (d) constituents, additives, and of toxic constituents and additives in smoke, expressed in their individual concentrations and as a ratio to nicotine; and
- (e) product packaging and labelling of all tobacco products.

(3) A report shall be made on the basis of a product prepared and tested in accordance with the prescribed methods.

(4) A report shall be submitted in the form and manner as may be prescribed.

(5) A person shall not disclose any information contained in the report unless required under this Ordinance or any other written law or by order of court.

(6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 or a term of imprisonment not exceeding one year, or to both.

Evidence

46. In a legal action for non-compliance with this Ordinance, the following shall apply—

- (a) a citation from an authorised officer who tested a tobacco product or component which is the subject of the proceedings, shall be admissible on its mere production as prima facie proof of the violations shown by the examination or analysis of the tobacco product or component, but the accused shall be notified in writing in advance of the intent to produce such an affidavit or certificate of analysis and may compel the analyst's presence at the hearing;
- (b) copies from any record, book, or document certified by the Unit as true and correct copies shall be deemed admissible into evidence as authentic;
- (c) where a tobacco product or component is found in premises used for the manufacture, import, distribution, sale or supply of a tobacco product, that product or component shall be presumed to be intended for manufacture, import, packaging, distribution, or sale, as the case may be;
- (d) a tobacco product from the same lot or batch shall be presumed to possess the same characteristics as those products from the same lot or batch found on the premises or at another location under the control of the owner or operator of the premises, but if there is no lot or batch number on the products as required under the Ordinance, a tobacco product found on the premises shall be presumed to possess the same characteristics as other tobacco products found on the premises or at another location under the control of the owner or operator of the premises; and

- (e) the person identified on the label or packaging of a tobacco product as the manufacturer, importer or distributor shall be presumed to have manufactured, imported, distributed or sold the tobacco product.

Protection of employee

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

Offences, penalties and liabilities

48. (1) A person who obstructs or hinders an authorised officer in the performance of his duties commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding two years, or to both.

(2) A person who commits an offence under sections 10, 24 to 27 is liable—

- (a) on summary conviction, to a fine not exceeding \$10,000 or a term of imprisonment not exceeding three years, or to both; or
- (b) on conviction on indictment, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding four years, or to both.

(3) A person who commits an offence under sections 29, 30, 31, 32, 33, 34, 35 and 36 is liable—

- (a) on summary conviction, to a fine not exceeding \$10,000 or a term of imprisonment not exceeding three years, or to both; or
- (b) on conviction on indictment, to a fine not exceeding \$30,000 or a term of imprisonment not exceeding five years, or to both.

(4) In an action for non-compliance with this Ordinance, the court may order confiscation and forfeiture of—

- (a) an item that contains a tobacco advertising and promotion;
- (b) a tobacco product packaged or labelled in a manner that does not conform with this Ordinance;

- (c) all tobacco products owned by or under the control of the person found to have committed a violation of sections 10, 24 to 27, 30 and 40 to 42;
- (d) equipment, machinery, raw materials, components, packaging and labelling materials, and other items used to manufacture tobacco products;
- (e) all tobacco products or components that fail to conform with the product requirements under this Ordinance;
- (f) all tobacco products for which all applicable taxes and duties have not been paid or that otherwise have not legally entered the jurisdiction; and
- (g) all non-tobacco products that fail to conform with section 28.

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

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

(7) Where an offence under this Ordinance is committed by a body corporate and it is proved to have been committed with the consent or connivance of or to be attributable to negligence on the part of a director, manager, secretary or other officer of the body corporate, that person as well as that body commits the offence and shall be liable to be proceeded against and penalised accordingly.

Amendment of Schedule

49. The Minister may by Order published in the *Gazette*, amend a Schedule.

Regulations

50. (1) The Minister may make regulations prescribing anything under this Ordinance which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Ordinance, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) prescribing requirements for an outdoor smoking area for licensed liquor premises;
- (b) prescribing the signs in respect of tobacco products and the information that must be displayed at points of sale, including—
 - (i) health warnings that must appear on the signs;
 - (ii) size and format of the signs;
 - (iii) location of the signs; and
 - (iv) the legal age at which tobacco products may be purchased,
- (c) information that must be displayed on a package containing a tobacco product and on an enclosed leaflet, picture or pictogram, including—
 - (i) information about the product and its emissions;
 - (ii) health hazards and health effects arising from the use of the product or from its emissions;
 - (iii) other health related messages such as advice on how to stop smoking;
 - (iv) information that may not appear on packages; and
 - (v) descriptors, package design characteristics, graphics or terms considered to be false, misleading, deceptive or likely to create any erroneous impression;
- (d) the location, content, size and format of any sign required in terms of this Ordinance;
- (e) methods to assess conformity, and methods of testing and measuring compliance, with any prescribed standard;
- (f) prescribing requirements and standards for tobacco product constituents, including emissions of smoked products, additives and product design and specifying methods for testing and measuring compliance with the performance standards and requirements prescribed;
- (g) that enable the tracking and tracing of tobacco products through the distribution chain from manufacture to the point where all relevant duties and taxes have been paid, for the purpose of assisting competent law enforcement authorities in

detecting and investigating illicit manufacture and distribution of tobacco products and identifying those responsible for illegal activity, which requirements may include—

- (i) overt or covert markings to uniquely identify each individual tobacco product and any of its packaging;
 - (ii) overt markings to clearly identify the legal intended end-market destination of tobacco products;
 - (iii) scanning of tobacco products and their packaging or other procedures that identify their origin and passage through the distribution chain; and
 - (iv) any other relevant technology that may emerge; and
- (h) generally for carrying out the purposes of this Ordinance.

Transitional provisions

51. (1) Notwithstanding section 10, a person engaged in the business of manufacturing, importing, exporting, distributing or selling at retail, tobacco products prior to the coming into force of this Ordinance shall have a transitional period of nine months to obtain a licence from the date this Ordinance comes into force.

(2) Where a person applies for a licence in terms of subsection (1), the applicant may continue to manufacture, import, export, distribute or sell at retail, tobacco products until notice is received by the applicant that the application is approved or denied, as the case may be.

(3) Where an application for a licence is denied, the applicant shall cease manufacturing, importing, exporting, distributing or selling at retail, tobacco products immediately upon notification of the denial.

SCHEDULE 1

FORMS

FORM 1

(Section 11(2))

APPLICATION FOR LICENCE AS A DEALER IN TOBACCO PRODUCTS

In accordance with the Tobacco Control Ordinance, the following information has to be provided by the applicant to the Coordinator of the Tobacco Control Unit.

1. Name of the Business Enterprise (same as in Trade and Business licence)

2. Physical Address

3. Mailing Address

4. Nature of the Business: () Distributor () Retailer
() Importer () Exporter () Manufacturer
5. Retailer: Specify size of business premises _____
6. Principal Owner's Contact details: (same as in Trade and Business License)
 - (a) Mr/Mrs/Miss _____
 - (b) Date of Birth _____
 - (c) Nationality _____
 - (d) Telephone number(s): _____
 - (e) Fax: _____
 - (f) Email: (business) _____
 - (g) Email (personal) _____
7. Name and types of tobacco products to be traded

8. Sources of tobacco products:

Local (details) _____

Overseas (countries of origin)

9. Trade and Business Licence No. (if applicable)

Period of validity From _____ to _____

I understand the requirements of being a Tobacco Dealer as per the Tobacco Control Ordinance and I shall abide by them.

Applicant's signature: _____

Date: _____

-----OFFICIAL USE ONLY-----

(a) Date application received: _____
by _____

(b) Fee \$ _____ received _____
by _____

Receipt # _____

(c) Date fees paid into Treasury _____
by _____

(d) Disposition of application: () Approved () Not approved

Reasons if not approved

Date: _____

Signature of Administration Officer _____

(e) Licence Number _____

(f) Date of Licence _____

FORM 2

(Section 12(2))

TOBACCO DEALER'S LICENCE

In accordance with the powers vested in the Coordinator of the Tobacco Control Unit, under the Tobacco Control Ordinance

_____ (name)
of _____

_____ with Licence # _____

is hereby licensed as a Tobacco Dealer
_____ (Specify the Nature of Business)

With effect from this ____ day of _____ 20 _____

Until the ____ day of _____ 20 _____

Licence Number: _____
_____ Tobacco Control Ordinance

_____ Coordinator, Tobacco Control Unit

Dated this ____ day of _____ 20 _____

This licence is the property of the Government of the Turks & Caicos Islands.

By law it is required to be prominently displayed in the business.

FORM 3

(section 14)

APPLICATION FOR RENEWAL OF LICENCE AS TOBACCO DEALER

I, _____ licensed as a
Tobacco Dealer as (Specify the Nature of Business)
_____ under the Tobacco Control Ordinance

My licence as such expires on the _____ day of _____, 20__ and I am
herby applying for renewal of licence for a further period of one year.

The renewal fee of \$ _____ is enclosed herewith.

Any changes in particulars of licence () Yes () No

If yes, Form 1 also needs to be completed.

Licence # _____

Applicants signature: _____

Date: _____

-----OFFICIAL USE ONLY-----

Date application received: _____

by _____

SCHEDULE 2

(Sections 11(2),12(2) and 14(1(b))

FEES

	\$
Application fee.....	150
Renewal of application.....	75
Retailor	
(less than 500 sq. ft.).....	500
(500 to 1,000 sq. ft.).....	750
(1,000 to 2,000 sq. ft.).....	1,500
(more than 2,000 sq. ft.).....	1,500
Importer.....	2,000
Exporter.....	5,000
Wholesale Distributor.....	5,000
Manufacturer.....	5,000

SCHEDULE 3

(Section 23)

NO SMOKING AREAS

1. Government buildings
2. Hospitals and medical facilities
3. Airports
4. Hotels, motels, inns
5. Reception rooms, lobbies or areas where the public have access.
6. Facilities rented out for events
7. Meetings and interview rooms
8. Corridors, toilet areas, stairways and elevators
9. Public lounges and canteen areas

10. Bars
 11. Clubs
 12. Restaurants
 13. Pool halls
 14. Schools
 15. Government vehicles
 16. Vehicles used for public transport
 17. Areas designated for public transportation
 18. Shops and shopping centres
 19. Casinos
 20. Cinemas
 21. Public parks
 22. Sporting complexes such as (stadiums, ballparks, basketball courts).
 23. Workplace facilities
 24. A public place where tables and chairs are provided for customers to consume food purchased from an on-site service
 25. Any other facilities that are accessible to the public.
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