



LAWS OF MALAYSIA

Act 672

SOLID WASTE AND PUBLIC CLEANSING MANAGEMENT ACT 2007

Date of Royal Assent	29 August 2007
Date of publication in the <i>Gazette</i>	30 August 2007

Publisher's Copyright ©

PERCETAKAN NASIONAL MALAYSIA BERHAD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording and/or otherwise without the prior permission of **Percetakan Nasional Malaysia Berhad (Appointed Printer to the Government of Malaysia)**.

LAWS OF MALAYSIA**Act 672****SOLID WASTE AND PUBLIC CLEANSING
MANAGEMENT ACT 2007**

ARRANGEMENT OF SECTIONS

PART I**PRELIMINARY**

Section

1. Short title, application and commencement
2. Interpretation
3. Federal Government to have executive authority
4. Agreement regarding solid waste management services and public cleansing management services

PART II**ADMINISTRATION**

5. Appointment of Director General, Deputy Director General and other officers
6. Functions and powers of Director General
7. Power of Minister to give directions

PART III**APPROVAL FOR THE CONSTRUCTION, ALTERATION OR CLOSURE
OF PRESCRIBED SOLID WASTE MANAGEMENT FACILITIES**

8. Construction or alteration of prescribed solid waste management facilities
9. Recommendation by the Corporation
10. Grant or refusal of approval

Section

11. Review of approval
12. Application to close any prescribed solid waste management facilities
13. Right of appeal to the Minister

PART IV

LICENSING PROVISIONS

14. Requirement for licence
15. Power to exempt from requirement for licence
16. Application for licence
17. Additional information or document
18. Recommendation by the Corporation
19. Grant or refusal of licence
20. Compliance with licence conditions
21. Power to impose additional, vary or revoke conditions
22. Transfer of licence
23. Suspension and revocation of licence
24. Effective date of revocation of licence
25. Surrender of licence
26. Renewal of licence
27. Effect of revocation, surrender or non-renewal of licence
28. Register of licence
29. Right of appeal to the Minister

PART V

CHARGES

30. Power to impose charges, *etc.*
31. Recovery of controlled solid waste charges, fees or levy
32. Failure or refusal to pay charges, fees or levy

PART VI

TRIBUNAL FOR SOLID WASTE MANAGEMENT SERVICES

Section

33. Meaning of “interested person”
34. Establishment of Tribunal for Solid Waste Management Services
35. Membership of Tribunal
36. Temporary exercise of functions of Chairman
37. Vacation of office
38. Revocation of appointment
39. Resignation
40. Filling of vacancy
41. Remuneration
42. Secretary to Tribunal and other officers
43. Sittings of Tribunal
44. Commencement of proceedings
45. Jurisdiction of Tribunal
46. Limitation of jurisdiction
47. Extension of jurisdiction by agreement
48. Abandonment to bring claim within jurisdiction
49. Cause of action not to be split
50. Exclusion of jurisdiction of court
51. Notice of claim and hearing
52. Negotiation for settlement
53. Right to appear at hearings
54. Proceedings to be public
55. Evidence
56. Tribunal may act in absence of party
57. Awards of the Tribunal
58. Reference to a Judge of the High Court on a question of law
59. Reasons for decision
60. Orders and settlement to be recorded in writing
61. Decisions of Tribunal to be final
62. Criminal penalty for failure to comply
63. Procedure where no provision is made
64. Want of form
65. Disposal of documents, *etc.*
66. Act or omission done in good faith
67. Regulations in respect of the Tribunal

PART VII

ASSUMPTION OF CONTROL

Section

68. Interpretation
69. Licensee to inform Corporation
70. Action of Corporation in respect of licensee in certain circumstances

PART VIII

CONTROL OF SOLID WASTE GENERATORS AND PERSONS
IN POSSESSION OF CONTROLLED SOLID WASTE

71. Prohibition against unauthorized depositing, treatment, *etc.*, of controlled solid waste
72. Prohibition against unauthorized escape of any controlled solid waste
73. Waste placed in receptacles or deposit sites for controlled solid waste
74. Power to direct for controlled solid waste to be separated, handled and stored
75. Power to direct controlled solid waste to be removed
76. Power to direct removal of unlawful depositing or disposing of controlled solid waste
77. Offences for causing damage to vehicles, receptacles or other solid waste management facilities.

PART IX

ENFORCEMENT PROVISIONS

78. Authorized officers
79. Power of enforcement
80. Power of investigation
81. Search and seizure with warrant
82. Search and seizure without warrant
83. Access to computerised data
84. Power to stop, search and seize vehicle
85. List of things seized

Section

86. Temporary return of seized property, *etc.*
87. Power to require attendance of person acquainted with case
88. Examination of person acquainted with case
89. Admissibility of statements
90. Forfeiture or release of seized property, *etc.*
91. Cost of holding seized property, *etc.*
92. No costs or damages arising from seizure to be recoverable
93. Obstruction
94. Compounding of offences
95. Institution of prosecution
96. Offences by body corporate
97. Service of document
98. Inaccuracies in documents
99. Liability of transferor
100. Solid waste management facilities installed or constructed without approval before the coming into operation of this Act

PART X

REDUCTION AND RECOVERY OF CONTROLLED SOLID WASTE

101. Reduction, reuse and recycling of controlled solid waste
102. Take back system and deposit refund system

PART XI

GENERAL

103. Solid Waste and Public Cleansing Management Fund
104. Power to exempt
105. Protection of Director General and other officers
106. Jurisdiction to try offences
107. General penalty
108. Regulations

PART XII

SAVINGS AND TRANSITIONAL

109. Savings and transitional
110. Existing solid waste and public cleansing management services
111. Existing agreements and supplementary agreements
112. Existing solid waste management facilities

LAWS OF MALAYSIA**Act 672****SOLID WASTE AND PUBLIC CLEANSING
MANAGEMENT ACT 2007**

An Act to provide for and regulate the management of controlled solid waste and public cleansing for the purpose of maintaining proper sanitation and for matters incidental thereto.

[]

WHEREAS sanitation is a matter within the Concurrent List in the Ninth Schedule to the Federal Constitution:

AND WHEREAS matters relating to the management of controlled solid waste and public cleansing are now administered by the various local authorities:

AND WHEREAS it is expedient for the purpose of ensuring uniformity of law and policy to make a law for the proper control and regulation of matters relating to the management of controlled solid waste and public cleansing throughout Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan:

AND WHEREAS it is also expedient that provisions be made to confer executive authority on the Federation for matters relating to the management of controlled solid waste and public cleansing throughout Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan:

NOW, THEREFORE, in accordance with Clause (1) of Article 74 and Clause (2) of Article 80 of the Federal Constitution, **IT IS ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Solid Waste and Public Cleansing Management Act 2007.

(2) This Act applies to Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan.

(3) 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—

(a) for the coming into operation of this Act in different parts of Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan;

(b) for the coming into operation of different provisions of this Act; or

(c) for the coming into operation of different provisions of this Act in different parts of Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan.

Interpretation

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

“prescribed”, unless otherwise specified, means prescribed by way of regulations made under this Act;

“public roads” means any public road which is currently repaired or maintained by a local authority or which has been transferred to or has become vested in the local authority under any written law and includes any street, square, court, alley, lane, bridge, footway, track, bridle-path, passage, tunnel, lay-by, interchange, round-about, traffic island, road divider, traffic lane, acceleration lane, deceleration lane, side-table, median strip, overpass, underpass, approach, entrance or exit ramp whether a thoroughfare or not, over which the public have a right of way,

but shall not include any Federal road, State road, highway, bridge, tunnel or anything connected to that road which is maintained and kept by any Federal or State authority or any private person or private bodies;

“nuisance” has the meaning assigned to it in section 2 of the Local Government Act 1976 [*Act 171*];

“solid waste management facilities” means any land, fixed or mobile plant and systems incorporating structures, equipment used or intended to be used for the handling, storage, separation, transport, transfer, processing, recycling, treatment and disposal of controlled solid waste and includes transfer stations, disposal sites, sanitary landfill, incinerators and other thermal treatment plants, recycling plants and composting plants;

“Director General” means the Director General of Solid Waste and Public Cleansing Management appointed under section 5;

“recycling” means to collect and separate solid waste for the purpose of producing products;

“Minister” means the Minister charged with the responsibility for solid waste and public cleansing management;

“market” has the meaning assigned to it in section 2 of the Local Government Act 1976;

“authorized officer” means any officer appointed under section 5, officer of any local authority as defined in the Local Government Act 1976 or officer of the Corporation authorized in writing by the Director General for the purposes of this Act;

“disposal” means the disposal of any solid waste by any means including destruction, incineration, deposit or decomposing;

“licensee” means a person who is licensed under this Act;

“owner”—

(a) in relation to any premises, means—

- (i) the registered proprietor of the premises; or
- (ii) the lessee, including a sub-lessee, of the premises whether registered or otherwise;

- (b) in relation to any subdivided building means—
- (i) the registered proprietor of a parcel held under a separate strata title;
 - (ii) the lessee, including a sub-lessee, of the subdivided building whether registered or otherwise; or
 - (iii) the management corporation or any other similar body approved under any written law and any subsidiary proprietor;
- (c) means the agent or trustee of any of the persons described in paragraph (a) and subparagraph (b)(i) or, if that person cannot be traced or has died, his legal personal representative;
- (d) if the premises are part of a development for which separate titles are required to be applied for under any written law in operation but separate titles have yet to be issued, means—
- (i) the person with whom the developer has entered into any agreement for the purchase of the lot or parcel comprising the premises; or
 - (ii) the person to whom the property has been assigned and the assignment of which has been notified to the developer;
- (e) in relation to any premises where building works are carried out, includes the developer;
- (f) in relation to the common property of any building erected on land comprised in a strata subdivision plan approved by the competent authority, includes—
- (i) the management corporation or any person having control of the building;
 - (ii) any agent or servant appointed by the management corporation or any person having control of the building;
 - (iii) any person, body or administrator appointed pursuant to the Strata Titles Act 1985 [Act 318] to exercise the power of, or for that, management corporation; or

(iv) any person or body appointed pursuant to the Building and Common Property (Maintenance and Management) Act 2007 [Act 663]; or

(g) in relation to any vehicle, means the registered owner of the vehicle;

“solid waste generator” means any person who generates any controlled solid waste;

“occupier”—

(a) means a person in occupation or control of any premises; and

(b) in relation to premises where different parts of the premises are occupied by different persons, means the respective person in occupation or control of each part of the premises;

“Corporation” means the Solid Waste and Public Cleansing Management Corporation established under the Solid Waste and Public Cleansing Management Corporation Act 2007 [Act 673];

“public cleansing management services” means the following services:

(a) the cleansing of public roads, public places, public toilets and public drains;

(b) the cleansing of—

(i) hawker centres excluding privately owned and maintained food courts; and

(ii) markets excluding privately owned and maintained markets;

(c) the clearing of illegally dumped controlled solid waste on public roads and in public places;

(d) beach cleansing;

(e) kerbside grass cutting on public roads;

(f) grass cutting in public places; and

(g) removal of carcasses,

but excludes landscaping and the maintenance of public roads and public places;

“solid waste management services” means the separation, storage, collection, transportation, transfer, processing, recycling, treatment and disposal of controlled solid waste;

“local authority”—

- (a) means any local authority established or deemed to have been established under the Local Government Act 1976;
- (b) in relation to the Federal Territory of Labuan, means the local authority established under the Local Government Ordinance 1961 of Sabah, in operation in the Federal Territory of Labuan as modified by the Federal Territory of Labuan (Modification of Local Government Ordinance) Order 1984 [*P.U. (A) 169/1984*];
- (c) in relation to the Federal Territory of Kuala Lumpur, means the Commissioner of the City of Kuala Lumpur appointed under section 3 of the Federal Capital Act 1960 [*Act 190*]; and
- (d) includes any person or body of persons appointed or authorized under any written law to exercise and perform the powers and functions which are conferred and imposed on a local authority under any written law;

“premises” includes houses, buildings, lands, easements of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority;

“recycling centre” means a place where the public can either drop or sell recyclable solid waste;

“solid waste” includes—

- (a) any scrap material or other unwanted surplus substance or rejected products arising from the application of any process;
- (b) any substance required to be disposed of as being broken, worn out, contaminated or otherwise spoiled; or
- (c) any other material that according to this Act or any other written law is required by the authority to be disposed of,

but does not include scheduled wastes as prescribed under the Environmental Quality Act 1974 [*Act 127*], sewage as defined in the Water Services Industry Act 2006 [*Act 655*] or radioactive waste as defined in the Atomic Energy Licensing Act 1984 [*Act 304*];

“public solid waste” means any solid waste generated by public places, which are under the supervision or control of any local authority;

“imported solid waste” means any solid waste generated in other countries and imported to Malaysia for processing or disposal;

“household solid waste” means any solid waste generated by a household, and of a kind that is ordinarily generated or produced by any premises when occupied as a dwelling house, and includes garden waste;

“institutional solid waste” means any solid waste generated by—

- (a) any premises approved under any written law or by the State Authority for use wholly or mainly for religious worship or for charitable purposes;
- (b) any premises occupied by any Federal or State Government department, any local authority or any statutory body;
- (c) any educational premises;
- (d) any healthcare facilities including hospitals, clinics and health centres; or
- (e) any premises used as public zoos, public museums, public libraries and orphanages;

“special solid waste” means any kind of controlled solid waste as may be prescribed which—

- (a) is or may be dangerous to public health; or
- (b) is difficult to treat, keep or dispose of,

that special provisions are required to deal with it;

“commercial solid waste” means any solid waste generated from any commercial activity;

“construction solid waste” means any solid waste generated from any construction or demolition activity, including improvement, preparatory, repair or alteration works;

“industrial solid waste” means any solid waste generated from any industrial activity;

“controlled solid waste” means any solid waste falling within any of the following categories:

- (a) commercial solid waste;
- (b) construction solid waste;
- (c) household solid waste;
- (d) industrial solid waste;
- (e) institutional solid waste;
- (f) imported solid waste;
- (g) public solid waste; or
- (h) solid waste which may be prescribed from time to time;

“recyclable solid waste” means controlled solid waste which is suitable for recycling as may be prescribed;

“appointed date” means the date on which this Act or parts of this Act comes into operation;

“public places” means any open space, parking place, garden, recreation and pleasure ground or square, whether enclosed or not, set apart or appropriated for the use of the public or to which the public shall at any time have access;

“Tribunal” means the Tribunal for Solid Waste Management Services established under section 34.

Federal Government to have executive authority

3. The Federal Government shall, upon the coming into operation of this Act, have executive authority with respect to all matters relating to the management of solid waste and public cleansing throughout Peninsular Malaysia and the Federal Territories of Putrajaya and Labuan.

Agreement regarding solid waste management services and public cleansing management services

4. Notwithstanding the provisions of any written law to the contrary, the Federal Government shall, upon the coming into operation of this Act, have power to enter into any agreement with any person authorizing such person to undertake, manage, operate and carry out any solid waste management services or public cleansing management services under this Act.

PART II

ADMINISTRATION

Appointment of Director General, Deputy Director General and other officers

5. (1) The Minister shall appoint a Director General of Solid Waste and Public Cleansing Management, who shall head a department, from amongst members of the public service for such period and on such terms and conditions as may be specified in the instrument of appointment.

(2) The Minister shall appoint such numbers of Deputy Director General of Solid Waste and Public Cleansing as may be necessary for the purposes of this Act from amongst members of the public service who shall, subject to the control and direction of the Director General, have the powers and functions of the Director General, other than the power of delegation referred to in subsection (4).

(3) The Minister shall appoint such numbers of Directors, Deputy Directors, Assistant Directors and other officers as may be necessary for the purposes of this Act from amongst members of the public service who shall be subject to the control, direction and supervision of the Director General.

(4) The Director General may, in relation to any particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Act, except his power of delegation, to any Director, Deputy Director, Assistant Director, or other officers including any officer of any local authority or any officer of the Corporation.

(5) A delegation under subsection (4) may be revoked at any time by the Director General and does not prevent the Director General from exercising the powers or performing the functions delegated under that subsection.

Functions and powers of Director General

6. (1) Without prejudice to any other functions conferred on the Director General by this Act, the Director General shall have the following functions:

- (a) to propose, after taking into consideration the recommendation from the Corporation, policies, plans and strategies in respect of solid waste and public cleansing management to the Minister;
- (b) to formulate, after taking into consideration the recommendation from the Corporation, plans for solid waste management including the location, type and size of new treatment facilities, the coverage areas of the solid waste management facilities, the solid waste management schemes to supply controlled solid waste to the solid waste management facilities and the time-scale for the implementation of the plans;
- (c) to set, after taking into consideration the recommendation from the Corporation, standards, specifications and codes of practice relating to any aspect of solid waste management services and public cleansing management services;
- (d) to exercise the regulatory functions specified in this Act and any regulations made under this Act;
- (e) to grant licences and approvals under this Act; and
- (f) to carry out such other activities for the purpose of carrying out, or in connection with, the performance of his functions under this Act.

(2) The Director General shall have all such powers as may be necessary for, or in connection with, or incidental to, the performance of his functions under this Act.

Power of Minister to give directions

7. The Minister may give the Director General directions of general character consistent with the provisions of this Act relating to the exercise of the powers and performance of the functions of the Director General and the Director General shall give effect to such directions.

PART III

APPROVAL FOR THE CONSTRUCTION, ALTERATION OR CLOSURE
OF PRESCRIBED SOLID WASTE MANAGEMENT FACILITIES

Construction or alteration of prescribed solid waste management facilities

8. (1) No person shall construct any prescribed solid waste management facilities unless the relevant plans or specifications which require the approval of the Director General have first been approved in writing by the Director General.

(2) No person shall undertake any alteration of any prescribed solid waste management facilities which may—

- (a) affect the performance of the solid waste management facilities;
- (b) cause adverse environmental impact;
- (c) impede the quality and level of solid waste management services;
- (d) adversely affect public health; or
- (e) affect the overall planning of solid waste management services,

unless the relevant plans or specifications which require the approval of the Director General have first been approved in writing by the Director General.

(3) An application for the approval of the Director General under subsections (1) and (2) shall be submitted to the Corporation.

(4) In addition to any other requirements under any other written law, the Corporation may require any person seeking the approval of the Director General under subsection (1) or (2) to submit to the Corporation such information and document in a form and manner and within the time as may be prescribed.

(5) If a person fails to comply with subsection (4), the person's application for approval shall be deemed to be withdrawn without affecting the person's right to submit a fresh application.

(6) The Corporation may give written directions to the person seeking the approval of the Director General under subsections (1) and (2) with regard to the compliance with this Act or any regulations made under this Act.

(7) The person to whom any written directions are given under subsection (6) shall comply with such directions and where necessary, amend the plans and specifications accordingly and resubmit the amended plans and specifications to the Corporation in a manner and within the time as the Corporation may specify.

(8) If the person referred to in subsection (7) fails to comply with the written directions of the Corporation, the person's application shall be deemed to be withdrawn without affecting the person's right to submit a fresh application.

(9) A person who—

- (a) constructs or alters any prescribed solid waste management facilities without the plans and specifications which are required to be approved by the Director General being first approved in writing by the Director General; or
- (b) constructs or alters any prescribed solid waste management facilities not in accordance with approved plans and specifications,

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 five years or to both.

(10) If an offence is proved under subsection (9), the court shall make an order requiring the person to alter the prescribed solid waste management facilities so as to comply with the approved plans and specifications within a period specified in the order and

if he fails to comply with the order, he 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 five years or to both and in the case of a continuing offence, be liable to a fine not exceeding five thousand ringgit for every day or a part of a day during which the offence continues after conviction.

Recommendation by the Corporation

9. (1) The Corporation shall within sixty days from the receipt of the application under subsection 8(3), submit a written recommendation to the Director General as to whether or not the approval should be granted to the person seeking the approval of the Director General under subsection 8(1) or (2).

(2) The written recommendation of the Corporation shall specify the reasons for its recommendation and any special conditions which that person should be subjected to if the Corporation recommends to the Director General to grant the approval.

Grant or refusal of approval

10. (1) The Director General may, after considering the application for approval under subsection 8(1) or (2) and having due regard to the recommendation of the Corporation under section 9, grant the approval or refuse to grant the approval.

(2) In granting the approval to the person referred to in subsection 8(1) or (2), the Director General may impose such terms and conditions as he thinks fit.

(3) The decision of the Director General to grant or not to grant an approval shall be communicated to the person referred to in subsection 8(1) or (2) as soon as practicable.

Review of approval

11. (1) The Corporation may from time to time submit a written recommendation to the Director General as to whether the approval granted under section 10 should be reviewed.

(2) The Director General may, having due regard to the recommendation of the Corporation under subsection (1), review the approval granted under section 10 if he is satisfied that the approved solid waste management facility does not conform to any requirements pertaining to environmental impact, quality and level of solid waste management services or public health.

(3) The Director General may serve upon the owner or occupier of the approved solid waste management facility a written notice of his intention to require the owner or occupier to apply for a fresh approval.

(4) The Director General shall give the owner or occupier an opportunity to make written submission within a period specified in the written notice which shall not be less than thirty days.

(5) After the expiry of the period specified in the notice, the Director General shall, after considering any written submission made by the owner or occupier and having due regard to any recommendation of the Corporation, decide whether or not to require the owner or occupier to apply for a fresh approval.

(6) The Director General shall give the owner or occupier a written notice of his decision under subsection (5) as soon as practicable.

Application to close any prescribed solid waste management facilities

12. (1) Any owner or occupier who intends to close any prescribed solid waste management facilities, may apply to the Director General by submitting a written application and a proposed closure plan to the Corporation.

(2) The Corporation may, after the receipt of an application under subsection (1), request the owner or occupier to give further information or document within the period specified in the request or any extension of time granted by the Corporation.

(3) If the owner or occupier fails to comply with subsection (2), the application shall be deemed to be withdrawn without affecting the owner or occupier's right to submit a fresh application.

(4) The Corporation shall within sixty days from the receipt of the application under subsection (2), submit a written recommendation to the Director General as to whether or not the application should be allowed.

(5) The written recommendation of the Corporation shall specify the reasons for its recommendation and any special conditions which the owner or occupier should be subjected to if the Corporation recommends to the Director General to allow the application.

(6) The Director General shall, after considering the application under subsection (1) and having due regard to the recommendation of the Corporation—

- (a) allow the application with or without conditions; or
- (b) reject the application and direct the owner or occupier to submit a fresh application and closure plan.

(7) Any owner or occupier who closes any prescribed solid waste management facility without the approval of the Director General commits an offence and shall, on conviction, be liable to a fine not less than one hundred thousand ringgit and not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Right of appeal to the Minister

13. (1) Any person who is aggrieved by any decision of the Director General under this Part may appeal to the Minister in the prescribed manner within fourteen days from the date the decision is communicated to such person.

(2) The Minister's decision on an appeal under subsection (1) shall be final and binding.

PART IV

LICENSING PROVISIONS

Requirement for licence

14. (1) Subject to section 16, no person shall—

- (a) undertake or provide any solid waste management services;

- (b) manage or operate any solid waste management facilities;
or
- (c) undertake or provide any public cleansing management services,

unless he holds a licence granted under this Act.

(2) A licensee shall not provide any of the licensed activities referred to in subsection (1) except in accordance with the conditions of the licence granted to the licensee.

(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not less than fifty thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both and in the case of a continuing offence, be liable to a fine not exceeding five thousand ringgit for every day or a part of a day during which the offence continues after conviction.

Power to exempt from requirement for licence

15. (1) The Minister may, upon the recommendation of the Director General, by order published in the *Gazette*, exempt a person from the licensing requirements under section 14 subject to such terms and conditions as the Minister thinks fit.

(2) A person who is exempted from the licensing requirements under subsection (1) shall comply with the duties and obligations of a licensee as if the person is a licensee under this Act unless otherwise specified in the exemption order.

Application for licence

16. (1) Any person may apply to the Director General for a licence to be granted to him under this Act by submitting a written application to the Corporation in the manner as may be prescribed.

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

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

Additional information or document

17. (1) The Corporation may, in writing at any time after the receipt of an application under section 16, request the applicant to give to the Corporation within the period specified in the request additional information or document on the application.

(2) If any additional information or document required under subsection (1) is not provided by the applicant within the period specified in the request or any extension of time granted by the Corporation, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

Recommendation by the Corporation

18. (1) The Corporation shall within sixty days from the receipt of an application under subsection 16(1), submit a written recommendation to the Director General as to whether or not the licence should be granted to the applicant.

(2) The written recommendation of the Corporation shall specify the reasons for its recommendation and any special conditions which the applicant should be subjected to if the Corporation recommends to the Director General to grant the licence.

Grant or refusal of licence

19. (1) The Director General may, after considering the application for a licence under section 16, and the additional information or document provided under section 17 and having due regard to the recommendation of the Corporation under section 18, grant the licence or refuse to grant the licence.

(2) If the Director General decides to grant a licence under subsection (1), he shall—

- (a) require the licensee to pay the prescribed fee within the prescribed period; and
- (b) impose conditions as he thinks fit.

(3) The conditions which may be imposed under subsection (2) include—

- (a) the nature, extent and frequency of services to be provided by the licensee;
- (b) the duration of the licence;
- (c) the area and scheme for which the licensee shall provide such services;
- (d) the types of controlled solid waste;
- (e) the solid waste management facilities to which collected solid waste may be delivered to;
- (f) the requirement to deposit such amount as may be prescribed as security for safe closure of solid waste management facilities;
- (g) the annual licence fee payable by the licensee, or if the Director General thinks it expedient, the lump sum licence fee payable by the licensee for the whole duration of the licence; and
- (h) the particular rights and duties of the licensee in respect of the services to be provided by the licensee.

(4) The decision of the Director General to grant or not to grant a licence shall be communicated to the applicant by written notice as soon as practicable.

(5) The written notice by the Director General under subsection (4) shall specify—

- (a) in the case where the licence is granted, the fact of such grant and the requirements and conditions imposed under subsection (2); and
- (b) in the case of a refusal to grant a licence, the fact of such refusal and the reason for the refusal.

Compliance with licence conditions

20. (1) A licensee shall comply with the conditions imposed by the Director General on the licence.

(2) A licensee who fails to comply with any condition of a licence commits an offence and shall, on conviction, be liable to a fine not less than twenty-five thousand ringgit and not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both and in the case of a continuing offence, be liable to a fine not exceeding two thousand and five hundred ringgit for every day or a part of a day during which the offence continues after conviction.

Power to impose additional, vary or revoke conditions

21. (1) The Director General may, on the recommendation of the Corporation, at any time—

- (a) impose any additional conditions on the licence; or
- (b) vary or revoke any of the conditions imposed on the licence.

(2) Before the Director General makes a decision under subsection (1), the Corporation shall give the licensee—

- (a) a written notice of the Director General's intention together with a draft copy of the imposition, variation or revocation; and
- (b) an opportunity to make written submissions within a period specified in the written notice which shall not be less than thirty days.

(3) After the expiry of the period specified in the notice, the Director General shall, after considering any written submission made by the licensee and having due regard to any recommendation of the Corporation, decide whether to impose additional conditions or to vary or revoke any existing conditions or to take no further action.

(4) The Corporation shall give the licensee a written notice of the Director General's decision under subsection (3) as soon as practicable and the decision shall take effect on a date to be specified in the written notice.

Transfer of licence

22. (1) The grant of a licence under section 19 shall be personal to the licensee and the licence shall not be assigned, sub-licensed or transferred to any other person except with the prior written approval of the Director General.

(2) A licensee who assigns, sub-licenses or transfers his licence to any other person without the prior written approval of the Director General commits an offence and shall, on conviction, be liable to a fine not less than twenty-five thousand ringgit and not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Suspension and revocation of licence

23. (1) The Director General may, upon the recommendation of the Corporation, suspend or revoke a licence under any of the following circumstances:

- (a) the licensee has failed to comply with any provisions of this Act or any regulations made under this Act;
- (b) the licensee has failed to comply with any conditions of the licence;
- (c) the licensee had improperly or illegally obtained the licence;
- (d) the licensee has been convicted of an offence under this Act or any regulations made under this Act;
- (e) a receiver, receiver and manager, provisional liquidator or like official has been appointed over the whole or substantial part of the licensee's assets and such appointment is not revoked or annulled within a period of sixty days from the date of such appointment; or
- (f) there has been any act or default on the part of the licensee or there has been a change of circumstances such that the licensee would no longer be entitled to be granted a licence under this Act.

(2) Before the Director General makes a decision under subsection (1), he shall give the licensee—

- (a) a written notice of his intention to suspend or revoke the licence; and

(b) an opportunity to make written submissions within a period specified in the written notice which shall not be less than thirty days.

(3) After the expiry of the period specified in the notice, the Director General shall, after considering the written submissions made by the licensee under subsection (2), if any, and having due regard to any recommendation of the Corporation, decide whether to suspend the licence for a period not exceeding one month or to revoke the licence.

(4) The Director General shall give the licensee a written notice of his decision under subsection (3) as soon as practicable.

(5) If a licence is suspended under subsection (3), the Director General may require the licensee to remedy the breach or the contravention and if he considers necessary to do so, cause the services provided by the licensee to be carried out by any other person authorized by the Director General on such terms and conditions as the Director General may specify.

(6) If the Director General is satisfied that the licensee fails to remedy the breach or contravention as required under subsection (5), or the breach or contravention continues after the licence is suspended under subsection (3), he shall revoke the licence.

(7) A licensee whose licence is—

- (a) suspended or revoked shall not be entitled to any compensation for any loss caused to him by the suspension or revocation of a licence granted under this Act; and
- (b) revoked shall not be entitled to any refund of the licence fee paid under section 19.

Effective date of revocation of licence

24. The revocation of a licence under section 23 shall take effect—

- (a) on a date specified by the Director General in the written notice given under subsection 23(4); or

- (b) if no date is specified in the written notice given under subsection 23(4), on the expiry of thirty days from the date on which the notice is served on the licensee.

Surrender of licence

25. (1) A licensee may surrender its licence by forwarding the licence to the Director General with a written notice of the surrender of the licence.

(2) The surrender of the licence shall take effect six months from the date the Director General receives the licence and the written notice under subsection (1) or on such other date as may be specified by the Director General.

(3) The surrender of a licence under subsection (1) shall be irrevocable unless the Director General by notice in writing to the licensee allows the surrender to be withdrawn before the effective date of the surrender of the licence.

Renewal of licence

26. (1) A licensee may apply for a renewal of his licence not later than one year before the date of expiry of the existing licence.

(2) Notwithstanding subsection (1), the Director General may, subject to the payment of a penalty not exceeding three thousand ringgit, impose on the licensee, allow an application for renewal of the licence made after the time specified in subsection (1), but no application for renewal shall be allowed where the application is made after the date of expiry of the licence.

(3) The Director General shall, on the recommendation of the Corporation, upon payment of the prescribed fee, renew an existing licence except in the following circumstances:

- (a) the licensee has failed to comply with any provisions of this Act or any regulations made under this Act;
- (b) the licensee has failed to comply with any of the conditions of the licence;
- (c) the licensee had improperly or illegally obtained the licence;

- (d) the licensee has been convicted of an offence under this Act or any regulations made under this Act;
- (e) a receiver, receiver and manager, provisional liquidator or like official has been appointed over the whole or substantial part of the licensee's assets and such appointment is not revoked or annulled within a period of sixty days from the date of such appointment; or
- (f) there has been any act or default on the part of the licensee or there has been a change of circumstances such that the licensee would no longer be entitled to be granted a licence under this Act.

(4) The Director General may request the licensee to provide any information or document as may be required for the renewal application within a period specified in the request.

(5) Notwithstanding subsection (3), if the information or document requested under subsection (4) is not provided by the licensee within the period specified in the request or any extension of time granted, the Director General may not renew the licence.

(6) If the Director General refuses to renew the licence, he shall inform the licensee by written notice as soon as practicable of refusal to renew the licence.

(7) The licensee shall be given an opportunity to make written submissions to the Director General within a period specified in the written notice referred in subsection (6) which shall not be less than fourteen days.

(8) After the expiry of the period specified in the written notice under subsection (7), the Director General shall, after considering any written submissions made by the licensee and having due regard to any recommendation of the Corporation, decide whether or not to renew the licence.

(9) If the Director General decides not to renew the licence, he shall notify the licensee as soon as practicable of the said decision and the reason for his decision.

Effect of revocation, surrender or non-renewal of licence

27. If the revocation of a licence under section 23 or a surrender of a licence under section 25 has taken effect or where the licence has not been renewed under section 26, the licensee shall immediately cease to provide any solid waste management services or operate any prescribed solid waste management facilities in respect of which the licence was granted.

Register of licence

28. (1) The Director General shall maintain a register of licences granted under this Act containing—

- (a) the names and addresses of the licensee; and
- (b) any other particulars as the Director General thinks necessary.

(2) The register shall be made available for inspection during office hours.

(3) Any person may, on application in writing to the Director General and on payment of the prescribed fee, be provided with a copy of or an extract from an entry in the register.

(4) A copy of or an extract from an entry in the register purporting to be certified under the hand of the Director General shall, until the contrary is proved, be admitted in evidence as proof of the entry as stated in the register.

Right of appeal to the Minister

29. (1) Any person who is aggrieved by any decision of the Director General under this Part may appeal to the Minister in the prescribed manner within fourteen days from the date the decision is communicated to such person.

(2) The Minister's decision on any appeal under subsection (1) shall be final and binding.

PART V

CHARGES

Power to impose charges, etc.

30. (1) The Minister may from time to time prescribe, either separately or as a consolidated rate, controlled solid waste charges, fees or levy which shall be paid by—

- (a) the owner;
- (b) the occupier;
- (c) the local authority; or
- (d) any other person,

to whom solid waste management services are provided under this Act.

(2) The Minister may, by order published in the *Gazette*, authorize the Corporation or the person with whom an agreement has been entered into under section 4 to demand, collect and retain the controlled solid waste charges, fees or levy prescribed under subsection (1) in respect of solid waste management services provided by the person under the agreement.

(3) The Corporation or the person with whom an agreement has been entered into under section 4, may recover from the owner, occupier, local authority or any other person, from whom charges, fees or levy for solid waste management services is due and remains unpaid after the due date, additional charges for late payment at a rate to be prescribed by the Minister.

(4) An order made under subsection (2) shall specify—

- (a) the type and extent of services with respect to which controlled solid waste charges, fees or levy may be demanded, collected and retained;
- (b) the person authorized to demand, collect and retain the controlled solid waste charges, fees or levy; and
- (c) the duration of the authorization to demand, collect and retain the controlled solid waste charges, fees or levy.

- (5) Any person authorized under subsection (2) shall—
- (a) maintain such accounts, books and records in respect of the payment and collection of controlled solid waste charges, fees or levy and late payment charges as the Director General may require;
 - (b) furnish to the Director General such information, returns and accounts in respect of the payment and collection of controlled solid waste charges, fees or levy and late payment charges as the Director General may require; and
 - (c) permit the Director General or any officer authorized in writing by the Director General—
 - (i) to have access to, examine, inspect or make copies of any document; and
 - (ii) to have access to, examine or inspect any machinery or equipment,

maintained or used for the payment or collection of controlled solid waste charges, fees, levy or late payment charges.

(6) The authorization of any person under subsection (2) shall not render the Federal Government liable to any person in respect of any injury, damage or loss occasioned by the failure of the person authorized under that subsection to carry out his obligations under the agreement in respect of which controlled solid waste charges, fees or levy are demanded, collected or retained.

(7) All moneys due and payable under this section shall be a debt due to the person authorized under subsection (2) and shall be recoverable accordingly from the owner, occupier, local authority or any other person referred to in subsection (1).

(8) Any person who fails to comply with subsection (5) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Recovery of controlled solid waste charges, fees or levy

31. (1) Where controlled solid waste charges, fees or levy become recoverable by the Corporation, or by the person with whom an agreement has been entered into under section 4, the Corporation

or person may serve on the owner, occupier, the local authority or any other person a written notice requesting payment of the sum due within such period, which shall not be less than fourteen days from the date of service of the notice, as may be specified in the notice.

(2) If at the end of the period specified in the notice under subsection (1) the sum or part of the sum due remains unpaid, the Corporation or the person with whom an agreement has been entered into under section 4 may serve on the owner, occupier, local authority or any other person a further written notice demanding payment of the sum due within fourteen days from the date of service of the notice; and if upon the expiry of the said period, the sum due still remains unpaid, the Corporation or that person may institute proceedings in any court of competent jurisdiction or the Tribunal established under this Act for the recovery of the said sum.

Failure or refusal to pay charges, fees or levy

32. Any person who, without any reasonable excuse, fails or refuses to pay controlled solid waste charges, fees or levy commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit and shall also be liable to a further fine not exceeding fifty ringgit for every day during which the offence is continued after the conviction.

PART VI

TRIBUNAL FOR SOLID WASTE MANAGEMENT SERVICES

Meaning of “interested person”

33. For the purpose of this Part, “interested person” means the Corporation, any licensee, owner, occupier, local authority and solid waste generator in respect of solid waste management services provided under this Act.

Establishment of Tribunal for Solid Waste Management Services

34. A tribunal to be known as the “Tribunal for Solid Waste Management Services” shall be established for the purpose of this Act.

Membership of Tribunal

35. (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman and a Deputy Chairman from amongst members of the Judicial and Legal Service; and
- (b) not less than five other members to be appointed from amongst persons who are members of or who have held office in the Judicial and Legal Service or advocates and solicitors admitted and enrolled under the Legal Profession Act 1976 [*Act 166*], the Advocates Ordinance of Sabah [*Sabah Cap. 2*] or the Advocates Ordinance of Sarawak [*Sarawak Cap. 110*] who have not less than seven years standing.

(2) The members referred to in paragraph (1)(b)—

- (a) shall hold office for a term not exceeding three years; and
- (b) shall be eligible for reappointment upon the expiry of his term of office but shall not be appointed for more than three consecutive terms.

Temporary exercise of functions of Chairman

36. Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

Vacation of office

37. The office of a member of the Tribunal shall become vacant—

- (a) upon the death of the member;
- (b) upon the member resigning from such office by giving three months' written notice to the Minister;
- (c) upon the expiry of his term of office; or

- (d) upon the member ceasing to be an advocate and solicitor under the Legal Profession Act 1976, the Advocates Ordinance of Sabah or the Advocates Ordinance of Sarawak.

Revocation of appointment

38. The Minister may revoke the appointment of a member of the Tribunal appointed under paragraph 35(1)(b)—

- (a) if his conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;
- (b) if he has become incapable of properly carrying out his duties as a member of the Tribunal;
- (c) if there has been proved against him, or he has been convicted on, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under a law relating to corruption;
 - (iii) an offence under this Act; or
 - (iv) any other offence punishable with imprisonment for a term more than two years;
- (d) if he becomes bankrupt;
- (e) if he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs; or
- (f) if he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

Resignation

39. A member of the Tribunal appointed under paragraph 35(1)(b) may at any time resign his office by giving three months' written notice to the Minister.

Filling of vacancy

40. Where a member ceases to be a member of the Tribunal, the Minister may appoint another person to fill the vacancy.

Remuneration

41. (1) The members of the Tribunal appointed under paragraph 35(1)(a) shall be paid such fixed allowances and other allowances as the Minister may determine.

(2) The members of the Tribunal appointed under paragraph 35(1)(b) shall be paid—

(a) a daily sitting allowance during the sitting of the Tribunal;
and

(b) such lodging, travelling and subsistence allowances,

as the Minister may determine.

(3) The remuneration provided for in subsections (1) and (2) shall be charged on the Consolidated Fund.

Secretary to Tribunal and other officers

42. (1) There shall be appointed a Secretary to the Tribunal and such number of officers as may be necessary for carrying out the functions of the Tribunal.

(2) The Chairman shall have general control of the officers of the Tribunal.

(3) For the purposes of this Act, the Secretary to the Tribunal shall be deemed to be an officer of the Tribunal.

Sittings of Tribunal

43. (1) The jurisdiction of the Tribunal shall be exercised by any of the following persons sitting alone:

(a) the Chairman of the Tribunal;

(b) the Deputy Chairman of the Tribunal; or

(c) any member of the Tribunal determined by the Chairman.

(2) The Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine.

(3) If the person presiding over any proceedings in respect of a claim dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the claim shall be heard afresh by another member of the Tribunal, unless the parties agree that the claim be continued by another member of the Tribunal.

(4) Where the term of appointment of any member of the Tribunal under this section expires during the pendency of any proceedings in respect of a claim, the term of his appointment shall be deemed to be extended until the final disposal of the claim.

Commencement of proceedings

44. Any interested person may commence proceedings in the Tribunal by lodging a claim in the prescribed form together with the prescribed fee claiming for any matter concerning his interests or any loss suffered or damages incurred which includes the recovery of charges, fees or levy under this Act.

Jurisdiction of Tribunal

45. (1) Subject to sections 46 and 47, the Tribunal shall have jurisdiction to determine a claim lodged under section 44 where the total amount in respect of which an award of the Tribunal is sought does not exceed fifty thousand ringgit.

(2) Subject to subsection (1), a respondent to a claim or dispute may raise a debt or liquidated demand as—

- (a) a defence; or
- (b) a counter-claim.

(3) Where a respondent raises a debt or liquidated demand under subsection (2) and the debt or demand is proved, the Tribunal shall—

- (a) give effect to the defence; or
- (b) hear and determine the counter-claim notwithstanding that the original claim is withdrawn, abandoned or struck out.

(4) Any claim lodged with the Tribunal may include loss or damage of a consequential nature.

Limitation of jurisdiction

46. (1) Except as expressly provided under this Act, the Tribunal shall have no jurisdiction in respect of any claim—

(a) for the recovery of land, or any estate or interest in land; and

(b) in which there is a dispute concerning—

(i) the entitlement of any person under a will or settlement, or on intestacy (including partial intestacy);

(ii) goodwill;

(iii) any chose in action; or

(iv) any trade secret or other intellectual property rights.

(2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from—

(a) any claim for the recovery of charges, fees or levy of solid waste management services by the licensee or the Corporation; or

(b) any disputes arising from any charges, fees or levy imposed for solid waste management services between the licensee or the Corporation and the owner, occupier, local authority or solid waste generator,

which is brought by the interested person within three years of the claim or dispute.

(3) Nothing in this section shall be deemed to authorize the Tribunal to deal with a claim arising from personal injury or death.

(4) For the purposes of subsection (1), “land” does not include fixtures.

Extension of jurisdiction by agreement

47. (1) Notwithstanding that the amount or value of the subject matter claimed or in issue exceeds fifty thousand ringgit, the Tribunal shall have jurisdiction to hear and determine the claim if the parties have entered into an agreement in writing that the Tribunal shall have jurisdiction to hear and determine the claim.

(2) An agreement may be made under subsection (1)—

(a) before a claim is lodged under section 44; or

(b) where a claim has been lodged under section 44, at any time before the Tribunal has recorded an agreed settlement in respect of the claim under subsection 52(3) or has determined the claim under section 57, as the case may be.

Abandonment to bring claim within jurisdiction

48. (1) A claimant may abandon so much of a claim as exceeds fifty thousand ringgit in order to bring the claim within the jurisdiction of the Tribunal.

(2) Where a part of a claim has been abandoned under subsection (1), the Tribunal's record of an agreed settlement under subsection 52(3) or the Tribunal's award under section 57, as the case may be, in relation to the claim shall operate to discharge—

(a) the person who is a party to that agreed settlement; or

(b) the person against whom the claim is brought and the subsequent award is made, from liability in respect of the amount so abandoned.

Cause of action not to be split

49. Claims may not be split, nor more than one claim brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal.

Exclusion of jurisdiction of court

50. (1) Where a claim is lodged with the Tribunal and the claim is within the Tribunal's jurisdiction, the issues in dispute in that claim, whether as shown in the initial claim or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless—

- (a) the proceedings before the court were commenced before the claim was lodged with the Tribunal; or
- (b) the claim before the Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1)(a) applies, the issues in dispute in the claim to which those proceedings relate, whether as shown in the initial claim or emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the claim before the court is withdrawn, abandoned or struck out.

Notice of claim and hearing

51. Upon a claim being lodged under section 44, the Secretary to the Tribunal shall give notice of the details of the day, time and place of hearing in the prescribed form to the claimant and the respondent.

Negotiation for settlement

52. (1) The Tribunal shall, as regards every claim within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the claim.

(2) Without limiting the generality of subsection (1), in making an assessment, the Tribunal shall have regard to any factors that in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall then take effect as if it were an award of the Tribunal.

- (4) Where—
- (a) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the claim; or
 - (b) the parties are unable to reach an agreed settlement in relation to the claim, the Tribunal shall proceed to determine the dispute.

Right to appear at hearings

53. (1) At the hearing of a claim every party shall be entitled to attend and be heard.

(2) No party shall be represented by an advocate and solicitor at a hearing unless in the opinion of the Tribunal the matter in question involves complex issues of law and one party will suffer severe financial hardship if he is not represented by an advocate and solicitor; but if one party is subsequently allowed to be represented by an advocate and solicitor then the other party shall also be so entitled.

(3) Subject to subsection (2), but notwithstanding section 37 of the Legal Profession Act 1976—

- (a) a corporation or an unincorporated body of persons may be represented by a full-time paid employee of the corporation or body the persons;
- (b) a minor or any other person under a disability may be represented by his next friend or guardian *ad litem*.

(4) Where a party is represented as permitted under subsection (3), the Tribunal may impose such conditions as it considers necessary to ensure that the other party to the proceedings is not substantially disadvantaged.

Proceedings to be public

54. All proceedings before the Tribunal shall be open to the public.

Evidence

55. (1) The Tribunal may—

- (a) procure and receive all such evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses, as the Tribunal thinks necessary to procure, receive or examine;
- (b) require the production before it of books, papers, documents, records or things;
- (c) administer such oath, affirmation or statutory declaration, as the case may require;
- (d) seek and receive such other evidence and make such other inquiries as it thinks fit;
- (e) summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, records or other thing in his possession or otherwise to assist the Tribunal in its deliberations;
- (f) receive expert evidence; and
- (g) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the claim.

(2) A summons issued under this section shall be served and enforced as if it were a summons issued by a subordinate court.

Tribunal may act in absence of party

56. The Tribunal may hear and determine the claim before it notwithstanding the absence of any party to the proceedings if it is proved to the satisfaction of the Tribunal that a notice of the hearing has been duly served on the absent party.

Awards of the Tribunal

57. (1) The Tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) An award of the Tribunal under subsection (1) may require one or more of the following:

- (a) that a party to the proceedings pay money to any other party;
- (b) that money be awarded to compensate for any loss or damage suffered by the claimant;
- (c) that costs to or against any party be paid;
- (d) that interest be paid on any sum or monetary award at a rate not exceeding eight per centum per annum, unless it has been otherwise agreed between the parties;
- (e) that the claim is dismissed.

(3) Nothing in paragraph (2)(d) or (e) shall be deemed to empower the Tribunal to award any damages for any non-pecuniary loss or damage.

(4) The Tribunal may at any time rectify or correct clerical mistake in any award or errors arising from any accidental slip or omission.

Reference to a Judge of the High Court on a question of law

58. (1) Before the Tribunal makes an award under section 57, it may, in its discretion, refer to a Judge of the High Court a question of law—

- (a) which arose in the course of the proceedings;
- (b) which, in the opinion of the Tribunal, is of sufficient importance to merit such reference; and
- (c) the determination of which by the Tribunal raises, in the opinion of the Tribunal, sufficient doubt to merit such reference.

(2) If the Tribunal refers any question of law under subsection (1) for the decision of a Judge of the High Court, it shall make its award in conformity with such decision.

(3) A Federal Counsel authorized by the Attorney General for that purpose may appear on behalf of the Tribunal in any proceedings before a Judge of the High Court under this section.

Reasons for decision

59. The Tribunal shall in all proceedings give its reasons for its award in the proceedings.

Orders and settlement to be recorded in writing

60. The Tribunal shall make or cause to be made a written record of the terms of—

- (a) every agreed settlement reached by the parties under subsection 52(3); and
- (b) every award made by it under section 57.

Decisions of Tribunal to be final

61. (1) Every agreed settlement recorded by the Tribunal under subsection 52(3) and every award made by the Tribunal under section 57—

- (a) shall be final and binding on all parties to the proceedings; and
- (b) shall be deemed to be an order of a Sessions Court or Magistrate's Court, as the case may be, and be enforced accordingly by any party to the proceedings.

(2) For the purpose of paragraph (1)(b), in cases where the award made by the Tribunal has not been complied with, the Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the Sessions Court or Magistrate's Court, as the case may be, having jurisdiction in the place to which the award relates or in the place where the award was made and the Court shall cause the copy to be recorded.

Criminal penalty for failure to comply

62. (1) Any person who fails to comply with an award made by the Tribunal within the period specified by the Tribunal commits an offence and shall, on conviction, be liable to a fine which shall be not less than five thousand ringgit and which shall not exceed ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) In the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

Procedure where no provision is made

63. Subject to this Act and to any regulations made under this Act, the Tribunal shall adopt such procedure as it thinks fit and proper.

Want of form

64. No proceedings of the Tribunal or award or other document of the Tribunal shall be set aside or quashed for want of form.

Disposal of documents, etc.

65. (1) The Tribunal may, at the conclusion of the proceedings before it, order that any document, record, material or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit.

(2) Where no person has taken delivery of the document, record, material or other property referred to in subsection (1), after a period of six months, the ownership in the document, record, material or other property shall be deemed to have passed to and become vested in the Government.

Act or omission done in good faith

66. No action or suit shall be instituted or maintained in any court against—

- (a) the Tribunal;
- (b) a member of the Tribunal; or
- (c) a person authorized to act for or on behalf of the Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act.

Regulations in respect of the Tribunal

67. (1) The Minister may make such regulations as may be necessary or expedient in respect of the Tribunal.

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

- (a) prescribing the responsibilities of members of the Tribunal;
- (b) prescribing the procedure of the Tribunal;
- (c) prescribing the forms to be used in proceedings under this Part;
- (d) prescribing and imposing fees and providing for the manner for collecting and disbursing such fees;
- (e) prescribing anything required to be prescribed under this Part.

PART VII**ASSUMPTION OF CONTROL****Interpretation**

68. In this Part, unless the context otherwise requires—

“licensee” includes—

- (a) a person who holds a licence under this Act;
- (b) a person who is exempted from holding a licence granted under this Act; and
- (c) a person who holds, controls or operates asset which form part of the solid waste management services and public cleansing management services.

Licensee to inform Corporation

69. Any licensee which considers that—

- (a) it is insolvent; or
- (b) it has suspended payment to any extent that prejudices its operation,

shall immediately inform the Corporation of the fact.

Action of Corporation in respect of licensee in certain circumstances

70. (1) Where the Corporation—

- (a) has been informed by a licensee of any circumstances referred to in section 69; or
- (b) is satisfied—
 - (i) that the licence or authorization of a licensee has been revoked and the licensee continues to provide solid waste management services and public cleansing management services in contravention of this Act and any regulations made under this Act;
 - (ii) that there has been or is a contravention by the licensee of any direction by the Corporation as is serious enough to make it inappropriate for the licensee to continue to hold its licence;
 - (iii) that the licensee is insolvent or has suspended payment to any extent that prejudices its operations or that there are facts or circumstances which is likely to lead to the licensee becoming insolvent or to the licensee suspending payment to any extent that prejudices its operations; or
 - (iv) that the licensee has contravened any provision of this Act or has contravened any condition of its licence as is serious enough to make it inappropriate for the licensee to continue to hold its licence,

the Corporation may, by order published in the *Gazette*, exercise any one or more of the following powers, as it deems necessary:

- (A) require the licensee to take any step, action or to do or not to do any act or thing in relation to the licensee or its business, directors or officers as may be specified, and within the period set out, by the Corporation in the order;
- (B) notwithstanding anything in any written law or any limitations contained in the constituent documents of the licensee, remove an officer of the licensee from his office with effect from a date as may be set out in the order;

- (C) notwithstanding anything in any written law or any limitations contained in the constituent documents of the licensee, in particular, a limitation as to the minimum or maximum number of directors—
- (i) remove any director of the licensee from his office with effect from a date as may be set out in the order; or
 - (ii) appoint one or more persons as a director or directors of the licensee and provide for any of the persons so appointed to be paid by the licensee such remuneration as may be set out in the order; or
- (D) appoint a person to advise the licensee in relation to the proper conduct of its business and provide for the person so appointed to be paid by the licensee such remuneration as may be set out in the order.

(2) The powers of the Corporation under paragraphs (1)(B), (C) and (D) shall be exercised only with the prior concurrence of the Minister.

(3) If any of the circumstances as set out in paragraphs (1)(a) and (b) exist in respect of a licensee and the Corporation is of the opinion that it is necessary in the public interest, the Corporation may, whether or not it has exercised any of its powers under paragraph (1)(A), (B), (C) or (D), make a recommendation to the Minister—

- (a) for the Corporation to assume control of the whole of the property, business and affairs of the licensee and carry on the whole of its business and affairs;
- (b) for the Corporation to assume control of such part of the property, business and affairs of the licensee as may be specified by the Corporation and carry on such part of the business and affairs;
- (c) for the Corporation to appoint any person to exercise any of the powers of the Corporation under paragraph (a) or (b) on behalf of the Corporation; or
- (d) for the expenses of the Corporation, or the remuneration of the person so appointed under paragraph (c), as the case may be, to be payable out of the assets of the licensee in priority to all other claims whether secured or unsecured.

(4) If the Minister agrees with the recommendation of the Corporation under subsection (3), he shall make an order to be published in the *Gazette* specifying his decision and the action to be taken by the Corporation accordingly.

(5) An order of the Corporation under subsection (1) or an order of the Minister under subsection (4) may from time to time be amended or replaced by a further order under subsection (1) or (4), by the Corporation or the Minister, as the case may be.

(6) No order under subsection (1), (4) or (5) shall be made unless—

- (a) the licensee in respect of which the order is to be made; and
- (b) in the case of an order under paragraph (1)(B) or subparagraph (C)(i), the officer or director who is to be removed from office,

has been given a reasonable opportunity of making representations against, or otherwise in respect of, the proposed order.

(7) Notwithstanding subsection (6), if in the opinion of the Corporation—

- (a) in the case of an order to be made by the Corporation under subsection (1) or (5); or
- (b) in the case of an order to be made by the Minister under subsection (4) or (5),

any delay would be detrimental to the interests of the solid waste generator or to the public or to any section of the public, the order may be made first and the opportunity to make representations against or otherwise in relation to the order shall, in such case, be given immediately after the order has been made, and the order may, in consequence of such representations either be confirmed or be amended or replaced under subsection (5), or be revoked under subsection (8).

(8) An order made under subsection (1), (4) or (5) may be revoked by the Corporation or the Minister, as the case may be, in the same manner as the order was made.

(9) A person who contravenes an order of the Corporation under paragraph (1)(A), (B), (C) or (D) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART VIII

CONTROL OF SOLID WASTE GENERATORS AND PERSONS IN
POSSESSION OF CONTROLLED SOLID WASTE**Prohibition against unauthorized depositing, treatment, etc.,
of controlled solid waste**

71. (1) No person shall deposit, separate, store, keep, collect, transfer, transport, treat or dispose of or cause to be or permit to be deposited, separated, stored, kept, collected, transferred, transported, treated or disposed of any controlled solid waste otherwise in accordance with this Act.

(2) All controlled solid waste shall be deposited, treated, kept, stored or disposed of only at solid waste management facilities licensed under this Act.

(3) Notwithstanding subsection (2), the Director General may, by notification published in the *Gazette*, specify any category of controlled solid waste which may be deposited, treated, kept, stored or disposed of otherwise in accordance with this Act or any regulations made under this Act or in areas other than solid waste management facilities.

(4) In exercising his powers under subsection (3), the Director General shall have regard to—

- (a) any controlled solid waste which are small enough or of such a temporary nature that it may be excluded from the application of subsection (2);
- (b) any means of treatment or disposal of any controlled solid waste which is innocuous enough that it may be excluded from the application of subsection (2); and
- (c) cases for which adequate controls are provided for under any other written law.

(5) No owner or occupier of the licensed solid waste management facilities shall receive, process or treat any controlled solid waste otherwise in accordance with this Act.

(6) Any person in possession of any controlled solid waste shall without any unreasonable delay inform the Director General of any accidental or unintended disposal of controlled solid waste at any place or area, other than the place or area at which that person is permitted under this Act to dispose of any controlled solid waste.

(7) Any owner or occupier of any premises shall take all reasonable measures to prevent unauthorized disposal of controlled solid waste on his premises and shall without any unreasonable delay inform the Director General of such unauthorized disposal.

(8) Any person who contravenes subsection (1) or (5) commits an offence and shall, on conviction, be liable to a fine not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not less than six months and not exceeding five years or to both.

Prohibition against unauthorized escape of any controlled solid waste

72. (1) Any person who has in his possession of any controlled solid waste shall take all reasonable measures to prevent the escape of any controlled solid waste from his possession.

(2) No person shall cause, aid, abet or permit to cause the escape of any controlled solid waste from the possession of other person.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Waste placed in receptacles or deposit sites for controlled solid waste

73. (1) Any thing which is placed in any receptacle or receptacle chamber for controlled solid waste, with a view to its being emptied or removed, or which is deposited at any place caused to be provided by the Director General or the Corporation for the collection and disposal of controlled solid waste shall be deemed to be solid waste, unless the contrary is proved.

(2) No person, unless he is licensed under this Act to collect the solid waste, shall sort over, disturb or otherwise interfere with any receptacle or receptacle chamber for controlled solid waste, which is placed with a view to its being emptied, or which is deposited at any place caused to be provided by the Director General or the Corporation for the collection and disposal of controlled solid waste—

- (a) regardless of who provides that receptacle or causes it to be provided; and
- (b) whether or not that receptacle is used for public or private purposes.

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

(4) The Director General may exempt collection of recyclable solid waste carried out by charity groups or any other organization from the provision of subsection (2).

Power to direct for controlled solid waste to be separated, handled and stored

74. (1) The Director General may give written directions as he considers fit to any person for the purpose of ensuring the compliance with this Act, on the separation, handling and storage of any controlled solid waste in the possession of such person.

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

Power to direct controlled solid waste to be removed

75. (1) If any person has in his possession any accumulation of controlled solid waste or any consignment of controlled solid waste on any land or premises which is in contravention of this Act, which cause a nuisance or is prejudicial to health or offensive to the neighbourhood, the Director General may, by notice in writing serve on that person, direct him to deliver the controlled solid waste within time specified in the direction to any solid waste management facilities or any areas as the Director General may determine for treatment or disposal.

(2) A direction under subsection (1) may require the person who is directed to deliver the controlled solid waste to pay the cost of treating or disposing of the controlled solid waste.

(3) If the controlled solid waste is not delivered as directed under subsection (1)—

(a) the Director General shall cause the controlled solid waste to be collected by any person authorized by the Director General; and

(b) the cost incurred in collecting the controlled solid waste by the person authorized under paragraph (a) shall be a debt due to the Government and shall be recoverable accordingly.

(4) The Director General may, upon application made by any person and with any condition that he thinks fit, permit the storage of any kind of recyclable solid waste or any consignment of controlled solid waste on any premises.

(5) Any person who fails to comply with the direction under this section commits an offence and shall, on conviction, be liable to a fine not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Power to direct removal of unlawful depositing or disposing of controlled solid waste

76. (1) If any controlled solid waste is deposited or disposed of in contravention of this Act, the Director General may, by notice in writing served on—

(a) the owner or occupier of the premises;

(b) the person who deposited or disposed the controlled solid waste; or

(c) the solid waste generator,

direct him to remove the controlled solid waste from the premises within a period of not more than three days from the date of the service of the notice.

(2) If the controlled solid waste is not removed as directed under subsection (1), the Director General may cause the controlled solid waste to be removed by any other person authorized by the Director General.

(3) If the Director General exercises the power conferred on him under subsection (2), the cost incurred in removing the controlled solid waste shall be a debt due to the Government and shall be recoverable accordingly from—

- (a) the owner or occupier of the land or premises unless he proves that he neither made nor caused or permitted the deposit of the controlled solid waste and that he took all reasonable measures to avoid the deposit on the premises;
- (b) the person who deposited or disposed of or caused or permitted the deposit or the disposal of the controlled solid waste; or
- (c) the solid waste generator.

(4) The Director General may give directions to the owner or occupier of any premises to allow access to the premises for the removal of unlawfully deposited solid waste by any person directed by the Director General.

(5) Any person who fails to comply with a direction under subsection (4) commits an offence and shall, on conviction, be liable to a fine not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Offences for causing damage to vehicles, receptacles or other solid waste management facilities

77. (1) Any person who by a deliberate or rash or negligent act or omission caused damage to receptacles, vehicles or solid waste management facilities commits an offence and shall, on conviction, be to a fine not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Any person who causes any damage under subsection (1) shall, in addition to the penalty under that subsection, make good or be liable to pay full compensation for the damage he has done within a specified time as the court thinks fit.

(3) Without prejudice to subsection (1), any court before which a person is charged with an offence under this Act—

(a) may assess the compensation payable under this section;
and

(b) may make an order for the payment of the compensation,

and any such order may be enforced as if it were a judgment in civil action.

(4) Nothing shall operate to relieve the person with whom an agreement has been made under section 4 or a licensee from liability arising under subsection (1) and the person or licensee shall also be liable to any damage shown to have resulted from any deliberate or rash or negligent act or omission on the part of persons employed by him, or his servants or agents.

PART IX

ENFORCEMENT PROVISIONS

Authorized officers

78. (1) The Director General may, in writing authorize any officer appointed under section 5, officer of any local authority or officer of the Corporation to exercise the powers of enforcement under this Act.

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

(3) In exercising any of the powers of enforcement under this Act, an authorized officer shall on demand produce to the person against whom he is acting the authority issued to him by the Director General.

(4) The Director General shall have all the powers, functions and duties of an authorized officer.

Power of enforcement

79. (1) An authorized officer may, for the purpose of enforcing this Act—

- (a) call for and examine any book, document, instrument or record and make copies of or take extracts from such book, document, instrument or record which is in the custody or control of any person pertaining to any matter under this Act;
- (b) visit, enter, inspect and examine with or without previous notice any solid waste management facilities, land or other premises at any time but shall not unnecessarily obstruct or impede any work therein;
- (c) investigate in respect of any solid waste management facilities, land or other premises—
 - (i) to ensure proper maintenance and sanitation of any solid waste management facilities, land or other premises;
 - (ii) any matter or thing concerned with or related to the safety or health of any person living in the vicinity of the solid waste management facilities or which causes or is likely to cause damage to property;
 - (iii) the effect of any operation or practice upon the amenity of any area or place; or
 - (iv) whether there are concentrations or accumulations of noxious gases or liquid; or
- (d) take samples of any material or substance found at solid waste management facilities, on land or other premises, and of the air or water in, on or in the vicinity of solid waste management facilities, land or other premises.

(2) If, on inspection by the Director General of any solid waste management facilities, it appears to the Director General that the condition of the solid waste management facilities is such that danger is posed to the safety or health of any person living in the vicinity of the solid waste management facilities, the Director General—

- (a) may take reasonable steps, whether on the solid waste management facilities affected or on adjacent land, including closing the solid waste management facilities, as appears to the Director General to be reasonable to avoid such danger; and
- (b) shall be entitled to recover costs and expenses incurred in doing so from the licensee of the solid waste management facilities.

Power of investigation

80. (1) An authorized officer shall have the power to investigate the commission of any offence under this Act.

(2) Every person required by an authorized officer to give information or produce any document or other article relating to the commission of any offence which is in his power to give shall be legally bound to give the information or produce the document or other article.

Search and seizure with warrant

81. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is a reasonable cause to believe that any premises have been used or are about to be used for, or there is in or on any premises, evidence necessary to establish, the commission of an offence under this Act, the Magistrate may issue a warrant authorizing an authorized officer to whom it is directed, at any reasonable time by day or night and with or without assistance—

- (a) to enter any premises and there search for, seize and detain any property, equipment, machinery, book, record, document, container, receptacle or other article;

- (b) to inspect, make copies of, or take extracts from, any book, record, document or other article so seized and detained;
 - (c) to take possession of, and remove from the premises, any property, equipment, machinery, book, record, document, container, receptacle or other article so seized and detain it for such period as may be necessary;
 - (d) to search any person who is in, or on, such premises, and for the purpose of the search, detain the person and remove him to such place as may be necessary to facilitate the search, and seize and detain any property or document found on the person; or
 - (e) to break open, examine, and search any container, receptacle or other article.
- (2) An authorized officer acting under subsection (1) may, if it is necessary to do so—
- (a) break open any outer or inner door of any premises and enter the premises;
 - (b) forcibly enter any premises and every part thereof;
 - (c) remove by force any obstruction to the entry, search, seizure, detention or removal that he is empowered to effect; or
 - (d) detain any person found on any premises searched under subsection (1) until the search is completed.
- (3) If, by reason of its nature, size or amount, it is not practicable to remove any property, equipment, machinery, book, record, document, container, receptacle or other article seized under this section, the authorized officer making the seizure shall, by any means, seal such property, equipment, machinery, book, record, document, container, receptacle or other article.
- (4) Any person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (3) or removes the property, equipment, machinery, book, record, document, container, receptacle or other article under seal or attempts to

do so commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both and in the case of a continuing offence be liable to a fine not exceeding one thousand ringgit for every day or a part of a day during which the offence continues after conviction.

Search and seizure without warrant

82. 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 81 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 officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 81 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Access to computerised data

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

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

Power to stop, search and seize vehicle

84. (1) If an authorized officer has reasonable cause to suspect that any vehicle is carrying any thing in respect of which an offence under this Act or any regulations made under this Act is being or has been committed, he may stop and examine the vehicle and may, if on examination he has reasonable cause to believe that such vehicle is or has been used for the commission of such offence, seize the vehicle and any thing found in the vehicle that is reasonably believed to furnish evidence of the commission of the offence.

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

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

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both and in the case of a continuing offence be liable to a fine not exceeding one thousand ringgit for every day or a part of a day during which the offence continues after conviction.

List of things seized

85. (1) Except as provided under subsection (2), where any property, equipment, machinery, book, record, document, container, receptacle or other article, or any vehicle or any thing found in the vehicle, is seized under this Act, the seizing officer shall prepare a list of the things seized and immediately deliver a copy of the list signed by him to—

- (a) if premises have been searched under section 81 or 82, the occupier of the premises which have been searched, or to his agent or servant, at those premises; and
- (b) if a vehicle or any thing found in the vehicle is seized under section 84, the person in control or in charge of the vehicle.

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

Temporary return of seized property, etc.

86. If any property, equipment, machinery, book, record, document, container, receptacle or other article, or any vehicle or any thing found in the vehicle, is seized under this Act, the Director General

may, in his discretion, temporarily return such thing to the owner or the person from whose possession, custody or control it was seized—

- (a) subject to such terms or conditions as the Director General may impose; and
- (b) subject, in any case, to sufficient security being furnished to the satisfaction of the Director General that such thing shall be surrendered to him on demand or be produced before a court of competent jurisdiction.

Power to require attendance of person acquainted with case

87. (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 the authorized officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

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

Examination of person acquainted with case

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

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

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

(4) An authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb-print, as the case may be—

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

Admissibility of statements

89. (1) Except as provided in this section, no statement made by any person to an authorized officer in the course of an investigation made under this Act shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or to the prosecutor, refer to any statement made by that witness to an authorized officer in the course of an investigation under this Act and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to—

- (a) the making; or
- (b) the contents,

of any statement made by him to an authorized officer in the course of an investigation made under this Act, that statement may be used as evidence in the prosecution's case.

Forfeiture or release of seized property, etc.

90. (1) Any property, equipment, machinery, book, record, document, container, receptacle or other article, or any vehicle or any thing found in the vehicle, seized in exercise of any power conferred by this Act shall be liable to forfeiture.

(2) If prosecution is instituted with regard to any property, equipment, machinery, book, record, document, container, receptacle or other article, or any vehicle or any thing found in the vehicle, under this Act, the court before which the prosecution with regard thereto has been held may order the forfeiture or release of the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle.

(3) The court shall order the forfeiture of the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle referred to in subsection (1) if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the thing was the subject matter of or was used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(4) If no prosecution is to be instituted with regard to any property, equipment, machinery, book, record, document, container, receptacle or other article, or any vehicle or any thing found in the vehicle, seized under this Act, the authorized officer in whose custody it is held shall notify the person from whose possession, custody or control the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle, was seized of that fact and of the provisions of subsection (7).

(5) A notice under subsection (4) shall be in writing and shall be sent to the last known address of the person concerned.

(6) If no claim is made under subsection (7) within thirty days from the date of service of the notice referred to in subsection (4), the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle, seized under this Act shall be taken and deemed to be forfeited at the expiration of that period.

(7) A person who asserts that he is the owner of the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle, referred to in subsection (4) and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to the authorized officer in whose possession such thing is held that he claims the thing.

(8) On receipt of the notice referred to in subsection (7), the authorized officer shall refer the claim to the Director General who—

- (a) may direct that the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle, be released; or
- (b) may direct the authorized officer in writing, to refer the matter to a Magistrate for decision.

(9) The Magistrate to whom a matter is referred under paragraph (8)(b) shall issue a summons requiring—

- (a) the person asserting that he is the owner of the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle; and
- (b) the person from whom the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle, was seized,

to appear before the Magistrate and upon their appearances or default to appear, but due service of the summons being proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence under this Act has been committed

and that such thing was the subject matter of or was used in the commission of such offence shall order the property, equipment, machinery, book, record, document, container, receptacle or other article, or the vehicle or any thing found in the vehicle, to be forfeited and shall, in the absence of such proof, order its release.

(10) Any property, equipment, machinery, book, record, document, container, receptacle or other article, or vehicle or any thing found in the vehicle, forfeited or deemed to be forfeited shall be delivered to the Director General and shall be disposed of by the Director General in accordance with the directions of the Magistrate.

(11) The Director General may direct that any thing seized under this Act be sold at any time and the proceeds of the sale be held pending the result of any prosecution or claim under this section if—

- (a) it is of a perishable nature or is subject to speedy and natural decay;
- (b) the custody of the thing involves unreasonable expense and inconvenience; or
- (c) it is believed to cause obstruction or hazard to the public.

Cost of holding seized property, etc.

91. If any property, equipment, machinery, book, record, document, container, receptacle or other article, or any vehicle or any thing found in the vehicle, seized under this Act is held in the custody of the Director General pending the completion of any proceedings in respect of an offence under this Act, the cost of holding it in custody shall, in the event of any person being found to commit an offence, be a debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable

92. No person shall, in any proceedings before any court in respect of the seizure of any property, equipment, machinery, book, record, document, container, receptacle or other article,

or any vehicle, or any thing found in the vehicle, seized in the exercise or the purported exercise of any power conferred by 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.

Obstruction

93. Any person who—

- (a) refuses 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, impedes or interferes with any authorized officer in the execution of his duty 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 which may reasonably be required of him and which he has in his knowledge or power to give,

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both and in the case of a continuing offence be liable to a fine not exceeding one thousand ringgit for every day or a part of a day during which the offence continues after conviction.

Compounding of offences

94. (1) The Director General or the Corporation may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed to be a compoundable offence by regulations made under this Act by making a written offer to the person suspected of committing the offence to compound the offence on payment to the Director General or the Corporation of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director General or the Corporation may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) If an offence has been compounded under subsection (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

Institution of prosecution

95. No prosecution shall be instituted for any offence under this Act except by or with the consent in writing of the Public Prosecutor.

Offences by body corporate

96. If a body corporate commits an offence under this Act or any regulations made under this Act, any person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate, or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of that offence.

Service of document

97. (1) Service of documents on any person shall be effected—

- (a) by delivering the document to that person or by delivering the document at the last known place of residence of that person to an adult member of his family;
- (b) by leaving the document at the usual or last known place of residence or business of that person in a cover addressed to that person; or
- (c) by forwarding the document by registered post addressed to that person at his usual or last known place of residence or business.

(2) A document required to be served on the owner or occupier of any premises—

- (a) shall be deemed to be properly addressed if addressed by the description of the “owner” or “occupier” of such premises without further name or description; and
- (b) may be served—
 - (i) by delivering the document to an adult person on the premises; or
 - (ii) if there is no such person on the premises to whom the document can with reasonable diligence be delivered, by advertisement at least in one local newspaper.

Inaccuracies in documents

98. (1) No misnomer or inaccurate description of any person or premises named or described in any document prepared, issued or served for the purposes of this Act or any regulations made under this Act shall in any way affect the operation of this Act or any regulations made under this Act with respect to that person or place if that person or place is so designated in the documents is identifiable.

(2) No proceedings taken under or by virtue of this Act or any regulations made under this Act shall be invalid for want of form.

Liability of transferor

99. (1) Every person who sells or transfers any property in respect of which costs and expenses have been incurred by the Director General or a licensee, as the case may be, in or about the execution of any work which are, under this Act, recoverable from the owner of the property shall continue to be liable for the payment of all such costs and expenses payable in respect of the property and for the performance of all other obligations imposed by this Act upon the owner of the property which become payable or are to be performed at any time before the transfer becomes effective.

(2) Nothing in this Act shall affect the liability of the purchaser or transferee to pay costs and expenses in respect of the property referred to in subsection (1) or affect the right of the Director General or licensee, as the case may be, to recover those costs and expenses from, or to enforce any obligation under this Act against, the purchaser or transferee.

Solid waste management facilities installed or constructed without approval before the coming into operation of this Act

100. (1) If the Director General is satisfied on reasonable ground that—

- (a) any solid waste management facilities had been installed or constructed without approval under any written law before the coming into operation of this Act; and
- (b) the continued existence of the solid waste management facilities—
 - (i) is such that the danger is posed to the safety or health of any person living in the vicinity of the solid waste management facilities; or
 - (ii) is likely to be used in contravention of this Act,

the Director General may make a written complaint to a Magistrate.

(2) Upon receipt of the written complaint under subsection (1), the Magistrate shall issue a summons requiring the owner or occupier of the solid waste management facilities to appear before the Magistrate and upon his appearance or default to appear, but due service of the summons being proved, the Magistrate shall proceed to hear the complaint and may—

- (a) dismiss the complaint; or
- (b) make an order for the demolition of the solid waste management facilities within a time specified in the order.

(3) Any person who fails to comply with the order made under paragraph (2)(b) commits an offence and shall, on conviction, be liable to a fine not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(4) Upon expiry of the time specified in the order under paragraph (2)(b), the Director General may execute the order and cost such work shall be a debt due to the Government and shall be recoverable accordingly.

PART X

REDUCTION AND RECOVERY OF CONTROLLED SOLID WASTE

Reduction, reuse and recycling of controlled solid waste

101. (1) The Minister may, by order published in the *Gazette*, require—

- (a) any solid waste generator to reduce the generation of controlled solid waste in any manner or method;
- (b) any person to use environmental friendly material;
- (c) any person to use specified amount of recycled materials for specified products;
- (d) any person to limit the generation, import, use, discharge or disposal of specified products or materials;

- (e) the implementation of coding and labelling systems for any product or material to promote recycling;
- (f) the use of any method or manner for the purpose of reducing the adverse impact of the controlled solid waste on the environment; and
- (g) the use of any method or manner for the purpose of reduction, reuse and recycling of the controlled solid waste.

(2) Any person who fails to comply with the order made under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Take back system and deposit refund system

102. (1) The Minister may, by order published in the *Gazette* establish take back system which—

- (a) require that specified products or goods after use shall be taken back by the manufacturer, assembler, importer or dealer and that the manufacturer, assembler, importer or dealer shall be obliged on their own account and cost to recycle or dispose any products or goods taken back in a specified manner;
- (b) require that any person shall deliver specified products or goods to the manufacturer, assembler, importer or dealer; and
- (c) require any dealer of specified products or goods to receive and store specified products or goods to be taken back.

(2) The Minister may, by order published in the *Gazette*, establish deposit refund system and determine—

- (a) the specified products or goods;
- (b) the deposit refund amount;
- (c) the labelling of the products or goods; and
- (d) the obligations of the dealers of the products or goods.

(3) Any person who contravenes any order made under subsections (1) and (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

PART XI

GENERAL

Solid Waste and Public Cleansing Management Fund

103. (1) A fund to be known as the “Solid Waste and Public Cleansing Management Fund” is established and shall be controlled and operated by the Corporation.

(2) The Solid Waste and Public Cleansing Management Fund shall consist of—

- (a) any sums contributed by the State Government and local authority under any arrangements made pursuant to the Federal Constitution;
- (b) all moneys received from the charges, fees or levy imposed under section 30;
- (c) all moneys appropriated from the Federal Government for the management of controlled solid waste and public cleansing.

(3) The Solid Waste and Public Cleansing Management Fund shall be expended for the following purposes:

- (a) paying for the cost incurred as a result of the agreement made under section 4; and
- (b) paying for the charges, fees or levy in relation to the direction given by the Director General under subsection 23(5) to carry out solid waste management services and public cleansing management services.

(4) The Corporation shall cause proper accounts of the Solid Waste and Public Cleansing Management Fund and proper reports

of its activities in respect of the Fund to be kept and shall, as soon as practicable after the end of the financial year, cause to be prepared for that financial year—

- (a) a statement of accounts which shall include a balance sheet and an account of the contributions and expenditure; and
- (b) a statements of its activities.

(5) The Corporation shall as soon as possible send a copy of statement of accounts certified by the auditors and a copy of auditors' report to the Minister and the Minister shall cause them to be laid before both Houses of Parliament.

Power to exempt

104. (1) The Minister may, if he considers it consistent with the purposes of this Act or in the interest of the public, by order published in the *Gazette*, exempt any person, vehicle, premises or solid waste management facilities or any class of persons, vehicles, premises or solid waste management facilities from all or any of the provisions of this Act or any regulations made under this Act for such duration and subject to such conditions as the Minister may specify and he may alter or add to conditions so specified.

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

Protection of Director General and other officers

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

- (a) the Director General, Deputy Director General, Directors, Deputy Directors, Assistant Directors or any other officers duly appointed or authorized under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act and any regulations made under this Act; and

- (b) any other person for any act done or purported to be done by him under the order, direction or instruction of the Director General, Deputy Director General, Directors, Deputy Directors, Assistant Directors or any other officers duly appointed under this Act if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Jurisdiction to try offences

106. Notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act or any regulations made under this Act, and to impose the full punishment for any such offence.

General penalty

107. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Regulations

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

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

- (a) prescribing the standards and specifications for the design, construction, operation and maintenance of any prescribed solid waste management facilities;
- (b) prescribing the methods or manner of collection, transportation, treatment or disposal of controlled solid waste including the types of controlled solid waste which may require pre-treatment before its disposal;

- (c) prescribing the scheme for carrying out solid waste management services including the duties and obligations of licensee and solid waste generators, the geographical area, the types of controlled solid waste and the services to be provided;
- (d) prescribing the design, type and number of receptacles to be provided and the materials or articles which may or may not be placed in the receptacles;
- (e) prescribing the specifications and requirements for vehicles used in transportation of controlled solid waste;
- (f) prescribing the methods or manner and level of recycling by any prescribed solid waste management facilities;
- (g) prescribing any controlled solid waste to be recyclable solid waste and the duty of any person to separate recyclable solid waste;
- (h) prescribing the duty of any person to separate special solid waste and the requirements for storage at any premises;
- (i) prescribing the methods or manner for carrying out the public cleansing management services;
- (j) prescribing the form and contents of licences to be granted under this Act, the conditions to be imposed and the fees to be paid for the licences;
- (k) prescribing the manner and form to be used and information to be furnished for any of the purposes of this Act;
- (l) prescribing the form of notifications, notices, orders or directions to be made under this Act and the manner of service thereof;
- (m) prescribing the offences which may be compounded and the forms to be used in and the method and procedure for compounding offences;
- (n) prescribing the charges, fees, levy or the rate for late payment charges which may be prescribed under this Act;
- (o) prescribing the keeping and maintenance of register;

- (p) prescribing the submission of data by the owner or occupier of any premises generating any controlled solid waste and any licensee providing solid waste management services;
- (q) prescribing the procedures in taking and dealing with samples of any controlled solid waste;
- (r) prescribing the manner and form in respect of plans and specifications for any prescribed solid waste management facilities to be submitted under this Act;
- (s) prescribing specific qualifications for any person involved with any solid waste management services;
- (t) prescribing all other matters as are necessary or expedient to be prescribed for giving effect to this Act or for the purposes of removing any difficulties occasioned by the coming into operation of this Act or any of its provisions.

(2) Regulations made under subsection (1) may prescribe any act or omission in contravention of any of the regulations to be an offence and may prescribe penalty of a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding six months or to both for such offence.

PART XII

SAVINGS AND TRANSITIONAL

Savings and transitional

109. Subject to the provisions of this Part, any registration, instruction, act, order, direction, approval or decision done, made or given before the appointed date, under any written law relating to the management of the solid waste and public cleansing which is consistent with this Act shall be deemed to have been done, made or given under this Act and shall continue in full force and effect relating to whom they apply until amended or revoked under this Act or under any regulations made under this Act or until the date of the expiry of the registration, instruction, act, order, direction, approval or decision.

Existing solid waste and public cleansing management services

110. (1) All Federal or State agencies or departments, local authorities or any person who are, prior to the appointed date, authorized under any written law to—

- (a) undertake or provide any solid waste management services;
- (b) manage or operate any solid waste management facilities; or
- (c) undertake or provide any public cleansing management services,

shall continue to be authorized under this Act to undertake, provide, manage or operate the aforesaid services or facilities for a period of one year from the appointed date or such other period as may be extended by the Director General if such Federal or State agencies or departments, local authorities or authorized person register with the Director General within six months or such other period as may be extended by the Director General after the appointed date.

(2) The authorization granted to the Federal or State agencies or departments, local authorities or any person under subsection (1) shall lapse if they fail to register with the Director General within six months or any extended period mentioned in subsection (1) after the appointed date.

(3) The Federal or State agencies or departments, local authorities or any person may at any time prior to the expiry of the authorization period apply for a licence under this Act to continue to—

- (a) undertake or provide any solid waste management services;
- (b) manage or operate any solid waste management facilities; or
- (c) undertake or provide any public cleansing management services,

after the expiration of the authorization period.

Existing agreements and supplementary agreements

111. (1) A person shall only be authorized to carry out the services and activities stipulated in any agreement and supplementary agreement in respect of solid waste management services and public cleansing management services made with any Federal or State agencies or departments or local authorities for a period of one year from the appointed date or such other periods as may be extended by the Director General if the person lodges a certified copy of the agreement and supplementary agreement with the Director General within six months from the appointed date or such other period as may be extended by the Director General.

(2) The authorization granted to the person authorized under subsection (1) shall lapse if they fail to register with the Director General within six months or any extended period mentioned in subsection (1) after the appointed date.

(3) The person authorized under subsection (1) shall as soon as possible after lodging his agreement and supplementary agreements, but in any event not later than six months after the lodgement date, commence renegotiation of his agreement and supplementary agreement with the Federal Government and the other counter parties to the agreement and supplementary agreement so as to address any national interest issues arising from the appointed date.

(4) The determination of what amounts to national interest issues arising from the appointed date shall be made by the Minister and such determination shall be final and binding upon all persons and shall not be challenged, appealed against, reviewed, quashed or questioned in any court.

(5) If amendments are made upon the finalization of the renegotiated agreement or supplementary agreement, the Director General shall register the amended agreements.

(6) Notwithstanding the provisions of this Act or any other written law, the failure of the person authorized under this section to commence renegotiation of his agreement and supplementary agreement as required under subsection (3) shall be a ground for the authorization referred to in subsection (1) to be revoked or for a licence under this Act not to be granted to such person.

(7) If an authorization has been revoked under subsection (6) or if a grant of licence is refused on the ground specified in subsection (6), the Federal Government, Minister or Director General shall not be liable—

(a) to pay any compensation to; and

(b) for any loss or damage suffered or incurred by,

the person affected by the revocation of the authorization or the refusal of the grant of the licence.

Existing solid waste management facilities

112. (1) Any solid waste management facilities approved under any written law before the appointed date shall be deemed to have been approved under section 10.

(2) The Director General may, at any time if he is satisfied that the approved solid waste management facility does not conform to current requirements regarding environmental impact, quality and level of solid waste management services or public health, serve upon the owner or occupier of such facility a notice in writing of his intention to require him to apply for a fresh approval under section 11.