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Act 606

OPTICAL DISCS ACT 2000

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OPTICAL DISCS ACT 2000

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LAWS OF MALAYSIA

Act 606

OPTICAL DISCS ACT 2000

An Act to provide for the licensing and regulation of the manufacture of optical discs, and for matters connected therewith.

[15 September 2000, P.U. (B) 327/2000]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Optical Discs Act 2000.

(2) This Act shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for different provisions of this Act.

Interpretation

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

“article” includes device, contrivance, machine or equipment;

“Assistant Controller” means an Assistant Controller of Optical Discs appointed under section 3;

“code of conduct” means the code of conduct issued under section 22;

“Controller” means the Controller of Optical Discs appointed under section 3;

“copyright” has the meaning assigned to it by the Copyright Act 1987 [*Act 332*];

“Deputy Controller” means a Deputy Controller of Optical Discs appointed under section 3;

“infringing copy” has the meaning assigned to it by the Copyright Act 1987;

“licence” means a licence granted under section 7;

“licensed premises” means any premises specified in a licence in which optical discs are authorized to be manufactured;

“licensee” means a person to whom a licence is granted under section 7;

“manufacture” means the processes and activities involved in the manufacturing of optical discs, including mastering or replicating or both;

“manufacturer’s code” means the manufacturer’s code assigned to a licensee under paragraph 7(2)(b);

“Minister” means the Minister responsible for domestic trade and consumer affairs;

“optical disc” means—

- (a) any medium or device listed in Schedule 1; or
- (b) any other medium or device on which data may be stored in digital form and read by means of a laser,

and includes any such medium or device manufactured for any purpose, whether or not any data readable by means of a laser or any other means has been stored on it;

“owner of copyright” means the owner of copyright within the meaning of the Copyright Act 1987;

“place” means any area on land or water and includes a building, structure or enclosure, whether movable or not;

“prescribed” means prescribed by regulations made under this Act;

“register” means the register kept by the Controller under this Act;

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

(2) For the purpose of this Act, a person is engaged in the manufacture of optical discs if he owns, directs, manages or otherwise has control of a business which undertakes the manufacture of optical discs.

PART II

CONTROLLER OF OPTICAL DISCS, *ETC.*

Appointments of Controller, *etc.*

3. (1) The Minister may appoint, from amongst public officers, a Controller of Optical Discs, such number of Deputy Controllers of Optical Discs, Assistant Controllers of Optical Discs and other officers as maybe necessary for the purposes of this Act.

(2) The Controller shall, subject to the general direction and control of the Minister, perform the functions and duties imposed and may exercise the powers conferred upon him under this Act.

(3) The Deputy Controllers, Assistant Controllers and other officers appointed under subsection (1) shall be under the direction and control of the Controller.

(4) The Controller and the Deputy Controllers may perform all the functions and duties imposed and may exercise all the powers conferred upon an Assistant Controller under this Act.

(5) A Deputy Controller may perform all the functions and duties imposed and may exercise all the powers conferred upon the Controller under this Act except the powers under Part III.

(6) Notwithstanding subsection (5), the Controller may delegate to a Deputy Controller any of his powers under Part III, and when so delegated such power shall be exercised by the Deputy Controller under the control of and subject to such directions and restrictions as may be specified by the Controller.

(7) A delegation under subsection (6) may be revoked at any time by the Controller and shall not prevent the Controller from himself exercising the delegated powers.

(8) All officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

PART III

LICENSING, *ETC.*

Licence to manufacture optical discs

4. Any person who manufactures optical discs without a valid licence under this Act commits an offence.

Unlicensed premises

5. A licensee who manufactures optical discs in a place other than the licensed premises commits an offence.

Application for licence

6. (1) An application for a licence under this Act shall be made in writing to the Controller in such form, and shall be accompanied by such documents or information, as may be prescribed.

(2) Where a person proposes to manufacture optical discs at more than one place, he may make one application for a licence in respect of all those places.

(3) The Controller may, at any time after receiving the application under subsection (1) and before it is determined, by a written notice require the applicant to provide such additional documents or information as the Controller deems necessary.

(4) Where any additional document or information required under subsection (3) is not provided by the applicant within the time specified in the notice or any extension thereof granted by the Controller, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without prejudice to a fresh application being made by the applicant.

(5) An application under this section may be withdrawn at any time before it is granted or refused.

Grant or refusal of a licence

7. (1) Upon receipt of an application together with the documents and information required under section 6, the Controller may grant the licence or refuse to grant the licence.

(2) If the Controller grants a licence under subsection (1), he shall—

(a) require the licensee to pay the prescribed fees within the prescribed period;

(b) assign to the licensee a manufacturer's code which shall consist of—

(i) one or more letters or numbers;

(ii) a mark, sign, symbol or device; or

(iii) any combination of letters, numbers, marks, signs, symbols or devices,

as may be prescribed;

(c) impose such conditions as he thinks fit for the purpose of—

(i) preventing the manufacture of infringing copies of works in which copyright subsists; and

(ii) protecting the rights of owners of copyright and other persons to whom rights are conferred under the Copyright Act 1987; and

(d) impose such other conditions as he deems fit.

(3) A licence shall be deemed to have not been granted if the fees required under paragraph (2)(a) are not paid within the prescribed period.

(4) Where the Controller refuses to grant a licence, he shall immediately notify the applicant in writing of his refusal without assigning any reason for the refusal.

(5) Where the Controller grants a licence in respect of the application made under subsection 6(2), the Controller shall issue a separate licence for each place of manufacture.

Validity of licence

8. The licence granted under section 7, unless sooner revoked or suspended, shall be valid for such period as may be specified in the licence.

Power to vary conditions

9. (1) The Controller may, at any time after a licence is granted—

- (a) impose any new or additional conditions on the licence;
- (b) vary or revoke any condition imposed on the licence; or
- (c) vary or revoke any condition already varied under paragraph (b).

(2) Where the Controller proposes to take an action under subsection (1), he shall give the licensee—

- (a) a written notice of his intention; and
- (b) an opportunity to make written representations within fourteen days from the date of service of the notice.

(3) After the expiry of the period of fourteen days, and after considering any representation made by the licensee, the Controller shall decide whether to impose, vary or revoke any condition under subsection (1) or to take no further action.

(4) The Controller shall give the licensee a written notice of his decision under subsection (3).

Revocation of licence

10. (1) The Controller may revoke a licence if he is satisfied that—

- (a) the licensee has failed to comply with any obligation imposed upon him under this Act;
- (b) the licensee has contravened any of the conditions of the licence, or any provision of this Act, regardless of the fact that there has been no prosecution for an offence in respect of such contravention;

- (c) the licensee has been convicted of an offence under this Act;
- (d) the licensee or any person who is or is to be a director, manager, secretary or other similar officer of the licensee has, either in connection with the application for the licence, or at any time after the grant of the licence, provided false or misleading or inaccurate information to the Controller; or
- (e) the licensee has ceased to carry on the business of manufacturing optical discs.

(2) Before revoking a licence, the Controller shall give the licensee a notice in writing of his intention to do so and require the licensee to show cause within fourteen days as to why the licence should not be revoked.

(3) After the expiry of the period of fourteen days and after considering any representations made by the licensee, the Controller shall decide whether to revoke the licence or to take no further action.

(4) The Controller shall give the licensee written notice of his decision under subsection (3).

(5) The revocation of a licence shall take effect—

- (a) where there is no appeal against such revocation, on the expiration of fourteen days from the date on which the notice of revocation is served on the licensee; or
- (b) where there is an appeal against such revocation, when the revocation is confirmed by the Minister.

Surrender of licence

11. (1) A licensee may surrender his licence by forwarding it to the Controller with a written notice of its surrender.

(2) The surrender shall take effect on the date the Controller receives the licence and the notice under subsection (1) or where a later date is specified in the notice, on that later date.

Effect of revocation, surrender or expiry of licence

12. Upon the revocation of a licence under section 9 or its surrender under section 10 taking effect, or upon the expiry of the licence, the licensee shall immediately cease to manufacture optical discs.

Transfer of licence

13. (1) A licence is not transferable except with the approval of the Controller.

(2) A licensee who transfers his licence to another person without the approval of the Controller commits an offence.

(3) The Controller may approve the transfer of the licence if—

(a) the licensee dies or becomes incapacitated or a bankrupt;

(b) in the case of a company, the licensee is wound up or a receiver or manager is appointed in respect of the business of the licensee; or

(c) for any reason the Controller is satisfied it would be unjust not to transfer the licence.

(4) An application for the transfer of a licence shall be made in writing to the Controller.

Renewal of licence

14. A licensee shall apply to the Controller for the renewal of a licence not less than one month before the date of the expiry of the existing licence.

Display of licence

15. (1) A licensee shall at all times display his licence in a conspicuous place at his licensed premises.

(2) A licensee who contravenes subsection (1) commits an offence.

Register

16. (1) The Controller shall establish and maintain a register in such form as may be prescribed of the licences granted under this Act.

(2) The Controller shall make the register available for public inspection subject to such conditions as he thinks fit.

Maintenance of records

17. (1) A licensee shall keep and maintain a proper records in such form and containing such information as may be prescribed, concerning the operation of his business in relation to the manufacture of optical discs.

(2) The records shall be—

(a) kept solely for the purpose of entering the records required under this Act;

(b) available at all times for the examination of any Assistant Controller; and

(c) kept up to date and in good order and condition.

(3) A licensee shall submit the records and furnish other relevant documents and information as and when required by the Controller within such time as may be specified by the Controller, except where any trade secret would be disclosed if the document or information is so furnished.

(4) A licensee who contravenes subsection (1), (2) or (3) commits an offence.

Appeal

18. (1) Any person who is aggrieved by any decision of the Controller under this Part may appeal to the Minister in the prescribed manner within one month from the date the decision is communicated to such person.

(2) The Minister may confirm, reverse or vary the decision of the Controller appealed against.

(3) The decision of the Minister under subsection (2) shall be final.

PART IV

MANUFACTURER'S CODE

Optical discs to be marked with manufacturer's code

19. (1) A licensee shall cause each optical disc manufactured by him to be marked with the manufacturer's code assigned to him under paragraph 7(2)(b).

(2) A licensee who contravenes subsection (1) commits an offence.

(3) In this section, "marked" means to be marked in accordance with the standards prescribed under section 20.

Marking standards

20. (1) The Minister may prescribe standards for the marking of the manufacturer's code on optical discs.

(2) Without limiting the generality of subsection (1), the Minister may prescribe—

- (a) different standards in relation to different classes or descriptions of optical discs; or
- (b) standards relating to the manner in which, and the means by which, manufacturer's code are to be marked on optical discs or on optical discs of any class or description.

Applying false manufacturer's code

21. (1) Any person who—

- (a) forges a manufacturer's code;
- (b) falsely applies to an optical disc a manufacturer's code or any mark so resembling a manufacturer's code as to be calculated to deceive;
- (c) makes any die, block, machine or other instrument for the purpose of forging, or which is capable of being used for forging, a manufacturer's code;
- (d) disposes of or has in his possession any die, block, machine or other instrument for the purpose of forging a manufacturer's code; or

(e) causes to be done anything referred to in paragraph (a), (b), (c) or (d),

commits an offence.

(2) In any proceedings for an offence under subsection (1), it shall be a defence for the person charged to prove that he acted without intent to deceive or defraud.

PART V

CODE OF CONDUCT

Controller may issue code of conduct

22. (1) The Controller may issue a code of conduct dealing with the conduct of any person connected with the business of manufacturing optical discs.

(2) The Controller may, before issuing a code of conduct under subsection (1), consult with such body representing the persons to whom the code of conduct will apply and other interested persons as he thinks fit.

(3) The code of conduct issued by the Controller under subsection (1) shall be published in the *Gazette*.

Revocation, etc., of code of conduct

23. (1) The Controller may revoke, amend or revise, whether in whole or in part, a code of conduct if he is satisfied that the code of conduct, whether in whole or in part, is no longer consistent with the provisions of this Act.

(2) The Controller may, before revoking, amending or revising a code of conduct, consult with such body representing the persons to whom the code of conduct applies and other interested persons as he thinks fit.

(3) The provisions of the code of conduct revoked, amended or revised by the Controller under subsection (1) shall be published in the *Gazette*.

Civil penalty for non-compliance

24. (1) Notwithstanding Part VI, a person who fails to comply with any provisions of a code of conduct shall be liable to pay to the Controller a fine not exceeding two hundred ringgit.

(2) Notwithstanding the provisions of any other written law, the fine payable under this section may, without prejudice to any other remedy or sanction, be recoverable as a civil debt.

Compliance with code of conduct a legal defence

25. Compliance with a code of conduct shall be a defence against any prosecution, action or proceedings of any nature, whether in a court or otherwise, taken against a person who is subject to the code of conduct regarding a matter dealt with in that code of conduct.

PART VI

OFFENCES AND PENALTY

Penalty

26. (1) Any person who commits an offence under Part III except under section 15 shall on conviction be liable—

- (a) if such person is a body corporate, to a fine not exceeding five hundred thousand ringgit, and for a second or subsequent offence to a fine not exceeding one million ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six years or both.

(2) Where a person being a director, manager, secretary or other similar officer of a body corporate is guilty of an offence under subsection (1) by virtue of section 30, he shall on conviction be liable to the penalty provided for in paragraph (1)(b).

Offences with respect to information

27. (1) Any person who submits false or misleading information in any application, report or other document for any purpose under this Act commits an offence and shall on conviction be liable—

- (a) if such person is a body corporate, to a fine not exceeding five hundred thousand ringgit, and for a second or subsequent offence to a fine not exceeding one million ringgit; or
- (b) if such person is not a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six years or both.

(2) Any person who—

- (a) furnishes or causes to be furnished to any Assistant Controller or police officer not below the rank of Inspector any false or misleading particular, information or statement in respect of any matter which such officer requires to be given under this Act;
- (b) refuses to answer or gives a false answer to any question put to him by any Assistant Controller or police officer not below the rank of Inspector for the purpose of obtaining any particulars, information or statement required to be given under this Act; or
- (c) fails or refuses to produce any document as may be required by any Assistant Controller or police officer not below the rank of Inspector,

commits an offence.

(3) Where a person being a director, manager, secretary or other similar officer of a body corporate is guilty of an offence under subsection (1) by virtue of section 30, he shall on conviction be liable to the penalty provided for in paragraph (1)(b).

(4) Nothing in this section shall be construed as requiring a person to answer any question or to give any information if the answer or information would have a tendency to expose him to a criminal charge, penalty or forfeiture.

Disappearance or destruction of article, etc., to be seized

28. Any person who causes the disappearance or destruction of any article, optical disc, thing, book or document liable to be seized under this Act with the intent to prevent the seizure thereof commits an offence.

Disclosure of confidential information

29. (1) Any person who makes use of or discloses to any other person any confidential information obtained by virtue of the provisions of this Act commits an offence.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where the disclosure is made—

- (a) for or in connection with the due administration of this Act;
- (b) for the purpose of any legal proceedings;
- (c) for the purpose of any investigation conducted under this Act;
- (d) to any person or any officer who is approved in writing by the Minister as a proper person to receive the information; or
- (e) for or in connection with the preparation by the Government of statistics in respect of the operation of this Act.

Offences by director, manager, secretary, etc.

30. Where any offence against any provision of this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Offences by employee or agent

31. Where any person (“the principal”) would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or the employee of such agent, if such act, omission, neglect or default was committed by the principal’s employee in the course of his employment, or by the agent when acting on behalf of the principal, or by the employee of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

Obstruction of officers

32. Any person who obstructs, impedes, assaults or interferes with any Assistant Controller or police officer not below the rank of Inspector in the performance of his functions under this Act commits an offence.

General penalty

33. (1) Any person who commits an offence under this Act for which no penalty is expressly provided shall on conviction be liable to a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence he shall be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any body corporate which commits an offence under this Act for which no penalty is expressly provided shall on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence it shall be liable to a fine not exceeding five hundred thousand ringgit.

(3) Where a person being a director, manager, secretary or other similar officer of a body corporate is guilty of an offence under this Act by virtue of section 30, and no penalty is expressly provided for such offence, he shall be liable to the penalty provided for in subsection (1).

Compounding of offences

34. (1) The Controller or a Deputy Controller or any person authorized in writing by the Controller may with the consent of the Public Prosecutor compound any offence under this Act which is prescribed to be a compoundable offence committed by any person by making a written offer to such person to compound the offence upon payment to the Controller or the Deputy Controller or any person authorized in writing by the Controller of an amount not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Controller or a Deputy Controller or any person authorized in writing by the Controller may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1)—

- (a) no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made; and
- (b) any article, optical disc, thing, book or document seized in connection with such offence shall be released immediately, subject to such conditions as the Controller or Deputy Controller or any person authorized in writing by the Controller thinks fit to impose.

PART VII

ENFORCEMENT

Power of enforcement

35. (1) An Assistant Controller or a police officer not below the rank of Inspector may exercise all the powers of enforcement under this Act.

(2) Every Assistant Controller or police officer, when acting against any person under this Act, shall declare his office and shall on demand produce to the person against whom he is acting such authority card as the Controller may direct to be carried by such Assistant Controller or as the Inspector General of Police may direct to be carried by such police officer.

Power of investigation

36. (1) Any Assistant Controller or a police officer not below the rank of Inspector shall have the power to investigate any offence under this Act.

(2) For the purposes of subsection (1), the Assistant Controller or police officer may issue orders to a licensee to further his investigation and secure compliance with this Act.

(3) In addition to his powers under subsections (1) and (2), an Assistant Controller or a police officer not below the rank of Inspector investigating an offence under this Act may exercise all or any of the powers in relation to police investigation in seizable cases given by the Criminal Procedure Code [*Act 593*].

Additional powers

37. Any Assistant Controller or police officer not below the rank of Inspector may, for the purpose of enforcing this Act, do all or any of the following:

- (a) visit, enter, inspect and examine with or without notice any licensed premises at any reasonable hour;
- (b) require the production of record, books, accounts, computerized data or documents kept by the licensee and inspect, examine and copy any of them;
- (c) require the production of any identification document from any person in relation to any case or offence under this Act; or
- (d) make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

Search by warrant

38. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act is being or has been committed on any premises, the Magistrate may issue a warrant authorizing any Assistant Controller or police officer not below the rank of Inspector named therein to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force.

(2) An Assistant Controller or a police officer not below the rank of Inspector may, in the premises entered under subsection (1), search and seize any article, optical disc, thing, book or document, including computerized data, which contain or is reasonably believed to contain information as to any offence suspected to have been committed and is likely to disclose evidence of the commission of any offence under this Act.

(3) An Assistant Controller or a police officer not below the rank of Inspector conducting a search under subsection (1) may, if in his opinion it is reasonably necessary to do so for the purpose of investigating into the offence, search any person who is in or on such premises but no female person shall be searched except by another female person.

(4) An Assistant Controller or a police officer not below the rank of Inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary.

(5) An Assistant Controller or a police officer not below the rank of Inspector shall, on leaving any premises, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(6) An Assistant Controller or a police officer not below the rank of Inspector making a search of a person under subsection (3) may seize, detain or take possession of any article, optical disc, thing, book or document found on such person for the purpose of the investigation being carried out by such officer.

(7) Where, by reason of its nature, size or amount, it is not practicable to remove any article, optical disc, thing, book or document, seized under this section, the seizing officer shall, by any means seal the article, optical disc, thing, book or document in the premises or container in which it is found.

(8) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (7) or removes any article, optical disc, thing, book or document under seal or attempts to do so commits an offence.

Search and seizure without warrant

39. Where an Assistant Controller or a police officer not below the rank of Inspector in any of the circumstances referred to in section 38 has reasonable grounds for believing that by reason of the delay in obtaining a search warrant under that section the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the Assistant Controller or police officer not below the rank of Inspector may enter the premises and exercise all the powers referred to in section 38 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

List of things seized

40. (1) Except as provided in subsection (2), where any article, optical disc, thing, book or document is seized under this Part, the seizing officer shall prepare a list of the things seized and immediately deliver a copy signed by him to the occupier of the premises which has been searched, or to his agent or servant, at those premises.

(2) Where the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

Warrant admissible notwithstanding defects

41. A search warrant issued under this Act shall be valid and admissible notwithstanding any defect, mistake or omission therein or in the application for such warrant and any article, optical disc, thing, book or document seized under such warrant shall be admissible in evidence in any proceedings under this Act.

Access to computerized data

42. (1) An Assistant Controller or a police officer not below the rank of Inspector conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) In this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data.

Power to require attendance of person acquainted with case

43. (1) An Assistant Controller or a police officer not below the rank of Inspector making an investigation under this Act may by order in writing require the attendance before himself of any person who appears to the Assistant Controller or a police officer not below the rank of Inspector to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses to attend as so required, the Assistant Controller or police officer not below the rank of Inspector may report such refusal to a Magistrate who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

Examination of person acquainted with case

44. (1) An Assistant Controller or a police officer not below the rank of Inspector making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Assistant Controller or police officer, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions.

(4) An Assistant Controller or a police officer not below the rank of Inspector examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section, whether or not a caution has been administered to him under subsection 45(2) shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be—

- (a) after it has been read to him in the language in which he made it; and
- (b) after he has been given an opportunity to make any correction he may wish.

Statement to be admissible in evidence

45. (1) Where any person is charged with an offence under this Act, any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of an Assistant Controller or a police officer not below the rank of Inspector and whether or not interpreted to him by another Assistant Controller or police officer or other person shall, notwithstanding any other written law to the contrary, be admissible in evidence at his trial and, if the person charged tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) The statement referred to in subsection (1)—

- (a) shall not be admissible or used under that subsection—
 - (i) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him; or

- (ii) in the case of a statement made by the person after his arrest, unless the court is satisfied that a caution was administered to him in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence.”; and

- (b) if made by any person before there is time to caution him, shall not be rendered inadmissible in evidence merely by reason of no such caution having been administered if it has been administered as soon as possible.

(3) Notwithstanding anything to the contrary contained in any written law, a person in respect of whom subsection (1) applies shall not be bound to answer any question relating to the case after a caution under subsection (2) has been administered to him.

Forfeiture of articles, etc.

46. (1) All articles, optical discs, things, books or documents seized in the exercise of any power conferred under this Act shall be liable to forfeiture.

(2) The court trying any person accused of an offence under this Act may at the conclusion of the trial, whether he is convicted or not, order that the articles, optical discs, things, books or documents seized from that person be destroyed or, in the case of infringing copies, be delivered up to the first owner of the copyright in question, or his assignee or exclusive licensee, as the case may be.

(3) Where there is no prosecution with regard to any article, optical disc, thing, book or document seized in exercise of any powers conferred under this Act, the article, optical disc, thing, book or document shall be taken and deemed to be forfeited at the expiration of one calendar month from the date it was seized unless a claim thereto is made before that date in the manner set out in subsections (4), (5) and (6).

(4) Any person asserting that he is the owner of any article, optical disc, thing, book or document seized under this Act and that the article, optical disc, thing, book or document is not liable to forfeiture may personally or by his agent authorized in writing by him give written notice to an Assistant Controller of his claim.

(5) On receipt of a notice under subsection (4), the Assistant Controller shall refer the notice to the Controller who may, after such enquiry as may be necessary, direct that such article, optical disc, thing, book or document be released or forfeited or refer the matter to the Court of a First Class Magistrate for decision.

(6) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the article, optical disc, thing, book or document and the person from whom it was seized to appear before the court and upon their appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter, and on proof that an offence under this Act has been committed and that such article, optical disc, thing, book or document, was the subject matter or was used in the commission of such offence, shall order the article, optical disc, thing, book or document to be forfeited or may, in the absence of such proof, order the release of such article, optical disc, thing, book or document to the person entitled to it.

(7) Any article, optical disc, thing, book or document forfeited or deemed to be forfeited shall be delivered to the Controller who shall dispose of it in a manner he deems fit.

Cost of holding article, *etc.*, seized

47. Where any article, optical disc, thing, book or document, seized under this Act is held in the custody of the Government pending completion of any proceedings in respect of an offence under this Act, the cost of holding such thing in custody shall, in the event of any person being found guilty of an offence, be a debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable

48. No person shall, in any proceedings before any court in respect of any article, optical disc, thing, book or document seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Protection of informers

49. (1) Except as provided in this section, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or to state any matter which may lead to his discovery.

(2) If any book, document, record or paper which is in evidence or is liable to inspection in any civil or criminal proceedings contains any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If in a trial for any offence under this Act the court after full inquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties to the proceeding without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

Reward for information

50. In the case of a conviction involving a fine, the court imposing the fine may, on the application of the prosecuting officer, direct the payment of any part of the fine in such proportion as the court thinks fit but in any case not exceeding one half of such fine to the person who gave the information leading to the conviction.

PART VIII

MISCELLANEOUS

Power to exempt

51. (1) The Minister may by order published in the *Gazette* exempt, subject to such conditions as he may deem fit to impose, any person or class of persons or any business or class of businesses from all or any of the provision of this Act.

(2) The Minister may, at any time by order published in the *Gazette*, revoke any order made under subsection (1) if he is satisfied that such exemption should no longer be granted.

Protection of officers

52. No action or prosecution shall be brought, instituted or maintained in any court against—

- (a) the Controller, a Deputy Controller, an Assistant Controller or any officer duly appointed under this Act or a police officer for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act; and
- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Controller, a Deputy Controller, an Assistant Controller or any officer duly appointed under this Act or a police officer if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Institution of prosecution

53. No prosecution for or in relation to any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Jurisdiction to try offences

54. Notwithstanding any written law to the contrary, a court of a Magistrate of the First Class shall have jurisdiction to try any offence under this Act and to impose the full punishment for any such offence.

Service of records, etc.

55. (1) Records, other documents or information pertaining to the manufacturing activity of any person required to be submitted or furnished or a notice given, a licence issued or a decision or an order made under this Act may be served personally or be sent by registered post.

(2) Any record, other document or information, notice, licence, decision or order which is sent by registered post shall be deemed to have been served on the person to whom it is addressed on the day succeeding the day on which the record, other document or information, notice, licence, decision or order would have been received in the ordinary course of post if it is addressed—

- (a) in the case of the Minister or the Controller, to either of them, as the case may require, at the Ministry;
- (b) in the case of a company, a partnership or body of persons having a registered office in Malaysia, to that registered office or, where there is no such registered office, to the company's, partnership's or body's principal place of business in Malaysia or, where there is no such principal place of business, to the place where any other activity of the company, partnership or body is carried on; and
- (c) in the case of an individual, to his last-known address.

Regulations

56. (1) The Minister may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out or achieving the objects and purpose of this Act, or for the further, better or more convenient implementation of the provision of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made—

- (a) to prescribe the forms to be used and the information to be furnished for any of the purposes of this Act;
- (b) to prescribe the procedure for making applications for licences and the determination of questions in connection with the grant, surrender, suspension, renewal and revocation of licences and the conditions to be attached to the licences and the procedure in connection with appeals;

- (c) to prescribe the fees to be paid under this Act and the manner for collecting and dealing with such fees;
- (d) to prescribe the form of the register to be kept and maintained by the Controller, the procedure and other matters relating to the opening, maintenance and closure of the register and the procedure and other matters relating to the inspection of and taking of extracts from the register;
- (e) to prescribe the form of records to be kept and maintained by the licensee and the information to be recorded and the submission of such records; and
- (f) to provide for any matter which under this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed.

Savings and transitional

57. (1) Any person engaged in the manufacturing of optical discs immediately before the commencement of this Act and intends to continue to manufacture optical discs on and after such commencement shall not later than six months from the date of commencement of this Act apply to the Controller for a licence under this Act.

(2) Pending the decision by the Controller on the application for a licence made under subsection (1), the applicant shall be deemed to be licensed under this Act and no action shall be taken against him for engaging in the manufacture of optical discs without a licence.

(3) Where a licence is granted by the Controller under section 7 pursuant to an application made under subsection (1), the applicant shall within six months from the date the licence is granted take the necessary action to comply with the conditions imposed on the licence.

(4) Where a licence is not granted by the Controller under section 7, the applicant referred to in subsection (2) shall cease to be deemed to be licensed under that subsection from the date he is notified of the decision of the Controller or, if there is an appeal under section 18, the date of the decision of the Minister on that appeal.

SCHEDULE 1

[Subsection 2(1)]

LIST OF OPTICAL DISCS

1. Compact discs (CD) including—
 - Compact discs-audio (CD-A)
 - Compact discs-video (CD-V)
 - Compact discs-read only memory (CD-ROM)
 - Compact discs-interactive (CD-I)
 - Compact discs-photo (CD-P)
 - Compact discs-recordable (CD-R)
 - Compact discs-rewritable (CD-RW)
 2. Digital versatile discs (DVD) including—
 - Digital versatile discs-recordable (DVD-R)
 - Digital versatile discs-rewritable (DVD-RW)
 3. Laser discs (LD)
 4. Mini discs (MD)
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LAWS OF MALAYSIA
Act 606
OPTICAL DISCS ACT 2000

LIST OF AMENDMENTS

Amending law

Short title

In force from

– NIL –

LAWS OF MALAYSIA

Act 606

OPTICAL DISCS ACT 2000

LIST OF SECTIONS AMENDED

Section

Amending authority

In force from

– NIL –
