

A BILL

*intituled*

An Act to amend the Customs Act 1967.

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BE IT ENACTED by the Duli Yang Maha Mulia Sen Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Customs (Amendment) Act 1990. Short title.

2. Section 2 of the Customs Act 1967, which in this Act is referred to as the "principal Act", is amended— Amendment of section 2. Act 235,

(a) by inserting, immediately after the definition of "dutiabale goods", the following new definition:

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

(b) by inserting, immediately after the definition of "importer", the following new definition;

' "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 in transit by land and placed under customs control;'

3. Section 3 of the principal Act is amended by substituting for the words "section 22" in subsection (3) the words "sections 22 and 145". Amendment of section 3.

Amendment  
of section 17.

4. Section 17 of the principal Act is amended—

(a) by renumbering the section as "17. (1)"; and

(b) by inserting immediately thereafter the following new subsection (2):

"(2) Where any amount is payable in accordance with subsection (1) the Director General may allow the amount to be paid by instalments in such amounts and on such dates as he may determine."

Amendment  
of section 18.

5. Section 18 of the principal Act is amended by substituting for the words "by unavoidable accident, lost, damaged or destroyed" in subsection (1) the words "damaged, destroyed or, by unavoidable accident, lost".

Amendment  
of section 44.

6. Section 44 of the principal Act is amended by deleting the words "the President of a Sessions Court in West Malaysia or" and the words "in the States of Sabah and Sarawak" in subsection (3).

Amendment  
of section 55.

1. Section 55 of the principal Act is amended—

(a) by substituting for the word "one" in the sixth line of subsection (2) the word "five";

(b) by substituting for the word "one" in the last line of subsection (2) the word "two"; and

(c) by deleting the words "a Sessions Court in West Malaysia or" and the words "in Sabah and Sarawak" in subsection (3).

New sections  
65D and 65E.

8. The principal Act is amended by inserting, immediately after section 65c, the following new sections 65D and 65E:

"Licensing  
of duty  
free shop.

65o. (1) The Director General may at his absolute discretion 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 suspend or withdraw such licence.

(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 at his absolute discretion 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 suspend or withdraw such licence.

(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."

Amendment  
of section 66.

9. Section 66 of the principal Act is amended by inserting, immediately after subsection (4), the following new subsection (5):

"(5) Notwithstanding anything contained in subsection (1), if the Director General is of the opinion that having regard to any particular goods imported into Malaysia it would be in the public interest not to require such goods to be deposited by the importer or his agent in accordance with the said subsection, he may direct such goods to be released subject to such conditions as he may impose."

Amendment  
of section 78.

10. Section 78 of the principal Act is amended by inserting immediately after the words "charges leviable thereon" in subsection (2) the words "within fourteen days of such declaration".

Amendment  
of section 90.

11. Section 90 of the principal Act is amended—

- (a) by inserting, immediately after the words "senior officer of customs" in subsection (1), the words "and subject to such terms and conditions as he may impose";
- (b) by substituting for the words "in default of the production of such authority such officer may refuse such permission" in subsection (2) the words "may at his absolute discretion grant or refuse such permission"; and
- (c) by inserting, immediately after the words "to comply with" in subsection (4), the words "the terms and conditions imposed pursuant to subsection (1) or".

12. The principal Act is amended by substituting for section 91 the following: Substitution  
of section 91.

"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."

13. The principal Act is amended by substituting for section 99 the following: Substitution  
of section 99.

"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; and
- (d) written notice has been given on the export declaration form 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 six months of the date of such re-export or such further period as the Director General may approve.

(2) In this section the expression "manufacture" includes any person to whom the manufactured goods have been sold or otherwise disposed of."

Amendment  
of section 115.

14. Section 115 of the principal Act is amended—

(a) by inserting, immediately after the words "section 127 (1A)" in paragraph (b) of subsection (1), the words "or 128 (4)"; and

(b) by inserting, immediately after the word "perishable" in paragraph (c) of that subsection, the words "or dangerous".

Amendment  
of section 127.

15. Section 127 of the principal Act is amended by inserting immediately after the word "paragraph" in the first line of subsection (1A) the words "(a) or".

Substitution  
of section 128.

16. The principal Act is amended by substituting for section 128 the following:

"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 (c) of subsection (1) of section 115 shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure of the goods unless, before such expiration—

(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 (a) or (b) of subsection (1) of section 115; 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) On the expiration of the period mentioned in subsection (1), or, if a decision is made earlier that there be no prosecution with regard to the goods, on the making of the decision the senior officer of customs shall, if such goods or the proceeds of sale of such goods are not taken and deemed to be forfeited under that subsection, refer the claim to the Director General who may direct that such goods or the proceeds of sale of such goods or the security furnished under paragraph (a) or (b) of subsection (1) of section 115, as the case may be, be released, or may direct such senior officer of customs, by information in the prescribed form, to refer the matter to a Magistrate of the First Class for his decision.

(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 (a) or (b) of subsection (1) of section 115, 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 (a) or (b) of subsection (1) of section 115, 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."

Substitution of section 129.

17. The principal Act is amended by substituting for section 129 the following:

"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 (a) or (b) of subsection (1) of section 115 or the amount realized by sale under paragraph (c) of the said subsection (1);

whether forfeited, or taken and deemed to be forfeited, pursuant to section 127 or 128, to be delivered or refunded, as the case may be, to the owner or other person entitled thereto upon such terms and conditions as he may deem fit:

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."

Amendment of section 131.

18. Section 131 of the principal Act is amended—

(a) by substituting for the word "two" in subsection (1) the word "five"; and

(b) by substituting for the full stop at the end of subsection (3) a colon and inserting thereafter the following proviso:

"Provided that where the prohibition is conditional upon a licence being issued in respect of the import of such goods, a senior officer of customs may release such goods if a licence is subsequently issued by any relevant authority."

Amendment of section 138.

19. Section 138 of the principal Act is amended by substituting for the word "four" the word "five".

20. Section 142 of the principal Act is amended—

Amendment  
of section  
142.

(a) by inserting, immediately after paragraph (34), the following new paragraph (35):

"(35) to regulate the conduct of all matters relating to duty free shops;" and

(b) by renumbering the existing paragraph (35) as paragraph (36).

#### EXPLANATORY STATEMENT

This Bill seeks to amend the Customs Act 1967 (hereinafter referred to as "the Act").

2. *Clause 2* seeks to amend section 2 of the Act by creating three new definitions to explain their use in the various sections in the Act.

3. *Clause 3* amends section 3 (3) of the Act to ensure that the relaxation on the use of various forms allowed under section 145 of the Act is not being misused.

4. *Clause 4* seeks to amend section 17 of the Act to empower the Director General to allow money due to be paid by a person liable, to be paid by instalments in such amounts and on such dates as he may determine.

5. *Clause 5* seeks to amend section 18 (I) of the Act to provide for the circumstances whereby remission of customs duty in cases where goods are lost, may be allowed only where such loss is on account of unavoidable accident.

6. *Clause 6* seeks to amend section 44 (3) of the Act. The proposed amendment is consequential to the amendment made to the Subordinate Courts Act 1948 where the jurisdiction of a Magistrate is enhanced to preside over all cases within the Act.

7. *Clause 7* seeks to amend section 55 (2) to provide for an increased penalty for any offence committed under this subsection. The proposed amendment to section 55 (3) is for a similar purpose as in *clause 6*.

8. *Clause 8* seeks to introduce two new sections in Part VIII, that is section 65D and section 65E. Section 65D gives the Director General power to issue a licence to operate a duty free shop. Section 65E empowers the Director General to issue a licence to operate an inland clearance depot.

9. *Clause 9* seeks to amend section 66 of the Act to introduce a new subsection (5) to empower the Director General to allow the release of certain imported goods instead of being deposited in warehouses, subject to such terms and conditions as he may impose.

10. *Clause 10* seeks to amend section 78 (2) by providing a time limit of fourteen days for payment of any duty on goods which are dutiable.

11. *Clauses 11 and 12* seek to amend sections 90 and 91 respectively of the Act to tighten the control over the permitted agents including the power to grant or refuse permission for anyone to act as agent.

12. *Clause 13* seeks to amend section 99 of the Act by introducing a new subsection (1) to allow a full drawback of any duty paid in respect of goods imported and to be used for manufacturing of other goods or used as the packing or part or ingredient of the packing of the manufactured goods in Malaysia and to further simplify the conditions for drawback. The proposed amendment to subsection (2) is provided to cover a situation where goods are disposed of otherwise than by sale.

13. *Clause 14* seeks to amend section 115 (1) to provide for the payment of the amount secured, to the Director General if the court forfeits the goods under section 128 (4) and to allow a senior officer of customs to sell or destroy any goods seized which are dangerous in nature.

14. *Clause 15* seeks to amend section 127 of the Act to enable the order of forfeiture be made also in respect of the amount secured for temporary release of the goods seized.

15. *Clause 16* seeks to amend section 128 of the Act to enable the forfeiture of any goods seized, the amount secured for the release of the goods seized or the amount realized by its sale.

16. *Clause 17* seeks to amend section 129 of the Act to provide power to the Minister to order goods or amount forfeited to be delivered or refunded to the person entitled.

17. *Clause 18* seeks to amend section 131 of the Act by increasing the penalty under subsection (1) from two to five thousand ringgit. An amendment to subsection (3) is also proposed to allow a senior officer of customs to return any prohibited goods seized where the importer subsequently obtains an import licence in respect of such goods.

18. *Clause 19* seeks to amend section 138 of the Act to provide for a higher penalty.

19. *Clause 20* seeks to amend section 142 of the Act by providing a new paragraph (35) to empower the Minister to make regulations in respect of matters relating to duty free shops.

#### FINANCIAL IMPLICATIONS

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