



**LAWS OF MALAYSIA**

**Act 235**

**CUSTOMS ACT 1967**

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**LAWS OF MALAYSIA**

**Act 235**

**CUSTOMS ACT 1967**

**PART I**

**PRELIMINARY**

**Short title**

1. (1) This Act may be cited as the Customs Act 1967.
- (2) (Omitted).

**Interpretation**

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

“agent”, in relation to a vessel includes chinchew and comprador;

“accredited person” means any person who has been approved by the Director General under section 88B;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“aircraft” includes any kind of craft which may be used for the conveyance of passengers or goods by air;

“collection station” means a customs warehouse established in Singapore under subsection 63(2);

“computer” has the meaning assigned thereto in section 3 of the Evidence Act 1950 [Act 56];

“conveyance” includes any vessel, aircraft, vehicle, train, barge, pipeline, electrical grid and all other means of transportation;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“customs agent” means any person approved under section 90 to undertake any customs transactions on behalf of another person;

*[Ins. S2 Act A1571 w.e.f. 1/9/2018]*

“customs airport” means any place which has been prescribed as a customs airport;

“customs clearance” means the completion of the relevant customs procedure to allow goods to be—

- (a) released for home consumption;
- (b) exported; or
- (c) placed under another customs procedure;

“customs control” means measures applied by officers of customs before the release of goods to ensure compliance with this Act;’

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“customs duty” means any import duty, export duty, surtax, surcharge or cess imposed by or under this Act, any countervailing duty or anti-dumping duty imposed by or under the Countervailing and Anti-Dumping Duties Act 1993 [Act 504], any safeguard duty imposed by or under the Safeguards Act 2006 [Act 657] and includes any royalty payable in lieu of an export duty under any written law, or a contract, lease or agreement to which the Federal Government or the Government of any State is a party or to which such Government has consented;

“customs office” means the customs administrative unit responsible for the performance of the functions and duties relating to customs, and the premises used, or other places approved, licensed or prescribed, for that purpose under this Act;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“customs port” means any port prescribed to be a customs port;

“customs ruling” means the customs ruling made by the Director General under section 10B;

“customs warehouse” means a warehouse or other place established by the Minister under subsection 63(1) for the deposit of dutiable goods;

“declaration of origin” means an appropriate statement as to the origin of the goods in connection with their importation or exportation by the importer, producer or exporter on the commercial invoice or any documents relating to the goods;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“denatured” means effectually rendered unfit for human consumption to the satisfaction of the Director General;

“Director General” means the Director General of Customs and Excise appointed under subsection 3(1);

“document” has the meaning assigned thereto in section 3 of the Evidence Act 1950;

“dutiable goods” means all goods subject to the payment of customs duty and on which such duty has not yet been paid;

“duty free shop” means any place licensed for the warehousing and sale of dutiable goods free of duty under section 65D;

“electronic data interchange” means the transfer, from computer to computer, of commercial and administrative transactions using an agreed message standard to structure the data pertaining to a transaction;

“export” means to take or cause to be taken out of Malaysia, by land, sea, air, or by any other means or to place any goods in a conveyance for the purpose of such goods being taken out of Malaysia by land, sea, air, or by any other means;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

“export by air” includes exportation in any manner or by any means by air;

“export by road” includes exportation in any manner or by any means by land, and includes, in particular, exportation through the land by means of a pipeline;

“export by sea” includes exportation in any manner or by any means by sea, and includes, in particular, exportation through the sea by means of a pipeline;

“exporter” includes any person by whom any goods (including goods transferred from an importing aircraft or ship) are exported from Malaysia or supplied for use as aircraft’s or ship’s stores, and also the owner, or any person acting on his behalf, and any person who for customs purposes signs any document relating to goods exported or intended for exportation or supplied or intended for supply as aircraft’s or ship’s stores as aforesaid;

“Financial Authority” in relation to Sabah and Sarawak means any person appointed by the Minister, by notification in the appropriate Gazette, to exercise under the directions of the Minister any function which the Minister is empowered or required by this Act to exercise in Sabah or Sarawak;

“goods” includes animals, birds, fish, plants, currency and bearer negotiable instruments and any other kinds of movable property;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

“hover” in the case of a vessel in territorial waters means to linger without apparent lawful purpose, whether such vessel be moving or not moving;

“import” means to bring or cause to be brought into Malaysia, by land, sea or air or by any other means;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

“import by air” includes importation in any manner or by any means by air;

“import by road” includes importation in any manner or by any means by land, and includes, in particular, importation through the land by means of a pipeline;

“import by sea” includes importation in any manner or by any means by sea, and includes, in particular, importation through the sea by means of a pipeline;

“importer” includes—

- (a) any owner or other person for the time being possessed of or beneficially interested in any goods at and from the time of importation thereof until such goods are duly removed from customs control; and
- (b) in relation to goods imported by means of a pipeline, the owner of the pipeline;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

“inland clearance depot” means a common-user inland facility equipped with fixed installations and offering services for handling and temporary storage of any kind of goods carried by land and placed under customs control;

“intoxicating liquor” includes any alcohol, or any liquid containing more than 1.14 per centum volume over volume of alcohol, which is fit or intended to be or which can by any means be converted for use as a beverage;

“issuing authority” means a body or government agency appointed under section 99c;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“in transit” (*deleted*).

*[Del. S2 Act 1593 w.e.f 1/1/2020]*

“Joint Development Area” has the meaning assigned thereto in section 2 of the Malaysia-Thailand Joint Authority Act 1990;

“legal landing place” means any place which has been prescribed as a legal place for the landing and shipping of goods;



"licensed carrier" means a person approved by the Director General to operate vehicles by road for the carriage of any goods in transit or any dutiable goods under this Act or under the Excise Act 1976 [Act 176];

"licensed warehouse" means a warehouse or other place licensed for the warehousing of dutiable goods under section 65;

"local craft" means any junk, tongkang, perahu, kumpit or other similar type of vessel, and any steam or motor vessel under seventy-five net registered tons;

"manufacture" means—

(a) in the case of intoxicating liquors, distilling, brewing, fermenting, bottling of intoxicating liquor, and includes the addition of any substance (other than water) to any intoxicating liquor and the blending, compounding and varying of intoxicating liquors with intent that the compound so formed shall be sold for human consumption, but excluding any such compound prepared at the order of the purchaser, and for his immediate consumption;

(b) in the case of tobacco, any process converting any raw or leaf tobacco into tobacco fit for smoking, snuffing or chewing, and includes the making of cigarettes from manufactured tobacco;

(c) in relation to petroleum, the process of refining that include separation, conversion, purification, and blending of refinery streams or petrochemical streams; and

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

(d) in other cases, the conversion by manual or mechanical means of organic or inorganic materials into a new product by changing the size, shape, composition, nature or quality of such materials and includes the assembly of parts into a piece of machinery or other products, but does not include the installation of machinery or equipment for the purpose of construction;

"master" means any person (except a pilot or harbour master) having for the time being control or charge of a vessel;

"Minister" means the Minister charged with the responsibility for finance;

"non-preferential certificate of origin" means a specific document identifying the goods, in which the issuing authority empowered to issue such document certifies expressly that the goods to which the certificate relates originate in Malaysia;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

"officer of customs" means—

(a) the Director General;

- (b) any Deputy Director General of Customs and Excise appointed under subsection 3(1);
- (c) any Assistant Director General, Director, Deputy Director, Senior Assistant Director and Assistant Director of Customs and Excise appointed under subsection 3(1);
- (d) any Senior Superintendent, Superintendent, Chief Assistant Superintendent, Senior Assistant Superintendent or Assistant Superintendent of Customs and Excise appointed under subsection 3(4); and
- (e) any Chief Customs Officer, Senior Customs Officer or Customs Officer appointed under section 4;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

“origin of goods”—

- (a) in relation to preferential tariff treatment, means the country in which the goods were wholly obtained, produced or regarded as having been produced according to the applicable rules of origin adopted within the framework of international or regional agreements in force; and
- (b) in relation to non-preferential tariff treatment, means Malaysia in which the goods were wholly obtained, produced or regarded as having been produced according to the rules adopted in Malaysia;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“owner”—

- (a) in respect of goods, includes any person (other than an officer of customs acting in his official capacity) being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the goods; and
- (b) in respect of any aircraft, vessel or vehicle, includes the charterer, the hirer and any person acting as an agent for the owner or who receives freight or other charges payable in respect of the aircraft, vessel or vehicle;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

“owner” in respect of a ship includes every person acting as agent for the owner or who receives freight or other charges payable in respect of the ship;

“Peninsular Malaysia” has the meaning assigned thereto in section 3 of the Interpretation Acts 1948 and 1967 [Act 388], and includes the Federal Territory.

“petroleum” means any mineral oil or relative hydrocarbon in its solid, liquid or gaseous form existing in its natural condition and includes casing head petroleum spirit, bituminous shales, other stratified deposits from which oil can be extracted commercially and petroleum products obtained from the process of manufacture;

“pilot of an aircraft” means every person having or taking command or charge of an aircraft;

“postal article” means a letter, postcard, newspaper, book, document, pamphlet, pattern or sample packet, parcel, package or any other article or thing that can be transmitted, collected or delivered by post;

“preferential certificate of origin” means a specific document identifying the goods, in which the issuing authority empowered to issue such document certifies expressly that the goods to which the certificate relates originate in a specific country in accordance with the rules of origin adopted within the framework of international or regional agreements in force;

“preferential tariff treatment” means the rates of import duty published in the order made under section 11 applicable to originating goods of the exporting country in accordance with the relevant trade agreements;’;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“preventive vessel” means any vessel employed for the prevention of smuggling or for any other purpose relating to the customs;

*[Amd. S2 Act 1593 w.e.f 1/1/2020]*

“producer” means a person who engages in the production of goods which includes the growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling of the goods;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“prohibited goods” means goods the import or export of which is prohibited, either absolutely or conditionally by an order under section 31 and any subsidiary legislation made under this Act or by any other written law;

*[Amd. S2 Act 1593 w.e.f 1/1/2020]*

“proper officer of customs” means any officer of customs acting in the fulfilment of his duties under this Act, whether such duties are assigned to him specially or generally, or expressly or by implication;

“public ruling” means the public ruling made by the Director General under section 10F;

“release” in relation to goods, means the action by the proper officer of customs to allow goods which has completed customs clearance to be placed at the disposal of the owner of such goods;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“road” includes any prescribed land route;

“sea” includes inland waters;

“senior officer of customs” means—

- (a)* the Director General;
- (b)* any Deputy Director General of Customs and Excise appointed under subsection 3(1);
- (c)* any Assistant Director General, Director, Deputy Director, Senior Assistant Director and Assistant Director of Customs and Excise appointed under subsection 3(1);
- (d)* any Senior Superintendent, Superintendent, Chief Assistant Superintendent, Senior Assistant Superintendent or Assistant Superintendent of Customs and Excise appointed under subsection 3(4);
- (e)* any officer of customs invested with the powers of a senior officer of customs under subsection 3(5) or section 5; and
- (f)* any police officer having the powers of a senior officer of customs by virtue of section 8;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“sufferance wharf” means any place other than an approved place of loading or unloading at which the senior officer of customs may, in his discretion, and under such conditions and in such manner as he may direct, either generally or in any particular case, allow any goods to be loaded or unloaded;

“surcharge” means any charge that is due and payable under subsection 17B(2);

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“territorial waters” means the territorial waters of Malaysia;

“transit” means the movement of goods—

- (a)* between two or more customs offices in Malaysia; or

- (b) from a customs office in any country to a customs office in Malaysia (including goods on transshipment) for the sole purpose of being carried out to another country;

“transshipment” means—

- (a) transferring of goods from one vessel or aircraft to another vessel or aircraft; or
- (b) unloading of goods from a vessel or aircraft and depositing such goods in a customs or licensed warehouse or in a warehouse or other place approved by the Director General,

for the purpose of shipment out of Malaysia on that other vessel or aircraft within the jurisdictional area of the same customs office relating to the importation and exportation;

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

“uncustomed goods” means goods in respect of which a breach of the provisions of this Act or of any subsidiary legislation made thereunder has been committed;

“value”—

- (a) in relation to imported goods, means customs value as determined under the regulations made under subsection 142(35B); and
- (b) in relation to goods to be exported, means the price which an exporter would receive for the goods calculated to the stage where such goods are released by Customs at the place of export;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

(1A) For the purposes of this Act, a free zone shall be deemed to be a place outside a principal customs area, and the provisions of section 31 and Parts IVA, V, VI and VII of this Act shall apply to a free zone.”;

*[Subst. S2 Act 1593 w.e.f 1/1/2020]*

(1B) For the purposes of subsection (1A)—

- (a) “free zone” means any area in Malaysia which has been declared by the Minister to be a free commercial zone or a free industrial zone under the Free Zones Act 1990 [Act 438]; and

(b) “principal customs area” means any part of Malaysia excluding a free zone, Labuan, Langkawi, Tioman and Pangkor.

*[Ins. S2 Act 1593 w.e.f 1/1/2020]*

(2) For the purpose of this Act, goods shall be deemed to be under customs control whilst they are deposited or held in any customs or licensed warehouse, **warehouse or other place approved by the Director General, petroleum supply base**, post office, or in **any conveyance** from which they may not be removed except with the permission of the proper officer of customs.

*[Amd. S2 Act 1593 w.e.f 1/1/2020]*

## PART II

### APPOINTMENT AND POWERS OF OFFICERS

#### **Appointment of Director General, Deputy Director General and other officers**

3. (1) There shall be appointed an officer to be styled the **Director General of Customs and Excise and such number of Deputy Directors General, Assistant Directors General, Directors, Deputy Directors, Senior Assistant Directors and Assistant Directors of Customs and Excise** as may be considered necessary for the purpose of this Act and any written law relating to excise.

*[Subst. S3 Act 1593 w.e.f 1/1/2020]*

(2) The Director General shall be the Chief Officer of Customs and shall have the superintendence of all matters relating to the customs, subject to the direction and control of the Minister.

(3) The Deputy Directors General, Assistant Directors General, Directors, **Deputy Directors**, Senior Assistant Directors and Assistant Directors shall be subject to the general direction and supervision of the Director General, and, subject thereto, shall have and exercise all powers conferred on the Director General by or under this Act, other than those conferred by sections **10F**, 13B, 22 and 145 thereof.

*[Ins. S3 Act 1593 w.e.f 1/1/2020]*

(4) There shall be appointed so many Senior Superintendents, **Superintendents, Chief Assistant Superintendents, Senior Assistant Superintendents and Assistant Superintendents of Customs and Excise** as may be considered necessary for the purposes of this Act and any written law relating to excise.

*[Subst. S3 Act 1593 w.e.f 1/1/2020]*

(5) The Minister may, by notification in the Gazette, invest any officer of customs not being a senior officer of customs with all or any of the powers of a senior officer of customs.

### **Appointment of Customs Officers**

4. There shall be appointed so many Chief Customs Officers, Senior Customs Officers, and Customs Officers as may be considered necessary for the purposes of this Act.

### **Investment of powers of senior officer of customs by Director General**

5. The Director General may by authorization in writing invest any officer of customs not being a senior officer of customs with all or any of the powers of a senior officer of custom for a period not exceeding ninety days in respect of any one authorization.

### **Officers of customs to be public servants**

6. All officers of customs shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

### **Officers of customs exempted from serving as jurors or assessors**

7. Notwithstanding anything to the contrary in any written law no officer of customs shall be liable to serve as juror or assessor.

### **Powers of police officers**

8. For the purposes of this Act, all police officers not below the rank of Inspector shall have and may exercise all the powers conferred by Part XII on senior officers of customs, and all police officers below the rank of Inspector shall have and may exercise all the powers conferred by Part XII on officers of customs.”.

*[Subst. S4 Act 1593 w.e.f 1/1/2020]*

### **Minister may prescribe uniforms, etc.**

8A. The Minister may, by order published in the *Gazette*, prescribe—

(a) uniforms and rank markings for any rank of officers of customs; and

(b) the authority card and badge to be carried by any rank of officers of customs.

## **Badges and authority cards to be produced**

9. (1) Every officer of customs when acting against any person under this Act shall, if not in uniform, on demand declare his office and produce to the person against whom he is acting such badge or authority card as the Director General or, in the case of a police officer, the Inspector General of Police, may direct to be carried by such officers.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer of customs acting or purporting to act under this Act if such officer is not in uniform and refuses to declare his office and produce his badge or authority card, on demand being made by such person.

(3) A badge or an authority card issued to an officer of customs shall be the property of the Government and shall be surrendered by such officer to the person appointed by the Director General for that purpose when such officer ceases to be an officer of customs or when instructed to do so.

## **Unlawful use, possession, etc., of uniform, etc.**

9A. Any person, not being an officer of customs, who unlawfully wears, uses, possesses or displays otherwise than in the course of a stage play or other theatrical performance, any prescribed uniform or badge or authority card, or any dress having the appearance of or bearing the distinctive marks of such uniform shall be guilty of an offence under this Act.

## **Persons employed on customs duty to be deemed proper officers of customs for such service**

10. Every person employed on any duty or service relating to the customs by the orders or with the concurrence of the Director General (whether previously or subsequently expressed) shall be deemed to be the proper officer of customs for that duty or service; and every act required by law at any time to be done by, or with any particular officer nominated for such purpose, if done by or with any person appointed by the Director General to act for such particular officer, shall be deemed to be done by or with such particular officer.

## **PART IIA**

### **CUSTOMS RULING AND PUBLIC RULING**

*[Ins. S5 Act 1593 w.e.f 1/1/2020]*

## **Application for customs ruling**

10A. (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:



(a) the classification of goods;

(aa) the origin of goods;

*[Ins. S6 Act 1593 w.e.f 1/1/2020]*

(b) the principles to be adopted for the purposes of determination of value of goods; or

(c) on any other matters to be prescribed by the Director General.

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

(a) in respect of imported goods—

(i) at any time before the goods, that are the subject matter of the application, are to be imported or intended to be imported into Malaysia; or

(ii) at any later time, if the Director General may in his discretion permit; or

(b) in respect of manufactured goods—

(i) at any time before the goods that are the subject matter of the application, are to be manufactured; or

(ii) at any later time, if the Director General may in his discretion permit.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

### **Making of customs ruling**

**10B.** (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 10A and such ruling shall bind the applicant.

(2) Any such customs ruling may be subject to such conditions as the Director General may deem fit to impose.

(3) The Director General may decline to make a customs ruling if, in his opinion—

(a) the information given by the applicant is insufficient to do so;

(b) the application is for a hypothetical situation; or

- (c) a review or an appeal under this Act is pending involving the subject matter referred to in the application.

### **Amendment, modification or revocation of customs ruling**

**10c.** (1) A customs ruling may be amended, modified or revoked by the Director General if—

- (a) it contains an error which needs to be corrected;
- (b) the customs ruling was based on an error of fact or law;
- (c) there is a change in law relating to customs; or
- (d) there is a change in the material fact or circumstances on which the ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any duty liability in respect of any goods, and—

- (a) the goods are imported within 3 months of the date the notice of the amendment, modification or revocation is given, pursuant to a binding contract entered into before that date;
- (b) the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Malaysia on the date the notice of the amendment, modification or revocation of the ruling is given; or
- (c) the goods are imported on or before the date the notice of the amendment, modification or revocation is given but have not been released for home consumption,

then the customs ruling which was made prior to the amendment, modification or revocation under this section shall be applied to such goods.

(4) Notwithstanding subsection (2), and subject to section 16, if the amendment, modification or revocation to a customs ruling has the effect of decreasing any duty liability in respect of any goods, any higher duty that has been paid shall be treated as if it has been paid in error.

### **Director General to declare rulings to be null, etc.**

**10D.** The Director General shall by a notice declare a customs ruling made under section 10B to be null, void and of no effect if the ruling has been obtained by the applicant by way of fraud, misrepresentation or falsification of facts.

### **Receiving of two customs rulings**

**10E.** Where an applicant receives two or more different customs ruling on the same subject matter, such rulings shall be treated as being null and void and such applicant shall immediately notify the Director General who shall, within thirty days from the date of the notification, issue a new customs ruling.

### **Public ruling**

**10F. (1)** The Director General may, at any time, make a public ruling on the application of any provision of this Act.

**(2)** The Director General may withdraw, either wholly or partly, any public ruling made under this section.”.

*[Ins. S7 Act 1593 w.e.f 1/1/2020]*

## **PART III**

### **LEVYING OF CUSTOMS DUTIES**

#### **Power of Minister to fix customs duties by orders to be approved by the Dewan Rakyat**

**11. (1)** The Minister may, from time to time, by order published in the *Gazette*, fix the customs duties to be levied on any goods imported into or exported from Malaysia and to be paid by the importer or exporter, as the case may be.

**(2)** Any order made under subsection (1) shall, at the next meeting of the Dewan Rakyat be laid on the table of the Dewan Rakyat and shall, at the expiration of one hundred and twenty days from being so laid or of such extended period as the Dewan Rakyat may, by resolution, direct, cease to have effect if and in so far as it is not confirmed by a resolution passed by the Dewan Rakyat within the said one hundred and twenty days or, if such period has been extended, within such extended period.

**(3)** Where an order ceases to have effect in whole or in part as provided by subsection (2), then any customs duty levied in pursuance of such order or, as the case may be, of such part thereof as ceases to have effect shall, subject to subsection (4), be repayable to the person from whom such duty was levied.

(4) Unless the Minister shall otherwise direct, no customs duty repayable under subsection (3) shall be repaid, unless the person entitled to such repayment makes a claim therefor to the Director General within one year from the day on which the order ceases to have effect in whole or in part as provided by subsection (2).

(5) Such claim shall be made in writing and shall contain such particulars as the Director General may, by general or special order, require.

(6) *(Deleted)*.

### **No customs duty levied on goods *bona fide* in transit and transshipment**

**11A.** For the purpose of levying of customs duties, goods *bona fide* in transit, including goods for transshipment, shall not be deemed to be imported unless they are or become uncustomed goods.”

*[Ins. S8 Act 1593 w.e.f 1/1/2020]*

### **Power to fix value**

**12.** The Minister may, from time to time, by notification in the *Gazette*, fix, for the purpose of the levy and payment of customs duties, the value of any dutiable goods.

### **Classification and valuation by proper officer of customs**

**13.** (1) The proper officer of customs may, in respect of any dutiable or uncustomed goods—

(a) determine the class of goods to which such dutiable or uncustomed goods belong; and

(b) value, weigh, measure or otherwise examine, or cause to be valued, weighed, measured or otherwise examined such dutiable or uncustomed goods,

for the purpose of ascertaining the customs duty leviable thereon.

(2) When a valuation of any goods has been made by the proper officer of customs, such valuation shall be presumed to be correct until the contrary is proved.

### **Payment of customs duty under protest**

**13A.** Any person who is dissatisfied with a decision of a proper officer of customs under subsection 13(1) as to whether any particular goods are or are not included in a class of goods appearing in an order made under subsection 11(1) or with the valuation, weighing, measuring or examining of any goods may pay the customs duty levied under protest.

## **Director General to determine questions on classification and valuation**

**13B.** Where customs duty has been paid under protest, the proper officer of customs shall, within thirty days of such payment being made, refer any question as to classification or valuation of goods to the Director General for his decision.

## **Powers of Minister to exempt**

**14.** (1) The Minister may, by order, exempt, subject to such conditions as he may deem fit to impose, any class of goods or persons from the payment of the whole or any part of any customs duty or any other prescribed fee or charge which may be payable.

(2) The Minister may in any particular case—

(a) exempt any person from the payment of the whole or any part of the customs duties or any other prescribed fees or charges which may be payable by such person on any goods; or

(b) direct the refund to any person of the whole or any part of the customs duties or any other prescribed fees or charges which have been paid by such person on any goods,

and in granting such exemption or directing such refund, impose such conditions as he may deem fit.

(3) Any goods in respect of which an exemption from the payment of customs duties has been granted under subsection (1) or (2) shall be deemed to be dutiable goods until the conditions, if any, subject to which the exemption from duty was granted are fulfilled and shall be liable to all other charges, not being customs duties, to which they would be subject if no such exemption had been granted.

## **Minister may remit **customs duty, etc.****

**14A.** (1) The Minister may, if he thinks it just and equitable to do so, and subject to such conditions as he may deem fit to impose, remit the whole or any part of the **customs duty, surcharge, penalty, fee or other money** payable under this Act.

*[Amd. S9 Act 1593 w.e.f 1/1/2020]*

(2) **Where a person who has been granted remission under subsection (1) has paid any of the customs duty, surcharge, penalty, fee or other money to which the remission relates, he shall be entitled to a refund of the amount of customs duty, surcharge, penalty, fee or other money which had been remitted."**

*[Ins. S9 Act 1593 w.e.f 1/1/2020]*

## Reimposition of duty

15. (1) If any goods, on which customs duty has not been paid by reason of an exemption granted under section 14, cease to comply with the conditions subject to which such exemption was granted or cease to be kept or used by the person or for the purposes qualifying them for such exemption, such goods shall, upon such cesser, become liable to the customs duty and the person to whom such exemption was granted and any person found in possession of such goods shall be jointly and severally liable to pay such customs duty.

(2) If any goods, which are liable to customs duty under subsection (1) and on which such duty has not been paid, are found in the possession or on the premises of any person other than the person authorized to possess them under the terms of such exemption, such goods shall, until the contrary is proved, be deemed to be uncustomed goods.

## Refund of duty or other charges overpaid or erroneously paid

16. (1) It shall be lawful for the Director General, if it is proved to his satisfaction that any money has been overpaid or erroneously paid as **customs duty, surcharge, penalty, fee or other money** or as any other fee or charge under this Act, to order the refund of the money so overpaid or erroneously paid:

*[Subst. S10 Act 1593 w.e.f 1/1/2020]*

Provided that—

- (a) no such refund shall be allowed unless a claim in respect of it is made in the prescribed form within one year after the overpayment or erroneous payment was made; or
- (b) in the case where any customs duty has been paid **under section 13A or paragraph 99H(2)(b) or pending the result of a review under section 143 or appeal under section 141T**, no claim of refund shall be allowed unless such claim is made in the prescribed form within one year **from the date of the decision on classification, valuation, verification of origin, review or appeal** is made known to the claimant.

*[Subst. S10 Act 1593 w.e.f 1/1/2020]*

**(2) A claim under subsection (1) shall be supported by such documents as required by the Director General.**

*[Ins. S10 Act 1593 w.e.f 1/1/2020]*

## Payment of duty, etc., short paid or erroneously refunded

17. (1) Whenever—

- (a) through inadvertence, error, or for any other reason, misconception on the part of any officer of customs, or through unintentional misstatement as to value, quantity or description by any person, or for any other reason, the whole or any part of **any customs duty, surcharge, penalty, fee or other money** payable under this Act have not been paid; or
- (b) the whole or any part of **any customs duty, surcharge, penalty, fee or other money**, after having been paid, have been, owing to any cause, erroneously refunded,

the person liable to pay **such customs duty, surcharge, penalty, fee or other money** or the person to whom such refund has erroneously been made, as the case may be, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within **six years from the date on which customs duty, surcharge, penalty, fee or other money was payable or deficient customs duty, surcharge, penalty, fee or other money was paid** or the refund was made, as the case may be, and without prejudice to any other remedy for the recovery of the amount due, any goods belonging to such person which may be in customs control may be detained **until such customs duty, surcharge, penalty, fee or other money** or deficiency be paid or the refund be repaid, as the case may be.

*[Subs. S11 Act 1593 w.e.f 1/1/2020]*

(2) *(Deleted).*

*[Del. S11 Act 1593 w.e.f 1/1/2020]*

(3) **Nothing in subsection (1) shall prejudice the exercise of the rights and powers under this section by the Director General to seize or, subject to subsection (4), sell any goods under customs control belonging to the person liable to pay such customs duty, surcharge, penalty, fee or other money for the recovery of the amount payable under subsection (1) or (7), or any outstanding balance thereof.**

(4) **If the customs duty, surcharge, penalty, fee or other money or the deficient customs duty, surcharge, penalty, fee or other money, or the refund to be repaid remain unpaid, as the case may be, the Director General may sell such goods seized under subsection (3)—**

- (a) **after giving not less than thirty days' notice in writing from the date of seizure to the person or his agent if the name and address of such owner or agent is known to the Director General; or**
- (b) **after giving not less than thirty days' notice in the Gazette if the name and address of such owner or his agent is not known to the Director General.**

(5) **The proceeds of sale of any goods under subsection (4) shall be applied to the payment of—**

- (a) **the customs duty, surcharge, penalty, fee or other money; or**

(b) the recovery of any amount or charges which may be due in respect of selling off such goods, and the surplus, if any, shall be paid to the person liable to pay the amount due under subsection (1) and if such person cannot be found within one month of the sale, such surplus shall be paid into the Consolidated Fund.

(6) If at the sale of any goods under subsection (4) no sufficient bid is forthcoming to defray the customs duty, surcharge, penalty, fee or other money or the deficient customs duty, surcharge, penalty, fee or other money payable or the refund erroneously paid, as the case may be, the goods shall be forfeited to the Government and shall be disposed of in such manner as the Director General may direct.

(7) Nothing in subsection (1) shall prevent the Director General from making a demand at any time after six years whenever any payment of customs duty, surcharge, penalty, fee or other money is not paid or short paid due to any form of fraud or default committed by or on behalf of any person.

*[Ins. S11 Act 1593 w.e.f 1/1/2020]*

### **Recovery of customs duty, etc. from persons leaving Malaysia**

**17A.** (1) Where the Director General has reason to believe that any person is about or is likely to leave Malaysia without paying any customs duty, surcharge, penalty, fee or other money, payable under this Act, he may issue to the Director General of Immigration a certificate containing particulars of the person reasonably suspected of having committed an offence with a request that such person be prevented from leaving Malaysia unless and until he pays all the duties, surcharges, penalties, fees or other moneys so payable or furnishes security to the satisfaction of the Director General for its payment.

*[Subst. S12 Act 1593 w.e.f 1/1/2020]*

(2) Subject to any order issued or made under any written law relating to banishment or immigration, the Director General of Immigration who receives a request under subsection (1) in respect of a person shall exercise all measures which may include the removal or retention of any certificate of identity, passport, exit permit or other travel documents in relation to that person as may be necessary to give effect to the request.

*[Subst. S12 Act 1593 w.e.f 1/1/2020]*

(3) The Director General shall cause a notice of the issue of a certificate under subsection (1) to be served personally or by registered post at the last known address of the person to whom the certificate relates.

*[Subst. S12 Act 1593 w.e.f 1/1/2020]*

Provided that the non-receipt of the notice by that person shall not invalidate anything done under this section.



(4) Where the person in respect of whom a certificate has been issued under subsection (1) produces on or after the date of the certificate a written statement signed by the Director General stating that **all the duties, surcharges, penalties, fees or other moneys** have been paid or that security has been furnished for its payment, that statement shall be sufficient authority for allowing that person to leave Malaysia.

*[Subst. S12 Act 1593 w.e.f 1/1/2020]*

(5) No legal proceedings shall be instituted or maintained against the Government, a State Government, or any other public officer in respect of anything lawfully done under this section.

(6) *(Deleted).*

*[Del. S12 Act 1593 w.e.f 1/1/2020]*

### **Payment by instalments**

**17B.** (1) Where any amount is payable in accordance with subsection 17(1), the Director General may allow the amount to be paid by instalments, subject to such conditions, in such amounts and on such dates as he may determine.

(2) If there is default in payment of any instalment under subsection (1) on its due date, the whole outstanding balance shall become due and payable on that date and shall, without any further notice being served on the person liable to pay the amount due, be subject to a surcharge equal to ten per cent of that outstanding balance and the surcharge shall be recoverable as if it were due and payable under this Act.

(3) Nothing in subsections (1) and (2) shall prejudice the exercise of the rights and powers under this section by the Director General to seize or sell any goods under customs control belonging to the person liable to pay such customs duty, surcharge, penalty, fee or other money for the recovery of the amount payable under subsections (1) and (2), or any outstanding balance thereof.

*[Ins. S13 Act 1593 w.e.f 1/1/2020]*

### **Remission of import duty on goods damaged, destroyed or lost before removal from customs control**

**18.** (1) If any dutiable goods which have been imported are damaged, destroyed or lost due to unavoidable accident at any time after their arrival within Malaysia and before removal from customs control, the Director General may, where he deems fit, remit the whole or any part of the customs duty payable thereon if notice in writing of such damage, destruction or loss, supported by sufficient documents, has been given at or before the time of such removal.

(2) If any dutiable goods are damaged, destroyed or lost due to unavoidable accident after the removal of such goods from customs control, no abatement of customs duty shall be allowed on such goods.

*[Subst. S14 Act 1593 w.e.f 1/1/2020]*

### **Calculation of customs duty**

19. (1) The rate of customs duty applicable to any goods shall be:

- (a) in the case of goods lawfully imported—
  - (i) if such goods (other than petroleum in a licensed warehouse) are warehoused, or if customs duty is paid at a collection station established under subsection 63(2), the rate in force on the day on which the removal of the goods is authorized by the proper officer of customs or, in the case of a collection station, by an officer appointed under the provisions of any law for the time being in force in Singapore relating to the collection of customs duties payable to the Government of Malaysia;
  - (ii) if such goods consist of petroleum which is in a licensed warehouse, the rate in force on the day on which such petroleum is removed from such warehouse;
  - (iii) if such goods are imported by post, the rate in force on the day on which duty is assessed by the proper officer of customs; and
  - (iv) in any other case, the rate in force on the day on which such goods are released by the proper officer of customs;
- (b) in the case of uncustomed goods, the rate in force on the day on which such goods became uncustomed goods, if known, or the rate in force on the day of seizure, whichever is the higher.

(2) For the purpose of calculating the customs duty payable, the valuation applicable to any goods shall be made in the prescribed manner.

### **Calculation of export duty**

20. The rate of export duty and the valuation (if any) applicable to any goods shall be—

- (a) in the case of goods lawfully exported, the rate and valuation in force on the day on which a receipt is issued for the payment of duty:

Provided that when payment of duty in arrears has been permitted under section 80 the rate and valuation shall be the rate and valuation in force on the day on which the goods are released by the proper officer of customs, or, as the case may be, by an officer appointed under any law for the time being in force in

Singapore relating to the collection of export duties on goods exported from Malaysia;

- (b) in the case of uncustomed goods, the rate and valuation in force on the day on which such goods became uncustomed goods, if known, or the rate and valuation in force on the day of seizure, whichever is the higher.

### **Time of importation and exportation when duty is imposed or repealed**

21. When by virtue of an order made under subsection 11(1) a customs duty is fixed on any goods which previously were not dutiable goods or any customs duty on goods is abolished or when the importation or exportation of any goods is prohibited or any such prohibition is abolished by an order made under section 31 and it becomes necessary for the purpose of this Act to determine the time at which an importation or exportation of any goods made and completed shall be deemed to have had effect, such importation or exportation shall, notwithstanding anything in this Act contained, be deemed to be the time at which the goods are released by the proper officer of customs.

### **Questions in respect of goods deemed to be dutiable**

22. If any question arises as to whether any particular goods are or are not included in a class of goods appearing in an order made under subsection 11(1), such question shall be decided by the Director General.

### **Certificate of Director General admissible in evidence**

22A. Notwithstanding anything contained in any other written law or rule of evidence to the contrary, where in any proceedings a document purporting to be a certificate under the hand of the Director General in respect of a decision made by him under section 10B, 13B or 22 is produced, such document shall be admissible in evidence and shall be accepted as sufficient evidence of the facts therein stated and the Director General shall not be required to give evidence in respect of such decision unless the court otherwise orders.

### **Recovery of customs duty, etc., as a civil debt**

22B. (1) Without prejudice to any other remedy and notwithstanding any review or appeal against any decision of the Director General under section 143, any customs duty, surcharge, penalty, fee or other money payable under this Act, may be recovered as a civil debt due to the Government of Malaysia, or where the customs duty is a duty of a category assigned to the State by Article 112c of the Federal Constitution, to the Government of that State.

(2) In any proceedings to recover the customs duty, surcharge, penalty, fee or other money under subsection (1), the production of a certificate signed by the Director General—

- (a) stating that any customs duty, surcharge, penalty, fee or other money and the amount shown in the certificate as payable, in any assessment or notice made under this Act from a person named in the certificate; and
- (b) giving the address of the person and purporting to be a copy of or an extract from any notice of assessment, shall be conclusive evidence of the customs duty, surcharge, penalty, fee or other money and the amount as payable in any assessment or notice and shall be sufficient authority for the court to give judgement for that amount.

(3) Any penalty imposed under this Act shall, for the purposes of this Act and the Limitation Act 1953 [Act 254], the Limitation Ordinance of Sabah [Sabah Cap. 72] or the Limitation Ordinance of Sarawak [Swk. Cap 49], as the case may be, be recoverable as if the penalty were customs duty due and payable under this Act and accordingly subsection 6(4) of the Limitation Act 1953, section 3 of the Limitation Ordinance of Sabah or section 3 of the Limitation Ordinance of Sarawak, as the case may require, shall not apply to that penalty.

*[Ins. S14 Act 1593 w.e.f 1/1/2020]*

#### **Joint and several liability of director, etc.**

**22c.** Where any customs duty, surcharge, penalty, fee or other money is payable by—

- (a) a company;
- (b) a firm; or
- (c) a society, an association or other body of persons,

then notwithstanding anything to the contrary in this Act or in any other written law, the directors of such company or the partners of such firm or the members of such society, association or other body of persons, as the case may be, shall, together with such company, firm, society, association or other body of persons, be jointly and severally liable for the customs duty, surcharge penalty, fee or other money payable:

Provided that in relation to a company that is being wound up, the directors of such company shall only be so liable where the assets of the company are insufficient to meet the amount due, after paying any sums having priority over the customs duty, surcharge penalty, fee or other money under the Companies Act 1965 in relation to the application of the assets of the company in such winding up.

*[Ins. S16 Act 1593 w.e.f 1/1/2020]*

## PART IV

### IMPORTATION AND EXPORTATION

#### Time and place of landing goods inwardly

23. (1) No goods imported by sea or transported by water from any place in Malaysia shall be landed—

(a) except at a legal landing place:

Provided that in Sabah and Sarawak goods may be landed at a sufferance wharf;

(b) until permission to do so has been received from the proper officer of customs; and

(c) except on such days and during such times as may be prescribed, unless permission to land goods on other days and during other times has been granted by the proper officer of customs.

(2) Except with the permission of the proper officer of customs, no such goods—

(a) after having been landed or unshipped shall be transhipped; or

(b) after having been put into any boat or craft to be landed shall be removed into any other boat or craft previously to their being landed.

(3) The foregoing provisions of this section shall not apply to fresh fish, whether packed with ice or not, which is landed from any vessel licensed for the purpose of fishing under any written law.

#### Places of landing of goods imported by air

24. No goods imported by air shall be landed except at a customs airport and such goods may be cleared at **such customs airport**, an inland clearance depot or an inland customs station.

*[Ins. S17 Act 1593 w.e.f 1/1/2020]*

#### Time and place of import by rail or road

25. No goods imported by rail or road shall be imported—

(a) except at a prescribed place of import and where a route has been prescribed, by such route; and

- (b) in the case of goods imported by road, except on the days and during the times prescribed for such importation unless permission to import goods on other days and during other times has been granted by the proper officer of customs.

### **Time and place of loading goods for export by sea**

**26.** No goods shall be loaded, or water-borne to be loaded for exportation by sea or for transportation by water from any place to another place in Malaysia—

- (a) except at a legal landing place:

Provided that in Sabah and Sarawak goods may be loaded or water-borne to be loaded for exportation by sea at a sufferance wharf;

- (b) until permission to do so has been received from the proper officer of customs; and
- (c) except on such days and during such times as may be prescribed, unless permission to load goods on other days and during other times has been granted by the proper officer of customs.

### **Transportation by sea of goods liable to export duty to another customs port**

**27.** (1) No goods in respect of which customs duty is payable on export shall be loaded, or water-borne to be loaded, for transportation by sea from any place to any other place in Malaysia unless—

- (a) the export duty has been paid on any goods intended to be transhipped at such other place; or
- (b) in the case of goods to be landed at a legal landing place in Malaysia security in the amount of such export duty has been furnished to the satisfaction of the senior officer of customs that any goods intended to be landed at such other legal landing place shall be so landed:

Provided that in the case of Sarawak, export duty may be paid at such time and in such manner as the Minister may prescribe by regulation under section 142.

(2) No goods in respect of which customs duty is payable on export shall be forwarded by rail from one place to another place in Malaysia when the journey involves passage through territory outside Malaysia unless—

- (a) the customs export duty has been paid thereon; or

- (b) security in the amount of such duty has been furnished to the satisfaction of the senior officer of customs at the station of despatch that such goods shall be produced to the senior officer of customs at the station of destination.

### **Time and place of export by rail or road**

**28.** No goods shall be exported by rail or road—

- (a) except at a prescribed place of export and, where a route has been prescribed, by such route; and
- (b) in the case of goods exported by road except on such days and during such times as may be prescribed unless permission to export goods on other days and during other times has been granted by the proper officer of customs.

### **Exportation by air**

**29.** No goods shall be exported by air except at a customs airport and such goods may be cleared at **such customs airport**, an inland clearance depot or an inland customs station.

*[Ins. S18 Act 1593 w.e.f 1/1/2020]*

### **Importation or exportation by pipeline**

**29A. (1)** No goods shall be imported or exported by pipeline unless such pipeline is approved by the Director General who, in granting such approval, may impose such conditions as he may deem fit.

**(2)** Goods imported by means of a pipeline shall be treated as imported at the time when they are brought—

- (a) if by sea, across the boundaries into the territorial waters; or
- (b) if by land, across the boundaries into Malaysia.

**(3)** Goods exported by means of a pipeline shall be treated as exported at the time when the goods are loaded from a pipeline into another conveyance for exportation.

*[Ins. S19 Act 1593 w.e.f 1/1/2020]*

### **Importation or exportation by other means**

**29B.** No goods shall be imported or exported by other means except as approved by the Director General subject to such conditions as he deems fit.

*[Ins. S20 Act 1593 w.e.f 1/1/2020]*

### **Exemption from provisions of sections 23, 24, 25, 26, 28 and 29**

**30.** The Director General may exempt any person from all or any of the provisions of sections 23, 24, 25, 26, 28 and 29 on such conditions as he may deem fit to impose.

### **Power of Minister to prohibit imports or exports**

**31.** (1) The Minister may, by order—

- (a) prohibit the importation into, or the exportation from Malaysia or any part thereof, either absolutely or conditionally, or from or to any specified country, territory or place outside Malaysia, or the removal from one place to another place in Malaysia of any goods or class of goods; and
- (b) prohibit the importation into, or exportation from, Malaysia or any part thereof, or removal from one place to another place in Malaysia of any goods or class of goods, except at specified ports or places.

(2) If any question arises as to whether any particular goods are or are not included in a class of goods appearing in an order made under subsection (1), such question shall be decided by the Director General.

### **Transportation by sea of goods of a class the export of which is prohibited**

**32.** (1) No goods of a class the exportation of which is prohibited by an order made under section 31 shall be loaded, or water-borne to be loaded, for transportation by sea from any place to any other place in Malaysia unless security has been furnished in such amount, not exceeding three times the value of such goods, as the senior officer of customs of the place from where the goods are to be transported may determine and such officer is satisfied that any goods intended to be landed at such other place shall be so landed.

(2) No goods of a class the exportation of which is prohibited by an order made under section 31 shall be forwarded by rail from one place to another place in Malaysia when the journey involves passage through territory outside Malaysia unless security has been furnished in such amount, not exceeding three times the value of such goods as the senior officer of customs at the station of despatch may determine and such officer is satisfied that such goods shall be produced to the senior officer of customs at the station of destination.

### **Saving in respect of certain navigable rivers**

**33.** Where in respect of any goods the provisions of this Act and of any subsidiary legislation made thereunder have been complied with, then notwithstanding sections 23 and 26, such goods may, subject to such conditions and the payment of such fee as the



Director General may impose, be landed or loaded at any place on the banks of a navigable river upstream of a customs port or legal landing place.

### **Power of Director General to require security**

**34. (1)** The Director General may require any person to give security or further security of such amount and in such manner as the Director General may determine for the payment of any customs duty which is or may become due and payable from the person.

(2) Where any security has been required to be given under subsection (1), no person shall move goods under customs control unless such security has been given.

*[Ins. S21 Act 1593 w.e.f 1/1/2020]*

### **Presumption as to export**

**35.** In relation to export, goods shall be deemed to be taken or caused to be taken out of Malaysia—

- (a) if they have been cleared by a proper officer of customs at the last customs station on their route out of Malaysia;
- (b) if they have been loaded on to a vessel or aircraft which is about to depart from a port or place in Malaysia; or
- (c) if they have been cleared by a proper officer of customs at an inland clearance depot or at an inland customs station on their route out of Malaysia through a customs port or airport.

## **PART IVA**

### **TRANSIT AND TRANSHIPMENT**

#### **Transits allowed**

**35A. (1)** Subject to the provisions of this Part, the following transits are allowed:

- (a) goods imported into the country—
  - (i) on board a vessel, aircraft, vehicle or a railway carriage to be transported through Malaysia from the place of import in Malaysia whether the goods were unloaded or not from the vessel, aircraft, vehicle or railway carriage to a place of exit from where the goods are to be taken out from Malaysia; or

- (ii) on board a vessel, aircraft, vehicle or railway to be transported through Malaysia from the place of import in Malaysia to a place under customs control;
- (b) movement of goods from a place under customs control to a place of exit in Malaysia for the purpose of export; and
- (c) movement of goods under customs control from a place to another place in Malaysia.

(2) The payment of customs duties for the imported or exported goods which moved in transit under subsection (1) may be temporarily suspended subject to such conditions as determined by the Director General.

### **Commencement and completion of transit procedure**

**35B.** (1) Subject to subsection (4), the transit procedure commences when the goods are cleared for transit and completes when such goods are cleared and released for another customs procedure approved by the proper officer of customs or for home consumption.

(2) Goods moved under the transit procedure shall reach the destination point as indicated in the declaration, and be exported within the period as determined by the Director General.

(3) Notwithstanding subsections (1) and (2), the transit procedure, in relation to any goods, ends before its completion if it is interrupted by any of the following circumstances:

- (a) the release of the goods for the transit procedure is withdrawn;
- (b) the goods have been—
  - (i) released for home consumption not according to the approval given by the proper officer of customs;
  - (ii) released for export not according to the approval given by the proper officer of customs; or
  - (iii) moved not under customs control;
- (c) the goods have been abandoned;
- (d) the goods have been seized under this Act or any other written law; or
- (e) the goods are destroyed, lost or unaccounted for.

(4) Without prejudice to any proceedings under this Act, where any dutiable goods moved under transit procedure ends before its completion as a result of the circumstances under subsection (3), the owner of the goods or his agent shall be liable to

pay the duty leviable on such dutiable goods and any security furnished under this Act may be forfeited and paid into the Consolidated Fund.

(5) Any person who contravenes subsection (2) shall be guilty of 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.

### **Safeguard against any unauthorized interference with goods in transit**

**35C.** (1) The Director General may require the owner of the goods to take the necessary measures to safeguard against any unauthorized interference with goods in transit.

(2) Any person who fails to comply with the request made by the Director General under subsection (1) shall be guilty of 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.

### **Determination of customs ports and airports for transit**

**35D.** (1) The Director General may determine—

- (a) the customs ports and airports where goods may be off-loaded from vessels or aircraft for transit; or
- (b) the customs ports and airports where goods may be loaded on board vessels or aircrafts for export from Malaysia under the transit procedure.

(2) No person shall load or off-load goods for transit except at the customs port or airport as determined under subsection (1).

(3) Any person who contravenes subsection (2) shall be guilty of 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.

### **Determination on routes for transits**

**35E.** (1) The Director General may determine the routes, by road or railway, over which goods may be transported under the transit procedures.

(2) No person shall transport goods for the purpose of transit operation over a road or railway route other than a route determined under subsection (1).

(3) Any person who contravenes subsection (2) shall be guilty of 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.

## **Persons entitled to submit declaration for transit**

**35F.** The following persons are entitled to submit declarations and supporting documents to clear goods for the purpose of transit:

- (a)* the owner of the goods;
- (b)* the licensed carrier or any other person as approved by the Director General under subsection 35G(2); or
- (c)* a customs agent.

## **Movement of goods in transit**

**35G.** (1) Subject to subsection (2), no goods shall be moved in transit (including transshipment) by road except by a licensed carrier.

(2) The Director General may, in special circumstances and subject to such conditions as determined by him, approve any person other than a licensed carrier to move goods in transit and transshipment.

(3) Any person who contravenes subsection (1) or the conditions under subsection (2) shall be guilty of 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.

## **Licensed carrier**

**35H.** (1) The Director General may grant a licence to any person to act as a licensed carrier subject to such terms and conditions as he may deem fit and he may suspend or withdraw such licence.

(2) In granting a licence under subsection (1), the Director General may require such security to be furnished as he may consider adequate to cover the customs duty payable on the goods moved and for the faithful and incorrupt conduct of such licensed carrier and of the licensed carrier's agents and employees acting for the licensed carrier both as regards to the customs and the licensed carrier's employers.

(3) The licensed carrier who carries out the transit or transshipment operation shall ensure such operation is carried out and completed in accordance with this Act and the necessary measures required by the Director General under subsection 35C(1) or 35K(1).

(4) If the licensed carrier who carries out the transit or transshipment operation is not the person who submits the declaration or other document for such operation, the licensed carrier and the person who submits the declaration shall be jointly and severally

liable for the customs duty due and payable and the obligation referred to in subsection (3).

(5) If the licensed carrier who carries out the transit or transshipment operation is the person who has subcontracted the transport of the goods to another carrier, the licensed carrier and the other carrier shall be jointly and severally liable for the customs duty due and payable and the obligation referred to in subsection (3).

(6) Any person who contravenes subsection (3) shall be guilty of 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.

### **Transshipment goods to be deposited in warehouse**

**35i.** (1) Goods arriving in Malaysia for transshipment and landed at a customs port or airport to await the arrival of the vessel or aircraft to which they are intended to be transhipped shall, if they are dutiable or prohibited on import or export, as the case may be, or belong to a class of such goods, be deposited in a customs or licensed warehouse, or a warehouse or other place approved by the Director General, until such goods are loaded on board the vessel or aircraft and transported out of Malaysia.

(2) The owner or agent of the goods for transshipment is liable to any storage charges, handling charges, warehouse rental and other charges at the rates applicable to such goods or, if such rates are not prescribed, at the prescribed rates applicable to such goods prior to transportation out of Malaysia.

(3) No goods for transshipment may be moved between two or more places under customs control at the customs port or airport where the goods were off-loaded without the prior permission of the proper officer of customs.

(4) The Director General may exempt any particular goods from the operation of this section.

(5) Any person who contravenes subsection (1) or (3) shall be guilty of 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.

### **Commencement and completion of transshipment procedures**

**35j.** (1) Subject to the provisions of this Part, the Director General may allow any goods imported to be moved under transshipment procedure subject to such conditions as determined by the Director General.

(2) The transshipment procedure commences when the goods are cleared for transshipment and completes when such goods are cleared for export.

(3) Notwithstanding subsection (2), the transshipment procedure, in relation to any goods, ends before its completion if it is interrupted by any of the following circumstances:

- (a) the release of the goods for the transshipment procedure is withdrawn;
- (b) the goods have been—
  - (i) released for home consumption not according to the approval given by the proper officer of customs;
  - (ii) released for export not according to the approval given by the proper officer of customs; or
  - (iii) moved not under customs control;
- (c) the goods have been abandoned;
- (d) the goods have been seized under this Act or any other written law; or
- (e) the goods are destroyed, lost or unaccounted for.

(4) Without prejudice to any proceedings under this Act, where any dutiable goods moved under transshipment ends before its completion as a result of the circumstances under subsection (3), the owner of the goods or his agent shall be liable to pay the duty leviable on such dutiable goods and any security furnished under this Act may be forfeited and paid into the Consolidated Fund.

### **Safeguard against any unauthorized interference with goods under transshipment**

**35K.** (1) The Director General may require the owner of the goods to take the necessary measures to safeguard against any unauthorized interference with goods under transshipment.

(2) Any person who contravenes the request made by the Director General under subsection (1) shall be guilty of 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.

### **Non-compliance with completion periods**

**35L.** (1) If—

- (a) transshipment procedure does not commence or is not completed in accordance with subsection 35J(2); or

(b) transshipment goods loaded on board the vessel or aircraft to be transported out of Malaysia are not exported in accordance with subsection 35j(2),

the licensee of the licensed warehouse, or warehouse or other place approved by the Director General, or the master of the vessel or the pilot of the aircraft on board of which the goods were to be loaded for export, as the case may be, shall—

- (A) immediately notify the proper officer of customs of the delay, and the reasons for the delay; and
- (B) thereafter notify the proper officer of customs regularly, of the situation with regard to the commencement and completion of the transshipment procedure.

(2) Any person who contravenes subsection (1) shall be guilty of 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.

### **Delivery of goods for transshipment for loading on board outgoing vessel or aircraft**

**35M.** (1) The master of a vessel or pilot of an aircraft or the agent of the vessel or aircraft under Part VII reporting the arrival of transshipment goods shall ensure that the goods are to be loaded on board the vessel or aircraft and be transported out of Malaysia at the customs port or airport to which the transshipment goods are intended to be transhipped under section 35i.

(2) Any person who contravenes subsection (1) shall be guilty of 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.

### **Responsibilities of licensee, owner or person handling goods for transshipment**

**35N.** (1) Where goods are deposited under section 35i, the licensee of the licensed warehouse, or warehouse or other place approved by the Director General, the owner or the person handling such goods for transshipment, shall keep such records of the receipt, handling, storage and delivery of the goods as may be determined by the Director General.

(2) The licensee, owner or person handling such goods for transshipment referred to in subsection (1) shall—

- (a) within two hours after the goods have been loaded on board such vessel or aircraft, submit to the proper officer of customs a certified statement in relation to the removal of the goods from the licensed warehouse, or warehouse or other place approved by the Director General; and
- (b) immediately notify the proper officer of customs if the goods are removed from the licensed warehouse, or warehouse or other place approved by the

Director General, for the purposes other than the loading of the goods on board such vessel or aircraft.

(3) The certified statement submitted under paragraph (2)(a) shall—

(a) state that such goods are for transshipment; and

(b) contain all the information as may be required by the Director General.

(4) The certified statement submitted under paragraph (2)(a) shall be submitted electronically unless approved otherwise by the Director General.

(5) Any person who contravenes subsection (1), (2), (3) or (4) shall be guilty of 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.

*[Ins. S22 Act 1593 w.e.f 1/1/2020]*

## PART V

### PORT CLEARANCES

#### **Arriving vessels, unless exempted, to be reported, and produce papers**

36. (1) The master of every vessel arriving at any customs port and not being a vessel to which the exemption under section 39 applies shall either personally or through the agent of such vessel—

(a) forthwith report to the proper officer of customs the arrival of such vessel;

(b) give such information relating to the vessel, cargo, crew and voyage, as the proper officer of customs may require; and

(c) on demand by such officer, produce the port clearance, or other document which it is usual to grant, granted at the last port of call and any other documents relating to the vessel, cargo, crew and voyage.

(2) The proper officer of customs may retain the port clearance or other document granted at the last port of call.

(3) Where there has been a failure to comply with subsection (1) the master or agent of the vessel concerned shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding **fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.**

*[Subst. S23 Act 1593 w.e.f 1/1/2020]*



### **No vessel unless exempted, to sail without port clearance**

**37.** (1) No vessel, whether laden or in ballast or empty, not being a vessel to which the exemption under section 39 applies, shall depart or attempt to depart from any customs port until a port clearance in the prescribed form has been granted by the proper officer of customs to the master or to the agent of the vessel.

(2) If any such vessel, departs or attempts to depart from any customs port without such port clearance, the master of the vessel and also the owner and agent of the vessel, if a party or privy there to, shall be guilty of an offence, and the vessel, if still within the territorial waters, may be detained.

(3) Any person guilty of an offence under this section shall on conviction be liable to a fine not exceeding **fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.**

*[Subst. S24 Act 1593 w.e.f 1/1/2020]*

### **Port clearance before departure**

*[Subst. S25 Act 1593 w.e.f 1/1/2020]*

**38.** (1) Before any vessel, other than a vessel to which the exemption under section 39 applies, departs from any customs port, the master or the agent of such vessel shall give such information concerning the vessel, the cargo, the crew, the passengers and the voyage, as the proper officer of customs may require and shall deliver to such officer a list of all goods, in respect of which customs duty is payable on export, and a list of all goods of a class the export of which is prohibited, which are to be delivered at another port in Malaysia.

*[Del. S25 Act 1593 w.e.f 1/1/2020]*

### **List of goods carried to be endorsed upon or attached to port clearance**

(2) If the proper officer of customs is satisfied that the information given under subsection (1) is accurate, he shall issue to the master or the agent of the vessel, a port clearance in the prescribed form, and shall endorse thereon or, at his discretion, attach thereto, a copy of the list of the goods delivered to the proper officer of customs in accordance with subsection (1).

*[Del. S25 Act 1593 w.e.f 1/1/2020]*

### **Port clearance to be carried aboard vessel to next port of call**

(3) Such port clearance shall be carried on board the vessel at all the times when such vessel is in the territorial waters.

### **Vessels exempted from requiring port clearance**

**39.** (1) Sections 36, 37 and 38 shall not apply to vessels of the following classes, namely—

- (a) any vessel of war, troop-ship, or other vessel belonging to, or for the time being operated by the Government of Malaysia or of any foreign State and used exclusively on governmental and non-commercial services;
- (b) vessels engaged solely in fishing and licensed for the purpose of fishing under any written law;
- (c) vessel whose movements are confined to navigable rivers upstream of a customs station situated at or near the mouth of such river;
- (d) privately owned pleasure vessels not plying for hire and not carrying cargo;
- (e) vessels of a class in respect of which an order under subsection (2) is in force.

(2) The Minister may, by order, exempt either absolutely or conditionally, any class of vessels from the operation of sections 36, 37 and 38.

### **Master of vessel not sailing within 48 hours of port clearance to report to proper officer of customs**

**40.** If a port clearance is issued in respect of any vessel in accordance with subsection 38(2), and the vessel does not sail within forty-eight hours thereafter, the master or agent of such vessel shall report to the proper officer of customs his reason for not sailing, and if the proper officer of customs so directs shall obtain a fresh port clearance.

### **When clearance may be refused**

**41.** (1) The proper officer of customs shall not grant a port clearance in respect of any vessel—

- (a) until the provisions of this Act and any regulation made thereunder regarding the vessel and cargo carried aboard such vessel have been complied with; or
- (b) until all charges and penalties due by such vessel or by the owner or master thereof and all duties payable in respect of any goods shipped therein have been paid or their payment secured by such deposit or written guarantee as the proper officer of customs may require.

(2) If under the provisions of any written law a Port Officer or other proper authority has notified the proper officer of customs that any vessel is liable to be detained, the proper officer of customs shall not issue a port clearance in respect of such vessel without the written concurrence of such Port Officer or other proper authority.

## **Application to aircraft**

42. The provisions of this Part shall apply, with such modifications and adaptations as may be necessary, in respect of aircraft arriving at, or departing from, any customs airport.

## **PART VI**

### **GENERAL PROVISIONS AFFECTING VESSELS IN TERRITORIAL WATERS**

#### **Master of vessel to obey signals from preventive vessels and instructions by an officer of customs**

43. The master of any vessel in territorial waters shall obey any signal made to him from a preventive vessel or any instructions given by an officer of customs in uniform from any other vessel or any place requiring him to stop or to heave to or to perform any other act.

#### **Hovering**

44. (1) If any vessel hovers within territorial waters and on examination is found to be conveying goods dutiable on import or goods of a class the importation of which is prohibited, the master and every member of the crew of such vessel shall be presumed, until the contrary is proved, to have imported uncustomed or prohibited goods, as the case may be.

(2) If any vessel hovers within territorial waters and on examination is found not to be carrying any of the goods referred to in subsection (1), such vessel shall be presumed, until the contrary is proved, to be hovering for the purpose of receiving dutiable goods upon which export duty has not been paid or prohibited goods exported contrary to a prohibition and the master and every member of the crew of such vessel shall be guilty of an offence against this Act.

(3) The master of any vessel found without lawful excuse in territorial waters without a clearance for a customs port in Malaysia, or carrying cargo or passengers or both without a proper manifest of such, or found to have passed the customs port named in the papers of such vessel without having made entry and declared at such port, **shall be guilty of 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.**

*[Subst. S26 Act 1593 w.e.f 1/1/2020]*

#### **Goods unaccounted for to be deemed uncustomed**

45. If goods, other than *bona fide* ship's stores, are found by a proper officer of customs in any vessel in territorial waters and such goods are not correctly accounted for in the

manifest or other documents which ought to be aboard such vessel, then such goods shall be deemed to be uncustomed goods and shall be liable to seizure.

### **Missing goods deemed to have been illegally landed**

46. If in any vessel in territorial waters the quantity of any goods entered in the manifest or other documents which ought to be aboard such vessel, is found by a proper officer of customs to be short, and the deficiency is not accounted for to the satisfaction of such officer, then such goods shall be deemed to have been illegally landed in Malaysia.

### **Proper officer of customs may board vessel in a customs port**

47. When in exercise of the powers conferred by this Act, a proper officer of customs boards any vessel, the master of such vessel shall provide such officer with suitable shelter and accommodation on the vessel while such vessel remains in territorial waters.

### **Power to seal up and secure hatchways goods, etc., and use of ship's stores**

48. (1) When in exercise of the powers conferred by this Act, a proper officer of customs boards any vessel, he shall have the power to fasten down hatchways or entrances to holds, to mark any goods before landing, and to lock-up, seal, mark or otherwise secure any goods, including ship's stores, on board such vessel; and no hatchway or entrance, after having been fastened down by such officer, shall be opened and no lock, seal or mark shall be opened, broken or altered without the consent of the proper officer of customs while the vessel is within the limits of the customs port or before any goods are delivered to be landed.

(2) The Director General may, in his absolute discretion, permit or refuse to permit the taking of anything without payment of customs duty into a ship as ship's stores and in granting permission for the embarkation of anything under this subsection impose such conditions as he may deem fit.

(3) The Director General may, in his absolute discretion, permit or refuse to permit the use, within the territorial waters, of any ship's stores on which customs duty has not been paid.

(4) Any person who contravenes subsection 48(1) shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

*[Ins. S27 Act 1593 w.e.f 1/1/2020]*

### **Prohibition of carriage of dutiable goods in local craft**

49. (1) No goods of a class dutiable on import or export or prohibited goods shall be carried in any local craft except with the permission of the Director General and subject to such conditions as the Director General may impose.

(2) Such permission may be granted either generally, by notification in the *Gazette*, in respect of all local craft or any class or classes of local craft, or specially, in writing under the hand of the Director General or an officer authorized by him in that behalf, in respect of a particular local craft.

(3) No vessel shall go alongside a legal landing place or alongside an ocean going vessel except with the permission of the proper officer of customs.

(4) Any person who contravenes subsection 49(1) or (3) shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

*[Ins. S28 Act 1593 w.e.f 1/1/2020]*

### **Bulk not to be broken, etc.**

50. After the arrival of any vessel within territorial waters—

(a) bulk shall not be broken;

(b) no alteration shall be made in the stowage of the cargo so as to facilitate the unloading of any part of the cargo, before the permission to land goods required by paragraph 23(1)(b) has been received by the master of such vessel; and

(c) no package shall at any time be opened on board such vessel;

without proper cause shown to a senior officer of customs.

### **Application to aircraft**

51. The provisions of this part shall apply, with such modifications and adaptations as may be necessary, in respect of aircraft arriving at, or departure from, any customs airport.

## PART VII

### MANIFESTS

#### **Master or agent of arriving vessel to present complete manifest**

52. (1) The master or agent of every vessel, other than a local craft, arriving in any customs port shall, not less than twenty-four hours before its arrival, or such period as the Director General may determine, whichever is lesser, present to the proper officer of customs at the customs office a true and complete manifest of the whole cargo of the vessel in the national language or English language, in the prescribed form, and certified by such master or agent.

(2) The manifest under subsection (1) shall contain—

(a) a complete list of the whole cargo which remains on board, intended to be landed and to be transhipped at the customs port; and

(b) a complete list of stores on board such vessel.

(3) The manifest shall list all particulars as to marks, numbers, contents of each package of the cargo, destination, together with the names of shippers and consignees of the cargo.

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

(5) For the purpose of this section, “agent of every vessel” includes a freight forwarder.

*[Subst. S29 Act 1593 w.e.f 1/1/2020]*

### **Provision for cases where all particulars are not known**

53. *(Deleted by S30 Act 1593 w.e.f 1/1/2020).*

### **Person in charge of local craft to make declaration on arrival**

54. (1) The master or agent of every local craft, whether carrying cargo or not, arriving in any customs port shall make, in the prescribed form, a declaration of a complete list of the whole cargo on board the vessel to the proper officer of customs.

(2) No cargo shall be landed or delivered to the importer or consignee, or his agent, except with the permission of the proper officer of customs.

*[Subst. S31 Act 1593 w.e.f 1/1/2020]*

### **Correction to be made on completion of discharge**

55. (1) On completion of the discharge of cargo or within **one month** of such discharge or within such further period as the proper officer of customs may allow, the master or agent of the vessel shall present to the proper officer of customs a certified statement of the outturn of such cargo and shall enumerate therein any alteration in the manifest due to short shipment, short landing, over landing or any other cause.

(1A) The proper officer of customs may refuse to accept any alteration made in the manifest after being notified that investigation into any offence under any written law has commenced in connection with the goods to which the manifest relates.

*[Ins. S31 Act 1593 w.e.f 1/1/2020]*

## **Liability of master or agent in respect of goods not satisfactorily accounted for**

(2) If any goods entered in the manifest of any vessel are not accounted for to the satisfaction of the proper officer of customs within **one month** of the presentation of such statement or within such further period as such officer may allow, the master or the agent of the vessel shall be liable to pay to such officer on demand a sum not exceeding **five thousand ringgit**, and in addition, in the case of dutiable goods, the agent shall be liable to pay to such officer on demand the amount of customs duty leviable thereon or, when the correct duty cannot be assessed, an amount not exceeding **ten thousand ringgit**.

*[Subst. S32 Act 1593 w.e.f 1/1/2020]*

(3) If the person liable to the penalties laid down in subsection (2) refuses or fails to pay the penalties demanded of him any senior officer of customs may sue for and recover such penalties in a court of a Magistrate of the First Class.

(4) For the purpose of this section, “agent of the vessel” includes a freight forwarder.

*[Ins. S32 Act 1593 w.e.f 1/1/2020]*

## **Pilot or agent of arriving aircraft to present complete manifest**

**56.** (1) The pilot or agent of every aircraft arriving at a customs airport shall, not less than two hours before its arrival or such period as the Director General may determine, whichever is lesser, present to the proper officer of customs at the customs office a true and complete manifest of the whole cargo of the aircraft in the national language or English language, in the prescribed form, and certified by such pilot or agent.

(2) The manifest under subsection (1) shall contain—

- (a) a complete list of the whole cargo which remains on board, intended to be landed and to be transhipped at the customs airport;
- (b) a complete list of stores on board such aircraft.

(3) The manifest shall list all particulars as to marks, numbers, contents of each package of the cargo, destination, together with the names of shippers and consignees of the cargo.

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

(5) For the purpose of this section, “agent of every aircraft” includes a freight forwarder.

*[Ins. S33 Act 1593 w.e.f 1/1/2020]*

## **Outward manifest of vessel to be presented**

57. The owner or agent of any vessel, other than a local craft, leaving any customs port shall, **not less than twenty-four hours before the departure of such vessel or such period as the Director General may determine, whichever is lesser, present to the proper officer of customs** a true outward manifest of the vessel in the National Language or in English, **in the prescribed form and certified by such owner or agent**, containing all particulars as to marks, numbers and contents of each package shipped at the customs port and the names of the shippers.

*[Subst. S34 Act 1593 w.e.f 1/1/2020]*

## **Person in charge of local craft to make declaration before departure**

58. (1) The master of any local craft, whether carrying cargo or not, leaving any customs port shall, before the departure of **such local craft, make a declaration in the prescribed form of all cargo shipped on board his local craft and the port or ports of destination of such cargo to the proper officer of customs**, and if no cargo is being carried he shall make a declaration accordingly:

*[Subst. S35 Act 1593 w.e.f 1/1/2020]*

Provided that in the case of a local craft which in the circumstances mentioned in, and under the provisions of, section 61 is deemed to leave such customs port, no declaration shall be required if the proper officer of customs is satisfied that a declaration has already been made at a customs port further upstream.

**(2) No cargo shall be loaded into the local craft except with the permission of the proper officer of customs.**

*[Ins. S35 Act 1593 w.e.f 1/1/2020]*

## **Pilot of departing aircraft to present outward manifest**

59. The pilot or agent of any aircraft leaving any customs airport shall, **not less than two hours before the departure of such aircraft or such period as the Director General may determine, whichever is lesser, present to the proper officer of customs** a true outward manifest of the aircraft in the National Language or in English, **in the prescribed form and certified by such pilot or agent**, containing all particulars as to marks, numbers and contents of each package loaded at such customs airport and the names of the consignors and consignees of the same.

*[Ins. S36 Act 1593 w.e.f 1/1/2020]*

## **Station master to produce railway invoices and waybills**

60. (1) The station-master at the place of import or export of goods by rail and at the customs station **to which goods are consigned, shall produce** to the proper officer of



customs the railway invoice or waybill **or any other document approved by the Director General**, as the case may be, in respect of such goods.

*[Subst., Ins. S37 Act 1593 w.e.f 1/1/2020]*

**(2) No cargo shall be loaded into or unloaded off the train except with the permission of the proper officer of customs.**

*[Ins. S37 Act 1593 w.e.f 1/1/2020]*

### **Local craft arriving at or leaving certain navigable rivers**

**61.** Every local craft proceeding up or down a navigable river, at or near the mouth of which there is a customs port, shall stop at such port and shall, for the purposes of this Part, be deemed to arrive at or leave, as the case may be, such customs port.

### **Saving in respect of exempted vessels and certain aircraft**

**62.** The provisions of this Part shall not apply to any vessel exempted under section 39.

## **PART VIII**

### **WAREHOUSING**

#### **Minister may establish customs warehouses**

**63.** (1) The Minister may establish and maintain customs warehouses, wherein dutiable goods may be deposited and kept without payment of customs duty, at any customs port, customs airport, place of import or export or at any inland customs station and may prescribe the amount to be paid as warehouse rent on goods deposited in such warehouses and remit any amount payable as rent.

#### **Minister may establish collection stations**

(2) The Minister may establish customs warehouses in Singapore in this Act referred to as collection stations if provisions for such establishment exist by virtue of any written law in force in Singapore or by virtue of any agreement between the Governments of Malaysia and of Singapore.

#### **Goods imported or exported from a collection station**

**64.** Where collection stations have been established as provided by subsection 63(2), then subject to other provisions of this Act and to such conditions and restrictions as the Director General either generally by order or in any particular case may impose—

- (a) the provisions of this Act relating to the payment of customs duty shall not apply to goods imported from a collection station on which duty has been paid before import; and
- (b) the provisions of this Act requiring payment of duty on goods to be exported at the time of export shall not apply to dutiable goods which are forwarded to a collection station.

### **Licensed warehouse**

**65.** (1) The Director General may, **on payment of such fees as may be prescribed**, grant a licence to any person, hereinafter in this section referred to as the licensee, and when granted withdraw any licence, for warehousing goods liable to customs duties in a place or places specified in such licence.

*[Amd. S38 Act 1593 w.e.f 1/1/2020]*

**(1A) The Director General may allow goods, other than goods liable to customs duty, to be kept in the licensed warehouse subject to such conditions he deems fit.**

*[Ins. S38 Act 1593 w.e.f 1/1/2020]*

(2) Any such licence shall be for such period and subject to such conditions as the Director General in each case may specify in the licence.

(3) A senior officer of customs, or any officer of customs deputed by him for the purpose, shall at all times have access to any licensed warehouse.

(4) If it appears at any time that in any licensed warehouse or any part thereof there is a deficiency in the quantity of dutiable goods which ought to be found therein, the licensee of such warehouse shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Act, be liable to pay to the proper officer of customs the customs duty leviable on the goods found deficient:

Provided that if it is shown to the satisfaction of the Director General that such deficiency has been caused by unavoidable leakage, breakage or other accident, the Director General may remit the whole or any part of the customs duty leviable on the goods found deficient.

**(5) Goods deposited in a licensed warehouse shall be cleared within two years from the date of deposit or such further period as the Director General may approve.**

*[Ins. S38 Act 1593 w.e.f 1/1/2020]*

### **Manufacture and other operations in relation to goods in licensed warehouse**

**65A.** (1) **The Director General may**, on payment of such fees as may be fixed by him in each case, **grant a licence to any person** and when granted withdraw, **suspend or cancel**

any such licence, to carry on any manufacturing process and other operation in respect of the goods liable to customs duties and any other goods.

*[Subst. S39 Act 1593 w.e.f 1/1/2020]*

(1A) A licence under subsection (1) shall be deemed to include a licence for warehousing goods as provided under section 65.

*[Ins. S39 Act 1593 w.e.f 1/1/2020]*

(2) Any such licence shall be for such period and subject to such conditions as the Director General may specify in the licence.

(3) (a) No goods which have undergone any manufacturing process in the **licensed manufacturing warehouse** may be released for home consumption or export without the prior approval of the Director General.

(b) Subject to subsection (4), if such goods are released from the **licensed manufacturing warehouse** for home consumption the customs duty thereon shall be calculated on the basis as if such goods had been imported:

*[Subst. S39 Act 1593 w.e.f 1/1/2020]*

Provided that the Minister may in any particular case exempt any person from the payment of the whole or part of such duty which may be payable by such person on any such goods and in granting such exemption the Minister may impose such conditions as he may deem fit.

(4) *[Deleted by S39 Act 1593 w.e.f 1/1/2020]*

### **Remission on waste or refuse from goods undergoing process**

**65AA.** (1) Where in the course of carrying out any activities approved under subsection 65a(1) there is waste or refuse, the customs duty may be remitted on the quantity of goods liable to the customs duty in so much of the waste or refuse as has arisen from the activities carried out in relation to the goods which have undergone any process.

(2) If the customs duty is remitted under subsection (1), the Director General shall direct the waste or refuse to be destroyed subject to such conditions as the Director General deems fit.

(3) If no remission is granted under subsection (1), the Director General shall require customs duty to be paid on such waste or refuse as if it had been imported in that form.

### **Deficiency in quantity of dutiable goods at licensed manufacturing warehouse**

**65AB.** (1) If it appears at any time that in any licensed manufacturing warehouse there is a deficiency in the quantity of dutiable goods which ought to be found therein, the licensee of such licensed manufacturing warehouse shall—

- (a) in the absence of proof to the contrary, be presumed to have illegally removed such goods; and
- (b) without prejudice to any proceedings under this Act, be liable to pay to the proper officer of customs the customs duty leviable on the goods found deficient.

(2) Notwithstanding subsection (1), if it is shown to the satisfaction of the Director General that such deficiency has been caused by any unavoidable leakage, breakage or other accident, the Director General may remit the whole or any part of the customs duty leviable on the goods found deficient.

### **Licensee to provide customs office and facilities**

**65AC.** The licensee of a licensed warehouse shall provide appropriate customs office and facilities within or at the perimeter of the licensed warehouse at the expense of the licensee.

*[Subst. S40 Act 1593 w.e.f 1/1/2020]*

### **Liquidator of company to give notice of winding-up, and set aside duty**

**65B.** (1) Where an effective resolution is passed or an order is made for the winding-up of a company which is **licensed under this Part**, the liquidator of the company shall give notice thereof to the Director General within fourteen days thereafter, and shall before disposing of any of the assets of the company set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any customs duty that is or will thereafter become payable in respect of the company, and shall thereafter pay such customs duty.

*[Subst. S41 Act 1593 w.e.f 1/1/2020]*

(2) A liquidator of any such company who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the customs duty as required by that subsection shall be personally liable for any customs duty that is or become payable as aforesaid.

(2A) Any liquidator who fails to comply with subsection (1) or (2B) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

*[Subst. S41 Act 1593 w.e.f 1/1/2020]*

(2B) A liquidator shall furnish all relevant documents, books and records which are in his possession to the proper officer of customs for the purpose of calculating all duties payable under this Act.

*[Ins. S41 Act 1593 w.e.f 1/1/2020]*

(3) Where two or more persons are appointed liquidators or are required by law to carry out the winding-up of any such company, subject to a right of contribution between themselves as in cases of contract, the obligations and liabilities attaching to a liquidator under this section shall attach to all such persons jointly and severally.

### **Appointment of receiver to be notified to the Director General**

65c. (1) Where a receiver of the property of a licensee under this Part is appointed, he shall give notice thereof to the Director General within fourteen days thereafter, and shall before disposing of any of the assets of the licensee set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any customs duty that will thereafter become payable in respect of the goods that have been sold by the licensee before the appointment of the receiver, and shall thereafter pay such customs duty.

*[Subst. S42 Act 1593 w.e.f 1/1/2020]*

(2) A person appointed as receiver who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the customs duty as required by that subsection shall be personally liable for any customs duty that is or becomes payable as aforesaid.

(2A) Any receiver who fails to comply with subsection (1) or (2B) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

*[Subst. S42 Act 1593 w.e.f 1/1/2020]*

(2B) A receiver shall furnish all relevant documents, books and records which are in his possession to the proper officer of customs for the purpose of calculating all duties payable under the Act.

*[Ins. S42 Act 1593 w.e.f 1/1/2020]*

(3) Where two or more persons are appointed receivers, subject to a right of contribution between themselves as in cases of contract, the obligations and liabilities

attaching to a receiver under this section shall attach to all such persons jointly and severally.

### **Licensing of duty free shop**

**65D.** (1) The Director General may on payment of such fee as may be prescribed, grant a licence to operate a duty free shop to any person, hereinafter in this section referred to as “the licensee”, and when granted, **may withdraw, suspend or cancel** such licence.

*[Subst.. S43 Act 1593 w.e.f 1/1/2020]*

(2) Any such licence shall be for such period and subject to such conditions as the Director General in each case may specify in the licence.

(3) The licensee shall, for the proper conduct of his business, furnish such security as may be required by the Director General.

(4) If it appears at any time that any goods have been sold or removed from such duty free shop otherwise than in accordance with all the conditions of a licence granted under this section, the licensee of such duty free shop shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Act, be liable to pay to the proper officer of customs the customs duty leviable on the goods sold or removed.

### **Licensing of inland clearance depot**

**65E.** (1) The Director General may on payment of such fee as may be prescribed, grant a licence to operate an inland clearance depot to any person, hereinafter in this section referred to as “the licensee”, and when granted, **may withdraw, suspend or cancel** such licence.

*[Subst.. S44 Act 1593 w.e.f 1/1/2020]*

(2) Any such licence shall be for such period and subject to such conditions as the Director General in each case may specify in the licence.

(3) The licensee shall, for the proper conduct of his business, furnish such security as may be required by the Director General.

(4) If it appears at any time that in any inland clearance depot there is a deficiency in the quantity of dutiable goods which ought to be found therein, the licensee of such inland clearance depot shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and shall, without prejudice to any proceedings under this Act, be liable to pay to the proper officer of customs the customs duty leviable on the goods found deficient:

Provided that if it is shown to the satisfaction of the Director General that such deficiency has been caused by any leakage, breakage or other unavoidable accident, the

Director General may remit the whole or any part of the customs duty leviable on the goods found deficient.

### **Deposit of goods in a warehouse or other place approved by the Director General**

**65F.** (1) The Director General may approve any warehouse, not being a customs or licensed warehouse, or other place to be deposited with dutiable goods, and when granted may withdraw, suspend or cancel such approval.

(2) Any such approval shall be for such period and subject to such conditions as the Director General in each case may specify in the approval.

*[Ins. S45 Act 1593 w.e.f 1/1/2020]*

### **Depositing goods into warehouse**

**66.** (1) On arrival or landing, any goods imported, other than prohibited goods, shall be deposited in a customs or licensed warehouse or in a warehouse or other place approved by the Director General unless—

- (a) the customs duty payable, if any, has been paid in accordance with section 78A;
- (b) the goods have been approved for movement in transit and the payment for customs duty has been suspended under section 35A;
- (c) the goods have been approved for transshipment and the goods are for immediate off-loading to another vessel;
- (d) the goods are imported by post;
- (e) the goods are imported by road or by sea where there is no customs or licensed warehouse, or warehouse or other place approved by the Director General at the place of import; or
- (f) the goods are personal effects carried or brought by passengers in any baggage.

(2) Notwithstanding subsection (1), prohibited goods which are subject to certain conditions may be deposited in a customs or licensed warehouse or in a warehouse or other place approved by the Director General if the goods are accompanied by any licence, permit or approval required under any written law and the licence, permit or approval is produced to the proper officer of customs.

(3) If the Director General deems it necessary for the purposes of public interest that any goods imported are to be warehoused, the Director General may require the goods to be deposited in a customs or licensed warehouse or in a warehouse or other place approved by the Director General.

(4) The goods deposited under subsection (3) shall—

(a) be deposited at the expense of the owner of such goods;

(b) be deemed to be under customs control; and

(c) not be removed except with the permission of the proper officer of customs.

(5) Subsection (1) shall not be applicable to goods entering a principal customs area by road, sea or air from a free zone.

(6) Notwithstanding subsection (5), the goods referred to in that subsection shall not be released from customs control unless—

(a) the customs duty payable, if any, has been paid in accordance with section 78A; or

(b) the goods have been approved for movement in transit and the payment for customs duty has been suspended under section 35A.

*[Subst. S46 Act 1593 w.e.f 1/1/2020]*

### **Warehouse deposit receipts**

67. (1) A warehouse deposit receipt shall be issued by the proper officer of customs for all dutiable goods deposited in a customs warehouse:

Provided that in the case of dutiable goods imported by road no such receipt shall be issued except at the request of the importer or his agent.

(2) Where the warehouse deposit receipt is lost, a copy of such receipt duly certified by the proper officer of customs shall be supplied to the owner of the dutiable goods or his agent on delivery of an indemnity bond approved by a senior officer of customs and delivered to him at the customs office, securing the Government against any claim for loss owing to wrong delivery of the goods deposited.

(3) The holder or endorsee in due course of a warehouse deposit receipt or a certified copy thereof granted under subsection (2) shall be deemed, for the purposes of this Act, to be the owner of the goods deposited, and delivery to the holder or endorsee or the agent of the holder or endorsee of such warehouse deposit receipt or certified copy thereof shall be a good and lawful delivery.

### **Power to open and examine packages**

68. A senior officer of customs may, at any time, direct that any goods or package lodged in any customs or licensed warehouse **or in a warehouse or other place approved by the Director General** shall be opened, weighed or otherwise examined, and after such



goods or package has been so opened or examined, may cause the same to be sealed or marked in such manner as he sees fit.

*[Inst. S47 Act 1593 w.e.f 1/1/2020]*

### **Detention of goods where doubt exists**

**69.** (1) The proper officer of customs may detain in a customs warehouse or any other place deemed to be under customs control any goods if he is in doubt whether such goods are dutiable or not, or any other reason.

(2) In every such case the proper officer of customs shall forthwith make a report to a senior officer of customs, who shall, without undue delay, decide whether such goods are dutiable or not.

(3) If any such goods are found not to be dutiable, no warehouse rent, handling or other charges shall be payable in respect thereof.

### **Protection of Government from liability**

**70.** The Government shall not be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of any officer of customs, unless such loss is caused by the wilful neglect, or default of an officer of customs or of a person employed by the Government in connection with the customs.

### **Protection of officers of customs from liability**

**71.** No officer of customs or other person employed by the Government in connection with the customs shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of such officer or any other officer of customs or person employed in connection with customs unless such loss is caused by his wilful neglect, or default.

### **Payment of warehouse rent**

**72.** The owner or his agent shall pay to the proper officer of customs the warehouse rent at the prescribed rates which may be due in respect of any goods deposited in a customs warehouse or a warehouse approved by the Director General. Such rent shall be payable at the end of each month whether or not a demand in respect thereof is made and if not so paid may be recovered as a civil debt due to the Government.

## **Dangerous goods**

73. No goods of an inflammable nature or of such a nature as to be likely to cause detriment to other goods shall be deposited in any customs warehouse without the sanction of a senior officer of customs, and if any such goods are landed they may be deposited, at the expense and risk of the importer thereof, in any place that a senior officer of customs may deem fit, and whilst so deposited such goods shall be deemed to be in a customs warehouse, and unless within a period of fourteen days they have been duly cleared or warehoused in any warehouse approved for that purpose shall, at the expiration of that period, be liable to be dealt with in the same manner as goods of a similar nature actually deposited in a customs warehouse. Such goods shall be chargeable with such expenses for securing, watching and guarding the same until sold, cleared or warehoused as aforesaid, as the senior officer of customs may deem fit.

## **Government lien over goods deposited in a customs warehouse**

74. (1) Goods of a perishable nature deposited in a customs warehouse shall be cleared forthwith, and if not so cleared a senior officer of customs may sell such goods.

(2) Goods of an inflammable nature deposited in a customs warehouse shall be cleared within fourteen days of the date of deposit.

(3) Goods not of a perishable or inflammable nature deposited in a customs warehouse shall be cleared within one month of the date of deposit:

Provided that a senior officer of customs may permit any goods to remain deposited for such further periods of not less than one month at a time and not exceeding six months in the aggregate as he may in his discretion think fit.

(4) If any goods are not cleared within the time specified in subsection (2) or (3) or if any warehouse rent in respect of any goods is not duly paid in the manner provided by section 72, a senior officer of customs may, after giving not less than fourteen days notice in writing to the owner (if the name and address of such owner is known to him), or after due notice in the *Gazette* (if the name and address of such owner is not known to him), sell such goods.

(5) The proceeds of the sale of any such goods shall be applied to the payment of any customs duties, warehouse rent and other charges and railway freight which may be due in respect of such goods or of any other goods deposited by the owner of such goods, and the surplus, if any, shall be paid to the owner of such goods and if the owner cannot be found within one month of the sale, such surplus shall be paid to the Consolidated Fund.

(6) If at the sale of any goods no sufficient bid is forthcoming to defray the customs duties, warehouse rent and other charges which are due in respect of such goods, the goods shall be forfeited to Government and shall be disposed of in such manner as the Director General may direct.

(7) Every auction sale shall be conducted—

(a) by or in the presence of senior officer of customs; or

(b) electronically in the manner to be determined by the Director General.

*[Subst. S48 Act 1593 w.e.f 1/1/2020]*

### **Removal of dutiable goods from a warehouse**

75. No dutiable goods shall be removed from customs control except—

(a) after payment of the customs duty payable thereon; or

(b) if such goods are in a customs or licensed warehouse, a warehouse or other place approved by the Director General, or a petroleum supply base under such conditions as the Director General may impose, for transit to another customs or licensed warehouse, warehouse or other place approved by the Director General, or a petroleum supply base; or

*[Subst. S49 Act 1593 w.e.f 1/1/2020]*

(c) under such conditions as the Director General may impose, for a re-export from Malaysia,

and in no case shall any goods be removed from a customs warehouse, **or warehouse or other place** approved by the Director General until all warehouse rent and other charges due in respect thereof have been paid:

*[Ins. S49 Act 1593 w.e.f 1/1/2020]*

Provided that petroleum or any other dutiable goods as approved by the Director General **may be removed from the customs or licensed warehouse or the warehouse or other place approved by the Director General** before payment of the customs duty if security has been lodged to the satisfaction of the Director General by which payment of duty is guaranteed within such time as the Director General may allow.

*[Subst. S49 Act 1593 w.e.f 1/1/2020]*

### **Landing of goods for transshipment**

76. *(Deleted by S50 Act 1593 w.e.f 1/1/2020)*

### **Weighing and handling fees**

77. (1) All necessary operations relating to the loading, shipping, unloading, unshipping, landing, carrying, weighing, opening, unpacking, repacking, bulking, sorting and marking of goods, including passenger's baggage, whether warehoused or not, shall

be performed by or at the expense of the owner, importer, exporter, consignor, consignee or agent as the case may be:

Provided that the proper officer of customs may, at his discretion, direct that any such operations shall be performed by officers of customs or other persons under his control, and in any such case such operation shall be performed at the expense of the owner, importer, exporter, consignor, consignee or agent, as the case may be.

(2) The Minister may prescribe the charges to be paid for operations performed under this section by officers of customs or other persons under the control of the proper officer of customs and may remit any charges due.

## PART VIIIA

### PETROLEUM SUPPLY BASE

#### **Interpretation**

**77A.** For the purpose of this Part, unless the context otherwise requires—

“licensee” means any person licensed under section 77B;

“petroleum supply base” means an area licensed under section 77B.

#### **Licensing of petroleum supply base**

**77B.** (1) The Director General may, on payment of such fees as prescribed, issue a licence to any person to manage and administer a petroleum supply base and to carry out activities in the petroleum supply base as approved by the Director General.

(2) The licence issued under subsection (1)—

(a) shall be for such period and subject to such conditions as the Director General may specify in the licence; and

(b) may be withdrawn, suspended or cancelled by the Director General.

(3) The licensee shall, for the proper conduct of his business, furnish such security as may be required by the Director General.

(4) The licensee shall provide appropriate customs office and facilities within or at the perimeter of the petroleum supply base at the expense of the licensee.

## **Release of goods from petroleum supply base**

**77C.** (1) No goods which have undergone any process in the petroleum supply base may be released for home consumption or export without the prior approval of the Director General.

(2) Subject to section 77E, if the goods referred to in subsection (1) are released from the petroleum supply base for home consumption, the customs duty on such goods shall be calculated on the basis as if such goods had been imported.

## **Exemption from a payment of customs duty**

**77D.** Notwithstanding subsection 77C(2), the Minister may in any particular case exempt any person from the payment of the whole or part of such the customs duty which may be payable by such person on such goods subject to such conditions as the Minister deems fit.

## **Remission of customs duty**

**77E.** (1) Where in the course of carrying out any activities approved under subsection 77B(1) there is waste or refuse, the customs duty may be remitted on the quantity of goods liable to the customs duty in so much of the waste or refuse as has arisen from the activities carried out in relation to the goods which have undergone any process.

(2) If the customs duty is remitted under subsection (1), the Director General shall direct the waste or refuse to be destroyed subject to such conditions as the Director General deems fit.

(3) If no remission is granted under subsection (1), the Director General shall require customs duty to be paid on such waste or refuse as if it had been imported in that form.

## **Deficiency in quantity of dutiable goods at petroleum supply base**

**77F.** (1) If it appears at any time that in any petroleum supply base there is a deficiency in the quantity of dutiable goods which ought to be found therein, the owner of the goods or the occupier of the premises shall—

- (a) in the absence of proof to the contrary, be presumed to have illegally removed such goods; and
- (b) without prejudice to any proceedings under this Act, be liable to pay to the proper officer of customs the customs duty leviable on the goods found deficient.

(2) Notwithstanding subsection (1), if it is shown to the satisfaction of the Director General that such deficiency has been caused by unavoidable leakage, breakage or other accident, the Director General may remit the whole or any part of the customs duty leviable on the goods found deficient.

*[Ins. S51 Act 1593 w.e.f 1/1/2020]*

## PART IX

### DECLARATION OF GOODS

#### *A—Dutiable goods*

#### **Declaration of dutiable goods imported**

**78.** (1) Every importer of dutiable goods shall make a declaration on such goods imported, personally or by his agent, in such form as may be prescribed to the proper officer of customs—

- (a) in the case of goods deposited in the customs or licensed warehouse, or warehouse or other place approved by the Director General referred to under subsection 66(1) or (3), within a period of one month from the date of the arrival or landing of such goods before the removal of such goods or any part of the goods from customs control;
- (b) in the case of goods not deposited in the customs or licensed warehouse, or warehouse or other place approved by the Director General referred to under subsection 66(1) or (3), upon arrival or landing of such goods at a place of import; or
- (c) in the case of goods entering the principal customs area from a free zone, upon arrival of such goods at the principal customs area.

(2) Notwithstanding subsection (1), the proper officer of customs may, by notice in writing, require such declaration to be submitted within three days from the date of such notice.

(3) In the case of goods imported by post, the declaration shall be made by the addressee or by his agent on demand by the proper officer of customs.

*[Subst. S53 Act 1593 w.e.f 1/1/2020]*

#### **Payment of duties of imported goods**

**78A.** The customs duties and other charges leviable on goods imported shall be paid by the importer of the goods—

- (a) in the case of goods referred to in paragraph 78(1)(a), within fourteen days from the date of declaration being approved by the proper officer of customs except for goods in transit;
- (b) in the case of goods referred to in paragraph 78(1)(b), forthwith upon the arrival of such goods;
- (c) in the case of goods referred to in paragraph 78(1)(c), forthwith upon the arrival of such goods; and
- (d) in the case of goods referred to in subsection 78(3), within fourteen days from the date of the declaration being approved by the proper officer of customs.

### **Declaration of dutiable goods before arrival**

**78B.** (1) Notwithstanding section 78, any importer of dutiable goods may make a declaration, personally or by his agent, to the proper officer of customs before arrival of the goods to be imported subject to such conditions as determined by the Director General.

(2) The importer of the dutiable goods shall pay the customs duties and other charges leviable on such goods within fourteen days from the date of the declaration being approved by the proper officer of customs.

### **Abandoned goods**

**78C.** (1) Any imported goods which are not declared according to section 78 shall be deemed to be abandoned and the Director General may destroy or dispose of such goods in any manner as he deems fit.

(2) Any proceeds from the disposal of the goods under subsection (1) shall be applied to the payment of customs duties or other moneys, or recovery of any amount or charges which may be due in respect of the disposal of such goods.

(3) Any surplus of the proceeds referred to under subsection (2), if any, shall be paid—

- (a) to the importer, if known; and
- (b) into the Consolidated Fund, if the importer cannot be found within one month of the disposal.

## **Declarations to give a full and true account**

**79.** (1) The declaration referred to in section 78 shall give a full and true account of the number and description of packages, of the description, weight, measure or quantity, and value of all such dutiable goods, and of the country of origin of such goods:

Provided that if it is shown to the satisfaction of the proper officer of customs that such goods are urgently required for home consumption and that it is not within the power of the importer to furnish all the details required, such officer may, at his discretion, release the goods on payment of such customs duty as he may estimate to be leviable thereon, together with a deposit of such amount as such officer may determine not exceeding such estimated duty and on an undertaking being given by the importer or his agent to furnish a correct declaration within two months or such further period as the proper officer of customs may allow.

(2) On the submission of a correct declaration the proper amount of customs duty and other charges leviable shall be assessed and any money paid and deposited in excess of such amount shall be returned to the importer or his agent and in default of such submission within the aforesaid period the deposit shall be forfeited and paid into the Consolidated Fund.

## **Declaration of dutiable goods to be exported**

**80.** (1) Every exporter of dutiable goods shall immediately before export—

(a) personally or by his agent make, in the prescribed form and to the officer of customs specified in subsection (2), a declaration of the goods to be exported;

(b) produce such goods to such officer at any place as the officer may direct; and

*[Amd. S56 Act A1593 w.e.f 1/1/2020]*

(c) pay the export duty and any other charge leviable thereon, if any, to such officer:

*[Amd. S56 Act A1593 w.e.f 1/1/2020]*

*[Proviso Del. S56 Act A1593 w.e.f 1/1/2020]*

(2) The declaration referred to in paragraph (1)(a) shall be made to the proper officer of customs at the appropriate place specified hereunder that is to say—

(a) at an inland clearance depot or at an inland customs station or at a customs port where goods are loaded if export is by sea;

(b) at an inland clearance depot or at an inland customs station where goods are loaded or at the place of export if export is by rail;

(c) at the place of export if export is by road, but the Director General may allow the declaration to be made to a proper officer of customs at an inland



clearance depot or at an inland customs station if such export by road is on their route to a customs port or airport or any other place approved by him;

(d) at an inland clearance depot or at an inland customs station or at a customs airport where goods are loaded if export is by air.

(3) The declaration referred to in paragraph (1)(a) shall give a full and true account of the number and description of packages and of the description, weight, measure or quantity, and value of all such dutiable goods, and the country of destination of such goods.

(4) No dutiable goods shall be removed from the place at which such goods were produced to the officer of customs in accordance with subsection (1) unless permission in that behalf has first been obtained from a senior officer of customs.

### *B—Non-dutiable goods*

#### **Declaration of non-dutiable goods imported by sea or air**

**81.** (1) When any goods which are not dutiable on import are imported by sea or air, the importer thereof shall, before taking delivery of such goods and in any case not later than ten days after the arrival of the vessel or aircraft in which such goods are imported or arrival otherwise of goods, make personally or by his agent to the proper officer of customs at the customs port at which such goods are landed or at other prescribed place, or at the customs airport at which such goods are imported, a declaration substantially in the prescribed form, giving particulars of the goods imported.

(2) No owner, master or agent of any vessel, and no pilot or agent of any aircraft arriving at any customs port or airport shall deliver any inward cargo consisting of goods which are not dutiable until he has been authorized to do so by the proper officer of customs to whom the declaration referred to in subsection (1) has been made.

#### **Declaration of non-dutiable goods imported by rail**

**82.** When any goods which are not dutiable on import are imported by rail the importer thereof shall make personally or by his agent to the proper officer of customs at the prescribed place of import a declaration, substantially in the prescribed form giving particulars of the goods imported, and until such a declaration has been made delivery or onward transport of the goods shall not be permitted.

#### **Declaration of non-dutiable goods imported by road**

**83.** When any goods which are not dutiable on import are imported by road, the importer thereof shall make personally or by his agent to the proper officer of customs at the place of import or at other prescribed place a declaration substantially in the

prescribed form, giving particulars of the goods imported, and shall not proceed till this has been done.

### **Declaration of non-dutiable goods exported by sea or air**

**84.** (1) When any goods which are not dutiable on export are exported by sea or air the exporter thereof shall, before such goods are shipped or water-borne to be shipped or transported otherwise to be shipped or loaded into an aircraft, make personally or by his agent to the proper officer of customs at the customs port at which such goods are to be shipped or at the customs airport at which such goods are to be loaded or at other prescribed place, a declaration substantially in the prescribed form, giving particulars of the goods to be exported.

(2) No owner, master or agent of any vessel, and no pilot or agent of any aircraft shall allow any goods which are not dutiable on export to be shipped or loaded until he has been authorized by the proper officer of customs to do so.

### **Declaration of non-dutiable goods exported by rail**

**85.** When any goods which are not dutiable on export are exported by rail the exporter thereof shall make personally or by his agent to the proper officer of customs at the prescribed place of export a declaration, substantially in the prescribed form giving particulars of the goods to be exported, and until such a declaration has been made such goods shall not be released for export.

### **Declaration of non-dutiable goods exported by road**

**86.** When any goods which are not dutiable on export are exported by road, the exporter thereof shall make personally or by his agent to the proper officer of customs at the place of export a declaration, substantially in the prescribed form, giving particulars of the goods to be exported, and shall not proceed till this has been done.

### **Declarations to give a full and true account**

**87.** The declarations referred to in sections 81, 82, 83, 84, 85 and 86 shall give a full and true account of the number and description of packages, of the description, weight, measure or quantity, and value of all goods, and of the country of origin of such goods.

*[Amd. S57 Act A1593 w.e.f 1/1/2020]*

*C – General provisions*

**Provisional declaration**

**87A.** (1) Notwithstanding sections 78, 78B, 80, 81, 82, 83, 84, 85 and 86, the proper officer of customs may, upon a written application by the importer or exporter, allow a provisional declaration if—

(a) in relation to goods imported—

- (i) the necessary documents or information on such goods cannot be produced or furnished at the time of import;
- (ii) such goods are subject to examination, testing or analysis; or
- (iii) such goods are urgently required for home consumption; and

(b) in relation to goods to be exported—

- (i) the necessary documents or information on such goods cannot be produced or furnished at the time of declaration; or
- (ii) such goods are not subject to any drawback claim under sections 93 and 99.

(2) Notwithstanding subsection (1), a provisional declaration shall not be allowed if the goods are subject to any prohibition.

(3) Any goods declared under subsection (1) may be released from customs control subject to—

- (a) the payment of such customs duty, if any, as provisionally assessed;
- (b) the payment of sufficient security as required by the proper officer of customs not exceeding the amount of duty provisionally assessed; and
- (c) the giving of an undertaking to submit a full and correct declaration within—
  - (i) two months or such further period as the proper officer of customs may allow for imported goods; or
  - (ii) five days from the date the goods have been released for export or such further period as may be approved by the Director General.

(4) On the submission of a full and correct declaration within the time specified under paragraph (3)(c)—

- (a) the proper amount of customs duty and other charges leviable shall be assessed by the proper officer of customs; and

*(b)* any money paid and secured in excess of such amount of customs duty assessed shall be returned to the importer or exporter or his agent.

(5) If the submission of a full and correct declaration is not made within the time specified under paragraph (3)(c), the security referred to in paragraph (3)(b) shall be forfeited and paid into the Consolidated Fund.

*[Subs. S58 Act A1593 w.e.f 1/1/2020]*

### **Goods which have been declared at a collection station exempted**

**88.** The provisions of this Part shall not apply—

*(a)* subject to such conditions and restrictions as the Director General may, either generally by order or in any particular case, impose, to goods imported from a collection station or to goods which are forwarded to a collection station;

### **Passengers' baggage, etc., and postal goods exempted**

*(b)* to accompanied passengers' baggage or personal effects;

*(c)* to fresh fish locally taken; and

*(d)* except as provided by subsection 78(3), to any goods sent by post.

### **Deferred payment**

**88A.** (1) The Director General may, subject to such terms and conditions as he deems fit, approve any person to defer the payment of customs duty due and payable under sections 78A and 80, and for such purpose determine the due date for the customs duty to be paid.

(2) The Director General may suspend or withdraw such approval or vary any of the terms or conditions under which the approval was given and vary the due date on which the customs duty is to be paid.

(3) Any person who fails to pay to the Director General the amount of customs duty due and payable on the due date under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

*[Ins. S59 Act A1593 w.e.f. 1/1/2020]*

## **Simplified procedures for accredited person**

**88B.** (1) The Director General may approve any person to be an accredited person to benefit from simplified procedures for customs clearance as determined by the Director General subject to such terms and conditions as he deems fit to impose.

(2) The Director General may suspend or withdraw the approval granted under subsection (1) or vary or revoke the terms and conditions.

*[Ins. S59 Act A1593 w.e.f. 1/1/2020]*

## **Saving provision**

**89.** Nothing in this Part contained shall release any person from any obligation imposed by or under any written law regulating the movement of any special goods or currency.

## **Customs agents**

**90.** (1) Any person who intends to act as a customs agent—

(a) shall attend a course on matters relating to customs and pass such examination as may be specified by the Director General;

(aa) shall be a registered person under the Service Tax Act 2018 [Act 807];

(b) shall produce a written authority from the person on whose behalf he is to act;

(c) shall give such security as may be considered adequate by a senior officer of customs for the faithful and incorrupt conduct of such agent and of his employees acting for him both as regards the customs and his employers; and

(d) shall not have been proved against him or convicted on a charge in respect of—

(i) an offence involving fraud or dishonesty;

(ii) an offence under any written law relating to corruption;

(iii) an offence under any written law relating to taxation; or

(iv) any offence punishable with imprisonment for more than two years.

(2) Subject to subsection (1), any application for approval to act as a customs agent shall be made in the form as determined by the Director General.

(3) The Director General may waive the requirement of paragraph (1)(a) if he is satisfied that the person has sufficient knowledge and experience on matters relating to customs.

(3A) The Director General may grant such approval for the application made under subsection (2) subject to such terms and conditions as he deems fit.

(4) The Director General may suspend or cancel any approval granted under subsection (3A) if the customs agent commits any breach of this Act or of any regulation made thereunder or if he fails to comply with the terms and conditions imposed pursuant to subsection (3A) or any direction given by an officer of customs with regard to the business transacted by the customs agent.

(5) *[Deleted by S3 Act A1571 w.e.f. 28/8/2018]*

(6) Any person who acts as customs agent when approval has not been granted to him under this section or while such approval is cancelled or suspended, or who makes or causes to be made a declaration of any goods without being duly authorized for that purpose by the proprietor or consignee of such goods shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

(6A) The importer, exporter or manufacturer may appoint a customs agent to act on his behalf on matters relating to declaration and clearance of goods or entry or clearance of any vessel or aircraft under this Act.

(6B) For the purpose of subsection (6A), a person is presumed to act as a customs agent without being duly authorized if there is reasonable cause to believe that the proprietor or consignee is not in existence or the existence of the proprietor or consignee is unlawful.

(7) The employee of any person or firm may transact business at any customs office on behalf of such person or firm.

*[Proviso Del. S3 Act A1571 w.e.f. 1/9/2018]*

(8) Notwithstanding subsection (7), a senior officer of customs may refuse to transact business with such employee unless such person or firm has furnished a signed authority authorizing such employee to transact business on behalf of such person or firm.

*[Ins. S3 Act A1571 w.e.f. 1/9/2018]*

### **Person in charge of goods imported, etc., by road to be deemed agents**

**91.** Notwithstanding anything contained in section 90 the person in charge of any goods imported or exported by road shall be deemed to be the agent of the importer or exporter, as the case may be and shall not be subject to the provision of paragraph 90(1)(a).

## Licensed carrier

91A. *[Del. S60 Act A1593 w.e.f. 1/1/2020]*

## Declaration to be made in **copies**

92. Every declaration required to be made under this Part shall be in such number of copies as the proper officer of customs, to whom such declaration is required to be made, may direct.

*[Ins. S61 Act A1593 w.e.f. 1/1/2020]*

## PART X

### REFUND AND DRAWBACK OF DUTY

#### Definition of “re-export” in sections 93, 94 and 99

92A. In sections 93, 94 and 99 of this Part, the expression "re-export" includes the movement of goods to a warehouse licensed under section 65A and to a duty free shop licensed under section 65D of the Act.

#### Conditions under which drawback may be paid

93. (1) When any goods, other than goods affected by section 96, upon which customs duty has been paid are re-exported, the Director General may allow nine-tenths of the duties calculated in accordance with subsection (2) be repaid as drawback, if—

*[Amd. S63 Act A1593 w.e.f. 1/1/2020]*

*[Amd. S2 Act A1628 w.e.f. 1/1/2021]*

- (a) the goods are identified to the satisfaction of a senior officer of customs at the customs port or customs airport at which such goods are shipped or loaded for re-export, or at the place of re-export;
- (b) the drawback claimed in respect of any one consignment of re-exported goods is not less than two hundred ringgit;

*[Amd. S63 Act A1593 w.e.f. 1/1/2020]*

- (c) the goods are re-exported within three months of the date upon which the customs duty was paid;

*[Amd. S63 Act A1593 w.e.f. 1/1/2020]*

- (d) payment of drawback upon goods of a class to which the goods to be re-exported belong has not been prohibited by regulations made under this Act;
- (e) written notice has been given to a senior officer of customs at or before the time of re-export that a claim for drawback will be made, and such claim is made in the prescribed form and established to the satisfaction of a senior officer of customs within three months of the date of re-export; and
- (f) the goods have not been used after importation.

(2) The amount of drawback allowed shall be calculated at the rate of the customs duty levied at the time of import.

*[Amd. S63 Act A1593 w.e.f. 1/1/2020]*

### **Declaration by claimant**

94. Every person claiming drawback on any goods re-exported shall, personally or by his agent, make to a senior officer of customs a declaration in the prescribed form, that such goods have actually been re-exported and have not been relanded or detained and are not intended to be relanded or detained at any customs port, customs airport or place in Malaysia or within any port of Malaysia.

*[Amd. S64 Act A1593 w.e.f. 1/1/2020]*

### **Drawback on destroyed goods**

95. *[Del. S65 Act A1593 w.e.f. 1/1/2020]*

### **Refund to visitors and owners of samples**

96. When any personal effects or other goods which have been imported by visitors to Malaysia for their personal use, or samples imported by commercial travellers, or trade samples or such other goods as may be prescribed, on which customs duty has been paid are re-exported within three months from the date of importation or within such further period as the Director General may, either generally or in any special case allow, the Director General may allow a drawback of such customs duty.

### **Relief from duty on goods temporarily imported**

97. Where the Director General is satisfied that goods are imported only temporarily with a view to subsequent re-exportation, he may permit the goods to be delivered on importation without payment of duty subject to the payment of a deposit equivalent to not less than the amount of duty which would be payable if the goods were imported for home consumption or security being given to the satisfaction of the Director General for



the payment of such duty, and such deposit shall be refunded or such security discharged if the goods are re-exported within three months of the date of importation or within such further period as the Director General may allow.

*[Del. S66 Act A1593 w.e.f. 1/1/2020]*

### **Export and reimport of trade sample free of duty**

98. The Director General may, in any case, at his discretion and subject to such restriction as he may deem fit to impose, allow any goods, which on the exportation thereof have been declared as trade samples, to be reimported free of duty.

### **Drawback on imported goods used in manufacture or in packing**

99. (1) Where any imported goods are re-exported by the manufacturer as part or ingredient of any goods manufactured in Malaysia or as the packing, or part or ingredient of the packing, of such manufactured goods, then, if customs duty has been paid on such imported goods, the Director General may, on such re-export, allow to the manufacturer a full drawback of the duty so paid, if—

- (a) the finished goods exported have been manufactured on premises approved by the Director General;
- (b) such books and account are kept as the Director General may require for the purpose of ascertaining the quantity of the goods used in such manufacture or for or in the packing of such manufactured goods;
- (c) such goods are re-exported within twelve months of the date upon which the import duty was paid or such further period as the Director General may approve;
- (d) written notice has been given on the prescribed export declaration form that a claim for drawback will be made, and such claim is made in the prescribed form to the satisfaction of a senior officer of customs within six months of the date of such re-export or such further period as the Director General may approve;

*[Amd. S67 Act A1593 w.e.f. 1/1/2020]*

*[Amd. S3 Act A1628 w.e.f. 1/1/2021]*

- (e) the finished goods shall be exported through such places or routes as the Director General may approve; and
- (f) the drawback claimed in respect of any one consignment of re-exported goods is not less than two hundred ringgit.

*[Amd. S3 Act A1628 w.e.f. 1/1/2021]*

(1A) In determining the amount of drawback of customs duty paid, the Director General may allow drawback of such duty on waste or refuse resulting from such manufacture, whether re-exported or otherwise:

Provided that such drawback shall only be allowed where the quantity of such waste or refuse has been proven to the satisfaction of the Director General.

(2) In this section the expression “manufacturer” includes any person to whom the manufactured goods have been sold or otherwise disposed of.

### **Offsetting of drawback or refund against amount owing**

**99A.** Notwithstanding any provision of this Act, where any person has failed to pay, in whole or in part—

- (a)* any amount of customs duty or any surcharge accruing, or any penalty, fee or other money payable under this Act;
- (b)* any amount of excise duty or any surcharge accruing, or any penalty, fee or other money payable under Excise Act 1976;
- (c)* any amount of sales tax due and payable, any surcharge accruing, or any penalty or other money payable under the Sales Tax Act 1972 [*Act 64*];
- (d)* any amount of service tax due and payable, any surcharge accruing, or any penalty or other money payable under the Service Tax Act 1975 [*Act 151*];
- (e)* any amount of good and services tax due and payable, any surcharge accruing, or any penalty or other money payable under the Goods and Services Tax Act 2014 [*Act 762*];
- (f)* any amount of sales tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under the Sales Tax Act 2018 [*Act 806*];  
or
- (g)* any amount of service tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under the Service Tax Act 2018 [*Act 807*],

the Director General may offset any amount or any part of any amount of drawback or refund due to that person against the unpaid amount referred to in paragraphs *(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)* and *(g)*, and the Director General shall treat the amount offset as payment or part payment received from that person.

*[Ins. S68 Act A1593 w.e.f. 1/1/2020]*

## PART XI

### MISCELLANEOUS PROVISIONS

#### **Documents to be produced on demand**

**100.** On demand of the proper officer of customs the importer or exporter of any goods or his agent shall produce to such officer all invoices, bills of lading, certificates of origin or of analysis and any other documents, which such officer may require to test the accuracy of any declaration made by such importer or exporter to any officer of customs and such officers may retain any such invoice, bill of lading, certificate of origin or analysis or other documents.

#### **Records relating to customs matters**

**100A.** (1) Every person shall keep full and true records up to date of all transactions which affect or may affect his obligation on any matters under the Act.

(2) The records to be kept shall include—

- (a) all records of importation and exportation of goods including goods in transit and transshipment;
- (b) all payments and bank records including letter of credit, fund transfers application and debit advice;
- (c) all accounting, management and financial records;
- (d) sales and purchase records including invoices, receipts, debit note and credit note;
- (e) other business records including sales, distribution and royalty contracts or agreements;
- (f) accounting charts, access codes, program documentation and system instruction manuals;
- (g) inventory records; and
- (h) any other records as may be determined by the Director General.

(3) Any records kept under this section shall be—

- (a) preserved for a period of seven years from the latest date to which such records relate; and
- (b) kept in Malaysia, except as otherwise approved by the Director General subject to such conditions as the Director General deems fit.

(4) Where the record is in an electronically readable form, the record shall be kept in such manner as to enable the record to be readily accessible and convertible into writing.

(5) Where the record is originally in a paper form and is subsequently converted into an electronic form, the record shall be retained in its original form prior to the conversion.

(6) A copy of the record shall be admissible in evidence in any proceedings to the same extent as the record itself.

(7) Any person who contravenes subsection (1), (2), (3), (4) or (5) shall be guilty of 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.

*[Subst. S70 Act A1593 w.e.f. 1/1/2020]*

### **Requirement to provide translation**

**100B.** (1) Where a senior officer of customs investigating into an offence finds, seizes, detains, or takes possession of any goods, record, report or document which wholly or partly, is in a language other than the national language or English language, or is in any sign or code, such officer may, orally or in writing, require the person who had the possession, custody or control of the goods, record, report or document to furnish to him a translation in the national language or English language within such period as the officer may specify.

(2) No person shall knowingly furnish a translation under subsection (1) which is not accurate, factful and true.

(3) Notwithstanding subsection (1), the senior officer of customs may require any other person to furnish the translation to him.

(4) The Director General may pay reasonable fees to the person who is required to furnish the translation under subsection (3).

*[Ins. S71 Act A1593 w.e.f. 1/1/2020]*

### **Persons legally bound to give information**

**101.** Every person required by the proper officer of customs to give information or produce any documents on any subject into which it is such officer's duty to enquire under this Act and which it is in such person's power to give shall be legally bound to give such information or produce such documents.

### **Service of notices**

**102.** (1) Every notice or document required by this Act to be served on any person may be served—

(a) personally upon that person; or

(b) by sending such notice or document to that person by registered post.

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

(a) in the case of a company, a firm, a society, an association or other body of persons—

(i) to its registered office;

(ii) to its last known address; or

(iii) to any person authorized by it to accept service of process; and

(b) in the case of an individual, to his last known address.

*[Amd. S72 Act A1593 w.e.f. 1/1/2020]*

### **Submission of list of passengers and crews**

**102A.**(1) The master of every vessel or pilot of every aircraft, or his agent arriving at any customs airport, customs port or entry or exit point shall submit to the proper officer of customs a true and complete list of the passengers on board—

(a) in the case of a vessel, not less than twenty-four hours before arrival; and

(b) in the case of an aircraft, not less than two hours before arrival.

(2) The master of every vessel or the pilot of every aircraft, or his agent leaving any customs airport, customs port or entry or exit point shall submit to the proper officer of customs a list of the passengers and crews—

(a) in the case of a vessel, not less than twenty-four hours before departure; and

(b) in the case of an aircraft, not less than two hours before departure.

(3) The carrier in charge of every train or the operator of a bus, or his agent, arriving at or leaving any customs airport, customs port or entry or exit point shall submit to the proper officer of customs a list of the passengers and crews as and when directed by such proper officer of customs.

*[Ins. S73 Act A1593 w.e.f. 1/1/2020]*

## **Baggage of passengers**

**103.** (1) Notwithstanding anything in this Act contained, every passenger or other person arriving in or leaving Malaysia shall declare all dutiable or prohibited goods in his possession, either on his person or in any baggage or in any vehicle, to the proper officer of customs, and if he fails so to do such goods shall be deemed to be uncustomed goods.

(2) The baggage of passengers or any other person may be examined and delivered in such manner as the Director General may direct, and it shall be the duty of the person in charge of such baggage to produce, open, unpack and repack such baggage.

*[Amd. S74 Act A1593 w.e.f. 1/1/2020]*

## **The proper officer of customs may take samples**

**104.** (1) The proper officer of customs may at any time, if his duty so requires, take samples of any goods to ascertain whether they are goods of a description liable to any customs duty, or to ascertain the customs duty payable on such goods or for such other purposes as the proper officer of customs may deem necessary, and such samples may be disposed of in such manner as the Director General shall direct.

(2) No payment shall be made for the cost of any sample taken but the proper officer of customs shall give a receipt for any such sample.

*[Amd. S75 Act A1593 w.e.f. 1/1/2020]*

## **Packing of dutiable goods**

**105.** (1) No dutiable goods shall be packed in any manner calculated to deceive an officer of customs so that a proper account of such goods may not be taken.

(2) Any person who contravenes subsection (1) shall be guilty of 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.

*[Ins. S76 Act A1593 w.e.f. 1/1/2020]*

## **Addition or deduction of new or altered duties in the case of contract**

**106.** (1) Where any new customs duty is imposed or where any customs duty is increased, and any goods in respect of which the duty is payable are delivered after the day on which the new or increased duty takes effect, in pursuance of a contract made before that day, the seller of the goods may, in the absence of agreement to the contrary, recover from the purchaser of the goods as an addition to the contract price, a sum equal to any amount paid by him in respect of the goods on account of the new duty or increase of duty, as the case may be.

(2) Where any customs duty is cancelled or decreased and any goods affected by the duty are delivered after the day on which the duty is cancelled or the decrease in the duty takes effect, in pursuance of a contract made before that day, the purchaser of the goods, in the absence of agreement to the contrary, may if the seller of the goods has had in respect of those goods the benefit of the cancellation or decrease of the duty, deduct from the contract price a sum equal to the amount of the duty or decrease of duty, as the case may be.

## PART XII

### INSPECTION, INVESTIGATION, SEARCH, SEIZURE AND ARREST

#### Access to place or premises

**106A.** (1) For the purposes of this Act, any senior officer of customs shall at all times have access to any place or premises where—

- (a) any importer, exporter, manufacturer or person carries on his business; and
- (b) any person who has dealings with the importer, exporter, manufacturer or person referred to in paragraph (a) carries on his business.

*[Subst. S77 Act A1593 w.e.f. 1/1/2020]*

(2) Where any senior officer of customs enters upon any premises in accordance with the provisions of this section, then—

- (a) he may require the importer, exporter, manufacturer or person referred to in paragraph (1)(a), or any person who has dealings with such importer, exporter, manufacturer or person referred to in paragraph (1)(a), to produce any book, data, document or other record, or thing which is required to be kept under the provision of this Act, or which relate to any imported, exported or manufactured goods;

*[Subst. S77 Act A1593 w.e.f. 1/1/2020]*

- (b) he may examine any book, data, document or other record, or thing and make copies of or take extracts from any such book or document;
- (c) he may seize and detain any book, data, document or other record, or thing if in his opinion it may afford evidence of the commission of any offence under this Act;
- (d) he may require—
  - (i) the importer, exporter, manufacturer or person referred to in paragraph (1)(a);

- (ii) the person who has dealings with such importer, exporter, manufacturer or person referred to in paragraph (1)(a); or
- (iii) any person employed by such importer, exporter, manufacturer or person referred to in paragraph (1)(a) or the first-mentioned person referred to in subparagraph (ii);

to answer questions truthfully relating to—

- (A) any book, data, document or other record, or thing;
- (B) any entry in any book, data, document or other record; or
- (C) any goods imported, exported or manufactured;

*[Subst. S77 Act A1593 w.e.f. 1/1/2020]*

- (e) he may require any container, envelope or other receptacle in any such premises to be opened;
- (f) he may at the risk and expense of the importer, exporter, manufacturer or person referred to in paragraph (1)(a), or any person who has dealings with such importer, exporter, manufacturer or person referred to in paragraph (1)(a) open and examine any package, or any goods or materials, in any such premises.

*[Subst. S77 Act A1593 w.e.f. 1/1/2020]*

(3) Where the senior officer of customs acting under the provisions of this section is unable to obtain free access to any premises where the importer, exporter, manufacturer or person referred to in paragraph (1)(a) carries on his business, or where the person who has dealings with such importer, exporter, manufacturer or person referred to in paragraph (1)(a) carries on his business or to any receptacle contained in those premises, he may, at any time, enter such premises and open such receptacle in such manner, if necessary by force, as he may think necessary.

*[Subst. S77 Act A1593 w.e.f. 1/1/2020]*

(4) Where, on the entry upon any premises under the provisions of this section, any dutiable goods are found in relation to which any offence under the provisions of this Act has been committed, then such dutiable goods shall be liable to forfeiture.

(5) Any person who refuses access to any place or premises to any senior officer of customs under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

*[Ins. S77 Act A1593 w.e.f. 1/1/2020]*



## Power of enforcement, investigation and inspection

**106B.** For the purposes of this Act, a senior officer of customs shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] in relation to enforcement, investigation and inspection, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

*[Subst. S4 Act A1580 w.e.f. 2/1/2019]*

## Additional powers

**106c.** (1) In addition to and without affecting the existing powers conferred under this Act, when escorting and guarding any person in custody, a proper officer of customs shall have all the powers of a police officer of the rank of Corporal and below and the powers of a prison officer of the rank of Sergeant and below under the Prison Act 1995 [Act 537].

(2) For the purposes of this Act—

- (a) where an order, a certificate or any other act is required to be given, issued or done by an officer in charge of a Police District under any written law, such order, certificate or act may be given, issued or done by a senior officer of customs, and for such purpose, the place where the order, certificate or act was given, issued or done shall be deemed to be a Police District under his charge; and
- (b) a proper officer of customs shall have all the powers conferred on an officer in charge of a police station under any written law, and for such purpose the office of such officer shall be deemed to be a police station.

*[Ins. S4 Act A1628 w.e.f. 1/1/2021]*

## Magistrate may issue search warrant

**107.** (1) Whenever it appears to any Magistrate, upon written information upon oath, and after any enquiry which he may think necessary, that there is reasonable cause to believe that in any conveyance, premises or place, there are concealed or deposited any prohibited or uncustomed goods or goods liable to forfeiture under this Act or under any regulation made thereunder, or as to which any offence under this Act or such regulation has been committed, or any books or documents relating to any such goods such Magistrate may issue a warrant authorizing any officer of customs named therein, by day or night and with or without assistance—

- (a) to enter such conveyance, premises or place and there to search for and seize any goods reasonably suspected of being prohibited or uncustomed goods, or goods liable to forfeiture under this Act or any regulation made thereunder, or as to which any offence under this Act or such regulation is suspected to have been committed, and any books or documents which may reasonably be believed to contain information as to any offence under this Act or any regulation made thereunder;

- (b) to arrest any person or persons being in such conveyance, premises or place, in whose possession such goods as aforesaid may be found, or whom such officer may reasonably suspect to have concealed or deposited such goods.

*[Subst. S78 Act A1593 w.e.f. 1/1/2020]*

(2) Such officer may if it is necessary so to do—

- (a) break open any outer or inner door of such conveyance, premises or place, and enter thereinto;
- (b) forcibly enter such conveyance, premises or place and every part thereof;
- (c) remove by force any obstruction to such entry, search, seizure and removal as he is empowered to effect; and
- (d) detain every person found in such conveyance, premises or place until the search has been completed.

*[Subst. S78 Act A1593 w.e.f. 1/1/2020]*

### **When search may be made without warrant**

**108.** Whenever it appears to any senior officer of customs that there is reasonable cause to believe that in any conveyance, premises or place there are concealed or deposited any prohibited or uncustomed goods or goods liable to forfeiture under this Act or any regulation made thereunder or as to which an offence under this Act or such regulation has been committed, and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant such goods are likely to be removed, such officer may exercise in, upon and in respect of such conveyance, premises or place all the powers mentioned in section 107 in as full and ample a manner as if he were authorized so to do by a warrant issued under that section.

*[Subst. S79 Act A1593 w.e.f. 1/1/2020]*

### **Power to search vessels and aircraft**

**109.** (1) A proper officer of customs may—

- (a) go on board any vessel or aircraft in any customs port or customs airport or place or within territorial waters;
- (b) require the master of such vessel or the pilot of such aircraft to give such information relating to the vessel or aircraft, cargo, stores, crew, passengers or voyage as he may deem necessary;
- (c) rummage and search all parts of such vessel or aircraft for prohibited or uncustomed goods;

- (d) examine all goods on board and all goods then being loaded or unloaded;
- (e) demand all documents which ought to be on board such vessel or aircraft;  
and
- (f) require all or any such documents to be brought to him for inspection;

and the master of any vessel and the pilot of any aircraft refusing to allow such officer to board or search such vessel or aircraft, or refusing to give such information or to produce such documents on demand shall be guilty of an offence against this Act.

(2) If any place, box or chest on board such vessel or aircraft is locked and the key withheld, such officer may break open any such place, box or chest.

(3) If any goods be found concealed on board any vessel or aircraft, they shall be deemed to be uncustomed goods.

### **Proper officer of customs to exercise powers of search**

**110.** (1) **For the purposes of Part IX, a proper officer of customs** may enter into and exercise in and upon and in respect of any vessel, aircraft, landing place, wharf, jetty, port installation or railway or any place all the powers mentioned in section 107 in as full and ample a manner as if he were authorized so to do by a warrant under that section.

*[Amd. S80 Act A1593 w.e.f. 1/1/2020]*

(2) In this section the expression "railway" shall have the meaning assigned to it by any written law relating to railways.

### **Officers of customs may stop and search conveyances**

**111.** (1) The person in charge or in control of any vehicle arriving at a prescribed place of import and export shall, on arrival at such place, produce his vehicle to the proper officer of customs, and shall, if so required, move his vehicle to another place for examination, and shall not proceed until permission to do so has been given by the proper officer of customs.

(2) Any officer of customs may stop and examine any vehicle for the purpose of ascertaining whether any uncustomed or prohibited goods are contained therein, and the person in control or in charge of such vehicle shall if required so to do by such officer, stop such vehicle and allow such officer to examine the same.

(3) The person in control or in charge of any vehicle examined under this section shall on request by the proper officer of customs open all parts of the vehicle for examination by such officers and take all measures necessary to enable such examination as such officer considers necessary to be made.

## Power to set up roadblocks

**111A.** (1) Notwithstanding anything contained in any other law, any proper officer of customs may, if he deems it necessary to do so for the enforcement of the provisions of this Act, erect or place or cause to be erected or placed any barrier on or across any public road or street or in any public place in such manner as he may think fit; and any proper officer **of customs** may take all reasonable measures to prevent any person from passing or any vehicle from being driven past any such barrier, including any measure to pursue and apprehend any such person or stop any such vehicle where, having regard to the attendant circumstances at a given moment of time, it is apparent that if such measure is not taken the escape of such person and vehicle to avoid detection or otherwise is likely to be imminent.

*[Ins. S81 Act A1593 w.e.f. 1/1/2020]*

(2) Any person who fails to comply with any reasonable signal of a proper officer requiring such person or vehicle to stop before reaching any such barrier, or attempt to cross or knock any such barrier, shall be guilty of an offence and **shall 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 any proper officer of customs may, without warrant, arrest such person.**

*[Subst. S81 Act A1593 w.e.f. 1/1/2020]*

(3) No proper officer **of customs** shall be liable for any loss, injury or damage caused to any person or property consequent upon his taking the steps mentioned in subsection (1).

*[Ins. S81 Act A1593 w.e.f. 1/1/2020]*

## Access to recorded information or computerized data

**111B.** (1) Any officer of customs exercising his powers under sections 106A, 107, 108, 109 and 111 shall be given access to any recorded information or computerized data, whether stored in a computer or otherwise.

(2) In addition, an officer of customs exercising his powers under sections 106A, 107, 108, 109 and 111—

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

**(aa) may make copies of or take extracts from the recorded information or computerized data referred to in subsection (1) as he deems necessary; and**

*[Ins. S82 Act A1593 w.e.f. 1/1/2020]*

(b) may require—

- (i) the person by whom or on whose behalf the officer of customs has reasonable cause to suspect the computer is or has been so used; or
- (ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material,

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

(3) For the purposes of subsection (1), “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information or computerized data.

(4) Any person who contravenes subsection (1) or the request to provide any reasonable assistance under paragraph (2)(b) shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

*[Ins. S82 Act A1593 w.e.f. 1/1/2020]*

### **Power to intercept communications**

**111c.** (1) Notwithstanding the provisions of any other written law, the Public Prosecutor may, if he considers that it is likely to contain any information which is relevant for the purposes of investigation into any offence under this Act, on the application of a senior officer of customs, authorize any proper officer of customs—

- (a) to intercept, detain and open any postal article in the course of transmission by post;
- (b) to intercept any message transmitted or received by any telecommunication; or
- (c) to intercept or listen to any conversation by any telecommunication.

(2) When any person is charged with an offence under this Act, any information obtained by any proper officer of customs in pursuance of subsection (1), whether before or after such person is charged, shall be admissible in evidence at his trial.

(3) An authorization by the Public Prosecutor under subsection (1) may be given either orally or in writing, but if an oral authorization is given, the Public Prosecutor shall, as soon as practicable, reduce the authorization into writing.

(4) A certificate by the Public Prosecutor stating that the action taken by the proper officer of customs in pursuance of subsection (1) had been authorized by him under subsection (1) shall be conclusive evidence that it had been so authorized, and such certificate shall be admissible in evidence without proof of signature thereof.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related thereto, of anything done under paragraphs (1)(a), (b) or (c).

*[Ins. S83 Act A1593 w.e.f. 1/1/2020]*

### **Power to open packages and examine goods**

**112. (1)** Any proper officer of customs may examine any goods in the course of being imported or exported or intended to be imported or exported and may for the purposes of such examination bring the same to a customs office and may open any package or receptacle.

(2) A proper officer of customs may use any tracing and tracking device, non-intrusive instrument, or any other form of aids in the performance of his duty under this Act.

*[Ins. S84 Act A1593 w.e.f. 1/1/2020]*

### **Search of persons arriving in Malaysia**

**113. (1)** Any person landing, or about to land, or having recently landed, from any vessel or aircraft, or leaving any vessel in territorial waters or aircraft, whether for the purpose of landing or otherwise, or entering or having recently entered Malaysia by road or railway shall, on demand by any proper officer of customs, —

- (a) permit his person, goods and baggage to be searched by such officer or otherwise examined by any other means; or
- (b) accompany such proper officer of customs together with his goods and baggage to a customs office or police station and there permit his person, goods and baggage to be searched by the proper officer of customs.

(2) If the person referred to in subsection (1) requests that his person be searched in the presence of a senior officer of customs, he shall not be searched except in the presence of and under the supervision of such officer, but such person may be detained until the arrival of such officer, or taken to any customs office or police station where such officer may be found.

(3) If the person referred to in subsection (1) requests the goods and baggage to be searched in his presence and so present himself within a reasonable time, the goods and baggage shall not be searched except in his presence.

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

*[Subst. S85 Act A1593 w.e.f. 1/1/2020]*

## Seizure of goods the subject of an offence

**114.** (1) All goods in respect of which there has been, or there is, reasonable cause to suspect that there has been committed any offence against this Act or any regulation made thereunder, or any breach of any of the provisions of this Act or of any regulation made thereunder or of any restriction or condition subject to or upon which any licence or permit has been granted, together with any receptacle, package, conveyance other than vessel exceeding two hundred tons nett registered tonnage or aircraft engaged in international carriage, in which the same may have been found or which has been used in connection with such offence or breach, and any books or documents which may reasonably be believed to have a bearing on the case, on the person or in any place either on land or in territorial waters.

*[Subst. S86 Act A1593 w.e.f. 1/1/2020]*

(2) All such goods and such receptacles, packages or conveyances referred to in subsection (1) shall, as soon as conveniently may be, be delivered into the care of a proper officer of customs whose duty it is to receive the same.

*[Subst. S86 Act A1593 w.e.f. 1/1/2020]*

(3) Whenever any goods, and such receptacles, packages or conveyances referred to in subsection (1) are seized under this Act, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner of such goods, if known, either by delivering such notice to him personally or by post at the person's last known address.

*[Subst. S86 Act A1593 w.e.f. 1/1/2020]*

*[Proviso Del. S86 Act A1593 w.e.f. 1/1/2020]*

(3A) Where by reason of its nature, size or amount it is not practicable to remove any goods and such receptacles, packages or conveyances seized under this section, the seizing officer may, by any means, seal the goods and such receptacles, packages or conveyance, or the premises or place in which the goods and such receptacles, packages or conveyances are found.

(3B) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (3A) or removes any goods and such receptacles, packages or conveyances under seal, or attempts to do so, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

*[Ins. S5 Act A1628 w.e.f. 1/1/2021]*

(4) This section relating to the seizure of goods shall apply to all the contents of any package or receptacle in which the same are found and to any article used to conceal the same.

(5) *[Del. S86 Act A1593 w.e.f. 1/1/2020]*

(6) This section relating to the seizure of conveyances shall apply to all tackles, equipment and furnishing thereof and to any animal by which the same is drawn.

*[Subst. S86 Act A1593 w.e.f. 1/1/2020]*

## No costs or damages arising from entry, search or seizure to be recoverable

**114A.** No person shall, in respect of any entry or search of any premises, place or conveyance or seizure of any goods, book, record, document or thing in the exercise of any powers conferred by this Act, be entitled to the costs of such entry, search or seizure, or to any damages or other relief unless such entry, search or seizure was made without reasonable cause.

*[Ins. S87 Act A1593 w.e.f. 1/1/2020]*

## Return or disposal of goods

**115. (1)** Where any goods have been seized under this Act, a senior officer of customs may, at his discretion—

- (a) temporarily return the goods to the owner thereof or to the person from whose possession, custody or control the goods were seized, or to such person as a senior officer of customs may consider entitled thereto, subject to such terms and conditions as a senior officer of customs may impose, and, subject, in any case, to sufficient security being furnished to the satisfaction of a senior officer of customs that the goods shall be surrendered to a senior officer of customs on demand being made by a senior officer of customs and that the said terms and conditions, if any, shall be complied with; or

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

- (b) return return the goods to the owner thereof or to the person from whose possession, custody or control the goods were seized, or to such person as a senior officer of customs may consider entitled thereto, with liberty for the person to whom the goods are so returned to dispose of the same, such return being subject to such terms and conditions as a senior officer of customs may impose and security being furnished to the satisfaction of a senior officer of customs in an amount not less than an amount which, in the opinion of a senior officer of customs, represents—

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

- (i) for goods other than dutiable or uncustomed goods, its open market value, and for dutiable or uncustomed goods, their value, on the date on which such goods are so returned

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

- (ii) the customs duty payable in respect thereof, if any; and

*[Ins. S88 Act A1593 w.e.f. 1/1/2020]*

- (iii) any tax payable in respect thereof under any written law, if any,

*[Ins. S88 Act A1593 w.e.f. 1/1/2020]*



for the payment of the amount so secured to the Director General in the event of the court making an order for the forfeiture of such amount under subsection 127(1A) or 128(4), or in the event of such amount being forfeited under section 131, as the case may be; or

- (c) sell or destroy goods, as appropriate in the circumstances, where the goods are living creatures, where it is a living creature or where, in the opinion of a senior officer of customs, the goods are of perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where the goods are so sold, he shall hold the proceeds of sale to abide the result of any prosecution or claim, or a forfeiture under section 131, as the case may be.

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

(2) Any person who—

- (a) fails to surrender on demand to a senior officer of customs the goods temporarily returned to him under paragraph (1)(a); or

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

- (b) fails to comply with or contravenes any of the terms or conditions imposed under paragraph (1)(a) or (b),

*[Ins. S88 Act A1593 w.e.f. 1/1/2020]*

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

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

(3) The criminal liability of any person under subsection (2) shall be in addition to any other liability that the said person or any other person may incur under the terms and conditions relating to the return of the goods under paragraph (1)(a) or (b).

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

(4) The provisions of subsection (2) shall not apply to such person, if any, who is the guarantor or surety of the person to whom the goods are returned under paragraph (1)(a) or (b).

*[Subst. S88 Act A1593 w.e.f. 1/1/2020]*

(5) The Minister may, from time to time, either generally or in any particular case or class of cases, give such directions to the Director General as he may deem necessary or expedient with regard to the exercise of the powers conferred on a senior officer of customs under subsection (1).

(6) No person shall be entitled to maintain any action on account of any act done or any decision taken by or on behalf of the Minister or by or on behalf of a senior officer

of customs under this section, and no court shall have any jurisdiction to entertain any such action.

(7) *[Del. S88 Act A1593 w.e.f. 1/1/2020]*

### **Production of a certificate of an analyst, or a senior officer of customs, or a person authorized by the Minister**

**115A.** (1) In any proceedings in respect of any offence against this Act or any regulation made thereunder in which the existence, description, classification, composition, quantity, quality or value of, or any other matter in relation to, **any goods returned** under paragraph 115(1)(a) or (b) or sold or destroyed under paragraph 115(1)(c), is in question, any document produced by the prosecution purporting to be a certificate in respect of any such matter given and signed by—

*[Subst. S89 Act A1593 w.e.f. 1/1/2020]*

- (a) an “analyst” within the meaning of subsection 121(5); or
- (b) a senior officer of customs; or
- (c) any person, regardless whether or not he is a public officer, authorized by or on behalf of the Minister, either generally or in any particular case, for the purposes of this section,

shall be admissible in evidence and its conclusiveness shall not be challenged on the ground that **the goods** in respect of which the certificate is given has not been produced before the court either in part or in entirety, and it shall be evidence of its contents, including the facts stated therein, without proof of the signature to such certificate.

*[Subst. S89 Act A1593 w.e.f. 1/1/2020]*

(2) The provisions of this section shall apply notwithstanding anything contained in any other written law or rule of evidence to the contrary.

### **Powers of arrest**

**116.** (1) Any officer of customs may arrest without warrant—

- (a) any person found committing or attempting to commit, or employing or aiding any person to commit, or abetting the commission of, an offence against this Act or any regulation made thereunder;
- (b) any person whom he may reasonably suspect to have in his possession any uncustomed or prohibited goods or any goods liable to seizure under this Act;

- (c) any person against whom a reasonable suspicion exists that he has been guilty of an offence against this Act or any regulation made thereunder,

and may search or cause to be searched, any person so arrested:

Provided that no female shall be searched except by another female with strict regard to decency.

(2) Every person so arrested shall be taken to a police station or may be detained in the custody of the proper officer of customs.

(3) The proper officer of customs may take or cause to be taken photographs and finger and thumb impressions of any person **arrested under subsection (1)**.

*[Subst. S90 Act A1593 w.e.f. 1/1/2020]*

(4) If any person liable to arrest under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and be dealt with as if he had been arrested at the time of committing such offence.

(5) **Subject to such conditions as the Director General deems fit, every person so arrested may be released from custody—**

*[Subst. S90 Act A1593 w.e.f. 1/1/2020]*

(a) on his depositing such reasonable sum of money as the proper officer of customs may require;

(b) on his executing a bond, with such surety or sureties, as the proper officer of customs may require; or

(c) on his depositing such reasonable sum of money as the proper officer of customs may require and his executing a bond, with such surety or sureties, as the proper officer of customs may require.

(6) Any person who has been released from custody under subsection (5) may be arrested without warrant by any officer of customs—

(a) if such officer has reasonable grounds for believing that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be breached; or

(b) on being notified in writing by the surety of such person that such person is likely to breach any condition on or subject to which such person was released and that the surety wishes to be relieved of his obligation as surety.

**(7) Where a person who is arrested for an offence under this Act is serving a sentence of imprisonment or is under detention under any law relating to preventive detention, or is otherwise in lawful custody, he shall, upon an order in writing by a senior**

officer of customs of or above the rank of Senior Assistant Director, be produced before such officer or before any other senior officer of customs for the purpose of investigation, and for such purpose he may be kept in lawful custody for a period not exceeding fourteen days.

(8) A person who is detained in lawful custody under subsection (7) or otherwise under any other written law may—

- (a) at any time be made available to a senior officer of customs for the purpose of investigation; or
- (b) be taken to any other place for the purpose of searching the place, or seizing any goods, or identifying any person for any other purposes relating to the investigation under this Act.

*[Subst. S90 Act A1593 w.e.f. 1/1/2020]*

### **Power to examine persons**

**116A.** (1) A senior officer of customs investigating an offence under this Act may—

- (a) order any person who appears to be acquainted with the facts and circumstances of the case to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence; or
- (b) order any person to produce before him any book, document or any certified copy of it, or any other article which may, in his opinion, assist in the investigation into the offence.

(2) Paragraph (1)(b) shall not apply to banker's books.

(3) A person to whom an order under paragraph (1)(a) has been given shall—

- (a) attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and
- (b) during such examination, be bound to answer all questions relating to the case put to him and shall be legally bound to state the truth, whether or not such answer is made wholly or partly in answer to questions but he 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.

(4) A person to whom an order has been given under paragraph (1)(b) shall not conceal, destroy, alter, remove from Malaysia, or deal with, expend, or dispose of, any book, document or article specified in the order, or alter or deface any entry in any such book or document, or cause such act to be done, or assist or conspire to do such act.

(5) A person to whom an order is given under subsection (1) shall comply with such order and with the requirements of subsections (3) and (4) notwithstanding any written law to the contrary.

(6) A statement made by any person in the course of investigation under this Act whether or not a caution has been administered to him under subsection 116B(3) shall be recorded in writing by the senior officer of customs examining him and the statement so recorded shall be read to and signed by the person, and where such person refuses to sign the record, the senior officer of customs shall endorse on it under his hand the fact of such refusal and the reason for it, if any, stated by the person examined.

(7) The record of an examination made in the course of an investigation under this Act or any book, document or article produced under paragraph (1)(b) or otherwise in the course of an examination under paragraph (1)(a), shall, notwithstanding any written law to the contrary, be admissible in evidence in any proceedings under this Act in any court—

(a) for offence under this Act; or

(b) for the forfeiture of goods pursuant to section 127, 128 or 131,

*[Subst. S91 Act A1593 w.e.f. 1/1/2020]*

regardless whether such proceedings are against the person who was examined, or who produced the book, document or article, or against any other person.

### **Admissibility of statements in evidence**

**116B.** (1) In any trial or inquiry by a court into an offence under this Act, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at anytime, whether before or after the person is charged and whether in the course of an investigation under this Act or not, and whether or not wholly or partly in answers to questions, by an accused person to or in the hearing of any officer of customs, and whether or not interpreted to him by any other officer of customs or any other person, shall, notwithstanding any written law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement made under subsection (1) shall be admissible or used in cross-examination or for the purpose of impeaching the credit of the person making the statement if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in authority and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(3) Where any person is arrested for an offence under this Act, he shall be cautioned in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence”.

(4) A statement made by any person accused of an offence under this Act made before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of no such caution having been administered if it has been administered as soon as possible.

(5) Notwithstanding anything to the contrary contained in any written law, a person accused of an offence under this Act to which subsection (1) applies, shall not be bound to answer any question relating to the case after any caution referred to in subsection (3) has been administered to him.

### **Procedure where investigation cannot be completed within twenty-four hours**

**116C.** (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within a period of twenty-four hours and there are grounds for believing that the accusation or information is well founded, the senior officer of customs making the investigation under this Act shall immediately transmit to a Magistrate a copy of the entries in the diary prescribed under section 116D relating to the case and shall at the same time produce such person before the Magistrate.

(2) The Magistrate before whom a person is produced under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of such person in such custody as the Magistrate considers fit for a term not exceeding fifteen days in the whole.

(3) If the Magistrate has no jurisdiction to try the case and considers further detention unnecessary, he may order such person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmitting the case for trial by the High Court.

(4) A magistrate authorizing detention under this section shall record his reasons for so doing.

### **Diary of proceedings in investigation**

**116D.** (1) Every officer of customs making an investigation under this Act shall day by day enter his proceedings in the investigation in a diary setting forth—

(a) the time at which the order, if any, for investigation reached him;

- (b) the time at which he began and closed the investigation;
- (c) the place or places visited by him; and
- (d) a statement of the circumstances ascertained through his investigation.

(2) Notwithstanding anything contained in the Evidence Act 1950, an accused person shall not be entitled, either before or in the course of any proceedings under this Act, to call for or inspect any such diary:

Provided that if the officer of customs who has made the investigation refers to the diary for the purposes of section 159 or 160 of the Evidence Act 1950, such entries only as the officer has referred to shall be shown to the accused, and the court shall at the request of the officer cause any other entries to be concealed from view or obliterated.

### **Evidence of agent provocateur admissible**

**116E.** (1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

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

*[Ins. S6 Act A1628 w.e.f. 1/1/2021]*

## PART XIII

### PROVISIONS AS TO TRIALS AND PROCEEDINGS

**117.** *[Deleted by Act A1109]*

### **Magistrate of the First Class to have full jurisdiction**

**118.** Notwithstanding the provisions of any written law to the contrary, a court of a Magistrate of the First Class shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.

## **Burden of proof**

**119.** If in any prosecution in respect of any goods seized for non-payment of duties or for any other cause of for-feiture or for the recovery of any penalty **or surcharge** under this Act, any dispute arises whether the customs duties have been paid in respect of such goods, or whether the same have been lawfully imported or exported or lawfully landed or loaded, or concerning the place whence such goods were brought or where such goods were loaded, or whether anything is exempt from duty under section 14 then and in every such case the burden of proof there of shall lie on the defendant in such prosecution.

*[Subst. S92 Act A1593 w.e.f. 1/1/2020]*

## **Proportional examination of goods seized to be accepted by courts**

**120.** (1) When any goods suspected of being prohibited or uncustomed or otherwise liable to seizure have been seized, it shall be sufficient to open and examine five per centum only of each description of the package or receptacle in which such goods are contained.

(2) If it is necessary to test any goods seized under this Act, it shall be sufficient to test only a sample not exceeding five per centum in volume or weight of the goods examined under subsection (1).

(3) The court shall presume that the goods contained in the unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened.

## **Evidence of analysis may be given in writing**

**121.** (1) In any prosecution for a breach of a provision of this Act or of any regulation made thereunder, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein unless the defendant requires that the analyst be called as a witness, in which case he shall give notice thereof to the prosecutor not less than three clear days before the day on which the summons is returnable.

(2) In like manner a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the defendant, be sufficient evidence of the facts stated therein, unless the prosecutor requires that the analyst be called as a witness.

(3) A copy of the certificate referred to in subsections (1) and (2) shall be sent to the defendant or prosecutor not less than ten clear days before the day fixed for the hearing of the summons, and if it is not so sent the court may adjourn the hearing on such terms as it may think proper.

(4) Analysts are by this Act bound to state the truth in certificates of analysis under their hands.



(5) In this section, “analyst” means—

- (a) a registered chemist under the Chemists Act 1975 [Act 158] or a person authorized under section 23a of such Act, or his employee working under his supervision;
- (b) a registered pharmacist under the Registration of Pharmacists Act 1951 [Act 371] or his employee working under his supervision;
- (c) a registered engineer under the Registration of Engineers Act 1967 [Act 138];  
or
- (d) a registered geologist under the Geologists Act 2008 [Act 689].”;

*[Subst. S93 Act A1593 w.e.f. 1/1/2020]*

(5A) The Minister may, after consultation with the relevant Minister, appoint any qualified person or class of qualified persons by notification in the *Gazette* to be an analyst for the purpose of this section.”.

*[Ins. S93 Act A1593 w.e.f. 1/1/2020]*

(6) If an analyst is called by the defendant as provided by subsection (1), he shall be called at the expense of the defendant unless the court otherwise directs.

(7) If in any trial or proceeding had under this Act it is necessary to determine the alcoholic content of any liquor, the certificate of a senior officer of customs as to such alcoholic content shall be accepted as if such officer were an analyst and in any such case subsections (1), (4) and (6) shall apply in the same manner and to the same extent as if such officer were an analyst.

### **Admissibility of statements and documents of persons who are dead or cannot be traced, etc.**

**121A.**Notwithstanding any written law to the contrary—

- (a) any statement made by any person to an officer of customs in the course of an investigation under this Act; and
- (b) any document or copy of any document seized from any person by an officer of customs in the exercise of his powers under this Act,

shall be admissible in evidence in any proceedings against any person for an offence under this Act before any court if—

- (A) the person who made the statement or the document or the copy of the document is dead, or cannot be traced or found;

- (B) the person who made the statement or the document or the copy of the document has become incapable of giving evidence; or
- (C) the attendance of the person who made the statement or the document or the copy of the document cannot be procured without an amount of delay or expense which appears to the court to be unreasonable.

### **Evidential provisions**

**121B.** (1) For the purposes of any proceeding under this Act, any statement purporting to be signed by the Director General or any officer of customs authorized by the Director General which forms part of or is annexed to the information, demand, statement of claim, shall be *prima facie* evidence of any fact stated therein.

(2) If a transcript of any particulars contained in a declaration or other document relating to the customs duty is certified under the hand of the Director General or any officer of customs authorized by the Director General to be a true copy of the particulars, the transcript shall be *prima facie* evidence as proof of those particulars.

(3) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against that person in any proceedings against him to which this section applies by reason only that he was or may have been induced to make such statement or produce such document by any inducement or promise lawfully given or made by any person having any official duty under, or being employed in the administration of this Act.

(4) Nothing in this Act shall affect the operation of Chapter IX of Part III of the Evidence Act 1950.

(5) For the purposes of paragraph 135(1)(g) or section 135b or 135c, where in any proceedings it is proved that any false statement or entry has been made in any declaration rendered under this Act by or on behalf of any person, or in any books of account or records of any person—

- (a) the person shall be presumed, until the contrary is proved, to have made the false statement or entry or to have caused the false statement or entry to be made or to have allowed it to be made with intent to evade the payment of customs duty or any prohibition of import or export, or to obtain a refund or drawback of customs duty to which the person is not entitled, as the case may be; and
- (b) any other person who made any false statement or entry shall be presumed, until the contrary is proved, to have made the false statement or entry with intent to assist the person referred to in paragraph (a) to evade the payment of customs duty or any prohibition of import or export, or to obtain a refund or drawback of customs duty to which the person referred to in paragraph (a) is not entitled.

(6) Notwithstanding anything to the contrary in any written law, where any officer of customs has obtained any document or other evidence in exercise of his powers under this Act, the document or copy of the document or other evidence, as the case may be, shall be *prima facie* evidence in any proceedings under this Act.

(7) Where any document which is to be used in any proceedings against any person for an offence under this Act is in a language other than the national language or English language, a translation of the document into the national language or English language shall be admissible in evidence where the translation is accompanied by a certificate of the person who translated the document setting out that it is an accurate, faithful and true translation and the translation had been done by the person at the instance of any officer of customs.

(8) Subsection (7) shall apply to a document which is translated, regardless of whether the document was made in or outside Malaysia, or whether the translation was done in or outside Malaysia, or whether possession of the document was obtained by any officer of customs in or outside Malaysia.

*[Ins. S94 Act A1593 w.e.f. 1/1/2020]*

#### **Proof as to registration or licensing of conveyances in Malaysia or Singapore**

**122.** Where in any prosecution under this Act it is relevant to ascertain particulars as to the registration or licensing of any conveyance registered or licensed in any port or place in Malaysia or Singapore, a certificate purporting to be signed by the officer responsible under any written law for the time being in force in Malaysia or any part thereof or in Singapore for such registration or licensing shall be *prima facie* evidence as to all particulars concerning such registration or licensing contained therein, and the burden of proving the incorrectness of any particulars stated in such certificate shall be on the person denying the same.

*[Del. S95 Act A1593 w.e.f. 1/1/2020]*

#### **Proof as to tonnage or build of a craft**

**122A.** (1) Where in any prosecution under this Act or any regulation made thereunder, it is relevant to ascertain the tonnage or build or such other particulars descriptive of the identity of a craft, and if any of these particulars relating to the identity of the craft is in question, then any document produced by the prosecution purporting to be a certificate in respect of any such matter given and signed by any officer responsible for such under any written law for the time being in force in Malaysia shall be admissible in evidence, and it shall be evidence of its contents, including the facts stated therein, without proof of the signature to such certificate.

(2) The provisions of this section shall apply notwithstanding anything contained in any other written law or rule of evidence to the contrary.

### **Proof as to accuracy of a compass radar, etc.**

**122B.** Where in any proceedings it is necessary to prove the accuracy of a compass, radar or any other navigational aid, a certificate purporting to be signed by a harbour master or any officer appointed by the Minister responsible in respect of such compass, radar or any other navigational aid, shall be accepted by the court as *prima facie* proof of the facts certified in such certificate.

### **Proof as to countervailing, **anti-dumping and safeguard** duties payable**

**122C.** Where in any proceedings it is necessary to prove the amount of countervailing duty, **anti-dumping duty or safeguard duty** payable, the production of a certificate signed by the Director General stating the amount of duty payable shall be sufficient authority for the court to give judgement for that amount.

*[Subst. S3 Act A1279 w.e.f. 22/11/2007]*

### **Proof as to accuracy of a meter or other device for measuring petroleum**

**122D.** Where in any proceedings under this Act or any regulations made thereunder it is necessary to prove the accuracy of a meter or any other device for measuring petroleum, a certificate purporting to be signed by any officer responsible under any written law for the time being in force in Malaysia for such measurement shall be admissible in evidence and shall be accepted by the court as *prima facie* evidence of the facts stated in such certificate.

### **Imprisonment for non-payment of fine**

**123.** Notwithstanding the provisions of the Criminal Procedure Code [Act 593] the period of imprisonment imposed by any court in respect of the non-payment of any fine under this Act, or in respect of the default of a sufficient distress to satisfy any such fine, shall be such period of such description, as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale:

<i>Amount of fine</i>	<i>Maximum period</i>
Not exceeding five thousand ringgit	Two months
Exceeding five thousand ringgit but does not exceed ten thousand ringgit	Four months
Exceeding ten thousand ringgit but does not exceed twenty thousand ringgit	Six months

with two additional months for every ten thousand ringgit after the first twenty thousand ringgit of the fine until a maximum period of six years is reached.

*[Subst. S96 Act A1593 w.e.f. 1/1/2020]*

### **Manner of seizure not to be enquired into on trial before court or on appeal to High Court**

**124.** On any trial before any court and in any proceeding on appeal in the High Court, relating to the seizure of goods subject to forfeiture under this Act, the court shall proceed to such trial or hear such appeal on the merits of the case only, without enquiring into the manner or form of making any seizure, except in so far as the manner and form of seizure may be evidence on such merits.

### **Obligation of secrecy**

**124A.** (1) Except as provided under section 125, the name, address, identification card number and passport number of an informer and the substance of the information received from an informer shall be kept secret and shall not be disclosed by any proper officer of customs or any person who in the ordinary course of his duties comes into possession of or has control of or access to such information to any person except the designated officer of customs authorized by the Director General.

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

*[Subst. S97 Act A1593 w.e.f. 1/1/2020]*

### **Protection of informers from discovery**

**125.** (1) Except as hereinafter provided, no witness in any civil or criminal proceeding shall be obliged or permitted to disclose the name or address of an informer or the substance of the information received from him or to state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If on the trial for any offence against this Act or any regulation made thereunder the court after full enquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer,

it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure, concerning the informer.

### **Confidentiality of information**

**125A.** (1) Any person having any official duty or being appointed or employed under this Act shall regard and deal with all information, documents or declarations relating to importation, exportation, valuation, classification or origin determination of any goods as confidential.

(2) Subject to subsection (4), any person having possession or control over any document, information or declaration, or copies thereof, relating to importation, exportation, valuation, classification or origin determination of any goods, who at any time, otherwise than for the purposes of this Act or with the express authority of the Director General—

- (a) communicates such information or anything contained in such document or declaration, or copies thereof, to any person; or
- (b) suffers or permits any person to have access to such information or to anything contained in such document or declaration, or copies thereof,

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

(3) No person having any official duty or being appointed or employed under this Act shall be required—

- (a) to produce in any matters or proceedings in any court or tribunal any information, documents or declarations; or
- (b) to divulge or communicate in such matters or proceedings any matter or thing, coming under his notice in the performance of his duties under this Act,

except as may be necessary for the purpose of carrying into effect the provisions of this Act, or in order to institute a prosecution, or in the course of a prosecution for any offence committed under this Act.

(4) The Director General may transmit or communicate any information or documents referred to in subsection (2) as he deems expedient or necessary to allow disclosure of certain information to any person.

(5) Notwithstanding subsection (4), the Director General shall not transmit or communicate any information or documents to a corresponding authority in a foreign state unless—

- (a) an agreement or arrangement has been entered with that foreign state regarding the exchange of information; and
- (b) the Director General is satisfied that the corresponding authority has given appropriate undertaking for protecting the confidentiality of anything communicated to it and for controlling the use of it, including an undertaking that it will not be used as evidence in any proceeding.

(6) The Director General shall record in writing all decisions to transmit or communicate any information or documents to a foreign state.

*[Subst. S98 Act A1593 w.e.f. 1/1/2020]*

### **Goods liable to seizure liable to forfeiture**

126. All goods liable to seizure under this Act, shall be liable to forfeiture and all forfeited goods shall be disposed of in accordance with the directions of the Director General.

*[Subst. S99 Act A1593 w.e.f. 1/1/2020]*

### **Court to order disposal of goods seized**

127. (1) An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence against this Act or any regulation made thereunder has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

(1A) The amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c) shall be forfeited by the court if it is proved to the satisfaction of the court that an offence against this Act or any regulation made thereunder has been committed and that the goods in respect of which the amount was secured or realized by sale, as the case may be, 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.

*[Subst. S100 Act A1593 w.e.f. 1/1/2020]*

(2) All things forfeited shall be delivered to a proper officer of customs and shall be disposed of in accordance with the directions of the Director General.

**Goods seized in respect of which there is no prosecution, or the proceeds of sale thereof, are forfeited if not claimed within one month**

**128.** (1) If there be no prosecution with regard to any goods seized under this Act, such goods or the proceeds of sale of such goods which are held pursuant to paragraph 115(1)(c) shall be taken and deemed to be forfeited at the expiration of **thirty days from the date of the notice of seizure of the goods** unless, before such expiration—

*[Subst. S101 Act A1593 w.e.f. 1/1/2020]*

- (a) a claim to such goods or the proceeds of sale of such goods is made under subsection (2);
- (b) a written application is made for the return of such goods under paragraph 115(1)(a) or (b); or
- (c) such goods are returned under the said paragraph (a) or (b).

(2) Any person asserting that he is the owner of such goods or the proceeds of sale of such goods, as the case may be, and that they are not liable to forfeiture may give written notice to a senior officer of customs that he claims the same.

(3) **If there is a claim or a written application made within the period of thirty days referred to in subsection (1) and there is no prosecution with regard to the goods, the senior officer of customs shall, on the expiration of the period of thirty days, refer the claim or the application to the Director General.**

*[Subst. S101 Act A1593 w.e.f. 1/1/2020]*

(3A) **Upon reference by the senior officer of customs under subsection (3), the Director General may direct such senior officer of customs—**

- (a) **to release such goods or the proceeds of sale of such goods or the security furnished under paragraph 115(1)(a) or (b); or**
- (b) **by information in the prescribed form, to refer the matter to a Magistrate of the First Class for his decision.**

*[Ins. S101 Act A1593 w.e.f. 1/1/2020]*

(4) The Magistrate of the First Class shall issue a summons requiring the person asserting that he is the owner of the goods or the proceeds of sale of such goods, and the person from whom the goods were seized, to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the Magistrate of the First Class shall proceed to the examination of the matter, and upon proof that an offence against this Act or any regulations made thereunder has been committed and that such goods were the subject matter, or were used in the commission, of such offence, shall order such goods or the proceeds of sale of such goods or the



amount secured under paragraph 115(1)(a) or (b), as the case may be, to be forfeited, or in the absence of such proof, may order the release of such goods or the proceeds of sale of such goods or the security furnished under paragraph 115(1)(a) or (b), as the case may be.

(5) In any proceedings under subsection (4), section 119 shall apply to the person asserting that he is the owner of the goods and to the person from whom they were seized as if such owner or person had been the defendant in a prosecution under this Act.

### **Goods or amount forfeited may be delivered or refunded to the owner or other person**

**129.** The Minister may, upon application made to him in writing through the Director General, order—

- (a) any goods seized under this Act; or
- (b) any amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c);

whether forfeited, or taken and deemed to be forfeited, pursuant to section 127, 128 or 131, to be delivered or refunded, as the case may be, to the owner or other person entitled thereto **on payment** of such amount and upon such terms and conditions as he may deem fit:

*[Subst. S102 Act A1593 w.e.f. 1/1/2020]*

Provided that any such application shall be made before the expiration of one calendar month from the date on which such goods or amount are forfeited or are taken and deemed to be forfeited, as the case may be.

### **Conviction under other law**

**130.** Nothing in this Act contained shall be deemed to prevent the prosecution, conviction and punishment of any person according to the provisions of any other written law; but so that no person shall be punished more than once for the same offence.

### **Compounding of offences**

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

- (a) any offence under this Act or its subsidiary legislation as an offence which may be compounded;

(b) criteria for compounding such offence; and

(c) method and procedure for compounding such offence.

(2) Any senior officer of customs may, with the written consent of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Director General of an amount of money not exceeding fifty per centum of the amount of the maximum fine for that offence within the period specified in the offer.

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

(4) Where an offence has been compounded under subsection (2), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

(5) Subject to subsections (6) and (7), upon the payment of such sum of money as specified under subsection (1), any goods seized and the amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c) shall be released and no further proceedings shall be taken against such goods.

(6) If dutiable goods are seized under this Act, such goods or the amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c), as the case may be, shall be forfeited unless the customs duties payable is paid within thirty days from the date of payment of such amount of money.

(7) If prohibited goods are seized under this Act, such goods or the amount secured under paragraph 115(1)(a) or (b) or the amount realized by sale under paragraph 115(1)(c), as the case may be, shall be forfeited.

(8) Notwithstanding subsection (7), where the prohibition on the goods is conditional upon a licence being issued, a senior officer of customs may release such goods if a licence is issued by any relevant authority and produced to the senior officer of customs within thirty days from the date such amount of money is paid.

*[Subst. S103 Act A1593 w.e.f. 1/1/2020]*

### **Cost of holding goods, document or thing seized**

**131A.** Where any goods, document or thing seized under this Act is held in the custody of the officer of customs pending completion of any proceedings in respect of an offence under this Act, the cost of holding such goods, document or thing in custody shall, in the

event of any person found guilty of an offence, be a debt due to the Government by such person and shall be recoverable accordingly.

*[Ins. S104 Act A1593 w.e.f. 1/1/2020]*

### **No costs of damages arising from seizure to be recoverable unless seizure without reasonable or probable cause**

**132.** No person shall in any proceedings before any court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief other than an order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.

### **Order to pay cost of damage to Government property**

**132A.** If any person is convicted of an offence under this Act or any regulation made thereunder, and it appears to the court before which he is convicted that the commission of such offence has caused damage to any Government property, the court may, in addition to any punishment specified for the offence, order the person so convicted to pay the Director General the costs and expenses incurred in repairing or replacing the property and any other cost and expenses incurred in connection with the damage to the property.

*[Ins. S105 Act A1593 w.e.f. 1/1/2020]*

## PART XIV

### OFFENCES AND PENALTIES

#### **Penalty on making incorrect declarations and on falsifying documents**

**133. (1)** Whoever—

- (a)* makes, orally or in writing, or signs any declaration, certificate or other document required by this Act which is untrue or incorrect in any particular;
- (b)* makes, orally or in writing, or signs any declaration or document, made for consideration of any officer of customs on any application presented to him, which is untrue or incorrect in any particular;
- (c)* counterfeits or causes to be counterfeited or falsifies or causes to be falsified any document which is or may be required under this Act or used in the transaction of any business or matter relating to customs, or uses or causes to be used or in any way assists in the use of such counterfeited or falsified document;

*[Ins. S6 Act A1580 w.e.f. 2/1/2019]*

- (d) fraudulently alters any document, or counterfeits the seal, signature, initials or other mark of, or used by, any officer of customs for the verification of any such document or for the security of any goods or any other purpose in the conduct of business relating to customs;
- (e) being required by this Act to make a declaration of dutiable goods imported or exported, fails to make such declaration as required;
- (f) fails or refuses to produce to a proper officer of customs any document required to be produced under section 100; or
- (g) being so required under section 87A fails to make a declaration in the prescribed form, within the stipulated period thereunder, of goods **imported or exported**,

*[Subst. S106 Act A1593 w.e.f. 1/1/2020]*

**shall be guilty of an offence and shall, on conviction**, be liable to a fine not exceeding \*five hundred thousand ringgit or to imprisonment for a term not exceeding \*\*seven years or to both.

*[Subst. S6 Act A1580 w.e.f. 2/1/2019]*

(2) When any such declaration whether oral or written, or any such certificate or other document as is referred to in paragraphs (1)(a), (b) and (c) has been proved to be untrue or incorrect or counterfeited or falsified in whole or in part, it shall be no defence to allege that such declaration, certificate or other document was made or used inadvertently or without criminal or fraudulent intent, or that the person signing the same, was not aware of, or did not understand the contents of, such document, or where any declaration was made or recorded in National Language or in English by interpretation from any other language, that such declaration was misinterpreted or not fully interpreted by any interpreter provided by the declarant.

(3) For the purposes of this section, “falsified” in relation to a document shall be deemed to include a document which is untrue or incorrect in any material particular, and “falsifies” has a similar meaning.

### **Penalty on refusing to answer questions or on giving false information**

**134.** (1) Whoever, being required by this Act to give any information which may reasonably be required by a proper officer of customs and which it is in his power to give, refuses to give such information or furnishes as true information which he knows or has reason to believe to be false, shall, on conviction, be liable to imprisonment for a term not exceeding **five years or to a fine not exceeding one hundred thousand ringgit** or to both.

*[Subst. S7 Act A1580 w.e.f. 2/1/2019]*

(2) When any such information is proved to be untrue or incorrect in whole or in part it shall be no defence to allege that such information or any part thereof was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

**Penalty relating to smuggling offences, evasion of duty, fraud, etc.**

135. (1) Whoever—

- (a) is concerned in importing or exporting any uncustomed goods or any prohibited goods contrary to such prohibition whether such uncustomed or prohibited goods be shipped, unshipped, delivered or not;
- (b) ships, unships, delivers or assists or is concerned in the shipping, unshipping or delivery of any uncustomed goods or any prohibited goods contrary to such prohibition;
- (c) illegally removes or withdraws or in any way assists or is concerned in the illegal removal or withdrawal of any goods from any customs control;
- (d) knowingly harbours, keeps, conceals, or is in possession of, or permits, suffers, causes or procures to be harboured, kept or concealed, any uncustomed or prohibited goods;
- (e) is in any way knowingly concerned in conveying, removing, depositing or dealing with any dutiable, uncustomed or prohibited goods with intent to defraud the Government of any duties thereon, or to evade any of the provisions of this Act or to evade any prohibition applicable to such goods;
- (f) being a passenger or other person, is found to have in his baggage or upon his person or otherwise in his possession, after having denied that he has any dutiable or prohibited goods in his baggage or upon his person or otherwise in his possession, any dutiable or prohibited goods; or
- (g) is in any way knowingly concerned in any fraudulent evasion or attempt at fraudulent evasion of any customs duty, or in evasion or attempt at evasion of any prohibition of import or export;

shall be guilty of an offence and shall, on conviction—

- (i) in the case of goods included in a class of goods appearing in an order made under subsection 11(1)—
  - (aa) be liable for the first offence to a fine of not less than ten times the amount of the customs duty or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the customs duty or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both; and

*(bb)* be liable for a second offence or any subsequent offence to a fine of not less than twenty times the amount of the customs duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the customs duty or one million ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding seven years or to both:

*[Subst. S8 Act A1580 w.e.f. 2/1/2019]*

Provided that when the amount of the customs duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both;

(ii) in the case of uncustomed goods, such goods not being dutiable or prohibited, be liable to a fine not exceeding twice the value of the goods or ten thousand ringgit whichever is the greater amount:

Provided that where the value cannot be ascertained the penalty may amount to a fine not exceeding ten thousand ringgit;

(iii) in the case of prohibited goods *other than cigarettes containing tobacco and intoxicating liquor*—

*(aa)* be liable for the first offence to a fine of not less than ten times the value of the goods or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the value of the goods or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both; and

*(bb)* be liable for a second offence or any subsequent offence to a fine of not less than twenty times the value of the goods or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the value of the goods or one million ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding seven years or to both:

*[Subst. S8 Act A1580 w.e.f. 2/1/2019]*

Provided that where the value of the goods cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both;

(iv) in the case of cigarettes containing tobacco or intoxicating liquor included in a class of goods appearing in an order made under subsection 11(1)—

*(aa)* be liable for the first offence to a fine of not less than ten times the amount of the customs duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the customs duty or five hundred thousand ringgit, whichever is the

greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both; and

(bb) be liable for a second offence or any subsequent offence to a fine of not less than twenty times the amount of the customs duty or two hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the customs duty or one million ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than seven years or to both; and

*[Subst. S107 Act A1593 w.e.f. 1/1/2020]*

(v) in the case of cigarettes containing tobacco or intoxicating liquor which are prohibited goods—

(aa) be liable for the first offence to a fine of not less than ten times the value of the goods or one hundred thousand ringgit, whichever is the greater amount, and of not more than twenty times the value of the goods or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both; and

(bb) be liable for a second offence or any subsequent offence to a fine of not less than twenty times the value of the goods or two hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the value of the goods or one million ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than seven years or to both.

*[Subst. S8 Act A1580 w.e.f. 2/1/2019]*

*[Subst. S107 Act A1593 w.e.f. 1/1/2020]*

(2) In any prosecution under this section or section 139 any dutiable, uncustomed or prohibited goods shall be deemed to be dutiable, uncustomed or prohibited goods, as the case may be, to the knowledge of the defendant unless the contrary be proved by such defendant.

### **Penalty for offences relating to data stored in computer**

**135A.** (1) Any person who, without the authority of the Director General—

(a) destroys, damages, erases or alters or manipulates the data stored in, or used in connection with, a computer;

(b) introduces into, or records or stores in, a computer by any means data for the purpose of—

- (i) destroying, damaging, erasing, altering or manipulating other data stored in that computer; or
  - (ii) interfering with, interrupting or obstructing the lawful use of that computer, or the data stored in that computer; or
- (c) otherwise uses a computer, the purpose or effect of which is to reduce, avoid or evade any liability to customs duty imposed or which would otherwise have been imposed by the Act, or to defeat any provision of the Act, shall be guilty of 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.

(2) In this section, “data” includes any computer program or part of a computer program.

### **Penalty for offence relating to claims for drawback**

**135B.** Any person who obtains, or does anything which causes any other person to obtain, any amount by way of drawback of any customs duty in respect of any goods which is not lawfully payable or allowable in respect thereof, or which is higher than the amount so payable or allowable shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three times the amount of such duty or five hundred thousand ringgit, whichever is the greater, or to imprisonment for a term not exceeding seven years or to both.

### **Penalty for offence relating to claims for refund**

**135C.** Any person who obtains, or does anything which causes any other person to obtain, the refund of any money under section 16 of any amount in excess of the amount properly so refundable shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three times the amount refunded in excess of the amount properly so refundable or five hundred thousand ringgit, whichever is the greater, or to imprisonment for a term not exceeding seven years or to both.

*[Ins. S108 Act A1593 w.e.f. 1/1/2020]*

### **Penalty for assaulting or obstructing officers of customs and rescuing goods**

**136.** Every person who—

- (a) **assaults, obstructs, hinders, threatens or molests** any officer of customs or other public servant or any person acting in his aid or assistance or duly employed for the prevention of smuggling, in the execution of his duty or in the due seizing of any goods liable to seizure under this Act;



- (b) rescues or endeavours to rescue, or causes to be rescued, **or any person who has been detained**; or
- (c) before or after any seizure staves, breaks or otherwise destroys any package or goods to prevent the seizure thereof or the securing of the same,

shall for any such offence be liable—

- (i) on the first conviction, to imprisonment for a term not exceeding **five years or to a fine not exceeding five hundred thousand ringgit** or to both; and
- (ii) on the second or subsequent conviction to imprisonment for a term not exceeding **seven years or to a fine not exceeding one million ringgit** or to both.

*[Subst. S9 Act A1580 w.e.f. 2/1/2019]*

### **Penalty for offering or receiving bribes**

**137. (1)** If any officer of customs or other person duly employed for the prevention of smuggling—

- (a) makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any conveyance, or any goods liable to seizure;
- (b) accepts, agrees to accept, or attempts to obtain, any bribe, gratuity, recompense or reward for the neglect or nonperformance of his duty; or
- (c) conspires or connives with any person to import or export or is in any way concerned in the importation or exportation of any goods liable to customs duties or any goods prohibited to be imported or exported for the purpose of seizing any conveyance or any goods and obtaining any reward for such seizure or otherwise,

*[Del. S109 Act A1593 w.e.f. 1/1/2020]*

every such officer so offending shall be guilty of an offence against this Act and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding **five hundred thousand ringgit** or to both such imprisonment and fine, and shall be interdicted from holding office in the public service of the Federal Government or the Government of any State, and every person who gives or offers or promises to give or procures to be given any bribes, gratuity, recompense or reward to, or makes any collusive agreement with, any such officer or person as aforesaid to induce him in any way to neglect his duty or to do, conceal or connive at any act whereby any of the provisions of any other law relating to imports or to exports may be evaded, shall be guilty as an abettor and so punishable under this Act.

*[Subst. S10 Act A1580 w.e.f. 2/1/2019]*

(2) Any officer of customs who is found when on duty to have in his possession any monies in contravention of any departmental regulations issued in writing shall be presumed, until the contrary is proved, to have received the same in contravention of paragraph (1)(b).

(3) If an officer of customs has reasonable suspicion that another officer of customs junior in rank to him has in his possession any money received in contravention of paragraph(1)(b) he may search such other officer.

### **Penalty for offences not otherwise provided for**

**138.** Every omission or neglect to comply with, and every act done or attempted to be done contrary to, the provisions of this Act, or any breach of the conditions and restrictions subject to, or upon which, any licence or permit is issued or any exemption is granted under this Act, shall be an offence against this Act and in respect of any such offence for which no penalty is expressly provided the offender shall be liable to a fine of not exceeding **fifty thousand** ringgit or to imprisonment for a term not exceeding five years or to both.

*[Subst. S11 Act A1580 w.e.f. 2/1/2019]*

### **Attempts and abetments**

**139.** Whoever attempts to commit any offence punishable under this Act, or abets the commission of such offence, shall be punishable with the punishment provided for such offence.

### **Offences by bodies of persons and by servants and agents**

**140.** (1) Where an offence against this Act or any regulation made thereunder has been committed by a company, a firm, a society, an association or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the company, firm, society, association or other body of persons or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person would be liable under this Act to any punishment, penalty or forfeiture for any act, omission, neglect or default he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any clerk, servant or agent, or of the clerk or servant of such agent provided that such act, omission, neglect or default was committed by such clerk, or servant in the course of his employment or by such agent when acting on behalf of such person or by the clerk or servant of such agent when acting in the course of his employment in such circumstances that had such act, omission, neglect or default been committed by the agent his principal would have been liable under this section.

## Rewards

**141.** The Director General may order such rewards as he may deem fit to be paid to any officer or other person for services rendered in connection with the detection of cases of smuggling or of offences under this Act, or in connection with any seizures made under this Act.

## PART XIVA

### CUSTOMS APPEAL TRIBUNAL

## Interpretation

**141A.** In this Part, unless the context otherwise requires—

“Chairman” means the Chairman of the Tribunal appointed under paragraph 141C(1)(a);

“Deputy Chairman” means the Deputy Chairman of the Tribunal appointed under paragraph 141C(1)(a);

“Secretary” means the Secretary to the Tribunal appointed under section 141H;

“Tribunal” means the Customs Appeal Tribunal established under section 141B.

## Establishment of Tribunal

**141B.** A tribunal to be known as “the Customs Appeal Tribunal” is established.

## Membership of Tribunal

**141C.** (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman and not more than two Deputy Chairmen from amongst members of the Judicial and Legal Service; and
- (b) not less than seven other members as the Minister deems fit from amongst the persons who, in the opinion of the Minister, have wide knowledge or extensive experience in any field of activities relating to customs or taxation.

*[Subst. S4 Act A1571 w.e.f. 1/9/2018]*

(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.

(3) The Minister shall determine the terms and conditions of the appointment of the Chairman, Deputy Chairman and other members of the Tribunal.”

*[Ins. S4 Act A1571 w.e.f. 1/9/2018]*

### **Temporary exercise of functions of Chairman**

**141D.** 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.

### **Revocation of appointment**

**141E.** The Minister may revoke the appointment of a member of the Tribunal appointed under paragraph 141C(1)(b) if—

- (a) 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) he has become incapable of properly carrying out his duties as a member of the Tribunal;
- (c) 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, the Excise Act 1976 [*Act 176*], the Sales Tax Act 2018 [*Act 806*] or the Service Tax Act 2018, or the repealed Sales Tax Act 1972 [*Act 64*], Service Tax Act 1975 [*Act 151*] or Goods and Services Tax Act 2014 [*Act 762*]; or
  - (iv) any other offence punishable with imprisonment for more than two years;
- (d) he is adjudicated a bankrupt;
- (e) he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs; or
- (f) he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

## **Resignation**

**141F.** (1) Subject to subsection (2), a member of the Tribunal may at any time resign his office by giving notice in writing to the Minister.

(2) For the purpose of resignation, a member of the Tribunal appointed under paragraph 141C(1)(b) shall give three months' notice in writing to the Minister.

## **Remuneration**

**141G.** All members of the Tribunal shall be paid such remuneration as the Minister may determine.

## **Secretary to Tribunal and other officers**

**141H.** (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 Secretary and officers of the Tribunal.

(3) The Secretary to the Tribunal shall be deemed to be an officer of the Tribunal.

## **Public servant**

**141I.** All members, officers and the Secretary of the Tribunal while discharging their duties shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

## **Sitting of Tribunal**

**141J.** (1) The sitting of every appeal shall consist of a panel of three members.

(2) In every appeal proceedings, the Tribunal shall be presided by—

(a) the Chairman;

(b) the Deputy Chairman; or

(c) any other member appointed by the Chairman.

(3) The decision of the Tribunal shall be determined in accordance with the opinion of the majority of the members of the panel.

(4) Where a member of the panel under subsection (1), other than the person presiding over the proceedings referred to in subsection (2), dies or becomes incapable

of exercising his functions as a member, the proceedings shall continue before, and decision shall be given by, the remaining members of the panel, and the panel shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death or incapability of the member as aforesaid.

(5) In the case where two members of the panel under subsection (1), other than the person presiding over the proceedings referred to in subsection (2), die or become incapable of exercising their functions as members, the proceedings shall be continued by the person presiding over the proceedings sitting alone.

(6) In the case under subsection (4), the decision shall be determined in accordance with the opinion of the majority of the remaining members of the panel, and if there is no majority, the person presiding over the proceedings shall have a casting vote.

(7) If the person presiding over the proceedings referred to in subsection (2) dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the appeal shall be heard afresh, unless the parties agree that the presiding person be replaced—

- (a) in the case where the presiding person is the Chairman, by a Deputy Chairman, or any other member appointed by the Deputy Chairman;
- (b) in the case where the presiding person is a Deputy Chairman, by the Chairman or another Deputy Chairman, or any other member appointed by the Chairman; or
- (c) in the case where the presiding person is the member appointed by the Chairman, by the Chairman or a Deputy Chairman, or any other member appointed by the Chairman.

(8) Where the term of appointment of any member of the panel expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

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

*[Subst. S8 Act A1571 w.e.f. 1/9/2018]*

### **Hearing by single members**

**141K.** Notwithstanding section 141J, if the Chairman deems it fit in the interest of achieving expeditious and efficient conduct of the appeal, the proceedings of the appeal shall be presided over by any of the following persons sitting alone:

- (a) the Chairman;
- (b) any of the Deputy Chairmen; or

*(c) any other member of the Tribunal as the Chairman may determine.*

*[Subst. S9 Act A1571 w.e.f. 1/9/2018]*

### **Disclosure of interest**

**141L.** (1) A member of the Tribunal having, directly or indirectly, by himself or his family member, any interest in an appeal brought before him as a member, such member shall, immediately, disclose the fact and the nature of his interest to the Chairman.

(2) Upon receipt of the disclosure of interest under subsection (1), the Chairman shall appoint another member to hear and dispose of the appeal.

### **Jurisdiction of Tribunal**

**141M.** (1) The Tribunal shall have jurisdiction to determine any appeal made under section 143 of the Act, section 47 of the Excise Act 1976, *subsection 96(5) of the Sales Tax Act 2018, section 81 of the Service Tax Act 2018, and section 126 of the repealed Goods and Services Tax Act 2014 as provided under section 5 of the Goods and Services Tax (Repeal) Act 2018 [Act 805].*

*[Subst. S10 Act A1571 w.e.f. 1/9/2018]*

(2) Without affecting subsection (1), the Minister may by order prescribe any additional matters to be within the jurisdiction of the Tribunal.

(3) An appellant may lodge with the Tribunal an appeal in the prescribed form together with the prescribed fee.

### **Exclusion of jurisdiction of court**

**141N.** (1) Where an appeal is lodged with the Tribunal and the appeal is within the jurisdiction of the Tribunal, the issues in dispute in such appeal, whether as shown in the initial appeal 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 appeal was lodged with the Tribunal; or

*(b)* the appeal before the Tribunal is withdrawn, abandoned or struck out.

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

## Notice of appeal and hearing

**141O.** Upon an appeal being lodged under section 141M, the Secretary shall give notice of the details of the day, time and place of hearing in the prescribed form to the Director General and the appellant.

## Negotiation for settlement

**141P.** (1) The Tribunal shall, as regards every appeal within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to the proceedings to negotiate an agreed settlement in relation to the appeal.

(2) Without limiting the generality of subsection (1), in making an assessment the Tribunal shall have regard to any factor 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 a decision 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 appeal; or

(b) the parties are unable to reach an agreed settlement in relation to the appeal,

the Tribunal shall proceed to determine the appeal.

## Representation at hearing

**141Q.** For the purpose of an appeal before the Tribunal—

(a) the Director General may be represented by any officer authorized by him; and

(b) the appellant may conduct the appeal himself or be represented by any person duly authorized by him.

*[Subst. S11 Act A1571 w.e.f. 1/9/2018]*

## Proceedings to be closed

**141R.** (1) Unless agreed by the parties to the appeal, all proceedings before the Tribunal shall be closed from the public.

(2) Notwithstanding subsection (1), where the Tribunal is of the opinion that it would be in the interest of the public, the Tribunal may allow the publication of the facts of the appeal, decision of the appeal and reasons for the decision.



(3) Notwithstanding subsection (2), the Tribunal shall not publish information the disclosure of which is prohibited or restricted by or under this Act or any other written law.

*[Subst. S12 Act A1571 w.e.f. 1/9/2018]*

## **Evidence**

**141S.** (1) Any proceedings before the Tribunal shall be conducted without regard to formality and technicality and 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 and things;
- (c) administer such oath, affirmation or statutory declaration as the case may be;
- (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 appeal.

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

## **Decision of the Tribunal**

**141T.** (1) The Tribunal shall make its decision without delay and where practicable, within sixty days from the first day the hearing before the Tribunal commences.

- (2) The Tribunal shall have the power—
- (a) to affirm the decision of the Director General;
  - (b) to vary the decision of the Director General; or
  - (c) to set aside the decision of the Director General and substitute it with a new decision.

(3) The Tribunal shall give its reason for its decision in any appeal heard before it.

### **Provisions relating to costs and expenses**

**141TA.** The Tribunal may make an award as to costs and expenses as may be prescribed and may determine to what extent the costs and expenses are to be paid—

- (a) by the appellant, if the Tribunal is satisfied that the appellant had conducted his case in a frivolous or vexatious manner; or
- (b) by any party to the appeal, if the Tribunal is satisfied that in all circumstances of the case it would be unjust and inequitable not to award the costs and expenses.

*[Ins. S13 Act A1571 w.e.f. 1/9/2018]*

### **Decision and settlement to be recorded in writing**

**141U.** 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 141P(3); and
- (b) every decision made by it under section 141T.

### **Decision of Tribunal to be final**

**141V.** (1) A decision of the Tribunal shall be—

- (a) final and binding on all parties to the proceedings; and
- (b) deemed to be an order of a Sessions Court and be enforced accordingly by the parties to the proceedings.

(2) For the purpose of subsection (1)(b), the Secretary shall send a copy of the decision made by the Tribunal to the Sessions Court having jurisdiction in the place to which the decision relates or in the place where the decision was made and the Court shall cause the copy to be recorded.

### **Appeal to the High Court**

**141W.** Any person aggrieved by the decision of the Tribunal may appeal to the High Court on a question of law or of mixed law and fact.

### **Tribunal to adopt procedure**

**141X.** Subject to this Act, the Tribunal may adopt such procedure as it thinks fit and proper.

### **Want of form**

**141Y.** No proceedings, decision or document of the Tribunal shall be set aside or quashed for want of form.

### **Disposal of documents, etc.**

**141Z.** (1) The Tribunal may, at the conclusion of the proceedings before it, order that any document, record, material, thing, goods 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, things, goods or other property referred to in subsection (1) after a period of six months, the ownership in the document, record, material, thing, goods or other property shall be deemed to have passed to and become vested in the Government.

### **Act or omission done in good faith**

**141AA.** No action or suit shall be instituted or maintained in any court against—

- (a) the Tribunal;
- (b) a member of the Tribunal; or
- (c) any 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**

**141AB.** (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 the proceedings under this Part;
- (d) prescribing and imposing fees and providing the manner for collecting and disbursing such fees;
- (e) prescribing anything required to be prescribed under this Part.

## PART XV

### REGULATIONS

#### **Power to make regulations**

**142.** The Minister may make regulations—

- (1) to regulate the powers and duties to be exercised and performed by officers of customs;
  - (2) to regulate the conduct of all matters relating to the collection of customs duties including the time of payment hereof and the imposition of a surcharge for late payment;
  - (3) to prescribe the time and the manner for payment of customs duties in Sarawak;
  - (4) to prescribe customs ports and legal landing places within those customs ports for the landing and shipping of goods imported, exported or transported by sea, and to define the limits of such ports and landing places and to prescribe the goods that may be landed or shipped thereat;
  - (4A) to regulate the landing and loading of goods under section 33;
- [Ins. S110 Act A1593 w.e.f. 1/1/2020]*
- (5) to prescribe places of import and export by road and rail and the routes to be used for the import and export of goods by road;
  - (6) to prescribe customs airports for the import or export of goods by air;
  - (7) to prescribe inland customs stations at which customs duties may be collected;
  - (7A) to prescribe, for any purpose under this Act, places other than those mentioned in paragraphs (4), (5), (6) and (7);
  - (8) to prescribe the days and times during which any customs office, customs station or customs or licensed warehouse may be open for business and the times during which any goods may be landed, shipped or loaded at any

customs port or customs airport or imported or exported by road at any place of import and export;

(9) to prescribe the rates of overtime fees to be paid by the masters or agents of vessels or by pilots of aircraft or agents of aircraft or by the persons in charge of vehicles or by the importers or exporters of goods or their agents in respect of the services of officers of customs rendered on request beyond the ordinary hours prescribed and the conditions under which such overtime may be permitted;

(9A) to regulate any matter relating to port clearance;

*[Ins. S110 Act A1593 w.e.f. 1/1/2020]*

(10) to provide for the control by officers of customs of traffic carried on in coasting vessels in the territorial waters;

(11) to prescribe the flag to be flown by vessels employed for the prevention of smuggling;

(12) to prescribe the forms to be used under this Act;

(13) to regulate the deposit, custody and withdrawal of goods in and from customs and licensed warehouses, **warehouses or other places approved by the Director General or petroleum supply bases**, and the management and control of the same;

*[Ins. S110 Act A1593 w.e.f. 1/1/2020]*

(14) to regulate the issue of licences;

(15) to prescribe the fees, if any, to be paid for permits and licences;

*[Ins. S110 Act A1593 w.e.f. 1/1/2020]*

(16) to prescribe the stock books to be kept by licensees and the method of keeping the same;

(17) to prescribe the method of importing, exporting, transporting or removing any goods under a licence or permit;

(18) to prescribe the manner in which the packages of goods imported or exported shall be marked and numbered and the manner in which the invoices shall be prepared;

(19) to regulate the manner **and to provide the conditions** in which goods may be transhipped or goods in transit may be moved;

*[Amd. S110 Act A1593 w.e.f. 1/1/2020]*

(19A) to regulate any matter relating to customs agent;

*[Ins. S12 Act A1580 w.e.f. 2/1/2018]*

(19B) to regulate any matter relating to manifest;

*[Ins. S110 Act A1593 w.e.f. 1/1/2020]*

(20) to prescribe customs areas and to regulate or prohibit, either absolutely or conditionally, the movement of goods or persons within such areas for the purposes of this Act;

(21) to prescribe the manner in which intoxicating liquor shall be denatured in customs or licensed warehouse;

(22) to regulate the blending, compounding, varying and bottling of intoxicating liquor in customs or licensed warehouse;

(23) to prohibit the payment of drawback upon the re-exportation of any specified goods or class of goods;

(24) to specify the goods dutiable on import in respect of which drawback may be allowed on re-export as part or ingredient of any goods manufactured in Malaysia and to fix the rate of drawback thereon;

(25) *[Del. by S110 Act A1593 w.e.f. 1/1/2020]*

(26) to prescribe the offences which may be compounded and the manner in which, and the officer of customs by whom, they may be compounded, **the criteria for compounding the compoundable offence;**

*[Amd. S110 Act A1593 w.e.f. 1/1/2020]*

(27) to define for the purposes of this Act any goods;

(28) to prescribe penalties for any contravention or failure to comply with any of the provisions of any regulation made under this section or with the restrictions of conditions of any licence or permission granted under any such regulations:

Provided that no such penalty exceed the penalty prescribed under section 138;

(29) to prescribe permits and other documents to be carried by local craft or barges transporting cargo from or to vessels in a customs port;

(30) to prescribe the manner in which dutiable or prohibited goods shall or shall not be packed, and to regulate or prohibit the inclusion of dutiable or prohibited goods in the same package or receptacle with non-dutiable goods;

- (31) to prescribe standard containers in which dutiable goods shall be exported;
- (32) to regulate the erection, inspection, supervision, management and control of premises licensed under section 65A and the fittings, implements, machinery and apparatus maintained therein;
- (33) to regulate the hours during which manufacture may or may not take place and during which goods may be removed from premises licensed under this Act;
- (34) to prescribe what accommodation any person licensed under section 65A shall provide free of cost for such proper officers as the Director General may deem to be necessary for the control of the licensed premises;
- (35) to regulate the conduct of all matters relating to duty freeshops;
- (35A) to regulate the movement of goods into and from the Joint Development Area;
- (35B) to determine the customs value of imported goods;
- (35C) to regulate the conduct of all matters relating to customs rulings;
- (35D) to prescribe and impose fees relating to customs rulings and provide the manner for collecting and disbursing such fees;
- (35E) to prescribe the forms to be used for the purpose of customs rulings;
- (35F) to regulate any matter relating to the origin of goods including—
  - (i) to prescribe the criteria for authorization or appointment of the authorized body or the issuing authority, as the case may be;
  - (ii) to prescribe the procedures and conditions relating to the issuance of a preferential or non-preferential certification of origin or declaration of origin;
  - (iii) to prescribe the criteria for importers, producers or exporters registered under section 99E;
  - (iv) to prescribe the goods or type of goods entitled to preferential tariff treatment;
  - (v) to prescribe the rules of origin of goods for preferential or non-preferential tariff treatment; and
  - (vi) generally to give effect to the provisions of Part XA;

(35G) to regulate the operation of the petroleum supply base and any matter relating to it.

*[Ins. S110 Act A1593 w.e.f. 1/1/2020]*

## PART XVI

### GENERAL

#### **Review of and appeal against decision of the Director General**

**143.** (1) Subject to subsection (4), any person aggrieved by any decision of the Director General may apply to the Director General to review any of his decision within thirty days from the date the person has been notified of such decision provided that no appeal has been made on the same decision to the Tribunal or High Court.

(2) An application under subsection (1) shall be made in the prescribed form.

(3) Where an application for review has been made under subsection (1), the Director General shall, where practicable within sixty days from the date of the receipt of such application, carry out the review and notify the decision of the review to the person.

(4) No review may be made in any matter relating to compound or **subsection 128(3A)**.

(5) Any person aggrieved by any decision of the Director General under subsection (3) or any other provision of this Act, except any matter relating to compound or **subsection 128(3A)**, may appeal to the Tribunal within thirty days from the date of notification in writing of the decision to the aggrieved person.

*[Amd. S111 Act A1593 w.e.f. 1/1/2020]*

(6) Any customs duty payable under this Act shall be paid on the due date notwithstanding that any review or appeal has been made under this section.

**143A.** *[Deleted by Act 1282]*

#### **Power of Director General to charge fees**

**144.** The Director General may charge such fee as he may consider reasonable in respect of any act or service done or rendered by the Customs Department which is not required to be done or rendered under this Act and for which no fee is prescribed by any written law.



## Forms to be used

**145.** Where any forms have been prescribed under the provisions of paragraph 142(12), no person shall, for the purposes of this Act use any form which is not printed or issued by authority of the Director General:

Provided that the Director General may, at his discretion and subject to such conditions as he may deem fit to impose, permit any person to use forms which are not so printed or issued as aforesaid, or permit the use of any form submitted through an electronic data interchange.

## Customs duty, etc., to be payable notwithstanding any proceedings, etc.

**145A .** The institution of proceedings or the imposition of a penalty, fine or term of imprisonment under this Act, or the compounding of an offence under section 131, shall not relieve any person from the liability to pay for **customs duty, surcharge, penalty, fee or other money** under this Act.

*[Subst. Section 112 Act A1593 w.e.f. 1/1/2020]*

## Protection against suit and legal proceedings

**145B.** No action, suit, prosecution or other proceeding shall lie or be brought, instituted or maintained in any court against—

- (a)* any officer of customs;
- (b)* any police officer having the powers of a senior officer of customs or officer of customs under section 8;
- (c)* any person employed under section 10; and
- (d)* the authorized body and issuing authority,

for or in respect of any act, neglect or default done or committed by him or it in good faith or any omission omitted by him or it in good faith in such capacity.

*[Ins. Section 113 Act A1593 w.e.f. 1/1/2020]*

## PART XVII

### SPECIAL PROVISIONS DEALING WITH PENANG

**146–153.** *[Deleted by Act 329]*

## PART XVIII

### SPECIAL PROVISIONS DEALING WITH LABUAN

#### **Interpretation**

**154.** In this Part, unless the context otherwise requires—

“Labuan” means the Island of Labuan and its dependent islands, *viz.* Rusukan Besar, Rusukan Kecil, Keraman, Burong, Papan and Daat;

“principal customs area” means Malaysia exclusive of Labuan, Langkawi, **Tioman and Pangkor.**

*[Amd. S114 Act A1593 w.e.f. 1/1/2020]*

#### **Customs duties on goods imported into or exported from Labuan or transported to or from Labuan from or to the principal customs area**

**155.** (1) Notwithstanding anything to the contrary contained in this Act—

- (a) no import duty shall be payable upon any goods imported into Labuan, other than goods which the Minister may from time to time declare by order published in the *Gazette*;
- (b) no export duty shall be payable upon any goods exported from Labuan;
- (c) import duty shall be payable upon all dutiable goods transported to the principal customs area from Labuan to all intents as if such transportation to the principal customs area were importation into Malaysia;
- (d) export duty shall be payable upon all dutiable goods transported from the principal customs area to Labuan to all intents as if such transportation from the principal customs area were export from Malaysia;
- (e) the Minister may, by order, prescribe the meaning of the word “value” in relation to goods transported from Labuan to the principal customs area.

(2) Subsections 11(2), (3), (4) and (5) shall apply to any order made by the Minister under paragraph (1)(a).

(3) Nothing in this section shall render inapplicable to Labuan any other customs duty which may be fixed by the Minister under subsection 11(1).

## **Transportation of goods to or from Labuan from or to the principal customs area**

**156.** Where goods are transported—

- (a) from Labuan to the principal customs area; or
- (b) from the principal customs area to Labuan,

the provisions of this Act shall, with such modifications and adaptations as may be necessary, apply as if such goods were imported into, or as the case may be, exported from, the principal customs area from or to a place outside Malaysia, and without prejudice to the above generality, the provisions of Part XII shall apply to goods transported to or from Labuan from or to the principal customs area and to persons and vessels and aircraft transporting such goods.

*[Del. S115 Act A1593 w.e.f. 1/1/2020]*

## **Declaration of goods transported from Labuan to the principal customs area**

**157.** The person in charge of any vessel or aircraft on which goods are transported from Labuan to the principal customs area shall make a declaration substantially in the prescribed form giving particulars of the goods transported in such vessel or aircraft.

## **Dutiable goods to be deemed to be non-dutiable while in Labuan**

**158.** Except for the purposes of section 48, any dutiable goods, other than goods declared by the Minister under paragraph 155(1)(a) or deemed to have been declared by the Minister under that section, shall, while in Labuan, be deemed to be non-dutiable goods and the provisions of this Act shall be construed accordingly.

## **Collection of duties in Labuan**

**159.** In making regulations under section 142 the Minister may provide—

- (a) for the collection in Labuan of customs duties payable in respect of goods transported or about to be transported from or to Labuan to or from the principal customs area;
- (b) for the limitation or restriction of vessels and aircraft which may be used to transport such goods; and
- (c) for the licensing or control of persons or vessels or aircraft transporting such goods.

## **Application of Part X to goods transported to Labuan**

**160.** The provisions of Part X (which deals with drawback) shall apply to goods (other than goods declared by the Minister under paragraph 155(1)(a) or deemed to have been declared by the Minister under that section), transported from the principal customs area to Labuan as if such goods had been re-exported.

## **PART XIX**

### **SPECIAL PROVISIONS DEALING WITH SABAH AND SARAWAK**

#### **Agreements between Sabah and Sarawak relating to movement of goods**

**161.** Notwithstanding anything to the contrary contained in this Act any agreement in force in respect of Sabah and Sarawak relating to the movement of goods between those States shall, until the Minister otherwise directs, have effect with such modifications as the Minister may specify by notification in the *Government Gazettes* of Sabah and Sarawak.

#### **Saving in respect of vessels entering territorial waters due to circumstances beyond the Master's control or in respect of local craft from any other place without clearance or manifest**

**162.** Notwithstanding anything to the contrary contained in this Act, sections 44 and 45 shall not apply in Sabah and Sarawak to—

- (a)* any vessel, the Master of which satisfies the proper officer of customs that its entry into the waters of Malaysia was due to circumstances beyond his control, and that its entry and the reason therefor was at the first possible opportunity reported to the nearest customs or police authority, and that after such entry no person on board or connected with the vessel has done any act contrary to any written law; or
- (b)* any local craft if the person in charge thereof can show to the satisfaction of a proper officer of customs that he has come from a place of departure from which it is unusual to grant or carry clearances or manifests.

#### **Time and manner of payment of duty in Sarawak**

**163.** Notwithstanding anything to the contrary contained in this Act, all customs duties payable in Sarawak under this Act shall be paid within such period after the date of importation or exportation, or loading of the goods for transhipment for export, as the case may be, as the Minister may by regulation made hereunder provide, or in default of any such regulation, before such goods are removed from customs control:

Provided that the customs duty on goods stored in a **customs or licensed warehouse, or warehouse or other place approved by the Director General** in accordance with any regulation made hereunder in that behalf shall be paid at such time and in such manner as may be prescribed by such regulations.

*[Subst. S116 Act A1593 w.e.f. 1/1/2020]*

## PART XIXA

### SPECIAL PROVISIONS DEALING WITH LANGKAWI

#### **Interpretation**

**163A.** In this Part, unless the context otherwise requires—

“Langkawi” means the Langkawi Island and all adjacent islands lying nearer to Langkawi Island than to the mainland;

“principal customs area” means Malaysia exclusive of Labuan, Langkawi, **Tioman and Pangkor**.

*[Subst. S117 Act A1593 w.e.f. 1/1/2020]*

#### **Customs duties relating to Langkawi**

**163B.** (1) Notwithstanding anything to the contrary contained in this Act—

- (a) no import duty shall be payable upon any goods imported into Langkawi, other than goods which the Minister may from time to time declare by order published in the Gazette;
- (b) no export duty shall be payable upon any goods exported from Langkawi, other than any goods which the Minister may from time to time declare by order published in the Gazette;
- (c) import duty shall be payable upon all dutiable goods transported to the principal customs area from Langkawi as if such transportation to the principal customs area were importation into Malaysia;
- (d) export duty shall be payable upon all dutiable goods transported from the principal customs area to Langkawi to all intents as if such transportation from the principal customs area were export from Malaysia; and
- (e) the Minister may by order, prescribe the meaning of the word “value” in relation to goods transported from Langkawi to the principal customs area.

(2) Subsections 11(2), (3), (4) and (5) shall apply to any order made by the Minister under paragraph (1)(a) or (b).

(3) Nothing in this section shall render inapplicable to Langkawi any other customs duty which may be fixed by the Minister under subsection 11(1).

### **Transportation of goods to or from Langkawi from or to the principal customs area**

**163C.** Where goods are transported—

(a) from Langkawi to the principal customs area; or

(b) from the principal customs area to Langkawi,

the provisions of this Act, other than sections 81, 82, 83, 84, 85, 86 and 87 and paragraph 87A(1)(b) thereof, shall with such modifications and adaptations as may be necessary, apply as if such goods were imported into, or as the case may be, exported from, the principal customs area from or to a place outside Malaysia, and without prejudice to the above generality, Part XII shall apply to goods transported to or from Langkawi from or to the principal customs area and to persons and **vehicles, vessels and aircrafts transporting such goods.**

*[Subst. S118 Act A1593 w.e.f. 1/1/2020]*

### **Declaration of goods transported from Langkawi into the principal customs area**

**163D.** The person in charge of any **vehicle, vessel or aircraft** on which goods are transported from Langkawi to the principal customs area shall make a declaration substantially in the prescribed form giving particulars of the goods transported in such **vehicle, vessel or aircraft.**

*[Subst. S119 Act A1593 w.e.f. 1/1/2020]*

### **Dutiable goods to be deemed to be non-dutiable while in Langkawi**

**163E.** Except for the purpose of section 48, any dutiable goods, other than goods declared by the Minister under paragraph 163B(1)(a) or deemed to have been declared by the Minister under that section, shall while in Langkawi, be deemed to be non-dutiable goods and the provisions of this Act shall be construed accordingly.

### **Collection of duties in Langkawi**

**163F.** In making regulations under section 142, the Minister may provide for the collection in Langkawi of the customs duties payable in respect of goods transported or about to be transported from or to Langkawi to or from the principal customs area.

## **Application of Part X to goods transported to Langkawi**

**163G.** The provisions of Part X which deals with drawback shall apply to goods other than goods declared by the Minister under paragraph 163B(1)(a) or deemed to have been declared by the Minister under that section, transported from the principal customs area to Langkawi as if such goods had been exported.

## **PART XIXB**

### **SPECIAL PROVISION DEALING WITH THE JOINT DEVELOPMENT AREA**

#### **Movement of goods into or from Joint Development Area**

**163H.** (1) The movement of goods from a country other than Malaysia or the Kingdom of Thailand or from a licensed warehouse of Malaysia or the Kingdom of Thailand into the Joint Development Area shall be deemed to be an importation of such goods into the Joint Development Area.

(2) The movement of goods produced in the Joint Development Area from the Joint Development Area into Malaysia, the Kingdom of Thailand or any other country shall be deemed to be an exportation of such goods from the Joint Development Area.

(3) The movement of goods from Malaysia or the Kingdom of Thailand into the Joint Development Area for use in the Joint Development Area and the movement of such goods from the Joint Development Area into Malaysia or the Kingdom of Thailand shall be deemed to be an internal movement of such goods.

#### **Customs duty payable on importation into or exportation from Joint Development Area**

**163I.** (1) Import duty shall be payable on all goods imported into the Joint Development Area.

(2) Export duty shall be payable on all goods exported from the Joint Development Area.

## **PART XIXC**

### **SPECIAL PROVISIONS DEALING WITH TIOMAN**

#### **Interpretation**

**163J.** In this Part, unless the context otherwise requires—

“Tioman” means the Island of Tioman and the islands of Soyak, Rengis, Tumok, Tulai, Chebeh, Labas, Sepoi and Jahat;

“principal customs area” means Malaysia exclusive of Labuan, Langkawi, **Tioman and Pangkor**.

*[Subst. S120 Act A1593 w.e.f. 1/1/2020]*

### **Customs duties relating to Tioman**

**163K.** (1) Notwithstanding anything to the contrary contained in this Act—

- (a) no import duty shall be payable upon any goods imported into Tioman, other than goods which the Minister may from time to time declare by order published in the *Gazette*;
- (b) no export duty shall be payable upon any goods exported from Tioman, other than goods which the Minister may from time to time declare by order published in the *Gazette*;
- (c) import duty shall be payable upon all dutiable goods transported to the principal customs area from Tioman as if such transportation to the principal customs area were importation into Malaysia;
- (d) export duty shall be payable upon all dutiable goods transported from the principal customs area to Tioman to all intents as if such transportation from the principal customs area were export from Malaysia; and
- (e) the Minister may by order, prescribe the meaning of the word “value” in relation to goods transported from Tioman to the principal customs area.

(2) Subsections 11(2), (3), (4) and (5) shall apply to any order made by the Minister under paragraph 1(a) or (b).

(3) Nothing in this section shall render inapplicable to Tioman any other customs duty which may be fixed by the Minister under subsection 11(1).

### **Transportation of goods from or to Tioman to or from the principal customs area**

**163L.** Where goods are transported—

- (a) from Tioman to the principal customs area; or
- (b) from the principal customs area to Tioman,

the provisions of this Act, other than sections 81, 82, 83, 84, 85, 86 **and 87 and paragraph 87A(1)(b)** thereof, shall with such modifications and adaptations as may be necessary, apply as if such goods were imported into, or as the case may be, exported from, the principal customs area from or to a place outside Malaysia, and without prejudice to the above generality, Part XII shall apply to goods transported to or from Tioman from or to the principal customs area and to persons and vehicles, vessels and aircraft transporting such goods.

*[Subst. S121 Act A1593 w.e.f. 1/1/2020]*



## **Declaration of goods transported from Tioman to the principal customs area**

**163M.** The person in charge of any **vehicle, vessel or aircraft** on which goods are transported from Tioman to the principal customs area shall make a declaration substantially in the prescribed form giving particulars of the goods transported in such **vehicle, vessel or aircraft**.

*[Subst. S122 Act A1593 w.e.f. 1/1/2020]*

## **Dutiable goods to be deemed to be non-dutiable while in Tioman**

**163N.** Except for the purpose of section 48, any dutiable goods, other than goods declared by the Minister under paragraph 163K(1)(a) or deemed to have been declared by the Minister under that section shall, while in Tioman, be deemed to be non-dutiable goods and the provisions of this Act shall be construed accordingly.

## **Collection of duties in Tioman**

**163O.** In making regulations under section 142, the Minister may provide for the collection in Tioman of the customs duties payable in respect of goods transported or about to be transported from or to Tioman to or from the principal customs area.

## **Application of Part X to goods transported to Tioman**

**163P.** The provisions of Part X which deals with drawback shall apply to goods other than goods declared by the Minister under paragraph 163K(1)(a) or deemed to have been declared by the Minister under that section, transported from the principal customs area to Tioman as if such goods had been exported.

## **PART XIXD**

### **SPECIAL PROVISIONS DEALING WITH PANGKOR**

#### **Interpretation**

**163Q.** In this Part, unless the context otherwise requires—

“Pangkor” means the Pangkor Island, Mentagor Island, Giam Island, Simpan Island, Tukun Terindak Island, Pelanduk Island, Anak Pelanduk Island, Landak Island, Batu Orang Tua and Batu Jambal;

“principal customs area” means Malaysia exclusive of Labuan, Langkawi, Tioman and Pangkor.

## **Customs duties relating to Pangkor**

**163R.** (1) Notwithstanding anything to the contrary contained in this Act—

- (a) no import duty shall be payable upon any goods imported into Pangkor, other than goods which the Minister may from time to time declare by order published in the *Gazette*;
- (b) no export duty shall be payable upon any goods exported from Pangkor, other than any goods which the Minister may from time to time declare by order published in the *Gazette*;
- (c) import duty shall be payable upon all dutiable goods transported to the principal customs area from Pangkor as if such transportation to the principal customs area were importation into Malaysia;
- (d) export duty shall be payable upon all dutiable goods transported from the principal customs area to Pangkor as if such transportation from the principal customs area were exportation from Malaysia; and
- (e) the Minister may by order, prescribe the meaning of the word “value” in relation to goods transported from Pangkor to the principal customs area.

(2) Subsections 11(2), (3), (4) and (5) shall apply to any order made by the Minister under paragraph (1)(a) or (b).

(3) Nothing in this section shall render inapplicable to Pangkor any other customs duty which may be fixed by the Minister under subsection 11(1).

## **Transportation of goods to or from Pangkor from or to the principal customs area**

**163s.** Where goods are transported—

- (a) from Pangkor to the principal customs area; or
- (b) from the principal customs area to Pangkor, the provisions of this Act, other than sections 81, 82, 83, 84, 85, 86 and 87 and paragraph 87a(1)(b), shall with such modifications and adaptations as may be necessary, apply as if such goods were imported into or, as the case may be, exported from, the principal customs area from or to a place outside Malaysia, and without prejudice to the above generality, Part XII shall apply to goods transported to or from Pangkor from or to the principal customs area and to persons and vehicles, vessels and aircrafts transporting such goods.

## **Declaration of goods transported from Pangkor into the principal customs area**

**163T.** The person in charge of any vehicle, vessel or aircraft on which goods are transported from Pangkor to the principal customs area shall make a declaration

substantially in the prescribed form giving particulars of the goods transported in such vehicle, vessel or aircraft.

### **Dutiable goods to be deemed to be non-dutiable while in Pangkor**

**163U.** Except for the purpose of section 48, any dutiable goods, other than goods declared by the Minister under paragraph 163r(1)(a), shall while in Pangkor, be deemed to be non-dutiable goods and the provisions of this Act shall be construed accordingly.

### **Collection of duties in Pangkor**

**163V.** In making regulations under section 142, the Minister may provide for the collection in Pangkor of the customs duties payable in respect of goods transported or about to be transported from or to Pangkor to or from the principal customs area.

### **Application of Part X to goods transported to Pangkor**

**163W.** The provisions of Part X which deals with drawback shall apply to goods, other than goods declared by the Minister under paragraph 163R(1)(a), transported from the principal customs area to Pangkor as if such goods had been exported.

*[Ins. S123 Act A1593 w.e.f. 1/1/2020]*

## **PART XX**

### **SINGAPORE PREVENTIVE VESSELS**

*[Del. by S124 Act A1593 w.e.f. 1/1/2020]*

## **PART XXI**

### **REPEAL**

### **Repeal and saving**

**169. (1)** The written laws specified in the Schedule are hereby repealed.

(2) Unless the contrary intention appears in this Act—

(a) all persons, things and circumstances appointed or created by or under any of the laws repealed by subsection (1) or existing or continuing under any of such laws immediately before the commencement of this Act shall, under and subject to this Act and regulations made thereunder, continue to have the same status, operation and effect as they respectively would have had as if such laws had not been so repealed; and

in particular and without effecting the generality of paragraph (a) such repeal shall not affect licences, permits, appointments, orders, rules and regulations issued or made under or by virtue of the aforesaid laws and in force immediately before the commencement of this Act and such licences, permits, appointments, orders, rules and regulations shall remain in force and shall continue to remain in force as if every such licence, permit, appointment, order, rule or regulation were issued or made under and by virtue of this Act until replaced or revoked by any licence, permit, appointment, order, rule or regulation made under or by virtue of this Act.

SCHEDULE

[Section 169]

Customs Ordinance 1952 of the States of Malaya	F.M. Ordinance No. 42 of 1952
Customs Ordinance of Sabah	Sabah Cap. 33
Customs Ordinance of Sarawak	Sarawak Cap. 26

**Note:**

***Savings and transitional provision (section 125 of Act 1593)***

*(1) Any licence—*

*(a) granted under section 65A to carry on any manufacturing process and other operation in respect of the goods liable to customs duties and any other goods; or*

*(b) granted under section 91A to any person to act as a licensed carrier,*

*before the appointed date and in force immediately before the appointed date shall, on the appointed date, continue to remain in force and have effect until the licence expires, or is withdrawn or cancelled by the Director General.*

*(2) Any approval granted by the Director General to any person to be an accredited person to benefit from simplified procedures for customs clearance as determined by the Director General before the appointed date and in force immediately before the appointed date shall, on the appointed date, be deemed to have been granted under the principal Act as amended by this Act.*

*(3) Any certificate of origin issued in the name of the Ministry of International Trade and Industry or chambers of commerce or trade associations appointed by the Minister of International Trade and Industry before the appointed date and in force immediately before the appointed date shall, on the appointed date, continue to remain in force and have effect until the certificate of origin expires, or is withdrawn or cancelled by the Ministry of International Trade and Industry or chambers of commerce or trade associations appointed by the Minister of International Trade and Industry.*

*(4) Any application for—*

*(a) a licence to carry on any manufacturing process and other operation in respect of the goods liable to customs duties and any other goods under section 65A;*

*(b) a licence to act as a licensed carrier under section 91A;*

*(c) an approval to be an accredited person to benefit from simplified procedures for customs clearance as determined by the Director General; or*

*(d) a certificate of origin to be issued in the name of the Ministry of International Trade and Industry or chambers of commerce or trade associations appointed by the Minister of International Trade and Industry,*

*made before the appointed date and pending before the Director General, or the Ministry of International Trade and Industry or chambers of commerce or trade associations appointed by the Minister of International Trade and Industry, as the case may be, immediately before the appointed date shall, on the appointed date, be*

*dealt with in accordance with the provision of the principal Act as amended by this Act.*

*(5) Any importer, producer or exporter registered by the Ministry of International Trade and Industry for the purpose of producing a declaration of origin before the appointed date shall, on the appointed date, be deemed to have been registered under the principal Act as amended by this Act.*

*(6) Any compounding of offences under the existing section 131 of the principal Act which is pending immediately before the appointed date shall, on or after the appointed date, continue to be a compoundable offences as if the principal Act had not been amended by this Act.*

*(7) In this section, "appointed date" means the date appointed by the Minister under subsection 1(2) of this Act for the coming into operation of this Act.*

#### ***Savings (section 14 of Act A1571)***

*Any appeal before the Tribunal heard by a member of the Tribunal sitting alone or a panel of three members which is pending immediately before the date of coming into operation of this Act shall, on or after the date of coming into operation of this Act, continue to be heard and decided by the member of the Tribunal sitting alone or the panel of three members, as the case may be, as if the principal Act had not been amended by this Act.*