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**TOBACCO CONTROL ORDINANCE, 2019**

***TOBACCO CONTROL REGULATIONS, 2019***

In exercise of the powers conferred by section 35 of the Tobacco Control Ordinance, 2019, the Governor in Council makes the following Regulations:

***Part 1***  
***Preliminary***

**Citation and commencement**

1. These Regulations may be cited as the Tobacco Control Regulations, 2019, and come into force on ...

**Interpretation**

2. In these Regulations—  
“**approved form**” means the form specified by the registration authority;  
“**no-smoking symbol**” means a symbol which consists solely of a graphic representation of a single burning cigarette enclosed in a red circle of at least 70 millimetres in diameter with a red bar across it;  
“**registration authority**” means ...

***Part 2***  
***No-smoking signs***

**No-smoking signs in premises and vehicles**

3. (1) For purposes of section 11 of the Ordinance, a person who occupies or is concerned with the management of smoke-free premises must ensure that no-smoking signs complying with sub-regulations (2) and (3) are displayed in those premises.

(2) There must be displayed in a prominent position near (and inside) each entrance to smoke-free premises at least one no-smoking sign which—  
(a) is at least 150 millimetres × 200 millimetres;  
(b) displays the no-smoking symbol; and  
(c) contains, in characters that can be easily read by persons using the entrance, the

words “*No Smoking. It is against the law to smoke in these premises*”.

(3) The words “*these premises*” in sub-regulation (2)(c) may be replaced by words which refer to the particular smoke-free premises.

(4) A person with the management responsibilities for a smoke-free vehicle must ensure that at least one sign displaying the no-smoking symbol is displayed in a prominent position in each compartment of the vehicle which is constructed or adapted to accommodate persons

### ***Part 3***

#### ***Registration of dealers in tobacco products***

##### **Register of dealers**

4. (1) The registration authority must maintain and make available to the public a register of persons who hold a certificate of registration to deal in tobacco products.

(2) The Register must be kept in a manner and form that the registration authority considers appropriate.

##### **Application for certificate of registration**

5. (1) A person who wishes to be registered as a dealer in tobacco products must submit to the Director of Health an application set out in the approved form.

(2) The application under sub-regulation (1) must be accompanied by the fee specified in Schedule 2.

##### **Registration of dealers**

6. (1) Subject to a refusal under regulation 8, on receipt of an application for registration made under regulation 5, the registration authority must register the applicant thereby authorising the applicant, and any employee or agent of that applicant acting on that applicant's behalf, to sell tobacco products at or from premises specified on the registration certificate.

- (2) The registration certificate must be in the approved form and include—
- (a) specify the name of the registrant and address of the premises to which it applies; and
  - (b) in the case of registration of a body corporate, be endorsed with the name and date of birth of the responsible person.

(3) Registration is at all times subject to the conditions specified in Schedule 1.

##### **Duration of registration and renewal**

7. (1) A certificate of registration is valid for a period of 12 months.

- (2) An application for renewal of registration must be made—
- (a) no later than 28 days before the day on which the registration is due to expire; or
  - (b) within any further period allowed by registration authority in their discretion.

##### **Refusal of applications**

**8. (1)** An application for registration or renewal of registration must be refused if the registration authority is satisfied that any of the following disqualifications apply:

- (a) the applicant is under the age of 18 years;
- (b) the applicant's current registration has been suspended;
- (c) the applicant is the subject of a pending charge for an offence under the Ordinance or any offence involving fraud or dishonesty;
- (d) anytime within the previous 24 months—
  - (i) the applicant was convicted of an offence referred to in paragraph (c); or
  - (ii) the applicant's registration was revoked;
- (e) the applicant is not a fit and proper person to be registered.

**(2)** An application for registration or renewal must also be refused if—

- (a) the information provided is insufficient to satisfy the registration authority that the applicant's operations would comply with the provisions of the Ordinance and these Regulations;
- (b) in the case of an applicant that is a body corporate, the registration authority does not approve the individual designated by the body corporate as its responsible person under regulation 9.

**(3)** If the registration authority proposes to refuse an application for registration or renewal, the registration authority must give the applicant written notice of the grounds for the proposed refusal and the date (at least 14 days after the date of the notice) by which a written submission may be made to the registration authority in respect of the proposed refusal.

**(4)** In determining whether to proceed with the refusal, the registration authority must consider any submission made in accordance with sub-regulation (3) and may consider any other information the registration authority considers relevant.

**(5)** On determining the application, the registration authority must give the applicant—

- (a) written notice of its decision; and
- (b) if the registration authority decides to refuse the application, written notice of the reasons and inform the applicant of his or her rights under regulation 12.

#### ***Part 4*** ***Responsible persons***

### **Responsible persons**

**9. (1)** A body corporate may apply to the registration authority for the approval of an individual to manage the conduct of the body corporate with respect to—

- (a) the registration or renewal for which the body corporate is applying; or
- (b) the existing registration of the body corporate where the individual is to substitute the responsible person endorsed on the certificate.

**(2)** An application under sub-regulation (1)—

- (a) must be made in the approved form containing the following information:
  - (i) name, address and date of birth of the individual;
  - (ii) any previous contraventions of the Ordinance or pending investigations with respect to any such contravention by the individual;
  - (iii) types of tobacco or related products to be sold;
  - (iv) a declaration by the individual indicating his or her knowledge of the

Ordinance and Regulations;

- (v) an undertaking by the individual to comply with the Ordinance and Regulations:
- (b) must accompanied by the fee specified in Schedule 2.

(3) Subject to a refusal under sub-regulation (4) and regulation 8, the registration authority must approve the person designated by the body corporate to manage the conduct of with respect to the registration and endorse upon the certificate the name and date of birth of the responsible person.

(4) Regulation 8 has effect in relation to an application for approval of a responsible person as if—

- (a) the application for approval were an application for registration or renewal; and
- (b) the individual designated by the body corporate to manage the conduct with respect to the registration were the applicant,

and in relation to any refusal of such application, the body corporate applying for the approval of the responsible person must be given notice and submit written submissions under regulation 8(3), (4) and (5).

(5) Subject to sub-regulation (7), where a responsible person is endorsed upon a certificate—

- (a) the provisions of the Ordinance and these Regulations apply to the responsible person as if that person is the registrant; and
- (b) the responsible person is to be treated as if that responsible person is the corporate registrant for the purposes of any proceedings and penalties.

(6) Nothing in sub-regulation (5) limits or affects the application of any provision of the Ordinance to the relevant body corporate, and proceedings may be taken and penalties enforced against the body corporate whether or not taken or enforced against the responsible person.

(7) Where a person endorsed as the responsible person upon a certificate of a body corporate ceases, or proposes to cease, to manage the conduct of the body corporate with respect to its registration—

- (a) that person must give the registration authority written notice thereof either before so ceasing to manage the conduct or no later than 14 days thereafter; and
- (b) upon receipt of that written notice the person concerned ceases to be the responsible person for the registrant and the registration authority must endorse the certificate of registration accordingly.

(8) Notwithstanding sub-regulation (7), the Ordinance continues to apply, for the purpose of enabling the person concerned to be investigated or otherwise dealt with for a matter arising before the receipt of the written notice, as if the person concerned were still the responsible person.

(9) On application by the body corporate, the registration authority may grant to an individual designated by the registrant a temporary permission to manage the conduct of the registrant for such period, not exceeding 2 months, as the registration authority considers necessary to enable an application for substitution of the responsible person to be made and determined in accordance with this regulation.

(10) A person granted temporary permission under sub-regulation (9) is to be regarded as the responsible person for the body corporate with respect to the registration during the period

for which the temporary permission was granted.

## ***Part 5*** ***Duties of registrants***

### **Duties of registrants**

- 10. (1)** A registrant must—
- (a) comply with the conditions of the certificate of registration;
  - (b) keep records required by the registration authority;
  - (c) on request by an enforcement officer, produce the certificate of registration and any such records for inspection; and
  - (d) promptly give written notice to the registration authority of any material change in circumstances which may affect the registration or conditions.
- (2)** In sub-regulation (1)(d), “material change in circumstances” includes—
- (a) in the case of a body corporate, the responsible person ceasing to manage the conduct of the body corporate with reference to the registration;
  - (b) any other change that affects or might affect the ability of the registrant to comply with the registration conditions; and
  - (c) any other change or event which affects the information provided in the application for registration.

- (3)** A registrant who contravenes sub-regulation (1) commits an offence.

Maximum penalty: A fine of ...

## ***Part 6*** ***Suspension, revocation and variation of registration***

### **Suspension, revocation or variation of registration**

**11. (1)** The registration authority may suspend, revoke or vary a certificate of registration in accordance with sub-regulations (2) if the registration authority has reasonable grounds to suspect that—

- (a) the certificate was granted or renewed on the basis of false, deceptive, misleading or incomplete information;
- (b) the registrant or responsible person has breached any condition of registration;
- (c) one or more of the disqualifications specified in regulation 8(1) apply to the registrant or responsible person; or
- (d) the conduct by the registrant or responsible person of activities authorised under the certificate would likely contravene a provision of the Ordinance or these regulations if the certificate were not promptly suspended, revoked or varied.

**(2)** Where the registration authority proposes to suspend, revoke or vary a certificate, the registration authority must give the registrant written notice of the proposed action and the reasons for it, and the date (at least 14 days after the date of the notice) by which a written submission may be made to the registration authority in respect of the proposed action.

**(3)** Following consideration of any submission made in accordance with sub-regulation (2) and any other information the registration authority considers relevant, the registration authority must decide whether or not to suspend, revoke or vary the certificate of registration and may take any of those actions regardless whether the particular action was notified to the

registrant under sub-regulation (2).

- (4) The registration authority must give the registrant—
- (a) written notice of its decision; and
  - (b) if the registration authority decides to suspend, revoke or vary the certificate of registration, written notice of the suspension, revocation or variation and the reasons for it and inform the registrant of his or her rights under regulation 12.

(5) The registration authority may at any time vary a certificate of registration on the application of the registrant made in accordance with sub- regulation (6).

(6) An application for variation of a certificate must be made in the approved form and be accompanied by the fee specified in Schedule 2.

### ***Part 7*** ***Appeal***

#### **Appeal against decisions**

**12. (1)** An interested person may appeal to the Chief Magistrate against any of the following decisions of the registration authority:

- (a) a decision to refuse an application for registration or renewal;
- (b) a decision to refuse an application for approval of a responsible person;
- (c) a decision to refuse an application to vary a registration certificate;
- (d) a decision to issue or renew a certificate of registration subject to any special conditions; and
- (e) a decision to suspend, revoke or vary a registration certificate.

(2) An appeal must be made within 28 days after the date of the notice of the decision and on hearing the appeal, the Court may allow or dismiss the appeal on such terms and conditions as the Court may direct, or make such other order as the Court considers just.

***Re-enact current exemption for Prison and Sundale (Other prisons?)***

***Set the fixed penalty amount and form of penalty notice***

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## SCHEDULE 1

### CONDITIONS OF REGISTRATION

Regulation 6(3)

1. A registrant must at all times comply with, and ensure that the registrant's employees and agents comply with, the Ordinance and these Regulations and conditions of registration.
2. A registrant is responsible for all sales of tobacco products from the premises

specified in the certificate of registration.

3. A registrant that is a body corporate must ensure that the responsible person manages the general conduct under the registration.
4. A registrant is authorised to sell tobacco products only at or from premises specified in the certificate of registration and in accordance with the conditions of the registration.
5. A registrant must display the certificate of registration and a copy of this Schedule at the point-of-sale for tobacco products in the premises specified in the certificate, so that these are clearly visible to members of the public.
6. A registrant must comply with all other conditions specified by the registration authority under regulation 6(4).

## SCHEDULE 2

### FEES

List of fees (to be determined):

Application for registration

Application for renewal of certificate of registration

Application for approval of responsible person

Application for substitution of responsible person

Application for variation of certificate

Fee to provide to any person with a copy of the register.

Made by the Governor in Council this      day of                      2019.

Anthea H. R. Moyce  
Clerk of Councils

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#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The purpose of these Regulations is to prescribe the requirements with respect to no-smoking signs. The Regulations also prescribe the process for registration as dealers in tobacco and related products and makes provision for the appointment of a responsible person in the case where a registered dealer is a corporate body. The Regulations provide for an appeal process where registration is refused or revoked and also lists the conditions subject to which dealers in tobacco and related products are registered.