

# ENERGY EFFICIENCY AND CONSERVATION BILL 2023

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*i n t i t u l e d*

An Act to regulate the efficient consumption of energy and conservation of energy with the aim to improve and increase energy efficiency and to avoid waste of energy, and to provide for related matters.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

**Short title and commencement**

**1.** (1) This Act may be cited as the Energy Efficiency and Conservation Act 2023.

(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.

(3) The Minister may by order published in the *Gazette* suspend the operation of the whole or any of the provisions of this Act in any part of Malaysia.

**Interpretation**

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

“this Act” includes any subsidiary legislation made under this Act;

“energy audit” means a systematic and objective assessment of the energy needs, consumption and efficiency;

“building” means any building or premises where energy is consumed including building or premises built or used for residential, institutional, commercial or industrial purposes;

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

“guidelines” means the guidelines issued by the Commission under section 67;

“registered training institution” means any training institution which is registered and holds a valid practising certificate under this Act;

“energy intensity” means the indicator of energy efficiency;

“energy auditor” means a person who conducts energy audit;

“registered energy auditor” means any energy auditor who is registered and holds a valid practising certificate under this Act;

“energy efficiency” means the efficiency in consumption of energy or energy resources which results in increase in the net benefit per unit of energy;

“energy intensity label” means an energy intensity label issued under section 10;

“Minister” means the Minister for the time being charged with the responsibility for matters relating to supply of electricity;

“person in charge of a building” means the owner of a building or any other person having the charge, management or control of a building;

“authorized officer” means any officer of the Commission authorized in writing by the Minister under section 41;

“energy efficiency rating” means energy efficiency rating for a building indicated through star rating;

“energy consumer” means a person who, for the purpose of carrying out his activity, business or trade, is supplied with energy or energy resources and consumes the energy or energy resources supplied;

“manufacturer” means a manufacturer who manufactures any energy-using product;

“registered manufacturer” means any manufacturer registered under Part V;

“importer” means an importer who imports any energy-using product;

“registered importer” means any importer registered under Part V;

“energy manager” means a person who manages energy efficiency and conservation for an energy consumer;

“registered energy manager” means any energy manager who is registered and holds a valid practising certificate under this Act;

“certificate of energy efficiency” means the certificate of energy efficiency issued in respect of a class of energy-using product;

“energy-using product” means any equipment, device, appliance or article which uses energy or energy resources;

“energy management system” means a set of interrelated or interacting elements to establish an energy policy and energy objectives, and the processes and procedures to achieve the energy objectives;

“minimum energy performance standards” means the specification of the minimum energy efficiency levels for a class of energy-using products;

“energy resources” means the energy resources specified in the First Schedule;

“Commission” means the Energy Commission established under the Energy Commission Act 2001 [*Act 610*];

“energy” means the energy specified in the Second Schedule.

### **Application**

3. (1) This Act shall apply to—

- (a) any energy consumer whose energy consumption for a period of twelve consecutive months equals to or exceeds the energy consumption threshold as may be prescribed;
- (b) any building as described in the Third Schedule; and
- (c) any energy-using product as specified in the guidelines.

(2) The Commission shall, on the basis of any information or evidence available to the Commission and in accordance with the guidelines, ascertain—

- (a) whether a person is an energy consumer to whom this Act applies under paragraph (1)(a); and
- (b) whether a building is a building to which this Act applies under paragraph (1)(b).

(3) The Commission shall, having ascertained that a person is an energy consumer to whom to this Act applies, issue a written notice to such person notifying that he is an energy consumer to whom this Act applies.

(4) The Commission shall, having ascertained that a building is a building to which this Act applies, issue a written notice to the person in charge of the building notifying that the building is a building to which this Act applies.

(5) For the purpose of paragraph (1)(a), the energy consumption shall be in respect of an activity, business or trade of the energy consumer carried out in one place.



PART II

FUNCTIONS AND POWERS OF THE COMMISSION

**Functions and powers of the Commission**

4. (1) The Commission shall have the following functions:

- (a) to advise the Minister on all matters relating to energy efficiency and conservation;
- (b) to recommend to the Government any policy, laws, action and measures relating to energy efficiency and conservation;
- (c) to promote, develop or implement policies and initiatives relating to energy efficiency and conservation;
- (d) to exercise regulatory functions under this Act;
- (e) to devise the nature of test to be employed and to recommend to the Minister the minimum qualifications and practical experience for any purpose pursuant to this Act;
- (f) to promote private sector investments in energy efficiency and conservation;
- (g) to carry out or cause to be carried out studies, research or assessments in energy efficiency and conservation;
- (h) to collate, analyze and publish information, statistics and factors influencing or relevant to the development of energy efficiency and conservation;
- (i) to recognize as the Commission deems fit, trainings or other programmes relating to the development of human resources and capacity building in the energy efficiency and conservation sector;
- (j) to encourage and promote public participation and to improve public awareness on matters relating to energy efficiency and conservation;

- (k) to set targets and ensure compliance for such targets for the improvement in energy efficiency and conservation; and
- (l) to do such other things as the Commission deems fit to enable the Commission to perform its functions effectively or which are incidental to the performance of its functions.

(2) The Commission shall have the power to do all things expedient or reasonably necessary for or incidental to the performance of its functions.

(3) Without prejudice to the generality of subsection (2), the powers of the Commission shall include the power—

- (a) to carry out all activities which appear to the Commission to be requisite, advantageous or convenient for or in connection with the performance of its functions; and
- (b) to impose fees, costs or charges for any service rendered in the exercise of its powers and the performance of its functions.

(4) The functions and powers of the Commission under this Act are in addition to, and not in derogation of, the functions and powers of the Commission under the Energy Commission Act 2001.

### PART III

#### DUTIES OF ENERGY CONSUMER

##### **Appointment of registered energy manager**

**5.** (1) An energy consumer to whom this Act applies shall appoint a registered energy manager within the period and in such manner as may be prescribed.

(2) A registered energy manager appointed by the energy consumer under this section shall carry out such functions and duties as follows:

- (a) to collect and analyze the data on energy of and energy consumption by, the energy consumer;

- (b) to ensure that the energy consumer implement the energy management system;
- (c) to monitor the implementation of the energy management system by the energy consumer;
- (d) to prepare the energy efficiency and conservation report for the energy consumer;
- (e) to ensure the accuracy of information provided in the energy efficiency and conservation report;
- (f) to advise the energy consumer on any other energy saving measures which may be implemented by the energy consumer and to monitor the implementation of such measures; and
- (g) to carry out such other duties as may be determined by the Commission.

(3) Any energy consumer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(4) Any registered energy manager who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

### **Energy management system**

**6.** (1) In ensuring energy efficiency in carrying out his activity, business or trade, an energy consumer to whom this Act applies shall develop an energy management system within the period as may be prescribed and implement the energy management system.

(2) The energy consumer shall develop and implement the energy management system in accordance with the guidelines.

(3) Any energy consumer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(4) Any energy consumer who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

**Energy efficiency and conservation report**

7. (1) A registered energy manager appointed by an energy consumer to whom this Act applies under subsection 5(1) shall prepare an energy efficiency and conservation report for the energy consumer which shall contain the following information:

- (a) the description of the energy management system implemented by the energy consumer;
- (b) the details on the total amount and purpose of consumption of energy and energy resources by the energy consumer;
- (c) the proposed measures for improving the energy efficiency and conservation by the energy consumer;
- (d) the details of any other energy efficiency and conservation measures which have already been implemented and measures that are yet to be implemented on the date of the energy efficiency and conservation report; and
- (e) any other information required by the Commission as may be specified in the guidelines.

(2) The energy consumer in respect of whom the energy efficiency and conservation report has been prepared under subsection (1) shall submit such energy efficiency and conservation report to the Commission within the period and in such manner as may be prescribed.

(3) Any registered energy manager who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

(4) Any energy consumer who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

**Energy audit**

8. (1) An energy consumer to whom this Act applies shall from time to time cause to be conducted an energy audit in respect of his activity, business or trade so as to comply with the requirements relating to the submission of energy audit report under subsection 9(2).

(2) The energy consumer shall appoint a registered energy auditor to conduct the energy audit under subsection (1).

(3) The energy audit shall be conducted in such manner as the registered energy auditor may determine.

(4) Any energy consumer who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

### **Energy audit report**

9. (1) A registered energy auditor appointed by an energy consumer to whom this Act applies under subsection 8(2) shall prepare an energy audit report based on the energy audit conducted under subsection 8(1) in accordance with the guidelines.

(2) The energy consumer in respect of whom the energy audit report has been prepared under subsection (1) shall submit such energy audit report to the Commission within the period and in such manner as may be prescribed.

(3) The energy consumer may, after submitting his first energy audit report and within the period as may be prescribed, apply to the Commission to be exempted from submitting the subsequent energy audit reports within the period as may be prescribed under subsection (2) if the energy consumer is able to show to the satisfaction of the Commission that after a considerable period of time he has implemented significant energy efficiency and conservation measures and such implementation of measures has resulted in improvement in energy efficiency in carrying out his activity, business or trade.

(4) Upon receipt of the application under subsection (3) and being satisfied with the application for exemption, the Commission may approve such application and issue a written notice of exemption to the energy consumer.

(5) The exemption given under subsection (4) shall take effect from the date specified in the written notice of exemption.

(6) Upon receipt of an energy audit report from the energy consumer under subsection (2), the Commission may request the energy consumer to give any additional information, particulars or document relating to the energy audit report as the Commission thinks necessary and if the energy consumer fails to give such additional information, particulars or document, the energy audit report may be refused by the Commission.

(7) Upon perusal of the energy audit report and if—

- (a) the Commission finds that the energy audit report has not been prepared in accordance with the guidelines; or
- (b) in the opinion of the Commission, the content of the energy audit report is insufficient,

the Commission may direct the energy consumer to rectify the energy audit report within the period and in such manner as may be determined by the Commission.

(8) Where the Commission directs the energy consumer to rectify the energy audit report under subsection (7) and the energy consumer fails to rectify the energy audit report as directed by the Commission, the Commission shall further direct the energy consumer to submit a new energy audit report within the period as may be determined by the Commission.

(9) Subsection (1) shall apply in respect of the preparation of the new energy audit report under subsection (8).

(10) Any energy consumer who fails to submit the energy audit report under subsection (2) or (8) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

## PART IV

### DUTIES OF PERSON IN CHARGE OF BUILDING

#### **Energy intensity label**

**10.** (1) A person in charge of a building to which this Act applies shall, within the period and in such manner as may be prescribed, apply to the Commission for an energy intensity label to be issued in respect of the building.

(2) Any person in charge of a building who fails to apply for the energy intensity label within the period as may be prescribed under subsection (1) shall pay a prescribed late fee.

(3) An application for an energy intensity label under subsection (1) shall be accompanied by payment of the prescribed fee and such information, particulars or document as may be determined by the Commission.

(4) After considering the application, the Commission may—

(a) approve the application and issue in respect of the building an energy intensity label in such form as may be determined by the Commission; or

(b) refuse the application, stating the grounds for refusal.

(5) The energy intensity label issued under this section shall be valid for a period as may be prescribed.

### **Display of energy intensity label**

**11.** (1) A person in charge of a building to which this Act applies shall at all times display in a conspicuous part of the building the energy intensity label issued under section 10 in respect of the building.

(2) Any person in charge of a building who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

### **Alteration, forgery, etc., of energy intensity label**

**12.** (1) No person shall—

(a) alter, forge, mutilate, deface or destroy any energy intensity label;

(b) use any energy intensity label which to his knowledge has been so altered, forged, mutilated, defaced, destroyed or expired for whatever purpose; or

(c) display any energy intensity label which to his knowledge has been so altered, forged, mutilated, defaced or expired.

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

### **Energy intensity performance**

**13.** (1) A person in charge of a building to which this Act applies shall ensure that the energy intensity performance of the building comply with the energy efficiency rating as may be prescribed.

(2) In ensuring that the energy intensity performance of the building comply with the energy efficiency rating as required under subsection (1), the person in charge of the building shall comply with such manner to that effect as may be prescribed.

(3) In ascertaining whether the energy intensity performance of the building is in compliance with the energy efficiency rating, the Commission shall use any information or evidence available to the Commission and adhere to the guidelines.

(4) Where the Commission finds that the energy intensity performance of the building does not comply with the energy efficiency rating, the Commission shall issue a written notice of non-compliance to the person in charge of the building.

(5) Upon receipt of the written notice of non-compliance under subsection (4), the person in charge of the building shall cause to be conducted an energy audit to improve the energy intensity performance of the building so as to comply with the energy efficiency rating.

(6) The person in charge of the building shall appoint a registered energy auditor to conduct the energy audit under subsection (5).

(7) The energy audit shall be conducted in such manner as the registered energy auditor may determine.

(8) Any person in charge of a building who contravenes subsection (5) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.



**Energy audit report in respect of building**

**14.** (1) A registered energy auditor appointed by a person in charge of a building to which this Act applies under subsection 13(6) shall prepare an energy audit report based on the energy audit conducted under subsection 13(7) in accordance with the guidelines.

(2) The person in charge of the building in respect of which the energy audit report has been prepared under subsection (1) shall submit such energy audit report together with the energy efficiency improvement plan prepared under section 15 to the Commission within one year from the date of the written notice of non-compliance issued to him under subsection 13(4).

(3) Upon receipt of the energy audit report from the person in charge of the building under subsection (2), the Commission may request the person in charge of the building to give any additional information, particulars or document relating to the energy audit report as the Commission thinks necessary and if the person in charge of the building fails to give such additional information, particulars or document, the energy audit report may be refused by the Commission.

(4) Upon perusal of the energy audit report and if—

(a) the Commission finds that the energy audit report has not been prepared in accordance with the guidelines; or

(b) in the opinion of the Commission, the content of the energy audit report is insufficient,

the Commission may direct the person in charge of the building to rectify the energy audit report within the period and in such manner as may be determined by the Commission.

(5) Where the Commission directs the person in charge of the building to rectify the energy audit report under subsection (4) and the person in charge of the building fails to rectify the energy audit report as directed by the Commission, the Commission shall further direct the person in charge of the building to submit a new energy audit report within the period as may be determined by the Commission.

(6) Subsection (1) shall apply in respect of the preparation of the new energy audit report under subsection (5).

(7) Any person in charge of a building who fails to submit the energy audit report under subsection (2) or (5) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

### **Energy efficiency improvement plan**

**15.** (1) A person in charge of a building in respect of which the energy audit report is required to be prepared and submitted under section 14 shall prepare an energy efficiency improvement plan based on the energy audit report in such manner as may be determined by the Commission.

(2) The person in charge of the building shall submit the energy efficiency improvement plan prepared under subsection (1) to the Commission for the Commission's approval together with the energy audit report under subsection 14(2).

(3) After considering the energy efficiency improvement plan, the Commission may approve or refuse the energy efficiency improvement plan.

(4) Where the Commission approves the energy efficiency improvement plan, the person in charge of the building shall implement the approved energy efficiency improvement plan in respect of the building.

(5) Where the Commission refuses the energy efficiency improvement plan, the Commission shall direct the person in charge of the building to revise the energy efficiency improvement plan within the period and in such manner as may be determined by the Commission.

(6) If the person in charge of the building fails to revise the energy efficiency improvement plan as directed by the Commission under subsection (5), the Commission shall further direct the person in charge of the building to submit a new energy efficiency improvement plan within the period as may be determined by the Commission.

(7) Subsection (1) shall apply in respect of the preparation of the new energy efficiency improvement plan under subsection (6).

(8) Any person in charge of a building who fails to implement the approved energy efficiency improvement plan under subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(9) Any person in charge of a building who fails to submit the energy efficiency improvement plan under subsection (2) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

### **Non-application of sections 13, 14 and 15**

**16.** Sections 13, 14 and 15 shall not apply in respect of a building where the person in charge of the building is also an energy consumer to whom this Act applies.

## **PART V**

### **PROVISIONS RELATING TO ENERGY-USING PRODUCT**

#### **Selling, etc., energy-using product**

**17.** (1) No person shall sell, offer to sell, display, advertise or lease any energy-using product to which this Act applies unless the energy-using product is affixed with an energy efficiency rating label issued under subsection 21(5).

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

#### **Distributing energy-using product**

**18.** (1) Neither a manufacturer nor an importer shall distribute any energy-using product to which this Act applies unless the manufacturer or importer is registered with the Commission under section 19 and a certificate of energy efficiency has been issued by the Commission in respect of the energy-using product under section 21.

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

### **Registration of manufacturer or importer**

**19.** (1) An application for registration by a manufacturer or importer who intends to distribute an energy-using product to which this Act applies shall be made to the Commission in such manner as may be determined by the Commission.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(3) After considering the application, the Commission may—

(a) approve the application and issue to the applicant a certificate of registration in such form as may be determined by the Commission; or

(b) refuse the application, stating the grounds for refusal.

(4) The certificate of registration issued under subsection (3) shall be valid for a period as may be specified in the certificate of registration.

### **Cancellation of certificate of registration of registered manufacturer and registered importer**

**20.** (1) The Commission may, by written notice to the registered manufacturer or registered importer, as the case may be, cancel the certificate of a registration issued under subsection 19(3) if the registered manufacturer or registered importer—

(a) has contravened any provision of this Act;

(b) has ceased to carry on the business in respect of which it is registered under this Act;

(c) has misused or cause to be misused the certificate of registration;

- (d) has altered the certificate of registration; or
- (e) has obtained the certificate of registration by making or causing to be made, or by producing or causing to be produced, a false or fraudulent declaration, certificate, application, representation or information, either in writing or otherwise.

(2) Upon cancellation of the certificate of registration, the certificate of registration shall cease to be valid from the date of the written notice issued by the Commission under subsection (1) and the manufacturer or importer shall not be allowed to file any fresh application to be registered under this Act.

### **Application for certificate of energy efficiency**

**21.** (1) An application by a manufacturer or importer who intends to distribute an energy-using product to which this Act applies for a certificate of energy efficiency in respect of the energy-using product shall be made to the Commission in such manner as may be determined by the Commission.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(3) After considering the application, the Commission may—

- (a) approve the application if—
  - (i) the energy-using product conforms to the testing methodology of energy-using products, the calculation of energy efficiency and the energy efficiency rating as specified in the guidelines; and
  - (ii) the energy-using product meets the minimum energy performance standards as may be prescribed; or
- (b) refuse the application, stating the grounds for refusal.

(4) Where the Commission approves the application, the Commission shall, upon payment of a prescribed fee, issue a certificate of energy efficiency in respect of the energy-using product in such form as may be determined by the Commission.

(5) Upon the issuance of a certificate of energy efficiency under subsection (4), the Commission shall also issue an energy efficiency rating label in respect of the energy-using product in such form as may be determined by the Commission.

(6) The certificate of energy efficiency issued under subsection (4) shall be valid for a period of one year from the date of its issuance.

### **Renewal of certificate of energy efficiency**

**22.** (1) A registered manufacturer or registered importer may apply to renew the certificate of energy efficiency issued in respect of an energy-using product under section 21 before the date of expiration of the certificate of energy efficiency within such period and in such manner as may be determined by the Commission.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(3) After considering the application, the Commission may—

(a) approve the application and renew the certificate of energy efficiency upon payment of a prescribed fee; or

(b) refuse the application, stating the grounds for refusal.

(4) Any registered manufacturer or registered importer who intends to apply for the renewal of the certificate of energy efficiency but fails to apply for the renewal before the date of expiration of the certificate of energy efficiency shall submit a new application for the certificate of energy efficiency under section 21.

(5) Subject to the provisions of this Act, the non-renewal of the certificate of energy efficiency or refusal by the Commission to renew the certificate of energy efficiency in respect of an energy-using product under this section shall not affect the validity of the energy efficiency rating label which has already been issued in respect of the product under subsection 21(5).

**Cancellation of certificate of energy efficiency**

**23.** (1) The Commission may, by written notice to the registered manufacturer or registered importer, as the case may be, cancel the certificate of energy efficiency issued in respect of an energy-using product under section 21 in any of the following circumstances:

- (a) the components of the energy-using product has been varied, substituted or changed;
- (b) upon inspection by the Commission during market surveillance, the Commission finds that the energy-using product as placed in the market no longer meets the minimum energy performance standards as may be prescribed;
- (c) the registered manufacturer or registered importer has misused or cause to be misused the certificate of energy efficiency; or
- (d) the registered manufacturer or registered importer has obtained the certificate of energy efficiency in respect of the energy-using product by making or causing to be made, or by producing or causing to be produced, a false or fraudulent declaration, certificate, application, representation or information, either in writing or otherwise.

(2) Upon cancellation of the certificate of energy efficiency, the certificate of energy efficiency shall cease to be valid from the date of the written notice issued by the Commission under subsection (1) and the registered manufacturer or registered importer shall recall and cause to be removed from the market the energy-using product in respect of which the cancelled certificate of energy efficiency has been issued within the period as specified in the written notice.

(3) Any registered manufacturer or registered importer who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

**Duty to keep records and documents by registered manufacturer and registered importer**

**24.** (1) A registered manufacturer or registered importer shall keep and retain in safe custody for a period of seven years from the date of the certificate of registration issued to him under subsection 19(3) a copy of an energy performance testing report or assessment letter issued by a conformity assessment body or laboratory recognized by the Commission in relation to the energy-using product in respect of which the certificate of energy efficiency was issued.

(2) Any registered manufacturer or registered importer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

**PART VI****REGISTRATION OF ENERGY MANAGER AND ENERGY AUDITOR****Requirement for registration of energy manager and energy auditor**

**25.** (1) No energy manager shall carry out any functions or duties under this Act unless he is registered under this Act and holds a valid practising certificate issued under this Act.

(2) No energy auditor shall conduct any energy audit under this Act unless he is registered under this Act and holds a valid practising certificate issued under this Act.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

**Qualifications for registration of energy manager and energy auditor**

**26.** Any energy manager or energy auditor may apply to be registered under this Act if—

(a) he is a Malaysian citizen;

(b) he holds any qualification as may be prescribed;



- (c) he fulfils other prerequisite requirements as may be determined by the Commission, including requirement for training; and
- (d) he has not been convicted of an offence involving fraud, dishonesty or corruption.

**Application for registration of energy manager and energy auditor**

**27.** (1) An application for registration of an energy manager and energy auditor shall be made to the Commission in such manner as may be determined by the Commission.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(3) After considering the application, the Commission may—

- (a) approve the application and issue to the applicant upon payment of a prescribed fee a certificate of registration in such form as may be determined by the Commission; or
- (b) refuse the application, stating the grounds for refusal.

**Application for practising certificate of registered energy manager and registered energy auditor**

**28.** (1) An application for a practising certificate by an energy manager or energy auditor who has been registered under section 27 shall be made to the Commission in such manner as may be determined by the Commission.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(3) After considering the application, the Commission may—

(a) approve the application and issue to the applicant upon payment of a prescribed fee a practising certificate in such form as may be determined by the Commission; or

(b) refuse the application, stating the grounds for refusal.

(4) A practising certificate issued under subsection (3) shall be valid for a period as may be specified in the practising certificate.

### **Renewal of practising certificate of registered energy manager and registered energy auditor**

**29.** (1) A registered energy manager or registered energy auditor may apply to renew his practising certificate issued under subsection 28(3) before the date of expiration of the practising certificate within the period and in such manner as may be determined by the Commission.

(2) A registered energy manager or registered energy auditor who applies for the renewal of the practising certificate after the date of expiration of the practising certificate shall pay a prescribed late fee.

(3) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(4) Where the application for the renewal of a practising certificate is made by a registered energy manager, in addition to the prescribed fee and information, particulars or document as determined by the Commission under subsection (3), such application shall be accompanied by any proof that the registered energy manager has attended sufficient continuous development programmes carried out by a registered training institution as required by the Commission.

(5) After considering the application, the Commission may—

(a) approve the application and renew the practising certificate upon payment of a prescribed fee; or

(b) refuse the application, stating the grounds for refusal.

**Cancellation of certificate of registration of registered energy manager and registered energy auditor**

**30.** (1) The Commission may, by written notice to the registered energy manager or registered energy auditor, as the case may be, cancel the certificate of registration of the registered energy manager or registered energy auditor issued under subsection 27(3) if the registered energy manager or registered energy auditor—

- (a) has contravened any provision of this Act;
- (b) has misused or cause to be misused the certificate of registration;
- (c) has altered the certificate of registration;
- (d) has obtained the certificate of registration by making or causing to be made, or by producing or causing to be produced, a false or fraudulent declaration, certificate, application, representation or information, either in writing or otherwise; or
- (e) has been convicted of an offence involving fraud, dishonesty or corruption.

(2) Upon cancellation of the certificate of registration, both the certificate of registration and practising certificate issued under subsections 27(3) and 28(3) respectively, shall cease to be valid from the date of the written notice issued by the Commission under subsection (1) and the energy manager or energy auditor shall not be allowed to file any fresh application to be registered under this Act.

PART VII

REGISTRATION OF TRAINING INSTITUTION

**Requirement for registration of training institution**

**31.** (1) No training institution shall—

- (a) conduct a training course for any person who intends to be a registered energy manager; or

- (b) carry out a continuous development programme for a registered energy manager under this Act,

unless the training institution is registered under this Act and holds a valid practising certificate issued under this Act.

(2) Any training institution which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

### **Qualifications for registration of training institution**

**32.** Any training institution may apply to be registered under this Act if the training institution—

- (a) is a company, limited liability partnership, firm, society or other body of persons incorporated or established under any written law;
- (b) fulfils other prerequisite requirements as may be determined by the Commission; and
- (c) has not been convicted of an offence involving fraud, dishonesty or corruption.

### **Application for registration of training institution**

**33.** (1) An application for registration of a training institution shall be made to the Commission in such manner as may be determined by the Commission.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(3) After considering the application, the Commission may—

- (a) approve the application and issue to the applicant upon payment of a prescribed fee a certificate of registration in such form as may be determined by the Commission; or
- (b) refuse the application, stating the grounds for refusal.

**Application for practising certificate of registered training institution**

**34.** (1) An application for a practising certificate by a training institution which has been registered under section 33 shall be made to the Commission in such manner as may be determined by the Commission.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

(3) After considering the application, the Commission may—

(a) approve the application and issue to the applicant upon payment of a prescribed fee a practising certificate in such form as may be determined by the Commission; or

(b) refuse the application, stating the grounds for refusal.

(4) A practising certificate issued under subsection (3) shall be valid for a period as may be specified in the practising certificate.

**Renewal of practising certificate of registered training institution**

**35.** (1) A registered training institution may apply to renew its practising certificate issued under subsection 34(3) before the date of expiration of the practising certificate within such period and in such manner as may be determined by the Commission.

(2) A registered training institution which applies for the renewal of the practising certificate after the date of expiration of the practising certificate shall pay a prescribed late fee.

(3) An application under subsection (1) shall be accompanied by the prescribed fee and such information, particulars or document as may be determined by the Commission.

- (4) After considering the application, the Commission may—
- (a) approve the application and renew the practising certificate upon payment of a prescribed fee; or
  - (b) refuse the application, stating the grounds for refusal.

### **Cancellation of certificate of registration of registered training institution**

**36.** (1) The Commission may, by written notice to the registered training institution, cancel the certificate of registration of the registered training institution issued under subsection 33(3) if the registered training institution—

- (a) has contravened any provision of this Act;
- (b) has ceased to carry on the business in respect of which it is registered under this Act;
- (c) has misused or cause to be misused the certificate of registration;
- (d) has altered the certificate of registration;
- (e) has obtained the certificate of registration by making or causing to be made, or by producing or causing to be produced, a false or fraudulent declaration, certificate, application, representation or information, either in writing or otherwise; or
- (f) has been convicted of an offence involving fraud, dishonesty or corruption.

(2) Upon cancellation of the certificate of registration, both the certificate of registration and practising certificate issued under subsections 33(3) and 34(3) respectively, shall cease to be valid from the date of the written notice issued by the Commission under subsection (1) and the training institution shall not be allowed to file any fresh application to be registered under this Act.

PART VIII

INFORMATION GATHERING POWERS

**Review and audit of energy consumer, etc.**

37. (1) The Commission may—

- (a) carry out or cause to be carried out a review or audit on any energy consumer to whom this Act applies, person in charge of a building to which this Act applies, registered manufacturer, registered importer, registered energy manager, registered energy auditor or registered training institution or any other person as may be determined by the Commission on their compliance with the provisions of this Act, on any information, particulars or document furnished by them to the Commission or on any other matters as may be directed by the Commission; or
- (b) require any energy consumer to whom this Act applies, person in charge of a building to which this Act applies, registered manufacturer, registered importer, registered energy manager, registered energy auditor or registered training institution to appoint, at their own cost, an independent expert, with qualifications as may be determined by the Commission to carry out a review or audit on their compliance with the provisions of this Act, on any information, particulars or document furnished by them to the Commission or on any other matters as may be directed by the Commission.

(2) The review and audit under this section shall be carried out in accordance with the guidelines.

(3) An energy consumer, person in charge of a building, registered manufacturer, registered importer, registered energy manager, registered energy auditor or registered training institution or any other person as determined by the Commission who or which—

- (a) fails to furnish any information, particulars or documents as may be required by the Commission for the purpose of this section;

- (b) intentionally alters, suppresses or destroys any information, particulars or document which has been required by written notice issued by the Commission to be produced for the purpose of this section; or
- (c) refuses to assist or facilitate, or obstructs the Commission or officers of the Commission, or the independent expert in carrying out the review or audit under this section,

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

**Power to require provision of information, etc.**

**38.** (1) Notwithstanding any other written law, if the Commission has reasonable grounds to believe that any person—

- (a) has any information, particulars or document that is relevant to the performance of the Commission's functions and powers under this Act; or
- (b) is capable of giving any evidence which the Commission has reasonable grounds to believe is relevant to the performance of the Commission's functions and powers under this Act,

the Commission may, by written notice, direct that person—

- (A) to give any such information or particulars to an authorized officer in the manner and form and within the period as specified in the notice or such extended period as the Commission may grant;
- (B) to produce any such document, whether in physical form or in electronic media, to an authorized officer in the manner and within the period as specified in the notice or such extended period as the Commission may grant;
- (C) to make copies of any such document and to produce those copies to an authorized officer in the manner and within the period as specified in the notice or such extended period as the Commission may grant;



- (D) if the person is an individual, to appear before an authorized officer at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any document, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Commission may grant;
- (E) if the person is a body corporate or a public body, to cause a competent officer of the body to appear before an authorized officer at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any document, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Commission may grant; or
- (F) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear before an authorized officer at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any document, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Commission may grant.

(2) Where the Commission directs any person to produce any document under subsection (1) and the document is not in the custody of that person, that person shall—

- (a) state, to the best of his knowledge and belief, where the document may be found; and
- (b) identify, to the best of his knowledge and belief, the last person who had custody of the document and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(3) Any person directed to give or produce any information, particulars or documents or copies of any document under subsection (1) shall ensure that the information, particulars or documents or copies of the document given or produced are true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information, particulars or document which would make the information, particulars or document given or produced untrue or misleading.

(4) Any person who fails to comply with the direction of the Commission under subsection (1) shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(5) Any person who contravenes subsection (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

### **Commission may retain documents**

**39.** (1) The Commission may take and retain for such duration as the Commission deems necessary, any document obtained under this Part.

(2) The person who provides the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy of the document.

(3) Notwithstanding any other written law, the certified copy of the document shall be admissible as evidence as if it were the original document.

(4) Until a certified copy of the document is supplied, the Commission shall, at such times and places as the Commission deems appropriate, permit the person who provides the document or a person authorized by the person to inspect and make copies of or take extracts from the original document.

(5) If the Commission is satisfied that it is no longer necessary to retain the document, the Commission may return the documents to the person who provided the document as soon as practicable.

### **Access to records**

**40.** (1) A person shall, if at any time requested by the Commission by written notice, allow the Commission or its authorized officers or any other person specified by the Commission in the written notice, access to his or its records for the purposes of carrying out the Commission's functions and powers under this Act.

(2) Any person who fails to comply with the written notice under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

## Part IX

### ENFORCEMENT

#### **Authorized officer**

**41.** (1) The Minister may, in writing, authorize any officer of the Commission to exercise the powers of enforcement under this Act.

(2) Any officer of the Commission authorized under subsection (1) shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

#### **Authority card**

**42.** (1) The Commission shall issue to each authorized officer an authority card which shall be signed by the Chief Executive Officer of the Commission.

(2) Whenever such authorized officer exercises any of the powers of enforcement 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 investigation**

**43.** (1) An authorized officer shall have all the powers necessary to carry out an investigation in relation to the commission of an offence under this Act.

(2) In any case relating to the commission of an offence under this Act, any authorized officer carrying out an investigation may exercise all or any of the powers relating to police investigation, except the power to arrest without warrant, given by the Criminal Procedure Code [*Act 593*].

**Power to enter premises and inspect, etc., document, record, etc.**

**44.** Any authorized officer may, at all reasonable hours, exercise the following powers:

- (a) to enter any premises other than premises used only for residential;
- (b) to inspect or verify any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing found in the premises;
- (c) to take samples of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing found in the premises for the purpose of ascertaining, by testing or otherwise, whether an offence has been committed;
- (d) to make copies of or extract any document, record, computerized data, digitalized data, plan, drawing or thing found in the premises; and
- (e) to require, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Act and of any order or directions made under this Act are duly observed, any person having authority to do so to break open any container or open any vending machine, and if that person does not comply with the requirement, the authorized officer may do so himself.

**Search and seizure with warrant**

**45.** (1) If it appears to a Magistrate, upon written information on oath from an authorized officer and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act is being or has been committed in any premises, so that any evidence or thing which is necessary to the conduct of an investigation into an offence may be found in any premises, the Magistrate may issue a warrant authorizing any authorized officer named in the warrant to enter the premises at any time, with or without assistance, and if need be by force to search for and seize any such evidence or thing.

(2) An authorized officer entering any premises under this section may take with him such other persons and such equipment as may appear to him necessary and on leaving any premises which he has entered by virtue of a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(3) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the search and seizure of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing which contains or is reasonably suspected to contain information as to any offence suspected to have been committed or is otherwise necessary to conduct an investigation into any offence.

(4) An authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(5) The authorized officer making a search of a person under subsection (4) or section 46 may seize, or take possession of, and place in safe custody all things other than the necessary clothing, found upon the person, and any other things, for which there is reason to believe were the instruments or other evidence of the offence, and they may be detained until an order by the court is issued for its disposal.

(6) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(7) If, by the reason of its nature, size or amount, it is not practicable to remove any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized under this section, the authorized officer who effected the seizure shall by any means seal such document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing in the premises or container in which it is found.

(8) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (7) or removes any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing 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 to imprisonment for a term not exceeding two years or to both.

### **Search and seizure without warrant**

**46.** If an authorized officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 45 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the authorized officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 45 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

### **Access to recorded information or computerized data, etc.**

**47.** (1) Any authorized officer exercising his powers under sections 44, 45 and 46 shall be given access to any recorded information or computerized data or digitalized data, whether stored in a computer or otherwise.

(2) In exercising his powers, the authorized officer—

(a) may inspect and check the operation of any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been used in connection with that information or data; and

(b) may require—

(i) the person, by whom or on whose behalf, the authorized officer has reasonable cause to suspect the computer is or has been so used in connection with the information or data; or

- (ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material in connection with the information or data,

to provide him with such reasonable assistance as he may require for the purposes of this section.

(3) The authorized officer may make copies or take extracts of the recorded information or computerized data or digitalized data, if he deems necessary.

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

(5) Any person who fails to give access to any authorized officer to any recorded information or computerized data or digitalized data under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

### **Tipping-off**

**48.** (1) Any person who—

- (a) knows or has reasonable grounds to suspect that an authorized officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reasonable grounds to suspect that a disclosure has been made to an authorized officer and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

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

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In any proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he did not know or suspect that the disclosure made under paragraph (1)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

(5) An authorized officer or any other person does not commit an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement or intended enforcement, of this Act.

### **Search warrant valid notwithstanding defects**

**49.** A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the search warrant or in the application for such search warrant and any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized under such search warrant shall be admissible in evidence in any proceedings under this Act.



**List of seized documents, etc.**

**50.** (1) Except as provided in subsection (2), where any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing is seized under this Part, the authorized officer who effected the seizure shall as soon as practicable prepare a list of the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized and immediately deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(2) Where the premises are unoccupied, the authorized officer who effected the seizure shall wherever possible post a list of the things seized conspicuously on the premises.

**Forfeiture of seized documents, etc.**

**51.** (1) Any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized in exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized in exercise of any power conferred under this Act shall be made by the court before which the prosecution with regard thereto it has been held and an order for the forfeiture of the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing 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 document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing 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.

(3) If there is no prosecution with regard to any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized in exercise of any power conferred under this Act, such document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing shall be taken and deemed forfeited at the expiration of three calendar months from the date of seizure unless a claim to such document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing is made before the date in the manner set out in subsections (4), (5) and (6).

(4) Any person asserting that he is the owner of such document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing and that the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing are not liable to forfeiture may personally or by his agent authorized in writing give written notice to an authorized officer that he claims the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing.

(5) Upon receipt of such notice under subsection (4), the authorized officer shall refer the claim to the Commission which may direct that such document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing be released or forfeited or may direct the authorized officer to refer the matter to a court for decision.

(6) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing and the person from whom the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing was seized to appear before the court and upon his appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that such document, record,

computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing were the subject matter or were used in the commission of such offence shall order the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing to be forfeited or may in the absence of such proof order for the release of the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing.

(7) Any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing forfeited or deemed forfeited shall be delivered to the authorized officer who shall dispose the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing in accordance with the directions of the Commission.

### **Release of seized documents, etc.**

**52.** (1) If any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing has been seized under this Act, the authorized officer who effected the seizure may at any time after that, with the consent of the Public Prosecutor, release the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing to the person as he determines to be lawfully entitled to the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing, if he is satisfied that the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing is not otherwise required for the purpose of any proceedings under this Act, or for the purpose of any prosecution under any other written law, and in such event, neither the authorized officer effecting the seizure, nor the Government, the Commission or any person acting on behalf of the Government or the Commission shall be liable to any proceedings by any person if the seizure and the release of the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing had been effected in good faith.

(2) A record in writing shall be made by the authorized officer effecting the release of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing under subsection (1) specifying in detail the circumstances of, and the reason for, the release, and he shall send a copy of the record to the Public Prosecutor within seven days of the release.

### **Cost of holding seized document, etc.**

**53.** Where any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized under this Act is held in the custody of the Government or the Commission pending completion of any proceedings in respect of an offence under this Act, the cost of holding such document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing in custody shall, in the event of any person being found guilty of an offence, be a debt due to the Government or the Commission, as the case may be, by such person and shall be recoverable accordingly.

### **No cost or damages arising from seizure to be recoverable**

**54.** No person shall, in any proceedings before any court in respect of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing 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 to require attendance of persons acquainted with case**

**55.** (1) An authorized 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 so required.

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

### **Obstruction**

**56.** Any person who—

- (a) refuses to give any authorized officer access to any premises which the authorized officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays any authorized officer in effecting any entry which the authorized officer is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act;
- (c) refuses to give any authorized officer any information relating to an offence or suspected offence under this Act or any other information or documents which may reasonably be required of him and which he has in his knowledge or power to give;
- (d) refuses to give any other officer of the Commission any information which may reasonably be required of him and which he has in his knowledge or power to give relating to any matter under the functions and powers of the Commission under section 4; or
- (e) gives information or documents that he knows or has reason to believe is false or misleading, in response to a direction issued by the Commission,

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

**Evidence of agent provocateur admissible**

**57.** (1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

(2) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, any statement, whether oral or in writing made to the agent provocateur by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.

**Taking of samples**

**58.** (1) Where any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing which are the subject matter of an offence under this Act are found in two or more packages or receptacles of the same description, it shall be presumed until the contrary is proved that all the packages or receptacles contain the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing of the same nature, quantity and quality.

(2) Where packages or receptacles containing document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing which contravene the provisions of this Act or are otherwise liable to seizure have been seized, it shall be sufficient only to open and examine one per centum or not less than five samples, whichever is the lesser, of the contents of each package or receptacle seized.

(3) The court shall presume that the remaining samples contained in the package or receptacle is of the same nature as those samples examined.

**Destruction, concealment, mutilation and alteration of document, etc.**

**59.** Any person who—

(a) destroys, conceals, mutilates or alters; or

(b) sends or attempts to send or conspires with any other person to remove from his premises or send out of Malaysia,

any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing kept or maintained to defraud the authorized officer or the Commission or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the authorized officer or the Commission under this Act commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART X

GENERAL

**Institution of prosecution**

**60.** No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

**Compounding of offences**

**61.** (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

(a) any offence under this Act as an offence which may be compounded; and

(b) the method and procedure for compounding such offence.

(2) The Commission may, with the consent in writing of the Public Prosecutor, at any time before a prosecution is being instituted, compound any offence prescribed as an offence which may be compounded by making a written offer to the person reasonably suspected of having committed the offence to compound the offence upon payment to the Commission of a sum of money not exceeding fifty per centum of the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence, within such time as may be specified in the written offer.

(3) A written offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Commission 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 (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and the Commission may forfeit or return any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized in connection with the offence, subject to such terms as the Commission thinks fit.

(5) All sums of money received by the Commission under this section shall be paid into the Federal Consolidated Fund.

### **Liability of director, etc., of company, etc.**

**62.** Where any person who commits an offence under this Act is a company, limited liability partnership, firm, society or other body of persons, a person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society or other body of persons or was assisting in its management—



- (a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or the body of persons; and
- (b) if the company, limited liability partnership, firm, society or other body of persons is found guilty of the offence, shall be deemed to be guilty of that offence and shall be liable to the same punishment or penalty as an individual 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; and
  - (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

**Liability of person for act, etc., of employee, etc.**

**63.** Where any person would be liable to any punishment or penalty under this Act for any act, omission, neglect or default committed—

- (a) by that person's employee in the course of his employment;
- (b) by that person's agent when acting on behalf of that person; or
- (c) by the employee of that person's agent when acting in the course of his employment by the person's agent or otherwise on behalf of the person's agent acting on behalf of that person,

that person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of that person's employee or agent, or of the employee of that person's agent.

**Protection against suits and legal proceedings**

**64.** No action, suit, prosecution or other proceedings shall be brought, instituted or maintained in any court against—

- (a) the Commission, authorized officer or any other person for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act; and
- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Commission or authorized officer,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

**Registers**

**65.** (1) The Commission shall keep and maintain the following registers in such form as the Commission may determine:

- (a) register of registered energy managers;
- (b) register of registered energy auditors;
- (c) register of registered manufacturers and registered importers; and
- (d) register of registered training institutions.

(2) The Commission shall remove from the registers the name and other particulars—

- (a) of any registered energy manager or registered energy auditor—
  - (i) who has died;
  - (ii) who is unsound mind or is otherwise incapable of discharging his duties; or

- (iii) whose certificate of registration has been cancelled under section 30; and
- (b) of any registered manufacturer, registered importer or registered training institution—
  - (i) which has gone into liquidation or has been wound up or otherwise dissolved; or
  - (ii) whose certificate of registration has been cancelled under sections 20 and 36 respectively.

**Service of notice**

**66.** (1) Every notice or any other documents required to be served on any person under this Act may be served—

- (a) personally upon the person;
- (b) by sending it to the person by registered post; or
- (c) by electronic means.

(2) The notice or other documents sent by registered post to a person shall be deemed to have been served on that person at the time at which it would have been delivered to that person in the ordinary course of the post if the notice or other document was addressed—

- (a) in the case of a company, limited liability partnership, firm, society or other body of persons—
  - (i) to its registered office;
  - (ii) to its last-known address; or
  - (iii) to any person authorized by it to accept service of process; and
- (b) in the case of an individual, to his last known address.

(3) Where a person has given his consent for a notice or document to be served on him through electronic means, the notice shall be deemed to have been served at the time when the electronic notice or document is transmitted to his account through the electronic means.

### **Power to issue guidelines and directions**

**67.** (1) The Commission may issue any guidelines as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) The Commission may issue such directions as the Commission considers necessary for the purpose of ensuring compliance with this Act.

(3) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines or directions issued under this section.

### **Power to exempt**

**68.** The Minister may, by order published in the *Gazette*, subject to such conditions or restrictions as he may consider necessary or expedient to impose, exempt any building or class of building, any manufacturer or importer or class of manufacturer or importer or any energy-using product or class of energy-using product from any or all of the provisions of this Act.

### **Power to make regulations**

**69.** (1) The Minister may make such regulations as may be expedient or necessary for giving full effect or the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for the following purposes:

- (a) to prescribe the energy consumption threshold for the purpose of ascertaining the application of this Act to an energy consumer to whom this Act applies;

- (b) to prescribe the period and manner for the appointment of a registered energy manager;
- (c) to prescribe the period for the development of an energy management system by an energy consumer to whom this Act applies;
- (d) to prescribe the period and manner for the submission of an energy efficiency and conservation report by an energy consumer to whom this Act applies;
- (e) to prescribe the period and manner for the submission of an energy audit report by an energy consumer to whom this Act applies;
- (f) to prescribe the period for an application for exemption from submitting the subsequent energy audit reports by an energy consumer to whom this Act applies;
- (g) to prescribe the period and manner for the application of an energy intensity label in respect of a building to which this Act applies, including the validity of the energy intensity label;
- (h) to prescribe the energy efficiency rating in relation to the energy intensity performance to be complied with by a building to which this Act applies, including the manner to comply with the energy efficiency rating;
- (i) to prescribe the minimum energy performance standards to be met by an energy-using product to which this Act applies;
- (j) to prescribe the qualifications for registration of energy manager and energy auditor under this Act;
- (k) to prescribe the offences which may be compounded and the forms to be used and the method and procedure for compounding the offences for the purposes of section 61;
- (l) to prescribe the fees payable under this Act, including the late fees; and
- (m) to prescribe any other matter required to be prescribed under this Act.

(3) Any regulations made under this Act may prescribe an act or omission in contravention of the regulations to be an offence and may prescribe for penalties of a fine not exceeding twenty thousand ringgit for such offence.

### **Power to amend Schedules**

**70.** The Minister may, upon the recommendation of the Commission, by order published in the *Gazette*, amend the Schedules to this Act.

### **Saving**

**71.** (1) Any person who holds a valid certificate of registration as an electrical energy manager issued under the Electricity Supply Act 1990 [Act 447] before the date of the coming into operation of this Act shall, on the date of the coming into operation of this Act, be deemed to be a registered energy manager under this Act and may carry out the functions and duties of a registered energy manager under this Act until the date of the expiry of the certificate of registration, provided that such person has made an application to be registered as an energy manager under this Act.

(2) Any energy-using product in respect of which a valid certificate of approval under the Electricity Supply Act 1990 has been issued before the date of the coming into operation of this Act shall, on the date of the coming into operation of this Act, be deemed to have been issued in its respect a certificate of energy efficiency under this Act until the date of the expiry of the certificate of approval, provided that an application for a certificate of energy efficiency in respect of the energy-using product has been made under this Act.

## FIRST SCHEDULE

### [Section 2]

#### ENERGY RESOURCES

1. Hard coal
2. Coke or oven coke
3. Gas coke
4. Brown coal coke

5. Pattern fuel briquettes
6. Lignite or brown coal
7. Peat
8. Lignite briquettes
9. Liquefied natural gas (LNG)
10. Butane
11. Propane
12. Natural gas
13. Ethane
14. Methane
15. Solar photovoltaic
16. Solar thermal
17. Biogas
18. Biodiesel
19. Charcoal
20. Empty fruit bunch (EFB)
21. Fuelwood
22. Mesocarp fibre
23. Palm kernel shell (PKS)

SECOND SCHEDULE

[Section 2]

ENERGY

1. Electricity
2. Chilled water
3. Steam
4. Hot water

THIRD SCHEDULE

[Paragraph 3(1)(b)]

BUILDING

1. Office building

## EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to regulate the efficient consumption of energy and conservation of energy with the aim to improve and increase energy efficiency and to avoid waste of energy, and to provide for related matters.

## PART I

2. Part I of the proposed Act deals with preliminary matters.
3. *Clause 1* contains the short title of the proposed Act and seeks to empower the Minister to appoint different dates for the coming into operation of different provisions of the proposed Act. This *clause* also empowers the Minister to suspend the operation of the whole or any of the provisions of the proposed Act in any part of Malaysia by order published in the *Gazette*.
4. *Clause 2* contains the definitions of certain words and expressions used in the proposed Act.
5. *Clause 3* contains the provision on the application of the proposed Act.

## PART II

6. Part II of the proposed Act deals with functions and powers of the Commission under the proposed Act.
7. *Clause 4* sets out the functions and powers of the Commission under the proposed Act. Some of the functions of the Commission is to advise the Minister on all matters relating to energy efficiency and conservation and to recommend to the Government policies, laws, actions and measures relating to energy efficiency and conservation. The Commission shall have the power to do all things expedient or reasonably necessary for or incidental to the performance of its functions under the proposed Act. This *clause* also provides that the functions and powers of the Commission under the proposed Act are in addition to, and not in derogation of, the functions and powers of the Commission under the Energy Commission Act 2001 [*Act 610*].

## PART III

8. Part III of the proposed Act deals with duties of an energy consumer.
9. *Clause 5* seeks to provide for the appointment of a registered energy manager by an energy consumer to whom the proposed Act applies to manage energy efficiency and conservation for the energy consumer. This *clause* also sets out the functions and duties of a registered energy manager.
10. *Clause 6* seeks to require an energy consumer to whom the proposed Act applies to develop and implement an energy management system in accordance with the guidelines issued by the Commission.



11. *Clause 7* seeks to require that a registered energy manager appointed by an energy consumer to whom the proposed Act applies under *subclause 5(1)* of the proposed Act to prepare an energy efficiency and conservation report for the energy consumer.

12. *Clause 8* seeks to provide that an energy consumer to whom the proposed Act applies shall from time to time cause to be conducted an energy audit in respect of his activity, business or trade so as to comply with the requirement relating to submission of energy audit report under *subclause 9(2)* of the proposed Act. This *clause* also provides that an energy consumer shall appoint a registered energy auditor to conduct the energy audit.

13. *Clause 9* seeks to require the registered energy auditor appointed by the energy consumer to whom the proposed Act applies under *subclause 8(2)* of the proposed Act to prepare an energy audit report based on the energy audit conducted under *subclause 8(1)* of the proposed Act in accordance with the guidelines issued by the Commission. This *clause* requires the energy consumer to submit the energy audit report to the Commission.

#### PART IV

14. Part IV of the proposed Act deals with duties of a person in charge of a building.

15. *Clause 10* seeks to require a person in charge of a building to which the proposed Act applies to apply to the Commission for an energy intensity label to be issued in respect of the building.

16. *Clause 11* seeks to require a person in charge of a building to which the proposed Act applies to display the energy intensity label issued by the Commission under *clause 10* at all times in a conspicuous part of the building.

17. *Clause 12* seeks to provide for offences relating to alteration, forgery, mutilation, defacement or destruction of any energy intensity label.

18. *Clause 13* seeks to require a person in charge of a building to which the proposed Act applies to ensure that the energy intensity performance of the building comply with the energy efficiency rating as may be prescribed. This *clause* also seeks to provide that a written notice of non-compliance will be issued to the person in charge of a building if the Commission ascertains that the energy intensity performance of the building does not comply with the energy efficiency rating. Upon receipt of the written notice of non-compliance, the person in charge of a building shall cause to be conducted an energy audit to improve the energy intensity performance of the building by appointing a registered energy auditor to conduct the energy audit.

19. *Clause 14* seeks to require the registered energy auditor appointed under *subclause 13(6)* to prepare an energy audit report based on the energy audit conducted under *subclause 13(7)* in respect of a building to which the proposed Act applies in accordance with the guidelines issued by the Commission.

20. *Clause 15* seeks to require a person in charge of a building to which the proposed Act applies to prepare an energy efficiency improvement plan for the building based on the energy audit report prepared and submitted to the Commission under *clause 14*.

21. *Clause 16* seeks to provide that *clauses 13, 14 and 15* shall not apply in respect of a building where the person in charge of the building is also an energy consumer to whom the proposed Act applies.

#### PART V

22. Part V of the proposed Act deals with provisions relating to energy-using product.

23. *Clause 17* seeks to provide that no person shall sell, offer to sell, display, advertise or lease any energy-using product to which the proposed Act applies unless the energy-using product is affixed with an energy efficiency rating label issued under *subclause 21(5)*.

24. *Clause 18* seeks to provide that neither a manufacturer nor an importer of energy-using products shall distribute any energy-using product to which the proposed Act applies unless the manufacturer or importer is registered with the Commission and a certificate of energy efficiency has been issued by the Commission in respect of the energy-using product.

25. *Clause 19* seeks to provide for the application for registration by a manufacturer or importer of energy-using products who intends to distribute an energy-using product to which the proposed Act applies.

26. *Clause 20* seeks to provide for the circumstances whereby a certificate of a registration issued to a registered manufacturer or registered importer may be cancelled by the Commission by a written notice.

27. *Clause 21* seeks to provide for the application for a certificate of energy efficiency in respect of an energy-using product to which the proposed Act applies by a registered manufacturer or registered importer who intends to distribute an energy-using product.

28. *Clause 22* seeks to provide for the application for renewal of the certificate of energy efficiency issued in respect of an energy-using product issued under *clause 21*.

29. *Clause 23* seeks to provide for the circumstances whereby a certificate of energy efficiency issued in respect of an energy-using product may be cancelled by the Commission by a written notice.

30. *Clause 24* seeks to provide for the duty to keep records and documents by a registered manufacturer and registered importer.

PART VI

31. Part VI of the proposed Act deals with registration of energy manager and energy auditor.

32. *Clause 25* seeks to provide that no energy manager shall carry out any functions or duties under the proposed Act unless he is registered under the proposed Act and holds a valid practising certificate issued under the proposed Act. This *clause* also seeks to provide that no energy auditor shall conduct any energy audit under the proposed Act unless he is registered under the proposed Act and holds a valid practising certificate issued under the proposed Act.

33. *Clause 26* seeks to provide the qualifications for registration of an energy manager and energy auditor.

34. *Clause 27* seeks to provide for the application for registration of an energy manager and energy auditor.

35. *Clause 28* seeks to provide for the application for a practising certificate by a registered energy manager and a registered energy auditor.

36. *Clause 29* seeks to provide for the application for renewal of a practising certificate by a registered energy manager and a registered energy auditor.

37. *Clause 30* seeks to provide for the circumstances whereby a certificate of registration issued to a registered energy manager and a registered energy auditor may be cancelled by the Commission by a written notice. Upon cancellation of the certificate of registration, both certificate of registration and practising certificate issued under *subclause 27(3)* and *28(3)* respectively, shall cease to be valid from the date of the written notice issued by the Commission and the energy manager or energy auditor shall not be allowed to file any fresh application to be registered under the proposed Act.

PART VII

38. Part VII of the proposed Act deals with registration of training institutions.

39. *Clause 31* seeks to provide that no training institution shall conduct training courses for any person who intends to be a registered energy manager or carry out a continuous development programme for a registered energy manager under the proposed Act unless the training institution is registered under the proposed Act and holds a valid practising certificate issued under the proposed Act.

40. *Clause 32* seeks to provide for the qualifications for registration of a training institution.

41. *Clause 33* seeks to provide for the application for registration of a training institution.

42. *Clause 34* seeks to provide for the application for a practising certificate by a registered training institution.

43. *Clause 35* seeks to provide for the application for renewal of a practising certificate by a registered training institution.

44. *Clause 36* seeks to provide for the circumstances whereby a certificate of registration issued to a registered training institution may be cancelled by the Commission by a written notice. Upon cancellation of the certificate of registration, both the certificate of registration and practising certificate issued under *subclauses 33(3) and 34(3)* respectively, shall cease to be valid from the date of the written notice issued by the Commission and the training institution shall not be allowed to file any fresh application to be registered under the proposed Act.

#### PART VIII

45. Part VIII of the proposed Act deals with the provisions relating to information gathering powers.

46. *Clause 37* seeks to empower the Commission to carry out or cause to be carried out a review or an audit on any energy consumer to whom the proposed Act applies, person in charge of a building to which the proposed Act applies, registered manufacturer, registered importer, registered energy manager, registered energy auditor or registered training institution or any other person as determined by the Commission on their compliance with the provisions of the proposed Act, on any information, particulars or document furnished by them to the Commission or on any other matters as directed by the Commission. This *clause* also provides that the Commission may require an independent expert with the qualifications as may be determined by the Commission be appointed to carry out such review or audit.

47. *Clause 38* seeks to require any person to provide information to the Commission if the Commission has reasonable grounds to believe that such person has any information, particulars or document that is relevant to the performance of the Commission's functions and powers under the proposed Act or such person is capable of giving any evidence which the Commission has reasonable grounds to believe is relevant to the performance of the Commission's functions and powers under the proposed Act. This includes any information relating to ownership and floor space of a building which is relevant for the Commission in determining the applicability of the proposed Act to a building.

48. *Clause 39* seeks to empower the Commission to take and retain documents provided by any person under this Part for such duration as the Commission deems necessary.

49. *Clause 40* seeks to require any person to allow the Commission or its authorized officers or any other person specified by the Commission in a written notice, access to his records for the purposes of carrying out the Commission's functions and powers under the proposed Act.

PART IX

50. Part IX of the proposed Act deals with provisions relating to enforcement of the proposed Act.

51. *Clause 41* seeks to provide that the Minister may, in writing, authorize any officer of the Commission to exercise the powers of enforcement under the proposed Act.

52. *Clause 42* seeks to provide for the issuance of an authority card to each of the authorized officer and the authorized officer shall, on demand, produce to the person against whom the power of enforcement is being exercised the authority card issued to the authorized officer.

53. *Clause 43* seeks to provide for the power of investigation of the authorized officers.

54. *Clause 44* seeks to provide for the power of the authorized officer to enter any premises other than premises used only for residential, and to inspect and verify, and to take samples of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item, or thing found in the premises and to make copies of or extract any document, record, computerized data, digitalized data, plan, drawing or thing found in the premises. This *clause* also provides for the power of the authorized officer to require, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of the proposed Act and of any order or directions made under the proposed Act are duly observed, any person having authority to do so to break open any container or open any vending machine.

55. *Clause 45* deals with provision relating to search and seizure with warrant.

56. *Clause 46* deals with provision relating to search and seizure without warrant.

57. *Clause 47* seeks to provide for the access by an authorized officer to recorded information or computerized data or digitalized data, whether stored in a computer or otherwise.

58. *Clause 48* deals with provision relating to tipping-off. This *clause* makes it an offence for any person to disclose to any other person information or any other matter which is likely to prejudice an investigation or proposed investigation on the commission of an offence under the proposed Act.

59. *Clause 49* seeks to provide that a search warrant which is issued under the proposed Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application for such warrant and any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized under the said warrant shall be admissible in evidence in any proceedings under the proposed Act.

60. *Clause 50* seeks to provide that where any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing is seized under Part IX of the proposed Act, the authorized officer who effected the seizure shall as soon as practicable prepare a list of the document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized and immediately deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

61. *Clause 51* deals with provision relating to the forfeiture of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing seized under the proposed Act. This *clause* also seeks to provide that any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing forfeited or deemed forfeited shall be delivered to the authorized officer who shall dispose it in accordance with the directions of the Commission.

62. *Clause 52* seeks to provide that the authorized officer who effected the seizure of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing may at any time after the seizure, with the consent of the Public Prosecutor, release the seized document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing.

63. *Clause 53* seeks to provide that the cost of holding any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing in the custody of the Government or the Commission pending completion of any proceedings in respect of an offence under the proposed Act shall, in the event of any person being found guilty of an offence, be a debt due to the Government or the Commission, as the case may be, by such person and shall be recoverable accordingly.

64. *Clause 54* seeks to provide that no cost or damages arising from the seizure of any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing under the proposed Act to be recoverable in any proceedings before any court unless such seizure was made without reasonable cause.

65. *Clause 55* seeks to provide power of the authorized officer to require attendance of persons acquainted with the facts and circumstances of case.

66. *Clause 56* seeks to provide for an offence of obstructing any authorized officer in the carrying out of his duty under the proposed Act.

67. *Clause 57* seeks to provide for the admissibility of evidence of an agent provocateur.

68. *Clause 58* seeks to provide for taking of samples of document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing which are the subject matter of an offence under the proposed Act found in two or more packages or receptacles of the same description.

69. *Clause 59* seeks to provide that any person who destroys, conceals, mutilates or alters, or sends or attempts to send or conspires with any other person to remove from his premises or send out of Malaysia any document, record, computerized data, digitalized data, plan, drawing, material, plant, equipment, machinery, goods, energy-using product, product, label, item or thing kept or maintained to defraud the authorized officer or the Commission or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the authorized officer or the Commission under the proposed Act, commits an offence.

#### PART X

70. Part X of the proposed Act deals with general provisions.

71. *Clause 60* seeks to provide that no prosecution shall be instituted for any offence under the proposed Act except by or with the written consent of the Public Prosecutor.

72. *Clause 61* seeks to provide for the compounding of offences under the proposed Act.

73. *Clause 62* deals with liability of a director, compliance officer, partner, manager, secretary or other similar officer in respect of an offence by a company, limited liability partnership, firm, society or other body of persons.

74. *Clause 63* deals with liability of a person for any act, omission, neglect or default by an employee of the person, agent of the person or employee of the person's agent under the proposed Act.

75. *Clause 64* seeks to provide for the protection of the Commission, the authorized officer or any other person for or on account of or in respect of any act ordered or done for the purpose of carrying into effect the proposed Act or 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 Commission or authorized officer against suits and legal proceedings.

76. *Clause 65* seeks to provide for the duty of the Commission to keep and maintain registers under the proposed Act.

77. *Clause 66* seeks to provide for the service of notice or other documents required to be served on any person under the proposed Act.

78. *Clause 67* seeks to provide for the power of the Commission to issue guidelines and directions under the proposed Act.

79. *Clause 68* seeks to provide for the power of the Minister to exempt any building or class of building, any manufacturer or importer or class of manufacturer or importer or any energy-using product or class of energy-using product from any or all of the provisions of the proposed Act.

80. *Clause 69* seeks to provide for the power of the Minister to make regulations under the proposed Act.

81. *Clause 70* seeks to provide for the power of the Minister to amend the Schedules to the proposed Act on the recommendation of the Commission.

82. *Clause 71* deals with saving provision.

*FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3260]