

FREE ZONES BILL 1990

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A BILL

intituled

An Act to provide for the establishment of free zones in Malaysia for promoting the economic life of the country and for related purposes.

[]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Free Zones Act 1990.

Short title and commencement.

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

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

Interpretation.

"activity" includes commercial activity and manufacturing activity and related operations;

"Authority" means any statutory body or company or department of the Government of Malaysia or of any State in Malaysia which has been appointed under the provisions of subsection (2) of section 3 to administer, maintain and operate any free zone;

"commercial activity" includes trading, breaking bulk, grading, repacking, relabelling and transit;

"customs duty" means any duty imposed by or under the Customs Act 1967;

Act235.

Act 176. "excise duty" means any duty imposed by or under the Excise Act 1976;

"free zone" means any part of Malaysia declared under the provisions of subsection (1) of section 3 to be a free commercial zone or a free industrial zone;

"goods" includes animals, birds, fish, plants and all kinds of movable property;

"Labuan" shall have the same meaning assigned to it under section 154 of the Customs Act 1967;

"Langkawi" shall have the same meaning assigned to it under section 163A of the Customs Act 1967;

"manufacture" means the conversion by manual or mechanical means of organic or inorganic material into a new product by changing the size, shape, composition, nature or quality of such materials and includes the assembly of parts into a piece of machinery or other products, but does not include the installation of machinery or equipment for the purpose of construction; and the term "manufacturing activity" with its grammatical variations and cognate expression shall be construed accordingly and, in relation to such term, it shall include any activity as determined by the Director-General to be manufacturing activity:

Provided that the Director-General may in his absolute discretion determine that the result of any manufacture or manufacturing activity is not a new product or article;

"Minister" means the Minister for the time being charged with the responsibility for finance;

"operation" means the operations set out under the activity approved by the Minister under the provisions of section 10;

"principal customs area" means any part of Malaysia but excluding a free zone, Labuan and Langkawi;

Act 64. "sales tax" means any tax imposed by or under the Sales Tax Act 1972;

"service" has the same meaning as assigned to the term "prescribed service" in the Service Tax Regulations 1975; *P.U. (A) 52175.*

"service tax" means any tax imposed by or under the Service Tax Act 1975; *Act 151.*

"value" in relation to imported goods, means the price which an importer would give for the goods on a purchase in the open market if the goods were delivered to him at the place of payment of customs duty and if freight, insurance, commission and all other costs, charges and expenses (except any customs duty and wharf handling, storage, removal mechanical equipment and other charges incurred in a free zone) incidental to the purchase and delivery at such place had been paid.

(2) For the purpose of the definition of the word "value", import means an import into a principal customs area from a free zone.

(3) The expressions "Director-General", "officer of customs", "senior officer of customs", "proper officer of customs" and "dutiabale goods" shall have the meaning assigned respectively to them in the Customs Act 1967.

3. (1) The Minister may, by notification in the Gazette, declare any area in Malaysia to be a free commercial zone or a free industrial zone and every such notification shall define the limits of such zone. *Declaration of free zones and appointment of Authority.*

(2) The Minister may appoint any statutory body established or constituted by or under a federal law or any department of the Government of Malaysia or with the consent of the State concerned, any statutory body established or constituted by or under a State law or any department of the Government of a State or, any company as the Authority to administer, maintain and operate any free zone which has been so declared under subsection (1).

PART II

ACTIVITIES PERMITTED WITHIN A FREE ZONE

Goods and services in a free zone.

4. Subject to this Act goods and services of any description, except those specifically and absolutely prohibited by law, may be brought into, produced, manufactured or provided in a free zone without payment of any customs duty, excise duty, sales tax or service tax.

Dealing with or disposal of goods in a free zone.

5. (1) Unless otherwise provided under this Act or any regulations made thereunder no person shall deal with or otherwise dispose of any goods in a free zone.

(2) Subject to the provisions of this Act, goods in a free zone may—

(a) be removed from such free zone for export or sent into another free zone either in original package or otherwise;

(b) unless otherwise directed by the Authority—

(i) be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed, or otherwise manipulated or be manufactured in accordance with the provisions of this Act, or

(ii) be destroyed;

(c) with the approval of the Authority, and subject to such conditions as may be imposed by it, be sent into any part of the principal customs area in the original package provided that the Authority shall consult the Director-General before movement of the goods is authorised.

(3) The provisions of this section shall not apply to goods excluded by order made under subsection (1) of section 6.

6. (1) The Minister may, by order published in the *Gazette*, exclude any goods or services from the provisions of section 4.

Exclusion of goods and services from free status.

(2) Notwithstanding anything to the contrary in any written law the provisions of the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972 and the Service Tax Act 1975 shall apply to the goods and services so excluded as if the free zone is a place within the principal customs area.

Act 235.
Act 176.
Act 64.
Act 151.

7. Unless otherwise provided under this Act or any regulations made thereunder or under any other written law—

Goods deemed to be exported from, or imported into, Malaysia.

(a) goods which are taken out from any part of the principal customs area and brought into a free zone shall be deemed to be exported from Malaysia; and

(b) goods which are brought out of a free zone and taken into any part of the principal customs area shall be deemed to be imported into Malaysia.

8. (1) Goods manufactured within a free industrial zone shall not be taken but of such zone except—

Goods manufactured in a free industrial zone.

(a) for export; or

(b) with the approval of the Authority and after consultation with the Director-General, and subject to such conditions as may be imposed, for transmission of the goods to a free commercial zone.

(2) No retail trade shall be conducted within a free industrial zone unless authorised by the Authority; and the Authority may in relation to such authorisation impose such conditions as it deems fit.

(3) The Authority shall consult the Director-General before authorising any retail to be conducted within a free industrial zone.

(4) Goods manufactured in a free industrial zone shall not, without the written permission of a proper officer of customs not below the rank of Assistant Director of Customs and Excise, be used or consumed in such zone.

Penalty.

9. Any person who contravenes the provisions of section 5 or 8 shall be guilty of an offence and shall, on conviction, be liable for the first offence to a fine of not less than ten times the amount of the customs or excise duty or tax or five thousand ringgit, whichever is the lesser amount, and of not more than twenty times the amount of the customs or excise duty or tax or five thousand ringgit whichever is the greater amount, and for a second or any subsequent offence to a fine of not less than twenty times the customs or excise duty or tax or ten thousand ringgit whichever is the lesser amount and of not more than forty times the customs or excise duty or tax or ten thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that when the value of the goods cannot be ascertained the penalty may amount to a fine not exceeding five thousand ringgit.

Activity.

10. (1) With the approval of the Minister—

(a) there may be carried out in a free commercial zone the activities specified in the First Schedule;

(b) there may be carried out in a free industrial zone the manufacturing activities specified in the Second Schedule.

(2) The Minister may, from time to time, by notification in the *Gazette* add to, alter or amend the First and the Second Schedules.

(3) Subject to section 8, no commercial activity shall be allowed in a free industrial zone.

11. (1) Subject to this Act goods of any description which would be used directly for the manufacture of other goods and are approved by the Minister or goods manufactured in any part of the principal customs area which are meant for export may be brought into a free industrial zone.

Goods permitted into a free industrial zone.

(2) No other goods except those referred to in subsection (1) shall be allowed to be brought into a free industrial zone.

12. (1) Subject to subsection (2) goods of any description may be brought into a free commercial zone for retail trade or otherwise.

Goods permitted into a free commercial zone.

(2) The Minister may, by order, prohibit any goods or class of goods from being taken into a free commercial zone.

PART III

SPECIFIC FUNCTIONS OF AUTHORITY

13. (1) The Minister may require the Authority to provide and maintain in a free zone such facilities as he may consider necessary for the proper and efficient functioning of such zone.

Authority to provide facilities.

(2) The Minister may give to the Authority such directions as he may consider necessary for the proper functioning of a free zone or for the purpose of protecting revenue; and the Authority shall comply with such directions.

(3) The Authority shall provide adequate facilities for officers of customs whose duties may require their presence within or at the perimeter of a free zone; and the Authority shall permit customs offices to be established in a free zone—

(a) to enable the Director-General to make such arrangements as he deems necessary to ensure the proper supervision of goods taken out from the free zone; and

(b) for such purpose as may be considered necessary by the Minister for the better administration of the provisions of this Act.

(4) The Authority shall provide adequate enclosures to segregate a free zone from the principal customs area for the protection of revenue together with suitable provisions for the movement of persons, conveyances, vessels and goods entering or leaving a free zone.

Authority may permit erection of private buildings, etc.

14. (1) The Authority may permit any person to erect such buildings and other structures within a free industrial zone as may be required.

(2) The Authority may, after consulting the Director-General, lease to or allow any person to take, hold or enjoy movable and immovable property of every description in a free industrial zone upon such terms and conditions and for such period as the Authority may determine.

Entry and residence in a free industrial zone.

15. (1) Subject to this Act no person shall enter or reside within a free industrial zone without the permission of the Authority.

(2) Any person who contravenes the provision of subsection (1) shall be guilty of an offence under this Act.

Exclusion of certain goods, etc

16. (1) The Authority may in its discretion order the exclusion or removal from a free industrial zone of any goods, or the discontinuance of any activity or operations, which in its opinion are dangerous or prejudicial to the public interest, health or safety.

(2) An order by the Authority as to the removal or exclusion of any goods, which in the opinion of the Authority are dangerous or prejudicial to public safety, shall, notwithstanding an appeal to the Minister, be complied with immediately; but an order as to the discontinuance of activities or operations shall not take effect, if an appeal has been made to the Minister, until the determination of the appeal in favour of the Authority.

(3) The decision of the Minister shall be final and not be subject to review in any court.

17. (1) The Authority shall prescribe the form and manner of keeping the accounts of a free industrial zone. Annual reports and accounts.

(2) The Authority if so directed by the Minister shall present to him annually and at such other times as the Minister may prescribe, reports containing a - full statement of all activities, operations, receipts and expenditure and such other information in respect of such zone as the Minister may require.

PART IV

OFFENCES, PENALTIES, SEARCH, SEIZURE, ARREST AND PROVISIONS AS TO TRIALS AND PROCEEDINGS

18. Every person required by a proper officer of customs to give information or to produce documents on any subject which it is such officer's duty to enquire into and which it is in such person's power to give or produce shall be bound to give such information or to produce such documents. Persons bound to give information.

19. Every omission or neglect to comply with, and every act done or attempted to be done contrary to the provisions of this Act or any regulations made thereunder shall be an offence and in respect of any such offence for which no penalty is expressly provided, the offender shall be liable on conviction to a fine not exceeding five thousand ringgit. Penalty for offences not otherwise provided for.

20. Whoever attempts to commit any offence punishable under this Act or any regulations made thereunder or abets the commission of such offence shall be punished with the punishment provided for such offence. Attempts and abetments.

Issue of
search
warrant.

Act 235.
Act 176.
Act 64.
Act 151.

21. Whenever it appears to any Magistrate on information and after such enquiry as he may think necessary, that there is reasonable cause to believe that in any shop, warehouse or other building or place in a free zone, there are concealed or deposited any goods in respect of which an offence under the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975 or this Act or any regulations made thereunder had been committed, such Magistrate may issue' a warrant authorising an officer of customs, named therein, by day or by night and with or without assistance—

- (a) to enter such shop, warehouse or other building or place and there to search for and seize any goods in respect of which there is reason to believe that the offence aforesaid has been committed, and any book or document which may reasonably be believed to have a bearing on the case;
- (b) to arrest any person or persons being in such shop, warehouse, building or place, in possession of any goods aforesaid found, or whom such officer may reasonably suspect to have concealed or deposited such goods;
- (c) to break open, if necessary, any door of such shop, warehouse, building or place and enter thereinto;
- (d) to forcibly enter, if necessary, such place and every part thereof;
- (e) to remove by force any obstruction to such entry, search, seizure and removal as he is empowered to effect; and
- (f) detain any person found in such place until such place has been searched.

When search
may be made
without
warrant.

22. Whenever it appears to any senior officer of customs that there is reasonable cause to believe that in any shop, warehouse or other building or place in a free zone, there are concealed or deposited any goods in

respect of which an offence under the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975 or this Act or any regulations made thereunder has been committed, and if he has reasonable grounds for believing that by reason of any delay in obtaining a search warrant under section 21 such goods or any book or document, which may reasonably be believed to have a bearing on the case are likely to be removed, such officer may exercise in, upon and in respect of such shop, warehouse or other building or place all the powers mentioned in the said section 21 in as full and ample a manner as if he were authorised so to do by warrant issued under that section.

23. (1) Any officer of customs may stop and examine any vehicle in a free zone for the purpose of ascertaining whether any goods which may form the subject of an offence under the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975 or this Act or under any regulations made thereunder are contained therein, and the person in control or in charge of such vehicle shall if required so to do by such officer stop such vehicle and allow such officer to examine the same or move the vehicle to another place for examination, and shall not proceed until permission to do so has been given by such officer.

Officers of customs may stop and search conveyances.

(2) The person in control or in charge of any vehicle stopped for examination under subsection (1) shall if so requested by the officer of customs open all parts of the vehicle for examination by such officer and take all measures necessary to enable such examination as such officer considers necessary to be made.

24. Any proper officer of customs may in a free zone examine any goods which are being taken into or being removed from a free zone or intended to be taken into or removed from a free zone and for the purpose of such examination direct the same to be brought to a customs office or a customs station and may open any package or receptacle.

Power to open packages and examine goods.

Search of persons entering or leaving a free zone.

25. Any person landing, or being about to land, or having recently landed in a free zone, from any vessel or aircraft, whether for the purpose of landing or otherwise, or entering or having recently entered a free zone by road or railway or leaving or about to leave a free zone in any vessel or aircraft, or by road or railway shall, if so requested by any proper officer of customs either permit his person, goods and baggage to be searched by such officer, or together with such goods and baggage accompany such officer to a customs office or customs station or police station and there permit his person, goods and baggage to be searched by an officer of customs:

Provided that—

- (a) any person requesting that his person be searched in the presence of a senior officer of customs shall not be searched except in the presence of and under the supervision of such officer, and such person may be detained until the arrival of such officer or taken into any customs office or customs station or police station where such officer may be found;
- (b) the goods and baggage of any person who requests to be present when they are searched and so present himself within a reasonable time shall not be searched except in his presence; and
- (c) no female shall be searched except by a female officer of customs or police officer.

Seizure of goods subject of an offence.

26. (1) All goods in respect of which there has been, or there is a reasonable cause to believe that there has been committed any offence against, or any breach of, the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975 or this Act or any regulations made thereunder or any contravention of any restriction or condition subject to which any licence, permit or authorisation has been granted under

any such law, together with any receptacle, baggage, package, vehicle, vessel (not exceeding one hundred and eighty two nett registered tonnes), or aircraft other than an aircraft engaged in international carriage, in which the same may be found or which is used in connection with such offence, breach or contravention, and any book or document which may be reasonably believed to have a bearing on the case, may be seized by any officer of customs in a free zone.

(2) All such goods and such receptacles, baggages, packages, vehicles, vessels or aircrafts shall, as soon as is practicable, be delivered into the care of a proper officer of customs whose duty it is to receive the same.

(3) Whenever any goods, receptacle, package, baggage, vehicle, vessel or aircraft is seized under this Act, the officer effecting the seizure shall forthwith give to the owner thereof, if known, notice in writing of such seizure and the reasons therefor, either by delivering such notice to him personally or by post at his place of abode, if known:

Provided that such notice shall not be required to be given where such seizure is made on the person or in the presence of the offender or the owner or his agents, and, in the case of a vessel or an aircraft in the presence of the master or pilot, as the case may be.

(4) The provisions of this section relating to the seizure of goods shall apply to all the contents of any package or receptacle seized and to any article used to conceal the same.

(5) The provisions of this section relating to the seizure of any vessel or aircraft shall apply also to tackles, equipments and, furnishings of such vessel or aircraft.

(6) The provisions of this section relating to the seizure of conveyances shall apply to all equipments thereof.

Return or disposal of movable property.

27. (1) Where any movable property has been seized under this Act, a senior officer of customs may, at his discretion—

- (a) temporarily return the movable property to the owner or to the person from whose possession, custody or control it was seized, or to such person as the senior officer of customs may consider entitled thereto, subject to such terms and conditions as may be imposed and, in any case, subject to sufficient security being furnished to the satisfaction of the senior officer of customs that the movable property shall be surrendered to a senior officer of customs on demand and that the said terms and conditions, if any, shall be complied with; or
- (b) return the movable property to the owner or to the person from whose possession, custody or control it was seized, or to such person as the senior officer of customs may consider entitled thereto, with liberty for the person to whom the movable property is so returned to dispose of the same, such return being subject to security being furnished to the satisfaction of the senior officer of customs in an amount not less than an amount which, in the opinion of the senior officer of customs, represents—
 - (i) the open market value of such property on the date on which it is so returned;
 - (ii) the customs duty payable in respect thereof; and
 - (iii) any tax payable in respect thereof under any written law,

for the payment of the amount so secured to the Director-General in the event of the court making an order for the forfeiture of such amount under section 39; or

(c) sell or destroy the movable property, as appropriate in the circumstances, where it is a living creature or where, in the opinion of the senior officer of customs, it is of a perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where it is so sold, he shall hold the proceeds of sale pending the result of any prosecution or claim and in relation to such proceeds of sale to abide by the outcome of such prosecution or claim.

(2) Any person who—

(a) fails to surrender on demand to a senior officer of customs the movable property temporarily returned to him under paragraph (a) of subsection (1); or

(b) fails to comply with or contravenes any of the terms or conditions imposed under paragraph (a) of subsection (1),

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand ringgit or to both.

(3) The criminal liability of any person under subsection (2) shall be in addition to any other liability that the said person or any other person may incur under the terms and conditions relating to the return of the movable property under paragraph (a) of subsection (1).

(4) The provisions of subsection (2) shall not apply to such person, if any, who is the guarantor or surety of the person to whom the property is returned under paragraph (a) of subsection (1).

(5) The Minister may, from time to time, either generally or in any particular case or class of cases, give such direction to the Director-General as he may deem

necessary or expedient with regard to the exercise of the powers conferred on a senior officer of customs under subsection (1).

(6) No person shall be entitled to maintain any action on account of any act done or any decision taken by or on behalf of the Minister or by or on behalf of a senior officer of customs under this section, and no court shall have any jurisdiction to entertain any such action.

Powers of arrest.

28. Any officer of customs may arrest in a free zone without warrant—

- (a) any person found committing or attempting to commit, or employing or aiding any person to commit, or abetting the commission of an offence against this Act or any regulations made thereunder;
- (b) any person whom he may reasonably suspect to have in his possession any goods liable to seizure under the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975, or this Act or any regulations made thereunder; or
- (c) any person against whom a reasonable suspicion exists that he had committed an offence against the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975, or this Act or any regulations made thereunder,

and may search, or cause to be searched, any person so arrested:

Provided that no female shall be searched except by a female officer of customs or police officer.

Provisions relating to arrest without warrant.

29. (1) An officer of customs making an arrest without warrant shall, without unnecessary delay and subject to the provisions of this Act, as to bail or previous release, take or send the person arrested before a Magistrates' Court.

(2) No officer of customs shall detain in custody a person arrested without a warrant for a longer period than under the circumstances of the case is reasonable; and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrates' Court.

(3) No person who has been arrested by an officer of customs shall be released except on his own bond or on bail or under a special order in writing by a Magistrate or a senior officer of customs.

30. Prosecution in respect of offences committed under— Who may prosecute.

(a) sections 5 and 8 may be conducted by a senior officer of customs or by any officer of customs specially authorised in writing in that behalf by the Director-General; and

(b) any other provisions of this Act or any regulations made thereunder may be conducted by an officer of the Authority, specially or generally authorised in writing in that behalf by the Minister.

31. (1) Except as hereinafter provided, no witness in any civil or criminal proceedings conducted pursuant to this Act shall be obliged or permitted to disclose the name or address of an informer or the substance of the information received from him or to state any matter which might lead to his discovery. Protection of informers from discovery.

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

(3) If on the trial for any offence against this Act or any regulations made thereunder the court, after full enquiry 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 proceedings the court is of the opinion that justice cannot be fully done between the parties thereto 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 enquiry, and require full disclosure, concerning the informer.

Offence by
bodies of
persons and
by servants
and agents.

32. (1) Where an offence against this Act or any regulations made thereunder has been committed by a company, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the company, society or other body of persons, a partner or manager of the firm, or such other person purporting to act in such capacity or such person having charge or control of the company, firm, society or other body of persons shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he has 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.

(2) Where any person would be liable under this Act to any punishment, penalty or forfeiture for any act, omission, neglect or default he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any clerk, servant or agent, or of the clerk or servant of such agent provided that such act, omission, neglect or default was committed by such clerk or servant in the course of his employment or by such agent when acting on behalf of such person or by the clerk or servant of such agent when acting in the course of his employment in such circumstances that had such act, omission, neglect or default been committed by the agent his principal would have been liable under this section.

Com-
pounding
of offences.

33. (1) Any senior officer of customs may compound any offence under this Act which is prescribed to be a compoundable offence by requiring the person

reasonably suspected of having committed an offence to pay a sum of money not exceeding five thousand ringgit.

(2) On payment of such sum of money the person reasonably suspected of having committed an offence, if he is in custody, shall be discharged, and any property seized shall be released and no further proceedings shall be taken against such person or property, unless the property consists of goods the import of which into Malaysia is absolutely or conditionally prohibited under any written law and no import licence has been issued in which case such goods shall be forfeited.

34. The Government or the Authority, as the case may be, shall not be liable to make good any loss sustained in respect of any goods by fire, theft, damage or any other cause while such goods are in any customs warehouse or in the lawful custody or control of any officer of customs or an employee of the Authority unless such loss is caused by the wilful neglect, or default of an officer of customs or of a person employed by the Government or the Authority.

Protection of Government from liability.

35. No officer of customs or other person employed by the Government in connection with the customs shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of such officer or any other officer of customs or person employed in connection with customs unless such loss is caused by his wilful neglect or default.

Protection officers of customs from liability.

36. No person shall in any proceedings before any court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred by this Act be entitled to the cost of such proceedings or to any damages or other relief except an order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.

No costs or damages shall be recoverable unless seizure is without reasonable or probable cause.

Conviction
under other
written law.

37. Nothing in this Act shall prevent any person from being prosecuted under any written law for any act, omission, neglect or default which constitutes an offence under this Act or any regulations made thereunder, or from being liable under that written law to any punishment or penalty higher or otherwise than that provided by this Act or any regulations made thereunder.

Goods liable
to forfeiture.

38. All goods seized under this Act shall be liable to forfeiture.

Court to
order
forfeiture and
disposal of
goods seized.

39. (1) An order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this Act shall be made by the Court before which the prosecution with regard thereto has been held, and an order for the forfeiture of goods shall be made if it is proved to the satisfaction of the Court that an offence against this Act or any regulations made thereunder has been committed and that the goods were the subject matter of, or were used in the commission of, the offence notwithstanding that no person may have been convicted of such offence.

(2) The Court shall order the forfeiture of,—

- (a) in the case of goods returned under paragraph (b) of subsection (1) of section 27 and subsequently disposed of by the owner or by the person to whom it was returned, the amount secured under that paragraph;
- (b) in the case of goods sold pursuant to paragraph (c) of subsection (1) of section 27, the amount realised by such sale,

if it is proved to the satisfaction of the Court that an offence against this Act or any regulations made thereunder has been committed and that the movable property in respect of which the amount was secured or realised by sale, as the case may be, was the subject

matter of or, was used in the commission of, the offence notwithstanding that no person may have been convicted of such offence.

(3) All things forfeited shall be delivered to a proper officer of customs and shall be disposed of in accordance with the directions of the Director-General,

40. (1) If there be no prosecution with regard to any goods seized under this Act, such goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim thereto is made before that date in the manner hereinafter set forth.

Goods seized in respect of which there is no prosecution.

(2) Any person asserting that he is the owner of such goods and that they are not liable to forfeiture may personally or by his agent authorised in writing give written notice to a senior officer of customs that he claims the same.

(3) On receipt of such notice the senior officer of customs shall refer the claim to the Director-General who may direct that such goods be released or may direct such senior officer of customs, by information in the prescribed form, to refer the matter to the Magistrate of the First Class for his decision.

(4) The Magistrate of the First Class shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the Magistrate shall proceed to the examination of the matter and, on proof that an offence against this Act has been committed and that such goods were the subject matter, or used in the commission, of such offence, shall order the same to be forfeited, or may in the absence of such proof order their release.

FIRST SCHEDULE

[Section 10 (1) (a)]

- | (1)
Name of Free Commercial Zone | (2)
Activities |
|---|------------------------------|
| 1. <i>Mukim of Plentong District of Johor Bahru:</i> | |
| All that land situated in the Mukim of Plentong in the District of Johor Bahru, bounded by the grey line as shown in the <i>Gazette</i> Plan 1709 deposited in the Office of the Director of Survey, Johor. | Commercial excluding trading |
| 2. <i>Duty Free Area at Pengkalan Kubor:</i> | Trading |
| Fenced area which includes Lot No. 752 to 759, 761 to 784, the market area and such other areas therein, of Mukim Pengkalan Kubor, in the district of Tumpat, Kelantan. | |
| 3. <i>Bukit Kayu Hitam:</i> | Trading |
| Lot No. (Pt. 1443) Town of Bukit Kayu Hitam, Mukim of Sungai Laka, District of Kubang Pasu, Kedah. | |

SECOND SCHEDULE

[Section 10 (1) (b)]

- | (1)
Name of Free Industrial Zone | (2)
Activities |
|---|-------------------|
| 1. <i>Mukim Plentong, Johor Bahru:</i> | Manufacturing |
| All that land situated in the Mukim of Plentong in the District of Johor Bahru, bounded by the grey line as shown in the <i>Gazette</i> Plan 1709 deposited in the Office of the Director of Survey, Johor. | |

- | (1)
Name of Free Industrial Zone | (2)
Activities |
|--|-------------------|
| <p>2. <i>Mukim of Pringgit, Central District of Melaka:</i></p> <p>All that land situated in the Mukim of Pringgit, in the Central District of Melaka, bounded by the grey line as shown in the <i>Gazette</i> Plan FG 109 deposited in the Office of the Director of Survey, Melaka.</p> | Manufacturing |
| <p>3. <i>Mukim Tanjung Kling, Melaka:</i></p> <p>All that land situated in the Mukim of Tanjung Kling, in the Central District of Melaka, bounded by the grey line as shown in the <i>Gazette</i> Plan PG 103 deposited in the Office of the Director of Survey, Melaka.</p> | Manufacturing. |
| <p>4. <i>Mukim of Pringgit and Bukit Baru, in Central District of Melaka:</i></p> <p>All that land situated in the Mukim of Pringgit and Bukit Baru, in the Central District of Melaka, bounded by the grey line as shown in the <i>Gazette</i> Plan PG 108 deposited in the Office of the Director of Survey, Melaka.</p> | Manufacturing. |
| <p>5. <i>Mukim Hulu Kinta in the District of Kinta, Perak:</i></p> <p>All that land situated in the Mukim of Ulu Kinta in the District of Kinta, bounded by the grey line as shown in the <i>Gazette</i> Plan 870 deposited in the Office of the Director of Survey, Perak.</p> | Manufacturing. |
| <p>6. <i>Telok Panglima Garang in the District of Kuala Langat, Selangor:</i></p> <p>All that land situated in the Mukim of Telok Panglima Garang, in the District of Kuala</p> | Manufacturing. |

- | (1) | (2) |
|--|----------------------|
| Name of Free Industrial Zone | Activities |
| <p>Langat, Selangor, bounded by the grey line as shown in the <i>Gazette</i> Flan 440 deposited in the Office of the Director of Survey, Selangor.</p> | |
| <p>7. <i>Mukim of Ulu Klang District of Gombak Selangor:</i></p> <p>All that land situated in the Mukim of Ulu Klang, in the District of Gombak, Selangor bounded by the grey line as shown in the <i>Gazette</i> Plan 439 deposited in the Office of the Director of Survey, Selangor.</p> | <p>Manufacturing</p> |
| <p>8. <i>Mukim Damansara, District of Klang, Selangor:</i></p> <p>AH that land situated in the Mukim of Damansara, in the District of Klang, Selangor bounded by the grey line as shown in the <i>Gazette</i> Plan 375 deposited in the Office of the Director of Survey, Selangor.</p> | <p>Manufacturing</p> |
| <p>9. <i>Prat, Central District of Seberang Prai, Mukim 1, Penang:</i></p> <p>All that land bounded by the grey line as shown in the <i>Gazette</i> Plan 290 deposited in the Office of the Director of Survey, Penang.</p> | <p>Manufacturing</p> |
| <p>10. <i>Bayan Lepas, South West District, Mukim 12, Penang:</i></p> <p>(i) AH that land bounded by the grey line as shown in the <i>Gazette</i> Plan 138 deposited in the Office of the Director of Survey, Penang;</p> <p>(ii) AH that land bounded by the grey land as shown in the <i>Gazette</i> Plan 281 deposited in the Office of the Director of Survey, Penang;</p> | <p>Manufacturing</p> |

(1)	(2)
Name of Free Industrial Zone	Activities
(iii)	All that land bounded by grey line as shown in the <i>Gazette</i> Plan 289 deposited in the Office of the Director of Survey, Penang

THIRD SCHEDULE

(Section 49)

AMENDMENTS AND REPEAL

(1)	(2)
Acts	Amendments
Customs Act 1967	<p>Section 2 is amended by substituting for subsection (1A) the following new subsection(1A):</p> <p style="padding-left: 40px;">"(1A) For the purposes of this Act (other than section 31), a free zone shall be deemed to be a place outside Malaysia.</p> <p style="padding-left: 40px;">In this subsection, the expression "free zone" has the meaning assigned to it under section 2 of the Free Zones Act 1990."</p>
Excise Act 1976 "	<p>Subsection (1) of section 2 is amended by substituting for the definition of "free Trade zone" the following new definition:</p> <p style="padding-left: 40px;">" "free zone" has the meaning assigned to it under section 2 of the Free Zones Act 1990 and for the purposes of this Act a free zone shall be deemed to be a place outside Malaysia;"</p>
Sales Tax Act 1972	<p>Section 2A is amended by substituting</p> <p>2A:</p> <p style="padding-left: 40px;">"2A. For the purpose of this Act, a free zone shall be deemed to be a place outside Malaysia.</p>

(1) Acts	(2) Amendments
	<p>In this section, the expression "free zone" has the meaning assigned to it under section 2 of the Free Zones Act 1990."</p>
Service Tax Act 1975	<p>Insert immediately after section 2 the following new section 2A:</p> <p style="padding-left: 40px;">"2A. For the purposes of this Act, a free zone shall be deemed to be a place outside Malaysia."</p> <p style="padding-left: 40px;">In this section, the expression "free zone" has the same meaning assigned to it under section 2 of the Free Zones Act 1990."</p>
Promotion of Investments Act 1986	<p>(a) Subsection (5) of section 36 is amended by substituting the words "Free Industrial Zone" for the words "Free Trade Zone" appearing therein; and</p> <p>(b) subsection (3) of section 36A is amended by substituting the words "Free Industrial Zone" for the words "Free Trade Zone" appearing therein.</p>
Free Trade Zones Act 1971	Repeal the whole.

EXPLANATORY STATEMENT

This Bill seeks to introduce a new law—

- (a) for the establishment of free zones in Malaysia for the purpose of trade and manufacturing industries;
- (b) to provide appropriate legal provisions for Malaysia to exploit to the best of its ability the economic potentials of duty free zones for the purpose of trade and industrial development including tourism; and
- (c) to replace the existing Free Trade Zone Act 1971 which has been found to be inadequate and incapable of supporting the greater needs of the present economic development.

2. *Part I* seeks to provide for preliminary matters.
3. *Clause 1* provides for the short title of the Bill and also provides that the Bill shall come into force on the date appointed by the Minister by notification in the *Gazette*. The Minister may prescribe different dates for the coming into force of different provisions of the Bill.
4. *Clause 2* defines certain words and expressions used in the Bill.
5. *Clause 3* empowers the Minister to declare by notification in the *Gazette* any area as a free commercial zone or a free industrial zone and to define the limits of such zone. This *clause* also empowers the Minister to appoint any federal or state department, any statutory authority established by a state law or any company as the Authority to administer, maintain and operate a free zone.
6. *Part II* seeks to provide for the activities permitted to be carried out within a free zone.
7. *Clause 4* seeks to provide that subject to the provisions of the Bill, goods and services of any description may be brought into, produced, manufactured or provided in a free zone without payment of any customs duty, excise duty, sales tax or service tax, except goods and services specifically and absolutely prohibited by law,
8. *Clause 5* deals with the manner in which goods in a free zone should be dealt with.
9. *Clause 6* empowers the Minister to exclude any goods or services from the provisions of *clause 4* of this Bill, and to provide for the application of laws mentioned in *clause 6 (2)* in relation to such goods.
10. *Clause 7* seeks to provide that goods taken from a free zone and brought into any part of principal customs area or vice versa shall be deemed to be imported into and exported from Malaysia respectively.
11. *Clause 8* deals with goods manufactured in a free industrial zone.
12. *Clause 9* seeks to provide for the penalty for offences committed against this Bill.

13. *Clause 10* seeks to provide the types of activity and operation that may be permitted by the Minister to be carried out in any free zone.

14. *Clauses 11 and 12* seek to provide for goods permitted into a free industrial zone and a free commercial zone respectively.

15. *Part HI* seeks to provide for the specific functions of the Authority that manages and operates a free zone.

16. *Clause 13* gives the Minister power to require the Authority to provide and maintain facilities necessary for the proper and efficient functioning of a free zone. This *clause* also gives the Minister power to issue directions to the Authority which the Minister considers necessary for the proper functioning of a free zone and for the purpose of protecting revenue. In addition this *clause* imposes a duty on the Authority to provide facilities to the officers of customs for proper supervisions of goods taken into or out of a free zone and to provide adequate enclosures to segregate a free zone from the principal customs area for the protection of revenue as well as for the control of movement of persons, conveyances, vessels and goods entering or leaving a free zone.

17. *Clause 14* deals with the erection of buildings and other structures in a free industrial zone as well as the leasing, taking, holding or enjoyment of movable and immovable property in such free zone.

18. *Clause 15* prohibits the entry into or residence in a free industrial zone.

19. *Clause 16* empowers the Authority, in its discretion, to order the exclusion or removal of any goods or discontinuance of any activity or operation which is dangerous or prejudicial to the public interest, health or safety, from a free industrial zone. This *clause* seeks to provide that the order made by the Authority shall take effect immediately except an order to discontinue any operation which shall take effect only after the Minister has decided the appeal, if any, in favour of the Authority. This *clause* further provides that the decision of the Minister shall be final and not be subject to review by any court.

20. *Clause 17* deals with the form and manner to be prescribed by the Authority for the keeping of accounts of a free industrial zone and the submission of annual report to the Minister by the Authority.

21. *Part IV* seeks to provide for offences, penalties search, seizure, arrests and provisions as to trials and proceedings under the Bill.
22. *Clause 18* seeks to provide that person who is within his power to give information or to produce documents on any matter inquired into by a proper officer of customs shall be bound to give the information or to produce the documents.
23. *Clause 19* seeks to provide the penalty for offences for which no other penalties are provided in the Bill.
24. *Clause 20* seeks to provide the punishment for any attempt to commit, or abetment of the commission of, an offence under the proposed Act. The punishment provided under this *clause* is the same as the punishment for the principal offence.
25. *Clause 21* provides for search with warrant of premises reasonably suspected to be used to conceal goods in commission of an offence.
26. *Clause 22* empowers any senior customs officer to conduct a search without warrant in free zone if he has reasonable cause to believe that in any shop, warehouse or other building or place is concealed or deposited any goods in respect of which an offence under the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975 or this Act or any regulations made under the mentioned laws has been committed.
27. *Clause 23* empowers any officer of customs to stop and examine or search any vehicle in free zone for the purpose of ascertaining whether the vehicle contained any goods which contravene the Customs Act 1967, the Excise Act 1976, the Sales Tax Act 1972, the Service Tax Act 1975 or this Bill.
28. *Clause 24* empowers any proper officer of customs in free zone to examine any goods leaving or entering such free zone and to open any package or receptacle for the purpose of such examination.
29. *Clause 25* empowers any proper officer of customs to search the person or goods and baggages of anyone entering or leaving a free zone.
30. *Clause 26* deals with the seizure of goods and documents which are the subject of an offence and the manner in which the goods are to be dealt with.
31. *Clause 27* deals with the powers of a senior customs officer to order the temporary return or disposal of goods seized under this Bill.

32. *Clause 28* and *Clause 29* seek to provide officers of customs with powers to effect arrest without warrant in a free zone and the manner in which the arrest is to be dealt with respectively.

33. *Clause 30* seeks to provide the power to prosecute under the Bill.

34. *Clause 31* seeks to protect informers from being discovered or disclosed in any civil or criminal proceedings and at the same time this *clause* also provides the safeguard by giving the court a discretion to order disclosure of the identity of the informer in order to do justice in any particular case.

35. *Clause 32* seeks to provide for offences committed by a company, a partnership, a society, a body of persons and by servant or agents of such company, partnership, society or body of person. This *clause* also provides that the principal shall be liable for the offences committed by its servant or agent.

36. *Clause 33* seeks to provide for the compounding of offences by a senior officer of customs.

37. *Clause 34* seeks to protect the Government and the Authority from liability for any loss in respect of any goods caused by fire, theft or damage while such goods are kept in customs warehouse or in lawful control or custody of any officer of customs or an employee of the Authority unless the officer of customs or the employee of the Authority as the case may be is at fault or negligent.

38. *Clause 35* seeks to protect officers of customs from liability for any loss or damage to goods while those goods are kept in customs warehouse or in lawful custody or control of the officers of customs unless the loss or damage is caused by the negligence or default of the officers of customs.

39. *Clause 36* seeks to prohibit any claim for costs or damages in any proceedings in respect of goods seized under the Bill except in the case where the seizure was made without reasonable or probable cause.

40. *Clause 37* seeks to provide for the prosecution and punishment of offenders under any other written law for an act, omission, or neglect or default which constitutes an offence under this Bill,

41. *Clause 38* seeks to provide that goods liable to seizure under this Bill shall also be liable to forfeiture.

42. *Clause 39* deals with the power of the court to order the disposal, forfeiture or release of goods seized under the Bill and which formed the subject matter of an offence under this Bill or to make an order for forfeiture of the amount secured under *clause 27 (1) (b)* in respect of such goods.
43. *Clause 40* seeks to deal with the manner in which goods seized under the Bill but of which there is no prosecution. In particular this *clause* provides for an inquiry by the Magistrate of the First Class with a view to order the forfeiture or release of such goods.
44. *Clause 41* provides that if an application is made to the Minister in respect of goods seized and forfeited under the Bill, the Minister may order the goods to be returned to the owner or any other person entitled to the goods. This *clause* however is subject to a proviso. That is the application must be made within one month from the date of forfeiture.
45. *Part V* provides for miscellaneous provisions.
46. *Clause 42* provides that vessels tied alongside the wharf of a free zone shall be deemed to be within the free zone.
47. *Clause 43* empowers a proper officer of customs to take samples of goods for the purpose of ascertaining its customs duty.
48. *Clause 44* seeks to provide that the members of the Authority and its employees are deemed to the public servants for the purpose of the Penal Code.
49. *Clause 45* empowers the Director-General of Customs to reward any officer of customs or any other persons for services rendered in connection with the detection of smuggling or other offences under the Bill.
50. *Clause 46* provides that an appeal shall lie to the Minister by any person aggrieved by the decision of the Director-General of Customs or the Authority except in cases where the decision appealed from are decisions made at absolute discretion of the Authority or the Director-General.
51. *Clause 47* empowers the Minister to make regulations under this Bill.
52. *Clause 48* empowers the Minister to delegate his powers under this Bill except his powers under *clause 10 (2)* and his powers to make regulations under *clause 47*.

53. *Clause 49* provides for the repeal of the Free Trade Zone Act 1971 and consequential amendments to the written laws mentioned in the Third Schedule.

54. *Clause 50* seeks to provide that the existing Free Trade Zones declared under the repealed Free Trade Zone Act 1971 shall be deemed to be Free Industrial Zones under this Bill.

55. *Clause 51* provides that the Minister may revoke any order or declaration made under previous written law relating to Free Trade Zones and under this Bill.

56. The First Schedule to this Bill lists out the manufacturing activities approved by the Minister to be carried in a Free Commercial Zone named therein.

57. The Second Schedule to this Bill lists out the activities approved by the Minister to be carried in a Free Industrial Zone named therein.

58. The Third Schedule to this Bill sets out the consequential amendments and the repeal mentioned under *clause 53* of the Bill.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure. [PN. (IP) 1496.]

