

BILL NO. 18 OF 2018

A BILL

FOR AN ACT TO AMEND THE CUSTOMS ACT 1986

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Customs (Budget Amendment) Act 2018.
- (2) This Act comes into force on 1 August 2018.
- (3) In this Act, the Customs Act 1986 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2(1) of the Principal Act is amended by inserting the following new definitions—

- ““authorised economic operator” means a person approved as an authorised economic operator by the Comptroller in accordance with section 92A;”;
- and
- ““Service” means the Fiji Revenue and Customs Service established under section 3 of the Fiji Revenue and Customs Service Act 1998;”.

*Section 63 amended***3.** Section 63 of the Principal Act is amended by—

- (a) in subsection (1)—
 - (i) after “they may be sold”, deleting “by public auction”; and
 - (ii) deleting “, either by public auction, or otherwise,”; and
- (b) in subsection (2), deleting “prescribed” and substituting “approved”.

*Section 66 amended***4.** Section 66(2) of the Principal Act is amended by—

- (a) deleting “\$5” and substituting “\$100”; and
- (b) deleting “, provided that the maximum payment under this subsection is \$1,000”.

*Section 69 amended***5.** Section 69 of the Principal Act is amended after subsection (3) by inserting the following new subsections—

“(4) Where a provisional entry for export is accepted by the Comptroller under subsection (3), an exporter must perfect the entry of those goods within a time approved by the Comptroller not exceeding 6 months from the date of the provisional entry.

(5) The Comptroller may, subject to such conditions as he or she deems fit and having regard to the provisions of this Act, determine the correct export value or duty to be paid in respect of a provisional entry accepted under subsection (3).

(6) Where a provisional entry has been accepted and the exporter fails to make perfect the entry within the approved time, the relevant exporter is guilty of an offence and is liable to a fine of—

- (a) 25% of the amount of export value; and
- (b) for each month that the exporter fails to make a perfected entry, an additional 2% of the export value, compounded monthly.”.

*Section 92 amended***6.** Section 92 of the Principal Act is amended by—

- (a) in subsection (3), deleting “maybe” and substituting “may be”;
- (b) in subsection (6), deleting “Trade” and substituting “Tax”;
- (c) after subsection (12), inserting the following new subsection—

“(12A) The Comptroller may approve an authorised economic operator as a person to whom subsection (12) may be applied for the purposes of allowing the deferment of payment of any duty due under this section.”; and

(d) deleting subsections (14) to (17) and substituting the following—

“(14) Where the payment of any duty has been deferred in accordance with subsection (12) and the duty remains unpaid by the due date, the relevant importer or, as the case may be, the exporter is guilty of an offence and is liable to a fine of—

(a) in the case of a person that is not an authorised economic operator—

(i) 5% of the amount of the duty unpaid; and

(ii) for each month that the duty remains unpaid, an additional 2% of the amount of the duty unpaid, compounded monthly; or

(b) in the case of an authorised economic operator, 25% of the amount of duty unpaid at the due date for each month of default of payment.

(15) Where for any reason the amount of duty in respect of which a fine has been imposed under subsection (14) is amended, the fine shall, where necessary, be adjusted accordingly.”.

Section 92A inserted

7. The Principal Act is amended after section 92 by inserting the following new section—

“Authorised economic operators

92A.—(1) The Comptroller may, upon the receipt of an application made in the approved form, approve a person as an authorised economic operator for the purposes of encouraging compliance with customs laws and improving efficiency in customs related activities.

(2) Pursuant to subsection (1), the Comptroller may endorse a framework or a policy regulating the conduct of authorised economic operators and the benefits and services which such operators may be eligible to under this Act.”.

Section 98 amended

8. Section 98(1)(b) of the Principal Act is amended by deleting “2 years” and substituting “one year”.

Section 114 amended

9. Section 114 of the Principal Act is amended after subsection (3) by inserting the following new subsection—

“(4) Notwithstanding subsection (1), where goods have been cleared from customs control or a customs area, and a proper officer has reasonable grounds to believe that a person is committing or has committed an offence under customs laws, the proper officer may in accordance with section 129(2)(f), retrieve samples of those goods in order to conduct an inquiry with regard to the classification of those goods.”.

Part 18A inserted

10. The Principal Act is amended after section 143C by inserting the following new Part—

“PART 18A—INFRINGEMENT NOTICES

Interpretation of this Part

143D. In this Part, unless the context otherwise requires—

“fixed penalty” means a penalty specified in, and payable on receipt of, an infringement notice;

“infringement notice” means a notice prescribed by regulations and issued by a proper officer pursuant to section 143E; and

“prescribed offence” means an offence under any customs law for which a fixed penalty is payable as prescribed by regulations.

Infringement notices

143E.—(1) Subject to this Part, where a proper officer has reason to believe that a person has committed a prescribed offence, the proper officer may institute proceedings in respect of the alleged commission of the offence by issuing upon that person an infringement notice.

(2) An infringement notice issued under subsection (1) must—

- (a) name the person to whom the infringement notice is issued;
- (b) specify the particulars of the offence;
- (c) specify the fixed penalty that the person named on the infringement notice is required to pay; and
- (d) specify any other information prescribed by regulations.

(3) A fixed penalty payable under this Act or any regulations made under this Act is a debt due to the State that—

- (a) is to be collected by the Service in the manner and form prescribed by regulations;
- (b) following the collection of the fixed penalty under paragraph (a), is to be paid by the Service into the Consolidated Fund; and
- (c) ceases to be due—
 - (i) at the time the fixed penalty is paid; or
 - (ii) on acquittal or conviction of the prescribed offence.

Regulations for issuance of infringement notices

143F. The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of infringement notices under this Part, including—

- (a) the offences for which infringement notices may be issued;
- (b) the fixed penalties for prescribed offences;
- (c) the manner, form and time frames for which infringement notices are to be issued;
- (d) the actions a person may undertake on receipt of an infringement notice; and
- (e) the penalties that a person to whom an infringement notice has been issued may be liable to.”.

Section 144 amended

11. Section 144 of the Principal Act is amended by—

- (a) in subsection (3)—
 - (i) in paragraph (b), deleting “or”; and
 - (ii) after paragraph (b), inserting the following new paragraph—
 - “(ba) if that person breaches the code of conduct issued by the Comptroller in accordance with subsection (4); or”; and
- (b) after subsection (3), inserting the following new subsection—
 - “(4) The Comptroller may issue a code of conduct for customs agents licensed under this section for the purposes of regulating the manner in which customs agents transact business in relation to the entry or clearance of any aircraft or ship, including its goods or baggage.”.

Section 148 amended

12. Section 148 of the Principal Act is amended after subsection (2) by inserting the following new subsection—

- “(3) The Comptroller may issue a code of conduct for airline or shipping agents licensed under this section for the purposes of regulating the manner in which airline or shipping agents transact business in relation to inward and outward entry and clearances of any aircraft or ship, including its goods and baggage.”.

June 2018

CUSTOMS (BUDGET AMENDMENT) BILL 2018

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Customs Act 1986 (**‘Act’**) regulates the mechanisms within which the Fiji Revenue and Customs Service administers, among other things, the duties chargeable on goods moving in and out of the country, the powers of customs officers under the Act and monitoring and compliance issues.
- 1.2 The Customs (Budget Amendment) Bill 2018 (**‘Bill’**) seeks to amend the Act by including the ‘authorised economic operator’ concept, which targets reputable entities involved in trade, creates a provisional entry option for exports and strengthens the compliance mechanism available under the Act.

2.0 FEATURES OF THE BILL

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 August 2018.
- 2.2 Clause 2 of the Bill provides a definition for ‘authorised economic operators’ (**‘AEO’**) as a new concept under the Act. High trade volumes make it difficult for customs administration to examine and verify each and every package passing through our borders. The AEO programme provides guidelines and procedures that ensure the security and safety of the country or region through regularising the flow of goods. It is an expansion of the existing Gold Card initiative to the international market through the SAFE Framework under the World Customs Organization.
- 2.3 Clause 3 of the Bill amends section 63 of the Act by allowing a swifter process for managing unclaimed goods in customs warehouses by deleting the reference to ‘public auction’ and allowing the removal of goods by sale as approved by the Comptroller.

- 2.4 Clause 4 of the Bill amends section 66 of the Act by increasing the penalty applicable under that section from \$5 to \$100 to strengthen compliance with the requirements of section 66 (1)(c).
- 2.5 Clause 5 of the Bill amends section 69 of the Act by inserting a provision to provide for provisional entries in case of exports, together with the requirement for the perfecting of such provisional entries within a period directed by the Comptroller. Clause 5 also includes penalties in case of a default of payment with regard to the duty due within the specified time.
- 2.6 Clause 6 of the Bill amends section 92 of the Act by inserting an enabling provision for the Comptroller's power to allow a deferred payment system for duty liability applicable to authorised economic operators, and creating a fine liability in cases of default.
- 2.7 Clause 6 also seeks to effect stylistic changes to section 92 of the Act for consistency of terms used in that provision.
- 2.8 Clause 7 of the Bill inserts section 92A to provide an enabling provision for the Comptroller's power to approve an entity as an authorised economic operator.
- 2.9 Clause 8 of the Bill amends the re-exportation condition required under section 98 of the Act for the payment of drawback under that section, by reducing the time required for re-exportation from 2 years to one year.
- 2.10 Clause 9 of the Bill amends section 114 of the Act by extending the ability of customs officers to take samples of goods cleared from customs areas, genuinely believed to have been the subject of a customs offence under the Act.
- 2.11 Clause 10 amends the Act by inserting a new Part 18A which seeks to further strengthen the enforcement mechanisms available under the Act by empowering customs officers as the proper officers under the Act to issue infringement notices for prescribed offences.
- 2.12 Clause 11 of the Bill amends section 144 of the Act by providing that the Comptroller may issue a code of conduct for regulating the conduct of customs agents.
- 2.13 Clause 12 of the Bill amends section 148 of the Act by providing a similar provision for a code of conduct for airline and shipping agents.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for finance.

A. SAYED-KHAIYUM
Attorney-General