

MALAYSIAN BIOFUEL INDUSTRY BILL 2006

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FIRST SCHEDULE SECOND

SCHEDULE

A BILL

i n t i t u l e d

An Act to provide for the mandatory use of biofuel, licensing of activities relating to biofuel and for matters connected therewith and incidental thereto.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Malaysian Biofuel Industry Act 2006.

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

Interpretation

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

"this Act" includes any subsidiary legislation made under this Act;

"biofuel" means any fuel, whether solid, liquid or gaseous, produced from biomass;

"biomass" means any biodegradable fraction of products, waste and residues from agriculture (including plant and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;

"prescribed" means prescribed by regulations made under this Act;

"sea" includes inland waters;

"licence" means a licence issued under section 8;

"Minister" means the Minister charged with the responsibility for biofuel;

"enforcement officer" means any person appointed under section 16;

"licensee" means the person to whom a licence is issued under section 8;

"conveyance" means any vehicle, vessel, ship, aircraft or any other mode of transport whether by air, sea or land;

"licensing authority" means the licensing authority referred to in section 6.

Prevailing law

3. (1) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to fuel.

(2) In the event of any conflict or inconsistency between the provisions of this Act and those of any other written law pertaining to biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel, the provisions of this Act shall prevail, to the extent of the conflict or inconsistency.

PART II

PRESCRIBED ACTIVITIES AND LICENSING

Prescribed activities

4. The Minister may prescribe—

- (a) the type of biofuel as specified in the First Schedule and its percentage by volume to be blended in any fuel; or

- (b) any activity in which the use of a biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel shall be made mandatory.

Requirement for licence

5. (1) No person shall —

- (a) commence to construct any biofuel plant or biofuel blending plant;
- (b) produce any biofuel;
- (c) blend any biofuel with any other fuel or biofuel;
- (d) export any biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel;
- (e) import any biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel;
- (f) transport any biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel connected with upstream activities;
- (g) store any biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel connected with upstream activities;
- (h) survey any biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel; or
- (i) test any biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel,

without a valid licence issued under this Act.

(2) For the purposes of subsection (1), "biofuel" refers to the biofuel as specified in the First Schedule.

(3) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Licensing authority

6. The person specified in the first column of the Second Schedule shall be the licensing authority in respect of the biofuel appearing in the corresponding second column.

Application for licence

7. (1) An application for a licence shall be made in writing to the licensing authority in the manner as may be prescribed.

(2) Every application under subsection (1) shall be accompanied by such document or information as may be prescribed.

(3) The licensing authority may in writing at any time after receiving the application and before it is determined, require the applicant to provide such additional document or information within the time specified by the licensing authority.

(4) If subsection (1), (2) or (3) is not complied with, the application for a licence 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.

Issue of licence

8. (1) Upon giving due consideration to the application made in accordance with section 7, the licensing authority may approve or refuse the application.

(2) Where an application for a licence is approved, the licence shall be issued upon payment of the prescribed fee.

(3) The licence may be issued subject to such conditions or restrictions as the licensing authority may think fit to impose.

Licence to be exhibited and produced

9. (1) A licensee shall exhibit his licence at all times at a conspicuous place at the premises where the business is carried out and shall produce such licence if required to do so by the licensing authority or any enforcement officer.

(2) A licensee who fails to exhibit or to produce his licence under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Transfer of licence

10. (1) No licence shall be transferable from a licensee to any person without the prior written approval of the licensing authority.

(2) A licensee who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

(3) The licensing authority 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 licensing authority 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 licensing authority.

Assignment of licence

11. (1) A licensee shall not assign any right, duty, liability or obligation under his licence to another person.

(2) A licensee who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Revocation or suspension of licence

12. (1) The licensing authority may revoke or suspend any licence if the licensing authority is satisfied that—

- (a) any of the provisions of this Act or any other written law or that any of the conditions of the licence has not been complied with;
- (b) the issuance of the licence was induced by a false representation of fact by or on behalf of the licensee;
- (c) the original purpose for which the licence was issued no longer exists; or
- (d) the licensee has ceased to carry on or operate any biofuel activity for which the licence is issued.

(2) Notwithstanding subsection (1), the licensing authority shall not revoke or suspend the licence on the ground of the breach mentioned in subsection (1) unless the licensing authority is satisfied, after giving the licensee an opportunity of making any representation in writing he may wish to make, that the licence should be revoked or suspended.

(3) Where a licence has been revoked or suspended, it shall have no effect from the date of revocation or during the period of suspension, as the case may be.

Appeals

13. (1) A person who is aggrieved —

- (a) by the refusal of the licensing authority to issue a licence;
or
- (b) by the revocation or suspension of his licence,

may, within thirty days after being informed in writing of the refusal, revocation or suspension, appeal in writing against such decision to the Minister.

(2) The Minister may, after considering an appeal made under subsection (1), confirm or set aside the decision appealed against, and the decision of the Minister shall be final.

(3) An appeal made under this section shall be accompanied by the prescribed fees.

Power of Minister to give directions

14. (1) The licensing authority shall be responsible to the Minister.

(2) The Minister may give general directions consistent with this Act to the licensing authority.

(3) The licensing authority shall give effect to all directions given under this section as soon as possible.

Powers of Minister to make regulations on licensing

15. (1) The Minister may make regulations for all or any of the following purposes:

- (a) prescribing the manner of applying for licences under this Act, the fees payable therefor, the conditions to be imposed and the power to limit the number of licences;
- (b) prescribing the procedures regarding revocation and suspension of licences; and
- (c) prescribing the procedures regarding appeals.

(2) Regulations made under subsection (1) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both for such offence.

PART III

POWERS RELATING TO ENFORCEMENT, SEIZURE, ARREST, ETC.

Appointment of enforcement officers

16. The Minister may in writing appoint such number of enforcement officers as may be necessary for the purpose of this Act.

Power of investigation

17. An enforcement officer shall have all the powers necessary to carry out an investigation under this Act.

Authority card

18. (1) There shall be issued to each enforcement officer an authority card to be signed by the Minister.

(2) Whenever such enforcement officer exercises any of the powers under this Act, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Power of arrest

19. (1) An enforcement officer may arrest without warrant any person —

- (a) found committing or attempting to commit or abetting the commission of an offence under this Act; or
- (b) whom the enforcement officer reasonably suspects of being engaged in committing or attempting to commit or abetting an offence under this Act.

(2) An enforcement officer making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt in accordance with the law relating to criminal procedure for the time being in force.

Search and seizure with warrant

20. (1) If it appears to a Magistrate, upon written information on oath and after such enquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

- (a) any premises has been used or are about to be used for; or
- (b) there is in any premises evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any enforcement officer named therein, at any reasonable time by day or by night and with or without assistance, to enter the premises and if need be by force.

(2) A warrant issued under subsection (1) may authorize the enforcement officer to —

- (a) search the premises for, and to seize or remove from the premises any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article that is reasonably believed to furnish evidence of the commission of such offence;
- (b) take samples of any fuel or thing found in the premises for the purposes of ascertaining, by testing or otherwise, whether the offence has been committed; and
- (c) make copies of or take extracts from any book, record, document or other article found in the premises.

(3) An enforcement officer entering any premises under this section may take with him such other persons and equipment as may appear to him to be necessary.

(4) An enforcement officer may, in the exercise of his powers under this section, if it is necessary so to do,—

- (a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises in order to effect entry into the premises;
- (b) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect under this section; and
- (c) detain any person found in the premises until the search has been completed.

(5) Where, by reason of its nature, size or amount, it is not practicable to remove any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this section, the enforcement officer shall, by any means, seal such fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article in the premises or container in which it is found.

(6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes the fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article under seal, or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding two years or to both.

Search and seizure without warrant

21. Whenever an enforcement officer has reasonable cause to believe that any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article in respect of which an offence under this Act has been committed is likely to be found in or on any place, premises, person or conveyance and that by reason of delay in obtaining a warrant under section 20 the object of the search may be frustrated, he may, without warrant, with such assistance and force as is necessary —

- (a) enter and search such place or premises;
- (b) stop and search such person or conveyance; and
- (c) seize any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article which may be found and may be evidence of the commission of such offence.

Power to enter premises

22. Notwithstanding sections 20 and 21, an enforcement officer may at any time enter any premises for the purpose of—

- (a) inspecting any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article as he considers necessary;
- (b) verifying the accuracy of records or statements or any information given to an enforcement officer; or
- (c) collecting samples of any fuel.

Access to computerized data

23. (1) Any enforcement officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, access shall be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data.

Seizure of thing, etc.

24. Without prejudice to subsection 20(2) and section 21, any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article that an enforcement officer reasonably suspects has been used or will be used in the commission of any offence under this Act may be seized and detained by the enforcement officer.

Power to stop, search and seize conveyances

25. (1) If an enforcement officer has reasonable cause to suspect that any conveyance is carrying any fuel, machinery, contrivance, equipment, book, record, document or other article in respect of which an offence under this Act is being or has been committed, he may stop and examine the conveyance and may, if on examination he has reasonable cause to believe that such conveyance is or has been used for the commission of such offence, seize such conveyance and any fuel, machinery, contrivance, equipment, book, record, document or other article found in the conveyance that is reasonably believed to furnish evidence of the commission of such offence.

(2) The person in control or in charge of the conveyance shall, if required to do so by the enforcement officer—

- (a) stop the conveyance and allow the enforcement officer to examine it; and
- (b) open all parts of the conveyance for examination and take all measures necessary to enable or facilitate the carrying out of such examination as the enforcement officer considers necessary.

(3) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding two years or to both.

List of things seized

26. (1) Where any seizure is made under this Act, the enforcement officer making the seizure shall prepare a list of the fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article seized and of the place in which it is found and shall sign the list.

(2) The list prepared in accordance with subsection (1) shall be delivered immediately to —

- (a) the occupant of the place or premises where the fuel, machinery, contrivance, equipment, book, record, document or other article seized is found; and
- (b) the person in control or in charge of the conveyance where the seizure is made under section 25.

(3) Where the seizure is made in or from any place or premises which is unoccupied, the enforcement officer shall whenever possible post a list of things seized conspicuously at or on the place or premises.

(4) Where the fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article is seized otherwise than in or from any place or premises, the enforcement officer making the seizure shall give a notice in writing of the seizure and the grounds of the seizure to the owner of the fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article seized by delivering a copy of such notice to the owner in person or by post at his place of business or residence.

(5) A notice under subsection (4) need not be given if the seizure is made in the presence or with the knowledge of the owner.

Temporary return of conveyance, etc.

27. (1) Where any conveyance, machinery, contrivance or equipment is seized under this Act, the court may temporarily return the conveyance, machinery, contrivance or equipment to the owner of the conveyance, machinery, contrivance or equipment or the person from whose possession, custody or control it was seized, subject to such terms and conditions as the court may impose,

and subject in any case to sufficient security being furnished to the satisfaction of the court that the conveyance, machinery, contrivance or equipment shall be surrendered to the court on demand and that such terms and conditions, if any, shall be complied with.

(2) Where any seized conveyance, machinery, contrivance or equipment is temporarily returned under subsection (1), a person who

- (a) fails, on demand, to surrender the conveyance, machinery, contrivance or equipment to the court; or
- (b) contravenes any of the terms or conditions imposed under subsection (1),

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding two years or to both.

Sale and disposal of seized fuel

28. (1) The enforcement officer may at any time direct that any fuel seized under this Act be sold and the proceeds of the sale be held while waiting for the result of any prosecution under this Act where

- (a) the fuel easily deteriorates in quality;
- (b) the custody of the fuel involves unreasonable expense and inconvenience;
- (c) there is a lack or absence of adequate or proper facilities for the storage of the fuel; or
- (d) the fuel is believed to cause an obstruction or to be a hazard to the public.

(2) Notwithstanding subsection (1), where an analyst appointed under section 38 certifies, or if the results of tests as certified by such analyst proves, that the fuel tested by him is contaminated, the enforcement officer may keep it in custody or, if no prosecution is instituted in respect of the fuel, cause it to be disposed of in the manner determined by the enforcement officer.

Power to require attendance of persons acquainted with case

29. (1) The enforcement officer making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as required.

(2) If any such person refuses to attend as required by an order made under subsection (1), the enforcement officer may report his refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.

Examination of persons acquainted with case

30. (1) An enforcement officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by the enforcement officer, but he 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 questions.

(4) The enforcement officer 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 shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after—

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

Admissibility of statements in evidence

31. (1) In any trial or inquiry by a court into an offence under this Act, any statement, whether the statement amounts to a confession or not, 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 an accused person to or in the hearing of an enforcement officer and whether or not interpreted to him by any other enforcement officer or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement under subsection (1) shall be admissible or used as provided for in that subsection 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 against the person proceeding from a person in authority and sufficient in the opinion of the court to give that person 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 proceedings against him.

(3) Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served with a notice in writing, which shall be explained to him, to the following effect:

"You have been arrested/informed that you may be prosecuted for(the possible offence under this Act). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done."

(4) Notwithstanding subsection (3), a statement by any person accused of any offence under this Act made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible thereafter.

(5) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.

(6) Where in any criminal proceedings against a person for an offence under this Act, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, may draw such inference from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(7) Nothing in subsection (6) shall in any criminal proceedings —

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence of it would be admissible apart from that subsection; or
- (b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.

Forfeiture of seized fuel, etc.

32. (1) Any fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized in exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture of the fuel or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article shall be made if it is proved to the satisfaction of the court that an offence under this

Act has been committed and that the fuel or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article was the subject matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(3) If there is no prosecution with regard to any fuel, or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act, such fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article shall be taken and deemed to be forfeited at the expiration of a period of one calendar month from the date of service of a notice to the last known address of the person from whom the fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article was seized indicating that there is no prosecution in respect of such fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article unless before the expiration of that period a claim thereto is made in the manner set out in subsections (4), (5), (6) and (7).

(4) Any person asserting that he is the owner of the fuel or the proceeds of sale thereof, or of the conveyance, machinery, contrivance, equipment, book, record, document or other article referred to in subsection (3) and that it is not liable to forfeiture may personally or by his agent authorized in writing, give written notice to the enforcement officer in whose possession such fuel or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article is held that he claims the fuel or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article.

(5) On receipt of the notice referred to in subsection (4), the enforcement officer shall refer the claim to a Magistrate of the First Class for his decision.

(6) The Magistrate to whom a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the fuel or the proceeds of sale thereof,

or of the conveyance, machinery, contrivance, equipment, book, record, document or other article and the person from whom it was seized to appear before the Magistrate, and when they appear or they fail to appear, due service of the summons having been proved, the Magistrate shall proceed to the examination of the matter.

(7) If it is proved that an offence under this Act has been committed and that the fuel or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article referred to in subsection (6) was the subject matter of or was used in the commission of such offence, the Magistrate shall order the fuel or the proceeds of sale thereof, or the conveyance, machinery, contrivance, equipment, book, record, document or other article to be forfeited, and shall, in the absence of such proof, order its release.

(8) Any fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article forfeited or deemed to be forfeited shall be delivered to the enforcement officer and shall be disposed of in accordance with the directions of the Magistrate.

(9) The licensing authority shall not be liable to any person for any deterioration, no matter how arising, in the quality of any fuel seized under this Act.

Property in forfeited fuel, etc.

33. Any fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article forfeited or deemed to be forfeited under this Act shall be the property of the licensing authority.

Release of seized fuel, etc.

34. Notwithstanding section 32, the licensing authority may, where the licensing authority thinks fit, at any time direct that any fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act be released to the person from whose possession, custody or control it was seized.

Enforcement officer may seek assistance to examine things related to offence

35. An enforcement officer may seek the assistance of any person to examine any fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article, seized or detained under this Act if such person has the necessary qualification to examine such fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article for the purposes of an investigation under this Act.

Power to take sample

36. (1) An enforcement officer may demand, select, take or obtain samples of any fuel suspected of being or containing biofuel for the purposes of analysis without payment from any person producing, selling or having possession of such fuel or his or its agent or servant from whom the fuel is procured.

(2) The samples demanded, selected, taken or obtained under subsection (1) shall be accepted in any court.

(3) Any person who refuses to comply with any demand made by an enforcement officer under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Procedure for taking sample

37. (1) If the enforcement officer intends to submit any sample of a fuel suspected of being or containing biofuel for analysis, the enforcement officer procuring the sample shall inform the person producing, selling or having possession of such fuel or his or its agent or servant from whom the fuel is procured that he intends to have the sample analysed by an analyst.

(2) The procedure for taking and dealing with the samples shall be as prescribed by regulations.

Appointment of analyst

38. The licensing authority may appoint any qualified person to be an analyst for the purposes of carrying out an analysis on any fuel and to certify its condition, type, method of processing, quality, standard and grade.

Certificate of analysis

39. (1) A certificate of analysis signed by an analyst shall, on production by the Public Prosecutor in any trial under this Act, be sufficient evidence of the facts stated in the certificate unless the accused requires that the analyst be called as a witness, in which case he shall give a written notice to the Public Prosecutor not less than three clear days before the commencement of the trial.

(2) Where the Public Prosecutor intends to give in evidence any certificate referred to in subsection (1) he shall deliver a copy of such certificate to the accused not less than ten clear days before the commencement of the trial.

Examination or testing of seized fuel

40. Where it is necessary to examine or test any fuel seized under this Act, it shall be sufficient to examine or test only a representative sample of the fuel or of each different type or description of the fuel or, if the fuel is packed in different containers, of the contents of each container.

Cost of holding seized fuel, etc.

41. Where any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act is held in the custody of the licensing authority pending completion of any proceedings in respect of an offence under this Act, the cost of holding it in custody shall, in the event of any person being convicted of such offence, be a debt due to the licensing authority by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable

42. No person shall, in any proceedings before any court in respect of the seizure of any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article 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.

Power of licensing authority to require information on fuel, etc.

43. (1) The licensing authority may require any person undertaking any activity involving fuel to furnish to the licensing authority information relating to the composition and use of such fuel.

(2) Any person who fails to furnish any information relating to the composition and use of any fuel as may be required under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Additional powers

44. (1) An enforcement officer shall, for the purposes of the execution of this Act, have power to do all or any of the following acts:

- (a) to require the production of records, accounts and documents from any person in relation to any case or offence under this Act and to inspect, examine and copy any of them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Act; or
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

(2) A person who fails to comply with the requirement made under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding two years or to both.

Offence to assault or obstruct enforcement officer

45. A person who —

- (a) assaults, obstructs, impedes or interferes with any enforcement officer in the performance of his functions under this Act;
- (b) rescues or endeavours to rescue any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act; or
- (c) before or after any seizure causes the disappearance of, or damages or destroys any fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article in order to prevent the seizure thereof or the securing of the fuel, conveyance, machinery, contrivance, equipment, book, record, document or other article,

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or both.

PART IV**GENERAL****Compounding of offences**

46. (1) The licensing authority may, with the consent of the Public Prosecutor, offer in writing to compound any offence committed by any person under this Act and prescribed to be a compoundable offence by regulations made under this Act by making a written offer to such person to compound the offence upon payment to the licensing authority of such amount not exceeding fifty per centum of the amount of the 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.

(3) If the amount specified in the offer under subsection (1) is not paid within the time specified in the offer or within such extended period as the licensing authority may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made and any fuel or the proceeds of sale thereof, or any conveyance, machinery, contrivance, equipment, book, record, document or other article seized in connection with the offence may be released or forfeited by the licensing authority, subject to such terms and conditions as the licensing authority thinks fit to impose in accordance with the conditions of the compound.

Institution of prosecution

47. 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.

Joinder of offences

48. Notwithstanding anything contained in any other written law to the contrary, where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of such offences committed within the space of any length of time.

Offence committed by body corporate

49. (1) Where a body corporate commits an offence under this Act, 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 the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) where the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves —
 - (i) that the offence was committed without his knowledge, consent or connivance; and

- (ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

(2) Where any person would be liable under this Act to any punishment or penalty for his 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 of the employee of the agent, if the act, omission, neglect or default was committed —

- (a) by his employee in the course of his employment;
- (b) by the agent when acting on his behalf; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent.

Protection of informers

50. (1) Except as provided in subsections (2) and (3), no witness in any civil or criminal proceeding 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.

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

(3) If on the trial for any offence under this Act 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 proceeding the court is of the opinion that justice cannot be fully done between the parties in that proceeding without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit enquiry and require full disclosure, concerning the informer.

Protection against suit and legal proceedings

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

- (a) the enforcement officer or any other officer duly appointed by the licensing authority; 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 licensing authority, enforcement officer or any other officer duly appointed by the licensing authority,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provisions of this Act.

Public servant

52. Every member, officer, servant or agent of the licensing authority and enforcement officer while discharging his duties as such member, officer, servant, agent or enforcement officer shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

Power to exempt

53. (1) The Minister may by order published in the *Gazette* exempt, subject to such terms and conditions as he may deem fit to impose, any person or class of persons or any activity or class of activities relating to biofuel from all or any of the provisions of this Act.

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

Amendment of Schedules

54. The Minister may, after consultation with the licensing authority, amend the First Schedule and Second Schedule by order published in the *Gazette*.

Regulations

55. (1) The Minister may, after consultation with the licensing authority, make regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

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

- (a) prescribing the standards of processing, storage, transportation and handling including packaging of biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel;
- (b) prescribing the standards or grades of biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel and making provision for giving effect to such standards or grades, including provisions for or relating to labelling;
- (c) prescribing the procedure to be followed by exporters in exporting biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel;
- (d) providing for the maintenance of proper standards of conduct in the carrying out of the biofuel industry and for dealing with infringements thereof;
- (e) prescribing the practices to be observed or avoided in the biofuel industry;
- (f) prescribing the name or description to be used for the biofuel, biofuel blended with any other fuel or biofuel blended with any other biofuel;
- (g) prescribing the offences which may be compounded;
- (h) prescribing the records and documents to be kept and returns to be submitted;
- (i) prescribing the fees and charges payable to the licensing authority under this Act and the manner for collecting and disbursing such fees;
- (j) providing for the regulation of all or any of the activities of the licensing authority and generally the performance of the functions, the exercise of the powers and the discharge of the duties of the licensing authority under this Act; and

(k) providing for such other matters as are contemplated by, or necessary for giving full effect to, the provisions of this Act and for their due administration.

(3) Regulations made under this section may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding one hundred and fifty thousand ringgit or imprisonment for a term not exceeding two years or both for such offence.

Transitional provisions

56. (1) Any person who, on the date of the coming into operation of this Act, is undertaking an activity to which this Act applies shall, within six months from the date of the coming into operation of this Act, apply for a licence under section 7 and such application shall be treated as a fresh application and not as an application for renewal of a licence.

(2) Upon receipt of an application under subsection (1) the licensing authority shall issue an acknowledgement of receipt to such person.

(3) Pending the determination of such application, such person may continue to undertake the activity.

FIRST SCHEDULE

[Sections 4 and 5]

TYPE OF BIOFUEL

1. Palm Olein
2. Methyl Ester

SECOND SCHEDULE

[Section 6]

LICENSING AUTHORITY

Licensing Authority	Biofuel
Secretary General of the Ministry of Plantation Industry and Commodities or in the absence of the Secretary General, any person duly authorized by the Minister in writing	Biofuels from oil palm products

In this Schedule—

"oil palm products" shall have the same meaning assigned to it under the Malaysian Palm Oil Board Act 1998 [Act 582].

EXPLANATORY STATEMENT

The proposed Malaysian Biofuel Industry Act 2006 ("the proposed Act") seeks to provide for the mandatory use of biofuel, the licensing of activities relating to biofuel and to provide for matters connected therewith and incidental thereto.

PART I

2. Part I of the Bill contains preliminary matters.
3. *Clause 1* contains the short title and seeks to allow the Minister to appoint the date of commencement of the proposed Act.
4. *Clause 2* contains the definition of certain expressions used in the proposed Act.
5. *Clause 3* seeks to provide that the proposed Act shall be in addition to, and not in derogation of the provisions of any other written law. However, in the event of conflict or inconsistency between the proposed Act and any other written law, the proposed Act shall prevail to the extent of inconsistency or conflict.

PART II

6. Part II of the Bill provides for prescribed activities and licensing.
7. *Clause 4* seeks to empower the Minister to prescribe, by regulations, the type of biofuel and its percentage by volume to be blended in any fuel. The Minister is also empowered to prescribe the activity in which the use of a biofuel shall be made mandatory.
8. *Clause 5* contains the provisions on the requirement for licensing of certain activities relating to biofuel.
9. *Clause 6* provides that the licensing authority in respect of certain biofuel is as specified in the Second Schedule. The Second Schedule specifies the licensing authority in respect of biofuels from oil palm products.
10. *Clauses 7, 8, 9, 10, 11* and *12* deal with the provisions relating to application for licence, issue of licence, exhibition and production of licence, transfer of licence, assignment of licence and revocation or suspension of licence respectively.
11. *Clause 13* seeks to allow an applicant to appeal against the decision of the licensing authority to the Minister.
12. *Clause 14* seeks to empower the Minister to give general directions to the licensing authority.
13. *Clause 15* seeks to empower the Minister to make regulations on the licensing of biofuel activities and the manner of applying for a licence, fees, conditions and to limit the number of licences issued.

PART III

14. Part III contains provisions relating to enforcement, seizure, arrest, *etc.*
15. *Clause 16* seeks to empower the Minister to appoint enforcement officers necessary for the purposes of exercising the powers of enforcement under the proposed Act.
16. *Clause 17* provides for the power of the enforcement officer to investigate any offence under the proposed Act. *Clause 18* provides that each enforcement officer under *clause 17* shall be issued an authority card and shall on demand produce his card when necessary.
17. *Clauses 19, 20, 21* and *22* deal with provisions relating to the power of arrest, search and seizure with warrant, search and seizure without warrant and the power of the enforcement officer to enter any premises for the purposes of inspection, verification and collection of samples respectively.
18. *Clause 23* provides for provision relating to access to computerised data.

19. *Clause 24* deals with the provision relating to seizure of things, *etc.*
20. *Clause 25* provides for the power of the enforcement officer to stop, search and seize conveyances.
21. *Clause 26* seeks to impose a duty on an enforcement officer to prepare a list of things seized and *clause 27* seeks to provide for the temporary return of seized conveyances, machinery, contrivance or equipment by the court to the owner subject to such terms and conditions as the court may impose.
22. *Clause 28* seeks to empower the enforcement officer to direct the sale and disposal of seized fuel.
23. *Clause 29* seeks to allow an enforcement officer to order the attendance of persons acquainted with the case.
24. *Clause 30* seeks to empower the enforcement officer to examine orally any person supposed to be acquainted with the facts and circumstances of the case and *clause 31* deals with the provision relating to the admissibility of statements in evidence.
25. *Clause 32* deals with the forfeiture of anything seized under the proposed Act.
26. *Clause 33* seeks to provide that any fuel forfeited or deemed to be forfeited under the proposed Act shall be the property of the licensing authority.
27. *Clause 34* provides for the release of anything seized under the proposed Act.
28. *Clause 35* seeks to provide that the enforcement officer may seek assistance to examine things related to offence.
29. *Clause 36* seeks to empower an enforcement officer to demand, select, take or obtain samples of any fuel suspected of being or containing biofuel for analysis and *clause 37* seeks to provide that the procedure for taking and dealing with the sample shall be as prescribed by regulations.
30. *Clause 38* seeks to empower the licensing authority to appoint an analyst to carry out analysis on any fuel, and to certify its condition, type, method of processing, quality, standard and grade.
31. *Clause 39* seeks to provide that in any proceeding under the proposed Act, the certificate of analysis signed by an analyst shall be admissible as evidence of the facts stated therein.
32. *Clause 40* provides that for the purpose of examination or testing of seized fuel, it shall be sufficient to examine or test only a representative sample of the fuel.

33. *Clause 41* seeks to provide that the cost of holding anything seized under the proposed Act shall be a debt due to the licensing authority and may be recoverable accordingly if that person is convicted of an offence.

34. *Clause 42* provides that no costs or damages arising from the seizure of anything in the exercise or the purported exercise of any powers under the proposed Act shall be recoverable in any proceedings before any court unless the seizure was done without reasonable cause.

35. *Clause 43* seeks to empower the licensing authority to require information relating to the composition and use of fuel.

36. *Clause 44* seeks to provide for the additional powers of the enforcement officers for the purposes of the execution of the proposed Act.

37. *Clause 45* seeks to make it an offence for any person to assault, obstruct, impede or interfere, *etc.* with any enforcement officer in the performance of his functions under this Act.

PART IV

38. Part IV contains general provisions.

39. *Clause 46* seeks to empower the licensing authority to compound offences with the consent in writing of the Public Prosecutor.

40. *Clause 47* seeks to provide for the institution of prosecution.

41. *Clause 48* deals with the provision relating to joinder of offences.

42. *Clause 49* provides for offences committed by a body corporate.

43. *Clause 50* deal with the provisions relating to the protection of informers.

44. *Clause 51* seeks to provide for the protection of enforcement officer or any other officer duly appointed by the licensing authority, in carrying out the duties under the proposed Act.

45. *Clause 52* provides that every member, officer, servant or agent of the licensing authority and the enforcement officer shall be deemed to a public servant within the meaning of the Penal Code [*Act 574*] while discharging his duties as such.

46. *Clauses 53, 54 and 55* seek to empower the Minister to exempt any person from the provisions of the proposed Act, to amend the Schedules by an order published in the *Gazette* and to empower the Minister to make regulations respectively.

47. *Clause 56* deals with transitional provisions. Any person holding a license issued before the commencement of the proposed Act shall make a fresh application within six months from the date of coming into force of the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot be at present ascertained.

[PN(U²)2455]