SUMMARY AND ANALYSIS OF KEY PROVISIONS OF THE TOBACCO AND NICOTINE CONTROL ACT NO.10 OF 2022

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The Tobacco and Nicotine Control Act No.10 of 2022 was unanimously passed into law on the 3rd day of August 2022 by the Parliament of Sierra Leone having been assented to by H.E President Julius Maada Bio on the 6th day of April 2022. The Act aims to control and regulate the production, manufacturing, importation, exportation, packaging and labeling, advertising, promotion and sponsorship, sale and use of tobacco, tobacco products and other nicotine products in Sierra Leone and to provide for the improvement of public Health by reducing demand for tobacco and nicotine products, the health harms caused by the use and exposure to same. By this Act, Sierra Leone has fully domesticated the provisions of the WHO Framework Convention on Tobacco Control (FCTC), a treaty that was adopted by the 56th World Health Assembly on the 21st May 2003, and ratified by Sierra Leone on the 22nd May 2009 among other African Nations. In the paragraphs that ensue, we will analyse key provisions of the Act.

PART II- ESTABLISHMENT OF THE TOBACCO AND NICOTINE CONTROL COUNCIL

By PART II, more specifically section 2 of the Act, there is established the Tobacco and Nicotine Control Council which is a body corporate ‘having perpetual succession and capable of acquiring, holding and disposing of property....’¹. Section 2(3) of the Act provides for the Council’s seal which said seal is authenticated by the signatures of the Chairman or other duly authorized member of the Council or the Executive Secretary or some other person duly authorized by the Council. The affixing of the seal of the Council to any document in the manner provided prescribed in section 2(3) will be deemed to be executed or issued by the Council without further proof unless the contrary is proven and in some appropriate cases, the seal may be affixed to documents outside of Sierra Leone.² By section 3 of the Act, the Council is composed the Chairman who is appointed by the President on the advice of the Minister of Health and Sanitation and approved by Parliament³ and other members not below the rank of director as follows: (a) Ministry of Health and Sanitation (b) Attorney-General and Minister of Justice (c) Ministry of Finance (d) Ministry of Foreign Affairs and International Corporation (e) Standards Bureau (f) Ministry of Trade (g) Ministry of Labour (h) National Revenue Authority (i) Ministry of Internal Affairs (j) Ministry of Youth and (k) Two representatives of whom one compulsorily female of an NGO engaged in matters relating to tobacco control, nominated by the Sierra Leone Association of Non-Governmental Organisations.

¹ See section 2 (2) of the Act
² See section 2(3) and (4) of the Act
³ See section 3 (2) of the Act
PART III - FUNCTIONS OF THE COUNCIL
Under Part III of the Act, the functions of the Council are outlined explicitly. Generally, the council is authorized to regulate and control the production, manufacturing, importation, exportation, packaging and labeling, advertising, promotion and sponsorship, sale and use of tobacco, tobacco products and other nicotine products and in the exercise of these general functions, the Act duly provides further duties which the Council is authorized to perform.4

PART V - ADMINISTRATIVE FUNCTIONS
Part V of the Act pertains to administrative provisions and section 17 establishes the Secretariat, which is responsible for the efficient discharge of the functions of the Council. Section 17(2) elucidates the responsibilities of the Secretariat.

PART VI - PROTECTION FROM INVOLUNTARY EXPOSURE TO TOBACCO SMOKE OR AEROSOL FROM ELECTRONIC NICOTINE DELIVERY SYSTEMS
Section 22 (1) of the Act provides for smoke-free areas. These include: a public place including offices, court buildings, factories, hospitals, clinics and other health institutions, corridors lounges, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries and amenity areas, cinema halls, theatres, video houses, places of worship, restaurants, hotels, bars or other eating places, children’s homes and other premises where children are cared for, and correctional centres, educational facilities among others.5 Under section 22 (b) smoking is prohibited in outdoor area within 10 meters of a window, door or air intake mechanism of an enclosed public space, work space, waiting area, queue or any other enclosed space that is open to the public. Furthermore, smoking is prohibited within 10 meters from a place of service or consumption of food or drinks, within 10 meters of a place where there are children and young persons and outdoor public space or work space prescribed by the Minister of Health and Sanitation. The said Minister may, by notice published in the gazette designate a place as public in which smoking is prohibited.6

PART VII - REGULATION OF SALE AND DISTRIBUTION OF TOBACCO, TOBACCO PRODUCTS AND OTHER NICOTINE PRODUCTS
This part of the Act regulates the sale and distribution of tobacco, tobacco products and other nicotine products. Section 24 (a) of the Act prohibits the sale and supply of tobacco or tobacco or nicotine related products to a child. The said section also prohibits the employment or involvement of a child in the importation, distribution, sale purchase or any other activity related to tobacco, tobacco products and other nicotine products.7 Section 24 (2) stipulates a fine of not less than Le1,000,000.00 or imprisonment of not less than 6 months or to both for any person who contravenes the provisions of section 24 (a). Section 25(1) of the Act prohibits the manufacture and sale of confectionary or other food or toy or an amusement product that resembles tobacco,

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4 See section 11(2) of the Act
5 See section 22 (a) of the Act for all smoke-free areas listed
6 Pursuant to section 23 of the Act
7 See section 24 (b) of the Act
tobacco or other nicotine product or which contains a brand name or trademark of a tobacco, tobacco or other nicotine product and a fine of Le100,000,000.00 or a term of not less than 12 years or both is prescribed for any person who contravenes the said provisions.\(^8\) By section 26 (1) and (2) of the Act, a person, shop or business that sells tobacco or tobacco products or nicotine products directly to the public is required to post signs in legible and conspicuous capital letters that inform the public that the sale of tobacco to a child is prohibited and that tobacco is dangerous to health. A person who contravenes the provisions in subsection (1) commits an offence and is liable on conviction to a fine of not less than 1,000,000.00 Leones or not less than 6 months imprisonment or both. Section 30 (1) prohibits the delivery of tobacco or tobacco products or other nicotine products by mail for consideration unless the delivery is between a manufacturer and retailer. Subsection 2 further provides prohibits the advertisement of an offer to deliver or mail tobacco, tobacco products or other nicotine product anywhere in Sierra Leone. A person who contravenes subsection (1) or (2) is liable on conviction to a fine of not less than Le10,000,000.00 or imprisonment for 5 years or both. Section 31 of the Act stipulates required information for packages containing tobacco, tobacco product or other nicotine product manufacture, sold, distributed or imported into Sierra Leone. Any said package as provided by this section must display pictorial warning and contain health messages with respect to health effects arising from the use of tobacco or from its emissions.\(^9\)

**PART VIII-REGULATION OF ADVERTISEMENT, PROMOTION AND SPONSORSHIP OF TOBACCO, TOBACCO PRODUCTS AND OTHER NICOTINE PRODUCTS**

Under this part of the Act, the first section (section 33 (1) (a) and (b)) prohibits false, misleading or deceptive promotion of tobacco or tobacco products or other nicotine product and any person who contravenes the provisions of section 33 (1) (a) and (b) is liable to on conviction to a fine of Le10,000,000 or a term of imprisonment not less than 2 years or both.\(^{10}\)

By section 34 of the Act, the promotion of tobacco, tobacco product or other nicotine product by means of a recommendation or an endorsement that is misleading or incapable of fully informing consumers of the hazards of tobacco or likely to evoke a conflicting message or impression is prohibited and a person who contravenes the provision is liable to a fine of not less than Le10,000,000.00 or to imprisonment for a term not less than 2 years or to both. Section 35 of the Act prohibits the advertisement of tobacco or tobacco product or other nicotine product by electronic or print medium. Section 36 prohibits the sponsorship, or organizing of sporting, cultural, artistic, recreational, educational or entertainment programme or event or activity in respect of tobacco, tobacco product or other nicotine product. Contravention of this provision warrants a fine of Le10,000,000.00 or a term of imprisonment not less than 2 years or both. Section 37 prohibits the display of the names of manufacturers of tobacco or tobacco product or other nicotine product on a permanent facility unless such facility is owned or leased and used by the manufacturers and

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\(^8\) See section 25 (2) of the Act

\(^9\) See section 31 (2) of the Act for further information required on packages and also see schedule 2 which sets out the form of such displays

\(^{10}\) See section 33 (2) of the Act
contravention of this section warrants a fine not less than Le 10,000,000.00 or to imprisonment for a term not less than 5 years or both.\textsuperscript{11} Section 38 prohibits the display of names of manufacturers on accessories,\textsuperscript{12} section 39 prohibits the display of tobacco brand element on non tobacco product and the promotion of non-tobacco products bearing tobacco related brand names,\textsuperscript{13} section 40 prohibits the supply of accessories bearing tobacco, tobacco product or other nicotine product without monetary consideration,\textsuperscript{14} section 41 prohibits cross border promotion, advertisement and sponsorship of products that bear tobacco, tobacco product or other nicotine product and section 42 prohibits brand stretching by tobacco manufacturers.\textsuperscript{16}

PART IX—REGULATION OF MANUFACTURE, IMPORTATION AND DISTRIBUTION OF TOBACCO, TOBACCO PRODUCTS AND OTHER NICOTINE PRODUCTS

By section 43(1) of the Act, manufacturing, importing and distributing or offering for sale any tobacco, tobacco product or any other nicotine product that has characterizing flavours and/or contains additives with properties associated facilitating nicotine uptake is prohibited and by section 43(2), a fine of Le 20,000,000.00 or a term of imprisonment of not less than 1 year or both is prescribed for persons who contravene this section. Section 44 of the Act provides that the manufacturing, importation and distribution of tobacco, a tobacco product or other nicotine product is subject to the authority of a license issued by the Council.\textsuperscript{17} By section 45 (1) of the Act, registration of wholesalers of tobacco, tobacco products or other nicotine product with the Council is mandatory and any person who contravenes subsection 1 is liable on conviction to a fine of not less than Le 10,000,000.00 or a term of imprisonment not less than 5 years or both.

TOBACCO REGULATIONS IN OTHER JURISDICTIONS

In England, the Health Act 2006 governs many aspects of public health, including tobacco control. With respect to tobacco control, the Act regulates smoking in public places, workplaces, and public transport. Numerous regulations have been issued under the Health Act to implement the Act, including: 1) Smoke-free (Premises and Enforcement) Regulations 2006, which define “enclosed” and “substantially enclosed,” and set out the authority of enforcement agencies; 2)
Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, which regulate smoking in enclosed public vehicles; 3) Smoke-free (Penalties and Discounted Amounts) Regulations 2007, which set penalties for smoking violations; 4) Smoke-free (Exemptions and Vehicles) Regulations 2007, which set forth exemptions to the ban on smoking and define “enclosed vehicle”; 5) Smoke-free (Signs) Regulations 2012, which set out requirements for no-smoking signs; and (6) Smoke-free (Private Vehicles) Regulations 2015, which prohibit smoking in enclosed private vehicles in which children are present. Government policy also prohibits smoking in all government facilities. The Tobacco Advertising and Promotion Act 2002 (“TAPA”) governs tobacco advertising, promotion and sponsorship, other than on broadcast media. TAPA was amended by: 1) the Tobacco Advertising and Promotion 2002 etc. (Amendment) Regulations 2006, which added provisions to specifically address information society services, such as the internet, and 2) the Health Act 2009, which authorized regulations to: prohibit tobacco product display at retail shops, restrict product displays on websites, and prohibit tobacco vending machines. Numerous regulations have been issued under TAPA to implement the Act. The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 prohibit the display and advertising of tobacco products in most retail shops. The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010 more stringently regulate point of sale advertising and product display at specialist tobacconists. The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010 regulate the display of price lists at points of sale. Other regulations issued under TAPA include: 1) the Tobacco Advertising and Promotion (Brand sharing) Regulations 2004, which prohibit brand sharing and reverse brand sharing, and 2) the Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010, which prohibits vending machines as of October 2011.

Broadcast media is regulated by the UK Code of Broadcast Advertising, which prohibits tobacco advertising on broadcast media regulated by Ofcom (TV, radio, and mobile phones). The paid placement of tobacco products on TV and on-demand programs is prohibited by the Audiovisual Media Services (Product Placement) Regulations 2010 and unpaid depiction of tobacco products or smoking is restricted by the Ofcom Broadcasting Code. The packaging and labeling of tobacco products is governed by the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of Tobacco Products Regulations 2015. E-cigarettes are primarily regulated under the Tobacco and Related Products Regulations 2016 (S.I. 2016 No. 507). Amendments were made to this law under the Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019 No. 41) and the Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 after the withdrawal from the European Union.

In Ghana the Public Health Act, 2012 is the primary tobacco control legislation and governs, among other things, smoking in public places; tobacco advertising, promotion and sponsorship; and tobacco packaging and labeling. The Tobacco Control Regulations, 2016 (L.I. 2247) entered into force on January 4, 2017 and provided 18 months for compliance with public smoking restrictions, among other measures and 18 months for compliance with new picture health warnings from the date the FDA issued the new health warnings electronically. The Food and Drug
Authority Guidelines for Labelling of Tobacco Products are issued under and implement the Public Health Act. The Guidelines regulate tobacco packaging and labeling. The most recent set of guidelines was issued in 2018.

In Nigeria, the National Tobacco Control Act, 2015 regulates all aspects of tobacco control including smoke free places, tobacco advertising, promotion, and sponsorship, tobacco packaging and labeling, prevention of tobacco industry interference, tobacco product disclosures, the creation of a National Tobacco Control Committee, tobacco product sales, including prohibiting the sale of single sticks, among other areas. The functions of the National Tobacco Control Committee in Nigeria can be said to be analogous to that of the Tobacco and Nicotine Control Council in Sierra Leone. The National Tobacco Control Regulations, 2019 implement many provisions of the Act including smoke free places, tobacco advertising, promotion, and sponsorship, tobacco packaging and labeling, prevention of tobacco industry interference, and tobacco product disclosures, among others. The provisions on tobacco product packaging and labeling entered into force in June 2021, 18 months after the date of publication of the regulations in the Gazette. There are two Nigerian Industrial Standards regulating the content and required disclosures and prescribing the health warning contents. NIS 463:2018 regulates smoked tobacco products and NIS 1031:2018 regulates smokeless tobacco products.

The Tobacco Control Act, 2007 is the principal law governing tobacco control in Kenya. This comprehensive law defines keys terms and covers topics including, but not limited to, restrictions on public smoking; tobacco advertising, promotion and sponsorship; and packaging and labeling of tobacco products. Other topics addressed by the law include: public education and information campaigns; sales to minors; and enforcement of the law. The Tobacco Control Act, 2007 grants powers, including implementation and enforcement authority, to individuals appointed under the Public Health Act. The Traffic Act provides a definition of “public service vehicle,” incorporated by the Tobacco Control Act with regards to smoke free provisions. The Tobacco Control Regulations, 2014 require combined picture and text health warnings and further regulate other provisions under the Tobacco Control Act, 2007 including public smoking restrictions, tobacco product and tobacco industry disclosures, tobacco industry interactions with government, and an annual fee placed on tobacco product manufacturers and importers, which will contribute to a tobacco control fund.

OBSERVATIONS AND RECOMMENDATION

Overall, the Tobacco and Nicotine Control Act No.10 of 2022 regulates all aspects of tobacco control including smoke free places, tobacco advertising, promotion, and sponsorship, tobacco packaging and labeling, prevention of tobacco industry interference, tobacco product disclosures, the creation of a Tobacco and Nicotine Control Council, tobacco product sales, including prohibiting the sale of single sticks, among other areas. The regulation is a timely response to the globalization of the tobacco epidemic which is facilitated by a variety of complex factors with crossborder effects, including trade liberalization, foreign direct investment, and other activities
such as global marketing, transnational tobacco advertising, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes.\textsuperscript{18} This work observes that the definition of ‘tobacco product’ under PART I of the Act includes electronic nicotine delivery systems and other products containing nicotine and devices used to replace, imitate tobacco or nicotine by which said definition E-Cigarettes can be said to be included. Notwithstanding, It is recommended that regulations analogous to the Tobacco and Related Products Regulations 2016 in England, in respect of E-Cigarettes be considered by parliament, in the future. Indeed every law is subject to change and it is inevitable that there will be additional regulations in order to further the purpose of the Act and meet the demands of the ever evolving state of affairs of the Country and the World.

\textsuperscript{18} See the WHO report on global tobacco epidemic 2021 for further reading on the global tobacco epidemic