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भारत सरकार/GOVERNMENT OF INDIA
वाणिज्य एवं उद्योग मंत्रालय/MINISTRY OF COMMERCE & INDUSTRY
वाणिज्य विभाग/DEPARTMENT OF COMMERCE

Udyog Bhawan, New Delhi
Dated: 5th May, 2022

Office Memorandum

Subject: Enactment of Tobacco Board (Amendment) Bill, 2022 -reg.

Department of Commerce is proposing to enact Tobacco Board (Amendment) Bill, 2022. A copy of the draft Amendment Bill is placed on the Department of Commerce Website (<https://commerce.gov.in/>) for seeking comments from public/stakeholders etc. till 06.06.2022. Comments may be sent to undersigned within specified time.



(निधि शर्मा)/(Nidhi Sharma)

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Encl: As above

Essential elements of the Tobacco Board (Amendment) Bill, 2022

The Tobacco Board (Amendment) Bill, 2022 ('Amendment Bill') seeks to update the Tobacco Board Act, 1975 ('Act') by promoting ease of doing business in the sector, and enabling the functioning of a modern Tobacco Board.

In furtherance of this aim, the Bill makes the following key changes:

1. The Board has been modernized with the introduction of a Chief Executive Officer. This replaces the former position of Executive Director.
2. To enable ease of functioning of the Board, the Secretary has been made an ex officio member of the Board.
3. Reference to the Tobacco Export Promotion Council has been omitted from the Act.
4. The requirements to obtain a separate license for the operation of barns and a registration for curers has been removed. Instead, registered growers who apply with support of licensed barns have been allowed to operate barns.
5. The Act has been wholly decriminalized. As a result, all penalties under the Act have been made civil in nature and officers/members of the Board when conducting inspections have been deemed to be public servants under the Indian Penal Code, 1860. As such, obstruction of such officers/members is a criminal offence. Further, the scheme of penalties under the Act has been rationalized, and the rate of the penalty has been linked to the market value of virginia tobacco involved for certain offences.
6. To provide an efficacious mechanism for redressal of grievances, a provision has been added to the Act allowing appeal to the Central Government against penalties imposed under the Act by an order of the Board. Provisions have been provided for the Central Government to confirm / modify / reverse the penalties imposed under the Act. Pursuant to the action taken by the Central Government, the penalties imposed under the order of the Board attains finality and cannot be challenged in a court of law.
7. Since the 'Amendment Bill' wholly decriminalizes the Act and makes all penalties under the Act civil in nature, the provisions on jurisdiction of courts for trial of offences and obtaining previous sanction of the Central Government regarding prosecution for offences have been omitted.

8. Consequently, the provisions under the Act on trail of offences committed by companies has also been omitted.
9. The "Amendment Bill" does not in any manner negatively impact the financial status of the Board. The rate at which fees can be levied on the sale of tobacco at auction platforms has been enhanced from two percent of the value to four percent, and the requirement to collect such fees equally from the seller and the purchaser has been done away with. This is done to ensure that the Board functions in a self sustaining model and for meeting the budgetary expenses of the Board. The existing rate of fee on the sale of the tobacco at the auction platforms which is at two percent of the value of the tobacco sold has not been enhanced since the inception of auction system in Tobacco Board. The rate of fees would be enhanced only on need basis with the prior approval of the Central Government. In case, the Central Government decides to enhance the rate of fees to be levied, there could be a small impact on the fees paid by the farmers and tobacco buyers for the tobacco sold / bought at the auction platforms.
10. To ensure greater accountability, the Board is now required to furnish a description of all its activities for the previous year, and its plan for the upcoming year as part of its annual report.
11. "The Amendment Bill" has no impact on the fundamental rights of any concerned / affected persons. The Amendment bill also does not make any new provisions which could have impact on the environment.

The Tobacco Board (Amendment) Bill, 2022	
<p>A Bill to further amend the Tobacco Board Act, 1975 to promote ease of doing business and enable the functioning of a modern Tobacco Board</p>	
<p>BE it enacted by Parliament in the Seventy-Third Year of the Republic of India as follows:—</p>	
Short title and commencement	<p>1. (1) This Act may be called the Tobacco Board (Amendment) Act, 2022.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.</p>
Amendment of section 3	<p>2. In section 3 of the Tobacco Board Act (Act No. 4 of 1975) (hereinafter referred to as the principal Act),—</p> <p>(i) After clause (b), the following clause shall be inserted, namely:—</p> <p style="padding-left: 40px;">“(ba) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (2) of section 6;</p> <p>(ii) Clause (e) shall be omitted;</p> <p>(iii) In clause (g), after the word “Chairman”, the following words shall be inserted “and the Chief Executive Officer”.</p>
Amendment of section 4	<p>3. In section 4 of the principal Act, in sub-section (4),—</p> <p>(i) in clause (g), for the words “Executive Director”, the words “Chief Executive Officer” shall be substituted;</p> <p>(ii) after clause (g), the following clause shall be inserted namely:—</p> <p style="padding-left: 40px;">“(h) Secretary to the Board appointed under sub-section (2) of section 6, <i>ex officio</i>.”</p>

Amendment of section 6	<p>4. In section 6 of the principal Act,—</p> <p>(i) for sub-section (1), the following sub-section shall be substituted, namely:—</p> <p style="padding-left: 40px;">“The Central Government shall appoint a Chief Executive Officer to exercise such powers and perform such duties as may be prescribed.”;</p> <p>(ii) for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p style="padding-left: 40px;">“The Central Government shall appoint a Secretary to the Board to exercise such powers and perform such duties as may be prescribed.”;</p> <p>(iii) In sub-sections (3) and (5), for the words “Executive Director”, the words “Chief Executive Officer” shall be substituted;</p> <p>(iv) In sub-section (4), the words and brackets “(including conditions as to appointment of the officers and other employees of the Tobacco Export Promotion Council, in the events of the said Council being wound up)” shall be omitted.</p>
Amendment of section 8	<p>5. In section 8 of the principal Act, in sub-section (2), in clause (cc), the words “or curers” shall be omitted.</p>
Amendment of section 10	<p>6. In section 10, after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p style="padding-left: 40px;">“(1A) No person shall operate a barn, subject to such conditions as may be prescribed, unless such person:—</p> <p style="padding-left: 80px;">(a) obtains a certificate of registration under sub-section (1); and</p> <p style="padding-left: 80px;">(b) possesses a barn at the time of such registration.</p> <p style="padding-left: 40px;"><i>Explanation:</i>—The word “barn” shall have the same meaning as assigned to it in the explanation to section 11-B.”</p>
Omission of section 11	<p>7. Section 11 of the principal Act shall be omitted.</p>
Amendment of section 11-B	<p>8. In section 11-B of the principal Act, in clause (ii), the words “and operation” shall be omitted.</p>
Amendment of section 13	<p>9. In section 13 of the principal Act, the words “or curer” shall be omitted.</p>
Amendment of section 13-A	<p>10. In section 13A of the principal Act, the words “or curer” shall be omitted.</p>

Amendment of section 14	<p>11. In section 14 of the principal Act:—</p> <p>(i) the words and figures “for registration of curers for the purposes of Section 11,” shall be omitted;</p> <p>(ii) the word “curers”, wherever it occurs, shall be omitted;</p> <p>(iii) the words “and operation” shall be omitted.</p>
Amendment of section 14-A	<p>12. In section 14-A of the principal Act,—</p> <p>(i) In sub-section (1), for the word “two”, the word “four” shall be substituted;</p> <p>(ii) In sub-section (2), the word “equally” shall be omitted.</p>
Amendment of section 20	<p>13. In section 20 of the principal Act:—</p> <p>(i) In sub-section (3), for the words “punishable with imprisonment for a term which may extend to one year, or with fine, or with both” the words “liable to pay a civil penalty which may extend to Rs.5,000/- (Rupees five thousand only), as may be determined by an order by the Chief Executive Officer” shall be substituted.</p> <p>(ii) After sub-section (3), the following proviso shall be inserted, namely:—</p> <p>“Provided, the amount of penalty imposed under this sub-section, if not paid, may be recovered as if it were an arrear of land revenue.”</p>
Amendment of section 22	<p>14. In section 22 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—</p> <p>“(2-A) Without prejudice to the provisions of sub-sections (1) and (2) the report prepared under sub-section (2) shall contain:—</p> <p>(a) a description of all the activities of the Board for the previous year; and</p> <p>(b) the plan of the Board for the upcoming year.”</p>
Amendment of section 23	<p>15. In section 23 of the principal Act,—</p> <p>(i) For the words “punishable with fine which may extend to five hundred rupees”, the words “liable to pay a civil penalty which may extend to five hundred rupees, as may be determined by an order by the Chief Executive Officer” shall be substituted.</p> <p>(ii) the following proviso shall be inserted, namely:—</p> <p>“Provided, the amount of penalty imposed under this sub-section, if not paid, may be recovered as if it were an arrear of land revenue.”</p>

Substitution of new section for section 24	<p>16. For section 24 of the principal Act, the following section shall be substituted, namely:-</p> <p>“24. Members, officers or other employees of the Board to be public servants.— All members, officers or other employees of the Board, when acting or purporting to act in pursuance of section 15 shall be deemed, to be public servants within the meaning of section 21 of the Indian Penal Code (Act No. 45 of 1860).”</p>
Substitution of new Section for Section 25	<p>17. For Section 25 of the principal Act, the following section shall be substituted, namely:-</p> <p>“25. Penalties.— (1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of sections 10(1), 12, 13 and 13-A of this Act or of any rules or regulations made there under, other than the provisions, penalty for the contravention whereof has been provided for in section 23, shall be liable to pay a civil penalty which may extend to the full market value of Virginia tobacco involved in such contravention, as may be determined by an order by the Chief Executive Officer.</p> <p>(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or any rules or regulations made there under, other than the provisions, penalty for the contravention whereof has been provided for in section 20 or section 23 or sub-section (1) of this section, shall be liable to pay a civil penalty which may extend to five thousand rupees, as may be determined by an order by the Chief Executive Officer.</p> <p>Provided, the amount of penalty imposed under this section, if not paid, may be recovered as if it were an arrear of land revenue.”</p>
Insertion of new section 25-A	<p>18. After section 25 of the principal Act, the following section shall be inserted, namely:-</p> <p>“25-A. (1) Any person aggrieved by an order of the Board passed under the provisions of section 23 or section 25 of this Act, within such period of the passing of the order, prefer an appeal to the Central Government, on payment of such fee, in such form and manner, and subject to such other conditions as may be prescribed.</p> <p>(2) The Central Government may confirm, modify or reverse the order appealed against.</p>

	<p>(3) Subject only to such decision of the Central Government, the order of the Board shall be final and shall not be called in question in any court.</p> <p>(4) Before disposing of an appeal under sub-section (2), the parties shall be given a reasonable opportunity of being heard.”</p>
Omission of section 26, section 27 and section 28	19. Sections 26, 27 and 28 of the principal Act shall be omitted.
Amendment of section 32	<p>20. In section 32 of the principal Act, in sub-section (2),-</p> <p>(i) In clauses (c) and (i), for the words “Executive Director”, the words “Chief Executive Officer” shall be substituted;</p> <p>(ii) Clause (ga) shall be renumbered as clause (gaa);</p> <p>(iii) After clause (g), the following clause shall be inserted, namely:-</p> <p style="padding-left: 40px;">“(ga) the conditions subject to which a person may operate a barn;”</p> <p>(iv) after clause (s), the following clause shall be inserted, namely:-</p> <p style="padding-left: 40px;">“(sa) the period within which, the fee to be paid for, the form and manner of, and conditions subject to which an appeal may be preferred under section 25-A.”</p>
Amendment of section 33	21. In section 33 of the principal Act, in sub-section (2), in clause (b), for the words “Executive Director”, the words “Chief Executive Officer” shall be substituted.

Explanation of the Proposed Changes in the Tobacco Board (Amendment) Bill, 2022

Provision		Explanation
<p align="center">The Tobacco Board (Amendment) Bill, 2022</p> <p align="center">A Bill</p> <p align="center">to further amend the Tobacco Board Act, 1975 to promote ease of doing business and enable the functioning of a modern Tobacco Board</p>		Short title
<p>BE it enacted by Parliament in the Seventy-Third Year of the Republic of India as follows:—</p>		Long title
Short title and commencement	<p>1. (1) This Act may be called the Tobacco Board (Amendment) Act, 2022.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.</p>	Enacting formula

Amendment of section 3	<p>2. In section 3 of the Tobacco Board Act (Act No. 4 of 1975) (hereinafter referred to as the principal Act),—</p> <p>(i) After clause (b), the following clause shall be inserted, namely:—</p> <p>“(ba) ‘‘Chief Executive Officer’’ means the Chief Executive Officer appointed under sub-section (2) of section 6;</p> <p>(ii) Clause (c) shall be omitted;</p> <p>(iii) In clause (g), after the word ‘‘Chairman’’, the following words shall be inserted ‘‘and the Chief Executive Officer’’.</p>	<p>The Board has been modernised with the introduction of a Chief Executive Officer. This replaces the former position of Executive Director.</p>
Amendment of section 4	<p>3. In section 4 of the principal Act, in sub-section (4),—</p> <p>(i) in clause (g), for the words ‘‘Executive Director’’, the words ‘‘Chief Executive Officer’’ shall be substituted;</p> <p>(ii) after clause (g), the following clause shall be inserted namely:—</p> <p>“(h) Secretary to the Board appointed under sub-section (2) of section-6, <i>ex officio</i>.”</p>	<p>The Board has been modernised with the introduction of a Chief Executive Officer. This replaces the former position of Executive Director.</p> <p>To enable ease of functioning and effective coordination, the Secretary has been made an ex-officio member of the Board.</p>

Amendment of section 6	<p>4. In section 6 of the principal Act,—</p> <p>(i) for sub-section (1), the following sub-section shall be substituted, namely:—</p> <p>“The Central Government shall appoint a Chief Executive Officer to exercise such powers and perform such duties as may be prescribed.”;</p> <p>(ii) for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>“The Central Government shall appoint a Secretary to the Board to exercise such powers and perform such duties as may be prescribed.”;</p> <p>(iii) In sub-sections (3) and (5), for the words “Executive Director”, the words “Chief Executive Officer” shall be substituted;</p> <p>(iv) In sub-section (4), the words and brackets “(including conditions as to appointment of the officers and other employees of the Tobacco Export Promotion Council, in the events of the said Council being wound up)” shall be omitted.</p>	<p>The Board has been modernised with the introduction of a Chief Executive Officer. This replaces the former position of Executive Director.</p> <p>Reference to the Tobacco Export Promotion Council has been omitted from the Act.</p>
Amendment of section 8	<p>5. In section 8 of the principal Act, in sub-section (2), in clause (cc), the words “or curers” shall be omitted.</p> <p>See explanation to clause 6 of this Amendment Bill.</p>	

Amendment of section 10	<p>6. In section 10, after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>“(1A) No person shall operate a barn, subject to such conditions as may be prescribed, unless such person:—</p> <p>(a) obtains a certificate of registration under sub-section (1); and</p> <p>(b) possesses a barn at the time of such registration.</p> <p><i>Explanation:</i>—The word “barn” shall have the same meaning as assigned to it in the explanation to section 11-B.”</p>	<p>To enhance ease of doing business and ease of compliance, the requirement to obtain a separate license for the operation of barns has been removed. Instead, registered growers who possess barns have been allowed to operate barns.</p>
Omission of section 11	7. Section 11 of the principal Act shall be omitted.	To enhance ease of doing business and ease of compliance, registration for curers has been removed.
Amendment of section 11-B	8. In section 11-B of the principal Act, in clause (ii), the words “and operation” shall be omitted.	See explanation to clause 6 of this Amendment Bill.
Amendment of section 13	9. In section 13 of the principal Act, the words “or curer” shall be omitted.	See explanation to clause 7 of this Amendment Bill.
Amendment of section 13-A	10. In section 13A of the principal Act, the words “or curer” shall be omitted.	See explanation to clause 7 of this Amendment Bill.
Amendment of section 14	<p>11. In section 14 of the principal Act:—</p> <p>(i) the words and figures “for registration of curers for the purposes of Section 11,” shall be omitted;</p> <p>(ii) the word “curers”, wherever it occurs, shall be omitted;</p>	See explanations to clauses 6 and 7 of this Amendment Bill.

	<p>(iii) the words "and operation" shall be omitted.</p>	
<p>Amendment of section 14-A</p>	<p>12. In section 14-A of the principal Act,—</p> <p>(i) In sub-section (1), for the word "two", the word "four" shall be substituted;</p> <p>(ii) In sub-section (2), the word "equally" shall be omitted.</p>	<p>The rate at which fees can be levied on the sale of tobacco at auction platforms has been enhanced from two percent of the value two four percent, and the requirement to collect such fees equally from the seller and the purchaser has been done away with.</p>
<p>Amendment of section 20</p>	<p>13. In section 20 of the principal Act:—</p> <p>(i) In sub-section (3), for the words "punishable with imprisonment for a term which may extend to one year, or with fine, or with both" the words "liable to pay a civil penalty which may extend to Rs.5,000/- (Rupees five thousand only), as may be determined by an order by the Chief Executive Officer" shall be substituted.</p> <p>(ii) After sub-section (3), the following proviso shall be inserted, namely:—</p> <p>"Provided, the amount of penalty imposed under this sub-section, if not paid, may be recovered as if it were an arrear of land revenue."</p>	<p>The Act has been wholly decriminalised. As a result, all penalties under the Act have been made civil in nature.</p>

Amendment of section 22	<p>14. In section 22 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:-</p> <p>“(2-A) Without prejudice to the provisions of sub-sections (1) and (2) the report prepared under sub-section (2) shall contain:-</p> <p>(a) a description of all the activities of the Board for the previous year; and</p> <p>(b) the plan of the Board for the upcoming year.”</p>	To ensure greater accountability, the Board is now required to furnish a description of all its activities for the previous year, and its plan for the upcoming year as part of its annual report.
Amendment of section 23	<p>15. In section 23 of the principal Act,—</p> <p>(i) For the words “punishable with fine which may extend to five hundred rupees”, the words “liable to pay a civil penalty which may extend to five hundred rupees, as may be determined by an order by the Chief Executive Officer” shall be substituted.</p> <p>(ii) the following proviso shall be inserted, namely:—</p> <p>“Provided, the amount of penalty imposed under this sub-section, if not paid, may be recovered as if it were an arrear of land revenue.”</p>	See explanation to clause 13 of this Amendment Bill.

<p>Substitution of new section for section 24</p>	<p>16. For section 24 of the principal Act, the following section shall be substituted, namely:-</p> <p>“24. Members, officers or other employees of the Board to be public servants.— All members, officers or other employees of the Board, when acting or purporting to act in pursuance of section 15 shall be deemed, to be public servants within the meaning of section 21 of the Indian Penal Code (Act No. 45 of 1860).”</p>	<p>To deter interference with inspection conducted by the Board, officers/members of the Board when conducting inspections have been deemed to be public servants under the Indian Penal Code, 1860. As such, obstruction of such officers/members is a criminal offence.</p>
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<p>Substitution of new Section for Section 25</p>	<p>17. For Section 25 of the principal Act, the following section shall be substituted, namely:—</p> <p>“25. Penalties.— (1) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of sections 10(1), 12, 13 and 13-A of this Act or of any rules or regulations made there under, other than the provisions, penalty for the contravention whereof has been provided for in section 23, shall be liable to pay a civil penalty which may extend to the full market value of Virginia tobacco involved in such contravention, as may be determined by an order by the Chief Executive Officer.</p> <p>(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or any rules or regulations made there under, other than the provisions, penalty for the contravention whereof has been provided for in section 20 or section 23 or sub-section (1) of this section, shall be liable to pay a civil penalty which may extend to five thousand rupees, as may be determined by an order by the Chief Executive Officer.</p> <p>Provided, the amount of penalty imposed under this section, if not paid, may be recovered as if it were an arrear of land revenue.”</p>	<p>The scheme of penalties under the Act has been rationalised, and the rate of the penalty has been linked to the market value of Virginia tobacco involved for certain offences.</p>
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<p>Insertion of new section 25-A</p>	<p>18. After section 25 of the principal Act, the following section shall be inserted, namely:-</p> <p>“25-A. (1) Any person aggrieved by an order of the Board passed under the provisions of section 23 or section 25 of this Act, within such period of the passing of the order, prefer an appeal to the Central Government, on payment of such fee, in such form and manner, and subject to such other conditions as may be prescribed.</p> <p>(2) The Central Government may confirm, modify or reverse the order appealed against.</p> <p>(3) Subject only to such decision of the Central Government, the order of the Board shall be final and shall not be called in question in any court.</p> <p>(4) Before disposing of an appeal under sub-section (2), the parties shall be given a reasonable opportunity of being heard.”</p>	
<p>Omission of section 26, section 27 and section 28</p>	<p>19. Sections 26, 27 and 28 of the principal Act shall be omitted.</p>	<p>These provisions dealt with offences by companies, jurisdiction of courts, and previous sanction of Central Government, and are only necessary when the Act contains criminal offences and penalties.</p> <p>These omissions are concomitant to the decriminalisation of the Act.</p>

Amendment of section 32	<p>20. In section 32 of the principal Act, in sub-section (2),—</p> <p>(i) In clauses (c) and (i), for the words “Executive Director”, the words “Chief Executive Officer” shall be substituted;</p> <p>(ii) Clause (ga) shall be renumbered as clause (gaa);</p> <p>(iii) After clause (g), the following clause shall be inserted, namely:—</p> <p>“(ga) the conditions subject to which a person may operate a barn;”</p> <p>(iv) after clause (s), the following clause shall be inserted, namely:—</p> <p>“(sa) the period within which, the fee to be paid for, the form and manner of, and conditions subject to which an appeal may be preferred under section 25-A.”</p>	<p>The Board has been modernised with the introduction of a Chief Executive Officer. This replaces the former position of Executive Director.</p>
Amendment of section 33	<p>21. In section 33 of the principal Act, in sub-section (2), in clause (b), for the words “Executive Director”, the words “Chief Executive Officer” shall be substituted.</p>	<p>The Board has been modernised with the introduction of a Chief Executive Officer. This replaces the former position of Executive Director.</p>